

Brands & Suppliers: Caught in a bind



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Brands and retailers are in a bind: they have to deal with store closures and consequent furloughing at home on the one hand, and honour the orders they had placed with suppliers far away on the other. The ones with deep pockets might tide over the pandemic-driven crisis, but the buyer-supplier relationship can never be the same again.

By Subir Ghosh

If there is that one thing which will have a considerable bearing on how the textiles-apparel-fashion ecosystem shapes up after the pandemic crisis, it is how brands deal with order cancellations. Now.

Since March 11 when the COVID-19 outbreak was declared a pandemic by the World Health Organization (WHO), there has been a deluge of reports about Western brands

cancelling orders to varying extent from suppliers in Asian countries. The resultant backlash, particularly on social media, has made many brands rescind their decisions altogether, or at least partially. The underlying sentiments were the same across the board: cancellation of orders would lead to retrenchment and therefore loss of livelihoods for millions of garment workers in developing economies.

How the Crisis Unfolded

Mark Anner, director of the Center for Global Workers' Rights (CGWR) at the Pennsylvania State University, believes the current crisis facing Bangladesh developed in three phases. In a report titled 'Abandoned? The Impact of COVID-19 on Workers and Businesses at the Bottom of Global Garment Supply Chains', Anner saw the first phase take hold soon after China locked down first the city of Wuhan, and subsequently many others.

He wrote, "For garment global supply chains, this impacted not only Chinese exports of final products, but it dramatically impacted Chinese raw materials (notably fabric) needed by exporters elsewhere, from Bangladesh and Cambodia to Honduras."

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Drawing on a survey of Bangladesh suppliers conducted online between March 21 and March 25, 2020, the CGWR survey found that 93 per cent of Bangladesh suppliers reported delays in raw material shipments from China. Of these 53.4 per cent were penalised by their buyers for resulting delays in shipments. Delayed payments marked the second phase. According to the CGWR, 10.9 per cent of suppliers experienced delays of 1-10 days in payments, relative to contractually stipulated terms, and 68.8 per cent experienced delays of more than 10 days.

This quickly escalated into the third phase of order cancellations. At the time of the survey (the findings were released on March 27), 23.4 per cent of the suppliers indicated that “a lot” of in-process orders had been cancelled, 22.3 per cent had “most” of their in-process orders cancelled, and 5.9 per cent had all of their in-process orders cancelled.

Anner wrote: “Many buyers are evoking the force majeure clause in their contracts to justify the breaking of their binding obligation to pay for orders in production. But, for fashion law expert Alan Behr, this appears to be an unjustified use of the force majeure clause since most force majeure clauses do not specify pandemics as a reason for failure to pay. More importantly, according to Article 7.1.1 of the Vienna Convention for International Commercial Contracts, force majeure claims should apply to the party with the most relevant contractual

obligation, which in this case would be the Bangladeshi factories producing items, not the buyers that have agreed to pay for them.

[According to Wikipedia, force majeure—meaning “superior force”, also known as *cas fortuit* (French) or *casus fortuitus* (Latin) “chance occurrence, unavoidable accident”, is a common clause in contracts that frees both parties from liability or obligation when an extraordinary event or circumstance beyond the control of the parties, such as a war, strike, riot, crime, epidemic or an event described by the legal term act of “God” (hurricane, flood, earthquake, volcanic eruption, etc), prevents one or both parties from fulfilling their obligations under the contract. In practice, most force majeure clauses do not excuse a party's non-performance entirely, but only suspend it for the duration of the force majeure.]

Orders for Bangladeshi garment exports worth \$1.44 billion were said to have been cancelled. The Bangladesh Garment Manufacturers and Exporters Association (BGMEA) then struck back by doing something that would hurt Western brands the most--its president Rubana Huq posted a video on social media making an impassioned plea to brands to not cancel orders and throw the lives of millions of garment workers to the winds.

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Brands Pushed into Corner

Since end-March a number of organisations and networks working on the garment worker issues have launched campaigns urging brands to do their bit to ensure that livelihoods down the supply chain are not destroyed.

Nonprofit Remake launched its #PayUp petition on April 3 on the campaign site change.org. The petition urged, “Unless H&M, Target, Zara, C&A, and others #PayUp millions of garment makers will go hungry and not survive. Many have already been sent home with no severance, savings and or access to healthcare. With no source of income, millions of women who bring our fashion to life will end up starving and on the streets within weeks.”

It listed 15 brands that had not yet paid their suppliers: Zara, Primark, PVH, Target, Marks & Spencer, C&A, Mothercare, Bestseller, Tesco, Kohls, Walmart, LPP, JC Penney, Gap, American Eagle Outfitters.

Since then, H&M, Target, Marks & Spencer, Zara, Kiabi, and PVH all publicly promised to pay for their in-production orders. H&M, Kiabi and VF Corporation are learnt to have started making payments.

Meanwhile, the Ethical Trade Initiative (ETI) published a guidance set for brands on how to treat existing orders and future commitments with suppliers. The guidance focuses on ensuring workers receive payment for completed work, urges dialogue with suppliers over ongoing

orders and collective action on long-term social protection for workers.

Peter McAllister, ETI's executive director, remarked, “ETI understands that many brands are facing huge challenges throughout their supply chains and within their own business during this period. Equally, we know that many suppliers and manufacturers are feeling the impact and will also be concerned with business continuity, however, in the long run, we all depend on each other and ultimately, workers. We expect that when difficult decisions are taken, the impact upon workers and suppliers is fully assessed and action is taken in collaboration to minimise this as much as possible.”

ETI anticipates three broad scenarios:

- Future orders where no costs have been incurred by suppliers or factories;
- Ongoing orders where some costs have already been incurred, but more would be expected with a continuation;
- Completed orders with full costs already allocated.

But, as the COVID-19 pandemic wreaks havoc in the US and West Europe, the retail realities are far more disconcerting: store closures (because of the pandemic itself), piling inventories (since stores are shut), falling online sales (because of recession as well as shipment bottlenecks), furloughs and retrenchment (because of dropping revenues, in the backdrop of no end in sight to pandemic).

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Many brands can afford to ensure the stability of their entire supply chains, and there are many who can ill-afford to. But for how long the former can hold ground will depend on the course that the pandemic takes in the coming weeks. The US has recorded four times the number of deaths in one month alone than what China saw over three months. And the disease shows no sign of waning in West Europe where the Spanish, Italian and French economies are on the verge of ruin.

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