



## White Paper on the Definition and Application of Commercial Compliance

### Sustainable Terms of Trade Initiative

#### 1. Context

The Sustainable Terms of Trade Initiative (STTI) is a manufacturer<sup>1</sup> driven initiative, focused on creating fairer purchasing practices in the textile and garment industry. It is set within a fiercely competitive, enormously globalized industry. An abundance of brands, retailers and manufacturers globally has led to what has been termed a ‘deflationary industry’: The fight for the final consumer’s attention creates a ‘race to the bottom’, meaning that competing brands and retailers<sup>2</sup> undercut each other by lower prices and a higher number of new collections in shorter periods of time. This is exacerbated by the fact that the predominant business model in the fashion industry is rather inefficient and wasteful: Short-lived and trend-driven demands on part of the consumers create high uncertainty in the fashion supply chain. However, the resulting economic risks are often borne entirely by the manufacturers, who constantly have to ask themselves: “Will the order that my buyer placed be kept as confirmed? Will I be paid on time and as agreed?” Because by the time an order is produced and reaches the shops, too often the demand turns out to have changed or even evaporated. In these situations, brands can still cancel orders or reduce the previously confirmed quantities – which are typically pre-financed by the manufacturers at their own risk. But what can a manufacturer do in this situation? He is the last link in the chain, who often has to accept what he is given, previously agreed or not, signed or not, fair or not. Because he depends on the (next) order.

It is clear that due to the intense competition there is pressure on manufacturers to further reduce their costs and at the same time the demand for services offered by manufacturers including financing, agility, and flexibility is growing. That has already been the situation before the COVID-19 pandemic hit, but during the pandemic, the unhealthy buyer-supplier relationship was taken to a new level and became more visible. Examples include cases where brands and retailers called in “force majeure”<sup>3</sup>, which allowed them to cancel previously placed orders without paying them. Since payment usually takes place several weeks after delivery<sup>4</sup>, this left many manufacturers with large volume of ready produced textile and/or garments, which were no longer wanted and not paid for. Thus, COVID-19 has accelerated the loss of trust of manufacturers in their buyer’s ability and/or willingness to enact good purchasing practices.

Under pressure, as was demonstrated in the pandemic, buyers’ sense of their responsibility to the supply chain and often even contractual agreements were overruled by some powerful buyers’ sole

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<sup>1</sup> “Manufacturer” in this white paper refers to textile, garment and footwear manufacturers globally. They will also be referred to as “suppliers”.

<sup>2</sup> Buying textile and garment brands, retailers and third parties in the textile and garment industry will also be referred to as “buyers” throughout this white paper.

<sup>3</sup> ‘Force majeure’ translates to ‘superior forces’ and is a term often used in contracts to refer to events outside of a party’s control which are unexpected and disruptive serving to alleviate a party from its obligations under the contract without liability (Source: <https://www.lexisnexis.co.uk/legal/glossary/force-majeure>). The term became famous in the COVID-19 pandemic as several European brands and retailers called in ‘Force majeure’ to justify order cancellation without obligations towards suppliers.

<sup>4</sup> According to a survey conducted by Better Buying whose results were reported through a Special Report published June 1, 2020 about payment and terms, “forty percent of suppliers reported terms of over 60 days...”



focus on preserving their own bottom lines, as they faced dramatic changes in commercial conditions. While buyer purchasing practices had been increasingly scrutinized over the last decade for the impact they have on economic, social and environmental sustainability, it became painfully clear to manufacturers that their vulnerability has increased and that they must play a stronger role in fostering purchasing practices that support mutually beneficial and sustainable partnerships, which was one of the main drivers leading to the development of the Sustainable Terms of Trade Initiative . Fortunately, this call comes at a time when many brands and retailers have equally realized that the industry needs a healthy buyer-supplier dynamic to achieve a healthy working environment.

The reality that the current predominant purchasing practices are often one of the major barriers to a more sustainable apparel industry has been recognized. Complying with international laws as well as *soft law* such as codes of conduct (CoC) depends, for a large part, on the buyers’ own purchasing practices. Soft law was specifically created to outline how certain international laws and conventions, such as the *International Human Rights Charta*, translate into recommendations for multinational enterprises in the textile and garment industry. Examples include the [UN Guiding Principles on Business and Human Rights](#) and the [OECD due diligence guidance for responsible supply chains in the garment and footwear sector](#). These consider the improvement of purchasing practices as an integral component of the mix of measures needed to improve social, economic and environmental conditions in the apparel industry. Growing legislative action such as the *German Due Diligence Act*, the *French Loi de vigilance* or *draft of European Corporate Due Diligence Act* reflect the most recent developments that both Human Rights and Environmental sustainability shall be respected along the supply chain, including by buyers.

Manufacturers and their associations are aware that they have a major role to perform in creating a better industry that delivers better living conditions to workers and has less impact on the environment. They have their own due diligence duties to perform in the supply chain, their own purchasing practices towards their suppliers, their own responsibilities to contribute to the industry’s commitment to achieve the Sustainable Development Goals (SDGs). However, through this initiative they are stating that, as a group, they are seriously hindered in pursuing these goals by their buyers’ purchasing practices.



## 2. Explanation of the objective and approach of the initiative

### Objective

The primary objective of the initiative is to deliver a major contribution towards purchasing practices that allow textile and garment manufacturers to run a socially, economically and environmentally sustainable operation.

### Manufacturer driven

The Sustainable Terms of Trade Initiative has started from the recognition that even though buyer's own initiatives to improve purchasing practices are important, they are not sufficient. Creating a more balanced commercial relation between a buyer and its suppliers is a prerequisite for achieving economically, socially and environmentally sustainable practices and it requires manufacturers to contribute an equal part to the discussion of what constitutes better purchasing practices and how these can be achieved.

As a result of the developments described above, the Sustainable Terms of Trade Initiative has been started by the STAR Network of nine Asian producing associations of the textile and garment industry - which is supported by GIZ FABRIC - and by the International Apparel Federation (IAF). It is supported by the Better Buying Institute, the OECD and a range of other experts. Participants of the initiative are the following 13 STAR Network and IAF member associations:

**Table 1: Participating associations**

| Members            |  | Represented by             | Title                    |
|--------------------|--|----------------------------|--------------------------|
| STAR + IAF Members | Bangladesh Garment Manufacturers and Exporters Association ( <b>BGMEA</b> )  | Mr. Miran Ali              | Vice President           |
|                    | Bangladesh Knitwear Manufacturers and Exporters Association ( <b>BKMEA</b> ) | Mr. Fazlee Shamim Ehsan    | 2nd Vice President       |
| STAR Members       | Garment Manufacturers Association in Cambodia ( <b>GMAC</b> )                | Mr. Ken Loo                | Secretary General        |
|                    | Myanmar Garment Manufacturers Association ( <b>MGMA</b> )                    | Ms. Khine Khine Nwe        | Secretary General        |
|                    | Pakistan Hosiery Manufacturers and Exporters Association ( <b>PHMA</b> )     | Mr. Junaid Makda           | Deputy Chief Coordinator |
|                    | Towel Manufacturers Association ( <b>TMA</b> )                               | Mr. Muzzammil Hussain      | Secretary General        |
|                    | Pakistan Textile Exporters Association ( <b>PTEA</b> )                       | Mr. Azizullah Goheer       | Secretary General        |
|                    | China National Textile and Apparel Council ( <b>CNTAC</b> )                  | Dr. Xiaohui Liang          | Chief Researcher         |
|                    | Vietnam Textile & Apparel Association ( <b>VITAS</b> )                       | Mrs. Hoang Ngoc Anh        | General Secretary        |
| IAF Members        | The Indonesian Textile Association ( <b>API</b> )                            | Mrs. Anne Patricia Sutanto | Vice Chairman            |
|                    | Turkish Clothing Manufacturers Association ( <b>TCMA</b> )                   | Mrs. Sanem Dikmen          | President                |
|                    | Istanbul Apparel Exporters Association ( <b>IHKIB</b> )                      | Mr. Cem Altan              | Board Member             |
|                    | Moroccan Association of Textile and Apparel Industries ( <b>AMITH</b> )      | Mrs. Fatima Zohra Alaoui   | General Manager          |

**Phased approach**

The initiative has taken a phased approach. The first phase, of which this white paper is the main deliverable, has centred on creating a space for manufacturers and their associations to exchange their experiences and wishes and starting to make recommendations of how, from a manufacturer’s perspective, purchasing practices should be improved. A series of nine working group meetings, divided across five sub-themes, have been held for this purpose.

**Manufacturer inputs and involvement of further stakeholder and experts**

The information in this white paper is a result of the inputs given by the participating manufacturers and their associations and has been organized with the support of industry experts. Also, insights from two surveys, carried out among manufacturers by the Better Buying Institute, allowed a broader group of manufacturers to contribute their experiences.

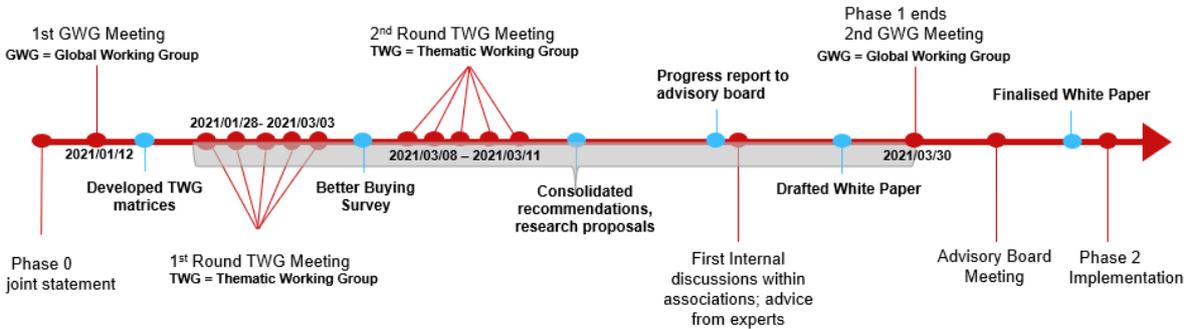
While the participating associations have collectively approved this white paper, it is clear that this paper can only document the preliminary status of discussions, which will be continued, given the complexity of the topic and the need to bring together the experiences and recommendations of manufacturers with those of the buyers. It is also important to mention that everything described in this document is only the opinion of the group and absolutely non-binding to the members of the participating associations.

The second project phase will be dedicated to actions within the supply chain to improve purchasing practices based on the findings from phase 1. While phase 1 only focused on manufacturers and their associations, phase 2 will open the discussions particularly for brands, retailers and the other industry stakeholders. A special emphasis will lie on conversations with Multi-Stakeholder-Initiatives (MSIs) working on the topic of Purchasing Practices. At the same time the conversation among manufacturers will be continuing both at the regional and national level.

**Advisory Board**

In order to involve other industry stakeholders early, an industry advisory board has been set up and members were informed about the discussions of the first project phase. It consists of representatives from international organizations such as OECD, international brands and brand initiatives, representatives from Multi-stakeholder initiatives and other development stakeholders such as ILO Better Work. A special emphasis was put on actors engaging in fairer purchasing practices.

**Figure 1: Timeline of Phase 1 of STTI**



### 3. Main results

This white paper starts with a description of some overarching problems defining many buyer-supplier relationships in the industry, before introducing the STTI's concept of commercial compliance and outlining the findings from the working groups to improve purchasing practices in three broad categories: Key Recommendations, Further Recommendations for (areas of) improvements of purchasing practices and Research Suggestions both legal and technical.

#### Overarching problems with buyer-supplier relations in the textile and garment industry

Not surprisingly, the thematic working group sessions that were held in the first three months of 2021 yielded a harsh picture of purchasing practices by brands and retailers (the buyers). A number of common elements of problems, defining many current sourcing relations in the textile and garment industry, are further reflected the currently unhealthy dynamic in many buyer-supplier relationships. Included among these overarching problems identified were:

- The mindset of buyers that **buyers set the terms**, while all resulting costs and risks, even if caused by the buyer or by buyer-designated material suppliers, are to be covered by the supplier.
- Frequent **revision of terms** after an order has been negotiated. Even when an agreement to do so is formally made bilaterally, the power relations in the supply chain are such that in practice, most changes to terms are made unilaterally by the buyer.
- **Contracts are not precise enough**, contracts are too one-sided, contract terms are ignored by buyers.
- Buyers define contractual relations, but adhere to them loosely, and **only when the terms remain in their favour**.
- Increasing the **level of services** to buyers does not generally command better prices.
- The line between **flexibility and predictability has been blurred**. Buyers should have a responsibility to create the best possible predictability of orders so that manufacturers and the workers they employ are not left with unnecessary, avoidable risks or costs. Now too often buyers achieve flexibility by fully sacrificing predictability for the manufacturer.
- **Manufacturers finance** the business of buyers for many months.
- We see an **asymmetric breakdown of risk**. In other words: Manufacturers act as the supply chain's "crush zones".
- **Quality and lead time shortcomings are often misused** in order to reduce or avoid payments by buyers.

#### Three categories of findings

The discussions from the thematic working groups are yielding a convergence of ideas on the manufacturers' perspective on necessary improvements to purchasing practices. To organize the range of ideas we received, each of these thematic working groups drafted a matrix including three categories of findings:

- 1) **Key Recommendations** on purchasing practices
- 2) **Further Recommendations** for (areas of) improvements of purchasing practices
- 3) **Research Suggestions** on legal and technical aspects needed for the development of services

## The STTIs' concept of 'commercial compliance'

The concept of commercial compliance that is introduced in this white paper introduces a definition of what purchasing practices manufacturers wish to see in their business operations. The concept, developed in the thematic working groups, helps to bring a clear focus and structure to the manufacturers' perspective on improved purchasing practices. Beyond this, this white paper also operationalizes commercial compliance by proposing, in section 4, a set of measures to ensure that, the chances of achieving a measurable improvement of purchasing practices, in the context of the current hyper competitive textile and garment industry are strongly increased.

'Commercial compliance' is a pivotal term introduced in this white paper. STTI defines it as 'purchasing practices that do not cause obvious and avoidable harm to manufacturers.

A major part of the work of the initiative in phase 1 has been the conversation among manufacturers about those purchasing practices that, in their experience, are harming them and thus blocking the manufacturers' ability to meet their own and their buyers' objectives for sustainable business.

Following these discussion, participating manufacturers' associations have collected a joint list of recommended improvements which are needed to be made to those purchasing practices that all agree are most harmful. We have called this list '**Key Recommendations on purchasing practices**' because these improvements form the foundation for commercially compliant purchasing practices (see page 7f.). These are supported by **Further Recommendations for improvement** (see page 8f.). The Key Recommendations were formulated in a way to allow for easy operationalization. An obvious example relates to basing order modifications on clear and fair procedures, so that not all costs and risks involved are pushed towards manufacturers, which in practice can lead to the need for ad hoc subcontracting. This, in turn, can lead to situations in which labor and environmental conditions of production are more difficult to control.

In fact, what this initiative has done by outlining the concept of commercial compliance is to give substance to the call on buying brands and retailers to avoid causing harm through exercising more responsible purchasing practices. On purchasing practices, the OECD's due diligence guidance for responsible supply chains in the garment and footwear sectors reads: "The purchasing practices of retailers, brands and their buying intermediaries have been demonstrated to contribute to harmful impacts – such as excessive and forced overtime and low wages – in some cases." "It specifically calls on enterprises to implement control measures to prevent contributing to harm through its purchasing practices regardless of whether it has identified specific contributions to harm."<sup>5</sup>

More specifically, 'Commercial compliance' is the culmination of the manufacturers' perspective on prevention of the contribution to harm in the [buying] enterprise's supply chain. The initiative wanted to contribute to this global dialog on purchasing practices, both the Key Recommendations and Further Recommendations are reflections of the current status of conversation.

This white paper is not meant to collectively mandate manufacturers' terms on buyers. It is up to the individual economic actors to decide whether they take the STTIs recommendations. It is however clearly meant to create a strong and effective orientation for individual manufacturers regarding potential improvement of purchasing practices. Moreover, the Key Recommendations should not be regarded as a 'ceiling'. They should not prevent or undermine manufacturers' and brands' efforts to go beyond this initial set of recommendations.

<sup>5</sup> See Section 3.2.1, box 4, page 74 of the OECD guidance.

## 1.) Key Recommendations

The Key Recommendations on purchasing practices may be considered as central elements of terms of trade that manufacturers wish to do business under. Therefore, they form the foundation of ‘commercial compliance’ as introduced in this white paper.

They shall by no means be considered as binding requirements but shall illustrate to the industry what kind of behaviour textile and garment manufacturers represented in this initiative would wish to see in their business operations. As stated above the Key Recommendations are meant as a foundation but should not limit or undermine any stakeholders’ efforts to go beyond this set of recommendations.

| Key Recommendations   |
|---|
| Payment terms may not exceed 60 days or the number of days that is customary between a buyer and supplier, whichever is shorter.  |
| No late payments. If payments are deferred, supplier and buyer will negotiate a fee that covers the supplier’s interest for the period and loss of opportunity/profit from the late payment.  |
| No changes to the mutually agreed price may be permitted except when there are changes in external costs that exceed 5% of Free on Board (FOB) price <sup>6</sup> , such as changes in price of raw materials. When fluctuations exceed 5%, either party may request price changes and any profit or loss that results will be shared between the buyer and supplier. No additional discounts shall be taken by the buyer after the purchase order has been issued. |
| If order modifications do occur, they will be based on clear and fair procedures for order modifications (e.g., product design, delivery date) with costs and savings following the modifications incurred by the responsible party.  |
| Every order will include a clear demarcation of the transfer of ownership of the goods and responsibility for risk past which point the buyer must accept and pay for delivery of finished goods.   |
| All prices will cover all costs of compliant production and allow for a reasonable and maintained supplier profit (requires further definition in project phase 2).   |
| The buyer will confirm available capacity for a specific time period with the supplier in advance. If capacity reserved is more than 20% of a supplier’s total capacity, the buyer pays for the capacity that remains unused.   |
| ‘Force Majeure’ can only be invoked on mutually agreed and legally valid grounds and will respect the transfer of ownership and risks defined elsewhere in the contract. If there is a force majeure event, then costs already incurred by the manufacturer will be paid by the buyer.  |
| Penalties to the supplier will be mutually agreed upon, reasonable, clearly stated in the agreed terms, and require supporting evidence for any claims of supplier fault. Penalties related to quality will only  |

<sup>6</sup> Under the terms of FOB (short for “Free on Board”), the seller clears the goods for export and ensures they are delivered to and loaded onto the vessel for transport at the named port of departure. The buyer takes over risk and costs, including import clearance and duties, as soon as the goods are loaded onto the transport vessel at the port of departure (Source: <https://www.aitworldwide.com/incoterms-fob>).

|   |
|---|
| <p>be applied when the commercial value of the product is affected by the deficiency, and they will be substantiated with evidence from a trusted third party. If re-processing is required, charges will be reasonable and never exceed the original FOB price. After goods have passed an in-country inspection the buyer may not reject or take reductions. Penalties related to delivery schedules will be proportionate to the damage caused by the delay.</p> |
| <p>When relying on nominated material suppliers, a buyer takes full responsibility for the nominated suppliers meeting calendar deadlines. Manufacturers cannot be penalized for a nominated material supplier's failure to achieve the buyer's quality standards or to deliver materials on time. Payment term of the nominated material supplier may not be shorter than the payment term defined between buyer and vendor.</p>                                   |
| <p>The buyer will commit to a transparent forecasting methodology that includes providing forecasts in advance and updating those forecasts as new information about the end market is obtained. Planning may be carried out in such a way that suppliers' compliance to the buyer's code of conduct and other terms is not compromised.</p>  |
| <p>Timelines are jointly developed to allow production to take place within regular factory working hours and to clearly distinguish each party's responsibilities for meeting the agreed deadlines.</p>  |

**2.) Further Recommendations for (areas of) improvements of purchasing practices**

In the thematic working groups, in addition to the Key Recommendations, the members also identified Further Recommendations for Improvements to be made to purchasing practices that are important for manufacturers, but that could not be considered a Key Recommendation in the light of 'commercial compliance'. However, the participating associations do consider these recommended improvements to purchasing practices important to the creation of a healthier buyer-supplier dynamic.

Obviously, there is a fine line between the 'Key Recommendations' and the 'Further Recommendations' listed in this white paper and the line is fluid, some recommendations may move 'up' to become 'Key Recommendations' and vice versa. But through focusing on a limited set of recommendations to form the foundation of 'commercial compliance' manufacturers are clearly prioritizing certain actions needed to improve purchasing practices.

| Further Recommendations for (areas of) Improvement  |
|---|
| <p>Payment terms shall not exceed 45 days or the number of days that is customary between a buyer and supplier, whichever is shorter.</p>   |
| <p>If the buyer misses mutually agreed critical deadlines that affect shipping timelines, then the costs of unutilized capacity, overtime or expedited shipping may be covered by the buyer.</p>  |
| <p>Requirements for the supplier to open their books related to their profitability may cease until further research has been conducted and may not take place without reciprocity (buyer must provide transparency in its financial situation) and under a non-disclosure agreement (NDA).</p> |

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| Additional services offered by manufacturers, including ‘pre-contract’ services may be included in pricing.  |
| Advance payments covering costs of raw materials made when a purchase order (PO) is released. If the buyer’s actions cause there to be leftover raw materials and they want the supplier to hold these materials, the costs of carrying over stock from season to season are borne by the buyer. |
| Accurate technical specifications will be used, mutually agreed between buyer and supplier. Buyer sign-off indicates the technical specifications are exactly what they want; supplier sign-off indicates the supplier can produce to those specifications.                                      |
| Buyers actively work to reduce audit and standard fatigue.   |
| Buyers sufficiently invest in data analysis, decision making, and improvement of demand planning, such that there is expanded achievement of financial, social, and environmental sustainability goals.  |
| Buyers make an effort to help their suppliers balance factory capacity, by providing orders for both reactive (fashion sensitive) and non-reactive (basics, not fashion sensitive goods) orders and spreading shipment dates across multiple months.   |
| Buyers with forecasting inaccuracy of greater than +/-20% will compensate the supplier for losses from unutilized capacity the supplier was unable to fill OR costs of overtime payments.  |

**3.) Research Suggestions for legal and technical aspects and for the development of services**

In phase 1 of this project we have recognized that there are many topics and potential solutions that require further legal and technical research. The textile and garment supply chain is complex and dynamic. It requires thorough, objective and well-intentioned research to find out how purchasing practices can support our own commercial compliance principles and be further improved while maintaining the flexibility and commercial independence that is to the advantage of both buyers and suppliers, as well as their customers and workers.

| Research proposals   |
|--|
| An <b>international arbitration mechanism</b> where manufacturers can bring disputes/grievances must be investigated. Different areas of expertise must be covered. A system must be created that is not too easily overburdened, with the majority of cases handled through existing (inspection) infrastructure.   |
| There exists confusion in the industry about the <b>transfer of ownership of the goods</b> , often to the disadvantage of the manufacturer. Research is needed on the costs and benefits of manufacturers retaining ownership of the goods until the buyer has paid for the goods. The role of third parties, including transport companies and agents/importers must be included in the research. |
| Investigation into how <b>open costing arrangements</b> can be made beneficial and fair to both buyer and manufacturer and be extended to incorporate full supply chain costs (which also includes i.e. costs of overstock and stockouts).   |

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|--|
| <p>Research to define a recommendation for a legally valid <b>force majeure</b> clause.</p>  |
| <p>Research on how <b>joint investments in digitalization</b> can improve purchasing practices and the bottom line for both buyers and for manufacturers.</p>  |
| <p>Research on how <b>smart contracts</b> can be used to support on-time and in full payments based on specific business actions that have been completed.</p>   |
| <p>Investigate how manufacturers’ desired <b>payment terms can be made to fit all non-traditional delivery arrangements</b> (such as open account), making clear the moments where payment terms are triggered so as to avoid them extending beyond the acceptable number of days.</p>   |
| <p>Research aimed at modernizing costing practices to create a cost and savings-driven system with multiple performance indicators that measure the value of any supply chain actor's performance in achieving <b>total supply chain profitability</b>. Define total supply chain profitability to incorporate a holistic set of components that can be used to quantify costs and savings that result from different practices, such as supplier speed and flexibility and buyer advance payments. Total supply chain profitability would go beyond short-term margin targets and include reduced stockouts, markdowns, and unwanted inventory, increased sales, savings on logistics and warehousing, and costs and savings of social and environmental sustainability performance. The research should test the applicability of the new costing system under a wide range of situations. Ultimately, the total supply chain profitability system would determine how risks and rewards can be fairly allocated across supply chains.</p> |
| <p><b>The role of third parties/intermediaries</b> in the textile and garment supply chain is often too opaque. Research should create more transparency about the role of third parties. The merits of a system of nominated third parties should be investigated.</p>  |
| <p>Investigate how existing services offering <b>supply chain financing, risk reduction</b> and possibly a combination of the two can be improved and expanded so that they better meet manufacturer’s needs.</p>  |
| <p>Investigate whether existing <b>quality norms</b> can and should be expanded to cover manufacturers’ needs to be able to refer to globally recognized and objective quality norms in case of disputes.</p>  |

## 4. Moving towards phase 2: Applying of commercial compliance

### Structural dialogue

The roll-out of the principle of commercial compliance for improved purchasing practices as described in this white paper requires a structural collaborative process. It has become clear through this initiative that manufacturers want to be engaged in a structural discussion about their experience on the continuous improvement of purchasing practices with (a representation of) their clients. They want the discussion to cover a range from awareness raising to actions that allow the monitoring of concrete and measurable changes in buying behaviour and they want the principle of commercial compliance to be leading. Manufacturers also realize that the Key Recommendations that define commercial compliance are dynamic and therefore require constant maintenance through discussion. Important elements of this structural collaborative process foreseen as potential components in phase 2 are:

- Operationalizing the concept of commercial compliance needs to commence with a discussion about STTIs' definition and the possibilities for **measuring the improvements** resulting from commercial compliance upheld in the relation between buyers and manufacturers.
- **Transparency and arbitrage** are to be based on inclusive processes, involving dialogue between buyers and manufacturers. Creating a system of transparency on improvements with regard to commercial compliance hinges on such elements as mutual trust in a system of measurement and communication and a clear baseline to measure progress against.
- Preventative actions, including **joint buyer – manufacturer training** to enhance commercial compliance should be set up and executed by buyers and manufacturers -and or the organizations representing them- together.
- We want to enhance an infrastructure for **creating continuous enrichment of brand/retailer/multi-stakeholder purchasing practice initiatives with manufacturers' input**, including, to start with, the recommendations posed in this white paper. Through a continuous process of communication between manufacturers and their associations, new recommendations, or specifications or modifications of existing recommendations will be fed into the dialogue.
- Phase 2 also foresees the creation of a **joint buyer-supplier platform to initiate, commission and assess research** on the improvement of purchasing practices, using the suggested research agenda in this white paper as a starting point.

One of the great benefits of this initiative is that a conversation on purchasing practices that support sustainability is now for the first time possible with a large group of manufacturers associations. The sheer size of the group, continuous feedback loops with manufacturers and the involvement of global federations has united the manufacturer's voice to be brought into the dialogues that we plan to set up in phase 2. Similarly, on the side of the buyers, numerous initiatives<sup>7</sup> aimed at improving purchasing practices currently exist. Some involve large brands and retailers; others primarily involve SME brands and retailers. Therefore, we have the groups of players in place for effective dialogue.

In phase 2 we need to first investigate, together with groups representing buyers, especially the **multi-stakeholder initiatives in the industry**, how this infrastructure for continuous dialogue can be set up. Then we want to proceed to set up the dialogue and eventually work with some MSIs to **incorporate**

<sup>7</sup> Examples of such initiatives include: The Common Framework for Responsible Purchasing Practices (FWF/ETI), ABA BLS Model Contract Clauses and Buyer Code (American Bar Association), ACT's Global Purchasing Practices Commitments and sample buying conditions by MODINT

**the concept of commercial compliance** and its underlying recommendations for improved purchasing practices into **MSIs industry tools**.

At the same time, we need to recognize that on a national level often valuable dialogue involving buyers and suppliers and groups representing them has already commenced. In phase 2 we must find a way to strike the right balance between national and international dialogue.

In phase 2, what will participating manufacturers be asking from buyers? In the first place, of those buyers and groups of buyers that choose to participate in the dialogue platform described above, manufacturers will ask a commitment to engage in a process of continuous improvement of purchasing practices based on the principle of commercial compliance as defined in this white paper.

Second, as dialogue and research yield mutually agreed and legally acceptable methods to operationalize commercial compliance, the aim is to provide manufacturers with an enforceable demand for commercially compliant purchasing practices from all of their clients. In the meantime, manufacturers can of course always use the Key Recommendations and Further Recommendations to individually demand better purchasing practices from their clients.

### Transparency and supplier contract

Given the orientation on the Key Recommendations of commercial compliance, suppliers may choose to include them in the contractual agreement with their clients. Nearly 54% of suppliers responding to Better Buying Institute’s survey about these Key Recommendations indicated that they would be likely or very likely to require their five largest customers to meet this set of recommendations.

Manufacturers choosing to trade only under terms not existing below the Key Recommendations could issue a supplier contract designed for that purpose.

Part of the phase 2 of this initiative therefore anticipates the creation of a **supplier contract**. This would basically be asking buyers to take our recommendations on commercial compliance in a similar fashion as suppliers are asked to follow with workplace codes of conduct and other demands from buyers. A stronger balance of power between buyers and suppliers could thus be illustrated also by using equal formats and wordings, as buyer codes of conducts are very common in the industry and also currently revised, for example as part of the initiative by the American Bar Associations, who revised standard contract clauses and a Buyer CoC for their American members, many of them representing international buyers.

However, independent from the format chosen, it will remain up to the **individual associations to make recommendations to their members** that are in line with competition laws and other relevant laws pertaining to such recommendations and manufacturers will be free to follow or disregard these recommendations.

Because the power-asymmetric nature of the market often prohibits manufacturers from driving commercial compliance, a broader range of measures is required. To achieve higher levels of commercial compliance, in addition to manufacturers’ individual actions, we pose here in this white paper that we need to organize more accountability of buyer’s behaviour through transparency, encompassing data and arbitrage.

- **Better Transparency** could be achieved by having a respected independent third party such as the Better Buying Institute collect data related to the Key Recommendations defining commercial compliance and report the results of the assessments in the scope of a study of how the recommendations of this initiative generally affect supply chains. We propose to set up such a

system in phase 2 of this initiative. We are fully aware of the importance of the trustworthiness of the data collected and the objectivity of the organization(s) behind it.

- Arbitrage can be another way to foster commercial compliance by bringing breaches to be investigated by an independent body (to be established) which determines appropriate remediation. **Systems of arbitrage** will be investigated through the research activities suggested to be carried out in phase 2.

**Research**

The results of the research will further define the STTI’s principle of ‘commercial compliance’ and aid its application. Results will feed into the structural dialogue described above. And, importantly, research results will provide steppingstones to launch new projects aimed at improving specific elements of purchasing practices or aimed at the development of specific services that will ultimately have an improved buyer-supplier relationship as a result. In taking the research assignment into phase 2, we may need to prioritize in time, but we will ensure a balanced distribution of commercial, legal and financial research elements.

In phase 2, the initiative will need to make a distinction between internal and external research. The internal research refers to research needed to operationalize the principle of commercial compliance. This includes legal research to ensure that the enforcement of commercial compliance is carried out within the limits set by the law in the major jurisdictions concerned and research to investigate how a system of arbitrage could be constructed. It also includes research on the connection between commercial compliance and the legislation that is currently in development, such as particularly the potential European mandatory human rights due diligence legislation. External research will follow the list of recommended research as published in this white paper. The width of the research topics listed does justice to the complexity of the topic of purchasing practices.

**Disclaimer**

All participants in this initiative declare that the work carried out in this initiative is not in any way aimed at a curbing of competition or a setting of prices. All associations and member companies involved undertake to comply with antitrust rules within the framework of this initiative without exception and no competition-relevant information is exchanged. This project is aimed purely at improving purchasing practices with the aim of ultimately improving sustainability and working conditions for factory workers.

The considerations and suggestions expressed as part of this white papers do not reflect an official position of the organizations supporting this initiative, namely Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, International Apparel Federation (IAF) and Better Buying Institute. Rather, they summarize the discussions between the manufacturers and associations that form part of this project as exchanged in the first phase of this initiative.