

# Maquila Solidarity Network

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- A. CSR Reports: Ratcheting Up Transparency Standards? ..... 1
- B. MFA Forum Promotes Joint Action in Bangladesh..... 10
- C. BSCI: Are European Retailers on the Right Track? ..... 16
- D. Code Updates ..... 21
  - Jo-In Approves Common Code ..... 21
  - ISO to Develop SR Standard ..... 22
  - FLA Accredits Brands..... 22
  - SAI Expands Training in China ..... 23
  - WRC Speaks Out on MFA..... 23
  - German Retailer Joins FWF ..... 24
  - ETI Gives Guidance on FoA..... 24
- E. New Resources ..... 24
  - Monitoring Sweatshops: Workers, Consumers and the Global Apparel Industry ..... 24
  - Globalization and Cross-Border Labor Solidarity in the Americas ..... 25
  - Gender and Labour Codes in Export Value Chains ..... 26
  - A Global Alliance Against Forced Labour ..... 26
  - Easy to Manage: A Report on Chinese Toy Workers ..... 27
  - Quick fix or lasting solution? Dealing responsibly with typical non-compliance ..... 28

## A. CSR Reports: Ratcheting Up Transparency Standards?

In May 2004, Gap Inc. released its first corporate social responsibility report. The report for calendar year 2003 received surprisingly positive reviews from many of the company’s long-term critics, largely because of its admission that worker rights abuses were a persistent problem in Gap’s global supply chain.

In Codes Memo #17, we praised Gap for its candour and for raising the bar on transparency for the whole industry. We expressed the hope that the Gap Inc. 2003 Social Responsibility Report would serve as a base line for other companies.

One year later, on April 12, 2005, Nike followed Gap’s lead by releasing its

Corporate Responsibility (CR) [sic] report for fiscal year 2004. On most issues, the Nike report is every bit as candid as the groundbreaking Gap report.

In addition, Nike went one step further than Gap or other major brands by publishing online the names and addresses of all its 700 supply factories

### *Codes Memo*

The **Codes Memo** is published three times a year in Spanish and English by the **Maquila Solidarity Network (MSN)**. The **Memo** examines developments in voluntary codes of conduct, as well as government action on corporate social responsibility and labour rights. We welcome your comments. Write us at: [info@maquilasolidarity.org](mailto:info@maquilasolidarity.org). The **Memo** is available in PDF format at: [www.maquilasolidarity.org](http://www.maquilasolidarity.org).

making Nike branded products around the world.

The International Textile, Garment and Leather Workers' Federation (ITGLWF) praised Nike's decision to publicly disclose its global supply chain, calling it "groundbreaking" and urged other retailers to follow suit. "Now the major challenge for the rest of the industry is to match Nike's courage and make disclosure common practice in the textile, clothing and footwear sectors," said ITGLWF General Secretary Neil Kearney.

Nike's factory list does not currently include facilities making products for the company's other wholly owned brands, such as Converse, Cole Haan, and Bauer Nike Hockey, however Nike says that in 2005 it will be working on "a timetable for addressing CR in all of our brands."

On July 13, 2005, Gap Inc. released its second CSR report, and although Gap did not follow Nike's lead in disclosing supply factory locations, it did take a number of steps forward that once again raise the bar on corporate transparency and accountability.

While we may not yet be witnessing a reversal of the race to the bottom on labour standards, there appears to be a race to the top on corporate transparency.

#### **Will Others Follow Nike's Lead?**

"Disclosure of supply chains is a key to unlocking greater collaboration among brands and to creating the incentives necessary for factories to turn their CR performance into a point of differentiation." says Nike's Corporate Responsibility Report. However, it goes on to say that transparency "can only be a driver of broad societal change if it is adopted by more than a handful of companies."

To date, most major retailers and brands have refused to voluntarily disclose factory locations where their apparel products are made, arguing that this is "proprietary information," and that

releasing this information would allow competitors to gain access to trade and product design secrets.

Companies and industry associations have been equally opposed to proposals for government regulation that would require all apparel companies to disclose factory sites, despite the fact that such regulations would create a level playing field and thus address industry concerns about competitive advantage. In Canada, for instance, the Retail Council of Canada and the Canadian Apparel Federation have strongly opposed a proposal from the Ethical Trading Action Group (ETAG) for federal factory disclosure regulations.

#### **Why Transparency?**

While admitting that Nike's announcement that it was disclosing its global supply chain made some companies nervous, Nike's vice-president

#### **In Memory of Angela Hale**



We were saddened to learn that our friend and colleague Angela Hale, Director of Women Working Worldwide (WWW), died suddenly on Tuesday, September 6. Angela was a dedicated and tireless champion of the rights of women garment workers. She helped build direct links between grass roots women activists in various parts of the world. Her research gave voice to the women who work in the global supply chains. Angela was an inspiration to all of us at MSN. She will be greatly missed.

of compliance, Dusty Kidd, believes that removing the veil of secrecy on production facilities would be good for the industry because it would open up new possibilities for collaboration among companies to improve factory conditions. However, Kidd prefers voluntary disclosure to government regulation.

"We may be competitors in the marketplace, but one place where we can cooperate is on achieving compliance at the factory level," says Kidd.

Asked if his company isn't concerned that disclosing its supply chain will put it at a competitive disadvantage, Kidd answers: "When we brought this proposal to disclose factory locations to the business leaders of the company, they said that the potential gains outweighed any potential loss on competitive advantage."

According to Kidd, the decision to publish supply chain information and a candid CSR report has also had "an incredibly positive impact within the company among Nike's own employees."

Kidd also notes that the publication of its factory list will allow NGOs and labour groups to bring problems to the company's attention when they are identified in Nike supply factories. Asked whether the company has any fears that campaign groups might use the factory list to target the company, he responds that in recent years most campaign groups have focused on resolving workplace problems rather than tarnishing Nike's image.

#### **Will Gap Follow the Leader?**

So, will Gap follow Nike's lead? "We have no current plans to make our factory base public," says Dan Henkle, Vice President of Social Responsibility for Gap Inc. According to Henkle, disclosing factory locations at this time would put Gap at a competitive disadvantage because the company's global supply chain is still very dispersed and there are few factories in which the company has 100% of the production,

"We carry out detailed code compliance and quality checks before entering into a business relationship with a new supplier, which represents a considerable investment on our part," says Henkle. He argues that disclosing factory locations would allow competitors to place orders with the same factories without making a similar investment in compliance.

However, Henkle goes on to say that Gap is at the beginning of a consolidation process that will result in the company having a bigger percentage of the production in fewer factories, which could lessen its concerns about free riders. "As we move to consolidate production, we are looking at ways to be more transparent," says Henkle. He points to countries like Lesotho where Gap is working in partnership with local unions as examples of "bottom up transparency." "In those countries, it is no secret where our production is located," he says.

Despite the reluctance of Gap and other apparel companies to publicly disclose their supply chains, MSN has received unconfirmed reports that at least two other major retailers are preparing to follow Nike's lead. As well, the Spanish retailer Inditex (owner of Zara) recently released its list of the 73 supply factories in Bangladesh to local trade unions, inviting them to work with the company on ensuring labour standards compliance in those facilities.

#### **Progress on Transparency**

Nike's decision to disclose its global supply chain appears to be part of a broader trend among major apparel and sportswear brands to attempt to repair their damaged reputations through candour, transparency and engagement with critics. Significantly, Nike's CR report, which was released on the same day as its factory list, is much more detailed, candid and transparent than any of the company's previous reports or public statements.

Following Gap's lead, the Nike report acknowledges the prevalence of worker rights violations in its global supply chain, as well as in the garment industry in general. Nike's admission of the systemic nature of the problem is, in and of itself, an important step forward for a company previously known for its public relations spin that attempted to minimize the impact of independent reports of worker rights abuses.

According to Henkle, Gap's second CSR report goes further than the first by showing the scope of the company's involvement in social responsibility initiatives worldwide and by introducing the concept that buyer behaviour can have negative or positive impacts on working conditions. "We are looking at ways that buyers can minimize the negative impacts of their decisions at key points in the product pipeline," says Henkle.

It appears that other companies are also feeling increasing pressure to provide more transparent reports on their code compliance efforts. In its CSR report for 2004, which was released in April 2005, the Swedish specialty retailer Hennes & Mauritz (H&M) states, "Some of our stakeholders have clearly indicated that they require more quantitative accounts of our work on improving working conditions at our supply factories."

The H&M report includes a blunt statement from one of the company's stakeholders, the Swedish Fair Trade Centre, suggesting that the report's lack of quantitative information on working conditions makes it difficult to determine whether the company is making progress on labour standards compliance. "The reader will not be able to know if H&M is indeed improving, or if conditions are actually deteriorating," says the Fair Trade Centre statement.

In its report, H&M promises that after improvements are made in the company's internal monitoring program, it should be able to release more performance figures

by 2007. The report also notes that while the company's main focus has been on improving its internal monitoring program, H&M has also been in conversations with the Fair Labor Association (FLA) and the Fair Wear Foundation (FWF) about possible options for external verification.

### **What's in the Reports?**

Not surprisingly, the Nike and Gap reports identify very similar workplace problems that are common throughout the industry: excessive hours of work; failure to pay the legal minimum wage, overtime premiums or statutory benefits; and violations of local labour law. One notable difference in the two reports is that Nike's monitoring teams found more instances of harassment and abuse than did Gap teams.

Both reports note that violations of freedom of association are more widespread than indicated in their statistics, and the Gap report indicates that discrimination is likely also underreported.

"Many of these issues [discrimination and freedom of association violations] come to our attention through third parties, such as trade unions and NGOs, rather than our own monitoring efforts," says the Gap report. The company promises to institute "more targeted training to improve our work in this area in the future," and to "explore ways to integrate trade union and NGO insights more systematically into our monitoring process."

Interestingly enough, the H&M CSR report also acknowledges that the company tends to receive information on human rights violations, particularly those concerning freedom of association, from trade unions rather than directly from factory workers, though it sees an increasing number of human rights violations being reported directly to auditors by factory workers. As a result, the company is placing an increased

emphasis on worker interviews in its monitoring program in the coming year.

The Nike report specifically mentions that freedom of association is prohibited by law in 10-25% of their audited factories, pointing to legal barriers to free association in China and Vietnam where a significant percentage of their products are made.

According to Kidd, lack of respect for freedom of association is not just a problem in China, it is "the biggest single issue in compliance globally." Even in countries where freedom of association is allowed by law, "it is often not honoured or is only honoured in the breach," says Kidd.

According to Henkle, Gap has also identified freedom of association as one of the key issues the company needs to deal with at the global level. "We need to both sensitize vendors to the issue and also improve our capacity to identify abuses," says Henkle.

#### **More Detail Needed**

Both the Nike and Gap reports include a statistical breakdown of areas of noncompliance globally and by geographic region. However, these composite figures make it difficult to determine the actual level of noncompliance by specific country, geographic region, or even globally.

The global statistics are hard to assess because of the wide range of figures used to describe the prevalence of particular code violations. For instance, the Nike report gives the following global figures for Nike audits (factory monitoring by Nike compliance staff) that identified one or more instances of noncompliance:

- Harassment and Abuse: 25-50%
- Hours of Work: 50-100% exceed Nike standard; 25-50% exceed legal limit
- Wages: 25-50% below legal minimum

As well, reporting on monitoring findings by geographic region doesn't

allow for evaluation of progress made at the country or factory level, or to compare noncompliance issues in particular countries. This is particularly the case in the Nike report, which arbitrarily lumps together Europe, the Middle East and Africa as one geographic region.

Reporting on findings and corrective action by factory, or at least by country, would be far more useful than these very broad regional breakdowns, says Maggie Burns, a labour rights consultant and member of the Nike Report Review Committee.

"Reporting by country would enable the labour rights movement to assess how Nike is interpreting and addressing key issues in particular countries," says Burns. "It would also allow the company to engage with local stakeholders on a clear agenda to confront endemic problems in particular countries."

It is worth noting that the Fair Labor Association (FLA), of which Nike is a member, is already disclosing the findings of external audits of Nike and other supply factories, while withholding the names of those factories.

"Now that Nike is publicly disclosing the names and addresses of its supply factories, there is nothing preventing it from connecting the dots to link specific audit findings to specific factories," says Burns. While this level of detail would not need to be published in the company's CSR reports, it could be posted online, linked to the factory names and locations.

Burns points to the fact that the ILO is already publishing factory specific audit findings in one Asian country as part of its Better Factories Cambodia project. "If companies like Nike would publish similar factory-specific reports, it would not only allow ethical consumers and investors to follow the progress of brands in implementing their codes of conduct, but would also act as a major incentive to suppliers to achieve and maintain

compliance with code standards and local laws," says Burns.

According to Kidd, Nike also views the ILO's Cambodia project as a positive example of how transparency can encourage labour standards compliance, noting that his company is only doing business with suppliers in Cambodia that are participating in the program. "Nike is looking at how the same model could be applied elsewhere," he continues, "but for such a program to be successful, there would need to be buy-in from factory management and a level playing field in which a number of buyers are committed to the process."

### Issues in China

According to the Nike report, in fiscal year 2004, 36% of Nike footwear was made in 17 contract factories in China. This does not include Nike's Converse brand running shoes. In addition, Nike apparel and equipment were made in 96 contract factories. With the elimination of the quota system at the end of 2004, production of Nike apparel products in China is likely to increase significantly.

Gap used an even larger number of factories in China, but the percentage of its products made in China appears to be lower than for Nike. In fiscal year 2004, 423 factories in China were approved to produce Gap apparel for some or all of the year. In the same year, Gap used 603 factories in Southeast Asia and 525 in the Indian Sub-Continent.

The Nike report points to the following worker rights issues that are endemic to the Chinese garment and footwear industries: the lack of freedom of association, lack of clarity as to what constitutes the law ("inconsistencies between national and local laws"), the common practice of management falsifying factory records on working hours and wages, and issues specific to the migrant labour system.

The report gives considerable attention to restrictions on freedom of association in China. Lack of worker awareness of basic code of conduct provisions is also identified as a major challenge for the company.

The report also notes that audits carried out by the US non-profit monitoring organization Verité of 142 factories in China producing for a number of companies found that 93% of factories audited employed excessive overtime. (The FLA's Second Annual Report also points to waivers granted by local governments in China allowing excessive working hours as major systemic problem in that country.)

The Gap report reveals that while there were improvements in 51% of its Chinese supply factories since its last CSR report, there was a decline in compliance in slightly over 48% of its production facilities in that country. It attributes the higher incidence of reported worker rights violations to the increased number of joint factory inspections carried out by Gap compliance staff, arguing that the involvement of more staff in monitoring visits allowed the company to uncover more problems. According to the report, the increase in wage and hours of work violations over the previous year was likely the result of labour and power shortages that forced suppliers to demand more overtime work.

The Gap report notes that China had one of the highest rates of local law violations among the countries where the company's products are made. According to the report, in 2004, Gap joined with several other brands in beginning to dialogue with the Chinese government about "opportunities to improve enforcement of China's labour laws at the provincial and local levels."

The Nike report also points to the lack of enforcement of national labour law in China and advocates constructive engagement with Chinese suppliers and

the Chinese government as the best approach to addressing this problem.

According to Kidd, Nike also helped to facilitate the democratic election of worker representatives at two footwear factories in China. His company is hopeful that this experience can be replicated at other factories, but Kidd acknowledges that it is more difficult to achieve in garment factories where there are multiple buyers.

"We have to work within the law, but there is some room in Chinese labour law for forms of democratic worker representation," says Kidd.

### **Monitoring and Verification Process**

The Nike report reveals that the company's compliance staff carry out internal audits of 25-33% of active factories per year. In addition, the Fair Labor Association (FLA), of which Nike is a "Participating Company," carries out external audits of 5% of Nike's active factories per year.

While health and safety issues are most frequently reported in FLA external monitoring of Nike supply factories, the FLA's own Second Annual Report admits that violations of freedom of association, harassment and abuse, discrimination, and wages and benefits provisions are generally underreported in FLA external monitoring because of problems with the quality of the audits. (See Codes Memo #18.)

One surprising overall finding from the Nike report is that FLA external audits find fewer instances of noncompliance that does Nike's internal monitoring program. Since the FLA chooses the factories to be audited based on a risk assessment, one would expect to find more instances of noncompliance rather than fewer.

The Gap report indicates that the company employs 92 compliance staff that carried out 6,750 inspections in 2,672 garment factories (close to 100% of the company's approved supply factories) in 2004.

Gap is also a member of two multi-stakeholder initiatives, Social Accountability International (SAI) and the UK-based Ethical Trading Initiative (ETI). Although neither SAI nor ETI requires Gap to be involved in external audits of its supply factories, the company's fairly recent involvement in the two MSIs has been facilitating collaboration with other companies and labour and nongovernmental organizations on a number of initiatives addressing systemic problems in the industry.

In 2004, Gap also participated in a SAI assessment of its global labour standards compliance program and a Verité assessment of its monitoring program and training needs. Recommendations from the two assessments included the following:

- Conduct longer, but fewer audits at larger facilities;
- Provide formal auditor training for compliance officers and shift, over time, to more diagnostic audits by third-party accredited auditors;
- Provide regular training for suppliers on compliance requirements and human resources management;
- Provide more measures of progress and disclose more numerical performance targets;
- Increase the level of credible information gathered from workers;
- Strengthen the alignment between sourcing and compliance strategies;
- Re-orient field staff and match staff competencies to the remediation function.

According to Henkle, since the SAI assessment, all compliance team members and headquarters staff have taken part in SAI training, focusing on how to identify and address the harder to spot issues, such as discrimination and freedom of association violations, as well as how to assess reports of noncompliance from third parties. He notes that at this year's annual conference, Gap compliance staff

received training on identifying and addressing sexual harassment issues.

### **Beyond Monitoring**

In their respective reports, both Nike and Gap acknowledge the limitations of the current factory audit model in achieving sustainable compliance with codes of conduct or local law, and the need to deal with the “root causes” of noncompliance. The H&M report talks about the need to move from a focus on “what is wrong” to “why things are wrong.”

According to the Gap report, these root causes include:

- The fragmented and highly competitive nature of the industry;
- Brands’ pricing, quality demands and unrealistic order deadlines, and insufficient emphasis on labour standards in sourcing decisions;
- Geographic shifts in production following the expiration of quotas;
- Inadequate or outdated labour laws, insufficient enforcement of those laws, and lack of worker awareness of their rights; and
- Suppliers’ acceptance of unreasonable number of orders, lack of management skills or understanding and/or commitment to labour laws and standards.

In their reports, both Nike and Gap acknowledge that different departments of their companies often make conflicting demands on suppliers, insisting on code compliance while at the same time also pressuring suppliers to make their products faster and cheaper. In order to ensure that labour standards compliance is an element in sourcing and other business decisions, both companies have revised their factory rating systems to include labour standards performance in decision-making.

According to Kidd, Nike has set up an internal taskforce to look at how the company’s supply chain management

practices contribute to excessive overtime. “We are the root cause of many of the problems,” Kidd admits. His company is also looking at management practices within factories in the human resources area that contribute to noncompliance.

In line with the general trend in the industry, both Nike and Gap are putting increased emphasis on training of management personnel and workers in an attempt to increase local ownership of their labour standards compliance programs.

The H&M report also highlights company-sponsored training workshops with factory managers and supervisors, as well as its involvement in a training project for garment workers in Bulgaria and its support for a training project for women workers in Bangladesh.

### **The Living Wage Issue**

According to the Nike report, over the next few years the company will focus on the following priority issues:

- Freedom of Association;
- Harassment and Abuse and grievance procedures;
- Payment of Wages;
- Hours of Work; and
- Environment, safety and health.

In its report, Nike takes another small step forward by acknowledging that wages and working hours are inextricably linked (inadequate wages compel workers to work excessive hours), but the company continues to deny that it has a responsibility to ensure that workers receive wages that meet their basic needs by local standards.

Both the Nike and the Gap reports skirt the living wage issue, focusing instead on increased efficiency and productivity as the solution to the problem of inadequate wages. It appears that neither Nike nor Gap is yet willing to acknowledge that the prices they currently pay to suppliers might be insufficient to provide for wages that meet workers’ basic needs.

According to Kidd, “workers should be paid what they deserve, but the current business model makes it difficult for a single company on its own to ensure that workers receive wages that meet their basic needs.” He argues that higher levels of productivity and a move to lean manufacturing are more viable strategies to improve wages in the short term.

At the same time, Kidd speaks positively about the Jo-In project in Turkey in which the four major multi-stakeholder initiatives, together with the Worker Rights Consortium and Clean Clothes Campaign, have developed a common code of conduct that includes a living wage provision and are testing how such a standard could be implemented in a single country. (See article on page 21)

### **Stakeholder Engagement**

The Nike report refers to recent initiatives in which the company is consulting or engaging with labour and non-governmental organizations, including two in which MSN has participated – the company’s February 2004 Stakeholder Forum, involving representatives of trade union, environmental and labour rights NGOs, investors and suppliers; and the ongoing MFA Forum, examining the impacts of the quota phase-out and promoting multi-stakeholder collaboration to address the negative impacts. Gap is also a founding member and active participant in the MFA Forum. (See article on page 10)

Although Nike has made a number of efforts in recent years to consult and engage with labour and non-governmental organizations, as the Nike Report Review Committee states, “future reports would benefit from coverage of how Nike engages with its keenest critics.”

According to Burns, Nike needs to engage with groups that are playing a leadership role in the international Nike campaign, and especially with those groups that are working at the local level

with workers producing Nike products. “The experience of worker organizations on the ground is that Nike has not been very responsive, particularly on freedom of association violations,” says Burns. “To change that perception, Nike needs to begin to engage directly with those organizations.”

Kidd agrees that his company needs to put a “concerted effort” into engaging with both Northern critics and local stakeholders in garment producing countries.

According to Burns, Gap has gone further than Nike on stakeholder engagement, but Gap too needs to put more emphasis on engaging with local labour and non-governmental organizations.

### **Public Policy**

Both reports indicate that Nike and Gap are under increasing pressure from NGOs and labour organizations to take a more active role in promoting public and trade policies that support improved labour standards. However, neither company has been particularly active in this area to date.

While the Nike report indicates that the company has taken a stand on environmental issues and against discrimination on same-sex benefits, as well as promoting duty-free market access for apparel exports from developing countries, it provides no evidence that the company is actively supporting public policies or trade agreements that require or promote improved labour standards in garment producing countries.

According to Kidd, while Nike does not support restrictions on imports from countries based on their labour standards performance, it would support government policies that offer incentives and rewards to countries that improve labour standards.

### **Conclusion**

Major brand name apparel and sportswear companies that have been the

subject of ongoing criticism for labour rights abuses in their global supply chains are beginning to see the value of candour and transparency in corporate social responsibility reporting. The recent CSR reports of Nike and Gap are good examples of this growing trend. As well, H&M's latest CSR report indicates that other companies in the sector are also under increasing pressure to provide more transparent reports on progress in labour standards compliance.

Nike's decision to publicly disclose its global supply chain is just the latest step in what could become a race to the top on transparency. CSR reporting that links factory locations to audit findings and progress on corrective action is the next logical step. If adopted by a significant number of companies, such transparent reporting would act as an effective incentive to suppliers to achieve and maintain compliance with code of conduct provisions and local labour laws.

In their recent CSR reports, companies like Nike and Gap are not only acknowledging that serious worker rights violations are common in their global supply chains, but are also pointing to the systemic nature of these problems in the industry as a whole. This admission represents another important step forward, since it could encourage companies to collaborate among themselves and with labour and NGO stakeholders to seek industry-wide solutions to the systemic problems that plague the industry.

The serious limitations of the current factory auditing model, which are exposed in these two CSR reports, are forcing companies to seek more effective means to achieve sustainable compliance with their codes of conduct and local laws. These include collaboration among companies and engagement with stakeholders at the international and local levels, participation in multi-stakeholder initiatives, training and capacity building for factory management and workers, and

engagement with government on public policy issues.

Although candour and transparency are important steps forward, they will not, in and of themselves, result in improved working conditions and labour practices unless and until companies begin to seriously confront some of the root causes of the persistent problems highlighted in their CSR reports. Whether companies like Nike, Gap and H&M will make good on their promises to address these root causes is yet to be seen.

*To access the Nike "FY2004 Corporate Responsibility Report" and factory list, visit: [www.nikeresponsibility.com](http://www.nikeresponsibility.com).*

*To access the Gap "2004 Social Responsibility Report," visit: [www.gapinc.com](http://www.gapinc.com).*

*To access the H&M "Corporate Social Responsibility Report 2004," visit: [www.hm.com/ca\\_uk/hm/social/csr\\_rapport.jsp](http://www.hm.com/ca_uk/hm/social/csr_rapport.jsp).*

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## **B. MFA Forum Promotes Joint Action in Bangladesh**

A two-day conference on the future of Bangladesh's textile and garment industry in the wake of the import quota phase-out could open the door to collaborative action for the survival of the industry with improved labour practices.

Co-sponsored by the MFA Forum<sup>1</sup> and the United Nations Development Program (UNDP), the June 27-28 conference in Dhaka, Bangladesh drew together

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<sup>1</sup> The MFA Forum is a multi-stakeholder initiative that brings together retailers and brands, trade unions, NGOs, and national and multi-lateral public institutions to identify and promote collaborative strategies to support vulnerable national garment industries and greater respect for workers' rights during the post-quota transition period. MSN is a member of the MFA Forum Working Group.

approximately 150 representatives of local manufacturers and industry associations, government ministries, national and international trade union and non-governmental organizations, multi-lateral institutions, and major retailers and brands that source from the country.

After two days of discussion and debate, forum participants agreed to establish a national multi-stakeholder steering group to develop a common strategy and mechanism to achieve an ambitious set of objectives that, if implemented, would make Bangladesh's garment and textile industry more globally competitive, safer for workers, and more respectful of workers' rights.

Unfortunately, it took a major tragedy and the needless loss of workers' lives to focus the attention of the industry and government on the need for labour standards compliance as a necessary precondition for the survival of the country's highest export-earning sector.

### **The Spectrum Tragedy**

In the very early morning of April 11, a nine-story building housing the Spectrum Sweater factory in Dhaka, Bangladesh where workers on night shift were producing sweaters for major European retailers collapsed, killing sixty-four workers, injuring dozens of others, and throwing 2,000 workers out of a job. Had the building collapsed during the day shift, hundreds of workers could have been killed.

As Shirin Akhter, president of the Bangladeshi women's group, Karmojibi Nari, points out, this was not a natural disaster; the building collapse was entirely preventable. Despite the building's poorly constructed support columns, the owners had added five additional stories to the original four-story structure in order to accommodate large clothing orders they did not want to refuse.

"Negligence was the cause of the April 11 tragedy," says Akhter. "This was a killing not an accident."

Only hours after the catastrophe, while the search for survivors and the dead under the rubble continued, the Clean Clothes Campaign in Europe released a list of European companies known to have been clients of Spectrum or its owner, Shahriyar. These included Inditex (Zara) of Spain, Karstadt Quelle of Germany, Carrefour of France and Cotton Group of Belgium. With the exception of Carrefour, all are members of the Business Social Compliance Initiative (BSCI). (See article on page 16.)

Local groups in Bangladesh quickly put together a list of specific demands addressed to these same companies, calling on them to accept their joint responsibility for the tragedy, together with the owner of Spectrum/Shahriyar, the local industry association (BGMEA) to which it belonged, and the local authorities.

Immediate concerns focused on the desperate needs of the injured, the unemployed and the families of the dead, as well as the responsibility of government and industry to take action to prevent future disasters.

### **The Broader Problem**

Far from being an isolated incident, the Spectrum case was only the latest in a series of workplace tragedies in Bangladesh's garment export industry, including a number of factory fires, caused by inadequate building facilities, poor health and safety practices, and the failure of the Bangladeshi government to enforce construction and health and safety regulations.

However, the Spectrum incident took on much broader significance because it happened at a crucial moment for the country – the end of the Multi-Fibre Arrangement (MFA) that had spurred the dramatic growth of its garment export industry. At a moment when that industry was particularly vulnerable to the new competitive environment, the Spectrum tragedy exposed the combined

deficiencies of Bangladeshi factory owners, their industry associations, and the local authorities.

Just as important, the tragedy focused international attention on the apparent inability of major retailers to effectively monitor and enforce their code of conduct standards. “Carrefour and Zara had codes of conduct, but that didn’t protect the workers who died in Bangladesh,” read the June 27, 2005 edition of *Fortune Magazine*. In Germany, Karstadt Quelle’s connection to the factory deaths was profiled in a five-page article in *Stern* magazine.

Meanwhile, the Clean Clothes Campaign in Europe and the International Textile, Garment and Leather Workers’ Federation (ITGLWF) were mobilizing their members and constituencies to demand immediate action by the European retailers whose clothes had been made in the Spectrum factory. At the same time, the NGO Caucus of the Ethical Trading Initiative (ETI) in the UK and MSN in Canada were calling on other companies sourcing in Bangladesh to view the tragedy as a serious wake up call about the lack of safe working conditions in the industry as a whole.

In consultation with labour and non-governmental organizations in Bangladesh, these organizations put forward a series of demands that included a full, independent and transparent investigation into the causes of the tragedy, fair compensation for injured and unemployed workers and families of the dead, and that proper mechanisms be put in place throughout the industry to prevent the recurrence of similar tragedies.

### **BSCI Mission**

Under increasing pressure from the CCC and the ITGLWF, on June 5, the BSCI sent a delegation to Bangladesh to investigate the situation. The delegation included representatives of The Cotton Group, Inditex and Kardstadt Quelle, as

well as ITGLWF General Secretary Neil Kearney and Lakshmi Bhatia of Gap Inc., representing the ETI.

Another client of the factory and significant buyer in Bangladesh, the French retailer Carrefour, did not participate to the mission, despite having prided itself in the past on a social audit program in Bangladesh – which had included the audit in 2002 of Spectrum’s owner, Shahriyar Company. Carrefour claimed it had asked a local NGO with which it had worked previously to get involved in emergency assistance to victims, and the company met separately with union representatives in Bangladesh.

According to Kearney, before leaving Bangladesh, the delegation was able to gain agreement on a number of measures to deal with the medium- and long-term impacts of the tragedy, including:

- Establishment of an office on site to facilitate the compilation of a full employee list, details of the dead and missing, and a complete list of the injured and the extent of their injuries;
- Establishment of a trust fund into which European retailers, the factory owner, the BGMEA, and hopefully the Bangladeshi government would be expected to contribute, which would be administered by a joint Spectrum Taskforce and Oversight Committee comprised of the BGMEA and local trade unions;
- An offer by Inditex to secure an independent assessment of appropriate compensation for the victims of the tragedy;
- A demand that all multi-story garment factories be subject to an urgent structural survey; and
- A proposal that a tripartite Economic and Social Development Committee for the Garment and Textile Industries be established to develop and market the industry on the basis of respect for workers’ rights.

According to Kearney, one of the retailers on the delegation – Inditex – announced during a meeting with local unions that it was embarking on a six-month improvement program with its 73 Bangladeshi suppliers, and that all suppliers would be expected to be compliant by the end of the program. Inditex then handed over the names and locations of those suppliers to the unions and invited them to help monitor the progress of the program.

### **What is fair compensation?**

The BSCI delegation's visit to Bangladesh took place almost two months after the tragedy. Yet, at the time of the visit, most survivors of the factory collapse had not yet received back wages owing or their legal severance pay. Compensation, if paid at all, had been delivered very unevenly and at very low level.

While some of the injured had received initial medical care paid by the owner or the BGMEA, others had received inadequate treatment or no treatment at all.

After meeting with some of the former workers, Inditex agreed to pay for the medical costs of the badly injured victims they had met, in addition to their wages for two years.

Under the rare international scrutiny that the case attracted, the question of what constitutes fair compensation could not be swept under the rug. For instance, shortly after the tragedy, the local authorities had lodged claims for compensation for the families of the dead that amounted to only US\$300 per family. The BGMEA's later offered to provide an additional 79,000 Taka (about US\$1,250 per worker).

However, local unions did not believe this was sufficient, arguing that compensation should be based on expected lifetime earnings for the dead and injured workers, plus payments for pain and suffering and full medical care for the injured.

Over the following weeks and months while the international buyers were increasingly eager to settle the case and determine once and for all the amount of their respective contributions, the issue of fair compensation gained increased prominence: how should the adequate level of compensation for the victims be calculated – solely based on the legal requirements in Bangladesh or also on relevant international standards?

### **MFA Forum comes to Bangladesh**

But even as the immediate crises facing Spectrum workers and their families were being addressed, the larger systemic problems of Bangladesh and its garment industry could not be ignored. This is where the MFA Forum attempted to intervene.

At the time of the Spectrum tragedy, the MFA Forum, which had been established in the first quarter of 2004, was examining how to translate its global principles into engagement at a country level in the hope of creating “home-owned” and “home-grown” multi-stakeholder action. Envisioned before the Spectrum factory collapse, but organized in its aftermath, the June 27-28 MFA Forum/UNDP conference in Bangladesh became a moment in which a terrible tragedy forced people to take seriously the need for joint action.

### **UNDP centre stage – International buyers join in**

For months prior to the conference, in collaboration with the Ministry of Commerce of Bangladesh, the UNDP had been working on preparing a comprehensive proposal for the survival of the garment and textile industry in the post-quota world. The project was developed with input from private sector associations, trade unions, service providers, civil society and NGOs. However, the international buyers had not been involved, so the conference was an

opportunity to bring them, as well as other important international actors, to the table.

Among the international buyers that participated in the conference were Gap Inc., Karstadt Quelle, H&M, Levi Strauss, Coop UK (CWS), Nike, Littlewoods, Inditex, Cotton Group, Marks and Spencer, Asda/George (UK supermarket owned by Wal-Mart), and Wal-Mart. Together they represent approximately 90% of the volume of garments exports from Bangladesh. Also attending were the World Bank, the International Textile, Garment and Leather Workers' Federation, Oxfam International, the Ethical Trading Initiative, Social Accountability International, and the Fair Labour Association.

Significantly at least three of the companies present - Karstadt Quelle, Inditex and Cotton Group – had not previously joined the MFA Forum discussions but had come to Bangladesh after being identified as clients of the Spectrum factory.

Among the Spectrum clients, French retailer Carrefour was the only major buyer that did not attend the Bangladesh conference. However, Carrefour did participate in a follow-up meeting in September in London at which retailers and brands sourcing from Bangladesh discussed buyer responsibilities identified at the June conference.

### **Key messages and action plan**

Despite the diversity of actors and interests represented at the conference, by the end of the two days, a surprising level of consensus on the road ahead had been reached among all the stakeholders present.

Key messages coming out of the conference included:

- There was absolute consensus on the need to sustain and grow both the textile and the ready-made garment industries in Bangladesh.

- Compliance with international labour standards and national labour legislation is a key issue, and factories need to address elements such as freedom of association and collective bargaining, employment contracts, living wage, reasonable working hours, weekly holidays and health and safety measures. Such compliance would meet the requirements of most corporate codes of conduct making the industry more attractive to the brands and retailers.
- Buyers (brands and retailers) need to work collaboratively to agree on a common approach both to code content and implementation criteria.
- Buying practices need to be reviewed, again collaboratively, to ensure that a fair price is paid for sourced products and to minimise the detrimental impact on suppliers, specifically from unrealistic delivery schedules.

An important outcome of the conference was the call for the Ministry of Commerce to take the lead in establishing a task force to initiate a tripartite dialogue – with input from other stakeholders – “charged with strengthening the industries, ensuring structurally sound, safe and healthy workplaces as well as rapid social compliance.”

Delegates also called for the establishment, within three months, of a multi-stakeholder steering group representing the government, industry, trade unions, buyers, non-governmental organisations, representatives of the importing governments and the international institutions and donors in order to develop a strategy to implement a series of activities to upgrade the industry and ensure compliance with international labour standards.

In addition, the country's two industry associations, the BGMEA and BKMEA, were asked to prepare a briefing paper on

Bangladesh's labour laws relevant to the industry in conjunction with the government, trade unions and other stakeholders for circulation throughout the industry within the next three months. They were also invited to make compliance with Bangladesh's relevant labour legislation and international labour standards a condition of membership in their associations.

As well, Marks and Spencer offered to prepare a gap analysis of all codes of conduct currently being applied in Bangladesh in order to deal with the confusion and duplication caused by the

competing codes and implementation practices and requirements demanded by different buyers.

Following up immediately on one of the recommendations of the forum, Ministry of Commerce Secretary Siddiquir Rahman Choudury announced that the terms of reference of the Bangladesh Government National Forum on Social Compliance be extended to encompass the issues raised by the Forum and that its membership be expanded to ensure that there is tri-partite dialogue with the support of other stakeholders.

*(continued next page)*

### **Mexico Forum Seeks Common Ground**

On August 18, representatives of Mexican garment manufacturing firms and their industry association, the Mexican government, national and international labour organizations, international brands, social auditing firms, and Mexican labour rights organizations participated in a public forum in Mexico City entitled "What lies ahead for the Mexican garment and textile industry? The impact of end of the MFA on the industry and labour rights."

Co-sponsored by MSN and the Mexican women's organization MUTUAC, the public forum included speakers from the National Chamber of the Garment Industry, the National Union of the Textile and Garment Industry of the Confederation of Mexican Workers (CTM), the Ministry of the Economy, the ITGLWF, the MFA Forum, Nike, Gap Inc., Levi Strauss, the Central American Regional Network for Social Responsibility and Decent Work (IRSTD), and Mexican labour rights expert Arturo Alcalde.

Statements made at the forum included the following:

"The end of the quota system has been marked by factory closures, increased uncertainty, and downward pressure on working conditions, especially for those workers employed in small factories and subcontract facilities."  
*– Milisa Villaescusa, MUTUAC*

"[A]lthough the end of quotas gives us more control over where we do business, we do not intend to put all our production in one place. We believe that we need a diverse sourcing network to mitigate geographic risk, increase speed to market and deliver the wide variety of products we sell. We also continue to encourage garment manufacturers to work with us and others to improve the working conditions in the factories they own, operate or contract with."  
*– Sean Ansett, Gap Inc.*

"For the Mexican textile and garment industry to survive, there needs to be an agreement between business, the workers and the Mexican government on a new set of mechanisms that incorporate their diverse perspectives. We need agreement on standards of corporate social responsibility and an inspection and monitoring system in order to verify its application. The standards should guarantee respect for universally recognized human rights at work. This could give Mexico a competitive advantage in global competition."  
*– Arturo Alcalde, Mexican labour rights expert*

### Opportunities for Change

The process set in motion in Bangladesh in the months that followed the end of the MFA and the Spectrum tragedy has achieved a rare momentum as follow-up initiatives multiplied. However, recent history in Bangladesh has shown that good intentions do not always suffice in the face of bureaucratic stonewalling and vested interests opposed to significant change, especially change that would benefit workers. However, the considerable attention currently focussed on the country's garment industry is certainly a strong indication that a window is opening in Bangladesh and a number of opportunities are there to be seized.

*For more information on the conference and the MFA Forum, visit:  
[www.mfa-forum.net](http://www.mfa-forum.net).*

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## C. BSCI: Are European Retailers on the Right Track?

As the major multi-stakeholder initiatives (MSIs) in the garment and food sectors begin to explore possible convergence on code standards and implementation mechanisms, European retailers are moving ahead with their own collaborative monitoring initiative.

The Business Social Compliance Initiative (BSCI) was officially launched in March 2003 by the Brussels-based Foreign Trade Association (FTA),<sup>2</sup> which acts as the BSCI's secretariat. According to the

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<sup>2</sup> The FTA is a European trade association that advocates on international trade issues on behalf of national retail associations and individual retailers. It is a strong supporter of trade liberalization and a vocal opponent of proposals to the European Union for binding rules on corporate social responsibility. The FTA has also lobbied against country of origin apparel labeling requirements, calling them protectionist and discriminatory.

FTA's 2003/2004 Annual Report, the BSCI is now "the broadest common approach to social standards monitoring that exists in Europe."

### Who's in the BSCI

The BSCI includes some of Europe's largest and most important retailers, such as Migros of Switzerland, Inditex (Zara) of Spain; Karstadt Quelle, Metro Cash and Carry, and the Otto Group of Germany; The Cotton Group of Belgium; and C&A of The Netherlands.

Two European retail associations, AVE of Germany and Textilimportörema of Sweden, are also members. German retailers and AVE play a prominent role in the leadership of the BSCI, and the BSCI's approach to code enforcement is modeled closely on the AVE Sector Model.

Conspicuously absent from the BSCI are major French retailers, such as Carrefour, the world's number two retailer, and Auchan. Both companies are members of the French retailers' association (FCD) and participants in the FCD's Social Clause Initiative.

Although the BSCI is currently a European initiative focusing on the textile, apparel, shoe, toy and electronics sectors, membership is also open to non-European retailers as well as importers and manufacturers. Recently, Canada's Hudson's Bay Company (HBC) became the first non-European member of the initiative. As well, the BSCI plans to expand its scope to include other consumer products sold by these multi-product retailers.

### Why BSCI?

The FTA Annual Report identifies the "need for harmonization and consolidation of individual corporate activities in matters of social standards" as the "motivating force behind the origins of the BSCI in 2002/2003." It notes that BSCI is attractive to retailers and suppliers alike because it means fewer factory audits, lower costs

and benchmarking of audit results. The BSCI has developed a database in which some information on audit findings is available to member companies, but not to stakeholders or the public.

According to Heinz-Dieter Koeppé, former Executive Director of Environmental and Social Policy for Karstadt Quelle and a member of the BSCI Representative Committee, European retailers created the BSCI because no existing system suited their needs. Koeppé regards Social Accountability International (SAI) as a “very good” system, but feels it is “too demanding and expensive” for many suppliers. “The most important reason for creating BSCI was to avoid multiple auditing and because we believe a sectoral approach is the only way to bring about sustainability and rapid change,” says Koeppé.

Fear of government regulation and reluctance to join multi-stakeholder code monitoring initiatives in which unions and NGOs share decision-making power with companies may have also contributed to the FTA’s decision to launch its own initiative, says Ineke Zeldenrust of the European Clean Clothes Campaign (CCC).<sup>3</sup>

Zeldenrust points to the FTA’s strong opposition to proposals for regulatory action on corporate social responsibility, such as the European Commission Green Paper promoting a European Framework for CSR, as a motivating factor for the creation of the BSCI. She also notes that FTA member companies in a number of European countries had previously been approached to join multi-stakeholder initiatives, but had decided instead to form their own industry-controlled, self-regulatory initiative.

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<sup>3</sup> For a more detailed critique of the BSCI by the CCC, see: “The Business Social Compliance Initiative (BSCI): A Critical Perspective,” Jeroen Merk and Ineke Zeldenrust, Clean Clothes Campaign, June 1, 2005, 20 pp., [www.cleanclothes.org/ftp/05-050bsci\\_paper.pdf](http://www.cleanclothes.org/ftp/05-050bsci_paper.pdf).

According to Koeppé, the FTA looked at other options, but found that most initiatives were “either too small or better suited for carrying out pilot projects or dealing with best practice cases.” Continues Koeppé, “as the name – Business Social Compliance Initiative – indicates, we are business driven.”

### Code Standards

Unlike many company or sectoral voluntary codes of conduct, the BSCI Code of Conduct makes explicit reference to ILO Conventions and UN Declarations. It includes provisions on freedom of association, discrimination, compensation, working hours, health and safety, child labour, forced labour, and environmental and safety issues.

On the crucial issue of hours of work, the BSCI Code is more demanding than those of the US apparel manufacturers’ initiative, the Worldwide Responsible Apparel Production (WRAP) factory certification program, or the US multi-stakeholder Fair Labor Association (FLA). The BSCI Code states that “overtime is to be worked solely on a voluntary basis.” It establishes 48 hours as the normal workweek and 12 hours as the maximum allowable overtime per week, and states that employees are entitled to one day off following six consecutive days worked.

Unlike the codes of MSI’s with significant European corporate involvement, such as the Ethical Trading Initiative, Fair Wear Foundation, and Social Accountability International, the BSCI Code does not provide for payment of a living wage, although it does include aspirational language indicating that “companies shall strive to provide employees with adequate compensation” to meet their basic needs.

One key element of the BSCI Code that could cause confusion for auditors, suppliers and workers is the freedom of association provision. While the provision specifically references ILO Conventions 87,

98 and 135 and includes language on the facilitation of parallel means of independent and free organization and bargaining in countries where those rights are restricted by law, it does not explicitly state that the employer must respect workers' right to form or join unions of their choice and to bargain collectively.

### **Voluntary Code Implementation**

While acknowledging that reference to ILO Conventions and UN Declarations is a significant advance for European retailers, Zeldenrust notes that membership in the BSCI does not necessarily mean that companies are always auditing to the BSCI Code.

According to Zeldenrust, a BSCI member company can choose when and if to request BSCI audits of supply factories. "BSCI audits will be carried out only when BSCI member firms or suppliers commission them," says the BSCI System Description. "This is voluntary within voluntary," says Zeldenrust.

According to Koeppe, before a company becomes a regular member of the BSCI, it must make a commitment as to the percentage of current suppliers that will be subject to BSCI audits and in what timeframe. He notes that only the findings of those audits that are done with "BSCI tools" will be included in the BSCI database.

Equally problematic, says Zeldenrust, is the lack of transparency on BSCI audits and their findings. "Under the current system, it is impossible for stakeholders to find out whether and to what extent BSCI member companies are actually participating in BSCI audits, the findings of those audits or corrective action taken," she complains.

Responding to its critics, the BSCI argues that it "provides interested parties with information about who is involved in the system, the criteria and how the BSCI

is implemented."<sup>4</sup> However, it also acknowledges that "[a]udit results are to be made available exclusively to audited suppliers and the related BSCI member firm(s)."<sup>5</sup>

According to Koeppe, the BSCI member that initiates an audit is responsible for sharing the audit results with the supplier and arranging for follow up, and the auditing company is responsible for feeding the data into the BSCI database. That data, continues Koeppe, includes information on the supplier, the member that initiated the audit, the auditing company, the date of the audit, the results, the date of the re-audit, confirmation that compliance has been achieved, and SAI certification, if applicable.

"We include only limited data on the database due to anti-trust law restrictions," says Koeppe. According to Koeppe, the BSCI Advisory Council could get access to specific information on the database in cases in which a request for that information was justified.

As Zeldenrust notes, however, neither audit findings nor corrective action plans are available to interested parties, including the workers whose factory was audited, unless the BSCI chooses to disclose such information on a selective basis.

In contrast, the Fair Labor Association (FLA) discloses the findings of all its external audits, as well as the status of corrective action, though it doesn't name the factories audited. And, while Social Accountability International (SAI) does not publish audit findings, it does publish the names and locations of all SA8000-certified facilities.

### **The SAI Connection**

In its promotional literature, the BSCI boasts that all its audits are carried out by

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<sup>4</sup> FAQ – Frequently Asked Questions, [www.bsci-eu.org/](http://www.bsci-eu.org/).

<sup>5</sup> BSCI System Description, November 2004, [www.bsci-eu.org/](http://www.bsci-eu.org/).

“independent auditing companies” that have been accredited by SAI. However, unlike SAI, the BSCI does not certify factories as being in compliance with SAI’s SA8000 Standard, nor does it make a commitment to the SA8000 Standard a condition of membership. Instead, the BSCI encourages member companies and their suppliers to strive to achieve SA8000 certifications over the longer term. SA8000 certifications, or an equivalent recognized certificate, are regarded as proof of best practice, and suppliers that achieve certification or are in the process of seeking such certification are exempt from further BSCI audits.

Zeldenrust questions whether SAI accreditation is a true measure of an auditing organization’s qualifications or independence. “Commercial social auditing firms, whether or not they are SAI-accredited, are notoriously bad at uncovering worker rights abuses,” says Zeldenrust. “Contracting a commercial auditing firm to do a one- or two-day factory audit is not independent verification.”

While agreeing with Zeldenrust that there are limitations to current factory audits, Koeppé sees them as necessary to raise supplier awareness and initiate discussions with suppliers on needed improvements. “We are aware that audits alone will not bring sufficient sustainable improvements, which is why we see the need for more training with factories at all levels,” says Koeppé.

Rather than certifying factories as being in compliance with either the SA8000 Standard or the BSCI Code, BSCI promotes a process of “qualification” that might include training and “coaching” for suppliers to assist them in achieving compliance with Code requirements. Such training and coaching can be carried out by the BSCI member company itself or by a social compliance auditing firm. The BSCI website includes a list of suggested

“qualifiers” that can assist suppliers in achieving compliance.

### **BSCI Audit Process**

There are two levels of BSCI membership, regular members that actually participate in the BSCI auditing program and associate members that have an interest in the process, but don’t participate in the program.

Suppliers of companies that are regular members of the BSCI are required to sign an agreement to meet the terms of the BSCI Code of Conduct, ensure that subcontractors also comply with the Code, cooperate with external audits, and carry out a self-assessment of its social performance upon the request of the BSCI member company.

A request for a BSCI external audit may be made by either a BSCI member company or the supplier itself. According to Koeppé, every audit includes an assessment of compliance with the minimum standards of the BSCI code and a “gap analysis” for SA8000 certification.

If violations of the BSCI Code are identified, corrective action must be undertaken by the supplier. Corrective action to achieve compliance with the SA8000 Standard is, however, voluntary. “If the supplier has a good performance, we encourage him to seek SA8000 certification,” says Koeppé.

According to the BSCI System Description, corrective action plans are mutually agreed upon by the auditing firm and the audited supplier. It goes on to say, “The timeframe and intensity of corrective actions lies within the BSCI member’s discretion and depends in part on the specific nature of the actions required.”

Zeldenrust questions whether commercial auditing firms are the appropriate bodies to negotiate corrective action plans. “Workers and their organizations need to be directly involved in establishing corrective action plans,” she argues.

According to Koeppe, a re-audit is carried out within one year of the original audit. "Once a year, the database is screened to identify unfinished audits and to ensure they are completed," says Koeppe. The audit process is repeated every three years.

### **Governance and Stakeholder Participation**

The BSCI Members' Board includes all member companies and industry associations, both regular and associate members, and meets at least two times a year to deal with organizational issues. The Board elects a Representative Committee to represent the BSCI at public events and in meetings with government and other institutions. The Representative Committee includes at least three senior members of the Members' Board and one representative of the secretariat.

The BSCI also plans to create an advisory council, which, it claims, will include representatives of trade unions, NGOs, suppliers, import and export business associations, the European Commission, the International Labour Organization, and the UN Global Compact.

To date, very little information has been released on the role and responsibilities of the Advisory Council or the criteria and process for selection of Council members. According to Koeppe, the Advisory Council is still in the process of being formed, and the first meeting with European stakeholders to discuss the Council's role and membership will take place on September 28 in Brussels.

Members of the Advisory Council will be appointed for a two-year term and may be reappointed for two additional terms. In addition to providing the BSCI advice on social standards monitoring issues, the Advisory Council is also supposed to deal with "complaints arising from BSCI auditing activities."

In addition, the BSCI will also convene local round table meetings in producer

countries that "will serve as forums for discussion and the airing of any complaints arising from BSCI monitoring system activities."

When asked about the status of the local BSCI round tables, Koeppe referred to a series of "National Round Tables" that have been taking place in 11 countries under the auspices of AVE, with the support of German Development Cooperation (GTZ) and the German Ministry of Economic Co-operation and Development (BMZ).

These round table meetings have brought together German retailers and local industry associations, government ministries, trade unions and NGOs. According to Koeppe, GTZ's support for the roundtables will continue until the end of 2006, at which time they are planning for local stakeholders to take over responsibility for organizing the roundtables.

While supportive of consultation with local stakeholders, Zeldenrust argues that periodic round table meetings are no substitute for genuine civil society participation in the development and implementation of a compliance verification program. She also questions whether the BSCI will carry through on its promise to create a third party complaint process, similar to those of the multi-stakeholder initiatives, in which worker and interested third parties can file complaints and receive transparent reports on investigative findings and corrective action taken.

According to Koeppe, the BSCI is working on the development of a formal complaint process that will be locally based, but that the details still need to be worked out.

### **Conclusion**

In many respects, the BSCI represents a step forward for large European retailers. It commits member companies to a common code of conduct that is largely based on

ILO Conventions. It also facilitates sharing of information on audit findings among retailers, thereby limiting duplication of factory audits. However, the BSCI is clearly an industry-controlled, self-regulatory initiative, and one that offers little access to information or influence to workers or other stakeholders.

“Convening local roundtables and giving stakeholders an opportunity to raise issues is certainly a good idea,” say Zeldenrust, “but it doesn’t give stakeholders a real say in the design or implementation of the initiative.”

At a moment when leading brands and multi-stakeholder initiatives are increasingly questioning the credibility and effectiveness of the commercial factory auditing model, the BSCI remains highly dependent on that same model to verify code compliance. This dependence on commercial social auditing firms as their primary source of information has already exposed BSCI member companies to unanticipated problems when reports from local labour and nongovernmental organizations conflicted with those of their auditors. (See MFA article on page 10)

While the BSCI’s emphasis on training and capacity building for suppliers to achieve “sustainable compliance” is certainly welcome, there appears to be much less emphasis on training workers about their rights or on including them in the verification or corrective action process.

“They are still missing other important aspects of effective code implementation,” says Zeldenrust. “Worker rights training for workers, involvement of local labour and nongovernmental organizations in the monitoring process, transparent reporting, a credible complaints process for workers and other stakeholders, these are still missing from the BSCI’ self-regulatory approach to labour standards enforcement.”

Although the BSCI has developed a working relationship with Social

Accountability International, in which it encourages suppliers to seek SA8000 certification, it could also learn from the experiences of the other multi-stakeholder initiatives that are less wedded to the commercial auditing model.

Dialogue with the various MSIs involved in the Jo-In project on best practice in code standards and implementation (See article below) could help the BSCI avoid repeating many of the early mistakes of those initiatives.

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## D. Code Updates

### Jo-In Approves Common Code

The Steering Committee of the Joint Initiative on Corporate Accountability and Workers’ Rights (Jo-In) has reached agreement on a common Code of Labour Practice that will be used in the Jo-In pilot project in Turkey to assess best practices in code of conduct implementation. One of the objectives of the initiative is to gain agreement on a Common Code for the apparel industry.

Organizations and multi-stakeholder initiatives (MSIs) involved in the Jo-In project include the Clean Clothes Campaign (CCC), Ethical Trading Initiative (ETI), Fair Labor Association (FLA), Fair Wear Foundation (FWF), Social Accountability International (SAI), and Worker Rights Consortium (WRC). Companies that have signed up for Jo-In include adidas-Salomon, Gap Inc, Gsus, Marks & Spencer, Nike, Otto Versand, Patagonia and Puma.

In early July, companies, NGOs, trade unions, and MSIs involved in Jo-In took part in a two-day meeting in Boston, Massachusetts hosted by the MIT Institute for Work and Employment Relations and entitled “Exploring common approaches to Corporate Accountability and Workers’ Rights.” MSN attended the meeting.

Meeting participants examined the actions companies would need to take to fulfill their commitments to the Common Code. A major focus of the discussion was guidelines for the implementation of three workplace standards that had been identified as priorities – freedom of association and collective bargaining, wages, and hours of work.

Key questions identified at the meeting to be addressed in the pilot project include:

- *Freedom of Association:* How to assess whether or not a factory is engaged in anti-union practices, is not exploiting legal procedures to obstruct freedom of association, and has adopted a “positive approach” toward trade unions? How to assess if a union is a “freely chosen representative?” What tools can be used to promote a positive climate toward freedom of association and constructive labour-management relations?
- *Wages:* What is a living wage for workers in Turkey’s garment sector? How to develop a consistent methodology and approach to calculating a living wage that is gender sensitive and addresses regional differences? What challenge does the living wage standard pose for factories, and what technical assistance can brands, NGOs, unions and MSIs give factories to support their ability to pay a living wage? What commercial strategies would support factories’ ability to pay living wages (e.g. pricing, sourcing, profit-sharing)?
- *Hours of Work:* How to establish whether overtime is voluntary? How to assess the magnitude of excessive overtime in Turkey? What is best practice in remediation of excessive overtime? What is the role of factory management? How can changes in the management of the supply chain

help reduce pressures on factories?  
How can a business case be made to reduce overtime?

The next stage of the Turkey project will be the testing of various strategies and approaches to code implementation in Turkish supply factories producing for the participating companies.

*For further information, visit:  
[www.jo-in.org/index.shtml](http://www.jo-in.org/index.shtml).*

### **ISO to Develop SR Standard**

On March 7-11, the Working Group on Social Responsibility of the International Organization for Standardization (ISO) met in Salvador, Brazil to launch a three-year process to develop a universally applicable Social Responsibility Standard, ISO 26000. The ISO guidance standard on social responsibility is to be published in 2008.

Over 300 delegates attended the meeting, including representatives from 43 countries, 24 organizations with liaison status, and observers from ISO members and international organizations. Delegates came from six designated stakeholder categories: industry, government, labour, consumers, NGOs, and others.

Although ISO 26000 is intended to be a voluntary standard for guidance only and is not meant to be a certification standard, the surprise entry of ISO into an already crowded field of competing initiatives and standards has been highly controversial.

Whether the development of ISO 26000 will contribute to harmonization of social responsibility standards globally and across economic sectors or merely add another competing set of standards to the mix is still unclear. However, whatever the outcome, the process will be important to monitor.

### **FLA Accredits Brands**

On May 12, the Fair Labor Association (FLA) announced that it had accredited the code compliance programs of six of its Participating Companies, including adidas-

Salomon, Eddie Bauer, Liz Claiborne, Nike, Phillips-Van Heusen, and Reebok apparel.

According to the FLA, accreditation means that a Participating Company's workplace labour standards program "is in substantial compliance with the FLA requirements at the completion of the company's initial implementation period." It does not mean that a brand is certified as being "sweatfree".

On July 6, the FLA announced that it had appointed Jorge F. Perez-Lopez as its new Director of Monitoring. Perez-Lopez is the former director of the Office of International Economic Affairs in the Bureau of International Labor Affairs at the US Department of Labor.

The FLA is a US-based multi-stakeholder organization that includes a number of US and European brands, as well as some US and Canadian retailers and manufacturers. The FLA carries out "external monitoring" of five percent of its Participating Companies' supply factories and publishes audit findings and corrective action plans.

### **SAI Expands Training in China**

Social Accountability International (SAI) reports that in April 2005 it expanded its worker/manager training program to a fourth factory in Southern China for a supplier of the US retailer Eileen Fisher.

According to SAI, worker committees have been established through democratic elections in three factories that supply Toys "R" Us and Timberland.

As of June 30, 2005, China had the third largest number of SA8000-certified facilities (99) in the world. Italy had the highest number (233) and India was second with 104 certified facilities.

SAI is a US-based multi-stakeholder initiative that accredits social auditing organizations that carry out workplace audits and certify facilities as being in compliance with the SA8000 Standard.

### **WRC Speaks Out on MFA**

The Worker Rights Consortium (WRC) has released a policy statement on "Potential University Responses to the Phase-Out of the Multi-Fibre Arrangement." In its statement, the WRC advises its member universities of the dangers in the post-quota transition period of licensees shifting their sourcing from factories that have made improvements in code compliance and/or failing to ensure that employers provide legally mandated severance when factories are closed.

The statement also warns that with the end of quotas, "China will become the source of one out of every two university logo apparel items imported into the US – yet independent unions are illegal in China, placing all factories in that country in conflict with a key provision of every university code of conduct."

The WRC suggests that its member universities take one of two approaches to dealing with increased sourcing from China or other countries that prohibit independent unions:

- a) Bar sourcing of university goods from those countries, as is the policy of the University of Notre Dame; or
- b) Maintain current production in such countries, "but prohibit any further shift to, or increase in current production in, these countries."

For universities that choose option b), the WRC suggests that suppliers be required to open their factories for trainings on code of conduct and worker rights, and to respect workers' efforts "to act collectively to express concerns about code violations and advance their interests."

The WRC is a US-based non-profit organization that assists colleges and universities to enforce their ethical licensing policies. There are currently 140 US colleges and universities and four Canadian universities affiliated with the WRC.

### German Retailer Joins FWF

On April 28, the Dutch Fair Wear Foundation (FWF) announced that the German mail order natural clothing company, Hess Natur, had become the first foreign company to become a member of the FWF. The company's decision to join the FWF was supported by the German Clean Clothes Campaign and IG Metall, Germany's largest trade union.

The FWF is a Netherlands-based multi-stakeholder initiative of business associations in the garment sector, trade unions and NGOs. The Foundation verifies whether its member companies are implementing its Code of Labour Practices. It also promotes the development of a European-wide multi-stakeholder initiative.

### ETI Gives Guidance on FoA

On March 9, the Ethical Trading Initiative (ETI) held a roundtable seminar for its members on how companies can implement the ETI Base Code provision on Freedom of Association and Collective Bargaining. Attending the seminar were representatives of NGOs, trade unions, the ETI Secretariat and over 20 ETI member companies.

In preparation for the meeting, the ETI prepared a Guidance Document on Freedom of Association and Collective Bargaining. Typical violations of the ETI Base Code listed in the Guidance Document include:

- Creation of company-dominated organizations as an alternative to independent unions, such as *solidarista* associations and "Permanent Committees" in Costa Rica;
- Exclusion of trade unions from organizing in Export Processing Zones;
- Prohibiting trade unions access to the workplace to communicate with workers;

- Employer interference to influence trade union activities, such as favouring one organization over another; and
- Victimization of union organizers, leaders, members or supporters, including discrimination, intimidation, dismissal, or denial of promotion or earning opportunities.

The ETI is a UK-based multi-stakeholder initiative that includes trade unions, NGOs and companies in the food and apparel sectors. The ETI identifies and promotes good practice in monitoring and verification of code provisions, but does not certify workplaces or accredit brands.

*Copies of the Seminar Report and the Guidance Document are available at: [www.ethicaltrade.org](http://www.ethicaltrade.org).*

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## E. New Resources

***Monitoring Sweatshops: Workers, Consumers and the Global Apparel Industry*, Jill Esbenshade, Temple University Press, 2004, 272 pp.**

Drawing upon her research into a US Department of Labor-sponsored private monitoring program in the Los Angeles garment industry, Esbenshade argues that while private sector monitoring has achieved some improvements in compliance, "[w]orkers are neither empowered nor truly protected by this system."

She then extends her critique to the monitoring of code of conduct compliance in global supply chains, concluding that voluntary codes of conduct and private monitoring have failed to make widespread changes at the workplace level or in the industry as a whole. "More significantly, [private monitoring] may well substitute for, or cover up, or obviate workers' own organizing," she charges.

However, despite the many weaknesses of voluntary codes and monitoring, Esbenshade believes that codes and monitoring should not be dismissed and can be used “by workers and their advocates as a tool to hold companies accountable.” She calls for “a more credible form of verification and a means by which workers can participate in the process.”

After describing the various industry and multi-stakeholder monitoring initiatives and recounting the divisive history of the Fair Labor Association (FLA), Esbenshade traces the development of “independent monitoring” from the emergence of the Central American NGO monitoring groups to the formation of the Worker Rights Consortium (WRC).

While dismissing private monitoring as disempowering for workers because it tends to focus on working conditions rather than workers’ rights, Esbenshade argues that “independent monitoring’s greatest potential is in locating workers at the centre of the monitoring system.”

She concludes that “[c]odes of conduct and monitoring must be seen as one tool within the broader context of governmental and intergovernmental actions.”

*To order a copy of the book, visit:  
[www.temple.edu/tempress/titles/1691\\_reg.html](http://www.temple.edu/tempress/titles/1691_reg.html).*

***Globalization and Cross-border Labor Solidarity in the Americas: the Anti-sweatshop Movement and the Struggle for Social Justice*, Ralph Armbruster-Sandoval, Routledge, 2005, 223 pp.**

Based on case studies of four cross-border labour solidarity campaigns in support of worker organizing efforts in Central America, Armbruster-Sandoval assesses the strengths and limitations of the cross-border campaigns and questions

why such campaigns often succeed in the short term, but fail in the long term.

Based on interviews with local union and NGO activists in Central America and labour and anti-sweatshop activists in the US, the author analyzes the various factors that contributed to the “mixed outcomes” of the Phillips-Van Heusen (Guatemala), Gap/Mandarin (El Salvador), Kimi (Honduras), and Chentex (Nicaragua) campaigns.

“Successful short-term cross-border labor solidarity campaigns depend on robust local maquila unions and fairly well-unified transnational activist networks,” says Armbruster-Sandoval. He notes that when local civil society actors are weak, even well-unified transnational advocacy groups (TANs) can have only limited success, and when TANs are divided, as in the Mandarin and Kimi campaigns, often local unions are further weakened.

According to the author, “high union strength and high TAN unity are important, but they are not ‘necessary and sufficient’ conditions for achieving better wages and working conditions.” Equally important in determining the success or failure of cross-border labour solidarity campaigns are the external factors, such as capital mobility and the dispersed nature of garment production. He also points to linguistic, cultural, gender, racial and national differences, as well as unequal power relationships between Northern campaigners and Southern maquila workers, as barriers that need to be overcome.

“Challenging sweatshop labor practices is no simple task,” concludes Armbruster-Sandoval, pointing to transnational corporations, capital mobility, and strategic divisions between movement actors as the main obstacles to successful cross-border campaigns. He singles out capital mobility as the most difficult issue that needs to be confronted, and proposes region-wide or production-chain organizing as possible

alternative strategies to limit capital mobility.

*To order the book, visit:  
[www.routledge-ny.com/](http://www.routledge-ny.com/)*

**“Gender and Labour Codes in Export Value Chains,” Stephanie Barrientos, DFID Labour Standards and Poverty Forum, April 2005, 23 pp.**

In this brief report, Barrientos examines whether codes of conduct are making a difference for women workers, and how they can be improved to better address issues specific to women.

According to Barrientos, although evidence of the impacts of codes on women is still partial, studies indicate that workers in permanent and/or formal employment benefit more from codes than do workers in lower tiers of the global value chain (temporary, casual, migrant, contract, homework) where women predominate.

She also notes that improvements due to codes are more likely to take place on “visible” issues such as health and safety, and less likely on “invisible” issues such as discrimination and freedom of association. As well, the definition of discrimination in codes is generally restricted to the issue of equal access to permanent employment, and this narrow definition fails to take into account that “gender discrimination is embedded in all aspects of employment practice covered by codes.”

According to Barrientos, there are a number of issues that are not addressed by codes or by the core conventions of the ILO on which they are usually based, such as child care, reproductive rights, housing and accommodation, and safe transportation to and from work.

She identifies six challenges for codes to improve working conditions and respect for the rights of women workers:

- How to improve gender sensitivity and awareness of codes?

- How to promote a ‘business case’ for gender sensitive codes?
- How to make the management of codes more effective?
- How to extend the practice of participatory social auditing and monitoring?
- How to develop more sustainable local independent monitoring bodies?
- How to increase the voice and organization of women workers?

The report also includes two brief case studies on Wine and Fruit Workers in South Africa and Bangladesh Garment Workers, as well as a summary of gender-sensitive issues related to specific code of conduct provisions.

*For a copy of the paper, contact MSN.*

**“A Global Alliance Against Forced Labour,” International Labour Organization, 2005, 87 pp.**

This important study by the International Labour Organization (ILO) offers useful information and analysis on the contemporary manifestations of forced labour, described by ILO Director-General Juan Somavia as the “underside of globalization.” As the study shows, forced labour is not a lingering issue from the past; it is a growing global problem that is closely linked with human trafficking.

According to the report, at least 12.3 million people around the world are victims of forced labour. Of those, 2.4 million are in forced labour as a result of human trafficking. Of the 9,490,000 victims of forced labour in Asia, almost two thirds are victims of private sector economic exploitation, mostly in debt bondage in the agricultural and other economic sectors. By contrast, in industrialized countries, three quarters of those involved in forced labour are victims of commercial sexual exploitation.

The report underlines that while public attention is currently focused on human trafficking, “effective action against trafficking requires a focus on its forced labour outcomes, and on demand aspects in the destination countries as well as supply in the origin countries.”

It notes that trafficking for labour exploitation often involves subtle forms of coercion rather than direct physical restraints. These practices include:

- Employer exploitation of migrant workers through the removal of identity documents;
- Employer threats of deportation to prevent workers from reporting violations or seeking alternative employment; and
- Deceptive practices of labour recruitment agencies that result in migrant workers being subjected to forms of debt bondage.

Significantly, the report also identifies forced and unpaid overtime, as well as compulsory labour in private prisons, as forms of forced labour, both of which are common practices in today’s garment industry.

The report identifies a number of positive initiatives against forced labour, including the Brazilian government’s National Action Plan against Slave Labour, and ILO projects in South Asia promoting the prevention of bonded labour and rehabilitation of released bonded labourers.

The report concludes by calling for a global alliance against forced labour, and outlining various elements of a global action plan to involve governments, employers, workers’ organizations and other sectors.

*For a copy of the ILO study, visit:  
[www.ilo.org/public/english/bureau/inf/pr/2005/22.htm](http://www.ilo.org/public/english/bureau/inf/pr/2005/22.htm).*

**“Easy to Manage’: A Report on Chinese Toy Workers and the Responsibility of the Companies,” Kristina Bjurling, SwedWatch and the Fair Trade Centre, May 2005, 69 pp.**

Based on offsite interviews with toy workers carried out by the Hong Kong Christian Industrial Committee (CIC) in Guangdong, China in February 2004, the report documents common worker rights abuses in factories producing toys for major companies selling those products in the Swedish market.

The study found that eight of the nine supply factories investigated violated Chinese hours of work laws, five did not always pay the legal minimum wage, eight failed to provide legal old age pensions or accident insurance, eight offered no formal health and safety training beyond fire drills, and seven coached and/or paid their employees to give false answers to social auditors.

One positive finding was that workers at one factory received an increase in wages after inspectors, possibly for Disney or Wal-Mart, discovered double bookkeeping.

The report attributes the persistence of labour rights violations in Chinese toy factories to the purchasing practices of buyers and the failure of the companies to facilitate worker rights training for workers and to involve workers in the enforcement of codes of conduct.

After the study was completed, the Swedish Fair Trade Centre discussed the findings with the buyers concerned. According to the report, while it is still too early to tell how the companies will address the problems identified, they are seriously examining the alleged violations and are undertaking studies at the factories.

*[www.swedwatch.org/swedwatch/in\\_english/reports](http://www.swedwatch.org/swedwatch/in_english/reports)*

Codes  
**memo**  
Number 19  
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Maquila  
Solidarity  
Network

**“Quick fix or lasting solution? Dealing responsibly with typical non-compliance,” Ethical Trade: shaping a new agenda, Briefing paper No. 1, Ethical Trading Initiative, May 2005, 15 pp.**

The first in a series of ETI briefing papers on critical issues in code of conduct implementation, “Quick fix or lasting solutions?” provides practical advice for companies, social auditors and other involved in factory auditing and/or negotiating corrective action plans on how to identify and address three difficult code compliance issues – freedom of association, hours of work and discrimination.

The briefing paper includes brief case studies on freedom of association in a UK factory, hours of work in a Chinese factory, and gender discrimination on a Kenyan

farm. Examining each case from the perspective of a retailer, an auditing company, and a trade unionist, the paper outlines the various steps these different actors would take to determine whether relevant labour standards were being complied with, and the practical solutions they would recommend to achieve short- and long-term solutions to the problems.

*The briefing paper will be available soon on the ETI website, at: [www.ethicaltrade.org](http://www.ethicaltrade.org).*