Late payment: challenging 'grossly unfair' terms and practices response form

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is 27/11/2015

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Please tick a box from the list of options below what best describes you or your organisation:

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<thead>
<tr>
<th>Business representative organisation/trade body</th>
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<tr>
<td>Central government</td>
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<td><strong>X</strong> Charity or social enterprise</td>
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<tr>
<td>Individual</td>
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<tr>
<td>Large business (over 250 staff)</td>
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<td>Legal representative</td>
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<td>Local Government</td>
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<td><strong>X</strong> Medium business (50 to 250 staff)</td>
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Traidcraft Response to BIS Consultation on Late payment: challenging ‘grossly unfair’ terms and practices
Introduction

Traidcraft is a UK fair trade organisation which works to bring about a situation in which trade contributes to international development, and the flourishing of those workers, farmers and businesses who contribute their labour, skills and capital to international supply chains.

Traidcraft is composed of two organisations – Traidcraft plc (a social enterprise with publicly traded shares), and Traidcraft Exchange (an NGO). Traidcraft plc sells fairly traded goods into the UK market through a range of channels and has experience of various trading practices and the impact that late payments have on small businesses.

Traidcraft Exchange has conducted research and advocacy on the subject of various unfair trading practices (including late payments) affecting non-EU suppliers to the EU market. On the basis of that research we have found that there are unfair trading practices, which also result in delayed/late payments within the supply chains of food and of assembled/manufactured non-food products which are sold through UK retail outlets. Attached to this consultation response we provide four appendices providing case studies of unfair trading practices for your consideration.

Question 1: Do you agree that representative bodies should have the flexibility to take action on behalf of individuals and groups? If not, why?

Comments:

The imposition of each Unfair Trading Practice (UTP) jeopardises individual businesses’ viability, as well as distorting markets. It is therefore a priority to stop these practices as they occur, rather than wait for a group to bring a specific set of grievances. Representative bodies should have the flexibility to take action on behalf of individuals.

The key consideration is whether a suitable enforcement mechanism to stop UTPs is going to be established. (see answers to Question 2 below)
Question 2: Do you agree that representative bodies should have the flexibility to take action on behalf of members & non-members if they chose to do so? If not, why?

Comments:

Yes – representative bodies should be able to take action on behalf of non-members too. Currently there is no accessible forum where overseas suppliers and exporters subjected to Unfair Trading Practices by UK businesses can go to resolve disputes. This is a concern since it results in distorted international supply chains and UK consumer detriment.

Traidcraft agrees that empowering representative bodies to take action on behalf of individuals and groups being negatively impacted by late payments could be a positive step, if they are able to access a suitable enforcement mechanism which keeps the supplier’s identity confidential and dissuades powerful business customers from applying abusive practices onto weaker businesses.

An enforcement mechanism which is able to tackle unfair trading practices will rebalance power within supply chains and help to prevent the transfer of excessive risks and unexpected costs onto vulnerable parties.

The consultation proposes that vulnerable suppliers can directly, or via representative body approach both courts and Small Business Commissioner.

We are concerned that the way these two enforcement mechanisms operate may not be suitable for the nature of the problem of UTPs.

The very occurrence of Unfair Trading Practices implies a power imbalance in which a weaker supplier does not want to jeopardise their more powerful business customer. It is vital that enforcement mechanisms which do not expose the weaker supplier should be explored.

Simply empowering groups to take action, therefore, is insufficient and fails to appreciate the dynamic that is often found within supply chains: a climate of fear that prevents many smaller businesses from complaining about unfair business treatment (including late payments) for fear of reprisal. In groceries’ supply chains, this can mean that supermarkets delist/terminate the contracts of suppliers that protest against their treatment. We are aware of one supplier which called upon the Groceries’ Code Adjudicator to arbitrate in a dispute, and was subsequently de-listed.

This strong incentive to remain silent that can only be overcome if there is a guarantee that complaints will be effectively anonymised.

It is very difficult for a representative body to guarantee the anonymity of those on whose behalf they complain. A business association going to court on behalf of a supplier member to complain about a business customer’s practices will have to
provide the details of the case by which a business customer will be able to identify the supplier and take retaliatory action.

The experience of the UK groceries’ sector is that one method of guaranteeing anonymity of complaints where there is fear of repercussions is to establish an ombudsman-style body: in this case, the Groceries Code Adjudicator (GCA). This is an independent adjudicator that works under the Department for Business, Innovation and Skills to regulate the relationship between the UK’s 10 largest supermarkets and their direct suppliers. Any complaints can be anonymised, since the GCA has the ability to initiate and conduct investigations into the buying practices of a whole sector, thereby ensuring that the identity of an original complainant is protected. Additionally, the GCA has the power to conduct investigations under its own initiative, based on complaints or other sources of information – this is a further protection for any vulnerable suppliers that may wish to complain of unfair trading practices.

Given the climate of fear which limits weaker businesses raising their concerns publically, and therefore the ease with which the problem of unfair trading practices gets overlooked, there is a need for civil society organisations to be encouraged to provide evidence when they become aware of unfair trading practices, rather than the UK government relying on trade or membership associations to come forwards.

Traidcraft is not in a position to take legal action on behalf of producers and suppliers that we understand to be subjected to unfair trading and late payments. However, given the significant effect of otherwise competent businesses going bankrupt due to Unfair Trading Practices, it is vital that Traidcraft and other civil society organisations are valued and encouraged to submit evidence of bad practices to a relevant regulatory body, to enable supply chains, and markets operate efficiently, rather than distorted by abusive practices.

**Recommendation:** civil society organisations with evidence of Unfair Trading Practices is encouraged to submit such evidence, given the importance of stopping UTPs.

**Recommendation:** that the Small Business Commissioner is set up with functions similar to the GCA. Reliance on court processes that inevitably expose the identities of suppliers is an inappropriate response to UTPs. In particular the Small Business Commissioner should be able to:

- Receive complaints anonymously
- Keep information confidential
- Initiate investigations
- Apply penalties
- Liaise with other public bodies for the gathering of information or enforcement of judgements in the UK
- Liaise with overseas enforcement bodies for the purposes of coordinated investigations and imposition of penalties
Question 3: Do you have any additional comments you would like to make in relation to the draft Regulations?

Comments:

Our comments below fall under following categories:

I) There is a strong relationship between Unfair Trading Practices and Late payments.

We welcome BIS’ focus on instituting greater regulation of late payments, since these are a problem that affect the cash flows of many businesses in supply chains and impinge upon their ability to invest and innovate, which has direct consequences for the livelihoods of workers and farmers overseas.

Widespread conduct that often falls under the heading ‘unfair trading practices’ includes last minute changing of volumes or specifications, making suppliers pay for promotion of goods and passing the cost of customer complaints onto the suppliers. All of these entail a supplier either not getting paid in full or only getting paid after lengthy process of chasing business customers for the full payment: these are essentially late payments (see Appendices for examples).

II) An enforcement mechanism could stop otherwise competent businesses from going bankrupt

The following circumstances can cause an unequal bargaining situation to occur, and therefore result in suppliers being particularly susceptible to UTPs.

a) When the supplier is handling a time-sensitive product then all delays reduce the product’s value. This weakens the supplier’s position. Examples of this include perishable agricultural products, products that have a single moment use (Valentine’s day, father’s/mother’s day, Christmas, Easter, Halloween, sporting events) and to a lesser extent fashion items. Appendix 1 relates to a flower business which experienced UTPs.

b) When one business partner is not purely operating as a customer but in some circumstances as a competitor (i.e. has a vertically integrated business operating at two or more levels of the supply chain).

c) When there are insufficient alternative customers for suppliers to be able to risk losing business with current customers.

d) When geographical distance and cultural differences exacerbate the power differential, since it is harder to resolve disputes across different cultures.

e) When a supplier has a very long lead time on producing a product, so weakening their negotiating position. For example, it takes years to bring a tree crop to first crop, whilst retailers operate on a quarterly decision-making cycle.

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f) When a third party is imposed onto a business relationship. When a customer requires a supplier (A) who is delivering product to use another supplier (B). This removes supplier A’s freedom to contract with whoever can best serve their business. It can also result in Supplier A incurring unexpected and sometimes inflated costs associated with purchasing from Supplier B. This situation occurs frequently when retailers specify for example a packaging supplier, and then the packaging supplier has a minimum order volume which is far greater than the supplier needs. Or the packaging purchased becomes obsolete when a retailer produces new branding.

g) When suppliers are forced to pay for things that they have no control over. This can include paying for damage, loss or insufficient sales which occurs once a product is at the retailer’s premises.

h) When changes to volume or specification are made after production has started – for example, when a different crop variety is specified to the crop already planted in the ground, or when manufacture of a product has already started. (Please see Appendices for examples)

Given that the UK Groceries Code Adjudicator is only able to address unfair trading practices between supermarkets and their first tier suppliers, BIS needs to provide suitable enforcement mechanisms to stop Unfair Trading Practices occurring more broadly.

Recommendation: that suitable enforcement mechanism is established to stop UTPs occurring in garment, leather, footwear and flower sector and upstream in the agricultural sector.

Recommendation: that the enforcement body treats suppliers equally when stopping UTPs. Under UK law it is possible for the enforcement body to enforce to stop UK businesses applying UTPs on overseas exporters. Lack of appropriate action will result in UTPs continuing to distort the market, harming consumers and weaker, but competent suppliers.

III) Unfair Trading Practices and late payments are symptoms of unbalanced markets – so choices needs to be made about the suitable type of remedy

BIS should look more closely at ways to tackle the unfair trading practices that often lead to late payments to suppliers. The occurrence of grossly unfair trading practices imply that suppliers are not able to negotiate trading relationships on an equal footing.

A well-functioning trading context is when both supplier and buyer are able to reject a deal which is not to their advantage, and also when businesses are able to resist unfair trading practices after a deal has been agreed. The fact that businesses are unable to resist, even when it is clear that such terms would breach contract law – indicates that there is a problem, and climate of fear. Otherwise weaker businesses
would go to court to enforce contract and stop the unfair trading practices being
imposed on them.

There are two possible options to address Unfair Trading Practices caused by
power imbalances:

1) Government rebalances the power dynamics within a market by asking
competition authorities to conduct an investigation. This can lead to
recommendations for a structural remedy (for example, the breaking up of
powerful companies);

2) Government makes “behavioural recommendations” and puts in place a suitable
enforcement mechanism. This recognises that since unfair trading practices are
a symptom of an unbalanced market, it will be necessary to enforce to stop
behaviours enabled by the imbalance of power and the current unsuitability of
existing enforcement tools. Given the profitable nature of UTPs it will be
necessary to apply dissuasive sanctions. If the Small Business Commissioner is
the preferred enforcement body for the problem of UTPs then the Commissioner
should be able to:
   a. Receive complaints anonymously
   b. Keep information confidential
   c. Initiate investigations
   d. Apply punitive penalties
   e. Liaise with other public bodies for the gathering of information or
      enforcement of judgements in the UK
   f. Liaise with overseas enforcement bodies for the purposes of coordinated
      investigations and imposition of penalties

Please see appendices below:
Appendix 1 – Unfair trading practices in flower supply chain
Appendix 2 - Unfair Trading practices occurring prior to sales transaction
Appendix 3 – UTPs by UK retailers impacting Moroccan suppliers
Appendix 4 – Unfair trading practices in Garment, Textile and Shoe sectors

Thank you for taking the time to let us have your views.

At BIS we carry out our research on many different topics and consultations. As
your views are valuable to us, would it be okay if we were to contact you again from
time to time either for research or to send through consultation documents?

☒ Yes ☐ No

BIS/15/616/RF
Appendix 1:
Case Study of Unfair Purchasing Practices of Retailer resulting in the Liquidation of a Developing World Flower Supplier

The following case study is not covered by the remit of the Groceries Code Adjudicator (GCA). The GCA enforces the fair purchasing GSCOP code in relation to the sale of food products only, not flowers. However, flowers are perishable and therefore acutely at risk of UTPs.

Introduction
The purchasing practices of buyers from large retailers can have significant impacts on all parties in the supply chain, especially in the developing world. This case study demonstrates the risks that small entities take on when they sell direct to retailers and the extent to which such risks can prevent smaller companies from successfully entering the market. These include significant and unpredictable fluctuations in price and quantity of orders, as well as delays in the actual orders being placed.

The Better Flower Company
The Better Flower Company (TBFC) was established in 2008 to bridge the gap between international retailers and agricultural producers in developing countries, and to facilitate trade in a more transparent and equitable way by linking producers directly to the market. TBFC sourced unique African and Indian flowers for UK retailers. They first identified products needed by the market and then provided technical, agricultural and marketing support to developing world producers. In addition, they acted as an import agent to ensure a direct relationship with the retailer and to provide a better service to farmers.

TBFC were initially supported by a grant from Shell Foundation of $300,000, who had identified a need for specialist enterprises, or “supply chain connectors”, in retail supply chains in order to create jobs in the developing world. This was followed by a further $1 million grant over 3 years.

Critical success factors
From a commercial perspective the critical success factors for TBFC included breaking into new markets quickly in order to reach the volume of flowers required to break even given high fixed costs of a UK import facility. Also, they needed to successfully compete in a highly competitive market against existing import agents with deep pockets.

New Indian flower supply to a large UK retailer
In 2008 TBFC had successfully entered into a direct agreement with leading UK retailer Waitrose to supply bouquets from the Western Cape, creating jobs in an area of high unemployment. This was a positive relationship, with a collaborative approach to planning volumes and orders and a strong commitment from Waitrose to the suppliers. At this time, there were also positive indications from other retailers that they wanted a more direct and transparent relationship with developing world growers, fitting well with the purpose of TBFC.
In 2009 TBFC then began negotiations with a large UK retailer to supply African flowers. The retailer requested that TBFC consider sourcing from India initially prior to being granted any African business. Sourcing from India was a new step for both TBFC and the retailer alike. They asked TBFC to enter into a trial which, if successful, would lead to ongoing business. This was all agreed verbally as it is standard practice within the UK retail industry not to issue written contracts.

A successful Valentine’s Day trial with the retailer of a substantial volume of red roses in February 2010 led to a significant future commitment from them.

**Preparation for Expansion**

TBFC needed to prepare for increased business, investing in the additional staff and infrastructure needed to process a high volume of flowers over the trial period and expected expansion thereafter. This included expanded cold storage facilities and machinery in the UK in addition to preparation and trials required for taking on the new suppliers in India. A new staff member was also recruited in India to support new suppliers in achieving required standards.

Given the expected commerciality of the expansion, Shell Foundation and TBFC decided that a further charitable grant was not appropriate and that it was time for TBFC to progress to debt finance. Banks generally will not provide loans to enterprises without sufficient collateral and track record, so Shell Foundation provided a partial guarantee of US$480,000 to Charity Bank against a US$700,000 loan to enable TBFC to access a loan that would enable it to scale-up its business. TBFC used the loan to invest in the high fixed costs of a UK import facility and associated staff. Unfortunately after the Valentine’s Day trial the next order was repeatedly delayed; it actually came through 8 months later and was smaller than was originally indicated. This resulted in losses which, combined with the challenges of taking on a new unproven supply base on a new continent and intense competition with existing suppliers, led to cash flow difficulties and liquidation in January 2011.

**Implications of the Liquidation**

The Shell Foundation guarantee of $480,000 was called upon and paid in full to Charity Bank.

Other losses were also incurred by TBFC suppliers in both Africa and India. In addition $1.3 million of charitable grant had been lost.

Every attempt was made by TBFC to minimise job losses with some suppliers transferring to other import agents. At one end of the supply chain the developing world producers no longer had access to the additional services which TBFC had provided to enable them to successfully enter the UK market and build strong direct relationships with the retailers. At the other end consumer choice had been reduced. As a specialist intermediary, or “supply chain connector”, TBFC increased transparency in the supply chain and enabled consumers to purchase a product with a story of origin.
Purchasing practices which contributed to the liquidation
There are inherent risks when small entities sell direct to multinational retailers. They are exposed to significant and unpredictable fluctuations in price, quantity of orders and delays.

The lack of written contracts with commitment to dates, volumes and prices contribute to delays in orders and retailers switching suppliers to gain the lowest possible price. This is particularly difficult for small enterprises who do not have the financial means of larger, more established competitors. It is also difficult in the case of agricultural products where growing decisions and associated investments have to be made in advance.

Whilst social and environmental impacts in the developing world may be included in high level retailer targets, in our experience buyer’s targets often focus on price/margin and hence drive the final purchasing decision.
Appendix 2:
Experience of UTPs in the food sector – which require a supplier to incur costs prior to a “supply agreement” being given

Unfair Trading Practices frequently occur in advance of sales starting. Traidcraft is aware of one example in which a retailer decided not to launch two products at short notice, despite a supplier receiving assurance that these products were going to be purchased and indicative order volumes given. In order for the supplier to be ready for the proposed launch date the following new product costs had already been incurred.

a. Packaging costs comprise of
   i. Artwork costs £6,100
   ii. Photography costs £2,857
   iii. Reprographics £4,480
   iv. Plates £4,000
   v. Sub-total £17,437

b. Lost Sales
   i. Product C £81,004
   ii. Product D £54,003
   iii. Sub-total £135,007

The one-off art-work and launch costs of £17,437 were lost. The supplier had to find an alternative outlets for selling products before the food expiry date made the product obsolete, which would then lead the supplier to have to incur further costs to dispose of the product. These are consequences of retailers avoiding the use of written documents and not using binding forecasts.

It is not clear that this example, which occurred prior to an actual sale and “Supply Agreement” is covered by the principle of fair dealing described in section two of the Groceries Supply Code of Practice:

“A Retailer must at all times deal with its Suppliers fairly and lawfully. Fair and lawful dealing will be understood as requiring the Retailer to conduct its trading relationships with Suppliers in good faith, without distinction between formal or informal arrangements, without duress and in recognition of the Suppliers’ need for certainty as regards the risks and costs of trading, particularly in relation to production, delivery and payment issues.”

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Appendix 3: Observation of UTPs in Moroccan perishable fruit sector

Oxfam Intermón has coordinated the Gender Justice Programme in Morocco, the objective of which is to improve the conditions and labour rights of women working in strawberry fields in northern Morocco. The Programme partners with a number of actors within the supply chain including the female workers that condition and pick the strawberries; the relevant Moroccan government agencies; the owners of the farmland; customers of strawberries in Morocco and Europe; and civil society.

Through observing conditions in strawberry fields and analysing the role of power dynamics within the whole supply chain, the Gender Justice Programme found significant evidence of Unfair Trading Practices. Some of these practices fall outside the remit of the GCA because they occur between first tier and second tier suppliers upstream from the retailers.

In the last 15 years the production as well as the surface farmed in Morocco has increased ten-fold.

Statistics of Moroccan strawberries

<table>
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<th>Year</th>
<th>Production</th>
<th>Land area/surface</th>
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<tbody>
<tr>
<td>1990</td>
<td>7000 tons</td>
<td>260 ha</td>
</tr>
<tr>
<td>2011</td>
<td>105000 tons</td>
<td>2600 ha</td>
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-70 % of whole production is exported which is:-70,000 tons. 5,850 tons of fresh strawberries were imported into the UK in 2010/2011.

Comments on UTPs

In Morocco, UTPs occur before, during and after the contract is settled, as described below.

There are evident financial impacts of these practices on a business, for example when a product is exported and the European buyer offers a price 25% lower on the basis of quality or other reason.

The impact of these practices on UK consumers can be a lack of product because either the Moroccan producers have gone out of business, or have changed destination of their product to countries applying less UTPs.

Unfair trade practices witnessed on exporters during the work of the Programme:

- All contracts are oral contracts, never written.
• Return of merchandise on the basis of bad quality. (Farmers have tested the rejected products on the grounds of the return and have seen were not true. They have concluded the EU rejects when it finds a lower-priced product elsewhere).
• Forced acceptance of any return because of fear of losing the client.
• Implementation of the fear factor of the termination of the supplying relationship.
• Threats from buyers to buy from another country.
• Changes in prices after having concluded in words a higher price.
• Given that the cost of storage is high, and buyers know it, farmers have to accept any price.
• Tight deadlines
• Unexpected last-minute changes in deadlines
• No support from the buyers to help the farmers with the higher costs incurred by operating with a better working environment, (to comply with a standard which the retailer has requested).
• A variety of strawberry that has always had demand, suddenly it is not wanted on the grounds that after February the taste is not good, it is too acid. However, when they are lacking of strawberries this argument is not posed. This variety is important for Morocco because they can produce higher volumes.

Effects on farmers and consumers:
• No new investments or innovation (for example new varieties of strawberries), which translates in less diversity of products in the UK.
• Ending of the production of the specific product, therefore no more of this product is sold in the UK.
• The fact that UK buyers buy from farmers that do not respect the minimum labour conditions and labour rights provokes an un-levelled field among farmers between those working towards the improvement of working conditions and labour rights of women with respect to the farmers and those that do not respect these. The UK consumer is buying strawberries that do not respect the minimum rights of workers in the production chain.

Effects on workers:
• The non-existence of contracts between producers and European buyers provokes the impossibility of producers to give working contracts to the women.
• Tight deadlines provokes excessive working hours for women, which commonly are not paid because the payment is paid per day worked.
• The lower prices translate for example to lower wages or non-payment of social security.
• No support for training of farmers or help in the technical development of new varieties.

Possible responses to tackle the problem:
There are various ways to tackle such problems. However, we think that the option of European buyers voluntarily ending such practices is not realistic. Changing
such practices implies a cost for the supermarkets/importers therefore unlikely to change. It is necessary to force the retailers to stop imposing Unfair Trading Practice on their suppliers, and in turn to stop those 1st tier suppliers then passing on Unfair Trading Practices onto Moroccan exporters.

Some interesting features of an enforcement approach to stop UTPs would be:

- To accept anonymous complaints containing proof of the unfair practice to proceed with an investigation of the unfair trade practice;
- To accept *ex-officio* initiation of an investigation;
- If the unfair practice is proven, a fine could be a type of sanction;
- The initiation of an investigation, that is made public, would be a strong deterrent also;
- To impose sanctions if there are changes in the evolution of exports at the start of the investigation (proof of trade diversion perhaps imposed as a punishment once an investigation is initiated)
Unfair trading practices occur within the garment supply chain. To look more closely at these, Traidcraft has produced “Material Concerns”, a guide to responsible purchasing based on interviews with garment workers in Cambodia, Bangladesh, and China selling to the UK market.

“Material Concerns” identifies the ‘pinch points’ which can result in labour rights violations at the ‘Cut, Make, Trim’ stage of garment production. Some of these ‘pinch points’ are UTPs and are applied by garment retailers or brands onto their supply chains. This publication provides a starting point for recognising those UTPs which are specific to garment sector.

The following refer to information in the public domain. Answers which have been provided anonymously are consistent with Traidcraft’s research. There have been no improvements in the garment sector’s ordering and buying practices since 2012.

In 2012:

- Laura Ashley demanded suppliers pay back 10% of the value of orders already agreed with them.
- Monsoon/Accessorize told its suppliers at the end of 2011 that all invoices received for payment were subject to a 4% deduction.

The answers below on Unfair Trading Practices in garment, textile and shoe sector were provided anonymously to Traidcraft following research conducted by an intergovernmental body at the time of the 2013 EU Green paper consultation on Unfair Trading Practices.

1) Do you agree with the above definition of UTPs?

Imbalance of power is a significant source of UTPs, and this imbalance has increased during the past 10 years, with demands for reduction in production lead times, and ongoing requirements that factories produce more for less. Price pressures and volatility with order sizes, cancellations, sanctions etc. have grown significantly since the financial crisis in 2008. Producer margins have been reduced across sectors, and competition has become fiercer. As a consequence, there has been an increase in factory bankruptcies e.g., among shoe, textile and garment manufacturers in several countries.

2) In your view, should the concept of UTPs be limited to contractual negotiations, or should they include the pre-and/or post-contractual phase as well?

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1 http://www.traidcraft.co.uk/media/e6645fed-648d-4e62-bc20-76bc30700dc7
2 http://www.telegraph.co.uk/finance/retailandconsumer/9950501/Laura-Ashley-accused-of-bullying-over-price-cut-demand-to-suppliers.html#disqus_thread
3 http://www.telegraph.co.uk/finance/retailandconsumer/9890005/Monsoon-accused-of-shameless-squeeze-on-supply-chain.html
Pre-and post-contractual phases are equally important and many UTP practices occur during these two stages, rather than during the actual contractual negotiations, which, in a fast paced industries, may or may not be formal, and include actual written contracts.

3) At what stage in the B2B retail supply chain can UTPs occur?

UTPs occur at all stages

4) What do you think of the concept of “fear factor”? Do you share the assessment made above on this issue? Please explain.

Fear factor underlies most, if not all, B2B relations in the garment, textile and hard goods sectors. Business is volatile, and sourcing teams and buying teams change factories easily. Producers are reluctant to complain to their clients, not to mention file official complaints, because they fear consequences to their business. Several organizations have made unsuccessful attempts to obtain official testimonies from producers, while UTPs are being discussed openly in more casual conversations. None of the 10+ factories contacted for this paper were forthcoming, and testimonies were provided only verbally and under the promise that producers cannot be identified from the examples.

5) Please give examples of UTPs that you (or other companies with whom you are associated) have experienced?

CASE 1.

Family owned garment factory had been contracted as an exclusive producer for a big client. Exclusivity meant that the factory had a contractual responsibility for reserving its whole production capacity for this particular client and was not allowed to produce for other clients. Client ordered first 30’000 pcs of a particular style which was within the production capacity of the factory, and then suddenly increased the order quantity to 90’000 pcs. When the factory was not in a position to triple its production capacity in the given lead time, client gave the additional order to another factory, despite of factory’s attempts to negotiate a new delivery lead time, and the client asked for 20% financial compensation/reduction in price from the factory for lost sales.

This resulted in significant financial difficulties for the factory that had already agreed to reduce its profit margin due to the large order quantity, and had not been able to produce for several clients at the same time. Factory had to close down a year later.

CASE 2.

Retail client ordered 60’000 pcs of garments from an Asian factory. In the middle of production, client wanted to reduce the order quantity to 40’000 pcs. Factory refused this as the materials had already been ordered, and production was under way. When garments were ready for final quality inspection, client’s inspection
team found quality problems with 20’000 products, and refused to give permission to ship them to Europe. Client could not proof quality claims but refused to accept the products and demanded that the factory destroy this part of the production.

Given that the order size was significant, and the client was big and well-known company, factory had made arrangements with its fabric and material suppliers to obtain credits. Non-acceptance and non-payment of parts of the goods created significant financial and reputational trouble for the factory, and created a chain effect among its suppliers. Factory made negative profit that year, and it took them 2 years to recover the losses that had occurred with this client.

CASE 3.

European client had told the factory to order large quantities of fabric from a pre-selected fabric supplier. Fabrics were shipped from country A to country B, and were blocked in the customs for 10 days due to missing paperwork by the fabric supplier. Factory was producing other goods at the time, and the delay did not affect the production schedule.

Client claimed, however, that the factory had missed 10 days of production time because of the blocked fabric, and asked fabric supplier for a compensation for the lost production and delivery time. Fabric supplier finally agreed to this demand because of the size and importance of the end client, and paid 9’400 USD as compensation to the fraudulent claim. This amount represented ca. 15% of the total amount of the fabric order, and fabric supplier made no profit from this deal.

CASE 4.

A home textile factory X in Asia received an order from a European client. Client wanted the factory to produce home textiles according to their specification, and within a very tight delivery schedule. Due to pressure and pleads from the client, the factory started production immediately, and ordered materials while waiting for the agreed 30% cash advancement from the client. Client delayed the payment of the cash advancement from the agreed 10 days to 30 days. This complicated material deliveries and production schedules. Production terminated with 10 days delay due to missing materials, and client insisted that the factory pays a penalty and air ships 25% of the goods to Europe at its own costs. Air shipment meant that the factory lost its entire profit margin.

6) How often do these UTPs occur?

In 80-90%, if not more, of the business transactions.

8) Do UTPs have an adverse impact on the ability of your company to invest and innovate? Please give concrete examples and quantify where possible.

Prices in the garment sector have come down by an average of 30-40% during the past 15 years. Order quantities are fluctuating, and have been declining in general since the financial crisis. Unfair competition and UTPs have become the norm in...
the garment industry, and that has had a direct impact on factories and companies' ability to invest and innovate.

9) Do you think that UTPs affect consumers (e.g., through influencing prices, product choice or innovation)? Please give concrete examples.

UTPs affect product safety by pushing factories to unethical business, e.g., choice of lower quality materials and use toxic chemicals. Consumers have gotten used to unrealistic price levels, and do not understand what type of environmental, social and labour problems lie beneath the increasingly cheap product prices.

Ethical and environmentally oriented marketing messages to consumers are often distorted or plain incorrect, as there is evidence that companies don’t reward factories with orders for social compliance or for ethical behaviour, and there is often a significant discrepancy between buying practices and companies’ demands for social compliance.