

Opinion

To: Fair Wear Foundation

From: Tim Frazer, Mark Gardner and Karoline Zwierzynska, Arnold & Porter (UK) LLP

Date: 1 June 2015

Re: The Application of EU Competition Law to the Adoption of the Living Wage Standard

1. INTRODUCTION AND EXECUTIVE SUMMARY

- 1.1 Fair Wear Foundation (“**FWF**”) has requested Arnold & Porter’s opinion on the impact of EU competition law on the implementation of FWF’s living wage standard. We set out our opinion below, which is based on our understanding of FWF’s nature and activities summarised in Section 2 below.
- 1.2 Arnold & Porter understands from FWF that some members have expressed a concern about a perceived competition law risk relating to any collective action by members to introduce a living wage.
- 1.3 After an analysis of the available case law and guidance, we believe that FWF may take the actions discussed in this Opinion to implement the living wage standard without objection from competition authorities. In particular, our Opinion is based on the fact that the arrangements envisaged by FWF will not result in a significant commonality or transparency of costs between participating members.
- 1.4 This Opinion is intended to provide reassurance to FWF that it may continue to implement the living wage standard, thus benefitting a greater number of workers and increasing the likely success of trade-related sustainability.
- 1.5 We also note that FWF maintains that, where collectively-bargained sectoral agreements already exist, FWF members should ensure that their actions support such

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agreements. However, we understand that, in many sourcing countries, sectoral, or other collective bargaining, agreements do not exist. In such contexts, FWF encourages its member brands to initiate discussions with other brands sourcing from shared factories to support wage increases for workers. Yet brands have historically hesitated to collaborate in this way due to perceived competition law concerns. It is here that FWF has sought legal counsel.

1.6 In seeking this opinion, FWF has informed us that all efforts at collaboration to raise wages must include workers and trade unions – and support the development of functional industrial relations systems at each step of the process.

2. FWF

2.1 FWF is an independent, non-profit organisation that works with companies and factories to improve labour conditions for garment workers. FWF’s member companies represent over 160 brands active in the garment and textile industries.

2.2 Through working together with business associations, trade unions and NGOs, FWF seeks to promote a number of labour standards,¹ which form FWF’s Code of Labour Practices. One of these labour standards concerns the payment of a living wage (the “living wage standard”). By promoting the payment of a living wage, FWF aims to ensure that workers employed in the factories used by its members will be paid a salary representing at a minimum the amount required to meet basic living needs - including an amount for discretionary purposes – even when salaries meet minimum statutory requirements in those countries.

Focus of FWF

2.3 FWF mainly focuses on the garment manufacture part of the overall value chain where sewing is the main activity. These are among the most labour-intensive phases of the production process and also the stage of production where many labour problems are found, and where effective remedies can positively impact the lives of millions of workers. This is also where brands have the most direct relationships with factories and thus the greatest impact.

¹ These standards are based on principles established by the United Nations and the International Labour Organisation: *ILO Declaration of Philadelphia (1944)* and *ILO Declaration on social justice for a fair globalization (2008)*

- 2.4 FWF is active in 15 production countries in Asia, Africa and Eastern Europe. Most of FWF's work is currently focused on Bangladesh, China, India and Turkey, from where around 80% of FWF member production comes.

Membership

- 2.5 FWF's member companies represent over 160 brands, and are based in ten European countries; member products are sold in over 20,000 retail outlets in more than 80 countries around the world. The organisation is active in 15 production countries in Asia, Europe and Africa.
- 2.6 FWF encourages companies active in the garment and textile industry to become members of the organisation. A full list of members and their associated brands is shown in the Appendix attached to this Opinion.

Transparency

- 2.7 FWF assesses its members' compliance with the Code across the supply chain through an annual "Brand Performance Check". During the Brand Performance Check, FWF interviews key employees at the member responsible for the member's management of supply chains and examines documentary sources such as financial records and the supplier register.
- 2.8 The Brand Performance Check includes a quantitative process, by which FWF allocates a numerical score to each member in respect of benchmarks concerning purchasing practices, monitoring and remediation procedures, complaints handling, staff training and transparency, and the extent to which these policies support living wages. For example, the assessment considers whether the member's pricing policy enables the payment of a living wage in production countries, and whether the member sources from long-standing suppliers, from whom they buy 10% or more of that supplier's capacity.
- 2.9 On the basis of the total score, a member is rated as a Leader, Good or Needs Improvement. As a recognition of their achievements in promoting fair working conditions, only companies with a Leader status will be allowed to use the FWF logo on their clothing or in marketing materials. Conversely, companies with a Needs Improvement status will only be able to remain FWF members for a year, after which their membership may be suspended if substantial improvements are not implemented. Since July 2014 the ratings, together with detailed reports summarising the company's

performance on each benchmark, have been made available to view and download by members of the public on FWF's website. This form of full transparency, a first in its field, allows consumers to easily compare the management practice of companies with regard to labour standards.

3. ANALYSIS OF THE LIVING WAGE CAMPAIGN

The living wage proposal

- 3.1 FWF seeks to ensure that workers employed in the garment factories used by its members will be paid a salary representing the minimum amount required to meet basic living needs – even if wage levels meet minimum statutory requirements in those countries. To achieve this aim, FWF encourages all its members² to use shared factories in order to achieve a collective leverage through the control of a greater total percentage of production. With such leverage, they are better placed to compensate factory owners for the added costs of increased wages. They are therefore more persuasive in requiring the payment of a living wage. FWF's proposal involves encouraging its members to harness this collective leverage by collaborating with factories to improve labour practices, including raising wages from current levels to an agreed benchmark representing or approaching, a living wage (“**the Living Wage Benchmark**”) and investing in other measures which increase productivity on the factory floor.
- 3.2 To support the cost of these improvements, members would agree to pay a small uplift on the FOB price³ of a given garment. This would be achieved through the payment of a per unit production price that is calculated by reference to a *labour minute cost* (i.e., a measure of how much a minute of labour costs at a given factory). The labour minute cost would be constant across the factory, and agreed collectively by the factory owner, the members using the factory and workers and trade unions. The labour minute cost could be set at a level which incorporates a living wage, as well as other costs resulting from the maintenance of fair working conditions (for example, investment in health and safety measures).

² A full list of members and their associated brands is shown in the Appendix attached to this Opinion.

³ The FOB (or “Free on Board”) price is the total price paid by a brand to a factory for the finished product - including costs such as labour, material, overheads and factory margin.

- 3.3 FWF would support the collaboration process by making available to members and factories – and, where appropriate, other non-member brands – tools for living wage costing calculations. Such calculations can be made on a spreadsheet designed by FWF, which lists the monthly average of each employee’s annual wages,⁴ shows the gap between it and the Living Wage Benchmark and the resulting uplift in FOB price required for a given product. However, as discussed under *Commonality of Costs* below, all production cost variables other than the labour minute cost will continue to be negotiated by FWF’s members individually with suppliers and will vary widely between participating companies and by garment. Although the labour minute cost would be constant for all members sourcing from a particular facility, the final FOB price for each garment and the ultimate size of each member’s uplift in that FOB price would remain confidential between each member and the factory and not be disclosed to other members.

Legal assessment

- 3.4 Given the novelty of the application of competition law in the area of sustainability, we understand that a number of FWF members have raised concerns that participation in the living wage initiative might give rise to a risk of infringing competition law. We are also aware that, if unresolved, these concerns might lead to an unnecessary disruption to FWF’s ability to ensure that the policy can be successfully implemented.
- 3.5 In order to address these concerns, we have considered whether FWF and/or its members would be exposed to competition law risk resulting from FWF seeking to facilitate an agreement or series of agreements among members to introduce a living wage. Based on our assessment, we believe that such fears are based on a theoretical application of competition law and will not be realised in practice. We discuss below two elements of the relevant assessment - namely the impact of the living wage initiative on the commonality of costs between participating members, and the impact on retail prices.
- 3.6 FWF has also carried out research on the likely effects of living wages on both FOB and retail prices. We note that studies conducted by FWF were based on limited data and are not a valid basis for drawing generalised inferences about the effects of living wage on the garment industry as whole. The studies are nevertheless a useful point of

⁴ Based on an average of three months of data collected by the factory

reference, through which the issue of whether a living wage proposal could result in coordination on prices due to a significant increase in commonality of production costs can be explored.

Commonality of costs

- 3.7 The European Commission has issued guidelines on “horizontal co-operation agreements”⁵ (the “**Guidelines**”). These include all efficiency-enhancing agreements between competitors or potential competitors, such as joint purchasing, joint production and joint commercialisation agreements. The Guidelines are relevant to an assessment of the living wage initiative, because the initiative requires an agreement or understanding between members to use factories in common, to require the payment of a living wage by the factory owner and to compensate through uplift to the FOB price.
- 3.8 The Guidelines explain that competition concerns are likely to arise in a joint purchasing agreement where the production costs agreed by the parties constitute a large proportion of the variable costs of production, and therefore lead to the companies having a significant part of their costs in common. The theory is that, where competitors have significant costs in common they will be unable to compete effectively on price downstream.
- 3.9 An agreement among two or more FWF members of the type outlined above would not increase the commonality of costs to any significant extent. Rather, the agreed costs attributable to the labour minute would account for only a small proportion of the overall variable costs of production incurred by the factory and the participating members. As a result, the great majority of the production costs continue to differ, even as between the members who use a common factory. For that reason, as confirmed in the Commission’s Guidelines, there would be no limitation on the nature or intensity of price competition between members in the downstream retail markets.
- 3.10 There are two important features that lead to this outcome: (a) the labour costs embedded in a garment will differ by reference to the nature and complexity of the garment (as expressed by the number of labour minutes taken to produce different

⁵ *Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements* (2011), paragraph 178

garments), the country and the location of manufacture; and (b) labour costs are a small part of the variable costs incurred during garment production.

- 3.11 The total cost of labour will differ for each garment, depending on the complexity of production. This feature will be unaffected by the introduction of the labour minute approach. Calculating the labour cost per garment is complex. Wage costs as well as the applicable Living Wage Benchmark used to determine the appropriate labour minute cost differ depending on the country and the factory concerned. Moreover, the per-unit staff time required for the manufacture of a garment varies depending on the skill required for the production of a particular style. For example, a garment with more complex design and finishes (including elements such as zippers, pockets and fastenings), or a tailored piece, will take longer to produce than a simple garment. Compared to a simpler garment, a more complex product manufactured at the same factory will therefore incur a higher total labour cost as the number of labour minutes required for production will be greater.
- 3.12 However, despite the inherent variability in aggregate labour costs, FWF's internal research into costing calculations for hypothetical products suggests that labour costs make up only a small proportion of production costs. Taking a simple garment like a cotton T-shirt retailing at EUR 29 and manufactured in Thailand as an example, salary cost would account for approximately 3.6% of the FOB price and just 0.6% of the retail price.⁶
- 3.13 In addition to wage costs, the FOB price of a garment will depend on the non-labour components of the factory's production costs, consisting of factory overheads (e.g. security, management, rent and bills) as well as the factory's margin. FWF members will also incur a range of other discrete production costs such as the cost of the fabric, trims and accessories or hire of specialised machinery (e.g. taping machinery used in the production of waterproof garments), which will vary between particular garment designs. In practice, these non-labour production costs will vary significantly between members, as a factory will typically manufacture garments with different production requirements for different clients. The fact that the labour minute cost is set at an agreed level will not impact on these individual differences in non-labour production costs.

⁶ Fair Wear Foundation (2012) [Climbing the Ladder for Living Wages](#), p.16-17

- 3.14 Following the FOB stage, the wholesale price for the products will depend on costs incurred in both the production and post-production stages. Members will continue to incur variable post-production COGS,⁷ including transport, customs tariffs, logistics, distribution, marketing, advertising, design and retail operations. The level of such costs will depend on a company's brand strength, supply chain arrangements and economic scale and will in no way be affected by the proposed agreement on living wages and the labour minute cost.
- 3.15 Secondly, only the labour minute cost and Living Wage Benchmark will be shared between members. Members will continue to negotiate independently with respect to other production and post-production cost elements. In particular, the uplift in FOB price payable on a particular garment by each individual member as a result of the Living Wage Programme will not be transparent or disclosed.
- 3.16 Agreement on the minimum labour minute cost will not, therefore, in itself result in a commonality of production costs as a whole, nor a convergence of FOB prices paid by FWF members. As discussed below under Retail Prices an increase in FOB costs may, in practice, be expected to give rise to a disproportionate increase in retail prices. However, as discussed below, this amplification is due to the characteristic inefficiencies of the garment supply chain and insistence on a percentage mark up by intermediaries, and not to any increase in the prices paid for labour - and still less to any agreement between member companies.
- 3.17 In light of the above, FWF's living wage proposal would not result in commonality of costs, other than to a very small proportion of overall variable costs. The impact on FOB price of the agreement of members to implement the living wage standard will differ depending on the garment, the factory and the country concerned: wage costs are only one of the many overheads incurred by garment manufacturers and considered when setting their wholesale prices. The ability of FWF's members to pay suppliers the amounts they wish, or price their products as they choose will therefore be maintained.

⁷ Cost of goods sold - i.e., the direct costs attributable to the production of goods sold by a company.

3.18 Retail prices

- 3.19 There are of course circumstances where a collective effort among competitors to increase prices (whether or not with the intention of passing on the increased revenue to upstream manufacturers) is likely to infringe competition laws. In addition, where the arrangements lead to increased margins for such competitors (as a result of the operation of any pricing formulae within the supply chain, for example), then it will be more difficult to demonstrate that the arrangements are entirely intended to, and have the effect only of, providing for humanitarian purposes.
- 3.20 FWF has itself considered the extent to which an increase in labour costs could increase retail prices in two studies: *Climbing the Ladder to Living Wages* and *Living Wage Engineering*, both of which are available on the FWF website. FWF's research suggests that if costs of living wages were passed directly to the consumer, the resulting retail price increase would be modest at most.
- 3.21 Using the example of a T-shirt manufactured in Thailand (see paragraph 3.12 above), *Climbing the Ladder to Living Wages* indicated that an introduction of living wages would result in a 5.4% increase in the FOB price, amounting to EUR 0.27 per unit. If this increase was passed down the supply chain, with all other costs and profit remaining the same, the retail price of the T-shirt would increase from EUR 29 to just EUR 29.27 - amounting to an increase in retail price of less than 1%. In *Living Wage Engineering*, FWF analysed wage data, product pricing and purchasing information relating to more complex outdoor products. The hypothetical impact of a living wage on FOB price was between 2% and 12%, with a direct retail price adjustment of less than 1% to 7%, depending on garment complexity and per unit staff time required in production.⁸
- 3.22 It is necessary to acknowledge that supply chain structures and practices in the garment industry do not usually lead to a direct transfer of cost between the manufacturing and retail stages. Rather, an increase in costs incurred at the manufacturing stage will be escalated as the garment passes through the various supply chain actors (e.g., selling agents, wholesalers). This is because the price payable at each step in the supply chain will typically be calculated on a cost-plus, or *ad valorem*, basis - i.e. relative to the price charged at the previous step. For example, an agent's fees may be calculated as a

⁸ Fair Wear Foundation (2014). [Living Wage Engineering](#), p.18-19

percentage of FOB, and therefore any increase in FOB will in turn increase the agent's commission.

- 3.23 We understand that, when the effects of this process (“**compounding price escalation**”) were taken into account in FWF’s studies, the predicted retail prices for the T-shirt increased by 5%, instead of by less than 1%;⁹ for more complex outdoor products, consumers would have paid up to 15% more, instead of a maximum of 7%.¹⁰ These escalated retail prices are not representative of the real scale of labour cost increases. To illustrate, the hypothetical consumer of one outdoor product considered in the *Living Wage Engineering* study would have paid up to US\$ 9 more for the garment after the implementation of wage increases, even though the labour cost increase at factory level only amounted to US\$ 1.40 per item.¹¹
- 3.24 However, this disproportionate impact on retail prices would be caused by any increase in costs incurred in the supply chain (for example, agent fees or tariffs). Its cause is the inefficiency embedded in the cost-plus escalator that amplifies cost increases as they pass through the supply chain. It is not the effect of any agreement between member companies to support the payment of the labour minute cost. FWF studies indicate that the impact of the collaboration on retail prices is modest when the amount by which the FOB price increases is directly passed down to the consumer at the point of sale. In any event, even the escalated impact on wholesale or retail prices is not significant enough to constrain price competition between member companies.
- 3.25 There is no agreement (tacit or explicit) that members will increase their wholesale or retail prices in order to compensate for the increased FOB costs incurred as a result of living wage efforts. In practice, members may be reluctant to pass on the price increase to retailers, due to shoppers’ increasing price-sensitivity. Despite growing pressure on companies to provide sustainable clothing, the garment and textile retail markets are characterised by low brand loyalty and high price elasticity of demand. Companies are therefore much more likely to fund the living wage programme from their margins. Margins at wholesale and retail are large enough such that a pass-on to retailers is not inevitable. Members may also be incentivised to address the inefficiencies in their

⁹ Fair Wear Foundation (2014). [Climbing the Ladder](#), p.21

¹⁰ Fair Wear Foundation (2014). [Living Wage Engineering](#), p.19

¹¹ Fair Wear Foundation (2014). [Living Wage Engineering](#), p.19

supply arrangements, such as those posed by compounding price escalation, and seek to individually renegotiate the remuneration received by their suppliers.

Case law of the Court of Justice of the European Union

- 3.26 The analysis above is supported by certain analogies drawn from the case law of the EU’s most senior court, the Court of Justice of the EU (“**the Court**”).
- 3.27 FWF’s living wage proposal has certain parallels with agreements entered into following a framework of collective bargaining between employers and employees, which directly contribute to improving the employment and working conditions of workers (“**collective bargaining agreements**”). Like collective bargaining agreements, FWF’s proposed initiative would seek to achieve fair wage levels for factory workers, and be an outcome of a collaborative negotiation process with the workers’ employers and, wherever possible, relevant worker representatives and/or trade unions.
- 3.28 Settled case law of the Court has recognised that by virtue of their nature and purpose, collective bargaining agreements fall outside the scope of EU competition law.¹² If the joint agreement on improvements to working conditions were subject to the prohibitions of EU competition law,¹³ the social policy objectives pursued by such agreements and espoused by the EU¹⁴ would be significantly undermined.¹⁵ In recognition of the social value of these objectives, the Court held in the recent case of *FNV Kunsten Informatie en Media v Staat der Nederlanden*¹⁶ that immunity from Article 101(1) may also in certain circumstances be afforded to collective remuneration agreements made on behalf of self-employed service providers who perform for an employer, under a works or service contract, the same activity as the employer’s employed workers. This observation is particularly important, given the increased use of sub-contracted labour across industries, including in garment production.

¹² *Albany International BV v Stichting Bedrijfspensioenfonds Textielindustrie*, Case C-67/96, at 60.

¹³ Article 101(1) of the Treaty on the Functioning of the EU (“**TFEU**”)

¹⁴ Article 155 and 156 TFEU

¹⁵ *Ibid*, at 59.

¹⁶ Case C-413/13, at 42.

- 3.29 Although the Living Wage proposal does not fall within the precise exemption from EU competition law afforded to collective bargaining agreements, the case law provides a useful analogy. Indeed, Advocate General Wahl¹⁷ stated in the case cited above that an assessment of whether a particular collective bargaining agreement is subject to the exception should be made on a case by case basis, in light of the specific provisions contained in the collective agreement and of all the characteristic circumstances of the relevant market.
- 3.30 On the other hand, we also note Advocate General Kokott's opinion in the case of *T-Mobile Netherlands BV and others*, that a concerted practice between undertakings may be found to infringe EU competition law, even in the absence of any actual effects on the market, if the object of the practice is deemed to be anti-competitive.¹⁸
- 3.31 We believe that FWF's living wage programme does not fall into the category of agreements with an anti-competitive object. The Guidelines note that certain individualised exchanges of information between competitors should be considered a restriction of competition by object, even in the absence of any explicit agreement to fix prices.¹⁹ However, as discussed above, the living wage proposal does not require any exchange of competitively sensitive data between participating members, such as future prices, FOB uplift, order volumes or other strategic data that would undermine the ability of members to compete at the wholesale or retail level.
- 3.32 We recognise that there is a risk that the context of co-operation envisaged by the living wage proposal might encourage some FWF members to hold information discussions with one another. Any such discussions could constitute a potential infringement of competition law if they inadvertently facilitated an exchange of competitively sensitive information. This risk is not unique to an agreement on living wages, however; it is a feature of all forms of co-operation between competitors and we have previously advised FWF how such risk can be effectively targeted by adopting appropriate safeguards communicated to participating members.

¹⁷ *Opinion of Advocate General Wahl*, Case C-413/13, *FNV Kunsten Informatie en Media v Staat der Nederlanden*, at 84.

¹⁸ *Opinion of Advocate General Kokott*, Case C-8/08, *T-Mobile Netherlands BV and others*, at 42

¹⁹ Guidelines, paragraph 74

The Commission's Communication on non-governmental trade-related sustainability schemes

- 3.33 There is also comfort to be taken from the Commission's stated approach to analogous sustainability schemes. In 2009, the European Commission adopted a communication on the role of Fair Trade and non-governmental trade-related sustainability assurance schemes (the "**Communication**").²⁰ The Commission was supportive of such non-governmental schemes, including elements that guarantee a minimum price or income.
- 3.34 Although there was no discussion in this document of competition law and principles, the Commission's 2009 press release announcing the Communication explained, among other relevant statements, that the Commissioner for Development and humanitarian aid:

"welcomed[d] the rapid development of goods certified "Fair Trade" in Europe, whose turnover has increased 70-fold in the past decade. Especially important are the schemes that guarantee a minimum price to farmers in developing countries. This development will be even more successful when the promoters of such systems better inform consumers on the real impact of their actions on trade and developing countries.²¹" (emphasis added)

- 3.35 Further the Communication stated, in relation to the issue of the living wage, that:

"The criteria, as defined by the Fair Trade movement and recalled in the 2006 European Parliament report are; – a fair producer price, guaranteeing a fair wage, covering the costs of sustainable production and living. This price needs to be at least as high as the Fair Trade minimum price and premium where they have been defined by the international Fair Trade associations."

- 3.36 Similarly, in the context of public procurement criteria, the Communication explains:

²⁰ COM(2009) 215 final Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee Contributing to Sustainable Development: The role of Fair Trade and nongovernmental trade-related sustainability assurance schemes

²¹ European Commission - IP/09/697 05/05/2009

“Environmental and social criteria may also be incorporated in the execution clauses, provided these criteria are linked to the execution of the contract in question (e.g. minimum salary for the workers involved in the performance of the contract).”²²

Enforcement priorities of the European Commission

3.37 The low competition law risk posed by the living wage initiative must be considered in light of the European Commission’s investigative priorities. In order to correctly allocate its finite resources to investigating cases, the Commission will often consider the likelihood and potential magnitude of anti-competitive effects arising from a particular initiative, so that the most harmful cases are granted priority status. As noted in this Opinion, we believe that the living wage proposal is not likely to give rise to any significant competition law concerns in practice, and for this reason is unlikely to be the Commission’s investigative focus. Indeed, public statements²³ made by the Commission suggest that the charity and humanitarian sectors do not appear to be a particular focus for the Commission’s investigative efforts. Rather, some of the key areas targeted include the digital single market, energy and financial services as well as State Aid and tax avoidance.

3.38 In addition, when assessing the likelihood of enforcement action resulting from the adoption of the living wage initiative, it is important to consider the broader economic and political context for FWF’s work in this area. The growing consumer awareness of pan-European initiatives such as The Clean Clothes Campaign or the Ethical Trading Initiative, encourages companies throughout the EU to prioritise the issue of living wages as part of their corporate social responsibility strategy. To maintain and promote interest in the campaign for living wages, FWF maintains relationships with these initiatives and partners with business associations, such as the European Outdoor Group, which represents brands active in the outdoor industry.

²² *Ibid.* (page 9).

²³ e.g., President Juncker’s Mission Letter to Commissioner Vestager, 1 November 2014 http://ec.europa.eu/commission/sites/cwt/files/commissioner_mission_letters/vestager_en.pdf;

European Parliament hearings, 2 October 2014, [http://ec.europa.eu/commission/2014-2019/vestager/announcements/speech-high-level-forum-member-stat](http://ec.europa.eu/commission/2014-2019/vestager/announcements/speech-high-level-forum-member-states-margrethe-vestager-commissioner-competition-18-december-2014_en)
[es-margrethe-vestager-commissioner-competition-18-december-2014_en](http://ec.europa.eu/commission/sites/cwt/files/commissioner_ep_hearings/vestager-reply_en.pdf) and
http://ec.europa.eu/commission/sites/cwt/files/commissioner_ep_hearings/vestager-reply_en.pdf

- 3.39 The practice of promoting a living wage is increasingly being adopted by both non-governmental and governmental stakeholders. For example, the Living Wage Foundation in the UK “...supports, recognises and celebrates the leadership shown by Living Wage Employers in the UK”.²⁴ At a European level, the 2013 European Conference on Living Wages saw a range of stakeholders, including representatives from the German and Dutch governments, declare an intention to “actively participate in multi-stakeholder and other processes to work towards living wages (...); share experiences and lessons learnt; share efforts in this field publicly for monitoring purposes; and coordinate these activities with other stakeholders to create leverage.”²⁵
- 3.40 FWF recognises that the living wage is an important tool for an effective economy and for social progress, which benefits employers and employees alike. Living wage initiatives improve efficiencies. Evidence suggests²⁶ that employers who pay a living wage report a higher quality of work of staff, which results in a reduction in absenteeism, improved staff morale, productivity and dedication to the manufacture of a high quality product. Other benefits for employers include higher staff retention rates, a greater ability to recruit a higher calibre of staff across all pay and competence levels, as well as increasing consumer awareness of an organisation’s commitment to be an ethical employer. The payment of a living wage also empowers employees. Recipients of living wage tend to score higher on measures of psychological well-being and feel more positive about their workplace than workers on a non-living wage. In most major garment production countries, the payment of a living wage is likely to lead to a reduction in child labour, as parents and caregivers become able to pay for their children’s education.
- 3.41 Indeed, FWF’s position is in conformity with the Commission’s own objectives. The year 2015 has been declared by the Commission as the European Year for

²⁴ <http://www.livingwage.org.uk/>

²⁵ <http://www.coc-runder-tisch.de/images/documents/2013-11-26Declaration%20of%20Intent.pdf>

²⁶ See, for example, ‘Living Wages in Global Supply Chains: A New Agenda for Business’, published by the Joint Ethical Trading Initiatives, April 2015, page 25 (<http://www.ethicaltrade.org/resources/living-wages-in-global-supply-chains>). See also, ‘Living Wage Employers: evidence of UK Business Cases’, published by the Living Wage Foundation, January 2015, page 2 (http://www.livingwage.org.uk/sites/default/files/BAR_LivingWageReport%20cropped%2021%2001.pdf)

Development. As part of this initiative, on 23 January 2015 the Commission held a discussion regarding the responsible management of the supply chain in the garment industry. FWF was invited to attend this event and shared its position on living wages and labour standards with officials from DG Development and Cooperation and other key stakeholders.

4. CONCLUSION

- 4.1 For the reasons set out in this Opinion, we do not believe that the Commission will initiate any investigation of FWF's conduct, and that of its members, in relation to the living wage initiative.
- 4.2 Our legal assessment indicates that agreement on the labour minute cost would not increase the transparency of a large proportion of the variable costs FWF members have in common; rather, the effects of the proposal on members' production costs are predicted to be minor. In addition, it would be difficult to characterise the principal object of living wage initiative as anti-competitive, as FWF will not facilitate inappropriate co-operation between competitors or provide a forum for exchange of competitively sensitive information.
- 4.3 We also believe that the living wage initiative carries a low practical risk of regulatory action. Given the absence of significant competition concerns, devoting resources to investigating FWF's living wage initiative would not be consistent with the Commission's own commitment to supporting such initiatives, as expressed in the Communication on non-governmental trade sustainability and the 2015 Year for Development programme.

Arnold & Porter (UK) LLP

APPENDIX

Currently FWF defines four different types of members:

- *Affiliate members* are companies that produce their own sewn goods, such as clothing, bags, footwear or textiles, and who commit to implementing the Code throughout their supply chain. FWF assists by independently verifying compliance, training staff and granting access to specialist audit teams trained by FWF.
- *Ambassador membership* is aimed at resellers, who commit to sourcing at least 40% of their sewn products from FWF affiliates or members of comparable initiatives.
- *Factory membership* is a pilot scheme involving several manufacturing companies which supply FWF's affiliates. A factory member commits to implementing the Code in all production sites and in dealings with subcontractors.
- *Young Designer membership* is aimed at emerging fashion brands. FWF facilitates learning and shares best practice via seminars on fair working conditions and sustainability, with the aim of preparing small and start-up brands for FWF's affiliate membership.

COMPANY	BRANDS
AFFILIATE	
Acne Studios, Sweden	Acne
Albiro AG, Switzerland	Albiro, Frenzy's, Marsum, Solida Care Collections, Solida Gastro Fashion, Wikland
Alchemist Fashion BV, the Netherlands	Alchemist
Anchor Workwear BV, the Netherlands	Anchor Workwear
Anna van Toor BV, the Netherlands	Anna van Toor
Bestex Fabricage BV, the Netherlands	Bestex
Bierbaum-Proenen GmbH & Co. KG, Germany	Bierbaum Proenen
Bizniz Confectie BV, the Netherlands	Bizniz
Blackout AG, Switzerland	Blackout
Blutgeschwister GmbH, Germany	Blutgeschwister
Buttonboss B.V., the Netherlands	Buttonboss, KingCap
Continental Clothing Company Ltd, UK	Continental Collection, Earth Positive Apparel
De Berkel BV, the Netherlands	De Berkel
Deuter Sport GmbH, Germany	Deuter
DW-Shop GmbH, Germany	DW-Shop
E.C.C Couture BV, the Netherlands	Culture
Espresso Fashion BV, the Netherlands	Espresso
Faber Group NV, the Netherlands	FaberVlaggen
Fabrimode NV – Bel&Bo, Belgium	Bel&Bo
Filippa K AB, Sweden	Filippa K
Gerhard Rösch, Germany	Rösch Creative Culture
GREIFF Mode GmbH & Co.KG	GREIFF
Haglöfs Scandinavia AB, Sweden	Haglöfs
Heigo Nederland BV, the Netherlands	Heigo
HempAge AG, Germany	HempAge

COMPANY	BRANDS
Hess Natur-Textilien GmbH, Germany	Hessnatur
Hydrowear BV, the Netherlands	Hydrowear
Jack Wolfskin, Germany	Jack Wolfskin
JBC n.v., Belgium	JBC
K.O.I International BV, the Netherlands	KOI
Kuyichi Europe, the Netherlands	Kuyichi
Kwintet AB, Sweden	A-Code, B&C, Bragard, Clinic Dress, Fristads Kansas, Kwintet Solutions, Lafont, Djupvik, Wenaas
LaDress BV, the Netherlands	LaDress
LK International AG (Kjus), Switzerland	Kjus
Madness The Nature Textile Company GmbH, Germany	Madness The Nature Textile Company
Maier Sports GmbH, Germany	Gonso Bike & Active Wear, Maier Sports GmbH, RONO Innovations
Mammut Sports Group AG, Switzerland	Mammut
Manroof GmbH, Switzerland	Manroof
Mayerline NV, Belgium	Mayerline
Mountain Force AG, Switzerland	Mountain Force
Nakedshirt GmbH, Austria	Nakedshirt
Nudie Jeans Co., Sweden	Nudie Jeans
Odd Molly International AB, Sweden	Odd Molly
Odlo International AG, Switzerland	ODLO
Outdoor & Sports Company Ltd, UK	Hilly, Mountain Equipment, Ronhill, Sprayway
Pama International BV, the Netherlands	Di Pama, Pama International BV
Premium Inc. BV, the Netherlands	Cruyff Classics, Cruyff Sports, Goliath Sportswear, l'Ascolana, Meyba, Premium Inc., Robey Sportswear
ROOTS for Safety BV, the Netherlands	ROOTS for Safety BV
Salewa & Dynafit, Italy	Salewa, Dynafit
Schijvens Confectiefabriek Hilvarenbeek BV, the Netherlands	Schijvens
Schöffel Sportbekleidung GmbH, Germany	Schöffel
Solo Invest S.A.S, France	SOL's
Sportsman's Delight GmbH, Germany	PYUA
Stanley and Stella S.A., Belgium	Stanley and Stella
Star Sock B.V., the Netherlands	Star Sock
Suit Supply BV, the Netherlands	Suit Supply
Swiss Post, Switzerland	Swiss Post
Switcher SA, Switzerland	Switcher, Whale
Tailor & Stitch BV, the Netherlands	Tailor & Stitch, Thirtyfour
Takko Holding GmbH, Germany	Takko Fashion, 1982
Triaz GmbH, Germany	B&W naturpflege, Pranahaus, Minibär, Vivanda, Waschbär, Grünheld
Tricorp BV, the Netherlands	Rom88, Tricorp Corporate, Tricorp Workwear
Uniform Brands B.V. (Crown East), the Netherlands	Orcon, Haen, Liemco, Determeyer & Van Maanen, Foggia, Regatta Professional
Vanilia C.V., the Netherlands	Vanilia
Van Lier Shoes, the Netherlands	Van Lier
Van Puijenbroek Textiel, the Netherlands	Bucofa, HaVeP
Vaude Sport GmbH & Co KG, Germany	Vaude
Westveer Holding BV, the Netherlands	BOUT Beroepskleding, PWG Bedrijfsveilige Kleding
Workfashion.com AG, Switzerland	Lutteurs, workfashion.com

COMPANY	BRANDS
AMBASSADOR	
ACP, Belgium	ACP
A. Mauritz en Zn. BV, the Netherlands	A. Mauritz
B.V. Handelsonderneming Joh. Steenkist v/h J. Schijfsma	Tricorp, Kwintet, Mascot, Snickers, Orcon, Helly Hansen, Sioen, Olymp, CrossHatch, Wrangler, Havep, SIR, Texowear
Groenendijk Bedrijfsschoenen & -kleding BV, the Netherlands	Groenendijk Bedrijfskleding BV
Hurricane Bedrijfskleding BV, the Netherlands	Hurricane
Kristel's Fashion BV, the Netherlands	Kristel's Fashion
Lasaulec BV, the Netherlands	Lasaulec
Pebetex BV, the Netherlands	Pebetex BV
Power Workwear BV, the Netherlands	F-Engel, Workzone, Cofra, Sunwill, ELKA, Broad Peak
P&P Projects BV, the Netherlands	P&P Projects
RK Tekstil e.K. Rainer Klemenz, Germany	RK Tekstil
Secur protects@work BV, the Netherlands	Secur protects@work
Trias Holding BV, the Netherlands	Boudestijn, Polichlo Safety & More
Wiltec BV, the Netherlands	Wiltec BV
FACTORY	
Hemp Fortex Industries Limited, China	HempFortex Industries
KTC Limited, Hong Kong	KTC Limited
ProGarments BV, China	ProGarments
YOUNG DESIGNER	
Axel Hammerschmidt, Austria	Brandless
Blysia Ltd, UK	Blysia Lingerie
Clubkollektion.de GmbH, Germany	ClubKollektion
Gonser & Hampel GBR, Germany	Die rote Zora
Neves Studio, the Netherlands	Sena Ecoculture
Sheeld E.U., Austria	Sheeld
Traced Good, the Netherlands	Traced Good
Underprotection ApS, Denmark	Underprotection
Up-rise Conscious Hemp Wear, Belgium	UpRise