Codes•memo

Maquila Solidarity Network

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2003 Year end review: Emerging trends in codes and their implementation

Why a Codes Memo?

This periodic memo is sent in Spanish to groups in Latin America in an effort to share information on developments and resources circulating in English about codes of conduct and monitoring. We also share the English version of the memo with our network. Comments, criticisms and suggestions are always welcome: info@maquilasolidarity.org.

In preparation for our "2003 Year End Review," MSN consulted with a number of key business, labour and NGO leaders and academics about recent developments and trends in voluntary codes of conduct and their implementation.

We asked them to share their views on possible future directions for these emerging non-governmental regulatory systems and possible alternative strategies and methods that might make them more effective tools to improve working conditions and labour practices in global supply chains.

As well, in November 2003, MSN participated in two European conferences, the first entitled "Corporate Social Responsibility and Development: Towards a New Agenda," which was hosted by the UN Research Institute for Social Development (UNRISD) on November 17-18 in Geneva, and the second on "Labour Standards and Human Rights," sponsored by Ethical Corporation in Brussels on November 19-20.

The conferences provided an opportunity to interview a number of activists, academics and company compliance officers. Many of the observations in the review below are taken from those interviews or from conference presentations.

This review also draws heavily upon three recent studies by the World Bank on codes of conduct and challenges inhibiting their effective implementation.

Developments and Trends in 2003

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In our *2002 Year End Review*, MSN examined the limitations and unresolved issues plaguing emerging non-governmental regulatory systems. These included:

- The proliferation of voluntary codes of conduct with varying standards and requirements;
- The poor quality of workplace audits by commercial audit firms;
- The limited capacity of many southern NGOs to play a significant role in labour standards monitoring and verification;
- The lack of transparency in corporate reporting on labour standards performance;

- Inadequate mechanisms for workers and interested third-parties to register complaints when workers' rights are violated; and
- Slow progress in achieving sustainable improvements in working conditions and labour practices.

In 2003, there were a number of positive developments in voluntary code of conduct initiatives, though many of the implementation challenges described in our *2002 Review* continued to plague companies and civil society organizations involved in those initiatives.

Increased Cooperation

- Anecdotal evidence points to increased information sharing and cooperation among some companies using the same suppliers.
- Increased cooperation and discussion of possible collaboration among the major multi-stakeholder initiatives (MSIs) was also an important development.

While the vast majority of companies continue to implement their individual codes primarily through their own separate monitoring programs, anecdotal evidence points to increased information sharing and cooperation among some companies using the same suppliers. These leading companies, most of which are large US or European brand merchandisers or brand-sensitive retailers, are also increasingly willing to engage with NGO critics on how to address reported worker rights violations in specific supply factories.

In 2003, MSN was involved in two international campaigns – Gina Form Bra in Thailand and Tarrant in Mexico – in which major US brand-name companies sourcing from the same suppliers were willing to engage with local and northern NGOs and consult and cooperate with other buyers on how to address specific labour rights violations in shared supply factories.[1]

Interviews with compliance officers of major US brands seem to confirm this positive trend. Lakshmi Bhatia, Global Partnerships Manager for Gap Inc., describes increased collaboration between her company and other brands sourcing from the same factories in India: "We have created a working group in India. Some buyers using the same factories are sharing information on audit findings. We are also trying to develop consistency in our dealings with common suppliers. There are now 15 companies involved, and we are inviting government, inspectors, and suppliers into these discussions."

A recent World Bank study found that a number of buyers have either launched or are interested in launching monitoring "cooperatives." According to the study this is taking place informally as well as through multi-stakeholder initiatives. However, the study also notes that while field staff of the companies "assert frequently and convincingly that buyers in practice are aware of each others' suppliers, many headquarters staff continue to believe that sharing factory information risks the surrender of business sensitive information, and is therefore too risky."[2]

Increased cooperation and discussion of possible collaboration among the major multi-stakeholder initiatives (MSIs) was also an important development in 2003. A series of discussions among the MSIs – Fair Labor Association (FLA), Social Accountability International (SAI), Ethical Trading Initiative (ETI), Fair Wear Foundation (FWF), Clean Clothes Campaign (CCC), and Worker Rights Consortium (WRC) – led to the development of a joint trial project to identify areas of common ground and best practices in the various aspects of code implementation.

Key issues that will be investigated in a joint MSI pilot project in Turkey

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include labour standards provisions, monitoring and external verification, education and training with workers and management personnel, consultation with and involvement of local stakeholders, complaints and remediation mechanisms, and reporting. "We aim to develop common guidelines on different aspects of code implementation," says ETI Executive Director Dan Rees. "If we can do that, I believe the MSIs will be far more influential in the global debate and could help develop stronger international consensus on corporate responsibility in promoting international labour standards."

Slow Growth

● The lack of critical mass remains a central issue for all the multi-stakeholder initiatives.

Despite increased cooperation among the MSIs, an ongoing problem is the relatively small number of companies that have committed themselves to formal membership in one or more of the multi-stakeholder initiatives.

The Fair Labor Association (FLA) includes twelve "Participating Companies," most of which are major brand merchandisers, such as Nike, Reebok, adidas-Soloman, and Liz Claiborne. The involvement of more than 175 US and Canadian universities in the FLA has resulted in the participation of over 1,100 collegiate licensees, but most of these are relatively small companies. In 2003, Levi-Strauss left the FLA and Canadian T-shirt manufacturer Gildan Activewear became an FLA Participating Company. With the possible exception of Gildan, university suppliers and the high-end retailer Nordstrom, the FLA has not yet made major inroads with manufacturers or retailers.

Although SAI is a factory certification initiative, it has created a special Signatory program for companies that commit to seeking SA8000 certification for their wholly owed and/or supply factories, and to reporting on progress. However, as of December 31, 2003, there were only 10 SAI Signatory Companies, two of which were buying agents. As of November 1, 2003, there were 310 SA8000-certified factories around the world, compared to 190 at the end of 2002.

ETI has been more successful than its US counterparts in attracting corporate members. It currently has 35 member companies, most of which are UK-based apparel and food retailers, including Sainsbury, Marks and Spencer, Pentland, Safeway Stores, and Tesco. Levi Strauss is also an ETI member, and in 2003, Gap Inc applied for ETI membership.

Littlewoods' decision to withdraw from the ETI in 2003 was seen as a major loss to the initiative. According to Rees, Littlewoods' abrupt departure from the ETI, which happened shortly after new owners with a different philosophy took over the company, shows the fragility of voluntary initiatives. However, the decision of this

founding member to abandon the ETI didn't dissuade other "high-street" retailers, including WH Smith and Boots, from joining that same year.

ETI's relative success in attracting corporate members might be explained by the fact that ETI is more a learning initiative than a code enforcement body, and is therefore less intrusive in its corporate members operations. According to Rees, ETI is also attractive to companies because it provides a safe space for peer review and engagement with critical NGOs and unions. He also notes that ETI is a multi-sectoral initiative, attracting companies from the food as well as the garment sector.

Meanwhile, less rigorous industry initiatives, such as the Worldwide Responsible Apparel Production Certification Program (WRAP), have continued to monitor and certify thousands of supply factories around the world, with little or no public scrutiny. While WRAP lacks credibility among labour and civil society organizations, it continues to be the program of choice for US apparel manufacturers and discount retail chains, southern garment industry associations, a number of southern governments, as well as the current US administration.[3]

One positive development for the MSIs in 2003 was Gap Inc's decision to apply to join ETI and to become more involved in SAI. According to Sean Ansett, Senior Manager for Global Partnerships for Gap Inc, his company has learned through the process of trying to go it alone on implementing its code how important collaboration among companies and with stakeholders is in achieving effective implementation.

However, the lack of critical mass remains a central issue for all the multi-stakeholder initiatives.

Convergence in Standards

● There is a gradual convergence in code provisions and language among leading companies and multi-stakeholder initiatives on at least the core labour rights conventions of the International Labour Organization (ILO).
● But inconsistent application of code provisions could be a greater source of confusion than inconsistency in the content of standards themselves.

As numerous industry analysts have noted, the proliferation of voluntary codes and monitoring and verification programs has caused considerable confusion and resentment among southern suppliers subjected to multiple audits and demands by competing buyers.

A second World Bank study estimates that approximately 1,000 voluntary codes of conduct, with varying standards and requirements, have been adopted by individual multinational companies, most of which are based in Europe, North America and Australia.[4]

However, the World Bank study also points to a gradual convergence in code provisions and language among leading

companies and multi-stakeholder initiatives on at least the core labour rights conventions of the International Labour Organization (ILO).[5]

Over half the corporate respondents to the second World Bank survey identified ILO core conventions, as well as ISO 14000, as standards that were among the most influential on their companies.[6]

The new collaborative project involving the major MSIs could also result in increased harmonization of standards among those competing initiatives.

"Within the range of the multi-stakeholder codes, a number of them only differ in wording and could be harmonized without losing key elements in each," says Neil Kearney, General Secretary of the International Textile, Garment and Leather Workers' Federation (ITGLWF) and a labour representative on the governing bodies of the Ethical Trading Initiative (ETI) and Social Accountability International (SAI). "The downside of harmonization is if we go for the lowest common denominator or water down the best features of each. Instead, we should combine the strongest elements of each of the MSI codes."

It is worth noting, however, that most respondents to the World Bank study, including some suppliers, saw inconsistent application of code provisions as a greater source of confusion than inconsistency in the content of standards themselves. "In the eyes of participants, code convergence would not in itself guarantee greater uniformity or effectiveness, since implementation practices today vary even among companies using identical codes."[7]

Suppliers also complained of being subjected to up to 30-50 audits per year, sometimes by the same auditing companies on behalf of different buyers, which they claim disrupts production and planning processes. At the same time, some NGOs and buyers view multiple audits as having positive benefits, since they increase pressure on suppliers and add up to better overall monitoring.[8]

Advances in Transparency

● Although the lack of transparency in corporate reporting on social performance remains a major issue in 2003, there were some important advances in transparency.

In June 2003, the Fair Labor Association (FLA) released its long-awaited first annual report. As promised, the report includes tracking charts that provide detailed information on the results of FLA external audits, including name of brand(s) sourcing from the factory, country/region where the facility is located, product and size of facility, name of monitoring organization, code or legal violations, and corrective action taken.[9]

While the tracking charts reveal major inconsistencies in audit practices and findings among different FLA-accredited auditing organizations and

raise serious questions about the quality of the FLA external audits, they also allow for increased public scrutiny of not only labour practices of FLA Participating Companies, but also the practices of the auditing organizations themselves.[10]

In July 2003, Chiquita Brands International released its third corporate responsibility report. While publishing such annual reports is becoming commonplace with major corporations, particularly those associated with well-known brands, the Chiquita report was unusual in the degree of candour and detail in reporting on labour rights issues identified and corrective action commitments made by the company.[11]

According to George Jaksch, Chiquita's Corporate Responsibility and Public Affairs Director, his company's decision to publicly disclose audit reports has had entirely positive results. He notes that civil society and labour participants in a Chiquita's supply chain monitoring project were not required to sign confidentiality agreements.

Meanwhile in Europe, the Swiss monitoring pilot project initiated by the Clean Clothes Campaign (CCC), in collaboration with three Swiss companies, Migros, Switcher and Veillon, issued a detailed report on the process, findings and corrective action taken at two supply factories in China.[12]

In 2003, there was also increased discussion and some action on government policy to require or promote more transparent social and environmental reporting by companies on their global practices.

The Region of Umbria in central Italy has adopted government procurement regulations, giving preference for government contracts to companies operating in the Region that have been certified as being in compliance with the SA8000 Standard. The regional government is creating a dedicated registry of SA8000-certified companies, and those companies will be given priority for tenders for public works or for supplying goods and services as long as they meet cost and quality specifications. Under the law, companies are required to give notice to the Regional Government within ten days of losing SA8000 certification, at which time they will be removed from the registry and no longer enjoy preferential treatment.[13]

In Canada, the federal government responded to a two-year campaign for factory disclosure regulations for the apparel sector by convening a consultative process and a multi-stakeholder roundtable discussion on "Policy Options to Verify Labour Standards in the Apparel Industry." The Ethical Trading Action Group (ETAG), a national coalition of faith, labour and non-governmental organizations, for which MSN acts as the secretariat, presented a five-point proposal that includes a mix of government policies that would require and encourage more transparent reporting on labour practices in global apparel supply chains.[14] However, given the strong resistance of the Canadian industry to mandatory reporting requirements, it is unlikely the Canadian government will move quickly to bring in such regulations.

While a number of European countries have adopted regulations requiring corporate reporting on environmental practices, France is one of the few countries whose corporate reporting requirements include labour practices.

In 2001, the French Parliament approved the Nouvelles Régulation

Économiques (NRE), which requires all nationally listed corporations to report to shareholders and stakeholders on a range of CSR issues, including corporate governance and environmental, community and labour issues. Article 116, paragraph 4, requires annual reporting by firms listed on the French stock exchange on social, labour rights and environmental issues, including compliance with ILO core conventions by subsidiaries and how the firm is encouraging compliance by subcontractors.[15]

Since 2002 is the first year firms were required to report on labour rights compliance and other issues under Article 116, it is still too soon to judge the quality of reporting or how useful the reports will be to consumers, researchers, labour rights and environmental activists or government.

Increased Commitment to Training

● A number of leading companies and multi-stakeholder initiatives put increased emphasis on labour rights training for management personnel and workers

Given the poor quality of audits, particularly by commercial auditing firms, and the difficulties companies are facing in obtaining accurate information on labour practices in supply factories, in 2003, a number of leading companies and multi-stakeholder initiatives put increased emphasis on labour rights training for management personnel and workers with the objective of strengthening the commitment of factory management to code compliance and workers' understanding of their rights.

In Cambodia, Gap Inc supported training on labour rights and codes of conduct for management personnel and workers at five Gap Inc supplier factories. The training was carried out by a local coalition of NGOs and labour organizations, including the Cambodian Labour Organization (CLO), Khemara, and the Cambodian Human Rights Taskforce (CHRTF). According to Gap Inc's Sean Ansett, a public report will be released on completion of the project in March 2004.

In China, Reebok, Nike and adidas have helped facilitate health and safety training by US health and safety experts and Hong Kong-based NGOs for sports shoe workers, supervisors and managers. That training program opened the door to the election of worker representatives to health and safety committees. Reebok has also facilitated worker rights training related to the election of local union leadership at two sports shoe factories in China, and Nike has helped facilitate health and safety training carried out by US health and safety experts and local NGOs for sports shoe workers in Indonesia.

SAI is collaborating with the ITGLWF on a train-the-trainer program with garment sector union leaders in 10 countries in Asia, Latin America and Africa on the use of voluntary standards, such as SA8000, to defend workers' rights. The training workshops are conducted in collaboration with ITGLWF local affiliates in the various countries. In 2003, SAI piloted a training program in Vietnam with a two-part course for workers and managers. It also began developing a worker/manager training program in China, in collaboration with the ITGLWF, the Institute for Contemporary Observation and the Chinese Working Women's Network.

SAI and the ITGLWF are currently working with the Guatemalan Commission for the Verification of Codes of Conduct (COVERCO) to develop a joint pilot project promoting multi-stakeholder dialogue and worker/management training in Guatemala. The pilot will be developed in collaboration with international and local companies, including Gap, Timberland, Development Alternatives Inc, and members of the Guatemalan Apparel and Textile Industry association (VESTEX).

The Swiss CCC pilot project described above also included a labour rights training component for workers in one of the factories prior to the worker interviews and the factory audit.

In 2003, a number of northern and southern NGOs also facilitated training programs and workshops with southern civil society organizations to help increase their capacity to effectively engage with northern-based codes of conduct and monitoring

systems. In December, MSN and the Mexican women's organization MUTUAC co-sponsored a workshop on codes, monitoring and brand campaigns for representatives of women's and worker rights organizations from eight garment-producing centres across Mexico. COVERCO from Guatemala was part of the workshop planning and coordinating team in order to share the Central American experience in code monitoring.

Over the past two years, UK-based Women Working Worldwide (WWW) has carried out a research, education and action project on the rights of workers in garment industry subcontracting chains in Asia and Eastern Europe.[16] The primary objective of the project was to provide information and develop educational resources for use by local unions and other labour organizations to increase workers' awareness of the links between their workplace and overseas retailers and brand merchandisers on the one hand and subcontract facilities on the other.

Meanwhile, the Central American independent monitoring groups – COVERCO (Guatemala), GMIES (El Salvador), EMIH (Honduras), PASE (Nicaragua) – continued to meet on a regional level to share experiences, information and strategies for engaging with companies and MSI's. A number of the Central American monitoring groups are now or will soon be carrying out labour rights training for workers and management personnel as part of training projects initiated by US buyers.

Complaints Processes

● Mechanisms for workers and civil society organizations to register complaints when workers' rights are violated are one of the most underdeveloped aspects of voluntary labour standards initiatives.
● In 2003, there was increased discussion and some limited progress on this issue, particularly with the multi-stakeholder initiatives.[17]

Fair Labor Association[18]

Under the FLA, anyone can file a complaint if they have sufficient evidence that provisions of the FLA code or local labour law are being violated in a factory producing for an FLA Participating Company. Complaints can be filed on a confidential basis. Based on the evidence provided, the FLA Executive Director determines whether the complaint should be accepted.

If the complaint is accepted, the FLA Participating Company is given 45 days to investigate the allegations and report to the Executive Director on its findings and progress in achieving remediation. Based on the company's report, the FLA Executive Director can determine to send in an auditor or audit team to verify the findings and status of remediation.

FLA Participating Companies are also required to provide confidential mechanisms for workers to make complaints to the company.

To date, the FLA has not developed detailed procedures for third-party investigations of complaints. The results of FLA investigative audits are available to the Participating Company and the complainant. Summaries of the reports are included in the tracking charts posted on the FLA website.

In 2003, the FLA helped to mediate a resolution to three disputes concerning workers' right to freedom of association and collective bargaining – at the Jaqalanka garment factory in Sri Lanka, two Choi & Shin garment factories in Guatemala, and the BJ&B cap factory in the Dominican Republic. In the Jaqalanka case, the FLA was responding to a third-party complaint from the Free Trade Zone Workers Union in Sri Lanka; in the BJ&B case, the complaint came from FLA Participating Companies that were sourcing from the factory.

In December 2003, MSN, the Canadian Labour Congress and the Independent Federation of Honduran Workers (FITH) filed a joint complaint with the FLA, alleging that Canadian T-shirt manufacturer Gildan Activewear had violated workers' right to freedom of association at the company's El Progreso factory in Honduras, and that there has been a systematic pattern of violations of freedom of association at the factory over at least the past two years.

MSN proposed to the FLA that since Gildan is the owner of the Progreso factory and factory management is directly responsible to Gildan, the company should not require 45 days to investigate the situation and should cooperate with an FLA investigative audit at the earliest possible date.

However, the FLA determined that while Gildan could voluntarily cooperate with an earlier FLA audit, it could not be required to do any more than any other FLA Participating Company.

Social Accountability International

As with the FLA, anyone can make a complaint alleging non-compliance with SAI's SA8000 Standard or local labour laws in a SA8000-certified facility. A complaint must be in writing and include "objective evidence" of noncompliance. It can be submitted directly to SAI Executive Director or to the SA8000-accredited auditing organization that certified the facility. Complaints can be filed on a confidential basis.

SAI requires SA8000-certified factories to have internal mechanisms for workers to file anonymous complaints with the employer.

While SAI did not receive any new complaints in 2003, it continued to deal with two outstanding cases. In the more contentious of the two cases, an NGO filed a complaint in December 2001 with both the SAI and the certification body, SGS, alleging that a SA8000-certified factory in Indonesia had improperly fired workers involved in union organizing, and had failed to reinstate those workers. SGS reported to SAI that the factory was in compliance with the SA8000 Standard.

In March 2002, SAI's auditor reviewed the records of the SGS audit and complaint investigation and found they were inadequate to make a judgement on the case. In April, SAI requested more information of the SGS auditor, who reported that the factory was in compliance with the SA8000

Standard and with local court decisions concerning the reinstatement of the workers.

The complainant has challenged the reliability of Indonesian courts, and SAI is currently investigating the alleged violations of freedom of association.

The case has raised serious concern about whether such a lengthy and complicated process could produce useful and timely outcomes for the workers involved, and serious reservations about the practice of having an auditing organization investigate a factory certification in which it acted as the certifying body.

While full reports from SAI investigations into complaints are not available to the public, progress reports on complaints are available on the SAI website.[19]

Worker Rights Consortium

The WRC is a complaints-based multi-stakeholder initiative that was created by US universities to investigate and remediate instances of non-compliance with their ethical purchasing and/or licensing policies for collegiate apparel and other products.

Workers or interested third parties can register complaints with the WRC Executive Director, who then determines if the compliant merits an investigation based on whether there is reasonable cause to believe the violation(s) occurred and substantial cause to believe the affected workers want and will benefit from a WRC investigation.

If the Executive Director determines that the complaint meets these criteria, the WRC forms an investigative team that includes members of its staff or board as well as members of local

labour or civil society organizations. The WRC does not make use of the services of commercial auditors.

In contrast to the other initiatives, the WRC initiates investigations fairly quickly after receiving complaints, and the full reports from the investigations, including the names of the factories, are posted on the WRC website.

While universities, as institutional buyers, are represented on WRC governance bodies, the WRC has decided not to invite companies to participate on those decision-making bodies. For that reason, access to factories and factory records must be negotiated with brands and/or the supplier at the time of each investigation. As well, the WRC only carries out investigations of factories where collegiate-licensed apparel or other products are manufactured or suspected of being manufactured.

In 2003, the WRC carried out investigations of the Primo garment factory in El Salvador, the PT Dae Joo Leports backpack factory in Indonesia, the PT Kolon Langgeng garment factory in Indonesia, VF India and Rebound garment factories in India, the Tarrant jean factory in Mexico, the PT Kahatex garment factory in Indonesia, and the Confeccciones de Monclova T-shirt factory in Mexico. Reports are not yet available from the latter two investigations. The WRC has also carried out assessments of conditions in four factories in Cambodia, which will be the subject of a forthcoming report on the effectiveness of the ILO monitoring program in that country. To date, the WRC has carried out a total of twelve investigations.[20]

In the Indonesian and Indian cases, the WRC was successful in gaining management and buyer cooperation with the investigations and remedial action. According to WRC Executive Director, Scott Nova, PT Dae Joo Leports has implemented a comprehensive health insurance plan covering approximately 5,000 workers and family members. He notes that there are now democratic unions at both of the Indonesian factories, and workers and management are currently negotiating collective bargaining agreements. According to Nova, there is also a serious remediation process underway at Rebound and VF India.

In the Tarrant investigation in Mexico, management did not provide access to the factory or factory records, but the WRC report, based primarily on worker interviews, was a useful tool in persuading buyers of the seriousness of the labour rights situation at Tarrant. In the Primo case in El Salvador, there was only limited cooperation from factory management, and the buyer, Lands End, has so far been unwilling to cooperate with remediation. However, according to Nova, discussions are now underway with Lands' Ends' parent company, Sears Roebuck, which could lead to a positive resolution to the dispute.

Ethical Trading Initiative

Under the ETI complaints system, only ETI member organizations can register a complaint. To be accepted, the complaint must be in writing and the allegation(s) of noncompliance with the ETI code in a facility supplying an ETI member company must be "specific and serious" or "specific and ongoing." Unlike the other MSIs, under the ETI system, the complaint is directed to the company, rather than to the ETI itself, although the ETI secretariat can become involved if the parties are unable to come to agreement.

As with the FLA, ETI member companies are also expected to provide workers confidential mechanisms to make complaints to the member company.

In 2003, the Central American Women's Network (CAWN), a UK-based member of the ETI, filed a complaint with Levi Strauss about alleged violations of freedom of association at a jean factory in Ajalpan, Mexico owned by the Tarrant Apparel Group.

The complaint resulted in a number of discussions involving Levi's, the CAWN, and the Mexican Worker Support Centre (CAT), which was advising and assisting the Ajalpan Tarrant workers. However, Tarrant refused to cooperate with a proposed audit of its facilities, and Levi's felt compelled to end its relationship with the company.

While the ETI complaints process did not result in remediation of documented worker rights violations, it did assist in gaining specific commitments from Levi's and facilitating dialogue between the CAT and the company.

Engagement with Local Governments

● There is some evidence that many brand merchandisers and some of their suppliers would prefer that local governments consistently enforced labour legislation.

● Local governments will need to see concrete incentives for labour rights enforcement before they will view labour standards compliance as a competitive advantage.

While the strongest pressure on local governments by foreign investors continues to be directed at weakening national labour laws and/or their enforcement, there was some anecdotal evidence in 2003 of a few brand-name buyers encouraging governments to better enforce existing legislation.

In the Tarrant case in Mexico, Levi Strauss was willing to meet with and write to state government officials to urge them to act in accordance with the Federal Labour Law when reviewing an application for an independent union. As well, Gap Inc is initiating a project in Central America that encourages governments to see labour standards compliance as a possible competitive advantage in the post-quota world.

MSIs have also engaged with local governments (FLA in Guatemala and Sri Lanka, SAI in Vietnam, WRC in Mexico) to encourage government action on freedom of association. It is also worth noting that in the Guatemalan case the government threatened to deprive a Korean garment manufacturer of its export license if it failed to resolve a two-year-old dispute with unions in its twin factories. However, this unprecedented action by the Guatemalan government probably had more to do with the

government's fear that the dispute would become an issue in negotiations for a regional free trade agreement with the US than with the intervention of the FLA or companies sourcing from the factory.

There is some evidence that many brand merchandisers and some of their suppliers would prefer that local governments consistently enforced labour legislation. The World Bank study found that 61 percent of companies surveyed say strong laws on CSR help their business, and 65 percent say strong, consistent enforcement helps their business.[21]

At the same time, some respondents to the World Bank survey noted, "As the system currently works, governments may perceive an advantage to lax enforcement because this allows them to attract foreign investment from both companies that do and do not care about these issues; relying on the companies that do care to enforce provisions on their own."[22]

As is the case with suppliers, local governments will need to see concrete incentives for labour rights enforcement before they will view labour standards compliance as a competitive advantage.

On the crucial issue of sustainable incomes, the overwhelming pressure on local governments is to maintain or lower already inadequate minimum wages. Even corporate members of MSIs whose codes of conduct require payment of a living wage by local standards seldom, if ever, call upon governments to raise the minimum wage to a level that meets basic needs. As a result, even progressive governments feel compelled to keep the minimum wage below poverty levels.

One exception to this general rule is the support some ETI member companies gave to a campaign lobbying the UK government for changes in the national minimum wage law to provide full coverage to homeworkers. According to the ETI's Dan Rees, the willingness of ETI-member companies to work together with unions and NGOs in lobbying the government for improved minimum wage legislation contributed real added value to the campaign.

Rees also pointed approvingly to the direct involvement of the South African government in the Wine Industry Ethical Trade Association (WIETA), a voluntary multi-stakeholder initiative promoting improved labour practices on farms in that country's wine industry. "We've learned from the WIETA experience how powerful multi-stakeholder initiatives can be when the voluntary initiative complements rather than substitutes for government regulation," says Rees.

International Institutions

● The World Bank is not the only international institution that has entered into the voluntary code debates. In 2003, both the United Nations (UN) and the International Labour Organization (ILO) played a more prominent role on issues concerning corporate social responsibility and voluntary codes of conduct.

As a key actor in the implementation of the US/Cambodia Textile Agreement, the ILO has overseen monitoring of factory compliance with ILO core conventions and provided public reports on progress toward achieving compliance. The Cambodia Textile Agreement provides for increased access to the US market for garments made in Cambodia in exchange for progress in achieving compliance with ILO standards.

In October 2003, the ILO published its "Seventh Synthesis Report on the Working Conditions Situation in Cambodia's Garment Sector."[23] The report provides an overview of the findings of ILO monitoring of the 61 remaining factories in the country's garment sector that had not previously been monitored by the ILO. The US government has decided to partially fund an extension of the project for at least another two years.

For many US NGOs and academics working on trade issues, the Cambodia Textile Agreement has become an important example of an alternative approach to bilateral and regional trade agreements that gives greater prominence to labour rights and transparent reporting.[24]

Some companies are also seeing the advantages of the level playing field created by the inclusion of labour rights in trade agreements. According to Sean Ansett of Gap Inc, his company has seen some improvements in working conditions in its Cambodian supply factories as a result of the Cambodia Textile agreement. He attributes these incremental changes to the ILO's role in this initiative and the fact that the monitoring reports are published.

In 2003, the UN Global Compact continued to be a subject of heated debate among NGOs, if not companies. While some NGOs, including CorpWatch, the Institute for Policy Studies, Third World Network, Focus on the Global South, and the International Baby Food Action Network, continued to dismiss the Global Compact as "bluewash" (using the UN flag to give unwarranted legitimacy to corporations),[25] others, including Amnesty International, Oxfam International, Human Rights Watch, and the Lawyers Committee for Human Rights, continued to support the initiative while voicing criticisms of its lack of accountability or transparent reporting mechanisms.[26]

On August 13, the United Nations (UN) Sub-Commission on the Promotion and Protection of Human Rights approved the draft UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises, which gathers together in one document the relevant international human rights, labour, gender, indigenous, environmental and anti-corruption treaties and standards

applicable to global companies. The draft Norms now go to the UN Human Rights Commission, which will consider them at its upcoming March meeting.

While the Norms are supported by some NGOs involved in the Global Compact, including Amnesty International, the Lawyers Committee, and Human Rights Watch, which call them "a sensible legal framework for business behavior,"[27] they are strongly opposed by two key Global Compact partners, the International Chamber of Commerce (ICC) and the International Organization of Employers. In an obvious reference to the Global Compact, the ICC dismissed the Norms as a "move away from the realm of voluntary initiative... conflicting with the approach of other parts of the UN."[28]

Re-examining First Principles

● Despite these advances in non-governmental regulation and mandatory and voluntary corporate social reporting, there is a growing body of evidence that the current code monitoring and verification model is not resulting in sustainable changes in labour practices and working conditions in global supply chains.

As the World Bank study states, "…[W]hile the present system of implementation has resulted in some improvements, some of them substantial, it possibly has reached its limits, and may not be positioned to bring about further real and sustainable improvements in social and environmental workplace standards in developing countries without meaningful adjustments."[29]

In 2003, leading companies and MSIs were more openly questioning the dominant policing model of non-governmental labour standards enforcement and checklist method of compliance monitoring and verification.

Key questions concerning this top-down enforcement model that were identified in our interviews with company compliance staff of leading apparel brands included:

- Is it sustainable and affordable?
- Does it accurately assess labour practices?
- Does it encourage improvements?
- Where do workers and civil society fit in?

Beyond Audits

- **The quality of workplace audits is a major problem.**

Among the dilemmas facing the companies and MSIs in monitoring and verifying labour standards compliance, Neil Kearney of the ITGLWF identifies quality of workplace audits as a major problem. "The quality of audits is appalling at the moment, and gets worse the further away you get from the multi-stakeholder codes," says Kearney. "There is little understanding of freedom of association or collective bargaining, and auditors are mesmerized by working hours and how to measure a living wage.

"This new social auditing profession needs standards itself, and the ILO should develop such standards," says Kearney. "I'm very pessimistic about the auditing profession; they are letting down the whole process – poor auditing, lack of knowledge of the issues, lack of training, complicity with employers."

Speaking at the the November "Labour Standards and Human Rights" conference in Brussels, Levi's Head of Health and Safety and Code of Conduct Department, Patrick Neyts, noted that one of the inherent flaws of checklist compliance model is that it doesn't take workers or communities sufficiently into consideration. According to Neyts, a participatory workplace assessment approach that involves affected workers, communities, and local governments has advantages over the conventional policing model. Neyts also noted that the compliance model is extremely expensive.

In the same panel discussion, Mohammad Tamer, a Moroccan supplier for Levi's, noted that factory audits are becoming routine, and that his company needed to hire an internal auditor to organize preparation for audits by buyers. He said bottom-up communication with employees wasn't working.

Stephanie Barrientos and Sally Smith of the Institute of Development Studies, described a participatory workplace assessment project with workers employed at 17 farms in Kenya, South Africa and Zambia. They noted that one farm had 17 codes of conduct it was supposed to comply with.

Workers were interviewed in a focus group discussion format, using participatory tools, rather than through the checklist approach. Of the 269 workers interviewed, only 13 workers had ever heard of codes of conduct. According to Barrientos and Smith, the workers had no involvement in the implementation of codes.

Barrientos noted that while there had been some improvements as a result of codes and monitoring, particularly concerning health and safety, housing, sanitation, employment contracts, and legal benefits, there were continuing problems with discrimination (gender, race, ethnicity), freedom of association, and harassment and abuse.

According to Barrientos, senior management were often unaware of those problems, line management were a block in the communication channel, and workers were afraid to talk about issues with auditors.

While Peter Utting, UNRISD Deputy Director and CSR Research Co-ordinator, is generally sympathetic to the participatory workplace appraisal approach, he notes that experience with participatory rural appraisal, on which it is based, points to potential problems with scaling up the process and the potential for co-optation of the discourse of participation by mainstream institutions. "Key players such as TNCs and commercial auditing firms, as well as multi-stakeholder initiatives that are heavily influenced by business interests, may well resist or dilute any serious application of such methods," he warns.[30]

Barrientos advocates greater worker participation in code implementation and local stakeholder engagement in the monitoring and verification processes. She believes local multi-stakeholder initiatives can achieve more sustainable change than can the checklist audit model, and points to WIETA[31] in South Africa and HEBI[32] in Kenya as two positive examples of independent, multi-stakeholder bodies that give local stakeholders a significant role in designing and overseeing monitoring programs as well as accrediting local monitors.

Barrientos favours some flexibility in addressing labour practices to allow local stakeholders to focus on particular problems of local industries, but warns that this framework approach shouldn't be used as an excuse to avoid addressing, at minimum, ILO Core Conventions.

« the checklist approach to monitoring labour standards compliance puts more attention to the more measurable code provisions, such as those on health and safety, and less attention to rights based issues such as non-discrimination, non-harassment and freedom of association. »

Stephen Ouma, Senior Program Officer with the Kenya Human Rights Commission, who is also involved in HEBI, agrees with Barrientos on the importance of local stakeholder involvement in the design and implementation of codes of conduct. While he agrees that codes should be based on international standards, he believes additional provisions are needed to address "grey areas" that are particular to the local situation, such as recruitment policies for agricultural workers. According to Ouma, groups in Kenya are working to develop a local pool of auditors who have the trust of and experience working with local workers.

Doug Cahn of Reebok describes his company's experience with trying to enforce labour standards compliance in a top-down manner in the following words: "We would demand that problems be fixed and return to the factory and find they weren't fixed. Workers didn't understand their rights and there were no mechanisms in place for workers to communicate with management."

According to Cahn, the checklist approach to monitoring labour standards compliance puts more attention to the more measurable code provisions, such as those on health and safety, and less attention to rights based issues such as non-discrimination, non-harassment and freedom of association.

Cahn points to the need for sustainable compliance, in which there are systems in place to achieve and

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maintain compliance over the long-term. According to Cahn, this is less about policing and more about coaching and training.

Monina Wong of the Hong Kong Christian Industrial Committee (HKCIC) acknowledges that some companies and MSIs are beginning to see beyond the corporate policing model. For a number of years, CIC and other Hong Kong-based NGOs have been highly critical of factory auditing by western-based commercial firms, advocating worker education and empowerment as a more effective and sustainable alternative.

"In the China context, policing by brands and commercial auditors backfires – factory records are falsified and workers are bullied to lie to auditors," says Wong. "Commercial interests always trump CSR."

Wong favours the bottom up approach of some of the multi-stakeholder initiatives in which there is engagement with civil society, worker education and training, worker complaint mechanisms, and NGO and worker participation in monitoring.

Labour Rights Training and Worker Empowerment

● Interviews with company compliance staff and NGO representatives indicate that a number of leading companies and MSIs now see labour rights training as a key element in making labour rights compliance sustainable.

There is a need for worker rights training with both management personnel and workers, says Lakshmi Bhatia, Gap Inc's Global Partnerships Manager. Involving first line supervisors in training programs is key, she notes, but in order to do so, you first have to involve top management. To be successful, training should focus on basic management skills as well as labour rights, she suggests. "Groundwork needs to be done to remove management's fears [about labour rights training]; ample time is needed to get all stakeholders involved and on board."

According to Doug Cahn of Reebok,

his company has a "multi-faceted program to enhance worker representation that includes coaching and training, a worker exchange program and elections."

While the primary objective of labour rights training with workers as part of the Swiss CCC pilot project was seen as facilitating worker empowerment, the Swiss project director also concluded that "worker training will also facilitate more complete fact-finding, because only if workers are better informed can they provide more complete information to interviewers." The report goes on to say, "Empowered workers can lead to better-functioning compliance systems,

because of their increased potential for playing a more meaningful role in such processes as interviews and complaint mechanisms."[33]

Monina Wong of the HKCIC agrees that some companies are now more open to worker rights training, but notes, "The key questions for us are what kind of training, about what, and by whom." She points to the problem of selective engagement – companies cherry picking NGOs based on the NGOs' willingness to adapt to the company's agenda.

She also notes that there is sometimes a penalty for worker empowerment and points to major brands cutting back on production in Indonesia as worker organizing and demands for improvements in wages and working conditions increase.

While some leading companies are giving increased attention to labour rights training, the World Bank study confirms the findings of numerous other studies that most workers remain largely unaware of codes of conduct and of their rights under codes of conduct, local laws or ILO Conventions. And despite the obvious need for increased labour rights training for workers, the majority of trade union respondents to the study were strongly opposed to NGOs playing the role of training workers, even where unions were unable to do the job.[34] The World Bank study also reveals that few suppliers surveyed share the view of buyers and NGOs that their management personnel need capacity building to improve implementation of labour standards.[35]

The Business Case

● A more compelling business case could be made if buyers made stronger concrete commitments to suppliers taking serious steps to achieve and maintain compliance – preference in placing orders, longer term business relationships, and sharing the financial cost involved in upgrading working conditions.

While increased emphasis on labour rights training for both workers and management personnel is certainly welcome, the focus of most companies on training for management personnel appears to be based on a questionable assumption that the main barrier to sustainable compliance is the failure of suppliers and their management personnel to understand the "business case" for labour standards compliance.

The business case argument assumes that improved working conditions and labour practices will automatically result in increased productivity and efficiency, and that buyers will place more orders and develop more long-term relations with suppliers who invest in improved working conditions and respect for workers' rights.

While the World Bank study defined "insufficient understanding of the business case" as one of the three key challenges for voluntary initiatives, it found there were "mixed perceptions of the degree to which the business case exists." As the report notes, "Many

participants, including suppliers, buyers, and NGOs, appear to hold the view that implementation of social and environmental standards in many instances tends to generate costs and provides relatively low return on investment."[36] Suppliers complain of receiving mixed messages from buyers – comply with code of conduct standards, but at the same time, lower prices and speed up delivery time.

The World Bank report goes on to say, "Suppliers in particular did not see a direct link between CSR performance and obtaining or keeping contracts, except in a handful of cases in which buyers were genuinely involved with CSR practices of suppliers."[37]

With the planned final phase out of quotas coming in 2005,[38] Gap Inc.'s Sean Ansett believes garment-producing countries and regions that will lose quota protection will begin to see that labour rights compliance can offer some competitive advantage. He points out that Central America should continue to be competitive on lead times and speed to market, but that labour rights compliance would add to their competitive advantage. He views Cambodia as a positive example of a country positioning itself to survive in the post quota world at least partially based on labour standards compliance.

Whether or not the business case argument has validity, it appears training alone will not convince suppliers that labour standards compliance will result in more orders and an increased return on their investment. A more compelling business case could be made if buyers made stronger concrete commitments to suppliers taking serious steps to achieve and maintain compliance – preference in placing orders, longer term business relationships, and sharing the financial cost involved in upgrading working conditions.

The pricing issue also remains a major barrier to suppliers accepting the business case for labour standards compliance. In our *2002 Year End Review*, we stated, "A key challenge for manufacturers, retails and brands is… how to reconcile contradictory demands being made by different departments of northern companies – that production costs be constantly lowered and the pace of production increased, and that workers' rights be respected and factory conditions improved."

In 2003, an increasing number of major retailers and brands were acknowledging that their purchasing practices undermine efforts to achieve labour standards compliance, however, to date there has not been significant action on this issue.

Civil Society and Worker Involvement

● Active participation of workers and local civil society organizations in code implementation is a key element in achieving and maintaining labour standards compliance.

In addition to labour rights training for workers and management personnel, active participation of workers and local civil society organizations in code implementation is increasing recognized by leading companies and MSIs as a key element in achieving and maintaining labour standards compliance. To date, the involvement of workers and local civil society in code implementation has been given more attention by the multi-stakeholder initiatives in the UK and continental Europe than by their US counterparts.

According to Ineke Zeldenrust of the European secretariat of the Clean Clothes Campaign (CCC), local civil society organizations should have the right to identify the organizations that are best skilled and best suited to work on audits and corrective action. "Currently, groups in producing countries are expected to give all their knowledge and expertise for free."

"To do a quality assessment of labour practices in a workplace you need people with different skills," says Zeldenrust. These include knowledge of health and safety issues, ability to gain the trust of workers, and experience and skills in auditing books and pay slips. "These different skills and experience are not often found in any one organization," she says.

"Quality control and financial auditors should have a limited role in the process."

Zeldenrust, who is also the CCC representative on the Dutch Fair Wear Foundation (FWF), says the FWF supports the building of local partner networks in which stakeholders in the country of manufacturer have a decision-making role in the monitoring process and can advise the FWF on priorities in remediation.

"We need a shift of resources from multinational accounting firms to local civil society networks," says Zeldenrust. "We need to build the capacity of those groups and workers to carry out ongoing monitoring. The aim is to make factory visits by outsiders redundant."

Sean Ansett of Gap Inc agrees with Zeldenrust that sustainable solutions cannot be achieved without dialogue with and involvement of local stakeholders in identifying problems and finding solutions. He points to the importance of local knowledge and the need for capacity building with credible local civil society groups, as well as training with management and workers. Looking to the future, Ansett sees the possibility of involving multi-stakeholder teams in compliance assessment.

The most extensive involvement of local civil society organizations in Gap Inc's monitoring program has been in

Central America, which remains the only garment producing region where there are a significant number of local civil society organizations with experience and expertise in monitoring compliance with codes of conduct and local laws.

In 2003, COVERCO, GMIES and EMI carried out monitoring of Gap supply factories in Guatemala, El Salvador and Honduras. The regional network of independent monitoring groups is currently working to harmonize their monitoring methodologies in order to be able to negotiate on a regional basis with companies about monitoring of their Central American supply factories.

According to Dara O'Rourke, assistant professor at the Department of Environmental Science, Policy and Management at the University of California, Berkeley, worker and civil society involvement in the monitoring and remediation processes are key elements in democratizing nongovernmental regulation.

George Jaksch of Chiquita Brands International sees real advantages for companies in involving labour and civil society organizations in the code monitoring process. Jaksch calls the involvement of two Central American monitoring groups, COVERCO and GMIES, and a Central American labour organization in a Chiquita monitoring project, "very positive," and notes that their participation "elevated quality of the audits." According to Jaksch, COVERCO and GMIES representatives were involved from the start to the finish of the project, even in the presentation of the project report to senior company management.

Jaksch supports the increased allocation of resources for capacity building with local civil society organizations to make use of local skills and local knowledge. "There needs to be a concerted effort and international financing," he says.

Jaksch also supports greater worker involvement in the monitoring process. "Worker empowerment creates a different working environment, one where respect and dialogue are more important," says Jaksch. "Many managers welcome the changed atmosphere of dialogue and trust, and workers who were interviewed noticed that management was more respectful, less authoritarian. Workers had the opportunity to express their aspirations."

Asked about the role of workers in monitoring code compliance, Doug Cahn of Reebok replies, "We can see progress in worker involvement in monitoring systems, but it is at its initial stages. In our experience, monitoring alone is not enough to ensure that workers' rights are respected, particularly in countries with significant compliance problems. The best way to protect workers' rights is to build the capacity of factories to own the process of maintaining good workplace conditions, in consultation with workers. This will be most effective when workers are educated about their rights and the best avenues for protecting them. Monitoring will still be a necessary part of the process, but is not an end in and of itself."

Transparency and Reporting

● The best answer to the quality of audits problem is greater transparency.

According to O'Rourke, the best answer to the quality of audits problem is greater transparency. He views the release of summaries of audit reports by the Fair Labor Association as is good step forward, but favours even greater transparency on the audit process and the release of full audit reports. "We need to know what companies and their auditors are doing, how they are doing it, the length and scope of the audits, and the results," says O'Rourke. "We need to open the hood on monitoring and verification systems."

Zeldenrust argues that there need to be different kinds and levels of reporting for different audiences. "Workers and labour organizations need to receive feedback on the results of audits, not lengthy reports," she says. "The Fair Wear Foundation is looking at the question of whether remediation plans should be required to be posted in the factories. Tracking charts, like those released by the FLA, could go up in the factory, not just on a website for Northern consumers."

Like O'Rourke, Zeldenrust believes information should be available on the code implementation and assessment process, "what is being done, how is it being done, and who is doing it." She emphasizes, however, that the information made public should be accurate and useful. "We need to make sure that the information made public is correct. FLA tracking charts are useful, but we need information made public that is quality information. We shouldn't overwhelm people with information."

According to Neil Kearney of the ITGLWF, there is no justification for withholding information from the public on the results of audits or factory locations. "We don't need disclosure of business contracts, but there is no reason to view factory locations as proprietary information. Disclosure of production sites is essential so that civil society can assess progress in a meaningful way. All information relating to audits should be in the public domain."

To Certify or Not to Certify?

● Certification is often seen as an end in itself.

While Kearney supports factory certification as an incentive for factory owners to achieve and maintain compliance with minimum labour standards, he is concerned that the certification is often seen as an end in itself. "Manufacturers often believe that [factory] certification is the end of the process, but it's only the end of the beginning. They need to maintain these standards. For that reason, we need management systems in place to ensure that standards are maintained."

O'Rourke is more sceptical of the usefulness of factory or brand certifications. "Factory certification puts the burden of payment and remediation on the factory; it is made for corporate buyers, not for consumers," says O'Rourke. "What will change the industry? The threat of consumer action. But factory certifications don't give consumers the information they need to take action." A major problem with brand certification, according to O'Rourke, is the rapid change in factories used by brands.

Sean Ansett of Gap Inc. believes there are advantages to the different approaches to code implementation by the major MSIs. In his view, factory certification by SAI, auditing the auditors by FLA, the space for dialogue created by ETI, and the WRC's strong emphasis on the role of workers in the process can complement one another.

Finding the Right Regulatory Mix

Despite all the current barriers and disincentives to government action on labour standards, most NGO and labour representatives involved in the major multi-stakeholder initiatives see the MSIs as only one of many instruments available to address labour rights violations and promote improved labour practices. They continue to believe that voluntary initiatives are not a substitute for governmental or international regulation.

A key issue under debate at the Geneva UNRISD conference on "Corporate Social Responsibility and Development" was whether or to what degree voluntary labour rights and environmental initiatives crowd out possibilities for government or international regulation.

Some activists and academics in the corporate accountability movement view non-governmental regulation as primarily a negative development, because of its historical association with globalization and neo-liberal ideology. Others see these emerging voluntary systems as a site of

contention between different social and economic forces, and, potentially, useful tools for workers and civil society.

"Nongovernmental regulatory systems are emerging and growing everywhere – diamonds, chocolate, wood products – everything," says O'Rourke. "They are gaining a life of their own; they are not just a temporary phenomenon. The regulatory gap is not currently being filled by government or multilateral institutions; there are few other avenues for action in the next period."

According to O'Rourke, the central choice facing the various players engaged in the development and implementation of voluntary labour and environmental standards initiatives is democratization vs. privatizing of regulation. While the dominant model continues to be self regulation with very limited worker or civil society involvement or public access to information on process or performance, there are countervailing pressures from the corporate accountability movement and even from within the corporate sector itself for more democratic processes.

In his presentation to the Geneva conference, Peter Utting of UNRISD drew a distinction between the corporate accountability movement and the corporate responsibility movement. "Rather than saying companies should assume responsibility for the actions, corporate accountability proposals stress that companies must be held to account," says Utting.

Corporate accountability implies that companies must report to the public not only on the processes they have put in place to monitor compliance with labour standards, but also the findings and corrective action taken. It suggests that workers and interested third parties

should have mechanisms to register complaints when workers' rights are violated and access to the results of the complaints process and information on corrective action taken.

Despite all the current barriers and disincentives to government action on labour standards, most NGO and labour representatives involved in the major multi-stakeholder initiatives see the MSIs as only one of many instruments available to address labour rights violations and promote improved labour practices. They continue to believe that voluntary initiatives are not a substitute for governmental or international regulation.

As Utting noted, "Rather than seeing corporate self-regulation and voluntary approaches as an alternative to governmental and international regulation, the CAM [corporate accountability movement] is calling for a new mix of voluntary and legal approaches." Just as collective bargaining interacts with and is reinforced by labour legislative frameworks and legal processes, non-governmental regulation interacts with and is reinforced by governmental and multi-lateral policies and regulations.

"We need to use all the tools we can," says Zeldenrust, "whether they be government or nongovernmental regulation. The key objective is strengthening worker organization."

"I live in hope that there will be a transition to more government action," says Neil Kearny of the ITGLWF. However, Kearney also notes that if and when the intervention of multi-stakeholder initiatives is effective, "they can sometimes shame governments into action." He points approvingly to the recent Choi & Shin case in Guatemala in which the threatened loss

of an export license was used to pressure the manufacturer to respect freedom of association. "This shows what governments can do when motivated," says Kearney.

"Civil society, manufacturers and buyers are giving contradictory messages to local governments," says Zeldenrust. "MSIs need to jointly convey the same message – that we want local governments to improve and consistently enforce labour legislation."

At the Geneva conference, Deborah Doane of the New Economics Foundation noted that currently there are insufficient incentives for companies to improve their social and environmental practices, and that the business case argument is inadequate. She pointed to the need for mandatory reporting requirements, which she sees as preferable to voluntary reporting.

Interestingly enough, the World Bank report echoes many of the recommendations of civil society participants in and critics of voluntary CSR initiatives. It calls on buyers to "communicate to governments and local business organizations the desire to see social and environmental practices improved," and calls on home governments to "link CSR supply chain performance to public procurement purchasing criteria, export credits (including investment guarantee programs and joint capital for investment projects in developing countries), and by explicitly addressing CSR issues in bilateral development assistance programs."[39]

As some leading companies and MSIs move beyond the "policing model" of enforcing code compliance in their global supply chains toward more bottom-up approaches involving labour rights training, civil society and worker participation in monitoring, and even promotion of worker representation and empowerment, it will be important to remember that top down pressure and public criticism will continue to be needed to ensure that this new language of "participation" is not co-opted and diluted.

As workers consulted for the World Bank study made clear, "top-down pressure [will continue to be] necessary to enable the implementation of worker empowerment."[40] We would add that with the 2005 phase out of quotas rapidly approaching, very tangible incentives and penalties from both governments and buyers will also be needed to convince suppliers that labour rights compliance really is a competitive advantage.

New Resources

Company Codes of Conduct and International Standards: An Analytical Comparison (Part I of II), World Bank, October 2003, 200 pp.

Race to the Top: Attracting and Enabling Global Sustainable Business (Business Survey Report), World Bank, October 2003, 28 pp.

Strengthening Implementation of Corporate Social Responsibility in Global Supply Chains, World Bank, October 2003, 67 pp.

These three complementary reports from the World Bank provide useful statistical information and insights on voluntary codes of conduct and how they might be more effectively implemented.

Company Codes of Conduct and International Standards compares and contrasts the various provisions in company codes of conduct, multi-stakeholder codes and international labour and environmental standards. The study focuses on the apparel, footwear and light manufacturing, agribusiness and tourism sectors. Part II of the study will examine codes in the mining and oil and gas sectors.

Based on interviews with executives of 107 multinational companies in the extractive, manufacturing and agribusiness sectors, *Race to the Top* examines how and to what degree CSR issues influence investment and sourcing decisions, and how governments in Southern countries could create CSR environments that would be attractive to multinationals.

The third, and possibly the most interesting of the three studies, *Strengthening Implementation of Corporate Social Responsibility in Global Supply Chains*, identifies three challenges and barriers to the effective implementation of voluntary codes of conduct, and includes the results of its consultation on how to overcome those barriers with 194 representatives of major buyers, suppliers, and stakeholder groups (NGOs, trade unions, MSIs, international institutions, governments), as well as 199 workers. People interviewed for the study come from China, Honduras, India, Kenya, Europe and the US.

For information on the conclusions of the reports, see the *Year End Review* above.

The reports are available at: www.worldbank.org/privatesector/csr/.

Challenges in China: Experiences from Two CCC Pilot Projects on Monitoring and Verification of Code Compliance, Nina Ascoly and Ineke Zeldenrust, SOMO, October 2003, 38 pp.

The report documents and assesses two Clean Clothes Campaign-initiated pilot projects on monitoring and verification of code compliance in China. It reveals the difficulties in implementing codes of conduct in a country where there are no independent unions and few local NGOs.

In the Swedish pilot, a Hong Kong-based NGO, the Hong Kong Christian

Industrial Committee (HKCIC), carried out off-site interviews with workers prior to an unannounced audit of the factory by a commercial audit firm, Intertek Testing Services (ITS).

While the factory audit confirmed many of the code violations identified during worker interviews, both the project coordinator and the HKCIC questioned the quality of the audit by the commercial firm, suggesting it would not have uncovered many of the violations on its own.

The CCC criticized the ITS audit for failing to check on certain health and safety issues, and claimed the auditors audited against Chinese labour law, rather than the CCC code of conduct. The unannounced audit did, however, uncover double bookkeeping, which is a common problem in export factories in China.

In the Swiss pilot, worker interviews were carried out several weeks before the factory audit by a team that included a university academic, a Chinese network organization and the project director. Two freelance social auditors selected by the project director carried out the unannounced factory audits.

In addition, the Swiss pilot included a training component for workers in one of the two factories. The four-hour participatory training sessions focussed on Chinese labour law, the Swiss company's code of conduct, women's reproductive health and rights, occupational health and safety, and stress management and life planning. In evaluating the project, the need for training of management personnel, as well as workers, was mentioned by the trainers, the auditor and the factory owner.

Key learnings from the two CCC pilot projects include:

- Unannounced factory audits are more likely to reveal workplace realities than those that are announced;
- Worker interviews carried out in safe locations by trusted NGOs are an important information-gathering tool; working on their own, professional auditors often miss important workplace problems and workers' concerns;
- Worker training facilitates more complete fact-finding, and empowered workers can lead to better-functioning compliance systems.

The report is available at: www.cleanclothes.org/codes/03-10-china.htm.

Seventh Synthesis Report on the Working Conditions Situation in Cambodia's Garment Sector, ILO Garment Sector Working Conditions Improvement Project, October 2003.

With the publication of this, the seventh report of the results of ILO monitoring of labour practices in Cambodia's garment industry, all 200 garment factories registered with the project have undergone the first round of ILO factory monitoring visits.

The report, which provides a synthesis of findings of audits of 61 factories employing over 52,000 workers, shows no evidence of forced labour, only two incidents of employment of minors, and two of sexual harassment. The report identifies continuing problems with incorrect payment of wages, involuntary and excessive overtime, and anti-union discrimination in some factories.

The ILO Garment Sector Working Conditions Improvement Project is the result of the US-Cambodia Textile Agreement, which provides improved access to the US market for textile and apparel products made in Cambodia in exchange for industry and government efforts to improve compliance with ILO Core Conventions and national labour law.

Under this unique program, the ILO, in consultation with a Project Advisory Committee made up of representatives of the Cambodia government, manufacturers and trade unions, carries out monitoring of the registered factories and issues periodic public reports on its findings.

The ILO reports are available at: www.ilo.org/public/english/dialogue/ ifpdial/publ/cambodia7.htm.

***Cambodian textile workers face a gloomy future,* Trade Union World Briefing, ICFTU, January 2004, 8 pp.**

In this concise report, the International Confederation of Free Trade Unions (ICFTU) describes the economic and political context that surrounds the ILO Garment Sector Working Conditions Improvement Project described above.

While generally supportive of the project, the ICFTU report points to underlining problems that make it difficult for Cambodian garment workers to make significant advances on wages, working conditions and respect for their rights. These include:
- the legacy of war and terror under the Khmers Rouges;
- lack of access to land or employment in rural areas that drives desperate young people to the cities where the must compete for a limited number of factory jobs;
- few authentic unions that defend workers' interests;
- lack of resources and corruption of government labour inspectors, and;
- gender discrimination and the stigmatization of young women who work in the garment industry.

Although the report praises the work of the ILO inspectors, it calls "astonishing" the ILO Seventh Synthesis Report's claim that there was no evidence of discrimination in the 61 factories recently audited, except for two isolated cases of sexual harassment. It notes that sexual harassment is a taboo subject in Cambodia, and that the recent increase in the number of women on the ILO monitoring team may result in different findings in the future.

The report concludes, …"[I]t is critically important that the ILO inspections are pursued after 2005 when the 'carrot' now offered, increased export quotas, is completely withdrawn."

Sadly, at the time the report was going to press, the ICFTU received word of the assassination of Chea Vichea, a union leader who had been fired for defending garment workers' rights. The report notes that the ICFTU sent a protest letter to the Cambodian authorities and lodged an official complaint with the ILO.

The ICFTU report is available at: www.icftu.org/www/pdf/CambodiaEN.pdf.

Considering Complaint Mechanisms: An Important Tool for Code Monitoring and Verification, Nina Ascoly and Ineke Zeldenrust, SOMO, December 2003, 17 pp.

The paper compares and assesses the strengths and weaknesses of the different mechanisms for workers and interested third parties to register complaints under the major multi-stakeholder code of conduct initiatives – Fair Labor Association, Social Accountability International, Worker Rights Consortium, Ethical Trading Initiative and Fair Wear Foundation.

The authors also provide useful information on how and where to file a complaint under the different initiatives, the criteria for acceptance of complaints, how they are investigated, how corrective action plans are developed if reported violations are verified, and what kind of reports on findings are available and to whom.

The report also raises a number of important questions about this relatively new development in voluntary codes of conduct, such as how accessible complaint mechanisms and reports on findings are to workers, and how effective they are in addressing workplace problems.

The paper is available at: www.cleanclothes.org/ftp/03-12-complaints_paper.pdf.

Working Conditions in Morocco, Campana Ropa Limpia (Spanish Clean Clothes Campaign) in collaboration with Intermon (Oxfam Spain), May 2003, 110 pp.

The study documents the growing importance of Morocco as a source of apparel products for Spanish companies, and examines working conditions in Moroccan garment factories and subcontract facilities producing for the Spanish and European markets.

According to the study, the greatest exploitation of workers takes place in small subcontract factories where national labour law – minimum wage, hours of work limits, social security contributions, statutory holidays – are systematically violated.

The study also looks at the position of women in Morocco's garment industry, the abuse of child labour in smaller factories, and the denial of freedom of association in the industry as a whole.

A summary of the report is available at: www.cleanclothes.org/publications/03-05-morocco.htm.

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Endnotes

[1] In the Gina Form Bra case, the employer was engaged in a campaign to eliminate an already existing union. In response to the campaign, Gap and The Limited agreed to pressure their common supplier to reinstate improperly fired union supporters and to respect the workers' right to be represented by the union of their choice. In the Tarrant case, the employer fired workers attempting to form an independent union. Although Levi's decided to end its relationship with its Tarrant after its supplier refused to cooperate with a factory audit, Levi's was willing to contact other buyers and the Puebla State government about the situation.

[2] *Strengthening Implementation of Corporate Social Responsibility in Global Supply Chains*, World Bank, October 2003, p. 20.

[3] For MSN's assessment of WRAP, see *Codes Memo* #12, November 2002

[4] *Company Codes of Conduct and International Standards: An Analytical Comparison*, World Bank, October 2003, p. 2.

[5] *Strengthening Implementation of Corporate Social Responsibility in Global Supply Chains*, op. cit., p. 18.

[6] *Race to the Top: Attracting and Enabling Global Sustainable Business*, World Bank, October 2003, p. 25.

[7] *Strengthening Implementation of Corporate Social Responsibility in Global Supply Chains*, op. cit., p. 22.

[8] Ibid. p. 19.

[9] To access the tracking charts, visit: www.fairlabor.org/all/transparency/

[10] For an assessment of the FLA's new reporting program, see *Codes Memo* #14, June 2003.

[11] To access the company corporate responsibility reports, visit: www.chiquita.com/

[12] For an analysis of the CCC's Swiss and Swedish pilots in China, see Nina Ascoly and Ineke Zeldenrust, "Challenges in China: Experiences from Two CCC Pilot Projects on Monitoring and Verification of Code Compliance," SOMO, October 2003.

[13] "Italian Region Gives Priority to SA8000-Certified Firms," *Social Accountability International e-Update*, February 2003. http://www.sa-intl.org/AboutSAI/February2003.htm

[14] To access submissions from ETAG and other civil society organizations, companies and industry associations, visit: www.ppforum.com/textile_labelling/submissions_e.htm.

[15] Mary Lou Egan, Fabrice Mauleon, et al, "France's Nouvelles Regulations Economiques: Using Government Mandates for Corporate Reporting to Promote Environmentally Sustainable Economic Development," paper prepared for Research Conference of the Association for Public Policy and Management, Washington DC, November 2003.

[16] *Garment Industry Subcontracting and Workers Rights: Report of Women Working Worldwide action research in Asia and Europe*, WWW, 2003, 256 pp. Visit: http://www.poptel.org.uk/women-ww/subcontracting.html

[17] For a more detailed assessment of the complaints systems of the various MSIs, see Nina Ascoly and Ineke Zeldenrust , "Considering Complaint Mechanisms: An Important Tool for Code Monitoring and Verification," SOMO, December 2003, www.cleanclothes.org/codes/03-12-complaints-report.htm.

[18] For information on the FLA complaints system, visit: www.fairlabor.org/all/complaint/index.html.

[19] To access progress reports, and for information on filing a complaint, visit: www.sa-intl.org/Accreditation/CertificationComplaints/ComplaintIndex.htm.

[20] Full reports from WRC investigations are available at: www.workersrights.org.

[21] *Race to the Top: Attracting and Enabling Global Sustainable Business*, op. cit., p. 4.

[22] *Strengthening Implementation of Corporate Social Responsibility in Global Supply Chains*, op. cit., p. 26.

[23] To access the report, visit: www.ilo.org/public/english/dialogue/ifpdial/publ/cambodia7.htm

[24] See *Codes Memo #15*, September 2003.

[25] For information on the Alliance for a Corporate-Free UN, visit: www.corpwatch.org/campaigns/PCC.jsp?topicid=101

[26] See April 7, 2003 letter to Global Compact: http://web.amnesty.org/pages/ec_briefings_global_7April03

[27] http://web.amnesty.org/pages/ec-unnorms-eng

[28] www.lchr.org/workers_rights/wr_other/wr_ft_article.htm

[29] *Strengthening Implementation of Corporate Social Responsibility in Global Supply Chains*, op. cit., p. 16.

[30] Utting, Peter, "Regulating Business via Multi-stakeholder Initiatives: A Preliminary Assessment," *Voluntary Approaches to Corporate Responsibility*, NGLS Development Dossier, NGLS/UNRISD, 2002, p. 106.

[31] The Wine Industry Ethical Trade Association (WIETA) is a South African multi-stakeholder code implementation initiative that arose out of an Ethical Trading Initiative (ETI) pilot project. For more information, visit: http://www.wosa.co.za/wieta.asp.

[32] The Horticulture Ethical Business Initiative (HEBI) is a Kenyan code implementation initiative that arose out of a complaint to the ETI. HEBI is an NGO/company initiative that does not currently include labour organizations from Kenya or the UK.

[33] Nina Ascoly and Ineke Zeldenrust , "Considering Complaint Mechanisms: An Important Tool for Code Monitoring and Verification," op. cit., p. 21.

[34] *Strengthening Implementation of Corporate Social Responsibility in Global Supply Chains*, op. cit., p. 26.

[35] Ibid. p. 25.

[36] Ibid. p. 17

[37] Ibid. p. 27.

[38] In 2005, all garment and textile quotas that currently limit the number of specific products imported from a developing country to a developed country will to be phased out under the WTO's Agreement on Textiles and Apparel (ATC). Most industry analysts anticipate that after 2005 much investment in garment and textile production will shift to fewer developing countries, such as China and India, and that competition among countries for investment and orders will intensify.

[39] *Strengthening Implementation of Corporate Social Responsibility in Global Supply Chains*, op. cit., pp 53-55.

[40] Ibid. p. 3.