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

9 December 2020

Ruling in the Arisa – C&A Nederland C.V. case[1]

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

in the case of:

the Arisa Foundation [*Stichting Arisa*] (hereinafter "Arisa"), formerly the National India Working Group Foundation [*Stichting Landelijke India Werkgroep*], having its registered office in Utrecht, The Netherlands, represented by Ms S. Claassen and Ms D. Heyl;
Complainant;

versus

C&A Nederland C.V. (hereinafter "C&A"), a limited partnership [*commanditaire vennootschap* (C.V.)] having its registered office in Amsterdam, The Netherlands, represented by Mr K. Eisenreich and Mr M. Reidick;
Respondent.

1. Proceedings

1.1 The CDC has taken cognisance of the following documents:
- Arisa's Complaint document dated 15 May 2020 with five appendices, additional information submitted by e-mail dated 9 June 2020 and by e-mail dated 11 September 2020, with three attachments;
- C&A's Response document dated 12 August 2020, with one appendix.

1.2 On 16 June 2020, the CDC declared Arisa provisionally admissible in its Complaint as Interested Party.

1.3 A hearing was held on 21 September 2020, at which both Parties appeared, Arisa physically and C&A via an internet connection. Arisa used a Memorandum of Oral Pleading, which has been submitted.

2. The facts

2.1 Arisa is a Party to the Agreement. Its Constitution [*statuten*] states its object as follows:

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[1] This is a translation of the Ruling in Dutch. In case the Dutch and the English text can be interpreted differently, the Dutch text is leading.

"The object of the Foundation is to support and reinforce the defence of human rights in South Asia from the Netherlands, together with local organisations. The Foundation shall do so by means of the following activities:
a. advocacy and influencing policy in political circles and among enterprises;
b. critical dialogue;
c. raising social awareness of human rights violations and malpractices in production chains; and
d. carrying out and supporting investigation that serves all of the above."

2.2 C&A has signed the "Declaration by Enterprises Concerning the Agreement on Sustainable Garments and Textile" (hereinafter "AGT Declaration by Enterprises").

2.3 Respondent makes use of Cotton Blossom Private Ltd. in Tamil Nadu, Southern India, to produce garments (hereinafter "Supplier"). It uses Unit 1 and a number of other of this Supplier's Production Units.

2.4 In an e-mail of 24 October 2019, Arisa brought a number of malpractices at Supplier to the attention of the AGT's secretariat, requesting that it makes them known to the enterprises that had signed the AGT Declaration by Enterprises and that purchase garments from said Supplier. The AGT secretariat did so on 25 October.

2.5 In the period from 4 November 2019 to 9 April 2020, Arisa and C&A were in regular contact by e-mail and telephone regarding the alleged malpractices. Parties have failed to reach an amicable solution.

3. Arisa's position

3.1 To summarise briefly, Arisa is of the opinion that employees' rights at Supplier have been disregarded and violated. In its Complaint document, it specifies various malpractices. These are discussed below in the *Assessment* section under *Alleged malpractices at Supplier*. Arisa expects C&A, both at this Supplier and throughout its entire supply chain, to take responsibility and to draw structural attention to shortcomings and violations of employees' rights. In view of the growing number of violations in the past year, it expects C&A to take immediate action. It also wonders whether the steps in this regard that C&A has taken so far are adequate.

3.2 More generally, Arisa is of the opinion that C&A is not prepared to share sufficient information with it. It feels that C&A has not involved it in any meaningful way. It wishes to receive more, and more complete, information from C&A and to be taken account of when issues arise. It has been consulting with C&A since late 2019. Arisa received no answers, or only limited answers, to many of its questions, including regarding the steps taken by C&A to rectify the malpractices alleged by Arisa. For example, Arisa has not been given access to remediation plans, meaning that it and its local partners have been unable to check whether measures had been put in place in response to their complaints/signals and whether those measures have been sufficient and effective to resolve the problems identified.

Much of the information that C&A presented in its Response document was new to Arisa. It is unclear to Arisa why that information was not shared previously. It would have liked to have received that information earlier. More fruitful

consultations could then perhaps have taken place.

Arisa asserts that even given the Response document, many questions remain unanswered. It remains unclear, for example, how various complaints about malpractices have been investigated by C&A and how it reaches its conclusions. In particular, it remains unclear whether and how the rightholders and interested parties regarding the malpractices – employees, trade unions, and organisations representing employees – have been involved in those investigations and the measures to be put in place.

3.3 Arisa asserts, furthermore, that access to remedy and remediation ("access to remedy") is poorly regulated for Supplier's employees. Supplier's complaint procedures do not meet either the legal requirements applicable in India or the OECD guidelines.

3.4 Arisa doubts, for a number of reasons – poor communication and transparency and the possible termination of cooperation with various production units of Supplier – the level of C&A's commitment to raising the matter of employee rights within the supply chain as referred to in the AGT and the OECD Guidelines for Multinational Enterprises.

3.5 Arisa requests the CDC to declare the complaint well-founded and to request C&A, firstly, to ensure "access to remedy" for all affected employees at Supplier and, secondly, to implement structural improvements in its due diligence with regard to the observance of human rights. In its Memorandum of Oral Pleading, Arisa has drawn up a list of improvement actions for this purpose, and requests the CDC to make the AGT secretariat responsible for monitoring implementation of those actions.

4. C&A's Response

4.1 To summarise briefly, C&A states that it takes its responsibility very seriously. IRBC has been a structural component of its policy for more than ten years. It focuses on long-term partnerships. It has its own Code of Conduct for the Supply of Merchandise (CoC), which clearly indicates what it expects of suppliers. The CoC forms part of every business relationship. C&A monitors and sanctions violations of the CoC.

C&A supports Suppliers in meeting and implementing the requirements of the CoC. Through the Supplier Ownership Programme, it also encourages suppliers to develop the competencies needed to proactively address important issues.

C&A asserts that it complies with the due diligence obligations set out in the OECD guidelines and the AGT, and that its due diligence measures go beyond the minimum standards. It regularly carries out unannounced audits of Supplier's individual production units or its suppliers, and shares the results with Supplier. If CoC requirements are not complied with, Supplier must draw up and implement a Corrective Action Plan (hereinafter "CAP"). C&A regularly checks implementation of the CAPs. Failure to adequately resolve shortcomings in compliance with the CoC may lead to a lower assessment of a production unit. In the event of a serious or repeated breach of the CoC, sanctions may be imposed regarding the contractual relationship, ranging from a reduction in the size of orders to temporary suspension or even termination of the business relationship.

C&A is reluctant to carry out the latter because it strives for long-term partnerships with suppliers.

4.2 C&A asserts that it is glad to cooperate with external stakeholders, including NGOs such as Arisa. It strives for continuous improvement of conditions and sustainability throughout the chain. It is aware that this is a long-term issue and that it requires ongoing dialogue with various stakeholders. In this context, it finds it a matter of course to be open to suggestions and proposals from third parties. It would therefore like to utilise this complaint procedure to achieve a positive outcome for all stakeholders, and it indicates that it is open to consultation on an amicable settlement.

4.3 C&A states that from the start of consultations with Arisa in October 2019 it has made great efforts to respond adequately to the breaches of employee rights that Arisa alleges. It has carried out an investigation and shared the results with Arisa, to the extent possible at the time. In the period from October 2019 to February 2020, it also responded directly to Arisa and was in regular contact with Arisa, as evidenced by the e-mail correspondence submitted by Arisa. It has not attempted to withhold facts, delay procedures, or conceal anything.

From March 2020 on, it was difficult for C&A to obtain information because, worldwide, the COVID-19 lockdown meant that both its own employees and employees of Supplier were temporarily unable to work or were unavailable.

4.4 C&A has responded in respect of each alleged malpractice. C&A has also responded to Arisa's request for clarification as to which of Supplier's production units C&A is still working with. These are discussed below in the *Assessment* section under *Alleged malpractices at Supplier*. In general terms, C&A states that Arisa's complaints were not substantiated in a very specific manner, making it difficult to determine whether complaints were well-founded because it was not possible to properly verify and establish whether accusations were justified and correct. C&A is dependent on information from third parties and needs specific information about persons or incidents so that C&A or its local representative can trace the cause of a complaint.

4.5 C&A also requests the CDC to provide an indication of what is generally expected of Parties in terms of information and action. It states that enterprises need greater clarity as to the requirements for providing information, for example: To what extent is specific evidence of complaints expected from the Complainant? To what extent is Respondent intended to investigate in order to be able to refute the complaints? What information and what level of detail should a component share with an NGO or other stakeholders in order to provide the necessary transparency? What information is covered by business secrecy with regard to the interests of a Supplier or client?

5. Assessment

Based on the written information exchanged and the explanations given at the hearing, the CDC arrives at the following decision.

Admissibility

5.1 The complaint was submitted by Arisa in its own capacity (as an interested party within the meaning of Section 1.10 of the CDC Rules of Procedure) and also as a representative (as a Mandated Party within the meaning of Section 1.7 of the CDC Rules of Procedure) of a local informal employees' organisation mandated

by affected employees. Both the local employees' organisation and the employees wish to remain anonymous because of a fear of reprisals by Supplier.

5.2 The CDC finds that the complaint is admissible in so far as it has been submitted by Arisa as an interested party. The requirements of Sections 9 and 10 of the CDC Rules of Procedure have been met: Arisa first attempted to arrive at an amicable solution with C&A. The complaint was submitted within a reasonable period after the issues arose. One or more of the issues concerning injury, loss, or damage are of material significance to the interested party and can be substantiated with respect to the enterprise and on the basis of the AGT. The complaint was submitted by e-mail. The e-mails states the name of the interested party – Arisa – and, Arisa being a legal entity, a copy of its Constitution was submitted.

Legal persons may be regarded as interested parties within the meaning of Section 1.10 of the CDC Rules of Procedure when the specific interests they represent according to their activities and objects set out in their constitution have been harmed as a result of an infringement of the AGT. It follows from Arisa's Constitution that its object is to support and reinforce the defence of human rights in South Asia from the Netherlands. Arisa states in the complaint that employees' rights at Supplier have been disregarded and violated.

C&A asserts that Arisa has not claimed that its interests have been harmed and C&A therefore doubts Arisa's admissibility. Contrary to what C&A asserts, however, assessment of admissibility involves whether Arisa claims to have been harmed in the specific interests which it promotes according to its constitutional activities and objects, in this case the protection of human rights and employees' rights in South Asia. This does not necessarily require that it also be authorised by individuals who claim that their human rights and/or their rights as employees have been violated. It is sufficient that Arisa asserts that it has been harmed in this interest as it arises from its Constitution.

5.3 In so far as the complaint has been submitted by Arisa as a Mandated Party, the complaint is inadmissible. The requirement laid down in Section 10 of the CDC Rules of Procedure that the Mandated Party provides evidence of the mandate issued by the interested party/parties concerned has not been complied with. The local organisation and local employees have remained anonymous, so that it is unclear by whom Arisa has been mandated and thus unclear who should be considered a party to the proceedings in addition to Arisa and who should be entitled to peruse the procedural documents.

The above is without prejudice to the fact that Arisa could have requested the CDC to provide the mandate granted and the names of the local organisation and/or local employees only to the CDC and not to C&A. In that case, it would have had to substantiate why keeping those names confidential was justified.

The CDC would in that case have enquired, before deciding on admissibility, whether C&A agreed to such confidentiality. If C&A had consented, the names concerned would not have been provided to C&A, the CDC would have verified whether the local organisation and/or local employees were interested parties within the meaning of Section 1.10 of the Rules of Procedure, and – if so – would have declared Arisa admissible as a representative of the local organisation and/or local employees.

If C&A had not agreed to such confidentiality, it could have submitted a further

response regarding Arisa's admissibility as a representative of the local organisation and/or local employees. The CDC would then have decided whether it was justifiable to keep the names of the local organisation and/or local employees confidential. In reaching that decision, it would have taken into account:
- the interest of that organisation and/or its employees in confidentiality and the interest of C&A in being able to advance a substantiated response, also in view of the nature of the relief sought;
- the circumstance that C&A did not itself perpetrate the alleged human rights violations and/or infringement of employees' rights;
- the fact that C&A is obliged to observe secrecy in these proceedings pursuant to Section 41 of the Rules of Procedure. C&A would therefore not in any case have been permitted to share the names of the local organisation and/or local employees with Supplier;
- the fact that Section 36 of the Rules of Procedure also allows the CDC to anonymise these names in its ruling.

The CDC could also have decided that confidentiality is justified to the extent that the names of the local organisation and/or local employees need only be disclosed to a limited group of persons within C&A, for example its representatives in these proceedings, and that these representatives are obliged to keep those names confidential.

If the CDC had decided that confidentiality of the names vis-à-vis C&A should be deemed justifiable, Arisa would have provided the names solely to the CDC, the CDC would have verified whether the local organisation and/or local employees were interested parties within the meaning of Section 1.10 Rules of Procedure, and – if that was the case – Arisa would also have been admissible as representative of the local organisation and/or local employees.

If the CDC had decided that the confidentiality of these names vis-à-vis C&A should not be deemed fully or partly justifiable, for example in connection with certain relief sought or in respect of the local organisation or certain persons, or if it had decided that the names only needed to be disclosed to a limited group of persons within C&A, Arisa could have indicated its choice to the CDC regarding the following points. First, whether it wished to maintain its request for the names of the local organisation and/or local employees to be kept confidential. Second, whether it wished to continue to represent the local organisation and/or local employees. These two points are interrelated and give rise to the following scenarios:
(1) If Arisa had indicated that it maintained the request for confidentiality of the names of the local organisation and/or local employees, and that it wished to continue to represent them, it would have been declared inadmissible with regard to the local organisation and/or local employees concerning whose names the CDC had decided confidentiality vis-à-vis C&A was not justified (or not entirely justified). With regard to the local organisation and/or local employees whose confidentiality the CDC had in fact deemed justifiable, Arisa would have been declared admissible if that local organisation and/or employees were indeed interested parties.
(2) If Arisa had indicated that it was withdrawing its request for confidentiality and also that it wished to continue to represent the local organisation and/or local employees, it would have had to provide C&A with the names of the local organisation and/or local employees, or – if the CDC had so decided – provide them to the limited group of persons within C&A designated to take note thereof, and Arisa would have been declared admissible if such local organisation and/or

employees were indeed interested parties.
(3) If Arisa had indicated that it was refraining from representation of the local organisation and/or local employees, it would not have had to provide their names and the complaint would to that extent have been considered withdrawn.

The CDC has suggested to Arisa the possibility of requesting to disclose the names of the local organisation and/or employees only to the CDC, but Arisa has not made use of that possibility.

Sharing of information

5.4 Arisa has stated that it is of the opinion that C&A does not wish to share enough information with it and that it does not feel that C&A has involved it any meaningful way. C&A has requested the CDC to clarify the extent of its obligation to provide information to NGOs with a view to offering the necessary transparency. The CDC finds as follows in that regard.

5.5 The Agreement entails that a commercial party that is a party to the Agreement, such as C&A, must basically share information that it possesses relating to the issue raised with that party which relates to social circumstances and/or the environment and which relates to a specific production site from which that party purchases, such as in this case Supplier, with non-commercial parties (other than the State) that are parties to the AGT or which can demonstrate that they are sufficiently representative to represent interested parties in the specific issue raised, in so far as those non-commercial parties have requested the provision of specific social and/or environmental information relating to the issue raised and have a legitimate interest in receiving it. It should not be the case that such information is only provided under the pressure of proceedings.

5.6 However, the aforementioned basic obligation does not apply if the commercial party that is a party to the Agreement can demonstrate plausibly that it is unable to provide the social and/or environmental information concerned because doing so would lead to a breach of privacy rules and/or would create a risk of retaliation against interested parties, such as employees, or because the information is company confidential or because its provision could lead to unacceptable detriment to its good name. However, if a commercial party is able to demonstrate such obstacles, that does not mean that it can simply refrain from providing information. In such cases, it must be determined whether the information could not be provided entirely or partly and/or in another form, for example anonymised.

5.7 If the information concerned is not held by the commercial party that is a party to the Agreement but only by the owners or operators of the production site, and otherwise complies with the above requirements for disclosure, the affiliated party may be expected to make reasonable efforts to obtain that information. Information is not deemed to be held by a commercial party that is a party to the Agreement or the operator or owner of a production site if it does not already exist and can only be obtained through further investigation. This does not alter the fact that pursuant to the Agreement a commercial party that is a party to the Agreement may, under certain circumstances, be required to carry out such further investigation.

5.8 Given that in the present case Arisa requested specific social information regarding Supplier’s production site, the remediation plans, in the context of its contact with C&A about the complaints Arisa had raised and C&A did not indicate why that information could not be provided, whereas it did provide that

information in the context of its Response to the complaint to the CDC, C&A has, in the light of the above, failed to fulfil its obligations pursuant to the Agreement by failing to provide that information. As regards this point, the complaint is therefore well-founded.

5.9 It appears to the CDC that the present complaint would not have been brought before it in this size if C&A had previously provided Arisa with the information which C&A did provide in its Response to the complaint to the CDC.

5.10 Arisa has also stated with regard to several complaints about malpractices that it remains unclear whether and how local employees have been involved in the subsequent investigation and the measures to be put in place. It considers that those employees must be involved in that way. C&A states that it has a contractual relationship with Supplier but not with the latter's employees, that it is up to Supplier to draw up remediation plans, implement them, and determine who it involves in this. C&A can assist, if so desired, in drawing up remediation plans.

In the opinion of the CDC, C&A is not expected to consult directly with the employees, given that it has no contractual relationship with them, but it is C&A's responsibility to check whether Supplier consults with them about the investigation and the remediation plans, and it is also C&A's responsibility – if Supplier does not consults with the employees, or only insufficiently – to enter into dialogue with Supplier regarding this matter.

Substantiation of complaints

5.11 With regard to the question of the extent to which a Complainant may be expected to provide specific evidence when lodging a complaint, the CDC finds as follows.

5.12 The complaining party, in this case Arisa, must substantiate its complaints in such a way that the other party can properly defend itself against them and the CDC can render a specific ruling on the matter. In this connection the Complainant must substantiate the problem raised in a sufficiently specific manner that the CDC can assess whether the Agreement has been complied with by the other party as regards that specific problem, and, where applicable, at a specific location.

5.13 The extent to which a complaint needs to be substantiated depends in part on the relief sought. For example, compensation for damages will require more specific justification as regards the aggrieved party than a complaint about failure to carry out due diligence in respect of a specific production site. Even in the latter case, however, substantiation must be provided as to why insufficient due diligence has been carried out at that specific production site. As a general rule, therefore, it is not sufficient, even in such a case, to rely solely on more general reports about the situation in a given country, although such reports can be used in support of a complaint. Such general reports do not, however, automatically substantiate the assertion that the problems identified in the report concerned in a more general sense also occur at the specific production site.

5.14 The CDC cannot therefore render a decision on complaints or malpractices that are formulated in too general a sense. It is limited to assessing complaints or malpractices that are sufficiently specific and well-defined, and substantiated with regard to a specific production site or sites. The latter is only otherwise if the complainant demonstrates that the due diligence carried out by an enterprise

in respect of all production sites fails to meet the requirements set out in the AGT.

5.15 The basic principle when assessing a complaint is the action taken by the other party (which is a party to the Agreement), in this case C&A, in the light of the Agreement and not the actions or omissions of the owner or operator of the production site or those of the local authorities involved. The point is whether the other party has failed to fulfil its obligations pursuant to the Agreement.

Asserted malpractices at Supplier

Preliminary remarks

5.16 In the following, when assessing the various malpractices at Supplier which are specifically asserted in the complaint, the CDC has taken account, on the one hand, of the fact that many employees involved in IRBC – both C&A's own employees and those at Supplier – were temporarily not working or were unavailable during the lockdown period from March 2020 onwards. On the other hand, it has taken account of the fact that most of the points in the complaint were brought to C&A's attention in the six months prior to the lockdown.

5.17 As regards Arisa's request for clarification as to which of Supplier's production units C&A is still working with, the CDC finds as follows. C&A states that that information is also available on its website. Arisa has not substantiated why that information is insufficient or why the obligations pursuant to the AGT would have obliged C&A to provide more extensive information. In view of this, the CDC considers that there is no infringement of the AGT in that regard.

C&A explains further that it no longer works with a number of Supplier's production units because Supplier has decided not to use them for work for C&A.

Cooperation with the production units with which C&A is still working will be terminated at the end of Q4 2020 because C&A is of the opinion that Supplier cannot sufficiently meet the requirements of C&A's CoC. C&A had therewith attached consequences to the requirements that it imposes in terms of the obligations set out in the Agreement. C&A has explained in the procedural documents and at the hearing that it notified Supplier in September 2019 that it would be terminating the contractual relationship with it at the end of Q4 2020. It has opted for such a long notice period in view of its long-term relationship with Supplier and its IRBC policy. It has stated that that decision was based on a combination of commercial and social factors. One of these factors is the repeated late remittance of social security contributions by Supplier, a matter to which C&A has repeatedly drawn Supplier's attention but without that leading to any lasting improvement. Arisa has not argued that this method of termination, as such, constitutes a breach of the Agreement obligations and the CDC also sees no obvious indications to the contrary. This manner of termination will not therefore be assessed any further.

Health aspects

5.18 A (female) employee of Supplier has died. Arisa asserts that she died of dengue and that she was not, in the first instance, allowed to go home. Four other employees were also admitted to hospital with dengue-related complaints. After an investigation, C&A found that the employee had received medical care from the doctor working at the production unit, had been transported after a few days to the hospital together with a number of other employees, and had died a few days later in the hospital of pneumonia. C&A has not received any indication that employees are being deprived of adequate medical care or that Supplier has

been remiss in any other way.

However regrettable this death may be, in the opinion of the CDC the complaint is not sufficiently substantiated and is therefore unfounded. In particular, Arisa has not substantiated what else or what more C&A should have done in the light of its obligations pursuant to the Agreement to prevent this death.

5.19 As required by law, a doctor is present at Supplier's production site. Arisa states that employees complain that the doctor does not provide proper care; various conditions are said to be treated with the same medication. C&A states that it has not received confirmation of this complaint. It always checks during the due diligence whether there is a medical post at the production site and whether it meets the legal requirements in terms of equipment and staffing, that that is so in the present case, and that assessment as to whether a doctor is making the correct diagnoses is not up to Supplier or C&A, all the more so because no complaints have been received about the doctor.

The CDC finds that – although it is unclear, in the light of what will be discussed below regarding the functioning of the grievance mechanism at the production site, whether there were in fact no complaints about the functioning of the doctor – Arisa has not sufficiently substantiated why C&A has failed to comply sufficiently with its obligations pursuant to the Agreement in this respect. The mere fact that complaints may have arisen about the functioning of the doctor does not provide such substantiation. C&A also discussed with Supplier whether it complied with its legal obligations in this respect. The complaint is therefore unfounded.

5.20 More generally, the CDC finds that C&A cannot be held responsible for situations beyond its sphere of influence. If there are numerous complaints about such a situation, it would demonstrate proper due diligence to attempt to find out what is going on and, in the case of apparent shortcomings, to take the initiative to encourage Supplier to take action to improve the situation.

5.21 Dengue, an illness transmitted by mosquitoes, occurs in the Tamil Nadu region. Employers are responsible for taking measures in and around production sites and hostels to prevent outbreaks of dengue. Arisa asserts that Supplier has done too little to prevent dengue, as supposedly appears from a newspaper article stating that fines have been imposed on factories in the textile sector in the region. C&A considers that this complaint has also not been confirmed. It states that in its risk analysis it has categorised dengue as a serious risk, that its audit team has emphasised the relevance of this risk to Supplier, that it has directed Supplier to a government information campaign and information material. C&A states further that Supplier has put various measures in place, such as spraying insecticide against mosquitoes, training employees in protective measures against dengue, and providing medication. It also argues that Supplier has complied with the measures prescribed by the government and that the newspaper article in question is worded in general terms and contains no names of factories.

The CDC finds that the complaint is not sufficiently substantiated and is therefore unfounded. It is also relevant in this regard that the spread of dengue as such is not a circumstance within Supplier's control. That spread cannot therefore be equated with working conditions at its production site, which it does basically have under its control and for which it can be, and is also, called to account by

C&A. After all, combatting dengue is to a large extent a matter for the public authorities.

5.22 Many of the employees at Supplier's production site live in hostels. Arisa asserts that the sanitary facilities in some employees' accommodation (hostels) are unhygienic. It considers that Supplier and also C&A, as a purchaser of products, have a certain responsibility for the quality of the accommodation, regardless of whether this is located in own buildings or in government buildings, certainly where migrant employees are concerned. It points out that Supplier has set up its own training programme in North India in order to recruit employees who are then put to work far away from home.

C&A points out that it has included in its own CoC that all hostels owned by Suppliers are regularly visited and examined in accordance with the standard inspection regime. This does not cover hostels that are not owned by suppliers. In the present case, Supplier only owns a hostel for female employees. As part of the due diligence process, C&A regularly carries out unannounced audits there. The audits show that this hostel meets all the legal requirements, and is clean and safe.

According to C&A, the hostels where male employees live are state-owned. The employees rent this accommodation themselves. Given that these hostels are not owned by Supplier but by the government, it is not only difficult for C&A to gain an insight into the living conditions – after all, C&A depends on Supplier for information about the living conditions, but Supplier only has information about the hostel that it manages itself – but also difficult to make any changes to the quality of the accommodation that is government-owned. The question is to what extent C&A can in fact influence this. If employees live in hostels owned by Supplier, the circumstances may be influenced through Supplier. When employees rent private accommodation, however, it is not possible to exert any influence on the situation. That is a private matter.

5.23 In the opinion of the CDC, whether Supplier (and by extension, in the context of due diligence, C&A) is responsible for the quality of the accommodation depends on the extent to which employees see to their accommodation themselves, and the extent to which Supplier is involved in this. The mere circumstance that Supplier is not the owner of that living accommodation does not automatically mean that it has no responsibility whatsoever for the quality thereof. If Supplier mediates in finding accommodation or provides accommodation, and certainly if it deducts the rent from wages and pays it directly to the owner or operator of the accommodation, or if the rent is regarded as wages in kind and is paid by Supplier to the owner or operator, then Supplier basically has a responsibility for the quality of that accommodation. In such cases, due diligence may require that C&A discuss any unsatisfactory quality with Supplier and it must be determined whether Supplier is taking adequate measures to address any quality problems.

However, Arisa has not substantiated in what way Supplier is involved in the accommodation of the male employees, other than the fact that many of them are recruited by Supplier in the north of India and therefore do not already have accommodation near Supplier's production site. How Supplier is involved with that accommodation cannot automatically be inferred from this, however, given that Arisa has not disputed that Supplier does not own the hostels for the male employees. It has also not been sufficiently substantiated how C&A, in view of its

obligations pursuant to the Agreement, has supposedly been remiss in this regard. The complaint is therefore unfounded.

Terms and conditions of employment

5.24 Arisa asserts that (interstate migrant) employees do not have access to social security. It has submitted a number of payslips on which the Employee State Insurance (ESI) number and/or Provident Fund (PF) number are missing. Arisa also points out that it has been informed that multiple ESI or PF numbers are sometimes linked to the same mobile phone number, whereas that must be employee-specific. It points out that all of this may indicate illegal employment.

The CDC finds as follows. C&A has stated that it has requested further information from Supplier about ESI and PF numbers on pay slips. Supplier has stated, showing examples, that it includes those numbers on payslips as required by law, that sometimes this has not been fully arranged at the beginning of an employment contract, and that the numbers may therefore be missing on the first few payslips. This could be sufficient explanation for the possible absence of ESI and/or PF numbers on some pay slips. Arisa has not disputed this statement in a sufficiently substantiated manner. The pay slips submitted have been anonymised, for reasons which may be understandable but which have not been explained by Arisa. As a result, C&A is unable to investigate the individual cases any further. Although C&A has questioned Supplier about the absence of the ESI and/or PF numbers, and to that extent has in any case carried out due diligence, the CDC would normally regard the concerns expressed by Arisa about the defective pay slips as a reason for further investigation. In the present case, however, the CDC does not consider it appropriate to instruct C&A to carry out further investigations given that the contract with Supplier will terminate at the end of 2020. This also makes it unnecessary to consider whether and in what way, partly in view of Section 23(3) of the CDC Rules of Procedure, C&A should be given access to the pay slips submitted by Arisa in order to facilitate further investigation.

5.25 C&A has noted a number of times in recent years during its audits that the contributions for ESI and PF were remitted late by Supplier. C&A has always given high priority to this shortcoming, drawn Supplier's attention to it each time, had a CAP drawn up, asked when payment would be made, and set deadlines. In addition to e-mailing, C&A also held personal onsite discussions and provided training. As a result of this pressure from C&A, delayed payments were always rectified within a few months. Nevertheless, delayed payment of these contributions continues to occur. This point is one of the reasons why C&A decided to discontinue its collaboration with Supplier; the fact that Supplier's management had not complied with its undertaking to improve these issues undermined confidence in that management. An audit in November/December 2019 provided evidence that there were again arrears in remitting social security contributions.

The CDC finds that the action taken by C&A vis-à-vis Supplier in this regard complies with the provisions of the Agreement. To the extent that Arisa's complaint about ESI and PF also related to these late remittances, that complaint is unfounded as regards this point. The CDC assumes that C&A will continue to exert pressure on Supplier to remit the contributions on time for as long as the contract with Supplier is still in effect.

5.26 The salaries for December 2019 and January 2020 had not been paid by the end of February 2020. This assertion by Arisa is correct. C&A has indicated that it has

entered into discussions with Supplier regarding this matter and has exerted pressure on Supplier to proceed to pay the salaries. Supplier had too low a cash flow due to the insolvency of a major client and payments from the government which it was still supposed to receive. By the end of March 2020, all the arrears of salary had been paid.

The CDC finds, partly in view of the precarious financial situation of Supplier at that time, that C&A has fulfilled its obligations pursuant to the Agreement as regards this point. Specifically, those obligations do not necessarily mean that it must vouch for the timely payment of salaries.

5.27 Arisa asserts that Supplier also works with contract employees and pieceworkers and that this increases the risk of illegal labour and exploitation, as is evidenced by a report that Arisa submits which shows that this is common in the garment industry in India.[2] C&A states that to the best of its knowledge Supplier does not work with contract employees or pieceworkers, and that, furthermore, these types of contract are permitted in India.

In the opinion of the CDC, Arisa has not made this complaint sufficiently specific, merely referring to the general report that it has submitted – in which, incidentally, Supplier is referred to as one of the sites investigated but no specific information is given regarding this point – which shows this risk of illegal labour and exploitation. In this context, Arisa could be expected to substantiate its complaint more specifically, for example by pointing out specific cases – if necessary invoking Section 23(3) of the CDC Rules of Procedure – in which such illegal labour or exploitation occurred or is still occurring at Supplier. Without such specific indications, C&A cannot be expected to enter into meaningful discussion with Supplier and exert influence to improve the specific situation at Supplier in this respect to a greater extent than it has already done. As regards this point, the complaint is insufficiently substantiated and is therefore unfounded.

Vulnerability of interstate migrant employees

5.28 Arisa and C&A share the concern that interstate migrant employees are vulnerable and that this poses a risk. In this connection, Arisa has submitted a report showing that this is a general problem in the Indian garment industry.[3] The CDC assumes that, in a general sense, this is taken into account as part of the audits carried out by the AGT's secretariat.

5.29 However, the CDC finds that at individual complaint level, in the light of what has been found above in relation to contract employees and illegal employment, Arisa has not substantiated in sufficiently specific terms that this is the case in order for C&A to be expected, in the light of its obligations pursuant to the Agreement, to investigate the complaint and, if necessary, take action on it.

The same applies to the tension reported by Arisa between Tamil-speaking and Hindi-speaking employees in the factory and the complaint that in the past there has been physical abuse of an interstate migrant employee and an HR officer.

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[2] Arisa investigated 73 factories in the Tamil Nadu region of India, including Supplier. It has submitted its investigative report of May 2019: Assessing risks on child labour and forced labour in Tamil Nadu, Paper by Arisa as part of the AGT project titled "Combatting Child Labour in the Garment Supply Chain" funded by RVO, for internal use by AGT signatories and parties only, May 2019.

[3] idem

As regards these points, the complaint is insufficiently substantiated and therefore unfounded.

Grievance mechanism

5.30 According to the OECD guidelines, a company must have a functioning internal complaint mechanism. Indian legislation requires an enterprise to set up various committees in this context, including a Works Committee, half of which is made up of management representatives and half of employee representatives. The task of that committee is to promote good employer-employee relations, to comment on matters of common interest or concern, or to resolve frictions in the workplace in the day-to-day course of events. Arisa investigated 73 factories in the Tamil Nadu region of India, including Supplier. It has submitted its investigative report of May 2019.[4] It follows from that report that a Works Committee has been set up in the great majority of these factories but no complaints are received.

5.31 Arisa has indicated that it follows from its investigation that Supplier has also set up the legally required Works Committee, but that no complaints are received. It points out that this indicates a non-functioning internal complaint mechanism which poses a risk to the welfare of employees. It also points out that although there is a complaints box at the production site, it has been hung up in a place where it is not possible to submit a complaint unseen, making it impossible to complain anonymously. Moreover, the complaints procedure is dealt with by the HR department, which deals with the hiring and dismissal of employees. This may restrict access to the complaints procedure and the settlement of complaints may be open to influence.

5.32 C&A states that it has enquired about this with Supplier. Supplier states that it complies with the legal requirements and that various complaint mechanisms have been put in place, including a complaints box and a monthly meeting with employees. C&A also states that during audits as part of its due diligence it always talks with employees, including at least two or three members of the Works Committee. C&A has not been informed during these talks that the complaint mechanism does not work.

5.33 Arisa has not indicated what further action C&A could be required to take with regard to the complaint mechanism in connection with its obligations pursuant to the AGT. Given the action taken by C&A vis-à-vis Supplier in this regard, the CDC considers the complaint unfounded as regards this point.

5.34 The CDC notes, however, that Supplier has set up a complaint mechanism, but that no complaints are received. The CDC also notes that, as a result of what was dealt with at the hearing, it has been established that social security contributions had been paid late and that wages had also been paid late. These are in themselves malpractices at Supplier about which employees could have complained to a Works Committee. The fact that no complaints were received by the Works Committee under these circumstances could have been an indication to C&A of the insufficient or poor functioning of the complaint mechanism at Supplier and could have been a reason to take action. In this regard, a properly functioning complaint mechanism is not only in the interests of Supplier, but also in the interests of proper due diligence by C&A itself, as expected of it on the basis of the Agreement. After all, it provides insight at an aggregated complaint level into malpractices on the shop floor at Supplier (for reasons of privacy and

[4] idem

employee protection it is not possible to provide information about complaints at the individual level). For example, a properly functioning complaint mechanism might at an aggregated level also have provided C&A with an understanding of the situation at hostels for male employees and of possible problems relating to illegal employment and exploitation.

In view of the above, the CDC recommends to C&A (without this being binding) that in situations where it is clear that there are malpractices (in this case due to non-remitting of contributions and late payment of wages) but not a single complaint has nevertheless been received within the complaint mechanism, C&A should enter into discussions with the owners/operators of the production site in order to determine how they can improve the functioning of the complaint mechanism, also in view of the criteria set out in United Nations Guiding Principle on Business Human Rights number 31. It is, furthermore, relevant in this context to recommend that the operators or owners of the production site also enter into discussion with employees and other stakeholders regarding how the complaint mechanism can be designed so as to function better. There may also be reasons for involving a specialised and independent third party in this matter.

Decision

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

Has jurisdiction to take cognisance of the complaint.

Declares Arisa's request to be admissible in its capacity as Interested Party.

Declares the complaint that C&A did not share sufficient information with Arisa, in particular the remediation plans – specific social information relating to Supplier's production site – to be well-founded.

Recommends with binding force:

- That a commercial party that is a party to the Agreement must, in principle, share information that it possesses relating to the issue raised with that party which relates to social circumstances and/or the environment and which relates to a specific production site from which that party purchases, with non-commercial parties (other than the State) that are parties to the Agreement or which can demonstrate that they are sufficiently representative to represent interested parties in the specific issue raised, in so far as those non-commercial parties have requested the provision of specific social and/or environmental information relating to the issue raised and have a legitimate interest in doing so.
- However, the aforementioned basic obligation does not apply if the commercial party that is a party to the Agreement can demonstrate plausibly that it is unable to provide the social and/or environmental information concerned because doing so would lead to a breach of privacy rules and/or create a risk of retaliation against interested parties, such as employees, or because the information is company confidential or because its provision could lead to unacceptable detriment to its good name. However, if a commercial party is able to demonstrate such obstacles, it does not mean that it can simply refrain from providing information. In such cases, it must be determined whether the information could not be provided entirely or partly and/or in another form, for example anonymised.

Declares the other complaints to be unfounded.

Recommends with non-binding force:

- In cases in which it is clear that malpractices are taking place at a production site but not a single complaint is received within the complaint mechanism, a commercial party that is a party to the Agreement should enter into discussions with the owners/operators of the production site in order to determine how they can improve the functioning of the complaint mechanism, also in view of the criteria set out in United Nations Guiding Principle on Business Human Rights 31. It is, furthermore, relevant in this context to recommend that the operators or owners of the production site also enter into discussion with employees and other stakeholders regarding how the complaint mechanism can be designed so as to function better. There may also be reasons for involving a specialised and independent third party in this matter.

This ruling was rendered by M. Scheltema, N. Mutsaerts, and H. van der Kolk, assisted by S. Geelkerken.