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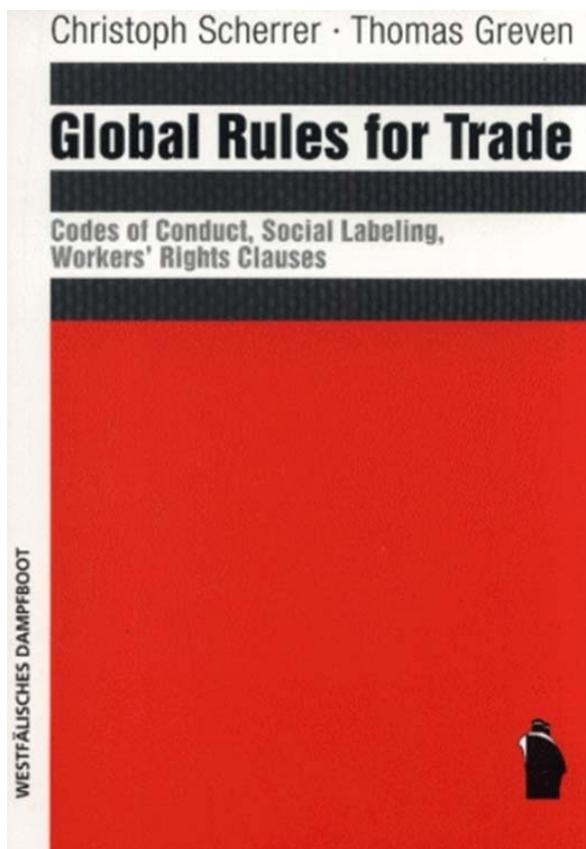
Global Rules for Trade: Codes of Conduct, Social Labeling, Workers` Rights Clauses

with contributions by

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Acronyms and Abbreviations

AIP	Apparel Industry Partnership
AMRC	Asia Monitor Resource Center
ART	Alliance for Responsible Trade
ASPEROLA	Asociación de Servicios de Promoción Laboral
BDA	Bundesvereinigung der Deutschen Arbeitgeberverbände
BIAQ	Business and Industry Advisory Committee
BIS	Bank for International Settlements
BMA	Bundesministerium für Arbeit und Sozialordnung
BMWi	Bundesministerium für Wirtschaft
BMZ	Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung
BVQI	Bureau Veritas Quality International
CAW	Committee of Asian Women
CCC	Clean Clothes Campaign
CEN	European Committee for Standardization
CEP	Council on Economic Priorities
CEPAA	Council on Economic Priorities Accreditation Agency
CIME	Committee on International Investment and Multinational Enterprises (OECD)
CIS	Commonwealth of Independent States
CJM	Coalition for the Justice in the Maquiladores
CMAWCL	Manufactures' Association without Child Labour
COVERCO	Commission for the Verification of Corporate Codes of Conduct/ Comisión de Verificación de Códigos de Conducta de Guatamala
DGB	Deutscher Gewerkschaftsbund
DNV	Det Norske Veritas
EMI	Grupo de Monitoreo de la República Dominicana
EP	European Parliament
ETUC	European Trade Union Confederation
ETUF-TCL	European Unions of the textile and apparel sector
EU	European Union
EURATEX	European Apparel and Textile Organization
FIAN	Food First Information & Action Network
FIET/Euro-	International Federation of Comercial, Clerical, Professional and Technical Employees

FLA	Fair Labor Association
FLO	Fairtrade Labeling Organization International
FLP	Flower Label Program
FNV	Federatie Nederlandse Vakbeweging
GATT	General Agreement on Tariffs and Trade
GIMES	Grupo de Monitoreo Independiente de El Salvador
GSP	Generalized System of Preferences
GTB	Gewerkschaft Textil und Bekleidung
HBV	Gewerkschaft Handel, Banken, Versicherungen
ICC	International Chamber of Commerce
ICEM	International Chemical, Energy and Mine Workers' Federation
ICFTU	International Confederation of Free Trade Unions
IFBWW	International Federation of Building and Wood Workers
ILAB	Bureau of International Labor Affairs (U.S. Department of Labor)
ILO	International Labour Organization (Office)
ILRF	International Labor Rights Fund
IMF	International Metalworkers Federation
IMF	International Monetary Fund
IOE	International Organization of Employers (ILO)
IPEC	International Program on the Elimination of Child Labor
ISO	International Organization for Standardization
ITLGW	International Textile, Leather and Garment Workers Unions
ITO	International Trade Organization
IUF	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers Associations
LARIC	Labour Rights in China
NAFTA	North American Free Trade Agreement
NAALC	North American Agreement on Labor Cooperation
NGO	Non-Governmental Organization
NICs	Newly Industrialized Countries
NLC	National Labor Committee
MAI	Multilateral Agreement on Investment
MEC	Movimiento Maria Elena Cuadra, Nicaragua
OECD	Organization for Economic Cooperation and Development

PPT	Permanent Peoples' Tribunal
SA8000	Social Accountability 8000
SACCS	South Asian Coalition on Child Servitude
TME	Toy Manufacturers of Europe
TNC	Transnational Corporation
TRAC	Transnational Resource & Action Center
TRIPS	Trade-Related Intellectual Property Rights
TUAC	Trade Union Advisory Committee (OECD)
TUC	British Trade Union Congress
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNGASS	United Nations General Assembly Special Session
UNICEF	United Nations Children's Fund
UNITE	Union of Needletrades, Industrial and Textile Employees
USAS	United Students Against Sweatshops
USDOL	United States Department of Labor
U.S.GAO	United States General Accounting Office
US-NAO	United States National Administrative Office
USTR	United States Trade Representative
WCL	World Confederation of Labour
WIPO	World Intellectual Property Organization
WRC	Worker Rights Consortium
WTO	World Trade Organization

Foreword

The debate on workers' rights within the international trade system has gained considerable momentum thanks to the failure of the WTO Millennium Round in Seattle in 1999. The actions and images of 40,000 protesters from all social and national backgrounds in the streets of Seattle have more than just delayed the opening of a new round of international trade negotiations. For the first time since the beginning of the heydays of transnational politics and the rise of international organizations like the International Monetary Fund (IMF), the World Bank, and the World Trade Organization (WTO) to the role of "managers" of global economic policy, the perspective of influencing, if not reforming, one of these major international institutions has become a plausible objective for social and environmental movements all over the world. Social and environmental clauses in the world trade system have been key elements in this mobilization. One may well ask whether any comparable mobilization would have been possible without the inclusion of these themes into the "protest agenda" of the Anti-Seattle coalition.

The quest for minimum social requirements in international trade is not a new theme. As early as the 1970s, when parts of the Third World were integrated into the industrial division of labor, the question of minimum social requirements was raised. The export processing zones gave transnational corporations (TNCs) the possibility to tap into the labor reserves of the Third World without being obliged to adhere to labor laws, environmental and tax regulations in force in these countries. The International Labor Organization (ILO) reacted with the formulation of the "Tripartite declaration of principles concerning multinational enterprises and social policy," which it adopted in November 1977. Several central points of the workers' rights clause debate are already raised in this declaration, especially the rights of freedom of association and collective bargaining, regulations on non-discrimination, and so on. Like today's social standards, these principles were centered around some of the most fundamental labor conventions of the ILO – especially the conventions on forced labor (No. 29), freedom of association and collective bargaining (Nos. 87 and 98), non-discrimination (No. 111), and a minimum age for employment (No. 138).

Yet history has shown that the ILO has lacked the necessary instruments to enforce these principles. The situation in many Third World countries concerning minimum social standards has deteriorated considerably since the 1970s. Competition for investments and market shares in a globalized economy has sharply increased. The level of integration of one-time "marginal areas" into the world economy has grown. Countries like China and India have been integrated into the world economy and have given a new dynamic to international

competition in the area of low-tech industrial production for the world market. The International Confederation of Free Trade Unions (ICFTU) states that much of this competition is based on reduced social standards and increased exploitation: *“The 50 country reports on core labor standards produced by the ICFTU in the last 2 years have provided substantial evidence of governments that have been deliberately keeping labor standards low, with a view to reducing export costs and winning a head start over their competitors on international markets.”* Anecdotal evidence from all continents shows that restrictions of labor rights are increasing and becoming more brutal. According to the ICFTU, in 1998 alone, 123 trade unionists were murdered, 1,650 individuals were attacked or injured, 3,660 were arrested, and about 21,500 people were sacked for trade union activities. Even First World regions – like South Carolina in the U.S. – have tried to attract international investment by declaring their areas more or less “trade union free.”

Labor has reacted to the growing international trade and the emergence of ever more complicated systems of world-wide subcontracting and specialization with the demand for the introduction of social standards into the international trade system. The 1996 World Congress of the ICFTU was the “starting point” for the international labor movement’s campaign for a more systematic and comprehensive approach to this question. The proposal of the international trade union movement calls for linking respect for ILO core labor conventions with trade sanctions within the system of the WTO. Yet this call for social standards has met considerable resistance from an odd coalition of business, government, and civil society in several countries of the South. This does not entirely come as a surprise: Social rights all over the world have had to be won in social conflict. And there are considerable local economic and political interests at stake concerning any of these rights.

Adversaries of social standards have – ever since the ICFTU introduced that demand – criticized these standards as a kind of camouflage operation whose real aims are not social, but economic. Workers’ rights clauses, the central arguments runs, are protectionism in disguise; their principal aim is to eradicate the competitive advantages of the South, which are to a high degree based on cheap labor. As Mexican president Ernesto Zedillo – one of the most outspoken adversaries of workers’ rights clauses – put it at the World Economic Forum in Davos in February 2000: The motives of the “globalophobics” are *“nothing but rhetorical subterfuges, whose aim is to occult a pure protectionism which is directed essentially against the developing countries”* (Zedillo 2000).

Shortly before the opening of the Seattle talks, a group of Third World scholars and intellectuals – among them prominent progressive leaders of Third World civil society like

Walden Bello, director of *Focus on the Global South* – issued a document stating that “*we see that the moral face of these developed-country lobbies agitating for higher labor and environmental standards in the developing countries, whether they are labor unions or corporate groups, is little more than a mask which hides the true face of protectionism*” (Bello 1999).

Given these antagonistic positions, the Friedrich Ebert Foundation has supported the elaboration of the present study to examine the “pros and cons” of workers’ rights clauses as one possible instrument toward bringing the international trade system on a more socially viable path and preventing a world-wide “race to the bottom” to the detriment of man and nature. Respect for workers’ rights, as one of the most interesting arguments of the present study goes, will not so much affect North-South relations and competition but put the competition between the emerging economies of the South on a much more solid base. This will promote the development of social and labor relations, which are ultimately much more favorable for economic development than a blind, export-driven development based on over-exploitation and social repression. As Dieter Senghaas, referring to historical development in Europe, puts it, countries have the choice between the “Danish path” (to development) and the “Romanian path” (to underdevelopment and stagnation). Core labor standards would possibly help countries to embark on the Danish path.

The authors have also looked for existing alternatives. New instruments of social policy based on consumer behavior and public pressure on transnational corporations have emerged world wide in the last twenty years. Ever more TNCs are currently developing their own codes of conduct, defining minimum requirements in social and environmental terms. And ever more “social labels” have been developed, certifying the respect for fundamental social norms during the production process of a given merchandise. “Shopping for a better world,” as the slogan goes, is one of the most interesting and innovative tendencies of the last few years in the area of social politics and human rights. Yet, like all instruments, this one has its own shortcomings and weaknesses. Only the intelligent combination of a wider array of instruments and its skillful implementation by a large coalition of concerned consumers, new and old social movements, government, and business will bring about the necessary changes in the international trade system. As long as there are 250 million children working as child laborers, there will be cause for engagement – in the North as well as in the South.

Ernst Hillebrand

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Ü1. Protecting Labor in the Global Economy

While international trade has resulted in great affluence for OECD member countries, the ongoing liberalization of trade does not go along with increases in prosperity everywhere. In many emerging market economies, working conditions, wages, and environmental standards have deteriorated particularly in the plants producing for export. Every year, the International Confederation of Free Trade Unions (ICFTU) documents widespread abuses of workers' rights. While only about 10 percent of the goods traded globally are produced in the context of such violations, according to the ICFTU the risk of union organizers being harassed, arrested, or killed has increased in recent years

(<http://www.icftu.org/english/turights/etuindex.html>).

Neither the IMF-prescribed reliance on export-led growth nor the wave of democratization after the end of the Cold War has changed the situation in developing countries for the better. In general, the relative power of labor and capital has shifted at the expense of the former. Several instruments are under discussion in terms of remedying this situation.

Recently, the International Labour Organization's reliance on code-writing and moral suasion has attracted renewed interest. The ILO's tripartite system has produced more than 180 conventions on labor matters, ranging from core labor rights like freedom of association and the right to organize, to rather technical issues. The problem with the ILO's conventions—and very likely the reason why many interested parties have “rediscovered” the ILO – is not only that ratification is voluntary but that compliance is essentially also voluntary since the ILO has no enforcement mechanism to speak of. The court of public opinion is called upon through cautiously worded ILO reports on violations of individual countries.

The international labor movement has reacted to the ILO's ineffectiveness in dealing with labor rights abuses in the context of a rapidly globalizing economy by calling for a so-called social clause, i.e., a labor rights provision to be embodied in the World Trade Organization (WTO). According to the proposal of the International Confederation of Free Trade Unions, the WTO would cooperate with the ILO in executing the social clause (see chapter 6). Still, due to the opposition of governments of developing countries at WTO ministerials, consensus has not even been achieved on a U.S. proposal to establish a working party that would study the relationship between trade and labor standards. Because of a lack of progress in terms of social clauses, labor rights advocates have increasingly turned to the instruments of voluntary codes of conduct and social labeling.

Following are the most common definitions of key terms in the debate about securing social rights in world trade:

Social standards is a comprehensive term for minimum standards in employment (i.e., work time, wages, social security) and workers' rights.

Workers' rights (or *labor rights*) refer to the core rights of freedom of association, collective bargaining, and prohibition of forced labor, child labor, and discrimination in employment.

Workers' rights clauses (or *social clauses*) are provisions in trade agreements or trade legislation that include regulations on social standards. They provide a mechanism for enforcing workers' rights internationally.

Codes of conduct are written guidelines that serve as a basis for transnational corporations' behavior toward state institutions, workforces, suppliers, and the environment in the respective host country.

Social labeling provides information on working conditions according to minimum social standards to enable consumer decisions based on social preferences. Social labels can be awarded to individual products and to whole corporations.

Today, codes of conduct and social labeling initiatives are related and complementary instruments. Originally, the call for codes of conduct was a call for an international regulation of the behavior of transnational corporations (TNCs). When this proved to be politically unfeasible, activists were content with codes issued by international organizations, whose adoption and enforcement were voluntary. In recent years activists have used consumer power to pressure specific companies to adopt individual codes of conduct and to actually enforce them. The concept of social labeling, by contrast, starts out by using the market. It relies on consumers' decisions to buy products that were manufactured according to fair working conditions. A precondition for a social-labeling program, however, is the existence of some kind of code of conduct whose adoption and enforcement entitles the use of the label. The necessity of making social-labeling programs attractive to as many companies as possible led to cooperation with state authorities, both in the developing countries (e.g., *Rugmark* in India) and in the industrialized countries (e.g., the *Apparel Industry Partnership* in the U.S.). As the harmonization of social labels is increasingly deemed to be desirable, interest in standardizing the labels in cooperation with international organizations is growing. And among advocates of codes of conduct, there is increasing interest in using social labeling to provide incentives for companies to adhere to a code.

Part I contains a brief history of the debate on minimum social standards (chapter 1), the policy positions of relevant actors on the three instruments (chapter 2), an overview of the

extent of violations of labor rights (chapter 3), an overview of the embodiment of workers' rights in international law (chapter 4), and a discussion of economic justifications for international workers' rights (chapter 5). In part II, we look at trade agreements as a means of enforcing international workers' rights (chapter 6) and at the experiences with workers' rights clauses in U.S. trade law (chapter 7). Part III features analyses of codes of conduct (chapter 8) and social labeling initiatives (chapter 9) as instruments to achieve global rules through consumer power. In part IV, we provide a comparative assessment and our conclusions.

1. A Brief History of the Debate

The debate on international labor standards goes back to the early 19th century. As early as 1833, the insight that the newly established regulations of the domestic labor market could be affected by world market competition led a member of the British Parliament, Charles Frederick Hindley, to suggest an international treaty on working hours. A second pioneer of the concept of international social standards was Daniel Legrand, a factory owner from Alsace, who between 1838 and 1855 suggested international factory laws in many memoranda to European governments. In the second half of the 19th century, labor law reform and the idea of international regulation were discussed at many conferences. In 1890, the first treaty on international social standards already included a linkage with international trade: a prohibition of the trade in slaves. Starting in 1897, conferences focusing on international social standards and labor legislation were held in Zurich and Brussels, leading to the founding in 1901 of an International Association of Labor Legislation and the establishment of an International Labor Office in Basel. In 1905, two conventions were adopted at a conference of the Association in Bern: a prohibition of night work for women, and a prohibition of the use of white phosphorous in industry, particularly in the manufacture of matches, as well as a prohibition of trading such matches (Leary 1996: 184-185; Charnovitz 1992: 339; Charnovitz 1987: 569).

In the years following these conventions, which were ratified throughout Europe, a number of bilateral agreements on conditions of work were negotiated (e.g., an agreement between France and Italy on the harmonization of working conditions in 1904) until the First World War stopped these developments. In 1919, under the impression of the war and the subsequent revolutions, the peace treaty negotiators in Versailles agreed to the founding of the International Labour Organization (ILO). This decision was guided by the insight that social injustice is a major cause of war and revolution. The ILO's main characteristic is its

tripartite organization. Each member country delegates two government representatives, one employer and one union representative to the institution's governing bodies. Until today, the ILO has drafted and passed 182 conventions on labor standards, with approximately 6,300 ratifications of the 175 member states (current data at <http://www.ilo.org>).

The preamble of the ILO's constitution explicitly refers to the relationship between social standards and international competition: "Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries." The ILO has consistently relied on consensus and voluntary action as mechanisms for passing and enforcing the conventions on social standards. The annual International Labor Conference passes conventions that are only binding for those member states that ratify them. ILO membership, however, does entail reporting on all conventions. Moreover, Convention no. 87 on the freedom of association is binding for all members, and includes special enforcement mechanisms, short of actual coercion. After 1919, the ILO focused on technical questions concerning actual working conditions. The conventions passed on these questions contained flexibility provisions to take into account countries with low levels of development (Leary 1996: 187). In today's discussion of international social standards the focus is generally on the following core labor rights embodied in ILO conventions:

- The Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87; 129 ratifications as of May 31, 2000; cf. <http://www.ilo.org> for current data), establishes the right of all workers and employers to form and join organizations of their own choosing without prior authorization, and lays down a series of guarantees for the free functioning of organizations without interference by the public authorities;
- the Right to Organize and Collective Bargaining Convention, 1949 (No. 98; 146 ratifications), provides for protection against anti-union discrimination, for protection of workers' and employers' organizations against acts of interference by each other, and for measures that promote collective bargaining;
- the Forced Labor Convention, 1930 (No. 29; 153 ratifications), requires the suppression of forced or compulsory labor in all its forms. Certain exceptions are permitted, such as military service, convict labor properly supervised, and emergencies such as wars, fires, earthquakes, and so forth;
- the Abolition of Forced Labor Convention, 1957 (No. 105; 147 ratifications), prohibits the use of any form of forced or compulsory labor as a means of political coercion or

- education, punishment for the expression of political or ideological views, workforce mobilization, labor discipline, punishment for participation in strikes, or discrimination;
- the Discrimination (Employment and Occupation) Convention, 1958 (No.111; 142 ratifications), calls for a national policy to eliminate discrimination in access to employment, training and working conditions, on grounds of race, color, sex, religion, political opinion, national extraction, or social origin and to promote equality of opportunity and treatment;
 - the Equal Remuneration Convention, 1951 (No. 100; 146 ratifications), calls for equal pay for men and women for work of equal value;
 - the Minimum Age Convention, 1973 (No. 138; 89 ratifications), aims at the abolition of child labor, stipulating that the minimum age for admission to employment shall not be less than the age of completion of compulsory schooling;
 - the Worst Forms of Child Labour Convention, 2000 (No. 182; 16 ratifications, will take effect in November 2000), while in no way supplanting Convention no. 138, prioritizes dealing with child labor in its most extreme forms, such as all forms of slavery; the use, procuring, or offering of a child for prostitution; and work which is likely to harm the health, safety, or morals of children.

The majority of these ILO conventions have achieved the status of universally accepted human rights. They have been reaffirmed in many international treaties and declarations; for instance, at the World Social Summit in Copenhagen in 1995 (see chapter 4). In 1998, the ILO adopted a *Declaration on Fundamental Principles and Rights at Work* concerning an obligation of all ILO Members to respect and promote the fundamental rights even if they have not ratified the conventions. A follow-up mechanism was also agreed to, modeled after the special mechanism developed for the Freedom of Association Convention, falling short of sanctions (cf. <http://www.ilo.org>).

The draft constitution of the stillborn International Trade Organization (ITO) included an explicit, albeit vague, linkage of trade and social standards in Chapter II, Art. 7: “1. The Members recognize ... that all countries have a common interest in the achievement and maintenance of fair labour standards related to productivity, and thus in the improvement of wages and working conditions as productivity may permit. The Members recognize that unfair labour conditions, particularly in production for export, create difficulties in international trade, and accordingly, each Member shall take whatever action may be appropriate and feasible to eliminate such conditions within its territory. 2. Members which are also members of the International Labour Organization shall co-operate with that

organization in giving effect to this undertaking. 3. In all matters relating to labour standards that may be referred to the Organization ... [under dispute settlement provisions of the Charter] ... it shall consult and co-operate with the International Labour Organization” (quoted in Leary 1996: 198).

While this proposed social clause did not lead to the demise of the International Trade Organization, no similar provision was included in the General Agreement on Tariffs and Trade (GATT), which merely extended to member states the right to discriminate against products made with prison labor in Article XX(e). Starting in 1953, the United States repeatedly proposed a social clause for the GATT. Occasionally endorsed by France and Scandinavia, the proposal failed to ever attract support from developing countries (Perez-Lopez 1988: 257-259). In the 1980s, the U.S. included unilateral social clauses in its preferential trade programs (see chapter 7).

In the context of increased pressures of the global economy, the international labor movement – which had always endorsed the concept of an international labor standard – ‘rediscovered’ the issue in the early 1990s and started to mobilize support for a social clause in the GATT and its successor organization, the World Trade Organization (WTO) (ICFTU 1999a). The ILO shied away from trade sanctions and was heavily criticized for not securing actual enforcement of its conventions (ILO 1994; Scherrer et al. 1998: 17-18).

2. Policy Positions of Relevant Actors

Following are the positions of a range of important actors on the three instruments discussed in this study: workers’ rights clauses, codes of conduct, and social labeling. The selection is by no means representative but reflects an attempt to include positions from different geographical regions as well as from different interests within societies.

3. Labor Unions

Unions and International Trade Secretariats in the textile and apparel sector started to push for the inclusion of workers’ rights clauses in international trade as early as the 1970s. At first, the German textile workers’ union Gewerkschaft Textil und Bekleidung (GTB) advocated including in a workers’ rights clause not only the core labor rights but also reference to minimum wages and a 48-hour working week. This led to criticisms of protectionism because it was specifically in the textile sector where developing countries were successful based on

low wages. Unions in the metal sector, which endorsed the demand later, learned a lesson from the critique. While the International Metalworkers Federation (IMF) devised a comprehensive International Social Charter – without explicitly outlining an implementing mechanism – the German IG Metall’s proposal for a workers’ rights clause focused on the core rights (Braun 1995: 29-34).

In 1992, at the latest, national and international labor federations, such as the AFL-CIO, the German DGB, the International Confederation of Free Trade Unions (ICFTU), the World Confederation of Labour (WCL), and the European Trade Union Federation, vigorously endorsed the demand of the textile and metal sector unions and advocated a workers’ rights clause at the Uruguay Round of GATT negotiations, which were at the time coming to an end. The DGB’s federal executive board proposed on July 5, 1994, that the workers’ rights clause would merely authorize member states of the World Trade Organization (WTO), in accordance with GATT rules, to sanction those countries that violated fundamental workers’ rights in a serious and continuous manner and refused to improve the situation. The proposal did not include an obligation to impose trade sanctions.

In July 1999, during preparations for the Third WTO Ministerial Conference, the German labor federation DGB reaffirmed its commitment to a workers’ rights clause and issued recommendations similar to the positions of the International Confederation of Free Trade Unions (for details, cf. chapter 6). The DGB stressed the necessity of embedding a workers’ rights clause into a general approach for fostering development, proposing:

- financial support from industrialized countries in the context of the WTO, i.a., marketing support; support targeted at enabling the use of the WTO’s trade-related conflict resolution mechanisms;
- renegotiation of the agreement on trade-related intellectual property rights (TRIPS) to enable the technology transfer urgently needed by developing countries (and specifically to grant exceptions concerning life-supporting medication);
- abolition of industrialized countries’ tariffs and import quota for those least-developed countries that respect core labor rights;
- improved market access for exports from developing countries by repealing industrialized countries’ trade-distorting measures like export subsidies;
- an exemption for developing countries from certain liberalization obligations and other WTO rules in order to appropriately take into account different levels of development (DGB 1999).

As late as 1995, the large Indian labor federations had opposed workers' rights provisions, claiming there were protectionist motivations behind them (Haas 1998: 117-124). But prior to the WTO's first Ministerial Conference in Singapore in December 1996, the international labor movement reaffirmed its demand for a workers' rights clause unanimously. At the 16th ICFTU World Congress in Brussels, roughly 800 delegates, representing 127 million employees organized in 196 labor federations in 136 countries, unanimously passed eight core elements for building global solidarity. The proposal of a workers' rights clause ranked first (Freie Gewerkschaftswelt July/August 1996: 5). This unity between unions from the North and South was reaffirmed at an international union conference in Singapore, right before the WTO Ministerial. At the third WTO ministerial in Seattle in 1999, a remarkable international coalition of more than 700 organizations assembled between 40,000 and 60,000 people on the streets, among them at least 25,000 unionists. The major labor-sponsored rally included people from 144 countries (Brecher et al. 1999). The demand for a linkage of labor rights with trade was at the center of the protesters' agenda.

The International Confederation of Free Trade Unions, in cooperation with International Trade Secretariats, has developed a model code of conduct (see chapter 8) and has supported, together with the British Trade Union Congress (TUC), the campaign for a code of conduct in the toy industry. It prefers "framework agreements," i.e. agreements negotiated between companies and International Trade Secretariats, to unilaterally adopted company codes (ICFTU 1999a: 61-66). The Clean Clothes Campaign (see chapter 8) receives support from the German DGB-Nord-Süd-Netz and the German unions HBV and IG Metall, which includes the former textile workers' union, GTB (IG Metall 1999: 25-31).

Recently, the German trade union federation DGB, which generally supports codes of conduct but calls for more union participation (Engelen-Kefer 2000: 6), has demanded that "the OECD guidelines for multinational enterprises have to be updated so that they include all minimum social standards. In order for them to be effective, their ongoing revision must feature an efficient enforcement mechanism" (DGB 1999; cf. the position paper of the DGB executive council, DGB 1998). As regards codes of conduct, the central question unions have is whether they cover the rights of freedom of association and collective bargaining. Also, unions consider workers' elected representatives the best form of monitoring. "The ICFTU believes that codes should not be a substitute for collective bargaining and that, to be meaningful, codes of labor practice must have the effect of creating space for worker self-organization and collective bargaining" (Justice 2000: 6).

Unions principally support the instrument of social labeling. For example, unions participate in the *Rugmark* initiative, in the German *Transfair* labeling program, and in the *Clean Clothes Campaign*. Their main objective is the inclusion of freedom of association and the right to bargain collectively in the codes of conduct underlying the social labeling programs. The example of the *Apparel Industry Partnership* shows that these fundamental objectives can lead to conflict, not only with participating employers but also with participating NGOs (see chapter 8). This is because unions rightfully see their role as representatives of employees jeopardized if agreements about wages, working time, and other conditions are made without progress on or even consideration of the freedom to form a union.

The department for labor market policy and international social policy of the German DGB has argued that “the effectiveness of codes will not depend on the certification of goods coming to Germany. Certifications and social labels may, however, be in the interest of companies and may be a motive to even adopt a code. Because of this, the possibility of certification must be considered. It can only be certified, however, that the company has subjected itself to the rules of the monitoring institution, and not that the product in question was produced under ethically perfect conditions” (DGB 1998).

Non-Governmental Organizations

Among German non-governmental organizations, the Catholic organization *Misereor* has advocated workers’ rights clauses (Piepel 1995b), as has the *Institut Weltwirtschaft, Ökologie & Entwicklung* (WEED; Falk 1996). *German Watch* supports workers’ rights clauses but sees the role of the WTO only in waiving GATT rules to allow sanctions of the International Labour Organization (Palm 1996: 217). The German section of FIAN (*Food First Informations- und Aktionsnetzwerk*) sees “more risks than opportunities” and takes a position similar to that of the Third World Network (see below; Windfuhr 1997).

The British organization *Oxfam* is among the most prominent international supporters of workers’ rights clauses (Coote/LeQuesne 1996). It proposes to first focus such a clause on the ILO conventions no. 87 and no. 98 on freedom of association and the right to collective bargaining because their implementation is a precondition for achieving progress concerning the other core rights. *Oxfam* opposes a minimum age for child labor (ILO Convention no. 138), reasoning that such a requirement would be counterproductive if no alternatives were provided for the children. The proposal of the International Confederation of Free Trade Unions (ICFTU) for an institutionalized cooperation between ILO and WTO concerning

implementation of a workers' rights clause is supported by *Oxfam*. Trade sanctions should only be considered as a last resort (ibid.: 47-58). *Anti-Slavery International* actively supports workers' rights clauses, as does SOLIDAR, the development policy arm of the welfare organizations close to labor.

In the United States, numerous non-governmental organizations (NGO) have advocated workers' rights clauses. Organizations like *The Development GAP* and *Global Exchange*, loosely allied within the *Alliance for Responsible Trade* (ART), have signed a proposal called "Alternatives for the Americas," which is supported by NGOs across the continent and advocates an American free trade zone based on respect for social and environmental standards (ART et al. 1998). ART and the *Coalition for the Justice in the Maquiladoras* (CJM) also are co-signatories of a joint resolution of NGOs and unions from all over the American continent ("Building a Hemispheric Social Alliance to Confront Free Trade") that was passed in May 1997 at an event held parallel to a trade ministers' meeting on the Free Trade Area of the Americas. The union-supported *National Labor Committee* in New York, founded in the 1980s to counter the anticommunist AFL-CIO foreign policy with a human rights focus, has also supported workers' rights clauses (NLC 1995).

Two surveys of non-governmental organizations from developing countries show strong support for workers' rights clauses. *Erklärung von Bern*, a network of roughly 70 Swiss organizations that issued the *Swiss Declaration on the Social Clause* in March 1995, and *Brot für alle* jointly commissioned a survey of 67 NGOs of the South and Eastern Europe. About half of these organizations were non-church organizations, 32 percent were church based, and 13 percent were unions. Ninety-one percent of the organizations supported a workers' rights clause, and 95 percent supported an environmental clause. Fifty percent of the surveyed organizations supported a cooperation between WTO and ILO concerning the implementation of a workers' rights clause (Egger/Schümperli 1996).

A survey among 26 partner organizations of *Misereor* showed that Asian non-governmental organizations are more skeptical regarding a workers' rights clause in world trade than are Latin American and African organizations. A majority opposed trade sanctions because they believed that the poorest would be hit hardest; positive incentives as well as financial and technical support, however, found support (Piepel 1995b: 93-98).

One of the harshest critics of the World Bank, International Monetary Fund, and Northern and Western economic dominance, Martin Khor of the *Third World Network* in Kuala Lumpur (Malaysia), has eloquently raised his voice against workers' rights provisions and specifically against any role for the WTO, which he dubbed "an animal controlled by the North" (Khor

1995: 33). To Khor, the fundamental argument against workers' rights provisions is the protectionist motivation of its implementation: "The attempt...to introduce 'labor standards' and 'workers' rights' as issues for the WTO to take up is quite clearly prompted not by feelings of goodwill toward Third World workers, but by protectionist attempts to prevent the transfer of jobs from North to South" (quoted in LeQuesne 1996: 51). Khor goes on to argue that the low wages in the developing world are not based on intentional policies and that adjusting to Western standards would result in a loss of comparative cost advantages (LeQuesne 1996: 53; cf. Khor 1994).

A large number of Indian non-governmental organizations are also strongly opposed to workers' rights clauses. A declaration of all major Indian labor federations, women's rights and human rights groups, universities, action networks, aid organizations, and others, called upon the fifth conference of labor ministers of the Non-Alignment Movement in March 1995 in New Delhi to reject workers' rights clauses on the basis of protectionist motives. This position was reaffirmed in the Bangalore declaration of October 1995, but this time it was combined with a critique of the World Bank and International Monetary Fund. Also, alternatives to workers' rights clauses were discussed, with a focus on proposals concerning a UN convention on workers' rights, increased use of social labeling (which had proven to be successful in the fight against child labor), and the founding of a National Commission on Workers' Rights (Haas 1998: 117-124; National Consultation on a Social Clause in Multilateral Trade Agreements, October 27-29, Bangalore 1995).

The *South Asian Coalition on Child Servitude* (SACCS), however, as well as the South East Asian NGO Forum in July 1994, welcomed the possibility of trade sanctions for violations of core workers' rights because it would intensify the dialogue on exploitative working conditions in all affected countries (Haas 1998: 117-124; Piepel 1995a: 122).

In contrast to the demand for workers' rights clauses, campaigns for codes of conduct have found undivided support among numerous human rights, development policy, Christian missionary, and women's non-governmental organizations. *Oxfam* and *Save the Children Fund*, for example, participate in many campaigns. In the U.S., there are campaigns targeted at individual corporations, such as *Global Exchange's* Nike campaign, as well as broader initiatives. Recently, numerous anti-sweatshop campus activities and groups have attracted media attention. Students engaged in these efforts call on university administrations to condition the award of licenses for the production of collegiate wear on the adoption and enforcement of a code of conduct (Cooper 1999; see chapter 9).

The *Clean Clothes Campaign*, which has developed a particularly elaborate code, is supported by a broad array of non-governmental organizations. Its German section, for example, is sponsored by *Südwind - Institut für Ökonomie und Ökumene*, *NRO-Frauenforum*, *Katholische Arbeitnehmer-Bewegung*, *Terre des Femmes*, *Christliche Initiative Romero e.V.* and others. The Green Party's *Heinrich Böll Foundation* has developed its own code of conduct, which extends to corporate governance issues like bribery and corruption, as well as to environmental standards (Altvater 1998).

Protection of women and children, and sometimes workplace issues like safety, health and a 'living wage,' are at the center of many activities of non-governmental organizations regarding codes of conduct. Union rights (i.e., freedom of association and the right to bargain collectively) rank lower.

Numerous non-governmental organizations from different backgrounds participate in social-labeling initiatives. In Germany, the Catholic *Misereor* is not only an associate of *gepa*, active for 20 years in alternative trade with the Third World, but also one of 37 members of *Transfair e.V.*, which awards a label for fairly traded products.

For non-governmental organizations, social-labeling initiatives have proven to be consensus instruments across borders, particularly North-South. Conflicts remain regarding the underlying codes of conduct, especially in terms of the certification, monitoring, and public disclosure of production facilities.

Advocates of the classic alternative trade criticize that social-labeling initiatives cause decreased sales for Third World stores. Regular retailers can offer fairly traded products such as coffee while not losing sales because they can at the same time offer products that were produced in a manner not meeting fair standards, and which are usually preferred by the consumers on account of their lower price (Frank/Scherrer 1996: 1496).

&Ü3&Employers

The employer associations represented in the ILO have rejected workers' rights clauses, with the exception of those of France, Belgium, and Argentina (Hess 1995).

Only 52 of 305 German companies operating internationally responded to a survey on child labor commissioned by UNICEF. Of these 52 companies almost half had never checked whether their suppliers use child labor. According to UNICEF, only five companies systematically and vigorously deal with the issue (taz, July 31, 1998, p. 1).

In a 1994 working group on trade and labor rights of the German employer association (Bundesverband der Arbeitgeber, BDA), only two member industries voiced sympathy for a workers' rights clause: the wood and plastic industry and the textile industry. The overwhelming majority of BDA members strongly rejected the concept. The BDA's trade expert stressed that employers are not opposed to minimum international labor and social standards. Rather, the opposition is directed solely against using trade policy as an enforcement mechanism (Hess 1995).

In the 1990s, consumer and union campaigns have increased the interest of business in codes of conduct. Particularly the headquarters of U.S. companies are concerning themselves with the development of such codes (White 1997). Under societal pressure, individual firms and some business associations have been willing to negotiate codes of conduct with unions, NGOs, and government agencies. During such negotiations, they usually strongly oppose including union rights, establishing independent monitoring, and the public disclosure of production facilities, i.e., suppliers and subcontractors (ILO 1998a: 12). While retailer C&A and mail-order company Otto have agreed to include the rights of freedom of association and collective bargaining in their codes as recommendations, C&A considers the model of independent monitoring proposed by the *Clean Clothes Campaign* unrealistic. Otto, C&A, and German retailer Karstadt, however, are no longer fundamentally opposed to NGO participation in the monitoring process. In April 1999, Otto opted for the certification program SA 8000 (CCC Newsletter No. 10, July 1999; see chapter 9).

According to the above-mentioned ILO study, the code of conduct of the European textile industry is the only one that includes a commitment by companies to incorporate the agreement into local collective bargaining agreements, which would make the code subject to contract law obligations in the specific national context (ILO 1998a: 12).

The European Foreign Trade Association held an internal conference in May 1999 in Brussels, attended by representatives of the ILO and the *Clean Clothes Campaign*, with the objective to gather information on various models of monitoring social standards.

With the exception of the French employer association, all associations opposed mandatory codes of conduct for multinational corporations established by international organizations. They did, however, stress the positive role of voluntary codes of conduct (IOE 1999). A draft position paper of the German employer association (BDA) supported the June 1998 ILO *Declaration of Fundamental Principles and Rights at Work* and the social efforts of companies operating internationally but stressed that these efforts need freedom to develop. A guarantee of suppliers' labor standards was unrealistic (BDA 1999).

Aside from unified opposition to corporate disclosure, employers are split on the issue of social-labeling initiatives. On the one hand, there are those who welcome market-oriented measures – implicitly because of the threat of tougher measures like workers’ rights clauses. On the other hand, some companies are opposed to the awarding of social labels because of its implicit criticism of other products and producers. Klaus R. Beekmann, secretary-general of *Care & Fair*, for example, argued in a memorandum to the U.S. Department of Labor: “...the carpet trade rejects any label on a single carpet generally. It is a fact that one carpet with a label will bring into discredit all carpets without labels ...” (quoted in USDOL 1997: 47).

In its reaction to developing social-labeling initiatives, companies are more creative today than they were with the ‘white labels’ of the *Consumers League* at the beginning of the 20th century. While back then there were many applications for membership (until legislation surpassed the standards embodied in the label), today there is a large supply of company labels that sometimes only suggest claims, or make claims that cannot be checked, and of company codes with the same flaws.

The following examples, however, show that there is a wide range of different approaches. The establishment of the *Child-Friendly Company Program* of the Abrinq Foundation, an initiative of Brazilian business, was made possible by a donation from a Brazilian company. Abrinq features labeling programs in the shoe industry, and is also a member of the CEPAA’s advisory council for the certification mechanism SA 8000 (see chapter 9). The Brazilian *Pro-Child Institute* – in the shoe industry – was also established upon the initiative of companies. Both programs award labels on the basis of pre-checks; however, only in the case of Abrinq do these include participation of NGOs and unions. Also, there is neither independent monitoring nor full transparency: Many employees in the production chain have no knowledge of the companies’ commitment (USDOL 1997: vi, 74-83).

Companies with well-established brands are particularly skeptical of participating in social-labeling initiatives because the labels would be awarded to other companies as well. “Our best social label is our brand label,” said Alan Christie of Levi-Strauss at the EU-US Symposium on Labor Standards in Brussels in February 1998 (DG-V/USDOL 1998). In 1992, Levi-Strauss was the first of many U.S.-based companies to include good “conditions of production in its image-planning” (Braßel/Windfuhr 1995: 90).

&Ü3&National Governments

In the German government under Helmut Kohl, the Labor Ministry (BMA), which represents Germany at the ILO, and the Economics Ministry (BMWi) generally agreed on opposing trade sanctions (Willers 1995: 34-35). The Labor Ministry, however, advocated the use of positive incentives, i.a., in the European Union's Generalized System of Preferences, for countries that observe core labor rights. At the first WTO Ministerial in Singapore in 1996, Economics Minister Günter Rexrodt worked behind the scenes with EU Commissioner Sir Leon Brittan to ensure that the European Parliament's endorsement of workers' rights clauses would not be reflected in the Commission's position, and opposed workers' rights clauses in his speech (Rexrodt 1996).

The coalition agreement of the new German government under chancellor Gerhard Schröder contains cautiously supportive language, but for a long time the minister for economic cooperation and development (BMZ) was alone with the following demand: "If minimum social standards are not met in production (social dumping), this can lead to international distortions of competition through cheap imports, which are manufactured by getting round internationally recognized rights of workers. Here too it is the task of development policy to reach agreement on international *minimum social standards* and to ensure that they are respected. In this context I would like to recall the development policy initiatives on combating child labor. ILO and WTO have to increase their activities on this issue" (Minister Heidemarie Wieczorek-Zeul, BMZ, at the VIP Panel of the World Bank Forum on "Putting People First," January 27, 1999, Munich). In the fall of 1999, the Ministry for Economic Cooperation and Development introduced core workers' rights as new criteria for the successful cooperation with partner countries. The new policy focuses on supporting the partners, but in serious cases of violations cooperation can be restricted (Minister Heidemarie Wieczorek-Zeul, BMZ, at the DGB, DGB-Bildungswerk, terre des hommes, and WEED conference on the "World Social Summit 2000," May 11, 2000, Berlin).

The Economics Ministry held back in the first half of 1999, referring to the opposition of developing countries. In July 1999, however, in a roundtable discussion with representatives of the German labor federation DGB and several affiliated unions, Economics Minister Müller signaled that the federal government would advocate a working group on "Trade and Labor Standards" at the third WTO ministerial in Seattle at the end of November. He said it was clear that in order to realize this demand concessions would have to be made to the developing countries in other areas. He stressed at the same time that the mandate of such a working group should not be too closely defined in the run-up to the ministerial (Interview with Gilbert Marchlewitz, DGB, October 6, 1999; cf. BMZ 2000: 3).

The governments of the United States, France, and the Scandinavian countries have strongly pushed for workers' rights provisions (Leary 1996: 189-190). Passage in 1988 of the *Omnibus Trade and Tariff Act* effectively committed the U.S. delegation at the Uruguay Round of GATT negotiations to support core labor rights (Gladbaw/Medwig 1996: 151). After this GATT round ended without workers' rights clauses, the Clinton administration remained committed to advocating the issue within the WTO. The Republican party, however, which has held the majority in both houses of the U.S. Congress since 1994, is strictly opposed to workers' rights clauses (Scherrer 1999: 304-314).

The government of Malaysia has assumed leadership among the adversaries of workers' rights clauses. It tries to unite all so-called newly industrialized and developing countries behind its position, and to stylize the issue in terms of a conflict between the North and the South. But not all governments of emerging market societies follow Malaysia. At the WTO ministerial in 1996, the ministers of Argentina, Chile, and Uruguay, among others, supported an institutionalized cooperation between the WTO and the ILO. At the Seattle ministerial in 1999, the developing countries' opposition remained steadfast publicly but there were reports of progress toward a compromise regarding a working group on "Trade and Labor Standards" in the 'green room' discussions (Köppen 2000: 22).

German governments under chancellors Kohl and Schröder have supported the *Rugmark* labeling initiative, which is based on a code of conduct prohibiting the use of illegal child labor (Haas 1998, see chapter 9).

In 1995, the Clinton administration developed *Model Business Principles*, which call for the adherence to ILO core labor rights without explicitly referring to ILO conventions, and in 1996 it endorsed the *Apparel Industry Partnership* (see chapter 8).

The *Ethical Trading Initiative* is supported by the British government; the governments of Canada, Australia, and New Zealand have developed their own guidelines (ILO 1998a, note 42).

Many governments, including those of developing countries, welcome the instrument of social labeling. In Germany, the Kohl government supported voluntary initiatives for labeling goods produced without child labor but not national or European legal initiatives. The minister for economic cooperation and development (BMZ) supported *Rugmark* and the ILO's *International Program on the Elimination of Child Labor* (IPEC). Mandatory product labeling, however, was opposed (BMA 1995: 66-67, 83, 92-93). The new German government has also voiced support for labeling initiatives and is contemplating an initiative as part of its development policy.

Nepal's labor ministry has established a department that will monitor the minimum age of employment in the carpet industry and create binding social labels. The Canadian government sponsors research on the instrument's effect on combating child labor (Kielburger/Major 1998: 314). The Swiss government provided the initial funding for the labeling initiative STEP (USDOL 1997: 43).

The position of the Clinton administration is instructive. In 1997, the U.S. Department of Labor conducted a study on social labeling and child labor and came to a cautiously positive conclusion (see below). The department, however, voiced criticism regarding the large supply of company labels and called for standardization. Behind the study (which is the fourth part in a series called *By the Sweat and Toil of Children*) is a mandate of the U.S. Congress that, despite a Republican majority, has initiated measures regarding the social dimensions of world trade. This mandate, however, was a result of Congress's unwillingness to pass the so-called Harkin bill, which would have prohibited the import of products made with child labor. Similar motives are also plausible concerning White House support of the *Apparel Industry Partnership* and the *Fair Labor Association* (see chapter 8). Scandals linked to imports of popular brand-name articles and disclosures of sweatshops in the domestic apparel industry created a public mood critical of multinational corporations and free trade, which ran counter to the administration's liberalization agenda. Through a partnership initiative of government, business, and civil society, the administration succeeded temporarily in taking away the campaigns' steam. In the meantime, serious disagreements have arisen between unions and NGOs – a side-effect possibly intended and certainly welcome.

&Ü3&The European Union

In its resolution A3/007/94, the European Parliament called for the introduction of a workers' rights clause in the multilateral and unilateral (GSP) systems of international trade. Based on ILO conventions, the clause should focus on combating child labor and forced labor and on promoting freedom of association and the right to bargain collectively. Such a social clause must not be a measure of protectionism but should contribute to combating underdevelopment and human rights violations (cf. Piepel 1995a: 90).

Prior to the 1996 WTO ministerial, and then again in a resolution on social labeling (May 15, 1997), the European Parliament reaffirmed this call. But even though the EU's Economic and Social Committee (1997: 71) as well as the European Commission supported the discussion of the issue within the WTO, the call for a workers' rights clause eventually could not be

pushed through within the EU. The European Parliament cannot mandate negotiation objectives for the Commission, which is in charge of trade policy, and the Council of Ministers – whose majority is open on the issue – declined to mandate such an objective, bowing to opposition from Germany and the UK (Kreissl-Dörfler 1997: 31-38; Wardenbach 1997). In 1999, with Germany's (and, to a lesser extent, England's) position changed, the European Union joined the United States in calling for a working group on "Trade and Labor Standards."

Already in 1994, the EU's Generalized System of Preferences, which grants reduced tariffs to developing countries, was amended to include a workers' rights clause. At first it was restricted to forms of slavery and forced labor and did not go into effect until March 1997. Upon a petition of the International Confederation of Free Trade Unions and the European Trade Union Confederation, preferences for Myanmar (Burma) were withdrawn (Eurasia Bulletin 3/1997; ICFTU/ETUC 1995). In 1997 the clause was amended, effective January 1, 1998. "Incentives in the form of additional preferences" (20-25 percent) can be granted upon request to those countries that show that they adhere to the norms embodied in ILO Conventions no. 87 and no. 98 on freedom of association and the right to collective bargaining, respectively, and Convention no. 138 on a minimum age of employment for children (Council Directive no. 3281/94, December 19, 1994, article 7; cf. Schneider 1997: 76-77).

In January 1999, upon an initiative of British Labour representative Richard Howard, the European Parliament passed a resolution calling on the European Commission and the European Council to establish a legal framework for the monitoring of the social behavior of transnational corporations. The resolution also voiced support for the development of voluntary codes of conduct; however, these codes should not replace international agreements (European Parliament 1999; CCC Newsletter No. 10, July 1999; Telkämper 1998). New initiatives of the European Parliament are expected.

In February and December 1998, the EU's Directorate-General for Employment, Industrial Relations and Social Affairs (DG-V/D) collaborated with the U.S. Department of Labor on two symposiums concerning codes of conduct and international labor standards. The conferences, however, were focused purely on information exchange (DG-V/USDOL 1998). In addition, the DG-V organized a workshop on the monitoring of codes of conduct and social-labeling initiatives in November 1998. According to the DG-V this workshop clearly demonstrated that a general consensus was developing in Europe at least on three issues: first, codes of conduct based on voluntary measures of companies and consumers are a good way

of improving working conditions; second, the core workers' rights embodied in fundamental ILO conventions and in the ILO's 1998 *Declaration on Fundamental Principles and Rights at Work* should be contained in all codes of conduct; and third and possibly most important, codes of conduct and social-labeling initiatives can only be effective in the context of a long-term, gradual, partnership- and incentive-based approach (DG-V 1999: 6).

On May 15, 1997, the European Parliament passed a resolution on social labeling, calling on the commission to draft a directive concerning social labeling (Telkämper 1998). In 1998, it adopted the so-called Fassa report, which contained a number of proposals for the European Commission on promoting fair trade.

The EU's Directorate-General for Employment, Industrial Relations and Social Affairs (DG-V/D) sponsored a study on social labels in 1998, which came to the conclusion that this instrument should be supported by the Commission (New Economics Foundation 1998; see below, chapter 9).

&Ü3&International Organizations

For the longest time the International Labour Organization (ILO) did not seem prepared to issue a position concerning workers' rights clauses and trade sanctions as a means of enforcing core labor rights (Leary 1996: 188-189). The reason for this cautious posture is the ILO's tripartite character. While the employer representatives are united in opposition on the issue, the governments are split (see above). In November 1994, a working party of the International Labor Office, the ILO's permanent secretariat, issued a study on the "Social Dimensions of the Liberalization of World Trade" for the meeting of the governing body (ILO 1994). The governing body decided in March 1995 that the working party should not discuss workers' rights clauses (the term was consistently avoided, as was the term 'social clause') and trade sanctions any further (Leary 1996: 223; ILO 1995). Prior to the WTO ministerial at the end of 1996, ILO Director General Michel Hansenne took the initiative and proposed a new international treaty on fundamental workers' rights as well as extending the ILO's special enforcement mechanisms concerning violations of Convention no. 87 (freedom of association) to the other core rights. Accordingly, in June 1998 the members of the ILO passed the *Declaration of Fundamental Principles and Rights at Work*, which calls on all member states to actively work toward adherence to the core labor rights, regardless of whether they have ratified the respective ILO conventions. The declaration contains no mechanisms for sanctions (Elliott 1998a: 171).

In 1996 the *think tank* of industrialized countries, the secretariat of the Organization for Economic Cooperation and Development (OECD), issued the results of a study commissioned two years earlier on the relationship between trade and labor rights (OECD 1996; for a detailed critique cf. Scherrer 1998: 65-76). Violations of workers' rights, the study's authors argued, do not improve competitiveness, and adherence to workers' rights does not reduce it. The study concluded that there was no relationship between trade and workers' rights and referred the issue to the ILO. The two OECD committees that had jointly prepared the study, however, later stated that improvement in competitiveness (i.e., efficiency) cannot be the primary criterion for an evaluation of core workers' rights. But they added that there are only a few countries that systematically suppress workers' rights (Charnovitz 1997: 153; on the extent of violations, see chapter 3).

The largest forum of developing countries, the United Nations Conference on Trade and Development (UNCTAD), came out against workers' rights clauses early on. The final document of the IX. UNCTAD Conference in Johannesburg, South Africa (April 27 - May 5, 1996) avoided the issue (Falk 1996: 4). At the X. UNCTAD conference in Bangkok (February 12-19, 2000), the issue of trade and labor and human rights was also not prominently discussed. The Bangkok Declaration "Global Dialogue and Dynamic Engagement" stressed, however, "the need for increased policy coherence at the national and international level. [...] There is also a need for more effective cooperation and coordination among multilateral institutions. National and international institutional frameworks should be strengthened accordingly" (UNCTAD X, Bangkok Declaration, Article 7, February 19, 2000; <http://www.unctad.org>; June 20, 2000).

The 1996 WTO ministerial conference in Singapore declined responsibility for the rights of those that produce goods for international trade. It did not establish a working group on "Trade and Labor Standards." Instead, in their final declaration on December 13, 1996, the ministers referred primary responsibility to the ILO. They did stress, however, that: "We renew our commitment to the observance of internationally recognised core labour standards. The International Labour Organisation (ILO) is the competent body to set and deal with these standards and we affirm our support for its work in promoting them. We believe that economic growth and development fostered by increased trade and further trade liberalisation contribute to the promotion of these standards. We reject the use of labour standards for protectionist purposes and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question. In this regard, we note that the WTO and ILO Secretariats will continue their existing collaboration."

To this day, however, this collaboration does not extend beyond informal conversations (Interview with A.V. Jose, International Labour Office, May 4, 2000). At the second WTO ministerial in Geneva in 1998, a resolution included a paragraph that Stephen Pursey of the International Confederation of Free Trade Unions saw as small progress. The preparatory program for the next round of trade negotiations (the so-called Millennium Round) would include “recommendations arising from consideration of other matters proposed and agreed to by Members concerning their multilateral trade relations” (Pursey 1998).

The ILO has thus far responded to requests for cooperation on the development and enforcement of codes of conduct with references to its 1977 guidelines for multinational corporations and to ongoing internal discussions (ILO 1998a: 33; cf. ILO 1999 for proposals by the ILO’s Working Party on the Social Dimensions of the Liberalization of International Trade regarding possible ILO participation). Most of all, the ILO fears that codes of conduct will facilitate the development of a market for ‘ethics’, which would make the ILO redundant. It would then be left to the consumer to buy ‘ethically correct’ goods, and left to the producers to offer such goods. In the end, there would be no need for national or international rules such as ILO conventions (ILO 1998a: 34). In addition, a competition between codes of conduct and ILO conventions could result. It is conceivable that firm A, closely adhering to ILO conventions ratified by its government, provides better working conditions than firm B in the same country, which enforces the code of conduct of a retailer from an OECD member country. Still, firm B could have better export opportunities if it is part of a network whose code of conduct or social label has credibility with OECD consumers. A report by UNIDO clearly states this: “For export-oriented firms, the dictates of large international buyers reflected in their own codes of ethics are more instrumental in bringing about improvements in social and environmental performance than guidelines recommended by international agencies such as the ILO, World Bank and WHO, etc. ... as they are better able to exploit trade opportunities inherent in the demand for sustainable produced goods” (Kumar et al. 1998). According to this logic, governments could be deterred from ratifying and enforcing ILO conventions. Based on these considerations, the ILO has not vigorously advocated that codes of conduct explicitly refer to its conventions. Such reference could lead the public to assume that the ILO participates in the respective code.

Still, the ILO does realize that it cannot ignore the trend toward codes of conduct, especially since it has decided not to pursue the option of using trade sanctions to enforce its conventions. The Working Party on the Social Dimensions of the Liberalization of International Trade has therefore proposed two principles that should be part of each code:

adherence to the respective national labor law, and to all (not just a few selected) core labor rights embodied in the ILO *Declaration of Principles on Fundamental Principles and Rights at Work*. Some business representatives, however, “insisted that the choice should be left to the discretion of each company” (ILO 1999: 2). In addition, the working group developed a “two-part framework of assistance to enterprises...in the area of private voluntary initiatives such as codes of conduct” (ibid.: 5): technical assistance in accordance with existing ILO programs, and technical assistance in the context of new pilot programs “specifically targeting the needs of constituents and enterprise in connection with private initiatives” (ibid.). The ILO’s working party thus followed a cautious path of supporting codes of conduct, employing neither the minimalist (only research) nor the activist (a binding ILO code) response it had contemplated the year before (ILO 1998a: 36-38).

Through its *International Program on the Elimination of Child Labor* (IPEC), however, the ILO does participate in an ILO-UNICEF project combating child labor in the Bangladeshi apparel industry that includes a code of conduct and a monitoring system in cooperation with the local textile industry association. A similar project exists in Pakistan involving manufacturers of soccer balls (ILO 1998a: 29).

With regard to social-labeling initiatives, the ILO’s former director-general Michel Hansenne briefly contemplated the awarding of labels on a country basis; that is, not just for export goods. This initiative, a response to pressure for a workers’ rights clause, would have awarded a label based on a country’s adjustment of its national labor law to core ILO conventions and on its agreement to external monitoring (Murray 1998: 22). The proposal has not been developed any further.

The ILO’s critique on codes of conduct – namely, that a market for ethics may develop – implicitly applies to social-labeling initiatives because such initiatives are based on codes of conduct (see below, chapter 9). The ILO, however, could acquire the power of definition in the context of a standardization of labels and certification processes.

The World Trade Organization (WTO) has not taken a position on codes of conducts for transnational corporations but it is conceivable that a WTO conflict resolution panel could consider a specific code a technical barrier to trade if it does not meet the WTO’s requirements for the preparation, adoption, and application of standards (New Economics Foundation 1998: 70; cf. the *Code of Good Practice for the Preparation, Adoption and Application of Standards*, paragraphs D-F, Annex 3 to the Agreement on Technical Barriers to Trade). Advocates of social-labeling initiatives also fear that the WTO could rule against even voluntary programs. Behind this concern is the debate over the discrimination of ‘like

products;' that is, discrimination based on production process, not on differences of product (cf. Altvater 1998; see chapter 6).

The content and status of the UNCTAD *Draft Code of Conduct on Transnational Corporations* are still unclear. The same may be said for the agreement under consideration by the WTO's *Working Group on Trade and Investment*.

&Ü2&3. Extent of Workers' Rights Violations in Global Trade

In the literature on workers' rights clauses there are astonishingly little data on what portion of world trade is made up of goods produced in violation of one of the five core labor rights. While the ILO regularly documents the degree of adherence to fundamental conventions for a large number of countries, violations in the export sector are not listed separately. Because of complex production and supplier chains, such an undertaking would probably have limited value. Therefore, only estimations are possible. Close to 80 percent of world trade is between OECD member countries. With the exception of South Korea and the U.S., these countries have ratified all or almost all core ILO conventions (cf. Scherrer/Greven/Frank 1998: 299). National labor laws correspond to ILO conventions, with the exception of the Turkish labor law and to a certain extent the Korean one. Enforcement of national labor laws conforms to ILO standards in all OECD member countries excepting Mexico and Korea (OECD 1996: 53-70). It seems obvious that the introduction of a workers' rights clause will not revolutionize world trade.

&T1& Ratifications of Core ILO Conventions by Leading Non-OECD Export Countries

&T2& Workers' Rights and Democracy in Leading Non-OECD Export Countries

Tables 1 and 2 list all non-OECD countries that in 1999 exported goods with a value of at least \$15 billion, except those predominantly exporting oil. In China, Indonesia, Malaysia, Singapore, and Thailand, freedom of association, the right to strike, and the protection of union activists are guaranteed only with restrictions or not at all. This group of countries accounts for about 50 percent of the exports of the large non-OECD member countries listed in table 1. In less significant export countries like Egypt, Mauritius, Pakistan, and Syria, freedom of association is severely restricted according to the ILO. This is also true for several export processing zones in countries that otherwise do guarantee this right, like Bangladesh

(OECD: 39, 85). State repression of unions is on the rise world wide: In the three years from 1992 to 1994 these incidents increased by 65 percent compared with the preceding period and they affected 98 countries. In 1998, there were violations against ILO conventions no. 87 and no. 98 in 119 countries (ICFTU 1995 and ICFTU 1999a).

The extent of child labor is also increasing world wide. In the “Year of the Child,” 1979, there were an estimated 52 million working children under the age of 15. In the mid 1990s, the ILO's Bureau of Statistics estimates that, in the developing countries alone, there were at least 120 million children between the ages of 5 and 14 who were fully at work, and more than twice this number (about 250 million) if those are included for whom work is a secondary activity. Of these, 61 percent were found in Asia, 32 percent in Africa, and 7 percent in Latin America (ILO 1998b: 7-8).

At the same time, among the large exporters in the non-OECD world, there are only three countries where child labor occurs outside the family household to a significant degree: India, the Philippines, and Thailand. Most children in these countries do not directly work for the export industries. But in some export-oriented sectors, especially in the textile, apparel, shoe, and carpet industries, child labor is widespread (OECD 1996: 44-46). In India, between 300,000 and 500,000 children are said to be employed in the production of hand-knit rugs (Harvey/Riggin 1994). A study commissioned by the ILO in 1995 estimated that, among the total number of workers employed in the carpet industry, the share of child labor lies between 7.2 percent (“definitely child labor”) and 29.3 percent (“probably child labor”). Half of the children work at home, the others work mostly as bonded labor with a contractual obligation of two to three years (quoted from Haas 1998: 46 and 56).

There is little traditional slavery. Bonded labor is found mostly in South Asia and Latin America, even though it is illegal there as it is in other countries. In Pakistan, bonded labor is especially widespread. According to the ILO, up to 20 million people live under such conditions. But only a fraction of these is employed in the export sector (Kulesa 1996: 97). To our knowledge, the extent of state-tolerated discrimination has not been documented systematically. While the respective ILO Convention no. 111 has been ratified by 106 states, it is not known to what extent governments are enforcing it. Private forms of discrimination, however, are widespread not only in developing countries. Serious implementation of ILO Convention no. 111 would affect almost all of world trade.

Even though only approximately 10 percent of the goods traded globally are produced in violation of the five core labor rights, a very large number of workers world wide is denied these rights. The disproportion between export value and affected workers is especially severe

in the case of child labor. In the financial year 1994/1995, approximately 300,000 children and 700,000 adults in the export-oriented carpet industry in India produced an export value of \$580 million (Haas 1998: 56 and 71). To put this into perspective, a German industrial enterprise with approximately 4,000 employees achieves such sales.

China is by far the most important trading country that would be affected by a workers' rights clause. Close to a quarter of the world's population lives there, it has increased its exports rapidly, and it recently took over Hong Kong, the biggest exporter outside of the OECD. At the same time, there are serious violations of the rights of freedom of association and collective bargaining as well as problems with forced labor (Report on China from the Annual Survey of Violations of Trade Union Rights, ICFTU 1999a; <http://www.icftu.org>; June 25, 2000).

4. Core Workers' Rights in International Law

Among those in favor of protecting labor in international trade, there is general agreement on the basic content for codes of conduct, social labeling programs, and a workers' rights clause within the World Trade Organization (WTO). The following core labor rights, which are covered by International Labor Organization (ILO) conventions, should be guaranteed: freedom of association (No. 87), the right to organize and bargain collectively (No. 98), and prohibitions of forced labor (Nos. 29 and 105), discrimination in employment (Nos. 100 and 111), and child labor (Nos. 138 and 182) (see chapter 1 for details).

3. Ratifications of Fundamental ILO and UN Conventions and Covenants

These rights are "enabling rights" or "framework conditions" (OECD 1996), establishing a process through which other "outcome-based" standards can be determined by bargaining. Although these core ILO conventions have not been ratified by all nations, international law considers them to be universal human rights for several reasons. First, all member states, even those that have not ratified a single ILO convention, commit themselves to the ILO's Declaration of Philadelphia (1944), which states that freedom of expression and freedom of association are essential to sustained progress. Second, a great many countries have undertaken to comply with at least one of the ILO conventions (see table 3). Third, all ILO conventions were supported by at least two-thirds of all the participants at the annual International Labor Conferences, where each member country is represented by

representatives from government, labor, and management. Thus, even those conventions that have been ratified by just a few members after their adoption at a Labor Conference, are an expression of a broad international consensus. An ILO survey on the reasons for non-ratification revealed that none of the countries that responded to the survey was in disagreement with the underlying principles of the core conventions. Instead, the reasons given for non-ratification referred to specific details of the conventions (OECD 1996: 34-35). For example, India, which has not yet ratified the Convention on the Rights of the Child, declared: “while fully subscribing to the objectives and purposes of the convention, realizing that certain of the rights of Child, mainly those pertaining to the economic, social and cultural rights can only be progressively implemented in the developing countries... The government of India will take measures to progressively implement the provisions of Art. 32 [minimum ages for admission to employment]” (quoted in De Waart 1996: 259).

Fourth, these core workers' rights are also covered by several human rights declarations (cf. table 3). Several of the freedoms contained in the Universal Declaration of Human Rights were included at the request of the ILO, which is responsible for their protection within the UN system. More than 75 ILO conventions are relevant to the achievement of the UN's International Covenant on Economic, Social and Cultural Rights. The 1995 UN summit on social development in Copenhagen agreed on a Program of Action that included a call for governments to enhance the quality of work and employment by safeguarding and promoting respect for basic workers' rights and to “fully implement the conventions of the International Labor Organization in the case of states party to those conventions and taking into account the principles in those conventions in the case of those countries that are not party to those conventions...” (UN 1995: part II, section 54b).

Fifth, the core workers' rights were most forcefully restated in the ILO *Declaration of Fundamental Principles and Rights at Work* of 1998. This declaration provides for the systematic monitoring and review of members' efforts “to promote and to realize in good faith” core workers' rights, regardless of whether the applicable conventions have been ratified.

The “follow-up mechanism” provides for an annual survey of reports submitted by member countries that summarizes the steps they have taken over the year to achieve the declaration's objectives. The second part of the follow-up is an annual “global report,” to be prepared by the director general, that focuses on achievements in the preceding four-year period (Elliott 1998a: 171). The first reports on core labor standards were issued on March 8, 2000,

submitted by “just over half (55.7 percent) the governments which had an obligation to do so” (ILO 2000).

While rejecting a social clause, the WTO member states renewed their commitment to the observance of internationally recognized core labor standards at the WTO Ministerial conference in Singapore in December 1996, thus affirming the universal recognition of these rights. The United Nations Copenhagen Social Summit and the UN Beijing 4th World Women's Conference have both agreed on the importance of respecting core labor standards. In the run-up to Copenhagen Plus 5, the Preparatory Committee of the General Assembly Special Session (UNGASS) has reaffirmed its commitment to these principles and is expected to make recommendations for future actions to implement them (Ladbury/Gibbons 2000: 21). Among the core conventions, Convention 138 on a minimum age for child labor has been ratified by the least number of countries (see table 3). The ILO has addressed this problem by adopting the Convention on the Worst Forms of Child Labor (No. 184) at its 1999 International Labor Conference. While it is to be expected that this convention will be more readily ratified, already 84 more countries are bound by the provisions of one or more of the 10 sectoral conventions on minimum age that were adopted before Convention 138 (OECD 1996: 72 note 12). In addition to the ILO provisions, there are a number of other more general statements on child labor to be found in international instruments. For example, Article 32(1) of the Convention on the Rights of the Child (191 ratifications as of 31 May 2000) stipulates that States should recognize the “right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development”. Article 32(2) stipulates that in implementing Article 32(1) states shall in particular provide for (a) a minimum age or minimum ages for admission to employment, (b) appropriate regulation of the hours and conditions of employment, and (c) appropriate penalties or other sanctions to ensure the effective enforcement of its provisions (Ladbury/Gibbons 2000: 36-37).

The other major international instruments relevant to child labor include the International Covenant on Economic, Social and Cultural Rights, some of whose provisions relate to compulsory free primary education; the International Covenant on Civil and Political Rights, which deals with the prohibition of slavery, servitude, and forced or compulsory labor as well as the protection of minors; the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, which refers to debt bondage of children (ILO 1998a: 22).

In sum, basic workers' rights are an inseparable part of human rights.

5. Economic Justifications for International Workers' Rights

The debate about international workers' rights revolves primarily around the introduction and raising of standards in developing countries (see above for a discussion of the extent of violations). Workers' rights, therefore, can also be justified by the contribution they make toward enhancing these countries' prospects of industrialization. Opponents of internationally enforced workers' rights see them as an obstacle to closing the industrial gap. They argue that better living and working conditions cannot be legislated but would be the natural outcome of industrialization. Economic development and respect for human rights would be best promoted by ensuring that the trading system was as free as possible (Srinivasan 1996; Bhagwati 1994; Krugman 1994).

Do Higher Standards Follow Trade Liberalization?

Does the development and expansion of the export sector necessarily lead to an improvement in living and working conditions? Apparently not. In many countries of the South, the liberalization of foreign economic policies went along with increasing social inequalities and a massive expansion of the informal sector, where labor rights are generally violated (Altvater/Mahnkopf 2000: 317-363). In many of the multiplying export-processing zones, the right of freedom of association is restricted (OECD 1996: 41). The Caribbean is a striking example: Despite a massive increase in export production and in employment, working conditions did not improve; on the contrary: wages fell. Harsh competition on the world market made the export success of Caribbean countries dependent on low wages, which were enforced by credible threats to relocate (Frank 1998: 168-176; Portes 1994: 168). The Indian export boom for hand-made carpets merely led to the spread of child labor, not to better working conditions. In other countries with high export growth, like Thailand, the use of child labor also increased (Haas 1998: 76-81; ILO 1998a). Even in countries that experienced the economic miracles of the eighties, such as South Korea, a visible improvement in living standards and in securing labor rights was achieved only as a result of very hard trade union campaigning (Ch'oe 1989).

An OECD study entitled *Trade, Employment, and Labour Standards: A Study of Core Workers' Rights and International Trade* (1996) attempted to find out whether trade

liberalization precedes freer association rights. It looked at those 44 countries that put into place a major trade-reform program between 1980 and 1994. In fifteen of these countries, free association rights tended to improve at least three years after the start of trade reforms. Better association rights preceded the trade reforms by at least three years in nine countries. The two processes began about the same time in eight countries. In six countries trade reforms were pursued without any observable improvement in association rights. The sample information was insufficient for the remaining countries. In sum, no single pattern was dominant. Such inconclusive empirical evidence at the level of aggregate cross-national comparisons has also been found for the linkage of transnational corporations and human rights in their host countries (Meyer 1999; Smith et al. 1999). These findings support the theoretical assertion that the extent of benefits of trade and investment liberalization critically depends on the institutional context (Palley 1998).

Neoclassical Defense of Workers' Rights

The question whether international workers' rights are economically justified touches upon the fundamental economic understanding of the nature of the market as a social regulatory mechanism. In highly simplified terms, the various concepts of the market can be reduced to two paradigmatic approaches: the neo-classical and the neo-institutional "schools" (Kochan/Nordlund 1989).

From the neo-classical standpoint, welfare-increasing efficiency gains can be achieved in foreign trade only if unhindered trade permits product specialization on the basis of comparative cost advantages. Even in the case of infant industries, protection is considered to be a suboptimal policy. Any domestic distortions should be addressed by subsidies, rather than protection (Johnson 1965/1987). The neo-institutional approach, by contrast, points to the destructive potential that market mechanisms can have in trade between nations because of the absence of a central regulatory authority at an international level. According to that view, foreign trade should therefore be flanked by domestic social legislation and regulated externally by multilateral agreements (Piore 1994).

The criticism of social standards from a development perspective comes in two forms. The "hard" variant takes the position that industrial development requires a repressive employment regime. It is put forward by Gary Fields but enjoys little support in the economic profession. The "soft" variant only demands that the employment regime contains no

minimum standards that slow down development. It enjoys support among the majority of neoclassical economists.

The soft variant of the criticism takes issue with international standards mainly in the areas of pay, health, and safety at work (standards under consideration for some codes of conducts and social labeling programs), but also in the field of workers' rights. As a rule, it is argued that every officially imposed increase in production costs harms the prospects of sales in the world market, and hence the development prospects of the countries concerned. Every increase in labor costs supposedly jeopardizes the developing countries' main comparative advantage, namely abundant labor.

Core workers' rights can, however, also be justified within the neoclassical paradigm, mainly as responses to specific market failures. For example, freedom of association is a means to counterbalance the market power of employers. The bargaining power of an individual worker may be very limited faced with a powerful corporate employer or group of employers. The prohibition of forced labor and the exploitation of children belongs to the core principles of the neoclassical market order: the market is defined as an exchange of goods among free persons. Furthermore, the adherence to these rights can enhance market efficiency. If discrimination is practiced, employment and earnings opportunities are allocated based on considerations not related to how well someone does a job. Anti-discrimination measures may facilitate the employment of individuals in jobs for which they are best suited (Swinerton 1997). Collective bargaining institutions allow efficiency gains by encouraging workers to share their views with management about the running of the enterprise (OECD 1996: 79-81; Freeman/Medoff 1984; Hansson 1983: 45-66).

Market failure is also to be found on the world market. Due to the leveling effect of competition, violations of core workers' rights in some countries can lead to their disrespect in one's own country (Leebron 1996: 54). In the extreme, a race to the bottom can ensue, pushing the standards of all trading partners to the lowest level. Most neoclassical economists reject the argument of a "race to the bottom" (e.g., Klevorick 1996). The term "destructive competition," however, has been used within the neoclassical paradigm (Bator 1958; for a discussion within the debate on international labor standards, see Krueger 1996). If, for whatever reason, market exit is difficult, supply might stay the same or even expand despite lower prices. Destructive competition takes place in the labor market when workers offer their labor power at wages that do not cover their reproduction costs. Reproduction costs cannot be determined precisely. They are dependent on the level of economic development, social status, and customs. A well-paid manager who suffers a heart attack before her retirement due

to work-related stress, has given too much of her labor power. An industrial worker who cannot afford to send his children to vocational training programs, has not given his labor power according to his reproduction needs.

Rapid population growth contributes to a structural oversupply of labor power in the non-OECD world. Insufficient social standards are among the causes of population growth, especially the discrimination of women in education and in occupations. Without welfare measures for old age, having a large number of children may remain attractive. Even without population growth labor power can be in oversupply. This is the case when industrial agriculture or world-class manufacturing meets subsistence or traditional industry. The displacement of the low-productivity subsistence agriculture or of inefficient industry (which had been protected by high transport costs or high tariffs) can release workers faster than the more productive market-oriented agriculture or modern manufacturing industry can absorb. This oversupply of labor power is exacerbated by impediments to market exit. In the case of manufacturing plants, market exit will be postponed because of sunken costs. In agriculture, non-economic motives, such as the preference for independence and emotional ties to the soil, frequently lead to postponing the inevitable, i.e. abandoning the farm. The “doubly free” wage laborer usually lacks an alternative to wage labor. Once the subsistence economy has been left, return is almost impossible. For one, the subsistence agriculture will be pushed from the more fertile soil by the more productive industrial agriculture. The remaining pockets of subsistence agriculture will increasingly be less able to support its population and even less any returnees from urban areas. The other reason is that those who have left frequently find the hard work in traditional agriculture even less attractive than a life on the margins of big cities.

The lack of a social safety net as well as falling wages increase the need to expand the supply of labor power. Without corrective intervention, the impoverishment of large segments of workers can turn into a self-supporting downward spiral: an increase in labor supply forces real wages down, lower wages in turn increase the labor supply in the next round. In the extreme, children are forced to work in order to secure the survival of the household. The more children are employed, the more adults are made redundant, which in turn forces them to send their daughters and sons to work. If the budget for education were to be cut because of a debt crisis, the number of children working would increase. This causal connection has been well documented for Peru (Pollmann/Strack 1995: 26-27) and for Thailand after the Asian currency crisis (ICFTU 1999b).

In order to restore an economic equilibrium according to market logic, some suppliers have to exit the market. Some neoclassical welfare theorists have rejected this solution even in the case of industrial plants. They argue that if the momentarily underutilized capacities would find demand at a later point in time, but if at that time it would be very costly to rebuild these capacities, then the regulation of competition is justified (Kahn 1971: 175). Market exit is not a viable solution for most wage earners for the above-mentioned reasons. Therefore, the regulation of competition is to be preferred, i.e. limitations on working time. In a historic perspective, this has been the answer to the oversupply of labor power during industrialization: the struggle for the eight-hour day, the prohibition of child labor, and (from today's viewpoint more problematic) the displacement of women from gainful employment. If such collective solutions are not available, the destructive competition can cross borders via trade (see below).

Most opponents of international workers' rights, however, consider lower standards as a result of international competition legitimate. To the neoclassical economist, there is an international market in state regulation. In such a market, mobile capital would be the purchaser and the individual authorities the suppliers. This, however, leads to circular reasoning: The market is designated as the mechanism for determining the regulatory scope of the market (Langille 1996).

Neo-institutional Arguments: Workers' Rights for Sustainable Development

From a neo-institutional perspective in economics, workers' rights contribute to long-term sustainable development. Both demand-side and supply-side arguments are put forward to demonstrate the stimulatory growth effects of workers' rights. From a demand-oriented perspective, highly unequal income distribution is regarded as an obstacle to development. First, it is argued that such inequality impedes the emergence of a mass market in durable consumer goods so that developing countries cannot emulate the "Fordist" growth model of the United States and Western Europe. Second, the concentration of national income in the hands of a few people produces an excessively high savings ratio, so that growth-stimulating investment is too low. It also increases the likelihood of capital flight. Throughout the 1980s, profits from investments in Latin America were not reinvested fully, but largely transferred abroad (Altwater 1992: 219-236). Freedom of association and the right to collective bargaining are necessary preconditions for a more equal distribution of income (Rothstein 1993: 1-2).

The supply-side neo-institutionalists cite two reasons why minimum social standards and resulting higher wages have a positive effect on a country's economic development prospects. First, higher wages promote the development of "human capital," without which no economic development is possible. Wages close to or below the minimum subsistence level make it impossible for workers to invest in their own education, or that of their children, and are often insufficient to pay for necessary health care. Higher wages, on the other hand, would not only enable workers to maintain and enhance their qualifications but would also increase the incentive to attend school and to adopt performance-oriented behavior (Sengenberger 1994a). There is evidence that the early involvement of children in work can have serious consequences for their health and development (Forastieri 1997). Furthermore, a study among Indian carpet weavers showed that 95 percent of parents who sent their children to work were illiterate and had been forced themselves to work while growing up (Haas 1998: 65-68).

Second, they argue, social standards are necessary for making the transition from an extensive to an intensive use of labor. Under the prevailing system of sweatshops, employers have no particular interest in using labor intensively because, first, workers are paid on a piece basis and hence no fixed labor costs arise, and second, their capital stock is usually small and consists of outdated machinery that cannot be used more efficiently. The resulting low labor productivity in turn precludes raising wages. In such a situation, minimum social standards could increase interest in measures to raise productivity by changing the structure of incentives for firms and workers. For firms, they would make the extensive use of labor less attractive; for workers, they would make it more rewarding to strive for the success of the firm. If, for instance, a strategy of "flexible specialization" is to succeed, certain preconditions must be met that ensure that workers can earn better wages, show themselves to be cooperative, and acquire professional qualifications. Social standards could help create those preconditions (Piore 1994). For example, as the minimum wage in Puerto Rico increased, turnover and absenteeism declined, job applicants were more thoroughly screened, and "managerial effort" improved (Card/Krueger 1995: 247).

Neo-classical economists doubt whether a minimum wage could eradicate the sweatshop system; they consider it more likely that a minimum wage above the market-clearing price would lead to unemployment and a growing informal sector. If the efficiency wage argument were applied, firms would voluntarily make it the basis of their system of remuneration. The strategy of "flexible specialization" therefore requires no special regulation. In their view, the resolution of the classical tension between a system of incentives and productivity on the one hand and the impermissible withdrawal of labor and free-loading on the other, depends

mainly on the production technique and on preferences such as between work and leisure, risk and the employment regime, including the prevailing ideology (i.e., worker morale; Srinivasan 1990: 68-69). It has to be asked, however, whether these latter factors are not precisely those conditions that the neo-institutionalists consider necessary for the strategy of “flexible specialization” and that have to be set politically.

Head-to-Head: South-South Competition

If standards are as beneficial as it is claimed, why are they not voluntarily adopted? While many countries have ratified ILO conventions (175 countries were members of the ILO as of February 2000), the new export nations in particular have been slow to follow suit. Some of the motives for not signing on to the ILO conventions are political in character. Dictatorships have good reasons to believe that trade unions might become places of government opposition (e.g. Solidarnosc in Poland). There are also economic reasons. While the “high road” promises long-term benefits, it may incur short-term costs. The amount of these costs, their impact on competitiveness, and their long-term rewards are difficult to appraise.

In a theoretical exercise, Peter Dorman (1995) attempted to gauge the impact of the adherence to core workers’ rights on labor markets. He came to the conclusion that the implementation of these rights will lead to an expansion of those labor-market segments that pay higher wages. For example, the prohibition of child labor will lead to wages above the level paid previously for adults. For one, the elimination of competition from forced (child) labor will allow higher wages. In addition, if freedom of association exists, adults will be more likely than children to obtain better working conditions and wages through collective action. This argument has been confirmed by the experience of an Indian exporter of carpets, OBEETEE, in the 1970s. This firm had experimented with the production of carpets in large-scale workshops without child labor. After a short while, the newly hired adults organized an union and pressed successfully for higher wages. The firm reacted by restoring child labor (Haas 1998: 80).

In a next step, in an attempt to assess empirically the impact of core workers’ rights, Dorman used a simple regression analysis of labor rights and manufacturing wages in a sample of developing countries. His results suggest that increases in these rights were associated with increased wages. Because of numerous data shortcomings, however, he professed not much faith in his results (1995: 27). Trade economist Dani Rodrik had more confidence in a similar method. He calculated that going from no child-labor legislation to having such legislation is

associated with an increase in annual labor costs of \$4,849-\$8,710 per capita. Yet he admitted that his indicator on child labor may capture other effects as well (Rodrik 1996: 52). In contrast to Rodrik, ILO studies conducted in India suggest that, as a portion of the final price of carpets or bangles to the consumer, any labor-cost savings realized through the employment of children are surprisingly small – less than 5 percent for bangles and between 5 and 10 percent for carpets (Anker et al. 1998).

However, the likelihood of higher wages does not automatically translate into higher production costs. According to the neo-institutional argument mentioned above, the observance of labor rights will lead to greater efficiency, which compensates for higher wages. The previously mentioned OECD study has made an attempt to assess whether freedom-of-association rights lead to higher prices for the respective goods. U.S. import prices of textiles served as its empirical base were. The study revealed that the prices of imports from developing countries tend to be rather uniform, even though the degree of enforcement of freedom-of-association rights varies substantially among these countries. Similarly, export prices of hand-made carpets do not reflect the use of child labor, since the export price of a hand-made carpet ranges from over \$40 in China to almost \$70 in Nepal, where child labor is reportedly pervasive (OECD 1996: 102-104, 138).

In what ways export prices are supposed to reveal differences in production costs remains the secret of the OECD authors. In a competitive market it would be quite surprising if prices were to differ much among similar products. Furthermore, little insight can be gained by a static price comparison, unless differences in quality, changes in market share over the previous years, and the hypothetical production costs of Nepalese carpets in the absence of child labor are known. The lower prices of Chinese carpets, for example, went along with a much greater market share, just as economic logic would have it (*ibid.*).

In sum, attempts to assess the cost impact of adherence to ILO conventions have not delivered reliable results thus far. Given that most export goods from developing countries are sold to wholesalers or transnational corporations, which command a strong market position vis-à-vis the producers, even small differences in production costs can be expected to be decisive for market success. The competition among the countries of the South has not received nearly as much attention as the North-South trading relationship. Therefore, empirical evidence is scant. However, there is some evidence that in a number of product lines fierce competition has led to an environment conducive to violating core workers' rights. For example, the trade in hand-made carpets is dominated by just a few firms. They exert massive pressure on the producers. A survey of carpet importers in a United States city found that, if the price of

carpets in India rose by more than 15 percent, the importers would stop buying them from that country (Levinson et al. 1996). In the early 1970s, Indian producers replaced the traditional market leaders of Iran. The Iranian export prices had gone up because of a literacy campaign, rising income levels, and an appreciation of the Iranian currency. In the 1980s, Indian producers in turn came under pressure from Chinese, Pakistani, and Nepalese carpet makers. Increased use of child labor and a weak currency allowed them to defend their market position (Haas 1998: 71-87; Große-Oetringhaus 1995: 178).

&T4& Similarity of Exports from Asian Countries to the U.S., Japan and the EU, 1997

In the last two decades, competition among emerging economies has increased considerably. Half the world's population lives in five low-income Asian countries: China, India, Indonesia, Pakistan, and Bangladesh. In the 1960s and 1970s, all of them were largely closed to trade, and thus their workers did not stand in international competition to each other. By the mid 1980s, Indonesia and China were opening up to trade, and the others followed in the 1990s. An analysis of the product range exported from Asian countries to the United States, Japan, and the European Union revealed a striking similarity in export specialization among a number of Asian countries. For example, on a two-digit level of industrial classification (SITC), 53 percent of exports from India and 62 percent from Thailand were similar to those from China in 1997 (see table 4). Throughout the 1990s, China seems to have expanded its market share in the United States at the expense of its Asian competitors, at least in relative terms (Rosen 1999; Noland 1998). The Bank of International Settlements identifies this competitive strength of China as one of the reasons for the Asian currency crisis, which started in Thailand in 1997 (BIS 1999: 127). Adrian Wood argues that the movement away from labor-intensive manufacturing in South Korea, Hong Kong, Taiwan, and Singapore (the so-called Four Tigers) was accelerated when other East Asian countries with lower wages (especially China) also adopted export-oriented policies. This competition tended to reduce the wages of unskilled workers in the Four Tigers, with the exception of Korea, where the massive expansion of higher education led to a decline in the number of unskilled workers (Wood 1999: 169f; 1994: 241-246). Raul Picard, the president of the Mexican national manufacturing industry chamber, Canacindra, recently proclaimed that the entry of China into the World Trade Organization will result in the loss of 60 percent of small- and medium-sized companies in Mexico (Daily Brief, June 16, 2000, Vol. 49, Issue 12, <http://brief.tradecompass.com/>).

The Chinese competitive threat is likely to continue. While the Four Tigers displayed rapid wage convergence with the U.S. until the Asian crisis in 1997 (from five percent of the U.S. wage level in 1975 to 46 percent in 1996 in the case of South Korea, the most impressive increase among the Tigers), the vast size of the Chinese workforce will prevent wage convergence with China any time soon. In the years from 1980 to 1996, Chinese wages remained below four percent of the U.S. level (Erickson/Mitchell 1998: 165, 168-169). The "soft" objections to internationally enforced core workers' rights ultimately rest on the argument that adherence to these rights will push wages above the market-clearing price, which in turn will threaten the competitiveness of firms. This threat to competitiveness, however, is the very reason why social standards have to be negotiated internationally. As long as it is possible for an economic region to gain competitive advantage by undercutting the social standards in other regions, these other regions are in danger of losing market share and hence employment opportunities. The greater the similarity between the competing regions with regard to factor endowment and market position, the more acute is this danger. It will be particularly high if market success depends on a single factor, namely low-skilled labor. In such a case, the danger from lower standards cannot be offset by other factors. This situation is particularly true of developing countries, which face the constant risk that new regions with an even larger reservoir of cheap labor will break into the world market. For these reasons, developing countries cannot raise their social standards in isolation but only in conjunction with other countries by multilateral agreement.

&U3&At the Margins: North-South Competition

The above argument runs counter to public discourse on globalization. The effects of globalization are usually discussed in a North-South perspective. Most studies focus on how increased trade with developing countries affects wages and labor standards in industrial countries. A number of advocates for international workers' rights have singled out the South as the main threat to the working and living conditions achieved in the North. It is argued that for some years now producers in OECD countries have encountered increasing competition from firms producing in countries with far lower wages, fewer social benefits and rights of co-determination, as well as fewer environmental requirements. If productivity were more or less equal, this competition would drive industry to the wall in the existing industrial countries. If this occurred more rapidly than the structural shift toward higher-value products and services, as these advocates fear, the existing level of social standards in the OECD

countries would come under great pressure. The former U.S. Labor Secretary Ray Marshall summarized this argument succinctly when he stated that “bad standards tend to drive out good standards” (Marshall 1994: 72; figure 1 graphically depicts these fears).

&Fig1& The Global Labor Pool

From the perspective of the classical theory of comparative cost advantages, however, a welfare gain generally stems from trade between unequal economic areas, each specializing according to its particular comparative advantage. Specialization increases the efficiency of production, which benefits all market participants (Hufbauer 1989).

Objections to classical theory have been raised on theoretical grounds for some time, but it was not until incontrovertible empirical evidence emerged from the U.S. that the advocates of free trade had difficulty justifying their stance. It was found that real wages in the U.S. had fallen (by 7.8 percent between 1980 and 1990) at the same time as the US economy was becoming more open. The decline in real wages of low-skilled workers was particularly pronounced (16.9 percent; Juhn/Murphy 1995, p. 27).

This divergence in wage income distribution corresponds with the Stolper-Samuelson theorem, which states that the dismantling of trade barriers leads to an equalization of factor prices in the countries involved. The income of the relatively scarce production factor will fall as the latter becomes less scarce as a result of trade. Applied to trade between industrial and developing countries, this theorem leads one to expect that the pay for low-skilled workers in industrialized countries will approach the level obtained in developing countries. Numerous studies have been carried out to prove or disprove the Stolper-Samuelson effect. Recently, a number of authors who are generally supportive of the free trade argument have conceded that trade did contribute to a further widening of wage income differentials between low-skilled and high-skilled workers in the United States. However, they maintain that increased automation of production is a much more important factor and that trade shares its role with immigration (Rodrik 1999; Cline 1999; see also Brauer/Hickock 1995; Borjas et al. 1992). Furthermore, some studies have begun to distinguish between the effect of OECD and non-OECD competition. Edward Leamer, for example, is inclined to think “that the threat of competition, not from the low-wage Asia, but from Japan and Korea was an important part of the story in the 1980s” (Leamer 1999: 149; see table 5). This view corresponds with research on the effect of foreign competition in the two industries that contributed most to the U.S. trade deficits in the 1980s: automobile and steel (Scherrer 1992).

&T5& Market Share of Developing Countries in the North, Manufactured Goods 1990-1996

The work of Leamer confirms the previously stated insight that the greater the similarity between competing regions with regard to factor endowment and market position, the fiercer the competition among them. In comparison to the impact of noncompliance of core workers' rights among the developing countries, the North-South impact appears to be small.

&Ü3& Will the South Suffer Under Global Rules?

The objective of global rules for workers' rights is to take them out of the competition among producers. If efforts succeed to make these rules binding for every country, the competitive situation among countries will change. Individual countries will no longer fear that they will suffer competitive disadvantages by adherence to these rights. Instead, they will be able to assume that their labor competes under similar conditions.

The need for international agreements is demonstrated particularly well in the case of child labor. Some authors see only two alternatives for children in economic problem areas: work or starvation. Since exploitation is better than starvation, they opt against prohibiting child labor (Freeman 1994: 89; Bhagwati 1994: 59). However, such harsh alternatives exist only under *ceteris paribus* conditions; that is, when the rules for competition have not changed. If child labor were to be prohibited in just one region in, say, carpet weaving, there is of course the risk that the carpet companies in that region will lose their market share. By contrast, if child labor were to be prohibited in all regions, then a loss in market share is not likely. Then family living wages could be paid to adults. Indian carpet makers would no longer be in competition with Pakistani carpet makers on labor costs but with industrial manufacturers of carpets. In this hypothetical case, the risk is whether the higher prices for carpets, which all carpet makers could charge, would lead to a diminishing overall demand for hand-made carpets.

To answer this question, the substitution or demand elasticities have to be known. Experts are not of one mind concerning the degree of demand elasticity for products from the South.

Adrian Wood assumes that the demand in the North for products of the South does not react to price because most products of the South are no longer in direct competition with those of the North. He therefore estimates that an increase in prices by one unit would cause a decrease in demand by just one half a unit (price elasticities of demand of 0.5; Wood 1994:

144). Robert Lawrence, on the other hand, has calculated that one-unit price increases reduces demand by 1.7 units (1996: 45-51).

Even if a "correct" value for the price elasticities of demand could be established, it would probably not reflect the reality of many exporters in the South. The elasticities of substitution and demand would vary considerably from product to product. Hand-made carpets, handcrafts, and tropical agricultural products can be substituted by products from the North only to a limited degree. Thus demand for these goods is rather insensitive to changes in prices. The income elasticity of demand for these products will be quite high, since they do not belong to the group of staple goods. The demand for these goods will depend on the business cycle. Furthermore, their production costs are rather low relative to the final sales prices. For some brand-name products, production costs are unrelated to sales prices. The most telling example is that set by the shoe producer Nike. Its products are assembled for 70 or 80 cents and may sell for \$120 (Ross 1997: 26). Increases in production costs can be easily absorbed by distributors or retailers. Most child labor occurs in labor-intensive industries. It can therefore be safely assumed that the prohibition of child labor would not infringe upon the export opportunities of the South in the North.

Demand elasticity would be much more pronounced for complex industrial supplies from the South. These products are in direct competition with those from the North. Since they usually would not yet have reached the same quality levels, they would compete mostly on price. These kinds of products are produced in emerging economies, some of which violate core workers' rights. Nevertheless, it can be assumed that higher wages would not necessarily translate into higher prices. Compared with the hand-made products mentioned above, the higher degree of capital intensity keeps the share of wages to total production costs lower. In addition the efficiency wage argument is applicable at this higher level of industrial development. Workers' qualifications and their motivation are important for mastering complex production processes. The general increase in wages can also be beneficial for the development of domestic demand, which in turn accelerates the move up along the industrial learning curve and helps realize economies of scale. Nevertheless, the more effective enforcement of workers' rights may carry with it adjustment costs in the short term. Higher costs in the short term, however, are not likely to influence the long-term growth of developing countries. Growth prospects are more dependent on the education level of the workforce and on technology transfer than on the level of wage compensation. Even where minimum standards are maintained, wage costs are significantly lower than in the OECD countries. In addition, higher labor costs do not necessarily lead to higher prices for

consumers in the OECD countries. They could be either neutralized by currency devaluation or absorbed by export price profit margins (Singh 1990: 52-254; see also Erickson/Mitchell 1998: 179).

The OECD study mentioned earlier attempted to measure these adjustment costs by comparing the trade performance of countries before and after a period of repressed labor rights. Democratization went hand-in-hand with improved trade performance in the cases of Spain and Portugal. In the case of Chile trade performance remained unaltered. In Argentina, Korea, and Chinese Taipei, the restoration of democratic institutions was followed by worsening trade performance. The authors caution against attributing all changes in trade performance to democratization. Chronic labor shortage, currency appreciation, and other factors have to be taken in account for the East Asian countries (OECD 1996: 92-96). Thomas Palley improved upon the OECD study by controlling for the growth rate at the time the reform was instituted and for the effect of global economic performance. The unambiguous conclusion of his regression results is that improved rights of freedom of association have a largely positive and statistically significant effect on country GDP growth rates in the five-year period after implementation of these rights (1998).

Even the more ambiguous results of the OECD study concerning the effects of the democratization of individual countries under current competitive constraints suggest that in the counterfactual case of a successful international enforcement of the right of freedom of association, most countries will not suffer a decline in trade performance. In fact, the effective enforcement of core workers' rights is most likely to improve the competitive position of most emerging economies. This is because of China. The most populous country of the world, and one of its most dynamic economies, at the same time belongs to the group of countries where labor is most repressed. In case of effective enforcement, this main competitor of the Asian Tigers and Little Dragons would at least no longer enjoy the dubious, short-term competitive advantage of suppressed workers' rights.

This counterfactual reasoning provides some clues concerning the impact of internationally enforced core workers' rights on unemployment and the distribution of income in the North (see above). The prohibition of child labor will have no effect on employment in OECD countries since child labor is almost exclusively used for goods produced with labor-intensive, simple production techniques. These products are no longer made in the North. The great success of Chinese products in the American market during the 1990s suggests that effective enforcement of the rights of freedom of association and collective bargaining will also have little impact on the North. The Chinese success happened only to a small degree at

the expense of production facilities in United States. In the main, Chinese manufacturers displaced products from other emerging economies and, due to their very low prices, created new markets (Rosen 1999; Klitgaard/Schiele 1997). However, if China and other countries that violated core workers' rights, succeed in the future to move up to the next levels of industrial development without simultaneously striving to honor these rights, then they may have an additional competitive edge that will hurt OECD producers.

In sum, the more an economy is capital, research, and service intensive, the less it will be affected by violations of core labor rights. Workers in Greece or Portugal will enjoy greater material benefits from the worldwide enforcement of core workers' rights than will workers in Germany or Japan. The main benefits would, therefore, accrue to the developing countries. Developing countries trying to respect these rights and improve working and living conditions are the most vulnerable to being undercut in world markets by countries seeking comparative advantage through the suppression of workers' rights. Often the victims are young and unorganized female workers in export processing zones that advertise the absence of trade union rights in order to attract investment. For these reasons, developing countries cannot raise their social standards in isolation but only in conjunction with other countries by multilateral agreement.

&U1&II. Global Rules: Workers' Rights Clauses

&U2&6. Trade Agreements as a Means of Enforcing Workers' Rights

A workers' rights clause is a provision in international trade agreements (or in trade legislation) containing the requirement that the parties to these agreements adhere to certain labor rights when engaged in the production of goods and services for trade. The privileges granted in these agreements are conditional on the respect for labor rights.

The current debate centers on a labor rights clause within the legal framework of the World Trade Organization (WTO). There is consensus among those in favor of such a clause that the following core workers' rights, which are covered by ILO conventions, should be guaranteed: Freedom of Association and Protection of the Right to Organize Convention (No. 87), Right to Organize and Collective Bargaining Convention (No. 98), Forced Labor Convention (No. 29), Abolition of Forced Labor Convention (No. 105), Discrimination (Employment and Occupation) Convention (No.111), Equal Remuneration Convention (No. 100), Minimum

Age Convention (No. 138), and the Worst Forms of Child Labor Convention (No. 182; for the content of these conventions, see chapter 1).

There are essentially two arguments for incorporating ILO conventions into trade agreements. The first is that the ILO monitoring arrangements are not adequate to ensure enforcement of the conventions; in the long run, the ILO's moral suasion is essential, but as long as there is no central body to regulate the world market, social clauses will be the only way to ensure compliance with the standard (Marshall 1990: 46).

Second, it is argued that the adoption and implementation of ILO conventions has slowed down markedly in the last decade. The proportion of conventions ratified by export-oriented developing countries is particularly low, so that the ILO conventions apply to an ever smaller circle of participants in the world market. These countries could be brought into the ILO system by adopting social clauses in agreements reached through the new World Trade Organization (Marshall 1990; Sengenberger 1994b).

The most specific and relevant proposal for a labor rights clause in the WTO comes from the international labor federations. In their joint statement, the International Confederation of Free Trade Unions (ICFTU), the World Confederation of Labour (WCL), and the European Trade Union Confederation (ETUC), suggested that a Joint Advisory Committee of the ILO and the WTO should oversee the implementation of a social clause referring to core labor rights, operating in cooperation with the ILO Committee on Freedom of Association and its Committee of Experts on the Application of Conventions and Recommendations. They proposed that, on the basis of specific complaints from the tripartite constituents of the ILO (governments, employers, and unions), the Joint Advisory Committee would examine the extent to which the contracting parties were meeting their obligations under the social clause and make recommendations accordingly:

&Z& “When a country was found to be falling short of its obligations, the Joint Advisory Committee would recommend measures to be taken within a specified period that should not exceed two years. The ILO would also offer technical assistance to the country concerned, perhaps funded by a new international social fund.

At the end of the specified period, a further report would be prepared which would either state that the country was now fulfilling its obligations, or that progress was being made, specifying the additional time needed to deal with the problem, or that the government had failed to make adequate efforts.

In the latter case trade sanctions would be applied. These sanctions could consist of increased

tariffs to be levied by all GATT/WTO Members on the offending country's exports.” (ICFTU et al. 1994)

As already mentioned, this demand, which had been first raised in 1994, has met fierce resistance and has yet to be realized. However, U.S. trade laws have comprised labor rights clauses since the mid 1980s and the European Union since 1995. These clauses were unilaterally imposed; that is, without negotiations with the respective trading partners. Also, in 1994, for the first time within the framework of an international trade treaty, the North American Free Trade Agreement (NAFTA), a commission on labor was founded by the North American Agreement on Labor Cooperation. Its purpose is to monitor the adherence to the respective national labor law. The experiences with these U.S. labor rights clauses have been thoroughly analyzed. They will therefore be used as the empirical basis for evaluating the usefulness of a labor rights clause (see chapter 7).

Overcoming the Collective Action Dilemma through Social Clauses

As discussed in the chapter on the economic dimensions of international workers' rights, it is possible that developing countries with open economies may face a collective action dilemma in labor rights: They jointly benefit if rights are upheld by all, but countries that upgrade rights unilaterally suffer a competitive disadvantage, and competitive benefits accrue to countries that unilaterally undercut the others. If this characterization is accurate, there will be general gains from labor policy coordination.

Perhaps the most significant point is how the workers' rights policies of one developing country may affect those of the others. For simplicity's sake, suppose that there are two low-wage developing countries that have both chosen the path of export-led industrialization, and that their goods compete in the same developed-country markets. Starting from a situation where neither is protective of labor rights, the two countries compete initially on an equal footing with an equal chance for development. The first country to vary by instituting rights, however, finds that it has raised its labor costs and is no longer competitive; its development strategy is defeated. Yet both countries could institute such rights and, apart from the domestic effects of enforcing them, they would be no worse off than they were originally. Nevertheless, each country would have an individual incentive to repeal its rights in order to gain a renewed competitive advantage. If one assumes that labor rights are desirable and their

absence costly – but only when the economy in question is competitive – then a standard prisoners' dilemma exists.

Most economists contend that high labor rights are injurious to development, but it would be more accurate to say that it is the incomplete spread of rights that is harmful. Both countries would benefit under an international regime requiring them to adopt a higher level of rights. Because individual incentives to violate the agreement would remain, such a regime must have the authority to impose sanctions (Dorman 1995).

The simple solution to the collective action problem is collusion. In contrast to prisoners (who, in the game theory model, are not allowed to speak with each other), nations can communicate with each other freely. The ILO provides an institutional framework for such collusive behavior. However, communication and the subsequent drawing up of conventions is apparently not sufficient. Without effective sanctions there is no guarantee that nations will adhere to ILO conventions. Workers' rights clauses can help to overcome this collective action problem. Trade sanctions, even when they are applied only in the last instance, affect not just the government of the country where workers' rights are violated but also the enterprises benefiting from such violations. The prospect of losing important export markets provides companies with an incentive to demand that their government improve the enforcement of these rights. By contrast, the payment of a fine can be transferred to all taxpayers and hence will not mobilize a domestic constituency in most circumstances. In addition, trade sanctions are more closely related to the illegal transgression than are fines, because the violation is caused at least in part by the competitive situation on international markets and the consequences of these violations are transferred via the market to other countries.

&U3&Violating Sovereignty?

The central objection to social clauses in trade agreements is generally that they violate the sovereignty of nation-states by prescribing their social policy.

Since the workers' rights clause is supposed to enforce respect for core labor rights by threatening to withdraw market access to export markets, power will automatically accrue to those nations with the richest and largest markets. Without doubt, developing countries are much more dependent on OECD markets for their economic development than vice versa. OECD countries, especially the United States and France, have been prominent in calling for a workers' rights clause in international trade agreements. However, in confronting the

disparity in power between the OECD countries and the rest of the world, it should not be overlooked that there is a further power axis as far as labor clauses are concerned. Steve Charnovitz rightly points out that, in negotiations on workers' rights, the governments of the industrializing countries can count on strong allies in the industrial countries, namely employers' associations. Even if negotiations on labor clauses between national representatives open up a North-South divide, the true political tension stems from the clash of interests between capital and labor (Charnovitz 1995: 180).

In addition, the discussion of the economic justification for workers' rights clauses has established that they are beneficial for developing countries in the long run. The discussion concerning the implementation of workers' rights has highlighted a collective action dilemma, which can be overcome with the help of such a clause.

Nevertheless, the question remains in what circumstances it is justified to wrest changes in national employment and social policy from reluctant governments of the non-OECD world at the negotiating table. Usually, such action can be regarded as legitimate only if it does not serve individual purposes, such as the protection of the respective domestic economies, but is taken in the name of supposedly universal rights. As the debate on the Western understanding of human rights shows, every claim to universal validity is problematic, however well it is justified by reference to a religious commandment, reason, natural law, or tradition. In fact, only that which is almost universally recognized can have universal validity ("almost" is an adequate criterion, for where there is total unanimity there is no longer need for discussion; Laclau 1992).

The most prominent academic proponent of free trade, Jagdish Bhagwati, denies that ILO standards have the status of universal human rights, as violations of employment standards occur even in the USA (Bhagwati 1994). According to this logic, there could be no universal human rights at all, as Amnesty International has reported offenses against traditional human rights in the USA and other OECD countries. Furthermore, the chapter on core workers' rights in international law has clearly established that these rights are an inseparable part of human rights. They therefore satisfy the requirement of universal recognition.

If the use of political and economic power in enforcing labor clauses in the name of universal rights is justified, there are nevertheless restrictions on the scope of such clauses and on the manner of their enforcement. Only those standards and rights that already enjoy a high level of acceptance, such as the core workers' rights, can be included in the catalogue of demands for social clauses. The demand for a worldwide minimum wage does not meet this requirement, and the unilateral enforcement of social standards cannot be justified on these

grounds. Only if demands for minimum standards are brought forward in the course of multilateral negotiations can the claim of universal validity be made on their behalf.

Ü3&Contrary to the Tradition of the World Trading System?

Workers' rights clauses continue to be rejected on the grounds that linkage between workers' rights and trade agreements runs counter to the tradition of multilateral negotiating rounds. It is argued that trade barriers were successfully dismantled because trade issues had been delinked from other political objectives. Three precedents are cited against this argument:

1. Article XX(e) of the General Agreement on Tariffs and Trade (GATT), which permits trade protection measures against products produced by forced labor.
2. The protection of Trade-Related Intellectual Property Rights (TRIPS), agreed upon in the Uruguay Round. The industrializing countries initially rejected the handling of intellectual property under the GATT, maintaining that it had no clear product characteristics and should, therefore, be dealt with in the World Intellectual Property Organization (WIPO), a UN agency (the same argument as the one applied to workers' rights and the ILO). However, they finally bowed to pressure from the OECD countries. The agreed upon clauses on TRIPS require developing countries to make far-reaching amendments to legislation and to establish costly monitoring mechanisms.
3. The new WTO objective of harmonizing competition policy.

Bhagwati does not accept the first two of these precedents. On the first point he objects that political compromises from the immediate post-war period cannot serve as a precedent.

Indeed, he suggests that these agreements be examined to establish whether they are still valid. With specific reference to Article XX(e), he argues that it is not forced labor as such but the circumstances in which the prisoners work that should be the subject of trade measures (Bhagwati 1994: 57). On this point he could find support from the ILO, as the ILO convention on forced labor makes precisely this distinction (Adamy 1994: 296-277).

Bhagwati's refutation of the second type of precedent – the protection of intellectual property – deserves to be quoted verbatim, as his treatment of this case takes on special importance:

“Rules about intellectual property protection ... do have some essential trade aspects: the transfer and diffusion of technology, and payments for the same, across countries can be legitimately viewed as international trade in technology, whereas no such case can be made for 'labor standards'” (Bhagwati 1994: 57).

However, it can be easily demonstrated that workers' rights also are trade related: "When unscrupulous employers rob workers of their right to organize and bargain collectively ... they are able to sell the product at a lower price, thereby gaining an unfair competitive advantage over employers who respect workers' rights. Workers in both companies are harmed by this unfair trading practice, as is the employer who obeys the law" (Jessup 1994: 9). Nevertheless, one difference remains: It is possible to trade in patents and copyrights but (thankfully?) not in workers' rights. Trade-Related Intellectual Property Rights, therefore, do not represent a precedent that can be applied to workers' rights.

The third precedent, the new bargaining topic "competition policy," displays more direct parallels with labor rights. This policy area deals as much as labor rights do with the national legal framework for the production of goods and services. Furthermore, Robert Howse and Donald Regan (2000) convincingly refute the distinction made by a GATT panel in the famous Tuna/Dolphin decisions between regulatory measures based on the process or production method and the inherent or physical characteristics of the product itself. These decisions held that all trade action against imports concerning process-based measures not directly related to the physical characteristics of the product itself, is a prima facie violation of GATT. Howse and Regan demonstrate that GATT articles do in fact cover measures that "affect products as such" and that process-based measures "giving terms their ordinary meaning ... affect the sale of products." As long as the market access of products produced under unwonted circumstances is not barred in a discriminatory fashion based on their country of origin, the denial of market access is not a prima facie violation of GATT (Howse / Regan 2000: 5). However, though the distinction between process and product may not be valid, competition policy focuses on property rights, and the rights of workers and employees have not yet found consideration.

The argument of the critics of labor rights clauses – that they run counter to the tradition of multilateral rounds of negotiations – can therefore not fully be refuted. Up to now, the international trading system has concentrated on protecting the owners of tradable goods but not the producers of those goods. A place for workers' rights still has to be won. Nevertheless, the scope of GATT negotiations has been widened from one round to the next according to economic and political imperatives. If today's changed conditions in world markets and a new political awareness have placed the issues of the environment and workers' rights on the agenda, the treatment of these subjects would accord precisely with the tradition of multilateral trade agreements, which has been to tackle new challenges as they arise (Kantor

1994: 15). The precedent would therefore lie in the pragmatic widening of the subject matter, not in the subjects that have been handled in the past.

Protectionist Misuse?

A frequent argument against labor rights clauses is that they represent an additional obstacle to the conclusion of multilateral agreements on the dismantling of trade barriers. It is claimed that taking this controversial demand into account would jeopardize the success of what are already highly complex and delicate negotiations. Moreover, for the WTO to assume responsibility for ILO tasks would run counter to the existing principle of specialization in the political handling of international problems. Specialized organizations were established for particular problem areas in the international community of nations and have acquired the necessary powers and instruments in their respective spheres. If they were given functions outside their existing fields of competence, they would not be able to perform them efficiently.

Charnovitz rejects both the specialization argument and the claim that social clauses are an unnecessary extra burden for multilateral trade agreements. He argues that the WTO would have great difficulty in performing its true function of regulating trade relations and promoting the dismantling of remaining trade barriers if it were to ignore subjects such as workers' rights and environmental protection, which have a high profile in public opinion. Moreover, where trade in foodstuffs is concerned, the UN Codex Alimentarius Commission lays down the standards that the WTO has to police (Charnovitz 1995: 180). This arrangement is exactly the same as one that has been proposed for the WTO and the ILO with regard to social clauses (see chap.2).

The fear that the demand for labor rights clauses could open the door to protectionism has more substance than the claim that it overburdens the negotiating process. Advocates of labor rights clauses stress that they reject protectionism, that they do not want social clauses to have protectionist overtones, and that in fact social clauses serve to cut the ground out from under protectionist demands. In the USA, however, the advocates are recruited mainly from the trade unions, the majority of which have pleaded the case for restricting access to the US market since the end of the sixties (Donohue 1992). They therefore lack credibility. However, experience with social clauses in U.S. trade legislation (i.e., General System of Preferences and Caribbean Basin Initiative) has not substantiated the claim of protectionism (see below). Multilaterally negotiated social clauses would lend themselves even less to protectionism.

The proposed sanctioning mechanism, as described above, with its emphasis on technical assistance and multilateral decision making, is well designed to avoid protectionist excesses.

7. Experiences with Labor Rights Clauses in U.S. Trade Law

Even if the theoretical arguments in favor of workers' rights clauses are found to be persuasive, the question remains whether they are substantiated by actual experience. Especially unilaterally imposed labor rights clauses (i.e., imposed without negotiations with the respective trading partners) have drawn a lot of criticism. It is often stated that such clauses are employed in a discriminatory fashion and are misused for protectionist purposes. Furthermore, they are considered an unwanted and unjustifiable intervention in nations' domestic affairs (Alston 1996). U.S. trade laws have incorporated labor rights clauses since the mid 1980s. They lend themselves for evaluating the merits of these criticisms.

The Generalized System of Preferences

The 1983 Caribbean Basin Economic Recovery Act, enacting unilateral tariff preferences, included a labor rights provision, the first such clause since the prohibition of imports made by prison labor in the 1930 Tariff Act. The provision was framed so that the administration would keep full discretion as to how to apply the clause, which contains the following criteria for granting trade privileges: "the extent to which workers in the country are afforded reasonable workplace conditions and have the right to organize and bargain collectively." No definitions were provided, but the Reagan administration developed standards oriented on ILO conventions and case law, and considered local circumstances and a country's progress toward better conditions (Perez-Lopez 1990: 223). Its history of enforcement after seven years led one observer to call the provision "almost purely symbolic" (Amato 1990: 97). In 1990, the provision was linked to the labor rights review process established by the U.S. Generalized System of Preferences (GSP) renewal act of 1984.

The GSP Renewal Act of 1984 added, among other things, a labor rights provision to the conditions beneficiary countries must meet: "if such country has not taken or is not taking steps to afford internationally recognized worker rights to workers in the country (including any designated zone in that country)." This new provision could be waived by the president for reasons of national economic interest. The legislation also required the president to submit an annual report to the Congress on the status of internationally recognized worker rights

within each beneficiary country. The GSP renewal act explicitly defined the term “internationally recognized worker rights” to include the right of association, the right to organize and bargain collectively, a prohibition on the use of any form of forced or compulsory labor, a minimum age for the employment of children, and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health. The labor rights provision in the U.S. Generalized System of Preferences is the key social clause among those unilaterally enacted by the United States: first, because the GSP is the largest preference program; second, it provides for public participation through a petition process; and third, because several other unilateral clauses have over time been linked to the determinations made under the GSP review process.

The small coalition advocating inclusion of a labor rights provision was genuinely interested in promoting human rights and broad development, and was therefore able to build a case for the provision that could not be portrayed as protectionist. Their success constituted a challenge to organized labor, which focused on defeating the GSP renewal act and only endorsed the labor rights provision in the days before the final vote (Greven 2000: 85). These advocates were able to secure public participation in the worker rights review process beyond parties with an economic self-interest (this allowed human rights groups, not just unions, to petition) and to obtain a commitment to hold at least one annual public hearing. However, the implementation regulations included several provisions that would severely impede the petition process. Most notably, the “new information” requirement allowed the immediate rejection of follow-up petitions that did not document new incidents of violations, regardless of whether a beneficiary country’s government had actually remedied the original situation.

Enforcement of the labor rights provision remained at the administration’s discretion.

Utilizing its discretion during every phase of the review process, the administration refused to review several petitions claiming that no “new information” had been provided (in 1987 and 1988), found several countries were “taking steps” to afford internationally recognized worker rights, and suspended or excluded only those countries that were to be pressured for unrelated foreign policy reasons: Nicaragua, Romania, and Paraguay in 1987, and Chile in 1988 (Greven 2000: 107; Frundt 1998).

The review process became more effective under the Bush presidency. A legal challenge of the previous review practices, a change of personnel in the subcommittee responsible for the review process, and political maneuvering in favor of NAFTA may have contributed to this change. Two cases from this period will be discussed in greater detail below.

Under President Clinton few petitions were filed. For several years, no new petitions were accepted or their acceptance was delayed because the GSP program had lapsed for budgetary reasons. Although benefits were always reauthorized retroactively, the opportunity to file labor rights petitions was lost for that year. In addition, the general GATT tariff cuts negotiated in the Uruguay Round further reduced the leverage of GSP. While throughout the Clinton administration petitioners were treated better, a larger percentage of the few petitions filed were accepted for review, and the GSP Subcommittee made a greater effort in explaining its decisions, under the surface strategic foreign policy considerations still dominated the decision-making process. The administration resorted to a number of policy innovations that neither put too much pressure on beneficiary developing countries nor completely alienated petitioners. Decisions about accepting petitions for review were delayed; for years in the case of Malaysia – until the country was graduated from the program in 1996. The review of Indonesia was “suspended” in February 1994 upon intervention by the National Security Council, and a policy of dialogue was implemented instead. In 1996, the GSP-Subcommittee recommended the withdrawal of Pakistan’s benefits only for products made with child labor (USTR 1996).

Many petitioners criticized the administration’s reluctance to withdraw benefits. The threat of withdrawal would become less credible if it was never executed. Experience showed that governments would often make promises when under review that were not kept once the review had ended (Harvey 1996).

What about the charge of protectionism? In a recent analysis of all GSP petitions to date, Kimberly Elliott of the Institute for International Economics argued that if protection had been the primary motivation of labor rights advocates, one would expect one of two responses to the possibility of filing petitions under the GSP labor rights provision: Either not much attention at all (because of the exclusions the program provided for domestic producers’ concerns), or protectionist motivations visible in the attention given to petitions targeting the largest and heaviest users of the program. Elliott found that both expectations were not supported (Elliott 1998b: 9-11).

In sum, the analysis of the enforcement of labor rights provisions in U.S. trade law, specifically in the Generalized System of Preferences, confirms the often stated criticism that social clauses can be employed in a discriminatory fashion. The U.S. government has enforced the unilateral labor rights provisions, based less on a fair and consistent assessment of labor rights violations than on U.S. foreign policy interests and domestic politics. Because of the general free-trade outlook of the U.S. government, however, few countries have had

their trade benefits withdrawn. There is no empirical basis for the claim that social clauses are employed in a protectionist way.

• The North American Free Trade Agreement

The North American Agreement on Labor Cooperation (NAALC) between Canada, Mexico, and the United States, negotiated as a side agreement to the North American Free Trade Agreement (NAFTA), went into effect on January 1, 1994. It does not establish a set of international labor rights and standards, but strictly focuses on the enforcement of the respective national labor laws of the three member countries. A three-tier system was set up, under which eleven so-called labor principles were subject to different enforcement mechanisms. NAFTA benefits may be suspended only for violations of child labor protection, minimum employment standards (e.g., minimum wage laws), and safety and health provisions. The quasi-diplomatic decision-making process of NAALC features cumbersome rules and limited sanctions (US-NAO 1995). Thus the agreement's submission procedure has been utilized only in a handful of cases to date. U.S. labor, specifically, fears to lend credibility to NAFTA by using the NAALC process; nevertheless, it has recently stepped up its efforts.

Even though Mexico's labor rights situation was its initial focus, the agreement's most remarkable feature is its reciprocity, which has led to complaints about U.S. labor practices. In essence, the process is similar to that of the International Labor Organization (ILO): principally employing diplomatic pressure and moral suasion. However, the participatory elements and regional focus of NAALC have led to the development of transnational networks of unions and human rights organizations and have provided greater publicity than ILO complaints. Thus, although very little progress has been made in the individual cases that have undergone the NAALC process, there is some evidence of a marginal positive effect on Mexico's general labor rights performance (Greven 1998; Compa 1997).

• Impact of Workers' Rights Clauses on Labor Regimes

Do workers' rights clauses achieve their objective; that is, do they lead to improved labor conditions? Supported by a grant from the German Hans Böckler Foundation, Volker Frank has analyzed the reactions to the United States GSP review process in Guatemala and in the Dominican Republic (Frank 1998). Both cases were initiated during the Bush presidency.

They were brought to conclusion, however, under President Clinton: the Dominican Republic in 1994 and Guatemala in 1997. In both cases the administration avoided withdrawing benefits until the governments were found to be “taking steps to afford internationally recognized labor rights.” Observers suspected that the State Department’s desire to reward Guatemala for progress in the peace process following the civil war was more responsible for this decision than actual improvements in labor rights.

During the U.S. GSP Subcommittee review period, labor relations in Guatemala and in the Dominican Republic changed at four levels: labor law, labor law enforcement, neo-corporatist bargaining, and collective bargaining. Both governments reformed their labor laws to meet international standards where needed and, to a lesser degree, made efforts to upgrade the performance of their labor departments. These reforms included strengthening and streamlining procedures to form and register unions and to negotiate collective bargaining agreements, establishing labor courts, enhancing the labor inspection and enforcement capabilities of labor ministries, and increasing salaries and training for labor inspectors. Trade unions in the Dominican Republic participated in a meaningful way in government-led talks on social and economic policies, whereas Guatemalan organizations failed to be recognized as serious political actors. The least amount of change was at the level of collective bargaining. Four contracts were signed in the Dominican Republic and only one in Guatemala at a maquila factory. Overall, labor conditions have improved only slightly. There are persistent reports of abuses, such as firing union organizers, refusing to engage in collective bargaining, and forcing overtime work, as well as of workplace health and safety hazards (see also Frundt 1998, and U.S. GAO 1998).

These relative improvements of labor rights can be traced to the GSP proceedings. On the basis of statements by the actors involved, the chronology of deadlines in the GSP process and the actions taken by these nations, a comparison between specific demands of the GSP Subcommittee and these improvements, and a comparison with other nations under review, Frank found that the GSP process had a strong impact on the labor law reforms and, together with the international campaigns of human rights organizations, on the contract negotiations at some of the maquila firms. The causal relationship was less strong concerning the improved efforts to implement labor laws and the neo-corporatist negotiations. Other factors such as the democratization of the political systems were necessary but not sufficient conditions for strengthened labor rights. The considerable export growth in both countries led to no material improvements for their working populations.

The social clause had a greater impact on the Dominican Republic than on Guatemala, mainly for two reasons: the greater strength and cohesiveness of Dominican trade unions, and the political “culture of dialogue” that facilitated compromises between government, employers associations, and trade unions. In Guatemala, labor relations were highly polarized and the unions were confronted by an alliance of government officials and employers. These differences indicate the dilemma of a social clause: Weaker trade unions are less likely to benefit from a social clause; that is, where labor rights are the most violated, a social clause is the least effective.

In sum, the evidence shows that both the labor rights review process and the threat of withdrawing benefits have small but generally positive effects on the adherence of foreign governments to labor rights.

Ü1&III. Global Rules Through Consumer Power

Ü2&8. Codes of Conduct

Codes of conduct are written guidelines that serve as the basis for the behavior of transnational corporations toward their employees and suppliers, government agencies, and the environment, everywhere the corporation does business. As approximately one third of world trade is intra-corporate trade and as another third involves at least one transnational corporation, such corporate codes of conduct are of great potential relevance, especially since violations of workers’ rights, human rights, and democratic rights have been found at subsidiaries and suppliers of transnational corporations (CCC 1998).

Ü3&OECD and ILO Codes

The first international code of conduct was drafted by the International Chamber of Commerce (ICC) in 1937 with respect to commercial advertising. After the Second World War a code of conduct for governments dealing with foreign direct investment followed. Only in the context of the UN debate on a new international economic order did a serious discussion begin about a code for multinational corporations. The UN Economic and Social Council started negotiations on a UN code of conduct in 1974, but these efforts later failed due to the opposition of the Reagan administration and were discontinued permanently at the beginning of the 1990s. The OECD, however, agreed on guidelines for multinational

corporations in 1976 (*Declaration on International Investment and Multinational Enterprises* - with labor issues being one of several areas covered), and in 1977 the ILO followed with its *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy*. Neither the OECD nor the ILO, however, expended significant resources on promoting their guidelines and on implementing complaint procedures. In the 1990s, the OECD even pursued the opposite course by drafting the Multilateral Agreement on Investment (MAI), which explicitly included no social responsibilities for corporations. The temporary failure of the MAI may have increased willingness to combine the protection of investments with a social code of conduct for transnational corporations (see below).

To our knowledge, there is no systematic evaluation of the experiences with the OECD and ILO codes. An ILO working paper by Jill Murray merely included a content analysis and a comparison of the codes. Murray came to the following conclusions:

- The OECD guidelines only affected corporations based in an OECD member country, while the ILO code can be applied to all transnational corporations;
- both codes rely on voluntary commitments and cannot be enforced
- both codes are based on the not very plausible assumption of symmetric commitments between employers and employees;
- both codes give absolute precedence to national law. E.g., the call to ignore the apartheid legislation in South Africa was not consistent with the codes. The codes do not even demand respect for ILO conventions in such countries. A request for lobbying activities is included, i.a., in the International Chamber of Commerce's code of conduct on bribery;
- a comparison of the two codes reveals inconsistencies.

As for the OECD code, Murray elaborates that it contains the obligation for member states not to discriminate against multinational corporations. The representatives of unions (TUAC) and business (BIAC) only have consultative status in the complaints procedure. The decisions of the Committee on International Investment and Multinational Enterprises (CIME), which is in charge of the complaints, do not directly refer to the respective complaint (i.e., to concrete behavior) but only provide "clarifications" of the guidelines. These clarifications are mostly vague and stress the governments' obligation to non-discrimination of multinational corporations and the precedence of national labor regimes. According to Murray there is little evidence that the OECD code of conduct has affected the actual behavior of corporations. The reports of corporations do not include references to adherence to the code.

On June 27, 2000, after the most comprehensive revision in 25 years of the Guidelines for Multinational Enterprises, the OECD adopted a new code. More than ever before,

representatives of the public had been requested to comment on drafts (cf. OECD 2000a; OECD News Release, March 15, 2000). The Trade Union Advisory Committee (TUAC), along with many NGOs, had advocated tougher language, stronger implementation mechanisms, and an increased role for the so-called “National Contact Points” (cf. TUAC 1999; TUAC 2000). These serve to promote the guidelines in OECD member countries and, in theory, to receive complaints on violations of the code. In fact, this has rarely ever happened (DGB 1999). In the end, the resistance of the Business and Industry Advisory Committee (BIAC) and of the Mexican government against a more mandatory nature of the code was not overcome (Financial Times, June 27, 2000). The guidelines remain mere recommendations (Frankfurter Rundschau, June 28, 2000; for the full text of the revised guidelines, see <http://www.oecd.org/daf/investment/guidelines/mnetext.htm>).

The ILO code also has only the status of a recommendation. Owing to complaints of transnational corporations that the Committee on Multinational Enterprises, which is in charge of code implementation, was abused as a wailing wall, the ILO decided in 1988 that in dealing with the code the positive contribution of multinational corporations to economic progress should be considered (Murray 1998: 9-16). Given the aforementioned recent position of the International Organization of Employers at the ILO, which again stressed the positive role and the voluntary nature of codes of conduct, it is not likely that the nature of the ILO code will change (IOE 1999).

&U3&Company Codes and NGO-initiated Codes

Because the OECD and ILO recommendations were rarely followed and because at the same time working conditions were worsening in many production facilities in the South (ICFTU 1998), in the early 1990s unions, human rights advocates, and development policy groups began public campaigns to pressure transnational corporations into adopting codes of conduct. Since then, many different codes have been established. The ILO analyzed 215 codes of conduct (ILO 1998a; overviews are also provided by OECD 2000b; Steelworkers Humanity Fund 1998; CCC 1998; Murray 1998; detailed case studies can be found in Musiolek 1999a).

About 80 percent of codes analyzed by the ILO were developed and implemented by the respective corporation itself; for example, the codes of the apparel company C&A, of German mail-order house Otto Versand, and of Levi Strauss & Co. – the first company to do so (see appendix). A few companies have committed themselves to codes of conduct in agreements

with unions or NGOs; for instance, the French corporation Danone and the hotel chain ACCOR with the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), and in May 1998, Swedish IKEA and the International Federation of Building and Wood Workers (IFBWW; see appendix). The International Chemical Energy and Mine Workers' Federation (ICEM) has negotiated a similar agreement with Norwegian oil company Statoil (ICFTU 1999a: 66). The *Compagnie Generale des Eaux*, pursuant to an initiative of its European works councils, has committed itself to adhere to a "Charter of fundamental social rights" in all its activities in and outside of Europe, including its relations to subcontractors and suppliers (Bach 1997).

Recently, whole business sectors have adopted codes of conduct. In 1996, for example, the International Council of Toy Industries announced its commitment to humane production and working conditions in manufacturing countries. It added three appendices to its *Code of Business Practices* in 1997, including methodology for evaluating compliance, a detailed audit checklist, and a corrective action plan. In addition, some associations have committed themselves in agreements with unions and NGOs. In September 1997, European unions of the textile and apparel sector (ETUF-TCL) agreed upon a code of conduct with the employer association EURATEX, which comprises about 60-70 percent of European companies in this sector. Leading U.S. apparel companies have committed themselves to respect certain minimum social standards in the context of the *Apparel Industry Partnership* (see below). The British *Ethical Trading Initiative* advocates a code of conduct for the European food processing industry. Furthermore, unions and NGOs have developed model codes, which are codes that can be adopted by interested cooperating companies, unions, and NGOs. The ICFTU, together with the International Trade Secretariats, developed a *Basic Code of Conduct covering Labour Practices*, which was adopted by its executive council in December 1997. It contains clear references to fundamental ILO conventions, holds the TNCs responsible for the working conditions of their suppliers, and prescribes independent monitoring. The ICFTU advocates this code's becoming the minimum standard for company and sector codes concerning labor relations (ICFTU 1999a: 64-65). The *Clean Clothes Campaign* calls for the adoption of a "Code of Labor Practice for the Apparel and Sportswear Industry" and has established the independent *Fair Wear Charter Foundation* in March 1999 to monitor the implementation of the charter (cf. <http://www.cleanclothes.org>; cf. the contribution by Nina Ascoly, Bettina Musiolek, and Ineke Zeldenrust in this volume). There are significant differences in the content of the various codes of conduct. While company codes are usually short and vague, union and NGO-initiated codes contain detailed

provisions, especially on their implementation in the workplace. Most company codes do not contain provisions regarding their enforcement. There are significant differences in the following points:

Access to the code of conduct: Company codes as a rule do not contain provisions on how the code will be made accessible to the employees. The model code of the *Clean Clothes Campaign* prescribes the translation of the code into the language of the country in question.

Range of applicability: While company codes restrict applicability to their subsidiaries, NGOs have successfully advocated the inclusion of the whole supplier chain.

Coverage: Company codes refer to vaguely defined “fair working conditions” and the respect for national labor law. Unions call for adherence to the core ILO conventions, especially the rights of freedom of association and collective bargaining. Many NGOs such as the *Clean Clothes Campaign* include standards like a ‘living wage’ and safety and health measures—reflecting, so they argue, the most urgent needs of workers (for a discussion of the highly controversial concept of a ‘living wage,’ cf. Volker Frank’s contribution in this volume).

Level of commitment: Company codes stress their voluntary character; unions advocate the inclusion of codes of conduct in collective bargaining agreements.

Monitoring and sanctions: Monitoring systems range from company-controlled internal monitoring, to monitoring with the participation of workers’ representatives, to external monitoring institutions, such as professional certification agencies or external actors like International Trade Secretariats, NGOs, and state agencies (see tables 6 and 7 for differences between selected codes of conduct).

&T6& Key Features of Selected Codes

&T7& Governance and Monitoring of Selected Codes

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&Ü2&The Code Debate in Context: A Decade of Campaigning for Clean Clothes

by Nina Ascoly, Bettina Musiolek and Ineke Zeldenrust

Standing before a packed auditorium at the ICFTU’s headquarters in Brussels in early May 1998, researcher Esther de Haan testified about the working and living conditions of Chinese migrant women workers that she had observed in Mauritius. De Haan, of SOMO (the

Amsterdam-based Centre for Research on Multinational Corporations), reported on field work done on these African islands in 1997. The women, she explained, were imported through brokers to work under contract for two to three years. Language kept the women isolated and they were barred from taking part in any trade union or cultural (social and religious) activities organized in Mauritius. It was not uncommon for the women to work seven days a week and live in housing facilities provided by the company. “Women live literally stacked on top of each other,” de Haan said, “four to eight per tiny room.” She noted the similarity between this situation, in 1997, in a factory producing for Levi Strauss, reportedly the largest brand-name apparel manufacturer in the world, and that of Chinese migrant workers employed to produce for Levi’s in a facility on the island of Saipan in the early 1990s. The conditions in Saipan garment factories – described as slavlike – became the basis of a \$10 million lawsuit filed by the U.S. Department of Labor, now partly settled. Reports continue to reveal similar bad working conditions for Chinese migrant women workers in Northern Italy’s garment production facilities as well as migrant workers in Russia producing for The Gap. Indeed, it is a grim fact of garment production in the year 2000 that heinous violations of workers’ rights are still commonplace. But this reality is at odds with the picture painted by companies such as Levi Strauss and The Gap, which have pledged to uphold good labor standards as articulated in codes of conduct for the workplaces that produce their clothes. In Europe the Clean Clothes Campaigns (CCC) have concentrated a large part of their efforts in providing detailed information on non-compliance of companies with their own codes of conduct as shown in the above-mentioned examples. But why have the Clean Clothes Campaigns focused so much of their attention on codes of conducts? This paper discusses the context of the ‘codes issue’ in order to clarify the limitations and opportunities connected with the use of codes of conduct and their implementation, verification, and monitoring in the garment sector. It starts with the history of how the campaign’s own code emerged, continues with a discussion of the main shortcomings of corporate codes, the legal aspirations regarding this tool, and the way codes are used, and concludes with comments on future research and action needed pertaining to this issue.

&U3& A Standard to Campaign By

In May 1998, when the CCC – a coalition of trade unions, NGOs, researchers and activists – convened the International Forum on Clean Clothes in Brussels, the campaign had already gone through nine years of campaigning and negotiating, research and discussion. It started in

1989 when a lockout in a clothing factory in the Philippines became the focus of attention of several Dutch and British groups active in the solidarity movement, leading to the kick-off of the “Clean Clothes Campaign” in the Netherlands and the “Labour behind the Label” network in the UK. From what we now know, it was in fact a quite typical case: A C&A contractor had a subcontractor in a Free Trade Zone. The women workers at the subcontractor demanded their legal minimum wage and got fired for it. They started a picket that lasted over a year. At the time this case did not seem typical, as there was virtually no knowledge in Western European countries about the way consumer products were being made and about the specific consequences for women workers, who make up the majority of workers in the garment industry. It was considered news that companies like C&A produced in faraway countries under bad conditions, that there were women involved, and especially that some people held a retailer company such as C&A responsible for all of this. After all, what did C&A have to do with what was happening in the Philippines? Not their company, not their country, not their employees, not their business. Remember, this was long before globalization became a buzzword, before the Internet, and even before the PC boom. It was in the midst of the economic crisis in the West, when people could not have cared less about other people’s jobs, especially on the other side of the world.

When a public burning of clothes in front of C&A’s main store in Amsterdam led to fights between activists and police, C&A took steps, though publicly denying any responsibility for what happened at the subcontractor. They wrote letters to the contractor telling them to settle, one way or another, with the subcontractor. Throughout 1989 and 1990 (as the case dragged on) the different groups involved continued to demonstrate. Press attention was ongoing and stories on women workers, the international division of labor, and TNC responsibility were receiving more coverage. Uncool subjects were the exclusive domain of a few academics, some radicals, and several anti-imperialistic seventies’ leftovers. More research on C&A continued to reveal new cases, in Bangladesh, in India, and in the sweatshops of the Netherlands. The solidarity groups involved were in contact with local workers’ organizations. Clearly, this initiative struck a nerve: Campaigning for ‘Clean Clothes’ provided a concrete way of taking up the political demands of women’s and labor organizations in the South and, at the same time, of changing the behavior and the policies of TNCs and governments in the North, since they were responsible for the way people in the South lived and worked.

After several such cases, CCC's partner organizations in the countries where garments were produced urged it to not just react to cases but take a pro-active position. CCC needed to develop more clarity in its demands to the industry, going beyond a case-by-case approach. CCC began studying different strategies. One strategy looked at the possibility of an international law on production chain responsibility. The main problem was the lack of international legal structures able to deal with such a law, not to mention the underlying assumption that CCC would reach the stage of gaining acceptance for its claims from governments and other legal entities – then considered extremely unlikely. The CCC agreed that responsibility should lie at the very top of the production chain – if not recognized by law, then otherwise.

Another strategy of the CCC was the introduction of a social clause into trade agreements, a debate that was responsible for serious infighting and deep rifts between those in favor (because it included government responsibility and the possibility of sanctions) and those against (because it excluded TNC responsibility, legitimized the GATT structures, and was potentially protectionist).

Eventually a combination of a workers' charter and a company label was put forward: The European CCC drafted the *Code of Labour Practices for the Apparel Industry Including Sportswear*, which elaborates the guiding principles toward the improvement of working conditions, found in the basic conventions issued by the International Labor Organization (ILO), as well as the international principles regarding fundamental rights in the workplace. These are: freedom of association, the right to collective bargaining, no discrimination of any kind, no forced or slave labor, a minimum employment age of 15, safety and health measures, a working week of 48 hours maximum and voluntary overtime of 12 hours maximum, a right to a living wage, and establishment of the employment relationship (a contract).

The development of the CCC code was the result of a process of international consultation. Informal meetings were organized among the Clean Clothes Campaigns in Europe, the International Trade Union Secretariats (International Congress of Free Trade Unions, ICFTU; International Textile, Garments, Leather Workers Federation, ITGLWF; European Textile, Clothing, Leather Workers Federation, ETUC/TCL; the International Federation of Commercial, Clerical, Professional and Technical Employees, FIET; Euro-FIET; the World Confederation of Labour, WCL; WCL Clothing & Textiles), and other NGOs (such as the UK Fair Trade Foundation and IRENE). Each consulted with their partners in the South on drafts of the codes (for example, Asia Monitor Resource Center, AMRC; the Committee of Asian Women, CAW; members of the OXFAM network; and trade union federations).

It was also proposed that compliance with the code should be monitored by a special foundation. The *foundation model* was chosen owing to the lack of willingness of international bodies to take up such duties. The Dutch CCC promoted a model for a foundation whose board would be made up equally of representatives of trade unions, NGOs, producers and retailers. This model was developed in the Netherlands within the context of the Fair Trade Charter working group, which included the Dutch trade union federation FNV, several member unions, and the development agency NOVIB. An agreement with the federation of middle-sized retailers and the federation of producers was reached in 1996. The Dutch foundation was officially launched in March 1999. The two-year initial work program includes facilitating similar work on a European level.

The campaign and its Code of Conduct put the chief responsibility for working conditions throughout the subcontracting chain at the very top: with the retailer, mail-order company, or sportswear firm. The CCC believes that this principal responsibility of the retailer must be ensured in the code. Such responsibility is not mentioned in international or national legislation or in social clauses of trade agreements, which address governments or manufacturers but not transnational retailers. Moreover, the responsibility has to cover the conditions throughout the *entire subcontracting chain* including casualized and contract labor, informal sweatshops, and homeworkers. This scope of applicability is not typically provided for by legislation.

Thus, the use of codes of conduct and the discourse on independent monitoring respond to the deliberate retreat of the state from regulating industrial relations. When the quadripartite (NGOs, trade unions, manufacturers, and retailers) negotiations on a Canadian Base Code of Labour Practice broke down in May 2000, one of the reasons was the unwillingness of the government “put pressure on the associations and companies in support of ILO core labour rights,” according to the Canadian Ethical Trading Action Group. In the case of the Clean Clothes Campaign, the decision to use codes of conduct has been made with the clear expectation that more effective national and international legislation will eventually be enacted. By no means does the CCC see codes as a substitute for implementing existing laws.

§ Codes: Inhouse, Unknown, or Out in the Open?

The failure of governments to enforce labor standards has been a significant catalyst in increasing “private” initiatives to improve working conditions. Trade unions, development organizations, solidarity groups, and environmental organizations directly approach and

address corporations (or industry associations representing corporations) about their social and environmental behavior. And while the revisionist histories developed by many companies to describe their move toward social responsibility erase this factor from the context, public pressure was and remains a crucial factor in their interest in such a brand image.

Meanwhile, industry has not looked on passively as processes of globalization have heightened interest in international business and its behavior. In the growing worldwide competition between corporations, the consumers' market behavior has become a deciding factor; this means that companies are much more sensitive to public pressure of any kind. Many companies have adopted their own codes "voluntarily" or in direct response to publicized scandals. The public relations preservation of both brand image and humanitarian concerns has been cited as a motivating factor in the formation of in-house guidelines – company codes.

Criticisms of company codes fall into four major categories: (1) vaguely defined; (2) incomplete; (3) not implemented and monitored; and (4) not independently verified.

Vague language in company codes allows 'creative' interpretation of the standards companies claim to hold themselves to. The inclusion of ILO conventions would easily eliminate the potential for confusion, but even upon repeated requests to do so, most companies do not include such benchmarks in their codes. Corporate codes often do not precisely specify the limits of their responsibility. Does the code apply only to the direct employees or also to the employees of the subcontractors and suppliers? And if so, who is considered to be a subcontractor or supplier? Does the code apply to all products? A good code must answer these questions. Most company codes do not.

The recognition of *responsibility for workers not in their own employ* is becoming more and more common among companies. This can be seen as significant progress compared with the position companies espoused 10 years ago, when the CCC began its work on this issue.

However, when company codes are virtually unknown to those who produce a company's products, this demonstrates the failure of the implementation phase for such standards and suggests that the company is not seriously interested in the standards. If companies are not informing the workers of their rights under the very guarantee they are brandishing to the consumer public (in some cases not even translating that pledge), they are working counter to values they espouse and sully the very brand image they seek to bolster. Today's migrant workers leaving China to work in Mauritius are duped by employment brokers who show them tourist brochures of the sunny island vacation paradise they will be journeying to, much

like the European migrants lured to U.S. textile mills in the 1920s were shown brochures with pictures of workers leaving factories loaded down with money and skipping across the street to make bank deposits. But did clothing companies 75 years ago spend millions on elaborate communications strategies to notify the public of the “policies” they were carrying out in the workplace? There seems to be a dangerously high level of cynicism and contempt for consumers at play within some corporate public relations divisions.

Even if a company has a good code of conduct and it has done its utmost to *implement* it, company-controlled or internal monitoring assumes a willingness to take the company at its word only. The staff of the company, special division, subsidiary, or external company involved in such monitoring efforts report only to the company that has hired them. Those outside of the company management have no way of knowing whether violations have been found; how many or what kind of violations have been found; what steps have been undertaken to improve the situation; or whether some changes in a handful of factories have been communicated to the public as across-the-board changes in all production units. These are just a few obvious questions. From the trade union/NGO point of view, company-controlled or internal monitoring actually forms part of the implementation phase of the code. Not surprisingly, industry looks at this differently.

&U3& The International Forum on Clean Clothes

By the mid 1990s the CCC had become increasingly interested in buttressing its work with legal arguments. Two specific legal approaches had become apparent: *first*, in terms of the consumer's right to be informed of the working conditions under which the clothes they buy are produced; and *second*, via the liability of the distributors and the clothing companies at every stage of production. In the context of the 1998 International Forum on Clean Clothes in Brussels, cases against seven major garment manufacturers and retailers – Adidas, C&A, Disney, H&M, Levi Strauss, Nike, and Otto Versand – were presented before the Permanent Peoples Tribunal (PPT), an organization of international law experts. Cases were compiled on some of the major transnational corporate players in the garment and sportswear sector – they were by no means the worst in the industry, but they were the *de facto* standard setters. Witnesses (researchers such as de Haan, workers and representatives of workers organizations, including unions) presented testimony that highlighted working conditions in clear violation of ILO standards and the companies' own self-declared codes of conducts.

The CCC sought a public forum where consumers' right to be informed of the social conditions under which articles of clothing and sport shoes are manufactured would be addressed within a legal framework. If companies make claims about the conditions under which their products are made, what is the legal right of consumers to know whether such claims are true? What about the meaning of codes of conduct from a legal point of view? What should be included in such codes to maximize their enforceability? Which conditions can be mentioned to enable the efficient monitoring of the codes of conduct? Since the International Forum in 1998, the campaign has continued to study legal measures that can support codes of conduct and 'voluntary' agreements to work on independent monitoring. The EU's legal framework for the protection of the consumer's rights (principally the right to information and the right to a quality product) as well as laws with applicability beyond the borders of the adopting country, are the starting points identified for follow-up by the CCC's Legal Working Group.

Seeking Answers to Important Questions

Beyond sustaining momentum and an awareness of the issues, the development of monitoring systems and procedures toward the successful implementation and verification of good labor standards is one of the primary occupations of the CCC at this time. How the concepts the CCC has campaigned for are operationalized are of great importance, as this will be the next step in eliminating consumer confusion, promoting corporate accountability, and, most importantly, improving working conditions and facilitating the empowerment of workers. Questions still remain on how to broaden the scope of applicability of systems of implementation, monitoring, and verification to cover all the different categories of companies that make up the supply chain. Monitoring systems that would continue to put all the responsibility for upholding good working conditions with suppliers and exempt their clients who set the actual wage norms – in other words, shift the responsibility – are clearly not acceptable. Sourcing guidelines should in no way facilitate a “cut and run” approach; rather, they should call for a commitment to help those without access to resources to improve conditions over time.

'Experiments' or pilot projects with monitoring models have to meet certain guidelines themselves and be carefully evaluated. Findings should be widely disseminated and considered in a thorough fashion to ensure informed learning. This phase of experimentation and information-gathering should not be company led.

In addition to the launch of the foundation model in the Netherlands, some CCCs are making advances in investigating possibilities for independent monitoring; still others are initiating projects that explore how the principles of processes campaigned for can be translated into action. Four Swedish retailers – H&M, Kapp-ahl, Lindex, and Indiska – signed a letter of intent in the summer of 1998 with the Swedish CCC (*Kampanjen Rena Klader*), stating their intention to collectively develop a system that independently monitors compliance with a common code. The French CCC (*L'ethique sur L'etiquette*) and the French retailer Auchan signed a letter of intent regarding the adoption of a Code of Conduct and its implementation and monitoring, including four training programs for buyers (now concluded) and pilot projects. In October 1998, the French organization of large retailers, FCD (including Carrefour, Promodes, and Casino), adopted a code including a commitment to work on systems of monitoring. The Ethical Trading Initiative, a UK coalition of trade unions, NGOs, and retailers, includes a number of organizations active in the UK CCC (*Labour behind the Label*). Characterized as a learning initiative, participating companies make a commitment to improve standards, adopt codes of conduct based on ILO conventions, and accept independent monitoring. Pilot studies are underway. The Swiss Clean Clothes Campaign just recently started on a monitoring project together with three Swiss companies - among them Migros. All three adopted a code of conduct very similar to the CCC code.

On the European level there is much to be looked into: What are the possibilities of using the statutory framework of the EU, vis-à-vis International Organization for Standardization (ISO)/European Committee for Standardization (CEN), within a monitoring/verification system? What are the implications of the European standards for certification agencies in relation to the models currently under development? What can/should be the way in which ILO bodies are involved in monitoring/verification systems – setting standards for social auditing perhaps?

Participatory Frameworks for the Future

We believe that independent verification should be based upon a two-track system. One track includes the use of accredited agencies/organizations, which can gather a certain type of information via the methods open to them. The other track includes information (via complaints) gathered by local-level worker organizations, for example, which have access to different kinds of information and use different methods. Pressure must be applied to maintain a balanced interest in the pursuit of both tracks. How can input from trade unions and NGOs

at the local (production) level be integrated into methods of implementation, monitoring, and verification?

Consultation and education in Asia, carried out by Women Working Worldwide, a British Labour behind the Label-organization based at the University of Manchester, has shown that it is important that workers' organizations, both trade unions and NGOs, help to spread awareness about codes and how they are being promoted. This should be the case not only for labor organizations but also for local communities and, of course, workers themselves.

Worker education is seen as crucial and as having wider relevance than the codes issue itself. Focusing on company codes is one way of creating greater awareness of the global production chain and the link to consumers in other countries. Perhaps, most significantly, it is one way through which workers can become aware that they have rights, rights that are internationally recognized and that apply to all workers.

Also important to consider are codes put forward, negotiated, and monitored by workers themselves and their organizations, such as the "*codigo de etico*" of the Central American network of women's organizations in solidarity with the maquila workers (RED). This is a successful code in terms of being adopted and implemented. During the education seminars in Asia organized by Women Working Worldwide, participants were particularly responsive to the idea of drawing up their own code and all were inspired by the story of how this became an organizing strategy among the workers in Central America. For instance, the case of the Nicaraguan Free Trade Zone workers who struggled for ratification of their own code was extremely appealing to Asian advocates of improved working conditions in Asia. Another example of a code developed by workers, NGOs, and a trade union is the Australian outwork code of practice.

No social regulation tools – particularly codes of conduct – really work if they are merely executed in a top-down manner without a significant participatory component, as this brings with it the inherent danger of manipulation by companies seeking to present a "clean image." More importantly: If social regulation instruments are not backed up by a bottom-up approach, for instance through workers' education, they will not be effective, nor will they lead to any considerable improvements in working conditions. Only participatory forms of social regulation can make the process of codes' implementation, monitoring, and verification one that helps to empower workers in the garment industry and improve their working conditions.

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&ENDE GASTBEITRAG&

&Ü3& The Record of Implementation and Impact

Because most codes of conduct have only been developed in recent years, there is little information concerning their effectiveness. Even the recent OECD study mentioned above is largely limited to content analysis, finding, i.a., that only 13 percent of the 148 codes on labor issues refer to ILO conventions, only 30 percent mention the right of freedom of association, but that 41 percent include obligations of subcontractors and other business partners (OECD 2000b: 10-12). The OECD concludes that “the lack of consistency in treatment of issues ... may reduce the codes' value as tools promoting transparency and accountability” but that the diversity of codes “also reflects an underlying lack of consensus” (ibid.: 12). The ILO is conducting research on the impact of codes of conduct but has not released any results (ILO 1999).

One experiment with codes of conduct, however, dates from quite some time back: the “Sullivan Principles” for subsidiaries of U.S. corporations operating in South Africa during the apartheid regime. These principles called for the end of segregation in the workplace, equal remuneration as well as special qualification measures for blacks. In addition, they committed the corporations to secure the right of black employees to freely associate and to lobby for a repeal of the apartheid legislation. Since the end of the 1970s several U.S. corporations with subsidiaries in South Africa voluntarily adopted these principles. Mostly these were corporations like General Motors that employ significant numbers of black employees in the U.S. In 1986, the U.S. Congress legislated that the Sullivan Principles be mandatory for all U.S. corporations employing more than 25 persons in South Africa, subject to oversight by the State Department. At the time, the Sullivan Principles appeared to be the lesser evil for companies faced with the concrete threat of having to withdraw from South Africa altogether, especially since corporations that had already voluntarily committed to the principles were exempted from oversight by the State Department. The latter companies were monitored by a private audit agency, which certified in 1991-1992 that all companies had followed the principles even though they had only made limited efforts toward

implementation. The State Department also certified that the companies it monitored had sufficiently followed the principles. Only one company's behavior was held to be unsatisfactory. While it cannot be established whether these evaluations were justified, there is reason to suspect that neither the audit agency nor the State Department were in the position to accuse a corporation of insufficient efforts. According to local studies, U.S. subsidiaries did end obvious apartheid practices in the workplace but did relatively little to promote the career opportunities of blacks and even less in terms of lobbying the South African government to end apartheid (Murray 1998: 23-27).

The problems with company codes are apparent at sportswear company Nike, whose code did not cover the rights of freedom of association and collective bargaining. Today, Nike is also a member of the Apparel Industry Partnership, whose code does include reference to freedom of association (see below). Reacting to criticisms of serious labor rights violations at its suppliers in Vietnam and China, Nike hired former civil rights activist and U.N. ambassador Andrew Young to report on working conditions at its suppliers. Young's inspection concluded that there were no serious and systematic violations of respective national labor law nor of Nike's code of conduct. In a big public relations effort, Nike disseminated this conclusion. Human rights organizations, however, demonstrated that Young had visited the factories only once, accompanied by an interpreter provided by Nike, and had not interviewed local union activists (Glass 1997). On the other hand, the Nike case does illustrate the potential leverage of consumer power when this power is concentrated in a well-organized campaign. After the disclosure of Nike's coverup of a commissioned report on working and environmental conditions at a Nike facility in Vietnam prepared by the audit company Ernst & Young, the company came under strong public pressure. In November 1997, the *Transnational Resource & Action Center* (TRAC) issued the report suppressed by Nike, which disclosed the disregard of the Nike code of conduct. Public statements of Nike CEO Phil Knight, who justified the employment of 14-year-old girls (in the documentary "The Big One" by Michael Moore), added to the pressure. Decreased sales and falling stock prices were the result, forcing Nike to announce a 'New Labor initiative' in May 1998, i.a., to raise the minimum age of employment and to allow NGO participation in monitoring. To date, however, problems continue, even though for a time it looked like there was a public relations contest between Nike and Reebok about which company had the best initiatives on labor rights issues (Mücke 1999: 143-144). Nike is adamantly opposed to a 'living wage' and actively lobbies against the supposedly politically motivated involvement of U.S. NGOs in its supplier countries in Asia (ibid.: 141; cf. <http://corpwatch.org/trac/nike>; June 19, 2000).

The German mail order house Otto-Versand, well-known for its environmental efforts since the mid-1980s, has participated in the *Rugmark* initiative (see chapter 9) since 1996, and it adopted a company code of conduct for its suppliers in 1997. Research of the *Asia Monitor Resource Center* in Hong Kong in 1997 showed that some Chinese suppliers of Otto did not adhere to the legal minimum wage in the lower pay range, that they did not follow legal requirements on overtime pay, and that they ordered overtime beyond the legal maximum. Similar violations were found by the IBON foundation at Philippine suppliers for Otto (Südwind 1997: 94-101). A year later, working conditions had not improved. At the Permanent Peoples' Tribunal (PPT - Basso Tribunal) in May 1998, the corporation was accused of having similar working conditions at its suppliers in China to those of other brand-name companies: up to 150 hours of overtime per month, no weekly day off, wages below the legal minimum, and child labor (Musiolek 1998: 3).

Apparently, the experience with codes of conduct that establish independent monitoring processes is better. A January 1998 conference in El Salvador featured presentations on such experiences. Independent commissions for monitoring codes of conducts for the suppliers of U.S. apparel companies (GAP, Eddie Bauer) had been established for one company in El Salvador and one in Honduras. The commission in El Salvador had been working for three years, the one in Honduras only for half a year. Both commissions had achieved improvements in the supply of potable water, the access to lavatories, ventilation, the behavior of superiors, and the reinstatement of fired union activists. In light of the sharp competition for orders from large retailers, it was not possible for these individual factories to decisively improve general working conditions. Also, there was tension between the commissions and the unions active in the factories. The roles of the different actors were rarely clear to the employees. Both commissions stressed the necessity of lobbying the respective labor ministry to enforce national labor law (Lynda Janz and Bob Jeffcott, quoted in: Steelworkers Humanity Fund 1998: 39-41; on further developments, cf. Ronald Köpke's contribution in this volume).

The ILO study on codes of conduct contains some generalizations of experiences to date. Codes of conduct that are made known in the importing country with considerable effort are frequently unknown in the manufacturing factories, not available, or not translated into the national language (for examples, cf. the interviews in Musiolek 1999a: 50-52). Appropriate implementing mechanisms are, as a rule, only found at such factories that have established functioning quality control systems based on ISO 9000 (ILO 1998a: 17-18).

Elaine Bernard, director of the *Harvard Trade Union Program*, succinctly described the typical behavior of corporations accused of serious violations of international labor law in their factories and at their suppliers in the South. In the first phase the criticism is denied. In the second, others are held responsible for the bad working conditions (mainly the suppliers, but also local authorities, and the employees themselves). The third phase is characterized by damage control. The companies attempt to minimize the potential damage to their reputation by partial denial, by playing down violations, and by attacks on the motivations and methods of their critics. In the fourth phase they try to regain their former reputation by adopting a voluntary code of conduct and by hiring public relations firms to disseminate their efforts. In the fifth and final phase, the companies attempt to be certified by a well-known person or organization that they actively work toward enforcement of their codes (Bernard 1997; for examples, cf. Amin 1999).

If, however, pressure on the companies remains strong despite these strategies of avoidance, improvements for individual workforces can be secured.

Problems of Cooperation: The Apparel Industry Partnership

In September 1995, U.S. Department of Labor officials uncovered “outright slavery here in the United States in [the garment] industry” (Then-Secretary of Labor Robert Reich, quoted in: *The Washington Post*, National Weekly Edition, September 18-24, 1995). A compound in El Monte, part of greater Los Angeles, had housed a clandestine sweatshop where 72 workers, most of them illegal immigrants, were held against their will (*ibid.*). While the *Washington Post* ran the headline “Sweatshops Reborn,” it was clear to the Department of Labor that they had been widespread for quite some time (cf. Esbenshade/Bonacic 1999 for details on sweatshops in the U.S., and Harvey et al. 1998: 50-51 for a critique of Department of Labor initiatives like the quarterly list of violators and the “trendsetter list” of companies that were making strong efforts – several of which were found to have serious violations in their subsidiaries).

In November 1995 Charles Kernaghan, executive director of the National Labor Committee (NLC), a union-supported human rights organization, came upon clothes made by young women in a Honduras facility for the successful Kathie Lee Gifford line of clothing primarily sold at Wal-Mart stores. A “little kid worker” gave him copies of pay stubs and labels that were stitched into the clothes. The labels indicated that the factory was producing for Kathie Lee Gifford, a TV celebrity hosting a popular morning show at NBC (‘Live with Regis and

Kathie Lee').¹ She had developed a children-friendly image and the labels actually said that a portion of the profits goes to children's charities.

The National Labor Committee saw a good target but decided to go "the high road" (Interview with Barbara Briggs, NLC, April 19, 1999) and give Gifford a chance to respond before going public (NLC 1996). After several letters remained without response, Charlie Kernaghan in congressional testimony elaborated on the conditions in the Honduras factory producing the Gifford line. While the media focused more on young Craig Kielburger, a Canadian labor rights activist who had also testified (cf. Kielburger/Major 1998 for Craig's remarkable story), Reuter did a wire story on April 29, 1996, and the next day "all hell broke loose" at the National Labor Committee's small office on New York City's Union Square. "All the tabloids and TV shows that follow celebrities around and who had never shown any interest in human rights were there," said Barbara Briggs. Gifford then publicly denied the charges, saying on TV that Wal-Mart had told her everything was OK. When Time Magazine covered the story, other respectable media started to call the National Labor Committee. Suddenly, labor rights violations were a story.

In 1996, one result of the increased publicity of sweatshops was Secretary of Labor Robert Reich's initiative for a White House Apparel Industry Partnership (AIP) of industry, labor, and NGOs. President Clinton, who by now routinely referred to international labor rights in speeches, agreed to host the Apparel Industry Partnership, and thus in August 1996, representatives of Nike, Reebok, L.L. Bean, Liz Claiborne, and a few other companies, as well as Pharis Harvey of the well-respected labor rights advocacy organization International Labor Rights Fund (ILRF), representatives of the National Consumers League, the Lawyers Committee for Human Rights, the Interfaith Center on Corporate Responsibility, and the Robert F. Kennedy Memorial Center for Human Rights, plus representatives of the U.S. textile workers' union UNITE and the Retail, Wholesale and Department Store Union came together to work on a code of conduct and mechanisms for monitoring and enforcement. When the Apparel Industry Partnership (AIP) was announced by president Bill Clinton on August 2, 1996 – in a speech that counterfactually praised Kathie Lee Gifford, Nike, and others for their responsible action, while not even mentioning the NGOs (Clinton 1996) – this cooperation of some of the largest U.S. apparel and footwear companies, NGOs, and unions

¹ In June 2000, co-host Regis Philbin also came under criticism for lending his name to a line of men's shirts for Phillipps-Van Heusen (PVH), a New York-based company notorious for its labor rights violations, but, of course, a member of the Apparel Industry Partnership. In 1999, PVH was named in a class-action lawsuit claiming that workers on the Pacific island of Saipan manufactured clothes under sweatshop conditions. And in 1998, PVH closed a plant in Guatemala after workers had won a years-long struggle for a union contract (The Associated Press, June 17, 2000).

attracted favorable media attention (e.g., *Journal of Commerce*, August 1, 1996, 1). In April 1997, a No Sweatshop agreement including a tentative Workplace Code of Conduct was presented and approved by President Clinton but was immediately criticized by *Global Exchange*, a San Francisco-based organization that had been involved in campaigns against labor abuses at Nike contractors in Asia, for inadequately addressing the key issue of independent monitoring (*Journal of Commerce*, April 15, 1997: 5A). Unions and NGOs in the taskforce said it was an interim report, a first step, and that further deliberations were necessary. Other contentious issues were freedom of association, where the agreement included a call for employers to respect the right of workers to organize but did not address the question of what to do in countries that disrespected this right; and minimum wages, where it was generally agreed that minimum wages were below sustainable or living wages in many countries, but there was no agreement on how to proceed (cf. Bissell 1997). Ann Hoffman of UNITE said, “the NGOs knew that this was our bottom line – no more concessions.”

The Apparel Industry Partnership not only failed to draw significantly more business support – most companies were not under consumer pressure and some of those that were chose to follow individual strategies, e.g., developing codes of conduct and monitoring schemes – but also failed to achieve consensus about the details regarding monitoring and the competencies of the proposed Fair Labor Association (FLA), which will accredit monitors and certify participating companies as sweatshop-free (FLA 1999; see appendix for a summary of the charter document). When the proposed guidelines were released in November 1998, both UNITE and the small Retail, Wholesale and Department Store Union – which by October 1998 had effectively ceased to participate in the panel – criticized that because of the companies’ intransigence on disclosing who their contractors were the FLA could not credibly certify any company as sweatshop-free. Also, UNITE stated that the guidelines were “virtually a license for companies to produce in any country regardless of the legal and practical prohibitions on freedom of association, the right to organize and bargain collectively” (UNITE 1998). The unions now officially quit the Apparel Industry Partnership, as did the ecumenical organization Interfaith Center for Corporate Responsibility (active in the Coalition for Justice in the Maquiladoras). Non-participating NGOs like Global Exchange distanced themselves further, and the AFL-CIO discontinued support as well (Benjamin 1999; Interview with Ann Hoffman, UNITE, March 25, 1999).

A serious rift in the anti-sweatshop movement occurred because the International Labor Rights Fund (ILRF) chose to endorse the Fair Labor Association Agreement (ILRF 1998;

Howard 1999). While acknowledging many weaknesses, Pharis Harvey argued that, on balance, the FLA was worth supporting. One could not simply tell companies not to do business in countries like China because there was no freedom of association – “it is better to work with the companies to create space for employees to organize and to improve their conditions” (Interview with Pharis Harvey, ILRF, April 6, 1999). Currently, pilot projects are conducted on training independent monitors to be accredited by the FLA. One project in Guatemala, conducted by the U.S. organization *Business for Social Responsibility*, focuses on the *Commission for the Verification of Corporate Codes of Conduct* (COVERCO), which is to monitor subcontractors of the apparel company *Liz Claiborne Inc.*, a member of the Apparel Industry Partnership that has adopted the AIP’s Workplace Code of Conduct as its Standards of Engagement and Human Rights Policy (COVERCO 2000). But the details of why organizations supported or opposed the FLA were quickly pushed aside when UNITE and the National Labor Committee accused the International Labor Rights Fund of being co-opted by the White House. National Labor Committee (NLC) executive director Charles Kernaghan did so on March 15, 1998, in a “letter to all students,” indicating where the real battleground of anti-sweatshop activism was: U.S. college campuses (cf. Cooper 1999). In part as a result of the AFL-CIO’s union summer program, students all across the United States have discovered anti-sweatshop advocacy (Labor Notes, March 1999: 16). Students focus on the sweatshop issue because they encounter it in the form of sweatshirts and caps emblazoned with the names of their colleges, universities, and sports teams. “They have realized their complicity,” said Robert Senser, editor of the newsletter “Human Rights for Workers.” In what the New York Times called “the biggest surge in campus activism in nearly two decades” (NYT, March 29, 1999), anti-sweatshop campaigns have resulted in sit-ins and demonstrations. The universities’ administrations are pressured not to contract with companies that produce in sweatshops – which virtually all of them do. While university administrations, sometimes approached by the White House and sometimes pressured by corporations like Nike (Esbenshade/Bonacic 1999: 127)², have tried to take the easy way out by endorsing the Fair Labor Association (134 as of March 2000; FLA 1999), the student anti-sweatshop movement, which is rapidly approaching dimensions unseen since the 1960s, is closer to labor than to human rights organizations like the International Labor Rights Fund. United Students Against Sweatshops (USAS), the largest coalition of campus-based anti-sweatshop groups, has sided with UNITE, the National Labor Committee, and the Campaign

for Labor Rights. Not only has the USAS rejected the ILRF-endorsed Fair Labor Association, which is called FLA(W) on the students' e-mail listserv and on the USAS website, but it has advocated a stronger code of conduct as well as stronger enforcement mechanisms in a student-sponsored organization called *Worker Rights Consortium*. This organization has placed great emphasis on corporate disclosure of supply chains, independent monitoring, and the responsibility of the companies under license to “use its leverage to correct conditions [at particular worksites] – and not to ‘cut and run’ from that site” (WRC 2000, Article 6). But these demands are effectively limited to companies producing collegiate wear under licenses from universities (ibid.; USAS 1999; UNITE 1999; cf. Greenhouse 2000; cf. www.umich.edu/~sole/usas).

The students’ and the National Labor Committee’s focus on the “right to know” has merit. Undisclosed production sites cannot be monitored, and monitoring blunders by hired accounting firms like PriceWaterhouseCoopers abound (for up-to-date information, cf. <http://www.sweatshop.org>).

There can be little doubt about the International Labor Rights Fund’s integrity as an organization working in the interest of all workers, but the Fund does not represent any members, and this makes a difference. The International Labor Rights Fund continues to provide valuable and credible information. Its assessment of the Fair Labor Association was by no means uncritical, for example; but its willingness to improve the situation of foreign workers by all means, whether by freedom of association, legal means, or through cooperation with governments and companies, is threatening to unions that consider themselves the ultimate representatives of workers and the ultimate monitors of working conditions.

&GASTBEITRAG&

&Ü2&Independent Monitoring in the Caribbean Basin

by *Ronald Köpke*

In Europe, North America, and Australia, independent monitoring is a political concept pursued by consumer activists and NGO networks such as the Clean Clothes Campaign Europe (CCC), United Students Against Sweatshops (USAS), the Maquila Solidarity

² Nike’s Phil Knight went as far as to withdraw a contemplated \$30 million gift to the University of Oregon, his alma mater, because the university administration had decided not to join the FLA but the student-supported

Network, and the FairWear Campaign. As an alternative to corporate verification systems, independent monitoring is embedded in strategies of conflict and cooperation aimed at the implementation of a specific code. Thus far, however, independent monitoring has yet to be achieved on a greater scale. NGOs and consumer networks may help to define the conceptual issues of independent monitoring by gathering first-hand experience in pilot projects.

On the one hand, the NGO concept of independent monitoring runs counter to the multinational corporations' understanding of 'independent monitoring.' For these corporations the term means nothing more than external commercial certification. On the other hand, the NGO concept stands in opposition to a 'realist's' position within the debate on social standards. While 'realists' such as Christoph Scherrer and Thomas Greven are quick to conclude from corporate behavior that the political focus of trying to enforce social standards must mainly be on national and supranational state institutions, the NGO campaign for independent monitoring emphasizes the role of 'civil society' in monitoring codes of conduct.

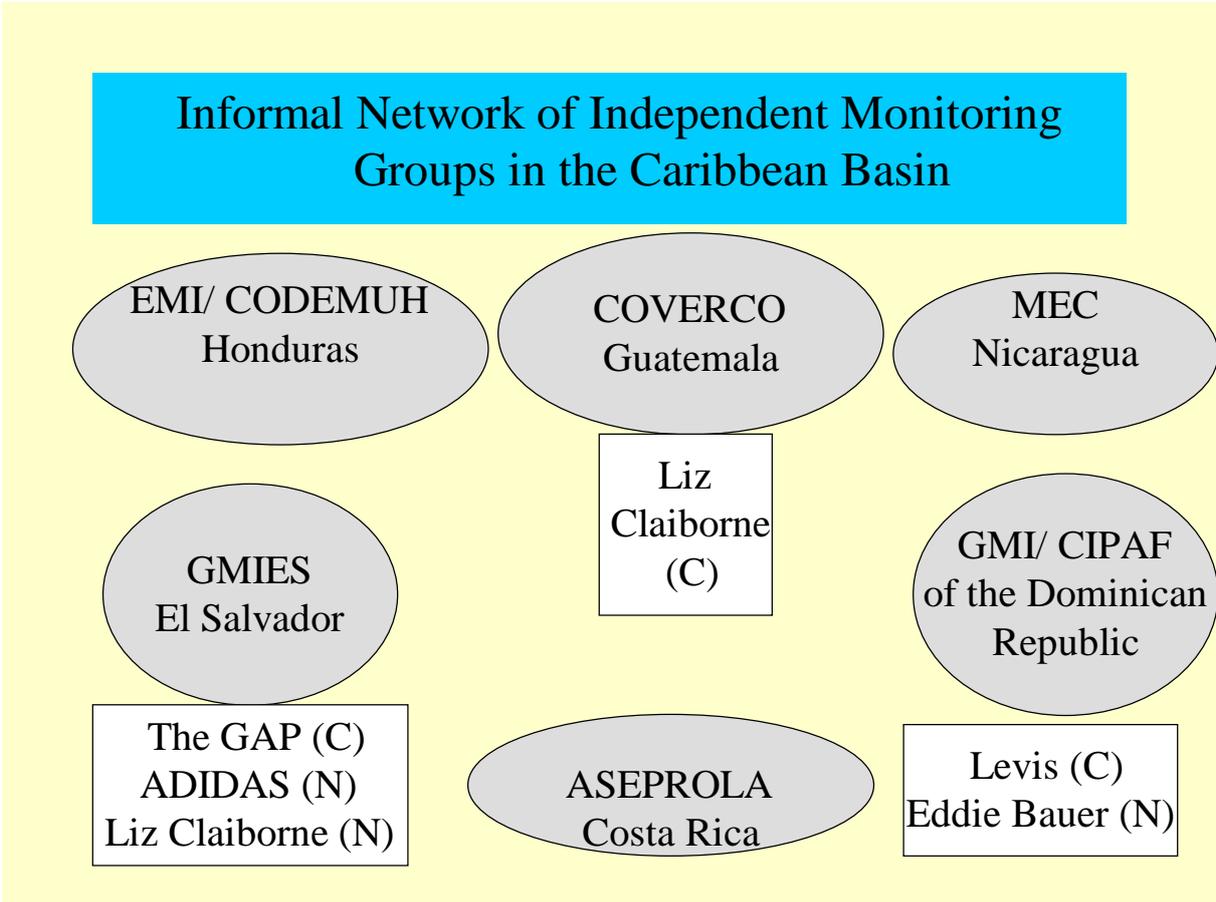
A division of labor between commercial mass certifications and traditional tripartism in labor relations, as envisioned, for example, by the International Textile Leather and Garment Worker Unions (ITLGW), has little to do with the reality of plants producing for the world market. In most global garment plants in Free Export Processing Zones (e.g., Indonesia or the Caribbean), there are no unions, and access to the shop floors is extremely restricted for government and ILO inspectors. Hong Kong Unions have criticized the ITLGW support of commercial SA 8000 auditing (see chapter 9) on the basis of negative experiences with SA 8000 audits in China (LARIC 2000). Therefore, new and independent actors are needed.

In the context of independent monitoring, 'civil society' refers to human rights groups in particular and does not include governments, companies, audit firms, and unions. If NGO activists become too preoccupied with a struggle between the two paradigms for socially responsible trade (social clauses vs. codes), regulations for workers in export industries might fall to the lowest level. This cannot be in the interest of the 'realists.' And the issue of independent monitoring will nevertheless remain on the agenda.

Independent Monitoring in the Caribbean Basin

To date, experience with independent monitoring has nearly been limited to the activities of local human rights and women's groups at a few plants in Central America and in the Caribbean. Local audits have taken place at supplier plants of The GAP (El Salvador), Liz

Claiborne (El Salvador and Guatemala), and Levi's (Dominican Republic). They have also been performed at plants in the Free Export Processing Zone Las Mercedes (Nicaragua), where suppliers have signed a Code of Ethics, and at a plant in Honduras. In 1998, the monitoring institutions *Grupo de Monitoreo Independiente de El Salvador* (GMIES), *Equipo de Monitoreo Independiente de Honduras* (EMI), *Grupo de Monitoreo de la República Dominicana*, *Comisión de Verificación de Códigos de Conducta de Guatemala* (COVERCO), *Movimiento Maria Elena Cuadra, Nicaragua* (MEC), and the labor rights NGO *Asociación de Servicios de Promoción Laboral* (ASEPROLA) of Costa Rica have established an informal network that is building a regional monitoring consortium to act as a strong counterpart to certification agencies.



Legend: (C) negotiations for independent monitoring completed; (N) negotiations underway

At a February 2000 workshop on strategy in Managua, Nicaragua, a transnational Southern network consisting of NGOs, unions, and representatives of independent monitoring groups

established their own Code of Conduct for the first time. Representatives of Northern NGOs and unions were also present.

The *Movimiento María Elena Cuadra* (MEC), the women's organization that hosted the workshop, had secured a national code of ethics for apparel subcontractors in Nicaragua in 1998.

Participants stressed the relevance of having truly independent and neutral groups in charge of the monitoring process, and discussed ways of qualification and accreditation in the context of certification systems. Union and NGO representatives pointed out that the clarification of their respective roles was leading to a better understanding between them. It seems that debate between people involved at the plant-level of Central American factories is much more pragmatic than between the headquarters of the ITLGW, the Clean Clothes Campaign (CCC), and the multinational corporations.

Commercial certification was considered problematic when, on the basis of monitoring a few subcontractors, it led to the certification of entire brands. Independent monitoring cannot be integrated into commercial certification systems because certification mechanisms like SA 8000 are considered standards imposed by the North. Monitoring groups criticize that Southern organizations have not been asked to participate in the development of certification systems.

&U3& Case Study: Adidas and Independent Monitoring in El Salvador

Adidas was the last large sports multinational to establish a voluntary code of conduct—later than both Nike and Reebok. It was primarily motivated by concern about its image on the U.S. market, for which Central American maquilas are producing. Without a somewhat credible code, Adidas would have faced severe problems in that competitive market. Shortly after the development of Adidas's Standards of Engagement, in July 1998, negative reports appeared in the German media about conditions at the Formosa/Evergreen plant, a supplier in El Salvador. From that point on, Adidas was pressured to show more than just public relations concern about improving working conditions and to establish a worldwide verification system modeled after its quality management system.

In 1998, Adidas decided to apply for membership in the controversial Apparel Industry Partnership (AIP, see chapter 8). For Adidas, the 1997 U.S. Apparel Industry's Workplace Code of Conduct of the Apparel Industry Partnership had many advantages compared with other commercial systems like SA 8000: It is less expensive, easier to implement, and avoids

the difficult issue of a 'living wage.' U.S. consumer campaigns and unions have therefore criticized the Apparel Industry Partnership and the Fair Labor Association, the Partnership's accreditation agency founded in 1998. Adidas has also applied for membership in the Ethical Trading Initiative (ETI), a prestigious British umbrella organization.

According to the rules of the Fair Labor Association, at least 20 percent of Adidas's estimated 10,000 suppliers would have to be certified within the next 2-5 years. While the terms of the Fair Labor Association are relatively inexpensive on the whole, this timeline would still put a certain amount of pressure on Adidas.

Since March 1999, there have been talks between Adidas and the German Clean Clothes Campaign toward establishing an independent monitoring group in El Salvador as local auditor for Adidas suppliers. In July 1998, the German Clean Clothes Campaign had demanded that *Grupo de Monitoreo Independiente de El Salvador* (GMIES) be established as monitoring institution at Adidas suppliers. Adidas answered with a dual strategy: They negotiated with *Grupo de Monitoreo Independiente* and with the Campaign separately. In December 1998, the company started negotiations with *Grupo de Monitoreo Independiente* to reach an audit agreement without the Campaign's influence.

In Germany, the Clean Clothes Campaign had envisioned a preliminary bilateral agreement with Adidas prior to the talks in San Salvador. Adidas refused to guarantee a continuation of its contract with the supplier FORMOSA and to establish an independent monitoring system with *Grupo de Monitoreo Independiente de El Salvador* in this factory. But a year later, after some months of pressure, Adidas invited the Clean Clothes Campaign to participate in the introduction process of *Grupo de Monitoreo Independiente* as Adidas's local audit partner. The Clean Clothes Campaign interpreted this invitation as a sign that meaningful negotiations were about to begin.

At first, Adidas tried to play the regional monitoring groups off each other. As a precondition to any agreement, the company suggested that *Grupo de Monitoreo Independiente* receive training from the Guatemalan monitoring group COVERCO (*Comisión de Verificación de Códigos de Conducta*) during a seminar held by the International Labor Rights Fund (accredited by the Fair Labor Association) in one or two model plants in Guatemala or Mexico. *Grupo de Monitoreo Independiente* declined, in part because of the staff training arrangements agreed upon at the meeting in Managua. Further disagreements concerned the number of workers to be interviewed during the audits and a box for confidential messages at the plants.

On April 12, 2000, after talks with their suppliers, Adidas managers let it be known that they were unable to convince the suppliers to accept *Grupo de Monitoreo Independiente de El Salvador*. According to Adidas, the suppliers feared that *Grupo de Monitoreo Independiente* would open the door to unions. Adidas declared it was unable and unwilling to force its suppliers to accept *Grupo de Monitoreo Independiente*, and that *Grupo* itself needed to improve relations with these suppliers.

Grupo de Monitoreo Independiente, which is highly regarded by ILO and other international institutions as a neutral monitoring body, declined this 'offer' as an unacceptable maneuver after 16 months of negotiating details. Chief negotiator Candray said that negotiations could continue after a signal from Adidas that the suppliers had been convinced.

Adidas's justification for breaking off negotiations is superficial: No supplier or entrepreneur favors being monitored by customers, be it for its quality or its social policy. But Adidas very well knows how to enforce its quality standards at supplier plants. Why did Adidas let the inexpensive option of dealing with the German Clean Clothes Campaign fail?

The answer is simple. Adidas found another human rights audit firm: VERITÉ. This American firm recruits local NGOs and their members for co-audits and pays them well with money from their transnational clients. The results are less than satisfactory from a human rights perspective; for example, VERITÉ "whitewashed" plants producing for the giant retailer Hilfiger. This method cannot be called "independent monitoring."

In April 2000, after it had terminated the negotiations with the Clean Clothes Campaign, Adidas issued a statement claiming that working conditions had improved at its supplier plant Formosa/Evergreen. Pre-hiring pregnancy tests were supposedly discontinued and employees were no longer forced to work overtime. According to research done by the Clean Clothes Campaign in May 2000, however, pregnancy tests were simply moved to 15 days after hiring, well within the probationary period. Also, the pressure to work overtime remained. Adidas's statement also demonstrated that it was willing to hold on to its problematic supplier. In the negotiation with the Clean Clothes Campaign, Adidas had threatened to withdraw from Formosa/Evergreen. This threat put the Campaign on the defensive because it wanted to avoid being held responsible for the loss of jobs. In other words, the threat of withdrawing from its supplier was nothing but a tactical maneuver.

(For more detailed accounts of the struggle for independent monitoring, see Bickham Mendez/Köpke 1998; Köpke et al. 2000)

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&Ü2&9. Social Labeling

Social-labeling initiatives rely on consumer decisions. Labels secure consumers' 'right to know' about production conditions of goods traded on world markets. Social labeling thus allows consumers to express, with their purchasing decisions, preferences for products that were manufactured in accordance with minimum social standards. Labels can be awarded to products and to whole companies.

In principle, social labels are based on guidelines regarding a set of minimum standards, often in the form of a code of conduct, and the awarding of the label is conditional on adherence to these guidelines. In some cases, however, a code of conduct can only be inferred implicitly from the statements made on the label. On the other hand, the introduction of labels or the threat thereof has at times led companies to adopt codes of conduct without participation in the social-labeling initiative (ILO 1998a). In this case, companies attempt to give their own brand name an 'ethical' image rather than using an extra label (e.g., Reebok, Levi-Strauss). The strategy of using social labels is not new. In the mid-19th century *union labels* were created in the U.S., at first predominantly for the domestic market, certifying union organization or good working conditions at companies. They still exist today, albeit in modified form (*Buy Union*) and not widely available. A predecessor of the *National Consumers League*, which advocates American consumers' interests, developed a *White Label* in 1898, based on a catalogue of standards and a list of companies without sweatshop conditions and child labor (USDOL 1997: 4-9). For approximately 20 years, eco-labels have been in use – from the beginning, with an eye on the world market.

Today's labels, which have been widely used since the mid 1990s, have another predecessor: *fair trade* with the Third World (sometimes also called *alternative trade*), which has been pursued since the late 1960s by special 'Third World Stores' and by church initiatives, as a result of the 1964 UNCTAD conference ('*trade not aid*'). While these initiatives were initially targeted predominantly at facilitating the sale of goods from independent production,

workers' rights began to be considered in the context of the labeling programs that started in 1988 (*Max Havelaar* in the Netherlands). In contrast to the 'classic' alternative trade, which never acquired more than a market niche, the labeling initiatives attempted to integrate established companies and sales structures, thereby reaching more consumers (Frank/Scherrer 1996: 1496). In Germany, for example, the *Transfair* Label (i.a., for tea and coffee; *Transfair e.V.* also serves as the 'roof' for *Rugmark*, see below) is widely known and available. In 1997, the *Fairtrade Labeling Organizations International* (FLO) was founded as a forum for, i.a., discussion on harmonization of the labeling initiatives (USDOL 1997: 127-145). Surveys have found consumer preferences for 'ethical' consumption (e.g., EMNID 1993, quoted in Lübke 1995; cf. New Economics Foundation 1999: 14), but this has not been reflected in high market shares for these products. On the contrary, while at first there were increased sales (ibid.; Braßel/Windfuhr 1995: 88), *Transfair* has recently suffered considerable losses (Phone interview, Volkmar Lübke, Institut Markt-Umwelt-Gesellschaft, Hanover, September 1, 1999).

Criteria for Evaluation

As in the realm of codes of conduct, it is important to distinguish company labels and labels initiated by NGOs or in cooperation with NGOs. Following are further differences between labeling programs:

Certification: The award of the label can be based on self-certification of a company, on licensing agreements with subcontractors and suppliers, or on certification by (more or less) independent agencies under contract with the company or cooperative arrangements of companies, unions, and NGOs. Labeling programs that do not include a certification process before awarding a label are not credible.

Award: Labels can be awarded to a product (in the case of *Rugmark*, even with a code for each individual carpet; see below), a line of products, or a whole company. The latter option can deny a company the possibility to continue profiting from unfair working conditions through differentiation in their product spectrum.

Usage: Labels can be physically affixed to the product or to its packaging. Especially in the case of labels awarded to companies, they can also be used at sales locations, in advertising materials, and letterheads. The form of labels can differ between those working with text, and those limited to symbols, logos, or trademarks. In the latter cases, the labels' effectiveness is

decreased because its meaning has to be inferred from alternative information sources (ILO 1998a).

Coverage: More so than in the case of codes of conduct, existing social-labeling initiatives have focused on a single issue, child labor (cf. USDOL 1997). Even among labels that refer to a broader spectrum of issues, child labor ranks first, followed by the wage issue. Roughly a third of existing labels refer to international labor standards, i.e., ILO conventions (ILO 1998a).

Transparency: On the one hand, this refers to the question of whether employees and other local actors have any knowledge of the label and/or of the code of conduct on which it is based; on the other hand, the question is whether it is clear from the label what claims are made and how these claims are guaranteed.

Financing: In contrast to codes of conduct, most labeling initiatives include elaborate financing systems, sometimes even with rules on how to use profits. The following financing systems can be found: fixed licensing fees, or membership dues and proportional fees for the use of the label for export and/or import. In addition, many programs receive grants from government agencies, NGOs, unions, and companies.

Monitoring: The range of monitoring measures is similar to the monitoring of codes of conduct, with the exception of collective bargaining arrangements.

Compare tables 8 and 9 for further differences between selected labels.

&T8& Markets, Main Actors, and Sources of Finance of Selected Social Labeling Programs

&T9& Implementation Methods and Contents of Selected Social Labeling Programs

&Ü3&The Record of Implementation and the Labels' Impact

There are few studies on the effectiveness of social-labeling initiatives. The ILO study mentioned above (ILO 1998a) was limited to inferences from the experience with eco-labeling, which however is rather anecdotal. While acknowledging that labeling programs appear to stimulate social concern among enterprises and consumers, the ILO authors took a rather skeptical view of label initiatives. They argued that such initiatives have a number of limits that are inherent to their origins and their very nature. These include

- “a lack of transparency and of participation by the supposed beneficiaries, attributable to their unilateral origin;
- the selective nature of the issues addressed, which are a response to the variable concerns of the public rather than those of the beneficiaries, as well as the absence of uniformity in the definition of principles, resulting, inter alia, in disparity vis-à-vis universal principles underlying fundamental labour standards;
- the wide variety of methods of implementation, including supervision and inspection, which make it virtually impossible to verify the credibility of the claims of conformity or make any comparison of the outcomes in different enterprises, the systems of certification or the labelling programmes, as well as the assessment of the concrete impact of such initiatives” (ILO 1998a §112).

The ILO authors concluded that a coherent international framework has to be developed (ILO 1998a: §81). The ILO is currently conducting empirical research on the impact of social labeling on child labor and on the agricultural sector (ILO 1999).

A study of the New Economics Foundation (1998), prepared for the European Commission, compared the effectiveness of various label schemes. According to their analysis, social labeling works best for:

- products bought and consumed by the general public
- identifiable, i.e., branded, products
- products strongly associated with social identity, e.g., clothing
- products not competing solely on price
- products that are simple to trace (ibid.: 6)

The study also emphasized the importance of involvement by organizations of the civil society because:

- partnership-based labeling initiatives are most effective (ibid.: 54-62)
- consumer decisions “confirm an earlier decision made outside the market place influenced by marketing, the media, and crucially, civil processes,” such as NGO campaigning (ibid.: 35)
- trust in the legitimacy of a label is constituted less by facts and more by the credibility of organizations behind the initiative (ibid.: 48)
- social-labeling initiatives are “resource hungry” and rely on external funding (ibid.: 63)

One significant limitation is seen in the fact that social-labeling initiatives have tended to focus on “soft targets,” such as companies with socially responsible reputations and countries

with relatively stable democracies (ibid.: 65). The authors repeated the criticism of the ILO study that the plethora of labels leads to consumer confusion and thus undermines their effectiveness (ibid.: 40).

A study on “Consumer Labels and Child Labor,” released by the U.S. Department of Labor in 1997 (USDOL 1997), which focused on the relevance of social labeling for combatting child labor, came closer to a systematic analysis of effectiveness. Nine social-labeling initiatives in the following four industry sectors were researched: hand-knotted carpets, leather footwear, soccer balls, and tea. Through public hearings, interviews with company representatives and NGOs, on-site visits, and non-representative surveys, the Department’s Bureau for International Labor Affairs (ILAB) studied the following six issues: 1. the physical label; 2. the claims behind the label; 3. the administration of the labeling program; 4. transparency for the public; 5. monitoring; and 6. enforcement. The Department generally found social labeling programs to be useful but recommended, i.a., that “monitoring procedures [should] cover subcontracting arrangements” and the adoption of “more standardized child labor labels” (ibid.: 162).

Labels Against Child Labor in the Carpet Industry

The example of the carpet industry is especially instructive. In the mid 1980s Indian human rights organizations began a campaign against child labor in the rug industry. At the end of the 1980s, a number of South Asian NGOs founded the *South Asian Coalition on Child Servitude* (SACCS), which was quickly followed by a *Manufacturers’ Association without Child Labour* (CMAWCL). In Germany, the largest importer of hand-knotted carpets, combating child labor in the carpet industry became a work focus for NGOs like *terre des hommes*, the German section of *bread for the world*, and Catholic *Misereor*. The immediate effect of their campaign, however, was political rather than economic. It forced the carpet industry to take a position on the frequently belittled issue of child labor (Haas 1998: 94). In 1994, the Indian *Rugmark* foundation was founded with the support of the Indian-German Export Project. The board included representatives of SACCS, CMAWCL, and UNICEF India. The objective of the *Rugmark* labeling initiative for carpets produced without illegal child wage-labor (Indian labor law distinguishes between illegal wage-labor and legal family-labor – a distinction *Rugmark* accepts) is to enforce a minimum social standard limited regionally and on one product (ibid.: 95-98; see appendix). Exporters apply for a license that authorizes them to use the label and commits them to not use child wage-labor and to meet

legal minimum wage requirements. Professional *Rugmark* inspectors, sometimes accompanied by representatives from local NGOs, monitor compliance in unannounced spot checks. At least 30 percent of an exporters' looms, which are all registered, must have been checked before a license is awarded. The exporter receives a specific amount of labels, with individual identification numbers, for each export shipment. The objective is to provide a guarantee that each labeled carpet was not produced with illegal child labor. The exporter pays a licensing fee of 0.25 percent of export value (ibid.: 96-98; Harvey et al. 1998: 51). *Rugmark* successfully counted on a competitive advantage for exporters using the label. In 1995, *Rugmark* carpets were estimated to comprise more than a third of hand-knotted carpets exported to Germany (Haas 1998: 98) – since then, the share has gone down (telephone interview with Volkmar Lübke). The *Rugmark* representatives in Germany and the U.S. have also accepted the challenge of providing alternatives for children freed from wage labor or bonded labor. Importers are also licensed, and they have to pay a fee of 1 percent of product value. The funds are administered by a trust fund in India and are being used for the rehabilitation of child laborers in seven schools in India and Nepal (Harvey et al. 1998: 52; cf. <http://www.rugmark.de>).

One problem of *Rugmark* and other product-specific labeling programs is that it continues to allow manufacturers and retailers to differentiate in their product spectrum. In the top market segment the social label justifies higher prices, while in the lower market segment continuing 'unfair' conditions make low prices possible and thus guarantee mass sales. Awarding labels to companies that produce their whole product spectrum under 'fair' conditions (e.g., the *Clean Clothes Campaign*; see above) would be a practical solution if only there were companies outside of market niches willing to subject themselves to the process.

Carpet importers in Germany as well as Indian exporters and the Indian government reacted rather nervously to the *Rugmark* initiative and were quick to introduce alternative labeling programs (Braßel/Windfuhr 1995: 93-94). The *Kaleen* label of the Indian *Carpet Export Promotion Council* (CEPC), a creature of the Indian textile ministry, is attached to individual carpets, just like the *Rugmark* label. In mid 1997, the program already had 2,000 members. It is based on a code of conduct, on the registration of looms, and on a license to be paid by exporters of 0.25 percent of the sales price of each exported carpet, which is used for the rehabilitation of freed children. The monitoring process consists of self-inspection of members and state inspection by a *National Level Steering Committee* headed by the Textile Ministry. It is unclear, however, whether an independent institute will be charged with

conducting spot checks and how violations of the code will be sanctioned (Haas 1998: 101-104; USDOL 1997: 35-40).

The “deficit of legitimacy” (Haas 1998: 103) of the *Kaleen* label is lower, however, than that of the *Care & Fair* label of those German carpet importers who are opposed to *Rugmark*.

Arguing that monitoring all looms would prove to be impossible, the initiators of this program focused on collecting a fee (1 percent of purchasing value), which will go to rehabilitation measures. The program thus does not guarantee that the carpets of licensed companies were produced without child labor, and consequently, carpets do not carry the *Care & Fair* label. But these limitations are not clear from the label that reads: “Action against child labor.” All companies certified by a commitment not to use child labor and by membership, can use the label on all their material, except on the carpets themselves (ibid.: 104-105; USDOL 1997: 46-50).

Yet another labeling initiative critical of *Rugmark* was established in Switzerland, where in 1995 five NGOs and one association of the carpet industry founded STEP, a foundation for fair conditions in carpet production and in carpet trade. STEP focuses on working conditions of all employees – not just children – in the carpet industry (without, however, including the right of freedom of association in its catalogue of rights), certifies complete (supplier) companies, and attributes greater responsibility for support activities to importers and retailers. These can use the label on their stores, but not on the carpets (the U.S. Department of Labor found some cases where non-certified carpets were available at stores carrying the STEP logo) (USDOL 1997: 40-46; Haas 1998: 104).

It becomes apparent that while the criticism of *Rugmark*'s attempt to prove fair conditions of production for every single carpet may be justified, there are reasons to be cautious concerning the self-commitments of producers, importers, and retailers. There are also numerous company labels in the carpet industry that claim production without child labor but do not provide recognizable monitoring mechanisms.

The soccerball industry shows that a dissemination of questionable company labels accompanies the career of the instrument. On the one hand, *Reebok* recentralized its production process in the context of introducing a social label, and *Baden Sports* started to import soccerballs predominantly manufactured by machines, in order to credibly exclude the possibility of using child labor – according to the USDOL, however, it is unclear to what extent this goal was achieved. On the other hand, the majority of social-labeling programs of U.S. retailers studied by the U.S. Department of Labor do not feature certification or monitoring processes (USDOL 1997: 109-114). The comprehensive model code agreed upon

by the world soccer federation FIFA and three union bodies including the ICFTU, a result of international campaigns (e.g., the *Foul Ball Campaign* in the U.S.), did not find support among companies, possibly because it includes the rights of freedom of association and collective bargaining (ibid.: 118-119).

Social-labeling initiatives in the tea industry, which are in the tradition of alternative trade with the Third World and are accordingly focused on premiums paid by the consumers, particularly show the limitations of this market. Most participating estates sell only a small portion of their production in the context of the labeling program, not because of different working conditions on one estate, but in an attempt to keep a balance between output and sales potential. Because of this, further estates are only cautiously added to the programs (USDOL 1997: 140-148).

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&Ü2&The Flower Label Program

by *Volker Frank*

Since the beginning of the 1990s, multinational corporations have reacted to non-governmental organizations and union criticisms of their poor labor conditions by publicly announcing corporate codes of conduct, whose contents and monitoring they most often control themselves. Many initiatives are underway in Europe and in the United States that try to influence these corporate codes of conduct. Several of these initiatives are oriented toward the interests of the companies rather than toward the needs of the workers. The initially acclaimed British Ethical Trade Initiative, made up of non-governmental organizations (NGOs), unions, and business representatives, recently signed an agreement with British supermarket chains that authorized the use of a label for horticultural products from Zimbabwe that are produced according to national law. The demand for adherence to international standards was abandoned. Pittances and a work week of 51 hours are now deemed to deserve a label (Brassel 2000). The Council on Economic Priorities' certification standard SA 8000 (see chapter 9) has been awarded to a number of plants in the People's Republic of China. It remains a secret how the adherence to the right of freedom of association, considered a priority by the Council, is monitored there (LARIC 1999). One example of an initiative that takes seriously the monitoring of international norms and strives for a cooperation with partner organizations in the South is the agreement of the German

Blumenkampagne (Flower Campaign) with the German association of cut-flowers importers and retailers. The participating actors did not choose the path of least resistance.

Their experience demonstrates that reference to and monitoring of international norms is a continuous learning process. In the following, some steps of this learning process are discussed. I will examine the monitoring experience with regard to two fundamental standards, the collective right of freedom of association and the right to a living wage. I will show that the effectiveness of the monitoring process (i.e., the actual inspection of plants) hinges on the interpretation of the standards as well as on the social context. As a first step, I will describe the agreement between the campaign and the importers.

&U3&The Flower Label Program

The “Flower Label Program” (FLP) started as an agreement between five Ecuadorian flower producers and the Association of German Flower Importers and Retailers (Verband des Deutschen Blumen-Groß- und Importhandels, BGI). AgrarControlGmbH (ACG), a semi-public inspection company specialized in pesticide checks of agricultural products, monitored the adherence to a list of social and environmental standards and proposed the awarding of labels in its reports. The German Flower Importers Association (BGI) reserved the right to make the final decision on awarding a label to a producer. Until 1999, the Flower Label Program remained an internal company code. Only after continued public criticism by the *Blumenkampagne* and a change at the head of the German Flower Importers Association did the BGI offer to adopt all standards demanded by the campaign.

The *Blumenkampagne* is made up by the Protestant development organization Bread for the World, the child advocacy organization *terre des hommes*, and the human rights NGO FIAN (Food First Information & Action Network). These organizations, together with the German union IG BAU and the international trade secretariat IUF (International Union of Food, Agriculture, Hotels, Restaurants, Catering, Tobacco and Allied Workers), now have equal rights with regard to awarding labels. AgrarControlGmbH annually inspects plants according to a checklist. This checklist is based on a code of conduct proposed by the *Blumenkampagne*. The Flower Label Program's governing board, where producers, importers, NGOs, and unions each have one vote, determines who will be the recipient of the label. Thus far, labels have been awarded to approximately 50 businesses in Zimbabwe, Kenya, and Ecuador. Ecuador is a special case because the Flower Label Program started there without participation of NGOs or unions. To date, monitoring has been based on the old checklist of the German Flower

Importers Association (BGI), and Ecuadorian companies have great difficulty accepting the new criteria and decision-making structures. This special situation has prompted a number of discussions between Ecuadorian businesses and NGOs, in which the author participated. The following discussion is therefore based mostly on the Ecuadorian case, a special case within the Flower Label Program.

Problems of the Monitoring Process

The Flower Label Program's code of conduct contains social and environmental norms. With reference to the relevant ILO conventions, freedom of association, collective bargaining, equality of treatment, living wages, working hours, health and safety, security of employment, child labor, and forced labor are listed in the area of social norms. Each of these rights implies specific monitoring difficulties with regard to the definition of the standard, the definition of indicators, and the social context. In the following, I will focus on collective bargaining rights and the right to a living wage.

The Rights of Freedom of Association and Collective Bargaining

Conceptually, the code of conduct for the flower industry is a collection of minimum standards whose further definition is left to the plant-level workers' representatives. Therefore, the rights of freedom of association and collective bargaining have the highest priority. The code of conduct is meant to support not replace the original function of unions, which is to negotiate improved working conditions for the employees. So far, however, there are no unions at the Ecuadorian flower producers that belong to the Flower Label Program. Several reasons account for this: The labor movement has not shown interest in organizing the flower industry and in the last decade has focused instead on defending its strongholds that have been weakened by economic crises and privatization policies; the damaged image of unions in the Ecuadorian public; and the resistance of businesses. In this complex situation, the monitoring expert is confronted with the question of whether the companies are preventing union organization by open or disguised repression, or whether the workforces do not strive to organize. What criteria do he or she have to answer this question, and what criteria are possible? The first criterion is whether the workers have the possibility to freely speak out. The Flower Label Program's monitoring guidelines stipulate that plant inspectors can speak with workers without management interference. This appears to fall short of an

effective monitoring of adherence to the right of freedom of association, however, because currently inspections as a rule take place only once or twice a year, and only a few workers are interviewed each time. Recently, meetings with employees on a regular basis have been proposed. By documenting these meetings in writing and through worker interviews, monitors could check whether employees were able to speak freely about working conditions. Furthermore, attendance protocols could be examined to uncover the possible repression of individuals based on critical statements made. Second, employees could be granted the opportunity to elect delegates for concrete issue areas or representatives of individual production areas with consultative status toward management. Safety and health representatives would be possible as well as representatives for personnel issues. On the basis of protocols and interviews with workers, the monitoring expert would have to check the election procedures (free, secret, without discrimination). Third, there has to be a debate on whether unions are the only possibility of plant-level representation of the workforce. The majority of workers in the Ecuadorian flower industry are indigenous people who are represented in the communities and neighborhoods by ethnic organizations with high mobilization capacity. In some cases these organizations have adopted demands of workers in the flower plants and reached important improvements in working conditions by blocking streets and through negotiations. The relationships between the plant and its social context is a monitoring area that needs to be developed. From a union perspective these proposals are second-best solutions. The monitoring criterion would be whether steps can be undertaken toward representing workers' interests, not whether an independent union has formed. Unions could, however, utilize this newly opened space at the plant level to establish themselves by offering advice and support. They would meet the determined resistance of Ecuadorian business, which opposes collective employee representation. In the planning phase of a seminar educating workers of Flower Label Program-businesses about the content of the code of conduct, the Ecuadorian association of cut-flowers exporters repeatedly accused the organizers of trying to stir up the workers and of striving for the establishment of unions. From the perspective of the flower companies, the rights contained in the code of conduct have so far remained something the employers can grant the workers but not something the workers can demand.

&Ü3&Living Wage

In the majority of developing countries, the legal minimum wage is below the amount necessary to secure a sufficient supply of essential goods (food, clothing, rent, transportation, etc.) for a family. This is no different in Ecuador. The monthly minimum wage is slightly above \$40, while the cost-of-living index is estimated at \$200. The average wage of a worker in the Ecuadorian flower industry is no higher than \$50. Therefore, several codes of conduct stipulate the payment of a living wage. The passage in the code of conduct of the flower industry reads: “wages and benefits paid for a standard working week shall meet at least legal or industry minimum standards and always be sufficient to meet basic needs of workers and their families and to provide some discretionary income.” The standard working week must not exceed 48 hours. So far, monitors in Ecuador have only checked for payment of a minimum wage. The interpretation of a living wage is still difficult. For example, it is not clear what family size should be the basis for calculating a living wage and what goods should be considered basic. The specific national calculations of basic goods are very different from each other and would have to be standardized to establish international norms. Several proposals are under discussion. In 1998, the Living Wage Summit at the University of California, Berkeley, adopted the following formula for calculating the net wage (Clean Clothes Campaign 1998):

Take-home wage = (average family size / average number of adult wage earners in a family) x (cost of nutrition + clothing + health care + education + potable water + child care + transportation) + (housing + energy / average number of adult wage earners in a family) + savings (10 percent of income).

Aside from insecure data, the lack of flexibility of such a formula is problematic. Companies could argue with some right that they provide transportation for their employees and working clothes or that they have a child-care facility. Health care is provided, to differing degrees, by the state's social system. Monitoring experts would be confronted by a good number of exceptions leaving room wide open for different interpretations. Furthermore, inflation has to be considered. In Ecuador, the current monthly inflation is almost 10 percent, which would mean continuous wage increases. Resistance of companies against such constant and drastic wage increases would be considerable because they would multiply variable costs within a short period of time. Given the worldwide trend of income polarization, an alternative to the rigid and inflexible formula mentioned above could be to retain the employees' purchasing power and to increase it on a long-term basis. Taking the current net wage as the basis, it would be adjusted to inflation as well as increased by a small percentage (approximately 2 percent) annually.

&Ü3&Conclusions

The agreements between NGOs, unions, and companies about the adherence to a code of conduct in the flower industry are the end of a long argument and at the same time the beginning of a learning process regarding the content of norms and the monitoring processes—at least if the participating organizations, NGOs, and unions take their demands and responsibilities seriously. In terms of the rights of freedom of association and collective bargaining and the right to a living wage, the campaign spurred an important dialogue between European, Latin American, and African organizations, which has been only sketched and enriched by my own considerations here. I have tried to formulate individual steps for the enforcement of standards as well as possibilities of monitoring them. Plant-level meetings of employees, the free election of delegates, and the consideration of new forms of organization could contribute to the realization of the right of freedom of association and create space for innovative monitoring possibilities. Attempts to enforce a living wage should be focused less on fixed formulas and more on fundamental considerations in terms of countering the increasingly unfair distribution of wealth. All these reflections are based on the premise that the establishment and monitoring of norms has to consider complex social power structures. Succumbing to existing power structures as well as setting standards at the drawing board have to be equally avoided. The cut-flowers campaign is a good example of a proposal of practicable processes of norms-setting and monitoring that does not ignore the interests of employees.

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&Ü3&SA 8000

The credibility of social labeling hinges on the procedures of certification and monitoring. The certification standard SA 8000 (*Social Accountability 8000*), modeled after industry standards ISO 9000 and 14000, was introduced at the end of 1997 by the *Council on Economic Priorities* (CEP) upon consultations with unions, NGOs, and companies (see appendix).

The standard, which can be applied to all industries, explicitly refers to core ILO conventions (including collective bargaining rights), features elaborate “social accountability requirements” that serve as benchmarks, and is monitored by legally independent, accredited certification agencies. The *Council on Economic Priorities Accreditation Agency* (CEPAA) is a member of the *International Accreditation Forum* and meets all requirements of an international accreditation agency based on ISO/IEC Guide 61. It accredits and monitors accounting and auditing firms and other organizations that want to work with SA 8000. On the basis of ISO/IEC Guide 62, the accreditation can also be withdrawn. CEPAA’s advisory board is made up of company representatives (including *Avon Products, Inc.*, which was the first company certified according to SA 8000; *Toys ‘R’ Us*, the *Dole Food Company*, and German mail-order firm *OTTO-Versand*, which became the first SA 8000 ‘member company’ in 1999), well-respected academic Jagdish Bhagwati, and union and NGO representatives (*International Textile, Garment & Leather Workers Federation*; Jack Sheinkman, former president of the *Amalgamated Clothing & Textile Workers Union* – today: UNITE; the *National Child Labor Committee*). Of the five certification bodies accredited by CEPAA so far, only *SGS - International Certification Services Ltd.* is represented on the advisory board; the other four are DNV (*Det Norske Veritas*), BVQI (*Bureau Veritas Quality International*), Intertek Testing Services, and Underwriters Laboratories, Inc.

The obligations of the company requesting certification according to SA 8000 include

- *transparency*: the written commitment to the standard must be broadly available and must inform employees about the system and their rights; interested parties – workers, NGOs, unions, and competitors – are to be integrated into the communication; there have to be clear rules for complaints procedures; and
- *full coverage*: adherence to the standard must be demanded from suppliers and subcontractors.

After a comprehensive audit conducted by one of the accredited agencies, including consultations with local groups such as NGOs and unions, the company – or rather, the production facility (see below) – is first certified for three years and subject to follow-up audits every six months. As of June 13, 2000, 51 companies had been certified and were thus

authorized to display the SA 8000 certification mark on the company's building, business cards, stationery, packaging, and advertising – but not on the product (Lübke 1999; CEPAA website, <http://www.cepaa.org>; June 29, 2000; and CEPAA Updates Vol. 1, 1-3).

Responding to criticisms of LARIC (Labour Rights in China), a coalition of Hong Kong NGOs, CEPAA clarified that “SA 8000 certification is not issued to TNCs, but on a plant by plant basis” (CEPAA 2000: 5). It remains unclear how the certification mark can be displayed by, say, Avon Products, Inc., if only two production facilities have been certified. Or, how those production facilities could use the mark in independence from their parent company. In the competition of accreditation and certification agencies – which support the ILO's analysis of a “market for ethics” – CEPAA and SA 8000 have a professional edge when compared to the *Clean Clothes Campaign* and the *Fair Labor Association*. But it remains to be seen whether the accredited certification agencies are truly independent; after all, they are under contract with the companies applying for certification. The certification agencies may also be interested in doing business with these companies in other fields. Also, the costs of certification can only be borne by companies in the industrialized countries. Thus companies in the developing world are largely excluded, just as in the case of ISO standards 9000 and 14000 (ILO 1998a: 33-34). If no special measures are introduced, such as a publicly funded certification body, small and medium-sized enterprises will be at a disadvantage compared with transnational corporations because a certification of their business or supplier is more costly to them in relation to sales. Furthermore, professional certification companies lack experience in the realm of social policy where other than technical or management systems criteria apply, and where violations most often occur “off paper” (Harvey et al. 1998: 60). This cannot be fully overcome by CEPAA seminars; however, human rights NGOs may also become certification agencies.

The consensus process, as well as the dominant position of experts from transnational corporations and industrialized countries' governments in the committees of voluntary standardization, leads to a focus on procedural questions rather than on content. It also favors agreement on the lowest common denominator and not on upward-harmonization of standards.

In this context, the question of corporate disclosure of the complete chain of production is particularly relevant. According to Volkmar Lübke, the SA 8000 process obligates certification agencies to progressively include more and more suppliers and subcontractors in the audits (phone interview).

IV. Comparative Assessment: Effectiveness and Efficiency

Experience with the two types of global rules concerning social standards is still limited. Under discussion are internationally binding rules about adherence to core labor rights, including effective sanction mechanisms, i.e., a *workers' rights clause in the WTO*, and “enabling” strategies such as codes of conduct and social-labeling programs, which are part of a new mode of public policy, “where desired outcomes are identified but how they are achieved is not necessarily laid down or led by government” (cf. New Economics Foundation 1998: 15). In this section, we discuss the effectiveness and efficiency of the three instruments, workers' rights clauses, codes of conduct, and social labeling initiatives, in comparison. In chapter 10, we argue that workers' rights are an inseparable part of human rights and needed for economic development. In chapter 11, we stress the effectiveness of workers' rights clauses, and in chapter 12, we demonstrate the limits of consumer power.

10. International Workers' Rights Are Necessary

Core workers' rights are violated on a massive scale world wide. Most violations take place in production for domestic consumption; nevertheless, about 10 percent of products traded internationally originate from countries that repress workers' rights systematically.

According to the International Labour Organization (ILO), the following workers' rights are fundamental: freedom of association (Convention No. 87), the right to organize and bargain collectively (Convention No. 98), and prohibitions of forced labor (Conventions Nos. 29 and 105), discrimination in employment (Conventions Nos. 100 and 111), and child labor (Conventions Nos. 138 and 182). The workers' rights covered by these core conventions are an inseparable part of human rights because they were adopted by consensus of ILO members, because they were ratified by most member countries, because they are covered by UN covenants and several human rights declarations, and because they have been reaffirmed again and again at international summits.

International core labor rights can also be justified on economic grounds. In the academic debate, the arguments of advocates of internationally binding workers' rights are based on a neo-institutional view of the market mechanism, while those of their critics stem from a neo-classical approach. If criticism on purely ideological grounds is to be avoided, it is necessary to challenge these approaches on their own “home domain”. It can be demonstrated that, on

the question of the optimum international level of regulation, the neo-classical reasoning is circular, declaring the market to be the mechanism determining the regulatory scope of the market. The trading nations have long ago decided to lower barriers to international trade by negotiation, i.e., through GATT. For this reason it cannot be argued that the optimum level of regulation can be decided solely by the market. Furthermore, respect for core workers' rights does not automatically increase in step with the development and expansion of the export sector. In fact, in many countries the liberalization of foreign economic policies has been accompanied by increasing social inequalities and a massive expansion of the informal sector, where labor rights are generally violated.

Core workers' rights can, however, also be justified within the neoclassical paradigm. They are constitutive for markets (since the market is defined as an exchange of goods among free persons) and address market failures such as power imbalances or barriers to market exit. They are an important precondition for the development of "human capital" and therefore contribute to economic efficiency.

If standards are as beneficial as some claim, why are they not voluntarily adopted? Some of the motives for not signing on to the ILO conventions are political. There are also economic reasons. While the "high road" promises long-term benefits, it may incur short-term costs. While attempts to assess the cost impact of adherence to ILO conventions have not delivered reliable results thus far, even small differences in production costs can be expected to be decisive for market success. Most export goods from developing countries are sold to wholesalers or transnational corporations, which command a strong market position vis-à-vis the producers. This competitive situation, however, is the very reason why social standards have to be negotiated internationally. As long as it is possible for an economic region to gain competitive advantage by undercutting the social standards in other regions, these other regions are in danger of losing market share and hence employment opportunities. The greater the similarity between the competing regions with regard to factor endowment and market position, the more acute is this danger. It will be particularly high if market success depends on a single factor, namely low-skilled labor. In such a case, the danger from lower standards cannot be offset by other factors. This situation is particularly true of developing countries, which face the constant risk that new regions with an even larger reservoir of cheap labor will break into the world market. For these reasons, developing countries cannot raise their social standards in isolation but only in conjunction with other countries by multilateral agreement. There is no need to fear a decline in the overall demand for goods from the developing countries, as their long-term growth depends primarily on the training level of their workers

and on transfers of technology. International standards can therefore plausibly be justified in terms of development theory.

11. Workers' Rights Clauses Are the Preferred Instrument

Since 1919 the International Labour Organization (ILO) has negotiated more than a hundred international agreements on workers' rights and social conditions. However, its method of setting international standards by means of voluntary conventions is increasingly considered to be inadequate, as the ILO is finding it ever more difficult to enforce them. Furthermore, the process of adopting and implementing ILO conventions has slowed down significantly in the last decade. In order to improve enforcement, the demand has been raised to make the privileges granted in international trade agreements conditional on the respect for labor rights. The use of political and economic power to enforce workers' rights clauses can be justified only in the name of universal rights. It follows that demands for such clauses should relate only to those standards and rights that already enjoy a high level of acceptance; in other words, those that can claim almost universal application through the "normative power of the *fait accompli*." Hence, claims for universal validity can be made on behalf of workers' rights clauses only if they are agreed upon in multilateral negotiations and not enforced unilaterally. The procedure for negotiating social clauses foreseen by the international trade union movement and the proposed content of such workers' rights clauses meet these criteria. One of the arguments against workers' rights clauses is that they overburden the multinational negotiating machinery of the GATT/WTO. However, a trading system will lose legitimacy if it ignores issues that interest the public. More serious is the fear that the demand for workers' rights clauses could open the door to protectionism. These reservations can be overcome if workers' rights clauses are negotiated multilaterally. The proposed procedures for implementing a workers' rights clause do not lend themselves to protectionism. The analysis of the enforcement of labor rights provisions in U.S. trade law, specifically in the Generalized System of Preferences (GSP), confirms the oft stated criticism that workers' rights clauses are employed in a discriminatory fashion. The U.S. government has enforced the unilateral labor rights provisions based less on a fair and consistent assessment of labor rights violations than according to U.S. foreign policy interests and domestic politics. Because of the general free trade outlook of the U.S. government, however, few countries have had their trade benefits withdrawn. There is no empirical basis for the claim that

workers' rights clauses are employed in a protectionist way. The GSP decision-making process takes into consideration the domestic producers' interests at an early stage.

Some aspects of the GSP process deserve a closer look and could be included in proposals for multilateral workers' rights clauses. Participatory elements include petitions to start a review process and the submission of evidence during such a process. Transnational networks of unions and human rights organizations have evolved that have lent credibility to labor rights petitions. Thus, the U.S. government has had to extend some review processes and to justify non-action. The interagency decision-making process features negotiations and trade-offs between the representatives of participating departments. Their respective institutional interests have offered additional inroads into participation.

The North American Agreement on Labor Cooperation (NAALC) between Canada, Mexico, and the United States, a supplemental agreement to NAFTA, has established institutions and mechanisms to secure enforcement of the respective national labor laws. The quasi-diplomatic decision-making process of NAALC features cumbersome rules and limited sanctions; therefore, the agreement's submission procedure has only been used in a handful of cases thus far. U.S. labor, specifically, fears to lend credibility to NAFTA by using the NAALC process; nevertheless, it has recently stepped up its efforts in this direction.

Even though Mexico's labor rights situation was its initial focus, the agreement's most remarkable feature is its reciprocity, which has led to complaints about U.S. labor practices. In essence, the process is similar to that of the International Labour Organization (ILO): principally employing diplomatic pressure and moral suasion. The participatory elements and regional focus of NAALC, however, have led to the development of transnational networks of unions and human rights organizations and have attracted greater publicity than ILO complaints. Thus, even though there has been very little progress in the individual cases that have been subject to the NAALC process, there is some evidence of a marginal positive effect on Mexico's general labor rights performance.

During the U.S. American GSP Subcommittee review period, labor relations in Guatemala and the Dominican Republic changed on four dimensions: labor law, execution of labor law, neo-corporatist bargaining, and collective bargaining. Both states strengthened collective rights considerably and, to a lesser degree, increased the number of labor courts and workplace inspectors. Trade unions in the Dominican Republic participated in a meaningful way in government-led talks on social and economic policies, whereas the Guatemalan organizations failed in being recognized as serious political actors. On the level of collective bargaining the

least changed. Four contracts have been signed in the Dominican Republic and only one at a maquila factory in Guatemala.

These relative improvements in labor rights can be traced to the GSP proceedings. On the basis of statements of the involved actors, the chronology of deadlines in the GSP process and the actions taken in these nations, a comparison between specific demands of the GSP Subcommittee and these improvements, and a comparison with other nations under the review process, we found that the GSP process had a strong impact on the labor law reforms and on the contract negotiations at some of the maquila firms. The causal relationship was less strong concerning improved efforts to implement labor laws and neo-corporatist negotiations. Other factors such as the democratization of the political systems were a necessary but not sufficient condition for strengthened labor rights. The considerable export growth in both countries did not lead to material improvements for their working populations.

The workers' rights clause had a greater impact on the Dominican Republic than on Guatemala mainly for two reasons: the greater strength and cohesiveness of Dominican trade unions and the political "culture of dialogue" that facilitated compromises between government, employers associations, and trade unions. In Guatemala, labor relations were highly polarized and the unions were confronted by an alliance of government officials and employers. These differences point to the dilemma of a social clause: Weaker trade unions are less likely to benefit from a social clause; in other words, where labor rights are the most violated, a workers' rights clause is the least effective.

In sum, theoretical considerations and empirical evidence show that workers' rights clauses are a sensible but only partially effective instrument for promoting and enforcing international labor rights. The U.S. administration's use of workers' rights clauses does not support the critique of such clauses as protectionism. If not even these unilateral clauses lead to protectionism, then the danger of protectionist abuse will be even lower in the case of a multilateral social clause. The process proposed by the international labor movement (a focus on the internationally accepted core labor rights, close cooperation between WTO and ILO, and the precedence of technical support over the use of trade sanctions) does not offer room for protectionist interests.

12. The Limits of Consumer Power

The extent to which *codes of conduct* can be effectively used depends on their concrete form. The long-term efficiency of this instrument is especially questionable if implementation is left

to companies. Seeing as no company has yet adopted a code of conduct truly voluntarily but only in response to public pressure, there is no reason to believe that a code's long-term implementation can be secured without further pressure. For several reasons it is questionable whether long-term public pressure can be sustained. Social movements have developed cyclically and when they have not succeeded at the high-point of their mobilization capacity in establishing the concessions they had won in the form of laws, their successes have remained rather temporary phenomena. This is likely to apply especially to strategies based on consumer behavior. Even on consumer decisions that directly affect their well-being, many consumers return to their buying habits quickly, after an initial panic. A return to old purchasing habits is even more likely in the case of public criticism that is based not on the product but on the production process, because consumers are less affected personally. In Germany child labor is regarded with moral indignation – except by neoclassical economists – and thus criticism that a product was manufactured with child labor will continue to receive broad attention. However, the denial of the rights of freedom of association and collective bargaining will result in less moral indignation, especially since fewer and fewer people use those rights even in OECD countries. A ‘postmodern’ mobilization of consumer concern, based not on material interests but on altruism, may also lead to paternalism toward the affected workforces and to an arbitrary selection of objectives. Upholding public pressure will also be made difficult by the great number of different codes of conduct, which may confuse consumers. Without a supervisory body or monitoring agency with adequate resources, organizations advocating improved working conditions in the “world” factories will face difficulties convincing the public again and again that a specific transnational corporation is violating its own code of conduct. Companies reacting especially sensitive to public criticism, and therefore willing to adopt codes of conduct, are also those with the highest advertising budgets. Responding to sustained public criticism, Nike increased its spending on advertising by 53 percent from 1999 to 2000 (Brakken 2000).

Compared with the economic power of transnational corporations and the political and police power of state institutions, the power of consumer organizations is rather modest. In theory the customer is king, but purchasing decisions are actually based more on price signals, habits, and advertising, than on the appeals of advocacy organizations. Even though competition among companies causes them to react sensitively even to small changes in market share, the labor practices of one company is, first, most often not much better than the next, so that consumers do not really have alternatives. Second, the rules of competition also provide a strong incentive to choose the least costly reaction to public criticism. And the least

costly solution is not necessarily the discontinuation of bad labor practices but could be effective public relations. Joined with the employees' organizations, NGOs are potentially stronger than they are on their own but, for one, these two currents of corporate critics can easily be played off against each other (e.g., in the case of the Apparel Industry Partnership); and second, unions have so far made only limited efforts to mobilize their members around cross-border solidarity.

At this time, however, it is too early to conclude whether company codes are merely tools for avoiding real improvements in working conditions or whether they provide criteria for a public assessment of company behavior. If no further steps follow, however, the current voluntary codes of conduct will be counterproductive, especially if they

- unilaterally prescribe working conditions for the respective workforces, with no participatory role for employees;
- contain vague formulations and/or ignore ILO conventions;
- are not integrated in factory procedures, and are not made accessible for the respective workforces;
- do not allow the external monitoring of working conditions.

But even if uniform codes of conduct that explicitly refer to core ILO conventions and include external monitoring can be realized, the following problems should not be overlooked:

Monitoring problems especially should not be taken lightly. These problems lie first of all in the complexities of supplier chains. In the toy industry, which is concentrated in Southern China near Hongkong, the Hongkong office of a U.S. toy corporation negotiates with so-called middlemen, who in turn negotiate with toy manufacturers or with intermediates. About one contract per day is signed (Murray 1998: 32-33).

An in-plant grievance procedure cannot replace independent monitoring. Employees under the threat of extreme exploitation are not in the position to make use of such a procedure. To have a chance of success, the person lodging a complaint requires

- access to information concerning the code of conduct;
- an understanding of what constitutes a violation of the code, and of the criteria used for evaluating the complaint;
- the necessary means to research and appropriately document the complaint;
- the mastering of the language in which the complaint will be dealt with;
- and most importantly, the assurance of not suffering negative consequences for filing the complaint.

The form of external monitoring increasingly preferred by corporations, i.e., audits by agencies certified according to the SA 8000 standard, can overcome these problems only in a limited way.

NGOs will not have the financial resources for more than spot-check monitoring. In addition, there is the danger that monitoring commissions will come to be regarded as substitutes for unions, or that there is competition between different monitoring groups, as the examples from El Salvador and Honduras have demonstrated (cf. Ronald Köpke's contribution in this volume).

A common problem of all instruments designed to improve working conditions in a country by using world trade is that they potentially lead to a split of the respective labor law regime into export industry and national segments (the employees in export processing zones are, however, often worse off). In the case of codes of conduct (and social labeling, see below), this problem is exacerbated because they lead to additional differences within the export sector. Workforces not producing for transnational corporations and/or not producing consumer products would not enjoy the protection of a code of conduct, and would not be the subject of supportive consumer campaigns.

Additional problems of the instrument of codes of conduct are: Codes targeted at corporations could divert attention from the responsibility of governments for the economic and social well-being and development of their societies. They could also lead business to assume that they can satisfy their responsibilities by adhering to a code.

Finally, there may be non-intended consequences. For example, the limitation of exploitative homework may affect women's access to employment, and the prohibition of child labor may push children into dangerous informal employment sectors. There is also the danger that if a transnational corporation discontinues its relationship with a supplier based on violations of its code, the pressure on workforces of other suppliers grows not to make violations public. This danger can be offset by a commitment of the transnational corporation to assist the management of the supplier in the improvement of conditions and to discontinue its relationship only when all means of persuasion and pressure are exhausted (such a provision is included, e.g., in the Worker Rights Consortium's code). There is thus a need for supporting measures.

Social-labeling initiatives are suitable for internationally traded consumer goods only, and particularly for brand-name articles whose producers heavily invest in image. Direct consumer pressure at the counter is most effective if there is a simultaneous information and

mobilization campaign. In such a case, social-labeling programs are a potentially greater threat to companies violating social standards than the codes of conduct of their competitors. Social-labeling initiatives, however, are only an efficient instrument if the incentive to participate can be made permanent for producers, importers, and retailers. This depends on whether the preferences for 'ethical consumption' voiced in surveys actually translate into purchasing behavior. There, the trend is to the contrary, which may be the result of a lack of availability and advertising; social labeling programs fundamentally confront a collective action problem. An individual consumer, wanting to express his or her moral preferences, "may not consider it rational to avoid buying [non-labeled products] ... unless he or she can be sure that most other consumers will do likewise" (Trebilcock/Howse 1999: 451). This is especially true when the labeled products come with a premium. Furthermore, avoidance strategies of competitors must be prevented. The proliferation of company labels without actual or checkable guarantees, or of advertising campaigns for equally dubious company codes of conduct, may prove the ILO's economic analysis correct: at a certain market share for 'ethical' products competitors will react. But consumers would be thoroughly confused and disappointed. Thus, the market-based incentive to establish credible social-labeling programs would vanish. The challenge is, then, to keep up the pressure – difficult enough, because the moral component of purchasing behavior is selective and temporary – and at the same time use the resulting interest of 'ethical' companies in a standardization of programs. But the latter's willingness to accept governmental regulation of social labels is low. In Germany, where there is already a vast number of eco-labels, a credible solution has been the introduction of a labeling program ('Umweltengel') based on the cooperation of relevant associations and organizations. While this could be a model for social labeling, the fundamental problem remains.

Standardization, possibly imminent in the realm of certification, involves risks too. On the one hand, social movements need to establish the concessions they have won in the form of law, because pressure on social change cannot be kept up permanently. On the other hand, a strategy that relies on consumer pressure requires constant mobilization. As the example of the *Fair Labor Association* in the U.S. shows, a movement can otherwise quickly lose its steam.

The credibility of social-labeling programs depends on the credibility of the award process and of the underlying codes of conduct, i.e., their monitoring and verification. A specific and unavoidable problem for social-labeling programs is the reduction of complexity. On the one hand, this reduction is intended. Potentially, social labels are simple instruments of

information in the marketplace, which have a signaling function for consumers. The market advantages that may result from consumer preferences, however, also provide an incentive for the misuse of labels, which is shown in the proliferation of pseudo-labels. Copyright law can prevent the plagiarizing of established labels but not the proliferation of labels without credibility. Whether a broad information policy can help solve this problem is questionable. A guide to social labels, modeled after the *Council on Economic Priorities*' 'Shopping for a better world', would very likely only reach the already conscious consumers. Thus, it is unlikely that, beyond market niches, transparency of competition between socially responsible enterprises and others can be permanently secured.

If labels are awarded for products, producers, importers, and retailers can still profit from bad working conditions by offering cheaper products made under bad conditions next to the more expensive 'fair' products. The strategy of certifying whole companies, which would be suited to counter this problem, has not found much support. A market-based alternative would be to increase, with marketing efforts, the market share of the products sold with a premium, in order to increase their availability.

Licensing fees, a feature of several social-labeling programs, are well-suited to counter the possibility that 'freed' children will be pushed into dangerous informal work by establishing rehabilitation and training programs. Furthermore, they can make independent certification and monitoring easier by ensuring that an individual company does not bear the costs – which is one of the flaws of SA8000. The licensing fees, however, are often externalized to the consumer in the form of premiums, which may reduce their market success.

The limitation of many social-labeling programs on the issue of child labor is comprehensible, because consumers are more responsive to this problem than, say, to union's freedom of association. It must be overcome, however, in order to move toward a comprehensive solution to the problem of labor rights violations.

Compared with the "enabling" strategies of codes of conduct and social labeling, internationally binding rules about adherence to core labor rights, including effective sanction mechanisms, i.e., a *workers' rights clause in the WTO*, are clearly preferable. Such a workers' rights clause would not just affect brand-name companies that heavily invest in image but all export companies in WTO member countries. As the adoption of ILO core labor rights within the WTO would go along with their ratification in the context of the ILO, WTO members would also be encouraged to respect these rights with regard to producers for the respective domestic market. The sanction mechanism for exporters penalizes the short-term advantage resulting from non-adherence to these rights. Therefore, workers' rights clauses promise a

higher rate of compliance. This higher rate, in turn, contributes to the development that countries tolerating violations can point less and less to their competitors' behavior as a justification of their own. Compared with codes of conduct and social-labeling initiatives, which can be established without consultation with the respective country of production, the multilateral character of the WTO also leads to an improved consideration of developing countries' interests. At the same time, multilateralism provides security against protectionist abuse. Because of the strong opposition to a workers' rights clause in the WTO, the other strategies should be pursued further. In the end, however, there is no way around a reform of the WTO system, i.a., because social-labeling programs may be considered distortions of competition and thus not in compliance with WTO rules.

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Appendices

Levi Strauss & Co.

Global Sourcing & Operating Guidelines

Levi Strauss & Co. seeks to conduct its business in a responsible manner. In 1991, Levi Strauss & Co. was the first multinational company to establish comprehensive Global Sourcing & Operating Guidelines.

Business Partners

Our Global Sourcing & Operating Guidelines help us to select business partners who follow workplace standards and business practices that are consistent with our company's policies. These requirements are applied to every contractor who manufactures or finishes products for Levi Strauss & Co. Trained inspectors closely audit and monitor compliance among approximately 600 cutting, sewing, and finishing contractors in more than 60 countries.

Partnerships That Work

For Levi Strauss & Co., implementing our guidelines is a comprehensive and resource-intensive effort. Our goal is to achieve positive results and effect change in partnership with our contractors, rather than to punish contractors for transgressions. Through our guidelines, we seek long-term solutions that will benefit the individuals who make our products and will improve the quality of life in the communities in which they live.

The Levi Strauss & Co. Sourcing & Operating Guidelines include two parts:

I. The Business Partner Terms of Engagement, which deal with issues that are substantially controllable by Levi Strauss & Co.'s individual business partners.

II. The Country Assessment Guidelines, which address larger, external issues beyond the control of individual business partners (e.g., health and safety issues and political, economic, and social conditions). These help us assess the risk of doing business in a particular country.

These standards are an integral part of our business. Company employees have the authority and the responsibility to take any steps necessary to ensure compliance with all standards and policies. Our employees and our business partners understand that our guidelines are no less important than meeting our quality standards or delivery times.

Terms of Engagement

1. Ethical Standards

We will seek to identify and utilize business partners who aspire as individuals and in the conduct of all their businesses to a set of ethical standards not incompatible with our own.

2. Legal Requirements

We expect our business partners to be law abiding as individuals and to comply with legal requirements relevant to the conduct of all their businesses.

3. Environmental Requirements

We will only do business with partners who share our commitment to the environment and who conduct their business in a way that is consistent with Levi Strauss & Co.'s Environmental Philosophy and Guiding Principles.

4. Community Involvement

We will favor business partners who share our commitment to contribute to improving community conditions.

5. Employment Standards

We will only do business with partners whose workers are in all cases present voluntarily, not put at risk of physical harm, fairly compensated, allowed the right of free association and not exploited in any way. In addition, the following specific guidelines will be followed:

Wages and Benefits: We will only do business with partners who provide wages and benefits that comply with any applicable law and match the prevailing local manufacturing or finishing industry practices.

Working Hours: While permitting flexibility in scheduling, we will identify prevailing local work hours and seek business partners who do not exceed them except for appropriately compensated overtime. While we favor partners who utilize less than sixty-hour work weeks, we will not use contractors who, on a regular basis, require in excess of a sixty-hourweek. Employees should be allowed at least one day off in seven.

Child Labor: Use of child labor is not permissible. Workers can be no less than 14 years of age and not younger than the compulsory age to be in school. We will not utilize partners who use child labor in any of their facilities. We support the development of legitimate workplace apprenticeship programs for the educational benefit of younger people.

Prison Labor/Forced Labor: We will not utilize prison or forced labor in contracting relationships in the manufacture and finishing of our products. We will not utilize or purchase materials from a business partner utilizing prison or forced labor.

Health & Safety: We will only utilize business partners who provide workers with a safe and healthy work environment. Business partners who provide residential facilities for their workers must provide safe and healthy facilities.

Discrimination: While we recognize and respect cultural differences, we believe that workers should be employed on the basis of their ability to do the job, rather than on the basis of personal characteristics or beliefs. We will favor business partners who share this value.

Disciplinary Practices: We will not utilize business partners who use corporal punishment or other forms of mental or physical coercion.

Evaluation & Compliance

All new and existing factories involved in the cutting, sewing, or finishing of products for Levi Strauss & Co. must comply with our Terms of Engagement. These facilities are continuously evaluated to ensure compliance. We work on-site with our contractors to develop strong alliances dedicated to responsible business practices and continuous improvement.

If Levi Strauss & Co. determines that a business partner is in violation of our Terms of Engagement, the company may withdraw production from that factory or require that a contractor implement a corrective action plan within a specified time period. If a contractor fails to meet the corrective action plan commitment, Levi Strauss & Co. will terminate the business relationship.

Our Commitment

Levi Strauss & Co. is committed to continuous improvement in the implementation of our Global Sourcing & Operating Guidelines. As these standards are applied throughout the world, we will continue to take into consideration all pertinent information that helps us better address issues of concern, meet new challenges, and, improve our guidelines.

(Source: [Http://www.levis Strauss.com](http://www.levis Strauss.com); June 28, 2000)

INTERNATIONAL FEDERATION OF BUILDING AND WOOD WORKERS (IFBWW) - IKEA CODE OF CONDUCT

29 May 1998

IFBWW-IKEA agreement on rights of workers

Introduction

At the International Federation of Building and Wood Workers' (IFBWW) Wood and Forestry Committee meeting in Geneva on Monday 25 May 1998, IKEA, one of the world's largest retail chains within the furniture sector and IFBWW signed a cooperation agreement on matters concerning working conditions, the natural environment and health and safety for workers at enterprises throughout the world that manufacture and supply goods for IKEA.

Under the terms of this agreement IKEA will demand of its suppliers that their workers enjoy working conditions which at least comply with national legislation or national agreements. Suppliers must, furthermore, respect any relevant ILO Conventions and Recommendations relating to their operations. This means, for example, that no child labour can be tolerated and that workers have unrestricted rights to join trade unions and to free collective bargaining. These rules already apply at manufacturing companies owned by IKEA.

The Agreement was signed by Mr Stig Holmqvist, International Procurement Strategies Director of IKEA and Mr Gunnar A Karlsson, Chair of the IFBWW Wood and Forestry Committee and President of the Swedish Wood Workers Union. The Agreement was subsequently endorsed by the IFBWW Executive Committee on 28 May 1998. The final Agreement was preceded by an earlier round of negotiations between IKEA and Nordic Federation of Building and Wood Workers which culminated in a Joint Declaration signed on 13 March 1998. The Agreement will cover almost 1,000,000 workers in 70 countries.

Agreement Between IKEA and the International Federation of Building and Wood Workers, IFBWW

IKEA is one of the world's leading home furnishing companies, with procurement in some 70 countries, and retailing in approximately 30 countries. The company is faced every day with cultural differences and diverse economic and social conditions.

IKEA's development confirms the growing globalisation and trade in manufactured goods. For a number of years the company has operated an internal Code of Conduct on ethical and social conditions in its relations with contractors all over the world.

The IFBWW and IKEA have each built up international experience over the years and are agreed on the advantages of long-term, stable rules of conduct for all parties in both producer and purchaser countries, which may also provide standards for industries other than the wood industry.

The Code of Conduct which is attached in Appendix 1, signifies that IKEA is demanding of its contractors that their employees have conditions of employment which do at least fulfil the requirements of their national legislation. The suppliers must respect those ILO Conventions and Recommendations which apply to their business. It means that child labour is not acceptable and that the workers are free to join trade unions and take part in free collective bargaining.

A similar Code of Conduct also applies to manufacturing companies owned by IKEA. The Code of Conduct in Appendix 1 will be available at all work-places in the appropriate languages.

A Monitoring Group will be appointed with two members from IKEA and two members from the IFBWW. The Monitoring Group will meet at least twice a year, and the parties shall provide relevant information in order to carry out its mandate. The group shall aim to hold its meetings at suppliers' premises.

If suppliers do not observe the Code of Conduct as in Appendix 1, the Monitoring Group will review the matter and propose appropriate measures. However, it is always IKEA's responsibility to regulate conditions of collaboration with its suppliers.

Geneva, Switzerland, 25 May 1998

IKEA INTERNATIONAL A/S IFBWW's Wood and Forestry Committee

Stig Holmqvist Gunnar A. Karlsson

Appendix 1 to the Agreement between IKEA and the International Federation of Building and Wood Workers, IFBWW:

Code of Conduct regarding the rights of workers

1. Employment must be freely chosen

No coercion may be used, including forced labour, slavery or non-voluntary work in prisons (ILO Conventions nos. 29 and 105). Nor must workers be asked to make "deposits" or leave their ID as pledges with their employers.

2. No discrimination in employment

There will be equal opportunities and equal treatment regardless of race, colour, gender, creed, political views, nationality, social background or any other special characteristics (ILO Conventions nos. 100 and 111).

3. Child labour must not be used

Child labour must not occur. Only workers aged 15 and over, or over the age of compulsory education if higher, may be employed (ILO Convention no. 138). Exceptions to this rule may only be made if national legislation provides otherwise.

4. Respect for the right to freedom of association and free collective bargaining

The right of all workers to form and belong to trade unions shall be recognised (ILO Conventions nos. 87 and 98). Workers' representatives may not be discriminated against and must have access to all the work-places necessary to exercise their functions as trade unions representatives (ILO Convention 135 and Recommendation 143). Employers shall adopt positive views of the activities of trade unions and an open attitude to their organising activities.

5. Adequate wages must be paid

Wages and conditions of work must fulfil at least the requirements laid down in national agreements or national legislation. Unless wage deductions are permitted by national legislation they may not be made without express permission of the workers concerned. All workers must be given written, understandable information in their own language about wages before taking up their work, and the details of their wages in writing on each occasion that wages are paid.

6. Working time must not be unreasonable

Working time should follow the appropriate legislation or national agreements for each trade.

7. Working conditions must be decent

Working environments must be safe, hygienic and the best health and safety conditions must be promoted considering current knowledge of the trade and any special hazards. Physical abuse, the threat of physical abuse, unusual penalties or punishments, sexual or other forms of harassment and threats by the employer shall be strictly forbidden.

8. Conditions of employment must be established

Employers' obligations to workers according to national labour legislation and regulations on social protection based on permanent employment must be respected. Apprenticeships that do not truly aim to provide knowledge must not be permitted. The parties shall work towards creating permanent employment.

(Source: Steelworkers Humanity Fund 1998: 47-49)

**Apparel Industry Partnership
Charter
Fair Labor Association**

(Summary Produced by International Labor Rights Fund, Lawyers Committee for Human Rights, National Consumers League, and Robert F. Kennedy Memorial Center for Human Rights)

The Apparel Industry Partnership (AIP) was initiated by the White House in August 1996 to take steps to protect workers worldwide and to give the public the information it needs to make informed purchasing decisions.

The Partnership is comprised of apparel and footwear companies, a prominent U.S. university, human rights groups, labor, religious organizations and consumer advocates.

In April 1997, the AIP released an historic agreement establishing:

A Workplace Code of Conduct addressing problems in 9 key areas (child labor, forced labor, discrimination, harassment, freedom of association, wages, health and safety, hours of work and overtime compensation).

Principles of Monitoring with two components:

Internal Monitoring Principles that include establishing workplace standards; communicating these standards within the workplace; creating programs to train company monitors; conducting periodic visits and audits to ensure compliance; providing factory workers with confidential reporting mechanisms; developing relationships with local labor, human rights or religious institutions; and establishing a means of remediation.

Independent External Monitoring Principles that include establishing clear evaluation guidelines and criteria; verifying implementation of internal monitoring principles; providing independent access to and conducting independent audits of employee records; conducting periodic visits and audits(announced and unannounced); developing relationships with local labor, human rights or religious institutions (where external monitors are not themselves such organizations); conducting confidential employee interviews; implementing remediation; and completing evaluation reports.

In November 1998, a working group of the AIP reached an agreement that will include the following:

Creation of a new non-profit entity, the Fair Labor Association, to oversee monitoring of compliance with the code and evaluation of company compliance. The Association board will have equal numbers of company and NGO/labor members with a mutually acceptable chair.

The Association will accredit independent monitors who will inspect a significant number of factories manufacturing products for each Participating Company that is part of the Association's monitoring process.

Reporting to the Public

A key objective of this process is to provide consumers with the information they need to make informed purchasing decisions. The reports of the independent monitors will be delivered to the Association, and the Association will disseminate to the public an annual report on each company. The report will include the following:

a finding as to whether the Company has effectively implemented internal and independent external monitoring programs consistent with the Monitoring Principles;

a finding as to whether the Company has timely remediated instances of noncompliance with the Workplace Code found by internal or accredited independent external monitors; and a summary and assessment of any significant and/or persistent patterns of noncompliance, and instances of serious noncompliance, with the Workplace Code.

A Participating Company cannot make any public announcement to the public that all or some of its Brands are produced in Compliance with the Fair Labor Association Standards and will not have the right to use the service mark of the Association unless:

such Brands have been certified by the Association to be produced in Compliance with the Fair Labor Association Standards; and

the Company continues to satisfy the criteria for participation in the Association's monitoring process.

Monitoring Plan

Companies will submit a monitoring plan to the Association. The plan will contain the following:

The Participating Company's plan to conduct internal monitoring and external monitoring. All external monitors shall be chosen from a list of Association- approved monitors.

Training materials for internal monitors, background on the internal monitors, information on number and frequency of on-site inspections.

A confidential list of all production facilities -- both company-owned and contracted.

A description of applicable brand or product lines.

External Monitoring

By the end of the initial implementation period, Participating Companies will have fully implemented an external monitoring program in compliance with the following requirements:

Accredited independent monitors will conduct periodic inspections of at least 30% of the Participating Company's applicable facilities during the initial implementation period. After this period, the annual percentage will be 10%, but may be adjusted up to 15% or down to 5%. After three years of monitoring experience, the Association will determine, in consultation with experts, whether this level of independent monitoring is sufficient.

Companies will suggest facilities for inspections by the accredited external monitors based on the following risk factors:

A particular facility's record of unremedied, substantiated violations of the Workplace Code or of credible complaints regarding such violations;

Risk of non-compliance presented in the country or region in which the facility is located; and

Size of facility in terms of the number of employees, production volume and percentage of Participating Company's production at a facility.

The Association will have the authority to modify the list of facilities if it does not appropriately reflect the risk factors listed above.

Cost of External Monitors

In order to encourage wide participation by companies, during the first five years of the Association's existence, the Association will reimburse a Participating Company for a portion of its total cost of required accredited external monitoring during the initial implementation period as follows:

year one: 50%
year two: 45%
year three: 30%

All other costs related to internal and external monitoring will be borne by the Participating Company.

Reporting Requirements

Both internal monitors and independent accredited external monitors will provide to the Participating Company an initial standardized report on each facility inspected. Within 60 days of issuing this report, internal and external monitors will provide to the Executive Director of the Association the initial report to the Participating

Company as well as a report on remedial actions taken by the Participating Company to address any non-compliance issues.

Every 12 months, each Participating Company will provide the Association with a standardized report of how the company implements the Workplace Code and the internal and external principles of monitoring. The report will include a summary report of all internal monitoring activities as well as the findings of the external monitors and the remedial actions taken if problems were uncovered.

The staff of the Association will prepare a standardized public report (as described on page 2 of this summary). The report will evaluate whether the company has complied with the Association's standards. It will also contain a summary of significant patterns and serious instances of non-compliance and a description of remediation. Information determined to be proprietary or confidential will be omitted.

Determination of Compliance

After the initial implementation period, the Executive Director will, on an annual basis, present the proposed public report to the Board and recommend to the Board whether a Participating Company is eligible for certification. The following criteria will be used in making such decisions:

Effective implementation of internal and external monitoring;

Timely remediation of noncompliance with the Code of Conduct and sufficient measures to help prevent reoccurrence of patterns of non-compliance.

Department of Labor Wage Study

The Association will ask the U.S. Department of Labor to complete within 6 months a study of the relationship between wages and basic needs of workers in the apparel and footwear industry around the world.

The Department of Labor will study minimum and prevailing wages in relevant countries, compile data to establish the poverty level in apparel and footwear producing countries, compare the minimum and prevailing wages with employees' basic needs, as reflected by the poverty level for those relevant countries, and compile existing research on methodologies to measure the level of the purchasing power of wages and benefits needed to meet basic needs of employees in relevant countries. The study will rely heavily on data from the International Labor Organization, World Bank and other existing resources.

The Association will review this and other pertinent and necessary data. It will consider any implications for the Workplace Code.

Special Country Guidelines

While implementation of some of the workplace standards may be difficult in countries where the rights embodied are not fully recognized or enforced, one of the goals of the Association shall be to promote and encourage positive change in these countries so that standards become fully recognized, respected and enforced.

Regarding the freedom of association and collective bargaining standards, Participating Companies must take steps to ensure that factory employees can exercise these rights without fear of discrimination or punishment, including ensuring that factory owners understand and recognize these rights and will not take action to prevent workers from exercising their rights.

Outside Complaint Procedure

The Association will have a process by which parties outside the Association can raise issues of significant Participating Company noncompliance with the Workplace Code. The Executive Director will take steps to determine the validity of the claims and, depending on the determination, work with the Participating Company to take action, if necessary.

(Source: <http://laborrights.org/projects/fla/index.htm>; June 29, 2000; see there for the full text of the agreement)

And this is how Rugmark works

When carpet exporters apply for a licence to the RUGMARK Foundation, they bind themselves legally not to employ children under fourteen years of age in the production of carpets and to pay adult weavers salaries that conform to legal minimum wage requirements. In traditional family business, regular school attendance must be proved for children employed as helpers, and only the loom-owner's own children are permitted to work.

Carpet-exporting firms furnish full information to RUGMARK complete details of looms which are working for them. These looms are regularly inspected.

Carpet-exporting firms pledge to allow the RUGMARK Foundation's full-time inspectors to examine their production process at any time. NGOs also carry out random checks to see that RUGMARK Foundation regulations are being observed. Infringements of the rules might result in withdrawal of the licence. Presently RUGMARK India has seventeen full-time inspectors whereas RUGMARK Nepal has four.

Licensed exporters affix the RUGMARK label onto the carpets, so that every carpet can be traced all the way back to the loom. The individual serial number on each label enables the complete identification of the carpet.

European and American importers pay a minimum of 1 % of the import value of the labelled carpet. These fees finance social and rehabilitation programmes for the displaced children. In this way the former child weavers are safeguarded against getting pressed into illegal employment once again. Regular reports are issued on the use of funds.

(Source: www.rugmark.de/english/e_how/htm; June 29, 2000)

Social Accountability 8000 (SA8000)

I. Purpose And Scope

This standard specifies requirements for social accountability to enable a company to:

- a) develop, maintain, and enforce policies and procedures in order to manage those issues which it can control or influence;
- b) demonstrate to interested parties that policies, procedures and practices are in conformity with the requirements of this standard;

The requirements of this standard shall apply universally with regard to geographic location, industry sector and company size.

II. Normative Elements And Their Interpretation

The company shall comply with national and other applicable law, other requirements to which the company subscribes, and this standard. When national and other applicable law, other requirements to which the company subscribes, and this standard address the same issue, that provision which is most stringent applies.

The company shall also respect the principles of the following international instruments:

ILO Conventions 29 and 105 (Forced & Bonded Labour)

ILO Convention 87 (Freedom of Association)

ILO Convention 98 (Right to Collective Bargaining)

ILO Conventions 100 and 111 (Equal remuneration for male and female workers for work of equal value; Discrimination)

ILO Convention 135 (Workers' Representatives Convention)

ILO Convention 138 & Recommendation 146 (Minimum Age and Recommendation)

ILO Convention 155 & Recommendation 164 (Occupational Safety & Health)

ILO Convention 159 (Vocational Rehabilitation & Employment/Disabled Persons)

ILO Convention 177 (Home Work)

Universal Declaration of Human Rights

The United Nations Convention on the Rights of the Child

III. Definitions

1. Definition of company: the entirety of any organization or business entity responsible for implementing the requirements of this standard, including all personnel (i.e., directors, executives, management, supervisors, and non-management staff, whether directly employed, contracted or otherwise representing the company).
2. Definition of supplier: a business entity which provides the company with goods and/or services integral to, and utilized in/for, the production of the company's goods and/or services.
3. Definition of subcontractor: a business entity in the supply chain which, directly or indirectly, provides the supplier with goods and/or services integral to, and utilized in/for, the production of the supplier's and/or company's goods and/or services.
4. Definition of remedial action: action taken to remedy a nonconformance.

5. Definition of corrective action: action taken to prevent the recurrence of a non-conformance.

6. Definition of interested party: individual or group concerned with or affected by the social performance of the company.

7. Definition of child: any person less than 15 years of age, unless local minimum age law stipulates a higher age for work or mandatory schooling, in which case the higher age would apply. If, however, local minimum age law is set at 14 years of age in accordance with developing? country exceptions under ILO Convention 138, the lower age will apply.

8. Definition of young worker: any worker over the age of a child as defined above and under the age of 18.

9. Definition of child labour: any work by a child younger than the age(s) specified in the above definition of a child, except as provided for by ILO Recommendation 146.

10. Definition of forced labour: all work or service that is extracted from any person under the menace of any penalty for which said person has not offered him/herself voluntarily.

11. Definition of remediation of children: all necessary support and actions to ensure the safety, health, education, and development of children who have been subjected to child labour, as defined above, and are dismissed.

IV. Social Accountability Requirements

1. Child Labour

Criteria:

1.1 The company shall not engage in or support the use of child labour as defined above;

1.2 The company shall establish, document, maintain, and effectively communicate to personnel and other interested parties policies and procedures for remediation of children found to be working in situations which fit the definition of child labour above, and shall provide adequate support to enable such children to attend and remain in school until no longer a child as defined above.

1.3 The company shall establish, document, maintain, and effectively communicate to personnel and other interested parties policies and procedures for promotion of education for children covered under ILO Recommendation 146 and young workers who are subject to local compulsory education laws or are attending school, including means to ensure that no such child or young worker is employed during school hours and that combined hours of daily transportation (to and from work and school), school, and work time does not exceed 10 hours a day;

1.4 The company shall not expose children or young workers to situations in or outside of the workplace that are hazardous, unsafe, or unhealthy.

2. Forced Labour

2.1 Criterion: the company shall not engage in or support the use of forced labour, nor shall personnel be required to lodge 'deposits' or identity papers upon commencing employment with the company.

3. Health And Safety

Criteria:

3.1 The company, bearing in mind the prevailing knowledge of the industry and of any specific hazards, shall provide a safe and healthy working environment and shall take adequate steps to prevent accidents and injury to health arising out of, associated with or occurring in the course of work, by minimizing, so far as is reasonably practicable, the causes of hazards inherent in the working environment;

3.2 The company shall appoint a senior management representative responsible for the health and safety of all personnel, and accountable for the implementation of the Health and Safety elements of this standard;

3.3 The company shall ensure that all personnel receive regular and recorded health and safety training, and that such training is repeated for new and reassigned personnel;

3.4 The company shall establish systems to detect, avoid or respond to potential threats to the health and safety of all personnel;

3.5 The company shall provide, for use by all personnel, clean bathrooms, access to potable water, and, if appropriate, sanitary facilities for food storage;

3.6 The company shall ensure that, if provided for personnel, dormitory facilities are clean, safe, and meet the basic needs of the personnel.

4. Freedom Of Association & Right To Collective Bargaining

Criteria:

4.1 The company shall respect the right of all personnel to form and join trade unions of their choice and to bargain collectively;

4.2 The company shall, in those situations in which the right to freedom of association and collective bargaining are restricted under law, facilitate parallel means of independent and free association and bargaining for all such personnel;

4.3 The company shall ensure that representatives of such personnel are not the subject of discrimination and that such representatives have access to their members in the workplace.

5. Discrimination

Criteria:

5.1 The company shall not engage in or support discrimination in hiring, compensation, access to training, promotion, termination or retirement based on race, caste, national origin, religion, disability, gender, sexual orientation, union membership, or political affiliation;

5.2 The company shall not interfere with the exercise of the rights of personnel to observe tenets or practices, or to meet needs relating to race, caste, national origin, religion, disability, gender, sexual orientation, union membership, or political affiliation.

5.3 The company shall not allow behaviour, including gestures, language and physical contact, that is sexually coercive, threatening, abusive or exploitative.

6. Disciplinary Practices

Criterion:

6.1 The company shall not engage in or support the use of corporal punishment, mental or physical coercion, and verbal abuse.

7. Working Hours

Criteria:

7.1 The company shall comply with applicable laws and industry standards on working hours; in any event, personnel shall not, on a regular basis, be required to work in excess of 48 hours per week and shall be provided with at least one day off for every seven day period.

7.2 The company shall ensure that overtime work (more than 48 hours per week) does not exceed 12 hours per employee per week, is not demanded other than in exceptional and short term business circumstances, and is always remunerated at a premium rate.

8. Compensation

Criteria:

8.1 The company shall ensure that wages paid for a standard working week shall meet at least legal or industry minimum standards and shall always be sufficient to meet basic needs of personnel and to provide some discretionary income;

8.2 The company shall ensure that deductions from wages are not made for disciplinary purposes, and shall ensure that wage and benefits composition are detailed clearly and regularly for workers; the company shall also ensure that wages and benefits are rendered in full compliance with all applicable laws and that compensation is rendered either in cash or check form, in a manner convenient to workers;

8.3 The company shall ensure that labour-only contracting arrangements and false apprenticeship schemes are not undertaken in an effort to avoid fulfilling its obligations to personnel under applicable laws pertaining to labor and social security legislation and regulations.

9. Management Systems

Criteria:

Policy

9.1 Top management shall define the company's policy for social accountability and labour conditions to ensure that it:

- a) includes a commitment to conform to all requirements of this standard;
- b) includes a commitment to comply with national and other applicable law, other requirements to which the company subscribes and to respect the international instruments and their interpretation(as listed in Section II);
- c) includes a commitment to continual improvement;
- d) is effectively documented, implemented, maintained, communicated and is accessible in a comprehensible form to all personnel, including, directors, executives, management, supervisors, and staff, whether directly employed, contracted or otherwise representing the company;
- e) is publicly available.

Management Review

9.2 Top management shall periodically review the adequacy, suitability, and continuing effectiveness of the company's policy, procedures and performance results vis a vis the requirements of this standard and other requirements to which the company subscribes. System amendments and improvements shall be implemented where appropriate.

Company Representatives

9.3 The company shall appoint a senior management representative who, irrespective of other responsibilities, shall ensure that the requirements of this standard are met;

9.4 The company shall provide for non-management personnel to choose a representative from their own group to facilitate communication with senior management on matters related to this standard.

Planning and Implementation

9.5 The company shall ensure that the requirements of this standard are understood and implemented at all levels of the organization; methods shall include, but are not limited to:

- a) clear definition of roles, responsibilities, and authority;
- b) training of new and/or temporary employees upon hiring;
- c) periodic training and awareness programs for existing employees;
- d) continuous monitoring of activities and results to demonstrate the effectiveness of systems implemented to meet the company's policy and the requirements of this standard;

Control of Suppliers

9.6 The company shall establish and maintain appropriate procedures to evaluate and select suppliers based on their ability to meet the requirements of this standard;

9.7 The company shall maintain appropriate records of suppliers' commitment to social accountability, including, but not limited to, the suppliers' written commitment to:

- a) conform to all requirements of this standard (including this clause);
- b) participate in the company's monitoring activities as requested;
- c) promptly remediate any nonconformance identified against the requirements of this standard;
- d) promptly and completely inform the company of any and all relevant business relationship(s) with other supplier(s) and subcontractor(s);

9.8 The company shall maintain reasonable evidence that the requirements of this standard are being met by suppliers and subcontractors.

Addressing Concerns and Taking Corrective Action

9.9 The company shall investigate, address, and respond to the concerns of employees and other interested parties with regard to conformance/nonconformance with the company's policy and/or the requirements of this standard; the company shall refrain from disciplining, dismissing or otherwise discriminating against any employee for providing information concerning observance of the standard.

9.10 The company shall implement remedial and corrective action and allocate adequate resources appropriate to the nature and severity of any nonconformance identified against the company's policy and/or the requirements of the standard.

Outside Communication

9.11 The company shall establish and maintain procedures to communicate regularly to all interested parties data and other information regarding performance against the requirements of this document, including, but not limited to, the results of management reviews and monitoring activities.

Access for Verification

9.12 Where required by contract, the company shall provide reasonable information and access to interested parties seeking to verify conformance to the requirements of this standard; where further required by contract, similar information and access shall also be afforded by the company's suppliers and subcontractors through the incorporation of such a requirement in the company's purchasing contracts.

Records

9.13 The company shall maintain appropriate records to demonstrate conformance to the requirements of this standard.

CRITERIA FOR ACCREDITATION OF
SOCIAL ACCOUNTABILITY SYSTEM CERTIFICATION BODIES

Accreditation requirements include demonstrated adherence to ISO/IEC Guide 62, and to CEPAA Guideline I.

CEPAA GUIDELINE I

150.1 With reference to preparation for an assessment, the certification body shall document how it will effectively obtain and maintain information about working conditions from regional interested parties, NGOs, and workers. For example, such information gathering could take the form of a semi-annual public meeting in each country or region, with minutes available for all auditors plus a system to acquire relevant informational publications. Additionally, the certification body shall document how such information is incorporated in the plans for initial audit, surveillance audits, and re-certification audits. [This requirement supplements those of ISO 62, 3.2]

150.2 The certification body shall document how it will determine the sufficient wage level, per SA000, 8.1, and the Guidance thereto.

150.3 The application form to clients shall include a question about the languages spoken by personnel at the facility, and the proportion speaking each. The certification body shall ascertain and record this information before accepting a client. [This requirement supplements those of ISO 62 3.1.2.2]

150.4 Individual client files shall include an appropriate summary of the inquiries in the above item 150.1 and 150.3 and the determination in 150.2. The certification body shall demonstrate that it conforms with the requirement to use the information in the audit process.

150.5 The certification body shall document and demonstrate to CEPAA that it satisfactorily ensures that audit personnel are trained in the elements and application of SA8000; the preferred option is successful completion of an approved accredited SA 8000 Lead Assessor course.

150.6 The certification body shall document and demonstrate to CEPAA satisfactory procedures for selecting a qualified team of auditors for social accountability; the preferred option is the use of certified SA 8000 auditors. [This requirement supplements those of ISO 62 3.2.3]

150.7 The certification body shall document how its auditing staff: [a] obtains factual information in a manner sensitive to local cultural norms, and ensure that any audit team can so conduct employee interviews; and [b] how it protects the confidentiality of workers who are interviewed. This is particularly, but not exclusively, in reference to the SA8000 element dealing with Discrimination.

150.8 The certification body shall maintain personnel records documenting that auditors have appropriate skills and experience for specific audit teams. This shall include a documented procedure for ensuring auditor possession of appropriate local language and interview skills. Where a subcontractor, auditor or translator, is engaged, the certification body shall have procedures to confirm that person's impartiality, including that such subcontractor is not an employee or recent ex employee of the auditee. [This is an additional requirement to those of ISO 62, provision 2.2.5.1]

(Source: <http://www.cepaa.org>; June 29, 2000)