



THE PANDEMIC REVEALED KEY PROBLEMS IN THE TEXTILE SECTOR

The pandemic resulted in a great many order cancellations.

In most cases, producers did not have any recourse: many purchase orders are oral contracts, and written contracts are typically one-sided and shift the costs of cancellation to producers.

And where do you go if there is a dispute? Local courts are too costly and take too long; enforcement of court orders is inconsistent and not very effective; and arbitration centres, which could be faster, are usually far away. Anyway, going to litigation disrupts commercial relations: what's the point of winning a case if you lose your biggest client?

These problems have existed for a long time; the pandemic only revealed the harsh realities of the sector.

A PIONEERING SECTOR THAT HAS FALLEN BEHIND

It was not always like this.

Of course, in this sector as in others, there have always been contractual disputes. The textile sector, understanding perhaps more than other sectors the importance of speedy resolution of contractual disputes, was one of the early adopters of innovative ways to do so.

There used to be sector-specific **mediation** and **arbitration** centres.

Mediation and conciliation are voluntary and *non-adversarial* ways of resolving disputes. Where there is disagreement about a contract and bilateral negotiations don't settle the dispute, parties engage the services of a third person – either an expert in the sector or a specialised mediator – to help them negotiate and come to agreement. Where mediation

is available to disputing parties, about 80% of disputes are settled in this way. And parties typically continue their commercial relations.

Arbitration is a mandatory and binding form of private litigation. It has fewer rules than courts, and the arbitrators are more specialised in commercial transactions than domestic judges. As well, most countries are party to an international treaty that allows for enforcement of arbitration awards in one party that is issued in another party. But, arbitration requires the involvement of lawyers, which is costly; it is adversarial, so it disturbs the business relationship. And many arbitration centres are far away from producers.

This is probably why a sector that pioneered international commercial arbitration eventually abandoned it.

TIME FOR INNOVATIVE SOLUTIONS

The pandemic highlighted long-standing problems in the sector; existing institutions were not up to the task.

And then, there are new global initiatives – on climate change, on workers' rights – that could make matters more difficult for producers and workers alike.

It's time for the sector to lead the way in innovative institutions again.

We recommend the establishment of a **specialised** venue comprising brands, purchasers, and producers – and supported by participating governments – with the following three mandates:

- **Conciliation** and mediation of commercial or contractual disputes with emphasis on expert-driven, non-adversarial processes, and arbitration with mix of lawyers and sectoral experts as last resort.
 - A **secretariat** with a light footprint with the responsibility and mandate to:
 - collect and analyse data, and engage in trilateral convening
 - enter into agreements for venue use with national arbitration centres
 - engage in outreach, technical assistance, and training.
 - A **complaints** or ombuds mechanism to hear and resolve non-contractual and third-party complaints.
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