

Ethical Licensing and
Purchasing Policies:

Implementation Guide

April 2005



*Maquila
Solidarity
Network*

www.maquilasolidarity.org

606 Shaw Street
Toronto, Ontario, Canada M6G 3L6
416-532-8584 (phone)
416-532-7688 (fax)
info@maquilasolidarity.org
www.maquilasolidarity.org

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1.0 Introduction

A growing number of public institutions – universities, school boards, municipal governments – are adopting ethical licensing and/or purchasing policies to help ensure that apparel and other products that bear their name and insignia or are bulk purchased by the institution are made under decent working conditions that are consistent with the values of that institution.

While there is an emerging consensus on the minimum labour standards that should be included in ethical licensing and purchasing policies, there is less clarity as to how such policies can be effectively implemented. In this *Implementation Guide*, the Maquila Solidarity Network (MSN) offers some practical methods to put an ethical licensing and/or purchasing policies into practice and to provide stakeholders and the public verifiable assurances that the policy is achieving its objectives.

This Implementation Guide is intended as a resource for administrators and policy advisors who are developing or implementing ethical licensing or purchasing policies, as well as unions, NGOs, students and other citizens who are calling on their institutions to adopt these policies and working with those institutions to develop and implement policies.

2.0 What should be in the Policy?

The four key elements in effective implementation of ethical licensing and purchasing policies include:

- **Public disclosure of factory locations:** The names and addresses of each factory used to produce the company's apparel are provided to the institution and made publicly available.
- **Internal monitoring by the company:** The company is responsible for monitoring the factories it uses to produce its apparel and reporting the results to the institution.
- **External verification by a credible third party:** an independent audit of conditions in the company's factories is undertaken to confirm compliance with the policy.
- **Public reporting on audit findings and corrective action:** The results of monitoring and verification are made public, as well as the steps being taken to correct any problems found.

An effective policy incorporates all four of these Provisions in the policy itself and in licensing or purchasing agreements with suppliers. As a condition of doing business with the public institution, suppliers agree to provide all required information and reports to the institution and the public, and to allow external auditors access to their supply factories to verify compliance with the policy.

By requiring suppliers to provide credible and transparent public reports, public institutions can give stakeholders and the public assurances that progress is being made on compliance with the policy. In addition, the institution must also decide on a method of verifying that its licensees or suppliers are upholding the standards set out in their ethical licensing or purchasing policy.

3.0 Verification of compliance

There are a number of options available to Canadian public institutions to verify compliance with ethical licensing and purchasing policies. Below we review some of the currently available options. We put forward these options on the assumption that the administrative and financial burden of implementing an ethical purchasing or licensing policy for one institution alone – including hiring social auditors on a regular basis to investigate working conditions – is not a realistic alternative for most Canadian public institutions that have relatively small licensing or purchasing programs.

In our view, it should be the responsibility of suppliers, not the public institution, to cover the costs of monitoring and external verification, since all apparel companies should be expected to provide their customers verifiable assurances that their factories meet minimum international labour standards and local legal requirements.

However, a public institution should consider devoting some resources to policy implementation for managing relations with suppliers, cooperation with other Canadian institutions with similar policies, and/or participation in one or more US-based multi-stakeholder initiatives, such as the Worker Rights Consortium (WRC) and the Fair Labor Association (FLA). (See below.)

3.1 Enforcement through Public Access to Information

While most public institutions do not have sufficient resources or expertise to monitor compliance with ethical licensing or purchasing policies on their own, they can require credible and transparent reporting from suppliers on those companies' efforts and progress in meeting policy standards.

Public disclosure of factory locations and annual public reports on the supplier's efforts to achieve and maintain compliance with the labour standards provisions of the policy can be effective tools to measure progress and encourage fair labour practices. If that information is only provided to the public institution on a confidential basis, stakeholders and the public will lack confidence that the policy is being implemented effectively.

Requiring suppliers to publicly disclose factory locations where the institution's products are made both encourages suppliers to better monitor conditions in those factories and makes it possible for workers and other stakeholders to register complaints when there are serious and persistent violations of the policy in particular factories. It is worth noting that while suppliers of US universities with ethical licensing policies initially resisted publicly disclosing factory locations, that information is now publicly available on the Worker Rights Consortium (WRC)

website, as well as the websites of major US university suppliers, such as Nike, GEAR for Sports, and JanSport. It's worth noting that university suppliers that have cooperated with factory disclosure requirements have learned that disclosure had little or no negative impact on their business, and some of these companies, such as Nike and JanSport, have since voluntarily disclosed all factory locations in their global supply chains.

In addition to public disclosure of factory locations, suppliers should also be required to provide annual public reports on their efforts and progress in achieving and maintaining compliance with the policy. Annual reports should include:

- Information on their internal monitoring program (by company personnel), including, monitoring methods, how frequently monitoring takes place, findings on compliance with specific policy provisions, and corrective action taken to address areas of noncompliance;
- Information on external audits by third-party verifiers mutually acceptable to the institution and the supplier, including information on the auditing organization, the frequency of audits, audit findings and corrective action taken (MSN can provide suggestions on credible auditing organizations for various countries); and
- Any additional efforts made to promote sustainable solutions to persistent problems, such as training on labour rights, gender, or health and safety issues for management personnel and/or workers; management systems put in place to document policy compliance; engagement with local labour and/or non-governmental organizations, etc.

This approach recognizes that no workplace is perfect and that achieving and maintaining compliance with ethical licensing and purchasing policies is an ongoing effort. Policies that demand instant compliance tend to discourage candid and transparent reporting. As well, our emphasis on public disclosure of audit findings, corrective action and other efforts to achieve and maintain compliance is meant to address the real and perceived inadequacies of many of the emerging monitoring organizations, the vast majority of which are commercial social auditing firms.

Public disclosure of audit findings and corrective action allows stakeholders to monitor the company's progress in achieving and maintaining compliance with the policy, thereby encouraging candid reporting. Please note that this level of transparent public reporting on audit findings and corrective action is currently being provided by the Fair Labor Association (FLA). (See below.)

Since smaller suppliers, particularly local companies that own the manufacturing facility(ies) where the institution's products are made, may not have the financial

resources to pay for external audits, efforts should be made to seek alternative means of verifying compliance with the policy.¹

It is also worth noting that the Fair Labor Association (FLA) takes the limited resources of small suppliers into consideration in its requirements for “Category D” suppliers of FLA-member universities. (See below.)

A public institution should also require that suppliers co-operate with independent investigations when the institution receives credible reports of noncompliance with the policy in a factory producing licensed or bulk-purchased products for the institution. Once again, the auditing organization used must be acceptable to the public institution, as well as the supplier. (As noted above, MSN can provide suggestions on credible auditing organizations for various countries.)

3.2 Cooperation among Canadian Institutions

Discussions are already underway to promote cooperation among Canadian universities on the implementation of their ethical licensing and/or purchasing policies. Co-operation might include sharing of information on suppliers, joint discussions with suppliers on implementation requirements, discussion with the Fair Labor Association and Worker Rights Consortium on possible membership of Canadian universities in those organizations.

In Ontario, initial discussions have taken place concerning possible cooperation among a group of school boards and the Worker Rights Consortium on implementation of their policies. While there is not currently a sufficient number of municipal governments with ethical purchasing policies to initiate discussion on possible cooperation regarding implementation of those policies, such cooperation might be possible in the longer-term, either by sector or in collaboration with other public institutions.

3.3 Participation in an Existing Code Implementation Body

In recent years, various multi-stakeholder initiatives have been developed that share both the costs and the administration of implementation of ethical licensing and purchasing policies while providing the additional influence of a large number

¹ One option worth exploring over the longer term is whether an Employment Standards Branch of a provincial Ministry of Labour could carry out annual audits of local supply factories producing for public institutions with ethical purchasing policies, if such audits were jointly requested by the public institution(s) and the supplier. This option would have particular relevance to a provincial government that has adopted an ethical procurement policy. Since provincial Employment Standards regulations in Canada are generally consistent with ILO Conventions, the standards audited would likely be consistent with those of the public institution’s policy. While this option might not be feasible in some provinces without increased resources being allocated for workplace audits, increased resources for factory audits would be of benefit to all workers, not just those employed in workplace producing for public institutions.

of institutions acting in concert. With the exception of the Worldwide Responsible Apparel Production Certification Program (WRAP), which is an industry-controlled, self-regulatory program rather than a multi-stakeholder initiative, the monitoring organizations listed below provide what we consider to be credible expertise in the area, which can be of assistance to institutions trying to implement policies in what may be an unfamiliar business environment.

There are three US-based organizations that can assist public institutions and/or their suppliers in the implementation of ethical licensing and purchasing policies.

3.3.1 Worker Rights Consortium

The Worker Rights Consortium (WRC) is “a non-profit organization created by college and university administrations, students and labor rights experts. The WRC’s purpose is to assist in the enforcement of manufacturing Codes of Conduct adopted by colleges and universities ...” There are currently approximately 130 colleges and universities affiliated with the WRC.

Recently, the WRC agreed to expand its scope to provide services to school boards and municipalities. According to WRC Outreach Coordinator Nancy Steffan, the WRC is currently prepared to work with non-university institutions on a short-term, experimental basis. “The best chance of success will be with schools (districts, boards, etc) or government entities that can create a consortium of interested bodies, to pool resources and leverage just as universities have done,” says Steffan.

The WRC is not a monitoring system. Rather, it is a complaints-based investigative system. WRC investigations are carried out by assessment teams that include WRC staff or board members and local human rights NGOs or labour rights experts.

When an institution signs on to the WRC they agree to:

- Adopt a manufacturing code of conduct and work toward the incorporation of this code into applicable contracts with licensees;
- Ask licensees to provide the WRC with a list, updated regularly, of names and locations of all factories involved in the production of their licensed and/or bulk purchased goods; and
- Pay annual affiliation fees, which are either \$1,000 or 1% of gross licensing revenues, whichever is greater.

The WRC maintains an on-line database of the suppliers or licensees associated with its affiliates, as well as their subcontract factories. When the institution or the WRC receives a complaint about the labour practices of any of the suppliers,

licensees or their subcontractors, they initiate an investigation of the factory in question and engage with the company to correct the problem.

The WRC does not issue a report on its investigations until it has met with the company to find ways to correct the problems encountered. The WRC then issues a detailed public report, available on its website, that includes its investigative findings, proposals for corrective action, and the company's response to those proposals.

Because it is a complaints-based system, however, the WRC does not require regular reporting on the part of the companies, nor does it conduct regular monitoring of any company facilities. Further information: www.workersrights.org

3.3.2 Fair Labor Association (FLA)

The Fair Labor Association (FLA) is, in its own words, “a non-profit organization combining the efforts of industry, non-governmental organizations (NGOs), colleges and universities to promote adherence to international labor standards and improve working conditions worldwide.” Base in the US, the FLA includes among its members some of the major US and European brands, such as Nike, Reebok, adidas-Salomon, and Patagonia, as well as hundreds of smaller university suppliers. The FLA Board of Directors includes representatives of companies, NGOs and universities.

According to the FLA, “Colleges and universities join the FLA to promote fair and decent conditions in the production of goods bearing their logo.” To date, there are over 190 colleges and universities affiliated with the FLA.

The FLA requires member companies to provide reports on their own internal monitoring programs and to have a percentage of their production facilities externally audited by FLA-accredited auditing organizations selected by the FLA. These external audits assess compliance with the FLA Code of Conduct, rather than the institution's code.

The FLA does not presently administer a program for municipal, provincial or state governments, or school boards. However, suppliers of municipal or provincial governments or school boards could be encouraged to join the FLA in order to make use of its monitoring and reporting program.

When a university signs on to the FLA, it is required to pay an annual fee equal to 1% of its gross annual licensing revenues or \$1000, whichever is greater. In addition, its licensees or suppliers are required to participate in the FLA program.

Full members of the FLA (Participating Companies) are companies that have committed to a thorough program to bring their entire supply chain in line with the FLA's standards. There are currently 12 companies that have made this

commitment: adidas-Salomon, Eddie Bauer, GEAR for Sports, Liz Claiborne, New Era Cap, Nordstrom, Nike, Patagonia, Puma, Reebok, Phillips-Van Heusen, Zephyr Graf-X and Gildan Activewear.

Companies that engage with the FLA as a result of licensing or supply agreements with colleges or universities are grouped into four different categories with specific requirements based on their annual sales and location.

Companies with annual consolidated revenues of US\$50 million or greater will be required to participate in either Category A or Category B.

Category A companies (like the 12 listed above) adopt the FLA standards across their supply chain and implement a system of internal compliance programs coupled with “independent external monitoring” by FLA-accredited monitoring organizations. They also pay annual assessments to the FLA based on their revenues. Finally, Category A companies must also submit annual reports on their progress in meeting the standards.

Category B companies face the same requirements as Category A companies, but only for the factories that supply the products to the university or college that has joined the FLA.

Category C companies have annual revenues below US\$50 million. They must apply the FLA standards to any facilities they own or operate. They must also provide the names and addresses of any subcontract facilities engaged in producing goods for the university or college. Within two years, the company must implement a system of internal monitoring for its own facilities. The company will also be part of a pool of Category C licensees or suppliers to a particular university or college, from which the university or college will select 10% of facilities for independent external monitoring. Category C companies also pay a fee set at .0001 times annual revenue, with a minimum of US\$500.

Category D companies have annual revenues of less than US\$1 million whose facilities are located in the US (or, presumably, Canada) and are either in the same state (province) or within 200 miles of at least one of the universities or colleges for which it is a licensee. Those companies have to disclose their factory locations and certify that they comply with the FLA’s standards. They do not have to produce annual reports, nor do they have to pay any fees.

The FLA’s system does provide some annual reporting on progress and requires some external monitoring of results, which is useful for gauging whether the institution’s licensees or suppliers are meeting the institution’s standards. The FLA chooses the auditing organizations to carry out its external audits, and summaries of those findings and the company’s corrective action plan are posted on the FLA website. This system also takes into account the size of the

company, limiting the obligations of small operations with few employees and therefore lesser capacity. Further information: www.fairlabor.org

3.3.3 Social Accountability International (SAI)

The SA8000 Standard and factory certification system was developed and is managed by Social Accountability International (SAI), “a U.S.-based, nonprofit organization dedicated to the development, implementation and oversight of voluntary verifiable social accountability standards.”

According to SAI, “SA8000 is a voluntary standard for workplaces based on ILO (International Labour Organization) and other human rights conventions. Its independent verification method draws many key elements from the widely accepted quality management system certification in the ISO programs.”

The SA8000 Standard is strictly based on the Conventions of the International Labour Organization (ILO). The hours of work and living wage provisions are higher than those in the FLA Code. The Standard also includes provisions on homework and labour-only subcontracting.

Unlike the FLA, SAI certifies factories rather than companies. Factories undergo a set of social audits by SAI-certified auditors, all of which are commercial social auditing firms, usually starting with an initial assessment to identify problems in meeting the SA8000 standards, followed by remediation and finally a compliance audit to certify the applicant factory as having met the SA8000 Standard. Certification lasts three years, after which another full audit is required to maintain certification. Once certified, the factory will also undergo surveillance audits every six months to a year.

There is also an SAI Corporate Involvement Program (CIP) under which a retailer or brand merchandiser that sells goods produced at contract facilities can commit to implementing SA8000 throughout its supply chain. The company is required to prepare an implementation plan with a timeline for bringing its suppliers into compliance and must prepare a SAI-certified public report on implementation every year. A number of major companies including Amana SA, Avon, Cutter & Buck, Dole, Eileen Fisher, Otto Versand, Tex Line, Toys “R” Us, UNOPS, and Vögele Mode have made this commitment.

A public institution looking to use the SA8000 program to ensure compliance with its ethical licensing or purchasing policy could require that its licensees or suppliers use only SA8000 certified production facilities, or alternately that its licensees or suppliers join the SAI’s CIP. SA8000 certified factories are listed on the SAI website. SAI also includes a third-party complaints process, allowing interested parties to challenge factory certifications.

There is a variable annual fee for participation in the CIP starting at US\$1,500 for companies with less than US\$25 million in annual revenues. Participating companies receive additional services from SAI to assist them in meeting ethical standards in their supply chains. Further information: www.sa-intl.org

3.3.4 A Less Credible, Self-regulatory Option: Worldwide Responsible Apparel Production Certification Program (WRAP)

WRAP is a factory monitoring and certification program created by the American Apparel and Footwear Association, formerly known as the American Apparel Manufacturers Association. Designed as an alternative to Fair Labor Association (FLA), WRAP is the program of choice for the large US apparel manufacturers such as Sara Lee, Kellwood and VF Corporation that produce for the discount retail market.

WRAP is an industry-controlled, self-regulatory system that has little credibility among labour or non-governmental organizations.

As in SAI's SA8000 factory certification system, WRAP accredits commercial social auditing firms to certify individual factories as being in compliance with the WRAP Principles. However, unlike the SA8000 Standard, which is strictly based on the Conventions of the International Labour Organization (ILO), the WRAP Principles require little more than compliance with local laws.

According to Neil Kearney, General Secretary of the International Textile, Garment and Leather Workers Federation (ITGLWF) and a member of the SAI Advisory Board and the Ethical Trading Initiative Governing Board, WRAP damages and does not uphold or enhance worker rights because its standards undercut ILO Conventions even on issues like child labour. Kearney notes that WRAP “does not provide for a living wage and sets no limits on working hours where these are not prescribed by law.”

While WRAP is an initiative of large US apparel manufacturers, and key executive officers of those companies sit on its “Independent Certification Board,” the actual responsibility for seeking WRAP factory certifications, hiring auditing firms and bearing the costs involved in achieving certification lie with the actual factory owners, who are in most cases southern suppliers of the northern manufacturers.

The following are the key steps in the factory certification process:

1. The factory owner applies to the WRAP board for certification, pays a US\$750 application fee, and receives the *Self-Assessment and Monitoring Handbook*.

2. After completing the self-assessment, the factory chooses, hires and schedules a visit by a WRAP-accredited "independent monitor" at a fee of approximately US\$1,500-\$3,000, plus 10% for follow-up visits.
3. Within 60 days of the factory visit, the monitor submits to the factory owner either a recommendation for certification or a corrective action plan. This information is also provided to the WRAP Independent Certification Board for review.
4. The Independent Certification Board reviews and assesses all reports and evidence (factory records) and grants a certification to the factory for a one-year period.
5. Once certified, the factory may or may not be subjected to an unannounced "follow-up evaluation," based on a risk assessment. The Board decides and chooses the monitor.
6. When the one-year certification expires, the factory can apply to be recertified, paying another US\$750 application fee.

WRAP is the least transparent among the various code monitoring initiatives. Unlike SAI, which lists the names and addresses of certified factories on its website, WRAP does not provide any information to the public on which factories were certified or in what countries.

Unlike the FLA, which provides information on the results of external monitoring, including the name of the member company using the facility, the external monitoring organization, the country and region, type of facility, the findings and the remediation plan, WRAP does not provide the public any information on the results of monitoring.

WRAP includes no provisions for workers or interested third parties to register complaints if they believe a factory has been improperly certified or if workers' rights are being violated. It is worth noting that Gildan Activewear's EI Progreso factory in Honduras was a WRAP-certified. That same factory was found to be in violation of freedom of association and other standards by separate investigations conducted by the Fair Labor Association and the Worker Rights Consortium.

Consequently, the WRAP factory certification program is not considered a credible alternative for implementation of ethical licensing or purchasing policies.

3.4 Combining Programs

An institution could use a combination of implementation systems to ensure that they receive adequate information from companies and have social auditing capabilities available to them.

For example, many universities in the United States are members of both the FLA and the WRC. Participation in both organizations ensures that their licensees are required to submit to FLA external auditing, the findings of which are available to the public, but are also subject to the factory disclosure requirements of the WRC program. While both systems also offer third party complaint mechanisms, the WRC's complaint process provides for more active participation of local civil society organizations and labour experts in its investigations and offers more detailed reports on investigative findings and corrective action.

For most universities with relatively small licensing programs the cost of participation in both programs is not high and therefore a combined approach provides added reliability when implementing the institution's ethical licensing and/or purchasing policy.

While municipalities and school boards are not currently able to become FLA members, they could consider working with the WRC on a pilot project basis and encouraging suppliers to join the FLA. This would offer the institution the factory disclosure requirements and third-party complaint process of the WRC and the monitoring and reporting services of the FLA. However, it is not yet clear whether non-university suppliers would be able to join the FLA under the same membership categories as university suppliers. (See above.) This might limit the ability of small non-university suppliers to make use of the FLA's services.

As noted above, the WRC is most interested in working with school boards and municipal governments that work together as consortiums.

For further information on ethical licensing and purchasing policies and to access model policies, please visit: **www.maquilasolidarity.org**.