



Freedom of association and social dialogue

/ a guide for brands

**FAIR
WEAR**

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Introducing Fair Wear's brand guide to freedom of association and social dialogue

This Guide offers Fair Wear member brands a one-stop shop for:

- 1 understanding the key concepts behind freedom of association, collective bargaining and social dialogue;
- 2 laying out the key actions Fair Wear expects its members to take in order to align with their Fair Wear commitments;
- 3 linking to concrete **tools** that members can use in implementing this practical guidance.



4 KEY REASONS BRANDS SHOULD USE THIS GUIDE AND ACCOMPANYING TOOLS

Freedom of association, collective bargaining and social dialogue reliably prevent other workplace violations.

Your brand is investing heavily in preventing workplace violations where you choose to make your products. Learning how to support conditions where workers are safe to use their voices is perhaps your brand's most promising road to delivering good working conditions.

The work brands are doing already to improve purchasing practices lays the groundwork for an 'enabling environment' for freedom of association.

Much of what your brand can do to ensure workers are safe to exercise their rights relates to sourcing, costing, contracting practices, and communications with suppliers and workers. Read on to tweak your new and improved purchasing practices to ensure these same efforts also support workers' most fundamental rights.

Social dialogue is a strong driver of stability, equality, productivity and sustainable business growth, according to experts at the ILO's Global Deal.

Setting the stage for social dialogue will benefit your brand's social compliance record. It will also support good business in the factories that choose to partner with your brand on social dialogue. Social dialogue brings more sustainable workplace improvements.

Social dialogue and capacity building are part of human rights due diligence, which is becoming law in Europe and beyond.

Following this guidance gives your brand a head-start in ensuring your brand's supply chain adheres to key due diligence principles. This Guide clarifies how the '**6 Actions for brands to promote freedom of association**' link to Fair Wear's HRDD steps, as well as Fair Wear's Brand Performance Check indicators.

Part I ***Key*** ***background***

What you should know about freedom of association
and social dialogue before taking action
in your supply chain.

1. The standards and key definitions

A. THE STANDARDS

Fair Wear's Code of Labour Practices (CoLP) forms the foundation of collaboration between Fair Wear and our members. Fair Wear's CoLP is based on internationally recognised standards that have been set through tripartite negotiation (between representatives of governments, workers, and employers) at [the International Labour Organization](#) (ILO), which is the United Nations agency that specialises in labour.



Fair Wear's CoLP standard on 'freedom of association and the right to collective bargaining' is based on three fundamental ILO Conventions:

- 】 [ILO Convention 87](#) protects the right of workers to form and join the trade union of their choosing;
- 】 [ILO Convention 98](#) protects workers' right to bargain collectively with their employers and to remain free of employer interference and dominance; and
- 】 [ILO Convention 135](#) protects worker representatives from discrimination and recognises the right of worker representatives to access to workplaces in order to carry out their representation functions.

The international community is unambiguous in its recognition of these inalienable rights, which are enshrined in numerous international and regional agreements. The [Constitution of the ILO](#), as well as the ILO's [Declaration on Fundamental Rights and Principles](#) and numerous other Conventions and

Recommendations, go a long way to defining and protecting freedom of association and collective bargaining. Furthermore, these fundamental rights are recognised in the [United Nation's Declaration of Human Rights](#), as well as UN Human Rights Covenants and the [OECD Guidelines for Multinational Enterprises](#). This guide has been written to guide you in upholding and respecting these rights.

B. KEY DEFINITIONS – AND NOTES ABOUT CONTEXT

Freedom of association

Freedom of association refers to the right of workers and employers to form and join independent organisations without interference from others. In garment supply chains, this means that workers can form and join [trade unions](#) of their choosing, and equally, employers can form or join employers' organisations. This right enables workers and employers to be formally and collectively represented in negotiations to arrive at solutions to improve working conditions.

Although protected by international law, freedom of association is often violated and obstructed in many garment production countries. In such contexts, workers—most of whom are women—do not feel free and safe to form or join trade unions and therefore have very little ability to collectively negotiate or defend their working conditions. Freedom of association is further undermined by the presence of so-called 'unions' that are not independent of the employer or the government and lack legitimacy in the eyes of workers themselves. Under such circumstances, discussions and negotiations with management would likely be severely limited (with workers representatives feeling under threat and without any recourse). Where collective agreements are in place under such a system, they can be ignored with impunity since workers have no means of enforcing them. Employers would also lose the benefits of knowledge feedback from workers that could help them not only to improve working conditions but also to impact workplace efficiency and performance.

Collective bargaining

Collective bargaining is the process of all negotiations between an employer (or employers' organisation) and one or more trade unions, with the aim of developing a collective bargaining agreement (CBA). It is recognised as a core labour right and is a key means through which employers and unions can jointly establish fair wages and working conditions for ongoing stability. CBAs clearly outline work conditions at a factory, regional or sectoral level and are agreed between employers and trade union representatives. These are written, legally binding, enforceable contracts that outline the terms and conditions of work for a specific period of time. Because they are legally binding, they hold more weight than a verbal or informal written agreement between workers and management.

The importance of CBAs should not be underestimated; when these legal contracts are in place, they constitute clearly defined and agreed upon conditions of work. For brands, these agreements can help you ensure that working conditions, such as reasonable wages, overtime regulations, social security measures, etc., are in place and enforceable by law at the factories in which you produce (depending, of course, on the quality of the CBA and what it includes).

CBAs may also address issues that are of particular importance to women workers, such as maternity leave, childcare, and gender-based violence, which can then lead to improvements in other areas. There is a more recent consensus that gender-based violence is an occupational safety and health risk, which can lead to lost productivity, absenteeism, stress, and further violence. Including articles specific to sexual harassment and gender-based violence as part of a CBA can help address these violations and subsequent effects. As discussed later, working with suppliers that have CBAs in place should be a priority in your sourcing strategy in order to help ensure the rights of workers are protected.

Freedom of association and collective bargaining: essential for implementation of all workplace standards

New research reaffirms how essential freedom of association and collective bargaining are for implementing all workplace standards. In *Private Regulation of Labor Rights in Global Supply Chains* (2021), Cornell University professor and researcher Dr. Sarosh Kuruvilla shares his analysis of the unprecedented amount of global garment supply chain data he accessed and processed. Among other findings, Kuruvilla provides a wealth of data to prove that workplace compliance is higher in the presence of freedom of association and collective bargaining. In fact, compliance tends to be highest in workplaces where a collective bargaining agreement is present. Kuruvilla reports finding little evidence of brands actively supporting or holding suppliers accountable for respecting workers' freedom of association and their right to bargain collectively. There is also little evidence that multi-stakeholder initiatives have effective mechanisms in place for brand action and accountability around these rights. Fair Wear takes note of this research and looks to the Brand Actions outlined in this Guide, and Fair Wear's work directly with global and national trade unions, to redress some of the key problems Kuruvilla's work has revealed.

Trade unions and workplace committees are NOT the same thing

When speaking of the right of freedom of association, you'll see that we talk specifically about workers' ability to join or form **trade unions**, rather than referring to **workplace committees** or councils. Understanding the difference between the two is key to grasping the importance of these rights and the scope of what this guide covers.

'Trade unions' specifically refer to independent organisations of workers, who can be legally recognised and registered as the collective representatives of workers (at company, industry, or national level, for example). In international law, freedom of association is recognized as a fundamental principle and right at work and must be adhered to by all countries that are members of the ILO, regardless of whether they have ratified the relevant conventions or not. In most countries, trade unions are afforded legal rights and protections – meaning that their work and the collective bargaining agreements (CBAs) they negotiate are protected by law. Subsequently, those CBAs hold more weight, and employers cannot simply choose to ignore those terms agreed. Additionally, trade unions are often part of a larger national or international structure supporting their work that they in turn can influence.

'Workplace committees' or works councils can also be a very important tool or mechanism for workers to express their concerns or influence workplace policy. These committees are legally mandated in some countries and are often viable and successful ways for workers to engage in workplace dialogue with management. However, they do not offer workers the opportunity to join as a member and be part of that organisation, and their decisions are (usually) not upheld by law. Most often, workplace committees discuss issues such as health and safety, grievances, or anti-harassment policies; they do not focus on negotiating the terms and conditions of work (such as wages, hours of work, benefits, etc.).

Where workers have chosen to belong to a recognised trade union, the workplace representative will be the first point of contact between the worker and their union. Where no union is present at the factory, workplace committees, which include elected representatives of workers, can be a first step in building trust and opening the doors to the representation of workers by trade unions and more formal social dialogue initiatives. However, there can be a risk that, where such committees have no contact with an external trade union, they can easily become absorbed into the overall corporate culture, and workers' concerns can become subordinate to other aims of the company. This can weaken their independence from the employer and their effectiveness as a negotiation partner for tough issues. Where worker committees are in place, it is essential that you, as a brand, understand how the committees function, if they are genuinely independent, and how well they are able to ensure workers' involvement in determining workplace conditions.

→ It is important to ensure that management does not use the fact that there is a worker committee in place to prevent union organising.

Key takeaways

Trade unions

- › are legally protected and are registered as the collective representatives of workers
- › can negotiate Collective Bargaining Agreements
- › are often part of a larger national or international structure supporting their work

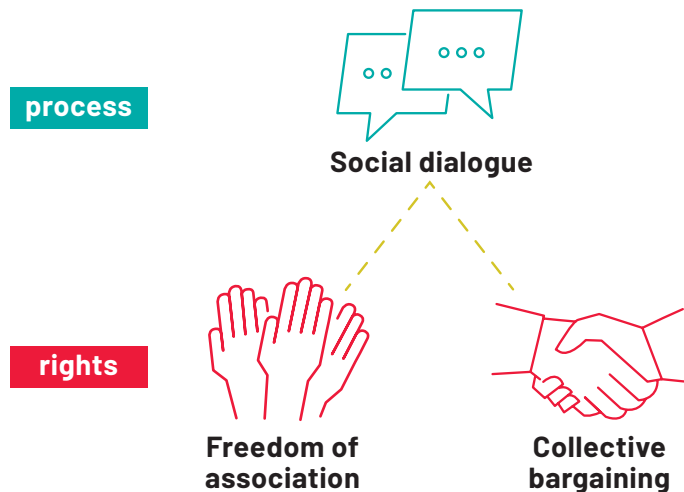
Workplace Committees

- › are valuable mechanisms for worker input IF representatives are democratically elected and committee is independent (from management influence)
- › decisions not (usually) legally binding
- › can be used as a reason/excuse to prevent union organising

Social dialogue

Social dialogue is essentially a process of clear communications, open consultation, and/or fair negotiations between employers and workers (and government, where relevant). The International Labour Organization (ILO) defines social dialogue as ‘all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest relating to economic and social policy’ (ILO Guide: ‘National Tripartite Social Dialogue,’ 2013).

Ultimately, social dialogue facilitates discussion and negotiations about the terms and conditions of work – either at the workplace level or through national structures and policies. If genuine dialogue is to occur, each party to the dialogue must be free to express an opinion without fear of reprisal and free from undue influence by the other parties. Workers and their representatives are particularly vulnerable to pressure from employers. This is why they have historically formed their own organisations – most commonly ‘trade unions’ – to defend their collective interests. As previously discussed, freedom to form and join such organisations is what is meant by ‘freedom of association.’ Freedom of association is, therefore, essential before genuine social dialogue can take place.



Keeping it simple...

Freedom of association & Collective bargaining = **rights**

Social dialogue = **process**

Social dialogue is the *process* of engaging, talking and negotiating. But for that process to really work, to be sustainable, and for workers to have voice legitimately – with enough power to be heard – there are *rights* (to freedom of association and collective bargaining) that need to underpin that process.

Levels of social dialogue

Social dialogue can take place at various levels and in various forms, for example:

Bipartite social dialogue

- at the **factory level** itself, between workers’ representatives (unions) and management, e.g., the negotiation of a factory collective bargaining agreement;
- at the **sectoral level**, representing a specific industry (i.e., apparel) and involving employer organisations and sectoral union federations (this could be national, regional, or global); and
- at a **regional or global level**, through Global Framework Agreements between global unions and multinational companies – or globally enforceable Brand Agreements (e.g., Bangladesh Accord).

Tripartite social dialogue

- at a **regional or national level**, e.g., setting a legal minimum wage for a province or country (either sectoral or confederal); and
- at an **international level**, such as negotiations between representatives of governments, employers’ organisations, and trade unions within the auspices of the ILO, OECD, UN Global Compact, or other inter-governmental bodies to set standards and to influence international policies affecting the world of work, for instance.

Tripartite 'plus' social dialogue

- » **most commonly at the national level**, where the 'traditional' social dialogue actors invite others into the dialogue - for example, civil society organisations which have specific expertise on a topic. An example of this is the National Economic Development and Labour Council in South Africa, which includes members of government, employers' associations, workers organisations AND civil society organisations in its structure as equal decision makers. The addition of the civil society organisations to the regular 'tripartite' dialogue adds additional knowledge and community input to national decisions.



Emerging forms of social dialogue

Social dialogue has naturally focused on the relations between employees and their direct employers, and those relations must continue as the basis for impactful industrial relations. But since brands and retailers generally control much of the global industry's financial resources relative to factories/suppliers, it stands to reason that they too should be at the negotiating table with workers and their employers. While there is not yet a fully formed model for 'triangular' social dialogue - involving brands, factories, and trade unions - there are important initiatives already underway which address various parts of these problems.

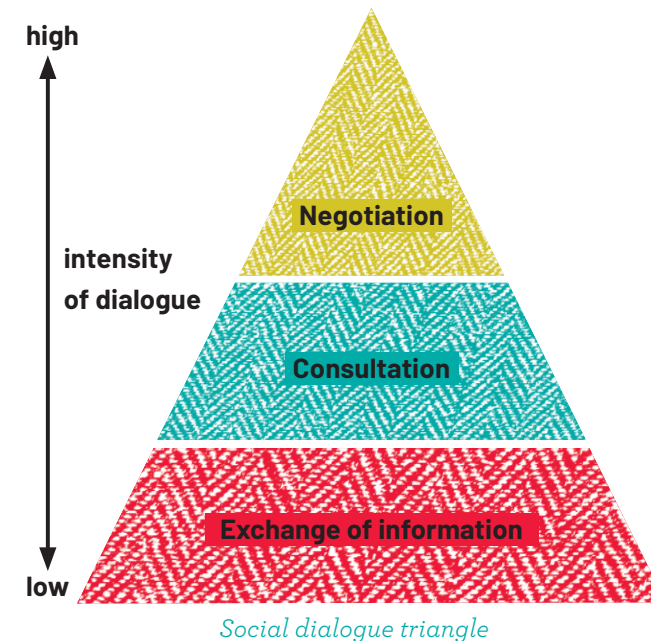
Wherever possible, Fair Wear engages with innovators to continue to work towards new models for social dialogue. Examples include the FoA Protocol in Indonesia, ACT, the Global Accord, and Multi-Company CBAs in Vietnam and Indonesia.

The different levels of social dialogue

The negotiation and implementation of collective bargaining agreements (CBAs) is often the ultimate goal of social dialogue activities. Nevertheless, it is important to recognise the importance of other levels of social dialogue, including the exchange of information and consultation. These other activities, which are often seen as precursors of full implementation of collective bargaining rights, are particularly relevant in garment supply chains. Often

garment production takes place where the skills needed for collective bargaining are under development or where appropriate collective bargaining partners, notably trade unions, are fledgling or not present at all. The consultation that takes place at a factory between elected worker representatives of a Works Council*, for example, and the factory management, also constitutes social dialogue and can be a crucial platform for workers as long as it does not replace or imperil the exercise of the right to form or join an independent trade union.

The different levels of social dialogue can be viewed as progressive steps which build upon one another, as illustrated in this figure:



* a Works Council is an organisation representing workers at the workplace level in various European countries - where trade unions often negotiate national- or sectoral- level labour agreements. Among other things, works councils serve to adjust national agreements to local circumstances.



Negotiation is the most advanced type of social dialogue. Both parties have equal seats at the table and decide collectively on a policy or topic, ideally resulting in a collective bargaining agreement. Negotiation means that all parties' opinions and demands receive equal consideration in working towards a shared conclusion.

Consultation refers to the process of proactively seeking information from the other party/parties, requesting their input or position on a topic. An example of this would be management holding a meeting with worker representatives to receive feedback on a new workplace policy regarding health and safety in the workplace or engaging workers before making changes to work schedules or routines.

Exchange of information refers to the giving of information from one party to another; it can be formal or informal information sharing. This is seen as the simplest form of social dialogue, which, although not yet a two-way exchange, forms the basis of further dialogue.

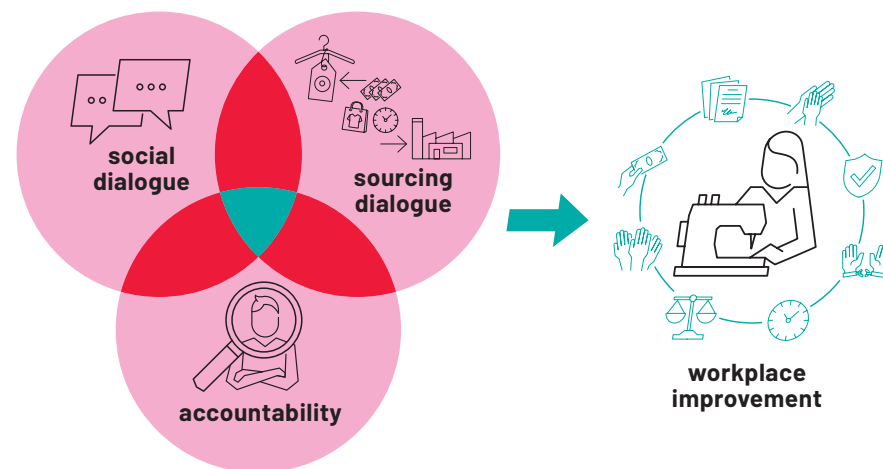
The term 'social dialogue' can be misleading for many. Despite this term consisting of 2 familiar words, i.e. 'social' and 'dialogue,' it is actually a technical term. It is the result of deliberation amongst members of the International Labor Organisation. The ILO lays out some key principles for social dialogue, as follows.

- ▶ strong, independent workers' and employers' organisations with the *technical capacity* and access to relevant information to participate in social dialogue;
- ▶ political will and commitment to engage in social dialogue on the part of all the parties;
- ▶ respect for the fundamental rights of freedom of association and collective bargaining; and
- ▶ appropriate institutional support.

These essential principles are the basis of much of the concrete guidance that Fair Wear offers to members. Here is where brands can play a role in creating an *enabling environment*. Notably, brands can support workers' and managers' technical capacity and access to information via remediation and training. And, by offering stability of contracts, orders and payments – and through non-retaliation agreements, support for stronger local law, and participation in direct agreements with trade unions – brands can go a long way to providing the institutional support needed for social dialogue. These actions are further outlined in the next section on '[Brand Actions](#)'.

Social dialogue and 'sourcing dialogue'

Fair Wear members may increasingly hear Fair Wear refer to 'sourcing dialogue,' which refers to the relationship between your brand and its suppliers, with a focus on the interplay of your brand's purchasing practices with the social performance of your suppliers. The name 'sourcing dialogue' was developed as a complement to the concept of 'social dialogue'. According to Fair Wear's theory of change, in any production facility where both legitimate social dialogue (between management and workers) and healthy sourcing dialogue (between brand and management) are at play, real changes in workplace conditions are possible. The six Actions (and accompanying tools) in this Guide target this interplay in order to deliver real improvements for workers.



QUIZ ON KEY DEFINITIONS

1. Managers and companies cannot form trade unions or call on workers to join a trade union. ☐ True ☐ False

Answer: True. Both are violations of workers' FoA.

2. Social Dialogue, freedom of association and collective bargaining are interchangeable words that all mean the same thing. ☐ True ☐ False

Answer: False. Social dialogue refers to the process(es) through which freedom of association and collective bargaining (rights) are realized.

3. In most places collective bargaining can only be undertaken by trade unions, because of the protections allowed under law. ☐ True ☐ False

Answer: True. Worker committees can serve to support social dialogue, but trade unions occupy a unique position, protected by domestic and international law. There are a few outlier exceptions to this (such as Romania), but it is rare. This is where due diligence is so important! Make sure you know and understand the regulations in the countries where you source.

4. Social dialogue' is dialogue that is social between different stakeholders. ☐ True ☐ False

Answer: False. The term 'social dialogue' can be misleading, but it is a key term to understand. According to the ILO, social dialogue requires involvement by employers and employees who have adequate technical capacity and institutional support – both of which brands can help support.

5. Women workers face systemic hurdles to exercising their freedom of association and collective bargaining. ☐ True ☐ False

Answer: True. In addition to various systemic threats to FoA for all workers, women workers tend to face additional barriers to forming and joining trade unions.

6. Promoting freedom of association in the global garment industry goes hand in hand with promoting the rights of women workers. ☐ True ☐ False

Answer: True. Research shows that when women are able to join unions, their wages and welfare increase significantly.

2. Threats to freedom of association and collective bargaining

Freedom of association and the right to collective bargaining are fundamental for sustained, fair labour conditions. Nevertheless, in reality, it is not uncommon for employers and governments to interfere with these rights. Before taking action to stop such violations, we must first understand them in context. In this section, we first consider the threats to these rights that are systemic and the ongoing underground efforts to limit workers' right to organise and bargain collectively. We then review specific anti-union behaviours that you may encounter in different factories where you source.

Systemic threats to workers' freedom of association

Lack of binding global human rights protections

The reality is that you and all other brands are operating at the global level, where regulation is at its weakest. Most garments are made in supply chains where production and consumption take place in different legal jurisdictions. Historically, manufacturers, retailers, consumers, and workers were often bound by a common legal framework at national level, making it comparatively straightforward for everyone to know and uphold their respective responsibilities to each other. In today's global economy, there is a multiplicity of laws and regulations applicable depending on where the company is active, and – although there is at international level a common regulatory framework of principles and standards (such as ILO Conventions and UN and OECD guiding principles) – it is difficult to hold all supply chain actors to be accountable to the same set of laws and standards. Initiatives such as Fair Wear were originally formed to plug the large regulatory gap created by the

globalisation of production in the absence of properly implemented and enforced global regulation. Today there is a need for further innovation towards better implementation of fundamental human rights.

Brands do not employ workers directly

In the context of discussions about social dialogue in the garment industry, it is important to highlight what might seem an obvious point: you as a brand rarely own your production locations. You do not directly employ the workers who make your products, which means less control over workers' everyday conditions of work. In traditional collective bargaining structures, this also means brands cannot negotiate directly with workers and their representatives. And ILO standards are clear: it is not your role as a brand to organise workers. Nevertheless, the [UN Guiding Principles](#) and the [OECD Guidelines](#) expect brands to ensure measures are in place for these rights to be exercised. There certainly are steps you can take to make a real difference for social dialogue ([as outlined below](#)), but it is worth appreciating the context in which you are working, where accountability and responsibility have been diffused.

Competition and long, diffuse supply chains undermine social dialogue

The garment industry is notoriously competitive on price and delivery time. Indeed, garment consumers have come to expect cheap and ever-changing collections, placing considerable strain on supply chains that are already under pressure because of their length and diffusion. This is exacerbated by a lack of trust that typically accompanies such distance and disconnection. Some brands may spread production over 100 or more factories for a given season. Such production relationships tend to be short-lived, as brands scramble to meet the demand for new styles while hitting their profit margin targets. Additionally, most contracts between brands and production facilities are limited to orders per season or run; long-term contracts and business relationships are the exception, not the norm. This provides [a background of uncertainty and instability, which are real disincentives for employers \(your suppliers\) to commit to workers contractually or via CBAs](#). Instead,

these sourcing models incentivise informal work, leaving suppliers more flexible and workers more expendable. Such high turnover also makes organising trade unions nearly impossible. Even though these examples may not be true of how most Fair Wear brands operate, if/when other brands operate like this, it challenges workers and suppliers' ability to engage in genuine social dialogue, including at production locations that you share with other brands.

Social dialogue is limited or under-developed, and collective bargaining is rare

We know that freedom of association and collective bargaining are severely limited in many garment-producing countries. But even if those rights are in place, the obstacles are compounded by practical realities on the ground, where the capacity to engage in meaningful social dialogue is limited. This can be due to several factors, including, among others:

- ▶ limited capacity and skills of employers and trade unions to engage in dialogue;
- ▶ limited resources for building these skills;
- ▶ lack of trust between the social partners; and
- ▶ the non-existence of national social dialogue institutions (such as wage boards or social and economic councils).

So even where workers are free to join or form trade unions, they may not have the ability to then engage in a meaningful social dialogue. When social dialogue is not taking place, collective bargaining is not possible, and, therefore, workers are not protected by collective bargaining agreements. This then limits workers' and employers' opportunities to witness the benefits of social dialogue – and, in particular, collective bargaining. Without seeing the benefits of functional social dialogue in practice, it is difficult for some stakeholders to justify the investment of the time, resources, and political capital needed to get fledgling social dialogue systems off the ground, and it may dampen workers' resolve to join or form trade unions.

Women's participation in social dialogue

Garment workers are predominantly women, often in low-pay, low power positions, and are underrepresented in social dialogue structures. Even when there are active, independent unions present at a factory, union leaders tend to be male. Therefore, women's rights issues may not be well represented or considered to be important priorities. Women also often have lower rates of unionisation. Research has found that women who belong to a union earn 8.7% more than women of similar characteristics who do not (Metcalf, 2000). The garment industry has a significant gender pay gap, which can be addressed through social dialogue structures. Moreover, unions can also be powerful actors in the fight against gender-based violence. They can negotiate collective bargaining agreements that specifically set workplace obligations for employers on preventing and addressing violence and harassment, including the formation of workplace harassment prevention committees.

There are a number of barriers to women's access to the rights of freedom of association and collective bargaining, including:

- ▶ Lack of awareness about the advantages, due to recruitment being traditionally aimed at men and male-dominated occupations and industries.
- ▶ Women are commonly employed in atypical forms of work, such as temporary, part-time, or home-based work, which make them less visible or accessible for a union; also, these forms of work may be subject to restrictions in national law on organising in a union.
- ▶ Women do the majority of unpaid care work, including housework, childcare, and eldercare. While they generally work fewer paid hours, the combined unpaid and paid hours mean that they have less free time than men to dedicate to trade union activities.
- ▶ There are religious and cultural norms and constraints around women in leadership and decision-making roles.
- ▶ Trade unions have historically been male-dominated, which can make them unwelcoming environments for women.
- ▶ In some areas, women face restrictions on their movement or access to spaces where negotiations may occur.
- ▶ Fear of reprisals from employers is especially threatening for women, as they often are in the lowest paid, lowest power positions. Moreover, they often work under precarious working contracts, which means they likely face a greater risk of being laid off.

▶ Female trade unionists may face sexual violence or harassment.

It is vital to understand how women are represented and included in the trade union or worker representative structures at the suppliers where you source and for you to promote women's involvement.

Threats on the ground to workers' freedom of association

There are also realities taking place on the ground that serve as direct and indirect threats to worker organising every day. Some examples include:

Lack of state capacity to protect and enforce

Although in some production countries, the national law may contain clear impediments for freedom of association and collective bargaining (in violation of international standards), it is not uncommon for domestic laws in a host of countries to be fairly strong with regard to the general respect for rights of freedom of association and collective bargaining and other labour rights. The challenge is the implementation of the law. Often this is linked to a lack of political will to allocate resources for enforcement or overly complex restrictions on union formation and industrial action. In many countries, the capacity of labour administrations, including labour inspectors, is also woefully underdeveloped and therefore they may be unable to ensure that workers' rights are respected.

Anti-union behaviour by employers and governments

All too often, workers face harassment or possible dismissal by their employers when they join or participate in unions at the workplace, despite the international prohibition of such behaviour. Even if they are not fired, workers can be moved or have their positions downgraded, and their pay docked. According to the International Trade Union Confederation (ITUC, 2022), intimidation and violence against trade unionists and their families are on the rise globally. Trade union leaders or elected worker representatives, in particular, face threats. Government and corporate surveillance of

trade union leaders – attempting to instil fear and put pressure on independent unions and their members – is also on the rise. For many workers, fear of such retaliation and of losing their livelihood stops them in engaging with or joining unions.

Governments' efforts to undermine unions can take on many forms. The [2022 ITUC Global Rights Index](#) ranks countries on a scale of 1-5 based on their overall respect for workers' rights. It is prudent to note that many of Fair Wear's production countries have a rating of 4 or 5, indicating some of the worst places for workers. The Index also noted that authorities impeded registration of unions in 61% of countries and that the number of countries that exclude workers from the right to establish or join trade unions increased from 92 in 2018 to 106 in 2020. This means that unions that should be recognized as legitimate (because they are formed or joined independently by workers) are unable to register and access the protection and rights afforded to registered unions.

Brands should be aware that according to ILO Convention 87, it is a violation to require authorisation for a union to exist. Fair Wear brands therefore should not refrain from engaging with unions simply because they do not (yet) have registered status. As we explain in the Brands Actions section, brands are still required to respect workers' freedom of association, even in countries where the law undermines these rights. In fact, [Action 1](#) clarifies that a brand's choice to source in repressive countries requires the brand to undertake due diligence (e.g. training, non-retaliation agreements, government lobbying, grievance handling, experimentation with new forms of social dialogue, etc.) to mitigate such state repression.

It is also important to note that anti-union behaviour can also take a more subtle form, such as restricting information about the right to freedom of association and collective bargaining. Often, workers are not aware that forming or joining a union is an option for them. Workers' representatives or

trade union representatives may not be allowed to talk openly about organising or provide information to workers about their rights. This may be the case in countries with strong government control or limited separation between state and private actors, where civil society lacks independence and may be underdeveloped. Or it may simply reflect an employers' lack of desire, or capacity, to inform and educate workers about their rights.

Employers may also intentionally move very slowly to engage in a negotiation process or simply refuse to engage in a dialogue. Fair Wear brands can play a key role in ensuring employers share information with workers and engage in a dialogue process.

Employer-controlled unions

The terms 'company union,' 'white union,' and 'yellow union' all refer to cases where a trade union is set up and/or controlled by the employer (or government) to prevent the establishment of a genuine trade union (ITUC Glossary). These 'unions' are contrary to international law, which states that unions should be free from the control of employers (ILO Convention 98, article 2). They can give the impression that a workplace has a union in place, when, in fact, it is not actually representing workers' interests. Because brands do not directly employ workers – or own and operate their production facilities – it can be difficult to have the access and judgment to determine whether a union present at one of your production facilities is legitimate. Therefore, when your brand is considering working with a new supplier, it is not enough to simply ask whether a union is active in the factory. You must find out more about its level of independence. Questions to ask your suppliers are included in [Tool 2: Supplier questionnaire on freedom of association](#).

Informal, unregistered, and agency work

An increasingly common practice in garment factories is to utilise short-term or temporary contracts. Factories work with agencies to supply workers. In

various countries, domestic law prohibits agency workers or those on short-term/fixed-term contracts from forming or joining trade unions. Informal, unregistered, and ‘agency workers’ sometimes work for years for the same factory without accessing the rights that other contracted, documented, registered workers within that same location access. It is also common for home-workers, refugees and migrant workers to take garment jobs that are not governed by an enforceable contract – and therefore are banned from exercising their freedom of association.

The peaks and troughs of production orders in the garment industry partly explain this high rate of informalisation. Factory owners seek to limit their financial risk by minimising the size of their permanent staff. Without job security, these positions tend to have a high turnover. Taken together, the intermittent employment relationship of informal and temporary agency workers can make worker organising nearly impossible or outright illegal in many places where garments are made.

Export Processing Zones

Export processing zones (EPZs) or Special Economic Zones are generally industrial zones which afford some special incentives (such as tax exemptions or duty-free exporting) for foreign investors to set up business in a specific country or area. The ILO estimates that there are over 3500 EPZs throughout the world, employing 66 million workers. Many governments choose to create these zones to encourage foreign investment in the expectation of a ‘trickle-down’ effect that they hope may create jobs, raise local skill levels, bring foreign technology into the country and boost the export sector. Sadly, these expectations are seldom realised.

Many EPZs have highly feminised workforces in the garment sector. According to the ILO, *‘The vast majority of workers in the EPZs worldwide are women, with a share of 70% and in some cases 90% of the workforce, especially in the garment and electronics sectors. The reasons generally stated by employers for preferring female employees in the EPZs are that they are cheaper in terms of labour costs, show great endurance in the monotonous production work, and are less prone to organise in trade unions’* (ACTRAV, Trade Union Manual).

The right to freedom of association and collective bargaining is violated in almost all EPZs across the world. On the assumption that EPZs without a trade union presence may attract more investment, many governments – even many that have ratified relevant ILO Conventions – have deprived EPZ workers of their right to organise. In the rare EPZ workplaces that are unionised, trade unionists face harassment, intimidation, threats, discrimination, and unfair dismissals. The level of bargaining capacity is very low and weak, with problems of recognition of trade unions as bargaining agents. For all these reasons, a brand's decision to source from an EPZ-based production facility almost always conflicts with its human rights due diligence responsibilities. Fair Wear discourages sourcing from EPZs.

QUIZ

1. Place a check next to all of the brand actions that undermine an 'enabling environment' for workers' freedom of association:

- ☐ Brands sourcing in production countries where workers may not form or join trade unions of their choice
- ☐ Brands sourcing from EPZs
- ☐ Brands seeking to drive down FOB and CMT prices
- ☐ Short lead times
- ☐ Short term contractual relationships
- ☐ A brand transporting all workers to register to join the trade union

Answer: All of the actions above should have been checked. How a brand engages in its 'sourcing dialogue' with suppliers shapes the environment for social dialogue between workers and their employers.

2. Place a check next to all of the anti-FoA behaviour brands should see as warning signs amongst suppliers and other stakeholders.

- ☐ Firing – or threatening to fire – workers for forming or joining a trade union
- ☐ Temporary employment contracts
- ☐ Hiring mostly informal, agency workers
- ☐ Long working hours, limiting workers' waking hours outside of work
- ☐ Suppliers using existing 'workplace committees' or 'yellow unions' to block grassroots worker-led unions from forming
- ☐ Management ignorance of – or spreading wrong information about – freedom of association and trade unions
- ☐ Low retention / high turnover

Answer: All of the actions above should have been checked. See [remediation tool](#) for more about what to look out for and how to help resolve such issues when they arise.

Part II Brand Actions

**What Fair Wear members should do
to promote freedom of association
and social dialogue**

According to Fair Wear's Freedom of association and collective bargaining policy, a brand is only in full compliance with the standards in Fair Wear's Code of Labour Practices when freedom of association and the right to collective bargaining can be exercised in all facilities in a brand's supply chain.

For most garment brands, such compliance may seem unattainable, given that China remains the dominant garment producing country globally. We acknowledge that there may be challenges for you and your suppliers as you work to support this fundamental right in your supply chain. There may be a lack of knowledge or understanding of these rights among different members of staff; 'fear' of unions based on stories or previous experiences; challenges navigating the complexities of structures in different countries and the various politics or competition between unions; concern towards increased costs related to collective bargaining; or simply not knowing where to start. **Fair Wear is committed to working with our members and stakeholders at large to overcome or debunk these challenges, and this guide is your starting point.**

How to use the Six Actions?

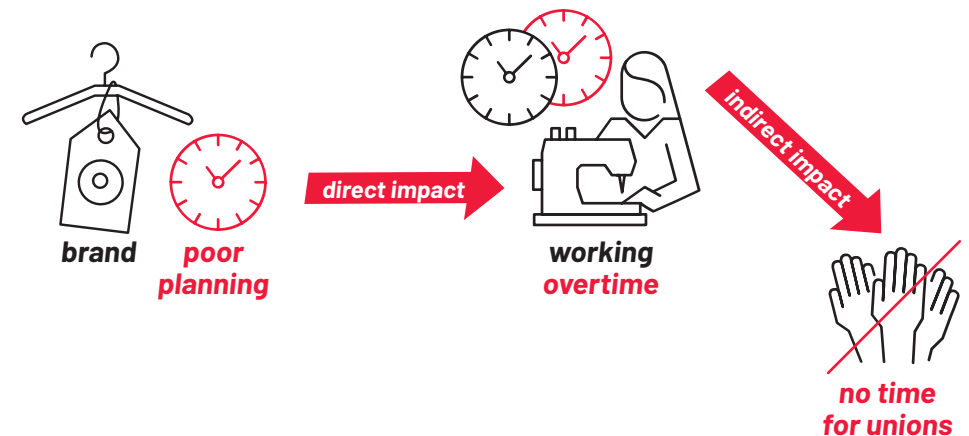
1. Read through the Six Actions. You will see that they are organized in an order that aligns with the systemic and on-the-ground threats that brands will encounter as they work on freedom of association.
2. Consider which Action(s) to target first – with an eye to realities within your brand and your supply chain. It is not necessary to undertake the Actions in order or all at once. Review the [tools](#) to better envision what each step would look like.
3. Develop a strategy for implementation, integrating this into your brand's work to implement the due diligence cycle. Remember to develop concrete timelines and targets. If needed, consult with your Fair Wear brand liaison.

4. Get to work! Remember we are all learning. Most important is that we take action that can have a real impact for workers, starting now.

For each Action, we provide a sense of the Fair Wear Performance Benchmarks that align, and link to relevant steps in the Due Diligence Cycle.




Internal alignment

It is important to remember that the sustainability department alone cannot ensure that all of a brand's practices align to support freedom of association and the right to collective bargaining in its supply chain. Often, they do not have the mandate to make changes in other departments. It is essential to build internal alignment around the importance and value of these rights, which means working with brand leadership and all relevant departments to understand freedom of association and collective bargaining as the most effective means to improve workplaces (Kuruvilla, 2021). Fair Wear will continue to offer training to member brands on this topic, and we encourage colleagues from various departments and from leadership to participate. As a brand, you can lead by example, ensuring that your brand's top management guarantees its employees understand these rights and have the ability to organise.






6 Actions for brands to promote freedom of association

Actions for change at the systemic level

-  1. Commit to a sourcing strategy that privileges countries and suppliers where workers are free to choose to form or join a trade union and/or bargain collectively.
-  2. Participate in direct agreements with trade unions that ensure worker participation in identifying, addressing, and remediating issues related to the conditions of their work.
-  3. Use your brand's voice and influence to encourage governments to promote and protect—and certainly halt violations of—international standards on freedom of association and collective bargaining (ILO Conventions 87 and 98).

Actions for change in your brand and suppliers

-  4. Develop contractual agreements with suppliers in which 1) your brand commits to orders in the long-term (several years or more) to provide the financial stability/predictability needed for workplace dialogue and freedom of association to thrive; 2) suppliers contractually agree to offer all workers stable contracts; and 3) supplier and brand jointly distribute non-interference and non-retaliation letters to the workforce, underscoring workers' right to organise.
-  5. Urgently address violations of freedom of association and collective bargaining (from complaints, audit findings, or other sources), including a strategy for addressing the root cause of violations.
-  6. Support workplace training for workers and management to build an understanding of their rights and skills to engage in workplace dialogue and collective bargaining. Recognising that women garment workers are under-represented in union structures, extra emphasis should be placed on encouraging and supporting women in this process.

The following sections provide more robust guidance and tips on the steps above that brands can take to promote the right to freedom of association and collective bargaining.

KEY ACTIONS AT THE SYSTEMS LEVEL



Action 1

Commit to a sourcing strategy that privileges countries and suppliers where workers are free to choose to form or join a trade union and/or bargain collectively.

When the basic rights to freedom of association and collective bargaining are not respected across a country or at a factory, real progress on social dialogue, or compliance on other labour issues, is difficult, if not impossible. In reference to freedom of association and collective bargaining, the [OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector](#) states that 'the institutional and legal framework is likely to be the most important risk factor when assessing the likelihood and severity of impacts' (OECD, 2017).

Where you choose to source may be the most important way your brand can implement its true commitment to workers' rights. Concentrate future orders in countries where freedom of association is respected by law and promoted in practice.

As a brand, you should do appropriate due diligence on this topic by:

- » **Scoping and assessing the risks:** what is the probability of risks to occur and the subsequent impact on workers.
- » **Determining your possible influence:** do you have the ability, time, strong enough leverage, etc. to mitigate risk and positively change these working conditions?

» **Understanding the impact:** what level of change can be achieved for the workers? Will it be possible to change laws that impede workers' rights, or the attitudes of employers? Are there examples of impact being made by other brands or initiatives in that context? Your impact should be monitored and taken into consideration when you reassess sourcing locations.

Additional considerations for this Action

EPZs (Export Processing Zones)

As mentioned in the [‘threats’](#) section, export processing zones often pose a threat to freedom of association and collective bargaining or restrict those rights completely. When the right to organise is hindered in an EPZ, this is a violation of Fair Wear's Code of Labour Practices. As a brand, you should consider the significant risks of sourcing from suppliers in EPZs and include clarity on this in your RBC/sourcing policy. At a minimum, brands currently sourcing from EPZs should actively look for ways to establish a worker-management dialogue in those facilities. However, such action is not considered a replacement for real freedom of association. Fair Wear brands committed to their position on freedom of association should opt against EPZs or any production location where this right is explicitly limited. Where you already source from an EPZ that restricts freedom of association, consider developing appropriate exit strategy steps.

Responsible Exit Policy

It is important to ensure your brand has clear criteria for a responsible exit from a factory based on certain violations of freedom of association.

[Fair Wear's guidance on Responsible Exit Strategy](#) offers steps brand should take if choosing to stop sourcing from a facility. Repeated violations to freedom of association or failure by factory management to improve, cooperate – or even discuss the topic – are valid reasons to end your business relationship with a supplier.

Integrate the points above into a written sourcing strategy that is understood by all departments and supported by top management. This may require additional internal training for your colleagues to understand the value and importance of these rights and why they are fundamental to improving all other labour rights. Fair Wear and our union partners can support this training. We also encourage you to write this strategy with a gender lens to ensure that all workers are represented. If you would like help integrating social dialogue and gender commitments, please contact your Fair Wear brand liaison.

Trade union calls for divestment/disengagement from a country

A critical way brands can support freedom of association is to rely on information/advice from trade unions in production countries and from Global Union Federations (GUFs) regarding cases where a country's freedom of association, human rights and democracy are under threat. As representatives of workers, trade unions are best placed to communicate when it is in the interest of workers for foreign businesses to avoid or leave a country. Trade unions do not take such decisions lightly, given the inevitable negative consequences of lost foreign investment for employment and the economy.

Transparency

Brands should be transparent by disclosing factories and sharing information on whether there are active, independent unions present. This information can serve to help other brands in their sourcing decisions and incentivise suppliers to comply and be recognised.

Fitting this Action into Your Brand's Due Diligence Work

Step 1: If where you choose to source is the major factor determining human rights conditions where your products are made, it is imperative to integrate these principles into your brand's RBC policy and sourcing policy. Most impor-

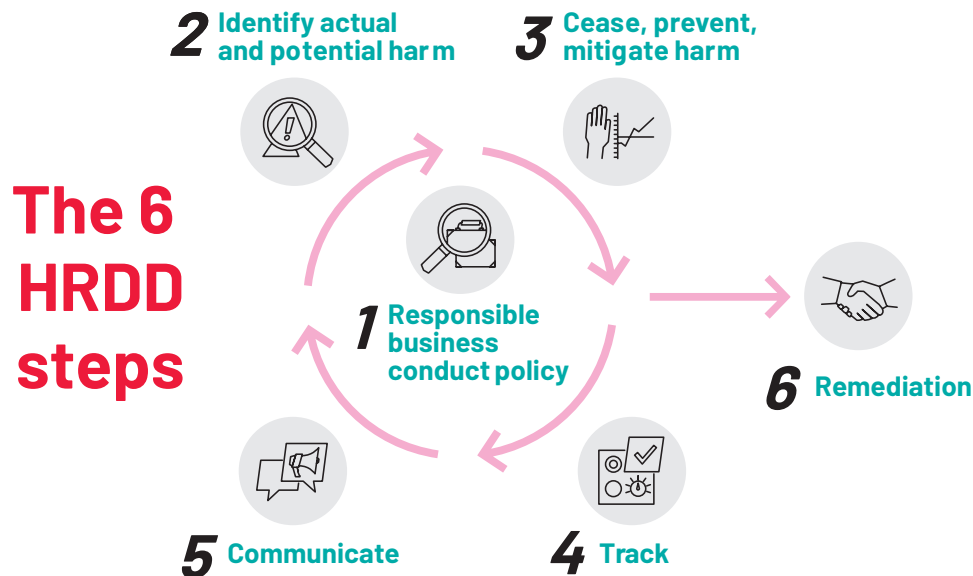
tant is the execution by way of your brand's sourcing strategy and practices.

If your brand is currently sourcing from countries like Myanmar and China, this may involve a strategy to responsibly exit (see more below) from those production locations during a set period of time and then shifting production to countries and/or factories where workers' freedom of association is respected.

You should also ensure your written sourcing strategy includes clear 'new supplier selection criteria,' where preference is given to suppliers where legitimate trade unions are active and/or collective bargaining agreements are in place.

Step 2: In alignment with Step 2 of the HRDD Cycle (Scoping and Risk Assessment), it is vital to understand the status of freedom of association and collective bargaining wherever you source:

- a** at a country level
- b** at all existing suppliers through verification visits and communications with management, workers and their representatives – as well as local stakeholders.



a Assessing the risks at a country level: To understand the status of these rights in each sourcing country and to map where obstacles potential improvements exist, [Tool 1: Country Information on Freedom of Association and Collective Bargaining](#) provides information per country to help assess these risks. This information is pulled from Fair Wear's most recent Country Studies, the ILO STAT database, and the International Trade Union Confederation Global Rights Index. In Tool 1, countries are grouped on a spectrum according to the potential to make progress on freedom of association and collective bargaining, taking into account the legal conditions as well as the practical situation and occurrence of violations. Time and resource considerations, as well as suggested next steps, are included for each grouping.

b For risk-assessment purposes at the factory level, [Tool 2: Supplier Questionnaire on Freedom of Association](#) provides a short list of 'key questions' that brands should ask of all suppliers (existing or new) to inform decision making. This information is crucial for sourcing decisions and to remediate violations of freedom of association (violations that in turn undermine other workplace compliance efforts). In addition to Tool 2, to further analyse the situation, Fair Wear trade union partners CNV Internationaal and Mondiaal FNV have developed an [extensive list of questions](#) you can use to find out more from your suppliers. If you need support in assessing the independence of a trade union or the quality of a CBA, Fair Wear can provide support or connect you with appropriate local stakeholders.

Tools to help you undertake this Action

- › [Tool1: Country information on FoA and CB](#)
- › [Tool 2: Supplier questionnaire](#)
- › Country specific FoA guides (Bangladesh and Vietnam)
- › Guidance on creating an RBC and related sourcing strategy

Relevant brand performance indicators

- › 2.3 Risk scoping exercise as part of the sourcing strategy
- › 2.8 Member company's continuous monitoring of human rights risks includes an assessment of freedom of association (FoA).



Action 2

Participate in direct agreements with trade unions that ensure worker participation in identifying, addressing, and remedying issues related to the conditions of their work.

Work on freedom of association at the local level, e.g., in factories, is important for this fundamental freedom to take hold. Yet given the scale and diffusion of global supply chains, there is a need to find organising structures to meet the realities of today's global industry. Some mix of brands, trade unions, suppliers, governments, and civil society organisations – and quite possibly all of these – will need to collaborate to find lasting solutions. Today, there are a number of 'beacon' initiatives that offer some vision for what shape social dialogue could take to match today's global business structures. These types of agreements provide unique advantages to workers, unions, suppliers, and brands. For instance, they facilitate active dialogue between brands, suppliers, and trade unions on systemic issues, which helps brands identify location-specific risks that are likely relevant at other suppliers. In turn, the dialogue facilitates more cooperative remediation of violations and how to appropriately prioritise them (based on direct input from workers' representatives). These direct agreements may offer an independent grievance mechanism, whereby trade unions can file a complaint directly to the brand. Such agreements directly bring together stakeholders from across the supply chain to facilitate learning and better understand each other's unique challenges.

Some examples of direct agreements

Freedom of Association Protocol agreements – in Indonesia and elsewhere

[The Freedom of Association Protocol for Indonesia agreement](#) was signed in 2011 between Indonesian textile, clothing, and footwear unions, major supplier factories, and major sportswear brands to ensure trade union rights were respected in Indonesian factories. In 2018, three Fair Wear brands joined the Protocol, committing to the principles and responsibilities outlined in the agreement. The Protocol outlines some basic principles that suppliers agree to abide by and ensures they work with trade unions to negotiate collective bargaining agreements. Brands commit to remaining with the supplier and supporting union and employer joint development activities. The Protocol also establishes a Supervision and Dispute Settlement Committee to ensure the commitments are upheld and that disputes are remedied appropriately.

Based on the Indonesian model, the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector encourages brands and their suppliers to enter into 'freedom of association protocol agreements.' According to the OECD, such a protocol agreement is made between a brand, supplier, and trade union, establishing a joint understanding and agreement to implement freedom of association. These agreements can be drafted between a single brand, its supplier, and a factory trade union, or may address a specific sector or region, such as the initiatives listed below. These protocols require commitments to be made by all parties involved, such as incentives from the brands to suppliers for compliance.

ACT (Action Collaboration Transformation)

[ACT](#), an initiative of global trade union federation IndustriALL, is an agreement between global brands and retailers and trade unions to transform the garment, textile and footwear industry and achieve living wages for workers through collective bargaining at industry level linked to purchasing practices. ACT is trying to ensure that there is a joint approach by all actors in a supply chain to ensure freedom of association, collective bargaining and living wages. Fair Wear is engaging with ACT by sharing our tools and knowledge, as well as supporting their in-country work.

The International Accord on Fire and Building Safety

[The Accord on Fire and Building Safety in Bangladesh](#), initiated in 2013, following the Rana Plaza building collapse, offering an unprecedented model for social dialogue in the garment industry. Brands, trade unions (local and international), workers advocacy groups, and local industry/employers negotiated this unique, legally binding agreement. The Accord represents an important step forward, seeking to fill the regulatory gap that currently exists in the global garment industry. On 1 September 2021, the International Accord for Health and Safety in the Garment and Textile Industry launched, building on the success of the Bangladesh Accord. The Accord is a 26-month legally-binding agreement to make ready-made garment (RMG) factories safe. The Accord has 176 signatories at the time of writing.

Pilot & prototyping approaches to direct agreements (Fair Wear and others)

As the garment industry evolves and as Fair Wear and our members learn more from real-life experience, we continue to test new approaches. There may not be a ‘one size fits all’ solution for the complex challenges of freedom of association and collective bargaining. Research and prototyping new approaches are vital contributions Fair Wear and its members can make to finding credible new solutions to share with the wider industry.

Fair Wear is partnering with Dutch union organisations, international research institutions, consultancies, civil society organisations, suppliers, and local trade unions to learn and test programmes related to freedom of association, collective bargaining, and social dialogue. To develop or join a pilot programme, please contact your brand liaison – and discuss your ideas with other member brands.

Multi-Company Collective Bargaining Agreements

Fair Wear’s partner CNV International is implementing multi-company collective bargaining projects in Indonesia and Vietnam. The goal of these projects is to establish CBAs that span multiple companies so that workers at different factories are protected under the same agreement. This should make it easier for more companies to participate (without having to negotiate their own CBAs) and enhance the coverage of the agreements. The process involves strengthening trade unions and continuously involving production workers in the process. Fair Wear member brands can support the development and implementation of these MC-CBAs by engaging with their suppliers in Indonesia and Vietnam and signing a direct agreement with CNV International to support.

Fitting this Action into Your Brand’s Due Diligence Work

This Action relates to [Step 3](#) of the HRDD Cycle, ‘Stopping harm, prioritising and implementing programmes’. As we argue above, new forms of social dialogue are perhaps the most promising way to stop ongoing harm to workers in global garment supply chains.

Tools to help you undertake this action

- › see examples of direct agreements above
- › Reach out to your brand liaison for more information about joining initiatives such as the MC-CBA Project, the International Accord or other direct agreements.

Relevant brand performance indicators

- › 3.3 Member company's improvement and prevention programmes include steps to encourage freedom of association and effective social dialogue.
- › 3.18 Business practices and/or improvement programmes go beyond the indicators or scope.



Action 3

Use your brand's voice and influence to encourage governments to promote and protect—and certainly halt violations of—international standards on freedom of association and collective bargaining (ILO Conventions 87 and 98).

Brands possess a significant amount of influence, both financially and through their public actions. In globalised garment supply chains, suppliers often listen when brands speak up—particularly when they speak in unison. Brands also have a unique position to engage their own governments and intergovernmental organisations and their consumers. Below are some suggestions on how you can address various stakeholder groups about your commitment to these rights and publicly support them.

Lobby production country governments

The governments of the countries from which your brand sources care what businesses think. They want to ensure economic growth and prosperity, which means keeping international companies sourcing from their factories. As such, brands may have considerable influence over the policies and practices related to their supply chains. When there is a clear violation of the right to freedom of association and collective bargaining by the government of a supplying country (for example, by erecting legal barriers for recognising a union; restricting trade union activity; persecuting union leaders; or refusing to register legitimate unions), brands should take action by writing to or asking for a meeting with that government to express their concern and offer solutions that would encourage smoother trading relations.

Such action is surely stronger when done in collaboration with other brands. Often Fair Wear, along with a network of other multi-stakeholder initiatives and civil society organisations, as part of the formally established MSI Emergency Response Group, will facilitate such processes and ask member brands to add their name or voice to a letter or meeting. In some countries, there are also local 'brand groups' that regularly discuss issues and formulate advocacy plans.

As a Fair Wear member brand, if you learn about violations that are not in line with your commitment to this or other code of conduct standards, please inform Fair Wear and other member brands and consider together appropriate action. Fair Wear's country teams can help provide guidance and support.

Case in point: letter to Cambodian government

In 2017, policy and actions undertaken by the Cambodian government encroached on trade unions and other civil society organisations, with implications for worker protections, specifically freedom of association and collective bargaining. Representing our member brands – alongside Fair Labor Association, Social Accountability International, and several large brands – Fair Wear [sent a letter](#) to Prime Minister Hun Sen expressing concerns and listing specific grievances.

The group followed up with a [second letter](#) to the Cambodian government in 2019, adding more brands, including several Fair Wear leaders. Thanks in part to the brands involved, the letter was shared with members of the European Parliament and other European leaders, encouraging a high-level response and highlighting the serious commitment of garment brands to address these human rights issues.

The situation in Cambodia is still precarious. The EU has taken several further steps to promote improved policy by the Cambodian government. In this case, Fair Wear lobbied a production country government both on behalf of, and with, our members. However, member brands can also directly lobby production country governments or collaborate with other brands for greater impact. Fair Wear can help coordinate and facilitate such efforts.

Lobby your local and national government

'Buying' country governments (those countries where products are sold) can play an important role in ensuring that the rights of workers who make products that are imported into their country are respected. Some European countries have already implemented national laws regarding some of these principles, including the French Duty of Vigilance Law and the UK's Modern Slavery Act. Others are moving towards similar laws domestically. An EU Due Diligence Act is also under consideration, which Fair Wear is actively working to strengthen.

These regulations put responsibilities on international brands to ensure certain provisions and monitoring take place in their supply chains. As a member brand of Fair Wear, you are already committing to many of the rights that these regulations aim to support, including freedom of association and collective bargaining. If other brands are also required to abide by these principles in their supply chains, it would create a more level playing field for Fair Wear member brands.

Writing to your local or national governments to confirm your commitment to the Fair Wear Code of Labour Practices standards, including the rights to freedom of association and collective bargaining, reinforces the message that brands and businesses support fit-for-purpose regulation. If you join trade missions with your country delegation, emphasise the importance of freedom of association to your delegate(s) and in your discussions.

Engage consumers

As a member of Fair Wear, you are already showing this commitment to consumers; help educate them on your work even further by sharing your commitment to freedom of association and collective bargaining with them! You can help educate consumers on why these principles are important and how, when workers can exercise these rights, they are more able to negotiate their own improved working conditions, such as higher wages and less over-

time. Social media has proven to be a powerful tool for engaging with consumers and other stakeholders around freedom of association. Consider running a campaign about the principles you commit to: share stories about freedom of association in your supply chain; forward posts about freedom of association from Fair Wear and other leading organisations; and/or hold a live chat with consumers talking about relevant issues. If you are interested in working on joint campaigns with Fair Wear, please reach out to your brand liaison.

Work through your business association

Many garment brands are members of business associations in their home country. These business associations often provide training and support to members and have a mandate to work on behalf of their members. Let your business association know that freedom of association and collective bargaining are important to you. Share your experience working on the topic. Ask them if you can speak at a member event about the importance of the topic. They may be able to arrange training on the topic for other members, thereby helping to spread the understanding of the issues and the actions brands can take.

Business associations also often lobby on behalf of their members to national or international governments. For example, there is a representative business association for each country that is part of the International Organisation of Employers (IOE). This group represents the viewpoint and interest of the businesses in that country at International Labour Organization (ILO) meetings and in decisions. In 2019, the delegates to the ILO, including business associations, voted on the new Convention on Violence and Harassment in the World of Work (C190). Ultimately, most business associations voted in favour of the Convention, which passed. It is certain that having companies lobby their business associations in favour influenced this vote. It is important to speak up and ensure that your point of view and commitment is represented.

Fitting this Action into Your Brand's Due Diligence Work

This Action relates to **Step 3** of the HRDD Cycle, 'Stopping harm, prioritising and implementing programmes.' Joining efforts to change and improve laws in production countries to enhance freedom of association is an effective way to address some of the root causes of harm to workers.

Tools to help you undertake this action

- › see examples of engagement above
- › Reach out to your brand liaison to see how you can become involved with advocating for strong laws at the EU level

Relevant brand performance indicators

- › 5.2 Participation in lobby and advocacy efforts

KEY ACTIONS AT YOUR SUPPLIERS LEVEL

The following steps focus on some of the most important actions you can take within your own supply chain and in partnership with your suppliers to support these rights.

Action 4

Develop contractual agreements with suppliers in which

- 1) your brand commits to orders in the long-term (several years or more) to provide the financial stability/predictability needed for workplace dialogue and freedom of association to thrive;
- 2) suppliers contractually agree to provide all workers stable contracts; and 3) supplier and brand jointly distribute non-interference and non-retaliation letters to the workforce, under-scoring workers' right to organise.



Quid pro Quo – Stable contracts for stable contracts

Calling upon suppliers to clear a space for potential trade union activities can be a difficult pill for suppliers to swallow. Employers often associate trade unions with additional costs due to collective bargaining on wages and/or fear disruptions in production. Most brands are not employers, but you can still communicate your commitment to freedom of association and the right to collective bargaining by linking longer-term production contracts (between you and the supplier) to management's commitments to increase stable contracts for workers and to distribute non-retaliation letters to all workers. The incentive of longer and stable contracts may give suppliers a level of security to in turn offer stable working conditions to workers.

The idea is quite simple: If suppliers commit to taking actions that promote freedom of association (stable contracts and non-retaliation), your brand commits to prioritise that facility for sourcing over successive years.

It is also important that your brand makes explicit that it will accept higher product costs that result from collective bargaining or other trade union action, so management knows they will not lose orders due to these rights being realised. Note: by using [labour minute costing](#) and the [Fair-Price app](#), it is possible to calculate the total product cost of any workplace improvement – wage increases or otherwise. All parties can be assured of higher product costs based on workplace improvement costs.

Why do stable contracts make a difference?

Stable employment is essentially a precondition for workers being able to exercise this right. As mentioned above, workers who do not have contracts or stable employment ([see informal and unregistered work](#)) are unlikely to invest in organising a union when their job is unstable and joining a union risks jeopardising their employment. Fair Wear's code requirement for legal contracts directly supports freedom of association. If workers in your supply chain do not have formal contracts – whether because they are hired as contractors, temp workers, or via agencies or subcontractors – this is one of the first places you need to start your freedom of association efforts.

It is worth noting that suppliers often turn to unregistered, informal, or temporary agency work to spread the risk of short-term, footloose contracts which they have with brands. So, while brands seek to reduce their risk by only committing to suppliers on a short-term basis, the suppliers mimic this behaviour and engage workers in precarious work. As a brand, if you reduce your risk through such practice, be aware that the workers who make your product may very likely be bearing this risk for you via informal and unstable work.

Part of the solution to precarious work lies in your brand finding more creative ways to mitigate risks in your supply chain while engaging in longer-term contracts with suppliers. Fair Wear does not prescribe a set number of years for a brand to commit but rewards relationships of over five years in the brand performance check. FairWear member brands should integrate their commitment to long-term relationships with suppliers into their RBC and sourcing policies.

Non-retaliation letters

Fair Wear recommends that brands work with management at each sourcing location to distribute non-retaliation letters to all workers. These letters commit the supplier to abide by international standards of non-interference in organising and elections and assuring workers that they will not be discriminated against for joining unions. This letter should also be posted publicly in the factory where workers can see it. The brand can underscore this message by helping to subsidise worker training and discussion about the letters (see more about training below).

Such a statement should be clear and simple (see [Tool 3: Sample Non-Retaliation Letter](#)). The statement should include:

- ▶ Commitment to freedom of association for all workers, that is the right of workers to form or join trade unions of their choosing, or other forms of worker representation.
- ▶ Commitment to the process of collective bargaining, that is that management is willing and open to engaging with trade unions in discussing and negotiating the terms of working conditions, including issues such as working hours and wages.
- ▶ That workers or workers' representatives will not in any way be discriminated against or punished for joining or participating in trade union or worker committees or any related activities.
- ▶ The ways in which workers can contact their working representatives and/or details about relevant grievance.
- ▶ Location where workers can find the full company commitment and policy.

▶ Fitting this Action into Your Brand's Due Diligence Work

Step 1: Establish a Responsible Business Conduct Policy. Fair Wear encourages every brand member to include in its RBC policy a commitment to support stable workplace places (i.e. *enabling environments for FoA and CB through*: a) developing lasting and meaningful sourcing relationships; b) ensuring all workers in the supply chain are permanent hires – with suppliers seeking to retain their workers; and c) communicating to all workers in the supply chain their joint commitment with management not to interfere with or retaliate against workers who organise, or seek to join, a union.

Step 2: Scoping and risk assessment. A very concrete and practical way to ascertain your supplier's commitment to FoA is to discuss your brand's desire to periodically distribute non-retaliation letters or other forms of communications to workers. Scoping should also be used to identify suppliers that should make good long-term partners in human rights.

Step 3: Stopping harm, prioritising and implementing programmes. Communicating non-retaliation to workers who join a trade union (or issue a grievance, etc) is a highly effective way to prevent harm and implement priorities.

Tools to help you undertake this action

▶ [Tool 3 – sample non-retaliation letter](#)

Relevant brand performance indicators

- ▶ 2.13 Written contracts with suppliers to support the implementation of Fair Wear's CoLP and HRDD.
- ▶ 3.3 Improvement and prevention programmes include steps to encourage FoA and effective SD.



Action 5

Urgently address violations of freedom of association and collective bargaining (from complaints, audit findings, or other sources), including a strategy for addressing the root cause of violations.

You will almost undoubtedly encounter violations of the rights to freedom of association and collective bargaining in your supply chain – either through complaints, audits, or other due diligence efforts. When violations are found, your brand is responsible for driving a suitable remediation process. As member brands, you should be actively involved in remediation and actively encourage the involvement of worker representation. In some cases, your brand may have a major role to play in the root cause of an identified problem. Fair Wear expects member companies to examine and remediate any problems to which they are contributing.

The immediate remediation of violations is key, but violations of freedom of association are likely to recur if the supplier does not support freedom of association and the right to bargain collectively. Violations of the rights to freedom of association and collective bargaining can be notoriously difficult to find in traditional audits. Similarly, workers might not raise this issue as a complaint (internally or through Fair Wear complaints hotline) if they either do not know about these rights or fear retaliation. This is why it is extremely important to **proactively** promote the understanding and value of these rights (in HRDD language), to 'prevent' violations of freedom of association.



Don't forget the workers

Social dialogue at the factory level is an important and effective tool for remediating labour violations, including those violations related to freedom of association and collective bargaining. When working with your suppliers to support remediation, you should actively encourage the involvement of workers and their representatives in the discussion, solution, and action steps and ask for feedback from those worker representatives periodically. This may be the union representatives or the workers who have been elected to a works council or committee. If there are no worker representatives at the factory to engage in discussion, introducing this role is a clear action your brand, management, and workers can take as part of remediation efforts. Appropriate resolutions can only be found when all parties, especially workers, are involved.

Fitting this Action into Your Brand's Due Diligence Work

Step 3: Stopping harm, prioritising and implementing programmes. As noted above, it is important to both conduct assessments of workers' freedom of association and also proactively support workers' understanding and their capacity to claim these rights.

Step 4: Tracking and validating progress. It is important to track and report on anything you do to support social dialogue. Remember: remediation is not a one-off step. It is a process.

Tools to help you undertake this action

› [Tool 4 – Violations, root causes and examples for brand action.](#)

Although there is no one-size-fits-all solution to these violations of freedom of association and collective bargaining, we have compiled some examples of the most common Fair Wear audit findings and complaints on this topic and provided examples of root causes and brand action. Tool 4 is not exhaustive, but it does sketch some ideas for action that may inspire brands, suppliers and workers as they design solutions suited their particular factory situation. Remember: As a brand, your main responsibility is consider whether your brands' actions may be a root cause, directly or indirectly, of any violation.

› **Relevant brand performance indicators**

- › 2.8 Continuous monitoring includes an assessment of FoA.
- › 3.3 Improvement and prevention programmes include steps to encourage FoA and effective SD.
- › 3.6 Degree of progress towards implementation of improvement programme per relevant factory.

Action 6

Support and finance workplace training for workers and management to build an understanding of their rights and skills to engage in workplace dialogue and collective bargaining. Recognising that women garment workers are under-represented in union structures, extra emphasis should be placed on encouraging and supporting women in this process.



Training and capacity building across the supply chain are important investments that pay off in terms of better responses when problems are found. Building skills for social dialogue also prevents many labour code violations from happening in the first place.

Brands, workers, management, and agents can all benefit from training and capacity building work. In many places, workers are not aware of their fundamental rights at work, and, therefore, do not have the opportunity to exercise those rights. Similarly, factory management cannot support or enforce rights, such as freedom of association and collective bargaining, if they do not know or understand their value in the first place or start with a biased opinion. If management has a clear policy in place allowing freedom of association, yet workers are not taking the opportunity to seek collective representation, this could be an indication that training is needed. Lack of organising may mean that workers are choosing not to exercise the right, but it could also mean that they simply do not know about it or feel afraid of attempting to exercise it.

Once these rights are known, workers and management may require training to learn how to systematically implement these rights, including developing internal systems for social dialogue and complaints handling, learning communication skills, understanding business processes, etc. It is important to ensure that women workers are adequately represented, and training is designed using a gender lens.

Training needs to begin at the top. No progress can be made unless management is first convinced that such a change will benefit the company in the long term. Fortunately, there is significant evidence about the performance benefits of freedom of association and social dialogue across the sector, and brands are in a good position to introduce factory managers and owners to that information to help induce a change in mindset around this issue.

Once factory management buys-in, front-line managers and supervisors also need exposure to new techniques of people-management. Supervisors are so often the least-considered element in creating genuine workplace change. Usually elevated directly from the ranks of line-workers on the basis of good performance, they do not necessarily bring with them ready-honed skills for managing their fellow workers. Therefore, a solid grounding in how to engage in a process of dialogue with workers and their representatives on a daily basis can reap dividends. It is not unusual for a language barrier to exist between management, supervisors, and workers. In this case, a neutral interpreter may be needed for the training and to support subsequent dialogues.

Training should also include the company's worker representatives to build professional skills in investigating workplace issues, gathering evidence, presenting a reasoned and clear case for a desired course of action, and, most importantly, for being accountable to the shop floor constituents who elected them to explain the results of discussion and negotiation.

From 2023, Fair Wear will ask members to gradually conduct 'onboarding' training at each of their suppliers, with the aim of raising awareness of workers' rights, grievance mechanisms and social dialogue. Brands will be able to request Fair Wear's new onboarding training for suppliers, which will replace the WEP Basic (the latter will be phased out in 2023).

Fair Wear also expects member brands to support suppliers in building capacity to engage in social dialogue – both among managers and worker representatives. To support this, Fair Wear conducted research and developed parameters for what an impactful social dialogue training at the factory level should include. The ‘Parameters’ document aims to help brands select qualified training partners to develop and deliver training on social dialogue where they work.

Training is a process, not an event

Training should not be thought of as a one-time event that will automatically lead to change. Following any training or capacity building programme, your brand should work with their supplier to create a plan to ensure ongoing follow up and supplementary training. For example, if only 10% of the workforce were able to participate in training, you and your supplier should work together to determine how to either schedule other training for other workers or have trained workers hold internal training of their own. As part of a good training on social dialogue, there should be multiple follow-up sessions for workers and management to continue their dialogue. Your brand should ask for updates from these meetings (or join when asked) to monitor how the dialogue is progressing and encourage continued relations. The ultimate goal is to have functioning social dialogue structures operating at the supplier, which will most likely involve regular training sessions and ongoing monitoring and support for the process.

Fitting this Action into Your Brand’s Due Diligence Work

Step 2: Conducting a scoping exercise, risk assessment and informing workers and suppliers. Step 2.3 is about ‘Onboarding workers and managers’, and specifically stressing the importance of gender-representative social dialogue with democratically elected worker reps. Onboarding training should ensure that both workers and managers are aware of the rights of FoA and the importance of SD. **Step 3:** Stopping harm, prioritising and imple-

menting programmes. Risk assessments at most garment factories will likely show a risk of FoA violations or a lack of social dialogue. In such cases, integrating trainings into implementation plans is likely advisable.

Tools to help you undertake this action

› [Tool 5: Parameters for Social Dialogue Training](#)

Relevant brand performance indicators

- › 3.3 Improvement and prevention programmes include steps to encourage FoA and effective SD.
- › 3.15 Training appropriate to the improvement or prevention.
- › 3.16 Follow up after a training programme.

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Practical tools for implementing this brand guidance for freedom of association can be accessed in a separate pack, which includes:



Tools for brands

Tool 1 Country information on freedom of association and collective bargaining

Tool 2 Supplier questionnaire

Tool 3 Sample non-retaliation letter

Tool 4 Violations, root causes and examples for brand action

Tool 5 Parameters for impactful workplace social dialogue training

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For more information, please visit www.fairwear.org

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