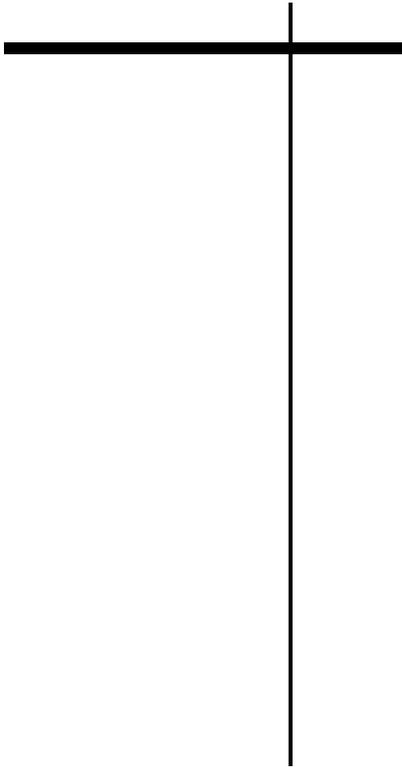


INDEPENDENT UNIVERSITY INITIATIVE FINAL REPORT



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EXECUTIVE SUMMARY

Background: To understand better the conditions under which university-licensed apparel is manufactured, five universities, Harvard, the University of Michigan, Notre Dame, Ohio State and the University of California, worked in collaboration with Business for Social Responsibility Education Fund (BSREF), the Investor Responsibility Research Center (IRRC) and Dara O'Rourke to gather information about working conditions and steps that universities can take to improve these conditions.

Project Elements: The elements of the project were as follows:

- Country Information Gathering: Project consultants gathered information about working conditions in the apparel industry in the following seven countries: China, El Salvador, Mexico, Pakistan, South Korea, Thailand and the United States. These countries were chosen because they represent a substantial portion of the university-licensed apparel business, and have been the focus of interest and concern by a variety of stakeholders. Information was gathered based on country visits and interviews with stakeholders including non-governmental organizations (NGOs), labor union officials, licensees, factory owners and managers, and public officials.
- Factory Information Gathering: This element of the project included information gathering in facilities producing university-licensed apparel to identify patterns of non-compliance and good practice to augment the information gathered through the general country information gathering. The universities selected PricewaterhouseCoopers as the primary monitor, to be accompanied by BSREF, IRRC and Dr. O'Rourke in various factory visits. Monitoring was undertaken against a consensus code of conduct based on the five universities' codes, and involved interviews with factory management; interviews with a sample of factory employees; review of relevant factory records; visual factory inspection; and other techniques relevant to the site.
- Survey of Other Compliance Efforts: The project team also explored on-going government, firm and NGO efforts to improve working conditions in the apparel industry. This analysis was undertaken through meetings with licensees and factory workers, and review of other monitoring initiatives underway, with a particular focus on efforts related to university-licensed apparel. Written surveys were distributed to participants in independent monitoring pilot projects, licensee programs and other efforts linked to university-licensed apparel.

Overall Findings: Based on meetings with stakeholders, factory visits and surveys, we found:

- Sub-par working conditions exist in apparel factories in all of the countries visited, as reported by stakeholders and confirmed by factory visits;
- The diffuse nature of apparel production hinders enforcement of labor standards;
- Awareness of codes of conduct and monitoring efforts is currently insufficient to promote effective compliance;
- Many trade unions and some NGOs are skeptical about the efficacy of monitoring;
- The proliferation of Codes of Conduct and the resulting duplication of monitoring efforts does not support greater compliance;

- It is particularly challenging to gather information from workers about conditions in factories.

Issues of Concern: The following issues were identified most frequently as areas of non-compliance in the course of the information gathering from stakeholders and from factory monitoring:

- Violations of regulations on working hours and overtime compensation;
- Limitations to freedom of association and collective bargaining;
- Violations of compensation laws;
- Discrimination against women (such as through pregnancy testing);
- Widespread health and safety problems;
- Increased subcontracting and further problems with implementation of codes of conduct.

Good Practices: The project team also identified the following good practices:

- Licensees, brands and industry associations were involved in initiatives to support:
 - Effective monitoring in all forms – internal, external and independent;
 - Transparency and disclosure about factory practices;
 - Training of monitors and suppliers;
 - Participation in collaborative efforts;
 - Ranking and benchmarking of individual factories;
 - Worker input into compliance efforts; and,
 - Industry association efforts to monitor member companies.
- Some governments were involved in efforts to enhance enforcement of laws and serve as conveners of a range of efforts to enhance good practices.

Local Conditions Hindering Compliance: Information gathering also yielded information about broad conditions that hinder compliance efforts, including:

- Economic conditions, especially those arising from the recent Asian financial crisis, were cited as having presented barriers to compliance efforts;
- Labor laws that conflict with codes, that are enforced unevenly, or that are subject to differing interpretations even by regulatory agencies also create an environment in which good practice is made more difficult;
- Some government agencies fail to enforce existing labor laws;
- Cultural attitudes in some cases prevent the implementation of certain principles, notably including provisions barring discrimination.

Options for Consideration: Based on the information we have gathered, the analysis of that information, and our various observations, we present the following options for consideration by universities as possible ways to contribute to the further development of fair working conditions in the apparel industry:

- Leverage educational resources to educate and empower workers;
- Promote effective monitoring and verification;
- Promote transparency;

- Support public comparison and learning;
- Address the diffuse nature of apparel production by centralizing licensed apparel production to enhance compliance;
- Create greater incentives and sanctions to promote good practice;
- Support initiatives that go “beyond monitoring.”

In addition, Dara O’Rourke offers on his behalf the following specific recommendations:

- Promote fuller public disclosure of licensee factory locations and factory conditions. This could be achieved by simple revisions to university codes of conduct;
- Require “internal” monitoring by licensees and standardized reporting of the findings of factory audits;
- Collect this information in a standardized format – preferably through a centralized body – and post it on the Internet. This Internet-based directory of factory performance would allow university administrators and other stakeholders to assess individual factory performance, compare firms and licensees, and identify best and worst practices in the industry;
- Support broader dialogues about labor standards and monitoring systems by making public different monitoring protocols and methods;
- Support a system of NGO and worker verification of licensee monitoring. This would involve making audits not only available via the Internet, but also available to workers and NGOs in the local language for them to verify or dispute;
- Establish procedures for analyzing and benchmarking best practices in licensees and subcontractors;
- Experiment with incentive and sanction systems that motivate licensees to meet or beat best practices.

ANALYSIS AND OPTIONS FOR CONSIDERATION

The purpose of this section is to provide an overall analysis of the information gathered through both factory visits and the in-country information gathering process, and to offer some options for consideration by universities exploring possible ways to address and enhance working conditions in factories producing university-licensed apparel.

The section will be divided into the following portions:

- A. Overall observations
- B. Common trends/issues of concern
- C. Good/best practices
- D. Local conditions hindering compliance
- E. Options for Consideration

A. OVERALL OBSERVATIONS

The following reflect some overall findings and observations from the project.

1. SUB-PAR WORKING CONDITIONS EXIST IN APPAREL FACTORIES IN ALL OF THE COUNTRIES VISITED, AS REPORTED BY STAKEHOLDERS AND CONFIRMED BY FACTORY VISITS.

Based on the information gathered from a broad range of stakeholders and through the factory monitoring visits, it seems clear that applicable laws and codes of conduct are not fully implemented in factories producing university-licensed apparel. Issues include clear evidence of non-payment of legally required compensation (wages and benefits), excessive overtime, poor health and safety practices, discrimination against women, dangerous health and safety conditions, and recurring reports that the right to freedom of association is not honored. While there were some reports from stakeholders and other evidence of child labor and forced labor, these issues seemed to arise less frequently.

We received information from stakeholders and direct examples through monitoring of a range of instances of non-compliance. These came from countries with both greater and lesser levels of economic development, and more and less well-developed regulatory systems. It is also clear that all countries visited have factory practices that are commendable, and factories that have very poor conditions.

2. THE DIFFUSE NATURE OF APPAREL PRODUCTION HINDERS ENFORCEMENT OF LABOR STANDARDS.

Supply chains for production of university-licensed apparel are often complex, involving a number of different parties, which in the end makes monitoring and enforcing codes of conduct difficult. Securing and transporting raw materials, manufacturing, transporting goods, and navigating the import/export process may involve a number of different independently owned businesses connected to one another through a web of brokers, dealers and other intermediaries in any number of countries.

Moreover, factories often produce goods for numerous customers, many with different standards and different monitoring and implementation schemes. Individual customers, especially universities, which often have relatively small production runs, many times have limited influence with factories, as their portion of the factory's production represents a very small portion of the factory's overall business. In addition, production runs for the university market are often short, making it difficult to determine when a particular university's goods are involved in the factory's operations.

3. AWARENESS OF CODES OF CONDUCT AND MONITORING IS CURRENTLY INSUFFICIENT TO PROMOTE EFFECTIVE COMPLIANCE

NGOs, unions and workers appeared to lack general familiarity with company codes of conduct. This unfamiliarity undoubtedly hinders the effectiveness of labor standards whether contained in codes of conduct, local laws or international standards. In the interviews, many NGOs seemed unfamiliar with codes of conduct and their practical applicability in the factories. Workers, when asked during worker interviews, could rarely name a provision in the code even in those occasions when the code was posted in their workplace. In Thailand, workers explained that they perceived the codes they saw on the wall as an additional burden to keep the factory clean: as their responsibility rather than their rights.

4. MANY TRADE UNIONS AND SOME NGOS ARE SKEPTICAL ABOUT THE EFFICACY OF MONITORING

Unions, when knowledgeable about codes, were generally skeptical of their efficacy and doubted their enforceability. NGOs in several locations were also skeptical that codes of conduct would lead to the improved working conditions they sought.

5. THE PROLIFERATION OF CODES OF CONDUCT AND THE RESULTING DUPLICATION OF MONITORING EFFORTS DO NOT SUPPORT GREATER COMPLIANCE

While workers and NGOs were not generally knowledgeable about codes of conduct, factory managers were not only familiar with them, but also often complained about them. Their complaints were about the multitude of codes they are asked to comply with. Each of their clients had different codes, so they were forced to spend valuable time ensuring they complied with the varying, but only slightly dissimilar, standards. In addition, many of their clients also have varying monitoring requirements, which can lead to time-consuming monitoring processes that factories perceive as harming their production schedules without substantially improving conditions. The factory managers we spoke with generally viewed code enforcement as positive. However, some factory managers seemed to be more willing to put in the effort to ensure compliance and enforce codes if they were receiving consistent

orders from a customer. They also seemed to be more willing to implement improvements if customers were willing to share the costs, either through grants for education programs or more lucrative or longer-term contracts. In addition, licensees said that when contractors realize that implementing the code improves worker morale/productivity, leads to repeat orders, etc., they become more supportive of these efforts.

6. IT IS PARTICULARLY CHALLENGING TO GATHER INFORMATION FROM WORKERS ABOUT CONDITIONS IN THE FACTORY

The efforts at improving conditions in the factories are geared toward guaranteeing a particular quality of life for the workers producing university-licensed apparel. However, a number of factors limit workers' ability to effectively communicate their needs and contribute towards potential solutions. Workers tend to feel inhibited from expressing their opinions while at their place of employment, either due to respect for their employer, fear of retribution or losing their job, or communication barriers between the interviewee and the worker. These barriers can consist of differences in culture, language or class. The consultant team made an effort to conduct interviews with workers outside of the factory in one country in particular, and the efforts were unsuccessful. Many stakeholders expressed their opinions that workers' input must be included in considering solutions to the problems faced in factories, emphasizing the importance of seeking effective means of communication with workers. Some NGOs noted that low education and literacy rates made efforts to gather information from workers difficult.

B. COMMON TRENDS /ISSUES OF CONCERN

In all of the countries surveyed, there seemed to be some consistency in the areas of non-compliance in the apparel factories visited. These issues were often brought up in stakeholder interviews, and then confirmed in the factory visits. Some of the most commonly identified issues include:

- 1. Working Hours/Overtime Compensation:** There is substantial evidence that employees consistently work more overtime hours than allowed by most codes of conduct and local labor laws. In addition, there were frequent reports, and evidence from the Independent University Initiative (IUI) monitoring visits, that those working overtime do not receive overtime premium pay mandated by local laws in most countries. There were few reports of forced overtime, although some noted that the quota system, through which workers must meet a specified production target, causes excessively long hours. Several people suggested that workers seek overtime voluntarily to earn more pay, although some stakeholders noted that this was due to workers' belief that their pay is insufficient to meet their expenses.
- 2. Freedom of Association:** According to the many interviewees, there are substantial restrictions on independent trade unions seeking to operate in the apparel industries in the countries involved in this survey. In China and Mexico, there are substantial legal and political hurdles to the formation of independent trade unions, and in other countries there are reports of barriers being presented to the formation of unions in the apparel industry. In South Korea, the prevalence of small factories is viewed by many as

having contributed to limited unionization of the work force. Several suggested the low unionization rate is attributable to the discrimination suffered by union members and those seeking to organize workers. In most countries there have been reports of union leaders and/or members experiencing loss of job, lower pay, worse hours or poor treatment because of their involvement in a union.

3. **Compensation:** In most of the countries visited, there were substantial reports that employees were not always being paid the legally required wage, and factory monitoring visits uncovered several examples of this. In some cases, their workers compensated on a piece rate system did not receive a wage that met even the legally required minimum. In other cases, workers were not being paid according to the legal premium for overtime work. This practice was exacerbated in South Korea, Thailand, Pakistan and El Salvador by the practice of subcontracting.
4. **Discrimination against Women:** In all of the countries visited, with the exception of Pakistan, women constitute a substantial majority of the work force in the factories. According to interviews and factory audits, women are discriminated against in many ways. In Pakistan, women are excluded from the work force by and large because of a broad cultural impression that women are not equipped to handle the rigors of factory work. In other countries, there were reports that female employees are often paid less than male employees performing similar work.

We also received reports of – and some evidence from monitoring visits – that women face pregnancy discrimination, notably in China, Mexico, El Salvador and Thailand. One of the ways in which this occurs is through required pregnancy testing, which then allegedly leads to women being fired, or not being hired, if they are pregnant. It is worth noting that in some nations, including China and Mexico, pregnancy testing is legal, and required as a prerequisite for obtaining permission to move to industrial areas for work (China) or to obtain social security benefits (Mexico).

5. **Health and Safety:** Each of the 13 factories visited contained health and safety violations, ranging from serious threats to workers' safety such as non-existent or blocked fire exits and insufficient safety equipment to more minor concerns such as unclean bathrooms. Issues observed by the monitors and the IUI team included chemical exposure (the use of spot cleaners), the lack of machine guards such as pulley guards or needle guards, ergonomics, physical stress, and lack of preparation for fire emergencies.
6. **Increasing Subcontracting and the Impact of Small Production Facilities:** Casualization of the work force—a trend away from providing stable, long-term employment--has become more widespread in some Asian countries, particularly as a result of the Asian financial crisis, as factory owners began to subcontract their production at lower cost. Many observers note that working conditions in subcontracting facilities are often sub-par. While there are some advantages to workers working out of their home or in small cooperatives, it is extremely difficult to monitor working conditions of home work, particularly with respect to payment of minimum wage, working hours and guaranteeing that children are not working. However, efforts to eradicate home work, by bringing workers to factories, can have unintended negative

consequences, as the IUI team found when investigating the outcomes of the initiative in Pakistan to eradicate child labor in soccer ball production. In addition, in many locations, notably in South Korea, the large number of small production facilities, some of which may change names and locations, contributes to difficulties in monitoring and other efforts to promote compliance. Some noted the quantity of small factories in the United States as well.

C. GOOD PRACTICES TO PROMOTE COMPLIANCE AND IMPROVE WORKING CONDITIONS

A number of local governments, multinational corporations and industry associations have undertaken initiatives to improve conditions. They are summarized in the following section:

1. INDIVIDUAL COMPANY EFFORTS

Individual companies have made efforts to improve conditions in the factories through a variety of means. These efforts were disclosed through stakeholder interviews and the licensee surveys the IUI consultant team conducted. Some examples include:

- **Internal Monitoring:** Five of the 11 university licensees that responded to our survey conduct some form of internal monitoring of factories by their own staff, as do a number of other companies that responded to our survey about independent monitoring projects. The range and nature of internal monitoring varied widely among these respondents. Some have only a few staff dedicated to code compliance—usually at company headquarters—and they are also responsible for quality control, sourcing and other issues. At the other end are companies that have larger staffs—in corporate headquarters and around the world—that focus just on code compliance. Companies also vary in the formality and rigor with which they track the compliance of their vendor factories and in their efforts to communicate their expectations to factory managers. It is clear that companies are increasing their efforts in this area, as they add staff and expertise devoted to monitoring factory conditions, but it is too early—and outside the scope of this study—to generalize as to which internal monitoring methods yield the best results.
- **External Monitoring:** Many of the companies surveyed discussed their increased use of external monitoring, *i.e.*, the use of for-profit organizations to monitor their contractors' facilities.
- **Independent Monitoring:** In the countries involved in the project, there are few examples of independent monitoring involving local civil society organizations. It is worth noting that one such country, El Salvador, was the site of the first such project, when the Gap joined together with two independent organizations to develop and implement the first independent monitoring project, working with local NGOs and religious organizations, to inspect conditions in the Mandarin factory in San Salvador over a period of two years. A number of university licensees reported on their efforts, in some cases extensive, to work with local NGOs and public and international agencies to enhance their ability to understand and monitor working conditions.
- **Transparency/Disclosure:** Several licensees have in the past year disclosed the names and locations of some or all of their contractors' facilities producing university-licensed goods for the IUI and other collaborative university projects. In addition, one licensee

has facilitated monitoring of its university-licensed apparel contractors' facilities by student groups, with reports of the monitoring visits posted on its website.

- **Training:** Licensees also reported enhancing the training they and other knowledgeable organizations provide for their internal staffs and their contractors.
- **Participation in Collaborative Efforts:** Several companies report participation in efforts including the Fair Labor Association (FLA), the Collegiate Licensing Corporation (CLC), Worldwide Responsible Apparel Production (WRAP) and other efforts to enhance collective work to raise working standards, and some stakeholders interviewed referenced awareness of the SA8000 factory audit and certification standard developed by the Council on Economic Priorities. One company has worked through collaboration with foundations, a multilateral organization, and educational institutions, to identify and address the needs of the young workers employed in their contractors' factories in several Asian countries (including China and Thailand amongst the countries involved in this survey). Stakeholders also noted the development of an effort to establish China Business Principles by a handful of U.S.-based NGOs and companies, though this does not include any of the licensees involved in this project.
- **Factory Benchmarking and Ranking:** A number of licensees report that they are evaluating, benchmarking and ranking their contractors to provide incentives for the contractors to improve working conditions in their factories. This can create incentives for better practices.
- **Worker Input:** Efforts to collect opinions of factory workers, conducted during and outside of factory monitoring visits, appear to be improving workplace conditions. For example, as noted in the survey section, Coverco's ongoing interviews and conversations with workers at a Liz Claiborne supplier factory in Guatemala have prompted such improvements as the launch of an onsite health clinic and the development for the first time of a formal grievance process.

2. INDUSTRY ASSOCIATIONS

EL SALVADOR ASIC: In addition to accepting the provisions of their major customers' codes of conduct, members of El Salvador's Apparel Industry Association (ASIC) developed their own code of conduct in 1997, one of the first Central American industry associations to do so. One hundred of ASIC's member companies have agreed to inspections against this code by KPMG. These inspections take place without notice.

3. GOVERNMENT EFFORTS

In most of the countries visited, the local governments are attempting to monitor and improve conditions in the factories. Each government has a Ministry of Labor responsible for inspecting a certain percentage of factories in the country. Of the seven countries involved in this project, El Salvador and the United States have focused specifically on the apparel industry in an attempt to improve conditions. The Salvadoran government has formed a committee called the Monitoring Committee to "understand the reality in the maquila, and offer proposals for improving the problems found in the maquilas." This committee is tasked with investigating workers' complaints, and improving relations between

the workers and the factory management. In addition, the Ministry of Labor has planned a series of visits specifically focused on the maquila industry to examine factory compliance with the labor law. The Pakistani government also has several initiatives underway to eradicate the use of child labor and to improve labor inspectors' skills.

The U. S. government has undertaken a variety of initiatives, including the Department of Labor's "No Sweat" campaign, support for the Fair Labor Association, and a series of congressionally mandated surveys of child labor and other practices linked to fair working conditions in the apparel and other industries globally.

D. LOCAL CONDITIONS HINDERING COMPLIANCE

Interviews with stakeholders yielded information about local conditions that are viewed as interfering with efforts to enhance compliance with labor standards. This section summarizes some of those conditions:

1. ECONOMIC CONDITIONS

The economic downturn in Asia is viewed by some as having had an adverse impact on factories attempting to comply with local labor laws and company codes of conduct. For example, many factories went bankrupt in Thailand and Korea, leaving employees without steady employment, and resulting in their not receiving legally required severance benefits. Others pointed to their view that jobs have become much less stable as a result of the crisis, with an increase in part-time or short-term work with fewer benefits. The crisis has also caused some factory managers to place less emphasis on compliance with Codes of Conduct, which is viewed by some as a discretionary cost, especially in initial implementation. Some observers have noted that the increasing globalization of production and trade is placing considerable downward pressure on wages and working conditions for producers in higher cost countries, and some have observed that wages have increased in the apparel industry in lower cost countries.

2. LABOR LAW

Local labor laws, as written, are often consistent with internationally accepted standards. However, in some cases, the local labor laws are in direct conflict with companies' codes of conduct. There are four ways that local laws tend to hinder compliance. First, in some cases, laws are more lenient than code standards, and this can lead to local contractors' objections to the higher standards they view as being imposed from North America. For example, Mexican labor law does not prohibit pregnancy testing. In Thailand and Korea, the maximum workweek allowed by the local labor law exceeds 60 hours, which is the most common standard in codes of conduct. Second, there are laws that affirmatively prohibit the enforcement of code provisions. The best-known example of this is in China, where it is illegal to form an independent trade union. Third, laws and regulations can conflict in a way that makes it difficult to determine what the proper standard is. An example of this also comes from China, where laws established by the national government on working hours and social insurance are interpreted and applied differently in different provinces and

localities. Fourth, there are nations that explicitly permit businesses to seek exemptions from applicable standards. Again in China and in Thailand, it is legal and fairly common for businesses to seek and receive exemptions from various legal provisions, notably including working hours provisions. The exemptions, referred to as “head nod agreements,” are viewed by many as being the result of individual relationships rather than clearly established criteria.

3. LACK OF GOVERNMENT ENFORCEMENT

Most observers of working conditions in the apparel industry globally point to poor public sector enforcement as one of the chief reasons conditions are considered below par. Opinions vary on why this exists, with various people pointing to lack of human and technical resources, misallocation of resources, corruption and conflicts between government agencies seeking to promote investment and those seeking to regulate.

4. CULTURAL HINDRANCES

Ingrained cultural attitudes also present challenges to the establishment of fairer working conditions. Several such issues were identified in the course of our stakeholder discussions, including:

- assumptions about the role of women in the workplace and specifically the role of pregnant women in the workplace;
- the existence and/or legacy of civil conflict that polarize the culture and hinder peaceful dispute resolution;
- the lack of open civil society and rule of law;
- substantial disparities in income between communities;
- widespread corruption;
- management of local work forces by non-national ownership not fully steeped in local culture and conditions; and
- the prevalence of a migrant labor pool that not only faces diminished legal status and respect, but whose members, because of their brief window of opportunity to make money in the industrial areas (as in southern China), may be disinclined to rock the boat to mobilize for better working conditions.

E. OPTIONS FOR CONSIDERATION

Based on the information we have gathered, the analysis of that information, and our various observations, we present the following options for consideration by universities regarding the further development of fair working conditions in the apparel industry.

In outlining these options, we take note of the fact that there are no easy answers for improving conditions in garment factories around the world. One of the overriding themes derived from this report is that the issues are complex, and that solutions will be most successful when those complexities are considered carefully. There are no perfect companies to license your logo to, no perfect monitors to oversee these licensees, and no

perfect monitoring systems to join. Attempts to implement codes of conduct and monitoring systems are so new that it is simply not yet clear which standards will be most workable or appropriate, or which monitoring strategies or certification bodies are most effective.

In that light, each institution will consider these options based on its own resources, mission, academic priorities and capabilities to determine whether any of these options, or others, is both suitable and likely to be effective.

Our findings suggest that collaborative efforts can be quite fruitful, and universities may explore ways they can cooperate productively and legally with their licensees and industry groups generally, with workers and those who work on their behalf, with nongovernmental organizations at local, national and international levels, with governmental bodies, and with the many professional, social and educational groups that have demonstrated a commitment to these issues.

Universities can contribute to improvements through a variety of targeted, strategic and long-term actions that draw on the roles universities are best at – producing information and knowledge, advancing study and learning, and educating people, communities and organizations. Solutions can derive from disciplined analysis and open debate within the academy and in public discourse, as universities seek to examine and learn from industry conditions and practices.

Universities can be helpful in developing processes, mechanisms and modes of analysis that motivate others in this complex process – workers, management, governments, monitoring and reporting organizations, industrial and social organizations and others – toward open learning and continuous upward improvement in the practices of the apparel industry at all levels.

The ideas that follow focus on many of the different roles that universities can play – as licensors; as teachers; as researchers in social, political and economic processes; as resources in the development of governmental and nongovernmental policy; and as catalysts for the generation of ideas and the discussion, analysis and implementation of those ideas.

The options we present support an approach premised on continuous improvement and learning, and fall into seven general categories:

1. Worker Education and Empowerment
2. Monitoring and Verification
3. Transparency
4. Public Comparison and Learning
5. Supply Chain Management
6. Incentives and Sanctions
7. Beyond Monitoring

1. LEVERAGE EDUCATIONAL RESOURCES TO EDUCATE AND EMPOWER WORKERS.

Several stakeholders – including some licensees – focused on the need to enhance workers' understanding of the standards that are designed to protect their rights. Universities could make a unique contribution towards this goal by promoting, developing and implementing educational efforts designed in a manner to help workers gain a greater understanding of their rights. Universities might also be in a position to convene the various stakeholders in

the process to help ensure that any such efforts are culturally appropriate, and reflect the needs of all involved.

Codes have been developed in the United States, licensees have instituted internal monitoring systems, and external monitors have been hired, yet to date, workers are rarely involved beyond on-site interviews. Current processes are missing an important opportunity to support workers, who are always closest to factory problems, and their potential roles in monitoring and improving conditions. There are of course many constraints and limitations to worker participation in identifying and reporting problems and in rectifying sensitive issues such as freedom of association, wages, etc. But universities can play a critical role in supporting worker participation, capacity building, and ultimately empowerment.

Universities thus might consider ways to build linkages with workers and support programs to build the capacity of workers and worker support organizations. Several stakeholders – including some licensees – focused on the need to enhance workers’ understanding of the standards that are designed to protect their rights.

This goal also could be met through direct training on hazard recognition, on methods to systematically document problems, on means to effectively report problems to factory managers, licensees and universities, and on ways to play a role in solving problems. One example of such a project is the Labor-Occupational Health Program at UC Berkeley that recently completed training for workers, NGOs, and unions in Indonesia on these issues. Universities can consider expanding on this or other models. Any future monitoring pilot projects undertaken by universities could include a capacity-building component.

Of critical import is the development of safe and effective complaint procedures for workers. Many observers have noted that employee interviews are the most difficult aspect of the monitoring process. Consistent with their general mission, universities could help develop models for employee reporting that would be trusted by workers and increase communication in factories. Universities could evaluate the effectiveness of different means to gather information from workers regarding on-going problems, such as telephone hot-lines, pre-paid mailers, surveys, interviews and focus groups. A broader research project that evaluated methods for acquiring information from workers in countries without unions or NGOs would also be extremely useful.

One other possible way to involve workers more fully in monitoring would be to translate factory audits back into the local language and to make these available to workers. Interested workers would have the opportunity to comment on, verify, or dispute that an audit accurately reflects conditions in the factory.

2. PROMOTE EFFECTIVE MONITORING AND VERIFICATION

Opinions vary substantially on the best way to conduct monitoring and on whom the most effective monitors would be. As all forms of monitoring have some value, and all forms of monitoring can be improved, we would suggest that universities promote the further development of all three categories of monitoring – internal, external and independent monitoring. Universities also can make a contribution by exploring the development of independent verification systems, or the third-party verification of the accuracy of monitoring reports.

By critically examining these different systems of monitoring, universities can help to ensure that all forms of monitoring meet basic requirements such as technical competence, inclusion of local knowledge, transparency, follow-through and accountability.

Harmonization of monitoring systems can be achieved by creating systems to publicly compare and learn from different firms and monitors. Universities can contribute to the establishment of procedures to evaluate, compare, benchmark, and learn from monitors and monitoring regimes.

These steps can take different forms, including encouraging licensees to expand and strengthen monitoring efforts, working on a collaborative basis to establish independent monitoring pilot projects, and supporting the development of new models of monitoring for facilities producing licensed apparel.

In addition to seeking improvements in the monitoring procedures implemented by private monitors or NGOs, universities can support improvements by evaluating monitoring efforts, and developing training and capacity building projects to enhance the ability of local NGOs and workers to evaluate factory audits and play a role in improving conditions.

Going forward, universities can consider strategies to integrate the strengths of different monitoring systems – the technical knowledge and business relationships of the best internal monitors, the broad scope and capacity of external monitors, and the local expertise, connections to workers, and credibility of independent monitors. One option would be to require or provide incentives to companies that develop and implement monitoring systems that seek to integrate these different types of monitoring.

3. PROMOTE TRANSPARENCY

While there have been several steps towards greater transparency in university-licensed apparel in recent years, there remains a significant lack information on what is actually going on in the factories that produce university-licensed goods (both the best practices and the worst practices), what types of monitoring can access reliable information in different contexts, and what mechanisms can successfully influence firms to improve working conditions. Greater information is needed to evaluate the best systems of monitoring and evaluation, and the most effective means for universities to improve the conditions in the factories that produce their goods. Increased transparency would generate this kind of information on practices and possibilities.

Universities might consider a variety of steps towards transparency, including the following:

- Requiring licensees to gather and maintain more accurate and complete information on their vendor factories. Our observations from this project are that in many cases accurate information about which factories are producing which goods for which licensee is not available. Without this, effective efforts to ensure compliance will not be successful. This reflects in significant part the diffuse and rapidly shifting nature of apparel production globally. While one solution is to centralize production (see below), another is to require that licensees keep more accurate and up to date information on the factories producing for them--not at any one point but over a period of time, given that university-branded apparel runs are relatively short. This administrative step could help universities to keep track of the entire pool of factories producing their apparel from year to year; a high turnover might indicate that their licensees are not sufficiently committed to these factories to ensure implementation of their or the universities' codes.
- Capacity building projects to enhance the ability of local NGOs, many of which are under-resourced, to offer effective means to support improved working conditions. This work may help to build resources to be utilized in monitoring and increasing transparency.

- Ongoing efforts to measure and report on the impact of the broad range of efforts to ensure better working conditions for those making licensed products. Universities can make a valuable contribution to the development of the field of enforcing labor rights by spawning academically rigorous analyses of various kinds of initiatives. Particular attention could be given to, amongst other issues:
 - Analysis of the strengths and weaknesses of various forms of monitoring
 - Analysis of the impact of factory disclosure
 - Developing measures of the financial benefits of promoting fair working conditions, in a manner similar to the body of evidence supporting the idea that environmental improvements bring financial benefits.
- Working on a collaborative basis to establish additional independent monitoring pilot projects. There are still relatively few such projects that have been undertaken; supporting the development of new models to be implemented in facilities producing licensed apparel would make a valuable contribution to the field.
- Helping to develop culturally appropriate means by which workers can report concerns about workplace conditions. Many observers have noted that employee interviews are the most difficult aspect of the monitoring process to implement. Consistent with their general mission, universities could generate models for employee reporting that would be trusted by workers and increase communication at worksites.

4. SUPPORT PUBLIC COMPARISON AND LEARNING

Universities are in a unique position to contribute to this debate on labor standards, working conditions, and monitoring of apparel factories. University researchers can help to report on the effectiveness of efforts to ensure better working conditions. Universities can make a valuable contribution to the development of monitoring systems by sponsoring academically rigorous analyses of different initiatives. In particular, university researchers could study: the strengths and weaknesses of various forms of monitoring; the impacts of factory disclosure procedures, best practices in the industry, and the financial benefits of promoting improved working conditions (in a manner similar to the body of evidence supporting the idea that environmental improvements bring financial benefits).

The ultimate goal of this public comparison and learning would be to involve multiple stakeholders in efforts to improve factory conditions. By opening up these processes, consumers, students, alumni and companies can all play a role in monitoring, enforcement and innovation.

One example of how this could be implemented is on the issue of freedom of association. Universities could sponsor research into how to make freedom of association “real” in countries where it is essentially blocked. Can a free trade union exist in the countries university licensees source from? Are there other means for worker organization and representation without violating Chinese law? Universities are in a unique position to examine these issues.

5. ADDRESS THE DIFFUSE NATURE OF APPAREL PRODUCTION BY CENTRALIZING LICENSED APPAREL PRODUCTION TO ENHANCE COMPLIANCE

Apparel production is spread across numerous countries, and often production runs for particular items are extremely short. This can contribute to poor working conditions as the influence of companies is limited to those places where they are doing business, and the less

significant the order placed, the less leverage a company – and therefore a university – has to seek changes in labor practices.

Universities – either individually or jointly – could seek to centralize production of their licensed apparel to harness their ability to effect changes in labor conditions. A narrower supply chain will be easier to manage. A university or universities could create a buying cooperative or other mechanism to shrink the number of factories producing for the licensed apparel market.

In addition, it would be valuable to see universities coalesce around a set of standards and practices that contribute to the leverage of individual institutions' efforts, harmonization of standards, and non-duplication of monitoring efforts.

6. CREATE GREATER INCENTIVES AND SANCTIONS TO PROMOTE GOOD PRACTICE

Incentives and sanctions to promote improved practices are another step that can improve the university apparel industry. This is relevant in that universities are not likely to have the resources or relationships to systematically monitor all the factories around the world producing for their licensees, or themselves equitably inspect and either sanction firms for non-compliance or offer incentives for good performance. Uneven policing of licensees risks creating unintended consequences or inaccurate pictures of compliance levels. Universities may therefore consider new ways that their licensees can promote improvements, rather than establishing a system that the universities cannot effectively police.

Such steps could include sanctions against companies and factories not agreeing to participate in monitoring practices, and incentives for companies to make improvements reflecting best practices. In making these suggestions, we note that it is important to ensure that sanctions and incentives not disadvantage workers, and that sanctions not simply target instances of non-compliance, as such measures may be a disincentive for improved working conditions, which is the primary goal of monitoring.

7. SUPPORT INITIATIVES THAT GO “BEYOND MONITORING”

Much of the attention paid to improving working conditions has been focused on efforts to strengthen monitoring and verification systems to promote compliance with labor standards. These efforts should not cause universities and others to lose track of the implicit goal of all these initiatives, which is to improve the lives of ordinary workers around the world. Therefore, it is worth considering alternatives or complements to monitoring that will educate and empower workers to look after their own interests.

Examples from our research include suggestions by Hong Kong-based labor organizers and NGOs interviewed by IUI that worker training courses be held on local labor law including wages, hours, benefits and on occupational safety issues. These issues could also be reviewed institutionally through the development of plant-level worker committees—which are permitted under Chinese law—and even by working through branches of the government-approved union federation. In addition, a small but growing number of companies have been engaging in efforts to determine how best to meet their workers basic needs through providing transportation, educational opportunities, technical skills, literacy training, and other benefits to workers in the factories.

Universities could consider partnering with companies and civil society organizations in conducting needs assessments, using their existing research capacity and interest on the part of students to learn more about workers' lives. This could also provide relationships with local academic partners with whom universities would need to partner in order to conduct the research.

UNIVERSITY STRATEGY FOR TRANSPARENCY AND ACCOUNTABILITY

Proposed Separately by Dara O'Rourke, Consultant to the Independent University Initiative

Universities can take immediate steps to motivate improvements in factory conditions around the world. One strategy would involve a set of fairly straightforward steps to advance greater transparency and accountability in the apparel industry, and to improve broader monitoring and enforcement systems. This would include:

- Promoting much fuller public disclosure of licensee factory locations and conditions. This could be achieved by simple revisions to university codes of conduct, laying out requirements for information disclosure on locations of factories and key performance criteria.
- Requiring internal monitoring by licensees and standardized reporting of the findings of factory audits.
- Collecting this information in a standardized format – preferably through a newly created body or through the WRC (which is currently trying to establish such a system) – and posting it on the Internet. This Internet-based directory of factory performance would allow university administrators and other stakeholders to assess individual factory performance, compare firms or licensees, and identify best and worst practices in the industry.
- Supporting broader dialogues about labor standards and monitoring systems by making public different monitoring protocols and methods.
- Supporting a system of NGO and worker verification of licensee monitoring. This would involve making audits not only available via the Internet, but also available to workers and NGOs in the local language for them to verify or dispute.
- Establishing procedures for analyzing and benchmarking best practices in licensees and subcontractors.
- Creating a system of incentives and sanctions for firms to meet or beat best practices.

This strategy of transparency and accountability fits well with the mission of universities. The program would be based on information gathering and dissemination, and most importantly, on learning. The building blocks of this system obviously rest on information. Universities have the capacity to construct this systematic process for reporting, evaluating and benchmarking the performance of companies producing for universities (and later other sectors).

One of the clearest findings of this project was that accurate information about even the most basic information on which factories are producing which goods for which licensees is rarely available. Without this information, efforts to ensure compliance simply cannot be successful. This reflects in significant part the diffuse and rapidly shifting nature of apparel production globally. While one solution is to centralize production, another is to require that licensees keep more accurate and up to date information on the factories producing for them around the world. This straightforward administrative initiative would help universities track the entire pool of factories producing their apparel from year to year.

This strategy would require that all university licensees and subcontractors report information on factory performance to the universities (or a coordinating office) each year. This requirement would explicitly place the burden of proof on industry to show that its

subcontractors are in compliance with each university's code of conduct. Firms that do not fully report, after a predetermined period, would have their license revoked. This system presumes that firms that do not have anything to hide will report, and that those that do not fully report are assumed to be out of compliance with the code.

This system will create clear incentives for licensees to gather and maintain more accurate and complete information on their vendor factories.

Required information might include: name of factory owner, location, products produced, number of workers, form of worker representation, age of workers, average employee wage, other benefits provided to workers (such as health care, meals, etc.), normal working hours per day, average hours worked per day over last three months, workplace conditions (health and safety, heat and noise conditions, bathroom breaks, access to water, etc.), number of citations issued by local labor inspectors, number of worker complaints, reported strikes or other labor disputes, performance on environmental criteria, etc. Much of this information is already being collected through internal auditing programs and participation in the FLA and SA8000.

The first cut of data should come from licensee self-reporting of information into a central coordinating organization. A simple two-page survey could be sent to all licensees and their subcontractors. All manufacturing facilities would be required to submit the survey (eventually in electronic form) by a certain date. The coordinating office would then establish a central database accessible over the Internet that would contain key performance information on licensees and subcontractors, and simple means for comparing firms along selected criteria, such as wages, health & safety, labor practices, or environmental performance.

This public database would not be used to "certify" compliance with one code or standard (as there are already a number of different codes being used throughout the industry), but rather would allow university stakeholders to compare different firms against a baseline standard of their choosing. For instance, stakeholders who want to purchase goods that are union-made could use the database and independent verification to develop lists of companies that meet this requirement. Multinational firms could also use the benchmarking tools to choose between subcontractors, and to identify the best producers in a specific country. This benchmarking would likely create competition between producers to increase their performance and to meet the demands of concerned stakeholders. It would also open the topic of standard setting to a wide-ranging public debate.

Licensee factories would then be required to allow independent verifiers, such as NGOs and unions, to inspect conditions and to file independent reports on factory performance. University research teams could also gather information on factories. Independent verification activities would increase as local groups and university researchers develop their capacities, but their right to inspect facilities would be assured from the outset. Universities could work with NGOs and unions to identify and support the capacity building of local groups.

Ground-truthing of factory conditions by workers themselves would also be critical. Factory reports should be translated and sent back to the factory in question for workers to review and comment on. Reports (or at a minimum basic performance information) could be posted in the factory so workers know what is being reported, and how they can challenge a factory's assertions. This would create a systematic means for workers to be involved in evaluations. The information provided could also be used by workers to inform themselves on issues of concern such as wages, hours, overtime, etc.

Universities may also need to consider establishing a “fire alarm” system in certain countries. This would involve a simple and safe system for workers to report problems or incidents in factories such as through toll-free phone numbers or pre-paid mailers. Worker complaints could then trigger independent verification. Universities would need to support capacity building programs so that local groups could play an effective role in these processes.

The proposal outlined above, which will establish a program for publicly comparing firm performance, seeks to force much more information about production practices into the public sphere, foster public debate about acceptable labor standards, and enlist a wide range of actors in evaluating factory performance including workers, local NGOs, unions and licensees. This strategy is based on information, but will bring to bear multiple mechanisms of pressure on firms to improve their performance.

Perhaps the biggest benefit of this strategy is that it is incremental and responsive. Through a program of disclosure, verification, and pooling information, it will be possible for universities to evaluate different practices in different parts of the world. This program does not lock in place one code of conduct or certification system. Instead it creates a process that will allow all stakeholders to benchmark good performers, identify and target the worst performers, and motivate improvements by enlisting multiple stakeholders in verifying conditions.

Universities are uniquely positioned to play a central role in opening up the apparel industry to greater public examination, and inviting multiple stakeholders to take part in discussions about labor standards and compliance strategies. By supporting a system of transparency and accountability, universities can provide tools to consumers, students, workers and governments to improve factory conditions through both market choices and conventional regulatory instruments. Through these straightforward steps – requiring deeper reporting, making factory information and monitoring methods public, and supporting local verification – universities can lay the groundwork for the difficult, yet critical, work of improving the global apparel industry.

MONITORING FINDINGS

MONITORING PROCESS

1. THE PROCESS AS OUTLINED

The process for factory monitoring is outlined in the initial project description as follows:

“(The factory monitoring) element of the project will include information gathering in facilities producing university-licensed apparel to identify patterns of non-compliance and good practice to augment the information gathered through the general country information gathering. The universities have selected PricewaterhouseCoopers as the primary monitor, to be accompanied by BSREF, IRRC and Mr. O'Rourke in various factory visits. PwC will submit its reports to the three consultants, who will in turn, assess and analyze the information in summary reports for the participating universities.”

“Factories to be monitored were selected to achieve a sample representative of: countries producing high levels of university-licensed apparel; countries presenting risk of non-compliance with codes of conduct and/or local laws; and the largest licensees of university-licensed apparel for participating schools. Monitoring was undertaken against a consensus code of conduct based on the five universities' codes, and will involve confidential interviews with a sample of factory employees; interviews of factory management; review of relevant factory records; visual factory inspection, and other techniques relevant to the site. BSREF, the IRRC and Dara O'Rourke will provide input into the monitoring process and, as country-specific information becomes available, that information may be factored into the monitoring process as well. Individual licensees or factories will not be identified as part of this process.”

The monitoring process was implemented in the following ways, by agreement of the IUI consultants, and through discussions with the monitors.

A. Selection of Factories: After receiving information from licensees identifying the factories producing university-licensed apparel for them, the consultant team randomly selected two factories in each country to be monitored by PwC and one or two factories for each participating licensee. The factories to be visited by PwC with representatives of the IUI consultant team were chosen by the consultants based on geography, *i.e.*, the factory undergoing monitoring that was closest to the nearest city where the stakeholder interviews were to occur would be the one on which the consultant team accompanied PwC.

B. Notification of Factories: The team agreed to provide 72 hours notice to the licensees prior to the factory monitoring visits. Once the licensee was notified, they were asked to inform the factory of the date and time of the visit. After the licensee notified the factory, PwC contacted the factory directly to finalize the logistics of the visit.

C. Standards Applied in Monitoring: The consultant team agreed on a code of conduct to be applied by PwC in the monitoring process. This code, a copy of which is attached as an Appendix to this report, was based on a consensus of the standards applied by the universities in the early fall of 1999, when the standards were developed and the country visits began.

2. PwC's FACTORY MONITORING PROCESS

PwC suggested a monitoring process and monitoring documents to be used in the factory audit, and the team provided input and suggestions, which were included in the implementation. The documents used to collect information during monitoring are attached in the Appendix:

The monitoring process included the following six components:

A. Factory Profile/Interview with Management: The monitors began by interviewing factory management to gain an understanding of the factory's operations and policies. Included in this interview are questions regarding the size and regular working hours of the factory, the legal compliance with respect to the labor, health, safety and environment laws, and management systems for ensuring compliance with local laws and Codes of Conduct.

B. Factory Records: For both review of factory records and the employee interviews, 25 percent of the work force is selected randomly, with a maximum of 25 employees in factories larger than 100 employees. In addition to the random sample, the monitors sought to review records based on their visual observation, e.g., for employees that appear particularly young, or are employed in less skilled positions or in production bottleneck areas. Factory monitors are instructed to examine:

- Payroll records to ensure that at least the local minimum wage is paid (whether paid hourly or by piece), to calculate whether workers are accurately paid for any overtime worked, and to verify that only legal deductions are made from the paycheck.
- Timesheets showing the number of hours worked, to ensure that they are within legal limits and not in excess of 60 hours a week, as outlined in the Consensus University Code.
- Employee files to ensure they include a signed contract, age verification, photo identification and any other documentation required by local law.
- Certification that the factory has regular fire drills and fire safety education, and has been inspected as legally required.

C. Employee Interviews: In addition to reviewing the records of the 25 employees who are randomly selected, PwC conducts interviews with these employees to investigate further the working conditions in the factory. The interviews occur in a separate room from where the interviews can be monitored by factory management. Employees are first provided with some background on the purpose of the audit (and the IUI), and are

assured that all of their answers will remain confidential. The interview template consists of 55 questions relating to the following topics, based on the code applied in this project:

- Legal Compliance
- Wages and Benefits
- Freedom of Association
- Child Labor
- Forced Labor
- Non-discrimination
- Disciplinary Practices
- Worker Health and Safety

D. Factory Tour: The monitors conducted a visual review of factory conditions. Amongst other issues, the visual inspection provides an opportunity to inspect the following:

- Age of workers
- Fire safety equipment
- Clear and accessible fire exits
- Personal protective equipment
- Machine guards
- Posting of work rules and codes of conduct
- Number of pregnant workers
- Adequate number of bathrooms in sanitary condition
- Existence and condition of medical/child care facilities
- Temperature, ventilation, lighting
- Adequate drinking water
- Sanitary cafeteria

E. Final Report: At the conclusion of the factory audit, a summary of the findings is discussed between the factory management and PwC. Both parties sign the summary to acknowledge agreement about the violations and to attempt to agree on a corrective action plan. The final report summarizing compliance with the law and the University Code is based on this signed report.

3. SUPPLEMENTAL MONITORING

The IUI project sought to conduct an alternative monitoring process in one country (South Korea) during the factory information gathering work. This monitoring was to focus on accessing information from local NGOs and workers themselves about factory conditions, largely based on interviews conducted outside of the factory. However, one key to conducting this kind of monitoring is building relationships with, and the trust of, local NGOs and workers. None of the consulting team members had conducted work in Korea previously or spoke Korean. We thus did not have existing relationships to build on for this work during our eight days in Korea. Also because the factory selection process was based on random selection from a list of licensee factories in the country, it was not possible to select a factory with existing NGO connections. The factory selected in Korea did not have a union or a local NGO connection that we were aware of. With additional time and planning, and a strong local partner, it might be possible in the future to establish the

relationships and procedures necessary to conduct worker-focused, external evaluations. However, we were not able to implement this concept during the IUI project.

OVERVIEW OF FACTORY MONITORING FINDINGS

The following section outlines the factory monitoring findings, country by country. This section provides a general overview of the conditions in the factories monitored in each country, including:

- a description of the location, number of people and product of each factory,
- an overview of the kinds of violations found in each factory, and
- a summary of any observations by the IUI consultants that do not appear in the PwC reports. Please note that the IUI consultants accompanied PwC on only one of the two factory visits in each country.

Because of the confidentiality agreements as originally agreed, this report does not disclose the names, addresses or licensees of the monitored factories.

PwC provided its monitors with a specific survey instrument and reporting scheme designed to identify and report violations of local labor law and the University Code of Conduct used for this project. The monitors then prepared summary reports for the IUI team that pointed out shortcomings in factory practice and listed recommendations, but which did not produce background information and context for those findings. The IUI consultant team accompanied PwC in part to observe conditions that might not be defined as violations according to these two sets of criteria, but which could potentially cause concern. For further details on the factory selection and monitoring process, please refer to the Method section of the report.

CHINA

A. Factory Details: One of the factories was located in Dalian City in Shandong province, employed 198 people and produced leather goods. The second factory, in Shanghai, had 324 workers producing sweatshirts and jerseys. The IUI team visited the Shanghai factory along with the monitors.

B. Factory One: The following code and legal violations were reported by the monitors:

Wages and Benefits:

- All of the sampled employees received less than the legally required compensation for their overtime hours. The monitors found in the course of their review of May 2000 payroll records that “all of the 25 sampled employees’ overtimes on weekdays and weekends were calculated based on only approximately 124 percent of normal wage rate [local minimum wage rate is RMB 1.61 per hour],” when Chinese law requires overtime compensation for work on weekdays, weekends and statutory holidays to be at least 150, 200 and 300 percent of the normal wage rate, respectively.

Working Hours

- The average monthly overtime hours of the 25 sample employees was 64 hours, exceeding the statutory limit of 36 hours.

- Some employees' consecutive working days exceeded the statutory limit: one-fifth of the sample employees did not receive one day off for every six consecutive days worked, but on average worked seven days before receiving a day off.

Health and Safety

- There were no emergency lights installed in the workshop and canteen, and no alarm system installed in the facility.
- Materials blocked some aisles in the workshop.
- The workshops lacked first aid supplies.
- No protective gloves were provided to the workers in the cutting workshop.
- There was no warning sign marked upon the electricity switch box covers.
- The dormitory had no emergency lights, alarm system or exit signs installed.

C. Factory Two: The Shanghai factory had violations in the same four categories as the Dalian factory: wages and benefits, working hours, and health and safety, in both the factory in the dormitories.

Wages and Benefits

- Most of the sampled employees received less than the legally required compensation for their overtime hours. The PwC monitors reported that of the 25 employees whose records they reviewed, 20 “were paid based on only approximately 80 percent” of the local minimum wage rate of RMB 2.52 per hour for their weekend work, which falls below the 200 percent overtime premium specified in Chinese law.

Working Hours

- Employees' monthly overtime hours far exceeded the statutory limit: of the 25 sample employees, 20 exceeded the statutory limit, working an average of 101 overtime hours a month.
- Employees' consecutive working days exceeded the statutory limit: of the 25 sample employees, 23 “were not receiving at least one day off after six consecutive working days. The average and longest number of consecutive days of these 23 employees worked were 13 days and 21 days, respectively.”

Health and Safety

- There were no emergency lights installed in the workshops or the canteen.
- There was no alarm system installed in the facility.
- No emergency evacuation plan was posted in some workshops.
- Exits in knitting and sewing workshops were locked during working hours, and some workshop exits did not have “Exit” signs installed. Moreover, some doors not used as an exit were not marked as “Not an Exit.”
- Several employees sampled were not trained in the use of fire extinguishers.
- There was no water supply in the male washroom near the canteen.
- No knife guards were installed on the cutting machines.
- Workers in the knitting workshop, which is noisy and dusty, were not provided with earplugs and masks.

- The dormitory lacked a posted evacuation plan, emergency lights and fire extinguishers.
- The dormitory's toilet was dirty, and did not have a cleaning system.

Monitoring and Compliance

- Employees' ID hard copies were not kept on site for review.

Additional Observations by IUI Consultants:

Disciplinary Practices/Compensation

- In the interviews, several of the workers indicated that they were being fined for disciplinary purposes.
- Piece rate workers were not paid according to local laws on work performed during normal work hours and overtime hours.
- Several timecards were not signed by workers.
- Several timecards appeared to be almost identical, making it look like one person was punching in for others.
- Some timecard entries were hand-written.

Health and Safety

- Blocked aisles in the knitting room.
- High levels of cotton dust in the air in the spinning and weaving room, and workers without dust masks or proper hearing protection in this section.
- Blocked fire exits.
- Inadequate worker health protections in the dyeing section. Workers were wearing flip-flop sandals around the hot-dye machines. Workers did not have respiratory protections while pouring dyes into mixers.
- No machine guarding of large chains and sprockets on a polar fleece machine.
- No information on chemicals in the factory. No labels explaining the contents of the spot cleaners used in the plant. A chemical identified only as the "King of Big Cleaners" was being used by workers to clean garments.
- No machine guards on cutting machines. Failure to provide mesh metal gloves to workers using hand cutting tools.
- Machine guards missing on many sewing machines.
- No needle guards on sewing machines.
- No blood borne pathogens program for use of tagging guns.
- Over-crowded dorms with inadequate bathroom facilities. The dormitory had 12 women to a room and 48 women per floor. Each floor only had one bathroom, and each bathroom had only two shower heads and four toilet stalls.

Freedom of Association

- The union in the factory seemed to be controlled by the company

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| EL SALVADOR |
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A. Factory Details: Due to circumstances explained elsewhere in the report, PwC audited only one factory in El Salvador, outside of San Salvador in a town called Santa Ana. The factory employed 618 people, and primarily produced t-shirts and sweatshirts.

B. Factory One:

The monitors reported the following code and legal violations:

Working Hours

- Some employees' hours of overtime work exceeded the statutory limit: the monitors found that 53 of 614 employees worked more than 32 overtime hours biweekly.
- Employees often do not have a minimum of eight hours to rest between work shifts, as required by law. The monitors reported that: "During our visit, five of 18 employees interviewed commented that it is common to work from 7:00 p.m. to 2:00 a.m. and then continue working the next day. When this happens employees sleep on light mattresses, and there is not enough time to rest between these shifts. In cases like this one, employees work seven overtime hours, plus eight hours of the normal work shift, making a total of 15 hours daily. This exceeds the total of 12 working hours permitted by the local law."

Health and Safety

- A box of finished products blocked one emergency exit. Management said this was due to the rain that fell the day before and was a special circumstance.
- Boxes of finished products and machines blocked three of 18 fire extinguishers.
- One of the seven male toilets did not flush.

Additional Observations by IUI Consultants:

Working Hours

- The factory's practice regarding the night shift work does not allow enough rest between shifts, and it poses health and safety risks as well as freedom of movement questions, as the cafeteria is locked while the workers sleep.
- Some employees mentioned that their children would accompany them to work for the night shift. They stated that they preferred this, because it allowed them to care for their children at night while working. However, this practice raises security, safety and child labor concerns.
- The factory's general manager claimed not to know about the 60 hour limit on the work week; however, a poster size copy of one of the licensee's codes, with the 60 hour limit requirement, was posted on the wall in Spanish directly behind her. (Several other codes with the standard of a 60 hour limit on work weeks were posted in Spanish and English throughout the factory.)

Health and Safety

- A worker was using spot removing chemicals containing perchloroethylene and trichloroethylene, without gloves or masks. Prolonged exposure to these chemicals can cause health problems, including respiratory ailments and cancer.
- Sewers and cutters were not wearing adequate personal protective equipment, specifically masks to protect themselves from inhaling dust and small particles.

Good Practices

- On-site cafeteria and health care facilities.
- Management practiced an open-door policy with all workers, and the workers we spoke with said they liked it. Workers said that they felt they could walk into one of the manager's offices and speak with them openly about a problem. Overall, workers spoke highly of the factory's managers and of the workplace in general.
- Women-owned and managed facility. (The majority of the workers were women, too.)

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| MEXICO |
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A. Factory Details: One of the Mexican factories audited was located in Lerma, outside of Mexico City, and had 480 employees, while the other was located in Guadalupe, Nuevo Leon, and had 680 employees. The IUI representatives accompanied PwC monitors on their visit to the Lerma factory.

B. Factory One: The following code and legal violations were reported by the monitors, mostly through employee interviews:

Wages and Benefits

- The company did not provide tools, such as scissors, that employees need to perform their work. The monitors reported that “during our interviews, five out of 25 employees mentioned that the company does not provide them with requested tools for work,” a violation of Mexican law.

Health and Safety

- The warehouse's aisles were blocked with boxes and materials.
- The bathrooms were unsanitary. The monitors reported that “employees mentioned that most of the time the restrooms do not have toilet paper and soap, and are dirty. Employees indicated that only for our visit were the bathrooms clean. In addition, bathrooms were closed from 8:30 to 10:00 on April 10, 2000, the date of our visit, in order to keep them clean.”
- The company does not have a working ventilation system, and employees commented that the work environment is hot.

Disciplinary Practices

- Some employees commented that supervisors verbally abuse them. The monitors reported that “during our interviews five out of 25 employees mentioned that the supervisors do not treat employees well, indicating that supervisors shout at employees to finish production.”

Additional observations by IUI consultants:

Health and Safety

- A worker was using spot removing chemicals containing perchloroethylene and trichloroethylene, without gloves or masks. Prolonged exposure to these chemicals can cause health problems, including respiratory ailments and cancer.

- Sewers and cutters were not wearing adequate personal protective equipment, specifically masks to protect themselves from inhaling dust and small particles.

Freedom of Association

- Factory workers were organized by a union affiliated with the CTM (See Mexico chapter.), yet none could point to any advantages to union membership or to victories won—benefits, raises or programs—for workers.

Discrimination

- Female workers said they were required to provide certification of and/or asked about their pregnancy status.

Good Practices: On-site medical and cafeteria facilities.

C. Factory Two: The monitors reported the following code and legal violations:

Health and Safety

- Fire drills were not conducted regularly, and employees did not know how to use fire extinguishers.
- The employees were not provided safety glasses: The monitors noted that six of the 25 employees interviewed “mentioned that they have irritated eyes due to the fuzz from the garments.”
- The company did not delineate the working areas, as required under Mexican law.
- The restrooms were not clean and did not have trashcans.

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| PAKISTAN |
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A. Factory Details: One of the factories audited in Pakistan was located in Karachi, while the other was located in Lahore. The Karachi factory had 134 employees and produced baseball and football shirts. The Lahore factory, which the IUI team visited, had 1,210 employees and produced cotton shirts. Both factories had a significant number of violations of great concern.

B. Factory One: The monitors reported the following code and legal violations:

Wages and Benefits

- Some unskilled employees working on contract were paid somewhat below the legal minimum: the monitors noted that “two out of the 25 selected employees were remunerated at a rate of Pak. Rs 2,000 per month” rather than the required 2,050 monthly minimum wage.
- Employees were working an average of 8-10 hours overtime per week, but were only receiving the regular hourly wage for this time, rather than double their hourly rate as required by Pakistani law.

- Statutory benefits were not paid to the workers for Gratuity/ Provident Fund or for Group Insurance. Under Pakistani law, employers must either establish a provident fund for their workers, or pay them the equivalent of 30 days wages upon terminating their employment; the factory had done neither.
- Statutory contributions to government mandated social welfare funds—“E.O.B.I,” Education “Cess” and Social Security—were not paid. However, the PwC monitors noted that management said it had applied to the respective departments for the registration, a process that would take two to three months, after which it pledged it would start payments.

Working Hours

- When the employees worked on Sundays, they did not receive the legally required compensatory day.
- Workers only received 18 of their 32 days of legally allowed annual, casual and sick leave, and none of the leave was well documented.
- The management did not limit the employee working hours to 60 per week, nor the number of consecutive days worked to six, as required by the Code of Conduct applied by the monitors. The monitors noted that four out of 25 employees worked more than 60 hours—some as many as 80 hours—during the tested period. Moreover, 19 of 25 workers had consecutive workdays exceeding six, with some working as many as 15 consecutive days.
- Notification of maximum daily hours and days of work were not displayed in the native language at or near the main entrance of the factory.

Health and Safety

- Proper fire safety precautions were not observed. The factory has not installed a fire alarm system, the stitching unit lacked fire extinguishers, and the factory did not have the legally required number of buckets filled with sand or water to be used in case of fire. Moreover, not all employees were trained to use fire extinguishers.
- The factory did not observe proper emergency evacuation planning: emergency exits were not available in all production halls, nor had emergency lighting been installed to ensure illumination of exit paths.
- The factory’s health and safety policy was not displayed at prominent places.
- Electric cables were not properly plugged.
- The work environment was not maintained in a clean manner.
- First aid equipment was not available in the factory.

Documentation

- Personal files of the employees were not maintained properly.

C. Factory Two: The monitors reported the following code and legal violations:

Wages and Benefits

- Under Pakistani law, employers must either establish a provident fund for their workers, or pay them the equivalent of 30 days wages upon terminating their employment; the factory had done neither for its piece rate workers.

- Workers' Profit Participation Fund was not paid to the workers.
- While the factory paid contributions to the state mandated social insurance programs, the "E.O.B.I," Education "Cess" and Social Security, it did not do so for all eligible workers.

Working Hours

- Employees were paid overtime when they worked on Sundays, rather than being provided compensatory days as legally required.

Health and Safety

- Fire extinguishers were not available in the compressor room.
- Three work areas lacked emergency exits, and the emergency exit in the packing department was blocked and unmarked.
- The factory's health and safety policy was not displayed in three production areas.
- First aid equipment was not available in one production section.
- None of the workers in the winding section, and only some of the workers in the knitting section, were wearing facemasks.
- Chemical waste in the dyeing section was being drained through the main sewerage system without any treatment

Additional Observations by IUI Consultants

Health and Safety

- The factory was uncomfortably hot, and did not seem to provide adequate ventilation for workers.
- Workers in the dyeing section were not wearing boots to protect their feet from the chemicals involved.
- There were insufficient bathrooms for women.
- A worker was using spot removing chemicals containing perchloroethylene and trichloroethylene, without gloves or masks. Prolonged exposure to these chemicals can cause health problems, including respiratory ailments and cancer.

Good Practices

- On-site prayer facilities.
- Lit cricket/soccer fields for recreation.
- Outdoor eating areas.

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| SOUTH KOREA |
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A. Factory Details: Both of the factories monitored by PwC in South Korea were located in Seoul and had 50 employees. One produced caps, and the second produced apparel, primarily sports jerseys and sweatshirts. The IUI consultants accompanied PwC monitors in their visit to the latter factory.

B. Factory One: The following code and legal violations were reported by the monitors:

Wages and Benefits

- Workers were not provided the four kinds of insurance required by South Korean law: medical insurance, pension benefits, unemployment insurance and industrial accident insurance.
- While the factory did provide pay slips for employees, it did not have a salary table or timecards.

Health and Safety

- This factory was not adequately prepared for a fire, as it did not conduct fire drills.

Disciplinary Practices/Legal Compliance

- The factory did not have set rules of employment submitted to the Labor Ministry, as required by the labor law.

C. Factory Two: The following code and legal violations were reported by the monitors:

Compensation

- The factory failed to provide National Pension benefits or Medical Insurance.

Health and Safety

- There were not separate toilets for men and women.
- A warehouse for hazardous materials was not properly marked.

Additional Observations by IUI Consultants

Wages and Benefits/Working Hours

- Factory management did not seem to be adequately accounting for employees' overtime. The timesheets were consistently marked "in" at 9 a.m. and "out" at 5 p.m., and this was done in the same color pen in the same handwriting. When pressed, employees admitted that sometimes they came earlier or stayed later, but this was not captured on the timecards. Indeed, on the day the IUI consultants visited, the employees worked overtime and were still working when we left the facility at 6 p.m. All of this suggests that overtime hours were not being captured accurately.

Health and Safety

- The factory was using spot cleaners called "Benzol" and "Pull Out #2." Benzol is a trade name for Benzene, a carcinogenic cleaner. Pull-Out #2 contains methylene chloride and perchloroethylene, also carcinogens. Workers were not provided adequate protections while using these chemicals.
- The ventilation for the chemical spraying area was inadequate.
- Personal protective equipment was inadequate.
- Workers had no training in chemical handling.
- In addition, sewing machines lacked needle guards and some belts were unguarded.

THAILAND

A. Factory Details: Both factories monitored in Thailand were located in the Bangkok metropolitan area. One factory had 350 employees, and the PwC report did not indicate what its product lines were. The second factory, which the IUI consultants visited, produced sport shirts and had 1500 employees.

B. Factory One: The monitors reported the following code and legal violations:

Wages and Benefits

- The factory did not properly compensate workers in their initial 120-day probation period, in violation of the Thai labor code. The factory paid probationary workers 157 baht per day, rather than the 162 minimum daily wage for the Bangkok area, and it did not provide paid time off to them for standard holidays.
- Also in violation of the Thai labor code, the factory required employees to pay security deposits. The PwC monitors noted “the factory withholds 500 baht from each worker as a security for work,” which, if notified, it “will refund...15-30 days in advance of the employee’s resignation.”

Working Hours

- Nearly all of the interviewed employees—24 of 25—worked more than the 60-hour weekly maximum specified by the University Code. Their weekly hours of work ranged from 61 to 73.5 during the tested period.
- Moreover, two pregnant women were found to be working overtime, in violation of Thailand’s labor law. During the two-week period of May 1-15, 2000, they worked overtime for 39 hours and 50.5 hours, respectively.

Health and Safety

- Workers were not wearing adequate personal protective equipment, specifically “nose and mouth crossmasks to protect themselves from inhaling dust and small particles.”

C. Factory Two: The monitors reported the following code and legal violations:

Working Hours

- Eleven out of the 25 employees interviewed worked more than the 60-hour weekly maximum specified by the IUI code.
- One of the 25 employees—a driver—was found to have worked 55.5 overtime hours in one week, well above the local legal limit of 36: The factory management indicated the excessive overtime was mainly due to the time the worker had to spend waiting to pick up the materials or tied up in traffic.
- Pregnant women worked overtime in this factory, as witnessed by the IUI consulting team and revealed in employee interviews. One of the three pregnant workers interviewed had worked an average of 16 overtime hours per week in the two-period under study.

Non-Discrimination

- Also revealed—in nine of the 25 employee interviews—was a factory practice of not hiring pregnant women, as well as a policy stating that women cannot get pregnant during their first year of employment. Moreover, the monitors reported, “One of the two pregnant workers interviewed indicated that she heard that the factory has a new policy that all new female applicants must take a physical examination and have a doctor certify that they are not pregnant. Although we planned to meet with the factory union representative to gather input on whether or not this rumor was true, the general manager, who wanted to be present at the meeting, interrupted us. We did not conduct the meeting since the union representative, [who] was also a factory employee, would not be provided with confidentiality to talk openly in front of the general manager. As a result, we were not able to discuss the pregnancy issues with the union representative or to verify the validity of the other employee’s statement.” Management denied that it had any policies discriminating in any way against pregnant employees.

Health and Safety

- Not all workers wear the personal protective equipment provided by the factory, and the workers exposed to chemicals are supplied only with cotton ventilation masks.
- The temperature at the dyeing section is very hot and there are no overhead fans.
- There are smelly or bad odors from the air conditioning ventilation.

Additional Observations by IUI Consultants:

Non-Discrimination/Freedom of Association/Disciplinary Practices

- After hearing from employee interviews that pregnancy discrimination was occurring, the monitors wanted to validate this from an additional source, and so asked to speak with the union representative. When the union representative entered the room, the factory manager entered the room and refused to leave, intimidating the union representative, who refused to speak while she was there. Therefore, not only was information denied by his presence, it also suggested an intimidation felt by the workers in expressing themselves about problems in the factory.

Health and Safety -- Dormitories

Based on seniority, work history and a lottery process, workers have access to dormitory facilities adjacent to a second factory owned by the same operators approximately 100 yards down the street.

- At times, 10 to 12 women were living in a single room with approximately 140 –150 square feet, leaving little privacy.
- Parts of the dormitory were in disrepair, including a number of bathrooms.

Good Practices

- On-site medical and cafeteria facilities.
- Recreational facilities and a cafeteria were located at the dormitory.

UNITED STATES

A. Factory Details: The two factories audited in the United States were located in Pennsylvania and Wisconsin. The Pennsylvania factory, which the IUI consultants visited along with PwC monitors, employed 18 people and produced long-sleeved golf shirts. The Wisconsin factory had 16 employees and printed shirts.

B. Factory One: The monitors reported the following code and legal violations:

Health and Safety

- The factory did not have proper fire safety and emergency evacuation procedures. The factory did not have an emergency evacuation plan, the main evacuation aisles in the facility were not marked with lines, two emergency exits lacked exit signs, and there were no markings/arrows to indicate the path to the nearest exit. The factory had not installed fire alarms, smoke detectors or emergency lighting, and management did not conduct fire drills or provide training in how to operate a fire extinguisher.
- Management did not use a blood borne pathogen container for the disposal of sharps metal objects such as broken needles and/or razor blades.
- Three sewing machines did not have pulley/belt guards.
- Employees were allowed to smoke in the factory break area directly adjacent to and in the same room as the trimming and inspection area, which could constitute a fire hazard.
- Management did not maintain an OSHA 200 Log tracking incidents of workplace injury and illness as required by law.
- The factory first aid kit did not have eyewash. Additionally, the cutting/storage facility first aid kit contained various supplies that appeared to be old or expired.

Documentation

- The documentation of employees was inadequate: 45 percent of employee W4 forms were missing, as were 40 percent of employee I-9 forms, and all the I-9 forms on file were incomplete.
- While not a violation of federal law or the University Code, management does not have an employee handbook indicating company policies, procedures and information on wages, work hours and safety.

Additional Observations by IUI Consultants:

- A worker was using spot removing chemicals containing perchloroethylene and trichloroethylene, without gloves or masks. Prolonged exposure to these chemicals can cause health problems, including respiratory ailments and cancer.
- Sewers and cutters were not wearing adequate personal protective equipment, specifically masks to protect themselves from inhaling dust and small particles.

Good Practices

- Employees were given some flexibility with their working hours.
- Employees spoke very highly of management and the working environment. All said they were very happy working at this facility.

C. Factory Two: The monitors reported the following code and legal violations:

Wages and Benefits/Working Hours

- The company had not posted the mandated federal minimum wage, overtime and child labor posters, nor the posters for the Equal Employment Opportunity law, the Family and Medical Leave Act and the Employee Polygraph Protection Act.

Non-discrimination

- There were no written non-discrimination procedures or policies.

Health and Safety

- There were no emergency evacuation diagrams.
- There was no OSHA poster posted.

Documentation & Inspection

- There were no written overtime procedures or policies.
- The factory did not maintain employee files on site. Because of this, the monitors were unable to assess compliance with regards to immigration and W-4 forms, as well as proof of age.

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| EVALUATION OF THE MONITORING PROCESS |
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The two sections offer a brief evaluation of both the monitoring process, and the difficulties of implementing the monitoring process from the perspective of the IUI consultants.

1. EVALUATION OF THE MONITORING PROCESS

The following section provides an evaluation of the process used by PricewaterhouseCoopers (PwC) to monitor the factories. While the IUI consultant team provided input into the process used for the monitoring visits, the comments were within the context of a specific monitoring scheme. The purpose of this section is to evaluate the efficacy of that scheme to gather information about factory conditions. The evaluation includes some shortcomings of the process as perceived by the IUI consultants, as well as some practices that were successful in providing information about the factory. The implementation of the monitoring tool varied widely by country.

A. Factory Profile/Interview with Management: The current monitoring process relies heavily on information gathered from factory management to render an assessment of compliance. The fact that the initial meeting with management includes a series of questions about the factory's operation and policies suggests a reliance on the information provided in this meeting as a baseline from which to determine compliance. Management supplies the personnel files, time cards and other factory records and there does not appear to be a requirement that these documents be supplied immediately, allowing time for modification of the documents. A more effective process would likely begin with the selection of employees to be interviewed, so that factory management would be obliged to produce their documentation immediately. An effective process could still include an initial introductory meeting with management, but reserve the

questions about operations and policies toward the end, after a visual assessment of those policies in practice.

- B. Factory Records:** It seems that the primary problem encountered with the review of factory records is that the records were taken at face value, with little questioning of their accuracy or legitimacy. The monitoring process did not seem to contain mechanisms to test or question the records. On two occasions where questions arose about whether the time cards reflected accurate working hours, the process did not allow for independent verification of those hours. In Pakistan, the auditors reviewed the factory records during the worker interviews, which is an exemplary practice that could be employed to check that the records are in accordance with workers' experience. In El Salvador, the monitoring process included substantial paperwork to verify that the calculations in payroll and hours were accurate, as well as a checklist of documents required in the employee file. One method for checking the accuracy of the records would be to check with the appropriate government offices prior to the visit to see if workers or other groups have filed complaints or lawsuits against facilities. If complaints turn up, they could be incorporated into the monitoring process and discussed with management and workers, which may yield a more accurate picture of factory conditions.
- C. Employee Interviews:** The current process for gathering information from workers was effective in discovering some factory violations, but improvements in the process would likely yield additional information from workers. In Mexico, Thailand, El Salvador and Pakistan the worker interviews yielded information that was useful in evaluating the factory's compliance and treatment of workers.

Though workers did seem willing to share their impressions in some countries, it seemed clear that the current process is not ideal for ensuring the trust necessary to maximize the amount of information to be gathered from workers. The interviews take place on-site, in the offices of the management, and sometimes within earshot of members of the management team. After the monitors select the workers to be interviewed, management escorts the workers to and from the interview room, making the workers quite aware that management knows they are being interviewed. The interviewers in many cases were not of the same gender and were dressed more formally than the workers. The interview template was not always translated from the English correctly (as evidenced by the answers recorded) and was not always followed exactly. In some cases, the interviewers treated issues such as sexual harassment lightly, while completely omitting issues like freedom of association or forced labor from some of the interviews. Finally, it did not appear that findings from the interviews appeared consistently in the final analysis of compliance provided to the licensees and IUI consultants.

An effective means for worker interviews could include contacting local NGOs with ties to the workers and establishing interviews at another location, in an environment where workers may feel more comfortable.

- D. Factory Tour:** There does not appear to be a consistent process for conducting the visual factory inspection. It might be helpful if the process included a specific route to be taken for every inspection, such as following the production process from beginning to end. The checklist included in the monitoring process was not followed uniformly in

every factory. Factory management always accompanied the monitors on the visual factory inspection, making it difficult to view normal operating procedures. Again, the process used in El Salvador to systematically check for safety equipment, PPE, adequate facilities and postings was extremely useful. Measurements could be included to ensure a more stringent verification of health and safety conditions, particularly ventilation, air quality, and ensuring that unsafe chemicals are not in use at the factory.

E. Final Report: The report that is provided to the client, in this case to the IUI consultants and the licensees, does not provide a complete picture of conditions in the factory. The report is geared toward reporting outright, proven violations and is not set up to include additional, questionable practices as gathered from workers, management, records, or the visual factory inspection. Details collected during documentation and interviews, such as the presence or names of affiliated unions or information on pregnancy testing, were at times absent from the monitors' reports. If these illustrations were shared with the clients, this anecdotal information may prove helpful in uncovering systematic problems.

In addition, the reports do not allow for the opportunity to suggest good practices for the factory to implement. Because the reporting is so focused on violations, the report does not provide for the adoption of more efficient, less expensive or employee-initiated practices to improve conditions in the factory.

Finally, the current process requires that factory management and auditors agree to the conditions of the report during the final meeting, on the very day of the audit. In practice, this means that if the factory management is not in agreement with the findings, the wording is changed so that management is in agreement. While this does allow management an opportunity to provide an explanation for the conditions, it does not provide for a completely independent reporting of conditions.

1. EVALUATION OF THE IMPLEMENTATION OF THE MONITORING PROCESS

A variety of issues affected the implementation of monitoring process from the perspective of scheduling visits. These include:

- A. Information Sought:** The monitors provided the information that was requested. This was a basic finding of whether the factory being monitored was in compliance with the provisions of the University Code of Conduct, used solely for this project. Based on this request, the reports back provided little "flavor" regarding the sources of this information, or information either about issues that might raise questions on possible areas of non-compliance, or about good or best practices in the facility.
- B. Limited Sample:** The project sought to focus more resources on gathering information from a full range of stakeholders, to ensure that a diversity of opinion was included in the information gathered and reviewed. This led to a small sampling of factories from which information was gathered – two per country. It is difficult to draw broad conclusions about working conditions in an industry with such a diffuse production base from this number of visits. It is worth noting, however, that the factory visits did provide a "real world" check on the information gathered from stakeholders. In cases

where there was consensus amongst stakeholders about prevailing conditions, the monitoring did not serve to disprove that consensus. In cases where stakeholder opinion varied, the monitoring results did not provide sufficient volume of information to indicate one conclusion or another.

C. Random Selection: It was agreed that the random selection of factories would provide assurance that the project consultants were not being steered either to factories that are “showcase” or “worst case” factories. While clearly achieving that purpose, in at least one case the random selection led to monitoring of facilities that probably are unrepresentative of the country in question. This was the case for the United States, where extremely small factories in Wisconsin and Pennsylvania were monitored, while most of the attention on the apparel industry has focused on densely populated urban areas in New York and California, and factories in traditional apparel production locations in the South. Our general sense is that the random selection in the other six countries led to more representative facilities.

D. 72 Hour Notice: This amount of notice was provided to balance the need to ensure that the visits could be effectively implemented (e.g., to ensure that relevant management are present, records are available, etc.), and to limit opportunities for the factory to distort normal operations to present an unrealistically positive impression of working conditions. Our experience is that in some cases the notice was not sufficient to arrange fully effective visits, and that in other cases the notice still allowed factories to seek to present an artificially positive view of factory conditions. On one occasion, it became clear through employee interviews that the bathrooms had been locked all morning until the visit began, in an effort to guarantee the bathroom would still be clean for the visual factory inspection. In another factory, the only visible code of conduct was that of the licensee being audited on that day. The code was posted so frequently that it covered the internal rules of the factory. When questioned why it was posted over the internal rules, factory management explained that the code was posted for the sake of the consultants, earlier that morning, specifically for the factory audit.

On the other hand, the 72 hours policy did not prove to be sufficient time to arrange the logistics for the factory visits. Because the factories were in seven different countries, logistical arrangements such as travel and accommodations and weekly schedules had to be made weeks in advance. When there were problems in coordinating the factory visits, PwC and the consultant team had very little flexibility in re-scheduling the visits. On one trip, an entire visit had to be cancelled because the licensee did not recognize until a day before the team was planning to leave that the “factory” that had been listed was actually a sales office. In Mexico, one factory let us in but explained that it did not produce university goods anymore.

E. Accurate, Up-To-Date Factory Information The consultant team faced some challenges in setting up more than half of the factory audits. Despite spending significant time and resources, it was extremely difficult even to locate factories producing university goods. The global garment industry is highly mobile, with contracts continuously shifting from contractor to contractor within and between countries. Licensees can move production between subcontractors after one year, one month, or

even as little as one week, and production runs may be quite small. The entire industry shifts its production so fast that even the licensees have trouble keeping track.

At the time we received factory information, the nine licensees we analyzed outsource university apparel production to over 200 factories in 26 countries. This, however, is the proverbial “tip of the global production iceberg.” There are an estimated 80,000 factories around the world producing garments for the U.S. market.¹ As the actual factories producing university goods at any given time change so fast, by the time we had planned trips to countries such as China and Korea to visit factories, the information we had received originally had changed substantially. For example, eight of one licensee’s eleven Korean contractors in Korea were not producing university-licensed apparel by the time we arrived, and this company’s list of subcontractors in Korea changed four times during a four month period. Twenty-one different factories passed across these lists, with only three of the initial factories remaining on the final list.

This mobility also begs the question of which factories the universities are really responsible for? Is a factory only a “university factory” on the days that a university’s brand is being run through the factory? Or should the university and the licensee be responsible for the factory’s conditions all year round?

The following problems were encountered:

- One of the factory names provided was actually a sales office; licensed apparel was produced in a different geographic location.
- Several times there was no production for the specified licensee in the factory during the factory audit, reflecting the shifting nature of production and often brief production runs for a particular product or university’s licensed goods;
- There were several instances of inaccurate reporting of factory information (phone number, address, factory manager), creating challenges when attempting to set up factory visits.

F. Access: Access was generally provided freely, subject to the logistical challenges arising from the notice we provided. In one case, the licensee was unable to secure approval from a contractor to permit the factory monitoring visit. This resulted in our only being able to visit one factory in El Salvador.

G. Monitoring “Normal” Factory Conditions: All monitoring takes place in a manner that may or may not reveal “normal” operating conditions. A range of factors contributes to this, from advance notice to the factory, to the wide fluctuations in production cycles resulting from issues as diverse as quota availability, high sales seasons and local holidays. This may make it difficult to know whether the “snapshot” taken on any single day is representative of typical conditions. It should be noted, however, that monitoring can be conducted with this in mind, with practices such as interviewing workers about overtime during peak production, or a review of payroll records for high and low production periods, etc.

¹ American Apparel Manufacturers Association.

H. No Follow Up Visits: The monitoring for this project was implemented for the sole purpose of gathering in-factory information to supplement the information gathered from off-site stakeholders. Monitoring was not undertaken for the purpose of finding and remediating instances of non-compliance. We are not able to report on the remediation process, which is one of the primary reasons for conducting monitoring, i.e., to identify problems and ensure that they are addressed.

COUNTRY REPORTS

METHODOLOGY

The participating universities sought in this process to gather information from a selection of significant apparel producing nations. It was initially determined that the IUI project would gather information about working conditions in the apparel industries of the seven countries producing the most licensed apparel for the major licensees of the five participating universities. This deliverable was outlined in the project description as follows:

Country reports, gathered from a range of stakeholders, describing issues of particular concern, as well as good and best practices concerning labor standards compliance, with focus on issues that are of particular relevance to university-licensed apparel production. These reports will also incorporate information gathered through a select number of factory monitoring visits designed to provide “on-the-ground” information.

A. Licensee Selection: IUI participants agreed that the project would involve the licensees producing the most licensed apparel for the universities. Project participants agreed to focus on the five licensees producing the greatest volume of licensed apparel for the schools. These top five licensees were invited to participate in the project by a letter from the universities, and at a meeting in Chicago held on January 13, 2000. Several licensees appeared on the “top five” list for multiple universities. The licensees invited to participate were:

- adidas-Salomon
- Apparel Sales Company
- Champion
- Fruit of the Loom (Union Underwear Co.)
- Gear for Sports
- Iron Knights
- JanSport
- Logo Athletic/TKS
- Nike
- Pro Player
- Russell Athletic
- Trau & Loevner
- VF Knitwear
- Zephyr Graf-X
- 4004 Inc. (Steve and Barry’s)

The universities and project consultants outlined licensee participation as follows:

- Identification, on a confidential basis, of all of the factories producing licensed apparel for the participating universities, to allow the project consultants team to identify specific facilities where university-licensed apparel is manufactured, and to make the selection of the countries producing the greatest volume of apparel for these five universities;
- Agreement to provide access to one or two factory sites each, to be selected randomly, for monitoring visits conducted by PricewaterhouseCoopers (PwC), with half the factory visits accompanied by members of the project team, *i.e.*, BSREF and either the IRRC or Dara O'Rourke; and
- Agreement to answer a written survey asking for a description of current code of conduct compliance efforts.

Of the fifteen licensees invited, nine chose to participate. The participating licensees were:

- adidas-Salomon
- Apparel Sales
- Champion
- Gear for Sports
- Jansport
- Nike
- VF Knitwear
- Zephyr Graf-X
- 4004 Inc. (Steve and Barry's)

The six licensees that chose not to participate were:

- Fruit of the Loom (Union Underwear Co.)
- Iron Knights
- Logo Athletic/TKS
- Pro Player
- Russell Athletic
- Trau & Loevner

B. Country Selection: The next step in this process was to determine which countries produce the most apparel under licenses issued by the participating five universities. To accomplish this, it was necessary first to determine which licensees would participate in the process.

Based on information submitted by the licensees about factories (both owned facilities and contractors' facilities) producing licensed apparel for the five universities, the IUI consultant team identified the seven countries producing the greatest volume of licensed apparel for the participating universities. The criterion used to make this determination was the number of

factories producing licensed apparel for the schools. The IUI consultant team had originally hoped to use volume of production in past 12 months (measured either in dollars F.O.B. or number of units) as a defining criterion. However, this information was not available in all cases, so the decision was made based on the number of factories alone.

Once the top ten countries were selected, the project consultants reviewed the results to ensure that the sample was geographically diverse, and that it represented various stages of economic development. The consultant team accordingly chose to include El Salvador rather than Taiwan, even though Taiwan had one more factory producing licensed apparel than El Salvador and one more licensee represented, to allow a second Latin American country to be included.

The seven countries chosen, along with the number of factories in each of them are:

| COUNTRY | Number of Facilities Producing University-Licensed Apparel |
|----------------|---|
| China | 17 |
| El Salvador | 6 |
| Mexico | 32 |
| Pakistan | 12 |
| South Korea | 12 |
| Thailand | 12 |
| United States | 42 |

C. Country Information Gathering

In six of the seven countries visited, the following process was used to gather information on the apparel industry.² The IUI consultant team that traveled to each country, (BSREF and either the IRRC or Dara O'Rourke) identified, approached and interviewed representatives from: industry associations, government officials, academics, NGOs focused on labor and human rights, women's groups and unions. In each case, the consultant team sought information about the following issues:

- context and history of the apparel industry;
- issues of concern in apparel factories;
- examples of best practices to combat these challenges;
- the effectiveness of codes of conduct and monitoring efforts to ensure compliance; and
- suggestions to help the universities ensure their licensed apparel is being produced in a way that is consistent with their codes of conduct.

² The country information for the United State was gathered based on research and phone interviews

In each of the interviews, the consultant team provided a description of the project and explained that the report would be public. Translators were used when necessary. The country visits were as follows:

| Country Visited | Dates of Visit | Project Team |
|------------------------------|----------------------------|---------------------|
| Mexico | October 10-16, 1999 | BSREF/IRRC |
| China/Hong Kong ³ | November 7-12, 1999 | BSREF/IRRC |
| El Salvador | April 11–14, 2000 | BSREF/IRRC |
| Thailand | May 15–19, 2000 | BSREF/IRRC |
| Pakistan | May 22–26, 2000 | BSREF/IRRC |
| Korea | June 17–23, 2000 | BSREF/Dara O'Rourke |
| United States | July 31, 2000 ⁴ | BSREF/IRRC |

Note: The IUI consultants decided to visit Mexico and China before the final selection of countries and factories was complete. This decision was based on an estimate, which proved true, that these countries would appear on the final list of countries to be included based on the criteria listed above. And also note that the accompanied factory visits took place after the initial visits to meet with stakeholders. The accompanied Mexico visit took place in conjunction with the April 2000 visit to El Salvador, and the accompanied China visit took place in conjunction with the June 2000 visit to Korea.

³ Due to restrictions on the freedom of civil society organizations in China, the IUI team met with public officials, NGOs, trade union representatives, and business representatives in Hong Kong as part of the process for information gathering on China.

⁴ This was the date of the factory visit. Telephone interviews took place between July and September 2000.

CHINA COUNTRY PROFILE

OVERVIEW OF ISSUES

China is an authoritarian state that is undergoing profound economic and demographic changes. While political power remains exclusively in the domain of the Communist Party, which has ruled China since 1949, the means of production have been opening to private and foreign control. China has enjoyed high economic rates of growth since its opening to the West in 1979, but its growth rate has been slowing in recent years, in large part because of the drag exerted by its inefficient state-owned enterprises. This is a challenge for ordinary Chinese workers, who no longer are guaranteed lifetime employment and accompanying benefits. While economic opportunities for many have been growing, a huge number of urban workers have been thrown out of work. Meanwhile, rural workers have new—but circumscribed—opportunities to find work in urban areas. The country's economy and its work force are poised to encounter still greater challenges and opportunities as China becomes a member of the World Trade Organization.

Perhaps nowhere in China are these forces more evident than in Guangdong Province, which—by virtue of its proximity to Hong Kong—has become its economic engine and the leading regional exporter. It is also the center of China's apparel industry and the region where much U.S.-branded apparel is produced.

In November 1999, the Independent University Initiative research team traveled to Hong Kong and Guangzhou, China, to hear firsthand from labor, human rights, government and business analysts the current status of labor practices in the export apparel industry and how they might be improved, especially in the context of university-licensed apparel. A list of the interviewees can be found at the end of this profile.

The work force in the export apparel industry is overwhelmingly young and female. In Guangdong, where local labor is scarce, this work force is largely imported from rural areas outside the province; northern factories are more likely to employ local workers. Labor practices are most likely to fall short of the U.S. universities' code in the following areas:

- Excessive overtime hours, including consecutive days worked without a day off
- The lack of freedom of association, since the Chinese government forbids independent labor unions
- Refusals to hire or retain pregnant workers, and discrimination against older or married female workers for fear they are more likely to become pregnant
- Sexual harassment
- The practice of many apparel factory managers of holding migrant workers' identity documents so that they cannot travel freely off factory premises or find other factory jobs in the area

HUMAN RIGHTS AND ECONOMIC OVERVIEW

Human Rights: China's human rights practices continue to bring criticism from rights groups and others, including the U.S. government, and criticism has intensified in 1999 and

2000. Many observers consider China to be one of the most authoritarian states in the world. Chinese Communist Party members hold almost all key government, police and military positions, and ultimate authority remains in the hands of the Politburo. Citizens do not have the right to express political opposition or to choose or change their political leaders. The government continues to severely restrict freedom of speech, of the press and of assembly and association. The lack of these key political and civil rights severely limits the rights of workers to mobilize to improve their status; moreover, the government does not countenance independent labor unions. The only approved unions are branches of the All China Federation of Trade Unions, which in turn is a branch of the Chinese Communist Party. Indeed, civil society is almost nonexistent in China, since virtually every organization with the exception now of business enterprises must be linked to a state organization.

The U.S. State Department's *Country Reports on Human Rights Practices for 1999*, released in February 2000, found that, "The Government's poor human rights record deteriorated markedly throughout the year, as the Government intensified efforts to suppress dissent, particularly organized dissent." In the last few years, the authorities have imprisoned or detained virtually all of the key leaders of the China Democracy Party as well as tens of thousands of members of the Falun Gong spiritual movement.⁵

At the same time, the advent of a mixed economy has wrought changes that have given many ordinary citizens—particularly those with the skills to benefit from economic modernization—more autonomy in their personal lives. As the State Department reported in its 1999 review: "Most average citizens went about their daily lives without significant interference from the Government, enjoying looser economic controls, increased access to outside sources of information, greater room for individual choice, and more diversity in cultural life."

But Trini Leung, the executive secretary of the Hong Kong Confederation of Trade Unions, cautioned the IUI team that "There is a wide misimpression that there is more freedom in China—this is true on a personal level for the most well off—but they only can voice dissent privately." She added that no organization legally can operate without the sanction of a state organization, a point that was reinforced by other interviewees.

One American observer told the IUI team that the country's history of poverty, its large population and the memories of political instability are all factors that foster the authorities' conservatism on human rights. "People in their forties and older remember people starving to death—they don't want to go through that again," he said. While discussion of human rights remains taboo in China, he said the Chinese he talks to are buying into the concept of the "the rule of law," which to them implies consistency and order. A growing number of homegrown Chinese entrepreneurs are growing frustrated—like their foreign counterparts—by the lack of consistency between the various levels of government in China, which creates the impression that "nobody's really in charge." Chinese entrepreneurs, he said, are becoming anxious for consistent legal standards and protections to guarantee their brands and contracts.

⁵ "China" in *1999 Country Reports on Human Rights Practices*, U.S. Department of State: Feb. 25, 2000

Economy: China's gross domestic product grew 7.1 percent in 1999, according to official figures, the seventh consecutive year in which the growth rate was lower than the previous year's, despite a massive state spending program and lending by state-owned banks to increase investment. The official forecast for 2000 is 7.0 percent. While these growth rates are still impressive on their face, economists caution that they are misleading because they include the rapid growth of inventories of poor quality goods for which is little demand. As a recent briefing by the Brookings Institution noted, China's additions to inventories averaged 5.7 percent of gross domestic product from 1990 through 1998, compared with just 0.4 percent in the United States. This buildup of unsold and presumably unsalable inventories represents a waste of economic resources that could have been better deployed elsewhere to raise living standards or productive capacity.⁶

China underscored its commitment to overhauling its inefficient economy in March 1999 when it adopted a constitutional amendment that recognized the private sector as equal in status to the state sector. Further evidence of this commitment was its decision to forge an agreement with the United States to facilitate its entry into the 135-nation World Trade Organization.

Accession to the WTO: On Nov 15, 1999, China and the United States announced they had reached a bilateral agreement intended to clear a path for China's entry into WTO. Under the agreement, China is obligated to further open sectors including automobiles, telecommunications and banking to outside competition, and agricultural and industrial tariffs will be sharply reduced. The U.S. Congress did not have to sign off on the agreement, but for the United States to benefit from Chinese entry into the WTO, Congress had to give China permanent "normal trading relations" (PNTR) status and discontinue passing annual legislation supporting trade with China. That annual trade fight had given legislators a regular opportunity to sound off on China's human rights situation, even though a bipartisan majority has ultimately endorsed trade relations. After a tough debate, the U.S. House of Representative approved PNTR in May 2000 by a vote of 237 to 197. The Senate approved PTNR in September.

The U.S.-China trade agreement does not absolutely ensure China's entry into the WTO. China must still reach bilateral market-access agreements with two remaining WTO members of the 37 that had originally expressed an interest in such negotiations.⁷ Once bilateral negotiations are completed, two-thirds of the WTO members must approve the terms of China's application, and China must ratify the arrangement. A WTO Working Group is currently negotiating the terms of the draft protocol.

China's accession to the WTO will have major implications for its apparel industry and for those of its trading partners and competitors. The Uruguay Round of trade negotiations that established the WTO in 1995 also produced the Agreement on Textiles and Clothing, which requires members to phase out import quotas on clothing and textiles in four stages over 10 years, lifting all import quotas by 2005. China's apparel industry is likely to be a major winner under this provision. In 1997, China's direct exports of apparel totaled \$31.8 billion, about 38 percent of which went to Japan, the United States and the European Union. The

⁶ Nicholas R. Lardy, *Permanent Normal Trade Relations for China*, Brookings Institution Policy Brief, May 2000

⁷ "Meeting of the Working Party on the Accession of China," July 27, 2000, available on www.wto.org

U.S. International Trade Commission projected from an economic simulation that China's accession to the WTO would cause its share of U.S. apparel imports to increase by 18 percentage points in 2006 over the share it would have were it not to gain WTO entry. The increase in market share will come largely at the expense of other developing countries now also subject to apparel import quotas. More broadly, elimination of textile and apparel import quotas will cause China's total exports to be about \$16 billion higher in 2006 than they would otherwise have been, will attract capital investment and could boost China's real gross domestic product by \$6.5 billion.⁸

Employment and wage trends: In the short term, however, China's market reforms and agreements to further open its economy promise more dislocation for unskilled and semiskilled workers in the rural areas and in the country's state-owned enterprises. According to the U.S. State Department, rural unemployment and underemployment combined may be as high as 30 percent, while the total number of urban unemployed exceeded 15 million by early 1999.⁹

Although the total number of Chinese living in absolute poverty has fallen to 150 million, according to the World Bank, an income gap is widening, particularly between urban coastal areas and inland rural areas. The U.S. State Department said urban per capita disposable income for 1998 was \$656, while rural per capita net income was \$261.¹⁰ There is anecdotal evidence that many rural families, unable to pay rising school fees, are taking their children—particularly girls—out of schools. According to a recent press account, education is “increasingly a luxury item in China's poorest villages.”¹¹

The rising rural-urban income gap has fueled a major demographic movement—the migration of tens of millions of relatively uneducated people from the countryside to the cities and special economic zones. The phenomenon is growing so rapidly that estimates of its size vary widely. Nationwide, official data from 1995 showed that the floating population of migrants in the urban areas totaled 30 million and was projected to reach 200 million by 2000 (given a rural labor surplus estimated in 1995 at 130 million).¹² One of IUI's interviewees said that the official estimate of this floating population was now 70 million migrant workers, and that the overall rural labor surplus numbered 100 million people.¹³ The U.S. State Department cites demographic estimates ranging between 80 and 130 million persons for the rural migrants now living in urban areas.

Economic outlook for Guangdong: Perhaps nowhere in China are these economic and social forces more on display than in Guangdong, a province of 60 million that has recently been China's economic engine.

⁸ *Assessment of the Economic Effects on the United States of China's Accession to the WTO*, U.S. International Trade Commission: September 1999, pp. 8-1 to 8-30.

⁹ “China” in *1999 Country Reports on Human Rights Practices*

¹⁰ *Ibid*

¹¹ “School a Rare Luxury for Rural Chinese Girls” by Elizabeth Rosenthal, *New York Times*: Nov. 1, 1999

¹² “Labor Rights in the Pearl River Delta” by Apo Leung, in *At What Price? Workers in China*, Asia Monitor Resource Center Ltd.: Hong Kong, 1997

¹³ Trini Leung, interview, November 1999

That Guangdong for many years has been the fastest growing province in China owes in large part to its proximity to Hong Kong. Companies, particularly apparel firms, owned by Hong Kong Chinese were the first foreign investors to move into the region to escape rising labor costs in the British colony and to expand production capacity. By making sure that some of the value added to their apparel products was generated in Hong Kong, these firms were able to take advantage of the separate import quotas for Hong Kong. One estimate the IUI team heard was that of the approximately 8,000 clothing and textile manufacturers in Hong Kong, only about 50 are major firms, and the Hong-Kong-owned apparel industry in Guangdong similarly is dominated by small and medium enterprises. Taiwanese investors, attracted by Guangdong's access to Hong Kong's duty-free port, came next to the province, to open footwear and electronics operations; 4,000 Taiwanese firms operate in the region. By the early 1990s, Guangdong was producing two-thirds of China's exports.

Although Guangdong remains the country's fastest growing province, it is facing new competition from other regions of the country with lower labor costs, particularly northern China. Guangdong's economic growth slowed to 9.4 percent in 1999 from 10.2 percent in 1998, and its share of the country's exports dropped to 41 percent in 1999.

Its apparel industry is likely to undergo major restructuring as the United States and other developed countries lift their remaining country-specific quotas on textiles and apparel in 2005, a move that will erase the current advantage of splitting apparel production between Guangdong and Hong Kong.¹⁴ Without the lure of Hong Kong trading benefits, the economic incentives to relocate will be compelling for lower-quality apparel producers that compete on price. Northern apparel factories can save production costs by drawing on local labor, reducing the need for factory owners to build dormitories. One recent survey found that workers in Southern factories are paid nearly twice as much as northern factory workers.¹⁵ Similarly, one of IUI's interviewees said that for apparel production that competes on price rather than quality, inland China may be a better location.

For the apparel industry to remain economically viable in the region will probably require a concentration on higher-quality and higher fashion items. Already, some of the more sophisticated and larger Hong Kong enterprises are supplying the design and marketing expertise, and with Hong Kong-based managers checking on their Chinese workplaces by Webcam. Moreover, the abolition of import quotas is certain to compel further foreign investment into Guangdong and its apparel industry.

Guangdong's rapid economic growth has outpaced the resident labor supply and acted as a powerful magnet to China's rural labor surplus. While both young men and women come to Guangdong from the rural areas for work, the apparel work force is predominantly female. A 1994 survey conducted by the Academy of Social Sciences gave the following profile of migrant women workers: the average age is 22, 82 percent had completed junior high school, and 90 percent were assembly line workers.¹⁶ A recent study by a group of Georgetown University business students reported that the labor force in southern apparel factories is 85

¹⁴ "Maverick Chinese Fears Opening of Trade," by Mark Landler, *New York Times*: June 12, 2000

¹⁵ Xiaoxing Liu et al., *Georgetown University and the Issue of Labor Standards in the Apparel Industry – A Case Study*, March 24, 2000

¹⁶ "Labor Rights in the Pearl River Delta"

percent female, typically unmarried, and ranging in age from 18 to 30 years old. The minimum age for all the factories they visited was 18.¹⁷

WORKING CONDITIONS IN THE APPAREL INDUSTRY

Any discussion of labor issues, particularly in southern China's apparel factories, must begin with a description of the migrant labor system and how it works. The following picture emerged from IUI's interviewees in Hong Kong and Guangzhou.

In the rural areas, when girls turn 18, they are usually introduced to eligible young men with the approval of both families. The expectation is that the newly introduced couple will marry after a few years of working hard and saving money. For the young women, this often means arranging a contract of two to three years to work in southern factories, a decision that requires an upfront investment of cash. They will need to pay the local government for the necessary permits to work—and therefore to reside temporarily—in the new area, and often the applicants must be able to produce a medical certificate that they are not pregnant. All told, the cost of getting the various permits and certificates (and paying the occasional bribe) may run to 2000 yuan, about \$240, an impossibly high sum for many rural households to produce with resorting to local lenders. Sometimes, factory owners may agree to pay the authorities on behalf of the applicant. Either way, the worker arrives knowing that she must work to pay off the initial loan paid on her behalf. In addition, factory owners commonly require workers to pay a deposit that is returned to workers only when they complete their contract.

Thus, migrant workers begin their life in the factories and special economic zones well aware that if they quit prematurely they will forfeit their deposits or be in debt. Numerous interviewees said the workers' options are further circumscribed by the common practice among factory managers of confiscating the workers' identity documents. This means that the workers will be unable to stray very far from the factory and dormitory. Throughout the special economic zones, there are checkpoints where workers are asked to show their identity documents. Workers who cannot produce the documents can—and are—sentenced to terms in prison labor camps, unless their families can come up with 500 yuan to pay the fine.

This picture can vary, though, depending on the employer and special economic zones. Most workers live in dormitories provided by their employers, but some may be able to rent apartments. The dormitories are usually cramped, but they may not compare badly with their living standards in the rural area. Han Dongfang, editor of the *China Labor Bulletin*, based in Hong Kong, notes that some economic zones have cinemas or recreational facilities. Workers housed there might be allowed to go into town once a month—but it depends on the factory they work for, and whether their factory will release their IDs. Hillary Cheng, a manager at Horizon, a market and policy research firm in Guangzhou with several U.S. clients, says workers may have some mobility during their tenure in urban areas, and may be able to find jobs in other factories if they are dissatisfied with their initial

¹⁷ *Georgetown University and the Issue of Labor Standards in the Apparel Industry*

employment. They usually have informal networks of hometown girlfriends, from whom they can learn about opportunities, pay and conditions in other factories. However, if their bosses hold their ID documents, she said, they can't leave.

Although interviewees agreed that a sizable portion of migrant workers are happy to return to their home towns upon completion of their contracts, some stay in the urban areas, even though they remain excluded from the social welfare benefits—such as subsidized public school education—that are the purview of the local governments and are provided only to permanent residents. Some migrant worker couples—against considerable odds—find jobs or microbusiness opportunities that enable them to move into apartments; their legal right to stay in the area, though, always remain contingent on having employment. Duncan Scott, the head of social and environmental compliance for Adidas-Salomon, noted, for example, that about half of the workers at an Adidas factory in Guangdong, despite their migrant status, are living outside of the factory, and have their children in local schools although they have to pay three times more than local citizens for school fees.

Even though interviewees agreed that migrant workers manage to earn and save far more than would have been possible in their home towns, they also said that the conditions migrant workers encounter are undeniably hard, and few migrant workers can countenance signing up for another stint in the factories—or of dormitory life—when their contracts expire. As Han put it, “Why should migrant workers have to work so hard with so much uncertainty to make money?”

What follows is an overview of how the standards described in the IUI consensus code of conduct are regarded and enforced in China, with special reference to the apparel industry in Guangdong.

Compliance with Local Laws: There was broad agreement among IUI's interviewees that the national and local labor laws—at least with regard to wages and working hours and working conditions—are good, but that they are not implemented. Local governments are allowed to override these laws, and may feel compelled to give waivers to factories that are a large part of the tax base. More simply, local authorities often turn a blind eye to violations, for fear of offending foreign investors, unless—according to one business representative—the vendors' multinational buyers insist on enforcement. In some cases, workers have sued to get the benefits to which they are entitled under law, an option that is not practical for most workers.

At the same time, some interviewees believed that the labor bureaus could be pressured to help improve conditions for workers, and that they sometimes do intervene to rectify poor working conditions in response to worker complaints. According to Chan Ka Wai, the associate director of the Hong Kong Christian Industrial Committee, the Shenzhen labor bureau is comparatively better than Guangzhou, and much depends on the integrity of individual bureaucrats.

A number of interviewees cited the Taiwanese-owned factories as being particularly resistant to complying with legal standards, and other interviewees echoed her observation. One interviewee told IUI they violate the law by paying workers only once every three or six months, instead of monthly as required.

Chan gave credit to municipal governments that are trying to reduce the military's involvement in factories. If the military is involved, he said, managers know they can exploit workers with impunity. Retired military may be in factories as police or security guards.

An American China-watcher told the IUI team that because the economy is developing so quickly, local governments are struggling to play "catch-up" with the legal infrastructure. In this view, part of the problem is that the government is short of sophisticated people who can administer and control this growth: "the technocratic elite in the bureaucracy is spread pretty thin."

Wages and Benefits: There is no one national minimum wage level; rather, it varies by region and is set by local governments. The weekly wage for factory work in Guangdong varies considerably, according to interviewees, and can range from 1,000 to 2,000 yuan at the upper end to 300-500 at the bottom. One recent report placed the average hourly wage and benefits in the Chinese apparel industry in 1998 at \$0.43—which for work weeks of 48 hours would produce a monthly income of approximately 730 yuan—but said that wages in Guangdong tended to be higher than the national average.¹⁸ In addition, if workers are local citizens, factories are supposed to pay an amount equal to about 40 percent of wages into the local social security fund, but this obligation does not exist for employers of migrant workers. Even if employers pay into the fund on behalf of migrant workers, there is no assurance that workers, once they return to their home regions, will ever see these benefits.

Even at the low end of the wage range, migrant workers may save 50 percent of their paychecks, according to the factory managers surveyed by one recent study.¹⁹ One interviewee explained that despite low wages, migrant workers save money not only because they are used to saving, but also because they have almost no chance to spend money given the lack of leisure time and activities generally available to them. Indeed, they come to the industrialized areas and put up with the difficulties of factory and dormitory life for the express purpose of saving money.

Working Hours and Overtime Compensation: In May 1995, China reduced the regular workweek from 44 to 40 hours, excluding overtime, with a mandatory 24-hour weekly rest period. The law does not allow overtime in excess of three hours a day or 36 hours a month, except under special circumstances.

However, what is common practice in Chinese apparel factories deviates substantially from the legal norm, as the two factory audits in China for the IUI project illustrated. In both factories, workers were typically working seven days or more consecutively before getting a day off and working 60 to 100 hours of overtime a month. According to one survey conducted by the provincial branch of the ACFTU and cited in a 1997 study by the Asia Monitor Resource Center, 61 percent of the workers worked more than six days a week, more than one-third worked overtime constantly, and 20 percent were not compensated

¹⁸ Werner International Management Consultants, "Hourly Labor Costs in the Apparel Industry, 1998," New York, quoted in U.S. International Trade Commission, *Assessment of the Economic Effects of the United States of China's Accession to the WTO*, September 1999

¹⁹ *Georgetown University and the Issue of Labor Standards in the Apparel Industry*

after working overtime. The AMRC publication said that the Guangdong provincial Labor Bureau had inspected 20,000 factories under the new national labor laws introduced in 1995. Of these, more than 4,500 were found to be in violation of the laws regulating overtime work, and over 3,000 factories which were inconsistent with the existing laws.²⁰

Apparel factories have overtime spikes because of the seasonality of demand and the volatility of fashion trends. April through June are relatively slow months, but in August and September, workers often stay on the production line far into the night, so that factories can meet pre-Christmas season deadlines. Duncan Scott said that Adidas asks contractors not to ask for exemptions from the legal overtime limit, “but it’s not easy,” simply because “it’s extremely difficult to be competitive without 60-hour weeks” as opposed to the 48-hour weeks of normal and overtime hours effectively countenanced by the national law. He noted that apparel and footwear firms smooth out the vagaries of demand through overtime. “We may get no orders on some things, and then a flood of orders for another item.” This uncertainty is exacerbated by the long lead times necessary to get raw materials, he said; if these lead times could be shortened—primarily by reducing the shipping time for raw materials—overtime hours could be smoothed out.

Many workers, in fact, feel they need a lot of overtime hours in order to reach an “acceptable” standard of living. One interviewee said that workers don’t mind overtime in modest amounts, such as the occasional 12-hour day, especially if they are compensated for it, and particularly if it is paid at a higher rate—which does not appear to be common practice. Although workers may leave a factory if it does not offer enough overtime, she said, they don’t like working from morning to midnight for days at a time.

Non-discrimination: China ratified ILO Convention 100 pledging equal pay for equal work on Nov. 2, 1990.

Discrimination on the basis of sex, marital status and age is widespread in the apparel industry. Female workers are preferred in apparel industry not only because they are believed to be more adept at detailed work, but also more timid and easily controlled.

As noted earlier, some migrant workers must produce a medical certificate that they are not pregnant in order to get hired. Moreover, factory owners are reported to be loath to hire married women or women over the age of 25 for fear that they are more likely to become pregnant. Pregnancy is grounds for summary dismissal, a number of interviewees said. “Most migrant workers will be dismissed at around 25 years of age, so that the company does not have to bear the expense of maternity leave,” the 1997 AMRC report said. It also said, “cases of abortion are commonly reported.” However, none of the interviewees mentioned forced abortion as a problem. Rather, as one interviewee said, these migrant workers just don’t become pregnant. Certainly, their long hours and limited mobility offer little opportunity for social—much less sexual—intercourse.

Guangdong’s migrant workers, as noted earlier, are also discriminated against as outsiders. They are not entitled to social welfare benefits, nor do they have any assurance that that they

²⁰ “Labor Rights in the Pearl River Delta”

will ever draw social pension benefits from their tenure as migrant workers. If they choose to stay in the urban areas, their residency permits depend on their continuing to hold jobs.

Disciplinary Practices: Chan told IUI that women workers report that a common problem is that factory managers or security guards are disrespectful to them, verbally abuse them or don't respect their "biological needs." Duncan Scott agreed that apparel factory managers—usually Hong Kong Chinese—are pretty "deprecating" towards workers, in part because workers come from undeveloped areas of China that are perceived as primitive and because they don't speak the Cantonese dialect prevalent in Hong Kong and Guangdong.

The staff of the *China Labor Bulletin* told IUI that sexual harassment of female factory workers is pervasive, based on the accounts of workers who call them, while another interviewee agreed that some migrant workers are forced to have sex with their bosses.

Health and Safety: China has a generally high rate of industrial accidents and deaths, particularly in its mines. When the mines are excluded, official statistics indicate that 10,803 workers were injured in industrial accidents in 1997, and 9,698 in 1998. Deaths in industries excluding mining totaled 6,207 in 1998 and 5,439 in 1999.²¹

Many factories throughout China—and Asia—are called "three-in-one," that is, a dormitory built on top of the factory, which was built on top of a storage area. Fires in these types of structures sweep up to the top dormitory levels, trapping workers above burning chemicals, plastics and fabrics. Factory fires throughout China resulted in tougher building regulations and inspections. The new labor reforms came into force in January 1995, as the government attempted to fix safety violations in foreign-invested factories and state enterprises, but critics say that many local officials still refuse to enforce safety regulations for fear of frightening away foreign investment. Some building violations are relatively easy to spot, such as the three-in-one factories. Other problems, such as locked emergency exits, sealed windows and fire hazards, require more thorough inspection and more government involvement. In June 1999, 28 workers died when a fire broke out in the Taiwanese-owned Zhimao Electronics Factory in the city of Shenzhen. The *China Labor Bulletin* reported that "Management had covered the windows to the factory with wire netting; fire escape doors were either locked or blocked, reducing the factory to a prison-like inferno. Once the fire broke out, workers were trapped in the building and most victims died either in the crush around the two fire exits or jumping off the roof."²²

Although Chinese factories are noted for laxity in their handling of hazardous chemicals, Chan said that exposure to hazardous chemicals is not a major issue in the apparel industry. Rather, the major health and safety issues for apparel factories is cut fingers and other minor injuries, along with poor ventilation, dust inhalation and the threat of fire. Because of the long working hours, accidents can be caused by fatigue—as when workers slumping over their machines get their hair caught in them.

Adidas's Duncan Scott said, "health and safety are our biggest problems because of ignorance and lack of resources." Local fire departments, he said, don't have the experience

²¹ "China" in *1999 Country Reports on Human Rights Practices*, U.S. Department of State: Feb. 25, 2000

²² "Profits and Lives: the Zhimao Fire in Shenzhen" in *China Labor Bulletin*, No. 49: July-August 1999

to handle the modern industrial centers that have sprung up. They don't know international standards, or how to fix electrical problems, or they don't have the proper equipment. In addition, he said, construction standards are bad. In his experience, the managers of the Chinese factories to which Adidas outsources don't know how to develop production control systems to solve these shortcomings, and wait for help from Adidas to solve them.

Freedom of Association and Collective Bargaining: The right of association includes the right of workers and employers to establish and join organizations of their own choosing without previous authorization, and among other things to confederate and affiliate with international organizations. While China's 1982 constitution ostensibly provides for freedom of association, "qualifying language makes it clear that this right is subject to the interest of the state and the leadership of the Communist Party," says the U.S. State Department.

Beijing traditionally has viewed trade unions as superfluous at best because the socialist state already represented the working class, and theoretically had overcome contradictions that required workers to protect themselves with independent trade unions.

China's only officially recognized trade union federation, the All-China Federation of Trade Unions (ACFTU), is controlled by the Communist Party. "Under China's planned economy," says the U.S. State Department, "the ACFTU's main task was to improve labor discipline, mobilize workers to achieve party objectives, and dispense social welfare funds."²³ As more workers have been laid off as the state attempts to close down ailing state enterprises, the department says the government has instructed ACFTU to help with retraining and reemployment.

In 1982, the Chinese government deleted language from the constitution that had allowed workers the right to strike. However, disgruntled workers have risked arrest by engaging in illegal striking, and the February 1999 State Department human rights document cited "numerous reports from both foreign and Chinese sources that there has been a marked increase in the number of strikes, work stoppages and worker demonstrations." By one account, there were more than 900 strikes and 2,000 petitions involving 200,000 workers in Guangdong in 1995, a doubling from the year before.²⁴

Shortly before President Jiang Zemin's official visit to the United States in October 1997, China signed the UN's International Covenant on Economic, Social and Cultural Rights, part of the International Bill of Rights. The covenant specifies a catalogue of rights that include the freedom to join a trade union, the right to strike and the right to take part freely in cultural life and benefit from scientific progress, and it obligates parties to promote progressive development of those rights. The State Department reports, though, a string of arrests in 1998 as the government "attempted to stamp out illegal union activity."

The new National Labor Law allows collective bargaining in all types of enterprises; laws passed in 1988 had permitted collective bargaining in the private sector only. Since the beginning of 1995, however, there have been only a handful of collective bargaining negotiations, with the ACFTU serving in a consulting role for workers and management.

²³ "China" in *1999 Country Reports on Human Rights Practices*

²⁴ "Labor Rights in the Pearl River Delta"

The State Department says that despite the “renewed emphasis on party control over the unions in the post-Tiananmen period, worker congresses have maintained some enhanced powers, most notably the right to examine and discuss bread-and-butter issues affecting the enterprise, including the distribution of benefits, salary reform, and the right to remove incompetent managers.” At the same time, though, the department says many worker congresses continue to act largely as rubber stamps for deals worked out by the manager, union representative and local party secretary, who in smaller enterprises are often the same person.

Han Dongfang noted to IUI that when he interviewed the local representative of the ACFTU for her reaction to the Zhimao Electronics Factory fire, she made a reference to the importance of “setting up” an ACFTU branch in plants. Han, who was exiled from mainland China for worker organizing, said that the representative’s terminology was telling: ACFTU unions in factories are indeed established from above, rather than organized from below. He explained the process as follows: when the ACFTU sets up a branch, it tells the boss to pay 2 percent of payroll into ACFTU coffers. No elections are held for workers to choose the union leaders. Rather, the manager and union representative will jointly choose a fulltime union official for the factory—usually the deputy manager of the factory. Because ordinary workers are not “cadres,” Han said, the ACFTU wouldn’t consider them suitable for leadership.

Nonetheless, Han believes that it may be a good strategy for workers to work through the ACFTU. He notes that according to Chinese law, workers are allowed to change the leaders of their plant unions. While he recognizes that the established plant leadership—with the backing of the union establishment—won’t like this, the law technically is on the side of workers in this regard. The alternative of organizing an independent union is too hazardous a course to recommend, he said, since it is certain to invite repression.

Forced Labor: China has ratified neither key ILO convention on forced labor, Convention 29 (from 1930) and Convention 105 (1957). While international conventions do not prohibit prison labor, they do place certain restrictions on it. First, prison labor can be imposed only on convicted criminals; people awaiting trial cannot be forced to work, nor can those who have been imprisoned for political offenses or as a result of labor disputes. Convicted criminals also must give their consent to work in workshops maintained by private enterprises, which must be supervised and allocated work by prison staff. Prisoners who agree to work under such conditions are expected to receive pay and social security benefits comparable to those of free workers.

The government of China long has used labor from the penal system, and has incarcerated large numbers of political dissidents and persons with suspicious class backgrounds. China’s two forced labor systems, the *laogai* (“reform through labor”) and *laojiao* (“reeducation through labor”), form an integral part of China’s economy, and critics contend that in some instances, China has exported products from the systems to other countries. Estimates of

the number of prisoners held in forced labor camps range from two million to eight million.²⁵

Two interviewees, Trini Leung and Chan Ka Wai, said they had heard occasional rumors or secondhand reports of prison labor in apparel factories, but had no documentation that it actually existed.

A more common problem in the apparel industry, however, and one that can produce a form of forced labor, is that of factory managers withholding migrant workers' identity documents. As discussed earlier, the result is that these workers cannot travel far from the factory premises and cannot look for jobs at other factories in the area.

Child Labor: In April 1999, China ratified ILO Convention 138 with regard to the minimum age of work, and the State Department reports that neither the International Labor Organization nor Unicef have found a serious child labor problem in China. It attributes this to a number of factors, including "good public awareness, a cheap, abundant supply of legal young adult workers, nearly universal primary schooling and labor law enforcement." However it does say that child labor in agriculture is widespread in poorer remote areas. The anecdotal evidence that the educational participation rate of rural youth is falling suggests that child labor—at least in rural settings—could be on the increase.

However, none of IUI's interviewees reported that child labor was a problem in the export apparel industry.

RECOMMENDATIONS

The broad consensus among IUI's interviewees was that the long term solution to the problem of poor labor standards was to educate and empower workers. They were divided; however, on whether monitoring corporate codes of conduct could make a contribution to ameliorating conditions in the short term.

Representatives of the four organizations that are members of Labor Rights in China (LARIC)—the Asia Monitor Resource Center, the China Labor Bulletin, the Hong Kong Confederation of Trade Unions, and the Hong Kong Christian Industrial Committee—were particularly troubled about the potential danger of focusing on corporate codes of conduct. As Trini Leung put it: "We have fundamental reservations about codes of conduct in very repressive regimes, although they can work in countries with a civil society and a free press." The conditions for ethical codes are absent in China, she said. "This is why we have reservations about codes of conduct, especially if they promise free association and collective bargaining." Codes that focus on health and safety, wages and "voluntary technical improvements" are more feasible and acceptable, but even so, she said, without worker participation they are meaningless.

²⁵ Carolyn Mathiasen, *U.S. Business in China*, Social Issues Service Background Report, Investor Responsibility Research Center, Jan. 25, 2000, p. 6

In Han Dongfang's view: "We workers have to look out for ourselves; we can't look for a foreign savior. Workers are bruised from trusting the Communist Party. They don't want to make the same mistake with foreign bosses. Looking for an outside savior is like relying on a dictatorship."

Focusing on workers: The LARIC members were in general agreement that the best solution is to train production workers along with managers in the regulatory standards for wages, hours, overtime, benefits and health and safety so that they can monitor from the inside. Rather than monitoring by outside groups, Han said, "free association is the answer. If we see free association and that workers are meeting regularly, this is the first step."

LARIC members said that worker training and in-plant monitoring programs will have more success if they are supported—or at least accepted—by local factory management. Leung says LARIC members aren't asking factories to "reach the sky" but to implement Chinese regulatory standards, and that legal compliance represents "best practice." Moreover, Han says, workers will have more leverage if they say that factories are violating the law, rather than a mere corporate code.

Han and Leung cited two options through which workers could associate legally to monitor labor conditions at their plants. Han, as noted earlier, urges workers to take control of their local ACFTU branches by invoking the law to change the leadership if it is unresponsive to their issues. Leung said a more realistic option for plants where the ACFTU is not represented—as is often the case with foreign-owned apparel factories—is for workers to form in-plant committees. This also is permitted under Chinese law, she said: "just be sure not to call them unions." The LARIC organizations propose that a worker training program should last three months meeting once or twice a week and should be conducted in the local language. LARIC members said they are willing to provide the training to workers, and that they would relish the opportunity to set up pilot projects with interested multinational companies for their vendor factories.

Any third parties involved in these in-plant monitoring efforts, they suggested, should be local people with expertise in industrial health issues, perhaps from academic institutions. Even the LARIC organizations, Chan Ka Wai said, would not be suitable for such monitoring because they are not local enough, given their bases in Hong Kong.

Chan explained that he and his colleagues believe third-party social auditors should be in for the long term, have expertise in the issues and be sympathetic to the worker viewpoint. His group has questioned the SA 8000 program, he said, because it is not clear to whom it is accountable. He said his impression was that SA 8000 is not truly committed to getting labor organizations as social auditors. Other LARIC members seconded this point. Leung said that her problem with accounting firms that have conducted social audits is that they don't really know about freedom of association and collective bargaining. And Han said that for PricewaterhouseCoopers employees to conduct social audits was problematic, given that another PwC division has advised the Hong Kong government on a rationalization plan that could result in 9,000 layoffs, if accepted. The more fundamental problem Leung and Han mentioned with regard to factory certification programs is that they can only certify a plant for a particular point in time. Functioning in-plant workers committees, in contrast, could provide a continual monitoring function.

Although the LARIC members were perhaps most insistent on the need for worker training and empowerment to improve workplace conditions, other interviewees broached this idea as well. Duncan Scott noted, “At Adidas, we’ve seen the issue of labor standards go through three phases. First, we had to have a code, then we had to monitor it internally, and now the focus has moved to external monitoring.” As a result, Adidas has joined the U.S.-based Fair Labor Association and the European-based Ethical Trading Initiative. The FLA, which requires 30 percent of factories over three years to be monitored, is costly. Therefore: “The next stage, in my opinion, is preventing—not just finding—the problems.” For this, he said, you need good worker representation to prevent abuses. Echoing Leung, he said, “It doesn’t have to be a union. It’s *possible* to have worker committees. It’s going to take a long time to have independent unions everywhere.”

U.S. universities might be able to help, he said, by doing research on how to educate and empower workers—particularly migrant workers whose vulnerable status and short-term tenure make them disinclined to rock the boat. A Chinese woman, Pung Ngai, runs one organization, with support from the Ford Foundation. Pung Ngai has a “deceptively simple approach,” Scott said, which is to set up a center that provides workers a social hangout where they can get instruction in Cantonese and hygiene. Based on insights she acquired as a line worker for six months, her center is very low-key and non-academic, but appears to boost the confidence of migrant workers, he added.

A business representative told IUI that training workers as internal monitors could make a difference, provided the training was fairly intensive and long-term. He said that factories usually go no further than posting their buyers’ codes of conduct, which workers probably don’t understand.

Changing factory manager attitudes: A key question many interviewees raised is how to secure the cooperation of factory managers in worker training programs. One U.S. official told IRRC that over the long term, monitoring is a band-aid and that entrenched labor problems can’t be solved through intermittent inspections.

One interviewee suggested that licensors could do much to create the conditions to make factory managers more receptive to policing and improving labor standards by guaranteeing stable orders to their contractors; then local managers could afford to think long-term, he said. Another suggested that licensors should play the economic card, by promising to their suppliers, for example, that “We’ll pay you 10 cents more if you let your workers wear earmuffs,” and communicating more generally to factory owners that “you can be bigger players in the global market if you make improvements.”

One business representative that IUI interviewed suggested a hard line approach. He said he encourages U.S. licensors to make surprise visits to their Chinese-based suppliers—because if the contractors have even 24 hours notice, they will have time to cover up pervasive problems. By and large, he said, Hong Kong manufacturing companies don’t understand why implementing good labor standards is important; he argued that cutting off business is the only sanction that works for recalcitrant contractors.

Other recommendations: Several interviewees also suggested various ways that universities, U.S. brand name companies and other foreign stakeholders can help nudge social attitudes in China over the longer term.

LARIC representatives noted that foreign buyers and investors have clout in a country that is anxious to attract foreign investment and expand trade links. Therefore, they say, multinational companies should be willing to speak out at the national or industry level in favor of worker rights and freedom of association, and at the very least, should not obstruct workers' drive for freedom of association. Chan said U.S. companies should also push for social welfare benefits to be made to migrant workers. One U.S. official said that U.S. companies invested in China have a good reputation locally because they pay their taxes and are generally seen as law-abiding. Therefore, he said, they're in a good position to press for better labor conditions and labor rights.

Some interviewees also suggested particular ideas for U.S. universities. One idea was that U.S. universities take advantage of the Chinese hunger for knowledge about how things are done in the West by helping to sponsor exchange programs that might bring local managers and bureaucrats to model U.S. factories or to meet with U.S. labor leaders. Another was that U.S. universities consider linkages with Hong Kong universities that have business ethic programs, with the aim of broadening the Hong Kong concept of business ethics to include labor standards.

LIST OF INTERVIEWEES

Adidas – Salomon

Duncan Scott

Head of Social and Environmental Compliance

Hong Kong

The American Chamber of Commerce in Hong Kong

Frank Martin

President

Asia Monitor Resource Center

Vivien W.H. Liu

Researcher

Hong Kong

China Labor Bulletin

Han Dongfang

Editor

Hong Kong

Hong Kong Christian Industrial Committee

Chan Ka Wai (Eli)

Associate Director

Horizon Research

Hillary Cheng
Manager
Guangzhou, China

Hong Kong Confederation of Trade Unions

Trini Leung
Executive Secretary

U.S. Consulate General – Hong Kong

Virginia Palmer
Deputy Section Chief
Consul - Political

U.S. Consulate General – Hong Kong

Geoffrey Pyatt
Economic Officer

U.S. Consulate General – Guangzhou

Jock Whittlesey
Economic Officer
Guangzhou, China

EL SALVADOR COUNTRY PROFILE

OVERVIEW OF ISSUES

The “maquila” sector in El Salvador, which accounts for 45.2 percent of the country’s total exports, has been under a great deal of scrutiny over the past several years. Labor rights campaigns and media stories have particularly focused on working conditions in the country’s export processing zones (EPZs). Partly as a result of this attention, companies, their business partners, and government officials have instigated noteworthy efforts to improve compliance practices in the EPZs. Still, certain concerns persist.

The most significant labor concerns in El Salvador, as identified by government officials, trade union leaders, human rights organizations, industry associations and the media, are:

- Unjust firing of workers, often without payment of legally entitled severance pay or bonuses
- Harsh disciplinary practices, particularly of factories with Korean management
- Forced, inadequately compensated overtime
- Pregnancy testing, discrimination against pregnant women
- Harassment, firing and blacklisting of union members
- Poor health and safety conditions, including restricted bathroom access
- Workers’ ignorance of their contractual and legal rights and Company Codes of Conduct

HUMAN RIGHTS AND ECONOMIC OVERVIEW

While human rights abuses in El Salvador have waned in the years since the 1992 peace accords, the “maquila” sector has been under a great deal of scrutiny over the past several years over reported labor rights abuses. Labor rights campaigns and media stories have particularly focused on working conditions in the country’s export processing zones (EPZs). Partly as a result of this attention, companies, their business partners and government officials have instigated noteworthy efforts to improve compliance practices in the EPZs. Still, certain concerns persist in both the human right and labor rights arenas.

El Salvador is continuing the transition to a peaceful society after 12 years of civil conflict. Peace talks begun in 1989 and mediated by the United Nations culminated in a peace accord that ended the civil war in 1992. The accord provided for the transformation of the unified guerilla movements’ military arm, the Farabundo Marti National Liberation Front (FMLN), into a legal political party now controlling one-third of the seats on the National Assembly. The armed forces have been reduced by 70 percent, and a civilian police service (PNC) was

created including former guerillas. Although politically related violence has significantly declined following the end of the civil war, Salvadoran security forces continue to commit human rights abuses. The PNC is licensed to use force and carry out arrests. The U.S. State Department reports a reduction in the number of human rights complaints and improved processes within the PNC, but also reports continued extrajudicial killings and excessive use of force, denial of due process, and the physical and psychological harassment of suspects in detention. Still, according to several public opinion polls, the PNC is broadly seen to be doing an adequate job of defending human rights.

Another result of the peace accords was the establishment of the office of the Ombudsman for the Defense of Human Rights (PDDH), created to advocate for citizens' rights. However, its investigative capacity is reported to be limited by resource constraints. In addition, there were continuing complaints of corruption from nongovernmental organizations (NGOs) and some legislators about the performance of Ombudsman Eduardo Penate Polanco.

Forty percent of El Salvador's workers are employed in the agricultural sector, with coffee and sugar as the primary export crops. The manufacturing, or "maquila" sector, employs 6.4 percent of the work force, is dominated by apparel manufacturing (mostly in export processing zones), and represents the main source of new jobs. In 1999, the rate of real economic growth was about 2 percent, and per capita gross domestic product was estimated to be \$2,024. The official unemployment rate averaged 7.5 to 8 percent during the year; however, the rate of underemployment (less than full-time work or total income below the minimum wage) was estimated at about 30 percent. About 45 percent of the population live below the poverty level.

It is estimated that 65,000 Salvadorans are employed in the maquila sector, up from 20,000 in 1992. The maquila sector accounts for 45.2 percent of the country's exports. The volume and value of exports from the country's export processing zones (EPZs) have grown from US \$60 million in 1990 to US \$1.3 billion in 1998. The growth can be attributed the expansion of established companies' operations in El Salvador rather than an increase in the number of companies establishing new business in El Salvador.

There are six privately owned EPZs in El Salvador where fifty-one companies operate, one-third of them American. Ninety-five percent of these companies assemble textile goods and apparel. In addition, 158 firms operated in "bonded areas," and enjoy the benefits afforded EPZs in the Free Zone Law. Many of these firms work as subcontractors to the larger firms associated with the EPZs. Traditionally, the compliance with labor and environmental laws in the bonded areas is reported to be substandard.

This increasing reliance on the maquila industry has instigated government efforts to encourage foreign investment in El Salvador. Recent improvements in the infrastructure, customs modernization, and projected reforms offering increased incentives through the Free Zone Law are all indicative of this commitment on the part of the government. The El Salvadoran Government has formed a committee called the Monitoring Committee to "understand the reality in the maquila, and offer proposals for improving the problems found in the maquilas." This committee is tasked with investigating workers' complaints, and improving relations between the workers and the factory management. In addition, the

Ministry of Labor had planned a series of visits specifically focused on the maquila industry to examine factory compliance with the labor law.

Other efforts have been undertaken by El Salvador's Apparel Industry Association (ASIC), which developed its own code of conduct in 1997, one of the first Central American industry associations to do so. Twenty-six of ASIC's 140 member companies have agreed to inspections against this code by KPMG. These inspections take place without notice.

Despite the growing number of workers in the industry, the growth of unionization has been slow. The maquila industry has opened the job market for women, who account for 85-90 percent of the workers employed in the apparel factories. Because this is their first entry into the job market, they are reportedly unwilling to risk losing their jobs by engaging in union activities. In addition, companies have put forth efforts, both legal and illegal, to discourage the formation of unions. Some have offered additional benefits, organized employee organizations sanctioned by plant management, and offered credit to workers to increase their satisfaction and stem their desire to form unions. Others are alleged to have illegally discriminated against or fired workers attempting to form unions, or to blatantly discourage freedom of association.

WORKING CONDITIONS IN THE APPAREL INDUSTRY

The most significant labor concerns in El Salvador, as identified by government officials, trade union leaders, human rights organizations, industry associations and the media are:

A. UNJUST FIRINGS; NON-PAYMENT OF SEVERANCE PAY/BONUSES

Dismissal of workers without just cause and without payment of legally entitled severance pay and bonuses is a common complaint among Salvadoran maquila workers. According to local unions and women's groups, workers have been fired for leaving their posts to seek medical help for themselves or for their children, for failing to meet production expectations, or for carrying pamphlets explaining their rights, among other reasons. Often these dismissed workers do not receive their legally entitled severance pay or bonuses. Some workers have allegedly been forced to sign contracts (called "renuncios") that disqualify them from receiving bonuses and severance pay. It is reported that some workers are dismissed immediately before the legally required Christmas bonus ("aguinaldo") is due. In some cases, workers are re-hired in January. Through this practice, factories apparently avoid having to pay large severance payments, which accrue according to seniority. Another reported practice is hiring workers on successive short-term contracts, so that employers do not have to pay government-mandated bonuses.

B. DISCIPLINARY PRACTICES / DENIAL OF FREEDOM OF MOVEMENT

Inappropriate disciplinary practices occur in several Salvadoran facilities, according to workers and advocacy groups. One of the most widely reported abuses in the factories is the refusal of management to allow workers to leave the premises to seek medical attention or to care for sick family members. Three to four workers have allegedly died as a

result of medical neglect. Additionally, workers feel pressure from supervisors not to leave their seats to go to the bathroom or get water because it will decrease their time to meet the high quotas they are expected to fulfill.

Additional reports of inappropriate disciplinary action include: verbal and physical abuse; sexual abuse or bodily searches; and coercion of some workers into serving as “informants,” charged with reporting on colleagues who may be union members/sympathizers or who commit other misdeeds.

Parties widely agreed that abuse occurs most frequently in those factories managed by foreigners, particularly of Korean or Taiwanese management. While ASIC is making efforts to ameliorate the situation, it is clear that the differences in culture and language only exacerbate the problems by impeding communication between workers and management.

B. COERCED, INADEQUATELY COMPENSATED OVERTIME

Forced overtime is cited by many sources as a significant problem in El Salvador.

Workers report being coerced into staying extra hours to meet their production goals, or “metas,” which some claim are set deliberately higher than can be reasonably accomplished in an eight hour day. On some occasions, supervisors and other workers exert pressure to work overtime to be sure the production line stays together as it seeks to meet production targets. Though the legal workday is eight hours, some factories allegedly add on an extra hour, and begin to count overtime only after hour nine. Overtime is not always paid at legal rates, and is sometimes not paid at all.

C. HARASSMENT OF UNION MEMBERS/ACTIVISTS

Much of the criticism over multinational corporations’ sourcing operations in El Salvador has centered on unionization. Only 1 percent of the apparel sector is currently unionized, and many claim this is a result of employers’ efforts to stem any attempts at unionization. In the wake of El Salvador’s civil war, employers and unions have remained distrustful of one another. Union leaders and members are reportedly routinely harassed and fired, usually when unions are in the formation stage. Laws protect union members from being fired without “just cause”; unions must first have legal status. Workers also report that blacklists of union activists continue to be circulated around the maquila zones, effectively preventing them from getting jobs in other factories. The country’s self-proclaimed independent trade movement, Feasies, alleged that factory owners share lists of workers known for engaging in union organizing efforts, and that lists were often drawn from government files. According to their reports, unions must furnish the Salvadoran labor ministry with lists of their members to register and receive protections under Salvadoran law. These lists are then shared with factory managers in order to verify that the workers are current employees. Feasies reported that during this registration period, workers are either fired or intimidated for union organizing efforts, and it asserted that the lists of workers are shared with other factory owners, making it difficult for those workers to gain employment elsewhere.

D. PREGNANCY TESTING/DISCRIMINATION

Factories commonly administer pregnancy tests for female job applicants as well as new female workers approaching the end of their training period, and often do not offer jobs to those who test positive. The practice of administering pregnancy tests to job applicants appears to be legal, and is conducted throughout El Salvador in all industries. The law protects women hired as full employees from being fired for becoming pregnant. However, the law does not appear to explicitly address the 30-day “trial” or “training” period. Despite corporate codes of conduct that prohibit business partners from administering pregnancy tests, the practice continues in many facilities.

E. HEALTH AND SAFETY

Poor health and safety conditions exist in many factories, particularly in bonded zones (as opposed to Export Processing Zones) where subcontracting takes place. Complaints include insufficient ventilation and lighting, inadequate and unsanitary bathrooms, and overcrowded conditions. Medical personnel are reportedly not always available for workers, instigating workers’ requests to leave the workplace to visit the Social Security clinics that are reportedly often denied. Workers also complain of severely restricted bathroom privileges, and non-potable water that causes headaches and is often contaminated with bugs.

F. WORKER IGNORANCE OF LABOR RIGHTS/CODES OF CONDUCT

Workers in export facilities are generally unaware of their rights under Salvadoran law, and ignorant of corporate codes of conduct This has led to workers’ misconceptions about how pay is calculated or benefits to which they are legally entitled. Because many workers are paid by a ‘piece rate’, it is difficult for them to calculate whether they are being adequately compensated for overtime rates according to the law. In many of the interviews with workers during the factory visit with PwC, it became clear that workers were unclear how to calculate their wage relative to the time they had worked.

Many workers are reportedly unaware of corporate codes of conduct in the factories. While they may recognize that they exist, or perhaps have even signed a copy of one, they are unable to describe their purpose or to recognize that the codes are meant to protect them.

G. LIST OF INTERVIEWEES

Asociacion Salvadorena de Industriales de Confeccion (ASIC) Apparel Industry Asociation

Licensiada Liz de Rivera
Executive Director

Human Rights Institute of the UCA University (IDHUCA)

Licensiado Dulce Amor

Independent Monitoring Group of El Salvador

Norma Molina
Group Monitor

**Ministerio de Trabajo – El Salvador
El Salvador's Labor Ministry**

Guillermo Aparicio
Unidad de Monitoreo (Monitoring Unit)

Lic. Jose Roberto Espinal Escobar
Asesor del Depacho

U.S. Embassy

Edward K. Sutow
Agregado Laboral (Labor Attache)

Centro de Intercambio y Solidaridad (CIS)

Leslie Schult
Director

Las Dignas

Nora Hernandez
226-1879, 226-0356

Feasies

Elmer Jiovinni Fuentes Flores
Responsable Maquila

Ormusa

Trinidad Mejia

MEXICO COUNTRY PROFILE

OVERVIEW OF ISSUES

In general, Mexico has a free and vibrant press, and the Mexican government largely respects human rights. It also has extensive labor rights outlined in its national labor laws that apply to workers in what appears to be a growing apparel sector.

Nonetheless, labor and human rights groups on both sides of the border raise five major concerns over conditions in apparel factories and general protections for workers' rights in Mexico:

- Local labor laws, while often very strong, are not adequately enforced.
- Factory workers are frequently harassed, intimidated or fired for attempting to organize independent unions.
- Use of pregnancy tests by factory owners to screen applicants or fire employees is widespread.
- The minimum wages set by the government and the more generous wages export factories pay in Mexico are inadequate and force workers' families to live at or below the poverty line.
- Health and safety standards in Mexican plants are generally not enforced, leading to ailments and injuries among workers and environmental degradation, especially in areas along Mexico's northern border where unprecedented industrial growth has not been met with complementary support structures or institutions.

The debate over factory conditions in Mexico, which reached a crescendo in the days leading to the signing and ratification of the North American Free Trade Agreement (Nafta), has included a wide range of groups from both sides of the border. Increasingly outsiders are seeking to improve labor and environmental standards by mounting campaigns to bolster enforcement of laws or to ask that U.S. companies adopt and monitor standards. Nonetheless, activists on both sides of the border stress that local, Mexican groups must take the lead in solving the problems. Traditionally, they say, labor reform has happened in Mexico when Mexicans are ready, not at the behest of outsiders, and Mexicans, therefore, need to play a central role in the solution.

HUMAN RIGHTS AND ECONOMIC OVERVIEW

In general, Mexico has a free and vibrant press, and the Mexican government largely respects human rights. Most human rights abuses reported in the press and by local NGOs in interviews with the IUI consultants revolved around politically motivated killings, abductions and torture and were isolated in several southern states, namely Chiapas, Guerrero and Oaxaca. Further abuses surrounded cases suspected of being related to narcotics trade.

Still, the Revolutionary Institutional Party's (*Partido Revolucionario Institucional*, PRI) longstanding rule, which led many analysts until recently to refer to Mexico as a *de facto* one-party state, has reportedly left a legacy of government corruption and favoritism based on

political affiliations that continue to restrict human rights. In relation to garment workers, local groups criticized the Mexican government for not doing more to give workers access to fair or prompt judicial remedies to conflicts with employers. Local groups also pointed to intimidation of union organizers and widespread discrimination against women as other areas of concern. Both issues are covered in subsequent sections of this profile.

However, President-elect Vicente Fox's and his National Action Party's (*Partido de Accion Nacional*, PAN) strong showing in national elections could indicate that Mexico and its government are on the road to reform. Fox's victory over the ruling PRI's Francisco Labastida Ochoa represents the first by an opposition presidential candidate in 71 years. Many feel that the fact that Fox won by a solid seven percentage points makes a strong statement about the average Mexican's sentiment toward the *status quo*.

In an opinion-editorial piece for *The New York Times*, Roberto Mangabeira Unger, a law professor at Harvard and Latin American political activist, said, "It is thrilling that Mexicans voted to take the government out of the hands of a mutual-protection racket of bureaucrats, politicians, big business and organized (but submissive) labor." In prognosticating about a Fox presidency, Unger says Mexico "may simply make itself more open to economic competition, more respectful of individual rights and more committed to the alleviation of extreme poverty." But he added that a Fox presidency holds the potential to forge far more sweeping changes. "Mexico, under President Fox, may begin to invent a more energetic democracy and a more people-friendly market than now exist in the United States or Europe."²⁶

Economy: The United States is Mexico's largest trading partner and the destination for the vast majority—88 percent in 1998—of Mexico's exports.²⁷ Mexico's proximity to the United States and its relatively abundant pool of cheap labor have long shaped U.S.-Mexican economic relations and the Mexican apparel industry. In 1965, following the end of the *Bracero* or Laborer Program, which helped bring Mexican workers into the United States as migrant farm workers, the U.S. and Mexican governments created the Border Industrialization Program, sometimes referred to as the *maquiladora* program. Today, maquiladoras operate by a set of rules that essentially will be superseded by Nafta by 2001.

The differences between maquiladora and non-maquiladora manufacturers in Mexico have already lessened substantially, as Nafta gradually has been implemented and trade liberalized. Under the current system, the Mexican government permits maquiladoras to import the component parts of their products to these factories duty-free, provided the companies then export the finished products. When maquiladora-made goods are imported into the United States, the importing company pays tariffs only on the "value added" in Mexico—not on the whole product.

Broadly speaking, under Nafta's terms maquiladoras will lose some of their special privileges—for example, the wholesale relief they now enjoy from import duties on

²⁶ Unger, Roberto Mangabeira. "In Mexico, A New Era and...a New Deal". *New York Times* (Section A; Page 13; Column 2; Editorial Desk; Final Edition). July 5, 2000.

²⁷ U.S. Department of Commerce, International Trade Commission. *Country Commercial Guides: Mexico FY2000*. Washington, D.C.

components. But they will also gain the same advantages that other companies receive under the pact—for example, freedom to sell products domestically in Mexico and general tariff relief on exports to the United States and Canada. Nafta also brings maquiladora operators opportunities, lending them an advantage over apparel producers from other countries. For example, Nafta allows Mexican apparel factories to tap domestic suppliers for textiles and other inputs, instead of U.S. sources, without having to pay a duty upon import into the United States.

It also enables factory owners to relocate production to other regions of the country, away from the border, where labor and other operating costs may be cheaper. Almost all of the groups the IUI consultants spoke with said this was already happening. Unfortunately, local NGO groups say, this complicates monitoring efforts, since most export factories previously lined the border region between the United States and Mexico, at least limiting geographic hurdles to reaching workers and plants.

With tariffs on a number of categories of apparel decreasing from 20-plus percent to nil in Nafta's wake, Mexican exports to the United States have grown considerably.²⁸ Total textile and apparel exports from Mexico to the United States increased 419 percent for the period 1993-1999. Mexican exports of men's and boy's woven apparel to the United States have shown the highest growth rates, increasing nearly 745 percent to \$84.5 million in 1999 compared to \$10 million in 1993. These products once faced a U.S. tariff of more than 21 percent in 1993, which was eliminated at the start of Nafta in 1994. Overall exports, led by the maquiladora industry, have remained the main engine of economic growth in Mexico in recent years, and could surpass \$131 billion in 1999.²⁹

Several business leaders, however, noted to the IUI consultants that export growth, at least in the apparel sector, was at risk, with competition between Mexico and other Latin American and Caribbean Basin countries—with cheaper labor costs—stiffening and China looming in the wings. “It is very hard for our enterprises to compete with those from countries like Honduras, Nicaragua or China, as their labor costs are considerably lower than ours,” Raymundo Winkler, Director General, Consejo Coordinador Empresarial (Coordinating Business Council), told the IUI consultants. Nonetheless, with faster and less expensive transportation options to the United States, Mexico jumped ahead of China last year to make it the largest apparel exporter to the United States, with \$8.8 billion in shipments in 1999—seven times the \$1.2 billion Mexico shipped to the United States in 1990.³⁰

WORKING CONDITIONS IN THE APPAREL INDUSTRY

A. GENERAL COMPLIANCE WITH LOCAL LAWS

²⁸ U.S. Department of Commerce, International Trade Commission. *Industry and Trade Summary: Apparel*. (Publication 3169). Washington, D.C. March 1999.

²⁹ Ibid.

³⁰ U.S. Department of Commerce, International Trade Commission, Office of Textiles and Apparel. “Textile and Apparel Trade Balance Report.” August 2000.

Given the litigious nature of U.S. society, Americans oftentimes are confounded by the dichotomies between written laws, regulations and standards and operational realities in Mexico. A passage from Alan Riding's book on Mexican culture and society, Distant Neighbors: A Portrait of the Mexicans, probably best explains it to the outsider: "Mexican officials find difficulty in admitting—above all to foreigners—that corruption is essential to the operation and survival of the political system.... Rigid laws have always been adopted [to appease various constituencies], but they were promulgated in an environment where they could not be applied."³¹

While extensive, strong labor laws exist in Mexico and government institutions appear to be reforming, a parallel system of interpretation and operating procedures continues to be the reality, at least for now, Luis Manuel Guaida Escontría of Guaida y Asociados, a local law firm, explained to the IUI consultants. The universities' challenge, he says, if they choose to enforce codes, "will not be in introducing standards alien to Mexico, but it will be getting factory owners to recognize and comply with them." This theme reverberated through interviews with a number of groups the IUI consultants spoke with on a wide range of issues, including sex discrimination, wages, working hours and the right to organize.

A representative from a Mexican business association told the IUI consultants, "There are no sweatshops here in Mexico; you should go to China." A Mexican government official interviewed by the IUI consultants echoed his sentiments, noting other countries had far worse labor rights track records. As in many other developing countries, part of the problem in Mexico may be the unwillingness—in part out of economic necessity—of businesspeople and government officials to acknowledge and resolve problems in the workplace. During questioning about factory conditions, many of the business representatives the IUI consultants spoke with in Mexico offered unsolicited complaints about mounting competition from other Latin American countries and China and the pressure to keep costs down.

Not surprisingly, labor and human rights groups in Mexico note that too often Mexican factory owners violate labor laws and that the Mexican government is complicit in these offences since labor inspectors at times accept bribes and turn a blind eye to offenses in the workplace. Without substantial consequences for such actions, violating laws or workplace standards becomes an economic necessity, Guaida explained to the IUI consultants, a way to maintain a business edge, especially in an industry such as apparel where margins are tight. As representatives from a labor research center, Cilas, told the IUI consultants, this is where U.S. companies and the universities can help. By requiring minimum standards through codes and monitoring programs, they said, U.S. organizations working with local groups can act as a surrogate to Mexican governmental institutions and improve workplace conditions.

B. THE RIGHT TO ORGANIZE: TRADE UNION INDEPENDENCE

The groups the IUI consultants spoke with say the following common practices pose barriers to union formation and lead to violations of workers' freedom of association and right to organize:

³¹ Riding, Alan. Distant Neighbors: A Portrait of the Mexicans. Vintage Books, a division of Random House. New York, N.Y. October 1989.

- Public union elections using a show of hands, not a secret ballot;
- Corruption in governmental labor offices, which sometimes:
 - block the formation of independent unions in lieu of company backed or “white” unions, or more docile pro-government (pro-PRI) unions; or
 - share lists of union organizers with factory managers, so that the managers can dismiss workers affiliated with the union; and
- Intimidation, firing or blacklisting of known union organizers.

Under the Mexican constitution and federal labor laws, workers have broad rights to form and join trade unions of their own choosing. No prior approval is needed to form unions, but they must have at least 20 employed members and register with the Federal Labor Secretariat or state labor boards in order to function legally and receive rights and protections under the law. Once formally recognized, management is compelled to negotiate with the union. Some 30 percent of all Mexican workers are unionized, and, in the formal sector, unionization may stand as high as 60 percent, according to government estimates.

Most unionized workers, however, belong to the Confederation of Mexican Workers (Confederacion de Trabajadores de Mexico, CTM) or other confederations associated with the PRI. For example, the Federal Employee Union Federation, the Revolutionary Worker and Peasant Confederation, and most of the separate national unions, smaller confederations, and federations in the Labor Congress also are allied with the PRI. Still other workers, at times without their consent or knowledge, belong to company or “white” unions, which have little real bargaining power with management.

The CTM unions have significant influence within the still ruling PRI, but many of the NGO groups the IUI consultants interviewed argue this influence does not translate into improved working conditions and broader rights for workers. Rather, local NGOs say, as a quid pro quo for their insider status, union leaders have worked hard to keep their rank and file members relatively quiescent. They are so effective, local NGOs attest, that CTM affiliates are not really unions by traditional definitions in that they do not represent workers’ best interests.

Workers’ efforts to form independent unions typically founder over the ostensibly pro forma step of registering unions with the government, according to the local NGOs interviewed. Mexico’s conciliation and arbitration boards, which are charged with carrying out this registration procedure, often find some technical ground on which to deny a new union’s petition for registration, local groups say, by saying a union did not file the proper number of copies of documents, for example. The U.S. State Department says that, while “registration requirements are not onerous,” the federal and state governments “occasionally withheld or delayed registration of unions hostile to government policies, influential employers, or established unions.”³² Moreover, since unions must file on record their membership and the employment status of members is verified by local labor boards, it is easy for factory owners to find out which employees are part of an organizing effort. Luján of FAT told the IUI consultants that workers attempting to form independent unions are often harassed or fired

³² U.S. Department of State, *1999 Country Reports on Human Rights Practices*. Washington, D.C., Feb. 25, 2000.

for their union organizing efforts during this registration period. This practice is the subject of a number of campaigns currently being waged by FAT.

Like the Federal Labor Board, the state labor boards are tripartite and include representatives from labor unions; however, those representatives have traditionally been members of CTM affiliates. The executive director of The Authentic Workers' Front (FAT), Berta Luján, told the IUI consultants that CTM affiliates dominate the state labor boards and work vigorously to dissuade their counterparts on the those boards from recognizing rival unions. In other cases, Luján says, factory owners try to register so-called white unions, ones that only exist on paper. U.S. State Department findings back this assertion. The U.S. government says that Mexico's Federal Labor Secretariat and the state boards "registered unions that turned out to be run by extortionists or labor racketeers falsely claiming to represent workers."³³

When conflicts over representation arise, elections are held and are traditionally an open affair in Mexico, and rarely are conducted by secret ballot. Workers often declare their votes openly in full view of coworkers, union leaders and management, unless the parties agree to a secret ballot election. While the prevailing practice, open, public elections are not mandated by Mexican laws or regulations. Local groups says workers are often reluctant to cast votes for a union opposing management in front of factory managers, since, if the union loses the vote, workers may face reprisals.

In addition, once a union is registered and recognized by the government, it is very difficult for another union to supercede its role in representing workers in a factory. In fact, the ILO's Committee of Experts has found that certain restrictions in Mexico's federal labor law violate ILO Convention 87 on freedom of association, which the Mexican government has ratified. These restrictions allow only one union per jurisdiction, forbid union members to quit the union, and prohibit reelection of union officials. In 1996 Mexico's Supreme Court ruled that similar restrictions in the laws of two states were unconstitutional, but the decision applied only in those two specific instances. In May 1999, Mexico's Supreme Court extended this interpretation to unions representing federal workers.

Ensuring non-CTM affiliates represent workers in factories or promoting the formation of independent unions, however, may not be the answer. Tim Beaty, former Field Representative in Mexico for the AFL-CIO, cautions that the rush to create new, independent unions may hold its own pitfalls. "Look at the situation after the fall of the Berlin Wall and the rush in the East to form independent unions," he told the IUI consultants. "The new unions ended up bickering, and the union movement remains fragmented and ineffective." Beaty notes that just as the traditional one-party oriented politics has reformed in Mexico and institutions governing elections have become truly democratic, the large unions, with their large infrastructure, resources and relationships, could also reform into real democratic movements. He notes that it would not only lead to a much smoother transition in labor relations in Mexico, but also could make unions a much stronger player in political arenas in Mexico sooner.

³³ Ibid.

Beaty sees a long-term solution as one that must come from legal and institutional reforms. “Secret ballot elections, easier and more transparent registration processes, these are already recommendations that have come out of ILO and NAO³⁴ complaints,” he told the IUI consultants. “They just need to be implemented.” Beaty says Mexico’s new political environment may very well lend itself to this. However, he cautions, “Labor reforms in these areas do not just depend on the Fox administration, but also debate in Congress. Since no party controls either house now, there’s a lot of give and take.” Beaty says that while many in the United States have a negative impression of the CTM and its affiliates, the AFL-CIO will not abandon its pact with the confederation, although he says the AFL-CIO is happy to have relations with any trade unions in Mexico. “It is in our interest that the labor movement in Mexico is strengthened, not weakened,” Beaty told the IUI consultants. “Reform happens in many ways.”

C. DISCRIMINATION: PREGNANCY TESTING IN THE WORKPLACE

The debate surrounding workplace discrimination in Mexico centers on the use of pregnancy tests to screen applicants and to fire employees. While local constituencies continue to argue and litigate the constitutionality of permitting employers to use pregnancy tests to screen applicants, pregnancy testing in the workplace is for all practical purposes legal in Mexico, as is discriminating in hiring based on the tests.

Moreover, the practice is widespread. Hector de la Cueva, Director of Centro de Investigación Laboral y Asesoría Sindical (Labor Research Center and Union Advisor, Cilas) told the IUI consultants, pregnancy testing is “not isolated to the maquila sector. Female workers applying for jobs as secretaries in offices or as tellers in banks are tested; it goes on everywhere.” In fact, a quick glance at any Mexican daily’s help wanted section proves De la Cueva’s point. Help-wanted postings frequently specify the required age, sex, marital status and appearance of desired applicants for jobs.

If women are not subjected to a pregnancy test on-site, NGO groups told the IUI consultants, they are often required to furnish employers with a certification of their non-pregnancy from a licensed doctor. If tests are administered or required for employment, the groups say, it’s hard to tell to what end they are used. For example, if a worker who is pregnant is subsequently fired, factory owners can try to claim that the worker was discharged for reasons related to job performance. If a pregnant worker is not hired for a job, proving discrimination in the end is even murkier. Moreover, with tough employment prospects, many workers are unwilling to do anything that might undermine their chances of getting a job. In addition, many workers simply do not know their rights or how to dispute violations of them.

Human Rights Watch has released several reports that document the widespread use of pregnancy tests, cited by many of the groups interviewed by the IUI consultants. The reports found that many women are required to undergo pregnancy testing and answer questions about their pregnancy status, menstrual cycles, use of contraception, sexual activity or marital status. The reports also found that women who became pregnant soon after

³⁴ NAO = National Administrative Office. Each signatory to Nafta maintains a National Administrative Office, which handles complaints filed by workers and local groups alleging violations of local labor laws.

being hired risked mistreatment and forced resignation. In some extreme cases, Human Rights Watch said, female employees were asked to show their used sanitary napkins to verify non-pregnancy before granting the workers permanent contracts.³⁵

Joaquín Blanes Casas, Director General of Federal Labor Inspection, told the IUI consultants that Human Rights Watch's findings were bogus. He claimed his own department's investigations of a larger sample of factories conducted after the release of Human Rights Watch's first report found no instances of discrimination. He further noted that Mexico's National Administrative Office formed the Alliance for Equality in 1995. The program aims to improve access to employment opportunities, protect labor rights, create better working conditions, and increase employment and training opportunities for women.

Even if a woman decides to file a complaint, local groups say Mexico's judicial system often proves too difficult for women to navigate. Women may submit claims alleging they were fired or not re-hired due to pregnancy status or were not paid mandatory benefits through:

- The federal and local conciliation and arbitration boards, which handle most individual and collective disputes between labor and management;
- The General Directorate of Federal Labor Inspection, which is in charge of workplace inspections; or
- The Office for the Defense of Labor, which advises workers and trade unions on matters related to labor standards and represents them to any necessary authority and proposes solutions to disputes and issues reports of the results.

However, none of these institutions hears cases on sex discrimination in the hiring process.

The use of tests has been the source of much controversy in recent years, as activists on both sides of the border have been calling on the Mexican government to strengthen its laws and enforcement in this area. As part of their campaign, a number of groups filed an official complaint in May 1997 with the U.S. National Administrative Office under the labor rights side agreement of Nafta. The filers, Human Rights Watch, the International Labor Rights Fund and Mexico-based National Association of Democratic Lawyers, alleged that Mexico was in violation of the Nafta labor rights side agreement. The groups argued that because Mexico failed to stop mandatory employment-related pregnancy testing, it was in violation of its anti-discrimination labor law. Petitioners also alleged that Mexico denied victims of pregnancy testing access to impartial tribunals in which sex discrimination cases could be resolved.

In response to the complaint filed by the labor and human rights groups, Mexico argued that pre-employment pregnancy screening does not violate Mexican law and that its labor tribunals are barred from hearing complaints from people who are not employed, including those who seek employment but have not been hired.

The U.S. Department of Labor examined the subject in response to the complaint and issued a report on Jan. 12, 1998. The report found that Mexico's constitution and federal

³⁵ Human Rights Watch. "No Guarantees: Sex Discrimination in Mexico's Maquiladora Sector." (B806). New York, N.Y., August 1996. / Human Rights Watch. "A Job or Your Rights: Continued Sex Discrimination in Mexico's Maquiladora Sector." Volume 10, No. 1 (B). New York, N.Y., December 1998.

labor code prohibit discrimination based on gender and that post-employment mistreatment and termination of pregnant workers constituted sex discrimination in violation of Mexico's laws. To the petitioners' consternation, the U.S. government did not take a firm position on whether pre-employment pregnancy screening violated Mexico's sex discrimination laws. The petitioners also said that the report did not address the issue of whether job seekers should have access to labor tribunals. The report called for ministerial consultations between the U.S. secretary of labor and the Mexican minister of labor and social welfare to clarify Mexican law.

The NGO groups the IUI consultants interviewed recommended that the universities and their licensees should:

- prohibit the use of and requirements for pregnancy tests in the workplace altogether;
- ban factory owners from asking women for information on their pregnancy status, marital status or sexual habits as a condition of employment;
- ensure there are safe jobs for pregnant women that do not diminish income prospects;
- ensure factory owners allow for maternity leave and pay for benefits, as required by local laws; and
- inspect subcontracting facilities to ensure they enforce the same workplace practices.

Mexico's new generation of leaders may be moving in that direction anyway. Earlier this year, Mexico City's first female mayor, Rosario Robles, signed an order to the city's penal code that would fine businesses that require pregnancy tests or fire an employee because she is pregnant. The new code also would require those who violate the anti-pregnancy discrimination code to serve from 100 hours of community service to three years in prison. In the most serious cases, a business can be shut down.

In addition, a few U.S. companies have taken the advice of local labor and human rights groups and have implemented policies prohibiting the use of tests. In March 1997, following an internal review of policies and procedures and consultations with various stakeholder groups, General Motors became one of the first U.S. companies to prohibit pregnancy testing and associated requirements in the workplace. Levi Strauss also prohibits its contractors from using pregnancy tests in the workplace and says it monitors vigorously to ensure compliance.

While not reported in the factory monitoring reports supplied to the IUI consultants, workers at factories engaged by the universities' licensees did mention that they were tested for pregnancy, and documentation of pregnancy tests was found in the workers' employment files.

D. WAGES AND BENEFITS

Mexico's federal labor law stipulates that minimum wage levels must be sufficient to meet the normal requirements of a head of a family and the obligatory educational requirements of his or her children. Federal laws also require a number of vacation, health and medical benefits. Despite these provisions, most labor and human rights groups in Mexico told the IUI consultants that it is difficult if not impossible for a head of a family to survive working

full time for the minimum wage, or even for higher wages paid in most factories. Local groups also cited the following common abuses by factory owners:

- Piece rate workers are often not paid required premiums based on the hours they work, and factory owners sometimes doctor time cards, require employees to punch out early, or punch cards on behalf of employees to avoid paying overtime wages.
- Workers being paid more than the minimum wage are often registered with Mexico's social security system as earning the minimum wage, so that the required premiums will be lower.
- Other workers see deductions in their paychecks, but are never registered with the social security system.

Mexico's federal labor laws require payment of a minimum daily—not hourly—wage. The government has a National Minimum Wage Commission, an agency comprised of entrepreneurial associations and government and union representatives, which sets three tiers of minimums by location. The commission reviews wages every year and bases increases on the official target of inflation and workers' overall productivity growth. Based on a projected 12 percent inflation rate for 1998, the commission raised wages in 1999 for the three geographic designations by 14 to 15 percent to:

- 37.90 pesos or approximately \$3.86 per day for area "A";
- 35.10 pesos or approximately \$3.57 per day for area "B"; and
- 32.70 pesos or approximately \$3.33 per day for area "C".³⁶

Most highly industrialized border towns fall under area "A"; however, with the implementation of Nafta and the end of special privileges for maquiladoras, more and more factories appear to be moving into localities designated as area "C", in order to cut costs.

Some minimums are higher for certain designated occupations, but the minimums cited above cover most factory line workers, including sewers. The National Minimum Wage Commission also determines area designations for localities, based largely on price levels. *Tiendas de raya*, or payment of wages in kind, once a widespread practice in Mexico, has been outlawed in lieu of paying the minimum wage. Wages must be paid directly to workers in legal tender. Federal laws also set standards for the frequency of payment of wages, and factory line workers must be paid once a week.

According to the Mexican government officials the IUI consultants spoke with, only approximately 15 percent of Mexico City's population earn the minimum wage, and most factory workers throughout the country earn twice to three times this minimum. Nonetheless, critics of the government's wage policies point out that the National Minimum Wage Commission is always one step behind current trends. Members of Cilas told the IUI consultants that the inflation rate for 1999 was pegged at close to 18 percent, far higher than the 12 percent estimate for 1998, so minimum wages will not keep pace with inflation this year. This was especially problematic during the financial crises during the early 1990s, they say, when inflation was escalating year after year.

Mexico's federal labor law requires employers to pay for the following employee benefits:

³⁶ Currency conversions are based on the interbank exchange rate on July 1, 2000.

- profit sharing,
- a year-end bonus or *aguinaldo*,
- at least nine days of paid holidays,
- vacation days paid at premium rates,
- training and maternity leave,
- contributions to the national retirement savings system, and
- contributions to the federal workers housing fund.

Employers must register with the Mexican Social Security Institute (Instituto Mexicana de Seguridad Social, IMSS) and must make social security contributions, along with an employee contribution withheld from salary.

According to several NGO groups, workers were fired or kept on rotating contracts so factory owners can avoid paying statutory benefits and vacation time and associated premiums. The groups also noted that factory owners, at times, agree to pay workers more than the minimum wage, but register the worker with IMSS as earning the minimum wage, so that the required premiums will be lower. Other factory owners take deductions from employees' paychecks, the groups say, but never register workers with or turn the deductions over to IMSS. Workers do not find out they are not registered until they are denied access to health care and other benefits from IMSS. Under federal labor laws, employees are entitled to request their registration information from IMSS and to communicate to IMSS any changes in their salary. In monitoring, some of the groups thought it would be a good idea not only to check factory records, but also to see if factory owners were indeed making the proper payments to IMSS.

While many codes of conduct center on ensuring government-mandated minimum wages are paid, a number of NGOs, the Coalition for Justice in the Maquiladoras (CJM) being the most vocal, advocate paying workers a "living wage." The CJM, as well as a number of activists in the United States and Mexico, would like companies to make regular assessments of workers' purchasing power to ensure wages enable workers to meet basic needs, have some discretionary income and save for the future.

Federal laws also permit factories to pay by piece rate or commission, as long as those rates exceed minimum daily and overtime requirements. If employees work on a piece rate basis, they must be told the terms and conditions of their contract, including when they will have access to any necessary tools and machinery and quality requirements. Employers are not permitted to charge employees for any normal wear and tear on tools or other equipment. Local groups charge the factory owners often change the terms for piece rate bonuses and neglect to pay minimum wages, when taking requirements for overtime pay into account. The following section discusses this issue.

E. WORKING HOURS AND OVERTIME

The CJM told the IUI consultants workdays in Mexico's apparel factories are long by U.S. standards—generally nine to ten hours a day and sometimes more. Local groups note that workers agree to these hours either under duress or simply to make enough wages to meet basic needs. Several of the NGO groups said that workers are willing to work long hours, since they are paid on a piece-rate basis and often must attain outrageous production goals in

order to secure bonuses, which vary from week to week, if not day to day. This forces workers—albeit not overtly—to work excessive hours, local groups say. Asking workers to clock out early, doctoring timecards or simply clocking in and out for workers, the groups say, are other ways factory owners attempt to avoid paying workers required wages and skirt laws governing working hours and overtime.

Mexico's federal labor law states that employers and employees set working hours by mutual agreement. Mexican labor law groups hours of work into three classifications:

- Day work, work performed between 6 a.m. and 8 p.m.;
- Night work, work completed between 8 p.m. and 6 a.m.; and
- Mixed work, work including both day and night work, provided that the period of night work is less than three and one-half night hours.

The maximum workday an employer can set without an employee's consent is eight hours of day work, seven hours of night work or seven and one-half hours of mixed work. The maximum workweek an employer can set is six days. If an employee works a full workday, as outlined by the maximum hours stipulated above, the worker is entitled to a rest period of at least half an hour during the workday. Workers must be allowed to leave the workplace during the rest period, otherwise it is not considered to be a legal rest period by the Mexican government.

An employer may extend the workday without consent from workers in an emergency. The Mexican government defines an emergency as any circumstance that places the lives of workers, the employer, or the solvency of the business in imminent danger. The workday may only be extended long enough to avoid or prevent the danger cited by the employer.

Workers are permitted to work overtime, up to nine hours a week, not to exceed three hours a day or three times a week, putting the maximum workweek at 57 hours per week, three hours short of the 60 hour limit set by many university codes. Any work performed during this time must be paid at a 100 percent premium. If an employee works more than nine hours of overtime in the course of a week, the employee must be paid at a 200 percent premium rate. Overtime hours in excess of nine hours can only occur in extraordinary, emergency circumstances, although most agricultural workers are exempt from these rules and regulations.

Workers are also entitled to at least one rest day, preferably on Sunday. If an employer requires an employee to work on Sunday, the employer is required to pay the employee at a 25 percent premium. Workers also receive a full day's pay for every six days they work. In addition, any employees who work on a national holiday are to receive double pay. Mexico's federal labor laws sets out the following days as national holidays: January 1, February 5, March 21, May 1, September 16, November 20, December 25, the first day of December every six years (president's inauguration) and any election days.

After a year of service, Mexico's federal labor law dictates that workers are entitled to six vacation days. The minimum number of vacation days increases by two each year for the first four years of service up to 12 days and then two days for each additional five years of service. Workers who are terminated or leave their job before taking their full vacation time are entitled to payment for vacation time proportional to the amount of time they worked.

In an uninterrupted work year, a worker must take a least six days vacation time and cannot be paid in lieu of vacation time. Employers are required to give workers time to take vacation within six months following the date the worker accrued the vacation time. Part-time and temporary workers also are entitled to vacation time and payment for time accrued proportional to their tenure. Employers are to pay for vacation time at a 25 percent premium.

F. HEALTH AND SAFETY

Many jobs in apparel factories involve repetitive tasks performed at high speed and can result in carpal tunnel syndrome and other ergonomic injuries, according to local NGO groups. Cloth dust and chemicals used in spot removers and other processes, local groups allege, are also responsible for a host of health problems, including asthma, conjunctivitis, bronchitis, brown lung and gastro-intestinal disorders. Local groups say that companies not only deny responsibility for these ailments, but also that they commonly dismiss employees if job-related ailments or injuries interfere with their productivity.

Mexico's federal labor law requires employers to observe occupational safety and health regulations, issued by Mexico's Ministry of Labor and Social Welfare, and to pay contributions to IMSS that vary according to their workplace health and safety ratings. The Federal Regulation for Occupational Safety, Sanitation and the Environment, promulgated by Mexico's Ministry of Labor and Social Welfare in 1997, lays out regulations for occupational health and safety. The new set of regulations were formed as part of the Mexican government's Program for Employment, Training and Defense of Labor Rights and aimed to modernize and simplify the regulatory framework for occupational health and safety rules.

Mexico's federal labor law also requires the formation of joint management and labor committees, which further set and refine standards and are responsible for workplace enforcement in plants and offices. Employers are required to form these committees, and employees are supposed to be entitled to democratically elect representatives to the committees. The committees are supposed to meet at least monthly to consider workplace needs and file copies of their minutes with federal labor inspectors. However, local groups say factories rarely form these groups, deterring workers from voicing concerns about health and safety issues.

Individual employees and unions may also file complaints directly with labor inspectors or health and safety officials from the Federal Labor Secretariat. If workers find themselves in a hazardous situation threatening their health, they may remove themselves from the workplace without jeopardizing their employment, according to Mexico's federal labor law. In addition to checking conditions, federal inspectors are supposed to train supervisors and workers on occupational health and safety matters; however, local NGO groups say this rarely happens.

Members of Cilas told the IUI consultants that factory managers many times pay off government inspectors to overlook violations of health, labor and environmental regulations. Local groups also note that penalties for violations are often low, so there isn't much

incentive for employers to rectify persistent problems, especially when government inspections happen infrequently.

Members of the CJM agree. The group says that ensuring that factories comply with local laws is most of the battle. As stated in their “Maquiladora Standards of Conduct,” members of the CJM recommend that universities or their licensees ensure factory operators:

- Disclose to employees, employee representatives and the public the identity of all chemicals used or stored in the workplace;
- Provide employees with a written explanation of any risks associated with any chemicals they come in contact with;
- Use chemicals that are the safest and least toxic for employees and the environment;
- Design workplace procedures and use equipment that limit risks of injuries;
- Establish worker-management health and safety commissions, as required by law, and complete monthly plant inspections and recommendations for improving safety;
- Provide employees with health and safety training using qualified instructors;
- Provide adequate ventilation, appropriate protective equipment and clothing;
- Maintain adequate fire safety equipment and train workers in the use of the equipment;
- Arrange health and safety inspections by qualified outside consultants;
- Provide fair compensation packages for workers who suffer occupational injuries or illnesses; and
- Provide all employees and their representatives with access to medical records and any related employment questionnaires, results from medical examinations or lab tests, and records pertaining to workplace injuries.

G. CHILD LABOR

The non-governmental organizations the consultants spoke with said most factory workers range in age from 18 to 30 years old, and child labor, therefore, is not a problem in most facilities, with one caveat. The groups said that child labor is a problem in small shops producing apparel in Mexico, but that these shops were likely to be working on orders for local retailers, not export contracts. Through subcontracting arrangements, however, some of the organizations believed that the universities’ licensees could be indirectly engaging smaller shops that employ child labor for simple, labor-intensive work, such as washing, cutting, embroidery or stitching. Those organizations recommend that the universities and their licensees take extra care to ensure that subcontracting relationships do not exist, and, if they do, follow up with visits to subcontracting facilities. The groups emphasized that outsourcing responsibility for inspecting subcontracting facilities to the factories themselves, as many U.S. companies do, is not adequate.

Mexico’s federal labor law sets the minimum legal work age at 14 years, in line with the ILO’s core child labor convention (No. 138), although Mexico is not a signatory. Those between the ages of 14 and 15 may work, but only six hours a day with no night or hazardous work. In addition, the Mexican government increased the number of years of compulsory schooling from six to nine in 1992 and made parents legally liable for their children’s attendance, in a move to improve laborers’ skills. According to the Mexican government, this keeps most children in school through age 14.

To encourage compliance with the 1992 mandate, the Mexican government offers scholarships to families in need. The program, called the Progresa, identifies poor families and provides them with cash assistance if they send their children to school and to the doctor for checkups and vaccines, to encourage poor families to take advantage of schools and clinics. A family with seven children receives approximately \$10 a month. The payment increases if the children attend school, with the maximum cash payment approximately \$63 a month, and the average payment approximately \$33 a month. The Progresa program makes higher payments to families with girls, makes checks payable to the mother, and requires family members to attend talks on nutrition and health.³⁷

LIST OF INTERVIEWEES

American Center for International Labor Solidarity, AFL-CIO

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Field Representative in México

The Authentic Workers' Front³⁸

Berta Lujan,

Executive Director

American Chamber of Commerce of Mexico

Gary L. Deaton

Director of International Trade

Centro de Reflexión y Acción Laboral (Center of Labor Studies and Action or Cereal)

Carlos Rodríguez and Manuel Padrón

Centro de Investigación Laboral y Asesoría Sindical (Labor Research Center and Union Advisor, CILAS)

Hector de la Cueva

Director

Coalición Pro Justicia en Las Maquiladoras (Coalition for Justice in the Maquiladoras)

Martha Ojeda

Executive Director

Sr. Susan Mika

Benedictine Sisters (affiliate)

³⁷ Information on the Progresa was gleaned from government pamphlets given to the IUI consultants by the Mexican government.

³⁸ (Frente Autentico del Trabajo, FAT) was a key founder and active participant in **Mexican Action Network Against Free Trade** (Red Mexicana de Acción Frente al Libre Comercio, RMALC), the coalition of more than 100 Mexican organizations which opposed Nafta. In addition to FAT (listed under unions below), The IUI consultants met with one other member of RMALC, the **Centro de Investigación Laboral y Asesoría Sindical** (Labor Research Center and Union Advisor, CILAS), which focuses on researching and reporting on labor abuses in México.

Consejo Coordinador Empresarial (Coordinating Business Council)

Raymundo Winkler

Director General

Facultad Latinoamericana de Ciencias Sociales (Latin American Faculty of Social Sciences, Flacso)

Guillermo Farfan Mendoza

Academic Director

Gabriella Bensusan

Guaida y Asociados

Lic. Luis Manuel Guaida Escontría

Organizacion Internacional del Trabajo (International Labor Organization or ILO)

Jean Maninat,

Director, Area office covering Cuba, Haiti and Mexico

Secretaria del Trabajo y Prevision Social (Secretary of Labor and Social Security)

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Lic. Joaquín Blanes Casas

Director General

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John A. Ritchie,

Labor Counselor

PAKISTAN COUNTRY PROFILE

OVERVIEW OF ISSUES

In an interview in advance of the IUI's field trip to Pakistan, Pharis J. Harvey, Executive Director of the International Labor Rights Fund, told the IUI consultants, "In a country where even the local NGOs (non-governmental organizations) are corrupt, it is difficult to get a handle on prevailing labor conditions." He added, "Getting groups to cooperate in research or monitoring efforts is even far more tricky." Harvey would know. He sits on the board of and works with Rugmark, an international foundation with the mission to eradicate child labor and support education programs for former child workers in the carpet industry in South Asia.

Indeed, the IUI consultants found that NGO groups lacked consensus on the effectiveness of the current programs to eradicate child labor, viewed by most local groups as Pakistan's most pressing labor problem. In fact, the child labor problem, well publicized in Pakistan and in the Western press, was so all-consuming that most local groups had little information on other types of workplace problems and on the apparel industry.

Despite the overwhelming focus on child labor and discord on evaluating various projects to eliminate the problem, the local groups agreed that the Pakistani labor situation posed a number of potential problems with respect to the implementation of international conventions and the universities' code. They included:

- Poorly trained labor inspectors and widespread corruption, local groups including some governmental officials said, made labor abuses commonplace and the need for intervention, in the form of codes and monitoring efforts or otherwise, needed.
- The few women working in apparel factories are often segregated from men in the factories, are many times given lower-paying jobs and do not receive training for advancement, according to a local training center for women.
- Due in part to a legacy of government repression and to lax enforcement of protections and exemptions from laws in export zones today, unions say workers' rights to organize are regularly violated, and unions' bargaining power is weak.
- Pakistani employers, at times, register with local authorities as several small businesses rather than a single one, local union groups say, so that their employment levels appear lower and they gain exemptions from local requirements for wages and benefits.
- Although no hard evidence was given, local groups believed it was possible the universities' licensees could be purchasing garments made by children, when factories, under pressure from seasonal deadlines, place work with smaller shops or with workers at home.

HUMAN RIGHTS AND ECONOMIC OVERVIEW

At a time when most countries are moving toward more democratic ideals and forms of government, Pakistan went from a semblance of democracy to military dictatorship. Its Constitution, National Assembly, Senate and provincial assemblies were suspended by former Army Chief of Staff General Pervez Musharraf, when he ousted Prime Minister Mian

Nawaz Sharif in a bloodless coup in October 1999. Musharraf has designated himself Chief Executive and has appointed a National Security Council, comprised of both military and civilian advisers as well as a civilian cabinet, to govern affairs of the country. Musharraf has left Pakistan's bureaucracy in place; however, he has his military commanders monitor it closely.

Surprisingly, in private off-the-record conversations with the IUI consultants, a wide range of interviewees, from union leaders to business people, found Musharraf's ascendancy to power and his reforms to be positive, needed steps for Pakistan. Most appeared happy with Musharraf's efforts to end corruption. He has established special courts and a National Accountability Bureau to deal with corruption cases, with broad powers to prosecute those suspected of defaulting on government loans or of other corrupt practices. Following a four-week grace period to repay outstanding loans owed to Pakistan's state-owned banks, amounting to some \$4 billion according to U.S. government estimates, Musharraf's government began arresting suspects in November 1999.³⁹

According to local groups and U.S. government reports, Pakistan continued to exhibit widespread human rights abuses, a situation that deteriorated considerably under the Sharif government and continues to be very poor today. Extrajudicial killings and the use of excessive force by police, poor prison conditions and restrictions on freedom of speech continued to be the norm. Pakistan's Constitution provides for freedom of speech and of the press, but places limits on ridicule of the Constitution, Islam, the armed forces and the judiciary, and journalists are said to exercise a degree of self-censorship. Still, Musharraf's government has not stopped press reports criticizing his government or taken any measures to control Pakistan's press.

Considered to be the country's most pressing human rights problem, significant numbers of women continue to be subject to violence, physical abuse and rape. Western press reports on the physical mutilation of women by suspicious husbands or so-called "honor crimes" in Pakistan have horrified the general public here. Born out of local tribal traditions, these violent crimes are common in Pakistan, as documented by local women's groups.⁴⁰ Islam, like most other religions, strongly disapproves of sex outside of marriage for both men and women; however, it does not condone these crimes, sometimes a point of confusion among the Western public. Musharraf launched a national campaign earlier this year to end the abuses, which at the very least sends a strong message that the government does not condone these crimes either.

Pakistan's trade unions continue to operate under a number of restrictive laws, and local groups say government officials continue to arrest union members for organizing activities, at times, threatening their families or informing employers so that they lose their jobs. These practices and others related to discrimination are discussed in subsequent sections of this report.

³⁹ U.S. Department of State, *1999 Country Reports on Human Rights Practices*. Washington, D.C., Feb. 25, 2000.

⁴⁰ Constable, Pamela. "In Pakistan, Women Pay the Price of 'Honor'; Maiming, Killing Accepted Response To Perceived Sins." *The Washington Post*. (A SECTION; Pg. A01). March 9, 2000.

Economy: Successive Pakistani regimes have sought to promote market-oriented economic reforms, including IMF structural adjustment programs, and these efforts have somewhat paid off, with real GDP growing 4.3 percent in 1997-98 and estimated to have grown 3.1 percent in 1998-99.⁴¹ Nonetheless, poverty remains a serious problem in Pakistan. Average per capita income there was only \$470 in 1999, and Pakistan ranks among the highest in income inequality according to the World Bank. Illiteracy rates, said to be highest among women, are pegged at 62 percent⁴²

The Pakistani government hopes manufacturing, one of the more consistent performers of the Pakistani economy in recent years will help improve income prospects for its people. According to the Federation of Pakistan Chambers of Commerce and Industry, the share of manufacturing in Pakistan's gross domestic product in 1998-99—the last year data were available—was around 18 percent, and manufacturing employed approximately 10 percent of the labor force. According to the federation, manufacturing's importance to the Pakistani economy is on the rise. The federation says the value added attributable to the manufacturing sector grew by 7 percent during 1997-98 compared with a growth rate of 1.2 percent during 1996-97. Forecasts for 1998-99 pegged growth at around 5.4 percent.

The United States is Pakistan's largest market for exports, accounting for 21.1 percent of its exports in 1997-98.⁴³ Apparel and textiles, the federation says, are the most important components of manufacturing industry and accounted for approximately 60 percent of Pakistan's exports in 1998-99, and exports of ready-made garments, knitwear being the largest segment, totaled \$671 million in 1997-98. Apparel production is concentrated in and around Karachi, and to a lesser extent, Lahore, in a number of highly fragmented small to medium-scale factories. Textile production is centered around Faisalabad, coined the "Manchester of Pakistan" by several local groups. The Pakistani government has proposed a series of measures to upgrade the garment sector, including modernization of facilities, and market research and sales promotion.

WORKING CONDITIONS IN THE APPAREL INDUSTRY

H. FREEDOM OF ASSOCIATION AND THE RIGHT TO ORGANIZE

Osama Tariq, Deputy General Secretary of the All Pakistan Federation of Trade Unions, told the IUI consultants, "Trade unions, once very powerful in Pakistan during the 1970s, are considerably weaker today." He says Pakistan's trade unions continue to operate under a number of laws that restrict their rights and hinder organizing efforts, and local groups say government officials continue to arrest union members for organizing activities, at times threatening their families or informing employers so that they lose their jobs.

According to Tariq's account, the trade union movement began gaining steam in Pakistan in the late 1960s and reached its height in 1977, as the result of the Zulfikar Ali Bhutto government's policies to liberalize regulations restricting union activity and growth in

⁴¹ U.S. Department of Commerce, International Trade Commission. *Country Commercial Guides: Pakistan FY2000*. Washington, D.C.

⁴² The World Bank Group. *World Development Indicators 2000*. Washington, D.C. April 2000.

⁴³ Ibid.

employment in Pakistan's manufacturing sector. The unions' success in recruiting members and leveraging their power, however, was met with a backlash. With the backing of industrialists, strikes and demonstrations were prohibited, and Pakistan remained under martial law from 1977 through the mid-1980s. During that time, new regulations limited the registration of unions to those able to demonstrate the support of 20 percent of a factory's workers, and workers were not allowed to belong to more than one union.

Today, approximately 8 percent of the industrial labor force and 3 percent of the total work force belong to trade unions. The 7,000-plus registered trade unions and 1,000-plus federations are mostly small and ineffectual, with many existing only on paper, according to local groups.⁴⁴ Tariq told the IUI consultants that statutory protections for worker organizing have improved, but are not enforced adequately. Given the government's history in cracking down on union activity, Khalil ur Rehman, Chairman of the All Pakistan Federation of Labour, said that many union leaders are afraid to challenge the government on a wide range of important workplace issues, including organizing rights, wages and health and safety matters.

Pakistan has ratified the International Labor Organization's two core conventions on freedom of association, the right to organize and collective bargaining (Nos. 87 and 98). Nonetheless, those rights are restricted in a number of areas, although parallel in some ways to practices found in the United States. Pakistan's Industrial Relations Ordinance of 1969 (IRO) gives industrial workers the right to form trade unions; however, it also states:

- Any strike conducted by workers who are not members of a legally registered union is illegal.
- The government has the authority to ban any strike that may cause "serious hardship to the community" or prejudice the national interest.
- The government may ban a strike that has continued for 30 days.
- The government may mandate conciliation proceedings and cooling off periods that can restrict strikes.
- Employers may not seek retribution against leaders of a legal strike, and violators may be imprisoned (but are more commonly fined, according to local unions).
- Leaders of illegal strikes are not protected under the law.

Still, the IRO prohibits employers from practicing antiunion discrimination, and private employers are required by law to reinstate workers fired for union activities.

These protections, however, do not apply to workers in Pakistan's export processing zones (EPZs), where a substantial portion of Pakistan's apparel production takes place. Workers in the zones are not permitted to bargain collectively or strike and are largely not protected against acts of interference from employers or anti-union discrimination. EPZs and other special industrial zones are excluded from the labor law under the Foreign Investors' Scheme, enacted in 1992. Another Pakistani federal law, the 1992 Finance Act, exempts industries that export more than 70 percent of their products from all labor legislation. Labor laws, however, apply in Pakistan's 72 industrial estates, although local labor unions say they offer little or no protection to workers in them.

⁴⁴ Statistics and commentary on the status of unions furnished from local Pakistani unions and the International Confederation of Free Trade Unions.

In addition, the Antiterrorism Ordinance of 1999 (ATO) also restricts workers' rights in these areas. It defines illegal strikes, go-slows, and lockouts and other forms of "civil commotion" as terrorist acts, punishable by a jail sentence from seven years to life, as well as fines. According to the ATO, distributing, publishing or pasting a handbill or creating graffiti constitute intent to create civil commotion and are also punishable by jail sentence under the law. According to the ILO, this ordinance prevented leafleting, posters, or even word-of-mouth notices of public meetings, including union meetings. While the ATO was amended in 1999 to eliminate references to handbills, graffiti, or the intent to create civil commotion, local unions say the act has severely undermined their efforts to expand membership ranks or take industrial action.

The Essential Services Maintenance Act of 1952 (ESMA), which covers state-administered services such as the government, utilities, the state-owned airline and ports, also curtails union activity. For example, in most cases it prohibits workers in a number of state and parastatal enterprises from organizing, striking and, in some cases, quitting. It also restricts collective bargaining. In cases in which the government prohibits collective bargaining, special wage boards decide wage levels, and the Pakistani National Industrial Relations Commission hears disputes.

Khalil ur Rehman, Chairman of the All Pakistan Federation of Labour, told the IUI consultants, "Pakistan lacks sufficient legal protections for workers dismissed for union activities or membership." Members of the union federations the IUI consultants spoke with in fact had a number of complaints in this area. They say that in Pakistan:

- Local authorities do not effectively enforce labor laws guaranteeing the right to organize and strike.
- Registration procedures for unions can take an inordinate amount of time, and, during that time, union organizers can be harassed or fired without legal recourse.
- Local authorities and the business community at times collaborate to repress workers' rights.
- Intimidation and violence are used routinely to prevent workers from organizing.
- Unions have to go through long and at times extremely cumbersome procedures in order to wage a legal strike.
- Pakistani labor courts are inefficient and allow cases and appeals to drag out unnecessarily for years.

Muhammad Aslam Wafa, President of the Pakistan Textile Garment Leather Workers Federation, told the IUI consultants that a number of employers in Pakistan register with local authorities as several small businesses rather than a single one, so that their employment levels appear lower and they gain exemptions from local laws.⁴⁵ Other complaints from local labor organizations included reports that armed security guards employed by factories—with at times the assistance of local authorities—disperse union meetings and demonstrations. They also say union organizers are often dismissed without cause and blacklisted. Finally, union representatives say subcontracting arrangements and

⁴⁵ This practice also pertains to violation of pay and benefits requirements. See the wages and benefits section below.

home work, which several groups claimed were on the rise, are hampering union efforts to organize workers.

The ILO has stated that Pakistan's current laws and practices violate the government's commitments under ILO Convention 87, which requires governments to protect workers' freedom of association and the right to organize. The ILO has asked that the government rescind its ban on union activity with respect to teachers and employees in the radio, television, railway, forestry, hospital and government industries and to review antiunion practices in the country.

The ILO has provided technical assistance at the government's request, and, in 1997, the Prime Minister and trade union representatives agreed to establish a committee to examine the labor laws and draft legislation to bring them into conformity with ILO conventions and the national Constitution. Louis Bono, Vice Consul and Third Secretary at the U.S. Embassy in Pakistan, confirmed for the IUI consultants that no concrete action has yet been taken by this committee. The United States revoked generalized system of preferences (GSP) trade benefits in 1996 for failure to make progress on these and other worker rights issues.

I. DISCRIMINATION

Western press reports on the physical mutilation of women by suspicious husbands or so-called honor crimes in Pakistan have horrified the general public in the West. Born out of local tribal traditions, these violent crimes are common in Pakistan, as documented by local women's groups.⁴⁶ Islam, like most other religions, strongly disapproves of sex outside of marriage for both men and women. Gen. Musharraf, Pakistan's military ruler, launched a national campaign earlier this year to end the abuses, which at the very least sends a strong message that these crimes are not condoned by the government either. In speaking with local groups, physical abuse of women is unheard of in the workplace; however, several other issues remain.

Pakistan has ratified ILO core convention No. 111 on discrimination. The convention calls for a national policy to eliminate discrimination in access to employment, training and working conditions on the grounds of race, color, sex, religion, political opinion, national extractions or social origin and to promote equality of opportunity and treatment. With respect to sex discrimination, Asma Hassan, Principal at the Pakistan Readymade Garment Technical Training Institute, told the IUI consultants that this convention is widely ignored.

Hassan explains that per local traditions, and in part linked to suspicions of infidelity, most Pakistani men want their wives to stay at home. Hence, unlike other countries where it is rare to see a man's face behind a sewing machine, she says, men dominate the ranks of sewers in apparel factories in Pakistan, although the number of women is slowly rising, especially in factories in around Karachi. She notes that the few women working in apparel factories are often segregated from the men in the factories, are often given lower-paying jobs and do not receive training for advancement.

⁴⁶ Constable, Pamela. "In Pakistan, Women Pay the Price of 'Honor'; Maiming, Killing Accepted Response To Perceived Sins." *The Washington Post*. (A SECTION; Pg. A01). March 9, 2000.

This is where Hassan's center comes in. By providing grants and loans and classes for women to train to work in factories not only as sewers, but also in other capacities, Hassan says her center is trying to extend economic opportunities to women, who were previously locked out of the formal economy. Hassan says that according to government estimates, only about 2 percent of the total female population in Pakistan are considered part of the labor force, compared with an overall participation rate of approximately 40 percent. Hassan says attitudes are changing, especially in around the more cosmopolitan Karachi, but slowly.

The Pakistan Readymade Garment Technical Training Institute runs special classes to train women in sewing and other facets of the apparel business. It also provides subsidies for classes to women in need.

J. HEALTH AND SAFETY

Local groups agree that provincial labor welfare departments are ineffective in enforcing worker protection laws. (See Compliance with Local Laws for more information.) Local labor groups say that if there is not a labor union in a factory, it is unlikely that health and safety regulations are being adequately enforced, and only larger facilities tend to be organized in Pakistan.

Pakistan's Factories Act of 1934 calls on manufacturing facilities to provide employees with a safe and healthy workplace, similar to the universities' code; however, it does not offer much in the way of details as to what exactly constitutes "safe and healthy" or a violation of this law. The Factories Act does not apply to most small industrial and commercial establishments, a matter of concern for licensees engaging small shops. Pakistan's provincial labor departments are charged with inspecting health and safety standards at factories, and provincial governments largely set workplace regulations on health and safety. The U.S. Department of State had the following disturbing assessment of their efforts to report:

"In general health and safety standards are poor. Although organized labor presses for improvements, the Government has done little and weakly enforces existing legal protection. Workers cannot remove themselves from dangerous working conditions without risking loss of employment."⁴⁷

The Pakistani government, however, at least appears to be showing some interest in improving conditions in this area. With help from the ILO, the Pakistani Employers Federation and the government organized training programs and seminars last year to promote greater awareness among workers and employers of health and safety issues. In addition, the Centre for the Improvement of Working Conditions & Environment, based in Lahore and run by the Punjab Provincial Government, was opened in 1998 to train labor inspectors and others to identify health and safety hazards. Saeed Ahmed Awan, director of the center, told the IUI consultants that his center is making good progress, but there was and would probably always be room for improvement. In defense of his entire department,

⁴⁷ U.S. Department of State, *1999 Country Reports on Human Rights Practices*. Washington, D.C., Feb. 25, 2000.

Naguibullah Malik, Secretary of Punjab province's labor department, told the IUI consultants, "Our inspectors are thorough in enforcing health and safety standards."

K. COMPLIANCE WITH LOCAL LAWS

Where protections exist for workers, local groups say they are not adequately enforced. Widespread corruption and a lack of resources and technical training continue to plague efforts to protect workers, according to the groups. Pakistan's provinces are charged with setting workplace standards and enforcing them and the few broad statutes outlined in national laws. Most groups the IUI consultants interviewed, including representatives from Pakistan's national government, raised serious questions about the effectiveness of the provinces in enforcing local labor regulations. The U.S. Department of State says, "The provinces have been ineffective in enforcing labor regulations, because of limited resources, corruption, and inadequate regulatory structures.... Employers and government officials admit privately that inspections are rarely thorough."⁴⁸

Najamuddin Majmi, Director General, Workers Education, Ministry of Labour and Manpower, Government of Pakistan, told the IUI consultants, "the provinces' efforts to inspect workplace conditions are far less than adequate." He adds that the national government can do little to help the situation, since it too has limited resources and is not charged with enforcement or inspection of workplace standards: "The federal government only sets broad policies with regard to labor; the provincial governments set regulations based on those policies and implement those standards."

According to his estimates, 227 inspectors out of approximately 400 nationwide focus solely on efforts to eradicate child labor, leaving few left to audit and enforce other workplace standards: "Implementation of the law is a big problem here. Employers are always trying to violate laws, labor inspectors are corrupt and poorly paid, making bribes an attractive means to supplement income." He notes that labor inspectors are among the lowest paid tier of workers for the Pakistani government, most receiving somewhere around 3,000 rupees a month, about \$55. Majmi adds that, "Inspectors are generalists, that is to say, not very technically minded, do not have a firm grasp of workplace regulations and receive limited support from their home offices." He says problems arise even when well-intentioned labor inspectors bring problems to factory managers. "If the employer protests," Majmi says, "labor inspectors find it difficult to argue, since they have no real technical expertise."

Moreover, the lack of inspectors is not compensated for by an efficient and fair judicial system, where victims can take up issues with employers. "The prosecution of employers is often difficult and penalties for violations are minimal," Khalil ur Rehman, Chairman of the All Pakistan Federation of Labor, told the IUI consultants.

Shengjie Li, Program Officer of the ILO's Area Office for Pakistan, told the IUI consultants that the ILO has organized orientation, support and training for government officials on labor inspection, including in assisting with the creation of the Center for the Improvement of Working Conditions & Environment, mentioned earlier. He says that while these efforts

⁴⁸ Ibid.

have been ongoing for several years and that the ILO has seen some improvements, problems persist. Li adds that what also needs to happen in Pakistan is achieving an understanding among employers that “labor productivity is directly linked to worker welfare.”

Anwarul Haque, Secretary General of The Federation of Pakistan Chambers of Commerce & Industry, told the IUI consultants that the government’s policies themselves are a big part of the problem in encouraging legal compliance. “Policies are inconsistent and the government not stable politically, so it is difficult for businesses first to realize what the regulations are and second to implement them, he said. Moreover, since the process for setting regulations is fairly decentralized, and in the hands of the provinces, Haque says, it is hard for businesses to get a handle on what is required in their locality.

L. WAGES AND BENEFITS

Local union groups say that some employers in Pakistan register with local authorities as several small businesses rather than a single one, so that their employment levels appear lower and they gain exemptions from local laws. In addition, Muhammad Aslam Wafa, President of the Pakistan Textile Garment Leather Workers Federation, told the IUI consultants that often factory owners hire workers on successive temporary contracts to avoid paying statutory benefits, such as health insurance and old age pensions. In addition, foreign business people managing operations in Pakistan that the IUI consultants spoke with said that Pakistan’s social security system is mismanaged and corrupt. They add that while the Pakistani government has made some token efforts to tighten up administration of the various welfare funds, the system is still inefficient and ineffective. They say that multinational employers provide far better coverage than the social security schemes, and that they must do so, since they cannot rely on the government to provide basic health services and insurance to their employees.

Indeed, many of Pakistan’s national laws limit requirements based on the number of workers an enterprise employs. For example, the national minimum wage for unskilled workers is approximately 1,976 rupees, or approximately \$37 per month; slightly higher rates apply for various types of skilled workers.⁴⁹ However, this rate applies only to industrial and commercial establishments employing 50 or more workers; it does not apply to agricultural workers, or to workers in the informal sector or smaller establishments.

Moreover, local groups found local protections inadequate. They say that the minimum wage, as well as prevailing industry wages for that matter, is woefully inadequate; they point to widespread poverty even among working families as evidence of this assertion.

M. CHILD LABOR

The broad consensus of the various groups the IUI consultants spoke with was that child labor is not a problem in the apparel industry. Nonetheless, it is important to note that

⁴⁹ For this report, the official interbank exchange rate of 53.4 Pakistani rupees to \$1 U.S. dollar was used for currency conversions.

university hospitals, through the purchase of surgical instruments, and sports programs, through the purchase of soccer balls, may be indirectly subsidizing cottage industries in Pakistan employing child labor. In a country where child labor is so prevalent, the groups, however, could not rule out the use of child labor in subcontracting arrangements or home work associated with apparel factories.

Pakistan's constitution prohibits children under 14 from working in factories, mines and other hazardous areas. Under the Employment of Children Act of 1991, no child is allowed to work overtime or at night. Nonetheless, child labor is a big problem in Pakistan. The U.S. State Department reports that children in juvenile detention facilities are required to work; so are those in the Karachi Central Jail, whether they are incarcerated for crimes they committed, detained with their parents or born in jail.⁵⁰ Still, many other children work alongside parents or other family members in the home, a practice that has plagued the soccer ball, carpet and surgical instrument industries.

In 1996, the Pakistani government released its first comprehensive child labor survey, conducted with the help of the ILO's International Program for the Elimination of Child Labor (ILO-IPEC). The report estimated that at that time:

- 3.3 million children between the ages of 5 and 14 (approximately 8 percent of that population group) are economically active;
- 67 percent worked in agriculture, forestry, hunting and fishing industries, 11 percent in manufacturing, 9 percent in wholesale and retail, 8 percent in social and personal services.
- 70 percent of working children are considered "unpaid family helpers."
- 73 percent of working children are male.

The report notes that when programs attempt to eliminate child labor in one industry, parents will move their children to another. The carpet, surgical instrument and soccer ball industries all employ children in significant numbers, according to the ILO-IPEC study.

Anwarul Haque, Secretary General of The Federation of Pakistan Chambers of Commerce & Industry, told the IUI consultants, "We understand that child labor is objectionable to the United States. We don't think if a son or a daughter after school or when school is out, if they help their parents work, that it is a problem." Haque adds that the average Pakistani doesn't see it as a crime, but as a necessary means to supplement a family's income. Attitudes in Pakistan, however, are changing, and the government and a wide range of groups in the country, including businesses, are working toward the eradication of child labor. Haque says his colleagues realize that if it is even perceived that Pakistan has a child labor problem, it will be difficult for Pakistani businesses to get export contracts and gain access to markets in industrialized countries.

A number of programs already in place may lend some advice and some important lessons on how to deal with child labor, if it is found. Acknowledging the potential to simply shift child labor problems from one industry to another, representatives from the carpet, soccer ball and surgical instruments industries are working with the ILO, Unicef, local groups and businesses to transfer children from jobs to school. Programs aimed at eliminating the child

⁵⁰ Ibid.

labor problem focus on monitoring production and developing rehabilitation centers to educate child laborers. In the soccer ball industry, programs also included the development of small stitching centers in individual villages in the Sialkot area so that manufacturers can transfer stitching work to unemployed adults unable—because of childcare responsibilities or other reasons—to commute to factories. A separate initiative, the Rugmark program, addresses the use of child labor in the carpet weaving industry.

While progress has been made, a number of the NGOs interviewed in Pakistan expressed some reservations about the programs, which they say can place poor families—women especially—in jeopardy. For example, the NGOs participating in the Sialkot Partnership, born out of what is known as the Atlanta Agreement, estimate that approximately 6,400 children out of a total of 7,000 have been removed from the soccer industry as a result of their program. Nonetheless, reduction in the work available at home and insufficient efforts to bring women laborers into social protection programs, the groups say, have created financial problems for the stitcher families. The groups are working on implementing a credit and saving program is designed to address this problem. Another assessment, made by Save the Children, raises another critical concern about the Sialkot program. The groups says some of the children, formerly stitching soccer balls, are now instead stitching gloves or making surgical instruments.

Zia-ul-Hague, Chairman of Rugmark Pakistan, told the IUI consultant that it was his opinion that many efforts to eradicate child labor to date were not successful, because of this transfer of the problem rather than resolution of it. He adds that while the ILO was attempting to work across industry sectors, the ILO and other groups working with it were not cooperating with other established initiatives in the country, including Rugmark's program in the carpet industry. Zia-ul-Hague also was critical of the ILO's approach at times, saying that the ILO programs were exclusionary, more concerned about bragging rights than results, and also not doing enough to transfer skills to local groups so that they can take over the monitoring. Zia-ul-Hague notes that Rugmark began operations in early 1996, well before the ILO began projects in the carpet and soccer ball industries.

Jacques van der Pols, Chief Technical Advisor of the ILO's project office in Sialkot, told the IUI consultants that the ILO has focussed on gathering credible groups together in a productive, transparent process. He believes that the frankness of the Save the Children progress reports, and the project partners' openness in dealing with press and other third parties, proves his point. "We realize that we have made a few mistakes along the way," he says, "but we're working to correct them and expand the project."

Van der Pols adds that it is the ILO's ultimate goal to transfer entirely responsibility for the Sialkot project on soccer balls and the associated monitoring to local groups. Van der Pols says the ILO is currently training several of the project partners in Sialkot for this very task and expects to end its participation in the project, at least on a daily basis, soon thereafter. To help mitigate drops in incomes of families in remote areas and the percentage of economically active women, Van der Pols says that the ILO has worked with the local project partners to create smaller stitching centers, for fewer than five stitchers, and to provide small-business loans to affected families.

All parties agree that balancing the costs for improved workplace conditions with the need to keep the manufacturers competitive with others worldwide, especially China, is important. For example, in the soccer ball project, mounting competition from machine-stitched balls from China is causing competitive pressures for some of the Sialkot producers that have somewhat been compounded by the added costs resulting from participating in initiatives to eliminate child labor and improve working conditions.

The local manufacturers participating in the Sialkot Partnership told the IUI consultants that overall they were happy with it and the progress made, although their margins were tightening and volumes decreasing under the new requirements. “When you’re talking about a top-quality ball, like a World Cup tournament edition ball that sells for \$100 or more, the additional costs are negligible.” Mian Usman Javed, Director Operations, Sublime Sports, told the IUI Consultants. “However, when you compare the added costs to a cheaper ball, that sells for maybe \$15, margins get far tighter.” He added that Adidas, Sublime’s principal customer, has been very supportive in this area, and has helped keep Sublime’s operations healthy.

Khawaja Zakauddin, Chief Executive of Export Promotion and Marketing at Capital Sports, another local producer, says that while his customers are pressuring him to cut prices, he has been unable to. To maintain profitability, Capital Sports has held prices at the same levels over the last several years; however, export sales for Capital Sports dropped from 1 million in 1998, the year of the last World Cup, to 400,000 in 1999. Zakauddin’s complaints are borne out by some recent statistics. According to Department of Commerce estimates, Pakistan’s share of the U.S. soccer ball imports dropped from around 65 percent in 1996 to about 45 percent in 1998.

ILO, Unicef and a number of local groups and representatives from the carpet, soccer ball and surgical instruments industries are working on several projects to eradicate child labor. These initiatives include the Sialkot Partnership discussed above.

ILO-IPEC funds a project named “Combating Abusive Child Labor” in Pakistan. The 22-month project includes three activities for the Directorate of Workers’ Education (DWE) to complete:

- Training of labor inspectors from provincial labor welfare departments, the government of Baluchistan, NWFP, Punjab and Sind.
- Sensitization and awareness of parliamentarians of the senate, national assembly and provincial assemblies, including local bodies at the grassroots level.
- Sensitization and awareness of the media and their involvement at national, provincial, regional and local levels through respective media institutions, organizations or agencies.

Labor inspectors were trained in techniques of effectively collecting and analyzing data, drawing conclusions, preparing working approaches according to individual situations, listening and observing, interviewing, and developing solutions and preparing reports.

The Rugmark Foundation, with locations in Germany, India, Nepal, Pakistan, Canada and the United States, recruits carpet producers and importers to make or sell carpets that are free of child labor, and encourages the producers to employ adults at the legal minimum

wage instead. By agreeing to adhere to strict guidelines for carpet production, and by permitting random Rugmark inspections of carpet looms, producers receive the right to put the Rugmark label on their carpets. The Rugmark label guarantees that children did not make the carpet and that a contribution has been made to educate former child carpet weavers. Rugmark is a global program under the umbrella of Rugmark International.

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| LIST OF INTERVIEWEES |
|-----------------------------|

Adidas-Salomon International Sourcing Ltd.

Javaid Akhtar

Manager

All Pakistan Federation of Labour

Khalil ur Rehman

Chairman

All Pakistan Federation of Trade Unions

Osama Tariq

Deputy General Secretary

Capital Sports Corp. (Pvt.) Ltd.

Khawaja Zakauddin

Chief Executive

Export Promotion and Marketing

Directorate of Labour Welfare

Saeed Ahmed Awan

Director

Centre for the Improvement of Working Conditions & Environment

Government of Punjab

Directorate of Workers Education

Ministry of Labour and Manpower

Government of Pakistan

Najamuddin Majmi

Director General

The Federation of Pakistan Chambers of Commerce & Industry

Anwarul Haque, Secretary General

Shahid Anwar, Senior Joint Secretary

Bilal Mulla, Member, Managing Committee

Federation House

Government of Punjab

Labour Department

Naguibullah Malik
Secretary
Lahore

International Labor Rights Fund

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Executive Director

Pakistan Readymade Garment Technical Training Institute

Asma Hassan
Principal

Pakistan Textile Garment Leather Workers Federation

Muhammad Aslam Wafa
President

Rugmark Pakistan

M. Zia-ul-Hague, Chairman
Neelofer Syed, Director

Ratra Trading Co. (Pvt.) Ltd.

M. Yunas Ratra
Managing Director

Spex Apparel Buying Services Inc.

Raza Baig

Sublime Sports

Mian Usman Javed
Director Operations

Save the Children

Shams-ud-din, Finance Officer
Azeem Francis, Research Officer
Pakistan Field Office

Sudhaar

Sajjad Ismail
Project Coordinator

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International Labour Organisation (ILO)

Shengjie Li
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**United Nations
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Jacques van der Pols,
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**U.S. Government
Embassy of the United States of America - Pakistan**

Louis L. Bono
Vice Consul / Third Secretary
Islamabad

SOUTH KOREA COUNTRY PROFILE

OVERVIEW OF ISSUES

The South Korean apparel industry has undergone vast changes since its prevalence as a leading industry in the country from 1960 to 1987. As South Korea has industrialized and modernized, many domestic apparel producers sought lower wages and moved their production to China, Southeast Asia and Central America, where the majority of sewing for Korean garments currently takes place. The apparel factories that remain in South Korea are quite small, with an average of 30 to 50 workers, and produce high-end apparel that requires short lead times and small production runs. Small factory sizes have impeded unionization in the apparel industry. The apparel sector has suffered from the recent economic crisis, forcing many factories to file for bankruptcy and dismiss employees. This has affected the stability of apparel jobs, resulting in more casualization of the work force.

The most significant labor concerns in South Korea, as identified by government officials, trade union leaders, human rights organizations and the media, are:

- Access to labor unions is limited in the apparel industry; and labor laws are followed less in non-unionized factories.
- Financial instability has caused apparel jobs to be less stable, increasing the numbers of atypical workers (temporary and informal) with fewer labor protections.
- Economic struggles have also led to more dismissals, with reports of workers not being paid severance pay when they lose their job.
- Sexual discrimination is prevalent, some of it reinforced by federal labor law and the trade union structures.
- Overtime hours exceeding legal limits, sometimes without adequate compensation
- Health and safety violations occur.
- Legally required insurance is not always paid for workers.
- Workers are unaware of corporate codes of conduct.

HUMAN RIGHTS AND ECONOMIC OVERVIEW

The Republic of Korea is governed by a directly elected president and a unicameral legislature selected by both direct and proportional voting. The constitution provides for an independent judiciary, and in recent years the judiciary has shown increasing independence; however, several recent scandals involving alleged illegal influence peddling and cronyism have damaged the image of prosecutors and judges.

While the South Korean government is generally considered respectful of the human rights of its citizens, there are some problem areas, including police abuse, instances of detaining and the possible torture of political prisoners, and the existence of the National Security Law (NSL). The government has expressed an intent to modify the law, but these revisions have not been implemented as of yet. Reports of violence against women and physical abuse continue, with reportedly insufficient legal redress for dealing with them. Women and ethnic minorities are reported to be subject to discrimination by society without legal protections to combat the discrimination. Recent labor law reforms have brought the country's labor laws closer to international standards.

It is estimated that there are 10,000 apparel factories employing 500,000 workers in Seoul, the largest area for apparel production in South Korea. Pusan is the next largest geographic area for apparel production. The average factory size is between 30 to 50 workers, and they are often referred to as "family factories." There are only five garment factories in Seoul that employ over 100 workers. Small factory sizes and instability in the work force caused by the economic crises has made it very difficult to unionize the South Korean apparel factories. The work force primarily consists of women over 50 years of age, with younger women and older men the next most likely to be employed in apparel jobs.

From the 1960s to 1987, the apparel industry was quite dominant in South Korea. As the country became more industrialized, wage increases and labor disputes were more common and many of the apparel companies moved their production to China, Southeast Asia and Central America. South Korea's high quality fabric allows it a competitive advantage based on quality compared with its Southeast Asian neighbors, while production is still less expensive than in Japan or Europe. Many companies produce the fabric and finish their products in South Korea, and take advantage of lower wages in other geographic locations to assemble the garment. It is estimated that 60 percent of the sewing for the apparel industry is conducted outside of South Korea, either in Southeast and South Asia, Central America or the Caribbean. If two-thirds of production activities occur in Korea, a garment can be labeled "Made in Korea." Eighty percent of apparel firms use subcontractors.

Knitwear is the most common category of apparel produced for export in South Korean factories. The factories specialize in small production runs that require very short lead times. This makes the university apparel market conducive to South Korean production because of frequent changes in market demand for a smaller, university market. Forty percent of the apparel manufactured in South Korea is for the domestic market, mostly consisting of shirts and pants. The domestic market is quite strong, with conglomerates (known as *Chaebol*) such as Daewoo, LG, Samsung and Hyundai also producing clothing domestically.

The economic crisis in 1997 had a significant impact on the apparel industry. As a result of the crisis, many apparel factories filed for bankruptcy and dismissed employees. Labor reform bills were passed in February of 1998 to legalize massive layoffs as well as to increase the legal workweek to five and a half days a week. The government stopped setting guidelines for wages in 1997 and allowed firms to freely coordinate pay raises, which resulted in a decrease of wages by 2.7 percent. More than 4,300 companies froze raises as a result of the crisis. The concept of "lifetime jobs," once common in South Korea, has become less common since the IMF crisis.

The South Korean government has proposed a series of additional changes to the labor law, which would improve labor conditions for workers. The proposals include extending maternity leave an additional 30 days to a total of 90 days time off paid by the government, reducing the number of workers in a factory required for child care centers, providing paid paternity leave of seven days, and extending the annual leave.

WORKING CONDITIONS IN THE APPAREL INDUSTRY

The most significant labor concerns in South Korea, as identified by government officials, trade union leaders, human rights organizations and the media, are:

A. ACCESS TO LABOR UNIONS IS LIMITED IN THE APPAREL INDUSTRY

Korean unions are based on an industrial union system, whereby each factory has to create its own union. Within this system, it is quite difficult for small-scale factories to support a union, as a limited number of workers have to pay all the dues for union expenses. Due to the small size of apparel factories (partly due to economics and partly reportedly due to management strategies) and legal limitations to cross-industry unions, very few apparel factories are unionized. The older age of the work force in the apparel industry also contributes to the lack of unionization, as senior workers seem to link unions with communism and are therefore unwilling to participate in union activities. Another obstacle to freedom of association in the workplace is the high female population, as Korean labor unions are male-dominated institutions and reportedly less interested in industries that are inhabited primarily by women workers. The increase in the number of atypical workers has also hurt unionization efforts, as temporary and part-time workers are difficult to organize.

Economic instability in Korea and threats of job loss have been a strong pressure against unionization drives and unions exercising their rights to collective bargaining. A number of groups in Korea are now discussing alternative union strategies, including creating temporary-worker unions, regional unions or industrial sector unions.

B. FINANCIAL INSTABILITY HAS CAUSED APPAREL JOBS TO BE LESS STABLE

There are generally three kinds of workers in the South Korean work force: regular, temporary and daily. Currently, 47 percent of the work force is categorized as “regular,” meaning employees have signed contracts that last more than a year. This number has decreased 6 percent since the economic crisis of 1997. This leaves over half of the work force in South Korea categorized as “atypical.” Atypical workers include temporary workers, with either no contracts or contracts of less than a year, part-time workers, or contract-based workers.

Particularly in the apparel industry, it was reported that temporary workers are employed by firms with fewer than five employees, or are assembling clothing out of their home. Not only does this exclude them from the protections of the federal labor law and pension privileges, but it also impedes proper monitoring of working conditions and wages and

excludes these workers from unionization opportunities. The casualization of the work force disproportionately affects women, as 70 percent of the women employed in the apparel sector are in firms with fewer than five employees.

C. WORKERS ARE NOT PAID SEVERANCE WHEN THEY LOSE THEIR JOB

An additional consequence of the economic crisis is an increase in the number of apparel factories that have filed for bankruptcy or have decreased their work force. This has resulted in a large number of dismissals, many without the legally required compensation. According to South Korean labor law, employees who have worked over a year at a facility are eligible for the equivalent of an average month's pay for each year served. Despite the decrease in labor unions as a result of the economic crisis, it is reported that the incidences of labor disputes over inadequate severance pay since the economic crisis have actually increased.

D. SEXUAL DISCRIMINATION EXISTS, SOME OF IT REINFORCED BY FEDERAL LABOR LAW AND TRADE UNION STRUCTURES

For women, lower pay and inferior benefits, fewer advancement and educational opportunities, a high incidence of sexual harassment, and structural impediments in male-dominated unions provide particular challenges in the workplace. It is estimated that women are paid 60 percent of what men are paid in the Korean work force. Only the "family head of household" is eligible for many of the benefits provided to workers, always the male unless a female can prove she is the unmarried sole financial provider for the household. The retirement age is lower for women, at 55, compared with 58 for men. It is reported that employers often fire or encourage the termination of women's positions when they get married or have children, though illegal by South Korean labor law. Women are typically provided with more supportive work roles initially, and are given fewer opportunities for advancement and promotion. Reportedly, the education prospects provided at the workplace are far inferior to those provided for men, consisting of the equivalent of "charm school" for women while men are taught computer or English language skills. An estimated 73 percent of women in the work force have experienced sexual harassment by their employer.

The union structure offers particular challenges for women, as most unions have historically had very few women leaders and members. In fact, the lack of unionization in the apparel sector is reportedly due in part to the large number of women employed in the sector, making it less of a priority for the male-dominated union leadership. Union meetings are often reportedly held after hours, when women's family duties exclude them from participating.

E. OVERTIME HOURS WORKED BEYOND LEGAL LIMITS, SOMETIMES WITHOUT ADEQUATE COMPENSATION

The legal maximum workweek is 56 hours in South Korea, but an average workweek at a typical apparel factory in South Korea is reportedly 60 hours, and is sometimes as high as 72 hours a week. Workers' representatives report that the federally required overtime premium of 150 percent is sometimes not paid for overtime hours worked.

The number one complaint of workers interviewed for this project was long working hours. Reportedly, as many as 80 percent of Koreans now believe the country should switch to a 40 hour work week and reduce maximum hours for industrial workers.

F. HEALTH AND SAFETY VIOLATIONS

In 1998, 51,514 workers were injured in industrial accidents. Korea just recently created a system of legal liability and compensation for industrial accident victims. However, it is still quite rare for workers to win compensation for long-term health impacts from workplace hazards.

Korea has far-reaching health and safety laws and regulations, which are in some cases stronger than equivalent U.S. laws. However, it was reported that many industrial employers fail to comply with these regulations. For instance, since 1995, Korea has required that all employers provide Material Safety Data Sheets for chemical hazards, but it is still quite rare to find these posted in Korean factories.

G. INSURANCE PAYMENTS ARE NOT ALWAYS PAID FOR WORKERS

There are four kinds of insurance required for all factory workers: medical insurance, national pension, employment insurance and industrial accident insurance. Many factory owners reportedly do not pay their portion (50 percent) of the medical insurance, which provides basic medical services for workers including an annual physical and pharmacy privileges. Management claims that women do not require such insurance as their husbands already provide these benefits through their places of employment.

H. WORKERS ARE UNAWARE OF CORPORATE CODES OF CONDUCT

Perhaps because of the size of factories, workers in South Korea do not seem cognizant of the corporate codes of conduct intended to provide them with assurances that conditions in their factories are being monitored for compliance with local labor, health and safety standards. Some NGOs and labor unions proposed that the codes are ineffective because they are not effectively monitored and there are no real sanctions for lack of compliance with the codes.

I. GARMENT MANUFACTURERS SOMETIMES REJECT DEMANDS FROM BUYERS

Because most companies make up only a small percentage of any one factory's production, it was reported that many Korean factories would turn away an order if it comes with too many costly demands. Several interviewees stated that many firms prefer to work for the domestic market in order to avoid complying with expensive production changes mandated by international buyers. Both industry and union representatives expressed serious doubts about the potential for codes of conduct to change production practices in Korea.

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| LIST OF INTERVIEWEES |
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Wonjin Institute of Occupational and Environmental Health

Jinjoo Chung, PhD

U.S. Embassy, Economic Affairs Division

Deanna Gentry

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THAILAND COUNTRY PROFILE

OVERVIEW OF ISSUES

The Thai government is trying to balance protection of worker rights with economic pressures caused by the Asian financial crisis. The government passed a new labor protection act in 1998, and Thai-based companies are generally struggling to meet its provisions. Thai-based companies remain under enormous pressure to reduce costs. This increases the potential for labor abuses to occur, including subcontracting, minimum wage violations, use of illegal migrant labor, and discrimination against union employees. Thailand has a thriving civil society, multi-party government, and strong press. However, security issues and discrimination concerns remain.

The most significant labor concerns in Thailand, as identified by government officials, trade union leaders, human rights organizations, and the media are:

- Discrimination, including firings, of union members
- Subcontracting production to factories that do not meet labor standards
- Excessive overtime hours worked, often without adequate compensation
- Inadequate payment of wages and benefits
- Substandard health and safety conditions
- Non-payment of legally mandated severance
- Workers' ignorance of their contractual and legal rights and company codes of conduct
- Employment and mistreatment of migrant workers
- Discrimination against women in the workplace

HUMAN RIGHTS AND ECONOMIC OVERVIEW

Since its transition from a military government in 1992, Thailand has experienced four democratic elections and transfers of power through electoral means, a shift from its previous history of military coups. Thailand's strong civil society, multi-party government and free press have served as indicators of the country's progress in human rights efforts. Still, security issues and discrimination issues remain.

In 1997, a constitution was enacted that includes protections against government corruption and increased transparency. While the influence of the armed forces has diminished since 1992, they still have a reputation for corruption, as do the police, judiciary and other branches of the government. The U.S. State Department reports that demands for bribes by

the police undermine the rule of law and enforcement. There have been reports of police officers killing suspects while attempting to apprehend them, along with government investigations (but not convictions) involving extrajudicial killings.

The constitution also contains provisions designed to defend the rights of women and handicapped persons, although these protections are slow to be enacted into law and enforced. Discrimination based on gender continues to be a serious problem. Prostitution, although illegal, flourishes, and Thailand is a source, transit, and destination for trafficking in women and children. There are approximately 200,000 women and children engaged in prostitution, according to NGO and government sources. There has been limited progress in integrating ethnic minorities into society. Only half of the estimated 500,000 ethnic hill tribe people are registered citizens, disqualifying them from protection of the law, participation in the political process, or accessing government benefits, including education and health care.

Thailand's economy has been improving since the July 1997 economic downturn, returning to a moderate economic growth of 4 percent in 1999. Annual per capita income decreased from \$3,000 in 1996 to \$2,000 in 1998. The government's efforts to close the gap between urban and rural living standards have met with only mixed success; 50 to 60 percent of the population is rural and agrarian. Government regulations generally provide protection for individual economic interests, including property rights. However, lack of transparency in bureaucratic decision-making and a gap between regulation and enforcement sometimes leads to uneven commercial treatment for some firms and institutions, and some areas of the government remain subject to corruption.

WORKING CONDITIONS IN THE APPAREL INDUSTRY

The most significant labor concerns in Thailand, as identified by government officials, trade union leaders, human rights organizations and the media, are:

DISCRIMINATION, INCLUDING FIRINGS, OF UNION MEMBERS

3 to 4 percent of the apparel sector in Thailand is unionized. According to Thai labor unions and NGOs, this low percentage can in part be explained by the discrimination against union members and leaders in the factories. It is reported that the federal labor law contains provisions that facilitate discrimination against union members. According to the law, a union can be formed with 10 workers signaling their intent to form a union to the Ministry of Labor. Within 120 days, the Ministry of Labor is obliged to inform the 10 founding members that they are a certified union. Until actual certification, it is legal under current law for employers to fire any employees who have sought to form a union. An additional obstacle to union formation is the legal provision that all union leaders must be full time employees. It is reported that, once factory managers are made aware of plans to form a union, the leaders of the effort are made part-time employees, thus nullifying the union. In addition, there are reports that the pay of those employees who have applied to form a union is decreased immediately after the filing of the intent to register.

One notable case of union discrimination occurred at the Phra Garment factory. In that case, a five-month lockout ended when the Prime Minister intervened under pressure from workers and the union. More recently, 30 union members and leaders at the factory, all women, were fired on the grounds that they walked out for two hours, thus disrupting production and causing damages to the company.

B. SUBCONTRACTING PRODUCTION

Due to the pressure of the Asian economic crisis, Thai manufacturers are subcontracting production to factories that do not meet labor standards, according to NGO and union representatives. The subcontracting is often directed at village cooperatives or urban sub-shops. It is particularly difficult to monitor the working conditions of these non-traditional work centers. In addition, home workers are less likely to be protected by the provisions of the federal labor law, and are more likely to be paid sub-standard wages and not receive legally required benefits. There are reports that child labor is being used in these informal settings as well. The organization Homenet indicated that home workers are only paid once they return finished pieces to a factory or some intermediary, so there is no one ensuring that they receive the minimum wage or other protections. Moreover, since the workers are either working for themselves or a very small shop, many of them are not protected under local laws, since laws governing small businesses give owners of small enterprises a lot of leeway in this area. Nonetheless, Homenet didn't believe home work or the village cooperatives were necessarily a bad thing, and the organization is working with these various individuals and small enterprises to help home workers to secure better terms on contracts, small business loans and access to basic social services, such as health care and education. By having individuals and small shops sign up as members, Homenet was attempting to leverage their more substantial collective clout to gain access to financial help and social services. Homenet also runs workshops to help home workers and cooperatives learn how to be better businesspeople and negotiate better terms for contracts with factories.

C. EXCESSIVE OVERTIME HOURS WORKED, OFTEN WITHOUT ADEQUATE COMPENSATION

Regular working hours, particularly at subcontractor locations, are often exceeded. NGOs and workers report extended working hours from 8 a.m. until 12 midnight during peak production periods. This is in contrast to primary contractor locations in and around Bangkok, where working hours have dropped considerably, due to an increase in subcontracting. The legal workweek has changed recently to allow a maximum of 36 hours of overtime, rather than 24 hours a week. Unions and NGOs explain that workers are often eager to work overtime hours, because the minimum wage they are paid is insufficient for them to pay their bills. It is reported that the federally obligatory overtime premium is often not paid for overtime hours worked, as well.

A. INADEQUATE PAYMENT OF WAGES AND BENEFITS

Non-payment and inadequate payment of minimum and overtime wages are concerns in apparel factories, according to government officials and activist groups. Workers are often reportedly underpaid for not meeting their quota. A recent study by Chulalongkorn University found that 60 percent of workers in Thailand are paid less than

the minimum wage. This is especially true in rural provinces. Employees in Bangkok-based factories are finding their normal bonuses for attendance, annual performance, annual leave, and transportation not being provided.

E. HEALTH AND SAFETY CONDITIONS

Thailand has one of the worst rates of work-related deaths in the world, at an estimated 25 per 1,000 workers, according to NGOs and academics. The rate of injury from industrial accidents has recently decreased slightly, but only from 3.6 to 3.4 percent of the total work force. There are no laws protecting workers' right to remove themselves from dangerous work conditions, and it was only the recently enacted 1998 Labor Protection Act that protected pregnant workers from working night shifts, overtime, or holiday hours. Evidence shows that this law is not always followed. In 1993, there was a highly publicized fire at the Kader Toy Factor near Bangkok, which resulted in 200 deaths. Other issues of non-compliance with respect to health and safety include high levels of dust in the factories and excessive temperatures. There are reports that neither workers nor inspectors are adequately trained on health and safety issues to ensure compliance with legal provisions.

F. SEVERANCE PAYMENTS

Few of the recently discharged workers have collected the government-mandated severance payments, according to NGOs and worker groups. Due to the economic crisis, large numbers of workers are being laid off. From January to March of the year 2000, it was estimated that 24,000 employees were laid off in Thai enterprises. According to Thai labor law, severance pay is due to any worker who has worked a minimum of 120 days. For each year worked after this initial period, the employee should receive not less than thirty days at the last wage rate or daily wage if a piece rate worker for each year worked. Factory owners, often with credit problems, claim they are not in a position to pay the legal severance to these workers.

While the federal labor court is meant to provide an opportunity for workers to re-claim the severance payments owed to them, the process is highly bureaucratic and costly for workers, who are often encouraged to accept settlements that are insufficient. Unions have staged a number of strikes in protest of the lack of severance payments, most recently for the employees of Master Toy, who were laid off without pay and are reportedly owed \$3.8 million baht.

G. WORKERS' IGNORANCE OF RIGHTS

Most workers are unaware of their rights or of manufacturers' codes of conduct, according to NGOs and worker groups. This leads to worker misconceptions about the amount of pay due to them as well as minimum wages and legal deductions. One union reported that while workers may be aware of codes, they see them as internal rules requiring them to work harder and take responsibility for keeping the factory cleaner. In this way, codes are seen as an extra burden, not as a full explanation of their rights.

H. EMPLOYMENT AND MISTREATMENT OF MIGRANT WORKERS AND ETHNIC MINORITIES

Unskilled migrant workers, illegal aliens and undocumented hill tribe members are not protected by Thai labor laws and are likely to be paid less than the minimum wage. A prime location is in Mae Sot province, near the Burmese border, where factories are allegedly using Burmese migrant labor and not paying minimum wages. Only half the estimated 500,000 ethnic hill tribe people are registered citizens. The remainder is unable to participate in the political process, or access government benefits, including education and health care. There was speculation among local labor groups that apparel production, even for export, was being subcontracted to illegal shops along the Burmese border in order to take advantage of lax labor laws in that area of the country and refugees in seek of work.

I. DISCRIMINATION AGAINST WOMEN IN THE WORKPLACE

There is a significant gap between men and women’s pay in the work force in Thailand, especially in the manufacturing sector. Although illegal, there have been incidences of pregnancy testing in the factories, and reports of pregnant women being excluded from hiring consideration initially based on the results, as well as being dismissed if they become pregnant during the initial probationary period. In addition, many job applications include questions about the employees’ menstrual cycles, in an effort to learn more about whether they are pregnant.

| |
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| LIST OF INTERVIEWEES |
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Phil Robertson

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Tom Seale

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UNITED STATES COUNTRY REPORT

EXECUTIVE SUMMARY

When most Americans think about sweatshops, they perhaps envision young women toiling in cramped, poorly ventilated factories in the outskirts of cities in far-off developing countries, not at home. Many Americans were surprised to learn that sweatshop conditions in the apparel industry can be found in the U.S. Many Americans first heard of the problem when, in August 1995, a U.S. Department of Labor-orchestrated raid closed down a clandestine garment factory in El Monte, a suburb of Los Angeles. The factory was ringed with barbed wire and held 72 Thai immigrants captive in crowded conditions. The immigrants were working as many as 17 hours a day, sleeping as many as eight to a bedroom and earning 70 cents an hour. The case symbolized for many a renewed awareness of poor working conditions in the United States, and touched off a concerted Department of Labor campaign to crack down on labor violations in the garment industry.

The conditions found in El Monte, while extreme, for many symbolize a growing problem in the U.S. garment manufacturing industry. Many of the groups interviewed by the IUI consultants contend that the universities do not need to look overseas to find subpar working conditions in the apparel industry. As Julie A. Su, Litigation Director at the Asian Pacific American Legal Center and lawyer for the workers in the El Monte case, told the IUI consultants, “The great misperception out there is that ‘made in the USA’ means the product was made under legal and humane working conditions. Unfortunately, that’s just not the case.”

In the years since the El Monte case was reported, government and private monitoring efforts have increased, and the US Department of Labor reports that these efforts have made a significant contribution to decreased labor law violations, while numerous violations persist. In the major apparel manufacturing centers of New York, San Francisco and Los Angeles, collaborative efforts have been undertaken to improve conditions.

The most significant labor concerns in American apparel production, as identified by the stakeholder organizations contacted for this report are:

- Government officials and stakeholder groups report that labor law violations are common, though some see a decrease, in U.S. garment production
- Monitoring efforts in the U.S. are characterized by extensive provisions that vary in different jurisdictions, as well as by varying degrees of familiarity with these provisions.
- Stakeholders report that price competition and tight margins contribute to violations
- The immigration status of workers and management contribute to legal violations
- Legal compliance and verification is viewed as more difficult because of the informal and fast-changing nature of production
- Legal remedies are time consuming, and often beyond the reach of most workers
- Local manufacturers have begun to organize collaborative efforts to improve conditions.
- Government data indicate that private monitoring efforts significantly improve compliance rates.

ECONOMIC AND HUMAN RIGHTS OVERVIEW

The U.S. economy is experiencing the longest period of continuous expansion in its history. In 1999, gross domestic product increased 4.3 percent and unemployment dropped to 4.1 percent, a 30-year low. The service sector provided the majority of employment growth in 1999, while the manufacturing industry steadily lost jobs.⁵¹

According to the Bureau of Labor Statistics (BLS), the number of workers in the apparel and textile industries decreased 9 percent in 1999, and experts predict that wage and salary employment in the apparel industry will decline 23 percent through 2008, whereas employment throughout the economy will increase 15 percent.⁵² This translates to 178,000 lost jobs over the next eight years. The BLS reports that “changing trade regulations are the single most important factor influencing future employment patterns. Because the apparel industry is labor-intensive, it is especially vulnerable to import competition from nations in which workers receive lower wages.”

According to U.S. Department of Labor, the number of workers manufacturing apparel in the United States has decreased dramatically during the past decade, from 1 million in 1990 to approximately 700,000 today. Some groups interviewed for this report, however, contested these figures, and contend that because government figures are based on registered businesses, and the number of shops operating underground has been rising dramatically in recent years, the actual numbers may be higher. (See findings below.)

The U.S. Department of Labor reports that workers’ earnings in the U.S. apparel industry are only 55 percent of the average earnings in other U.S. manufacturing jobs. The apparel industry is a major employer of women and minorities. According to the department’s statistics from 1994, women make up 75 percent of the workforce, African-Americans account for 15 percent, 24 percent are Hispanic and a large percentage of the remainder are Asian.⁵³ According to the department, the majority of American apparel and textile jobs are concentrated in large firms, most with 50 or more workers, located in eight states: Alabama, California, Georgia, New York, North Carolina, Pennsylvania, Tennessee and Texas.

⁵¹ Martel, Jennifer L. and Laura A. Kelter, “The Job Market Remains Strong in 1999”. *Monthly Labor Review*. U.S. Department of Labor. February 2000.

⁵² Bureau of Labor Statistics. *Career Guide to Industries*, 2000-2001 ed.

⁵³ Board on Science, Technology and Economic Policy’s 1999 book, *U.S. Industries in 2000: Studies in Competitive Performance*.

FINDINGS

A. GOVERNMENT OFFICIALS AND STAKEHOLDER GROUPS REPORT THAT LABOR LAW VIOLATIONS ARE COMMON, THOUGH SOME SEE A DECREASE, IN U.S. GARMENT PRODUCTION

Based on a survey of 67 garment production facilities in the Los Angeles, the U.S. Department of Labor reported in 2000 that only one in three shops in the Los Angeles area are in compliance with federal minimum wage and overtime laws. To place these findings in context, the 2000 survey, the fourth in a series, yielded a 50% improvement in compliance levels over the results in the first survey, conducted in 1994, which found only 22 percent of Los Angeles area garment shops in compliance. The Labor Department further notes that compliance levels have stagnated since 1996. Overall the survey found nearly \$900,000 in minimum wage and overtime back wages due to more than 1,400 employees. Three firms were cited for illegally employing three minors, and five firms were cited for illegally employing home workers.

U.S. government officials from the Department of Labor told the IUI consultants the most common violations in U.S. garment shops are:

- failure to pay the minimum wage and/or overtime pay;
- missing or delaying payment of entire payrolls;
- employment of minors; and
- falsification of payroll records.

Katie Quan, Director of the John F. Henning Center for International Labor Relations at the University of California at Berkeley, and a former garment worker, also believes that common violations include health and safety, the right to organize and bargain collectively, sexual harassment, and discrimination. She told the IUI consultants that her research has found instances of industrial home work in the United States too, at times involving child labor. "Anything you would expect to find overseas, you can find here at home," says Quan.

Julie Su reported that she has worked on cases involving university-licensed apparel production in the greater Los Angeles area. She noted that one plant whose workers she represented in legal proceedings were alleged to have seen routine violations of wage and overtime laws, and homeworking, with some of that work being performed off the books and without compensation. In addition, she contends that the factory employed a mix of documented and illegal, undocumented workers. The factory in this case agreed to settle this case, and paid \$172,000 to the eight workers with wage claims, which included back wages owed plus statutory liquidated damages. The factory, which Su says is bigger than most in Los Angeles with some 70 workers, is still in business.

Richard Appelbaum, co-author of a study for the Los Angeles Jewish Commission on Sweatshops, told the IUI consultants that based on his research it was his impression that overall conditions in the U.S. garment shops have deteriorated. He says this worsening trend in the industry is due to a huge squeeze from the top of the industry to cut costs. According to the report Appelbaum co-authored:

- The number of apparel workers in Los Angeles County has steadily increased and now exceeds 160,000.
- Appelbaum's report contends that a number of factors have contributed to the return of garment sweatshops to the United States, including:
 - the rise of competing low-wage offshore production;
 - the weakening of organized labor;
 - wage pressures resulting from risk and competition within the industry; and
 - a subcontracting system in which downward price pressures on contractors.
 - piece rate payment systems, and stagnating piece rates.
- The industry's effort at self-monitoring has met with limited success and by itself is unlikely to solve the problem of sweatshops
- State enforcement efforts are grossly under-funded.
- Unionization efforts have thus far only reached a small fraction of garment workers. The weakness of these efforts is due in large measure to industry resistance.⁵⁴

Ron Blackwell, director of corporate affairs for the AFL-CIO, paints a similar picture. He categorizes labor rights issues in U.S. garment production into three areas:

- Worker abuse, including corporal punishment and safety violations;
- Worker exploitation, by which workers do not receive adequate or timely wages; and
- Worker oppression, by which workers are not allowed to express themselves, organize or bargain collectively.

B. MONITORING EFFORTS IN THE U.S. ARE CHARACTERIZED BY EXTENSIVE PROVISIONS THAT VARY IN DIFFERENT JURISDICTIONS, AS WELL AS BY VARYING DEGREES OF FAMILIARITY WITH THESE PROVISIONS.

One monitoring organization contacted for this report suggests that the wide variety of jurisdictions, and differing legal requirements, make it more difficult to generalize about conditions in the U.S. To determine appropriate standards nationally, one must consider federal labor laws and related regulations, as well as relevant state and local guidelines. It is worth noting as well that there is a wealth of information available via the Internet regarding federal and state labor law standards in the U.S., notably through the U.S. Department of Labor's website.

One manufacturer also views inconsistent standards as hindering compliance efforts. In his view, accepting compromise standards to which all parties could subscribe could eventually result in higher industry standards, with industry leaders vying to outdo one another by raising the bar on workplace conditions. "Remember," he says, "sweatshops are bad for us, too. They undercut our business and hurt the companies that are trying to operate ethically."

In addition, U.S. labor law does not cover several key parts of most companies' codes of conduct, and Occupational Safety and Health Administration rules are complex. According

⁵⁴ Los Angeles Jewish Commission on Sweatshops. *Sweatshops Report*. January 1999.

to Lary Brown, Project Manager for Verite, which has conducted monitoring in the U.S., “it is not uncommon for small factories in U.S. inner cities to be owned by immigrants. In these cases, factory management is not always fully aware of U.S. law and cultural norms. Furthermore, since the factory workers are often also immigrants, we have seen cases where so-called ‘immigrant factories’ behave, for better or worse, like factories in the countries of origin of management and workforce.”

At the same time, says Brown, “is often easier than elsewhere because U.S. factory owners read American newspapers and understand the pressures in the marketplace that have led to the movement toward auditing factories. They do not see the audit process as something imposed from the outside, but rather a client response to conditions in a marketplace where both are active and familiar with conditions.”

C. STAKEHOLDERS REPORT THAT PRICE COMPETITION AND TIGHT MARGINS CONTRIBUTE TO VIOLATIONS

A U.S. government official interviewed by the IUI consultants said that increased price competition amongst all links in the supply chain have created pressures that may lead to violations. According to the official,

“Retailers pressure manufacturers to get merchandise produced cheaply and quickly, and manufacturers pressure their contractors. The contractors then have to cut corners to meet manufacturers’ demands, resulting in long hours and little compensation for the workers. Contractors are fiercely competitive amongst themselves. Many of them are former garment workers who have no idea how to run a business, much less how to comply with wage laws and health and safety regulations. They often take on contracts knowing that they will not make a profit but hoping that doing so will guarantee them more work in the future. Sometimes they don’t know how to bid or negotiate prices and delivery dates. Many of them don’t know how to keep records and don’t know what U.S. laws require. Since they often pay workers by the piece, they have a hard time translating workers’ piece-rate earnings into an hourly wage to see if they comply with minimum wage and hour laws.

The official also notes that factory owners face economic hardships and attempt to deal with them by defaulting on various payments, and at times entire payrolls. “One month perhaps the workers will get paid but the electric bill will not,” the official said, “and the next month the factory owner will pay the electric bill, but the workers will not get paid.” The government official added that when contractors have the ability to negotiate or renegotiate on the price, delivery date or quantity of merchandise, they are much more likely to be in compliance with labor laws.

Ron Blackwell, director of corporate affairs for the AFL-CIO, told the IUI consultants that the current global economic climate has lowered the standards of competition so much that companies operating in the United States can hardly avoid engaging in unethical manufacturing practices. Consumers, he explains, and consumer-driven corporations are too motivated by prices and profit margins to raise their standards and sacrifice the bottom line.

D. IMMIGRATION STATUS OF WORKERS IS A FACTOR CONTRIBUTING TO LEGAL VIOLATIONS

Many stakeholder groups believe that the prevalence of immigrants in the apparel industry contributes to legal violations, as immigrant workers may be less willing or able to assert their rights under the law. According to U.S. government officials, most workers in the U.S. garment industry are immigrants, some illegal, and many are reluctant to complain. A government official told the IUI consultants that many of the workers are illiterate in their own language and speak little or no English. The official added many of them come from Asian cultures that frown upon complaining about one's boss. Workers from these cultures, the official said, believe they should revere their boss and be happy that they have work, so they don't want to complain. Others, the official said, are illegal immigrants and fear attracting the government's attention.

On the other hand, native-born workers are viewed as being more willing to state their concerns about workplace conditions. Says Brown of Verite, "given that the U.S. labor movement has been active for many years, native workers are not easily intimidated, and while they are sometimes bemused by the worker interview process, they are generally not afraid to speak frankly. Where abuse is most common in the United States is when the workforce is non-native—both legal and illegal immigrants—and therefore not aware of their rights under U.S. and state laws."

Lynda Whittaker of Unite's U.S. Apparel Project told the IUI consultants that overcoming the fears of new immigrants is one of the greatest challenges in ensuring fair working conditions. She explains that while a factory's manager violates the law by hiring undocumented immigrants, and that many illegal immigrants present false papers, shop owners are complicit in all of this, since they intentionally locate in neighborhoods where they know it will be easy to recruit new, and in a number of cases undocumented, immigrants. In the end, Whittaker says, factories exploit workers by not paying legal minimum wages and flouting overtime and other workplace rules, knowing that an undocumented worker will not report them because of fears of deportation.

Julie A. Su from the Asian Pacific American Legal Center echoed many of Whittaker's impressions. "Workers often don't know who monitors are or whom they represent and at times have been told a different story by factory management," she says, "so they don't want to talk to monitors for fear of losing their jobs or worse." Su says that some factory managers tell workers that monitors are from the Immigration and Naturalization Service, putting fear in those working in the United States illegally. For that reason, she says it is important for monitors to identify themselves and to state their purpose in the factory.

E. LEGAL COMPLIANCE AND VERIFICATION IS VIEWED AS MORE DIFFICULT BECAUSE OF THE INFORMAL AND FAST-CHANGING NATURE OF PRODUCTION

Some of the interviewees contacted for this survey cited the fast-changing nature of production as one reason for violations of workers' rights.

“The underground grapevine is amazing,” Whittaker of Unite told the IUI consultants. “Immigrants know where the shops are; many of the contracting shops owned by immigrants... They know where the work is moving to... it’s all word of mouth in the neighborhood.” She says that you can even see immigrant workers on 8th Avenue in New York City near the garment district waiting for someone to come and to tell them where which shops need workers. In other boroughs of New York she says that manufacturers send around vans to pick up workers and that workers hear about where the pick up meeting places are from other workers in the neighborhood.

Whittaker adds that the practice of underground shops paying cash to workers instead of checks also hinders organizing efforts and monitoring, since workers do not have a record of the wages they are paid or for even working for some of the shops. Indeed, one of the biggest issues in tracking violations, a U.S. government official told the IUI consultants, is record-keeping. The official told the IUI consultants that factory owners often falsify factory records intentionally, or simply keep incorrect or incomplete records, further complicating investigations. The official noted that factory owners are becoming smarter, and they know they may be monitored, so they show records that indicate they’re compliant, but they’re either falsified or a second set of records.

Katie Quan from UC Berkeley agrees. “The truth can be hidden from monitors easily,” Quan warns, “and monitors often do not get an accurate account of what is going on.” She says that shops often keep several sets of books so that they can violate wage and hour laws. Quan says that in general tracking abuses and violations is very difficult, since the garment industry is very dynamic. She told the IUI consultants, “Factories open and close under different names every day, it’s difficult to keep track of what’s going on out there.” She says that out of 500 shops she’ll track for any given period, nearly half will have a different name the next year. She does say that California’s registration laws do help in this area, since the law requires garment producers to register, pay a fee and take a test, making it costly to change names all of the time. Quan says that many facilities, however, evade the local laws and go underground. She says that many work out of houses with no signage and move at the slightest hint of an investigation.

Legal Remedies Are Time Consuming, and Often Beyond the Reach of Most Workers

Su, of the Asian Pacific American Legal Center, told the IUI consultants that the process to litigate a worker’s claim is often difficult and long. She says in California, workers have two principal means of legal recourse to pursue in trying to settle disputes with employers. The first is the California Labor Commissioner’s administrative claims process. The process is supposed to be an expedited way for workers, without an advocate or an attorney, to file claims for back wages. She says that workers also can file a supporting petition to have a name-brand retailer or manufacturer pay the wages under a new law enacted in September 1999, which requires name brand manufacturers and retailers to act as guarantors of back wages if a shop becomes insolvent. Su says, however, that the administrative claims process

and subordinate support structures have been grossly underfunded and staffed, so claims can take months – even years – to process.

Su says that as an advocate, her organization primarily uses the federal courts to settle cases, as she did as lawyer on behalf of the Thai immigrant workers in the El Monte sweatshop case. Despite this, she reports that the overloaded court system, along with the time needed to resolve cases, presents a disincentive for workers to pursue this option.

F. LOCAL MANUFACTURERS HAVE BEGUN TO ORGANIZE COLLABORATIVE EFFORTS TO IMPROVE CONDITIONS.

In recent years, especially in certain major urban centers with substantial apparel production, local manufacturers have organized collaborative efforts to improve conditions.

In New York, Los Angeles, and the San Francisco bay area, such efforts have sought through education, outreach, and implementation of systems to raise the level of compliance with applicable standards.

One such effort is “Made by the Bay,” an effort described by the San Francisco Chronicle as one designed to “help local garment contractors carve out a profitable niche in the super-competitive apparel industry by giving technical training to workers and factory managers, helping the factories eliminate labor abuses, and helping persuade apparel corporations to contract with local factories rather than offshore ones.” Made by the Bay is a collaborative effort that includes on its Board of Directors a range of stakeholders from business, labor and government.

The Chronicle reports that the program utilizes technical consultants to visit factories and teach workers and factory managers how to incorporate the latest quality-control measures and ‘modular’ team techniques on the production line. Under the program, federal labor inspectors work closely with factory owners to eradicate the sweatshop-style abuses that once were rampant locally.”

Similarly, the Los Angeles Compliance Alliance is an association of apparel manufacturers in that city seeking ways to improve working conditions, and the Garment Industry Development Corporation (GIDC) in New York City, a non-profit collaboration between industry, labor and the public sector, is also running programs there to enhance efforts. The GIDC offers training workshops for employees on workplace safety, and sessions for management to enhance their understanding of relevant legal requirements on topics like child labor, wages, and industrial homeworking.

G. GOVERNMENT DATA INDICATE THAT PRIVATE MONITORING EFFORTS SIGNIFICANTLY IMPROVE COMPLIANCE RATES

The U.S. Department of Labor says its 2000 study of Los Angeles area garment shops reconfirms that compliance monitoring does promote higher levels of compliance. It says its 2000 study found that name-brand manufacturers monitored about 70 percent of the shops

it surveyed, roughly the same percentage as in previous years. Of the shops monitored, 44 percent were in compliance with wage in hour laws, compared with a 10 percent compliance rate for shops not monitored.

Despite this evidence, some advocates remain skeptical of monitoring efforts. Richard Appelbaum told the IUI consultants that even heavily self-monitored shops and those monitored by private firms in the study he conducted had incidents of violations. Julie Su also expressed her belief that these monitoring efforts did not succeed in identifying all violations.

H. STAKEHOLDERS' VIEWS OF WAYS TO IMPROVE CONDITIONS

Recommendations from the various groups varied widely, but shared some common themes. The broad consensus of the groups was that:

- It is important be vigilant in monitoring efforts;
- Monitors, if used, should be able to communicate effectively with and have the trust of workers; and
- Above all, education is critical for all parties.

Education programs can improve compliance: The groups recommended training for everyone: monitors, factory managers, and workers.

All of the parties agree that monitors need better training. The Department of Labor will be mounting an education campaign in 2001 for retailers and name-brand manufacturers on what constitutes thorough, effective monitoring. A government official interviewed by the IUI consultants said that, given the relatively low compliance rate in the United States for monitored shops, it appears that training monitors is greatly needed. Appelbaum says that licensees and universities should invest in training local groups in independent monitoring and workers in recognizing violations of their rights. The key over the long haul, says Appelbaum, is “to build the capacity to monitor in producing locations and to conduct unannounced inspections.” Whittaker says that all parties “need to invest more seriously in monitoring, so that you get monitors, who are fluent in the right languages, are trained in interviewing techniques, know about worker rights and health and safety standards and understand what’s going on.”

Three of the workers’ rights advocacy organizations interviewed for this report discussed their plans to establish and/or expand their efforts to educate workers. Julie Su of the Asian Pacific American Legal Center is building a worker education center that will provide a place for workers to take classes on language and workers’ rights and for workers to speak with one another about problems in the workplace. Unions support similar programs for workers and encourage other organizations to get involved. All parties say that such programs are effective in improving compliance, in that they empower workers to identify and report violations. The National Interfaith Committee for Worker Justice (NICWJ) is working with the Department of Labor on training programs for workers in several industries, including the garment industry. Regina Botterill, Education and Outreach Coordinator for the NICWJ, says “There are good laws in the United States,” Botterill says, “but most workers in these industries don’t know them.” To combat this problem, the NICWJ has developed

pamphlets to teach workers about their rights under the law and how to advocate for their rights when they are violated. The pamphlets are distributed by local religious groups in 12 different languages in communities throughout the United States.

Check factories again, and again: The U.S. government official interviewed by the IUI consultants recommended thorough, frequent visits, incorporating worker interviews in the worker's native language. Many manufacturers monitor their operations, "hoping to look good in the government's eyes," the official told the IUI consultants. However, "simply performing audits is not enough...they must be frequent enough and thorough enough."

End practices that lead to volatility: A U.S. government official recommended that the universities work to develop policies to help stabilize the industry, including:

- Working with smaller numbers of contractors on a consistent basis.
- Helping those contractors develop better business practices.
- Learning contractors' limits and capabilities, so unrealistic demands aren't place on them.

The official added that universities could also insist that their manufacturers allow negotiation or re-negotiation in the bidding process. This would help particularly in the United States, the official said, where a lot of merchandise with a quick turnaround time is produced. The official notes that retailers that don't want to wait for merchandise to be shipped from overseas often choose U.S. contractors, but this often means pressure for fast delivery and hasty decisions, which creates opportunities for the contractors to run afoul of overtime and other wage and hour laws.

Consider the source when buying: Appelbaum told the IUI consultants that the universities could improve working conditions by watching whom they buy from and giving students options to purchase apparel made by union shops or fair trade cooperatives.

Union advocates call for support of organizing efforts: Whittaker told the IUI Consultants, "Our position is straightforward; conditions are better when unions are in the plants...We can't have this self-monitoring business going on all over the world...that's moot...If you've got a union involved, you always have monitoring." Whittaker notes that if you have a union representative and members who are educated through the union on health and safety issues always in the plant. "That's the best type of monitoring," she says. If a union is not present, she says, monitoring by independent, local labor and human rights groups is the next best option. As a former union organizer, Quan agrees. She says that if garment workers had strong unions there would be no need for codes or monitoring. "In my personal opinion, of all of the standards out there, the one that is most pivotal is freedom of association and guarantees for collective bargaining and the right to strike." She says that in her experience as the head of a union in San Francisco, workers monitor their own union contract and factory conditions. Whenever there was a problem, for example if the factory did not pay overtime pay, the shop steward would raise a complaint with management immediately and resolve the issue. "This is the ideal situation," she says.

Get local groups involved as monitors, and arbiters: Quan acknowledges, however, that the vast majority of apparel factories in the United States, especially the growing number of smaller shops, are not unionized. She says that if monitoring is undertaken, people who the

workers trust should do it. In most cases, she says, this would be local non-governmental organizations (NGOs). “It’s okay if companies want to monitor contractors,” says Quan, “but I think it is important to get information from NGOs who are trained with dealing with worker complaints.”

She also says it is important to have a mechanism where workers can register complaints without fear of reprisal. Quan says that talking to workers during a walk through of a factory is not the right time. She says that a situation where workers can get information to local groups off site and the complaints can be investigated on a timely basis is ideal. She also says that monitoring programs need some form of adjudication, if there is a dispute between a worker and management.

Wheatley told the IUI consultants, “Independent monitoring of factory conditions deals with investigating human and labor rights issues. In order to do it, you can’t have folks parachute into a factory for a nine-hour site visit, especially hired guns from a for-profit firm, sending people who don’t have the trust of workers and with no established track record or basis for trust.” Wheatley says local, trusted, labor, human rights and religious groups are best.

Conduct worker interviews off site: Wheatley cautioned against conducting worker interviews on site. He said that the NLC has found in many factories workers are trained on how to “entertain the monitors.” He added that in one factory management was as bold as to hold an assembly to inform workers that an inspector would be arriving the next day and to prep them on what to say to monitors and how to act around them. Su also says off site interviews are important, otherwise, management can prep workers on how to act and what to say to monitors.

Achieve unified standards: Broderick and Brown both reported that monitoring would be significantly improved if standards were unified. This would reduce confusion and harmonize the various efforts to enforce compliance.

Groups Consulted

Ron Blackwell, Director of Corporate Affairs
American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)

Julie A. Su, Litigation Director
Asian Pacific American Legal Center

Lynda Whittaker, Director of the U.S. Apparel Project.
Garment Worker Justice Center
Union of Needletrades, Industrial and Textile Employees (Unite)

Katie Quan, Director
John F. Henning Center for International Labor Relations, University of California at Berkeley
(Member of the Board, Sweatshop Watch and Workers Rights Consortium)

Richard Appelbaum
Los Angeles Jewish Commission on Sweatshops

Jonathan Fine
Massachusetts Interfaith Committee for Worker Justice

Regina Botterill
Education and Outreach Coordinator
The National Interfaith Committee for Worker Justice (NICWJ)

Thomas Wheatley, Spokesperson
National Labor Committee

Edna Bonischsi
Professor of Sociology
University of California at Riverside

U.S. Department of Labor
Wage and Hour Division

Lary Brown
Verite

Rick Broderick, Director of Risk Management and Employee Compliance
VF Corporation

INDEPENDENT UNIVERSITY PROJECT: SUMMARY OF SURVEY RESULTS

1. INTRODUCTION

As a part of the Independent University Initiative (IUI), the IUI consultant team created three surveys to gather information about ways in which U.S. companies and universities have monitored the labor practices involved in the production of their branded apparel and the lessons they have learned from these methods and projects.

In particular, the IUI team sought to understand and compare projects involving internal, external and independent monitors. Throughout this section, “internal” monitoring refers to monitoring by the staff of the company producing branded apparel through company-owned operations and those of unaffiliated vendors, and “external” monitoring to that involving third parties—generally for-profit firms such as accounting firms that have branched into labor standard auditing. “Independent” monitoring is more difficult to define—but is generally used to refer to monitoring by not-for-profit groups, unions or academics, particularly those based in the countries of companies’ vendors, that focus on labor or human rights issues. (In addition, some groups prefer “verification” to “independent monitoring.” In this view, verification is distinct from monitoring, in that it refers to a process of third party, non-profit evaluation of whether monitoring accurately describes factory conditions; verification can also involve non-profit targeted inspections and responses to worker complaints.)

To this end, the IUI team jointly developed three surveys:

1. A survey of collaborative initiatives in addition to IUI seeking to address the labor conditions under which university-licensed apparel is produced. This was sent to:
 - Collegiate Licensing Company (CLC) Initiative
 - Collegiate Industry Initiative for Responsible Manufacturing
 - Fair Labor Association (FLA) and FLA’s University Advisory Committee
 - Workers Rights Consortium
2. A survey of participants in independent monitoring pilot projects undertaken in the footwear and apparel industry in Latin American and Asia. This was sent to participants in the following projects:
 - Ethical Trading Initiative (ETI) – China
 - Gap/Independent Monitoring Working Group – El Salvador and Honduras
 - Levi Strauss & Co. – Dominican Republic
 - Liz Claiborne – Guatemala
 - Mattel – Asia
 - Reebok – Indonesia
 - Swedish Retailers/Manufacturers – India.
3. A survey of licensees producing the greatest volume of licensed apparel for the five universities concerning their efforts to ensure compliance with applicable labor standards. This was sent to:
 - 4004, Inc.
 - adidas-Salomon AG

- Apparel Sales
- Champion
- Gear for Sports
- JanSport Inc.
- Logo Athletic
- Nike
- Sara Lee Corporation (are they separate and distinct from Champion?)
- VF Knitwear

Each of the three surveys is included in an appendix to this report.

A list of key observations or comments made by one or more of the survey respondents is shown below; these comments are discussed more fully and in context in the body of this chapter. This summary list is based solely on the responses of the responding groups and thus reflects their experiences and interest in the monitoring schemes and procedures on which they have worked. The survey responses thus may tell us more about these groups' perspectives on what they are trying to advance than about the potential problems or challenges of different monitoring strategies.

- Internal monitoring is useful, and external and independent monitoring lends added credibility to the process.
- A “tremendous amount of time and resources” is needed to administer codes, monitoring, and verification.
- There are limitations and weaknesses in both external monitoring by non-profit groups by “for profit” monitoring organizations.
- Reports from monitors can vary widely as they include subjective information and are “colored by the lens of the monitoring agents.” Independent monitors and certification companies differ vastly in their skill sets and methods.
- Collaboration and open communication are essential when building relationships among contractors, NGOs, and companies.
- While pilot projects can be replicated, it is crucial to recognize the nuances and differences between countries and cultures. Replicating pilot projects in other countries involves a significant commitment of time and resources.
- Resources are best spent on establishing clear and practical standards, researching long-term solutions to the more difficult problems and training.
- Monitoring is only useful as a double-check to see if buyers and suppliers are truly committed, so extensive monitoring is a questionable investment.
- It is important to keep workers at the center of the monitoring process.
- Transparency should be built into projects so NGOs have access to the company's training programs, assessment materials, contractor's records, factories, and workers.
- Securing trade union and NGO participation can be difficult due to a political context.

2. SURVEY OF OTHER COLLABORATIVE UNIVERSITY-CENTERED PROJECTS

Of the four participants invited to respond to the survey of other collaborative university-centered projects, three--the Collegiate Licensing Company (CLC), the Fair Labor Association and the Worker Rights Consortium—responded. Neither the Fair Labor Association nor the Workers Rights Consortium has actually undertaken monitoring university branded apparel production, so their profiles summarize the procedures they anticipate they will follow.

CLC Project: The CLC coordinated a project which involved six universities (Boston College, Duke, Georgetown, UNC-Chapel Hill, University of Wisconsin-Madison, and University of Southern California), five licensees (College Concepts, Gear for Sports, MF Softe, VF Corporation and Zephyr Graf-X). The monitoring organization has been Verite International, a private, not-for-profit, organization based in Massachusetts, with ties to local labor and human rights groups in countries around the world.

The CLC has served as the overall coordinator and facilitator for the project, with licensees invited once the plan was determined. The five participating universities were actively involved in developing the program and participated in several organizational meetings. The project, which commenced in November 1999, was designed to gather information and gain experience regarding the monitoring of labor conditions in factories that produce collegiate products, and has focused on the process by which a factory site can be brought into compliance with the CLC code of conduct, which was used as the baseline against which monitoring took place.

How monitoring worked: The monitoring program was composed of a two-part process.

In the fall of 1999, Verite's monitors began visiting factory sites to identify and begin to resolve compliance issues. These initial audits were completed by January 2000. Both CLC and Verite have been consulting with licensees to ensure that they are working to take appropriate remediation actions.

In the second part of the process, the monitors are conducting compliance and verification audits and preparing site reports for each facility, describing remediation steps. The CLC released an interim status report on the project in May 2000. Upon advice from Verite, the original timeline was extended to allow sufficient time for remediation.

According to a representative of the CLC, Verite's monitors have reported that working conditions appeared to be generally positive in the factory sites visited in five countries: Costa Rica, El Salvador, Korea, Mexico and Taiwan.

Funding: The participating universities each paid an equal amount, which was not disclosed to IUI.

Observations: CLC's observations on the project were:

- This has been a valuable learning experience for the licensees
- This experience will be useful as factories transition to working with independent monitors.
- Factories involved in the project were producing for well-known brands, and often collegiate production is a small fraction of these factories' overall output
- Reports from monitors can vary, as they include subjective information, are “colored by the lens of the monitoring agents.” and contain information from interviews with different workers with varying perspectives and levels of understanding of their rights.
- As, a “tremendous amount of time and resources” is needed to administer code monitoring and verification; it will take an experienced and well-funded staff to accomplish effective remediation.

Fair Labor Association: The Fair Labor Association (FLA) emerged in November 1998 as the successor to the Apparel Industry Partnership, which the White House created in 1996 to address labor rights standards. The FLA has the support of the White House and several major corporations; consumer, human and labor rights organizations; and more than 141 universities and colleges. Its website, at www.fairlabor.org, says, “The affiliated organizations will be represented by a Board of Directors comprising a Chairperson, six representatives from human rights, consumer and labor rights groups, six industry representatives and one college/university representative.” Currently, the board numbers 12, with an industry representative and an NGO representative still to be appointed. The Chair of the Board is Charles Ruff, formerly White House counsel and now in private law practice. The Executive Director is Sam Brown, who has experience in both the private sector and public service, including most recently, four years as U.S. ambassador to the Organization on Security and Cooperation in Europe, in which capacity he worked closely with human rights groups concerned about the full implementation of the Helsinki Accords. A list of the FLA’s board members, university and corporate members can be found on its website, as can its Charter and Workplace Code of Conduct.

How monitoring will work: While companies and universities are welcome to adopt more stringent standards, at minimum, members must adhere to the FLA’s *Workplace Code of Conduct*. The code contains nine specific provisions, covering forced labor, child labor, harassment or abuse, nondiscrimination, health and safety, freedom of association and collective bargaining, wages and benefits, hours of work, and overtime compensation. Member companies are required to inform their employees, contractors, and suppliers of code provisions in local languages and through specific outreach programs.

Shawn MacDonald, Director of Accreditation, emphasized to IUI that college and university members are free to establish additional requirements for their licensees participating in the FLA. For example, the FLA’s University Advisory Committee recently adopted a policy requiring college/university members to establish policies with licensees by Dec. 31, 2000, that requires public disclosure of factory locations. MacDonald added, “The FLA charter is explicitly open and flexible on the need to investigate and further refine its provisions on such issues as wage levels and the amount of external monitoring based on the experience it gains in its first years of operation. Part of our organizational mission is to further research and understanding on issues related to sweatshops and labor rights generally.”

The FLA charter stipulates that “each participating company shall submit to the [FLA] for review and approval a monitoring plan that describes with specificity the participating company’s proposed internal and independent external monitoring programs. The monitoring plan must describe the strategy and process by which the participating company shall implement its monitoring programs in accordance with the Monitoring Principles and whether the company determines to opt for an Initial Implementation Period of two or three years.” Each participating company, during the first two years of its participation in the FLA, is required to internally audit and report back to the FLA on all of its applicable facilities. The standardized report it files with the FLA for each facility must describe any serious instances or significant patterns of noncompliance with the FLA code and the remedial steps the company and facility are taking. In addition, within the first two or three years, the participating company must allow 30 percent of its applicable facilities to be audited by independent external auditors accredited by the FLA. After the initial implementation period, companies must allow independent external monitoring of between 5 and 15 percent of their facilities annually.

MacDonald told the IUI consultants that the heart of the FLA monitoring system is the provision for independent external monitoring that goes beyond the baseline requirement that all member companies also do internal monitoring that is subject to FLA oversight. He emphasized, “The external process is designed to reinforce and verify the internal monitoring.”

The FLA also has created the Monitoring Guidance Compliance Benchmarks document and the FLA Audit Instrument, both of which were created and tested through actual factory monitoring in five countries, to guide monitoring efforts. In addition, the FLA has an outreach program designed to facilitate the recruitment and training of NGOs and union groups to enable them to become accredited as monitors of the FLA code. As part of the FLA’s membership requirements, in companies’ internal monitoring systems and throughout the external monitoring process regular contacts with local NGOs must be maintained.

The FLA also has designed a number of ways to engage the general public and other interested third parties. For example, the FLA has designed a confidential third party complaint procedure, so that workers or other groups may air grievances about a factory’s conduct. In addition, the FLA plans to release periodically public reports on the results of independent monitoring efforts.

Funding: To date, approximately 60 percent of FLA’s budget has come from the U.S. government, namely the U.S. Department of Labor and U.S. Agency for International Development. Funding for 2001 will come from the Office of Democracy, Human Rights and Labor at the State Department.

In addition, the FLA collects funding from both its participating companies and from its college and university affiliates to pay for staff and for a portion of participating companies’ external monitoring costs in the initial implementation period. Colleges and universities that collect royalties from a licensing program are required to pay 1 percent of their licensing revenue from the previous year but no less than \$100 and no more than \$50,000. All other college and universities (that do not collect royalties from a licensing program) pay \$100 a year. Each participating company must pay an annual fee ranging from \$5,000 to a

maximum of \$100,000 based upon its annual consolidated revenues, with companies with annual consolidated revenues of \$10 billion required to pay the maximum fee. The FLA will reimburse participating companies for 50 percent of the costs of their FLA-approved external monitoring in their first year in the program, 45 percent in the second year and 30 percent in the third.

Worker Rights Consortium: Students affiliated with the United Students Against Sweatshops, which claims chapters on over 175 North American college and university campuses, formed the Worker Rights Consortium in late 1999 in reaction and as an alternative to the Fair Labor Association, which they argue awards too much control over the monitoring process to the companies whose facilities are monitored. In contrast to the FLA, the WRC allows no industry representatives to sit on its governing board. David Moore, a member of WRC's governing board, says that WRC has three constituencies: USAS, the WRC Advisory Council of labor rights experts and worker advocates, and the University Caucus of 58 member colleges and universities. Each constituent group appoints five representatives to the board. The board chairman is Congressman George Miller (D-Calif.). WRC currently has an acting director, and is looking for an executive director. The board held its inaugural meeting in Washington on July 20, 2000. A list of its member universities and advisory council members can be found on its website at www.workersrights.org.

The organization's bylaws describe WRC's mission as the following:

- (a) to promote socially responsible initiatives by universities and colleges, and by manufacturers who use the indicia of those universities and colleges, for the improvement of working conditions and labor standards in domestic and global production of that merchandise;
- (b) to promote in the community of universities, colleges and manufacturers, through education and research, awareness of and appropriate responses to production of merchandise bearing college and university indicia under ethically unacceptable working conditions such as sweated, child, sub-living-wage, discriminatory, unsafe, and other forms of abusive labor;
- (c) to codify and promote compliance with ethical standards of conduct by college and university licensors, and by manufacturers who use the indicia of those universities and colleges, including but not limited to standards for living wages, child labor, women's rights, the right to organize and bargain collectively, and health and safety, in light of the "Key WRC Principles."
- (d) to gather and publicly disseminate information regarding the locations and conditions of workplaces where merchandise bearing college and university indicia is produced.
- (e) Paragraphs (a) through (d) may also apply to such other goods as both the WRC and the respective affiliated institution shall agree to.

How monitoring will work: The WRC has not yet undertaken any monitoring practices, and has not announced a date when monitoring will begin. However, Moore told IUI, "there is a shared vision for how the WRC will enforce Codes of Conduct, as laid out in the 'WRC white paper' (available on the website). The WRC seeks to closely involve worker-allied NGOs in apparel-producing regions in the development of the WRC monitoring practices. The WRC will investigate working conditions in factories producing

university goods, through three mechanisms. First the WRC will solicit and collect worker complaints, second the WRC will gather self reported information from industry representatives, and finally the WRC will perform spot investigations in areas with a history of violations, or where workers are particularly suppressed from reporting violations. The WRC is responsible for disseminating information about factory conditions and may make suggestions for remediation if Codes are violated. The ultimate threat of universities is termination of the licensing contract with companies that exhibit a pattern of Code violations; however, this is a final step, and many other efforts will take place before this course of action is suggested. The WRC Executive Director, when hired, will be involved in developing these monitoring practices in detail.”

Funding: Member colleges and universities will fund the Consortium with a percentage of licensing revenue. For a college or university that collects royalties from a licensing program, initial dues shall be 1 percent of its previous year's licensing revenues (but in no case less than \$1,000 and with each year's dues payment capped at \$50,000 for any individual college or university). For a college or university that does not collect royalties from a licensing program, annual dues shall be \$1,000. These dues provisions will be reevaluated once the costs of running the Consortium become clearer. The WRC will not collect dues from the companies it monitors.

3. INDEPENDENT MONITORING SURVEYS

Responses were received from participants in five of the independent monitoring projects from which information was sought: the Ethical Trading Initiative (ETI), Gap/Independent Monitoring Working Group, Levi's program in the Dominican Republic, Liz Claiborne in Guatemala, Mattel Independent Monitoring Commission, and the Swedish retailers involved in the Clean Clothes Campaign pilot monitoring project.

In each case, project participants included—or attempted to include—a mix of companies, local and international NGOs, and factories.

Project participants reported the following:

- The objectives of these projects ranged from “basing independent verification on a code of conduct” to engaging more effectively with local NGOs, to “promoting the rights of workers.”
- Similar challenges, including cultural differences between foreign management and local workers, the need for continuous education of workers and factories, and in communication between the various participants.
- Most of these projects were successful in educating contractors and suppliers about the codes of conduct and guaranteeing safe and fair working conditions for their employees.
- Progress was slower than expected, and communication between management and workers remains challenging.

Lessons learned from these projects were similar, and include:

- Mutual respect, collaboration and open communication were essential when building relationships among contractors, NGOs and companies.
- While similar pilot projects can be replicated in other parts of the world, it is crucial to recognize the nuances and differences between countries and cultures, and replicating these projects in other countries involves a significant commitment of time and resources.
- Benefits of independent monitoring reported by some respondents independent monitoring include effectiveness in detecting problems at factories beyond “snap shot” reviews and audits, providing more frequent reporting, and providing the companies to which they report enhanced credibility due to the neutrality of the monitors.
- Nonetheless, some respondents noted that it is not always easy to find local NGOs with the interest or skills to be monitors, and that allowances usually need to be made to train the monitors and bring them up to speed.

Ethical Trading Initiative (ETI)

The Ethical Trading Initiative, which is based in Great Britain, describes itself on its website (www.ethicaltrade.org) as “an alliance of companies, non-governmental organisations (NGOs), and trade union organizations committed to working together to identify and promote good practice in the implementation of codes of labor practice, including the monitoring and independent verification of the observance of code provisions.” Its members consist of 15 companies, mostly British companies but also including Levi Strauss; 17 human rights, development and non-governmental organizations, five trade unions and trade union federations, and the British government, which has agreed to provide over half of ETI’s operating budget in its first three years. The balance of ETI’s budget comes from membership fees.

ETI’s website also explains that “All these stakeholders have jointly agreed to a “Base Code”, and are committed to working and learning together through an extensive program of pilot studies designed to test monitoring and verification systems. This pilot study program is the key activity of ETI, and participation is a requirement for all ETI members.” ETI’s base code can be found on its website. In connection with this mission, ETI has launched four pilot monitoring and verification projects—in China with regard to the apparel industry, and in Costa Rica, South Africa and Zimbabwe with regard to the food and agricultural industries.

How monitoring worked: ETI supplied a copy of its December 1999 interim report on the status of these monitoring projects in lieu of responding directly to the IUI survey. ETI’s pilot project on China’s garment industry involved four companies (Pentland, Monsoon, Tesco, Littlewoods), two NGOs (Oxfam and Women Working Worldwide), and a trade union (International Textile, Garment and Leather Workers’ Federation). The China pilot set out to test four approaches to monitoring: an internal company audit (Pentland), a third party audit (Tesco, using the commercial audit company BVQI), an academic audit (Monsoon) and a multi-stakeholder process (Littlewoods).

- The results were as follows:
The Pentland audit was completed in 1999 and an improvement plan drawn up.

Pentland reviewed this after six months and found that most of the issues identified as priority items for remediation had been addressed to some extent. Further progress was expected by the time of the next visit.

- The Tesco/BVQI evaluation was undertaken and at the end of 1999. Tesco is considering how to follow up on the results of that audit.
- ETI is still exploring the possibility of an academic audit.
- The organizations tried a multi-stakeholder process with Hong Kong partners in 1999 but this did not come to fruition due to differing priorities. Since then, Littlewoods has approached Verité to conduct a training audit in conjunction with ETI.

Funding: ETI did not disclose how funding for the China pilot projects was arranged. As noted earlier, though, it receives financial support from the British government and membership fees.

Comments: The interim report found that “the China pilot showed that ETI corporate members can swiftly press ahead with inspections using their own procedures and/or certification companies, and that the latter can offer benefits in terms of consistency of approach and reporting. However, securing a trade union and NGO element has proved difficult because of the political context.” Thus, the ETI pilots in China have yet to test an independent monitoring system using local NGOs, academics or unions. As ETI elaborated in the report, “The trade union component has not functioned optimally everywhere for a variety of reasons, many of which are not amenable to action by ETI member trade unions.... In China, there is a fundamental problem of freedom of association, which both creates the main issue from the point of view of trade union-based NGOs but also makes work on the ground especially difficult.”

In addition to the actual monitoring pilots, the ETI has explored independent monitoring in China through a public seminar in London on "Governance in China", which looked at the Chinese systems of labor law and social security and approaches to independent monitoring of working conditions and labor rights.

Gap/Independent Monitoring Working Group:

The Independent Monitoring Group of El Salvador project grew out of a bitter dispute at Mandarin International, a Hong Kong-managed plant in San Salvador that contracted with The Gap, Liz Claiborne, Eddie Bauer, J.C. Penney, J. Crew and other U.S. companies. Mandarin’s labor practices became a cause celebre in the United States in August 1995, when Charles Kernaghan of the U.S. activist group, National Labor Committee, organized a speaking tour for a former Mandarin worker who had been fired after she tried to form a union. Her stories of forced overtime and low pay were soon corroborated by follow-up interviews of other Mandarin workers conducted by Tutela Legal, the human rights office of the Archdiocese of San Salvador.

The NLC and U.S. religious leaders entered into talks with Gap—which had placed orders with Mandarin since 1993 at relatively high levels representing about 15 to 20 percent of the factory’s production. In December 1995, the Gap, NLC and representatives of the Interfaith Center on Corporate Responsibility (ICCR) approved a statement committing

themselves to explore a way to have independent third parties monitor the plant's labor practices and pledging that Gap would place new orders contingent on Mandarin rehiring the fired union organizers and improving its labor practices.

To pursue this goal, the Independent Monitoring Working Group (IMWG) in the United States, comprised of the Gap, BSR and ICCR, was established to develop an independent monitoring pilot project that would help to deter violations of Gap's Code of Vendor Conduct and promote the establishment of a fair, productive and harmonious working environment at the Mandarin facility.

To establish independent monitoring initially in El Salvador, the IMWG engaged with the Independent Monitoring Group -- El Salvador (IMGES), which has been comprised of four local nonprofit organizations: the Human Rights Institute of the University of Central America, Tutela Legal; a representative of the Catholic Archdiocese; and the Center for Labor Research.

How monitoring works: A Gap representative told IUI that IMGES representatives visit the plant about once a week to check labor practices against the Gap Code and local law and to respond to issue raised by the two unions now in the plant. On their visits, they observe factory operations, interview workers and review records. "On critical issues requiring immediate action from Gap (for example the dismissal of workers), they will send out an email." In addition, the IMGES representatives, Mandarin management, the unions' representatives and the Gap monitor meet monthly at the factory to "review how everything is going."

The IMWG has recently engaged with the Episcopal Archbishop of Honduras to monitor selected Gap contractor facilities in that country, and with COVERCO to monitor selected facilities in Guatemala.

Funding: In response to the IUI survey, an IMGES representative said that funds for monitoring Mandarin came from unions and human rights groups in Canada and Spain.

Compliance issues that arise most frequently: Gap responded that payroll issues came up most frequently in monitoring at Mandarin. IMGES, responding to the IUI survey for both the Mandarin facility and a second factory it has been involved in monitoring, said that issues concerning freedom of association, pregnancy discrimination and forced overtime came up most frequently at the two plants.

Observations: Gap management noted to IUI that "given the context in which monitoring began—a tension-filled moment immediately following the labor dispute—the 'job description' for the independent monitors was broad"; not only were the monitors to check on compliance with local law and Gap's code, they "were charged with promoting harmony in the workplace." On both counts, Gap believes, the monitors have been successful: "while there have been, and continue to be, some tensions at the factory, it has been possible to avoid another major problem like the one which occurred in 1995. There is now increased communication between management and the workers and an increased channel of information to Gap on factory conditions." The formula for success, Gap

believes, was that workers, management, the independent monitors and the Gap monitor “each had an investment in the project succeeding.”

Gap told IUI that, based on the company’s experience with independent monitoring—which it defines as “locally based non-governmental organizations check[ing] through interviews, observation and review of records whether a factory is complying with local laws and the retailer’s code”—it considers independent monitoring “highly effective.” Gap views independent monitoring as a complement to internal monitoring, and it adds that it can take a great deal of management time, particularly “in those cases where the local independent monitoring organization needs to be built up.” However, Gap told IUI, “As independent monitoring becomes more practiced and more organizations are available to do it, the cost in management time should be reduced.”

IMGES, for its part, told IUI that for independent monitoring to work, it is important that all the parties involved understand the ground rules, that the monitoring is transparent, and that efforts are made to win the cooperation of the management of the factories to be monitored. One way to do this, it said, is by stressing to local factories that the goal of independent monitoring is to prevent conflict. Independent monitors—which IMGES defines as organizations not directly connected with the contracting company, the workers or their representatives—can be more effective than other types of monitors because they have a better understanding of the local labor situation.

Levi Strauss & Company

Levi Strauss responded by providing a copy of the public report regarding the status of its pilot monitoring project in the Dominican Republic. According to the report, drafted by the NGO monitors in consultation with the company, the project began in the fall of 1997, when Levi “in the spirit of continuous improvement...began exploring innovative ways to involve independent third parties in a review of its workplace code of conduct,” which was developed in 1991.

Levi’s project in the Dominican Republic involved organizations including NGOs (OXFAM-Great Britain, Latin American Faculty of Social Sciences or FLACSO, Research and Training Program for Community Intervention and the Research Center for Feminist Action), four local contractors and Business for Social Responsibility Education Fund (BSR).

How monitoring worked: Project objectives were to: develop an effective model for great involvement by local NGOs in Levi's Terms of Engagement (TOE) process; build collaborative working relationships between Levi's, its contractors and NGOs, and evaluate and improve the process used to implement and monitor the TOE. NGOs developed the research method, reviewed training and TOE assessment materials, conducted site visits and prepared a report on their findings. At the close of the project, the NGOs reported their view of the strengths and weaknesses of the TOE process, and presented recommendation to Levi's. Levi's agreed with the recommendations and planned on implementing improvements with contractors. This project's impact on the local community was evident. Local contractors developed a variety of on-site social programs for employees, including daycare facilities, savings plans, literacy classes and health education courses.

Funding: The report implies that Levi's provided the financial support for the Dominican NGOs' monitoring services.

Comments: According to the report, the pilot program "demonstrated that a multinational company, independent NGOs and local contractors can work together collaboratively with mutual respect to develop a credible approach for improving a code of conduct implementation and monitoring process." It added that the pilot program's general concept and method can be replicated in other parts of the world, after taking "changing dynamics from country to country" into account, and Levi's intends to test this model in selected countries in Asia and North Africa.

Liz Claiborne in Guatemala:

The gestation period for Liz Claiborne Inc.'s independent monitoring project in Guatemala began in 1996, when representatives of LCI began conversation with representatives of Guatemalan civil society organizations about the concept. Many of the individuals contacted responded by forming the Commission for the Verification of Codes of Conduct (Coverco) the following year, and Coverco began negotiations in 1998 with LCI about a pilot initiative to monitor a key LCI vendor factory. The ground rules they agreed upon were that Coverco would have full access to the factory and factory records and would be able to set up occasional meetings with factory management in order to provide LCI with regular updates on the factory and cases of non-compliance with LCI's Standards of Engagement. The two parties agreed also that Coverco would present periodic public reports summarizing its findings. LCI invited the Business for Social Responsibility Education Fund (BSREF) and the International Labor Rights Fund (ILRF), an organization in Washington, D.C. that advocates and litigates on issues of international labor rights, to provide training and advice to both LCI and Coverco as the project got underway.

How monitoring has worked: The project began in full on January 1999 at the 900-worker factory. Coverco representatives introduced themselves to workers by handing out a pocket calendar and brochure describing Coverco's monitoring responsibilities. Coverco also attempted an informal survey to assess the general characteristics of the workforce, but "our survey design did not sufficiently take into account the low academic level of the workers and their unfamiliarity with the world of surveys," it noted in its public

report covering the initial period ending July 30, 1999; fewer than half the workers had completed primary school.

Coverco also established three types communication channels with the factory workers—off-site meeting places, accepting telephone calls and visits to the Coverco office, and placing padlocked suggestion boxes in the factory. Some channels proved more satisfactory than others did. Although Coverco “arranged with a local women’s group and a local church to use their facilities at designated times each week to talk with workers,” workers never used these sites. Instead, they requested meetings—to which Coverco acceded—at various other sites near the factory, including a public park and a restaurant. Coverco reported, too, that “despite the added expense of calling or visiting our office in Guatemala City”—with a round-trip bus trip or a two-minute call representing close to two hours at the minimum wage—“these have proved to be the most popular options.” The suggestion boxes proved to be unsuccessful. Several workers reported that they felt intimidated by management when they dropped comments into the boxes, and the boxes fell into disuse.

Through July 30, 1999, Coverco had 33 investigative visits to the factory, each time interviewing a number of workers, and it had many more offsite meetings and telephone conversations with workers. As a result of its findings and recommendations from these visits and contacts, Coverco reported, factory management has set up and staffed a rudimentary health clinic at the factory, kept standard emergency exits unlocked—after repeated reminders and visits from Coverco, and begun to implement a grievance procedure.

Funding: LCI pays quarterly for Coverco’s monitoring services, which combined with translator fees totals about \$15,000 annually, LCI reported to IUI. In addition, LCI estimated that its travel and that of factory management in connection with the initiative came to \$10,000. It was not able to assign a dollar cost to the time of LCI management.

Comments: LCI commented to IUI that the monitoring initiative has been “very effective in detecting problems and helpful in offering ideas for best practice. It also allowed LCI to go beyond the ‘snapshot’ reviews and audits done as part of its internal program. Both Coverco and LCI indicated that the local factory management was initially not fully cooperative, but that this situation has improved. LCI commented that the factory now views the project as a positive development that “will make them more competitive in a region where labor is becoming more scarce.” But LCI cautioned that the relative success of its project may not be easily replicated, because of the difficulty of finding independent, impartial monitors with the appropriate experience or in providing the training to get them up to speed. Moreover, the company said, “it would be difficult to have multiple projects of this type due to the costs and time involved.”

Mattel

In November 1997, Mattel reports that it became the first consumer Products Company to commit to establish a global, third party verification system. The company states that, unlike many apparel and footwear manufacturers and retailers, it did so with relatively little pressure from activists and other stakeholders. Mattel enlisted the assistance of S. Prakash Sethi, Academic Director of Executive Programs at Baruch College, City University of New York,

to implement its code and to develop a system for monitoring and reporting on compliance. Sethi advises various U.S. and multinational corporations in developing and implementing ethics programs and codes of conduct and has also advised U.N. agencies on economic development issues.

After announcing its code and partnership, Sethi recruited Paul F. McCleary, former executive vice president of Save the Children and former associate general secretary of the United Methodist Church. Sethi also engaged Murray L. Weidenbaum, a professor at Washington University and former chairman of the U.S. Council of Economic Advisors. The three form the Mattel Independent Monitoring Council or “Mimco,” the group that oversees Mattel’s third-party monitoring program. Mimco is free to refuse to endorse statements on Mattel’s compliance if it finds fault with the statements or feels Mattel or its suppliers have not fully cooperated with monitors. Mimco published the results of its first audits in November 1999.

How monitoring works: Mimco’s monitoring program features on-site inspections of manufacturing facilities, including unobstructed facility tours by Mimco members, management interviews, auditing of personnel files by PwC, and one-on-one interviews conducted confidentially by Verite International with statistical samplings of workers. PwC uses its affiliates overseas to complete audits for Mattel’s plants and has agreed to use staff and affiliates that have no direct connection or direct contact with PwC personnel conducting financial audits for Mattel. Verite (which is also involved in the Collegiate Licensing Company initiative described earlier) engages local groups and coordinates and manages their interviews with Mattel employees and Mattel’s suppliers’ workers.

By October, Mimco had translated the general statements contained in Mattel’s code into concrete requirements for Mattel’s operations and those of its suppliers and procedures for monitoring and reporting. This operational code, created by a task force of 50 managers and technical experts from within Mattel, contains more than 200 specific quantifiable standards. They define the compliance parameters for each principle that, at a minimum, must meet the legal criteria mandated by a country’s labor and environmental laws where a plant is located.

Mimco also developed a three-phase audit schedule. The first year of the cycle—1999—concentrated on Mattel’s company-owned facilities and those plants where Mattel controlled 100 percent of the output. In 2000, Mimco is focusing on a statistically selected sample of the plants that are owned and operated by Mattel’s strategic partners and primary suppliers, and where Mattel buys 70 percent or more of a plant’s output. The third year of the audit cycle will focus on a statistically selected sample of second-tier plants where Mattel buys between 40 percent and 70 percent of the plant’s output. Mimco also has complete discretion to add more plants in its audit sample in order to get a more accurate picture of the level of compliance on the part of Mattel’s strategic partners and primary suppliers.

In advance of Sethi’s team, Mattel’s own team of internal monitors inspected facilities of its suppliers and worked with them to ratchet up standards to adhere to Mattel’s code. Based on its these internal monitoring efforts, 15 contractor facilities had been dismissed as of mid-2000 and several were on Mattel’s “watch list.”

Funding: Mattel reported to IUI that: Mimco draws up a budget for Mattel management, which pays Baruch College, which then administers the budget and pays Mimco subcontractors such as Verite, PwC and the graduate students who assist Mimco. Mattel said, “Invoices are sent quarterly to Mattel, so that we may see how the money has been spent, but the company does not control the spending decisions made by Mimco once the budget has been allocated.” In addition, Mattel pays each Mimco member an annual honorarium of \$15,000.

Compliance issues that arise most frequently: “In terms of legal compliance,” Mattel told IUI, “our greatest concerns are in the areas of hours and wages in China. Globally, our greatest concerns are probably in raising the environmental and safety standards. To date, child labor has not been a significant issue.”

Observations: Mattel says independent monitoring—which it defines as “monitoring conducted by a party outside the company who has the freedom to publicly share findings”—has been successful in raising awareness of actual labor practices and manufacturing conditions at vendors as well as company plants. The independent monitoring program, management says, has also received a “general positive” reception from NGOs, “which has been an added benefit to corporate reputation.” Where the project has fallen short of expectation, Mattel says, is in the initial timetable it set for vendors to come up to standard, which now appears “too aggressive” as Mattel learns in more detail about conditions at these vendors.

Based on the company’s experience, a Mattel representative told IUI: “As an internal motivation and a means of gaining credibility with the public, I believe independent monitoring is a key component of an audit program. In preparing for public reporting, however, I feel we have identified that in general, more resources should be spent on training and development of manufacturing sources, and less on the audit portion of the program.”

Swedish Retailers/Clean Clothes Campaign

The H & M project on independent verification of compliance with code of conduct in the garment industry began in 1997 and involved four Swedish clothing chains (H & M, Kapp-Ahl, Lindex and Indiska) and the Clean Clothes Campaign - Sweden. In the summer of 1998, the five parties signed a declaration of intent agreeing that the four retailers would work together to implement an independent monitoring system. The objective of this project was to “build up a system for verification for adherence to codes of conduct and to base independent verification on a common code of conduct”. The project led the participants to clarify for themselves a definition of “independent verification:” monitoring conducted by a third party, and different from the companies’ monitoring programs.

Project participants established a board composed of representative from trade unions, companies and NGOs to conduct the study.

How monitoring worked: Factory audits were performed from October 1999 to February 2000 in Bangladesh and India. Before the audits were conducted, workers were

interviewed away from the factory site to provide a better sense of factory working conditions and potential issues the monitors might discover.

ITS and project staff then conducted unannounced audits to check the payroll, working environment and overall compliance with local laws. Based on the results from this pilot study, new studies are planned for India and China for in late 2000.

4. UNIVERSITY LICENSEE SURVEYS

Five out of ten licensees receiving the survey responded. It was agreed that the results would not be attributed to any individual company.

The companies responding created their codes largely between 1991 and 1997. All five said they began monitoring their vendors using company staff—or internal monitors—soon after developing their codes, while the development of monitoring systems involving external monitors came somewhat later, for those companies that use external monitors. A few of the respondents said they are experimenting with using independent monitors in pilot projects or at some of their vendor factories.

The department responsible for the code's implementation varied from company to company. One company indicated that the human resources department has primary responsibility for code implementation, with assistance from sourcing and manufacturing while ultimate responsibility for compliance lies with the Director of Human Resources and Global Workplace Values. Three companies said they had special "Compliance" departments that had ultimate responsibility for ensuring their plants and vendors are in compliance with the companies' codes.

The companies responding to the survey have developed a variety of ways to monitor compliance with their codes of conduct. Four of the five companies use both internal and third-party monitors. The remaining company said it used only internal monitoring, but has participated in a few pilot projects that involve external monitors and that it is also in dialogue with a third party auditor to augment an internal program.

Internal Monitoring:

- Companies agreed that internal monitoring is extremely helpful, and that external and independent monitoring lends added credibility to the process.
- In terms of internal staff, two companies indicated that they have four or five staff responsible for code enforcement. A third company utilizes its 40 quality control staff to perform inspections and audits. A fourth company employs 25 staff in three global regions that are dedicated to compliance monitoring. Most of these companies indicated that, in addition to code enforcement, staff members' other responsibilities include human resources, sourcing, manufacturing, and quality control. However, a fifth company told IUI that its 40 compliance managers and inspectors work only on code compliance; "the potential for conflict of interest," it says, "is one of the reasons we decided to set up a separate compliance department, which has the authority to make final decisions on the factories in which we do business."

- To ensure that there are no conflicts of interest, two companies described policies that all new facilities get externally monitored before initiating production. At one of the two companies, the company's compliance staff as well as the company's external auditing firm first inspect the factory against the company code. The factory is then required to correct shortcomings before the company places an order with it.
- Most of these licensees reported that compliance staff is located in worldwide productions facilities as well as at corporate headquarters.
- Four of the five companies indicated that they make efforts to train factory managers in person on the terms of their codes and what implementation involves, with one company reporting that the managers of its vendor factories have to complete a one-week training certification course.
- Only one company said that it numerically ranks supplier factories within a particular country—rankings that it then includes in a detailed company database and discusses with the factory managers. However, a second company said that it had an “informal” ranking system, while a third said it was developing a factory ranking system. A fourth company did not have a ranking system, but said that it maintained a company-wide database with its internal and external monitors' reports on its factories.

External Monitoring:

- Companies using external monitors have engaged Pricewaterhouse Coopers (PwC) and Intertek Testing Services (ITS).
- In addition, one company mentioned that it has brought outside experts in occupational and environmental health and safety to inspect various of its vendors' facilities and make recommendations for improvement.
- One licensee said it is using the Worldwide Responsible Apparel Production Program (WRAPP) to certify internal and contractor facilities.
- One firm in particular noted that external audits vary greatly in quality, depending on the monitoring firms' experience.
- One company said that it trains its external auditors on its code of conduct. It explains, “we have worked closely with PricewaterhouseCoopers to develop training materials for local auditors. These auditors must complete the [company] training program prior to conducting audits on any [company] contract-manufacturer.”

Independent Monitoring:

- Three of the companies also described their efforts in working with local and international NGOs and government agencies to monitor facilities.

Other Comments: Overall, the licensees responding to the survey reported the following findings:

- It is important to understand the culture and economic dynamics of producing countries.
- Resources are best spent on establishing clear and practical standards, researching long-term solutions to the more difficult problems and training.
- Regarding the relative merits of internal, external and independent monitoring, the licensees generally seemed to believe that each offered important insights. One company said: “Internal monitoring produces the best results as we can work with the suppliers long term. External monitoring by non-profit groups sometimes brings up items

overlooked by internal audits but for the most part produces audits that are not in depth and lack professionalism. External audits that we have reviewed by “for-profit” groups are generally good but sometimes show a lack of depth and a lack of experience in social areas. In summary the external/independent audits are improving but internal audits are still the most useful.”

- One licensee asserted that monitoring is only useful as a double-check to see if buyers and suppliers are truly committed, so extensive monitoring is a questionable investment.
- One company said that multiple audits of the same facility are highly inefficient and a common audit form and protocol are needed.
- Most of the licensees said that they encourage compliance by their suppliers, but that they impose sanctions and will terminate relationships if necessary. As one company said, “Our primary approach is to encourage compliance by favoring suppliers that have a good internal program and a good record of compliance. With this approach other suppliers see that they might get additional business through good compliance.”-
- Three of the licensees indicated that they are involved in other compliance efforts related specifically to university-licensed apparel, such as the CLC project and the Independent University Initiatives.
- Two licensees described efforts to facilitate student/ faculty visits to suppliers and joint monitoring visits with licensees.

APPENDICES