

Ruling in the case of Manderley Fashion B.V.

Parties

1. Secretariat for the Dutch Agreement on Sustainable Garments and Textile;
Claimant
and
2. Manderley Fashion B.V., with its registered office in Ootmarsum; Respondent

Proceedings

On 14 December 2018, the Complaints and Disputes Committee for the Dutch Agreement on Sustainable Garments and Textile ('the CDC') received a dispute submitted by the Secretariat of the Dutch Agreement on Sustainable Garments and Textile ('the AGT Secretariat'), which concerns the efforts and progress of the AGT participant Manderley Fashion B.V. ('the Company').

The Company has not submitted a written response.

The dispute was considered during a hearing held on 22 March 2019, with both parties explaining their views on the matter. The AGT Coordinator Mr J. Wintermans attended the hearing on behalf of the AGT Secretariat. A letter from the Chairman of the Steering Committee was read aloud explaining the Steering Committee's decision to refer the Company's substandard efforts and progress to the CDC. The owner and managing director, Mr B. Lohuis, attended the hearing on behalf of the Company.

Facts

The Company has participated in the AGT since 4 July 2016.

The Company has consistently failed to comply with the obligations incumbent on participants in the AGT.

On the advice of the AGT Secretariat, the Company, referencing Section 5.4.12 of the AGT, gave notice of its intention to withdraw from the agreement in a letter dated 26 September 2018.

Dispute

On 18 October 2018, the Steering Committee resolved to refer the Company's substandard efforts and progress, including its notice of withdrawal, for review to the CDC. Pursuant to Section 5.4.12 of the AGT, the Steering Committee must make a

withdrawal public. The Steering Committee considers it important to announce that the company has in fact failed to comply with the AGT's obligations.

Ruling

The dispute is admissible. Its admissibility has not been disputed and there is no reason to arrive at a different opinion in that respect.

The Company's explanation can be summarised as follows.

The Company is a small enterprise. The Company has great respect for the AGT and was persuaded that the AGT and the Company were a good fit. The Company was aware that the AGT would involve a considerable amount of work. The Company's co-owner decided to participate in the AGT. It was agreed that he would do all the work arising from this participation. Unfortunately, since December 2016, personal circumstances have prevented the co-owner from doing this work. He left the Company in the spring of 2017. Initially, the Company endeavoured to continue complying with the AGT obligations, but this took up more and more time and energy, not least because of the growing number of obligations that it was required to meet under the AGT. In addition, the Company lost more than half of its employees during this period. As a result, the Company no longer had the time or means to comply with all the requirements of the AGT. On the advice of the AGT Secretariat, the Company opted to withdraw from the AGT after a minimum period of two years from the date of its accession. It did so in a letter dated 26 September 2018, in which it stated that it was withdrawing from the AGT because the co-owner responsible for its accession had left the company and because it lacked the time and money to comply with all the AGT's requirements. Its production companies work with ISO 18001, ISO 45001 or BSCI, and for now it would be able to proceed on that basis.

The arguments provided by the Steering Committee and the AGT Secretariat can be summarised as follows.

The AGT Secretariat has been in touch with the Company on several occasions about substandard performance of the AGT obligations. It also paid a visit to the Company on 20 September 2018. Based on these conversations, the AGT Secretariat was convinced that the person currently bearing final responsibility for the Company saw no prospect of complying with the AGT's obligations. Having considered all the various factors, it advised the Company to withdraw from the AGT. The AGT Secretariat pointed out that a withdrawal would be made public and that there was a risk of the Steering Committee resolving to submit a dispute to the CDC. The Company opted to give notice of its withdrawal from the agreement. The AGT Steering Committee resolved to submit a dispute because it wishes to make it known that the Company has in fact failed to comply with the AGT's obligations.

On the basis of the information provided in writing and the explanations given at the hearing, the CDC has concluded the following.

The CDC notes that, during the period in which it participated in the AGT, the Company initially complied with the obligations arising from the AGT; in time, however, it no longer did so, despite repeated requests from the AGT Secretariat. The CDC therefore agrees with the AGT Secretariat that the Company consistently failed to meet the requirements under the AGT. The dispute is valid.

The CDC notes that the Company withdrew from the AGT after having participated for more than two years, and did so stating its reasons. This is in compliance with the provisions of the AGT. The Steering Committee must make the withdrawal public. The Steering Committee considers it important to provide a context for the withdrawal upon its disclosure to the public, i.e. that the Company has in fact failed to comply with the

AGT's obligations. The CDC considers this understandable and would advise the Steering Committee to add a provision to the AGT to the effect that a public announcement of withdrawal may further state:

1. that the withdrawing party has failed to comply with obligations under the AGT, and
2. the underlying reason for this non-compliance.

In cases of non-compliance with the obligations under the AGT, a distinction must be made between being 'unwilling' and being 'unable' to comply. In the former, a Company chooses not to comply with the obligations under the AGT for reasons of its own, even though, by any objective measure, it has the means and capacity to do so. In the latter, a Company can no longer reasonably comply with its obligations under the AGT for objective reasons. The CDC notes that in the present case, the Company is unable to comply. The situation has changed due to objective factors that resulted in the Company no longer having the means or capacity to comply with its obligations. The reasons were the departure of the co-owner who had decided to accede to the AGT and was to do the associated work, and the reorganisation that had cut the company's workforce by more than half. Under these circumstances, the AGT Secretariat's advice to withdraw is understandable and appropriate for this small enterprise.

The CDC notes that the Company submitted its notice of withdrawal about 18 months after its co-owner became unable to carry out his work (December 2016) and left the company (May 2017). In the intervening period, the Company failed to comply properly with its obligations under the AGT despite its efforts to do so. It was not until September 2018 that the Company indicated to the AGT Secretariat that it was no longer able to comply with its obligations under the AGT because it lacked the necessary means and capacity. The CDC regards this situation as undesirable.

The CDC considers it acceptable to end a company's participation in the AGT at short notice if a change in circumstances means that it is demonstrably unable to continue complying with its obligations under the AGT. That way, it quickly becomes clear whether or not it remains bound by the obligations under the AGT. The AGT (see section 5.4.11 - 14) stipulates that in certain situations, a company may end its participation in the AGT by withdrawing from the Declaration; in other cases, it can do so by submitting a notice of withdrawal. With regard to such notice, the main rule is that a company may only give notice after a period of two years has elapsed since it acceded to the AGT. The CDC recommends that the Steering Committee consider inserting a provision in the AGT that permits a company to end its participation in the AGT at short notice if a change in circumstances means that it is demonstrably unable to continue complying with its obligations under the AGT. An additional provision of this kind could be inserted in Section 5.4 of the AGT under paragraph 13 or 14.

Pursuant to Section 5.4.12 of the AGT, a participant is bound by the *Declaration by Enterprises concerning the Dutch Agreement on Sustainable Garments and Textile* ('the Declaration') for a further year after giving notice of withdrawal. The CDC does not see the added value of this in a case such as the present one, as there is good reason to expect that the Company will no longer perform its obligations under the AGT. The CDC suggests that the Steering Committee consider whether this provision needs to be qualified for such situations.

Decision

The CDC:

- finds the dispute to be valid.

Recommendation

The CDC recommends that the Steering Committee should:

- consider adding a provision to the AGT to the effect that when issuing a public announcement of a company's withdrawal, the Steering Committee may further state:
 1. that the withdrawing party has failed to comply with obligations under the AGT, and
 2. the underlying reason for this non-complianceand – once this provision has been added – apply it in the present case when making the Company's withdrawal public by stating that a change in circumstances meant that the Company was unable to comply with its obligations.
- consider inserting a provision in the AGT that permits a company to end its participation in the AGT at short notice if a change in circumstances means that it is demonstrably unable to continue complying with its obligations under the AGT. An additional provision of this kind could be inserted in Section 5.4 of the AGT under paragraph 13 or 14.
- in situations such as the present case, consider including a qualification in Section 5.4.12 of the AGT concerning the provision that a company that has acceded to the AGT remains bound by the Declaration for a full year after giving notice of withdrawal.

This ruling was issued by M. Scheltema, P. Brust, H. van der Kolk, assisted by S. Geelkerken.