CHAPTER 2

Challenging Sweatshop Abuses in Canada's Garment Industry

Sweatshop Conditions in Canada

> *Homeworkers have no status in the community. My husband will say, "Oh my wife — she is at home." There is no understanding of the work I do.*
>
> — Toronto homeworker, 1993.[1]

Speaking to a November 1992 conference on homeworking, Holly Du, former Coordinator of the Homeworkers' Association (HWA), noted that when homeworkers were interviewed in 1991, a commonly expressed desire was to overcome their social isolation:

> One question was: "Would you like to meet with another homeworker?" The answer was always "yes." Other things that came up over and over again were that homeworkers wanted to learn more about labour law, wanted to have English as a Second Language (ESL) classes. Everyone mentioned their social isolation.[2]

The social isolation of homeworkers and the invisibility of home-based production have made it next to impossible to obtain precise information on the extent and location of this growing part of the informal sector, or to obtain detailed information on the chain of production between the women who sew our clothes and the retailers who sell them.

The lack of statistical information on contract shop labour is due to the complex and semi-clandestine nature of contract apparel production, the fact that workers are not organized, and the lack of access to information under Canadian law. The fact that the vast majority of apparel homeworkers and contract shop workers are immigrant women of colour, often with limited English or French language skills, may also be a factor in why their experience has not been given sufficient attention.[3]

Yet, despite this lack of hard data, the existence of groups like the HWA in Toronto has made it possible to document and raise public awareness about the problems, issues, and needs of homeworkers and contract shop sewers. There have also been a number of valuable academic studies on the characteristics and role of homework, the ethno-cultural, gender, and class profile of homeworkers, as well as the worker rights abuses associated with home-based production.[4]

In interviews with homeworkers carried out by the International Ladies' Garment Workers Union (ILGWU) Ontario District Council in 1991, 1993, and 1996 in Toronto and in 1993 and 1994 by University of British Columbia graduate student Amanda Araba Ocran in Vancouver, homeworkers identified the following common worker rights abuses:

- workers receiving much less than the minimum wage;
- declining piece rates;
- excessively long hours with no overtime pay;
- employers failing to provide legally required benefits such as statutory holidays and vacation pay or to make employer contributions to Employment Insurance (EI) or the Canada Pension Plan (CPP);
- insecurity of employment with periods of intensive labour and other periods of up to three months with no work and no unemployment benefits.[5]

Research by the ILGWU Ontario District Council also documented the fact that many of the above violations of the *Ontario Employment Standards Act* have been committed by contractors producing for major labels, including Braemar/Dylex, Club Monaco, Eaton's, The Bay, Cotton Ginny, Sears, Alfred Sung, and the Woolworth Northern Group.[6]

In addition to these explicit violations of the legal rights of homeworkers, studies also point to other social and structural barriers faced by homeworkers, including barriers to retraining and entry into the formal job market, racism, isolation, lack of availability of affordable childcare, immigration status, invisibility, fear of a loss of employment if formal complaints are filed, etc. [7]

Homeworkers report suffering the following common health problems: back strain, exposure to fabric dust, eye strain, and stress related to pressure to finish work quickly and to using the home as an industrial work site where work demands compete with demands made by children and other family members.[8] In a recent Australian study comparing the occupational health and safety concerns of factory and homeworkers, 90 percent of the 100 homeworkers interviewed had experienced chronic work-related injuries and illnesses in the previous twelve months, as compared to 42 percent of factory-based workers. Once again, one of the major complaints was back injuries.[9]

In the 1991 ILGWU Ontario District Council study, of the thirty homeworkers interviewed "twenty-seven of the twenty-eight women with children said that the reason they worked inside the home was the lack of affordable childcare. With very few exceptions the last job outside the home ... was in a garment factory and their reason for leaving that job was pregnancy."[10]

> We stay at home to look after the children, because there is no child care in the factory. We need the money, yet at home you can't do both — look after the children and sew.
> — Homeworker, 1993

Ocran states: "Homeworkers in this study [Vancouver area] invariably made unfavourable comparisons of their homework employment to their shop-floor experiences even when citing the advantage of combining child care with paid work. They reported isolation and loss of worker identity or formal employment status as a primary reason for preferring factory work (or any non-home-based work for that matter) to homework."[11] Although little systematic research has been done in Canada on the extent and nature of sweatshop practices in small garment contract shops, interviews with and/or reports from union

organizers, government inspectors, and community organizations servicing unorganized workers provide a good description of common worker rights abuses.

These interviews indicate that practices and violations similar to those suffered by homeworkers are also common in small contract sewing workshops. In fact, it may be a mistake to view homeworkers and contract shop workers as separate categories of workers, since it appears that many women move regularly between homework and contract shop employment. Other common abuses noted in contract shop production include treating the initial period of work as "training" without pay, falsifying hours-of-work records to hide unpaid overtime, demanding overtime work on evenings and weekends beyond hours permitted by law, locking the factory doors during forced overtime periods to prevent inspectors from entering the factory, and late payment or failure to pay wages due.[12]

Rights and Protections for Canadian Homeworkers and Contract Shop Workers

In Canada, most forms of homework are legal, and homeworkers are generally entitled to the same rights as all other workers, including minimum wage and all statutory benefits. Both homeworkers and contract shop workers are covered by most provisions of employment standards acts in the four provinces where garment production is concentrated — Quebec, Ontario, British Columbia, and Manitoba — with a few exceptions and differences. One major difference in provincial legislation that affects homeworkers and contract shop employees is the existence of the decree system in Quebec, which provides for a form of broader-based bargaining that we will discuss below.[13]

Other differences include the following: In Ontario, homeworkers are entitled to 10 percent above the minimum wage to compensate for overhead costs. In Quebec, under the men's wear decree, employers are not permitted to hire homeworkers to make men's clothing, and workers are not permitted to work at home on items covered by this decree. In British Columbia, all homeworkers and other workers are entitled, under a recent amendment to the *Employment Standards Act*, to make anonymous complaints concerning employer violations.

An important mechanism used by some provincial governments for keeping track of the number of homeworkers and who is employing them is the permit system. Unfortunately, this system of recording and regulating the use of homework is not presently being effectively implemented.

In Ontario, Manitoba, and British Columbia, employers are legally required to seek a permit to employ homeworkers and to provide information on the homeworkers they employ. However, as of 1997 in British Columbia — which has an estimated 1,500 homeworkers — not one employer has requested a permit.[14] In Ontario, which has an estimated 5,000 homeworkers, as of 31 March 1998, there were sixty-one permits registered covering 1,220 homeworkers.[15] In Manitoba, there are currently no permits issued to employers for using homeworkers. According to Nancy Anderson of the Manitoba Employment Standards Branch, the branch realized in the early 1990s that the permit system was not being used by employers. Based on a survey they did with some of the employers, they estimated that the number of homeworkers being used in Winnipeg's garment industry was only one percent of the 7,000 total workers in the industry.[16] Based on this survey (which is based solely on employer reports of the number of homeworkers employed), Manitoba is apparently not enforcing its requirement to register the use of homeworkers.

In Quebec, there is no requirement under the *Labour Standards Act* to seek a permit to employ homeworkers. However, under the women's wear decree, homeworkers producing items covered by the decree must be registered. In 1992, of an estimated 25,000 to 30,000 homeworkers in the Montreal region, only 1,000 were registered.[17]

The Homeworkers' Association (HWA) in Toronto, Ontario, was established in 1992 as part of a broad public educational campaign on homeworkers' wages and working conditions launched by the International Ladies' Garment Workers Union (now known as UNITE) and a broad coalition of legal clinics, workers' rights, women's and faith organizations.The HWA is incorporated as Local 12 of UNITE, through its Associate Membership Program. The HWA has received little or no financial support from the international union, and has instead relied on grants from government and religious organizations.

The HWA currently has about 140 members, primarily Chinese garment workers. A four-member Executive Committee is elected for a one-year term and works closely with a full-time Coordinator.

Over the last six years, HWA has provided many services, including a confidential hotline; legal clinic; advocacy, referral and support services, drug and dental benefits; social activities and celebrations; health and safety information and home visits; leadership training, workshops on health, how to repair your sewing machine, labour law, human rights, ergonomics; and sewing and English-as-a-second-language classes.

The constant exposure to the union, its members and staff has challenged many of the homeworkers' negative perceptions of unions. Investigations and documentation of violations of homeworkers' rights in Metro Toronto and resulting campaigns to challenge those abuses may not have been possible without the involvement of the Homeworkers' Association.

Despite the fact that homeworkers and contract shop employees are generally entitled to the same rights and protections as all workers, provincial employment standards legislation is either not being enforced or is not enforceable. In the opinion of Ocran, who interviewed seventy homeworkers and labour rights advocates in the Vancouver area and found that only one homeworker was receiving the minimum wage, current employment standards legislation is fundamentally flawed because it does not adequately acknowledge the home as a workplace, nor how employers use the home to exploit a particular segment of women workers.[18] Other authors point to the growth of "non-standard" employment in general and the difficulty of applying and enforcing legislation designed for standard employment now enjoyed

by a shrinking segment of the workforce, sometimes referred to as "core" workers.[19]

The union representatives, community service providers, and researchers we interviewed as part of this study are virtually unanimous in the belief that significant reforms would be necessary to make enforcement of current legislation possible. Instead, the governments of Ontario and Quebec are introducing changes in legislation that will erode the rights and protections for the most vulnerable sectors of the workforce.

In Ontario, in December 1996, the provincial government made changes in the *Employment Standards Act* to shorten the time limit for workers to make formal complaints from two years to six months. It has also placed a $10,000 limit on awards for violation, even if the value of lost wages is much higher.[20] In Quebec, the government is considering phasing out the decree system for garment workers, which currently provides for a form of broader-based bargaining that extends some of the benefits of collective bargaining to unorganized workers in small workplaces.

Proposed Reforms to Challenge Sweatshop Abuses

There is a great deal of agreement among the researchers, union organizers, and worker rights advocates we interviewed on four key reforms that together might make enforcement of current legislation possible and extend the wages, benefits, and protections enjoyed by organized core workers to the growing sector of unorganized, non-standard workers:

- joint and several liability all along the chain of production;
- provision for anonymous and third-party complaints;
- a central registry for homeworkers;
- broader-based bargaining.

Most of those interviewed also agreed that there needs to be a step-by-step approach to improvements in legislation. This would mean prioritizing the demands that would open the door to the other reforms.[21]

1. Joint and Several Liability

Joint and several liability would make retailers and manufacturers jointly and legally liable, along with the immediate employer, for the employment standards violations of their contractors and subcontractors. Presently, in most Canadian jurisdictions, only the immediate employer is considered legally liable for employment standards violations. As a result, retailers and manufacturers can not be held legally accountable for the labour rights violations of their contractors and subcontractors, and thus there is little incentive for these more financially secure players in the chain of production to police the subcontracting system. Given the dominant role of retailers in the new system of garment production, their inclusion in any system of joint and several liability is essential.

This reform was seen by most of those interviewed as the crucial first step toward achieving the necessary package of reforms in employment standards legislation to challenge sweatshop abuses.

However, given the history of strong resistance by retailers and manufacturers to this proposal, it may also be the hardest to achieve.[22] Two important policy documents, *Meeting the Needs of Vulnerable Workers*[23] and *Collective Reflections on the Changing Workplace,*[24] also identify joint and several liability as the key step in making current employment standards legislation enforceable.

Alexandra Dagg, Manager of the Ontario District Council of the Union of Needletrades, Industrial and Textile Employees (UNITE), notes that a few of the more progressive retailers are moving toward having one or two dedicated contractors with whom they would have a solid relationship, rather than using multiple contractors and a maze of subcontractors, a practice that encourages abuses. She feels that joint and several liability would encourage retailers to adopt a similar approach to gain some control over the contracting system. It would also motivate retailers and manufacturers to actively discourage abuses by contractors and subcontractors. In addition, reducing the number of subcontractors would facilitate the organization of workers.[25]

According to Dagg, joint and several liability is a crucial demand because it addresses the fundamental question of who is the real employer and who are the employees in the restructured garment industry. She noted, however, that the previous Ontario NDP government was lobbied hard by retailers not to implement this proposal.[26]

Judy Fudge, professor of labour law at Osgoode Hall Law School, reinforced the point: “In low wage sectors where fragmentation, competition and contracting are key features, you need joint and several liability in order to gain enforcement of employment standards legislation.”[27]

2. Anonymous/Third-Party Complaints

There is unanimous agreement among those we interviewed that a major barrier to enforcement of existing employment standards legislation is that homeworkers and contract shop workers are justifiably afraid to make formal complaints.

According to Shelly Gordon of the Workers Information and Action Centre of Toronto (WIACT), 90 percent of all claims in Ontario are made after people are no longer at the job where the alleged violation took place. This appears to be because workers understand the risk of making complaints while they are still employed by the violator. She notes that in Ontario there is currently no enforceable protection from being fired for people making complaints. For homeworkers, it is even more dangerous to make a complaint because the contractor can merely withhold future work without needing to formally dismiss the homeworker.[28]

In “Across the Home/Work Divide,” Ocran quotes an advocate/translator who assisted in homework disputes as stating: “After you make a grievance ... your family will condemn you for stirring up trouble. Your so-called employer will blacklist you ... and after a couple of years they [the Employment Standards Branch] might decide that somebody should give you eighty dollars, but you never really get the money. So you go through all that for a principle.”[29]

Provisions allowing for anonymous complaints have been integrated into British Columbia's *Employment*

Standards Act.[30] According to Phillip Legg, Director of Research for the British Columbia Federation of Labour, anonymous complaints provisions have encouraged workers to report violations. He noted that the British Columbia Employment Standards Branch has set up a 1-800 number to receive anonymous complaints regarding workplace problems, and that the average calls per month numbered 60,000 (including repeat calls). Over a one-year period, the total number of calls would equal the figure for half the workforce in British Columbia. However, even with the new legislation, according to Legg, calls generally are made after workers have left their jobs or have been fired.[31]

Following the amendment of the British Columbia *Employment Standards Act* to allow for anonymous complaints, the Victoria Labour Council set up an advocacy program to assist unorganized workers in making complaints. According to Bill Fowler, Secretary-Treasurer of the Labour Council, the majority of workers who make complaints through the program are still at the workplace where the alleged violation(s) took place. He said that the council deals with two or three complaints every day. Complaints about payment for overtime are the most common. Workers normally hear about the service through word of mouth, since there are only two staff, and the council doesn't have time to do proactive outreach. When asked whether workers in small workplaces are protected using the anonymous complaints procedure, Fowler replied that he felt they were. As evidence, he stated that he has filed complaints for workers employed in workplaces with as few as three workers. Fowler believes strongly in the right of workers to make anonymous complaints. “If workers don't have that right,” he stated, “they are blacklisted, fired and have very little protection.”[32]

Although there are no employment standards provisions for anonymous complaints in other Canadian provinces, in March 1996, worker rights advocates in Ontario created the “Bad Boss Hotline” to receive anonymous complaints. Although the complaints could not be filed with the province's Employment Standards Branch unless the workers were willing to give up their anonymity, they did provide powerful evidence of how rampant worker rights violations are in Ontario. Between August 16 and September 9, the Hotline received approximately 2,000 calls. Many were from homeworkers and contract shop employees in the garment industry.[33]

In Australia, the Textile, Clothing and Footwear Union (TCFUA) carried out a National Outwork [homework] Information Campaign from July to November 1994 with substantial funding from the Department of Industrial Relations. The campaign included an eight-week “national phone-in,” in which ten bilingual workers representing eleven languages received anonymous calls from homeworkers and provided information and advice. Over the eight-week period, they received over 3,000 calls. As a result of the phone-in, the TCFUA began processing approximately 100 claims against employers representing tens of thousands of dollars.[34]

> I work fourteen hours a day, every day of the week. Last week I earned $1.70 an hour. That was with my husband and two children giving me a lot of help.
> — Jenny, a homeworker in Australia, 1995

Although there is now a safer procedure for workers to make complaints in British Columbia, there are apparently not sufficient Employment Standards Branch (ESB) officers to respond to complaints.[35] A

similar problem exists in Ontario and Quebec, where the number of inspectors investigating violations is also inadequate. In Ontario, forty-five ESB staff were laid off between 1994 and 1997.[36] Employment standards officers were to be reduced by one-third between 1996 and 1998.[37] The outcome of these cuts is that cases take longer to investigate, resulting in a huge backlog of cases. There are simply not enough resources for effective enforcement. For example, in Quebec, in 1993, there were only eleven inspectors to monitor compliance with the decree for the women's apparel sector for 14,000 workers in 3,000 plants.[38]

Along with reductions in staffing, there has also been a significant decline in inspections and audits carried out. In Ontario, the number of inspections have declined from 1,304 in 1980–81 to 21 in 1994–95.[39] In 1997, only ten inspections took place in Ontario, with eight out of that ten determining there were violations.[40] At a January 1998 meeting with the Employment Standards Working Group, Richard Clarke, the Director of the Ontario Employment Standards Branch, admitted that many ESB officers did not have proper training for carrying out inspections.[41] The audit of employers' records when individual claims are made is also infrequently performed. According to Fudge, "Despite a sharp increase in the number of audits conducted in 1992–93 as a result of concerted complaints that the [Ontario] Employment Standards Act was not effectively enforced, the use of audits to detect violations is rare."[42]

Even if a worker is able to successfully make a claim and gain a decision in her or his favour, it does not necessarily mean that the worker will get the money owed. According to Mary Gellatly at Toronto's Parkdale Comunity Legal Clinic, in 1995–96, 76 percent of orders issued by the Ontario ESB to employers to pay money owed to workers were ignored. This amounts to $42.1 million. The situation has not improved: in 1996–97, $42.4 million were owed to workers, which accounted for 71 percent of claims.[43] ESB officers consider a case closed when they have issued their order to pay and not when the employer has actually paid the money owed. At the January 1998 meeting of the Employment Standards Working Group, Clarke also admitted that the best percentage rate the Branch had on collecting on orders was 22 to 25 percent.[44] The Ontario ESB is supposed to prosecute employers that fail to pay; however, in 1997 there were only two prosecutions and none the previous year.[45]

Clearly, if a system of anonymous complaints is to be effective, there must be sufficient resources and staff to investigate complaints in a timely manner and a serious commitment to enforce decisions and prosecute violators who fail to pay fines. As well, routine and proactive inspections and audits could be used as a way for the ESB to send a clear message to employers that violations will not be tolerated.[46]

3. A Central Registry for Homeworkers

In a December 1991 brief to the Ontario Government, the Coalition for Fair Wages and Working Conditions for Homeworkers called for a Homeworkers Central Registry "with records from Homeworker Permits including [the] list of employers, the list of homeworkers and their wages and number of hours worked."[47]

Meeting the Needs of Vulnerable Workers also calls for a central registry that would have the following

characteristics:

- Employers hiring homeworkers would be required to apply to the registry for a permit, which would provide the terms and conditions required in the sector or subsector. It would also be the employer's responsibility to register all homeworkers doing work for his/her company. Copies of the permit would be sent to the registered homeworkers.
- Homeworkers would also have the option to register themselves, though they would not be required to do so by law.
- The registry would be operated by the tripartite committee established for the specific sector or subsector.
- The registry would keep track of homeworkers' service with different employers to ensure payment of appropriate prorated benefit contributions, appropriate overtime pay, and benefits that require continuous service.
- The registry would act as an agent on behalf of workers who have disputes with their employers.
- The registry could also provide information on employment rights in different languages, counselling and advice, information on and referrals to social services and advocacy services. It could also operate a drop-in centre.
- In the event that minimum benefit packages were negotiated, the registry in a particular sector would administer that system.
- The registry could be empowered to administer a group plan for employees who wish to take part.
- The registry could also be a place where employers could advertise for workers.
- In addition to the requirement that employers register homeworkers, all entities involved in the chain of production, from retailers and manufacturers through jobbers to contractors, should be required to register.[48]

According to UNITE's Alexandra Dagg, “Our idea for a central registry was not just to have a permit system, but to have a location where homeworkers could come forward with complaints, more of an advocacy organization.”[49]

4. Broader-Based Bargaining

Broader-based bargaining is seen by many worker rights advocates as the final and essential piece in the set of four necessary reforms. However, for broader-based bargaining to be effective for homeworkers and employees in small garment contract shops, it is important that the three previously discussed legislated enforcement and control mechanisms are in place.[50]

Broader-based bargaining is a multi-employer system of collective bargaining in which all the workers in a geographic location, occupational sector, subsector, or chain of production would be covered by some or all the provisions of a master collective agreement. The particular feature of broader-based

bargaining that makes it attractive for the garment industry is that non-union as well as unionized workers — including homeworkers and employees of small contracting shops — could potentially be covered by important provisions of the master collective agreement. This would take wages out of competition, and make it possible to extend the benefits of collective bargaining to non-standard workers who are virtually impossible to organize in traditional North American union structures.

As labour lawyer Diane MacDonald explains in "Sectoral Certification: A Case Study of British Columbia," the advantage of broader-based bargaining over the traditional Wagner Act model of collective bargaining is that it challenges labour market inequality by making the right to bargain collectively to improve wages, benefits, and working conditions accessible to women, immigrants, workers of colour, and workers with disabilities.[51]

According to Judy Fudge, the move to a system of collective bargaining that encompasses sectoral or broader-based bargaining is a long-term solution to the problem of non-standard work.[52] This approach recognizes that the single-employer bargaining unit structure is no longer applicable to today's organization of work in the garment industry, which is characterized by intense competition, increasing use of contractors and subcontractors, small workplaces, home-based production, generalized employment standards violations, and low wages.[53]

The Quebec Decrees Act

The Quebec *Collective Agreement Decrees Act*, R.S.Q. 1977 (the CADA) appears to be the only Canadian example of a legislated form of broader-based bargaining that is relevant to contract shop workers and homeworkers in the garment industry. The CADA was adopted in Quebec in 1934 at the height of the Great Depression when high unemployment fuelled wage competition. At that time, the right to bargain collectively was not recognized in Quebec. The decree system was seen as an alternative way to address deteriorating conditions by taking wages out of competition.[54]

According to *Meeting the Needs of Vulnerable Workers*, the decree system "... was introduced to establish certain minimum standards for workers, to eliminate unfair competition amongst employers who were undercutting each other by pushing down wages."[55] The objective of the CADA was to shift the basis of competition from labour costs to other factors such as quality, efficiency, and service.
Given the similarities in how work is organized in the restructured garment industry of the 1990s, many see this 1930s reform as a critical piece of legislation to examine today.

Meeting the Needs... goes on to explain that, "The CADA empowers the government of Quebec to proclaim by decree or order-in-council that a collective agreement in a particular `trade, industry, commerce or occupation' shall bind all employees and employers doing the same kind of work, either in Quebec as a whole or in a particular region of the province."[56] This process in which the government brings unorganized workers in a particular sector under at least some of the terms of a sectoral collective agreement is known as juridical extension. The process can only be initiated by one or more of the parties to the original collective agreement.

The advantages of the decree system that make it relevant to the garment industry of the 1990s are that it extends some of the benefits of collective bargaining to unorganized workers in small workplaces, and in some cases to homeworkers, and that it establishes minimum standards in traditionally low-wage and cost-competitive sectors on key issues such as wages, hours of work, paid vacations, and social security benefits (which can include life, health, accident and disability insurance, and a pension plan).[57]

Four subsectors of Quebec's garment industry are covered by decrees: women's wear, men's wear, shirts, and leather gloves. The extension of some of the terms of collective agreements to unorganized workers is possible because in Quebec, union negotiations in these subsectors take place on a multi-employer basis. The agreements are then administered by parity committees with equal employer and union representation.[58]

How the decrees apply to homeworkers is complicated by the fact that homework doesn't fit easily into the outdated craft divisions under which the decrees were organized. For instance, homeworkers producing women's wear and leather gloves are covered by the decrees, while homework is not permitted under the decrees for men's wear and shirts. In other words, a homeworker is permitted to sew women's apparel, and is entitled to the wages and benefits provided under the women's wear decree, but the same homeworker is not permitted to sew men's wear. While the parity committee for the women's wear decree establishes base salaries for homeworkers, it also prohibits the occasional use of regular employees as homeworkers. Homeworkers not covered by the decrees are covered by the *Labour Standards Act*, as they are under employment standards acts in other provinces.[59]

Another major advantage of the CADA is that it provides for joint and several liability covering all employers in a subcontracting chain for the payment of the wage established by the decree. This provision offers a legal mechanism to enforce payment of the negotiated wage to homeworkers and contract shop workers covered by the women's wear decree. When a contractor fails to pay its employees, the Joint Commission (or parity committees) first attempts to collect the money from the contractor; then, if that isn't possible, it tries to collect from the manufacturer. The manufacturer is liable for that payment even if it has already paid the contractor for the work. Two weaknesses of this provision are that liability is limited to wages and doesn't cover other violations involving payment owed to a homeworker or contract shop employee, and that liability isn't extended to retailers.[60]

Other notable features of the CADA include:

- successor rights provisions that make former and new employers jointly and severally liable for debts incurred and owing to a parity committee or to employees; and
- enforcement and monitoring clauses, one of which requires employers to keep a record of homeworkers — name, address, the date of delivery and description of the work, quantity of garments and piece rate paid — which they must submit to the parity committee.[61]

Also of interest is how complaints and inspections are dealt with. Parity committees are charged with monitoring the terms of the decrees. They hire inspectors and receive complaints from workers (and

file suit in civil court for individuals or groups of workers, paying all costs). Inspectors hired by the parity committees have significant investigative and enforcement powers. For example, no restrictions are placed on the time or place at which an investigation can be carried out and no notice is required before carrying out an inspection.[62]

However, despite the authority given inspectors, the fact that there are very few inspectors has limited their effectiveness. In 1993 in the women's clothing subsector, there were only eleven inspectors to monitor 14,000 workers in 3,000 plants.[63] As well, Geoffrey Brennan notes that the effectiveness of enforcement depends on the inspectors and on the way they use the power given to them. Since employers sit on the parity committee, which hires inspectors and approves decisions, there can be unevenness in enforcement.[64]

The power of inspectors hired by a parity committee to examine payroll records of employers covered by a decree has been raised before the Supreme Court of Canada. The issue was whether this provision of the decrees act violated section 8 of the *Canadian Charter of Rights and Freedoms* prohibiting "unreasonable search or seizure." In their ruling, Justices La Forest and L'Heureux-Dubé noted that the *Charter* "does not prohibit inspections without authorization [but] simply imposes a requirement of `reasonableness'."[65]

Geoffrey Brennan, in *The Big Picture: Broader-Based Bargaining and the Decree System*, argues that the decree system has benefited a sector of the workforce that would not otherwise be covered by conventional collective agreements. He notes that the average size of establishment regulated by decree in 1988–89 was just under ten employees.[66]

However, although the decree system has been relatively successful in establishing a wage floor for unorganized contract shop workers, it appears to have been less successful in protecting the rights of the majority of homeworkers. This is demonstrated by the fact that most homework in Quebec, as in the rest of Canada, is not declared, and is therefore part of the underground economy. In 1993, as noted above, out of an estimated 25,000 to 30,000 homeworkers in the Montreal region, only 1,000 were registered.[67]

Even some contract shop apparel production seems to be shifting into the underground economy, outside the norms established under the decrees. In "Le travail au noir dans l'industrie du vêtement," the Professional Association of Industrial Relations Counsellors of Quebec notes that between 1989 and 1992, the number of workers covered by the women's wear decree declined by 30 percent.[68] The authors go on to say that in 1992, 52 percent of women's wear firms were extremely small contractors employing between one and five employees. They also argue that enforcement of decrees for homeworkers is extremely difficult since it requires a great deal of "surveillance." As well, since the decree system is organized by sector (based on archaic craft divisions that are often no longer relevant), it can not deal with the fact that many companies produce apparel covered by more than one decree or no decree.[69]

Unlike groups consulted in Ontario, the Association approaches the sweatshop abuse violations as part of the broader problem of the growth of the underground economy and taxation revenues lost through

undeclared income. They argue that the answer to abuses in the garment industry is to attempt to eliminate underground work in the industry altogether through close cooperation among the parity committees, the employment standards commission, and the Quebec Ministry of Revenue, along with information campaigns by unions, employers, and professional associations.[70] In contrast, groups in Ontario have focused on defending and strengthening the rights of workers who are trapped in the underground economy.

At the time of this writing, the Quebec decrees system is once again under review. It appears that the Quebec government is under pressure from sectors of the business community to scrap or weaken the decrees in order to offer management more "flexibility" to better compete in the global economy. In a May 1998 report to the Quebec government, the Groupe conseil sur l'allègement réglementaire recommends that the government declare its firm intention to abolish the decree system in the apparel industry, modify the *Loi sur les normes du travail* (employment standards) to cover the workers currently covered by the apparel decrees, and allow for a transition period during which some superior standards currently enjoyed by workers under the decrees would be maintained. The report also opposes any attempt by the government to amalgamate and simplify the four decrees. New legislation is expected by January 1999.[71] We can anticipate resistance from the Quebec labour movement to these proposed changes.[72]

However, in the words of Bergeron and Veilleux: "Despite its limitations, the collective agreement decree system helps to establish good working conditions for employees of small and medium-sized firms, and helps to prevent undue competition. These strengths will become increasingly clear in the future. Accordingly, other Canadian jurisdictions would do well to look closely at the decree system."[73]

Ontario Proposals

Advocates for homeworkers in Ontario whom we interviewed believe that lessons can be learned from the Quebec decree system experience. However, they advocate forms of broader-based bargaining more relevant to the current structure of the garment industry, rather than a system based on antiquated craft divisions which presumes that the core of the workforce is already organized and that employers would cooperate voluntarily with unions in order to tackle unfair competition.[74]

Meeting the Needs of Vulnerable Workers suggests that broader-based bargaining could take place in two different ways: it could allow the "extension of [union] representation of workers throughout a single chain of production" from the retailer or jobber down to the homeworker, based on joint and several liability; and second, it could allow the extension of representation of workers across any subsector, such as women's apparel, when "a preponderance (45 percent)" of the workers in that subsector are organized.[75]

In the first model, "chain of production" refers to the different steps in the production of particular brands of apparel from the retailer who places the order to the jobber or manufacturer to the sewing contractors and subcontractors to the homeworkers. Under this model, once the majority of workers

involved in the manufacture of products in a chain of production were organized, union representation would be extended to all the workers in the chain.

Referring to the second model, in which representation would be extended to all workers in a subsector of the industry, the report notes that "as sectoral definitions now stand in the [Ontario] *Industrial Standards Act* (ISA), they are very outdated and make little practical sense."[76]

Ontario labour rights advocates who were interviewed favoured a system of broader-based bargaining organized around chains of production. This preference is probably because under current conditions, organizing sufficient workers in a whole sector or subsector to gain the right to broader-based bargaining would be extremely difficult, and because current sectoral divisions under the Ontario *Industrial Standards Act* are not applicable to the restructured garment industry. It was strongly suggested that for broader-based bargaining to be effective for homeworkers, joint and several liability and a homeworkers central registry must already be in place. UNITE's Alexandra Dagg stated that while broader-based bargaining would be complicated since contractors and homeworkers often produce for more than one retailer, "it's the only way to organize in the garment sector today."[77]

One option for how homeworkers might be organized under a system of broader-based bargaining based on chains of production is suggested in *Meeting the Needs of Vulnerable Workers*. The report suggests that once a chain of production was organized, homeworkers would be employed through a union hiring hall, all unionized homeworkers would be registered at the central registry, and all apparel made by unionized homeworkers would be required to bear the union label.[78]

It is important to acknowledge that broader-based bargaining is not supported by all elements in the labour movement. Labour law analyst Judy Fudge stated that the main reason for debate in the union movement about broader-based bargaining comes down to the issue of union democracy. The main opponents of broader-based bargaining are unions that are reluctant to support a system that gives exclusive bargaining rights to one union for one sector. The dominant view in the North American unions is that there should be competition between unions to ensure political accountability and democracy.

However, Fudge believes that most of the problems concerning union democracy that are sometimes associated with broader-based bargaining are problems that already exist in the Canadian collective bargaining system, since that system is based on majority representation, exclusive bargaining rights, and union security. Fudge notes that at present the support of a majority of workers is required to gain union certification at any workplace and that once gained the union has guaranteed certification until the "open period" when the collective agreement is up for renegotiation. Broader-based bargaining would operate in the same way, only on a larger scale.[79]

Some unions oppose broader-based bargaining because they believe it leads to weak unions, unions that don't organize, and unions that don't empower their members. "I agree with them that you have to go out and organize," says Dagg, "but in the garment sector as it's currently structured, it is very difficult to organize. It would require a huge effort and enormous resources."[80]

Jan Borowy, former research director at the Ontario District Council of the International Ladies' Garment Workers Union (ILGWU, now known as UNITE), believes that even with broader-based bargaining "we still need to look at new strategies for organizing in the garment sector." She suggests that more discussion is needed on organizing strategies that would allow unions to reach a significant foothold in the industry or in a particular chain of production to make broader-based bargaining viable.[81]

Sectoral Certification: A British Columbia Proposal

Although never implemented, a form of broader-based bargaining called "sectoral certification" or "multiple employer certification" was proposed to British Columbia's NDP government in 1992. The proposal was made by two members (John Baigent and Vince Ready) of an advisory committee on proposed changes to provincial labour legislation.

Unlike the Quebec system of juridical extension, which extends some of the provisions of a master collective agreement to all workers covered by an appropriate decree, the Baigent/Ready proposal would allow employees in a small workplace to democratically determine whether they wish to become union members and in the process have the opportunity to opt into an existing sectoral master collective agreement. It would therefore encourage unions to organize workers in small workplaces, and offer tangible benefits to workers in small workplaces who choose to organize.

Under the proposal, a union could apply to the Labour Relations Board for a "variance" of an existing bargaining certification to include employees from a new workplace or workplaces in the same sector, if there was sufficient support for unionization among the new workers. If the Board determined to vary the certification to include the new employees, they would come under the terms of the existing collective agreement.

In "Sectoral Certification: A Case Study of British Columbia," Diane MacDonald points to a number of advantages sectoral certification could offer not only regular employees in small workplaces but also non-standard workers, such as casual and temporary workers.[82]

The advantages for workers in small workplaces, particularly in the retail sector, are fairly obvious. Under sectoral certification, workers employed by a fast food chain or by its franchises would not have to face the daunting task of negotiating a first collective agreement in each of the company's outlets in a particular province. Once a first collective agreement was achieved in the appropriate sector, other workers employed in small workplaces in the same sector could opt into the terms of the master collective agreement immediately upon gaining approval by the Labour Relations Board to vary an existing bargaining certification to include them. Workers in small workplaces would therefore have a very concrete incentive to organize.

The legislation would not require that workers in a particular sector be members of the same union, though unions representing those workers would be compelled to participate in joint negotiations for a

sectoral collective agreement. If organizing was successful, the existence of a sectoral master agreement would take wage costs out of competition and therefore discourage sweatshop abuses.

Although at the time of certification of a particular workplace, the immediate employer would not have input into the terms of the sectoral master agreement, he/she could participate in multi-employer contract negotiations when the sectoral agreement was up for renegotiation. As well, employers and employees covered by the sectoral certification would be able to negotiate local agreements concerning issues particular to their workplaces, while sectoral negotiations would set common standards on key questions such as wages and hours of work. Unlike the traditional Wagner Act system of workplace certification in which multi-employer bargaining is permitted but voluntary, under the Baigent/Ready proposal, employers would not have the option to enter into or withdraw from sectoral contract negotiations.

Although MacDonald doesn't specifically refer to homeworkers and contract shop workers in the garment sector, she does suggest changes to the Baigent/Ready proposal that would make it applicable to non-standard or "precariously employed" workers. She argues that "there could be a mechanism which ensures that once a majority of employees in a geographic and occupational sector have chosen to be represented by a union, the collective agreement could be extended to all employees within the defined sector."[83]
In effect, MacDonald is proposing a combination of the best features of sectoral certification and the Quebec system of juridical extension. She also notes that this provision was included in the 1973 version of "multi-employer certification," but was opposed by BC business groups.[84]

This revised version of the Baigent/Ready proposal would allow for union representation for homeworkers and contract shop employees in very small workplaces where the lack of anonymity and employer intimidation are strong disincentives to organizing. MacDonald also refers to other advantages this version of sectoral certification would offer non-standard workers:

> If precariously employed individuals organized under a sectoral model they could remain in the same bargaining unit even if they changed employers. This would ensure that their wages and working conditions were consistent; it might also enable precariously employed individuals to retain benefits and seniority as they move from workplace to workplace ...[85]

Although sectoral certification may not facilitate broader-based bargaining organized along particular sub-contracting chains of production, it does offer an innovative approach that connects workplace organizing to geographic and sectoral broader-based bargaining. With MacDonald's suggested amendment, the Baigent/Ready proposal could eventually extend the benefits of organizing and sectoral bargaining to homeworkers and contract shop employees.

According to MacDonald, sectoral certification was not adopted in British Columbia because of opposition from the business sector and because unions either didn't fully understand the proposal, were not sufficiently committed to it, or didn't give it enough priority. She states:

> Unless academics, policy-makers, groups representing women, workers with disabilities, immigrants

and workers of colour and, most importantly, the labour movement make a form of sectoral certification a priority, race- and gender-based labour markets will likely remain a dominant feature of North American labour relations systems.[86]

The Australian Experience

In 1987, the Textile, Clothing and Footwear Union of Australia (TCFUA) won the inclusion of three new clauses in the Clothing Trades Award, thereby extending to homeworkers [called outworkers in Australia] the minimum wage and other benefits provided for under the Award.[87] In Australia, industrial award entitlements are the minimum wage, benefits, and other conditions that all workers in a particular sector are entitled to by law. There are four awards in the apparel sector: clothing, textile, footwear, and felt hatting.[88]

According to Annie Delaney, the Outworker Program Coordinator for the TCFUA, the awards are determined by the industrial relations commission, which has powers under federal labour law to determine national minimum wage increases, other provisions of the awards, variations to award clauses, and other matters. Decisions concerning proposals for new clauses in or "variations" to the awards are made on the basis of cases presented to the commission by the union representing workers in the particular sector. Employer organizations either consent to the proposed changes or present a case as to why they should be opposed. The commission determines the outcome.

According to Delaney, the awards are "varied" regularly. For example, one of the clauses in the Clothing Trades Award concerning homeworkers was amended in 1996. An award covers all workers in an appropriate sector, including unorganized workers, though higher wages and benefits can be negotiated at the enterprise level. As of 1 June 1998, the average minimum wage for all workers in the apparel industry was Australian $10.85 an hour. According to Delaney, "we do not make a distinction on the basis of where people work, whether they are factory workers or homeworkers."[89]

Britain's National Group on Homeworking (NGH) was established in 1984 and is made up of local homeworking projects in eleven cities. The NGH is currently negotiating with the national task force on homeworking and pressuring for a guaranteed minimum wage, enforceable for the country's estimated two million homeworkers. In 1997, NGH launched a national campaign called "A Charter for Homework, Real Work, Equal Work," which includes:

- Equal employment rights for homeworkers to clarify the worker status of homeworkers in all appropriate legislation and with all government bodies.
- Basic floor of employment rights for all workers who are not self-employed, which will link homeworkers with other precarious workers and include just cause protection, maternity, sick, pension, health and safety protection, and the right to trade union representation.
- Employer responsibility where the onus is on the employer, not the homeworker, to prove the self-employment relationship. A second component focuses on joint and several liability.
- Establishment of an Enforcement Agency.
- International Convention (1996) on Homeworking be Adopted by UK government.

Although there are some similarities between the awards system and Quebec's decree system, the Australian model of industrial relations gives some unique rights and powers to unions, both in terms of access to information and in enforcement of minimum labour standards.

Before changes were made to the *Workplace Relations Act* in 1996, the TCFUA had the legal right to inspect, without notice, the premises and records of companies who were "respondents to the awards." This essentially gave the union the right to monitor employer compliance with minimum labour standards in the unorganized sector of the garment industry. In 1996, this right was limited to companies employing at least one member of the TCFUA. As well, the union was required to give 24 hours notice before visiting a workplace.[90]

According to Delaney, the awards are reinforced by the *Industrial Relations Act*. The Act gives the union the power to prosecute companies for violations of the Award. The Award requires that the companies have to register with an industry board, keep records of all contract work, including the sewing time, the amount of work, the total number of hours required to complete the work, the delivery date, etc. The company is also required to provide lists to the union four times a year of the contractors and/or homeworkers they are using.[91] Delaney explains: "If the union discovers that a company has not registered, not kept proper records or not provided a list of contractors, we initiate prosecution procedures against the company under the federal act."[92]

According to Delaney, the federal government passed laws in 1997 which attempt to "strip down" the number of matters covered by the awards. Later in 1998, the Industrial Relations Commission will determine if the current clauses concerning homeworkers will be cut back or remain as they are. If the Commission determines that the provisions in the Award should be cut back, and if reporting requirements are removed from the Award, this would eliminate the union's right to prosecute companies for violations, such as not registering, keeping records, or providing lists. Delaney charges that although "the government departments have the power to police awards and prosecute companies who are not complying, they no longer put any resources into compliance."[93]

Despite the rights and powers given to unions under Australian labour legislation, homework remains largely unorganized and unregulated in that country, as is the case in Canada. However, the phenomenon of homework appears to be much more prevalent in Australia's garment industry, unless the number of Canadian homeworkers is grossly underestimated. The TCFUA estimates that there are now 329,000 homeworkers in the textile, clothing, and footwear industries, or fourteen homeworkers for every factory garment worker. Of the 3,000 homeworkers interviewed during their 1994 phone-in campaign, fewer than ten were receiving the minimum pay and benefits to which they were entitled. Although required to by law, most contractors do not keep records of the homeworkers they are using or the compensation they are receiving.[94] According to the TCFUA, homeworkers are usually paid between Australian $2.50 and $5.00 per hour.[95]

In response to the growing problem of exploitation of homeworkers, and to government attempts to weaken labour legislation, the TCFUA adopted a new strategy to pressure retailers and manufacturers to take responsibility for abuses of home-based workers producing their apparel. In the wake of Senate

hearings on homework, in 1996, the TCFUA began negotiations with retailers and manufacturers to adopt the "Homeworkers Code of Practice." Although the code is voluntary, its intent is to commit retailers, who are not party to the awards, and manufacturers to cooperate with the enforcement of the awards and other labour legislation, and to provide the union with sufficient information to monitor compliance. As the Fair Wear campaign kit explains, the Homeworkers Code of Practice "is a regulatory process designed to make the contracting chain transparent, and to enable home-based outworkers to receive an agreed wage rate, including loading for holidays (pay in lieu of holidays)."[96]

Rather than seeing the code as a substitute for legislation that is not currently being enforced, the TCFUA is using the code to commit retailers and manufacturers to ensuring that their contractors abide by that legislation and cooperate with the union in its legally established monitoring role. In that sense, employer endorsation of the code might actually be useful in discouraging the federal government from further dismantling existing labour legislation.

Since 1996, the TCFUA and its community, church, and labour partners in the Fair Wear Coalition have succeeded in pressuring and persuading the Australian Retailers Association and a significant number of major retailers to sign on to the code of conduct. The TCFUA and the Fair Wear Coalition are now putting pressure on apparel manufacturers. As of March 1998, thirty-seven major retailers and fifty-three manufacturers and fashion houses have signed the code.[97]

Key features of the code include the following:

- Homeworkers shall not be paid less than they are entitled to under the Award, and shall receive all benefits and entitlements provided by the relevant Award and legislation. These include hours of work and minimum and maximum workload provisions, workers compensation protection, superannuation contributions, written notice upon termination.
- Retailers will require their suppliers to comply with all laws and regulations relevant to the engagement of homeworkers, including payment of the Award pay rate.
- Retailers may display a logo or sign to indicate they are not exploiting homeworkers; manufacturers may affix a label to their products indicating the same.
- Retailers will provide quarterly and in writing to the TCFUA the names and addresses of all their suppliers.
- The union shall have the responsibility of enforcing compliance with the code. When a violation is discovered, the union will inform the manufacturer and retailer.
- The retailer will investigate the case with its supplier giving fair opportunity for the supplier to demonstrate it is in compliance with the code. If the supplier is not in compliance, the retailer will cancel the purchase contract and/or terminate the relationship.
- A Code of Practice Committee, with equal representation from the union and employers, will accredit manufacturers and have the power to withdraw accreditation. It will also confirm a retailer's entitlement to accreditation based on whether it is only using accredited manufacturers.

- Upon request, the manufacturer shall provide the union the name and address of any homeworker involved in the manufacture of their products.
- Where the union gives written notice to the manufacturer that a contractor is in violation of the agreement, the manufacturer shall within fourteen days investigate the allegation and report its findings to the union and the Code of Practice Committee. If the contractor fails to pay the homeworkers or to compensate the homeworker for an underpayment, the manufacturer shall pay the homeworker from any monies that remain outstanding to the contractor.[98]

Although the Australian Homeworkers Code of Practice is not yet in operation, and it is therefore not possible to judge its success in challenging the exploitation of homeworkers, it does offer an innovative strategy for linking codes of conduct and labelling schemes with enforcement of labour legislation. The requirements for corporate disclosure on manufacturers, contractors, and homeworkers should be particularly interesting to groups in Canada and the United States campaigning for more citizen and consumer access to information.

While some unions and advocates for homeworkers in Canada may feel that the code has the effect of privatizing enforcement of labour legislation, the involvement of the TCFUA in monitoring and enforcement is already well established in Australian labour law and is seen by the union as a right they would not want to relinquish. According to Delaney, if the code eventually fails, the union will refocus its energy on legislation.[99]

Nor is negotiation of a voluntary code preventing the union from using legal channels to prosecute violators of Award requirements. In June 1998, the TCFUA launched legal action against thirteen companies, including Nike and Reebok, who the union claims are in breach of the Clothing Trades Award. Some homeworkers producing for some of the thirteen companies were reportedly receiving as little as $2.00 an hour. The companies could be fined up to $10,000 for each offence. The aim, says Annie Delaney, is to ensure the Award is complied with.[100]

Clearly, the Code of Practice comes out of a particular experience of labour relations and legislative context and therefore may not be entirely applicable to the Canadian reality. However, there are a number of features of the code that could be relevant to the discussion and debates now under way in Canada on the merits of codes of conduct and their relationship to legislative approaches.

ENDNOTES

[1] International Ladies' Garment Workers Union, Notes from educational, Port Elgin, 1993. All insert quotes in this chapter are from the same source, except for the quote from Jenny, the Australian homeworker, which is reprinted from Australia's Fair Wear Campaign web-site: http:vic.uca.org.au/fairwear. Boxed descriptions of the Homeworkers' Association (HWA) on pages 22–23 and the National Group on Homeworking (NGH) on page 36 are based on interviews with staff.

[2] International Ladies' Garment Workers Union (ILGWU), *From the Double Day to the Endless Day* (Toronto: ILGWU, 1992), 20.

[3] One of our research team, Deena Ladd, former Coordinator of Organizing with the Union of Needletrades, Industrial and Textile Employees (UNITE) — Ontario District Council, has documented information on conditions of contract shop workers in Toronto in interviews (on file).

[4] See the "Canadian Garment Industry" section of the bibliography at the end of this report.

[5] Barbara Cameron and Teresa Mak, "Working Conditions of Chinese-Speaking Homeworkers in the Toronto Garment Industry: Summ of the Results of a Survey Conducted by the ILGWU" (1991); Jan Borowy and Fanny Yuen, "ILGWU Homeworkers Study: An Investi into Wages and Working Conditions of Chinese-Speaking Homeworkers in Metropolitan Toronto" (1993); Amanda Araba Ocran, "Ac the Home/Work Divide: Homework in Garment Manufacture and the Failure of Employment Regulation," in *Challenging the Public/Private Divide: Feminism, Law and Public Policy,* ed. Susan B. Boyd (Toronto: University of Toronto Press, 1997); Bob Jeffcott, "A Brief History of the Labour Behind the Label Coalition," unpublished paper (February 1998).

[6] Borowy and Yuen, "ILGWU Homeworkers Study," above note 5 at 9.

[7] Ocran, "Across the Home/Work Divide"; Cameron and Mak, "Working Conditions of Chinese-Speaking Homeworkers"; above note ILGWU, *From the Double Day to the Endless Day*, above note 2.

[8] Borowy and Yuen, "ILGWU Homeworkers Study," above note 5 at 9.

[9] Claire Mayhew, in association with Michael Quinlan, *The Effects of Outsourcing Upon Occupational Health and Safety: A Comparative Study of Factory-based and Outworkers in the Australian TCF Industry* (New South Wales: National Occupational Hea and Safety Commission, January 1998), 87.

[10] Cameron and Mak, "Working Conditions of Chinese-Speaking Homeworkers," above note 5.

[11] Ocran, "Across the Home/Work Divide," above note 5 at 155.

[12] Interview with Deena Ladd, November 1997. Anne Bains, "Thirty-eight Cents a Shirt," *Toronto Life,* February 1998; Employment Standards Work Group, *Bad Boss Stories: Workers Whose Bosses Break the Law (*Toronto: Employment Standards Work Group, 199

[13] See description of the decree system in "The Quebec Decrees Act," in this chapter.

[14] Stewart Bell, "B.C. cracks down on home sweatshops: cheap clothes produced with long hours, little pay," *The Vancouver Sun*, 3 May 1997, A1.

[15] Interview with Alexandra Dagg, Manager, Union of Needletrades, Industrial and Textile Employees (UNITE) — Ontario District Council, February 1998.

[16] Interview with Nancy Anderson, Acting Manager of Client Services, Employment Standards Branch, Government of Manitoba, 6 Ap 1998.

[17] International Ladies' Garment Workers Union — Ontario District Council and INTERCEDE, *Meeting the Needs of Vulnerable Wor Proposals for Improved Employment Legislation and Access to Collective Bargaining for Domestic Workers and Industrial Homeworkers*, Brief submitted to the Ontario Government (1993), 46. This estimate of the number of homeworkers is based on an interview with Gerry Roy, Canadian Director, International Ladies' Garment Workers Union, in October 1992. Ordre professionnel des conseillers en relations industrielles du Québec, "Le travail au noir dans l'industrie du vêtement" (Quebec, May 1997) estimated the number of homeworkers slightly lower, as 23,000 in 1992, based on statistics from the parity committee for women's apparel.

[18] Ocran, "Across the Home/Work Divide," above note 5 at 152–58.

[19] Judy Fudge, *Labour Law's Little Sister: The Employment Standards Act and the Feminization of Labour* (Ottawa: Canadian Centre for Policy Alternatives, 1991), 11–15; Alexandra Dagg, "Worker Representation and Protection in the `New Economy'," in *Collective Reflections on the Changing Workplace: Report of the Advisory Committee on the Changing Workplace* (Ottawa: Government of Canada, 1997), 78–84.

In its 1990 report, *Good Jobs, Bad Jobs*, the Economic Council of Canada points to women as the majority of those employed in non-standard work forms — part-time employment, short-term work, own-account self-employment, and temporary-help agency work (Ottawa: Ministry of Supply and Services, 1990).

[20] Ontario, Ministry of Labour, "Important Changes to the Employment Standards Act Become Law on December 1, 1996," News Rele 27 November 1996.

[21] ILGWU — Ontario District Council and INTERCEDE, *Meeting the Needs of Vulnerable Workers*, above note 17; interviews with J Borowy, former Research Director, ILGWU — Ontario District Council; Shelly Gordon, Co-ordinator, Workers' Information and Action Centre, Toronto; Judy Fudge, Labour Law Professor, Osgoode Hall Law School; and Alexandra Dagg, Manager, UNITE — On District Council, all carried out in February 1998.

[22] Interviews with Jan Borowy, former Research Director, ILGWU — Ontario District Council; Shelly Gordon, Coordinator, Workers' Information and Action Centre, Toronto; Judy Fudge, Labour Law Professor, Osgoode Hall Law School, and Alexandra Dagg, Manage UNITE — Ontario District Council, all carried out in February 1998.

[23] ILGWU — Ontario District Council and INTERCEDE, *Meeting the Needs of Vulnerable Workers*, above note 17 at 69.

[24] Dagg, "Worker Representation," above note 19 at 106–7.

[25] Interview with Alexandra Dagg, above note 15.

[26] *Ibid.*

[27] Interview with Judy Fudge, Labour Law Professor, Osgoode Hall Law School, Toronto, March 1998.

[28] Interview with Shelly Gordon, Director, Workers Information and Action Centre, Toronto, February 1998.

[29] Ocran, "Across the Home/Work Divide," above note 5 at 159.

[30] Paul Jay, "Third Party Complaints Used by B.C. Union Organizers," *Workplace News,* February 1997.

[31] Interview with Phillip Legg, Director of Research, British Columbia Federation of Labour, April 1998.

[32] Bill Fowler, Secretary-Treasurer, Victoria Labour Council, fax to Deena Ladd, 20 April 1998.

[33] Theresa Boyle, "`Bad bosses' thrive amid lax standards workers say," *The Toronto Star*, 10 September 1996.

[34] Textile, Clothing and Footwear Union of Australia, *The Hidden Cost of Fashion: Report on the National Outwork Information Campaign* (Sydney, NSW, Australia: TCFUA, 1995), 24. For a description of the Australian Outwork Information Campaign, see "Th Australian Experience," in this chapter.

[35] Interview with Phillip Legg, above note 31.

[36] Employment Standards Work Group, *The Desirable Dozen: 12 Ways to Update the Employment Standards Act for the 21st Centur Workplace* (Toronto, 1997).

[37] Judy Fudge, "The Real Story: An Analysis of the Impact of Bill 49, the Employment Standards Improvement Act, upon Unorganized Workers," unpublished paper (July 1996), 8.

[38] ILGWU — Ontario District Council and INTERCEDE, *Meeting the Needs of Vulnerable Workers*, above note 17 at 44.

[39] Fudge, "The Real Story," above note 37 at 21.

[40] Interview with Mary Gellatly, Community Legal Worker, Parkdale Community Legal Clinic, Toronto, April 1998.

[41] Minutes from meeting of the Employment Standards Working Group, 23 January 1998.

[42] Fudge, "The Real Story," above note 37 at 21.

[43] Interview with Mary Gellatly, above note 40.

[44] Minutes from meeting of the Employment Standards Working Group, 23 January 1998.

[45] *Ibid.*

[46] Interview with Mary Gellatly, above note 40.

[47] Coalition for Fair Wages and Working Conditions for Homeworkers, *Fair Wages and Working Conditions for Homeworkers*, Brief the Government of Ontario (1991), 11.

[48] ILGWU — Ontario District Council and INTERCEDE, *Meeting the Needs of Vulnerable Workers*, above note 17 at 44.

[49] Interview with Alexandra Dagg, above note 15.

[50] Interviews with Jan Borowy, Shelly Gordon, Judy Fudge, and Alexandra Dagg, above note 22.

[51] Diane MacDonald, "Sectoral Certification: A Case Study of British Columbia," *Canadian Labour and Employment Law Journal* 5 (1998): 243–86, 244.

[52] Judy Fudge, "The Gendered Dimension of Labour Law: Why Women Need Inclusive Unionism and Broader-Based Bargaining" (pa prepared for conference on Broadening the Bargaining Structures in the New Social Order, Centre for Research on Work and Society, York University, 7–8 May 1992); and interview with Judy Fudge, Labour Law Professor, March 1998.

[53] Interview with Judy Fudge, Labour Law Professor, Osgoode Hall Law School, Toronto, March 1998.

[54] Michel Grant and Ruth Rose,"Bringing Homework in the Garment Industry under Control in Quebec." *Relations industrielles/Industrial Relations* 40, no. 3 (1985): 228.

[55] ILGWU — Ontario District Council and INTERCEDE, *Meeting the Needs of Vulnerable Workers*, above note 17 at 35.

[56] *Ibid.* at 36.

[57] Jean-Guy Bergeron and Diane Veilleux, "The Quebec Collective Decrees Act: A Unique Model of Collective Bargaining," *Queen's Law Journal* 22 (1996): 146, 164.

[58] Ordre professionnel des conseillers en relations industrielles du Québec, "Le travail au noir dans l'industrie du vêtement" (Quebec, May 1997).

[59] *Ibid.* 4–8 *passim*; Interview with Stephanie Bernstein, researcher at the Université du Québec à Montréal, March 1998.

[60] ILGWU — Ontario District Council and INTERCEDE, *Meeting the Needs of Vulnerable Workers*, above note 17 at 36.
Stephanie Bernstein, researcher at the Université du Québec à Montréal, points out that the Quebec *Labour Standards Act* also provides for joint and several liability for workers, including homeworkers not covered by decrees. While the CADA restricts joint and several liability to wages, the LSA covers all "pecuniary obligations," that is, wages, vacation pay, overtime, etc. (Article 95). E-mail correspondence, 14 August 1998.

[61] ILGWU — Ontario District Council and INTERCEDE, *Meeting the Needs of Vulnerable Workers*, above note 17 at 43.
Stephanie Bernstein, researcher at the Université du Québec à Montréal, notes that the Quebec *Labour Standards Act* also provides for successor rights (Article 96). E-mail correspondence, 14 August 1998.

[62] Stephanie Bernstein, researcher at the Université du Québec à Montréal, E-mail correspondence, 25 September 1998.

[63] ILGWU — Ontario District Council and INTERCEDE, *Meeting the Needs of Vulnerable Workers*, above note 17 at 44.

[64] Geoffrey H. Brennan, *The Big Picture: Broader-Based Bargaining and the Decree System. A Review of Canadian and Internationa Experience* (Toronto: Ontario Federation of Labour, 1993), 62.

[65] Bergeron and Veilleux, "The Quebec Collective Decrees Act," above note 57 at 154.
Stephanie Bernstein, above note 60, claims that there are also problems with the LSA inspection and enforcement procedures. She notes that there are not enough inspectors, there are few on-site inspections, and there is a trend to promote mediation between employers and employees rather than seeking prosecutions of violators. E-mail correspondence, 14 August 1998. Also see: "Un dangereux glissement: Des faits troublants sur la Commission des normes du travail," published by the Montreal advocacy group Au bas de l'échelle in 1994.

[66] Brennan, *The Big Picture: Broader-Based Bargaining and the Decree System*, above note 64 at 164.

[67] ILGWU — Ontario District Council and INTERCEDE, *Meeting the Needs of Vulnerable Workers*, above note 17 at 46.
These numbers may at least partially reflect the fact that there is no requirement for registration of the use of homeworkers producing men's apparel because that practice is illegal. However, it is the women's apparel sector — where homework is legal and registration is required — that has experienced the most radical reorganization from factory production to contract shop and home-based production.

[68] Ordre professionnel des conseillers en relations industrielles du Québec, "Le travail au noir dans l'industrie du vêtement," above note 58 at 10. In a June 1998 interview, a representative of the Parity Committee for Women's Clothing (who chose to remain anonymous) noted an interesting change: the number of employees in women's shops has increased from 8,600 in September 1996 to 9,500 currently, which, in his assessment, is due to an increase in exports as a result of the low Canadian dollar.

[69] Ordre professionnel des conseillers en relations industrielles du Québec, "Le travail au noir dans l'industrie du vêtement," above note 58 at 10–11.

[70] *Ibid.* at 29.

[71] "Rapport du Groupe conseil sur l'allègement réglementaire au Premier ministre du Québec" (Québec, 29 May 1998), 17–19.

[72] Interview with member of the Parity Committee for Women's Clothing, June 1998.

[73] Bergeron and Veilleux, "The Quebec Collective Decrees Act," above note 57 at 164.

[74] ILGWU — Ontario District Council and INTERCEDE, *Meeting the Needs of Vulnerable Workers*, above note 17 at 47.

[75] *Ibid.* at 73.

[76] *Ibid.* at 74.

[77] Interviews with Jan Borowy, Judy Fudge, and Alexandra Dagg, above note 22.

[78] ILGWU — Ontario District Council and INTERCEDE, *Meeting the Needs of Vulnerable Workers*, above note 17 at 75.

[79] Interview with Alexandra Dagg, above note 15.

[80] The "open period" is when the collective agreement is up for renewal; workers have the option of decertifying and/or opting for another union.

[81] Interview with Jan Borowy, former Research Director, ILGWU — Ontario District Council, February 1998.

[82] Diane MacDonald, "Sectoral Certification: A Case Study of British Colombia," above note 51.

[83] *Ibid.* at 281.

[84] *Ibid.* at 277.

[85] *Ibid.* at 266.

[86] *Ibid.* at 286.

[87] Textile, Clothing and Footwear Union of Australia, *Fairwear: Stopping the Exploitation of Home-based Outworkers*, A Campaign Kit (Sydney, NSW, Australia: TCFUA, n.d.), Section 5.

[88] Annie Delaney, Textile, Clothing and Footwear Union of Australia, E-mail correspondence, 26 January 1998.

[89] Annie Delaney, E-mail correspondence, 3 July 1998.

[90] Annie Delaney, E-mail correspondence, January 1998.

[91] Annie Delaney, E-mail correspondence, 12 August 1998.

[92] *Ibid.*

[93] Annie Delaney, E-mail correspondence, January 1998.

[94] Textile, Clothing and Footwear Union of Australia, *The Hidden Cost of Fashion,* above note 34 at 4.

[95] Fair Wear Campaign web-site, above note 1.

[96] Textile, Clothing and Footwear Union of Australia, *Fairwear*, above note 87, Section 9.

[97] Annie Delaney, E-mail correspondence, January 1998.

[98] Textile, Clothing and Footwear Union of Australia, "Homeworkers Code of Practice" (Sydney, NSW, 1997).

[99] Annie Delaney, E-mail correspondence, January 1998.

[100] Annie Delaney, E-mail correspondence, July 1998.

CHAPTER 3

Codes of Conduct and Independent Monitoring: Tools to Challenge Sweatshop Practices Internationally

> *I worked for a maquila where we often worked from 7:00 in the morning until 12:00 at night. Sometimes they would tell us to bring clothes and sheets, and after work we'd just sleep on top of the machines or under the cutting tables. We'd get up at 5:00 a.m., a couple of people at a time, to wash and change. There were only three bathrooms. Pregnant women had it the worst. They had to work under very bad conditions, sometimes in the direct sun. If women got sick they were made to clean the streets of the "zone" when they came back to work.*
>
> — Zoila Alvarez, maquila worker in El Salvador[1]

A recent study by the International Labour Organization (ILO) estimates that there are now over 850 export processing zones worldwide, employing 27 million workers, 90 percent of whom are women.[2]

Numerous studies, reports, and testimonials have documented the problems, issues, and needs of women garment workers in free trade zones in Central America, maquiladora factories in Mexico, and export processing zones in Asia.[3] These resources reveal striking similarities in the problems and issues facing women garment workers in export processing zones and maquiladora factories worldwide, including:

- exploitation of very young women workers, some below the legal minimum age (mostly migrants from rural areas, although some are from other countries);
- wages below what is needed to provide basic necessities for the worker and her immediate dependants;
- excessively long hours of forced overtime, often without required overtime pay;
- an intensive pace of production and intense pressure to meet production quotas;
- physical and psychological abuse and sexual harassment;
- forced pregnancy testing and/or pressure to take contraceptives, and other forms of discrimination based on pregnancy;
- inadequate health and safety protections and limited access to health care and social security programs;
- little or no access to childcare facilities;
- inadequate transportation facilities, particularly at night;

- insecure employment;
- an increasing use of subcontracting and homework to further reduce labour costs; and
- mass firings, repression, and sometimes factory closures when workers attempt to organize.

Renewed Interest in Codes of Conduct

The deterioration of labour standards and working conditions in the apparel and other consumer products industries worldwide, caused by a convergence of trade liberalization policies, globalization of production and distribution networks, and deregulation policies of governments, has awakened a renewed interest in voluntary codes of conduct as a tool to re-establish standards across national boundaries.

In the past ten years, there has been a remarkable increase in interest and debate around the merits of voluntary codes of conduct, and some significant movement toward the negotiation of multi-company codes, monitoring systems, and accreditation and labelling schemes. Most company codes of conduct have been developed in response to consumer concerns, media attention and/or organized public pressure about questionable corporate practices. For many companies, a voluntary code of conduct is seen as preferable to increased government regulation. However, there are also risks involved in adopting a code of conduct, since it can draw attention to the company's practices and raise expectations of improvements in those practices.

For many in government, voluntary codes of conduct are seen as the non-governmental regulatory tools for the 1990s. Voluntary codes seem to be compatible with the neo-liberal model of trade liberalization, privatization, deregulation, cost-cutting, flexibility, and global competitiveness. In "Political Economy of Voluntary Codes: Executive Summary," Bryne Purchase, Professor at the School of Policy Studies, Queen's University, explains why governments are attracted to voluntary codes:

> The traditional command and control model of government regulation is increasingly costly to enforce, difficult to apply across national boundaries, inflexible and inefficient. In certain circumstances, the voluntary code may offer some opportunity to reduce these costs.[4]

For this very reason, many trade unionists and social movement activists have been sceptical if not suspicious of voluntary codes of conduct. Many see codes of conduct as nothing more than a public relations tool used to manipulate consumers into thinking that they need not worry about conditions under which products are made or the impact they have on the environment or the community. They worry that consumer campaigns demanding corporate adherence to codes of conduct reinforce our identity as consumers and undermine our identity as citizens. Even when

codes of conduct include provisions for transparency and independent monitoring, many critics see the current emphasis on voluntary codes as at best diversionary and at worst a threat to the regulatory role of the state.[5]

Although we would agree that there are good reasons to be sceptical about the usefulness of voluntary codes of conduct, particularly if there are no provisions for independent monitoring or transparency in the monitoring and certification processes, we believe that voluntary codes need not be a privatized alternative to state regulation, but can actually complement and reinforce the regulatory role of the state. We explore this issue further in chapter 4.

Although most company codes of conduct refer to rights contained in ILO Conventions on issues such as forced labour and child labour, health and safety, non-discrimination on the basis of race, gender, etc., company codes are seldom as inclusive, detailed, or precise as the ILO Conventions. Only a few company codes in the apparel sector — such as those of the GAP and Reebok — recognize freedom of association, and specifically the right to organize unions and the right to bargain collectively.[6] A recent survey by the Washington, D.C.–based Investor Responsibility Research Center found that of the 122 major US companies that responded, only eighteen had codes of conduct that included freedom of association, and only twelve had codes that included the right to organize and bargain collectively.[7]

Company codes have also been criticized for failing to clearly define the limits of their responsibility regarding practices of suppliers, contractors, licensees, etc.[8] These codes often lack specific provisions for implementation or monitoring of supplier compliance. They rarely include provisions for company disclosure of information on suppliers, contractors, subcontractors, and licensees.

In most cases, the gradual improvements in the provisions and language of company codes of conduct have not been the result of growing company awareness, but rather the pressure and persuasion brought to bear on companies by religious organizations such as the Task Force on Churches and Corporate Responsibility (TCCR) in Canada, the Ecumenical Committee for Corporate Responsibility (ECCR) in Britain and Ireland, and the Interfaith Center on Corporate Responsibility (ICCR) in the USA, as well as by individual church groups, religious orders, and multi-sectoral coalitions such as the Coalition for Justice in the Maquiladoras. In 1995, ECCR, ICCR, and TCCR published "Principles for Global Corporate Responsibility, Bench Marks for Measuring Business Performance," for use in dialogue with corporations. The Bench Marks, which suggest specific reference points for assessing a company's performance, are currently being updated and will be ratified in a world conference in 1999.[9]

The International Confederation of Free Trade Unions (ICFTU) has also developed a model code of conduct, based on ILO Conventions, which was adopted by its Executive Board in December 1997. The code is particularly useful in providing labour and other concerned groups involved in negotiating multi-employer codes or demanding improvements in company codes with appropriate language to make companies accountable. The ICFTU model code includes

provisions applicable to the garment industry concerning company accountability for the practices of their suppliers, contractors, subcontractors, and licensees and franchise-holders. It also provides useful language for provisions on corporate disclosure, a living wage, freedom of association, and security of employment.[10]

In the apparel sector, company codes of conduct now usually apply to the practices of the company's suppliers and sometimes their subcontractors, as well as to those of the company itself. This has been the most significant advantage of codes of conduct for retailers in general and the garment sector in particular — the fact that they recognize the responsibility, and by extension liability, of retailers and manufacturers for the practices of their suppliers, contractors, and subcontractors. Codes of conduct for suppliers therefore have the potential of helping to establish accountability of retailers and manufacturers for the conditions of all the workers who produce their products, not only around the globe, but also down the subcontracting chain.

Codes and Monitoring in Canada

> *A compliance policy that is not monitored and enforced is not worth the paper it is written on.*
> — Stephen Beatty, former Executive Director, Canadian Apparel Federation[11]

Canadian companies have generally been much slower than their US or European counterparts to develop company codes of conduct. A 1996 survey of Canadian businesses carried out by the Canadian Lawyers Association for International Human Rights (CLAIHR) and the International Centre for Human Rights and Democratic Development (ICHRDD) documents how few Canadian businesses have adopted codes of conduct addressing labour rights issues in their overseas operations. Of ninety-eight firms surveyed, fifty-five refused to say whether they had a code of conduct. Of the forty-three firms that did reply, thirty-four said they had or were developing a code of conduct. Of those thirty-four firms, only six said they had codes that referred to all OECD (Organization of Economic Cooperation and Development) core labour rights.[12] Of those six, only two provided copies of their codes to CLAIHR/ICHRDD, and those two codes "contained few if any reference to core labour standards."[13]

Apparel retailers and textile manufacturers that responded to the CLAIHR/ICHRDD questionnaire — Dylex, Hudson's Bay, Mark's Work Wearhouse, and Dominion Textile — all stated that they had a code of conduct that governed relations with overseas suppliers. Although Dylex stated that its code of conduct refers to freedom of association, the right to organize and bargain collectively, non-discrimination, and elimination of child labour, it did not provide CLAIHR/ICHRDD with a copy of its code for verification.

Of the OECD core labour rights, the Hudson's Bay Company's current code of conduct (the only retailer code provided to CLAIHR/ICHRDD) refers only to the elimination of child labour. (Significantly, all three retailers who responded to the questionnaire stated that their code of conduct referred to the elimination of child labour.) Although Hudson's Bay claimed to have

independent audits, after reviewing its code of conduct, Craig Forcese, author of the report, determined that it did not provide for any form of auditing.[14] The company claims it is currently working with the Retail Council of Canada and the ILO to develop model codes.[15]

In the summer of 1996, the Toronto-based Labour Behind the Label Coalition (LBLC) distributed a similar survey to forty major Canadian retailers involved in the apparel industry. Out of the forty retailers surveyed, only three completed at least part of the questionnaire: Cotton Ginny, Tristan & Iseut Inc., and a small retailer called For World Spirit. A fourth company, which requested anonymity, agreed to be interviewed by a church-affiliated member of the Coalition. Another company, Dylex, responded to a follow-up phone call, but declined to respond to the survey questions once they realized that the Ontario District Council of the Union of Needletrades, Industrial and Textiles Employees (UNITE) was a member of the Coalition.[16]

Of the three completed questionnaires, the response from Cotton Ginny appeared to the Coalition to be the most positive. In an exploratory meeting with officials of the company in the fall of 1996, they expressed interest in the idea of a Wear Fair label and their willingness to explore possible monitoring systems. However, although Cotton Ginny claimed it had a policy on workers' rights and that their policy included freedom of association, their “Ethics Policy on Workers' Rights” is a general statement of principles rather than a code of conduct, and it makes no specific reference to ILO or OECD core labour rights.[17]

Although the LBLC has developed a model code of conduct that refers to both domestic and off-shore production practices, to date it has not made a major effort to gain retailer or manufacturer agreement to the code. This is at least in part due to the reservations of many coalition members as to whether independent monitoring would be feasible and/or desirable in the Canadian context. At the time when the code was developed (1997), some coalition members feared that a voluntary code with provisions for independent monitoring would play into the deregulation and privatization agenda of the Ontario government. The LBLC's model code includes provisions on security of employment, addressing the situation of homeworkers and contract shop employees, and on monitoring and enforcement, which requires retailers to provide information on their contractors, and, “in circumstances where labour legislation is adequate and adequately enforced,” commits retailers and contractors to “cooperate with ministry of labour investigations and periodic audits of supplier compliance with that legislation.”[18]

Since the Labour Behind the Label and ICCHRD surveys were carried out, there appears to have been some movement by a few major retailers and the Retail Council toward acceptance of codes of conduct. This change in attitude was possibly in response to recent consumer campaigns in Canada and the United States focusing on labour rights abuses in the garment industry, in both domestic and off-shore production, and increased media attention to and consumer awareness of the issue, as well as growing concern about the issue of child labour in the garment sector and other sectors.

In March 1998, in response to threatened shareholder actions led by the British Columbia

Federation of Labour, four major Canadian retailers — Hudson's Bay, Sears Canada, Mark's Work Wearhouse, and Dylex — agreed to support the Labour Behind the Label Coalition's call for a federal task force to look at possible mechanisms to stop sweatshop abuses, including, but not limited to, a voluntary code of conduct and monitoring system.[19]

In the North-South Institute's 1998 *Canadian Development Report*, Ann Weston notes that the Canadian Apparel Federation has commissioned the Swiss company, the Société Générale de Surveillance (SGS) to "help define a social accountability process including certification, monitoring, and enforcement."[20] SGS is also the first company to be accredited by the US-based Council on Economic Priorities Accreditation Agency (CEPAA) to audit corporate compliance with the Social Accountability 8000 (SA 8000) "comprehensive standard" for corporate responsibility. (See SA 8000 below.)

Progress Outside Canada

Although Canadian retailers are just beginning to consider adopting voluntary codes of conduct, events have been moving ahead quickly in other countries. In the United States, and to a lesser degree in Canada, media-savvy consumer campaigns have been pressuring giant US retailers and super-labels to go a step further than voluntary codes of conduct, and accept civil society involvement in the monitoring of contractor compliance with codes. Campaigns focusing on the GAP, Disney Corporation, Levi, Wal-Mart's Kathie Lee Gifford label, and Nike have demanded that those companies' codes of conduct become more than public relations tools for Northern consumers. In demanding independent monitoring by local human rights, labour, and women's groups, these campaigns are pushing corporations beyond self-regulation, shifting the debate from corporate responsibility to corporate accountability.

1. Monitoring in El Salvador

The GAP campaign was the first significant victory in this new stage in the fight to make retailers accountable for the conditions under which their products are made. In December 1995, after a year-long campaign in the United States, Canada, and El Salvador, the GAP agreed to independent monitoring at the Mandarin International maquiladora contract factory in El Salvador's San Marcos Free Trade Zone. This was the first instance in which a major North American retailer mandated local human rights, religious, and labour groups to monitor contractor compliance with its code of conduct.[21]

The El Salvador Independent Monitoring Group (GMIES) includes the Human Rights Institute of the University of Central America (UCA), the Human Rights Office of the Archdiocese of San Salvador, the legal advisory office of the Archbishopric of San Salvador, and the Labour Studies Centre (CENTRA). According to Benjamin Cuellar, Director of the UCA's Human Rights Institute, the monitoring group has regular access to the factory and has won the trust of the workers and management. Significantly, the monitoring group is focusing as much if not more of its attention on employer compliance with Salvadoran labour law as it is on adherence

to the GAP code of conduct. When asked why this is the case, a member of the monitoring group stated that company codes of conduct are too general and that Salvadoran labour law is much more precise on employer obligations.[22]

Probably the most important achievements of the Independent Monitoring Group are: (1) facilitating the reinstatement of 75 of the approximately 300 workers who were fired for supporting a union-organizing drive, including members of the union executive, and who were allowed to re-establish their union without suffering management sanctions; and (2) gaining the agreement of the GAP to continue sourcing from the Mandarin plant and to increase its orders from the factory in order to allow for the reinstatement of fired workers.[23]

Given that Northern consumer campaigns are often accused by Southern governments, employers, and even some Southern unions as being motivated by protectionism and designed to drive away investment and jobs, the fact that this campaign protected jobs and facilitated the reinstatement of fired workers and their union is a significant achievement.

When asked what specific improvements in working conditions independent monitoring has achieved for the workers at Mandarin, Mark Anner, former coordinator of the monitoring group, stated:

> Before monitoring, there wasn't proper drinking water. Locks were put on the bathroom doors, women had to ask permission to go to the bathroom, and their visits were timed. An ex-military colonel was in charge of personnel and he ran the factory like a military barracks. There were problems with forced overtime and poor ventilation. Women had to present a pregnancy test to get a job. Since the agreement, the worst of those violations have been rectified. The colonel has been removed from the factory. The locks have been taken off the bathroom doors, and the women don't have to sign up to go to the bathroom. The company has put in proper water coolers. Women aren't required to present pregnancy tests, nor are they forced to work overtime.[24]

Despite these achievements, there have been a number of criticisms of the independent monitoring experiment at Mandarin. In "Codes of Conduct and Independent Monitoring: Strategies to Improve Labor Rights Enforcement," Bama Athreya of the International Labor Rights Fund points to the fears of many Northern and Southern union activists that independent monitoring could assume some of the normal functions of the democratically elected local union leadership. She notes that at the Mandarin plant the monitoring group has taken on the role of investigating and handling workers' grievances, "thus obviating the need for, and unintentionally undermining support for, a strong, independent union at the factory."[25]

In our conversations with members of the Independent Monitoring Group, they stated that it has not been their intention to replace the role of the union, but that the particular circumstances at Mandarin forced them to assume a mediating role between management and the workers. They noted that there were now two unions in the factory, both of which were

certified by the Ministry of Labour, and that the union representing the most workers, ATEMISA, had been set up with the support of management after the supporters of SETMI had been fired.[26] As Athreya states, the monitoring group didn't feel it was their role to "influence workers as to which, if any, union they should support."[27] Former GMIES staff person Carolina Quinteros adds that the monitoring group has respected SETMI's right to define its own strategy to win the support of the workers at Mandarin and its role of representing its members, which, she states, is very different from the mediating role the monitoring group has assumed.[28]

Although the independent monitoring experience at Mandarin has helped to improve conditions for the workers concerned and has served as an example of how monitoring by local human rights groups can work, it appears not to have helped strengthen the workers' capacity to organize themselves and defend their own interests. However, according to Quinteros, the fact that SETMI is currently in a weak position at Mandarin isn't attributable to the existence of independent monitoring. It is the result of historical divisions in the union and among Mandarin workers and reflects the current weakness of the Salvadoran union movement in general.[29]

When asked what independent monitoring has been unable to accomplish at Mandarin, Anner said:

> Independent monitoring has not been able to touch in this one factory the logic of how the industry works, the intensity of the work, which is linked to the production goals. Local factories producing under contract for big US retailers like the GAP or Eddie Bauer have set deadlines they have to meet to fulfill their orders. Profit margins are very low. For the maquiladora owners to survive under this system, they try to keep the pace of production up. They keep a small workforce and demand a lot of overtime when orders are heavy. We can only achieve so much in one isolated factory. The next great challenge is to see to it that all the companies are feeling the same pressure to improve conditions.[30]

If the GAP begins to source from other maquilas in El Salvador, the monitoring group hopes to negotiate the right to monitor conditions in those factories.[31] To date, the GAP has not authorized independent monitoring at any of its other contract factories in fifty countries around the world, nor has it participated in the US Apparel Industry Partnership where negotiations are under way on a multi-company code of conduct and monitoring system.

2. Monitoring in Honduras

The only other example we are aware of in which an apparel company has mandated local human rights groups or other local NGOs to monitor conditions in a factory on an ongoing basis is at the Kimi maquila garment factory in Honduras.[32] In this case, the agreement

allowing for independent monitoring was negotiated with the contractor rather than any of the North American retailers sourcing from the factory.[33]

The Honduran monitoring agreement was signed in June 1997, following a bitter battle that erupted when workers attempted to organize a union. Several workers were fired, international solidarity activities were organized, and US retailers sourcing from the factory, such as Macy and JC Penny, threatened to pull out of Honduras, putting the employment of the 500 maquila workers at risk.

The Independent Monitoring Team (EMI) in Honduras includes CODEH (Committee for the Defence of Human Rights), the Jesuits, CODEMUH (Women's Collective of Honduras), and Diocesan Caritas. Each organization has a long history of investigating conditions in the maquilas of Honduras. Given the high percentage of women in the maquilas, and the lack of a gender perspective of many Central American unions, the participation of a women's group in the monitoring team is an important advance.

The Kimi agreement provides for regular and unannounced visits by the monitoring team and monthly meetings with management and worker representatives. The agreement sets out the short-term priority issues the monitoring team will be addressing, including the treatment of pregnant women workers, accusations of abusive treatment of workers by management personnel, freedom of association, and the situation of the fired union supporters.

As in the Mandarin case, independent monitoring at Kimi has succeeded in facilitating the return to work of some fired union supporters, and it has created conditions that encouraged some North American retailers to continue sourcing from the factory.

However, the Honduran independent monitoring experience has also engendered mistrust between the union at the plant (SITRAKIMIH, affiliated to the FESITRAINCOSH) and the monitoring group, and confusion about roles. In her presentation on behalf of the EMI to a January 1998 conference on independent monitoring in El Salvador, Maritza Paredes pointed to the lack of a clear definition of the role of independent monitoring in relation to that of the union, and the fear by unions that independent monitoring might seek to displace their role.[34]

3. Nike and Independent Monitoring

The very public achievement of independent monitoring in El Salvador has put the issue of monitoring on the agenda both for labour rights advocates in the North and South and for apparel companies worldwide. High profile companies like Nike and Disney that are under continuing criticism for labour rights abuses of overseas contractors have recently hired accounting firms such as Ernst & Young, or professional certification firms such as SGS (Société Générale de Surveillance), to carry out “social audits” of their contractors' practices. Significantly, Nike is now using the term “independent monitoring” to describe what is essentially contracted external monitoring, even though Ernst & Young is solely accountable to Nike, and Nike has sole access

to the auditors' reports. This has provoked a whole new debate on the meaning of independent monitoring and the degree of transparency required for the monitoring process to have legitimacy.

On 12 May 1998, Nike responded to growing protests and continuing criticisms of alleged labour rights abuses and the lack of transparency in its monitoring process by promising to include NGOs in monitoring and to make summaries of their reports public.[35] However, Nike critics are still sceptical about which NGOs will take part, how they will be chosen, whether they will have access to the factories and the workers, who will write the reports, and how much public access there will be to those reports.[36]

Since Nike's May 12 press conference, a team of six US labour rights advocates and health and safety experts, with the support of International Labor Rights Fund (ILRF), Global Exchange, and other US groups involved in lobbying Nike on worker rights issues, has presented a proposal to the company for a labour rights verification system that would involve NGO monitoring. The team is offering its cooperation on a pilot monitoring project in one of the Asian countries where Nike production is concentrated. An earlier discussion paper circulated by the ILRF suggested that such a pilot project would involve “reputable local NGOs, academics and individual activists” in the monitoring process. The team is not requesting funding from Nike.[37]

4. A European Example

One European apparel company that is moving toward involvement of NGOs in monitoring is the French retail chain, Auchan. The company has agreed to “study the feasibility of external independent audits,” working toward a system of social certification and labelling.[38] Auchan has also agreed to participate in a monitoring commission along with consumer groups, international NGOs, and unions that will verify the procedures of internal audits and, eventually, external monitoring. The commission will apparently have access to auditing and monitoring reports.

The agreement is partially based on a model code of conduct developed by the Collectif de l'éthique sur l'étiquette, which commits companies to a five-year pilot project to investigate and develop mechanisms for internal audits and external monitoring, certification, and labelling.

Other notable features in the Auchan code are provisions on freedom of association, including the right to organize and bargain collectively, and a living wage at least sufficient to satisfy the basic needs (food, clothing, housing) of the worker and direct dependants.

Reflections on Independent Monitoring

Stephen Coats of the US/Guatemala Labor Education Project (US/GLEP) draws preliminary conclusions from the Central American experience with independent monitoring in a recent paper entitled “Reflections on the Issue of Independent Monitoring.” He lists six lessons for future independent monitoring initiatives:

1. *Acceptance by Labor*. Without the support of the workers and local labor leaders, independent monitoring is likely to encounter formidable if not destructive obstacles to its success. This is true even if the factory doesn't have a union, but is absolutely essential if the factory does. And if there is not a relationship of some trust between monitors and labor, the monitors are likely to end up being viewed as in collusion with the company. Conversely, if monitors become the workers' primary representatives to the company, unions will believe that their concerns that monitors might become their substitutes and competitors have been realized, leading to conflicts between those who need to be allies.

2. *Clarity about Roles*. Unless the role of the monitor in a given situation is carefully defined, conflicts and misunderstandings are likely. Certainly monitors are not meant to be neutral. After all, the first job of a monitor is to ascertain whether a company is in compliance with a code of conduct meant to benefit the workers. In that sense, monitors are inescapably advocates for workers. But if monitors move from investigation to enforcement and problem-solving, then they take on the role of representing the workers. Yet independent monitors are by definition not the representatives of the workers, which is the role of unions.

3. *Credibility*. Monitors must have credibility with a sufficiently broad spectrum of civil society to be effective, and can't be seen as uncritical mouthpieces of workers or as having a political agenda that interferes with their objectivity.

4. *Caution with Regard to Outside Funding*. The prospect of a secure and substantial source of funding from North American companies, foundations and/or aid agencies may lead to divisions and tensions among local groups based less on principle than on competition for scarce resources. While some groups have approached the prospect of being engaged in contracts with US companies with due care, others have shown an unseemly interest in serving as monitors.

5. *Capacity and Training*. Monitoring groups composed of religious and human rights advocates do not necessarily have the expertise or staff to take on all aspects of monitoring a code of conduct. Training and capacity building are needed on health and safety, auditing books, labor law and other issues.

6. *Distinguishing Between Short-term and Long-term Approaches*. Independent monitoring has taken two forms in Central America: one in which the monitor is brought in to serve as a permanent oversight group (e.g. the two-year-old independent monitoring group in El Salvador) and another in which a monitor is brought in specifically to assess one set of issues and then leave (e.g. Human Rights Watch in the Phillips-Van Heusen struggle in Guatemala). Which is more appropriate will depend primarily on the context, but a permanent presence clearly raises more issues than the one-shot approach."[39]

Elaine Bernard, Executive Director of the Harvard Trade Union Program, suggests the

following general principles to ensure the authenticity of monitoring processes in a paper presented to an April 1997 conference on independent monitoring in New York, titled "Ensuring Monitoring is Not Co-opted." According to Bernard, to avoid being co-opted, monitoring must be:

- independent from the corporate sector and the government;
- ongoing, with regular access to workers and workplaces (not ad hoc, one-time events such as high-publicity celebrity visits);
- institutional, with assured resources and independent authority;
- indigenous, involving people who live in the country, have an on-the-ground presence, and speak the workers' language;
- trusted by the workers, protective of their confidentiality, and with a proven track record in the country;
- knowledgeable about the work process and what is common practice;
- transparent, with a communications infrastructure, the right to communicate information without corporate screening, and the right to go public when necessary.[40]

According to Bernard, the above general principles "are all necessary components to breathe life into the promise of any `code of conduct' or indeed, any claims of `good employer' practices."[41]

A cautionary note on the role of NGOs in independent monitoring is raised by Neil Kearney, General Secretary of the International Textile, Garment and Leather Workers Federation (ITGLWF). Kearney is concerned that in their eagerness to play a role in negotiating and monitoring company codes, NGOs are in danger of neglecting their historical role of exposing abuses and organizing activist campaigns, thereby taking the pressure off companies to make significant changes in their labour practices.[42]

However, Carolina Quinteros of the El Salvador Independent Monitoring Group cautions against drawing premature conclusions based on the two experiences with ongoing independent monitoring in Central America, or treating either experience as a model. She notes that the two independent monitoring experiences are very distinct, with different levels of support of civil society, different experiences with unions and factory managements involved, and different relations with the transnationals and with the international community.[43]

Independent Monitoring and Labour Legislation

Since the relationship between independent monitoring and enforcement of local labour legislation is an issue that has been raised by a number of critics of voluntary codes, it is worth

noting that both the Salvadoran and Honduran monitoring groups appear to be putting more emphasis on monitoring compliance with labour legislation than with any specific corporate code of conduct. At the January 1998 El Salvador conference, Maritza Paredes of the Honduran Independent Monitoring Team emphasized the importance of continuing to pressure ministries of labour to play an effective role in monitoring and enforcing labour legislation. Neither monitoring group saw independent monitoring as a privatized alternative to state enforcement of national labour laws.[44]

Bama Athreya of the International Labor Rights Fund points out that in many countries the problem is not just a lack of enforcement of labour laws. For instance, the right to organize and bargain collectively is denied to workers in export processing zones in Pakistan, Bangladesh, and Malaysia, while the right to organize independent unions is greatly restricted in other centres of garment export production, such as Indonesia and Mexico. "Codes of conduct have the potential to play a critical role in the promotion of free trade unions in such places," says Athreya, "provided they contain language protecting workers' rights to associate and form unions and to bargain collectively. By pressuring MNCs not only to adopt but to honour such language, worker advocates may be able to create a context within which free trade unions can develop even under restrictive legal frameworks."[45]

Athreya suggests that an important role for monitoring groups is to collect information on worker firings for union activity and to immediately pressure for the workers' reinstatement. She argues that in countries like China where independent union organizing isn't permitted, "pressure [around worker firings] from Western consumers and advocacy groups is far more likely to be effective than recourse to local judicial processes ... [and] is also likely to act as a deterrent to any future such firings, thus removing a significant obstacle to union organizing."[46]

Southern Reactions to Northern Codes

Between October 1997 and February 1998, the UK-based Women Working Worldwide (WWW) carried out a research and consultation exercise with women's groups in six Asian countries on the potential value of codes of conduct for both workers' organizations and workers themselves. Most striking — although perhaps not surprising — in WWW's preliminary report is that very few of the workers involved in the research knew anything about codes of conduct.[47]

> Workers from both groups heard for the first time about a code of conduct. They told us that not one clause of the code was implemented. There was no union, no living wage, even no minimum wage and no minimum working hours. Besides, child labor is also there.
>
> — Pakistan focus group, research report, WWW consultation

In Pakistan, this lack of knowlege of codes apparently extended to government and ILO

officials. “During the research we also got a chance to talk with the Labor Department and other government officials who deal with labour issues. Their conversation demonstrated that they do not have clear concept about codes of conduct. Even many of them asked what is a code of conduct? During the Sialkot visit [sub-contractor to Adidas] we also met people from the ILO who are working as program monitors of the ILO. They told us they do not know about codes.”[48]

In response to the question “Can company codes strengthen the bargaining position of workers?” the general consensus from the workers interviewed was affirmative, but with the following three qualifications:

1. Workers have the right to organize and bargain collectively. Without this right, codes could undermine attempts to establish collective bargaining. It was suggested that freedom of association was a prerequisite for the effective implementation of codes.
2. Workers have full knowledge of codes and are involved in decision making. Without this knowledge and participation, codes would be seen as a bureaucratic instrument being imposed from above rather than as an organizing tool.
3. Codes are promoted as one strategy among many. The promotion of codes should not divert attention away from other strategies for improving workers' rights.[49]

There was also agreement that all codes should include workers' fundamental rights, including the right to organize, and that workers needed to be involved in the monitoring process.
In response to the question of whether or not model codes were appropriate for workers in the informal sector, it was pointed out that “many of the clauses in existing codes did not meet the needs of informal sector workers. ... Yet if codes are to be effective it was seen as essential that they are applied to workers who are not factory based, since these workers are growing in number and are the most exploited.”[50]

When asked what consumer campaigners and trade unionists in Europe and America could do to help, the Indian participating group suggested that groups in the North could “monitor the policies of their own governments, and oppose any spurious anti-dumping and other protectionist measures which have a detrimental effect on garment workers in our countries.”[51]

The Asia Monitor Resource Center (AMRC) echoes the concerns raised in the WWW consultation process. First and foremost, the vast majority of workers are not aware of the

> The workers I interviewed knew about Reebok's Code of Conduct, but they never read it carefully because the employer put the code only on the window of the factory security building. The workers felt that the security guards always watched who was reading the code and carefully kept their eyes on the workers who wanted to read the code. The workers fear that if there is ever a strike in the factory, the workers who were seen by security guards reading the code will be suspected as leading the strike.
>
> — Poengky Indarti, an Indonesian lawyer, interviewed several workers at PT. Victory Long Age who made goods for Reebock.

existence of codes for the factories in which they work. "Overwhelmingly, people with whom we have met that are not connected to campaigns in the `North' are not aware of codes of conduct of transnational corporations. ... Most people have no idea what they are. For example, we asked workers at sports shoe factories in Southern China this summer about codes of conduct at their factories. Though the workers were producing for companies that advertise their code to consumers, very few workers knew about the code of conduct. Some actually thought we were asking about the factory rules which list fines given for various infractions."[52]

According to AMRC, while "some workers' organizations have commented that [codes are] a good instrument to stress the importance of workers' rights and companies' duty to provide safe and adequate work places ... [they] must not overshadow the importance of continuing to pressure governments to enforce their own existing labour and health and safety laws, and to pass legislation to protect its workers. Codes of conduct are seen as one means of improving working conditions."[53] AMRC also points to the limitation of codes of conduct in touching the growing number of Asian workers in the informal sector.

AMRC raises the following critical questions for work on codes:

> [W]e need to identify what role we want to play in our relationship with transnational corporations (TNCs) who are developing codes of conduct. For example, are we willing to work with TNCs to develop this monitoring system? How can we accomplish this without appearing to be acquiescing to TNCs or accepting their paper code of conduct as a genuine intention to improve workers' rights? What impact will NGOs and campaigners for the conditions of workers' organisations working together with TNCs have on future campaigns or efforts to promote workers' rights? Will this relationship affect the strategy of fighting for workers' rights? How can monitoring be accomplished without incurring these negative side affects? How can we avoid the situation where the concerns by Northern consumers and workers in the South ends up leading to unintended consequences for workers?[54]

Multi-Company and Industry-Wide Codes

At the same time as anti-sweatshop campaign organizers are mobilizing consumer pressure on particular brand name apparel and footwear companies to go beyond self-regulation and accept independent monitoring, national and international labour and non-governmental organizations are pressuring apparel and sporting goods companies and their associations to negotiate multi-company or industry-wide codes of conduct and monitoring and accreditation systems.

The advantages of multi-firm and industry-wide codes and monitoring systems over individual company codes are fairly obvious:

- the fact that many contract factories and subcontract sewing workshops produce for more than one Northern apparel company;

- the reluctance of even major apparel companies to risk adopting higher standards that might be undercut by their competitors;
- the problem of inconsistency in the provisions in different company codes and the lack of agreed-upon guidelines and standards for monitoring and accreditation of monitors.

One of the key elements of multi-company and industry-wide codes of conduct and monitoring systems is the development of certification systems and labelling schemes, in order that consumers can identify apparel produced under ethical conditions, and so that unions, NGOs, and citizens can challenge decisions regarding the certification of particular companies. Although there are no major examples at present of the adoption of a labelling system by companies in the garment and footwear industries, many of the apparel industry code initiatives hope to develop labelling programs in the future.

International trade lawyer and analyst Christine Elwell believes that independent monitoring, certification, and labelling are a preferred option at this moment because they are "GATT legal." Both Elwell and Sheila Katz of the Canadian Labour Congress point to the tuna/dolphin case in 1992, noting that although in that case you couldn't enforce a product or import ban, you could require a label for consumer information.[55]

While some Southern governments might argue that the expense of meeting labelling and certification requirements is a barrier to trade, Elwell notes that sustainable forest product groups have answered that criticism by helping to finance the ability of Southern producers to qualify under labelling programs.[56]

Below are several examples of agreements that have been reached and initiatives that are currently in process on multi-company or industry-wide codes of conduct, monitoring, and certification systems:

1. FIFA Code of Conduct

In September 1996, a model code of conduct for the production of soccer balls was agreed to by the International Federation of Football Associations (FIFA); the International Textile, Garment and Leather Workers Federation (ITGLWF); the International Federation of Commercial, Clerical and Technical Employees (FIET); and the International Confederation of Free Trade Unions (ICFTU). The negotiation of the code was prompted by the strong public reaction to reported exploitation of children in the production of soccer balls in Sialkot, Pakistan. According to Bama Athreya, of the International Labor Rights Fund (ILRF), the FIFA Code is one of the most comprehensive codes of conduct that has been developed to date, which is at least in part due to the fact that no industry representatives were involved in its development.[57]

The Code requires the international soccer federation to ensure that all soccer balls and other FIFA-licensed products or components of those products are not made under sweatshop

conditions or by child labour. It prohibits the use of forced or bonded labour, child labour under the age of fifteen, excessive hours of work and overtime, and discrimination in employment. It guarantees freedom of association and the right to bargain collectively, a safe and hygienic working environment, and wages and benefits meeting "at least legal or industrial minimum standards and ... sufficient to meet basic needs and provide some discretionary income."[58] The wage provision is particularly significant, since there are very few codes that require employers to pay a "living wage."

Another important feature of the FIFA code is that it applies to contractors and subcontractors, as well as to licensees. It also discourages abuses of temporary, casual, and apprentice labour, stating: "Employers should endeavor to provide regular and secure employment and refrain from the excessive use of temporary or casual labour. Obligations to employees arising from the regular employment relationship should not be avoided through the use of labour-only subcontracting arrangements, or through apprenticeship schemes where there is not real intent to impart skills or provide regular employment."[59] These provisions are particularly important for women workers.

The FIFA code includes provisions for monitoring that require licensees, their contractors, and subcontractors to permit inspections at any time by approved inspectors, to maintain and make available to the inspectors on request the name, age, hours worked, and wages paid for each worker, and to refrain from "disciplinary action, dismissal or otherwise discriminating against any worker for providing information concerning observance of the Code."[60]

According to Athreya, the FIFA code "attracted considerable anxiety and animosity" from the World Federation of Sporting Goods Industries (WFSGI), which proceeded to negotiate its own code with the ILO, UNICEF, Save the Children UK, and the Chamber of Commerce of Sialkot. This code, which is focused on the issue of child labour, is called the Partners' Agreement to Eliminate Child Labour in the Soccer Ball Industry.[61]

To date, the FIFA logo indicating that licensees are abiding by the code has not been adopted by soccer ball manufacturers or importers. However, FIFA has endorsed the Partners' Agreement in Pakistan, and the Irish Congress of Trade Unions and the Football Association of Ireland have agreed to a code of conduct based on the FIFA code.

2. Apparel Industry Partnership — USA

The Apparel Industry Partnership (AIP) is the product of an anti-sweatshop task force launched in August 1996, largely at the initiative of then-Secretary of Labor Robert Reich. US President Clinton appointed the task force with the mandate "to ensure that the products companies make and sell are manufactured under decent and humane working conditions, and to develop options to inform consumers that the products they buy are not produced under exploitative conditions." According to the US Interfaith Center on Corporate Responsibility (ICCR), "the Secretary's initiative was inspired in part by Kathie Lee Gifford's response to news that

children were sewing garments under her label at a maquiladora factory in Honduras."[62]

Participants in the AIP include many of the "super-labels" that have come under attack for their association with sweatshop practices in Asia and Latin America, including Nike, Reebok, Liz Claiborne, Phillips-Van Heusen, and Kathie Lee Gifford, as well as L.L. Bean, Patagonia, Tweeds, Nicole Miller, and Karen Kane. Religious, human rights, and labour rights advocacy groups involved include: the ICCR, the International Labor Rights Fund (ILRF), the Lawyers Committee for Human Rights, the National Consumers League, the Retail Wholesale and Department Store Union (RWDSU), the AFL-CIO, the Robert F. Kennedy Memorial Center for Human Rights, and the Union of Needletrades, Industrial and Textile Employees (UNITE).

On 14 April 1997, the Apparel Industry Partnership released a preliminary anti-sweatshop agreement, titled "Workplace Code of Conduct and Principles of Monitoring." The AIP agreement includes provisions for a multi-company code of conduct and general principles for external monitoring and a certification process. Companies that adopt the Workplace Code of Conduct will have to require their suppliers and contractors to comply with appropriate legislation and the provisions of the code. A non-profit association will be created, with representation from the companies, unions, religious groups, and NGOs. Their role will be to determine criteria for company membership, develop criteria and implement procedures for the certification of external monitors, design audit and other instruments for the monitoring practices, help build members' capacity to remedy instances of non-compliance, and serve as a source of information to consumers about the code and the companies that comply with the code.[63]

While most US labour rights activists have applauded the Workplace Code of Conduct's recognition of freedom of association and the right to bargain collectively, provisions on wages[64] and hours of work[65] have generated a great deal of criticism and debate. There has also been considerable controversy around the issues of monitoring, certification, and the degree of involvement of Southern groups in the monitoring process. In an April 1997 media release, Global Exchange and five other US labour rights advocacy groups criticized the AIP agreement for "not mandating that companies pay workers a living wage, for sanctioning excessive overtime, and for allowing accounting firms rather than human rights groups to monitor the companies' labor practices."[66]

Since the release of the agreement, the parties have continued to negotiate difficult issues related to monitoring and certification, and transparency of those processes, as well as revisiting controversial issues such as wages. According to Pharis Harvey, who is involved in the negotiations on behalf of the International Labor Rights Fund, some of the contentious issues that have not yet been resolved include:

- What does it mean to be in compliance with the code? For instance, what percentage of production facilities would have to be monitored in order to be certified?
- How much information do you provide to the public: information on all inspections or just whether or not a company is certified?

- Who are the monitors? Are financial auditors the appropriate bodies to do "social audits"? What other kinds of groups should be involved?
- How involved are workers in the monitoring?
- How do you define a living wage?[67]

At the time of this writing, it is unclear whether sufficient consensus will be achieved to allow the AIP to reach the implementation stage. However, it appears that general agreement has been reached on a monitoring system in which the participating companies would hire external monitors from a pool agreed upon by the different parties involved in the AIP. In answer to an AIP questionnaire, the Clean Clothes Campaign (CCC) in the Netherlands argues against the adoption of this model, stating, "It is hard to imagine a situation where workers would feel safe reporting complaints directly to either the company or to a certified commercial enterprise that is under contract by the company."[68]

3. Fair Trade Charter for Garments — Netherlands

A model code of conduct called the Fair Trade Charter for Garments was developed in the Netherlands in 1994 by the Clean Clothes Campaign, the Dutch union federation FNV, and the overseas development organization NOVIB. The Charter is based on ILO Conventions on freedom of association and the right to bargain collectively, hours of work (48 max./week), non-discrimination, a living wage, health and safety, and the elimination of child and forced labour. The Charter applies to the entire subcontracting chain, including home-based workers. Companies in compliance with the Charter would have the right to use a trade mark indicating that the clothes they sell are "clean."[69]

The inclusion of strong language on freedom of association, hours of work, and a living wage can be attributed to the fact that the code was first developed by unions and social movement actors, and only later agreed to by apparel associations in response to public pressure generated by the Clean Clothes Campaign.

In 1996, the garment manufacturers' association (FENECON), the federation of middle-sized retailers (MITEX), and the Dutch Clothing Convention (NKC) agreed to participate in a working group, together with the CCC, FNV, and NOVIB, to discuss the possible creation of a foundation to oversee the implementation and monitoring of the Charter. As of April 1998, the parties in the working group have reached agreement on a number of issues related to the establishment of the foundation:

- The foundation's governing board will have equal representation from each of the four sectors involved: union, NGO, retailer, and manufacturer, plus a jointly chosen independent chairperson.
- Individual companies will not become members of the foundation, for they are already represented on the board by their sectoral organizations. Instead, a company that accepts the

standards and monitoring principles outlined in the Charter will sign a contract with the foundation that spells out the tasks of all parties involved, as well as how monitoring will be carried out.

- A five-year period will be allowed before all production has to be up to standard.
- The foundation will have the role of certifying external monitors, which can include quality control companies, accountants, NGOs, and individuals. The external monitors will be contracted by the foundation, which will also receive their reports.
- The industry will bear most of the costs involved, but as their contribution goes to the foundation rather than to the monitors directly, there would appear to be few opportunities for abuse.[70]

According to Ineke Zeldenrust of the CCC, major discussion has focused on who will select the certified monitors and who will receive the reports. Even though there is now agreement on the text on this issue, it will continue to be an area of discussion. Another issue has been how active the monitors have to be in the field, with some employer groups feeling that monitors should only check a production site in cases of extreme suspicion. Although there is agreement that the foundation will receive complaints — and if they deem it necessary, send a monitor to investigate — there is not agreement on how active the foundation should be in this area, nor on when they should send monitors.[71]

An unanticipated area of debate is around the fact that the original Fair Trade Charter does not include a provision on security of employment (see FIFA code above), which is included in the European Clean Clothes Campaign's Code of Labour Practices in the Garment Industry including Sportswear. While union and NGO representatives want to add security of employment to bring the Dutch code in line with the European code, employer groups are opposing its inclusion.[72]

In the Dutch model, there is no government involvement in the process, though they are seeking political support from the government and financial support for a pilot project.[73]

4. European Union Code of Conduct

On 22 September 1997, the European Trade Union Centre of Textiles, Clothing and Leather Workers (ETUC/TCL) and EURATEX, the European employers' association for garment and sportswear, signed a code of conduct concerning the labour practices of European companies, their subsidiaries, and subcontractors in the South. The code includes provisions on child labour, forced labour, discrimination, and the right to organize. According to the *Clean Clothes Newletter*, the agreement was to have been submitted to the European Commission in July 1998. Following that submission, the precise terms and procedures for monitoring would have been negotiated.[74]

A second European code, the Code of Labour Practices in the Garment Industry including

Sportswear, also supported by the ETUC/TCL and by groups involved in the European Clean Clothes Campaign network, has not yet been agreed to by the apparel companies. It contains provisions on freedom of association and the right to bargain collectively, hours of work, a living wage, non-discrimination, health and safety, child and forced labour, and security of employment. The second code is based on the Fair Trade Charter negotiated in the Netherlands, with the addition of the clause on security of employment.

5. SA 8000

On 15 October 1997, the US-based Council on Economic Priorities Accreditation Agency (CEPAA) announced the adoption of a "comprehensive global verifiable standard for auditing and certifying corporate responsibility," called Social Accountability 8000 (SA 8000).[75]

The CEPAA initiative is an attempt to develop a comprehensive set of labour rights standards that will be applicable to all industries, including public sector institutions, in all countries. Although the SA 8000 Guidance Document does not yet cover the agricultural sector or extractive industries, there may be a future Guidance Document and/or SA 8001 and SA 8002 to address those sectors. SA 8000 standards are based on ILO Conventions, the United Nations Convention on the Rights of the Child, and the Universal Declaration on Human Rights. At present, SA 8000 does not specifically address homework other than to reference ILO Convention 177, but future revisions will apparently address home-based production practices.

The objective of the SA 8000 initiative is to bring consistency to the labour rights standards now contained in various and competing codes of conduct, and to procedures for social auditing, and to offer "clear guidelines for public disclosure of appropriate audit information." The role of the CEPAA will be to accredit organizations, which, at least in theory, could be NGOs as well as professional certification firms, and to conduct third-party audits of companies and/or their suppliers. These organizations will then monitor the labour practices of a particular company and certify if it is in compliance with SA 8000 standards.

Although NGOs are not specifically excluded as organizations that could be accredited as social auditors, they would need to be contracted by companies seeking SA 8000 certification. It is therefore more likely that professional certification firms such as SGS International Certification Services (SGS ICS) and Det Norske Veritas (DNV) will play this role, while NGOs and unions and other worker organizations will be consulted as part of the auditing process. However, NGOs and unions will have the right to make appeals to the certification body or to the CEPAA for the revocation of the accreditation of a certification firm. In effect, NGOs and unions would be relegated to the role of monitoring the monitors. However, it should be noted that CEPAA has so far been willing to offer pro bono auditor training to a limited number of NGOs, including Southern groups, who are interested in building their capacity to monitor company compliance with labour rights criteria.

An important advocate of the SA 8000 approach has been Neil Kearney of the ITGLWF.

Kearney believes that given the enormous challenge involved in applying consistent criteria to the monitoring of even one company's thousands of contractors in numerous different countries, professional certification firms are likely to play the primary verification role, while unions and NGOs should be actively involved in briefing the verifiers, monitoring the monitors, and raising complaints when needed.[76]

A June 1998 media release from SGS ICS announced that the multinational certification firm has been approved as the first organization accredited by CEPAA to audit companies seeking SA 8000 certification. According to the media release, SGS ICS is part of the SGS Group, "the world's largest international inspection, testing, and certification organization ...," with operations in 140 countries, and with 354 subsidiaries, 365 laboratories, and 39,000 workers.[77]

Although there have been very few criticisms of the provisions and language contained in the SA 8000, a number of labour rights advocates have been critical of how accreditation, monitoring, and certification will be carried out. Janneke van Eijk of the CCC questions which workers are covered by SA 8000. She notes that SA 8000 doesn't necessarily apply to all contractors, suppliers, subcontractors, and licensees, since a company can choose to apply for certification just for its own facilities. She stresses the importance of the standards also applying to homeworkers.[78]

Judy Gearhart, a researcher for CEPAA, replies by pointing out that SA 8000 cannot be used as a label, and that "companies will need to specify what level of participation they have in the SA 8000 system, i.e. how many or what percentage of their products come from certified facilities, regardless of whether they are their own factories or suppliers or subcontractors."[79] Van Eijk also raises a number of questions about the SA 8000 monitoring process, including:

- What steps will be taken to gain workers' trust and guarantee that workers will not suffer repercussions for speaking out?
- How will NGOs and unions be involved in the monitoring process, and who will select the NGOs?
- What access will the CEPAA have to information gathered by the auditors?[80]

Bama Athreya of the International Labor Rights Fund feels that the greatest weakness of SA 8000 is its lack of accountability to consumers. "It is unclear, under the plan, who will make decisions on accreditation of monitors and what criteria will be used, ... to whom the auditor will report, what steps should be taken when violations are found, and in what ways the company will be monitored in order to ensure correction of the violation has taken place."[81] Athreya prefers the foundation model of the CCC, which she feels is a more transparent monitoring body.

In answer to these criticisms, Gearhart notes that the CEPAA accompanies certification bodies on "witness audits" prior to accreditation and then every six months. As well, reports from

accreditation audits are turned in to the CEPAA Accreditation Review Panel, which is made up of CEPAA Advisory Board Members and always includes equal representation from unions or NGOs and companies.[82]

6. Ethical Trading Initiative — UK

Like the Apparel Industry Partnership in the United States, the United Kingdom's Ethical Trading Initiative (ETI) was initiated and nurtured by government, in this case by the UK government's Department for International Development and its minister, Clare Short, with the support of the Department of Trade and Industry. The ETI is also receiving substantial financial support from the government — a commitment to cover over half the anticipated costs for the first three years of the process. Unlike the Apparel Industry Partnership, the ETI is multi-sectoral, involving companies from a variety of sectors, including supermarket chains, clothing retailers, a beverage company, and even a telecommunications company. Its focus is on improving labour practices in the global supplier and contract chain of companies trading in the United Kingdom.[83]

The approach of the ETI seems to be to encourage a lengthy process of dialogue between the different sectors and interests involved in order to gain consensus on the terms of a multi-sectoral Supplier and Sourcing Code, membership requirements, and principles of monitoring and auditing. The ETI is also interested in developing training programs for monitors and auditors, and in helping build coalitions of organizations in the South that could carry out monitoring and verification work. It is not clear whether the ETI will eventually develop an accreditation program or foundation approach, or whether it will continue to evaluate and encourage the development of codes of conduct and mechanisms for independent monitoring.[84]

7. Southern Initiatives

Although most initiatives for industry-wide or multi-company codes of conduct have originated in the North, there are some examples of initiatives by Southern groups to pressure manufacturers' associations and sometimes ministries of labour to accept and endorse voluntary codes of conduct. Significantly, the focus of these efforts is to bring pressure on foreign investors, often in free trade zones, that manufacture clothing and other consumer products on a contract basis for North American or European retailers or super-labels. Many of these contract manufacturers are multinationals in their own right, companies that have moved production from their country of origin, usually Korea, Taiwan, or Hong Kong, to poorer Asian, Latin American, or Caribbean countries offering cheaper labour and weaker or non-existent unions.

One example is the Code of Ethics developed by the Central American Network of Women in Solidarity with Maquila Workers. The emphasis of the code is on issues specific to women maquila workers, including discrimination, social security benefits, physical, psychological and sexual abuses, excessive overtime, the rights of pregnant workers, etc. The code has been criticized by unions for not including freedom of association and the right to organize and bargain collectively. However, in the one instance to date in which a maquila owners' association and ministry of labour have endorsed the code, the Network has insisted that freedom of association be included.[85]

The Central American women's network has used the code both to educate workers and the broader population about workers' rights in the maquila, and also to bring pressure on maquila owners' associations and the ministries of labour in the respective Central American country to commit themselves to abiding by and enforcing a common charter on women workers' rights. On 1 February 1998, in front of 500 women maquila workers, the Nicaraguan Minister of Labour, Wilfredo Navarro, signed a proclamation for the free trade zone based on the Code of Ethics, but also including freedom of association. On 2 February, the owners of all twenty-three maquilas in the zone signed an agreement to adhere to the terms of the proclamation.[86]

The Self Employed Women's Association (SEWA) grew out of the Women's Wing of the Textile Labour Association. In 1972, SEWA became India's only independent women's union.

SEWA members include hawkers and vendors; manual labourers and service providers; and home-based workers such as weavers, potters, bidi rollers, garment workers, and agricultural and handicraft producers.

Over one-third of SEWA's 250,000 members are home-based workers. Any self-employed woman can become a member of SEWA by paying a membership fee of 5 rupees per year. Every three years the members elect their representatives to the Trade Council, who in turn elect the 25- member Executive. Close to 85 percent of SEWA's staff come from the membership of the union.

SEWA's Cooperative Bank was set up in 1974 to provide SEWA members access to credit facilities. Today the bank has over 81,000 depositors and a total working capital of US$4.6 million.

SEWA operates over seventy co-operatives where women learn principles of democratic functioning and develop business and leadership skills. SEWA has trained members as community health care workers, established its own maternity benefits (1978), and lobbied the Labour Ministry to provide maternity coverage to landless agricultural workers.

SEWA was the key force behind the twenty-year struggle to gain international trade union action for the regulation and organization of homeworkers. SEWA was the backbone in the successful struggle to establish an International Convention recognizing homeworkers and their rights.

Although the code has served as an effective educational tool, there are no provisions for independent monitoring of compliance, nor is there much evidence that the Nicaraguan Ministry of Labour is actively enforcing the provisions of the proclamation.

A second example of an industry-wide code of conduct in which Southern groups have played a leadership role is the Charter on the Safe Production of Toys. In this case, the model industry-wide code of conduct, which focuses on health and safety issues, was developed by the Hong Kong-based Coalition for the Safe Production of Toys after two major fires occurred in toy factories owned by Hong Kong interests. Although the charter focuses on conditions in the toy industry rather than the apparel industry, many of the issues addressed and the contract system involved are similar. Several toy industry associations, including the British, European, and International toy associations, and the Hong Kong Toys Council, have responded to the charter and the international campaign around it by developing their own codes of conduct. The industry codes tend to focus on forced and child labour and adherence to local health and safety legislation, but generally fail to recognize toy workers' rights to organize and bargain collectively or the need for independent monitoring and enforcement mechanisms.[87]

In July 1998, the Committee for Asian Women (CAW), a women workers regional network based in Hong Kong, launched a signature campaign to address the "deteriorating situation of women workers in Asia, particularly with the rapid expansion of casual and flexible forms of employment.
CAW is calling on governments to:

- immediately ratify the International Labour Convention on Part-time Workers (175) and the Convention on Home Work (177);
- establish national policies, laws, and regulations according to the ILO Conventions to guarantee the legal rights of part-time and homeworkers;
- implement these policies, laws, and regulations at local levels to ensure that part-time and homeworkers are protected;
- set up an effective mechanism to inspect, monitor, and ensure the protection of the rights of casual and flexible workers;
- implement adequate remedies, including penalties, for violations of these laws and regulations.

Another recent example of a model code of conduct specifically addressing the labour practices of manufacturers is the Draft NGO Charter on Transnational Corporations. Although this charter has been developed by Japanese labour and NGO groups and focuses on the labour practices of Japanese multinationals in other Asian countries, the code is seen as applicable to all Asian overseas investors. According to Jennifer Porges of the Asia Monitor Resource Center (AMRC), the Japanese network doesn't see the charter as a code to be adopted and implemented by companies, but rather as a guideline for their work, which includes working with other similar groups in Asia to monitor conditions in factories producing Japanese goods.[88]

According to Gerard Greenfield of AMRC, "Clearly the Charter (and the East Asian movement that it represents) will help us to develop more effective strategies for targeting the East Asian TNCs which remain the `weak link' in existing international campaigns. Of course the Charter is not simply a part of existing international campaigns, but is in itself an important regional alternative to many of these campaigns."[89]

The Canadian Government and Codes of Conduct

Although the Department of Foreign Affairs and International Trade has declared its support for private sector codes of conduct, to date it has not been as proactive as governments in the United States, the United Kingdom, and the European Union in facilitating and supporting multi-stakeholder fora and initiatives to find solutions to domestic and off-shore sweatshop abuses. The Apparel Industry Partnership in the United States and the Ethical Trading Initiative in the United Kingdom in particular are initiatives in which the respective governments played a major role in bringing together the various stakeholders, facilitating the process, and in the case of the Ethical Trading Initiative, providing generous financial support.

Until recently, the Canadian government seems to have adopted the view that codes of conduct are best left to the private sector. In a September 1997 letter to Lloyd Axworthy, the Canadian Labour Congress (CLC) stated that "a major shortcoming of the process [in developing the International Code of Ethics for Canadian Business] ... is that neither unions, international development organizations, nor human rights groups were involved in the drafting process in a meaningful way."[90]

However, in a reply to the CLC, Axworthy did leave the door open for future dialogue when he stated: "During my discussions with them [private-sector representatives] I suggested that they consider working with the NGO community on monitoring and enforcement mechanisms for the code."[91]

In response to an October 1997 open letter from sixteen Canadian organizations[92] calling for a multi-stakeholder task force on sweatshop abuses, Minister Axworthy stated that the Office of Consumer Affairs of Industry Canada, together with the Treasury Board Secretariat, is developing a guide on the use of voluntary codes, but then went on to say: "I believe that a private-sector led approach to developing such codes is the best way to achieve effective results in this important area."[93]

Since the October open letter, a second call for a task force has been made from a broader representation of Canadian organizations. On 23 June 1998, representatives of this broader coalition presented petitions, signed by 30,000 Canadians and over 200 national, regional, and local groups, to Minister Axworthy calling for a task force. Those organizations and individuals are awaiting the government's response. According to Barbara Anderson, the Canadian Coordinator for UNITE's Stop Sweatshop! Campaign, her union wants to be part of a task force that "would look at a number of ways to challenge the spread of sweatshop abuses, including government policy and legislation, better access to information, as well as codes of conduct and monitoring systems."[94]

A federal task force on sweatshop abuses could therefore be an opportunity for the Canadian government not only to initiate and facilitate multi-stakeholder discussions on voluntary codes and monitoring systems, but also to explore how government policy could complement and reinforce the effectiveness of an industry-wide code of conduct and monitoring system.

Key areas of government policy that could complement and reinforce an industry-wide code include:

- the use of preferential tariffs, linked to the negotiation of development pacts, to promote adherence to ILO labour rights conventions;

- government procurement policies giving priority to apparel produced in compliance with ILO and UN standards;

- increased development assistance in support of Southern groups doing advocacy work such as providing training on labour rights issues and capacity-building for worker and community organizations, and support and training for Southern human rights, labour and religious groups involved in on-the-ground labour rights monitoring;

- improved consumer access to information or corporate disclosure legislation to strengthen the consumers' right to know where apparel is made and under what conditions;

- improved citizen access to information on government programs providing various forms of support to Canadian businesses in overseas investments.

Endnotes

[1] Insert quotes and boxes in this chapter come from a variety of sources. Zoila Alvarez's testimony is found in "The Changing Fact of a Global Industry," *Wear Fair Action Kit*, ed. Bob Jeffcott and Lynda Yanz (Toronto: Labour Behind the Label Coalition, 1997), 7; the descriptions of SEWA and of the Committee of Asian Women's signature campaign were compiled from materials received from those organizations.

[2] International Labour Organization, "Export processing zones growing steadily, providing a major source of job creation," Press Release, 28 September 1998.

[3] Our bibliography includes written references documenting conditions for women working in maquila factories and free trade zones from labour, women's groups, non-governmental organizations, and human rights and church groups in Canada, the USA, Asia, Africa, the Caribbean, and Latin America.

[4] Bryne Purchase, "Political Economy of Voluntary Codes: Executive Summary," http://strategis.ic.gc.ca/ssg/ca00796e.html, September 1996 (on file), 2.

[5] Naomi Klein, "The Era of Corporate Rule," *Asian Labour Update* 26 (October 1997–January 1998): 8–9. Neil Kearney, General Secretary of the International Textile, Garment and Leather Workers Federation (ITGLWF) expresses many of these same reservations, although he has been actively involved in a number of code initiatives (E-mail correspondence, 2 September 1998).

[6] For examples of company codes with provisions on the right to organize and bargain collectively, see Nike and Rebock (on file).

[7] IRRC, "Corporate Codes on Global Labor Practices Vary Widely," Press Release, 23 February 1998, http://www.irrc.org/labor/prlabor.htm.

[8] Ineke Zeldenrust and Nina Ascoly. "Codes of Conduct for Transnational Corporations: An Overview," International Restructuring in Industries and Services (IRENE), June 1998, 12–26.

[9] Interfaith Center on Corporate Responsibility, "Principles for Global Corporate Responsibility, Benchmarks for Measuring Business Performance, " *The Corporate Examiner* 24 (September 1995)

[10] The ICFTU Code of Labour Practice is reprinted in Steelworkers Humanity Fund, "Review of Codes of Conduct and Labels Relevant for a Proposed Canadian Task Force on Sweatshop and Child Labour," 9 July 1998, 53–57. It is also located at http://www.icftu.org.

[11] Stephen Beatty, Executive Director, Canadian Apparel Federation, "Presentation to Sub-Committee on Sustainable Human Development of the Standing Committee on Foreign Affairs and International Trade," 3 October 1996.

[12] The Organization for Economic Cooperation and Development (OECD) identifies four "core" labour standards found in International Labour Organization (ILO) and United Nations (UN) Conventions as human rights. These are: Freedom of Association and the Rights to Organize and Bargain Collectively; Non-Discrimination (on the basis of race, colour, national origin, sex, religion or other belief, or political or other opinion); as well as prohibitions against Child Labour, and Forced Labour.

[13] Craig Forcese, *Commerce with Conscience: Human Rights and Corporate Codes of Conduct* (Montreal: Canadian Lawyers Association for International Human Rights in collaboration with the International Centre for Human Rights and Democratic Development, 1997), 36–38.

[14] *Ibid.* at 50–53.

[15] *Ibid.* at 49.

[16] Bob Jeffcott, "A Brief History of the Labour Behind the Label Coalition," unpublished paper (February 1998), 3.

[17] *Ibid.*

[18] Bob Jeffcott and Lynda Yanz, eds., "The Wear Fair Charter for Fair Treatment of Garment Workers," *Wear Fair Action Kit* (Toronto: Labour Behind the Labour Coalition, September 1997).

[19] "Labour and Retailers Join in Support of Task Force on the Retail Industry," *BC Federation of Labour News* (20 April 1998).

[20] Ann Weston, "Ethics in the Marketplace: The Manufacturing Sector," in the *Canadian Development Report 1998: Canadian Corporations and Social Responsibility*, ed. Michelle Hibler and Rowena Beamish (Ottawa: The North-South Institute, 1998), 68.

[21] Bob Jeffcott and Lynda Yanz, "Bridging the GAP: Exposing the Labour Behind the Label," *Our Times* (February 1997).

[22] Interview with Mark Anner, past coordinator of the El Salvador Independent Monitoring Group, January 1998.

[23] According to Carolina Quinteros, former GMIES staff person, of the 300 fired workers, only 160 expressed a desire to return to the factory, and of those, about half arrived to receive the telegram announcing their rehiring. E-mail correspondence, 29 August 1998.

[24] Interview with Mark Anner, above note 22.

[25] Bama Athreya, "Codes of Conduct and Independent Monitoring: Strategies to Improve Labor Rights Enforcement," International Labor Rights Fund (24 May 1998), 7.

[26] Discussions with members of the El Salvador Independent Monitoring Group, El Salvador, January 1998.

[27] Athreya, "Codes of Conduct and Independent Monitoring," above note 25 at 9.

[28] Carolina Quinteros, E-mail correspondence, 29 August 1998.

[29] *Ibid.*

[30] Interview with Mark Anner, above note 22.

[31] *Ibid.* It is important to note that GMIES receives no funding from the GAP; to date it has been funded by two Canadian organizations — the Humanities Fund of the Communication, Energy and Paperworkers Union (CEP) and the International Centre for Human Rights and Democratic Development.

[32] Another monitoring example is the short-term intervention of an independent monitor in the dispute at the Phillips-Van Heusen plant in Guatemala, in which a US group, Human Rights Watch, was mandated by P-VH to evaluate whether workers' rights had been violated, and whether a sufficient percentage of workers had joined the union to compel the company, under Guatemalan law, to bargain collectively. See Stephen Coats, "Reflections on the Issue of Independent Monitoring" (U.S./Guatemala Labor Education Project, March 1998), 4.

[33] Honduran Independent Monitoring Group, "Ponencia Sobre Experiencias y Reflexiones del Equipo de Monitoreo Independiente (EMI) en la Empresa Kimi de Honduras" (paper prepared for Meeting on Independent Monitoring, San Salvador, February 1998).

[34] Honduran Independent Monitoring Group, "Ponencia Sobre Experiencias y Reflexiones," *ibid.* at 13.

[35] Nike, "Nike CEO Philip H. Knight Announces New Labor Initiatives," Press Release, 12 May 1998.

[36] "Global Exchange's Public Response to Nike's New Labor Initiatives," 13 May 1998 (circulated by E-mail); "Statement by Jeff Ballinger, Press for Change," 12 May 1998 (circulated by E-mail); Viet Nam Labor Watch, "After 18 months of criticism, Nike blinked," 13 May 1998 (circulated by E-mail); Naomi Klein, "Nike Runs Out of Excuses on Shoe Factories," *The Toronto Star*, 14 May 1998; Maquila Solidarity Network, "Are we feeling the winds of change or just more hot air?" (Toronto, 15 May 1998).

[37] Bama Athreya, "Nike and Independent Monitoring: A Discussion Paper," International Labor Rights Fund (circulated on the Nike International listserv, 1 June 1998). Bama elaborated on this in E-mail correspondence, 10 August 1998.

[38] Code de conduite d'Auchan, fax photocopy (on file).

[39] Coats, "Reflections on the Issue of Independent Monitoring," above note 32 at 3–4.

[40] Elaine Bernard, "Ensuring Monitoring is Not Co-opted" (paper presented at Independent Monitoring, A Forum, New York City, April 1997), 2.

[41] *Ibid.* at 3.

[42] Neil Kearney, E-mail correspondence, 1 September 1998.

[43] Carolina Quinteros, E-mail correspondence, 29 August 1998.

[44] Interview with Maritza Paredes in El Salvador, January 1998.

[45] Athreya, "Codes of Conduct," above note 25 at 9–10.

[46] *Ibid.* at 10.

[47] Women Working Worldwide, *Women Workers and Codes of Conduct,* Report of Preliminary Research and Consultation Exercise, (Manchester, UK: March 1998).

[48] *Ibid.* at 11.

[49] *Ibid.* at 1.

[50] *Ibid.* at 1-2.

[51] *Ibid.* at 25.

[52] "Editorial: Wait a Minute," *Asian Labour Update* 26 (October 1997–January 1998), 4.

[53] *Ibid.* at 5.

[54] *Ibid.* at 4–5.

[55] Interviews with Christine Elwell and Sheila Katz, February 1998.

[56] Interview with Christine Elwell, February 1998.

[57] Athreya, "Codes of Conduct," above note 25 at 5.

[58] "Code of Labour Practice for Production of Goods Licensed by the Federation Internationale de Football Association (FIFA)," 3 September 1996, http://www.citinv.it/org/CNMS/archivio/strategic/code_lab.html (on file), 2.

[59] *Ibid.* at 2.

[60] *Ibid.* at 3.

[61] Athreya, "Codes of Conduct," above note 25 at 6.

[62] David M. Schilling, “A Step Towards Eliminating Sweatshops: The White House Apparel Industry Partnership Report,” *The Corporate Examiner* 25 (9 May 1997), 1.

[63] “White House Apparel Industry Partnership Report” *The Corporate Examiner* 25 (9 May 1997).

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[66] “Human Rights Groups Denounce Presidential Task Force Agreement on Sweatshops,” April 1997 (on file).

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