



## **Reaction of Arisa to the decision of the Complaints and Disputes Committee of the Agreement on Sustainable Garment and Textiles, concerning a complaint against C&A Nederland C.V.**

On 7 January 2021, the Complaints and Disputes Committee (hereinafter: CDC) of the Agreement on Sustainable Garment and Textiles (hereinafter: AGT) [published its ruling](#) on a complaint by Arisa against the company C&A Nederland C.V. (hereinafter: C&A), a member of the AGT. The ruling concerns a complaint Arisa filed on 15 May 2020 about serious human rights violations at the supplier Cotton Blossom Private Ltd. in Tamil Nadu, India. The complaint concerned, among other things:

- the insufficient sharing of information by C&A, which meant that there was no meaningful dialogue to reach a solution;
- the death of a worker and failing medical assistance;
- no access to social security for workers;
- unhygienic sanitary facilities in hostels (housing facilitated by the employer);
- illegal employment;
- non-functioning complaints committees (which factories must have according to Indian legislation);
- non-timely payment of wages to workers.

On 24 October 2019, Arisa informed C&A for the first time about the aforementioned human rights violations at its supplier. Arisa regrets that the communication with C&A did not result in a valuable dialogue about the abuses and a desired solution for the workers affected, forcing Arisa to file a complaint with the AGT.

This ruling is the first following a complaint and therefore sets a precedent. Access to redress is a crucial part of the OECD due diligence process that member companies of the AGT have to follow. Arisa has thoroughly reviewed the ruling and although she has been proved right on a number of points, Arisa sees room for improvement to ensure access to redress for workers in international production chains.

Arisa welcomes the substantiation of the point that C&A did not share enough information with Arisa, which meant that no meaningful dialogue could take place. In doing so, the CDC clearly indicates that companies affiliated to the AGT must share information with relevant external parties about possible abuses and risks in their supply chain and how they address them. For example, Arisa only had to read in C&A's defence - almost 10 months after the initial contact - that C&A had already decided in September 2019 to end the contractual relationship with the supplier by the end of 2020.

Unfortunately, the substantive parts of the complaint have been declared unfounded. In short, the CDC considers the evidence to be insufficient and, above all, 'too general'. However, the committee did make a non-binding recommendation with regard to the supplier's complaints mechanism. Arisa is disappointed that the actions of C&A were not or hardly assessed by the CDC against the OECD guidelines, which are the starting point of the AGT and to which AGT companies are committed. The ruling did not lead to a solution for the abuses. Based on the experience with this complaint, Arisa provides a number of recommendations to improve the complaints mechanism. Arisa advises the committee to:

1. Explicitly include the possibility to lodge a complaint anonymously as described in the ruling in the Rules of Procedure of the CDC in order to increase the legitimacy and accessibility of the mechanism.
2. In addition to carrying out an independent review of the complaint and the acting of the accused company on the basis of the OECD Guidelines, to carry out an independent review to determine whether the company is complying with its obligations under the CDC.
3. Increase the predictability of the process by proactively informing parties about the different steps in the complaint process and what exactly is expected from parties and when.

Below, Arisa responds in detail to a number of parts of the ruling.

#### 1. Admissibility check

Arisa filed the complaint on behalf of an informal workers' collective and affected workers both as an interested party and as a mandated party. The CDC has declared Arisa admissible as an interested party because of the organisation's objective to defend and strengthen the defence of human rights in South Asia from the Netherlands together with local organisations.

The CDC declared Arisa inadmissible as a mandated party. Arisa regrets that the ruling does not address the dialogue between Arisa and the Commission on the mandate and the possibility for the informal workers' collective and the affected workers to complain anonymously. The ruling does, however, extensively address procedural steps for anonymous complaining; this was not known at the time of the admissibility check. The CDC did not inform Arisa in advance whether the anonymity of the informal workers' collective and the affected workers who mandated Arisa by means of a signed letter could be guaranteed.

#### 2. Inadequate review of OECD guidelines

Arisa is disappointed that the CDC did not assess Arisa's substantiated complaint against the six due diligence steps of the OECD Guidelines for Multinational Enterprises and the elaborate OECD Guidelines for the Garment Sector and specifically the guidelines for responsible disengagement.<sup>1</sup> As a result, it is not clear whether the CDC is of the opinion that C&A has carried out these six steps properly in relation to the various parts of the complaint. In addition, Arisa believes that the CDC has paid little attention to the power

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<sup>1</sup> <https://mneguidelines.oecd.org/oecd-due-diligence-guidance-garment-footwear.pdf>

relations in international production chains and the vulnerable position of workers in these chains. The CDC should have included this more explicitly in its assessment of the complaint.

Arisa finds it remarkable that the CDC is of the opinion that C&A cannot be held responsible for situations outside its direct sphere of influence and that CDC does not expect from C&A itself to consult directly with employees in their supply chain. Arisa does not consider these parts of the ruling to be in line with the OECD guidelines and the AGT. According to the guidelines, meaningful stakeholder involvement is part of the due diligence process. In the case of complaints, a company is expected to communicate with stakeholders who have suffered the negative consequences and to provide and/or support access to redress and remedy, for example in cooperation with a local civil society organisation or trade union.

It is striking that the CDC repeatedly indicates that C&A carries out (unannounced) audits as part of its due diligence obligation. Unfortunately, the CDC did not indicate in its ruling that it is now generally known that there are many limitations to audits. A company may not rely solely on what its supplier says or what is stated in an audit report. In addition, the CDC has not checked whether C&A's supplier has been audited on all the points mentioned in the complaint. C&A's investigation of the complaints mainly concerned enquiries with their supplier. We are disappointed that the CDC considers this to be sufficient.

### 3. COVID-19

C&A has argued that since March 2020, because of COVID-19, it has been difficult to obtain information from both the supplier and its own employees because they were temporarily not working or unavailable. Arisa regrets that the CDC took this point into account in its assessment and did not address it more critically in its ruling. Arisa is of the opinion that it was C&A's choice to temporarily prevent its CSR employees from working. Particularly in these difficult times with higher risks of violations in supply chains, companies must continue to operate in a socially responsible manner. Unfortunately, the CDC has ignored this.

### 4. Non-functioning complaints committees

The CDC does not consider the supplier's complaints mechanism to be sufficiently effective, but nevertheless declares this point in Arisa's complaint to be unfounded. CDC argues that Arisa did not indicate what further actions could be required from C&A with regard to the complaints mechanism of its supplier in relation to its obligation under the AGT. The CDC did make a non-binding recommendation to C&A to take action in situations where it is clear that there are abuses (in this case non-payment of social security contributions and late payment of wages) but no complaints are received by the legally prescribed local complaints committees. Arisa is of the opinion that the unfounded statement of this point in the complaint is not in line with the non-binding recommendation to C&A and would have expected this point to have been declared well-founded. In addition, it is unclear how the monitoring of the non-binding recommendation to C&A will take place.

### Other remarks

Arisa would like to clarify the following points:

- On pages 8 and 9, the CDC states that *'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.'* Arisa has shared communications with C&A from 2018 regarding another complaint with CDC and has requested the Committee to merge Arisa's complaint against C&A with the [complaint of ALR, SOMO and SKC against C&A](#). No further response was received.
- On page 11 of the ruling it is stated that the supplier cannot exert any influence on the hostel where male employees live because those employees would rent this accommodation privately. During a telephone conversation with C&A in February 2020, C&A itself indicated that there was a lease contract between the supplier and the owner of the hostel. This means that the supplier does have an influence on the situation in the hostel. Arisa shared the minutes of this conversation with C&A and CDC. Unfortunately, this is not reflected in the statement.
- Page 12 of the statement states that *'the pay slips submitted have been anonymised, for reasons which may be understandable but which have not been explained by Arisa'*. Both the e-mail communication with C&A, which Arisa shared with the CDC, and the pleading note state that the pay slips have been anonymised because employees are afraid of retaliation by their employer and the loss of their job and therefore want to remain anonymous. It is unfortunate that this is not mentioned.
- On page 13 it is stated that the secretariat of the AGT carries out audits. It is unclear what the CDC means by this. The secretariat of the AGT does not carry out audits at production locations. The AGT carries out an annual assessment to check whether member companies, including C&A, meet the requirements agreed upon in the AGT.

Finally, Arisa is happy to share her views on the process. The legitimacy, accessibility, predictability, equivalence and transparency of the complaints mechanism are very important for its effectiveness. The Complaints Mechanism of the AGT has been set up so that workers in the production chains of member companies, and the organisations representing these workers, can file a complaint. The information provided by the AGT from the submission of the complaint to the publication of the ruling - minimal and not always clear. For example, Arisa was not proactively informed by the CDC when the committee was unable to meet the deadlines set in the procedural regulations at various points during the proceedings. In addition, Arisa was not asked by the CDC to substantiate the complaint while Arisa was judged on this in the ruling. Arisa is of the opinion that the minimum provision of information by the CDC does not improve the predictability, equivalence and transparency of the complaints mechanism.

*On behalf of Arisa:*

*Sandra Claassen, director*

*T: +31 (0)6-42519032 E: [sc@arisa.nl](mailto:sc@arisa.nl)*