

Written evidence from Traidcraft Exchange

Environmental Audit Committee Fixing Fashion Follow Up call for evidence on fashion sustainability and working conditions in UK garment industry

Summary

Traidcraft Exchange responds below to the Environmental Audit Committee's Fixing Fashion Follow Up questions 1, 3, 5 and briefly 6, 7 and 8¹. For answers to other questions, please refer to the Corporate Responsibility coalition's submission, which we support. This submission sets out the significant effect of fashion retailers and brands' purchasing practices on the social and environmental impact of the sector. Purchasing practices have not improved since EAC's 2019 Fixing Fashion report and workers continue to experience precarious working conditions. This has been evidenced in both domestic and international garment supply chains before and since the COVID-19 crisis began.

Unfair trading practices directly cause and perpetuate labour rights abuses such as wages below minimum wages, forced overtime, evasion of holiday, maternity and sick pay, and unsafe working conditions.

This submission sets out why retailers' purchasing practices will never conform to norms of fair commercial practices unless there is regulatory intervention. The Groceries Code Adjudicator has been effective in reducing abusive purchasing practices in the food sector and provides a model which could be explored further. We propose that the Government establishes a Garment Trading Adjudicator, to act as a watchdog to ensure that practices move towards fair purchasing in this sector. Stopping unfair purchasing practices is an essential precursor if the fashion sector is to have a hope of improving its social and environmental impacts.

0. Traidcraft Exchange

Traidcraft Exchange is the UK's only development charity dedicated to making trade work for people living in poverty in the global south. It was established in 1995 as the sister organisation to the social enterprise Traidcraft plc. Traidcraft Exchange runs programmes in South Asia and Africa supporting small businesses, farmers, and workers. In the UK we campaign and advocate for improvements in the practices of the UK government and UK businesses.

In 2008 Traidcraft Exchange published "Material concerns: Guide for Responsible sourcing"², following concerns that clothing retailers' and brands' purchasing decisions (made in the UK) perpetuated poor labour rights in their supply chains.

¹ Environmental Audit Committee, UK Parliament, October 2020, "*Fixing fashion: follow up Inquiry*" <https://committees.parliament.uk/committee/62/environmental-audit-committee/news/119822/committee-revisit-fashion-sustainability-and-working-conditions-in-uk-garment-industry/>

² Traidcraft Exchange & Impactt, 2008, "*Material Concerns*" <https://traidcraftexchange.org/policy-resources/2017/10/20/material-concerns-responsible-garment-sourcing>

In April 2020 we started our Fast Fashion Crisis campaign³ to ask the UK's largest fashion retailers whether they were honouring contracts (made prior to 23 March) with their suppliers, and calling for transparency about the conditions of workers in their supply chains.

Traidcraft Exchange is making this submission to highlight that stopping unfair trading practices by UK retailers is vital if the social and environmental impacts of the fashion sector are to improve.

1. What progress has been made in reducing the environmental and social impact of the fashion industry since the Fixing Fashion report came out?

1.1. Why purchasing practices determine social and environmental impacts.

The social and environmental impacts of the fashion industry are heavily influenced by the buying practices of UK retailers and brands. Specifically:

- fashion retailers are able to *select* suppliers who have good or poor employment and environmental practices.
- *which* products fashion retailers procure determines the human rights and environmental footprint of the *raw materials* (e.g. organic cotton vs. synthetic fabrics with a significant carbon and water footprint)
- *which* products fashion retailers procure determines the *processes* used to make them, and that directly impacts upon working conditions⁴ and the environmental footprint (e.g. electricity consumption and choice of dyes).
- Both *how* fashion retailers set their FoB⁵ purchase *prices*, and their *purchasing practices* has a direct impact on wages, forced overtime, willingness to pay maternity and holiday pay, and whether workers are offered permanent employment. Purchasing practices include how retailers negotiate, set lead times, give order confirmations, amend their specifications, volumes and terms, ask for discounts, set payment terms and reward their suppliers.

1.2. Whilst other factors influence social and environmental outcomes in the international and national supply chains of the UK fashion sector, the key decision makers in these supply chains are fashion retailers and brands. This response therefore focuses on the purchasing practices of these UK retailers and brands.

1.3. Please see Annex B for evidence of how purchasing practices impact upon the social and environmental impacts of the sector, including evidence which directly correlates certain aspects of purchasing practices with their effect on workers' wages. This is highly relevant when considering the poverty wages paid both internationally and in Leicester. The annex provides evidence of these effects going back more than 15 years, and also highlights

³ <https://traidcraftexchange.org/fast-fashion-how-are-brands-responding>

⁴ E.g. sandblasting jeans to create a faded effect often results in health and safety issues for workers associated with handling heavy wet fabric.

⁵ Pricing of garments is mostly quoted on FOB (Free on Board) terms. FOB is defined as a term of sale under which the price invoiced by the supplier includes all charges up to placing the goods on board a ship at the port of departure specified by the buyer.

guidance that has been produced to help garment retailers and brands improve their purchasing practices. The barriers to implementing the responsible purchasing recommendations persist. Fashion retailers continue to be driven by the need to bring ever-cheaper products, faster and on-trend compared to competitors. Whilst there has been an improvement in transparency (set out in the Annex B) this is not a substitute for retailers and brands reforming their buying practices. As this submission shows, abusive purchasing practices is one of the most common practices in this sector, and only regulation can deal change these practices.

3. What impact has the pandemic had on the relationship between fashion retailers and suppliers?

The trade disruption brought about by UK retailers after the UK government mandated that physical shops had to close has exposed the huge power imbalance between retailers and suppliers. It has worsened relationships between those retailers and suppliers, as well as making millions of workers jobless, and has made employment for the remainder even more precarious.

3.1. As can be seen from the typical ordering pattern, in normal times, suppliers experience low margins and are dependent on bank loans. The result is that, especially for low-cost items, workers experience poverty wages, poor workplace safety and have no resilience because no social security provision is made.

A Typical Ordering Pattern.

- a. Brands/retailers, especially mass market retailers whose cost structures need economies of scale, place *indicative* orders sometimes up to 9months ahead.
- b. Suppliers are then able to take a bank loan to purchase raw materials – fabric, yarn, and accessories. The cost of fabric and other raw materials is approximately 70% of the FoB⁵ price of a garment. The materials arrive. Only once brands confirm their final technical specifications, and the volumes needed, do workers make the garments and are then paid wages.
- c. The clothes are then delivered to freight forwarders, usually at a port in the supplier’s country. If the products have been purchased on FoB terms, the garments become the responsibility of the brand/buyer.
- d. Products arrive in the UK more than a month later. Brands and retailers then pay for orders according to the previously agreed payment terms.
- e. The supplier pays off the bank loan associated with that order.

3.2. Practices experienced by suppliers during recent Covid Period

When the UK government required high street retailers to close their physical shops on 23 March the knee-jerk reaction of many retailers was to tell their suppliers that orders were to be put on “hold” or that orders were “cancelled”. Often the email advising suppliers of this change made no reference to the contract.

3.3. Between March and June 2020 many retailers and suppliers continued to have tense exchanges in relation to the orders that retailers now no longer wanted on the timescales previously agreed. Changes being imposed by retailers would in the most part constitute a breach of contract. During this period Traidcraft Exchange was in touch with a range of suppliers in South Asia. The following are a *selection* of the unfair and often unlawful practices unilaterally applied to suppliers we were advised of by suppliers.

- i. Cancellations.
 - a. As of June 2020 Primark cancelled more than £98m orders owed that had been placed with Bangladeshi suppliers. Later Primark later committed to pay for outstanding orders. However, in many cases orders and therefore payments will in practice delayed by many months.
 - b. ASDA cancelled more than 5% of its clothing orders despite its shops experiencing an increase in footfall.
 - c. Suppliers have alleged that TK Maxx UK cancelled orders for its own brand items that were due for delivery before June.
- ii. Discounts. Many retailers asked their suppliers for discounts for the clothes which had already been shipped and were in the ownership of the retailers. The scale of the discounts being demanded, meant that suppliers would not only been giving away their margin, and wage payments, but they were also being expected to subsidise the retailer's raw material cost for the items.
- iii. Delayed payments have occurred as businesses have delayed delivery dates and/or have extended payment terms. For example, suppliers have alleged to Traidcraft Exchange that White Stuff and White Company have extended to 120 days, and Sports Direct to 180 days.
- iv. Conditional payments have arisen. One retailer said it would pay the supplier only after 70% of that supplier's product had been sold.
- v. Future discounts have also been demanded.
- vi. Retrospective rebates were demanded by GAP, according to supplier interviews.
- vii. Brands that told suppliers they wouldn't take previously placed orders, didn't commit to use the raw materials purchased for their orders for new styles, and are leaving suppliers out of pocket on raw material costs.

3.4. The worst practice according to suppliers was to receive an email cancelling an order, and then for there to be no follow up or possibility to resolve the status of the order. Peacocks (part of the Edinburgh Woollen Mill Group) sent emails advising its suppliers that products already shipped or landed in the UK would not be paid for. More than \$4m worth of orders were cancelled from at least 11 Bangladeshi suppliers.

The business Peacocks then sent many of its staff home in the UK and overseas, leaving no point of contact for suppliers to liaise with. The result for many suppliers was that they were not paid for products already shipped and that had become the property of the retailer. One supplier wrote to their trade association as follows "*Responsible buyers are paying off the dues and helping factories to pass through difficulties. Unfortunately, Peacocks Stores Ltd, and Edinburgh Woollen Mill (EWM) are not responsible buyers. They are holding the goods at the destination port to pressure us to give huge discount. These unethical buyers don't*

care of our people starving and struggling. .. We are communicating with them every day and request them to release the goods, but they never reply.” [sic]

3.5. The consequences of retailers making changes to their orders with suppliers, directly impacts workers worldwide. The International Labour Organisation singled out the impact of Covid disrupted trade in the garment sector. 86 million mainly women garment workers have been pushed into extreme hardship⁶. Annex A sets out the impacts felt by workers as a result of the disruption to orders, and where known, which retailers’ supply chains these workers are in.

3.6. **Non-payment of wages** is alleged to have occurred in the following supply chains, though these figures are disputed. The brands and the civil society organisations involved in the relevant countries are currently investigating whether or not the suppliers who haven’t paid wages correctly were in the supply chains of these retailers when Covid disrupted trade. Whilst suppliers are responsible for paying the wages of their workers, it is retailers’ responsibility to honour contracts as initially agreed, and to ensure that the labour rights of workers in their supply chains does meet the standard in their supply chain codes of conduct, which include correct payment of wages.

- Next (25,370 workers in Bangladesh, Cambodia, India, Myanmar and Sri Lanka),
- Primark (20,700 workers in Bangladesh, Cambodia, Myanmar),
- Arcadia (11,300 workers in Bangladesh, Cambodia, Pakistan),
- Tesco F&F (4,150 workers in Bangladesh, Cambodia, India),
- New Look (3,140 workers in Bangladesh, Sri Lanka, and Hong Kong),
- M&S (2,200 workers in Bangladesh and Sri Lanka),
- Sainsburys TU (1,872 workers in Bangladesh and Cambodia)
- ASOS (600 workers in Sri Lanka).⁷

The decisions of single companies impact on the livelihoods of thousands of workers, many of whom are in countries with no social security net. When they lose their jobs, have wages delayed or reduced, they and their families are at risk of becoming destitute.

3.7. **Unfair trading practices are applied irrespective of geography.**

The UK purchases clothes from more than 180 countries in the world. UK retailers apply unfair trading practices uniformly, including to UK manufacturers, as has become apparent from reports on Leicester garment sector. Widespread labour rights abuses in Leicester, including hourly rates of pay well below minimum wage, are directly driven by the purchasing practices of Boohoo, and other retail customers. (See the correlation between purchasing practices and hourly wages from ILO study in – Annex B.)

3.8. **Lack of credible action by UK Government to curb unfair trading practices.** Sadly, UK garment retailers are amongst some of the worst offenders, internationally. On 26

⁶ International Labour Organisation with Cornell University, October 2020, “*The supply chain ripple effect: How COVID-19 is affecting garment workers and factories in Asia and the Pacific*”

https://www.ilo.org/asia/publications/issue-briefs/WCMS_758626/lang--en/index.htm

⁷ Labour behind the Label, October 2020, Presentation

June 2020 a Bangladeshi newspaper⁸ highlighted that UK retailers owe \$1bn to their Bangladeshi suppliers, followed by US retailers owing \$500m, German, Swedish, Netherlands, French and Spanish retailers each owing \$100m to their Bangladeshi suppliers. Primark, Mothercare, Debenhams were cited as the brands owing the most. These values give a sense of the scale of how much is missing from the Bangladesh economy. Payments owed to Bangladeshi suppliers will be very keenly felt since the garment sector represents 95% of Bangladesh's total exports. In light of the negative international relations impact of individual retailers' actions, both Swedish and Netherlands governments reached out to their retailers asking them to honour contracts⁹. Whilst the UK government has made Covid loans available to facilitate liquidity including paying invoices, UK government has not put UK garment retailers under pressure to pay what they owe. The scale of UK retailers' commercial activities dwarfs the UK's £190m aid budget to Bangladesh¹⁰, and makes it all the more crucial that UK government stops unfair and unlawful trading activities.

3.9. Instead, the UK government still relies on two failing voluntary initiatives relevant to this sector, the Ethical Trading Initiative and the Prompt Payment Code. During this pandemic retailers have ignored their previous commitments to both. For example, M&S breached both its commitment to both ETI and PPC when it unilaterally changed terms for its suppliers. It showed no regard for workers employed by suppliers (thereby breaching the ETI code) when it unilaterally moved to paying suppliers on 120 day payment terms¹¹ (breaching the PPC).

⁸ Daily Star, 26 June 2020, "Is Foul Play the new Normal?" <https://www.thedailystar-net.cdn.ampproject.org/c/s/www.thedailystar.net/business/news/you-suffer-we-survive-1920733?amp>

⁹ "In a 15-minute phone conversation with Bangladeshi Prime Minister Sheikh Hasina on April 29, her Swedish counterpart, Stefan Lofven, gave assurances that Swedish companies would stop *cancelling* Bangladeshi clothing shipments. The following day, Sigrid Kaag, the Netherlands' minister for foreign trade and development cooperation, pledged to his Bangladeshi counterpart that Dutch buyers will continue to buy Bangladeshi garments." Source: Nikkei Asia, 30 May 2020, "Bangladesh goes to bat for textile industry as buyers scrap orders" <https://asia.nikkei.com/Politics/International-relations/Bangladesh-goes-to-bat-for-textile-industry-as-buyers-scrap-orders>

¹⁰ DFID, 2018, "DFID Bangladesh Profile"

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/913400/Bangladesh-Profile.pdf

¹¹ M&S, April 2020, "Supplier Management – Covid response"

<https://corporate.marksandspencer.com/sustainability/clothing-and-home/supplier-management>

5. What are the pros and cons of proposals to license factories or more strongly regulate purchasing practices?

5.1. Previous parts of this submission have set out the wide spread scale of the harm, particularly impacting workers, of the actions made by individual garment retailers and brands. To achieve public policy goals the UK Government needs to change the behaviour of garment retailers and brands, who in turn shape the practices of their suppliers, which is where the widespread social and environmental footprint of the clothing sector is felt.

5.2. This section will set out why the UK Government urgently needs to establish a regulator to curb abusive, often unlawful purchasing practices in this sector. We consider licensing to be a distraction, and that the UK should instead prioritise improving the enforcement of minimum wage and health and safety which safeguards workers, and should at the same time curb one of the key drivers of poor working conditions and low pay, namely abusive purchasing practices. This section will set out the reasons why the government needs to act, why the government can't rely on the existing legal mechanisms to curb what are often already unlawful purchasing practices, and then the key features of an enforcement mechanism to stop unfair purchasing practices.

5.3. **Licensing is not the solution**

Licensing places the responsibility and cost onto suppliers rather than focusing on the brands. It is the pricing decisions and purchasing practices of fashion brands that drive illegal wages and unsafe working conditions. They dictate the short manufacturing periods which directly drive overtime, corner-cutting and a high-pressure work environment. Stopping the unfair, frequently unlawful purchasing practices by brands and retailers which drive exploitative practices needs to be the priority.

5.4. To ensure that workers in the UK are treated with respect there is a need to adequately resource enforcement of the UK's minimum wage, and health and safety legislation. Otherwise employers, like those in Leicester exposed by this summer's newspaper articles, will continue to get away with breaching the law. It is essential that the fundamental building blocks of safe workplace and minimum wages are delivered to *workers*, rather than overlaying a new licencing scheme of *suppliers* on top of the current non-functioning enforcement system.

5.5. Labour rights enforcement needs to be delinked from immigration control. Otherwise workers and the local community will not see the benefits of reporting breaches of employment law and will instead fear losing their job and ability to remain in the UK.

5.6. The licensing proposal singles out Leicester, although there are similar problems in other labour-intensive garment factories in other parts of the UK.¹² In those cities, as well as

¹² - Brill, L, Homeworkers Worldwide, 2019, '*The Greater Manchester textile and garment industry: a scoping study.*' www.homeworkersww.org.uk/assets/uploads/files/HWW-GM-textilesmanufacturing-FINAL.pdf
- Froud, Julie, Hayes, Steven, Wei, Hua & Williams, Karel, University of Manchester, 2016, "*Coming Back. Resilience and precarity in UK textiles and apparel*" <https://foundationaleconomycom.files.wordpress.com>

in Leicester, the priority should be on improving labour rights enforcement and addressing some of the key drivers of this situation, namely unfair purchasing practices by fashion brands.

5.7. The business model of garment retailers enables significant wealth to be extracted in good times, and vulnerable suppliers and workers to be abandoned in tough times.

Analysis of the 14 large retailers included in Traidcraft Exchange's Fast Fashion Crisis found that either the business or their owners had the assets to honour contracts with suppliers but chose not to. ASOS and Primark which terminated contracts with their suppliers, are already back into profit. This sector is notable for having a much larger proportion of companies owned by billionaires¹³, compared to food retailing where the largest companies are plcs. It appears they are able to transfer significant resources out of their companies when the sector is performing well¹⁴, but then when times are hard, they let their businesses move towards administration, including the process of writing off a large proportion of supplier debt, rather than reinvest. Abusive purchasing practices is one of the most common and profitable practices in this sector that retailers and brands use to transfer risks and costs onto suppliers.

5.8. Government can't rely on existing legal mechanisms to deter unlawful trading practices

Retailers unilaterally change their terms of business with their suppliers. This was the case prior to Covid, but that crisis has made it worse. In most cases, these were unlawful breaches of the contracts that retailers and suppliers had previously agreed. Traidcraft Exchange provided guidance to suppliers' associations as to how to respond to these changes.¹⁵ Many contracts did *not* have clauses enabling the retailers to cancel in the manner that they did.¹⁶

/2017/02/coming-back-capability-andprecarity-in-uk-textiles-and-apparel-march-2017.pdf
- Manchester Growth Company, 2017, *'Realising the growth potential of UK Fashion and Textile Manufacturing: a report for The Alliance Project and N Brown.'* National Textiles Growth Programme.
<http://www.ltma.co.uk/wp-content/uploads/2017/05/The-Final-AllianceProject-Report-Oct-2012-to-May-2017.pdf>

¹³ Western family – Primark; Philip & Christina Green – Arcadia/Burtons/TopShop; Philip Day – Edinburgh Woollen Mill/Peacocks; Mahmud Kamani – Boohoo; Mike Ashley – Sports Direct/Frasers/Flannels; John & Jason Hargreaves – Matalan; Walton family – Asda; Anders Povlsen – Bestseller and majority shareholder of ASOS. Source: Sunday Times, 17 May 2020, *"Rich list 2020"*

¹⁴ Guardian, 21 October 2005, *"Philip Green pays himself record £1.2bn"*

<https://www.theguardian.com/business/2005/oct/21/executivesalaries.executivepay>

¹⁵ Traidcraft Exchange in conjunction with The Lawyer's Circle (thecircle.ngo), May 2020, *"Force Majeure And Covid-19 A Guide For Suppliers In The Garment Industry"*

¹⁶ For example if a retailer's Force Majeure clause did include a reference to a pandemic, then there could be a suspension of the activities directly prevented by the Force Majeure event, and/or the option to terminate the contract after a period of time. Note that it is only activities *directly* prevented by the Force Majeure event which can be suspended. Payment obligations of a contract are not directly suspended. It appears that brands chose to use "Force Majeure" and "frustration" clauses to get out of contractual obligations which were merely difficult or less profitable.

5.9. However, suppliers are so dependent on their retail and brand customers for future orders that they are usually unwilling to challenge their customers for breach of contract, and certainly not to take them to court. If suppliers were willing to take their retail customers to court, they would face several hurdles. Namely, most UK retailers have specified that the contract will be performed under English law, requiring overseas suppliers to identify a solicitor in the UK. Hostile business customers are likely to ask a supplier to provide evidence that the supplier has the funds reserved to pay the legal costs of the customer should the supplier lose. This usually requires a supplier to open or demonstrate that they have a UK bank account containing sufficient funds before a case can proceed.

5.10. Despite the widespread scale of cancellations in March - May 2020, and the significant financial hit these cancellations caused suppliers, Traidcraft Exchange is aware of only a handful of suppliers who have issued (private) pre-court action notices to UK retailers for breach of contract. A supplier that takes their customer to court will be regarded as a troublemaker by multiple retailers (not just one). Such publicity would be commercial suicide.

5.11. This situation means that it is futile for government to rely on private action to enforce contracts between powerful fashion retailers and their suppliers.

5.12. **A Garment Trading Adjudicator is needed urgently to curb unfair, often unlawful purchasing practices.** This submission highlights that problems in purchasing practices have been a known problem for more than a decade. Despite the availability of abundant guidance, retailers and brands have chosen not to improve their practices.

Instead, it is clear that the incentives on fashion retailers and brands continue to drive irresponsible purchasing practices, including unlawful cancellations and changes to contract terms. We propose the introduction of an independent regulator with a remit to tackle unfair trading practices in the garment sector.

This submission will now go onto set out the key characteristics needed of the proposed regulator, which we will call Garment Trading Adjudicator. In CORE's submission to this EAC call for responses the same proposed regulator is a Fashion fair purchasing watchdog.

5.13. **Design of a Garment Trading Adjudicator needs to be cognisant of the power imbalance between retailers and suppliers.**

As set out in paragraphs 5.8 to 5.11 above, suppliers are too afraid to challenge their retail and brand customers in court because they are in a considerably weaker position. There are thousands of suppliers all competing for garment retailers' and brands' business, putting suppliers in a very weak position. This is a crucial consideration when designing an enforcement mechanism to stop unfair trading practices.

5.14. It will be necessary for the enforcement body to guarantee suppliers that information they provide will be kept confidential, and it would be wise for the regulator to welcome anonymous complaints, given the scale of the climate of fear in the sector.

5.15. To avoid a retailer trying to second guess which supplier(s) may have complained, the enforcement body will need to be able to initiate its own investigations based on information in the public domain, on surveys it conducts, and on the intelligence it receives and complaints from suppliers.

5.16. Design of a Garment Trading Adjudicator needs to include ability to apply significant and dissuasive penalties, which outweigh the financial gains accrued from unfair purchasing practices

A very significant cost that a retailer incurs is payment to its suppliers since its core activity is buying for resale. Unfair trading practices therefore provide retailers and brands with very significant financial advantages.

5.17. We estimate that Primark's decision to suspend honouring its contracts for products due to be shipped after mid-April 2020 will have saved it hundreds of millions of pounds. The accounts of Primark's parent company, Associated British Foods, indicate that it had available to it a £1.2billion bank loan facility, as well as £1.5bn cash on hand, and was eligible for a UK government Covid Corporate Financing Facility loan. The CCFF loans are offered to businesses precisely to maintain liquidity and enable businesses to pay their suppliers. Primark could have afforded not to cancel these orders in Spring 2020.

5.18. Approximately 80 UK retailers cancelled approximately £759m worth of orders from Bangladesh.¹⁷ In spite of the dubious legality of these cancellations, these 80 UK retailers preferred to keep money in their own bank accounts, rather than pay suppliers what they had previously agreed to.

5.19. It is therefore essential that an enforcement mechanism to stop unfair trading practices needs to be able to apply significant and dissuasive penalties.

5.20. Design of a Garment Trading Adjudicator could be modelled on a similar UK regulator that has proved to be effective.

In 2013 the UK established the Groceries Code Adjudicator (GCA) to stop the UK's largest food retailers from breaching a fair purchasing statutory code, called the Groceries Supply Code of Practice. Retailers with a UK turnover exceeding £1 billion¹⁸ fall into GCA's scope. The climate of fear, and power imbalance in the garment sector mirrors similar dynamics witnessed in the food sector. The GCA is able to hear confidential complaints, gather

¹⁷ Daily Star, 26 June 2020, "Is Foul Play the new Normal?" <https://www-thedailystar-net.cdn.ampproject.org/c/s/www.thedailystar.net/business/news/you-suffer-we-survive-1920733?amp>

¹⁸ Competition Commission 2009 "The Groceries (Supply Chain Practices) Market Investigation Order 2009" https://webarchive.nationalarchives.gov.uk/20111108222700/http://www.competition-commission.org.uk/inquiries/ref2006/grocery/pdf/revised_gscop_order.pdf

evidence from a range of sources and conduct investigations on its own initiative.

5.21. The scale of financial harm that garment and food retailers can inflict on individual suppliers is similar. Tesco overstated its profits by £250m in 2014, which resulted in Tesco agreeing to pay a fine to the Serious Fraud Office in 2018. The Groceries Code Adjudicator found that “*Tesco deliberately and repeatedly withheld money owed to suppliers to boost its sales performance artificially*”¹⁹. Individual suppliers were owed millions of pounds, sometimes for several years. “*The GCA has found that Tesco plc has breached the Groceries Supply Code of Practice (the Code) in respect of Paragraph 5: No delay in payments. Five recommendations have been made to address this breach of the Code.*”²⁰ Following on from this investigation the GCA was given the power to fine up to 1% of UK turnover where a retailer had been found to be in breach.

5.22. The GCA regulator has a £2million budget which is funded by a levy on the UK retailers whose purchasing practices are within the GCA’s remit. The GCA reports into BEIS and has a governance independent of the 13 retailers within scope. This is an exceptionally cost-effective regulator.

5.23. The regulator has been effective in curbing abusive purchasing practices. The GCA’s annual supplier survey conducted by YouGov found in 2014 that 79% of suppliers experienced a breach of the code; by 2020 this had reduced to 36%.²¹

5.24. The UK market for garments (excluding footwear) was valued at just over £55 billion in 2019. If we assume the mark up of UK retailers is approximately 50%, this submission focuses on the economic detriment happening in a £23 billion market. The rationale for creating the Groceries Code Adjudicator was related to the long term adverse effect on competition associated with the UK’s largest retailers passing on “excessive risks and unexpected costs” onto their suppliers and consideration of fairness.²² The same practices

¹⁹ Independent, 28 March 2017, “*Tesco fined £129m by Serious Fraud Office for overstating profits*” <https://www.independent.co.uk/news/business/news/tesco-fined-ps129-million-serious-fraud-office-overstating-profits-a7653166.html>

²⁰ Groceries Code Adjudicator, 26 January 2016, “*Decision: GCA Investigation into Tesco plc*” <https://www.gov.uk/government/publications/gca-investigation-into-tesco-plc>

²¹ YouGov, 2020, “*GCA Annual Survey*” https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/890059/GCA_YouGov_2020_Presentation.pdf

²² Competition Commission, 30 April 2008, “*Groceries Market Investigation Final Report*” Paragraph 9.83 “grocery retailers transfer excessive risks or unexpected costs to their suppliers, this is likely to lessen suppliers’ incentives to invest in new capacity, products and production processes. If unchecked, we conclude that these practices will ultimately have a detrimental effect on consumers.”

9.84 “We also have concerns regarding the transfer of risk from grocery retailers to suppliers in situations where this transfer creates a ‘moral hazard’; that is, where the retailer has the ability to affect the degree of risk incurred, but as a result of the transfer, the retailer has less incentive to minimize that risk.”

Paragraphs 11.269 onwards sets out the Competition Commission’s recommendations. <https://webarchive.nationalarchives.gov.uk/20140402235418/http://www.competition-commission.org.uk/assets/competitioncommission/docs/pdf/non->

have been happening and are continuing to occur in the garment sector which is why we recommend that a Garments Trading Adjudicator is established with some urgency to stop unfair purchasing practices.

6. What would be the most effective measures industry or Government could put in place to ensure that materials or products made with forced or prison camp labour are removed from the supply chain?

6.1. Government has a role to play in curbing the inhumane impacts of the garment retailers' purchasing practices, including for cheaper priced products. Some of the exceptionally cheap clothes, can only be made in inhumane circumstances and are part of what drives businesses to use slave labour in their supply chains. Two complementary government interventions need to be applied to change UK retailers' sourcing and purchasing practices. These decisions are made in the UK and so come under the jurisdiction of the UK.

6.2. Establish a Garment Trading Adjudicator to deter unilateral, short notice changes to previously agreed terms, as well as to stop other abusive, sometimes unlawful, purchasing practices. This will help to rebalance power between suppliers and retailers and give suppliers some confidence that they can start to reliably plan how to deliver orders to their customers without needing an exceptionally flexible workforce. This law will reduce the business need for ultra-cheap flexible workers, and is essential to stop labour rights violations being driven further underground.

6.3. We recommend a corporate duty to prevent human rights and environmental abuses modelled on the Bribery Act to deter and penalise those businesses which *commission or profit from* human rights violations, including forced labour. For more details please see the Corporate Responsibility Coalition's²³ submission. Such a law could be enforced by a dedicated Business & Human Rights regulator²⁴. This law would penalise businesses which benefit from the use of forced labour in their direct operations or in their supply chains. Careful attention will be needed when drafting this law to ensure the correct level of responsibility and deterrent is applied to a business which is found to be using and profiting from forced labour perhaps more than three tiers into its supply chain, for example in cotton growing, and cotton seed harvesting.

7. How can any stimulus after the Coronavirus crisis be used to promote a more sustainable fashion industry?

inquiry/rep_pub/reports/2008/fulltext/538.pdf

²³ Corporate Responsibility (CORE) Coalition <https://corporate-responsibility.org/>

²⁴ Dr Rachel Chambers, University of Connecticut, Sophie Kemp & Katherine Tyler, Kingsley Napley LLP, 21 August 2020, "Report of research into how a regulator could monitor and enforce a proposed UK Human Rights Due Diligence law"

<https://static1.squarespace.com/static/59242ebc03596e804886c7f4/t/5f69fa52ccfcab6a566f1d39/1600780900693/Research+report+1.pdf>

7.1 First the playing field needs to be levelled, then stimulus considered

The EAC's 2019 report at paragraph 135 says, *"We heard concerns about the extra costs and barriers that the UK's sustainable fashion businesses face. Innovators are faced with competition from businesses who are focused on reducing costs and maximising profits regardless of the environmental or social costs."*

Mainstream fashion businesses are able to pass risks and costs back up their supply chains, effectively enabling them to bring products subsidised by exploitation to the UK market. The environmental consequences of these sourcing decisions are primarily felt overseas, and the environmental cost of cleaning up pollution is not factored into products purchased from mainstream retailers. Smaller scale responsible retailers seeking to bring products to the UK market where workers have been paid a living wage, and products have been made in an environmentally responsible manner, will inevitably be offering products at price points significantly higher than their mainstream competitors. It is likely that these higher price points will be beyond most consumers consider value for money.

7.2. First the government needs to establish a mechanism to curb unfair and unlawful purchasing practices, which perpetuate human rights violations. Otherwise stimulus proposals to benefit one group of enterprises are at risk of being undermined and the resources wasted. Once unfair purchasing practices are deterred then stimulus money can be properly targeted to support social or environmentally responsible practices. Socially responsible businesses should then be able to compete successfully with mainstream businesses that disregard their social and environmental obligations.

8. Is the Sustainable Clothing Action Plan adequate to address the environmental impact of the UK fashion industry? How ambitious should its targets be in its next phase?

The Sustainable Clothing Action plan needs to be updated in such a way as to accommodate a garment fair purchasing practices regulator to stabilise orders and reduce unsecured materials purchasing. It can be several months between when a supplier receives an estimated order volume (against which suppliers purchase raw materials), and when final order volumes are confirmed.

November 2020

Annex A - Consequences on workers of unfair sometimes unlawful trading practices of UK retailers

A.1. When suppliers were not paid or underpaid by their buyers this directly impacted their workers and their ability to service their bank loans. Around the world thousands, if not millions of workers have experienced some of the following issues, as a result of trade disruption caused by Covid.

- Dismissals/retrenchment.
- Not been paid wages for work they have already completed
- Had their wages delayed
- Had their wages reduced.
- Experienced discrimination
- Unsafe working conditions
- Unsafe working conditions in relation to Covid
- Been arrested
- Experienced harassment and violence
- Forced overtime
- Forced to accept changes to their employment terms.

These issues have been and are still being experienced by garment workers in Bangladesh, Bulgaria, Cambodia, India, Indonesia, Myanmar, Nicaragua, Pakistan, Philippines, Serbia, Sri Lanka, Thailand, Vietnam²⁵. These are just the countries where organisations are sharing data with the Clean Clothes Campaign network, workers in other countries will also be experiencing similar issues. Please see ILO *“The supply chain ripple effect: How COVID-19 is affecting garment workers and factories in Asia and the Pacific”* for more details.²⁶

A.2. **The impacts of UK retailers’ unfair purchasing practices are widespread.**

UK retailers purchase garments from more than 180 countries. The top five countries supplying garments to the UK are as follows, with approximate values:

- Imports, £ billion, 2018
 - China 5.2
 - Bangladesh 2.7
 - Turkey 1.8
 - Italy 1.6
 - India 1.5

A significant difference between exporting countries lies in the proportion of garments in their total exports of goods. Bangladesh has by far the highest proportion, at 95%; Pakistan, Sri Lanka, Cambodia and Myanmar are all close to 78%, India 20%, and China 11%²⁷.

²⁵ Labour behind the Label, 30 June 2020, Presentation

²⁶ ILO with Cornell University, 2020, *“The supply chain ripple effect: How COVID-19 is affecting garment workers and factories in Asia and the Pacific”* https://www.ilo.org/asia/publications/issue-briefs/WCMS_758626/lang--en/index.htm

²⁷ www.statista.com

When a country's economy is highly dependent on the garment sector, this translates into a high dependency on specific brands continuing to purchase from their country to sustain the lives of workers employed.

A.3. Mass dismissals have been alleged to have occurred in the supply chains of the following UK retailers, though these figures are disputed. The brands and the civil society organisations involved in the relevant countries are currently investigating whether or not the suppliers who have made the mass dismissals were in the supply chains of these retailers when Covid disrupted trade. Whilst suppliers are responsible for paying the wages of their workers, it is retailers' responsibility to honour contracts as initially agreed, and to ensure that the labour rights of workers in their supply chains does meet the standard in their supply chain codes of conduct, which includes correct termination procedures.

- Arcadia (Pakistan),
- ASOS (Sri Lanka),
- Debenhams (Bangladesh),
- Lacoste (Indonesia),
- Lands End (Sri Lanka),
- Marks & Spencer (Sri Lanka),
- Matalan (Pakistan),
- New Look (Sri Lanka),
- Next (Myanmar),
- Primark (Myanmar),
- Sainsburys (Bangladesh),
- Tesco (India).²⁸

This list is compiled by the Clean Clothes Campaign network and is an under-representation of the true situation.

A.4. With no social security systems in place many workers are destitute once they lose their job and are unable to pay their rent, pay for food, or support their dependents.

²⁸ Labour behind the Label, 30 June 2020, Presentation

Annex B Further answers to Q1 What progress has been made in reducing the environmental and social impact of the fashion industry since the Fixing Fashion report came out?

The main text above sets out how purchasing practices significantly influence the social and environmental impacts of the sector. This annex provides evidence of these effects going back more than 15 years, and also highlights guidance that has been produced to help garment retailers and brands improve their purchasing practices.

B.1. Evidence that purchasing practices undermine social impacts (even of those businesses which have signed up to supply chain labour rights codes of conduct)

Oxfam's 2004 report *Trading Away Our Rights*²⁹ highlighted the effects of poor purchasing practices on the garment sector.

End the double standards!

Five purchasing practices that undermine labour standards in garment supply chains:

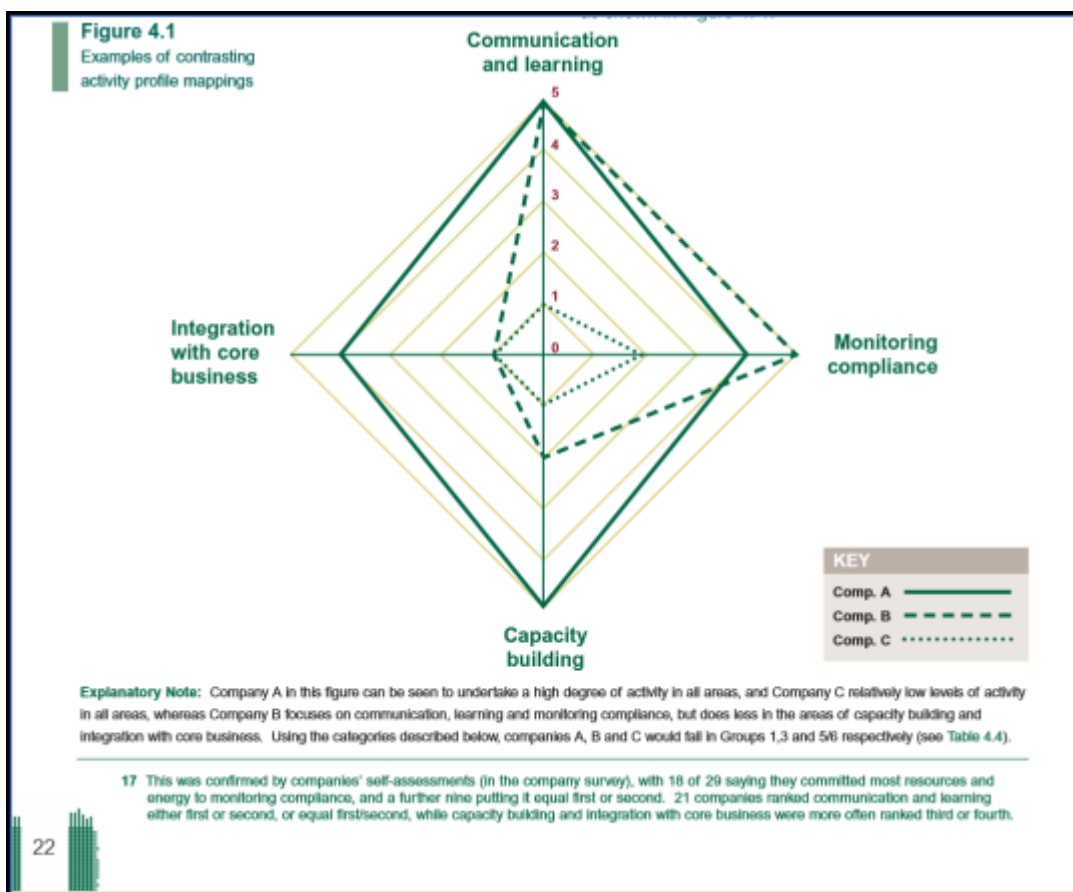
- changing and delaying samples without extending shipping deadlines, often resulting in excessive overtime and sub-contracting;
- withdrawing when labour-standard violations are discovered, instead of working with the producer to become compliant;
- switching frequently between producers, undermining their commitments to long-term progress on labour standards;
- sourcing through agents and mid-chain suppliers who do not provide information on producers and workers down the chain;
- demanding improvements in labour conditions from producers without making the adjustments to price or delivery time required to make it possible.

P57 Chapter 3 Clothing the World from Oxfam's 2004 *Trading away our Rights*

B.2. A 2006 Ethical Trading Initiative (ETI) study looked at supply chains starting in China, Costa Rica, India, Vietnam and the UK.³⁰ This study found that ETI member retailers and brands failed to give adequate priority to the integration of labour rights considerations with their core business activities, and this undermined the realisation of labour rights in these brands' supply chains.

²⁹ Oxfam, 2004, "*Trading Away our Rights*", <https://oxfamilibrary.openrepository.com/oxfam/bitstream/10546/112405/1/cr-trading-away-rights-women-global-supply-chains-10404-en.pdf>

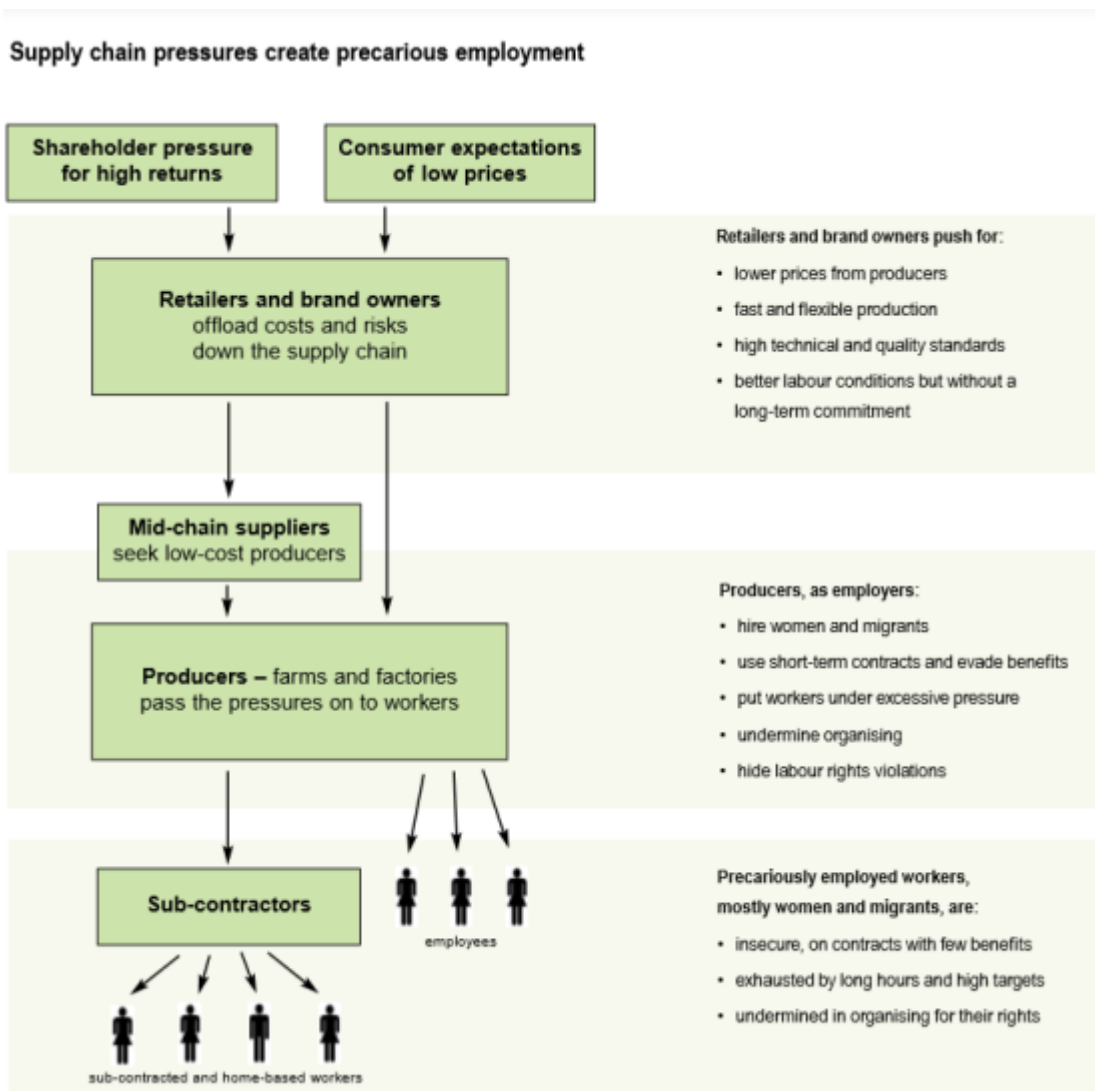
³⁰ Institute of Development Studies, 2006, "*Report on the ETI Impact Assessment – Part 3: How and where ETI member companies are implementing codes.*" https://www.ethicaltrade.org/sites/default/files/shared_resources/impact_assessment_part_3_implementing_codes.pdf



P22 Ethical Trading Initiative Impact study Part 3 How and Where ETI member companies are implementing codes.³¹

B.3. Alongside running retail shops, the core business of a retailer is to buy for resale. The majority of retailers do not make a single item that is sold in their shops. Buying for resale is their key expertise and a vital component of how they make money. When competition or shareholder pressures mean that an increase in profits needs to be found, the default reaction is to find the shortfall from commercial relationships with suppliers, usually by passing on more risks to suppliers. These can include imposing discounts, extending payment terms, or purchasing less than previously agreed. A supplier subjected to these practices then passes on these risks to their employees in the form of low wages, non-payment of overtime, and evasion of paying legally mandated leave or maternity pay.

³¹ P22, Institute of Development Studies, 2006, "Report on the ETI Impact Assessment – Part 3: How and where ETI member companies are implementing codes."
https://www.ethicaltrade.org/sites/default/files/shared_resources/impact_assessment_part_3_implementing_codes.pdf



P35 Oxfam's 2004 Trading away our Rights³²

B.4. These supply chain pressures have resulted in the unfortunate but predictable outcome that workers hired in these supply chains include women, migrants and other vulnerable groups who have insecure employment, and are undermined if they organise to demand their rights. The situation of these workers is further compounded because many of the countries known for cheap labour also have no social security protection.

B.5. The International Labour Organisation's (ILO) report *Purchasing practices and working conditions in global supply chains: Global Survey results* goes further than Oxfam's report and demonstrates the link between poor purchasing practices, including below-cost pricing, inaccurate technical specification and low wages in supply chains.

³² Oxfam, 2004, "Trading Away our Rights", <https://oxfamlibrary.openrepository.com/oxfam/bitstream/10546/112405/1/cr-trading-away-rights-women-global-supply-chains-10404-en.pdf>

Table 1. Business practices and relationship with average hourly wages (all sectors)

(1) Item	(2) Factor description	(3) % change in hourly wages ¹⁴
Purchasing practices	Full flexibility expected from suppliers	-5.95%
	Very inaccurate technical specifications	-21.91%
	Buyers agree to pay at least production costs	9.74%
	Imposing prices below the cost of production	-11.33%
Market power	Supplier only has 1 customer	-20.27%
Labour relations	Existence of a firm-level collective agreement	11.17%
	Existence of a workers' committee and a trade union	15.57%

Page 14 International Labour Organisation 2017 INWORK Issue Brief No.10: Purchasing practices and working conditions in global supply chains: Global Survey results³³

B.6. Purchasing practices remained unfair after the EAC Fixing fashion report and prior to Covid.

After the 2019 EAC *“Fixing Fashion”* report Human Rights Watch produced a report on international brands’ purchasing practices based on interviews with 35 garment suppliers, social compliance auditors, and apparel industry experts as well as with more than 500 garment workers in Cambodia, Bangladesh, Pakistan, Myanmar and India. The report *“argues that brands’ poor sourcing and purchasing practices can be a huge part of the root cause for rampant labour abuses in apparel factories, undercutting efforts to hold suppliers accountable for their abusive practices.”*³⁴

B.7. The Human Rights Watch report *“Paying for a bus ticket, and expecting to Fly”* refers to over-time violations (including minutes worked which workers are not paid for), use of casual and temporary contracts to avoid making pension and social security payments, pressure to work faster, and breaks being reduced even for going to the toilet. Capital projects which suppliers are encouraged to undertake by buyers, such as improving building or fire safety, are also undermined by purchasing practices. *“Factories’ loan eligibility to make these financial investments was influenced by their ability to show strong business relationships and good cash flow, which directly depended on brand purchasing practices.”* Despite brands’ desires not to be associated with a potential repeat of Rana Plaza building collapse or Tazreen fire at their suppliers, in practice factories under price pressure do not invest enough in making fire and building improvements. This means leaving workers at risk, and highlights the hollowness of retailers’ claims to be concerned

³³ P 14 International Labour Organisation 2017 *“INWORK Issue Brief No.10: Purchasing practices and working conditions in global supply chains: Global Survey results”* https://www.ilo.org/asia/publications/issue-briefs/WCMS_758626/lang--en/index.htm

³⁴ Human Rights Watch, 2019, *“Paying for a bus ticket, and expecting to Fly”* Summary <https://www.hrw.org/report/2019/04/24/paying-bus-ticket-and-expecting-fly/how-apparel-brand-purchasing-practices-drive>

about safe working conditions.

B.8. The textile sector has long had a poor environmental track record

McKinsey's November 2019 report *The State of Fashion 2020: Navigating uncertainty* observes the following: "When it comes to sustainability, the industry's track record remains a source of concern. The textile sector still represents 6 percent of global greenhouse-gas emissions and 10 to 20 percent of pesticide use. Washing, solvents, and dyes used in manufacturing are responsible for one-fifth of industrial water pollution, and fashion accounts for 20 to 35 percent of microplastic flows into the ocean."³⁵ These environmental impacts are all externalised. Clean-up, if it happens, will be paid for by the countries experiencing the pollution and not by those who commissioned the manufacture of polluting clothes. Because of brands' purchasing practices, there is currently insufficient money in garment supply chains to clean up pollution and off-set emissions.

B.9. Guidance on purchasing practices to improve labour rights exists

In 2008, Traidcraft Exchange and Impactt published a responsible purchasing guide for UK garment retailers and brands, based on research conducted in Bangladesh, Cambodia, China and the UK³⁶. The "*Material Concerns*" guide was produced following the concerns raised in Ethical Trading Initiative's impact study, as well as within the forums discussing the ending of the Multi-Fibre Agreement, which governed world trade in textiles and garments until 2005.

B.10. Material Concerns aimed to provide guidance to companies on how to align their purchasing practices to support better working conditions in their supply chains. Material Concerns includes three types of recommendations:

- i) A change to buyers' and suppliers' incentives to recognise their joint responsibility in creating good working conditions in their supply chains according to the retailers' code of conduct.
- ii) Operational Principles for the buying team to implement for key stages of the Critical Path from developing, placing and receiving orders.
- iii) A change to processes that undermine the purchasing relationship with suppliers, and a reorganisation of the teams within retailers and brands to avoid the conflicting and divergent messages which suppliers receive from the same retail customer which ultimately undermines good working conditions.

B.11. Other more recent reports have also made recommendations as to how purchasing practices should improve. These include ETI *Guide to Buying Responsibly*³⁷, published as a response to the concerning findings of the 2017 ILO study on purchasing practices³⁸, and Human Rights Watch's 2019 report *Paying for a bus ticket, and expecting to fly – How Apparel Brands Purchasing Practices drive Labour Abuses*.³⁹

³⁵ McKinsey, 20 Nov 2019, "*The State of Fashion 2020: Navigating uncertainty*"

<https://www.mckinsey.com/industries/retail/our-insights/the-state-of-fashion-2020-navigating-uncertainty>

³⁶ Traidcraft and Impactt, 2008, "*Material Concerns: How responsible sourcing can deliver the goods for business and workers in the garment industry*" <https://traidcraftexchange.org/policy-resources/2017/10/20/material-concerns-responsible-garment-sourcing>

³⁷ Ethical Trading Initiatives of Norway, Denmark and UK, 7 Sept 2017, "*Guide to buying responsibly*" <https://www.ethicaltrade.org/resources/guide-to-buying-responsibly>

B.12. Transparency alone is not sufficient, nor a substitute for fair purchasing practices

Since EAC's 2019 *Fixing Fashion* report garment retailers and brands:

- are providing much more transparency about which suppliers they are purchasing their products from. This is in part thanks to pressure from Fashion Revolution. The Open Apparel Initiative is improving stakeholders' ability to access and use this information.
- have more diversity in how they implement and check on compliance against their labour rights codes of conduct.
- are producing Transparency in Supply Chains statements describing if and how modern day slavery risks are being addressed in their supply chains. The failure of the UK government to publish a list of which companies are within scope of the TISC reporting provision means that less-well-known fashion brands can continue not to comply.

³⁸ ILO 2017 "INWORK Policy Brief No. 10: Purchasing practices and working conditions in global supply chains: Global Survey results" https://www.ilo.org/travail/info/fs/WCMS_556336/lang--en/index.htm

³⁹ Human Rights Watch, April 23, 2019, "Paying for a Bus Ticket and Expecting to Fly: How Apparel Brand Purchasing Practices Drive Labor Abuses" <https://www.hrw.org/report/2019/04/24/paying-bus-ticket-and-expecting-fly/how-apparel-brand-purchasing-practices-drive>