

Maquila Solidarity Network

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A. Labour Rights, Trade Agreements and the MFA Phase Out

One week before the World Trade Organization (WTO) meeting in Cancun, Mexico, the International Textile, Garment and Leather Workers Federation (ITGLWF) issued a warning to the trade ministers, predicting disaster

Why a “Codes Update” memo?

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

for garment and textile workers, particularly in the poorest apparel producing countries, unless urgent measures are taken to address the impact of the phase out of quotas under the Multi-Fibre Arrangement in 2005.

Some observers predict that by 2005-2006 major textile and clothing buyers will reduce by half the number of countries they source from and by another third by 2010. For example, a survey by the US Commerce Department, based on talks with firms that currently source from 40 to 50 countries, reveals that these companies are likely to consolidate sourcing in 12-15 countries.

While there has been a great deal of speculation on the impacts the MFA phase out will have on investment and sourcing patterns, and which garment

producing countries will be “winners” and “losers,” very little attention has been paid to the potential consequences for workers in particular countries, such as the impacts on jobs, wages and working conditions, or workers’ ability to exercise and defend their rights. Nor has much attention been given to the need for new strategies and international alliances to defend workers’ jobs, standard of living, and rights.

Worker rights advocates view with varying degrees of alarm the expected emergence of China as the dominant player in world textile and clothing trade once import quotas are removed in industrialized countries in 2005. According to a September 12 article in *Women’s Wear Daily*, “China accounted for 96 percent of the textile and apparel import growth [to the US market] during July, with Vietnam posting the second-largest growth of 22.5 percent...” Significantly, the growth in imports of Chinese textiles and apparel is concentrated in products categories no longer restricted by quotas.

There is growing concern about the impact of the quota phase out, not only among northern trade unions and textile manufacturers, but also among smaller southern countries that have benefited from quotas, such as Bangladesh, Sri Lanka, Thailand and a number of countries in Africa, as well as labour and employer organizations in those countries.

While Mexico and Central America enjoy the advantage of geographic proximity to the US market, as well as limits on tariffs due to regional trade agreements, competition with Asia on labour and other production costs is a serious concern.

Since January 2001, 325 of Mexico’s 1,122 garment maquilas closed down.

While plant closures and job losses can be at least partially attributed to the slowdown in the US economy, the dramatic increase in US garment imports from China while imports from Mexico declined by 5.6 percent seems to indicate that some investment and jobs that left Mexico ended up in China.

In Central America and Mexico (as in other regions), the question on the minds of workers, employers and governments is how much production will remain in each country and how will it be distributed through the region. The challenge for labour and civil society organizations will be whether labour rights compliance can be promoted as an essential element of the region’s “competitive advantage.”

With the collapse of global trade talks at Cancun, attention will now shift to bilateral and regional trade negotiations, particularly those currently underway for an US/Central American Free Trade Agreement (CAFTA). Some prominent US non-governmental organizations are actively lobbying for alternative proposals that would address southern concerns about market access and push the envelope on labour rights and corporate social responsibility.

While the Bush administration is reportedly proposing the inclusion in CAFTA of labour provisions based on the Chile and Singapore trade agreements, which have been widely criticized for their non-enforceable labour and environmental standards, a number of US NGOs are putting forward an alternative model based on labour standards provisions in the US-Cambodia textile agreement.

That agreement offered increased market access for Cambodian textile products in exchange for efforts to comply with international labour

standards. Compliance has been monitored by the International Labour Organization (ILO), and its annual progress reports are available to the public.

In an August 7 letter to US Trade Representative Robert Zoellick, Michael Posner, Executive Director of the Lawyers Committee for Human Rights, calls the labour provisions of the Chile and Singapore trade agreements “particularly inappropriate in the CAFTA context,” due to the “widespread abuse of workers’ rights in Central America.”

Posner points to the Cambodia agreement as a positive alternative and calls for the establishment of “permanent monitoring bodies” as a provision of CAFTA “to determine whether or not CAFTA governments and employers are in compliance with international labor standards. The degree to which they make progress towards compliance would be rewarded with a corresponding reduction in tariffs.”

According to Posner, “these efforts ought to be undertaken in a fully transparent manner where buyers and consumers, as well as state actors and parties to the agreement, can have access to the information.”

Both Carol Pier of Human Rights Watch and Sandra Polaski of the Carnegie Endowment for International Peace have put forward similar proposals. In an August 1 article in the Washington Post, entitled “The Right Way to Trade,” Pier calls for labour provisions in CAFTA in which the ILO would have “a key monitoring role, as it does with the US-Cambodia agreement.”

Polaski adds that because a number of independent monitoring groups already exist in Central America, “it is easy to envision a rapid start-up of

monitoring led by the ILO, which could then engage these existing groups, provided they met ILO-determined standards and procedures.” (See New Resources below.)

As many US NGOs and labour organizations are promoting the inclusion of more enforceable labour provisions in CAFTA and other bilateral and regional trade agreements, some US, European and Canadian NGOs are also beginning to explore whether and how compliance with international labour standards might become a competitive advantage for some vulnerable apparel producing countries and regions.

A few brand-name companies that are major backers of free trade are also initiating training and capacity-building programs with southern suppliers, government ministries and NGOs on labour standards compliance as a means of enhancing trade competitiveness. One example is the “CAFTA, Capacity Building and Labor Standards” project initiated by Gap Inc.

According to Gap Inc.’s Senior Manager for Global Partnerships, Sean Ansett, the project proposes a strong labour standards initiative in Central America that will attempt to achieve the following:

- Consensus through dialogue among companies, workers and communities on core internationally recognized labour standards as applicable to the region;
- A credible monitoring and reporting system;
- Training of managers and workers on their responsibilities and rights; and
- A “CAFTA Labour Fund” to support capacity-building for monitoring, reporting and remediation efforts.

These new initiatives linking labour rights with trade agreements are certainly welcome, but they will not adequately address the major restructuring in the global garment and textile industries following the phase out of quotas in 2005.

In the lead up to the Cancun round of WTO meetings, the ITGLWF proposed a multifaceted strategy to address the fallout from the MFA phase out, combining labour rights, trade and industry upgrading proposals, including:

- Continuation of some targeted trade restraints beyond 2005;
- Inclusion of labour standards conditionalities in bilateral and multi-lateral trade agreements;
- Support for emerging and struggling industries; and
- National industrial policies that include industry upgrading, skills training for worker, and promotion of respect for international labour standards.

B. UN Committee Approves Corporate Accountability Norms

On August 13, the United Nations (UN) Sub-Commission on the Promotion and Protection of Human Rights approved a set of corporate social accountability norms for multinational corporations.

While the UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises do not establish new rules or standards, they do gather together in one document the relevant international human rights, labour, gender, indigenous, environmental and anti-

corruption treaties and standards applicable to global companies.

The significance of the draft norms is that they recognize that multinational corporations, and not just nation states, are responsible for respecting, promoting and ensuring compliance with human rights and labour and environmental standards.

On labour rights issues, the Norms make reference to the ILO Fundamental Principles and Rights at Work, as well as ILO Conventions concerning forced labour, child labour, freedom of association and collective bargaining, discrimination, health and safety, and wages. They also make reference to the Tripartite Declaration of Principles Concerning Multinational Enterprises, which recognizes the right of workers to wages that meet basic needs.

The document calls on global companies to report on implementation of these international laws and standards, and to incorporate them in their contracts with contractors, subcontractors, suppliers, licensees, and distributors. It also endorses “transparent and independent” monitoring and verification that takes into account “inputs from stakeholders (including non-governmental organizations) and as a result of complaints of violations of these Norms.”

The draft norms still need to be approved by the UN Human Rights Commission, which meets in early March of next year. While the Norms are being supported by major human rights organizations, including Amnesty International, Oxfam and Human Rights Watch, which called them “a step in the right direction” toward binding standards for corporations, they are being opposed for the same reason by the International Chamber of Commerce

(ICC), which sees them as a “move away from the realm of voluntary initiative... conflicting with the approach of other parts of the UN.”

C. WRC Releases New Investigative Report

On August 26, the Worker Rights Consortium (WRC) released a new report on an on-site investigation by a WRC Assessment Team into working conditions and labour practices at the PT Dae Joo Leports factory in Jakarta, Indonesia. The report also assesses general conditions and practices in the Kawasan Berikat Nusantara (KBN) export processing zone where the factory is located.

The factory employs over 1,000 workers and produces backpacks and handbags for adidas-Salomon and JanSport (VF Corporation), as well as US WRC-member universities.

Based on interviews with 79 workers, as well as management personnel, union officers and factory clinic staff, the Team identified a number of violations of Indonesian laws and university codes of conduct, including:

- Failure to negotiate with the SPTSK union, and threats to dismiss union members;
- Arbitrary and excessive disciplinary action;
- Failure to provide health insurance or treatment for work-related injuries;
- Compulsory and excessive overtime hours, and involuntary transfers to other factories;
- Misuse of short-term contracts;
- Failure to provide adequate health and safety equipment, and restrictions on access to washrooms;

- Failure to provide legally-required menstrual leave.

The report also identifies policies and common practices in the export processing zone that “might be directly or indirectly related to alleged material violations of law and College and University Codes of Conduct...” These include “interference by the military, police or thugs in labour disputes, broad internal regulations that protect factories’ assets from workers’ legitimate claims in the event of closure, and inadequate access to health care, in violation of legal mandates.”

The report concludes by commending the Dae Joo Leports Corporation, VF Corporation and adidas-Salomon for their cooperation with the investigation and their willingness to take corrective action to address many of the violations identified.

For instance, the company has entered into negotiations with the SPTSK union, and has agreed to recognize a second union that now represents a majority of workers in the factory and to create a freedom of association policy in consultation with the unions. An occupational health and safety committee has also been established. In addition, the company has agreed to provide improved health care coverage and is covering workplace-related medical expenses until the new policy is in place.

However, the WRC reports that to date the employer has not adequately addressed issues of compulsory overtime or abuse of short-term contracts. Nor has it included the new union in contract negotiations or achieved a legally valid collective agreement.

The WRC is a non-profit organization created by university administrations,

students and labour rights experts to assist member universities in enforcing their ethical licensing and purchasing policies. Unlike other multi-stakeholder code initiatives, the WRC doesn't include companies on its governance bodies. It carries out investigations in response to worker and third-party complaints, and provides public reports on the results of those investigations.

The PT Dae Joo Leports report is available at: www.workersrights.org.

D. WRAP Raps MSN Study

The Maquila Solidarity Network (MSN) has received a letter, dated July 28, 2003, from the Worldwide Responsible Apparel Production Certification Program (WRAP), criticizing MSN for its "attacks on Gildan Activewear's WRAP certified factories."

The letter is apparently referring to a recently released report co-authored by MSN and the Honduran Independent Monitoring Team (EMIH) entitled *A Canadian Success Story? Gildan Activewear: T-shirts, Free Trade and Worker Rights*.

Earlier in July, the Montreal-based T-shirt manufacturer threatened MSN with legal action if the report or information from it was distributed. MSN has informed Gildan that it stands by the findings and recommendations in the report and will continue to distribute the publication.

Based on offsite interviews with workers at Gildan wholly owned and subcontract facilities in Honduras, El Salvador and Mexico, the report documents cases of mass firings of union members, inadequate wages and high production targets, health and child

care issues associated with long hours of work and the intense pace of production, and workers' concerns that urine or blood tests for new employees were for pregnancy.

At least three of the factories profiled in the report are certified as being in compliance with the "WRAP Principles."

In February 2003, the Ethical Trading Action Group (ETAG), a coalition of Canada faith, labour and non-governmental organizations, for which MSN acts as the secretariat, wrote to WRAP Executive Director Lawrence Doherty, raising concerns about violations of freedom of association at a Gildan-owned factory in Honduras and at the Gina Form Bra factory in Thailand, both of which had received WRAP certifications.

Without naming the Gildan factory, ETAG requested information on whether WRAP had a process for receiving and investigating complaints, and, if so, whether complainants have access to the results of a WRAP investigation.

To date, ETAG has not received a response to those questions.

In March 2003, the European Clean Clothes Campaign (CCC) sent an open letter to WRAP, raising concerns about "serious violations of internationally-recognized labour rights" at the Gina Form factory and other WRAP-certified facilities. The letter criticizes WRAP for "shortcomings in the standards outlined" in the WRAP Principles and a "lack of transparency regarding WRAP's monitoring methods." It questions the "quality of the 'independent monitoring' service which WRAP provides."

The open letter was co-signed by the International Labor Rights Fund, Campaign for Labor Rights, Global Exchange, and UNITE.

While Gildan continues to refer to its WRAP certifications in letters and public statements defending its labour rights record in Central America, it recently announced its intention to become a Participating Company in the Fair Labor Association (FLA), a competing code monitoring initiative with relatively higher labour standards and a more transparent monitoring program.

While acknowledging this as a positive step forward, MSN is continuing to call for an independent investigation to verify the findings in the MSN/EMIH report and determine whether worker rights violations documented in the report continue to exist or have been rectified.

For a fuller analysis on the WRAP code and system, see MSN's *Code Memo #12*, November 2002. Note that Lawrence Doherty is no longer Executive Director at WRAP. MSN will report on this further in the next Memo.

E. Nike Signs Australian Deed

On June 25, Nike and the Textile, Clothing and Footwear Union of Australia (TCFUA) announced in a joint media release the signing of an agreement that could help protect the rights of Australian apparel workers, including homeworkers, known as outworkers in Australia.

The Sports and Corporate Ethical Clothing Deed is a legally binding document that commits Nike to ensuring that all workers making Nike products in Australia receive their legal entitlements. While Nike's official policy is to prohibit contract facilities from using homeworkers anywhere in the world, the

Deed applies to homeworkers as well as factory workers.

In the joint media release, the TCFUA "reaffirms that outworkers are employees who are entitled to be properly paid in accordance with award obligations. As such, they are an important and legitimate workforce in the Australian clothing industry."

As part of the agreement, Nike will provide supplier information to the TCFUA, including the names and addresses of all the brand's Australian suppliers, the date of delivery of the goods to be made under the contract with the supplier, the price to be paid for each item to be made, and the total price to be paid for the goods under the contract.

While Nike will continue its own internal monitoring and external verification program in collaboration with the Fair Labor Association (FLA), compliance with the Australian Deed will be monitored by the TCFUA, which will be given access to Nike contract facilities in that country.

The union expects the deed will serve as a model for future agreements with other major clothing and footwear companies in Australia.

F. World Bank Studies CSR

In April 2003, the World Bank commissioned two studies on public policy for corporate social responsibility.

The first study is an analysis of the content of approximately 100 codes of conduct, comparing their provisions with those in internationally recognized standards, and providing an assessment of their implementation mechanisms. According to Nigel Twose of the Bank's Foreign Investment Advisory Service, the

study found emerging convergence around ILO core conventions in code provisions.

The second study looks at the key barriers to implementation of codes of conduct at the supplier level in the footwear, apparel, toy, and agricultural sectors. That study was carried out by Business for Social Responsibility, the Danish Institute for Human Rights, and PricewaterhouseCoopers in Denmark.

Stakeholders consulted as part of the study included suppliers, buyers, unions, civil society organizations, and government officials in six countries.

Local NGOs and research groups were commissioned to consult workers in workplaces in China, Honduras, Kenya and India. Interviews focussed on workers' and labour rights groups' knowledge and opinions of codes of conduct and their implementation.

Suppliers were also consulted in the same countries, as were buyers in the United States and Europe (along with their local staff in China and India).

Key challenges to the implementation of CSR standards identified for the second World Bank study included:

1. inefficiencies and confusion due to the plethora of codes of conduct and compliance requirements;
2. failure of top-down CSR strategies to achieve improvements, and the "importance of participation, empowerment and capacity-building targeting a variety of stakeholders;" and
3. insufficient understanding of the business benefits of CSR at the supplier level and the need "to develop business practices that maximize those benefits."

According to Twose, the second study found that CSR codes have made a substantial contribution to improved

conditions, but that the current system is not sufficient to bring sustainable improvements. It argues that future success depends on a more coherent framework with greater collaborative action at the country level, including greater involvement of local governments and civil society organizations, including trade unions.

The reports from the two studies will be released at a World Bank-sponsored conference on public policy for CSR on October 8-9 in Washington, DC. MSN will provide an assessment of the studies in our next issue of the *Codes Memo*.

G. Kasky v. Nike Settled?

In a surprise decision that stunned the US anti-sweatshop movement, Nike critic Marc Kasky has agreed to an out-of-court settlement of his five-year lawsuit accusing the sportswear giant of making false public statements on labour conditions in its Asian contract factories.

As part of the settlement, which was announced on September 12, Nike will contribute \$1.5 million to the Fair Labor Association (FLA), of which the company is a member. According to an FLA media release, the decision as to how the money will be allocated will be made at its October Board meeting, but will likely be used to address "independent monitoring, worker education and public reporting among other issues." It is not clear whether the settlement also included payment of Kasky's legal fees and/or other payments.

According to Michael Posner, FLA Board Member and Executive Director of the Lawyers Committee for Human Rights, the Kasky versus Nike settlement sets aside differences in order to focus

on improving conditions for factory workers.”

However, long-time critics of Nike and the FLA, including Jeff Ballinger of Press for Change and Kevin Danneher of Global Exchange, were quick to condemn the settlement for pre-empting the possibility of challenging Nike’s claims in court, and for providing settlement money to the FLA rather than directly to Asian workers making Nike products.

The Kasky lawsuit was based on a California law allowing citizens to sue companies for false advertising. After the California Supreme Court ruled in favour of Kasky in 2002, Nike appealed the ruling to the US Supreme Court on the narrow question of whether its public statements were free speech protected under the US Constitution, or commercial speech subject to the California law. In June of this year, the Supreme Court decided not to decide and threw the case back to the California courts.

The out-of-court settlement leaves unresolved the underlying issue of whether Nike was attempting to mislead the public. However, it doesn’t prevent Nike or other companies from being sued under the same California law in the future.

H. New Resources

***Monitoring and Verification Terminology Guide for the Garment and Sportswear Industries*, by Nina Ascoly and Ineke Zeldenrust, Centre for Research on Multinational Corporations (SOMO), August 2003, 10 pp.**

The proliferation of voluntary codes of conduct and monitoring and verification

initiatives has not only spawned a global labour standards audit industry, it has also produced a new and confusing vocabulary of terms and phrases.

In this brief publication, SOMO attempts to define key concepts in code monitoring and verification in order to promote greater clarity and consistency in the terms being used to describe the various players and activities in this rapidly evolving field.

While a common vocabulary won’t solve all the differences among the various code initiatives, it should at least help promote better understanding and more productive debate.

The Guide also includes an appendix describing current disagreements about the usage of particular terms, revealing that what might appear to be debates about semantics actually reflect underlying differences about what constitutes effective code monitoring and verification.

The Guide is available at: www.somo.nl.

***How to Build a Better Trade Pact with Central America*, by Sandra Polaski, Carnegie Endowment for International Peace, July 2003, 8 pp.**

As the US and Central American governments negotiate the terms of a new regional trade agreement, critics of free trade in both Central America and the US are raising concerns about the impact of such an agreement on farmers, workers, indigenous people, and the environment.

In this concise and persuasive article, former US State Department official Sandra Polaski offers an alternative vision of a trade agreement that could benefit campesino farmers and garment maquiladora workers in the region.

Polaski calls on the US government to “break new ground in four key areas if it wants to contribute to genuine development gains for Central Americans.”

In contrast to current US proposals, the author advocates rapid liberalization of access to the US market for Central American export crops, such as sugar and coffee, combined with a gradual phase out of tariffs and other restrictions on exports of US agricultural products to Central America.

Secondly, she calls on the US government to contribute to transitional adjustment programs for Central American campesinos and workers.

Thirdly, she calls for formal commitments from Central American governments to labour law reform to provide workers “labour rights protections at least as strong as those for property rights.”

Lastly, Polaski advocates the implementation of an ILO-led labour standards monitoring program as part of the agreement, based on the US-Cambodia experience. She envisions a role for the existing Central American independent monitoring groups in carrying out monitoring under ILO leadership, “provided they met ILO-determined standards and procedures.”

The article is available at:
www.ceip.org.

ETI Workbook: Step-by-step to Ethical Trade, Ethical Trading Initiative, 2003, 188 pp., £176.25 for companies/for profit organizations, £58.75 for not-for-profit organizations.

Based on lessons learned from the Ethical Trading Initiative’s pilot projects on code monitoring and verification, the ETI Workbook identifies key issues

companies need to address when setting up and implementing an ethical sourcing strategy.

While the Workbook is designed primarily for management personnel responsible for implementing codes of conduct, it is also a useful tool for NGOs and unions pressuring or engaging with companies to improve labour practices in their supply chains.

The Workbook includes information and advice on understanding supply chains, getting suppliers to comply with the code, inspections, corrective action, reporting, verification, and consultation with stakeholders. It also offers case studies of ETI member companies’ experiences working with suppliers to implement corrective actions.

To order the Workbook, contact:
eti@eti.org.uk.

Background Study on Turkey: Basic Information on Labour Conditions and Social Auditing in the Turkish Garment Industry, The Fair Wear Foundation, June 2003, 30 pp.

The study, published by the Dutch Fair Wear Foundation, provides an overview of the Turkish textile and garment industries, and describes the working conditions and labour practices in both registered and non-registered workplaces in that country.

A major problem identified by the authors is the disparity between wages and working conditions in registered factories and those in unregistered and informal workplaces where the vast majority of garment workers are now employed.

The study reveals that wages are 6-7 times higher in registered and unionized garment factories than in unregistered workplaces, which often employ children and/or illegal foreign workers. Gender-

based discrimination and sexual harassment are also more common in unregistered workplaces, as are violations of overtime laws and health and safety regulations.

According to the report, only 3-4% of Turkey's garment workers are organized, and only 1% benefit from their collective bargaining rights.

The study also provides information on relevant labour laws and major trade union, employer and other organizations working in the garment sector.

The Study is available (in English) at: www.fairwear.nl/engelsframe1.htm

Corporate Responsibility and Labour Rights: Codes of Conduct in the Global Economy.
Rhys Jenkins, Ruth Pearson and Gill Seyfang,
Earthscan, 2002, 232 pp, £17.95.

Focussing on the consumer products sector, the book includes a series of articles from a variety of perspectives on codes of conduct, written by activists in the anti-sweatshop movement, union leaders, NGO representatives, company code compliance staff, academics and people involved in the development and implementation of multi-stakeholder codes of conduct.

The authors critically assess the value and effectiveness of voluntary codes of conduct, describe and analyse workers' experiences with codes and monitoring, and draw lessons from the experiences of the UK's Ethical Trading Initiative and the European Clean Clothes Campaign.

The book includes a list of key websites of campaign organizations and resources for further research.

To order, visit: www.earthscan.co.uk.