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Your reference: AL OTH 42/2022

1 September 2022

Dear Ms Balbin,

Joint Communication under Special Procedures dated 5 July 2022

1. We refer to the joint communication dated 5 July 2022 addressed to our Chief Executive Officer, Mr. Stefan Bomhard, sent under the Special Procedures of the United Nations Human Rights Council (the "**HRC**") relating to tenant farming at tobacco farms in Malawi (the "**Joint Communication**").
2. Imperial Brands PLC ("**Imperial**") recognises the important work undertaken by the Special Rapporteurs and Working Groups and, of course, the HRC more broadly. Imperial takes the matters raised in the Joint Communication very seriously and wishes to assure the Special Rapporteurs and Working Groups of its long-standing commitment to human rights in its supply chain.
3. We describe below the policies and procedures implemented by Imperial as part of its sustainability programme in order to mitigate the risks identified in the Joint Communication and protect the human rights of those involved in Imperial's supply chain.
4. However, it is first necessary to explain the existence of ongoing proceedings in the High Court of England and Wales in respect of which Imperial Group entities are defendants and which raises matters that are of a materially identical nature to the matters raised in the Joint Communication. As we hope you will appreciate, these proceedings impact on our ability to respond directly to the questions raised in the Joint Communication.

The English High Court Proceedings

5. On 18 December 2020, proceedings were commenced¹ in the High Court of England and Wales, Queen's Bench Division by 7,257 Malawian tenant tobacco farmers against Imperial and other entities in the Imperial group² (the "**Imperial Defendants**") together with certain entities in the British American Tobacco group (together with the Imperial Defendants, "**the Defendants**"). We refer to these proceedings below as the "**English Proceedings**".³
6. The matters referred to in the Joint Communication appear to be identical to the issues in the English Proceedings. We enclose a copy of the Particulars of Claim (which is a publicly available document) in

¹ Case No: QB-2020-004542

² Imperial Tobacco Limited, Imperial Tobacco Overseas Holdings Limited, Imperial Tobacco Overseas Holdings (I) Limited, Imperial Tobacco Overseas Holdings (2) Limited and Imperial Tobacco Overseas (Polska) Limited.

³ There are further related proceedings that were also commenced in the High Court of England and Wales, Queen's Bench Division which concern an additional 3,357 tenant tobacco farmers. These proceedings concern the same issues as the English Proceedings which will be defended vigorously. By agreement with the claimants, the Imperial Defendants have not yet acknowledged service of these proceedings and reserved their position as to the appropriate jurisdiction in which these claims should be determined. Further steps in these proceedings have been put on hold pursuant to the order made on 22 December 2021.

the English Proceedings which illustrates this point. The Joint Communication does not mention the English Proceedings. However, given the similarities, it seems reasonable to infer that those who raised the issues contained in the Joint Communication are familiar with the details of the English Proceedings.

7. The Imperial Defendants have made clear that they dispute the claims against them in the English Proceedings and that they intend to defend those claims vigorously. The Imperial Defendants have submitted to the jurisdiction of the English High Court.
8. On 25 June 2021, Mr Justice Martin Spencer gave judgment in the English Proceedings, dismissing an application by the Defendants to strike-out the Particulars of Claim on the grounds that the claimants did not have a proper basis to plead their foundational allegation that any individual claimant had grown tobacco leaves ultimately acquired by the Defendants or their subsidiaries. We enclose a copy of that judgment (a publicly available document). The position is therefore that the English Proceedings are ongoing and continue to be pursued by the claimants and defended by the Imperial Defendants.
9. The degree of overlap between the issues in the English Proceedings and those raised by the Joint Communication is relevant for two key reasons.
10. First, the English Proceedings have not yet reached the point at which the Imperial Group is required to provide its defence. That is so in particular because it remains to be ascertained which of the more than 7,000 claimants in whose name the claims are brought were involved in producing tobacco acquired by the Imperial Group. It is common ground in the Proceedings that that is a threshold issue of fundamental importance. In the circumstances, it would not be appropriate for the Imperial Group to provide substantive responses to the points raised by the Joint Communication, which are materially identical to the points raised in the English Proceedings. Respectfully, the most appropriate forum for those responses is in the English Proceedings pending in the national court chosen by the claimants.
11. Secondly, given the ongoing English Proceedings, and in light of the relevant international framework to which we refer below, we would respectfully invite the Special Rapporteurs and Working Groups to stay any investigation of the matters in the Joint Communication and/or to stay any consideration which might ultimately lead to findings or observations on the matters referred to in the Joint Communication. It follows that we invite them not to make any findings or observations on the matters referred to in the Joint Communication whilst the English Proceedings are ongoing. We note the following points in this regard:
 - (a) It is a general principle of international law, well entrenched within the framework of UN human rights treaty bodies,⁴ that a complainant should exhaust domestic remedies when seeking redress for alleged human rights violations by a State before taking the matter to an international body. This requires that a complainant use the available adequate and effective national legal protections available from a domestic court, including pursuing any rights of appeal, before seeking to refer the matter to an international body such as the HRC. Although the defendants in this case are not States: that is what is happening in relation to the ongoing English Proceedings. The claimants have chosen to start those proceedings and should exhaust the remedies available in that jurisdiction before turning, if they so wish, to international bodies; and
 - (b) Furthermore, and consistently with what we say in point (a) above, an international body will not generally consider a case currently pending before another international body.⁵ We suggest that

⁴ This is consistent with the principle of "*lis alibi pendens*". See, for example, Article 5(2)(b) of the Optional Protocol to the International Covenant on Civil and Political Rights.

⁵ See for example, Article 35 para 2(b) of the European Convention on Human Rights; Article 5 para 2(a) of the Optional Protocol to the International Covenant on Civil and Political Rights; Human Rights Council in Resolution 5/112, §87.

this principle should apply with even greater force in circumstances where the case is pending before a domestic court, at the initiative of the claimants. This principle reflects the recognition that it is highly likely to lead to confusion, complexity and unfairness (especially for a defendant) for the same claim to be considered separately in two different fora, at the same time.

Imperial's position in the market in Malawi

12. Notwithstanding the points noted at §§5-11 above, Imperial wishes to provide the following factual information about how it acquires tobacco from Malawi. It does so in the hope that the information will assist the Special Rapporteurs and Working Groups by providing helpful context to the questions raised in the Joint Communication.
13. Imperial is not vertically integrated in Malawi and, as a result, it does not have an on-the-ground presence there. The tobacco that Imperial purchases ranged from approximately 3% to 12% of the total tobacco sold in Malawi during the period 2014-2020. Imperial purchases tobacco grown in Malawi from the two leaf buyers identified in the Joint Communication, Limbe Leaf Tobacco Company Limited ("**Limbe Leaf**") and Alliance One International ("**Alliance One**"). As with all of our suppliers, Imperial expects Limbe Leaf and Alliance One to adhere to certain behaviours with regards to human rights set out in our Supplier Code of Conduct (see further below).
14. In November 2019, the US Customs and Border Protection ("**USCBP**") issued a withhold release order on tobacco from Malawi due to concerns that it was produced using forced labour and forced child labour. The USCBP subsequently undertook a "*rigorous evaluation*" of each of Limbe Leaf's and Alliance One's social compliance programmes and their efforts to identify and minimise the risks of forced labour from their supply chains. The USCBP concluded that the tobacco produced and harvested from Limbe Leaf's and Alliance One's farms in Malawi did not use forced labour.⁶ The withhold release order was then modified so as to allow both companies to resume their imports of Malawian tobacco into the US.⁷

Imperial's commitment to human rights in its supply chain

15. Imperial wishes to assure the Special Rapporteurs and Working Groups and the HRC more broadly of Imperial's long-standing commitment to human rights in its supply chain as a part of its broader sustainability programme.

Code of Conduct

16. Imperial's Supplier Code of Conduct⁸ sets out the behaviours we expect all of our suppliers to adhere to. The content of the Code has been guided by the United Nations Guiding Principles on Business and Human Rights ("**UNGPs**") and the International Labour Organisation ("**ILO**"). We expect our suppliers to:
 - (a) ensure that people are employed fairly, safely and at least in compliance with international labour standards;
 - (b) ensure that employment is freely chosen and that there is no slavery, servitude or forced labour;

⁶ <https://www.cbp.gov/newsroom/national-media-release/cbp-issues-withhold-release-order-tobacco-malawi>

⁷ <https://www.cbp.gov/newsroom/national-media-release/cbp-modifies-withhold-release-order-imports-tobacco-malawi>;
<https://www.cbp.gov/newsroom/national-media-release/cbp-modifies-withhold-release-order-tobacco-imports-limbe-leaf>

⁸ <https://www.imperialbrandsplc.com/content/dam/imperialbrands/corporate2022/documents/healthier-futures/governance/our-code-of-contact/English-Code-of-Conduct.pdf>

- (c) not employ any person under 15 years old, or less than the local minimum employment age/mandatory school age, whichever is higher;
- (d) not employ any person under the age of 18 years old to undertake tasks which are hazardous; and
- (e) ensure that working hours and remuneration comply with national law and benchmark industry standards, whichever offers greater protection.

Sustainable Tobacco Programme

- 17. We actively seek to prevent exploitation through multi-stakeholder initiatives, including an industry-wide sustainable tobacco programme (the “STP”). We note that the claimants in the English Proceedings seek to impugn the STP but, as noted above, Imperial is defending those proceedings.
- 18. All suppliers from whom we source tobacco are expected to participate in the STP, which is managed by an independent Secretariat and which provides a framework for continuous improvement. Through the STP we work with suppliers to improve social, economic and environmental standards. The STP annual assessment is part of our formal supplier relationship management programme.
- 19. Since 2018, we have worked with the industry to enhance the STP. This has included reviewing the STP indicators and guidance to achieve better alignment with the UNGPs and the UN Sustainable Development Goals.

Tackling root causes

- 20. In addition to the STP, and in collaboration with key stakeholders in the industry, we participate in two main initiatives designed to tackle the root causes of child labour: the Eliminating Child Labour in Tobacco Growing Foundation (“ECLT”) and our Leaf Partnership programme.
- 21. We actively support the ECLT. As well as financing projects on the ground, the ECLT plays an important role in convening broader stakeholders (including governments, industry, farm workers, and the ILO) to come together to find sustainable solutions to address child labour.
- 22. We also work directly with suppliers to fund Leaf Partnership projects. These involve us working directly with suppliers to fund identified projects that will have a direct impact on tobacco-growing communities. For example, since 2015 Imperial has worked with local partners in Malawi to develop a reliable and clean water supply in tobacco-growing regions by funding 288 boreholes with hand/treadle pumps. These boreholes have secured access to clean drinking water for up to 16,908 people, helping to increase farm productivity in line with the UN Sustainable Development Goals (“SDGs”) 1, 2 and 6.
- 23. Imperial takes the welfare of farmers seriously and we are committed to engaging with our suppliers to support and develop farmers. We want to contribute to alleviating poverty on an ongoing basis. In order to achieve this goal, we work to enhance the standards in our leaf supply chain, both directly with our suppliers and through the STP, and we are continuing to enhance due diligence in our leaf supply chain. The STP's standards with regards to farmers' working conditions are aligned with the UNGPs and SDGs.

Conclusions

- 24. The matters raised in the Joint Communication involve industry-wide issues, which arise in many different agricultural supply chains. As explained above, we seek to mitigate the risks posed by these issues through our internal policies and multi-stakeholder initiatives.

25. We wish to reiterate once again our support for the ongoing work of the HRC. As part of its commitment to human rights, and in addition to the work it is already undertaking in this area, Imperial would welcome the opportunity to work with organisations that are in a position to influence public policy and set global or industry-wide standards aligned with the UNGPs.
26. While we regret that we are unable to respond to the Joint Communication in more detail for the reasons explained earlier in this letter, we nevertheless hope that the information contained in this letter is helpful.

Yours sincerely



John Downing
Company Secretary
Imperial Brands plc