

## **Ruling in the case of SOMO, SKC, R - C&A Nederland C.V.**

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Ruling by the Complaints and Disputes Committee for the Dutch Agreement on Sustainable Garments and Textile (hereafter: "the CDC") within the meaning of Clause 1.3 of the Dutch Agreement on Sustainable Garments and Textile [*Convenant Duurzame Kleding en Textiel*] (hereafter: "AGT" or "the Agreement")<sup>1</sup>

Regarding:

Stichting Onderzoek Multinationale Ondernemingen [*Centre for Research on Multinational Corporations*] (hereinafter: "SOMO") - the Netherlands, represented in this matter by Ms P. Overeem, Ms M. Theuws, Mr J. Wilde Ramsing, Stichting Schone Kleren Campagne [*Clean Clothes Campaign*] (hereinafter: "SKC") - the Netherlands, represented in this matter by Ms Ch. de Bruin, Mr B. Joanknecht, Ms I. Kelly, R and four former employees (hereinafter: "R")<sup>2</sup> - Myanmar, represented in this matter by the Mr X and Ms Y;  
complainants;

versus

The limited partnership C&A Nederland C.V. (hereinafter: "C&A"), with its registered office in Amsterdam, represented in this matter by Ms K. Köklü, Ms R. Feldmann, Mr A. Busquets Gonzalez and Mr M. Reidick;  
the defendant.

### **1. Conduct of proceedings**

- 1.1 The complainants filed the complaint on 2 July 2020. The CDC dealt with the complaint and the hearing was held in three parts on 20 November 2020, 3 December 2020 and 15 January 2021.
- 1.2 In the interlocutory judgement of 17 May 2021 (hereinafter: "Interlocutory judgement"), the CDC declared SOMO, SKC and R each admissible as Stakeholders and also declared R admissible as a Mandatee as defined in the Rules of Procedure. R has been authorised by four of the five former employees of Production Site cited by name in the procedural documents. In the interlocutory judgement, the CDC recommended that the parties first engage in a dialogue to break the deadlock and discuss the consequences of the changed situation in Myanmar following the coup in February 2021. It provided a framework for this

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<sup>1</sup> The Dutch text of this ruling shall prevail in the case of interpretation disputes.

<sup>2</sup> In the interlocutory judgement, this party is referred to as "Z". With the war in Ukraine that was ongoing at the time of writing this ruling, this abbreviation has taken on a serious connotation. Therefore, another abbreviation has been chosen, viz. "R".

and indicated that the most diligent party could bring the case back to the CDC if the parties did not enter into a dialogue or if the dialogue did not lead to the withdrawal of the complaint. It also indicated that the CDC would then further deal with the complaint, taking into account the results of the dialogue and would then formulate a ruling.

- 1.3 The complainants brought the case up again on 28 September 2021. The CDC then took note of the final memorandum from the complainants dated 27 October 2021 with three appendices and the Final memorandum from the defendant dated 30 November 2021 with two appendices.
- 1.4 The hearing was held on 11 January 2022. All parties were present via an internet connection. The complainants used a written pleading that was submitted.
- 1.5 The CDC is authorised to handle complaints filed while the AGT was in force, after the expiry of the AGT on 31 December 2021.

## **2. The facts**

With respect to facts and circumstances that occurred after the interlocutory judgement was issued, the CDC assumes the following facts and circumstances that have been established by the parties or have not been contested or have not been sufficiently contested, as they have become evident from the documents and/or what was presented at the hearing.

- 2.1 The dialogue recommended in the interlocutory judgement did not take place. In an email dated 6 August 2021, C&A invited the complainants to enter into a dialogue as referred to in the interlocutory judgement. The complainants responded to this invitation by email dated 13 August 2021. In that email, they indicated that they were open to discussion about the current situation at the Production Site and in Myanmar in general, and proposed which points they would be able to and would be willing to discuss. They also stated that such a consultation should not take place within the context of the ongoing complaints procedure and that the complainants wanted to bring the complaints procedure to a close with a final ruling by the CDC. The complainants requested further information from C&A about the closure of the Production Site by email dated 6 September 2021 and sent a reminder to C&A on 27 September 2021 as their emails had remained unanswered. C&A responded to the complainants by email dated 30 September 2021, expressing its surprise that it had understood from the complainants that they did not want to engage in a dialogue as recommended in the interlocutory judgement. The complainants confirmed in an email dated 8 October 2021 that they were open to dialogue, that in their opinion this could take place outside the current complaints procedure and that they would like to receive information about the closure of the Production Site and any associated aspects.

In the intervening period, C&A had informed the CDC by email dated 9 September 2021 that the complainants did not want to engage in a dialogue as recommended in the interlocutory judgement, but instead wanted a meeting outside the context of the complaints procedure and had asked what the subsequent procedure would be. The complainants had also reinstated the complaint on 28 September 2021 and C&A had been informed about the resumption of the procedure.

- 2.2 C&A has ceased its activities in Myanmar.

- 2.3 The Supplier has unilaterally decided to close the Production Site in August 2021. C&A has actively sought to ensure a responsible exit. It has not involved the complainants in this disengagement process.

### **3. Position of the complainants**

After the interlocutory judgement, the complainants supplemented their original complaints, briefly, with the following complaints and requests.

- 3.1 The request to the CDC to explicitly conclude that C&A violated the AGT by:
- Failing to ensure that freedom of association and collective bargaining were respected during the period that the complaint concerns;
  - Not taking any action to stop union busting;
  - Failing to ensure a functioning independent Workplace Coordination Committee (hereinafter: "WCC");
  - Failure to engage R in a meaningful way as a legitimate stakeholder;
  - Failing to provide transparency on audit findings, corrective action plans (CAPs) and other steps towards the Myanmar and international stakeholders.
- 3.2 Requesting the CDC to update its analysis of responsibility for the actions of C&A at the Production Site, re-evaluate and confirm that the nature of C&A's involvement has shifted from "directly related" to "contributing to". Furthermore, the complainants have argued that C&A did not involve R in any meaningful way after the interlocutory judgement, and that there was not even any contact with R, not even regarding the closure of the Production Site. Furthermore, they claim that C&A did not consult with the complainants about the new situation at the Production Site and in Myanmar in general, despite questions from the complainants about that situation and the willingness of the complainants to hold such consultations.

Since C&A has contributed to the damage, C&A has a responsibility, in the opinion of the complainants, to contribute to repairing the damage.

- 3.3 The request submitted to the CDC is to handle the points from the original complaint that were not addressed separately in the interlocutory judgement. The crux of the matter, in the view of the complainants, is that the management of the Production Site has over the years consistently ignored the concerns and grievances of the employees, and that C&A has failed to address this situation. It has neglected to make proper use of its influence (leverage) in this respect. There was no functioning WCC, no trade union at grassroots level, and no other functional grievance mechanism or channel for employees to raise concerns and grievances with the management. One example is how the management handled the bonus scheme in 2018.
- 3.4 The request that the complaint process should also take the situation in Myanmar since the military coup of 1 February 2021 into account. The situation after the coup has clearly had an impact on the procurement practices of C&A in Myanmar in general, and on its dealings with the Production Site in particular. The respect for human and workers' rights has, according to complainants, declined drastically, which has severely impacted the labour movement and workers in the garment industry. This places an extra burden of care on companies when it comes to exercising human rights due diligence.
- 3.5 The complaint that there would appear to have been irresponsible disengagement by C&A at the Production Site as a consequence of the security situation after the

military coup. The complainants have also alleged that C&A did not involve, inform or answer questions from either R or the complainants in any meaningful way concerning the closure of the Production Site and the disengagement process. The complainants see this as deliberate neglect and disregard of the involvement of the complainants.

- 3.6 The request of the complainants to the CDC to provide clarity on the implementation and monitoring of the final ruling.

#### **4. Defence of C&A**

After the interlocutory judgement, C&A supplemented its defence briefly as follows.

- 4.1 C&A invited the complainants to enter into a dialogue as recommended in the interlocutory judgement and understood from the response of the complainants to this invitation that they did not want to engage in a dialogue about the issues at stake in the complaints procedure.
- 4.2 The complaints procedure should be limited to the original complaint filed by the complainants, whereby the CDC may, if necessary, review the facts in the light of current developments in Myanmar and the Production Site. No new topics can be introduced into the procedure at this stage. The ongoing complaints procedure does not concern how C&A views the political developments in Myanmar or what strategy C&A has adopted to deal with these developments.
- 4.3 After the interlocutory judgement, C&A continued to be involved with the Production Site and with attempts to improve working conditions and freedom of association. In July 2021, it met with the Supplier to discuss the situation at the Production Site, the working conditions, the requested plans for improvement and the importance of freedom of association. It also underlined the obligations arising from ACT. The Supplier was positive, but also stated that, in view of the situation in Myanmar, the Production Site would be closed. C&A asked the Supplier to comply with the legal requirements in the event of a temporary or permanent closure and to involve the local trade unions in the process.

C&A furthermore verified that the WCC was fully operational by viewing the minutes every month from February to August 2021. It made sure that the Supplier and the Production Site provided training (together with MXX) to the workers on freedom of (trade) union activities and the rights of workers. It inspected the canteen at the Production Site and confirmed that the dining halls are at least 8-10 metres away from the toilets. It also followed up on other issues that had been identified by MXX or C&A.

- 4.4 The following complaints should, in the opinion of C&A, be declared unfounded because they have not been substantiated or have not been substantiated to a sufficient extent: the unlawful dismissal of five employees, the change in the bonus system, the unsatisfactory working conditions, the improper implementation of the leave system and the non-existence of a functioning complaints mechanism.
- 4.5 The assumption that the complainants have that C&A is under a general obligation to cooperate with R is, in the opinion of C&A, incorrect. It was ruled in the interlocutory judgement that C&A is not obliged to appoint R as the legitimate representative of all employees at the Production Site.

C&A has the right to cooperate with any reputable and capable stakeholder

organisation and cannot be forced to cooperate with all stakeholders. Its choice of (external) stakeholders is usually based on the "C&A External Stakeholder Strategy and Matrix", whereby the status of the stakeholders is reviewed regularly. An important element in the selection of stakeholders whom C&A works with is that the organisation is willing to cooperate on the basis of two-way communication. When questioned, C&A explained at the hearing that, when making its decisions, it assesses who is affected by its business operations and then speaks to them, and that it remains open to consultation with the complainants.

- 4.6 C&A has suspended its activities in Myanmar due to the changed circumstances and also in response to calls from the IWFM (hereinafter: Industrial Workers Federation of Myanmar) and IndustriALL not to continue doing business in the country.
- 4.7 The Supplier unilaterally decided to close the Production Site in August 2021. This meant that it was no longer possible to organise a dialogue as recommended in the interlocutory judgement, in which R, MXX and the management of the Production Site would also be present. C&A has carried out the process of 'responsible disengagement'. It felt it had a duty to support the management of the Production Site in cooperation with the management of the Supplier in closing down the factory in a law-abiding manner. Together with the IWFM, it made sure that the employees of the Production Site received the severance pay that they were entitled to. It had all pending orders delivered and paid for, including those that had only just been placed.
- 4.8 C&A has come to the conclusion that the complaint must be rejected in its entirety. It recognises that there is always room for improvement of its own actions and processes when it comes to exercising due diligence. However, it points out that in a complaints procedure, a decision can only be made on the basis of proven facts and that, in this specific case, the allegations made by the complainants have so far not been proven to be true.

## **5. Assessment**

The CDC sees no grounds for going back on its interlocutory judgement and therefore stands by what was decided therein. In the following, the conclusions per section relate to both the original complaint and the supplementary complaint after the interlocutory judgement.

### ***Scope of the handling of the complaint***

- 5.1 The original complaint filed by the complainants has been assessed, whereby on points where relevant, it has been assessed in the light of the current situation. Furthermore, the CDC assessed the complaint concerning responsible disengagement now that it constitutes an expansion on the original complaint.

### ***Dialogue after the interlocutory judgement***

- 5.2 The CDC has already ruled on a number of matters in the interlocutory judgement. It recommended that the parties, with due observance of these, enter into dialogue with each other with a view to finding a resolution to the deadlock that has arisen and finding ways of improving the climate for freedom of association at the Production Site. It also recommended that this dialogue should take into account what the new situation in Myanmar as a result of the military coup means for the opportunities to improve the climate for freedom of association, for

continuing production for C&A and for (responsibly) ending the use of the Production Site for C&A.

- 5.3 This dialogue did not ensue after the interlocutory judgement. C&A asserted that it had invited the complainants to do so, but had understood that the complainants did not want to engage in a dialogue about the points raised in the complaint in question and that it was up to the CDC to decide on this. The complainants stated that they were certainly open to engaging in dialogue and that, as far as they were concerned, it could take place outside the context of the current procedure, that they had asked questions about the new situation in Myanmar in general and at the Production Site and about the closure of the Production Site and other associated aspects, but that C&A had not responded to them.
- 5.4 In the view of the CDC, complaints that have now been assessed by the CDC could have been addressed in the dialogue, and especially in light of the changed situation in Myanmar. In the absence of consultations, C&A has now chosen its own course, whereas in the view of the CDC, it would have been expedient for the parties to discuss the changed circumstances in the wake of the military coup in Myanmar. Such a conversation would have allowed for a much more thorough exchange of information between the parties than is possible in this procedure and an exploration of the problems that have arisen due to the new situation and how a solution might have been found.

***Human rights due diligence and IRBC***

- 5.5 In their complaint dated July 2020, the complainants stated that C&A had failed in its efforts with regard to exercising human rights due diligence and IRBC.
- 5.6 In the interlocutory judgement, the CDC decided that, insofar as the complainants intended to assert that C&A failed to exercise due diligence in all the supply chains it makes use of globally, the complaint was insufficiently substantiated and therefore unfounded. Insofar as the complainants had intended to assert that C&A had not exercised due diligence with regard to the Production Site in question, the complaint was dealt with in part in the interlocutory judgement and will be further assessed below within the context of the specific issues raised in the complaint.

***Nature of the involvement***

- 5.7 In summary, the complainants claimed in their July 2020 complaint that the involvement of C&A in the lack of freedom of association at the Production Site has shifted from "linked" (direct relationship) to "contribution" (contributing to). The failure of C&A to rectify the damage in more than two years since the matter was first reported to them in July 2018 has exacerbated the matter and increased the level of responsibility of C&A in this matter, according to complainants. The efforts of C&A to address the reported abuses have been unsatisfactory. There is still no trade union at the Production Site and C&A is refusing to address the problem that union busting is occurring.
- 5.8 In the interlocutory judgement, the CDC decided in summary that the involvement of C&A up to that point should be qualified as "linked" in view of the situation and the measures taken by C&A. In addition, it was decided that in its approach to addressing negative consequences, C&A can consequently be expected to exert its influence ("leverage") on other responsible parties in order to attempt to limit/prevent the consequences of the absence of a trade union for the employees at the Production Site and, if necessary, to expand its leverage. As decided in the interlocutory judgement, the circumstance that the involvement of C&A should be regarded as 'linked' means that in 2018 C&A had no responsibility for repairing

and/or providing redress in respect of the employment relationships of the ex-employees named in the procedure, even if it should be assumed, as the complainants have argued, that their dismissal was connected to their trade union activities. The CDC has indicated that, in view of the knowledge it has and the foreseeability of the impact, C&A must nevertheless continue its efforts to persuade the Production Site to improve the situation (which it had itself ascertained or had MXX ascertain that it was not yet remedied). This means that C&A had to closely monitor the effectiveness of the measures it had taken regarding the problems raised in the complaint at the Production Site, which had already been occurring since mid-2018 and had not yet been resolved (in full) at the time the complaint was handled, so that it would not end up being in a situation of "contribution" and that C&A is therefore under an obligation to continue to exert leverage, whereby there must be a satisfactory improvement in the situation for the employees, although problems flagged by the complainants do not always have to be resolved within a fixed period (such as the complainants stated: of one year). However, should C&A find that, despite its efforts, improvements are no longer being made, the (indirect) relationship with the Production Site must be terminated (in a responsible manner). If this is not done, the involvement may shift from "linked" to "contribution".

- 5.9 After the interlocutory judgement, the complainants supplemented their complaint with the assertion that C&A had not assumed any responsibility or taken the necessary steps to improve the situation even after the interlocutory judgement, quite the contrary, and that the manner in which C&A had acted had placed it at the level of "contribution". Following the interlocutory judgement, C&A did not involve R in any meaningful way, and there was no further contact with R, not even in connection with the closure of the Production Site. Also, C&A, according to complainants, did not consult with them about the new situation at the Production Site and in Myanmar in general despite questions posed by the complainants about that situation and willingness on the part of the complainants to have consultations.
- 5.10 The complainants claimed further that they remain of the view, as previously stated, that the involvement of C&A in or around 2019 should be deemed to have shifted from "linked" to "contribution" to the adverse consequences of anti-trade union behaviour and violations of collective bargaining and freedom of association. They thereby pointed out that the violation of these rights constitutes a "serious" adverse effect that requires a swift effective course of action and a response.
- 5.11 The complainants contend that the CDC ruled in the May 2021 interlocutory judgement that there was not yet a case of 'contribution' but that C&A was warned that if it did not do its best it could find itself in that situation. They contend that the steps C&A has taken since the interlocutory judgement, such as Freedom of Association (FoA) training for employees at the Production Site, have not been enough to effectively address the anti-trade union climate, nor has C&A met its obligation to exercise due diligence. The shortcomings and ineffectiveness of the efforts made by C&A to exercise due diligence and effectively tackle the anti-trade union climate is evident in several respects, according to the complainants: in July 2021, there was still no trade union at the Production Site, the five sacked trade union leaders/members were not rehired - C&A could have insisted that the management of the Production Site do so -, the WCC was not involved in key decisions such as the temporary closure of the Production Site, C&A did not meet its due diligence obligations to engage stakeholders in a meaningful way and share information e.g., it did not consult R on key issues such as the closure of the Production Site, it did not engage the complainants in a meaningful way on issues

related to the anti-trade union climate at the Production Site, and it did not share information about the FoA training sessions or WCC minutes with the complainants even though it knew the complainants were interested in these.

The complainants contend that C&A has been placed in a situation where it is "contributing to". They contend that C&A has failed to exercise due diligence in view of the ongoing and insufficiently and ineffectively addressed anti-trade union climate at the Production Site at the time of closure in or around July 2021. These grave, highly predictable consequences have not been effectively prevented or mitigated by the activities of C&A.

### *Assessment*

- 5.12 The CDC had already ruled in its interlocutory judgement that under certain circumstances it is possible for a responsibility under the OECD Guidelines to shift from "linked" to "contribution".

### *General*

- 5.13 In order to assess whether such a shift from "linked" to "contribution" applies and consequently whether a substantial contribution to a negative consequence has occurred within the scope of the OECD Guidelines, whereby the activities of a company facilitate, incite or encourage another entity to cause a negative consequence, the following viewpoints should be taken into account in accordance with these OECD Guidelines:

- (i) The extent to which a company can encourage or motivate a negative consequence caused by another entity, i.e., the extent to which the activities of the company increased the likelihood of the consequence occurring.
- (ii) To what extent the company knew or should have known of the negative consequence or the likelihood thereof, i.e., the degree of predictability.
- (iii) To what extent any activity undertaken by the company actually limited the negative consequence or reduced the likelihood that it would occur.

- 5.14 From these viewpoints, in the opinion of the CDC, it does not necessarily follow that failure to resolve a negative consequence within a certain period of time implies that there is a case of substantial contribution. However, such a period of time may constitute a relevant viewpoint, particularly within the framework of the viewpoint mentioned under (iii). Whenever a negative consequence persists for a longer period of time without any improvement in respect of the negative consequences, this viewpoint is more indicative of a substantial contribution. Specifically, what time frame can be set aside to address a negative consequence before it constitutes a substantial contribution depends on the circumstances of the case, such as the nature of the human rights violation - grave violations directed at individuals, such as on their physical integrity, will need to be addressed more quickly than more generic violations that required much broader (societal) adjustments (such as issues around freedom of trade unions) -, the extent to which the individual company has an influence on that violation, the extent to which a company makes efforts to improve the situation, and the extent to which there are improvements as a result of those efforts. A climate of trade union freedom is something that takes time to develop and where a relevant role is played in terms of how the country's government views this right. What is clear is that in Myanmar before the military coup in February 2021, the government

made it difficult to form trade unions by imposing strict requirements on them and that after the military coup, trade unions were banned.

*Applicability in this case*

- 5.15 The complainants contend that the involvement of C&A should be deemed to have shifted from "linked" to "contribution" in or around 2019. This period of one year - summer 2018 to summer 2019 - is, in the opinion of the CDC, too short a timeframe under the circumstances of the present case to fully resolve the negative consequences concerning trade union freedom and, in the absence of any improvements, to proceed to a responsible exit. The time frame also does not align with the policy of C&A to enter into long-term cooperative relationships with suppliers; C&A has indicated from the outset that it started working with the Production Site with the intention of doing so for a longer period of time. This has also not been disputed by the complainants. C&A knew beforehand that trade union freedom in Myanmar was still in its infancy, that it had to be worked on and that this would be a long-term process. C&A has done this by improving the WCC, providing training in social dialogue, cooperating with other brands, with local trade unions and with IndustriALL. Furthermore, C&A has committed to the ACT Myanmar Guideline on Freedom of Association (FFOA guideline) and has asked the Production Site to ratify it. In the view of CDC, this resulted in some improvements. The fact that C&A did not conduct a responsible exit after one year under these circumstances, on the grounds that trade union freedom had not yet been fully achieved, does not, in the opinion of the CDC, also in light of the position taken by the Myanmar government concerning trade unions, result in a shift in the extent of the involvement of C&A from "linked" to "contribution".
- 5.16 The CDC has not come across any circumstances in the months between the interlocutory judgement (May 2021) and the closure of the Production Site (August 2021) that have caused the extent of C&A's involvement to shift to "contribution". In the period following the interlocutory judgement, C&A emphasised the importance of freedom of association to the Supplier, verified that the WCC was fully operational, and made sure that training on freedom of association and workers' rights was provided to employees (see Section 4.3). The complaint that C&A failed in this period to exercise due diligence in involving stakeholders in a meaningful manner and to share information, and more specifically did not seek contact with R, did not consult with complainants about the new situation in Myanmar and at the Production Site, and did not share information about the FoA training courses or WCC minutes with the complainants even though it knew that the complainants were interested in them, is not sufficient to shift the extent of C&A's involvement from being "linked" to "contribution". However, in the section *Involvement of stakeholders* below, we will still assess whether C&A, even in a situation whereby its involvement could be described as "linked", was actually obliged to involve the complainants or to provide them with the information in question.
- 5.17 As the CDC is of the opinion that the extent of C&A's responsibility has not shifted to "contribution", it does not get to discuss the courses of action cited by the complainants that C&A should take to contribute to repairing the damage.
- 5.18 The CDC has come to the conclusion that the involvement of C&A cannot be qualified as "contribution".

***Involvement of stakeholders***

- 5.19 In summary, the complainants stated in their complaint filed in July 2020 that C&A unjustifiably refuses to acknowledge and address R as a legitimate stakeholder. Furthermore, the complainants contended that C&A acts in a rather one-sided manner without informing or involving the complainants in a timely and transparent manner. Contacts between the complainants and C&A have not led to a meaningful dialogue.
- 5.20 In the interlocutory judgement, the CDC decided, in summary, that R could be deemed a relevant stakeholder in the sense that it could act as the representative of the four former employees who had given power of attorney to R, and that it could act as a local organisation in its own right as a relevant stakeholder, but that R could not act as the representative of all the employees at the Production Site since it had not yet been established that the representative status of R was sufficient for that purpose. Furthermore, it was decided in the interlocutory judgement that the aforementioned implies that R must be regarded as a legitimate stakeholder by C&A, *inter alia* in the discussions about freedom of association and workers' rights.
- 5.21 In the interlocutory judgement, the CDC set out the framework for the obligation to share information as to whether enough information has been shared, whether C&A has been sufficiently transparent and whether it has involved the complainants to an adequate extent. The CDC has ruled that, with due observance of the restrictions formulated within this framework and concerning those specific issues that complainants have complained and raised concerns about, C&A must share the Correction Action Plans (CAPs) and the results of the audits underpinning them with the complainants, that C&A must also discuss the CAPs with the complainants and that the complainants must be given the opportunity to express their views on the CAPs. The CDC also decided that it was not sufficiently clear from the procedural documents to what extent the aforementioned information had been shared and discussed. What did transpire from the exchanges in the procedural documents and the hearing, however, was that C&A had in any event shared and discussed with the complainants the findings of the audits and the integral MXX report. Nevertheless, the documents did seem to indicate that C&A did not wish to discuss the CAPs with the complainants, and that where this was indeed not the case, C&A should have done so, subject to the restrictions outlined in the framework, with regard to current and future CAPs.
- 5.22 After the interlocutory judgement, the complainants supplemented their complaint with the allegation that they wrongfully had not been involved in the (consultation on the) disengagement process carried out by C&A after the interlocutory judgement had been issued. They contended that C&A has deliberately ignored them and refused to involve them, and that by doing so, C&A has not complied with the recommendations of the CDC contained in the interlocutory judgement.

More specifically, the complainants claimed that the Production Site has been closed, that the Production Site is no longer included on the suppliers' list and that C&A did not inform the complainants of this. They claim that C&A did not have any contact with R after the interlocutory judgement, whereas C&A should have discussed with R the new situation, the risks and potential adverse consequences of the closure of the Production Site and the exit of C&A. The complainants also contended that C&A should have looked at how it could achieve this involvement, for example, by exploring how it could arrange for safe communication and consultation with R in a creative manner. They further claimed that C&A initially invited only the European stakeholders, but later all three complainants, to a

meeting to discuss the situation at the Production Site and in Myanmar, that the complainants responded positively to this with several suggestions for topics to be discussed, but that despite repeated explicit requests C&A did not respond until 30 September 2021, when C&A indicated that it had understood that the complainants did not want a dialogue as recommended in the interlocutory judgement. Finally, they claimed that C&A is apparently negotiating with Myanmar and international trade unions about a compensation scheme for the employees of the Production Site without involving the complainants and that no response is being given to any of the questions raised by the complainants.

### *Assessment*

5.23 The OECD Guidelines require companies to consult in a meaningful way with relevant stakeholders as part of the due diligence process. Whereby under the term *Meaningful stakeholder engagement* is understood to mean stakeholder engagement that is characterised by two-way communication and that is dependent on the good faith of the participants on both sides.<sup>3</sup> A company is for this reason not entirely free in the choice of the stakeholders it gets to speak to. It should in all cases consult those who are adversely affected by its business operations, including in this case the employees of the Production Site and their elected representatives or representative organisations.

5.24 The CDC understands that C&A, in response to the interlocutory judgement, invited the complainants to enter into a dialogue as recommended and that C&A understood from the response of the complainants that they did not want to enter into a dialogue about the complaints at issue in the complaints procedure but did want to consult with C&A about the rest.

The CDC also understands that C&A was suddenly confronted with the decision of the Supplier to close the Production Site. C&A felt that it was responsible for a 'responsible exit' and that it sought to ensure that a settlement was reached for the employees and thereby turned to the trade unions (IndustriALL and IWFM) that are qualified to enter into binding agreements on behalf of the employees, rather than to R, which is not able to do so.

5.25 Although under these circumstances it is explicable that C&A did not involve the complainants, it would nevertheless have been logical for C&A to have checked with the complainants whether they wished to hold consultations about the 'responsible exit'. A dialogue about this was not hampered by the deadlock on whether or not to hold a dialogue about the complaints at issue in the ongoing complaints procedure. After all, the complainants had indicated that they wanted to consult with C&A about the rest.

A 'responsible exit' plan should in principle be shared with the stakeholders concerned, just as this applies to a remediation plan (see section 5.32 of the interlocutory judgement). Complainants are stakeholders (see sect. 5.2 of the interlocutory judgement) in this matter. It was for this reason that it would have been advisable to consult R on the 'responsible exit' as a local organisation that was familiar with what was going on on the work floor at the Production Site and of which C&A had always indicated that it was prepared to discuss potential solutions with for improving the situation of the employees. IndustriALL and IWFM are considerably more distanced from the work floor at the Production Site. C&A

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<sup>3</sup> OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector pp. 14, 27, 28

could then have had R provide information about the work floor, even though R was unable to make any collectively binding agreements (see sect. 5.27 and 5.28 of the interlocutory judgement). Where necessary and relevant, C&A could then have concluded (binding) agreements with IndustriALL and IFWM, as trade unions that can enter into agreements on behalf of employees. It would have also made sense in this instance to involve SOMO and SKC in the 'responsible exit' since they were already supporting R in the ongoing dispute.

- 5.26 The CDC has reached the conclusion that the complaint filed in July 2020 is well-founded in that C&A should have involved R, among others, in the discussions on freedom of association and workers' rights, even though C&A is unable to reach collective agreements with R on behalf of all of the employees at the Production Site.

It also concludes that the complaint filed in July 2020 is well-founded in that C&A should have consulted the complainants about the findings of the audits and the CAPs, with due regard for the framework concerning the disclosure of information as set out in the interlocutory judgement.

Likewise, the complaint filed in October 2021 that C&A had wrongfully not involved the complainants in (consultation about) the 'responsible exit' is also well-founded. R should have been involved as a local organisation with knowledge of the situation at the Production Site, and SOMO and SKC as indirect representatives, since they were already supporting R in this dispute.

### ***Disengagement/exit from Myanmar***

- 5.27 In the period after the interlocutory judgement, C&A pulled out of Myanmar. The complainants have claimed that this would appear to be an act of "irresponsible disengagement". They claim that, according to the OECD Guidelines, C&A should have had a "responsible exit" plan in place, in which legitimate stakeholders were consulted, and should have contributed to remedying all the negative consequences that it had contributed to. Furthermore, C&A should have ensured that the negative consequences that may ensue from the decision to pull out were limited. According to the complainants, C&A did not meet any of these criteria and did not satisfactorily do its utmost. The severance pay has still not been paid to the employees; C&A should insist on this payment being made.

### *Assessment*

- 5.28 The complaint of the complainants that they were wrongfully not involved in the disengagement process has been dealt with above in the *Involvement of stakeholders* section. The question of whether the withdrawal was substantively responsible is addressed below.

### *General*

- 5.29 In general, the termination of an (indirect) relationship with a supplier will be a last measure when other interventions have not lead to a mitigation of the negative consequence. In particular, there will be a need to do so if:
- (i) previous efforts to mitigate this consequence have not worked,
  - (ii) there is no longer a realistic expectation that change will take place, or
  - (iii) serious violations have occurred or risks thereof have been identified and the (indirect) supplier does not take measures to limit or prevent them.
- Also, after termination of the relationship with the (indirect) supplier, no new relationship with this supplier should be entered into, at least for a longer period

of time.

Furthermore, before proceeding to terminate the relationship with the (indirect) supplier, clear deadlines should be set for this supplier to implement improvements specifically laid down in a recovery plan. In case of failure to make improvements, a notice of default should follow containing a final deadline to implement those improvements. After the relationship has been terminated, the company terminating the relationship should endeavour to ensure that the employees of the (indirect) supplier are paid any outstanding salaries and severance pay, and, where possible, seek a replacement work environment. The company should also give special consideration to vulnerable employees, such as (informal) trade union officials who may find it more difficult to find work elsewhere.

*Applicability in this case*

- 5.30 In the opinion of the CDC, there were sufficient grounds in this particular case for C&A to undertake 'responsible disengagement'. The military coup in February 2021 marked a significant change in the circumstances and opportunities for exercising human rights due diligence. For instance, trade unions have since been banned, which affects the opportunities for improving the climate for the freedom of association. C&A has sought advice on how to respond to the changed circumstances and has decided to pull out of Myanmar, just as most other clothing brands have also done. It has done so partly in response to calls from the IWFM and IndustriALL not to continue doing business in the country if that would risk indirectly supporting the military dictatorship. Furthermore, the Supplier unilaterally decided to close the Production Site in August 2021.
- 5.31 When asked, C&A indicated that in the event of a 'responsible exit', the usual procedure at C&A is to observe a notice period of six to nine months and first give the supplier the opportunity to make improvements, with support from the SSC team if required.
- 5.32 C&A has indicated that it also felt responsible in this particular case and was in constant contact with IndustriALL and IWFM about the matter. In consideration of due diligence, C&A in this particular case stopped placing orders in March 2021 and informed all its suppliers in Myanmar that it would not be placing any further orders. It has continually maintained contact with its suppliers. C&A arranged for all orders placed prior to this point to be produced and delivered, and paid the full agreed price for these. Therefore, this not only concerned orders that had already gone into production, but also those that had just been placed.
- 5.33 In addition, C&A has arranged, through consultations with the Production Site, the Supplier, IndustriALL and IWFM and by way of agreements with these trade unions, that the circa 770 employees who were working at the Production Site in August 2021 would receive/received their severance pay and compensation for the period of notice. These are compensations that they are legally entitled to. The complainants have confirmed that the severance pay has been paid, but the compensation relating to the notice period has allegedly not yet been paid. During the hearing, C&A stated that part of the compensation had been paid and that it was seeing to it that the remainder was also paid. Furthermore, C&A indicated that the management of the Production Site had agreed to redeploy the employees but the factory had closed and the owner of the factory had changed, so that C&A no longer saw any opportunity to negotiate about the loss of wages.

- 5.34 C&A has indicated that it does not feel responsible for seeing to it that the five former employees who are the subject of part of this particular complaint are also entitled to receive these compensations as requested by the complainants. In its opinion, these former employees are not entitled to compensation for loss of wages due to the cessation of production at the Production Site. The complainants, in the opinion of C&A, have not demonstrated that the termination of the contracts of these employees was unjustified. In its interlocutory judgement, the CDC ruled that C&A is not responsible for repairing and/or providing redress in respect of the broken employment relationships of these former employees named in the procedure. Therefore, this also applies to the payment of compensation for the cessation of production at the Production Site, irrespective of the fact that, at the time of this cessation, these employees were already no longer working at the Production Site and it is consequently not apparent why they should be entitled to compensation for this cessation.
- 5.35 In the opinion of the CDC, in light of the above-mentioned claims by C&A, which in the view of the CDC have not or not sufficiently been refuted by the complainants, there is a case of 'responsible disengagement'. The complainants have as such not substantiated why there is no question of a 'responsible exit', other than that they were not involved in the creation of it.
- 5.36 The CDC rules the complaint that the cessation of production at the Production Site was not responsible in terms of content and that C&A did not or did not sufficiently make an effort to limit the negative consequences for the employees, in particular with regard to the payment of the remuneration owed to them, to be unfounded.

***Freedom of association***

- 5.37 In summary, the complainants stated in their complaint filed in July 2020 that C&A had neglected to ensure that the freedom of association and the freedom of collective bargaining were respected at the Production Site.
- 5.38 In the interlocutory judgement, the CDC decided, in summary, that in its view C&A could have done more. C&A could have increased its leverage by means of consultation with all the stakeholders involved. Moreover, it could also have involved the Supplier in this. It would then have been able to make use of the knowledge of these stakeholders in order to (possibly) clarify and bridge the differences between the complainants' findings and the investigations that C&A had had carried out by its SSC team and by MXX. In this joint dialogue, opportunities could have been explored to improve the situation at the Production Site with regard to freedom of association. The CDC further decided that, in its opinion, this step could still be undertaken and that, also in view of the significantly changed situation in Myanmar, it made sense to first allow this dialogue to take place before proceeding with the handling of this complaint.
- 5.39 This dialogue has not taken place.
- 5.40 After the interlocutory judgement, the complainants reiterated that the core of the case is that C&A failed to exercise its influence to correct the unlawful conduct of the management of the Production Site, which consisted of persistently ignoring the concerns and grievances of the employees. There was no freedom of association and collective bargaining, no functioning WCC, no trade union at grassroots level, and no other functioning complaints mechanism or channel for workers to raise and discuss concerns and grievances with management. As examples, the complainants cited the situation of how the management had

handled the bonus system in 2018 and the situation that the five employees specifically referred to in the complaint, who according to the complainants had lost their jobs unfairly, had never been redeployed or rehabilitated. The complainants came to the conclusion that C&A has not managed to fulfil its 'human rights due diligence' as outlined in the UNGP and the OECD Guidelines for Multinational Enterprises on this point.

### *Assessment*

- 5.41 The complainants have requested that the CDC reconsiders its interlocutory judgement that C&A is not obligated to ensure that the five employees named in the complaint whose contracts were terminated are reinstated, redeployed or rehabilitated, receive damage compensation or are granted any other form of redress and/or recourse in their favour. After the resumption of the procedure, no new facts or circumstances have come to light that would lead the CDC to reach a different conclusion. Therefore, the CDC sees no reason to reconsider its ruling in the interlocutory judgement as far as these former employees are concerned.
- 5.42 An important factor in this respect is that it is not the task of the CDC to settle individual employment disputes between the supplier and employees. The CDC assesses whether C&A has complied with the Covenant (the OECD Guidelines). Within that framework, individual employment disputes may be indicators of malpractice which are relevant to an assessment of compliance with the Covenant, however, not points of dispute which the CDC is able to decide on as such, unless C&A has contributed to them and is required to offer a remedy for them. This has not become apparent to the CDC, as decided above.
- 5.43 However, these dismissals could be an indication that the freedom of association was not sufficiently achieved at Production Site. The CDC has come to the conclusion, partly on the basis of this and other circumstances put forward by the complainants, that the freedom of association at the time when C&A was working with the Production Site had not yet been fully achieved. C&A also acknowledges this. C&A has encouraged the establishment of a social dialogue and a better functioning of the WCC by means of training courses provided by the Supplier and the Production Site (together with MXX) for the employees on the freedom of (trade union) association and workers' rights, as well as by encouraging new elections for the WCC (see also the section on WCC in this ruling). It has also continued to pursue these efforts since the interlocutory judgement. C&A has also together with other brands, local trade unions and IndustriALL, developed and implemented binding guidelines on freedom of association for suppliers and a corresponding complaints mechanism. It has also endeavoured to ensure that the Production Site would ratify this ACT Myanmar Guideline on Freedom of Association (FFOA).
- 5.44 In the opinion of the CDC, C&A has evidently taken the necessary steps as mentioned above to promote freedom of association, but on the specific point of stakeholder consultation addressed above, C&A could have done more to improve the climate for freedom of association at the Production Site, which could possibly have led to initiatives for the establishment of a local trade union or at any rate, to better collective bargaining on behalf of the employees at the Production Site. In addition, with regard to the CAPs, C&A could have set more specific deadlines for the Production Site, helped formulate concrete courses of action, and consulted R in order to find out what measures could contribute to a more favourable climate for freedom of association. As already considered above, C&A cannot confine itself to talking to stakeholders with whom it can reach collective binding agreements. It

must also talk to stakeholders (or their representatives) who are adversely affected by its business operations, even if no collective agreements can be reached with them. R belongs to the latter category.

The complainants have not indicated on this point what more C&A could or should have done, apart from consultation with R.

- 5.45 The CDC has come to the conclusion that the complaint filed in July 2020 alleging that C&A breached its obligations under the AGT by failing to ensure that freedom of association and collective bargaining were respected at the Production Site during the period to which the complaint relates is partially well-founded. C&A has taken various steps and exercised its leverage, but in the opinion of the CDC, it could have done more, especially when it came to consulting relevant stakeholders, as indicated above and in the interlocutory judgement. In particular, it should have consulted R to gain a better understanding of the situation at the Production Site and what measures could be taken to improve freedom of association. This is especially applicable as the complainants had indicated to C&A that there was union busting and C&A had commissioned an investigation into this - first by its own SSC team and later by MXX - but had not received any confirmation of this.
- 5.46 The complaint filed in July 2020 that the contracts of the five employees named in this procedure were unlawfully terminated on account of their trade union activities has not been substantiated and the CDC therefore considers this complaint to be unfounded on the grounds of the considerations set out in sections 5.18 and 5.21 in its interlocutory judgement.

### **WCC**

- 5.47 In summary, the complainants claimed in their complaint filed in July 2020 that C&A had failed to ensure that a credible Workplace Coordination Committee (hereinafter: "WCC") was set up at the Production Site.

More specifically, the complainants claimed that the management of the Production Site did not follow the proper procedures in setting up and electing the WCC. The employees were not given any opportunity to stand for election, the line management selected a group of candidates and the management chose two employees from among them to serve on the WCC. The WCC was present in name only and had no meaningful role. Similarly, the re-elections that took place at the end of 2020 did not follow the formal procedures. Photographs were taken of workers during the elections. During the counting of the votes, an employee (witness) noticed that names on voting forms had been changed. The elected employee from her production line was a relative of the supervisor. This confirms her statement, according to the witness.

- 5.48 In the interlocutory judgement, the handling of this complaint was deferred.
- 5.49 After the interlocutory judgement, the complainants formulated their complaint to the effect that there was no independent and properly functioning WCC and claimed that the WCC was not consulted in any meaningful way on any important decision, such as the temporary closure of the Production Site.

### *Assessment*

- 5.50 It is clear from the above that during the time that C&A worked with the Production Site, full freedom of association was not achieved (see the section on

*Freedom of Association*). This also had implications for the WCC. However, on the basis of the facts and circumstances that have emerged in this procedure, the complainants have not sufficiently substantiated that the most recent WCC elections in December 2020 were not conducted in a proper manner. The complainants claim that the elections were rigged, whereby individuals were elected who were sympathetic to the management of the Production Site. Nevertheless, C&A has satisfactorily refuted this unsubstantiated claim by referring to the investigation conducted by MXX which indicated that these elections were conducted in a proper manner.

- 5.51 Nor have the complainants provided sufficient evidence that the WCC is not independent and/or did not function properly after those elections, taking into account the circumstances under which freedom of association had not yet been fully achieved then. After the interlocutory judgement, the complainants claimed that the WCC was not consulted in any meaningful way on any important decisions. C&A, for its part, claimed that it had verified that the WCC was fully operational by checking the minutes of each month from February to August 2021.
- 5.52 The CDC no longer considers it expedient to conduct an on-site investigation now that the relationship between C&A, the Supplier and the Production Site has ended. It is clear from the procedural documents and from what was said at the hearing that there was a WCC in place and that there had been an improvement. What is also clear is that C&A has exercised its leverage to improve the functioning of WCC. C&A commissioned an investigation and took action on the basis of the subsequent report issued by MXX. It has drawn up an action plan - which is not disputed by the complainants - and arranged for MXX to organise in-house training. C&A has also plausibly demonstrated that the second round of elections had already been conducted better than the first round. This indicates a development where progress has been made. C&A has in this respect fulfilled its obligations as set out in the AGT.
- 5.53 On the basis of the above, the CDC has come to the conclusion that the complaint filed in July 2020, that C&A breached its obligations under the AGT because it did not ensure that an independent and properly functioning WCC was set up, is unfounded.

### ***Concerns and complaints from employees in 2018***

- 5.54 In summary, in the complaint filed in July 2020, the complainants claimed that C&A had failed to take any action in response to complaints from employees. Three employees, who were members of the trade union formed in 2018, had written a letter to the Department of Workplace and Labor Law Inspection on 28 August 2018, expressing their concerns about several issues:
- the forced introduction of a new bonus system, which replaced the existing bonus system, whereby the concerns and wishes of the employees were ignored,
  - inadequate implementation of statutory leave provisions,
  - the non-existence of a reliable complaints mechanism,
  - a number of health, safety and ergonomic issues, ranging from the lack of tables which forced workers to sit on the floor during (lunch) breaks, the lack of clean drinking water, filthy and faulty toilet facilities and the lack of trained nurses and adequate medicinal supplies in the factory clinic.

During the investigation conducted by MXX from 3 to 5 February 2020, these problems were also ascertained.

5.55 In the interlocutory judgement, the handling of this complaint was deferred.

*Assessment*

5.56 The complaint concerning the forced introduction of a new bonus system in 2018 is handled below in the *Bonus Scheme 2018* section.

5.57 The points raised in the above-mentioned letter from the employees were first investigated by the SSC Team at C&A and later by MXX.

The complainants have objected to the use of MXX on the grounds that they were not involved in the choice of MXX and that MXX is ostensibly not independent. In the opinion of the CDC, the first objection has been confirmed by the exchanges in the procedural documents and at the hearing, but the second objection has not been confirmed. On the grounds of the AGT, C&A is in principle free to decide how it conducts its investigations. It is not obliged to engage the services of an external party nor to consult with stakeholders on this choice. In this case, however, C&A and the complainants had agreed to ask an independent external party to conduct the investigation, but C&A instead engaged the services of MXX on its own accord. C&A has claimed that MXX is independent and that it is financed, among other things, by the European Commission and the German Society for International Cooperation. The complainants have disputed that MXX is independent, but have not substantiated this claim further.

5.58 The above-mentioned MXX investigation conducted in 2020 showed that the provisions for leave were complied with. The complainants have not provided any further substantiation as to why this would be incorrect, other than that they received different information from their contacts. The CDC has no knowledge of local legislation to determine whether this local legislation is complied with satisfactorily. At this point in time, as decided earlier, it no longer seems expedient to have that investigation carried out.

5.59 It also emerged from the aforementioned MXX investigation that there was a complaints mechanism which could be improved. C&A had indicated that it has been working on improving this. The complainants have not disputed this.

Furthermore, it emerged from the investigation that some of the health, safety and ergonomic issues raised had been resolved, while others had not been resolved yet. C&A has indicated that it has started to address the points for improvement identified in the report. The complainants have not provided any substantiation as to why the report is incorrect on these points. Consequently, on the basis of the report and other documents that have been exchanged, the CDC is unable to establish that C&A has failed to exercise its leverage in respect of the points referred to.

5.60 The complaint is thus insufficiently substantiated on these points. The CDC is disappointed that the parties have not engaged in further dialogue with each other on this aspect. It no longer considers it expedient to conduct an on-site investigation now that the relationship between C&A, the Supplier and the Production Site has ended. Insofar as there is the possibility that the factory will reopen in 2022, as the complainants claim but which C&A disputes, C&A is no longer involved in that.

5.61 Insofar as this complaint filed in July 2020 should be understood to mean that the complainants cite these circumstances as a signal that employees were not

afforded the space to stand up for themselves, and it is therefore an example of the consequences of the lack of a positive climate for freedom of association and collective bargaining, this complaint has been discussed in the above.

### **2018 Bonus Scheme**

- 5.62 In summary, the complainants claimed in the July 2020 complaint that the Production Site introduced a new bonus system in 2018 that negated the benefits of the newly increased statutory minimum wage. They further contended that employees feared that the performance bonus system would raise the workload and that they went on strike. They also drew attention to the fact that the dispute was referred to the local Township Conciliation Body (TCB) and that the TCB mediated and ruled in favour of the striking workers that the management of the Production Site was required to reinstate the existing bonus system and that the management and representatives of employees had signed an agreement to that effect, but the management of the Production Site failed to comply with this agreement. The complainants have claimed that C&A did not (successfully) take action to address this non-compliance. Furthermore, the complainants have claimed that no new statutory minimum wage has been set since 2018.
- 5.63 In the interlocutory judgement, the handling of this complaint was deferred and it was noted that in Myanmar the statutory minimum wage is lower than the minimum living wage, so that even when payments take place in compliance with the bonus system that are equal to or above the statutory minimum wage, the risk of exploitation can still exist. Consequently, exercising leverage on this point may not necessarily always have the sole purpose of ensuring that the statutory minimum wage is paid.

### *Assessment*

- 5.64 During the hearing on 11 January 2022, it emerged that the complaint about the bonus system related to the change from an hourly wage to piecework. Furthermore, it became apparent that in 2018, after intervention by C&A, the Production Site finally started to comply with the agreement that had been entered into after mediation by the TCB. The original bonus system based on an hourly wage was reinstated. Therefore, C&A has exercised leverage here. The complainants have acknowledged this. The complainants have not indicated that C&A should have done more here.
- 5.65 Insofar as the complainants cite this point as an example of the consequences of the lack of a climate of freedom of association and collective bargaining at the Production Site, this complaint has been discussed in the above.

### **Other**

- 5.66 When the handling of this complaint was resumed after the interlocutory judgement, the complainants contended that the CDC should have assumed a monitoring role towards C&A with regard to some of the consequences of the changed situation in Myanmar after 1 February 2021 for the filed complaints. This contention was not discussed because such a monitoring role falls outside the remit of the CDC as agreed upon by the parties in the AGT.
- 5.67 The complainants have requested that the CDC provide clarity on how compliance with the final ruling will be assured. Information on this matter was posted on 15 March 2022 [on the website of the CDC](#) under the heading *Course of action after the Agreement*. The corresponding document is attached to this ruling as

an appendix.

### **Decision**

The Complaints and Disputes Committee for the Dutch Agreement on Sustainable Garments and Textile:

*Is authorised* to handle the complaint.

*Declares* SOMO, SKC and R, each in their capacity as Stakeholder, and R also in its capacity as Mandated Party, and the four former employees of the Production Site represented by her, admissible in their application.

*Declares* the complaints well-founded that:

- C&A should have recognised and involved R as a legitimate stakeholder, even though it is not possible to make collective agreements with R on behalf of all the employees at the Production Site;
- C&A should have consulted the complainants about the findings of the audits and about the CAPs, in compliance with the framework for the disclosure of information as set out in sections 5.30 up to 5.33 of the interlocutory judgement;
- C&A should have involved the complainants in (consultations on) the 'responsible exit'.

*Declares* partially well-founded the complaint that:

- C&A neglected to see to it that the freedom of association and collective bargaining were respected at the Production Site. C&A should have consulted stakeholders and involved the Supplier in its efforts to improve the freedom of association, as stipulated in the interlocutory judgement (sections 5.46 up to 5.48) and as outlined above.

*Declares* the remaining complaints to be unfounded.

This ruling will be published on the website page of the Complaints and Disputes Committee for the Dutch Agreement on Sustainable Garments and Textile.

This ruling was issued by M. Scheltema, N. Mutsaerts, H. van der Kolk, with the assistance of S. Geelkerken and H. Arpaci.

The Hague, 31 May 2022

M.W. Scheltema  
Chair

S.W. Geelkerken  
Secretary

**Appendix** (document published on 15 March 2022 on website page of the CDC)

## **Course of action of the Complaints and Disputes Committee after the Dutch Agreement on Sustainable Garments and Textile**

### **End of Agreement**

The Dutch Agreement on Sustainable Garments and Textile (AGT) will end on 31 December 2021. The Steering Group has decided that ongoing complaints may also be settled after 31 December 2021.

### **Compliance**

The parties are expected to comply with the decision of the Complaints and Disputes Committee (CDC) based on their commitment to the Agreement and to the Rules of Procedure of the Complaints and Dispute Mechanism.

After the Agreement ends, there will be no body to monitor compliance with a CDC decision. The current Agreement stipulates that the AGT Secretariat shall monitor compliance with a CDC decision. When the Agreement ends, the AGT Secretariat will also cease to exist. This means that once the current Agreement has ended, the AGT Secretariat will no longer play any role in monitoring.

### *Possible follow-up pursuant to the Agreement*

Should one or more parties fail to comply with a CDC decision, a number of sanctions may be imposed pursuant to the Agreement. The table below indicates whether the parties may continue to impose the relevant sanction after the Agreement ends on 31 December 2021.

<b>Sanction</b>	<b>Situation after the Agreement ends</b>
If an Enterprise has failed to comply with a binding decision by the Committee concerning a Complaint, or has failed to do so within the time limit set by the Committee, the Secretariat will report this to the Steering Group.	Will expire. The Secretariat will cease to exist after 31 December 2021.
If compliance with the Committee's decision involves influencing a supplier who cannot be induced to cooperate, and a possible joint approach by the Enterprises involved in the Agreement does not lead to a desired result, the Steering Group may decide to place the supplier(s) on a list of companies from whom participating Enterprises may no longer purchase.	Will expire. The AGT will cease to exist after 31 December 2021.
In the case of 'culpable non-compliance' <sup>4</sup> the parties concerned and the parties to the Agreement are free to publish substantive information about the Complaint and their opinion on the failure to comply with the Committee's binding decision.	Remains in effect. The parties concerned have the option of disclosing substantive information. <sup>5</sup>
Parties to the Agreement may nominate the Enterprise for expulsion.	Will expire. The AGT will cease to exist after 31 December 2021.

<sup>4</sup> Culpable non-compliance' is when the non-compliance is attributable to the party that does not comply. When (external) factors make compliance impossible, there is no culpable non-compliance.

<sup>5</sup> Article 41 of the AGT Rules of Procedure state that Parties to a dispute or complaint are bound by confidentiality in respect of all information presented to them in the course of the procedure and which has not been made public during the procedure. After the end of the Agreement, the duty of confidentiality will continue to apply.

*Legal steps*

Finally, the parties have the option of initiating proceedings before the court. The court may:

- be asked by either of the parties to the proceedings to review the CDC's decision. The substance of the Committee's decision is not reviewed in these proceedings; the review is non-substantive in nature, with the court only ascertaining whether there has been a violation of fundamental principles of due process. This means that the court does not review the substance of the decision itself but only whether it was arrived at properly.
- be asked by either of the parties to the proceedings to enforce compliance. The court does not review the substance of the CDC's decision in that case. The court will only ascertain whether the decision has been complied with. The parties to these proceedings must comply with the obligations under the CDC decision (the binding recommendations). If they refuse to comply with the binding recommendations or fail to comply with them on time, the recommendations are legally enforceable. The court may, for example, impose a financial penalty to ensure compliance. In that case, a penalty is imposed on the non-complying party for each day of 'non-compliance'. If compliance is sought, the parties once again have an obligation to furnish facts and burden of proof. The party asserting the claim must specify which aspects of the decision have not been complied with. It is then up to the other party to prove that it did comply with the decision.

**Procedure before the National Contact Point OECD Guidelines (NCP)**

A CDC procedure does not exclude the possibility of a procedure before the NCP. Parties may initiate new proceedings before the NCP if they so wish.

The NCP offers the possibility of mediation between parties in the event of a report or problem, subject to the agreement of the parties concerned. The NCP's consideration of a specific instance is not a judicial procedure. For more information about the procedure, see <https://www.oecdguidelines.nl/notifications>.

*Note: the NCP cannot be asked to enforce compliance with a CDC decision*