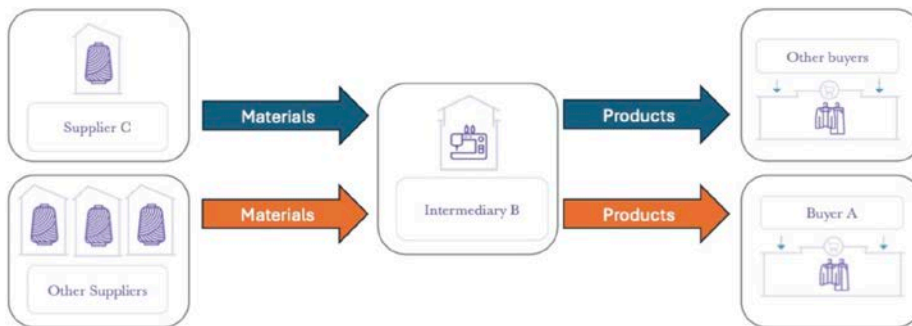


AAFA Response on Behalf of Brands Regarding Brand Responsibility/Linkage with Specific Mills
June 28, 2024

Thank you for your constructive engagement to date. We remain committed to engaging with Transparentem in this process. Thank you also for your note “Corporate Responsibility for Forced Labor in Indirect Business Relationships” to further explain Transparentem’s position.

We recognize the OECD Guidelines for Multinational Enterprises (OECD Guidelines), the supporting OECD [Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector](#), and the UN Guiding Principles on Business and Human Rights (UNGPs) as the international standards on supply chain due diligence. We have carefully reviewed Transparentem’s memo and wanted to clarify a few points to ensure we’re all working with the same information.

Under the OECD Guidelines and the UNGPs, a buyer is not responsible to address forced labor risks and impacts that occur at a supplier’s supplier that is not producing for the buyer i.e., where that supplier is not part of the buyer’s supply chain. We have copied Transparentem’s example below as a helpful starting point.



- 1. We agree with Transparentem’s analysis that Supplier C is not a business relationship to Buyer A. This means that Buyer A does not have a responsibility to prevent, mitigate or remedy the impacts at Supplier C.** As Transparentem noted, under the OECD Guidelines, brands have a responsibility to “seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship.” And that “[t]his is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.”¹ For supply chain, the term “business relationships” under the OECD and UNGPs includes “entities in the supply chain which supply products or services that contribute to the enterprise’s own operations, products or services...”² Supplier C is not a business relationship to Buyer A and any alleged forced labor at Supplier C is not linked to Buyer A’s products.
- 2. Buyer A is not contributing to the human rights impacts at Supplier C. The OECD and UNGPs are very clear that simply having a business relationship is not equal to contributing to a human rights impact. Furthermore, Buyer A is not in a business relationship with C.**³ Under the OECD Guidelines, “contribution has to be substantial” and the company’s activities have to “substantially increase the risk.” The above example of Buyer A and Supplier C does not meet these criteria. Conversely, by sourcing from “other suppliers” Buyer A is mitigating the risk of forced labor in its supply chain, and this approach is aligned with OECD due diligence guidance.

We’ve provided two examples below from the German National Contact Point to the OECD Guidelines and the OECD where they have further clarified these points.

¹ OECD Guidelines, II General Policies, Commentary, Para 13.

² OECD Guidelines, II General Policies, Commentary, Para 17.

³ OECD Due Diligence Guidance for Responsible Business Conduct, Q29.

1. German NCP Case

In 2020, the German NCP ruled on a very similar case and found that Adidas was not responsible for the human rights impacts at its supplier's supplier from the moment that its products were no longer being produced there (i.e. from the moment it was not in its supply chain).

- On April 24, 2020, the German National Contact Point to the OECD Guidelines (German NCP) published its final statement on a case raised by three NGOs against Adidas. National Contact Points (NCPs) are non-judicial governmental grievance mechanisms set up in all OECD countries. They provide mediation and expert decisions on cases related to the OECD Guidelines for Multinational Enterprises.
- The NGOs alleged that from January 2012 onwards there were human rights abuses related to wages, freedom of association and retrenchment at a Subcontractor to one of Adidas' Main Suppliers. The NGOs alleged that the Subcontractor was a fully-owned subsidiary to the Main Supplier. *The ownership structure was disputed during the case.*
- Adidas responded that the Subcontractor was an overflow facility for its products for 19 months. When Adidas learned of the human rights abuses, it directed its Main Supplier to stop Adidas' production at the Subcontractor, around May 2012. The Main Supplier continued its relationship with the Subcontractor for another 18 months, but did not place Adidas production at the site.
- In its final statement, the German NCP dismissed all aspects of the case that occurred after May 2012 and clarified that Adidas was not responsible to prevent or mitigate impacts at the Subcontractor from the moment that its products were no longer being produced there. This is despite the fact that its Main Supplier continued to have a business relationship with the Subcontractor, and may even have been its parent company.⁴
- The German NCP wrote, "... it is the NCP's understanding that a stop of production for the Respondent [Adidas] at the Subcontractor's factory took effect in May 2012. From that time onwards there was no longer a sourcing relationship between the Respondent and the Subcontractor. The mere fact that the Respondent continued its business relationship with the Main Partner beyond May 2012 is not sufficient for the assumption of a continued business relationship between the Respondent and the Subcontractor and a direct linkage between the Respondent's products and adverse impacts caused post May 2012 by the Subcontractor."

2. Case Example by the OECD

- In June 2014, the OECD published a report, Due diligence in the financial sector: adverse impacts directly linked to financial sector operations, products or services by a business relationship. **The report includes a case example from the garment sector which explicitly clarifies that brands do not hold a responsibility for impacts at their suppliers' supplier if their goods are not produced at the sub-supplier.**
- The case describes an EU-based t-shirt brand that is sourcing t-shirts from an Asian supplier. The Asian supplier also produces handbags for another brand in one of its other factories (similar to the scenario presented by Transparentem). The report states that "Adverse impacts arising at the Asian supplier's separate factory that produces handbags for another brand are *not* directly linked to the operations, products, or services of the t-shirt brand." The report clarifies that the extent of the T-shirt brand's responsibility in this case is to verify and monitor that its products are not being produced in the other factory.

Once again, we remain committed to this process and hope the above helps to clarify the responsibilities of buyers in this complex context.

⁴ The German NCP wrote in its Final Statement, "...