

U.S. Retailers See Big Risk in Safety Plan for Factories in Bangladesh

Noah Berger for The New York Times

Protesters outside the San Francisco headquarters of Gap on Tuesday.

By [STEVEN GREENHOUSE](#)

Published: May 22, 2013



American retailers remain sharply opposed to joining an international plan to improve safety conditions at garment factories in Bangladesh as their European counterparts and consumer and labor groups dismiss the companies' concerns about legal liability.

A few shareholders at Gap's annual meeting this week questioned the company's refusal to sign on to a plan that commits retailers to help finance safety upgrades in Bangladesh, where 1,127 workers died when the Rana Plaza factory building collapsed on April 24.

"In the United States, there's maybe a bigger legal risk than there is in Europe," Gap's chief executive, Glenn Murphy, responded. "If we were to sign onto something that had unlimited legal liability and risk, I think our shareholders should care about that."

Whether the new accord would subject retailers to substantial legal risks has been debated since nearly three dozen European retailers embraced the plan last week while almost all

major American companies shunned it. The plan, called the Accord on Factory and Building Safety in Bangladesh, was forged by retailers, union leaders and government officials overseas.

Labor advocacy groups and other supporters of the plan pilloried the responses by Gap, Wal-Mart and other American retailers that have decided to rely on their own inspection systems rather than join the plan.

Johan Lubbe, a legal adviser to the National Retail Federation, asserts that the Americans' worries about litigation are legitimate. "The liability issue is of great concern, at least on this side of the Atlantic," Mr. Lubbe said. "For U.S. corporations, there is a fear that someone will try to impose liability and responsibility if something goes awry in the global supply chain."

For example, if a Bangladesh factory burns and workers die, the victims' families, represented by zealous American lawyers, might seize on the legal commitments in the accord to file lawsuits in the United States against retailers that bought apparel from the factory.

John C. Coffee Jr., a professor of corporate law at Columbia University, said American companies generally faced a higher risk of litigation than overseas competitors, largely because the court systems differ significantly. Unlike the system in the United States, courts in Europe generally prohibit class-action lawsuits, do not allow contingency fees for lawyers who win cases and require losing parties to pay legal fees for both sides. Those policies often discourage lawyers and plaintiffs from filing lawsuits.

But Professor Coffee also cited a Supreme Court decision last month that could greatly reduce the ability of overseas factory workers and their families to file lawsuits in United States courts.

"It may be that those retailers who worry about legal liability are pointing to an outdated sense of what liability is for actions taken abroad," Professor Coffee said. He added that if an accident occurred abroad — for instance, at a factory in Bangladesh — "there is an increasing doubt that the American retailer could be sued in the United States," because the Supreme Court ruling, [Kiobel v. Royal Dutch Petroleum](#), went far to curb such lawsuits under the Alien Tort Claims Act.

Long before the Bangladesh safety plan was developed, overseas workers had sued American retailers over illegally low wages, 12-hour shifts and the use of guard dogs and barbed wire fences, said Scott Nova, executive director of the Worker Rights Consortium, a university-backed factory monitoring group. In 2003, Gap, Nordstrom, Target, Wal-Mart and 20 other retailers settled a lawsuit for \$20 million on behalf of 30,000 garment workers on the Pacific island of Saipan who alleged those abuses.

Mr. Lubbe cited a more recent lawsuit as evidence that American retailers still faced risks. Last year, the University of Wisconsin sued Adidas, demanding that it pay \$1.8 million in severance benefits to former workers at an Indonesian factory it used. The factory's owner

had failed to comply with an order to pay those benefits to 2,800 workers who lost their jobs.

Mr. Nova said the University of Wisconsin lawsuit was based on a licensing agreement with more specific obligations than the Bangladesh accord. Adidas had pledged to comply with a labor code of conduct that said it must “ensure that all manufacturers comply” with the code and “provide legally mandated benefits,” such as severance benefits.

Under the international agreement, a great number of Bangladesh’s more than 5,000 apparel factories could be affected. Some workplace experts estimate that fixing safety problems could cost at least \$500,000 on average per factory, meaning that the countrywide price tag could easily exceed \$1 billion over several years. Some note, however, that the expense would be just a fraction of the \$18 billion worth of apparel exported annually by Bangladesh, the second-largest garment exporter after China.

Gap’s spokesman, Bill Chandler, said the accord contained numerous provisions that worried American retailers. He said the plan’s binding, contractual nature could impose large legal obligations that were hard to estimate because of the plan’s ambiguities.

For instance, it does not detail how much the Bangladeshi apparel manufacturer should pay toward needed safety upgrades — perhaps factories lack a fire escape — and how much the Western companies that use those factories should pay. Another ambiguity is how costs for safety improvements will be apportioned among the several Western companies that buy garments from a given factory in Bangladesh.

“The language is vague and unclear and thus there can be too much legal liability for our company in Bangladesh,” Mr. Chandler said. Such statements cause some supporters of the plan to assert that American retailers’ real objection is the price of financing safety improvements.

Paul Lister, director of legal services at Associated British Foods, the parent of Primark, a retailer that has signed the Bangladesh accord, acknowledged that the plan has ambiguities. He said the signatories planned to work with government and labor officials over the next 45 days to decide on the details.

“It’s not a perfect document,” Mr. Lister said. “We’ll deal with the imperfections in the document, and we have to deal urgently with the underlying issue — the moral and ethical issues of fire safety and building integrity in Bangladesh.”

Sounding far different from American retailers, Anna Gedda, manager for social sustainability at H&M, the Swedish company that is the biggest buyer of apparel from Bangladesh, voiced little concern about legal liability.

“The fact that it was a legally binding accord was not a big issue,” she said. “I know it is for American brands but it isn’t for us.” The accord contains a clause that calls for settling disputes through independent arbitrators in an effort to keep disputes out of court.

“This whole fear of lawsuits is a straw man,” said Philip J. Jennings, general secretary of Uni Global Union, a worldwide federation of 20 million retail and service workers, who has negotiated with various retailers to develop the plan and persuaded them to join it. “If these American retailers get 20 lawyers in a room, they start hyperventilating about lawsuits and they’ll have a communal anxiety attack.”

Matthew Shay, president of the National Retail Federation, gave another reason for opposing the Bangladesh plan, saying it “seeks to advance a narrow agenda driven by special interests,” a reference to the labor unions that helped shape the plan and then pressed retailers to sign on.

Jyrki Raina, general secretary of IndustriALL, a union federation with 50 million members from 140 countries, said that European retailers were receptive because they often deal with and negotiate with labor unions.

In rejecting the accord, Wal-Mart outlined its own proposals that it said would meet or exceed the accord’s goals. The company, the world’s largest retailer, predicted quicker results, saying it would inspect all of the 279 factories it uses in Bangladesh over the next six months.

While Wal-Mart, voicing concern about potential liability, said the plan “introduces requirements, including governance and dispute resolution mechanisms, on supply chain matters that are appropriately left to retailers, suppliers and government.”

Representative Sander Levin of Michigan, the senior Democrat on the House Ways and Means Committee, who has urged the Obama administration to do more to improve factory safety in Bangladesh, criticized Wal-Mart’s approach. “It’s been left up to the retailers, suppliers and government all these years, and that hasn’t worked,” he said.