CHAPTER 4

Policy Options to Challenge Sweatshop Abuses Internationally

> *From 1989 to 1993, I worked in a factory that produces Nike shoes in Serang, Indonesia. My job was to dip a rubber sole into a chemical, then slap on a cushioned sole. We were expected to produce 2,500 of these soles an hour. If we did not meet our quota, we had to work overtime until we finished. If you made a mistake on only one pair of shoes, you would be fined $.50. The foreman would yell, "Do It Right."*
>
> *In 1992, I was making US$1.45 a day. On this salary I had to pay $.50 a day for rent and $.75 for food. If I missed the factory bus, I would have to use the remaining $.20 for transportation.*
>
> — Cicih Sukaesih was fired after attempting to organize a union.[1]

In 1995, Canadian consumers bought $8.5 billion worth of apparel. Fifty-eight percent of this clothing was made in Canada, while 42 percent was imported from other countries.[2]

The top ten countries in terms of the dollar value of garments imported to Canada in 1996 were: China (20%), USA (19%), Hong Kong (13%), India (6%), Italy (4%), South Korea (4%), Taiwan (4%), Indonesia (2%) Bangladesh (2%), and Thailand (2%).[3] With the reintegration of Hong Kong as part of China, the reunited Asian giant now accounts for one-third of apparel imports to Canada by value, while China and the United States together account for more than one-half.

Before the advent of the Canada–US Free Trade Agreement (FTA), China, Hong Kong, and Korea were Canada's major apparel suppliers. Since the signing of the FTA in 1989, there has been a huge jump in the value of US garments imported to Canada. Between 1988 and 1995 apparel imports from the United States increased at an average rate of over 25 percent.[4] In recent years, there has also been an increase in Canadian garment exports to the USA that can also be attributed to the FTA and NAFTA (North American Free Trade Agreement). In 1995, Canadian apparel exports to the United States rose by 18 percent, at the same time as European apparel exports to the USA fell by six percent.[5] However, this increase in Canadian exports to the United States does not begin to compensate for the loss in the Canadian industry's share of the North American market. Between 1990 and 1994, the Canadian industry's share of the combined Canada–US market fell from 6.9 to 4.6 percent.[6]

There is a great deal of information available linking sweatshop practices in free trade zones in Asia, Latin America, and the Caribbean with US retailers selling those products in the United

States and Canada.[7] This information is available largely as a result of research tied to consumer campaigns carried out in the USA, and possibly also because there is better access to information legislation in the United States than exists in Canada.

Despite the fact that Canadian retailers are sourcing from many of the same countries (mostly Asian) as their US competitors, much less research has been done linking Canadian retailers to their overseas suppliers and contract factories. An exception is a study by the Canadian Friends of Burma entitled *Dirty Clothes: Dirty System*,[8] which links sweatshop practices in Burma with major Canadian retailers, including Sears Canada, Zellers, and the Hudson's Bay Company. Much more research is needed in this area.

Government Trade Policy

Until the 1980s, Canada's garment industry was relatively protected by tariffs and quotas. Trade liberalization in the garment sector began with the signing of the FTA in 1989, and then was accelerated with the signing of NAFTA with the United States and Mexico in 1994. Under NAFTA, all tariffs will be reduced to zero between Canada, the United States, and Mexico by 2003.

From 1974 to 1994, apparel and textiles didn't fall under GATT (General Agreement on Tariffs and Trade) rules, but under a separate agreement called the Multi-Fibre Agreement (MFA), which involved negotiating, country by country, bilateral quotas concerning the quantity of garments that exporting countries from the South could send into Canada and other Northern countries. In 1994, at the end of the Uruguay GATT round (1974–1994), a new agreement called the Agreement on Textiles and Clothing (ATC) was signed. Under this agreement, the MFA quotas are to be gradually phased out by 2005, and garments and textiles are to fall under general WTO (World Trade Organization) rules.[9]

In 1996, Canada had forty-three bilateral apparel and textile import restriction (quota) agreements in place. Thirty-two out of the forty-three countries for which Canada has import restrictions are WTO members, and therefore those restrictions will have to be phased out completely by 2005.[10] However, quota agreements with non-WTO members, which includes China, can remain in place.

Tariffs are also being lowered under GATT over a ten-year period beginning 1 January 1995, which will reduce the average tariff for imports of garments into Canada from 25 percent to 18 percent.[11]

For the Canadian garment industry, the combination of these changes will probably mean a significant increase in apparel imports, particularly from China, South Asia, and Mexico. According to the International Labour Organization (ILO), total trade liberalization in the garment and textile sector would result in an increase in imports to Canada and the United

States of 190 to 305 percent.[12] How Canadian garment exports to the USA will fare in this new free trade environment is uncertain.

While the phasing out of quotas and lowering of tariffs may, at first glance, appear to be advantageous to Third World countries, and therefore worthy of support, it will actually provide advantages for some Third World countries and regions (those that offer lower labour and other production costs; better supplies of fabric, yarn, and other materials; infrastructure for transport and marketing; and nearness to First World markets), and disadvantages for others, those that currently have access to First World markets because of the existence of quotas.[13]

There is considerable debate about the relative impact of the phasing out of quotas and lowering of tariffs on different Southern countries. Most studies anticipate a significant increase in the export garment sector in China, once China becomes a WTO member. Hong Kong's integration with China is seen as providing an additional advantage in terms of marketing expertise. According to Women Working Worldwide, India, Pakistan, and Korea should also be able to significantly increase garment exports because of their low labour costs and access to domestically produced fabrics. Bangladesh, on the other hand, may experience a decline in exports to European and US markets because of a loss of quota advantage and its underdeveloped textile industry. Other Asian countries, including Thailand, Sri Lanka, and the Philippines — which depend on imported fabrics — will find themselves in competition with lower cost producers such as Vietnam and China.[14]

If there are no new terms of global regulation for the apparel industry, the market will become the overriding factor determining the location and price of production. Although this may encourage the relocation of apparel production to poorer countries that need investment and jobs, it will also increase competition between poor countries to offer cheap, flexible, and disciplined workers, as well as other favourable terms of investment.

The consequence for garment workers around the world is increased pressure to compete against each other for jobs on the basis of who is willing to work for the least compensation, under the most flexible (unregulated) conditions.[15]

Future Policy Options

Whatever the negative impact of the phasing out of the MFA and the lowering of tariffs under the WTO and NAFTA, the transition period offers an opportunity to redefine the framework and terms of regulation in the global apparel industry in order to encourage adherence to international labour standards and other ILO and United Nations (UN) Conventions and to promote respect for the rights of garment workers, both in the formal and informal sectors, the vast majority of whom are women.

None of the Canadian policy analysts we interviewed were aware of Canada having any labour

rights criteria to condition its trade, investment, or overseas development policies. The only exception, according to Moira Hutchinson of the Steelworkers Humanity Fund, was the inclusion in CIDA INC's (Canadian International Development Agency, Industrial Cooperation Program) gender guidelines of a clause requiring companies receiving support to abide by the host country's labour laws. She speculates that the clause may have been put under gender because some CIDA-funded projects could have an impact on women workers. Though extremely weak, this was the only specific reference to labour rights criteria of which she was aware.[16]

Despite the fact that a large and growing proportion of the apparel we buy in Canada is imported from countries where labour standards are extremely low and worker and human rights violations are common, Canada has done little to date to address this issue. Canada could play a much more active role through national policy and in multilateral fora to promote adherence to international labour standards and respect for workers' rights. Although international and regional trade agreements do impose some limits on government action, all those we interviewed felt that Canada could be taking a number of steps to promote adherence to core labour rights and other ILO and UN Conventions in countries and by companies producing apparel for the Canadian market.[17]

In order to address issues specific to women workers, the Canadian government must also take into account other Conventions beyond those addressing core labour rights, including ILO Convention 177 on homework and ILO Convention 175 on part-time work, neither of which has been ratified by Canada.[18] Other issues that are high on women garment workers' priority lists, but are not adequately addressed in the core labour rights Conventions, are reproductive rights issues, including pressure to take contraceptives, forced pregnancy testing, and other forms of discrimination on the basis of pregnancy, and the right to bodily integrity, including freedom from physical, psychological, and sexual harassment and abuse.[19]

One occasion in which the Canadian government has shown interest in promoting labour rights overseas has been the support given by Foreign Affairs Minister Lloyd Axworthy and International Trade Minister Sergio Marchi on 5 September 1997[20] for a voluntary code of conduct, the International Code of Ethics for Canadian Business (since renamed the International Code of Practice for Canadian Business).[21] This voluntary code has been endorsed by a number of business organizations and corporations,[22] most of which are in the resource sector.

The code includes extremely general language on values, human rights principles, business conduct and employees' rights, and health and safety. The three provisions on health and safety and labour rights are particularly vague, making only passing reference to respect for freedom of association, child labour, forced labour, and non-discrimination in employment. The code has also been criticized for lacking provisions for monitoring and enforcement, and for the lack of labour and NGO involvement in its development.[23]

As the Steelworkers Humanity Fund notes, “the code contains no provisions for or reference to monitoring or reporting.” They also point out that in April 1998, Canadian Occidental announced that it would be pursuing a joint venture investment in Nigeria — which is generally thought to have an extremely poor record on human rights and environmental issues — referring to the company's adherence to the new code to justify its decision.[24]

A second area in which the federal government has demonstrated interest in labour rights issues has been the issue of child labour. In January 1997, Minister Axworthy announced that the Canadian government would “consider applying child-rights standards to foreign aid and trade assistance programmes.”[25] On 23 April, Minister Axworthy announced the creation of the Child Labour Challenge Fund “to support private sector initiatives.” Up to $400,000 was to be made available over two years, to “establish partnerships with the private sector for projects such as the development of voluntary guidelines, codes of conduct and consumer labelling practices.”[26] As far as we are aware, no company has accessed the fund to date (September 1998).

Given Canada's willingness to consider applying standards regarding child labour to conditions for foreign aid and trade assistance programs, the Canadian government should also be willing to consider applying internationally recognized labour standards covering all workers, including young women workers who make up the bulk of the workforce in overseas contract garment factories.

In the apparel sector in particular, it is difficult to separate the issue of child labour from the problem of sweatshop abuses in general. In most garment factories or subcontract sewing workshops where child labour is often a problem, child labourers are working alongside young, but legal-aged workers, under the same abusive conditions. In some cases, the child labourers are the daughters of adult workers in the same factory, sewing workshop or home-based production units. If these adult women workers received adequate wages, they would not be compelled to enlist the labour of their daughters.

As a number of labour rights advocates have pointed out, one of the most effective ways to address child labour in the apparel and footwear sectors is to promote respect for core labour rights and other ILO and UN Conventions, and to support improved wages and standards for all workers in those sectors.[27]

1. Linking Labour Standards to Quotas and Preferential Tariffs

Despite the phasing out of the MFA and the lowering of tariffs under WTO rules, both quotas and tariffs still play a significant role in apparel trade. Canada could condition access to preferential tariffs and higher quotas (particularly for non-WTO members, such as China, our largest supplier) based on adherence to ILO labour standards. The GATT rules, still valid under the WTO, include provisions called the Generalized System of Preferences (GSP) for non-reciprocal trade benefits for developing country exports. Both the United States and, more

recently, the European Union are currently applying labour rights criteria to the granting of preferential tariffs to developing countries.[28]

Under the US GSP, developing countries can export limited quantities of goods, primarily agricultural commodities, into the United States duty free. In 1984, when this program of preferences was renewed by the US Congress, worker rights criteria were attached, based on five key ILO standards.[29] Countries can now be put under review based on their labour rights record. Although products such as garments and apparel, which were deemed to be competitive with US labour-intensive manufactured goods, are specifically excluded from the GSP program, the granting of tariff-free access for other goods is based on a country's overall labour rights record, including labour practices in the garment industry.[30]

According to Steve Coats of the US/Guatemala Labor Education Project (US/GLEP), whether preferential tariffs are protectionist depends on how they are used. For instance, the GSP has been used as a tool of US foreign policy (e.g., to deny tariff relief to Nicaragua under the Sandinistas, and to remove benefits from Chile and Paraguay *at the end* of their dictatorships). However, the GSP has also proved to be an effective tool to support efforts of Southern worker and human rights organizations to improve labour rights standards. This has been possible because the GSP review process is open to civil society participation. Under the GSP review process, citizens' groups can file a petition with the US trade representative, requesting an investigation of worker rights abuses to determine whether or not GSP benefits should be ended.[31]

In the case of Guatemala, US labour rights organizations, such as US/GLEP, have worked in close consultation with Guatemalan worker organizations, including unions organizing in maquiladora garment factories, to intervene in the GSP review process in order to lobby for positive changes in Guatemala, including a raise in the minimum wage.[32]

Between 1985 and 1995, 101 labour rights petitions were filed in the United States, resulting in sixty-three reviews of thirty-nine countries. In cases involving countries such as Sri Lanka, El Salvador, the Dominican Republic, and Guatemala, the GSP review has forced labour rights violators to make significant improvements.[33] According to Pharis Harvey of the International Labor Rights Fund (ILRF), "… [H]owever remote or minor the economic impact might be, [governments] tend to react in positive ways to a review. Repeatedly we have been told by unionists in countries under review that the government had responded to the criticism in the GSP petition more seriously than they had ever reacted to a negative judgement by the ILO's Committee on Freedom of Association or Committee of Experts."[34]

In Europe, the European Union introduced GSP labour conditions in 1995, to be phased in by 1998. On 25 May 1998, the "social clause" to the GSP was adopted by the EU Council. Under the EU provisions, countries meeting standards on freedom of association, collective bargaining, no forced labour, and a good faith effort to eliminate child labour receive lower GSP tariffs.[35]

Because the EU system rewards good labour practices with an additional percentage of lower

tariffs, rather than removing tariff-free access if there are significant labour rights abuses, as the US system does, it might be viewed more favourably by Southern governments.[36] Although Harvey argues that "it might be more proper to describe the US approach as a `withheld carrot' rather than a `stick'," Southern governments understandably view the total withdrawal of tariff-free access for some goods as a form of trade sanction, particularly when the carrot is granted and withheld in a fairly arbitrary manner.[37]

To date, some Southern countries, including India and Pakistan, have objected to the EU's GSP clause, expressing fears that it will set a precedent by linking social standards and trade that would affect the WTO (World Trade Organization) negotiations. These governments see low labour costs as being one of the few competitive advantages they have in the global economy, and therefore view efforts to include a social clause guaranteeing core labour rights in trade agreements as being motivated by Northern protectionism.

A. Canada and Preferential Tariffs

Canada's system of preferences is called the General Preferential Tariffs (GPT). Extension of preferential tariffs is not currently subject to any labour rights conditionality. In February 1997, the House of Commons Sub-Committee on Sustainable Human Development issued a report encouraging the government to explore the use of market access and trade promotion measures, including the GPT, as "incentives for exporting countries to eliminate child labour exploitation."[38]

However, in its April 1998 response to the subcommittee's recommendations, the government dismissed the idea of using the GPT to promote the elimination of child labour exploitation, for the following reasons:

1. In the absence of a rules-based approach, trade conditionality may lead to protectionist actions by major trading powers to the detriment of the global trading system.
2. The legitimacy of conditionality is deeply divisive between developed and developing countries.
3. Identifying appropriate types of conditionality (exploitive child labour is not the only candidate) and establishing safeguards against the abuse of conditionality is difficult.[39]

The government also argues that because Canada's import market for products made by exploited child labour is small compared to other major industrialized countries, and because tariff rates are being reduced globally under the Uruguay Round Trade Agreement, "the impact of imposing conditionalities relating to child labour or other issue areas would likely be minimal."[40] Although the subcommittee's recommendation and the government's response focus specifically on the issue of child labour, their arguments are clearly relevant to the use of the GPT to promote adherence to ILO labour standards that include and go beyond the issue of child labour.

Of those we interviewed, Ann Weston of the North-South Institute was the most cautious about Canada unilaterally applying human rights criteria to the granting of tariff benefits, on the grounds that it could unfairly single out the poorest, most vulnerable countries. In a 1994 submission to the federal government's Interdepartmental Committee, she suggested that "action to promote human rights is most likely to be effective and acceptable if it is multilateral, and focuses on positive measures such as assistance in the strengthening of judiciaries."[41] However, in the North-South Institute's 1998 Canadian Development Report, Weston is more supportive of the use of preferential tariffs, under certain conditions:

> Under the General Preferential Tariff, the Canadian government should consider removing all tariffs on imports of textiles, clothing, and footwear from least-developed countries that agree to endorse and enforce certain minimum labour standards. These tariff preferences could be withdrawn if an investigation by the ILO found that the standards were being violated and that the government had subsequently failed to introduce corrective measures.[42]

Craig Forcese of the Canadian Lawyers Association for International Human Rights (CLAIHR) proposes that Canada first "actively pursue the linkage of human rights and trade" through multilateral fora such as the WTO, APEC, and the Free Trade Agreement for the Americas (FTAA), but if those channels prove to be ineffective, Canada should follow the lead of the United States and the European Union in linking labour rights criteria to the extension of non-reciprocal tariff benefits such as the GPT.[43]

Hutchinson believes that Canada could ensure that a policy of linking the preferential tariff to labour rights criteria achieves its objectives without unfairly penalizing developing countries by taking the following steps. First, Canada could offer help to enable less-developed countries to meet the criteria within a specified time period. For example, development assistance to help a government improve its labour legislation and enforcement capacity might be needed. This could be provided directly or through special programs of the ILO. Second, Canada could work with the United States and the European Union to ensure that the application of preferential tariffs by the three jurisdictions is fair and consistent. For example, the three jurisdictions might agree to common processes for the transparent application of preferential tariff policies, such as involving the ILO to determine when criteria have been violated.[44]

Hutchinson's proposal is particularly attractive because it links a multilateral approach in developing common criteria and transparent processes for the application of preferential tariffs with a bilateral approach in the negotiation of development pacts with countries needing support to meet and enforce ILO standards. A development pact approach implies a negotiated long-term and mutually beneficial agreement to improve labour practices and the enforcement of labour standards with one or more developing countries in exchange for increased access to the Canadian market. Because the development pact approach offers incentives rather than being punitive, it may be received more favourably by Southern governments.

B. Development Pacts

In its February 1996 "Discussion Paper on Child Labour," the Steelworkers Humanity Fund (SHF) offers a fairly detailed description of how the development pact approach might be linked to the granting of preferential tariffs under the GPT. Although the focus is on child labour, it is equally relevant to labour standards in general. The paper recommends the following:

- that Canada adopt the European approach of providing additional trade incentives (and/or development assistance) to countries taking steps to meet and enforce ILO standards;
- that trade incentives, development assistance, and labour rights criteria be part of a single package negotiated with the respective country or countries;
- that the same labour rights criteria be applicable to Canada as well as to the developing country;
- that there be both government and private sector involvement;
- that monitoring of adherence to ILO standards and participation in development assistance projects involve workers and other civil society groups; and
- that private sector/NGO codes of conduct, certification processes, and labelling schemes could be strengthened through government import requirements recognizing the certification they provide.[45]

An alternative to the development pact approach, also discussed in the SHF paper on child labour, is the concept of a "border tax adjustment." If applied to the garment sector, the border tax adjustment scheme would place a tax on imported apparel that has not passed a certification and/or labelling process. The tax would be based on a percentage of the value of the product, equal to the cost associated with certification and labelling. Under the scheme, the revenue generated by the tax would be remitted to a supervised development fund through institutions like the ILO or Southern NGOs helping to build the capacity of Southern countries to meet and enforce ILO standards. An advantage to this strategy, noted in the SHF paper, is that it would apply to apparel imported from Northern countries, such as the United States, as well as from Southern countries.[46]

International trade lawyer, Christine Elwell, a proponent of the border tax adjustment strategy, argues that such a tax would be justifiable since it recognizes "costs born related to a social policy obligation." She contends that labour is an input in the production process, and a tax promoting social policy objectives such as the elimination of sweatshop abuses is comparable to a carbon tax to achieve environmental objectives.[47] The SHF paper notes that "it is not yet clear, however, whether a mechanism such as a carbon tax will be acceptable to GATT — and by extension, whether a border tax for social objectives is possible."[48]

Hutchinson referred positively to the principle underlying Elwell's proposal — a principle that also underlies the Rugmark labelling scheme[49] — where the label generates funds to be used to support the efforts and address the needs of workers caught in exploitative situations.[50]

Given that tariffs on imported garments will continue to be substantial, use of the GPT to promote labour rights, particularly through the development pact approach, is an option that should be seriously considered by the Canadian government. However, as long as some labour rights violators, such as China, are major sources of imported garments and remain outside the WTO, continued use of quotas is also an option Canada should consider.

The negotiation of development pacts tied to the granting of preferential tariffs could be targeted to countries with significant trade, aid, and immigration ties with Canada, as well as countries in which there is a serious commitment to improving labour rights. The development assistance provided need not be restricted to strengthening the respective country's capacity to monitor and enforce adherence to ILO labour standards and domestic legislation; it could also go to helping alleviate underlying socio-economic problems contributing to rights abuses.

While rejecting the punitive and arbitrary aspects of the US approach to preferential tariffs, Canada should consider adopting one positive feature — the participation of civil society in the review process concerning the renewal of preferential tariff benefits for particular countries. In the United States, this involvement of civil society in the review process has actually encouraged cooperation between US labour rights advocates and their counterparts in the South.

One interesting possibility is the linking of the development pact approach with a future industry-wide or multi-company code of conduct that includes provisions for independent monitoring, certification, and labelling. Such a private sector/labour/NGO initiative could offer the development pact program a credible labour rights monitoring and certification mechanism. At the same time, preferential tariff benefits and development assistance provided by government through the development pact could strengthen the effectiveness of the private sector/labour/NGO initiative. This linkage would have additional credibility if the industry-wide code and certification system also applied to Canada's domestic apparel industry.

2. Government Procurement Policies

In *Voluntary Codes: A Guide for Their Development and Use*, the Office of Consumer Affairs of Industry Canada notes: "Governments can also encourage compliance by recognizing codes efforts in licences, compliance and enforcement policies, and procurement activities."[51]

Craig Forcese has documented a number of instances in which government procurement policy has been used in Canada and other countries to promote human rights or environmentally

sound practices. He notes that under a 1985 Memorandum to Cabinet on the Greening of Government Operations, federal departments are to develop action plans for the greening of their operations, including their procurement practices.[52]

Forcese also points to a June 1997 bill introduced in the US Congress to require the US federal government and its agencies to give preferences in procurement to businesses that adopt and enforce a corporate code of conduct. It outlines the required elements of such a code. Under this bill, anyone could petition the Department of Commerce to investigate a business's compliance with the code.[53]

Recently, citizens' and consumer groups in the United States and Canada have lobbied civic governments and public institutions to adopt ethical criteria or codes of conduct concerning bulk purchasing and acceptance of corporate sponsorships. Examples include:

- a licensing policy adopted by Duke University (Durham, North Carolina) in which all companies manufacturing products bearing the Duke name and/or logo must comply with the terms of the university's code of conduct;
- a program of the Roman Catholic Archdiocese of Newark, New Jersey, to identify manufacturers of school uniforms and ensure their products are made under ethical conditions;
- a policy by the city of North Olmsted, Ohio, not to purchase, lease, rent, or take under consignment goods produced under harsh sweatshop conditions;
- a policy adopted by the municipal government of St. John's, Newfoundland, to oppose the sale in their city of goods made under sweatshop conditions;
- a campaign in Victoria, Bristish Columbia, calling on the city council to adopt a policy similar to St. John's.

The Duke University policy is particularly notable since it requires licensees to provide the university administration with a list of all factories, contractors, and subcontractors producing Duke merchandise. It also gives the university the right to send independent monitors to investigate the labour practices in those factories and contract shops.[54]

According to trade lawyer Christine Elwell, although the use of government procurement policies is limited by FTA and NAFTA, it might be acceptable if based on the same labour rights criteria for apparel produced in Canada and off-shore. Elwell believes such a procurement policy could favour apparel produced in compliance with ILO core labour standards or a code of conduct based on ILO standards; for instance, apparel could bear a label certifying that the producer is in compliance with the code. She noted that there are parallel policies currently in force in other sectors; for example, the requirement of “end use certificates” for the export and importation of military products. This is a government-administered system of monitoring and regulating how military weapons and equipment will ultimately be used. The Convention on endangered species

operates in a similar manner, requiring import and export permits to monitor and regulate the trade in ivory and certain animals and animal products.[55]

In September 1998, the government of Japan requested that the WTO set up a dispute panel to rule on whether a state of Massachusetts law sanctioning companies that trade with or invest in Burma is in violation of the WTO Agreement on Government Procurement (GPA). The European Union is also expected to make a similar request.[56] While a WTO ruling against the state of Massachusetts would have implications for a future procurement policy adopted by the Canadian government, such a ruling would not necessarily prevent the adoption of human rights criteria for selective purchasing policies.

In *Putting Conscience into Commerce*, Craig Forcese states that "the GPA does not explicitly prohibit the consideration of political or human rights variables in procurement decisions."[57] He refers to current government programs, such as the Canadian Federal Contractors Programme — which requires private sector companies to meet employment equity standards to receive federal contracts — as precedents that should be permitted under the GPA. Forcese concludes that a government procurement policy would be most likely to be acceptable under the GPA if it included the following elements:

- human rights criteria applied at the awards stage, rather than at the bidding stage to exclude suppliers from making bids for contracts;
- human rights performance criteria indicated in the tender document;
- the same standards applied to all bidders irrespective of their country of origin.[58]

Although we haven't been able to obtain specific figures on the value of garments and footwear purchased by the federal government, government departments, crown corporations, and the military, we know that every year the federal government alone purchases $8 billion in goods and services.[59] In adopting a procurement policy tied to adherence to labour rights criteria, the federal government could also set a positive example for Crown corporations and provincial and municipal governments.

3. Product Bans

Although product bans may be an unusual and extreme step for governments to take concerning human and labour rights issues in the apparel sector, there are some circumstances in which this may be justifiable. John Dillon of the Ecumenical Coalition for Economic Justice (ECEJ) notes that under the GATT, Article 20, it is permissible to ban products made by prison labour.[60] Pharis Harvey believes that it would be possible to require countries to prove that certain goods are not produced under those conditions, in order to avoid having those products banned.

Many labour rights advocates believe that since there are clear parallels between bonded and forced child labour and prison labour, there is equal justification for banning goods produced under those circumstances.

In a January 1996 letter to Kathleen Ruff, Coordinator of the Canadian Anti-Slavery Group, from Pierre Gravelle on behalf of the then-Minister of National Revenue David Anderson, Gravelle stated that in the view of Revenue Canada, "The prohibition against the importation of goods manufactured by prison labour also applies to any good produced through the use of bonded or otherwise coerced child labour. It does not, however, address circumstances where child labour is involved in the production of goods, but there is no coercion." The letter also states: "Accordingly, when Revenue Canada receives accurate information that indicates goods may be the product of prison labour, department officials actively investigate the allegations."[61]

However, there is no evidence to date indicating that this policy is being enforced. Nor is there Canadian legislation that explicitly prohibits the importation of goods produced by bonded or forced child labour. In contrast, the US Congress recently passed legislation prohibiting the importation of goods produced by bonded or forced child labour.[62]

In addition to a prohibition on goods produced by slave labour or bonded or forced child labour, there are other circumstances in which product bans or other forms of sanctions might be justifiable. The Canadian Friends of Burma argues that the human rights situation in Burma, and the direct connection of many garment manufacturing companies there to the SLORC (State Law and Order Restoration Council) regime, should trigger Canadian government actions ranging from discouraging Canadian investment in Burma to calling on the Canadian government to "endorse selective purchasing legislation that prohibits legislatures and municipal governments from purchasing goods exported by the SLORC, or those of companies which have dealings with the SLORC."[63] The ruling by the WTO dispute panel on the state of Massachusetts' "Burma law" will obviously have implications for future Canadian government action on this issue.

4. Other Government Policy Options

Forcese outlines a number of examples of attempts to pass bills in the United States that would set out standards for US corporations in certain countries (China, Tibet), or an overall code of conduct for all US corporations functioning overseas, which would have a requirement for companies with operations overseas to report to the Secretary of State on their observance of this code.[64]

Forcese also details the labour rights eligibility conditions that were introduced in 1985 into the statutes governing overseas investment insurance by the US agency, the Overseas Private Investment Corporation (OPIC).[65] The Canadian equivalent to this would be the Export Development Corporation (EDC). OPIC does annual reviews of labour standards for countries.

The United States also has labour conditions for its development aid funds. US law requires that no US development aid funds can be used to support projects or activities that contribute to the violation of “internationally recognized workers' rights” in the recipient country.

5. Labour Rights and Overseas Investment

The Canadian government provides support to Canadian investors and businesses abroad through a variety of support services, financial assistance to research opportunities abroad, insurance and loans through EDC, trade missions, etc. We are not aware of any circumstances in which labour rights conditions are applied to any of these programs.

In 1997, the Steelworkers Humanity Fund (SHF) made a preliminary analysis of two of these programs in relation to labour rights: the EDC and CIDA INC. They concluded that most of the EDC's financing is related to Canadian exports and investments in countries where labour rights are seriously curtailed. The SHF was not able to get the information that would have allowed analysis of Corporate Account activities. However, they found that 77 percent of the concessional loans and 21 percent of non-concessional loans under the Canada Account went to countries that the OECD has indicated have significantly curtailed freedom of association, including China (e.g., Candu reactor sales).[66]

The SHF's view is not that these financing activities should be ruled out (unless there is a situation of gross and systematic violations of human rights, as in Burma). Instead, it proposes that the EDC explore options such as requiring companies seeking financing to sign a code of conduct covering not only their own operations, but also those of subcontractors and suppliers. A code could require not only the protection of core labour rights, but also support for the implementation of existing labour legislation, which is often adequate, but not adequately enforced.[67]

It appears that direct Canadian investment in garment production abroad is less significant than the contracting of production to foreign manufacturers by Canadian retailers. This would suggest that the EDC's activities may be relevant to only a small number of Canadian garment manufacturers. However, there are some notable examples of Canadian direct investment in off-shore apparel manufacture.

A report released in June 1998 by the US International Trade Commission, entitled “Canadian Involvement in Mexico's Maquiladora Industry,” states that while most Canadian investment in Mexico's maquilas is in the auto parts sector, investment in the apparel sector is also significant.[68] The report profiles Winnipeg-based Nygard International, “reportedly the largest women's apparel producer in Canada.” It notes that Nygard's Tan-Jay/Alia division “operates several contract manufacturing facilities in Mexico and exports approximately 75 percent of its production of women's trousers to the United States.”[69]

According to the report, the attraction for Canadian apparel manufacturers to Mexico's maquilas is “the elimination [under NAFTA] of US quotas and duties on apparel and textile products sewn

in Mexico making use of US formed and cut fabric."[70] Under NAFTA, foreign-owned maquila assembly plants in Mexico will also have unrestricted access to the Mexican market beginning in the year 2001.[71] Since Canadian apparel manufacturers will be in direct competition with US and Asian suppliers assembling garments in Mexico, we can anticipate that more Canadian firms will set up apparel assembly operations in Mexico.

Although the number of Canadian apparel manufacturers investing abroad and seeking government assistance may, at this time, be relatively small, the SHF proposal could still have a positive impact on those companies' labour practices. If Canadian companies with operations overseas were required by the Canadian government to agree to a code of conduct as a condition of access to government finance or public subsidies (through the Program for Export Market Development, the EDC, or CIDA), such a code would necessarily apply to the companies' domestic operations as well as their operations abroad. Thus, companies based in Canada or with operations in Canada would be required to take responsibility for subcontracted and home-based labour in Canada as well as labour practices abroad if they wanted to make use of these government programs.

The SHF also analyzed the activities of CIDA INC in relation to countries with serious restrictions on labour rights. CIDA INC provides money for feasibility studies, investment support, and professional services (e.g., designing capital projects) to Canadian companies interested in investment and other activities in developing countries. The SHF found that in 1995, 44 percent of CIDA INC assistance went to projects in countries restricting freedom of association.[72]

As noted above, CIDA INC has no specific criteria on labour or human rights, although companies are expected to comply with CIDA gender guidelines that require recipients of grants to operate within the labour regulations of the host country. Unfortunately, CIDA INC does not address the question of requirements in situations where labour regulations of the host country are inadequate. Again the SHF is not proposing, nor are we proposing, that CIDA INC rule out financing for projects in countries with poor labour rights records. Instead, CIDA should find ways of ensuring that these projects strengthen rather than undermine respect for labour rights. This means that a commitment to labour sector development should be included either within the project or alongside it.

Further research needs to be undertaken to determine the extent to which CIDA INC and other private sector development programs of CIDA are involved in the garment sector. Again, there are currently limits on the information that CIDA will make available, citing commercial confidentiality restrictions.

The possibility of requiring adherence to a code of conduct as a condition for access to government financing should also be explored by Canada at the international level through the Multilateral Investment Guarantee Agency (MIGA) and the International Finance Corporation (IFC), both part of the World Bank Group, and in relation to similar institutions associated with

the regional development banks. MIGA was established to promote the flow of private foreign direct investment to developing countries, by providing political risk insurance coverage against the risks of war and civil disturbance, currency transfer, and expropriation. MIGA also provides technical assistance to member countries to help them attract foreign investment.[73]

6. Development Assistance and Labour Rights

In addition to adopting the development pact approach (see above), the Canadian government through the Canadian International Development Agency (CIDA) could be providing greater support to civil society organizations in the South involved in labour and gender rights training and promotion, and monitoring of adherence to ILO labour standards, voluntary codes of conduct, and local labour legislation.

In Asia, Latin America, the Caribbean, and to a lesser extent in Africa, human rights, Faith, and women's organizations are actively involved in monitoring human and labour rights abuses in free trade zones and maquiladora regions, and in promoting adherence to international labour standards and domestic legislation. This important work is currently being carried out without the sanction of giant Northern apparel companies or Southern contractors, and often without the support of local governments. Canada should not wait until Northern codes of conduct and monitoring systems are developed and endorsed by Northern apparel companies before providing increased support to help strengthen the capacity of Southern groups to play a significant role in the monitoring process. Without the active and informed participation of Southern groups in monitoring, voluntary codes of conduct and certification and labelling schemes will not have legitimacy.

Southern women's organizations and networks, community groups, worker centres, and labour organizations are offering training on labour rights and gender issues to women working in free trade zones and maquiladora factories. A number of overseas development agencies, including the CEP and Steelworkers Humanity Funds and the CAW Social Justice Fund, OXFAM-Canada, and others are currently providing support to Southern women's, labour, and community groups working in free trade zones and surrounding communities. CIDA should consider increasing its support for these and other labour rights initiatives.

All of the foreign policy analysts we interviewed for this study agreed that CIDA and CIDA INC should adopt labour rights criteria, based on ILO standards, for evaluating the projects and programs it supports.

Conclusion

Despite the restrictions placed on government action by international and regional trade agreements, there are a number of options open to the Canadian government to encourage governments and apparel companies to adhere to internationally recognized labour rights and standards. These policy options include preferential tariffs linked to development pacts,

procurement policies favouring goods produced under conditions consistent with ILO and UN Conventions, product bans under specific circumstances, labour rights criteria for the granting of assistance to overseas investors, and development assistance supporting labour rights training and capacity building for Southern involvement in monitoring of labour practices.

Most of these policy options could relate to and be strengthened by a multi-company or industry-wide code of conduct containing mechanisms for independent monitoring, company certification, and "fair trade" labelling. All would be strengthened by civil society and private sector participation.

Endnotes

[1] "Nike Doing It Just?", *Wear Fair Action Kit*, ed. Bob Jeffcott and Lynda Yanz (Toronto: Labour Behind the Label Coalition, 1997) 3.

[2] Industry Canada, *Sector Competitiveness Framework Series, Apparel*, http://strategis.ic.gc.ca/ssg/ap01967e.html (26 September 1997).

[3] Consumer Products Industries Branch, Industry Canada, http://strategis.ic.gc.ca/SSG/ap03198e.html.

[4] Industry Canada, *Sector Competitiveness Framework Series, Apparel*, above note 2 at 10 (on file).

[5] Ann Weston, "Some Notes on Textiles and Clothing after the Uruguay Round," unpublished paper (1997).

[6] Industry Canada, *Sector Competitiveness Framework Series, Apparel*, above note 2 at 9 (on file).

[7] The more notable examples are the GAP in El Salvador, Disney in Haiti, and Nike and Reebok in Asia.

[8] Canadian Friends of Burma, *Dirty Clothes, Dirty System: How Burma's Military Dictatorship Uses Profits from the Garment Industry to Bankroll Oppression* (Ottawa: Canadian Friends of Burma, 1996).

[9] Wenguo Cai, "International Trade in Textiles and Clothing after the Uruguay Round: Opportunities and Challenges for ESCWA Countries," Occasional Papers in International Trade Law and Policy, No. 46 (Ottawa: Centre for Trade Policy and Law, 1997).

[10] Industry Canada, *Sector Competitiveness Framework Series, Apparel*, above note 6.

[11] *Ibid*.

[12] International Labour Organization, *Globalization of the Footwear, Textiles and Clothing Industries* (Geneva: International Labour Office, 1996) 14, 46; cited in Union of Needletrades, Industrial and Textile Employees (UNITE), *People, Work and Innovation — Final Report*, 1997, 28.

[13] Women Working Worldwide, *Phasing out the Multi-Fibre Arrangement — What Does It Mean for Developing Countries' Garment Industries?* (Manchester, UK: Women Working Worldwide, 1997), 3.

[14] *Ibid*.

[15] *Ibid*. at 4.

[16] Interview with Moira Hutchinson, policy analyst/researcher with the Humanity Fund, United Steelworkers of America (USWA), February 1998.

[17] This view was expressed most strongly in interviews with foreign policy analysts such as Tim Draimin, Canadian Council for International Cooperation; Moira Hutchinson, Steelworkers Humanity Fund; Sheila Katz, Canadian Labour Congress; Craig Forcese, Canadian Lawyers Association for International Human Rights; John Dillon, Ecumenical Coalition for Economic Justice; and Christine Elwell, lawyer/trade analyst. Except for the interview with Craig Forcese, which took place in June 1998, all interviews were carried out in February 1998.

Generally the following ILO Conventions are referred to as covering "core labour rights": Freedom of Association and Protection of the Right to Organize, 1948 (No. 87); Right to Organize and Collective Bargaining, 1949 (No. 98); Forced Labour, 1930 (No. 29); Abolition of Forced Labour, 1957 (No. 105); Discrimination (Employment and Occupation), 1958 (No. 105); Equal Remuneration, 1951 (No. 100); Minimum Age, 1973 (No. 138). An additional Convention prohibiting the "most intolerable forms of child labour" will be presented for ratification in June 1999.

[18] The ILO Home Work Convention (No. 177) was adopted on 26 June 1996 and marked a significant step in the recognition of the importance of homeworkers' growing strength in the workforce, and their entitlement to equality of treatment between homeworkers and other wage earners in relation to the rights to organize, protection against discrimination, remuneration, statutory social security protection, access to training, minimum working age, and maternity protection. The ILO Convention on Part-Time Work (No. 175) was adopted in 1994 and established the right to equality (on a pro rata basis) in pay and working conditions for part-time workers.

[19] Women Working Worldwide, *Trade Liberalisation and the Rights of Women Workers. Are Social Clauses the Answer?* (Manchester, UK: Women Working Worldwide, 1997), 2.

[20] Department of Foreign Affairs and International Trade, Press Release, "Axworthy and Marchi Welcome Canadian Business Focus on International Practices," No. 143, 5 September 1997.

[21] "International Code of Practice for Canadian Business," included 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, 50–52. Or see http://www.cdnoxy.com/coe.

[22] Canadian business organizations and corporations that have endorsed the International Code of Practice for Canadian Business include: the Alliance of Manufacturers and Exporters of Canada, the Business Council on National Issues, the Canadian Chamber of Commerce, the Conference Board of Canada, Alcan Aluminium, Beak International, Cambior, Chauvco Resources, Kaizen Environmental Services, Komex International, Liquid Gold Resources, Manitoba Hydro, Movado Group, Placer Dome, Profco Resources, Pulsonic Corporation, Reid Crowther International, Sanduga & Associates, Shell Canada, Suncor Energy, Wardrop Engineering, and Canadian Occidental Petroleum.

[23] The only reference to labour rights in this code is the following: "Concerning Employee Rights and Health & Safety, we will ensure health and safety of workers is protected; strive for social justice and respect freedom of association and expression in the workplace; and ensure consistency with other universally accepted labour standards, related to exploitation of child labour, forced labour and non-discrimination in employment." Above note 21.

[24] 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, 12.

[25] Steelworkers Humanity Fund, "Comments On Ending Child Labour Exploitation — A Canadian Agenda for Action on Global Challenges," March 1997, 2.

[26] Canadian Council for International Cooperation, "Flash" (2 May 1997), 2.

[27] See for example, Gerard Greenfield, "Child Labour in the Toy Industry," *Asian Labour Update* 21 (April–July 1996), and Lynda Yanz and Bob Jeffcott, "Child Labour: Eliminating it is not as simple as it seems," *Briarpatch* (June 1998).

[28] Christine Elwell, *Human Rights, Labour Standards and the New WTO: Opportunities for a Linkage, A Canadian Perspective* (Montreal: International Centre for Human Rights and Democratic Development, 1995); Craig Forcese, *Putting Conscience into Commerce: Strategies for Making Human Rights Business as Usual* (Montreal: Canadian Lawyers Association for International Human Rights in collaboration with the International Centre for Human Rights and Democratic Development, 1997); Pharis Harvey, "U.S. GSP Labor Rights Conditionality: `Aggressive Unilateralism' or a Forerunner to a Multilateral Social Clause" (Washington: International Labor Rights Fund, n.d.).

[29] Freedom of Association and the Right to Organize (ILO Conventions 87 and 98); Forced Labour (ILO Conventions 29 and 105; Discrimination and Equal Remuneration (ILO Conventions 111 and 100), and Minimum Age (ILO Convention 138).

[30] Harvey, "U.S. GSP Labor Rights Conditionality," above note 28 at 2.

[31] Interview with Steve Coats, Director, US/Guatemala Labor Education Project (US/GLEP), July 1998.

[32] *Ibid*.

[33] Forcese, above note 28 at 79.

[34] Harvey, above note 28 at 6.

[35] *Ibid*. at 2.

[36] European Commission, "Europe" No. 7200, Mon/Tues, 14/15 April 1998, 8. Reprinted from *Agence Europe*, 14/04/1998.

[37] *Ibid*. at 3.

[38] Standing Committee on Foreign Affairs and International Trade/Sub-Committee on Sustainable Human Development, "*Ending Child Labour Exploitation — A Canadian Agenda for Action on Global Challenges* (Ottawa, February 1997), 36–37.

[39] Canada. "Government Response to the Sub-Committee on Sustainable Human Development of the Standing Committee on Foreign Affairs and International Trade on Ending Child Labour Exploitation — A Canadian Agenda for Action on Global Challenges," http://www.dfait-maeci.gc.ca/youth/child_labour-e.asp (2 April 1998), 24 (on file).

[40] *Ibid*. at 24.

[41] Ann Weston, "Review of the General Preferential Tariff," Submission prepared on behalf of The North-South Institute for the Interdepartmental Committee (June 1994), 4.

[42] 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), 70.

[43] Forcese, *Putting Conscience into Commerce*, above note 28 at 92.

[44] Interview with Moira Hutchinson; Steelworkers Humanity Fund, "Comments on `Ending Child Labour Exploitation — A Canadian Agenda for Action on Global Challenges'" (March 1997), 4.

[45] Steelworkers Humanity Fund, "Discussion Paper on Child Labour" (1996), 2–3.

[46] *Ibid*. at 7–8.

[47] Interview with Christine Elwell, February and June 1998.

[48] Steelworkers Humanity Fund, "Discussion Paper on Child Labour," above note 45 at 7.

[49] For a general description and one-year assessment see: International Labor Rights Fund, *Rugmark After One Year: Appraisal of a New Effort at Social Marketing in the Interest of Children* (Washington, DC: ILRF, 1996).

[50] Interview with Moira Hutchinson, June 1998.

[51] Canada. Office of Consumer Affairs, Industry Canada, and the Regulatory Affairs Division, Treasury Board Secretariat, *Voluntary Codes, A Guide for their Development* (Ottawa, March 1998), 27.

[52] Forcese, *Putting Conscience into Commerce*, above note 28 at 74.

[53] *Ibid*.

[54] "Sweatshops are Losers at Duke University," *Maquila Network Update* (April–June, 1998).

[55] Interview with Christine Elwell, above note 47.

[56] "Burma: Japan, EU Bring Massachusetts Law to WTO," *BRIDGES Weekly Trade News Digest*, vol. 2, no. 35, 14 September 1998.

[57] Forcese, *Putting Conscience into Commerce*, above note 28 at 101.

[58] *Ibid*.

[59] *Ibid*. at 73.

[60] Interview with John Dillon, February 1998.

[61] Pierre Gravelle, Deputy Minister, Revenue Canada, letter to Kathleen Ruff, Coordinator, Canadian Anti-Slavery Group, 22 January 1996.

[62] Interview with Pharis Harvey, February 1998.

[63] Canadian Friends of Burma, *Burma Links* (October 1996), 1.

[64] Forcese, *Putting Conscience into Commerce*, above note 28 at 81.

[65] *Ibid*. at 83.

[66] Interview with Moira Hutchinson, June 1998.

[67] *Ibid*.

[68] Ruben Mata, "Canadian Involvement in Mexico's Maquiladora Industry," *Industry, Trade and Technology Review* (June 1998), 28.

[69] *Ibid*. at 29.

[70] *Ibid*. at 27.

[71] *Ibid*. at 26.

[72] Steelworkers Humanity Fund, "Comments on Ending Child Labour Exploitation," above note 25 at 2.

[73] Moria Hutchinson, above note 66. Bama Athreya, International Labor Rights Fund, notes that both MIGA and IFC recently adopted worker rights language into their lending criteria.

CHAPTER 5

CORPORATE DISCLOSURE AND CITIZEN ACCESS TO INFORMATION

> *Some individuals and organizations are convinced that the answer to this enforcement problem lies in encouraging consumers to take direct action in the marketplace to penalize firms which fail to observe and enforce appropriate standards. The problem with this approach is that the average consumer does not have access to the information required to permit him or her to make an informed decision. In the absence of meaningful information, the consumer can not police the marketplace*.
>
> — Stephen Beatty, Executive Director, Canadian Apparel Federation[1]

It is impossible to monitor the conditions of garment workers and ensure enforcement of their rights under domestic labour laws, ILO and other international standards, and company or sector-wide codes of conduct, if the workers producing the apparel can not be found and/or believe that their employment will be put at risk if they make formal complaints to ministries of labour or bring labour rights violations to the attention of companies, unions, human rights organizations, or the public. Without information, there can be no effective monitoring or enforcement at any level. As well, without access to information on where the clothes we buy are made and under what conditions, consumers cannot make informed choices based on ethical standards, or demand accountability from retailers and manufacturers.

Information currently available on the contracting practices of Canadian and other retailers operating in Canada is very limited. Even the identity of contractors and subcontractors is viewed as privileged information. While general statistics on trends in the Canadian garment industry are available through Industry Canada and Statistics Canada — numbers of manufacturers and garment workers, decrease in the number of employees per manufacturing unit, decline in unionized percentage of the workforce, number of factory closures, figures on apparel made in Canada and imported from other countries — it is virtually impossible to obtain information through Canadian government or industry sources tracing apparel to its point(s) of production.

Current Situation: What Information Is Available? What Are the Information Barriers?

1. The CA Number

In Canada, apparel is required to include a label indicating the country in which the item was produced, unless it was produced in Canada, and a CA number indicating the company accountable for fibre content and washing instructions.[2] The CA number is the only legally required labelling mechanism that links clothing to an accountable company. The CA number may belong to the retailer, to

the importer, or to the manufacturer, if it was made by a Canadian manufacturer. Consumers can determine to what company the CA number is registered by accessing Industry Canada's on-line database (http://strategis.ic.gc.ca/ssg/
cp01120e.html), which also has a link to the RN database in the United States.

However, even if a brand is registered to a Canadian manufacturer, the CA number does not give any information as to whether the garment was made on the manufacturer's premises or further contracted out to a subcontract sewing workshop, or to homeworkers.

2. Corporate Information

With few exceptions, corporations in Canada are under no obligation to release to the public or to interested parties information on their suppliers, licensees, contractors, or subcontractors. As we have seen above, however, under the decree system in Quebec, inspectors hired by a parity committee, which includes union appointees, have the right to carry out workplace investigations without notice, including examining payroll records of employers covered by the decree. As well, manufacturers covered by the women's apparel decree are required to keep records of homeworkers and provide to the parity committee the name, address, the date of delivery and description of the work, quantity of garments, and piece rate paid.[3]

In Ontario, British Columbia, and Manitoba, the Employment Standards Branch of the Ministry of Labour, and in Quebec the Commission des normes du travail, has the power to carry out audits of employers' records when individual claims are made. However, as discussed in chapter 2, the power to carry out audits is infrequently exercised.

Efforts to obtain information from Canadian apparel companies on their domestic and off-shore sourcing practices have been remarkably unsuccessful. In 1996, the Toronto-based Labour Behind the Label Coalition sent out a questionnaire to forty major Canadian apparel retailers, requesting information on their sourcing practices, codes of conduct, and monitoring procedures. Only three retailers responded to the questionnaire, and none of those was willing to share information on its sourcing practices.[4] Also in 1996, in an attempt to resolve complaints of labour violations by Toronto homeworkers sewing for Woolworth Corporation labels, the Homeworkers' Association requested information about the contractors Woolworth was using in Metro Toronto. Woolworth was unwilling to provide any information.[5]

In its study on garment production in Burma, the Canadian Friends of Burma cite an example of the owners of the Arrow shirt label stating that they did very little sourcing from Burma, while shipping records indicated the contrary.[6]

3. Information on Imports

Other than the name of the importer (which in some cases is the retailer itself or a Canadian manufacturer who will resell the product), information on imported apparel is also unavailable through Canadian sources. This information is, however, available through US sources. Ironically, Canadian

citizens are able to get more information about the origins of imported clothing, using US sources, than about Canadian-made clothes. This is because US freedom of information laws are broader than Canadian laws.[7]

Information on imported garments entering Canada or the United States can be obtained through a commercial database of US Customs records. Ships are required by US Customs to provide reports of their entire cargo, and ships generally carry cargo destined for both US and Canadian ports. Reports include the name of the vendor, the item, the quantity, the recipient, and the CA number. This allows for tracing imported garments back to their source. However, this information is only available commercially, from US sources, and at considerable cost.[8] We believe this information should be publicly available through Canadian sources.

Possible Areas for Government Policy Action

1. Consumer Access to Information

The federal government should make available to the public, on request, information on where our clothes were manufactured. One possible mechanism for providing this information would be the CA number. Labour rights advocates we interviewed suggested that the CA mechanism could be adapted to allow the buyer to identify the name and address of the manufacturer and/or supplier or contractor involved in the manufacture of any item of apparel sold in Canada.[9] For imported goods, this information is readily available through customs. For Canadian-made goods, it would have to be provided by the holder of the CA number.

This expansion of the role of the CA number would obviously make its administration more complicated. Since retailers and manufacturers often change suppliers or contractors producing particular items of apparel, regular updating of records would be necessary. As well, it might not be possible to provide information on the lowest level of subcontract labour. Nonetheless, this adaptation of the CA number would make it much easier for citizens and consumers to trace where our clothes are made and under what conditions.

Reference is made in Industry Canada documents on the garment industry to discussions about the possibility of transferring the administration of the CA program from Consumer Affairs to the Canadian Apparel Federation.[10] This can only make access to information more difficult, since the CA number is one of the only mechanisms available to trace apparel sourcing practices. In order to be credible, this information should continue to be publicly administered and available to the public.

Another possible approach, which would go hand in hand with an expanded role for the CA number, would be to increase the reporting requirements of apparel companies to provincial ministries of labour. In the same way that employers are currently required to request permits to employ homeworkers, retailers

and manufacturers could be required to report (to a publicly accessible body) the names and addresses of the contractors and subcontractors they are using at any given time.

Retailers might argue that these requirements would be extremely difficult, if not impossible, to meet because the web of subcontract garment production is not totally under their control. However, such a reporting requirement would force retailers to have up-to-date knowledge of their contractors and subcontractors. It would therefore encourage retailers to eliminate some of the unnecessary levels of subcontracting, which encourage labour rights violations, and to use more reliable contractors. This is consistent with the recommendations made to Woolworth-Canada by the Homeworkers' Association.[11]

Ideally, reporting requirements on domestic contractors and subcontractors would be integrated with the proposal discussed in chapter 2 for a Central Registry for Homeworkers.[12] This would allow for the centralization of information on the whole contract chain of production in Canada, or at least in the provinces where these reforms were introduced.

The fact that provincial governments have jurisdiction over most labour relations, while the federal government has jurisdiction over foreign affairs and trade, makes the issue of where reporting and information should be located a bit complicated. Obviously, it would be preferable if companies were not burdened with multiple and overlapping reporting requirements. However, the sharing of information between provincial bodies receiving reports on domestic contracting practices (such as a Central Registry for Homeworkers) and Consumer Affairs at the federal level, through the CA number program, would allow for consumer access to information from one federal institution.

Although it would not be necessary, and may not be desirable, to include in this central database specific information on individual homeworkers, it would be useful to include information on apparel companies and contractors making use of homework in the manufacture of their products.

Another option was proposed by former Executive Director of the Canadian Apparel Federation, Stephen Beatty, to the Sub-Committee on Sustainable Human Development of the Standing Committee on Foreign Affairs and International Trade. In his presentation, Beatty proposed that the Department of Foreign Affairs and International Trade establish a registry that would “maintain records of foreign companies and countries which failed to meet [a minimum standard governing the use of child labour in developing countries] as well as identifying any which were known to exceed the standard.”[13]

Beatty's proposal would tie a government-administered registry to a private sector certification system. He suggests that the registry could “maintain a list of independent, commercial inspection services having a demonstrated ability to inspect and certify the performance of companies based in exporting countries.” Although Beatty's proposal is addressed specifically to the problem of child labour, it could just as easily be applied to labour practices in general, and though it refers to the use of “independent, commercial inspection services,” it could also be linked to a monitoring and certification system involving unions and NGOs, as well as private firms.[14]

A third possible option is the model developed in Australia,[15] in which legislation and a voluntary

code of conduct require that apparel companies provide information to the garment workers' union on their domestic contractors, subcontractors, and homeworkers. In this case, the union is hoping to eventually extend the code of conduct to require information on off-shore sourcing and contracting practices. In this model, the union has the option to make information on sourcing public if labour rights violations are not rectified.[16]

2. Consumer Choice

Since the apparel industry is so concentrated, and yet functions with a plethora of brand names and specialty stores, consumers often do not know whom they are buying from. For example, the brand names and specialty stores Northern Reflections, Northern Traditions, Footlocker, Randy River, and Weekend Edition are all part of the Woolworth Corporation, yet this is by no means obvious to shoppers. Therefore, another issue to be explored further would be consumer regulations that require the name of the parent company that owns the brand name or specialty store to be publicly displayed on labels and signage. This would allow consumers to identify the real owner behind the brand name or specialty store. If the name of the parent company were also required to be listed on the label, sewers could easily identify the apparel company for which they were sewing.

3. Citizen Access to Government Information

In September 1992, the US National Labor Committee released a report charging that the US Agency for International Development (USAID) and the US Overseas Private Investment Corporation had together provided over $1 billion in aid to help establish export processing zones in Central America and the Caribbean, and for incentives to US companies to invest in manufacturing facilities in the zones, most of which were in the apparel sector.[17]

The report linked human and labour rights abuses in export processing zones with US government support for investment, trade promotion, and factory construction, as well as subsidized financing, technical assistance, and worker training programs for US companies investing in the zones. It caused a major scandal in the United States, and was raised as an issue during the televised debate between vice-presidential candidates Gore and Quayle.[18]

Although it is highly unlikely that the Canadian government is providing comparable support for Canadian investment in export processing zones and/or to off-shore apparel manufacturing, it is extremely difficult under current access to information legislation to determine whether or to what extent Canadian investors in the apparel sector are receiving subsidies, loans, or other forms of support from Canadian governmental agencies.

In Canada, access to government information regarding the operations of Canadian companies in other countries and Canadian companies receiving federal subsidies, loans, or other resources through government sources is also extremely limited. For instance, the Export Development Corporation (EDC) is a crown corporation that provides export loans and insurance and foreign investment insurance to Canadian companies. However, details that would allow researchers to assess the implications of this financing for labour rights outside of Canada are not available. In 1997, the EDC refused a request of

the Steelworkers Humanity Fund (SHF) for such information.[19]

Although the EDC's Corporate Account is not subject to the *Access to Information Act*, the EDC's Canada Account, in which decisions regarding financing are referred to government, is subject to the Act. However, a request made by the SHF in 1997 under the Act for information on Canada Account financing had resulted in no substantive information one year later.[20] According to the SHF, the kind of information it was seeking is published regularly by the equivalent US agencies.[21]

We wonder how the Canadian public and the Canadian government can hope to encourage corporate accountability without allowing for even the most basic access to information on where public funds are being allocated and how they are used.

4. Codes, Campaigns, and the Right to Know

While government has been slow to act on, if not resistant to, demands for strengthened citizen and consumer access to information legislation, non-governmental initiatives concerning corporate disclosure and the public's right to know are moving forward.

Independent monitoring and certification systems could potentially offer consumers increased access to information on apparel manufacturing and labour practices. However, as we have seen in chapter 3, a major issue of contention in negotiations for multi-company and industry-wide codes of conduct has been the degree of public access to information on the suppliers and contractors and to information contained in monitoring and certification reports.

Apparel companies have tended to favour monitoring systems in which they maintain control of information — a model in which "professional" private sector certification firms have primary responsibility for monitoring, rather than NGOs, human rights, religious, or labour organizations, and in which monitors are hired by and directly accountable to the company, rather than to a third-party institution that includes labour and NGO representation.

The weakness in this model of "external" monitoring is explained by Bama Athreya of the International Labor Rights Fund:

> Since the external monitor is on contract to the company, the monitor is not free to disseminate information publicly. Instead, a confidential report is issued to the company which the company may or may not disseminate.[22]

In contrast, labour and NGO participants in negotiations around multi-company and industry-wide codes have generally favoured greater transparency in the monitoring and certification processes, and greater involvement of NGOs, religious, human rights, and labour groups in monitoring, certification, and reviews of certifications.

As we have seen above, one major issue in the negotiations of the US Apparel Industry Partnership has been how much information should be provided to the public: information on all inspections or just

whether or not a company is certified.[23] In negotiations around the implementation of the Fair Trade Charter in the Netherlands, the issue of who receives monitors' reports continues to be an area of discussion.[24] In Canada, the Labour Behind the Label Coalition has made increased access to information a major objective of its proposed federal task force on sweatshop abuses.[25]

Another example of negotiations for codes of conduct becoming the site of struggle about public access to information is taking place on North American university campuses. Student groups in the United States, and more recently in Canada, are demanding that their universities adopt ethical licensing and bulk purchasing policies. In response to campaigns by Students Against Sweatshops at two major US universities (Duke and Brown), university administrations have agreed to codes of conduct requiring licensees to provide information on their suppliers. However, that information is currently only available to the university administrations. A recently formed campus network called United Students Against Sweatshops (USAS) is now pressuring for provisions in university codes that make that information available to student organizations as well. If those organizations were not satisfied with company compliance with the code, they could make that information public.[26]

Increasingly, Stop Sweatshops campaign activists are also beginning to make corporate disclosure a major focus of their campaign work. In the fall of 1998, two US groups, the National Labor Committee and the People of Faith Network, launched “The People's Right to Know Campaign: a Call for Corporate Disclosure.” The NLC's campaign is calling on the US retail giant, Wal-Mart, to publicly disclose the names and addresses of all factories producing its goods worldwide. Although the campaign is focused on one company, the objective is public access to information on the sourcing practices of all apparel companies. Local activists are also being encouraged to introduce a People's Right to Know resolution before their city council, requiring a “sweatshop-free” bulk purchasing policy.[27]

Commenting on the NLC campaign, Neil Kearney, General Secretary of the International Textile, Garment and Leather Workers Federation (ITGLWF), states: “The arguments put forward by the retailers and merchandisers about commercial confidentiality are pretty hollow. It's not their competitors they want to keep in the dark, but rather their consumers. Why shouldn't we know exactly where products are made? If it is good enough for wine, why not for shoes?”[28]

Conclusion

We have looked briefly at two different strategies to achieve greater public access to information on where our clothes are made and under what conditions. In the first example, information would be made available on demand through a public institution, and apparel companies would be required by legislation to report on their sourcing practices to that institution. In the second, citizens' groups, backed by consumer campaigns, attempt to negotiate directly with apparel companies to voluntarily disclose information on their sourcing practices.

We believe that these two strategies need not be in conflict with one another, nor are they mutually exclusive. While government legislation requiring corporate disclosure may be the preferred option, there are no indications that the federal government is prepared to consider introducing such

legislation in the near future. However, consumer campaigns demanding corporate disclosure could potentially create a political climate in which government felt compelled to take action, if apparel companies refuse to disclose information voluntarily. Agreements requiring corporate disclosure by local public institutions such as universities, school boards, and civic governments could help create momentum to encourage higher levels of government to take similar action.

Whether negotiations for multi-company codes of conduct, monitoring, and certification systems reinforce pressure for government action or undercut that pressure will depend on the sophistication of the negotiators and the strength of the grass roots movement against sweatshop abuses.

Endnotes

[1] 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).

[2] Industry Canada, "A Guide to `Made in Canada' Labelling and Advertising" (April 1994); Consumer Products Directorate, "Textile Labelling," http://strategis.ic.gc.ca (25 August 1997).

[3] International Ladies' Garment Workers Union — Ontario District Council and INTERCEDE, *Meeting the Needs of Vulnerable Work Proposals for Improved Employment Legislation and Access to Collective Bargaining for Domestic Workers and Industrial Homeworkers*, Brief submitted to the Ontario Government (1993), 3.

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

[5] *Ibid.* at 5.

[6] Canadian Friends of Burma, *Dirty Clothes, Dirty System: How Burma's Military Dictatorship Uses Profits from the Garment Industry to Bankroll Oppression* (Ottawa: Canadian Friends of Burma, 1996), 26.

[7] All labour rights advocates interviewed indicated that US corporate disclosure requirements, although limited, are superior to those in Canada.

[8] *Ibid.* at 18; Interview with Stephen Coats, Executive Director, U.S./Guatemala Labor Education Project, February 1998.

[9] Interviews with Jan Borowy, former Research Director, ILGWU — Ontario District Council; Alexandra Dagg, Manager, UNITE — Ontario District Council; and Judy Fudge, Labour Law Professor, Osgoode Hall Law School in February 1998; International Ladies' Garment Workers Union, *Designing the Future for Garment Workers*, Technology Adjustment Research Programme (Toronto: ILGW 1995), 72.

[10] Industry Canada, *Sector Competitiveness Framework Series, Apparel*, http://strategis.ic.gc.ca/ssg/ap01967e.html (27 September 1997), 7 (on file).

[11] Interview with Alexandra Dagg, Manager, UNITE — Ontario District Council, March 1998.

[12] ILGWU — Ontario District Council and INTERCEDE, *Meeting the Needs of Vulnerable Workers*, above note 3 at 65.

[13] Stephen Beatty, "Notes for presentation by Stephen Beatty to the Sub-committee on Sustainable Human Development of the Standing Committee on Foreign Affairs and International Trade" (3 October 1996), 11–12.

[14] *Ibid.* at 12.

[15] See “The Australian Experience,” in chapter 2.

[16] The foundation approach, such as that being explored in the Netherlands, is similar to the Australian model in that a bipartite institution involving labour centrals, apparel industry associations, and NGOs would have the option to make information available if labour rights violations are not rectified.

[17] “Paying to Lose Our Jobs: A special report prepared for the National Labor Committee Education Fund in Support of Worker and Human Rights in Central America” (US National Labor Committee, September 1992).

[18] “Quayle and Gore battle devolves into a hand-to-hand fight about 4 issues,” *The New York Times*, 14 October 1992.

[19] Steelworkers Humanity Fund, “Comments on Ending Child Labour Exploitation — A Canadian Agenda for Action on Global Challe (March 1997), 8.

[20] *Ibid.* at 8.

[21] Interview with Moira Hutchinson, Steelworkers Humanity Fund, February 1998.

[22] Bama Athreya, “Codes of Conduct and Independent Monitoring, Strategies to Improve Labor Rights Enforcement,” International Labor Rights Fund (24 May 1998), 12.

[23] Interview with Pharis Harvey, Director, International Labor Rights Fund, April 1998.

[24] Ineke Zeldenrust, Clean Clothes Campaign, E-mail response to Maquila Solidarity Network questionnaire, 17 April 1998.

[25] Letter to the Honourable Lloyd Axworthy, Minister of Foreign Affairs, 24 June 1998.

[26] “Students Structure Campaigns for Codes,” *Maquila Network Update* (September–November, 1998).

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[28] Correspondence with Neil Kearney, September 1998.

CHAPTER 6

Conclusion and Recommendations

The globalized garment industry of the 1990s is continents wide and layers deep. Globalization and trade liberalization policies have caused profound changes not only in the international division and global organization of labour, but also in how, by whom, and under what conditions our clothes are made in Canada and other countries.

In today's garment industry, giant Northern retailers and super-labels (or marketing firms) largely determine the location and terms of production, while manufacturers are forced to compete for orders by constantly lowering the cost of labour and increasing the speed of production (turnaround time). While high-tech design, marketing, and information management systems are concentrated in the North, the actual production (low-tech and labour-intensive) of a growing percentage of our clothes is shifting to large and medium-size contract factories in the South.

At the same time, rapidly and constantly changing fashion demands of Northern retailers and customers require a maze of subcontracted and home-based production in major Northern cities where short runs of less-standard garments are sewn by non-standard workers. As global competition intensifies, there are increasing pressures on contract manufacturers in the South to also subcontract production to smaller sewing factories and to homeworkers.

The phasing out of Multi-Fiber Agreement quotas by the year 2005 and the elimination of all tariffs between Canada, the United States, and Mexico under NAFTA by 2003 will only accelerate these global processes. Although there is considerable debate about the specific impact of trade liberalization in the garment sector on particular countries in the South, there is general agreement that competitive pressures will increase on countries, manufacturers, and workers to increase productivity and/or the speed of production and to lower labour costs.

For the Canadian garment industry, we can anticipate more plant closures with some manufacturers moving to a high-tech, high-fashion niche market, while others will be forced to enter the subcontracting maze of just-in-time production. Canadian garment workers can look forward to an increasing polarization between a shrinking sector of unionized core workers, and a growing sector of unorganized workers, the majority of whom are immigrant women working in sweatshops and as homeworkers.

The consequences for the women who sew our clothes — the young women migrating from rural areas to export processing zones and maquiladora regions in the South, the immigrant women of colour recruited to a subcontract, home-based underground economy in the North — are precarious, virtually unregulated employment; intensive labour and excessive hours of work; inadequate wages and few legally required

benefits; discrimination on the basis of gender, race, and place of origin; and limited opportunities to organize and improve their situation.

The Regulatory Context

In Canada, the closure of garment factories with the resultant decline in the unionized percentage of the garment workforce and the growth of small contract shops and home-based production has both weakened the bargaining power of the remaining factory workers and made organizing and regulating the working conditions of the new workforce extremely difficult, if not impossible — at least under current legislation.

Although homeworkers and contract shop garment workers in Canada are generally covered by the same employment standards legislation and other legislation as other workers, the semi-clandestine nature of the organization of work in the restructured garment industry makes monitoring and enforcement of minimum labour standards extremely difficult. At the same time, the pressures of global competition and the embrace by many provincial governments of the neo-liberal economic model are being used to justify further reductions in resources allocated to monitoring and enforcement and further moves toward deregulation.

While the government of British Columbia has introduced legislation allowing for anonymous and third-party complaints, the trend elsewhere is to undermine existing rights and protections rather than to strengthen them. The government of Quebec is considering dismantling the decree system, which allows for a form of broader-based bargaining extending some of the benefits of collective bargaining to employees in small contract shops, provides for a limited form of joint liability, and offers some access to information. In Ontario, the government is taking steps to further weaken existing rights and protections contained in the *Employment Standards Act*. None of the current provincial governments appear to be considering reforms to make retailers and manufacturers accountable for the labour practices of their contractors, or to make it easier for home-based and contract shop workers to organize.

Pressures for deregulation are equally present if not stronger in the South, where, in order to attract foreign investment and jobs, Southern governments have created export processing zones offering foreign garment companies access to a cheap labour force along with other attractive terms of investment, including duty-free importation of semi-manufactured goods to be assembled then re-exported, extremely low or non-existent taxes, restrictions or a prohibition on the right to organize, and lax enforcement of labour and environmental standards.

Despite what appear to be overwhelming obstacles to challenging the growing problem of sweatshop abuses in the garment industry, we are now seeing the emergence of a variety of responses from unions and coalition partners, community groups, international labour rights advocates, concerned consumers, and garment workers themselves. These responses include demands for reform of domestic labour legislation and for enforcement of current legislation; calls for trade and foreign policy initiatives that encourage adherence to international labour rights and standards; pressure on retailers and

super-labels for independent monitoring of voluntary codes of conduct and on the industry to negotiate industry-wide codes of conduct with mechanisms for independent monitoring and certification; and experiments with new organizing strategies more relevant to the new organization of garment production in the North and South.

In our view, none of these responses is sufficient in itself. Challenging sweatshop practices in the complex and many-layered garment industry of the 90s, requires a multi-layered strategy that addresses domestic legislative and enforcement issues, trade and foreign policy options, voluntary mechanisms to promote international standards, and the need for new organizing strategies.

Important questions for activists and organizations working at various levels on these issues include:

- How can these responses be integrated so that they complement rather than compete with each other?

- How can debates on the merits of different strategies be carried on in a manner that doesn't further divide an already fractured movement?
- How can real or perceived differences in interests between groups in the North and South be dealt with in a manner that acknowledges those differences, while moving forward on areas of agreement?
- What strategic demands best address the fundamental problems of women garment workers, and have the greatest potential to generate public support and achieve government and industry action, and to open doors for future reforms?

1. Policy Options to Challenge Sweatshop Practices in Canada

In Canada, or at least in Ontario — where there is a relatively strong history of analytical and activist work around the situation of homeworkers — there is a great deal of agreement on the legislative reforms required to make it possible for homeworkers and contract shop employees to organize and defend their rights. These include

- joint and several liability to make retailers and manufacturers liable for the labour rights violations of their contractors;
- the right to make anonymous and third-party complaints;
- a central registry for homeworkers; and
- broader-based bargaining.

The problem isn't the lack of innovative proposals; it is the strong opposition of the private sector to these proposals, the ideological bias of most provincial governments in favour of labour flexibility and deregulation, and the fact that most sectors of the labour movement have made the protection of the rights of core, standard workers a much higher priority than those of non-standard, precariously employed workers.

One essential element in this package of reform proposals, but one around which there is much debate, is the call for some form of broader-based bargaining. This proposal is particularly important because it goes beyond mere enforcement of minimum standards under employment standards legislation and offers the possibility of homeworkers and employees of small contract shops to enjoy some of the benefits of collective bargaining.

Some forms of broader-based bargaining, such as the Baigent/Ready proposal for sectoral certification in British Columbia, would also make it easier for workers in small contract shops to organize. As this proposal not only allows for but encourages workplace organizing, it might be more acceptable to those labour groups who fear that broader-based bargaining might actually discourage organizing and result in weak unions.

The Baigent/Ready proposal would be particularly attractive if sectoral certification provided that, once a majority of the workers in a particular sector were organized, the wage and benefit provisions of the sectoral collective agreement would be extended to cover all workers in the sector, including homeworkers and employees in very small workplaces. This adaptation of sectoral certification, put forward by Diane MacDonald,[1] would integrate the most attractive aspects of the Quebec model of juridical extension with the impetus for workplace organizing contained in the Baigent/Ready proposal.

The proposal for broader-based bargaining based on chains of production, which is favoured by those we interviewed in Ontario, need not be seen as being in contradiction to the BC proposal. We could imagine a system of sectoral certification in which workplace organizing leads to the extension of a collective agreement to cover workers in a chain of production, and once a majority or preponderance (45 percent) of workers in a sector or subsector are organized, the collective agreement would be extended to all workers in the sector or subsector.

Given that the Government of Quebec appears to be moving toward the gradual elimination of the decrees in the garment sector, we can expect that garment workers and their allies in Quebec will be focusing on defending that system, rather than developing alternative proposals. It would be wise for groups in the rest of Canada to pay attention to this Quebec debate and use it as an opportunity to learn from the decree system and to develop and debate alternative proposals.

As important as reform to provincial legislation is in order to make it possible for homeworkers and contract shop employees to organize and defend their rights, reform in one province or one country will not be sufficient to eliminate sweatshop abuses. Alan Howard, Assistant to the President, UNITE, states:

> [E]ffective enforcement standards domestically will not solve the problem, for as we have seen, employers have the option of sending work to shops offshore where workers are often even more vulnerable to abuse. Transnational corporations and the production systems they have developed have outraced the ability of laws to follow them across national borders.[2]

2. Policy Proposals to Challenge Sweatshop Practices Internationally

In an era of trade liberalization and deregulation, many labour rights activists are putting increasing emphasis on confronting high-profile apparel companies directly and demanding that the apparel giants live up to their own codes of conduct or other statements regarding their corporate social responsibility. The growing movement against sweatshop abuses has pushed the debate beyond questions of corporate self-regulation toward a discussion of how civil society might participate in the monitoring of supplier compliance with voluntary codes. The debate is now focused on the terms of industry-wide codes of conduct, external or independent monitoring, and certification of Southern suppliers and Northern apparel companies.

On the positive side, whatever the weaknesses of voluntary codes of conduct, they have provided a focus for discussion and debate on how corporate labour practices might be monitored across national boundaries and how corporations might be held accountable for practices in other countries. On the negative side, debates around codes of conduct, independent monitoring, and certification systems have exacerbated already existing divisions between unions, women's groups, and human rights groups in the South, particularly around the respective roles of unions and monitoring groups. These debates have also provoked tensions between Northern groups negotiating global systems of monitoring and certification and Southern groups either demanding participation in the negotiation and monitoring processes or dismissing the process altogether.

As the actual terms of global monitoring, accreditation, and certification mechanisms are being spelled out, new debates and differences among Northern and Southern groups are emerging on issues such as whether Northern private social auditing firms should be trusted to carry out monitoring and how involved local religious and human rights groups should be in the monitoring process, to whom monitors are accountable and the level of information disclosure required, and what degree of compliance is necessary for companies to become certified as “good corporate citizens.”

In the midst of these debates, a more central question — one that is not being sufficiently explored — concerns the interrelationship between these private sector/civil society initiatives; the trade, investment, and overseas development policies of Northern governments; and the labour and enforcement policies of governments in the North and the South. As we have seen, although trade agreements and other international treaties put definite limits on what national governments are permitted to do to defend domestic industries or regulate the behaviour of transnational corporations, there are many things national governments can do to encourage adherence to internationally recognized labour rights Conventions.

We have discussed a number of specific proposals the Canadian government could adopt to encourage greater adherence to labour rights in the apparel industry in Canada and in other countries. We have also examined how those government policies could complement and reinforce the development and implementation of a Canadian industry-wide voluntary code of conduct, monitoring, and certification system. The following is a brief summary of some of those proposals:

A. Federal Task Force on Sweatshop Abuses

The Canadian government should follow the lead of governments in the United States, the United Kingdom, and Australia in convoking a federal task force on sweatshop abuses in the garment and footwear sectors, and providing financial and other forms of support for this task force. Given the interconnections between the spread of sweatshop practices in other countries and the emergence of similar practices in Canada, we would strongly suggest that a task force address the problem of sweatshop abuses in Canada and off-shore at the same table.

B. Industry-Wide Code of Conduct

As there are now a number of experiences in other countries with attempts to negotiate multi-company and industry-wide codes of conduct along with monitoring, accreditation, and certification systems, it would be important that a task force consult with groups involved in these initiatives to learn what might be applicable to the Canadian reality, and what issues need to be addressed and what problems avoided. Given some of the tensions that have arisen in the development and application of other models, it would be equally, if not more, important that Southern labour, human rights and women's groups, and policy analysts be consulted early on in the process, and, as much as possible, be given the opportunity to have direct input into the discussions.

Without advocating one model over another, we would strongly suggest that for any system to be successful, there must be mechanisms for active and ongoing participation of unions and NGOs in a decision-making, rather than in a purely consultative role. This applies to all stages in the process of developing and implementing an industry-wide code and monitoring system, including definition of criteria, decisions around membership, accreditation of monitors, the monitoring process itself, assessment of monitors' reports, certification of companies, and review of accreditations and certifications. The issue of transparency of these processes is not only crucial for the credibility of the initiative with participating unions and NGOs, but also for its credibility with consumers and citizens.

Although there may be justification for the involvement of Northern social auditing firms and/or other private firms or individuals in some aspects of global monitoring, the knowledge, experience, and trust by workers that many Southern NGOs and labour groups bring to the monitoring process is the essential ingredient that would make monitoring effective and credible. Again, we would suggest that Southern groups need to be actively involved in the monitoring process, rather than merely being consulted by Northern “experts.”

Since compensation would be needed by Southern groups involved in the monitoring process, and since trust by workers and the broader community in any society is such an important factor in making monitoring effective and credible, we would suggest that any funding for independent external monitoring that is provided by apparel companies, whether it be for the services of Northern professionals or Southern NGOs, be channelled through an independent third-party institution. In that respect, the foundation model, such as that being developed in the Netherlands, offers definite advantages.

Two other important considerations for a task force would be (1) the inclusion of provisions in the

code requiring suppliers to abide by local labour legislation where that legislation is superior to or more inclusive than the terms of the code, and (2) provisions requiring that the terms of the code also apply to all subcontractors and the use of home-based production.

Attempts to apply independent monitoring to the subcontract maze of the Canadian garment industry would be difficult and controversial; therefore, we would propose that a task force consider including provisions in an industry-wide code requiring apparel companies to cooperate with periodic inspections and audits of their contractors' practices by appropriate ministries of labour, and to provide information on their contractors, subcontractors, and the use of homeworkers in Canada to the foundation or other governing body for the code, but also to appropriate provincial ministries of labour and/or tripartite bodies.

An alternative would be to follow the Australian example and require that this information on contractors, subcontractors, and the use of homeworkers be provided to the garment workers' union. However, since the garment workers' union or another related labour organization would be represented on the code foundation or other governing body, this might be unnecessary.

C. Trade and Investment Support

As an incentive to Canadian apparel companies to seek certification under a multi-company or industry-wide code, the Canadian government could make certification or the seeking of certification a condition of access to government trade and investment support — for example, through the Program for Export Market Development (PEMD), Export Development Corporation (EDC), the Canadian International Development Agency's Industrial Cooperation Program (CIDA INC). As we stated above, since the code would apply to a company's domestic operations as well as its operations abroad, accreditation would require the company to take responsibility for subcontracted and home-based labour in Canada, as well as abroad, if it wanted to make use of these government programs.

The government should also promote policies in international development institutions such as the Multilateral Investment Guarantee Agency and the International Finance Corporation to ensure that international investment financing and insurance programs reinforce ILO labour standards. To be a credible advocate for the rights of workers in international fora, Canada should ratify the ILO Convention on Homework (177) and Part-time Work (175), as well as other ILO labour rights Conventions.[3]

D. Preferential Tariffs and Development Pacts

The federal government should promote adherence to relevant ILO labour rights Conventions, including Conventions 177 and 175, through the negotiation of development pacts, tied to the granting of preferential tariffs. Development pacts negotiated with specific countries with which Canada has significant trade and other relations would provide needed assistance to help those countries bring legislation and enforcement practices in line with internationally recognized labour standards. Development assistance provided as part of the development pact need not be restricted to support for improved monitoring and enforcement of ILO labour standards and domestic legislation, but could also go to helping alleviate underlying socio-economic problems contributing to rights abuses.

As we have suggested above, the development pact approach could be linked with a future industry-wide code of conduct that includes provisions for independent monitoring, certification, and labelling. This would offer the development pact program access to a credible labour rights monitoring and certification mechanism as a resource for its planning and decision making. At the same time, preferential tariff benefits and development assistance provided as part of the development pact would strengthen the effectiveness of the voluntary code.

We have suggested above that there be civil society participation in the review process concerning the renewal of preferential tariff benefits for particular countries. This would allow for the information gained and assessments made of supplier compliance with the industry-wide code of conduct to be fed into the government's review process determining progress in compliance with ILO standards in particular countries.

We have also proposed that Canada work together with the United States and the European Union to ensure that the application of preferential tariffs by the three jurisdictions is fair and consistent. For instance, the three parties might agree to common processes for the transparent application of preferential tariff policies, such as involving the ILO to determine when criteria have been violated.

E. Government Procurement Policies

The federal government should adopt a procurement policy that requires that all apparel purchased by government departments, institutions, and agencies be produced under conditions that satisfy ILO core labour rights and other pertinent ILO Conventions (such as Conventions 177 on the rights of homeworkers, and 175 on part-time work), as well as adhering to the labour legislation in the appropriate jurisdiction, where that legislation provides for higher standards. This policy should apply equally to apparel produced in Canada and other countries.

One method of determining whether apparel has been produced under labour conditions that meet the standards listed above would be to make reference to a certification process tied to a multi-company or industry-wide code of conduct and monitoring system.

This policy would not only act as an impetus to the development of a monitoring and certification system based on ILO standards, but would also provide a positive example to Crown corporations, provincial and municipal governments, and to public institutions throughout Canada.

F. Development Assistance

In addition to the negotiation of development pacts with specific countries, Canada should provide increased support to strengthen the capacity of Southern human rights, religious, women's, and labour groups to play an informed and effective role in the monitoring of manufacturer compliance with ILO standards and local labour legislation.

The government should also consider increasing its support, through the Canadian International Development Agency (CIDA), for current and future NGO initiatives with Southern women's organizations and networks, community groups, worker centres, and labour organizations that offer training on labour

rights and gender issues and other forms of support to women working in free trade zones and living in surrounding communities.

In addition, CIDA should adopt labour rights criteria, based on ILO and UN Conventions, for evaluating projects and programs that it supports.

3. Policy Options to Increase Public Access to Information

The federal government should make available to the public, on request, information on where their clothes were manufactured. One possible mechanism would be to expand the mandate of the CA registration to include information on the manufacturer and/or the contractor(s) that produced the item.

In addition, provincial governments in the four provinces where significant garment production takes place should be encouraged to increase the reporting requirements of apparel companies to require retailers and manufacturers to report (to a publicly accessible body) the names and addresses of the contractors and subcontractors they are using in that province at any given time. This reporting requirement should be integrated with current and future requirements in each province for the registration of companies making use of homeworkers. This information should be communicated to the federal CA registration program and updated on a regular basis.

To be credible, the government must ensure that information is also available to the Canadian public about the various forms of assistance provided to Canadian companies related to their overseas operations. Although the Canadian apparel industry appears to be a small player in terms of direct overseas investment, requirements for government disclosure of information on its support for overseas investment by Canadian companies should be at least as stringent as the above proposals for corporate disclosure.

Areas for Further Research

Throughout our research for this document, we have confronted the problem of the lack of reliable information on the dimensions of home-based and contract shop production in Canada. Although unions, such as the Ontario District Council of UNITE, and a number of academic researchers have done an admirable job in documenting labour rights violations and the problems homeworkers face in particular cities, very little work has been done to document the full extent of the use of homework and contract shop production in Canada and the extent of labour rights violations related to those production practices.

In contrast to the lack of support from federal and provincial governments in Canada for this essential research, we would point to the generous financial support provided by the government of Australia to the garment workers' union in that country to carry out a major national research and public education project that not only documented the extensive use of homework in the Australian garment industry, but also provided homeworkers the opportunity to bring the problems and issues they face to the attention

of the union, the government, citizens, and consumers.[4]

A second area in which information is sorely lacking is on the links between Canadian retailers and manufacturers and the labour practices of their suppliers, contractors, and subcontractors in Canada and overseas. We need much more information on:

- where and under what conditions apparel is being produced in other countries for Canadian retailers;
- what apparel is being purchased through importers and what apparel production is being directly contracted to which factories;
- how much apparel is being produced by foreign investors in export processing zones and how much in domestically owned factories, and on the working conditions and other issues facing workers in those factories.

Much more research also needs to be done tracing the links between Canadian retailers and manufacturers and their contractors, subcontractors, and homeworkers in Canada's garment industry.

A major reason for this lack of information is the totally inadequate access to information or corporate disclosure legislation in this country. However, as the Canadian Friends of Burma[5] have demonstrated, this kind of research is possible, even under current legislation (but only through US sources), and is deserving of support.

Strategy Choices: Steps toward Reform

As we write, the Canadian government is being called upon to convene a federal task force on sweatshop abuses in the garment and footwear industries. The fact that the call for a task force is coming from such a broad range of Canadian organizations and constituencies, including religious organizations, unions, women's groups, human rights groups, community groups, students, overseas development agencies, etc., reflects the current level of awareness and concern about sweatshop abuses that has been generated by recent high-profile corporate campaigns and media exposure of labour rights abuses, particularly in Asia and Latin America.

The apparent willingness of major Canadian retailers, the Retail Council of Canada, and the Canadian Apparel Manufacturers Association to participate in such a task force suggests that this may be the political moment for multi-stakeholder discussions and negotiations on policy options to address sweatshop abuses.

The federal government could take this opportunity to initiate a process in which labour, women's, religious, and non-governmental organizations sit down with apparel retailers and manufacturers and attempt to find common ground on possible solutions to sweatshop abuses. While the initial focus of a task force might be on the negotiation of an industry-wide or multi-company voluntary code of conduct with provisions for independent monitoring, certification, and labelling, consensus could also be

sought on proposals for government action that would complement and reinforce a voluntary code — proposals such as those discussed above.

One important issue that deserves to be given priority whether or not a federal task force is convened is the need for increased access to information on where apparel sold in Canada is manufactured. Without access to this information, neither voluntary nor governmental efforts at monitoring labour practices and encouraging improvements in those practices can be effective. If the apparel industry is not prepared to make this information available on a voluntary basis, the federal government could be pressured to create mechanisms, such as the CA registration, to make that information publicly available.

Given the jurisdictional complexities of Canada's labour relations system, and given the reluctance of most current provincial governments to consider proposals to strengthen employment standards and other labour legislation at this time, it might be difficult for a federal task force to develop a consistent set of proposals applicable to all provincial jurisdictions in which garment production is concentrated. However, a task force could examine ways in which apparel retailers and manufacturers might cooperate with the enforcement of existing provincial legislation, such as periodic audits of contractors by ministries of labour.

Although in the current climate of deregulation most provincial governments appear to be unwilling to consider serious reform proposals — such as joint and several liability — to make retailers and manufacturers more accountable for domestic labour rights violations, it is important that reform efforts be focused not only on off-shore labour practices, or that policy proposals be addressed only to the federal government and/or to the apparel industry. One reform to provincial employment standards legislation that could be achievable in the short term, particularly since it is already in place in British Columbia, is the right to make anonymous and third-party complaints.

A provision for anonymous and third-party complaints would not only lessen the fear of possible loss of employment which prevents many homeworkers and employees of small contract shops from reporting employment standards violations, it could also be a tool for unions and community groups to document the nature and extent of violations in the garment industry and to pressure for adequate monitoring and enforcement of that legislation by provincial ministries of labour. Information received anonymously by third-party advocacy groups could also help document the labels homeworkers are sewing for, and therefore could be used to pressure for measures to make retailers and manufacturers more accountable, such as joint and several liability and a central registry for homeworkers.

Although we see broader-based bargaining as an essential reform for homeworkers, contract shop employees, and other non-standard workers to organize and improve their own situation, this reform will not be high on the agenda of any provincial government unless and until it is identified as a priority by the labour movement. For that to happen, the issue must be taken up within the labour movement by the unions representing workers in the affected sectors and by women's and workers-of-colour caucuses within unions.

Lastly, a key question that requires further attention, and which is not explored in this paper: To what degree are the federal and provincial governments, the women's movement, religious organizations, NGOs, and trade unions in the garment sector and in the broader labour movement prepared to make the problems, issues, and needs of women garment workers a priority, whether they work in overseas export processing zones or sweatshops here in Canada?

Without the concerted support of all these sectors, women working under sweatshop conditions will not be able to organize to improve their situation.

Summary of Recommendations

1. To the Canadian Government

    1. Convene a multi-stakeholder federal task force on sweatshop abuses in the garment and footwear industry in Canada and overseas, and provide financial and other forms of support for it. Although such a task force might initially focus on the garment and footwear sectors, its focus could be expanded, and the principles established could be applied to other consumer products sold by many of the same retailers.

    2. Make certification under an industry-wide or multi-company code of conduct and/or adherence to relevant ILO labour rights Conventions a condition for access to government trade and investment support (for example, for access to the PEMD, EDC, or CIDA).

    3. Promote policies in international development institutions, such as the Multilateral Investment Guarantee Agency and the International Finance Corporation, to ensure that international investment financing and insurance programs reinforce ILO labour standards.

    4. Ratify ILO labour rights Conventions, including Convention 177 on Homework and 175 on Part-time Work.

    5. Promote adherence to relevant ILO labour rights Conventions through the negotiation of development pacts, tied to the granting of preferential tariffs. Such a program could be linked with a voluntary industry-wide or multi-company code of conduct that includes provisions for independent monitoring, certification, and labelling.

        Create mechanisms for civil society participation in the review process concerning the renewal of preferential tariff benefits for particular countries.

        Work together with the United States and the European Union to ensure that the application of preferential tariffs by the three jurisdictions is fair and consistent.

    6. With respect to countries outside of the WTO, consider the continued application of quotas for garments if there is systematic violation of labour rights.

Consider the application of product bans for apparel produced by prison labour or forced child labour, and restrictions on investment in and importation of products from countries with a pattern of ongoing and systematic violations of human rights.

7. Adopt a procurement policy that requires that all apparel purchased by government departments, institutions, and agencies be produced under conditions that satisfy pertinent ILO labour rights Conventions. This policy could be linked to a voluntary code, monitoring, and certification system.

8. Provide increased support to strengthen the capacity of Southern human rights, religious, women's, and labour groups to play an effective role in independent monitoring, and for NGO initiatives with Southern women's organizations, networks, community groups, worker centres, and labour organizations that offer training on labour rights and gender issues related to free trade zones.

9. Create a mechanism, such as an expanded mandate for the CA registration, which would provide for public access to information on where clothes sold in Canada are manufactured. Exchange information with appropriate provincial government bodies to maintain and make available to the public on request updated information on apparel companies' use of jobbers, contractors, and homework.

10. Ensure public access to information on governmental support to Canadian companies investing abroad, including loans, insurance, foreign investment insurance, and other forms of assistance.

11. Provide increased support for research on homework and contract shop production in Canada, the sourcing practices of Canadian retailers and manufacturers in Canada and overseas, and labour practices of suppliers and contractors producing apparel for the Canadian market.

2. To Provincial Governments

1. Introduce legislation providing for joint and several liability all along the chain of production from retailers to subcontractors for employment standards violations.

2. Introduce provisions allowing for anonymous and third-party complaints regarding violations of employment standards legislation.

3. Provide sufficient financial resources and staffing to the Employment Standards Branch to facilitate the timely investigation of complaints. Make a serious commitment to enforce decisions and prosecute violators who fail to pay fines. Implement routine and proactive ESB inspections and audits in order to send a clear message to employers that violations will not be tolerated.

4. Create a central registry for homeworkers, administered by a tripartite committee. Require

employers to apply to the registry for a permit to employ homeworkers, and to register all homeworkers doing work for them. Mandate the registry to provide information and counselling to homeworkers regarding their legal rights, and to act as an agent for homeworkers concerning violations of those rights. Require all entities in the garment chain of production to register and to provide information on the jobbers and contractors producing for them.

5. Consider implementing a system of broader-based bargaining, at least covering workers in the garment sector, building on the experiences and proposals discussed in this document and in consultation with relevant unions and other interested parties.

3. To a Future Task Force on Sweatshop Abuses

1. In order to learn from other experiences and avoid unnecessary problems, a task force should consult early on in the process with participants in parallel initiatives already under way in other parts of the world. It should also consult with and create opportunities for input from Southern labour, women's group, human rights and labour rights advocates, and policy analysts.

2. If the task force determines to negotiate an industry-wide or multi-company code of conduct, monitoring, and certification system, mechanisms should be created to ensure active and ongoing participation of labour and civil society groups in the definition of criteria, decisions on membership, accreditation, monitoring, assessment of reports, certification of companies, and review of accreditations and certifications. Mechanisms should also be created to facilitate the active participation of Southern labour, NGO, human rights, and women's groups in the monitoring, accreditation, and certification review processes.

3. Any funding provided by retailers or apparel companies for monitoring and other related processes should be channelled through a third-party institution in which labour and civil society groups share equal decision-making power with retailers and manufacturers.

4. An industry-wide or multi-company code of conduct should include provisions requiring retailers, apparel companies, and suppliers to abide by local labour and other appropriate legislation, where that legislation is superior to or more inclusive than the terms of the code. The terms of the code should also apply to all subcontractors and to home-based production. Such a code should contain provisions requiring companies and suppliers to cooperate with periodic inspections and audits by appropriate ministries of labour and/or tripartitie bodies.

5. A task force should attempt to achieve agreement on a set of proposals for government action to reinforce and complement the voluntary code, as well as agreement on mechanisms to ensure industry cooperation with the enforcement of existing provincial labour legislation.

6. A task force should also attempt to achieve agreement on mechanisms to ensure public access to information on sourcing practices of apparel companies.

7. A task force should consider developing a label or other mechanism to indicate to consumers that apparel has been produced under conditions that are in compliance with the code of conduct.

Endnotes

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

[2] Alan Howard, "Labor, History, and Sweatshops in the New Global Economy," *No Sweat: Fashion, Free Trade, and the Rights of Garment Workers*, ed. Andrew Ross (New York and London: Verso, 1997), 167–68.

[3] Of the seven International Labour Organization (ILO) Conventions that generally are referred to as constituting "core labour" rights — Freedom of Association (No. 87 and No. 98); Forced Labour (No. 29 and 105); Discrimination (No. 100 and 111), and Child Labour (138) — Canada has ratified only Nos. 87, 105, 100, and 111. The justification often used by the Canadian government for not ratifying labour-related Conventions is that in Canada, provincial governments have jurisdiction over most labour relations matters. Several basic labour rights are also included in the Universal Declaration of Human Rights, the Covenant on Civil and Political Rights, and the Covenant on Economic, Social and Cultural Rights, all of which Canada has ratified.

[4] Textile, Clothing and Footwear Union of Australia, *The Hidden Cost of Fashion: Report on the National Outwork Information Campaign* (Sydney, NSW, Australia: TCFUA, 1995).

[5] Canadian Friends of Burma, *Dirty Clothes, Dirty System: How Burma's Military Dictatorship Uses Profits from the Garment Industry to Bankroll Oppression* (Ottawa: Canadian Friends of Burma, 1996).