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The Real Issue Is Accountability

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There's no truth to the idea being propagated by US retailers like Gap and Walmart that signing the [Accord on Fire and Building Safety in Bangladesh](#) (the "Bangladesh Accord") might open them up to frivolous lawsuits.

The companies are under tremendous pressure to join the Bangladesh Accord, a comprehensive response to the string of fatal disasters in the Bangladeshi garment industry which has been signed by more than 70 other major retailers.

The Accord, which sets out a regime of independent inspections, public disclosure of the results, mandatory building renovations to eliminate hazards, and union access to factories to educate workers on their rights, is a major step forward for Bangladesh.

Instead, Gap, Walmart and a number of other companies have established a [separate scheme](#) which [lacks the basic provisions](#) that make the Accord such a promising initiative.

Defending their continued failure to join the Accord, Gap and Walmart [have been saying](#) that most of the signatories are European companies, and that the [dispute resolution](#) provisions of the Accord have different implications on this side of the Atlantic.

Saying that the Accord is a European agreement ignores the fact that the very first signatory to the Accord was the massive US firm PVH Corp, and that Abercrombie and Fitch and Loblaw, both of which are headquartered on this side of the pond, have since signed up.

Moreover, European companies like H&M and Inditex (Zara) which have signed the accord have substantial operations in North America where they are direct competitors to retailers like Gap.

Saying that the US firms are special because the Accord might be enforced in court might also come as a surprise to the European companies - including many of the world's largest apparel retailers - since European countries also have functioning legal systems in which the Accord can also be enforced.

But more importantly, their claim runs aground when you actually [read the Accord](#).

There is a binding dispute resolution mechanism in the Accord -- its binding nature is what sets it apart from the mountain of prior failed CSR programs in Bangladesh -- but it's hardly the scary monster Gap and Walmart are projecting.

If a company fails to meet its obligations under the Accord, one of the parties to the agreement -- and only one of the parties to the agreement -- can raise the issue within a steering committee set up to manage the overall program. The steering committee, which includes equal company and trade union representation and is chaired by the International Labour Organization, decides the issue by majority vote and issues an initial decision on the conflict. It's only if the conflict is not resolved at this point that it goes to binding arbitration.

Independent arbitration will be very familiar to US companies. It's a [standard process](#) included in almost every international [business contract](#), specifically to enable disputes to be resolved when there might otherwise be a conflict over which country's legal system should hear a claim. It would be very surprising if Gap entered into *any* international contracts that don't contain binding arbitration clauses.

Once a dispute goes to arbitration, an independent panel -- with one arbitrator chosen by the company, one by the claimant, and one chosen by the first two arbitrators -- hears the dispute and issues a judgment. The process is held under the widely-used UNCITRAL (United Nations) [model rules](#) for commercial arbitration, again a common standard in international business contracts.

If a ruling is issued and the company still does not comply, the only recourse in American (and European) courts would be to ask the court to recognize and enforce the judgement of the arbitral panel. There is no process for the kind of massive civil suits with multi-million dollar jury awards, the spectre of which Gap and Walmart are trying to invoke.

The truth is a lot less dramatic. All that happens is that, under an international convention signed by almost 150 countries (the [New York Convention](#)), a US court is obliged to recognize the arbitral ruling and give it the force of law within the USA. In *exactly* the same way as a court in a European country would give the ruling the force of law in that country.

No big US jury trials, no *Law and Order* moments, none of that.

What the dispute resolution system does do is ensure accountability. It means that Gap can't make big promises while the cameras are on them, and then renege on those promises once the heat is off. It means that Bangladeshi workers can count on this agreement to deliver, [unlike most other voluntary CSR programs](#) that have done precious little to prevent the more than 1700 deaths in disaster after preventable disaster in Bangladesh.

The reason Gap and Walmart have been unwilling to join the Accord has nothing to do with the "different" US legal environment. It has everything to do with avoiding accountability.