

Maquila Solidarity Network

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Introduction

In this issue of the *Codes Memo*, we profile three key issues in the ongoing debate on codes of conduct and their implementation: social auditing, labour standards in China, and transparency.

In part A of the *Codes Memo*, we look at two important critiques of the dominant social auditing model, the first by the Clean Clothes Campaign (CCC) and the second by the Fondation des droits de l’Homme au travail (Human Rights at Work Foundation). We also look at how an NGO auditing organization responded to the unanticipated closure of a factory it was auditing.

In part B, we assess a new code of conduct initiative in China that was

created by the country’s textile and apparel industry and the Chinese government, and look at two recent reports on the impact of the end of the quota system, with particular attention to labour practices in China and whether they constitute unfair competition.

In part C, we profile a study carried out by MSN for Canada’s Ethical Trading Action Group, *Coming Clean on the Clothes We Wear: Transparency Report Card*, which assesses and compares the information retailers and brands are disclosing to the public on their labour standards policies and programs, and provide an update on companies disclosing their global supply chains.



Social Auditing

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CCC Critiques Social Auditing

On November 2, the European-based Clean Clothes Campaign (CCC) released a devastating critique of the social auditing industry, entitled *Looking for a Quick Fix: How Weak Social Auditing is Keeping Workers in Sweatshops*.

Based on interviews with 670 workers employed in 40 factories in eight countries, as well as with a few factory managers and social auditors who were willing to be interviewed, the 96-page report documents the weaknesses and limited impact of factory audits carried out by commercial social auditing firms.

Interviews and focus groups for the CCC study were organized by local labour rights organizations in India, Kenya, Romania, Bangladesh, Pakistan, Morocco, Indonesia and China.

Seriously Flawed Model

According to the CCC report, social auditing methods that are currently used by most retailers “are based on a seriously flawed model largely discredited not only by labour rights advocates but also by those within the industry who have had a

longer-term involvement in this field...”

It notes that while a number of brand-sensitive companies and a few multi-stakeholder initiatives have begun to identify the limitations of current social auditing methods, unbranded retailers, such as KarstadtQuelle of Germany and Wal-Mart, as well as industry-controlled monitoring initiatives, such as WRAP and the BSCI, are taking a minimalist approach to code implementation that relies almost entirely on social audits carried out by a growing list of commercial social auditing firms, many of which are multi-nationals themselves.

The report identifies the key players in the booming social auditing industry, including global financial auditing firms, quality control companies, specialized for-profit social auditing firms, and not-for-profit social auditing organizations. Among the largest for-profit companies, Cal-Safety Compliance Corporation (CSCC) claims to conduct over 11,000 factory audits a year. In comparison, the largest not-for-profit social auditing organization, Verité, claims to have conducted a total of 1,100 audits since 1995.

The report points to the lack of skills, training or experience of most social auditors and describes how they often turn a blind eye to extreme abuses of workers or miss crucial issues. In the most extreme cases, some social auditors, usually ones that double as quality control and purchasing staff, were found to be accepting bribes from factory managers in exchange for a clean bill of health.

The report also shows how factory managers often deceive social auditors through falsification of documents, double bookkeeping, hidden subcontracting, and coaching of workers on how to answer interview questions.

Workers interviewed for the study complain of superficial inspections in which auditors are “always in a hurry” and worker interviews, when they take place at all, are brief and poorly designed.

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. The Memo is available in PDF format at: www.maquilasolidarity.org.

They cite instances in which factory managers act as translators for the auditors during worker interviews, are allowed to select or know the identities of the worker to be interviewed, and/or are present or in the vicinity during worker interviews. They also found that “auditors often did not explain [to workers] who they were, nor what their purpose was, nor that they did not ‘represent’ buyers.” As a result, workers are often afraid to tell the truth to social auditors for fear of retaliation by their employer.

While acknowledging that social auditing is contributing to some progress on issues such as child labour, forced labour and health and safety, the report found that social auditing is failing to achieve significant improvements on freedom of association and the right to bargain collectively, discrimination, wages, working hours, the employment relationship, or abusive treatment of workers.

In none of the countries researched were there any reports from workers of being asked by auditors about freedom of association.

Lack of Worker Involvement

The CCC report points to the lack of involvement of workers and their organizations, as well as other local civil society organizations, in the code implementation process as the fatal flaw in the dominant social auditing model.

According to the report, very few of the workers interviewed for the study were knowledgeable about codes of conduct or their purpose. “While codes of conduct may indeed stipulate that codes be displayed on the walls of the factory in order that workers are aware of their rights, this doesn’t seem to be having much of an effect,” says the report.

In the few instances where workers were aware of their rights and how to file complaints, unions were either present in the factory or had been attempting to organize the workplace.

Ironically, coaching of workers by management before auditor visits has sometimes resulted in workers learning more about their rights, since the answers they were taught to recite accurately reflected the wages, working hours and overtime pay mandated by law.

According to the report, local researchers found almost no instances of auditors informing workers of a means of registering complaints after the audit, or of auditors’ reports being shared with workers or their representatives.

“Disclosing the [audit] findings with any stakeholders other than management is not part of the majority of existing systems,” says the report.

Nor did the local researchers find many instances in which social auditors consulted with local organizations knowledgeable about workplace conditions. Where auditors do consult with local organizations, there is, according to the report, little incentive for those organizations to work with the auditors because they are treated as a free source of information, but are denied access to the audit findings. The report notes, however, that where trade unions are present in the workplace, auditors tend to cross check information with the unions.

“Observers are increasingly concluding that social auditing is not effective if some form of engagement with credible local organizations does not accompany it,” says the report. It notes that some companies, including Gap, now recognize that their ability to identify worker rights violations, particularly concerning freedom of association, increases when there are in-depth interviews with workers and engagement with local unions and NGOs.

More Comprehensive Approach Needed

“The evidence shows that credible efforts to implement codes of conduct cannot rely on social auditing alone, important though it is,” concludes the

report. It advocates a system that “puts workers at the centre of social auditing processes” and a “more comprehensive tool box approach” to implementing labour standards policies and verifying compliance with those policies.

According to the report, a comprehensive approach to labour standards compliance would include, in addition to quality audits:

- Partnership with local organizations;
- Involvement in credible multi-stakeholder initiatives;
- Grievance and complaint mechanisms;
- Education and training for workers and management personnel;
- A pro-active approach to freedom of association;
- Addressing the purchasing practices of retailers and brands;
- Effective remediation when violations are uncovered; and
- Transparency.

Report Makes Waves

Since its publication, the CCC report has stimulated considerable discussion and debate in the corporate social responsibility movement, among company code compliance staff, and within a number of industry and multi-stakeholder initiatives.

The report was a source of tension at a November 23-24 conference in Brussels, “Ethical Sourcing – a Contribution to CSR,” sponsored by the Business Social Compliance Initiative (BSCI).

On November 24, twenty representatives of the Belgian and Dutch Clean Clothes Campaigns, together with partners from India, Bangladesh, Pakistan, Turkey and Macedonia leafleted conference participants as they entered the Brussels Residence Palace in order to draw their attention to the results of the CCC study concerning the deficiencies in the social audits being carried out for many BSCI member companies.

Inside the conference, Ferry den Hoed, president of the European Foreign Trade Association (FTA), which launched the BSCI in March 2003, charged that “a Clean Clothes Campaign does not become more credible by just sitting by the side of the playing field, watching what is going on, commenting on any negative scenes and giving marks.”

The CCC report was also a topic of discussion at a second Brussels conference, co-sponsored by the European Commission and the Fondation des Droits de l'Homme au Travail, on “Responsible Sourcing: Improving Global Supply Chains Management.”

One of the speakers at the conference, Peter Utting, Deputy Director of the United Nations Research Institute for Social Development (UNRISD), referred to the CCC report to underline his concerns with the “major limitations in the dominant approaches to social auditing, particularly in the retail sector.”

According to Utting, “commercial auditors tend to have neither adequate time, autonomy, nor skills to really understand the situation of workers and industrial relations.”

In his speech, Utting also pointed to some of the positive developments profiled in the CCC report that are aimed at addressing the weaknesses and limitations of social auditing, such as the creation of complaints procedures in multi-stakeholder initiatives, improvements in social reporting, and greater co-ordination among multi-stakeholder initiatives.

“As the CCC report on social auditing points out,” said Utting, “the challenge is to see social audits not as policing mechanisms, but as a means to empower workers... [T]he question is how to use CSR practices to strengthen the position of weaker stakeholders in the value chain.”

Conclusion

The CCC report is an important and timely contribution to the debate on

voluntary codes of conduct and social auditing. The report comes at a crucial moment when a number of leading brands and some multi-stakeholder initiatives are beginning to question the effectiveness of commercial auditing firms and their checklist auditing methods in enforcing code of conduct standards.

The report also poses a number of important challenges to retailers and discount chains and industry associations that continue to rely on social auditing as their primary method of enforcing codes of conduct.

The findings of the CCC study will not come as a surprise to labour rights organizations in the North or South, or to experienced company compliance staff for that matter. Nor is the CCC's call to place workers at the centre of code implementation a new demand for labour rights groups in the North or South.

However, the scope and breadth of the CCC study mean that its finding and recommendations will be difficult to ignore, even by those companies and industry associations that continue to view social auditing as a quick-fix solution to reputational risks associated with global sourcing.

The CCC report offers a well-researched and persuasive argument on the need to go beyond the current commercial auditing model, while acknowledging the continued need for quality social audits.

Although the CCC's proposal for a more comprehensive tool box approach to promoting labour standards compliance is not a fully articulated answer to the code implementation dilemma, it is a useful contribution to ongoing discussion and debate on how to achieve improved labour practices in a globalized industry.

To access the CCC report, visit:
http://www.cleanclothes.org/publications/quick_fix.htm

To access Peter Utting's presentation to the EU conference, visit:

http://europa.eu.int/comm/employment_social/soc-dial/csr/051118_puttingtxt.pdf

FDHT Compares Private Sector and NGO Auditing

Published ten months prior to the release of the CCC study described above, a 29-page report by the Geneva-based Fondation des droits de l'Homme au travail (Human Rights at Work Foundation) entitled "Codes of Conduct Implementation and Monitoring in the Garment Industry Supply Chain" offers a somewhat different perspective on current social auditing practices.

In contrast to the CCC study, in which local labour rights NGOs interviewed workers on their experience with social auditing, FDHT contracted two "experienced auditors" to do shadow audits of 19 audit teams from commercial firms, NGOs and brand compliance departments in 14 countries, and to interview key people in multi-stakeholder and industry code initiatives.

Despite the very different approaches to the research for the two studies, many of the findings of the FDHT study were remarkably similar to those of the CCC.

Common Findings

As in the CCC study, the FDHT researchers identified a lack of consultation with local stakeholders as a key issue. According to the report, private sector auditors do not always understand the importance of consultation with local NGOs, trusting their own knowledge or that of journalists over the knowledge of NGOs. As well, local NGOs "often mistrust private audit firms and are usually wary [of cooperating with them] because after providing them with information they do not get any feedback on the audited facility."

The FDHT report also mirrors the findings of the CCC study on the difficulties encountered by auditors in identifying worker rights violations. It notes that sensitive issues like harassment, discrimination and freedom of association require additional information gathering, “something that auditors do not always do.”

The study also found that companies perceive NGOs to be more competent in carrying out worker interviews than they do commercial firms, claiming they receive more information from workers when NGOs do the interviews. According to the report, NGO auditors observed during the study did 12% of worker interviews offsite, while the private auditors only interviewed onsite.

The study also raises similar concerns as were identified in the CCC report about confidentiality in worker interviews. According to the FDHT report, although companies ask auditors to give their business cards to workers interviewed in order to follow up on any possible retaliation, during final meetings with management “some auditors observed mentioned the number of workers who complained about specific issues, which equals to revealing their identity.”

Although the FDHT study does not assess the training received by auditors in any great depth, it does identify auditors’ lack of knowledge of basic legal instruments, such as ILO conventions, and their lack of preparation for audits as key problems with the current social auditing model.

The study found that most of the audits were done in one-half day to three days, including report writing. However, it found that the NGOs observed for the study spent more days inside facilities than did the commercial auditors.

One particularly disturbing finding of the study is that the majority of auditors observed “did not know the core ILO conventions and mentioned that they did not think they had an impact on the work they were carrying out.” It goes on to say,

“Many auditors lack enough broad perspective to analyze themes such as freedom of association, which is probably the most sensitive in a social audit.”

Critiquing NGO audits

Although the FDHT and CCC studies raised very similar concerns about the current practices of commercial social auditing firms, the FDHT report was also critical of current audit practices of non-governmental organizations.

According to the FDHT report, while NGOs may be more effective in gaining the trust of workers for worker interviews, “NGO auditors observed during worker interviews do not have specific competencies and many of them are still students recruited to be part of an audit team on an ad hoc basis.” It notes, however, that NGO auditors tend to spend more time interviewing workers “because they feel it is part of their mission.”

The report also raises concerns about the neutrality of NGO auditors that are hired on an ad hoc basis.

It lists a series of instances in which NGO auditors engage in activities that the authors of the report clearly view as a conflict of interest, including auditing a company for which they had also created a daycare centre, “selling” the implementation of a corrective action plan after carrying out an audit, acting as a mediator in a labour conflict after an audit, giving advice to workers during interviews if questions are asked of them, and “inciting union activity.”

The report also suggests that while NGO auditors provide companies more information obtained from worker interviews, “clients take NGOs to task for not verifying and cross-checking the information gathered from the workers.”

Auditor Profiles

The report also compares the backgrounds and training of auditors

employed by commercial firms, NGOs and company compliance departments.

The majority of 34 commercial auditors observed during the study were engineers who had taken ISO and SA8000 training, however, according to the report, “Not one of them had experience in human rights, trade unions or human resources.”

In contrast, the 19 NGO auditors had legal, foreign languages, marketing or management backgrounds, and most had previously been involved in human rights activities. The report goes on to say, however, that the NGO auditors observed “did not receive any specific training as described in their monitoring organization’s website.”

Critiquing the Model

The FDHT study also makes some general observations on the dominant social auditing model itself. While the CCC report focuses on the views of workers, the FDHT study bases its assessment of social auditing on the views of brand buyers, suppliers and social auditors. Although their critique of social auditing mirrors that of a number of previous studies, the fact that this critique is made by companies themselves gives added weight to the findings.

Interviews with the heads of company compliance departments carried out during the study reveal their “discontent with the way audits are carried out,” but suggest that they are “in the process of reviewing their own audit tools and developing more sophisticated approaches...”

The report points to company concerns with “inconsistencies between second and their party audits within the same facility” and with the fact that “third party auditors find less non-compliance than internal auditors.” Company compliance staff interviewed also complain that “freedom of association is interpreted differently according to the auditors,” but at the same

time express their suspicion of how NGOs define freedom of association.

According to the report, companies are also concerned that there is no clear process for the accreditation of auditors, and that auditors “describe problems encountered within facilities, but do not try to identify causes.”

Interviews with suppliers indicate that they feel “humiliated” and “colonized” by the current auditing process and view auditors as “policemen sent to find mistakes rather than help them improve.” They also complain of “audit fatigue” and of having to implement corrective action plans “that can be sometimes incoherent from one standard to the next (from one client to the next).”

According to the suppliers interviewed, buyers “are strict about working conditions, but they are the ones reducing prices, giving short production lead-time and sometimes cancelling orders altogether.” Suppliers also complain that investing money in improvements doesn’t guarantee that they will receive orders.

Auditors interviewed complain that they are usually not provided prior audit reports that they could use as a base for their audits, and that they are given a set number of days they can spend in a facility and are not always allowed to extend their stay to investigate issues identified during the audit.

Although the report doesn’t focus on the views of workers and their organizations, it does mention that some unions fear that social auditing could diminish their role, since “audits might conceivably replace the need for [union] representation and collective bargaining.” It also mentions that workers “do not always feel safe during interviews, nor comfortable [giving] their testimony.”

Conclusion

Although the researchers, research methods and sources of information for the FDHT study were very different from

those employed in the Clean Clothes Campaign (CCC) study, most of the findings and conclusions were remarkably similar. The key finding of both reports is that there are serious problems with how factory audits are currently being carried out and more fundamental problems with the current social auditing model itself.

One important difference in the two studies is the critical assessment in the FDHT study of social auditing currently being carried out by NGOs. Unfortunately, this section of the report is the weakest, revealing an apparent lack of understanding by the researchers of the roles of local NGOs and their relationship to other local actors. For instance, the report includes incorrect information on the origins of a local monitoring organization in Central America and the nature of a dispute between that organization and a local union.

While there may be some legitimate concerns about neutrality of some NGOs involved in social auditing, the researchers appear to be taking at face value management claims that some NGO auditors were “inciting union activity.” If NGO auditors can be criticized for not always cross-checking the claims workers make in audit interviews, certainly the authors of the report should also be expected to cross-check such accusations made by companies.

When researchers take NGOs to task for failing to verify the claims made by workers in worker interviews, they fail to recognize that verifying alleged violations of workers’ rights is often extremely difficult. In such cases, workers and management personnel seldom agree on the facts in the case and factory records seldom provide sufficient information to verify worker allegations.

It is for this very reason that the current social auditing model, which is based on the assumption that auditors can and must uncover verifiable facts and tangible (written) proof, is fatally flawed. As the

report acknowledges, the valuable contribution NGOs can and do make to the code implementation process is their ability to document workers’ stories.

The fundamental weakness in the report is that it doesn’t sufficiently appreciate how absent workers’ voices are in current code of conduct monitoring and verification processes and how important it is for workers’ stories to be told and heard.

Despite that serious omission, the report provides an accurate picture of current social auditing practices and offers useful insights into the views of buyers, suppliers and social auditors on the inadequacies of the dominant social auditing model.

To request a copy of the study, contact the FDHT at: infos@fdht.org

EMIH Monitoring Report Challenges Gap on Factory Closure

The Honduran Independent Monitoring Team (EMIH) has published a detailed 80-page report on its findings concerning code and legal compliance issues at an unnamed Gap supply factory in Honduras. EMIH is a non-profit independent monitoring organization that monitors and verifies compliance with codes of conduct and Honduran law in manufacturing for export factories in that country. EMIH reserves the right to make public its full audit reports, excluding the names of the factories audited.

Although the detailed information provided in the report on EMIH’s audit methodology, process, and findings will be of less interest to those not directly involved in the case or in the social auditing profession, the report offers a useful case study on the response of a brand-name buyer to an unanticipated

factory closure that took place in the midst of an audit and remediation process. Unfortunately, such factory closures are becoming more common in the post-quota transition period when buyers are restructuring their global supply chains and vendors their manufacturing networks.

Unanticipated event

According to the report, EMIH had carried out a number of inspections of the factory, had presented the results to Gap Inc., and was in the midst of discussions on a corrective action plan in December of 2004 when it was notified by workers that the factory was going to be closed. Coincidentally, the announcement of the closure came as workers at the factory were in the process of applying for legal registration of a union.

Responding to these unanticipated events, EMIH attempted to document what was behind management’s decision to close the factory. Workers interviewed claimed they had not received any prior notice of their employer’s decision. They stated that on Friday, December 17 they were told they would receive their legally required 13th month bonus when they return to work on the following Monday. However, when they arrived at the factory that morning, they learned that their employment contracts were cancelled.

Management’s version of the story was that they were cancelling all operations in Honduras and that it was a strictly business decision. They claimed they hadn’t provided the workers prior notice of their decision because they were “afraid of not being able to meet production goals and not sending out orders on time.” They noted that in similar cases when prior notification is given the morale of workers drops and it is difficult to meet commitments.

Gap’s version of events was that no one from the company’s Global Compliance Department was aware of the closing prior

to hearing the news from EMIH. However, they acknowledged that as of November 2004 the global head office of the factory was attempting to gain more orders from Gap Inc., but had failed to do so. The EMIH report suggests that Gap and other clients had asked the company to lower its prices so that it could be more competitive. It notes that Gap was one of the vendor’s strongest customers and “will continue to be one of its best clients in Asia.”

EMIH also interviewed an advisor to the General Workers Central (CGT), which had been providing support to workers who were attempting to organize a union at the factory. She noted that at the time of the closing the union had gone public about the organizing effort, and that in the month of November the entire executive of the union had been dismissed. She compared the situation to the closure of another factory owned by the same company one year earlier where “a legally recognized and fully constituted union was totally dismantled with the closing of the factory.”

According to the EMIH report, Ministry of Labour inspectors who were on site to witness the factory closure claimed that their role was to verify that the workers received the benefits they were due. Asked whether they were aware that the workers had not received prior notice of the factory closure, they replied that they were there at the company’s request to “witness the payment.”

According to the report, the inspectors acknowledged that they “did not check the calculations since there was no time with so many people [present], but they maintained that they looked at some payments and by just seeing them they could determine if they were correct or not.”

Verifying legal compliance

After documenting the different versions of events from the various parties involved, EMIH entered into discussions

with Gap compliance staff concerning the terms and conditions under which it would participate in the verification of compliance with management's obligations related to the closure. Gap then proceeded to negotiate with the head office of the supplier in Singapore concerning EMIH's access to the factory, payroll records, and workers and management personnel.

According to the report, despite the agreement between Gap and the vendor in Singapore, factory management in Honduras failed to provide all payroll records needed to verify whether all workers had received all the benefits to which they were legally entitled. Although the report acknowledges numerous interventions by Gap compliance staff in both Honduras and Singapore in order to guarantee that workers received their full severance and other benefits owed, it also expresses EMIH's frustration with Gap's apparent lack of awareness "of the gravity and the implications of the case, not only for the workers but for the credibility of the program itself," as well as the apparent lack of communication between the company's buying and compliance departments.

However, according to the report, these efforts by both Gap and EMIH did achieve some additional compensation for at least some of the workers. A second important achievement was the agreement by Gap to meet directly with the General Workers' Central (CGT), the union involved in the organizing effort at the factory. According to the report, "following the consultation with workers and union leaders, it was established that there were violations of the right to organize...."

Negotiated settlement

Those discussions resulted in Gap arranging a meeting on July 26, 2005 involving two representatives from the supplier's Headquarters in Singapore, five former workers, members of the Executive

Committee of the union at the factory, the advisor from the CGT, as well as representatives of Gap and EMIH, who attended as observers. The purpose of that meeting was to come to agreement on compensation for the workers who had been unjustly fired during the union organizing drive.

However, according to the report, the day before that meeting took place, factory management and the CGT representative met separately, apparently at the request of the management, at which time "agreements were made regarding the demands of the workers." The following day, the signed agreement was shared with the other parties, thus ending the process.

According to the report, that agreement provided for payment of outstanding maternity benefits, adjustment in the severance payments for seven members of the Union Executive, a payment concerning union rights to be turned over to the CGT, and payment of six months salary for 18 workers who had not yet found employment.

The report notes that as a result of this verification process, 395 workers had the opportunity to have their severance pay reviewed and 36 received adjustments. However, 786 workers did not have that opportunity. An additional 18 workers who were not employed at the factory at the time of the closure and two women who were pregnant at the time of the closure, but did not take their case to the courts, received the benefits they were owed.

However, the report suggests that a more generous settlement that would have benefited more workers might have been achieved if the union leadership and the workers involved in the case had made more effective use of Gap's commitments to corporate social responsibility to leverage negotiations with the employer. The report also points to the absence of the Ministry of Labour at the meeting between the CGT and management as a

missed opportunity to give “added force and sustainability to this precedent.”

Obstacles to compliance

The report points to the lack of connection between the buying department and the code compliance program of Gap Inc., the apparent “lack of information” of Gap compliance staff about the vendor’s operations in Honduras, as well as the lack of good faith of factory management, as major obstacles to the verification and remediation processes.

It notes that the closing of the factory without proper notice constitutes a violation of the workers’ rights, since it treats workers as “one more piece [of machinery that] must be kept in good condition in order to maintain the rhythm of production [forgetting that these are] human beings whose lives can be substantially altered by the loss of employment.”

The report also points to the interventions of the Labour Ministry in the case, which, the report states, “confirms once again the weakness of the State in an era of globalization.”

It notes that while EMIH was able to document a number of areas of noncompliance concerning working conditions in the factory, as well as identifying violations that “should have been more deeply investigated during the period of independent monitoring, [t]hese aspects were left uninvestigated due to the rapid closing.

“This situation makes clear that the principal monitors of labour conditions are the workers themselves and for that reason it is necessary to prioritize opportunities for communication with the workers from a position which is respectful of their opinions and fears,” says the report. “Along with this, we find the need for a training process on the range of the Codes of Vendor Conduct and the procedures to guarantee their rights via the use of these instruments.”

Conclusion

The report concludes by singling out the purchasing practices of companies like Gap as being major disincentives to code and legal compliance in countries such as Honduras. It argues that in this case renegotiated price reductions “apparently set off the closing,” thereby putting into question the buyer’s commitment to corporate social responsibility.

“It is not consistent to pressure suppliers to reduce prices while demanding respect for the human rights of workers,” says the report. “There should be a balance which permits greater sustainability since the demands require an investment of physical and human capital.”

The report includes a written response from Gap Inc., in which the company acknowledges the need “to improve the coordination between our compliance objectives and our purchasing practices.” According to the letter, Gap is attempting to “encourage garment manufacturers to take more responsibility for working conditions in the factories they own, operate or contract with... [by] building labor standards directly into our buying decisions through an ‘integrated sourcing scorecard’.” The letter also points to Gap’s involvement in the Ethical Trading Initiative (ETI) working group on purchasing practices as evidence that it is working with other stakeholders to address this industry-wide issue.

For a copy of the EMIH report, contact EMIH at: emihn1@yahoo.com; or MSN at: info@maquilasolidarity.org.



MFA and China

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The China Code: One Step Forward or Two Steps Back?

The debate is heating up on CSC9000T, a code of conduct for China’s textile and apparel sectors that was developed by the China National Textile and Apparel Council (CNTAC) with the assistance of Canada’s oldest retailer, the Hudson’s Bay Company (HBC), and its buying agent, Linmark Group Limited.

Speaking at the 30th Anniversary of the Centre International de Solidarité Ouvrière (CISO) on October 17 in Montreal, Neil Kearney, General Secretary of the International Textile, Garment and Leather Workers’ Federation (ITGLWF) criticized HBC for its role in helping to create “a watered-down version of the SA8000 code of conduct... [that] negates freedom of association and removes the obligation to pay a living wage among other things.”

Kearney called on Canadian unions and the Canadian public to pressure HBC to withdraw its support for CSC9000T and instead endorse a more credible multi-stakeholder code and ensure it is properly implemented in China.

Stephen Frost, co-director of the Hong Kong-based CSR Asia, speaks more positively about CSC9000T, seeing it as a home-grown CSR standard, the release of which signals “the Chinese government’s acceptance of the concept of sustainable growth” and the Chinese industry’s understanding of “the link between CSR and the competitiveness of Chinese enterprises operating in the global market.”

According to Frost, CSC9000T is a “work in progress” that is “designed to

take manufacturers from resistance to CSR to at least understanding the business case for doing CSR.”

In a Special Report in the October 26 issue of *CSR Asia Weekly*, Frost calls the decision of HBC and Linmark to join the Responsible Supply China Association (RSCA), whose membership currently includes approximately 180 Chinese textile and apparel suppliers that have signed on to the standard, “an important step for CSC9000T. These are the first endorsements by foreign companies, and they should be taken seriously.”

Apo Leung of the Hong Kong-based Asia Monitor Resource Centre (AMRC) is less enamoured with the CSC9000T initiative. He is most concerned about the code’s weak enforcement mechanisms.

“The code is voluntary and companies are requested to do internal audits, but there is no requirement for so-called external audits or for the involvement of NGOs or trade unions in the process,” says Leung. “They are not concerned with worker empowerment or education or their involvement in the whole process.”

If there is a positive side to CSC9000T, says Leung, it is the industry’s claim that it will abide by domestic labour laws and regulations, and respect the international laws to which the Chinese government has made a commitment.

What’s behind the code?

Launched in May 2004, China Social Compliance 9000T is, according to the CSC9000T Principles and Guidelines, “the collective Code of Conduct for [the] China textile and apparel industry...” Based on the ISO and Social Accountability International’s SA8000 model, the CSC9000T Principles are said to “include overall requirements for social responsibility management system[s] and enable a business enterprise to establish its social responsibility objectives and targets.”

However, to understand what is behind CSC9000T, it's important to recognize that it is as much an initiative of the Chinese government as it is of the country's textile and garment industry. (It is worth noting that the CNTAC was formerly the Ministry of Textiles, and the CNTAC president, Du Yuzhou, is a government-appointed official.)

According to Anita Chan, Senior Research Associate at the Australian National University's Research School of Pacific & Asian Studies, CSC9000T is a nationalistic response to what the Chinese government views as foreign interference in its internal affairs.

"CSC9000T serves a number of purposes for the Chinese government," says Chan. "It helps China ward off international criticism, showing that China is also trying to do something about labour rights." She notes that for three years the Chinese media was attacking western code of conduct initiatives, and particularly the SA8000 factory certification program, labelling them protectionist ploys and unwanted western intervention.

"Now the discourse in China on CSR has done a 180 degree turn," says Chan, "they decided that if you cannot get rid of it, you might as well join the game. People also realized that money can be made from monitoring and auditing for corporations."

AMRC's Apo Leung agrees, calling CSC9000T "a defensive tool of the Chinese companies, most likely backed by the government."

An article in the August 1, 2005 addition of the *South China Morning Post* seems to confirm Chan and Leung's assessment. It quotes an unnamed senior Chinese official as saying, "The Chinese government didn't want to be taught by foreign capitalists how to treat workers."

Equally important is the Chinese government's concern about the danger of escalating trade disputes with the US and Europe after the demise of the import quota

system. In the same *South China Morning Post* article, CNTAC deputy director, Lucy Lu Laizhen, expresses the Council's hope that its work will challenge the perceived image of China's garment industry in the US and help to ease trade tensions with that country. "If the image of the industry is uplifted, there will be less lobbying by groups in the US for protectionist actions against China," said Lu.

What's in the code?

Given its origins, it is not surprising that CSC9000T is strictly based on China's national labour law. While there are references in the CSC9000T Principles and Guidelines to ILO and UN Conventions, few of the code provisions go beyond Chinese legal requirements.

Despite its voluntary, self-regulatory trappings, CSC9000T can be viewed as an attempt by the Chinese state to reassert the primacy of national labour law over international standards, as well as over the more arbitrary standards of foreign private actors and local government officials. In short, CSC9000T is CSR "with Chinese characteristics."

Like most codes of conduct in the apparel sector, the "China Code" includes provisions on child labour, forced labour, discrimination, harassment and abuse, health and safety, working hours, wages and benefits, and freedom of association. It also includes a provision requiring the establishment of a written employment contract with each new employee at the time of hiring.

However, since the code generally mirrors Chinese law, it contains many of the same strengths and weaknesses of the country's laws and regulations. In general, the code is strong on protections for workers and weak on worker rights.

Some of the key provisions in which the CSC9000T code differs from international standards and/or those of the major multi-stakeholder (MSI) codes include the following:

Child Labour:

As in Chinese law, 16 is defined as the minimum working age. In contrast, ILO Conventions sets 15 as the minimum working age, and 14 in countries that meet its developing country criteria. It's worth noting that many company codes define 14 as the minimum age in all countries.

The code is consistent with ILO Conventions and most of the MSI codes in requiring that workers under 18 shall not be exposed to hazardous situations in or outside the workplace.

As in the better multi-stakeholder codes, the CSC9000T code requires remediation and access to educational opportunities for children found to be working in an enterprise.

Forced Labour:

As with most of the MSI codes, the CSC9000T code prohibits the employer from requiring payment of fees upon commencing employment or the deposit of identification documents. Both are common practices in China's garment export industry.

Working Hours:

At first glance, the CSC9000T code appears to provide stronger protection on working hours than do either ILO Conventions or provisions in the MSI codes. In line with Chinese labour law, CSC9000T defines the normal workweek as 40 hours and the normal working day as 8 hours, and provides for one day off in every seven.

In contrast, the ILO and most of the MSI codes define 48 hours as the normal workweek. The exception to the rule is the Fair Labour Association (FLA) code, which treats 60 hours as the normal workweek. Many company codes have even weaker provisions. For instance, Wal-Mart's code sets 72 hours as the maximum working hours per week. While MSI and company codes also require compliance with local law, social auditors have tended to

interpret legal compliance as including exceptions to national hours of work regulations provided by local authorities.

The CSC9000T code allows for the extension of working hours, after consulting with the union and the employees, by three hours per day, not to exceed a total of 36 hours in a one-month period.

Of more serious concern is the CSC9000T code provision that allows the enterprise to apply to average working hours for the period of a week, a month, a season, or an entire year, "as long as the average daily working hours and the average weekly working hours are in compliance with the legal standard."

These provisions could be used to justify excessive working hours during heavy production periods and reduced hours during periods of the year in which there are fewer orders. According to Leung, "they encourage management to apply for exemptions."

Wages and Benefits:

While most of the MSI codes provide for payment of a living wage that meets basic needs by local standards, and the FLA code provides for payment of the prevailing industry wage, the CSC9000T code only requires payment of the legal minimum wage and legally-mandated benefits.

And while most of the MSI codes prohibit unauthorized deductions from wages, the CSC9000T code only prohibits "unexplained" deductions. This would appear to allow for deductions from wages for disciplinary reasons, as long as the worker was informed of the reasons for the deductions.

Discrimination:

The CSC9000T code prohibits discrimination on the basis of ethnic community, race, religious belief, physical disability, or personal characteristics. "Personal characteristics" is defined as including gender. Conspicuously absent

from the list are sexual orientation and political opinion, both of which are included in the MSI codes. (ILO Convention 111 prohibits discrimination on the basis of political opinion, but does not refer to sexual orientation.)

This provision could be used by employers as a pretext for collaborating with state to weed out workers based on their sexual orientation or political beliefs. Attempts by workers to organize independently of the ACFTU could easily be interpreted as political acts that are a threat to social harmony and the leading role of the Communist Party, and therefore legitimate grounds for firings, or worse.

Concerning gender discrimination, the CSC9000T Principles and Guidelines clarify that women are entitled to equal pay for equal work, and that employers are prohibited from firing a female employee due to marital status, pregnancy, child birth or breastfeeding.

However, the Guidelines allow an employer to refuse a job or position to a female employee if the type of work or position is unsuitable for a woman “as stipulated by statutes.”

According to Leung, there are currently some efforts taking place to revise laws and practices that discriminate against women, and if the reforms are introduced, this provision may be of less concern.

Freedom of Association:

The most controversial provision of the CSC9000T code is the one dealing with freedom of association and the right to bargain collectively. In line with recent changes in Chinese law, the code recognizes the right of workers to bargain collectively concerning “matters relating to remuneration, working hours, rest and vacations, occupational health and safety, and benefits etc.” It also prohibits employer retaliation against workers based on their union activities, as well as actions that restrict or obstruct union representatives from carrying out their duties.

However, the code explicitly restricts freedom of association to membership in the government- and party-affiliated All China Federation of Trade Unions (ACFTU), stating, “The enterprise shall respect the right of employees to join **the trade union** and to bargain collectively.” [emphasis added]

In case there is any doubt as to the intent of this provision, the definitions section of the CSC9000T Principles and Guidelines states, “The All-China Federation of Trade Unions and all the trade union organizations under it represent the interests of all employees and safeguard the legitimate rights and interests of employees.”

This explicit restriction on freedom of association to membership in a state-affiliated body not only contradicts ILO Conventions 87 (the right of workers to establish and join organizations of their own choosing without previous authorization), but also appears to negate rights established in China’s own labour law for the democratic election of worker representatives in workplaces where there is no trade union. The law states: “In enterprises with no established trade union, representatives shall be democratically elected by the staff and workers, but must be supported by more than half of the staff and workers.”

With the exception of the FLA code, all the MSI codes require the employer to facilitate “parallel means” of independent and free association and bargaining in countries like China where these rights are restricted by law. As noted above, China’s labour law allows for alternative forms of worker representation where a branch of the ACFTU does not currently exist, but the CSC9000T code fails to mention this legal right.

How is the Code enforced?

As Leung points out, although it is based on Chinese law, CSC9000T is a voluntary, self-regulatory tool specifically

designed for Chinese textile and apparel manufacturers. As with SA8000 and ISO, the emphasis is on the establishment and maintenance of management systems. However, unlike SA8000, there is no requirement for external verification or factory certification, unless the factory owner chooses to contract an external verifier or seek certification under another program.

According to the CSC9000T Principles and Guidelines, "Users of this [sic] CSC9000T shall be responsible for its correct application." The document goes on to say that enterprises can demonstrate their compliance with the standard by:

- "Making a self-determination and self-declaration of conformity with this CSC9000T;
- Seeking acknowledgement by any interested party (such as customers); and
- Seeking acknowledgement of the self-declaration by an external party."

The management systems described in the CSC9000T Principles and Guidelines, most of which focus on health and safety issues, include:

- Assigning responsibility for code implementation to a senior management person;
- Health and safety training;
- Communication within the enterprise and with stakeholders;
- Record keeping to provide evidence of compliance with the Code;
- Internal audits at planned intervals; and
- Procedures to investigate noncompliance and take corrective and preventive action.

Buyer buy-in?

The August 1, 2005 article in the *South China Morning Post*, claims that the CNTAC has been in contact with a number of brands and retailers and quotes an unnamed source as saying that some

companies have shown interest in CSC9000T "because it would improve their stance with the Chinese government if they recognized a mainland standard."

Clearly, CSC9000T will not be successful unless there is sufficient buy-in from major North American and European retailers and brands that source from China. For that reason, the Hudson Bay Company's decision to become the first foreign buyer to endorse and promote the China code has significance beyond the size or influence of this particular company.

In an October 24, 2004 address to the National Conference on Textile Development in Shanghai, HBC's CEO George Heller stated, "Today's commitment of the CNTAC is an important and positive step in engaging with governments as a critical participant in this three way partnership (retailers, national governments and manufacturers) that is crucial to meaningful progress."

Conclusion: One step forward, two steps back

The arrival of CSC9000T on the CSR map indicates that the Chinese government and China's textile and apparel manufacturers are beginning to recognize the need to provide assurances to western buyers and consumers that they are addressing their concerns about the working conditions and labour practices in China's apparel export industry, as well as the failure of the Chinese government to consistently enforce national laws and regulations in that sector. That recognition is a step in the right direction.

At the same time, the arrival of CSC9000T also represents an attempt by the Chinese government to ward off what it perceives to be foreign interference motivated by protectionism, and to reassert the primacy of Chinese national law over the international labour standards of the ILO and UN. Despite all the talk

about CSC9000T being based on ILO and UN conventions and declarations, it is in fact a Chinese standard that mirrors Chinese laws and regulations.

By promoting CSC9000T as an alternative to multi-stakeholder codes that are based on ILO and UN conventions and declarations, the Chinese government and apparel and textile industry are, in effect, asking foreign buyers and investors to accept their argument that China is a special case in which international standards do not apply. “We don’t use your code, you use our code,” explains Chan.

While there is no doubt that the consistent application of China’s national labour laws in the thousands of garment export factories in the coastal special economic zones would be an important step forward, accepting CSC9000T as the only appropriate standard for China would be a big step backward.

Accepting CSC9000T as the only appropriate standard for China would, among other things, mean recognizing the All China Federation of Trade Unions (ACFTU) as the only legitimate representative of workers in that country, and would therefore close the door on other possibilities for democratic worker representation and collective bargaining.

Given the limitations and potential negative impacts of the “China Code,” it is important that retailers and brands sourcing from China, as well as multi-stakeholder initiatives attempting to implement codes based international standards in that country, resist the temptation to accept CSC9000T as the one appropriate standard for China.

Instead, they should recognize the China Code for what it is, a commitment by a limited number of suppliers to comply with Chinese national labour law. Rather than signing on to the China Code, they should continue to demand that all of their Chinese suppliers comply with minimum international labour standards, as well as with China’s national labour laws.

And, as Chan points out, codes of conduct are only one point of contention in China; current efforts to improve China’s labour and social laws and regulations and their enforcement may be more important in the current period. She goes on to suggest, “For the time being, anti-sweatshop activists genuinely concerned about labour rights in China should continue to support those organizations and individuals who are exposing bad working conditions in supplier factories and helping workers to fight for their rights.”

Reports on the MFA & China

Stitched Up: How those imposing unfair competition in the textiles and clothing industries are the only winners in this race to the bottom, International Confederation of Free Trade Unions (ICFTU), December 2005, 30 pp.

This brief report from the ICFTU looks at the consequences of the end of the import quota system on garment workers and vulnerable garment producing countries, and alleges that China is the main beneficiary of the quota phase-out due to “unfair practices, both in terms of international labour standards and also the basic norms of international trade...”

The report also provides a useful survey of the current situation and outlook for garment workers and national garment industries in six representative countries – the Philippines, Cambodia, Bangladesh, Bulgaria, Lesotho, and Kenya.

According to the report, “Whilst Chinese workers, deprived of free trade unions, have not seen a substantial improvement in their working conditions (barring a few factories) since the end of the quota system, the workers in most other countries subjected to unfair competition from China are facing major

difficulties: job losses and greater downward pressure on their rights or working conditions.”

The report goes on to say, “Governments and employers are using the pretext of competition with China to justify such pressure...[and] major buyers are exerting added pressure on their suppliers to increase their flexibility.”

According to the report, the ICFTU and the International Textile, Garment and Leather Workers Federation (ITGLWF) have received numerous complaints from a number of garment producing countries, alleging that employers and governments are attempting to downgrade working conditions or wages and step up repression of trade unions, supposedly in order to remain globally competitive.

The report points to a number of examples, including:

- Garment exporting countries excluding textile and clothing workers from statutory wage increases or minimum wage protection;
- Bangladesh legalizing a 72-hour workweek for a brief period;
- An increase in unpaid overtime in the Philippines;
- The Employment Ministry in Thailand attempting to attract migrant workers from Vietnam and the Philippines to address a supposed labour shortage; and
- Employers in the Dominican Republic making a pact to reject any pay increases and threatening to relocate production to Haiti where they can pay lower wages.

The report also documents job losses and estimates potential job losses in a number of garment producing countries, which it attributes to “unfair competition from Chinese products.” These include:

- **United States:** The closure of 31 factories in 2005, and anticipated losses of 500,000 to 750,000 jobs over the longer term;

- **Dominican Republic:** The loss of 20,000 jobs in 2005, and anticipated losses of 40% of the jobs in the sector over the longer term;
- **El Salvador:** Layoffs of 6,000 garment and textile workers in 2004 following a decline in orders from the US, and the estimated loss of 30,000 additional jobs in coming years;
- **Mexico:** Loss of market share in the US market from 14.2% in 2001 to 8.9% in 2004, significant further job losses anticipated, according to the ILO;
- **Philippines:** Significant job losses in years prior to quota elimination, with only 311,000 jobs left in the sector in 2004 as compared to 900,000 in 1994;
- **Lesotho:** Closure of six of 50 clothing factories at end of 2004, and fears that the unemployment rate, which is currently 40%, could eventually reach 70%;
- **Nigeria:** Closure of 100 factories, loss of 100,000 jobs since 1999, and loss of three additional factories and 8,500 workers in beginning of 2005;
- **Kenya:** Loss of 5,000 jobs in 2004 and 8,000 layoffs at start of 2005;
- **Morocco:** Drop in apparel exports of 16% in first four months of 2005, and estimates of job losses ranging from a few thousand to 95,000.

The ICFTU report also points to major changes taking place in buying practices of retailers and brands since the end of quotas, which, it claims, will result in the consolidation of production with fewer suppliers. It notes that the Spanish retail chain, Inditex (Zara), has already reduced the number of its suppliers from 2,700 to 900, and that Wal-Mart plans to reduce the number of countries from which it sources from 63 to 12 by 2007 and to buy 85% of its textile and apparel products from no more than four or five countries.

According to the report, buyers are also imposing even greater price constraints and shorter order deadlines on suppliers

at the very same time they are demanding compliance with codes of conduct.

The report lists a number of reasons why the ICFTU believes China is engaging in unfair competition, including the “ban on free trade unions” and the “cosy relationship that company bosses maintain with local authorities... [that] opens the door to widespread abuses....” It also points to the accusations of European textile associations and the EU parliament that China provides unfair subsidies to the country’s garment export industry.

However, the report also admits that the Chinese textile and apparel industry has a number of legitimate advantages over competitors, including factories equipped with modern machinery, the financial capabilities and marketing expertise of Hong Kong-based intermediaries, the integration of the cotton, textile and clothing industries offering ready access to raw materials, and customs procedures that are better organized and more predictable than in many other garment-producing countries.

The report also criticizes the World Trade Organization (WTO) for “failing to ensure that trade policies do not allow governments to undermine international labour standards,” and calls on the WTO to “urgently examine the impact of trade liberalisation on the textile and clothing sector with a view to adopting policies that will allow vulnerable and emerging economies or industries to adapt to the challenges presented by dominant suppliers deploying unfair practices.”

The report concludes by charging that major international brands “take refuge behind their codes of conduct... [despite the fact that] such codes have in most cases failed to resolve a whole range of abuses in China and other countries....” It suggests that the current crisis in the clothing and textile industry “will require the collaboration of all the stakeholders: governments, industrialists, buyers, trade unions, importer countries and

international institutions...” It points approvingly to the work of the MFA Forum as an example of such collaboration. (See article on page 27.)

For a copy of the ICFTU report, visit: www.icftu.org/www/PDF/LMSrapporttextile05EN.pdf (english)

The Expiration of the Multi-Fibre Arrangement (MFA) and Its Consequences for Global Labor Standards, Aurret van Heerden and Dorothee Baumann, Fair Labor Association 2005 Annual Report, 20 pp.

As part of its 2005 Annual Report, the Fair Labor Association (FLA) has published this “feature issue” on the consequences of the elimination of import quotas on labour standards. While a number of the observations made in the FLA study are similar to those made in the ICFTU report described above, the authors of the FLA study put a much more positive spin on their findings, emphasizing the potential for improved labour practices in China and other garment producing countries.

In contrast to the ICFTU report, the FLA study disputes the view that the reason for China’s dominant position in the garment sector is due to the end of quotas or low wages. According to the authors, “China is not the cheapest location, and the country’s competitive edge does not depend on low wages alone.”

The study emphasizes China’s other competitive advantages, including a large and highly productive labour force, its undervalued currency, government investment in the textile and apparel industries, near self-sufficiency in raw materials, and advanced business networks and good shipping connections.

The study acknowledges that there are many structural impediments to labour standards compliance in China, including:

- The structure of the labour market with its huge supply of young migrant workers;
- The rapid pace of enterprise creation and growth of the industry;
- The lack of professional qualifications or human resource management and labour relations skills among management personnel, resulting in “the arbitrary exercise of discipline” in the workplace, and the “general lack of awareness of what can and cannot be done...;” and
- The lack of a developed “regulatory environment commensurate with a market economy, let alone a major export power.”

However, the authors of the FLA study are more optimistic than is the ICFTU about the Chinese government’s “determination to catch up” on regulatory issues. As evidence of the government’s good will, they point to a 2001 memorandum of agreement with the ILO to “strengthen institutional capacity in labor inspection to promote the effective application of ILO Conventions...” and the publication in 2004 of a new Regulation on Labour and Social Security Inspection.

Concerning the Chinese government’s poor record to date in enforcing its labour legislation, the report states, “The degree and consistency of law enforcement will continue to be a challenge, but the government is working on the corruption and inefficiency that plagues some levels of government.”

The authors also speaks positively about the CSC9000T code initiative of the China National Textile and Apparel Council, calling it “one of the clearest signs of the movement in China towards improved labor law and code compliance.” However, they also point to a number of weaknesses in the initiative, including standards based solely on national law rather than relevant ILO Conventions, its lack of independence from industry and government, and the lack

of “independent or external verification.” (See article on page 12.)

The study also questions the widely held view that China is leading the “race to the bottom” on labour standards, arguing that “China is no closer to the bottom than a number of other sourcing destinations” and that, “unlike many other countries, China is not overwhelmed or despondent and is in a strong position to improve its regulatory mechanisms.”

According to the authors, garment-producing countries have reacted differently to the end of the quota system, some following the logic of the race to the bottom by lowering labour standards and through lax enforcement of labour laws in order to keep and attract foreign investment, while others have adopted a “high-road” strategy of attempting to attract investors and buyers “on the basis of high levels of law enforcement that provide certainty and security.” They single out Cambodia as a country pursuing a “high-road” strategy.

The study concludes by suggesting that China should not be treated any differently than other garment producing countries on labour standards compliance, while admitting that the FLA’s current social auditing model has not been very successful in tackling the root causes of persistent worker rights violations in China or elsewhere.

“In China, as in other countries, we found that the compliance system was not working properly because of significant gaps that led to repeated breakdown of the system,” the report states. “This realization provided a major impetus to the development of a process designed to identify root causes and achieve sustainable compliance.”

According to the report, “Under the new system..., we will replace checklist questionnaires with new tools that identify root causes and measure the impact of remediation in both qualitative and quantitative terms.”

Whether the FLA's new approach to achieving and maintaining labour standards compliance, in China and elsewhere, will be more successful than its current external monitoring system is yet to be seen.

For a copy of the FLA report, visit:
www.fairlabor.org.



Transparency

ETAG Report Card Rates Companies on Transparency

On November 30, Canada's Ethical Trading Action Group (ETAG), a national coalition of faith, labour, international development and teacher organizations, released an 88-page study, *Coming Clean on the Clothes We Wear: Transparency Report Card*.

Based on research carried out by MSN, which acts as the ETAG secretariat, the *Transparency Report Card* assesses and compares 25 major retailers and brands selling apparel products in the Canadian market in terms of their efforts to address worker rights issues in their global supply chains and on how and what they report on those efforts.

The rating system utilized in the research was based on the Gradient Index developed by AccountAbility in the UK, and the company assessments and ratings are based exclusively on publicly available information published by the companies themselves.

The Report Card is the first in what could become an annual assessment of labour standards reporting by apparel brands and retailers in Canada. "It is our hope that this report will encourage all

companies profiled to take additional steps to meet and exceed the standards of industry leaders," says the study. "Companies that do so will see their rating improve in future report cards."

The Report Card includes a series of recommendations to companies, investors, lenders, the Canadian government, and consumers, that, according to the report, "would remove the veil of secrecy from Canada's apparel industry and set the stage for collaborative action to eliminate worker rights abuses in global supply chains."

Report Card findings

According to the 2005 ETAG Transparency Report Card, "none of the 25 retailers and brands surveyed is currently providing sufficient, credible and verifiable information to consumers or investors to allow them to make informed ethical choices." It notes that close to one half of the companies surveyed currently provide no publicly available information on their policies or efforts to address labour standards issues in their supply chains.

However, the study found that there are significant differences in the kinds and amount of information those companies are disclosing. Not surprisingly, a number of brand-sensitive companies that have been the target of anti-sweatshop campaigns for the past decade, including Levi Strauss, Nike and Gap Inc., are now providing more information to consumers than are companies that have slipped under the radar screen.

According to the report, "these companies received higher ratings because they provide evidence of a comprehensive and transparent approach to addressing labour rights issues in their supply chains that includes, in addition to codes of conduct and factory audits, collaboration with other companies and labour and non-governmental organizations in multi-stakeholder initiatives, public reporting on audit findings and corrective action, labour rights training for workers and management

personnel, and/or engaging with labour and non-governmental organizations in importing and producing countries.”

It also notes that the decision of Nike and Levi’s to publicly disclose their global supply chains “contributed to their receiving the highest scores.”

Canadians lagging behind

Another key finding of the Report Card is that, with a few exceptions, Canadian companies are lagging behind the major US brands on their reporting to customers and investors. “With the exception of MEC (Mountain Equipment Co-op), not a single Canadian company scores higher than the average score (44) of all US-based companies surveyed,” says the report.

The report attributes the low ratings of most Canadian companies to “their relative lack of experience with media exposés or consumer campaigns on worker rights issues.”

Undercutting ILO standards

MSN researchers found that few of the company codes of conduct assessed were consistent with the minimum international standards of the International Labour Organization (ILO). “Even some of the companies that rate highly in the report Card, including Gap Inc., have codes that fall short of ILO standards,” says the report.

The study also found that code of conduct provisions on core labour rights issues often undercut the internationally recognized fundamental rights at the workplace as defined by the Core Conventions of the ILO.

“Even the codes that address all core labour rights often include language that qualifies the company’s commitment to freedom of association, non-discrimination, and the prohibition of child labour,” says the report.

Companies that engage rate higher

The ETAG study found that companies that engage with unions and NGOs in

importing and producing countries and/or are involved in multi-stakeholder initiatives also rate higher on other Report Card criteria.

According to the report, “A company engaging with trade unions and NGOs on the ground is more likely to be taking additional steps to address labour rights issues in its supply chain because engagement provides greater access to information and raises expectations of greater accountability to local stakeholders. It is also likely that stakeholder engagement is a logical outcome of a more developed labour standards compliance program.”

The report concludes, “Given recent reports on serious deficiencies in factory audits carried out by commercial social auditing firms, it is worth noting that industry leaders appear to be giving increased importance to engagement with local stakeholders and involvement of workers in the ongoing monitoring process as key elements in effective code implementation programs.”

Company reactions

Not surprisingly, the reactions of companies surveyed for the Transparency Report Card varied depending on the ratings they received. However, some companies also criticized the research methodology and/or questioned why they should be expected to make public information on their labour standards policies and programs.

As well, a number of Canadian retailers, and particularly private companies, appeared to be confused about the research methodology, failing to understand that the ratings were based on publicly available information, rather than on their response, or lack of response, to a confidential questionnaire. In fact, there was no questionnaire.

MSN researchers had consulted with each company twice during the research process, inviting each company to respond

to MSN's initial research findings and to provide any additional publicly available information of which MSN may not have been aware.

Canadian men's wear retailer Harry Rosen noted in a letter to ETAG, "As a private company we are under no obligation to share this kind of information you are requesting..." The letter went on to say, "Working conditions we have seen [in our supply factories] are at a world-class level, in terms of health, safety and labour standards. I am compelled to add that I sensed an accusatory tone in your letter. Unless a company takes the action of completing your survey and disclosing private information, ETAC [sic] presumes that the firm is doing business in contravention of labour and other standards. The implication is that, by not participating in the survey, the firm is guilty of breaches of corporate responsibility. I find this extremely distasteful and undemocratic."

In contrast, a number of retailers and brands, including the Hudson's Bay Company, Levi Strauss, Gap Inc., Mountain Equipment Co-op, responded to the researchers' inquiries by drawing their attention to additional publicly available information, clarifying areas in which they believed MSN had misinterpreted the information, and/or publicly disclosing information that had previously not been available to the public.

For instance, in response to MSN's second inquiry, Levi Strauss agreed to disclose additional information on its code compliance program, which resulted in a significant improvement in its score. These materials included its "Terms of Engagement Handbook," which defines in greater detail the company's expectations of suppliers concerning compliance with its code of conduct, as well as reports on its efforts to engage with labour and non-governmental organizations.

In response to MSN inquiries about inadequacies in its current code of conduct,

Gap Inc. posted on its website a statement declaring its commitment to "the principle that wages and benefits for a standard working week be sufficient to meet basic needs and to provide some discretionary income." The statement also notes the company's involvement in the Jo-In project, a joint project of the various multi-stakeholder initiatives to develop a common code of conduct that is firmly based on ILO Conventions. (See article on page 27.)

While the posting of the statement didn't result in changes in Gap's rating in the Transparency Report Card, the commitments made in the statement were noted in the report.

Room for improvement

Although ETAG's 2005 Report Card assesses companies based on a fairly broad set of criteria, some crucial questions are not adequately addressed in the Report Card, or by the Gradient Index upon which it is based. For example, the 2005 Report Card does not include criteria concerning worker and third party complaint processes, worker access to audit reports, or other mechanisms for worker participation in the monitoring or remediation processes. Nor does it include criteria concerning rewards or incentives for suppliers for achieving and maintaining compliance with international labour standards.

While ETAG made some alternations to the weighting for certain criteria in the original Gradient Index, giving greater importance to transparency and engagement with local labour and nongovernmental organizations, it did not make significant changes in the criteria itself. As a result, the involvement of workers in the code implementation process is not assessed. According to the Report Card, ETAG will consider including such criteria in future Report Cards.

Does transparency matter?

Although the Transparency Report Card and other similar CSR reports have been

successful in pushing companies to disclose more information on their social and environmental policies and programs, the question remains whether greater transparency will lead to greater corporate accountability and better working conditions and respect for workers' rights at the factory level.

Dara O'Rourke, Assistant Professor of Environmental and Labour Policy at the University of California at Berkeley and a major proponent of transparency, believes it is useful to track what companies are making public, but that the information currently being disclosed by even the leading brands is not specific enough to differentiate between companies.

"We need to talk to the leading firms about what performance data they are willing to disclose," says O'Rourke. "Over time, we need to move toward actual performance indicators, and to do so, we need factory level information to identify patterns of noncompliance."

So, what information is needed to improve labour practices? According to O'Rourke, in order to assess the root causes of excessive overtime and inadequate wages, you would need information on prices paid to suppliers and delivery time demanded. "Is the price being paid sufficient to provide a minimum wage or living wage?" asks O'Rourke.

O'Rourke also suggests that groups lobbying for greater transparency need to consult with local groups on the ground about the kinds of information that would be useful to them. "What are the brands saying about the wages workers are supposed to be making? What are the brands claiming about prices and wages? What are the real issues for workers concerning discrimination?"

While admitting that detailed factory-level information won't be immediately useful to consumers, O'Rourke argues that it is the role of NGOs and academics to assess and translate the data disclosed by

companies to make it useful information for consumers and workers.

To access the full report, as well as an Executive Summary and other materials, visit: www.maquilasolidarity.org/campaigns/reportcard/index.htm

More Companies Disclose Factory Locations

Three apparel and footwear companies have followed Nike's lead by releasing to the public the names and addresses of all their supply factories around the world, and a fourth company has promised to also do so in the near future.

On April 13, 2005 Nike became the first major brand to publicly disclose its global supply chain for Nike-brand products. Although Nike has not yet disclosed factory locations for its other wholly owned brands – Converse, Cole Haan and Bauer Nike Hockey – it has committed to doing so in the coming year.

In its Corporate Responsibility Report for fiscal year 2004, Nike explained its decision to disclose its supply chain and urged other companies to do the same, stating: "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... Transparency is an opportunity, if driven by a desire to inform stakeholders and enable them to make informed judgments about us based on the facts. It can only be a driver of broad societal change if its is adopted by more than a handful of companies."

On October 11, Levi Strauss became the second major apparel company to disclose its supply chain, publishing on its website a list of more than 750 wholly owned and contract factories making

Levi's, Dockers and Levi Strauss Signature branded products.

"Our hope is that this level of transparency will become standard across the apparel sector, fostering greater collaboration among brands in shared factories," said the Levi's media release.

On October 17, Puma released its 2004 Sustainability Report in which it announced that it was also publicly disclosing its worldwide list of active supply factories. According to Puma, its factory list is available through the Fair Labor Association (FLA).

On November 1, Timberland released its 2004 CSR report in which it announced that it was disclosing its list of 160 factories making the company's footwear and apparel products around the world.

In addition, a number of sportswear companies now disclose partial lists of the supply factories. Reebok, for instance, discloses locations of supply factories producing its footwear and university-licensed apparel products, and GEAR For Sports and Jansport disclose supply factories producing university-license apparel products in order to meet the transparency requirements of university ethical purchasing policies.

As well, Labour Behind the Label, the UK platform for the Clean Clothes Campaign, reports that the British sportswear company, Umbro, has informed UK organizations involved in the Play Fair at the Olympics campaign – Trades Union Congress (TUC), Oxfam, Labour Behind the Label – that it also plans to follow Nike's lead and disclose the locations of factories from which it sources directly.

While only a handful of apparel and footwear companies have so far agreed to disclose supply factory locations, there appears to be a growing momentum in favour of supply chain transparency.

To access the supply factory lists of various companies, visit: www.itglwf.org/.



FLA Releases Third Annual Report

The US-based Fair Labor Association (FLA) has released its third Annual Public Report on its own activities and those of 28 member companies in 2004.

The FLA 2005 Annual Report includes individual progress reports from 15 "Participating Companies" and 13 "Category B" University Licensees, an overview of the findings from FLA audits of member supply factories, case studies of two third party complaints submitted to the FLA in 2004-2005, summaries of FLA Special Projects, and a feature report on the impact of the MFA phase-out on labour standards, with a particular focus on China [See article on page 19].

According to the FLA, the 2005 Annual Public Report differs from previous reports "in that it includes a wide range of companies – large and small, with diverse suppliers producing goods ranging from apparel and footwear to class rings and imprinted logoed checks."

The report includes composite findings from FLA external audits of at least 3.3 percent of each member company's applicable factories. These figures show that there were 18.2 instances of noncompliance with the FLA per factory in 2004, as compared to 15.1 instances in 2003.

The report cautions, however, that this increase in the rate of noncompliance doesn't necessarily suggest that there was a deterioration in working conditions, but rather might be attributed to improvements in the quality of audits, enhancements in the audit instrument, and/or greater experience of the auditors with the audit instrument and FLA requirements.

As in its two previous reports, the composite findings in the 2005 FLA Report show a disproportionate number of instances of noncompliance on quantifiable issues, such as health and safety (44%) and wages, benefits, hours of work and overtime compensation (27.5%) as opposed to rights-based issues, such as discrimination, harassment and abuse (5.1%) and freedom of association (4%). As the report admits, FLA findings related to freedom of association, harassment and abuse, and discrimination “do not mirror the realities on the ground.”

While the report argues that improvements in the FLA’s monitoring methodology and monitors’ capacity to utilize it “is expected to bring about necessary improvements in the quality of data that the FLA collects,” it would appear that there has been little progress to date in the quality of FLA audits concerning worker rights issues.

To its credit, the FLA acknowledges the inadequacies of its current monitoring program and the “need to move beyond monitoring to proactively address the root causes of the noncompliances and implement remediation responses that are sustainable and preventative.”

The report points to the FLA’s efforts to develop a new monitoring methodology, FLA 3.0, which it says is being piloted through the FLA Special Projects, such as the projects on hours of work in China, labour rights in Central America, and freedom of association, as evidence of its commitment to go beyond the current auditing model and develop other methods of achieving sustainable compliance.

FLA Participating Companies include a number of major US and European sportswear brands, such as adidas-Salomon, Asics, GEAR For Sports, Nike, PUMA, and Reebok; US and Canadian apparel merchandisers and specialty retailers, including Eddie Bauer, Liz Claiborne, Patagonia, Mountain Equipment

Co-op, and Phillips-Van Heusen; a few US and Canadian manufacturers that supply the university market, including Drew Pearson Marketing, Gildan Activewear, New Era Cap, Outdoor Cap, Top of the World, and Zephyr-Graf-X; and one high-end US retail chain – Nordstrom.

The FLA Annual Report is available at:
www.fairlabor.org

ETI Shifts Gears to Drive Change

The Ethical Trading Initiative (ETI) has released its 2004/2005 Annual Report, entitled “Driving Change.” According to the UK-based multi-stakeholder initiative it is shifting gears to move beyond its historical “learning by doing” approach and put more resources into ensuring that member companies “implement our learning and drive measurable change in the workplace.”

In the next few years ETI will put more emphasis on the following activities:

- Capacity building “to support local initiatives in selected key supplier countries by 2008;”
- Recruiting more brands, retailers, suppliers and manufacturers to “create more commercial leverage for the implementation of the Base Code;”
- Raising the profile of ethical trade and the ETI in the UK and in key sourcing countries; and
- Developing and disseminating practical tools to help companies implement the Base Code credibly and consistently.

One of the tools mentioned in the report is a new training program for buyers and suppliers jointly developed by the ETI and the Co-operative College. In 2006, the program will offer four modules – an introduction to ETI and its Base Code,

developing and implementing an ethical trading policy, how to work with suppliers and other stakeholders to resolve entrenched code violations, and developing and maintaining effective partnerships with stakeholders.

For a copy of the report and further information, visit:

www.ethicaltrade.org/Z/lib/annrep/2005/en/index.shtml

Jo-In Pilots Best Practice

The Joint Initiative on Corporate Accountability and Workers' Rights (Jo-In) is moving into its pilot project phase.

Organizations involved in the initiative include Ethical Trading Initiative (ETI), Clean Clothes Campaign (CCC), Fair Labor Association (FLA), Fair Wear Foundation (FWF), Social Accountability International (SAI), and Worker Rights Consortium (WRC).

Eight major brands involved in four of the multi-stakeholder initiatives listed above are participating in a pilot project in Turkey to test what methods or combination of methods can deliver improvements for workers in the companies' Turkish supply factories.

The companies participating in the Turkey Trial Project include Adidas, Gap Inc., Gsus, Marks and Spencer, Nike, Otto Versand, Patagonia and Puma.

To date, the companies and organizations involved in the initiative have gained agreement on a common code of conduct that is based on ILO Conventions and includes a living wage provision. The project will focus on methods of achieving compliance on three challenging issues – freedom of association and the right to bargain collectively, wages, and hours of work.

As well, a number of suppliers have been selected for the project from lists submitted to Jo-In by the above brands,

based on the length of the relationship, volume of production, presence of more than one buyer in the factories, integrated production practices, mix of organized and unorganized workplaces, geographic location, primary supplier (possibly with subcontractors), and expected chances of survival in the post-quota environment. The factory assessments are scheduled to start in early March.

In response to feedback received from Turkish stakeholders, the project steering committee is proposing that a Jo-In Local Working Group be established that will include local staff of participating buyers, participating suppliers, local trade unions and NGOs, and representatives of the Turkish government and industry.

MFA Forum Moves Forward in Bangladesh

In June 2005, the MFA Forum and the United Nations Development Program (UNDP) co-sponsored a conference in Dhaka, Bangladesh in which local manufacturers, national and international trade unions and NGOs, multi-lateral institutions, and major retailers and brands that source from the country achieved a remarkable level of consensus on common objectives to make Bangladesh's garment and textile industry more globally competitive, safer for workers, and more respectful of workers' rights.

Six months later, some progress has been made toward developing a national industry survival strategy that includes a commitment to achieving compliance with minimum international labour standards.

According to Allan Roberts, Chair of the UK Ethical Trading Initiative (ETI), a "buyers working group" that includes European and US retailers and brands representing 90% of Bangladesh's garment export market has reached agreement on a common code of conduct

for their Bangladeshi suppliers and are now working on a timeline for achieving compliance with the code. The working group has also reached agreement on “minimum performance standards” that the suppliers are expected to comply with in the short term in order to continue to receive orders from the buyers while they move toward compliance with the common code.

Brands and retailers currently involved in the working group include: Asda, Carrefour, Co-op, Cotton Group, Gap Inc., H&M, Inditex (Zara), Karstadt Quelle, Levi Strauss, Marks & Spencer, Nike, Tesco and Wal-Mart.

According to Roberts, the common code is identical to the code of conduct adopted by the labour rights organizations and multi-stakeholder initiatives involved in the Joint Initiative on Corporate Accountability and Workers’ Rights (Jo-In) project in Turkey. (See above.)

Meanwhile, there has been some progress in Bangladesh toward the development of a National Compliance Forum, which is intended to promote dialogue among local stakeholders on labour standards compliance issues and give key national players a voice in the MFA Forum activities.

While two government-initiated taskforces established to address the issues raised at the June 2005 conference originally included only government and industry representatives, agreement has now been reached for the participation of local trade unions and NGOs. According to Roberts, the Bangladeshi trade unions and NGOs have nominated their representative to the National Compliance Forum.

For more information on the Bangladesh conference and the MFA Forum, visit: www.mfa-forum.net.



New Resources

***Rethinking Business Regulation: from Self-Regulation to Social Control*, Peter Utting, United Nations Research Institute for Social Development, September 2005, 29 pp.**

In this brief but dense publication, Utting takes a critical look at the potential and limitations of voluntary approaches to business regulation. Rather than dismissing all forms of voluntary regulation as “simply part of a broader trend of ‘deregulation’ promoted by neoliberalism,” Utting views them as “part of a more complex process of ‘re-regulation’ ...”

The author points to the development of multi-stakeholder initiatives (MSIs) as an example of a “ratcheting-up of standards and a slight hardening of the soft volunteerism that characterized the early experiences of CSR, which centred on corporate self-regulation.”

He notes that some non-governmental regulatory schemes “are conducive to democratic governance by engaging a broader range of actors or stakeholders in consultative and decision-making processes... [and] have also contributed to harmonizing standards and implementation procedures, and to imposing some order on what was becoming a confusing array of codes of conduct.”

At the same time, MSIs have a “very mixed scorecard,” says Utting. Since they only involve “a small fraction of the world’s 61,000 TNCs, nearly one million affiliates and several million suppliers,” their procedures to encourage compliance remain weak, and some tend to be “fairly exclusionary, top-down and technocratic.” He also notes that some CSR schemes “have not seriously addressed the question of what impact CSR is having on developing countries and the possible tensions and contradictions between CSR and development.”

Utting also points to the structural constraints that restrict the scope and effectiveness of CSR, noting, “The pressures on companies to prioritize ‘business-as-usual’ practices and shareholder interests are intense, and they are institutionalized in legal and incentive structures, as well as in corporate or management culture.”

As Utting notes, “the major substantive weakness of the CSR agenda seems to reside in the fact that it is swimming against a strong current of neoliberal reform that promotes forms of deregulation and flexibilization – or disembedding – that often have the effect of lowering standards.” According to Utting, “the key challenge confronting the CSR agenda appears to be its relationship with neoliberalism.”

However, according to Utting, the “ratcheting up” and “gradual hardening” of voluntary initiatives has recently entered a new phase encapsulated in the term “corporate accountability,” which emphasizes “not only more effective codes of conduct monitoring, reporting and certification systems, but also recourse to public policy and law.”

Utting argues that we need to “look beyond the voluntary versus binding, soft versus hard dichotomy” that frames much of the current debate on corporate social responsibility and accountability. It would be more fruitful, he suggests, to focus more on the “complementarity between different non-governmental regulatory systems; the interface between confrontational and collaborationist forms of civil society activism; and the linkages between voluntary and legalistic approaches or public policy.”

The author concludes, “[O]ne of [the CSR movement’s] main challenges is political, namely how to mobilize the social and political forces, and build the broad-based coalitions and networks required to promote progressive institutional change.”

According to Utting, this will require “confronting the difficult question of alliances and compromises involving

business interests, and exploring more systematically the potential for the types of complementary, synergistic and pluralistic approaches to regulation outlined above.”

Rethinking Business Regulation *is available in English at: www.unrisd.org/*

Threads of Labour: Garment Industry Supply Chains from the Worker’s Perspective, Angela Hale & Jane Wills, Blackwell Publishing, November 2015, 288 pp, £15.99.

Based on research carried out by a number of academics and labour rights activists in the North and South, *Threads of Labour* examines global apparel supply chains from the workers’ perspective.

This UK publication edited by two well-know researchers/activists includes a series of chapters by different authors, most of whom are members of worker support organizations. The authors examine the following issues:

- The changing face of the global garment industry;
- The impact of the end of the import quotas system on garment workers;
- Organizing and networking in support of garment workers;
- Action research;
- Supply chains and workers’ lives;
- The implications of subcontracting for UK workers;
- The impact of full-package production in Mexico’s blue jean capital; and
- Defending workers’ rights in subcontract workplaces.

One of the authors, Angela Hale, died suddenly prior to the book’s publication, but after it had gone to print. The book is a testament to her commitment to bringing workers’ voices to the analysis of the workings of garment industry supply chains.

To order the book, visit:
www.blackwellpublishing.com/1405126388

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***Brand Campaigns & Worker Organizing:
Lessons from Lesotho, Thailand and
Honduras, Maquila Solidarity Network,
September 2005, 82 pp, \$7 North America,
\$10 International (including postage).***

Published by MSN, this 82-page booklet includes three case studies in which local worker organizing efforts were supported by international brand-focused campaigns.

Based on MSN's experience in three international campaigns targeting major brand-name apparel companies, as well as interviews with other participants in the

campaigns and the worker organizing efforts, the case studies document the various strategies and pressure points used to support the workers' efforts to win better wages and working conditions and respect for their rights.

Brand Campaigns & Worker Organizing also assesses the major strengths and weaknesses of the three campaigns, and draws positive and negative lessons from those experiences.

To order the booklet, contact:
info@maquillasolidarity.org.