



**MONITORING WORKING CONDITIONS
IN THE GARMENT & SPORTSWEAR INDUSTRY**



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INTRODUCTION

In 1990 the Clean Clothes Campaign (CCC) in the Netherlands started her work of trying to improve working conditions in the garment industry, worldwide. Since 1995 the CCC has expanded to Belgium, France, Germany and the UK. Campaigns are starting in Switzerland, Sweden, Spain and Italy. Also in the United States, Canada and Australia similar campaigns exist. The campaigns consist of broad coalitions of trade unions, consumer organisations, womens' groups, solidarity organisations, developmental organisations, world shops and other NGO's. The campaigns originated in direct solidarity work with garment workers in producer countries. The wish of expressing this solidarity in a more structural way led to several methods to promote the aim of the campaigns.

1. Garment workers organizing themselves in unions and NGO's need support and solidarity. Good worldwide cooperation is crucial for the realisation of the campaign. Most of CCC's partners are in Asia and recently we started to work on expansion to Africa and Eastern Europe. We are in touch with US and Canadian groups that work in a similar way and focus on Central America. This worldwide network has been growing in 1995 and 1996 when more countries started a CCC. The organisations involved in the different CCCs are trade unions and ngo's who have their own partners in producer countries. The english newsletter serves as a means of communication for all these groups. In case of a strike or other action immediately protest-letters are sent from different countries. We also have a small strikefund where workers can apply to in case of a strike or lock-out. The campaigns also aim to improve the position of homeworkers and people working in sweatshops in Western Europe, often through lobbying governments on improving legislation.

2. Everybody buys clothes. The CCC aims to reach individual consumers through the organisations that they are a member of, identify with or listen to. In all countries the CCC consists of large coalitions of a wide variety of organisations. Through the active trade unions, consumer organisations, womens' groups,

solidarity organisations, world shops and other NGO's consumers can be targeted and reached. There are many different ways. Publishing articles in newspapers and magazines, going to manifestations and rally's, participating in panel discussions and fora are just some examples. Postcards can be distributed which consumers can send to companies.

3. Pressuring garment retailers and production companies to accept responsibility for the working conditions in the garment industry in the entire subcontracting chain.

Garment retailers and production companies are urged to sign a good code of conduct and accept a system of independent monitoring. In the Netherlands a proposal was developed by the CCC, the Dutch trade union federation FNV and the developmental organisation NOVIB, called the Fair Trade Charter for Garments (FTC). If companies accept this proposal, they will guarantee that all the clothes that they sell are produced according to the ILO-based conditions in the FTC, or will be after an agreed upon period. The demands in the FTC concern: the right to organize, the right to collective bargaining, living wages¹, hours of work, no discrimination, health and safety, no child labour, no forced labour and security of employment. A company that signs the FTC gets the right to use a trademark for all its shops, to profile itself to the consumer as selling 'clean clothes'. The company allows independent monitoring² of the code. If any violations of the code are found, the company will be advised on what steps to take. If they do not comply with this advice, the case will be made public and in the last instance the trademark for their shops can be taken away.

¹ A living wage is a wage that covers basic needs. A living wage can therefore be higher than the legal minimum wage, if the legal minimum wage is below subsistence level.

² 'Monitoring' is defined as: "the process of regularly collecting information to check performance against certain criteria" (NEF/CIIR 1997). 'Independent monitoring' means this is not (entirely) in the hands of the company that is being monitored. In Chapter 2 the concept of independent monitoring will be dealt with in more depth.

After years of pressuring companies, educating the public and solidarity work with workers' organisations in producer countries, the campaigns now get to the stage where the first companies start to reply positively. The first agreement between a garment retailer and an action group has been signed in the US in December 1995. In Europe we see similar developments. In several countries, the local CCC is negotiating with retailers.

In the meantime, companies start to develop their own codes and their own systems of monitoring, making claims on independence and quality. This increases the need for trade unions and ngo's to unite internationally and come with clear proposals, as to keep the initiative and not let companies get away with what usually bears only a vague resemblance to what was originally demanded.

At the moment the issue of independent monitoring is crucial, and the main focus of this report. After all, "if codes of conduct used by Reebok, Mattel or other companies were monitored through independent mechanisms they would be more effective in ensuring proper working conditions, and become more than tools to improve corporate reputations"³.

Independent monitoring is the subject of a lot worldwide debate. This report is mainly based on this discussion between workers' organisations, ngo's and companies. In October and November 1995 CCC-Netherlands went to Sri Lanka, Bangladesh, Thailand and the Philippines. In these countries we visited all together about 30 garment factories that produce for the European market. We interviewed the management of these factories and were shown around so we could take a look at the working situation. In a number of cases we managed to conduct interviews with workers of these same factories outside the factory (either at the office of a trade union or ngo, or at the house of the worker). These interviews were organized by local organisations that are active in supporting workers in their struggle. With them we also extensively discussed strategies.

³ 'Company codes of conduct: do they work?' by Jennifer Porges, Asian Labour Update issue 41, april - july 1996, AMRC Hong Kong

These discussions continued when representatives of these organisations visited Europe in April and May 1996, for a European Action Tour. This tour was organized by the CCCs in the different countries and included actions, press conferences, meetings with trade unions and ngo's and discussions with companies. Independent monitoring turned out to be a major issue for all. Within Europe different organisations involved in a CCC followed this up with research, discussions and public meetings. The Asian counterparts did the same within their countries, and of course more international exchange was organised.

A coalition of the Clean Clothes Campaigns in Europe, International Trade Union Secretariats (ICFTU, WCL, ITGLWF, ETUC/TCL, FIET, Euro-FIET, WCL- Clothing & Textiles) and other ngo's (Fair Trade Foundation, IRENE) has started a process of developing a single code of conduct for the garments and sportswear (including shoes) industry and drafts for a system of independent monitoring for such a code are circulating. This report has extensively made use of these drafts.

In February and March of 1997 CCC-Netherlands went to Hong Kong, where we conducted interviews mainly with buying offices of European retailers, agents, traders, in short all the business that one can find between shops and factories. We also spoke with a quality control company that is getting involved in monitoring working conditions. We visited some factories in China and Macau and we continued the discussions with several (regional) ngo's in Hong Kong about the monitoring proposals that had been developed so far.

We have used a lot of the knowledge and ideas on codes and monitoring developed by the international toy campaign, in which a number of CCC partners are active. Other sources include newsletters from a lot of different groups, some publications used for this study can be found in the list of literature at the end.

We will first in Chapter I give some background on corporate codes of conduct concerning working conditions, that companies in the garments and sportswear industry started developing as a reaction to workers' and consumer' pressure. We will look into the aim of corporate codes of conduct and their effect on working conditions. As we will see, they leave many loopholes for companies to escape a real change of their working environment. Corporate codes are therefore heavily criticised. Derived from this criticism, we will describe principles that must be met by an effective code of conduct, that is a code which results in improving the working situation for each worker.

Chapter II will then continue with an analysis of implementation and monitoring of codes of conduct. We will first look into the current behaviour of companies with a corporate code of conduct. What steps do companies take to ensure their corporate code of conduct is implemented? What steps do they take to monitor their code? We will give examples of different companies in different stages. What is the criticism on these company's approaches? From there we can derive criteria for implementation and criteria for monitoring.

Chapter III looks at the different 'actors' that are involved in an independent monitoring system, their roles and their interaction. As we said earlier independent monitoring is the subject of a lot of discussion. Chapter III brings together ideas, proposals and methodology developed until now and describes an independent monitoring system that reflects this.

A List of Literature and a Toolkit are added. The toolkit contains questionnaires and checklists for the implementation and maintenance of the monitoring system. These were drawn up using existing models both from companies and campaigns.

English is not our first language, so there are bound to be a lot of mistakes and strange phrases. We did not want to do an expensive and time-consuming edit. We've tried to be as clear as possible, but if it is not clear enough please contact us.

CHAPTER 1: CODES OF CONDUCT IN THE GARMENT AND SPORTSWEAR INDUSTRY

1.1 Strategies for Improvement

To ensure that 'cheap and flexible labour' remains that way, trade unions or other workers' organisations are discouraged, to say the least. It is common practice for a garment worker to get sacked at the first sign of organising. In some countries there are elaborate systems of blacklisting to enable factory management to keep 'troublemakers' out of their workforce.

The demand for compliant workers also explains why we find so many (especially young) women working in this sector; in Asia and Central America over 80% of the workforce is female and under 25. This is not because (young) women are compliant, even though that is what management might think. In general women are being discriminated against and their position on the labour market is worse than that of men with similar education and experience. They have therefore much more reason to be afraid to lose their job. Also, in many countries trade unions are dominated by men and are not very sensitive towards specific problems that women encounter in their work. A 'female' sector like the garments and sportswear is therefore often not a high priority for these unions.

The general discrimination against women also makes that management usually gets away with paying women less than men for the same job. This is often excused by the image of men as breadwinners and women as making some extra money. However, many women workers in the garment sector are the sole wage earners in their family. This wage discrimination of course strengthens the preference management has for hiring women. Management themselves will usually state other reasons for this preference, like 'the nimble fingers' women are supposed to have, or a sort of 'natural ability' to be good at sewing. To regard this as something that you are born with instead of as something that has to be learned, enables management to qualify this as unskilled work, and pay accordingly. Opposed to that we see that physical strength and mechanical

ability are associated with men and are considered skills. For example cutting is considered skilled work. You need a jigsaw instead of a sewing machine. Cutters are almost always men, and cutting is a better paid job than stitching.

It has been argued that jobs in the export oriented industry at least provide women workers with one more option to obtain an income, albeit often at sub-subsistence level. Conclusions about whether a certain form of employment is beneficial to women or not depend on the alternatives that are available to them. However, it must be taken into account that in the current state of affairs women only work in such industries for a short period of their lives. It is rare to see women over 30 working in the garment and sportswear industry. By then they have severe health problems and/or cannot keep up the work speed that is demanded of them. They will move on to jobs usually of even lower quality, lower paid and with lower job security, such as in the services sector or as homeworkers. On the one hand one can argue that this means that factory jobs are among the better employment alternatives. On the other hand one can argue that jobs that 'use up' women in a few years, leaving them with few or no marketable skills and little or no capital from savings, are not beneficial to them at all.

Recent research in Sub-Sahara Africa showed that in Kenia, Zimbabwe, Madagascar and Mauritius the majority of the workforce is male. Though we can explain why in the Asian and Central American countries the workforce is predominantly female, we do not yet know why in the African countries it is predominantly male. There are no reliable data on Eastern Europe as yet. This requires further research since a gender perspective is essential to understand the situation of the worker and to support worker organisation.

A lot of study has been done on the work of children in the garment industry and in other export-oriented industries. It is generally estimated that about 2% of the workers in the garment industry are children. They are usually employed as helper, for example cutting threads or cleaning. This means they are on helpers' salary even when working more than fulltime. The fact that they are children means that they stay on a helpers salary, despite the amount of months or years they've been employed or the number of people in the household dependent on

them. A consensus has slowly emerged over the past few years that the way to abolish child labour is to provide adequate transitional economic assistance and appropriate educational opportunity to any replaced child workers.

Workers organize themselves in many different ways and try to improve their situation. They can demand negotiations and when these are refused, go on strike. Sometimes this leads to massive lay-offs (lock-outs), or -in an earlier phase of organizing- to lay-offs of active workers. Sometimes management responds by closing the factory and re-open on another location under another name. The rise of a strong labour movement might even lead to a massive international relocation, such as in the case of South Korea. However, the decision on where to locate production is always taken for a number of reasons, such as access to markets, infrastructure and tax advantages. Low labour costs and a compliant workforce are certainly attractive factors, but never the only ones. The argument that organizing workers and demanding better working conditions is not in the interest of workers, is therefore not very strong. Workers risk to lose their jobs due to relocation anyway, whether they organize or not. Without the assistance of (non-yellow)⁴ trade unions or ngo's, workers are usually not in the position to fight massive lay-offs and lock-outs. They lack knowledge and resources to follow the legal procedures that can be undertaken. They also lack time for massive organizing, especially in the Asian countries where most workers are women who have to do a triple shift: organizing work, housework and childcare, and incoming generating work. It's hard to stick to the case, since they have to find another job or other means of making some money. With the assistance of (non-yellow) trade unions or ngo's the situation improves but is still very difficult. The legal procedures often take years and the verdict is by that time largely irrelevant. Massive organizing can have some results though it usually does not bring back jobs. It does play a role in pressuring the

⁴ A yellow trade union is an organisation representing the interest of the management or even established by the management. Establishing yellow unions is a strategy to keep out 'real' unions who represent the interest of the workers.

government to undertake action, and in general to make the public more aware of what is happening.

However, the power of governments is not unlimited. If -due to trade union or ngo pressure- a government starts to take measures to improve labour legislation or to implement the existing labour legislation, the response of foreign investors is to (threaten to) shift production to another country. Governments of third world countries are usually heavily in debt and under pressure of Structural Adjustment Programmes by IMF and World Bank. The strategy to attract foreign investors, a policy of strict implementation of labour legislation is not helpful.

In general we can say that due to the international nature of the garment and sportswear sector (and many other sectors) it is not possible for a government on a national level to come with a 100% solution. Solutions need to have an international dimension, otherwise companies always have a way out, as long as there is another country or region that will fulfil their requirements. This is not to say that governments have no responsibility in this matter, or that they are powerless. Not all companies will run away if labour legislation is implemented. It is important to have examples of how a labour situation can improve, so others can be pressured to follow these examples. However, the point is not to look only at governments or to see them as the only actor in this matter.

The garment and sportswear industry makes products that are bought by individual consumers. Therefore, they can play a role in promoting decent working conditions. Through their purchasing power they can influence company policy.

Consumers' organisation for a long time was only concerned with issues like price, guarantees and quality. When you want to buy a new refrigerator you look in the consumers magazine for the best one. 'Environment' is by now a more accepted issue to include. The magazine will also tell you which refrigerator is most environmentally friendly. However, you will not find anything on working conditions.

That is not to say that consumers are not concerned with social issues. If they are provided with the information to distinguish between different companies or products, many people will take social responsibility into account. Although it still remains to be seen how many consumers are really willing to pay a higher price for products that include some social standards in their production, a large majority of consumers expresses that they would purchase these goods when given a choice.

For example research by the Dutch youth organisation NJMO showed that 75% of young people is willing to pay 25 guilders extra for a pair of jeans if it is guaranteed that the jeans are produced without child labour. In the 1970s and 1980s we have seen the boycott of South African products because of the apartheid and the Nestlé boycott because of the baby food marketing. Consumers can decide to buy Max Havelaar coffee. Shell gave in to consumers' demands in the Brent Spar affair, and so did Heineken when severe pressured on their production in Burma. We can see this both as a sign of growing consumer awareness but also as a sign of growing company awareness on such environmental and social issues. Companies have been increasingly responsive to demands from consumers concerning their social responsibility. On the one hand companies make use of bad working conditions to maximize their profit, but at the same time consumers are much more important for companies than in the past. Higher competition, more information and more awareness on many issues have led to the situation where companies do not get away with an attitude of being closed off for any consumer demands. They have to 'seduce' the consumers to buy their products, and increasingly they have to account for their behaviour if the consumers demand so.

1.2. Companies Responses

We can distinguish two strands of action that are undertaken by companies in this respect. The first is direct responses to 'scandals', as in the mentioned examples of Shell and the Brent Spar and Heineken and Burma. In the garments

and sportswear sector the reaction of companies when faced with criticism has changed considerably during the last 5 years. In the early 1990s the common response to criticism was outright denial of responsibility or no response at all. Nowadays companies usually acknowledge their responsibility, and claim to be very concerned about the environment and human rights. When faced with criticism, their first reaction is often to say "we have investigated the matter very thoroughly and found that nothing is wrong". If then the criticism continues and is supported by evidence, the company will acknowledge the accusations and get rid of the problem as fast as possible. This is not always a victory, since in some cases it might even deteriorate the situation. In the garment sector for example, the fastest way out usually means to withdraw orders from the factory that has been found to violate workers' rights. That might lead to workers losing their jobs instead of getting their rights. Also this strand of action does not lead to any structural improvements and so new scandals will come to light again and again.

The second strand of action goes a step further. Companies start to develop policy on social and environmental issues. By means of self-regulation they make claims about the ethical level of their business. They actively try to distinguish themselves from their competitors on ethical grounds. Since the early nineties⁵ codes of conduct are a frequently used tool in this respect. Recently an American consultant even advised companies to adopt a code of conduct as a strategy to deal with criticism by labour activist groups, which he calls watchdogs. "Although following these steps will not guarantee that you will not be bitten by the watchdog, they should ensure that any bites you get will be 'nips' as opposed to gashes that require rabies shots" (Roinick 1997).

In the garment and sportswear sector we see American companies taking the lead in cleaning up their image. After several scandals concerning bad working conditions in Central America and Mexico, sweatshops in the US itself, low wages, child labour and a prohibition of union organisation, large retail and

⁵ Levi Strauss & Co. adopted its 'Global Sourcing and Operating Guidelines in 1991 and was the first company in the sector to take such a step.

producer companies developed codes of conduct to protect their image. The contents of these codes differ, as does the wording and the references they make. Usually they say something about not using child labour and forced labour, about complying with local laws and in general demanding 'fair practices' both in their own company and in those of their subcontractors. Some go as far as to refer to ILO conventions. Some of the better ones (Levi Strauss, The Gap) include the right to organise and the right to collective bargaining.

With some distance, European companies have been following this approach. C&A, Otto Versand and others have some sort of code or general statement of principles with which they profile themselves on social responsibility. It is perhaps no coincidence that the first companies in Europe to take such a step are also the ones that were most heavily under attack by consumer campaigns. C&A has been the focus of many actions in the Netherlands and the UK since 1990, and in Belgium, Germany and France since 1995. Otto Versand has been the first action target of the German Clean Clothes Campaign since 1995, and immediately developed principles for their production that were sent to all suppliers. A conclusion might be that 'pestering pays off'.

Trade unions and ngo's have heavily criticised corporate codes of conduct. One argument is that these codes are nothing more than tools in a public relations strategy and are not implemented at all. The critics demand that companies have their codes independently monitored to ensure that they meet their own standards. The claims companies make in this respect ('monitoring' their own code, hire accountant firms or getting an ngo to 'advise' them) are a reaction to this criticism.

Company codes are accused of being vague and therefore not effective. First we will give general principles for a good code of conduct. Then, after going into the criticisms on existing company codes, we will derive more specific principles for a good code of conduct.

* A code of conduct should not be a substitution for government action.

* A code of conduct has both a workers' and a consumers' perspective.

- * A code of conduct will be endorsed by both ngo's and trade unions.
- * A code of conduct must not be a substitute for collective bargaining and other forms of normal union activity...
- * A code of conduct must not be protectionist.
- * A code of conduct is aimed at manufacturers as well as retailers and all in between, either directly or through their federations.

1.3. Criteria for Codes of Conduct

The criticism on company codes can be distinguished in 4 core points of criticism, of which we can derive principles for what a good code should look like.

1.3.1. Issues

Corporate codes are limited in their coverage. They deal with child labour only, or otherwise exclude basic labour rights. For example C&A's code lacks the right to organize and to bargain collectively, which is an internationally recognized basic labour right, even included in discussions on social clauses in trade agreements.

Principles:

- * A code of conduct must consist of a total package with at least the following labour standards:
 - freedom of association
 - right to collective bargaining
 - no forced labour
 - no child labour
 - no discrimination
 - maximum hours of work
 - health and safety
 - a living wage
 - security of employment

1.3.2. Measurableness

Corporate codes have general text on the demands in their code. It is therefore difficult to interpret them and/or to prove they have been violated.

An example: "Reebok will seek business partners who share our commitment to the betterment of wage and benefit levels that address the basic needs of workers and their families so far as possible and appropriate in the light of national practices and conditions. Reebok will not select business partners that pay less than the minimum wage required by local law or that pay less than prevailing local industry practices (whichever is higher)" (Reebok Human Rights Production Standards). Now this code is not the worst one, but still if Reebok gets confronted with underpaid workers they have several ways out. First of all Reebok only says they 'will seek' business partners, so maybe in this case they had not found them yet. Secondly, 'commitment to the betterment of wage and benefit levels that address the basic needs of workers and their families' is something that is difficult to measure. The supplier could say 'we are very much committed but lack the cash right now to pay more' and not violate the standards. Thirdly the clause 'so far as possible and appropriate in the light of national practices and conditions' is of course a nice way out if all else fails. Does this mean that if most other factories pay their workers a wage below subsistence level, Reebok can do the same? The clause referring to legal minimum wage and local industry practice is nice, but in most developing countries the legal minimum wage is far below subsistence level and therefore not a good standard. However, even in these countries we find factories that pay less than the legal minimum wage so it is good to mention it. But it is not enough.

To compare, we look at the text on the same issue in the ICFTU/ITGLWF/FIET code: "Fair wages are paid. Wages and benefits paid shall meet at least legal or industry minimum standards and should be sufficient to meet basic needs and provide some discretionary income". There can still be discussion on what are basic needs, however, the text is very clear. Usually one can find sources on what covers basic needs in a certain country or region through the national bureau of statistics or by the UN.

Principles:

- * A code should specify standards which are precise and measurable. In the absence of precise and measurable standards, it is reasonable to conclude that codes of conduct are statements of intent rather than anything more serious.
- * For the interpretation of the standards the ILO conventions and ILO jurisprudence will be used. Where applicable also other internationally existing and accepted standards can be used.

1.3.3. Scope (which part of the production chain is covered)

Corporate codes do not specify precisely the limits of their responsibility. Does the code only apply to the direct employees or also to the employees of the subcontractors and suppliers? And if so, who is considered to be a subcontractor or supplier? Does the code apply to all products? A good code needs to answer these questions. Most company codes do not.

Principles:

- * A code should apply not just to the company which sells products, but also to its suppliers, subcontractors and licencees.
- * Companies accept responsibility for the labour conditions under which the products they sell are produced, down the entire supply chain in their sector. The limits of their sector have to be defined.
- * A code of conduct applies to all workers. Definition of a worker so that it includes homeworkers, sweatshop workers, migrant workers without legal status etc.
- * A code of conduct applies to 100% of the company's products. The implementation of the code might take place within a specified timeframe.

1.3.4. Implementation and monitoring

Many (company) codes are not implemented and monitored. It must be clear in the text of a code that it will be implemented. It has been shown that often even the management of a supplier is not aware of the existence of a code, let alone

the workers of the factory. It must also be clear that there are some sort of procedures in case of violations. If these are absent, the usual response of a company when faced with violations is to withdraw orders. This does not improve the situation and can even cause workers to lose their jobs. In Chapter 2 we will look into the concepts of implementation and monitoring.

1.4. New Initiatives

After public accusations of sweatshop practices by several American companies in the garment sector, the Apparel Industry Partnership was formed in 1996. This consists of a group of companies, several trade unions and ngo's and the US Department of Labor. They drafted a 'Workplace Code of Conduct' and 'Principles of Monitoring'. In April 1997 these have been signed by Nike, Reebok, Liz Claiborne, Warnaco, Nicole Miller, Patagonia, Phillips van Heusen, LL Bean and Kathy Lee.

The Code of Conduct refers to forced labour, child labour, harassment and abuse, non-discrimination, health and safety, freedom of association and collective bargaining, wages and benefits, hours of work and overtime compensation. Most criticism is aimed at the wages and benefits and hours of work parts. The code refers to legal minimum wage or industry wage and not to living wage as is demanded by trade unions and ngo's. The wording of the hours of work part allows a 60 hour week as regular and allows for overtime on top of that "in extraordinary business circumstances".

During 1997 there were several meetings of the International Trade union Secretariats, Clean Clothes Campaigns and ngo's. A draft text for a code of conduct that meets all these criteria was discussed and is currently being finalized.

The principles described in this Chapter can be used as a checklist for any (corporate) code of conduct to see what is good about the code and at what points it needs improvement. However, this is only a first step. Even if a company has a good code of conduct or signed an agreement with trade unions and ngo's on a good code of conduct, this in itself does not improve the situation of any worker. Therefore a code must also be implemented and monitored. In Chapter 2 we will look into these complex issues in depth.

CHAPTER 2: IMPLEMENTATION AND MONITORING

"Credibility is the critical element for codes of conduct. Without it, the promises contained in a code are hollow and the credibility of the company falters" (US Department of Labor 1996: 9).

An important flaw in company codes of conduct is the lack of information on how these codes are being implemented and monitored. Companies often say they instruct their buyers or send special teams. If they really do so cannot be known. This means that everything can be true: the code can be nothing more than a piece of paper with a public relations function or an extensive implementation and monitoring system might have been developed by the company. Often companies don't have a consistent policy in this respect; in some places and on some issues they check and monitor, while other places and issues are being ignored as the following examples show.

C&A

A (garment) factory manager in Sri Lanka: "C&A demands we don't use child labour. They also look at fire safety. All buyers come with checklists these days (Schone Kleren Kampagne 1996: 21)".

A manager of a garment factory in the Philippines producing for C&A: "It is not the buyers' place to interfere in what goes on in the company. As long as we deliver what they order, they have no reason to do so" (Clean Clothes Campaign 1997: 8).

Marks & Spencer

A manager of a garment factory in Bangkok, Thailand: "Marks & Spencer are strict, but are more concerned with whether something is neat and clean and less with workers rights. For them, appearance is everything" (Clean Clothes Campaign 1997: 19).

A manager of a garment factory in Sri Lanka: "Marks & Spencer visit twice a year and check the canteens, toilets and washrooms. They also check safety regulations and medical facilities. They want to see workers are well paid and sharing in our success" (Clean Clothes Campaign 1997: 20).

However, due to pressure by trade unions, consumer groups and other ngo's, companies start to make policy on implementing and monitoring their code or at least make claims in this respect. We will first look at what action has been undertaken in the last 5 years by garments and sportswear companies that have a corporate code of conduct. From the criticism that exists on these company approaches we will work out criteria for implementation and monitoring. We will then look into each of these criteria in depth.

With 'implementation' we mean the action that is undertaken by a company to transform a code of conduct from an intention written on paper into a reality in their production locations. 'Monitoring' is defined as the process of regularly collecting information to check performance against certain criteria (NEF/CIIR 1997), in this case check the working conditions in all production locations of the company against the standards in the code of conduct. A company can make attempts to monitor its own behaviour ('company controlled monitoring') and in that case there can be some confusion because then monitoring is also an action undertaken by a company itself. However, we will distinguish between implementation and monitoring according to the above definitions.

2.1. Implementation of a Code of Conduct; the Company's Approach

What do garments and sportswear companies with a corporate code of conduct do with the code?

2.1.1. Spreading the Message

Usually companies claim they have sent the code to all their suppliers. However, this does not necessarily mean the suppliers are aware of the code and its

contents. If there no obligations following from the code, why would suppliers take the trouble of doing anything with it? Sometimes suppliers know their clients for example do not want them to use child labour or some other demands, though often this is not put into a contract (SOMO 1997: 4, 5, 7, 13). Another problem is that often the company is not aware who are its suppliers due to the long and complex subcontracting chains. The company then only informs the primary suppliers and does not keep track of all the subcontractors. Lastly it is very rare that workers are aware of the code and its contents. Some examples support this criticism on the companies' action.

V&D is supposed to have signed the child labour code of the Dutch VGT (Association of Large Retailers in Garments). It was found that a Hong Kong buying house that sources for V&D does not know about this (SOMO 1997: 4).

In a factory in Macau producing among others for V&D and C&A the management claims they never got any requirements on working conditions by the buyers (SOMO 1997: 28).

The US Department of Labor visited 70 factories that produce for American companies with codes of conduct in 6 countries. Managers of 47 factories were aware of the existence of these codes. Only 34 of the companies had available a copy of the code that they could show. Only 14 stated they had received some formal training regarding the code. It was evident that the intensity of the training varies widely from company to company. In 21 of the factories there was a code posted. The US Department of Labor officials were told by management of 22 factories that they informed their workers about codes of conduct; 13 said they had done so orally, 9 stated they had done this both orally and in writing. There was only 1 factory that had an explicit policy of informing workers about the code of conduct of its US customer. Of the 6 visited countries El Salvador scored highest on transparency: in all 8 visited factories managers were aware of the codes and could provide a copy

and 7 of them had a code posted in the factory. However, representatives of several major labour organisations in the country stated that most workers and even some labour leaders do not know about codes of conduct. In a survey by CENTRA⁶ of one thousand 16-17 year old workers conducted in June-July 1995 not a single person had ever heard of a code of conduct. Interviews with workers conducted by the US Department of Labor officials confirmed the workers' lack of knowledge about codes of conduct (US Department of Labor 1996: 84-95). The study concludes therefore: "It is quite clear from the field visits that posting of codes of conduct alone has not had the desirable effect of making workers aware of their existence, and active steps to educate workers about the code of conduct is required (ibid: 96).

* JCPenney purchases infant and childrens' apparel from Renzo, a US based importer. Pursuant to its sourcing requirements, JCPenney requires Renzo to certify that its imports are not made with child labour.

* Renzo imports from its Philippines agent, Robillard Resources. Renzo communicates to Robillard the JCPenney sourcing requirements and its obligations and requires Robillard to sign a certificate that its products are not made with child labour.

* Robillard purchases from a number of contractors in the Philippines, one of which is Castleberry. Robillard requires Castleberry to certify that its products are not made with child labour. The owner of Robillard visits Castleberry from time to time monitoring for quality control, but also for compliance with the sourcing requirements. Occasionally, a representative from JCPenney also visits.

* Contractor Castleberry does cutting, finishing, and packing. It subcontracts sewing to about thirty plants.

* The thirty or so subcontractors who do the sewing do not sign a certificate stating that no child labour has been used, but are supervised by Castleberry line supervisors, who are each responsible for several subcontractors. They

⁶ Centro de Estudios de Trabajo, a Salvadorean research centre.

spend almost their entire time with the subcontractors. Occasionally, a production supervisor from Castleberry also visits. It is apparent that their primary interest is quality control, but they also monitor compliance with other standards, including child labour requirements. It is safe to say, however, that none of these supervisors are familiar with the code of conduct other than an understanding that they are not supposed to allow child labour. Embroidery and smocking is subcontracted out to home workers; some is done within the plants as well.

* Homework contracts are made with heads of households. Children may help their parents with some of the simpler embroidery and smocking and with the trimming. This is not monitored by any company⁷ (US Department of Labor 1996: 102).

Otto Versand has a code of conduct with demands concerning child labour, minimum wage and waste products dumped in the water. The demands on child labour and the use of AZO-free dyes and the other rules on chemicals are written in the contract. Also in the contract is a clause that the supplier has to comply with the local law, so that covers the minimum wage. Otto does a sort of audit when they start working with a new factory but 'not so that they throw somebody out'. Violation of the demands written in the contract can be a reason to cancel, this sometimes happens. Sometimes they do not find out, for example in India the structure of the garment industry does not really allow this, they deal with the big companies who put out the production to a large number of small workshops. Usually they check all the subcontractors but India is the exception (SOMO 1997: 10).

⁷ However, if we look at the ILO definition of child labour, it excludes helping within the family. This example would therefore not be a violation of a code of conduct. The example is included because it shows that the monitoring is limited to the first stages of the subcontracting chain, so IF there would be a violation in the lower ends of the subcontracting chain, this would go by unnoticed.

2.1.2. Instructing the Company Staff

A retail company has staff that does visit the production locations. These are usually the buyers, the designers and/or the quality controllers. The frequency of visits ranges from once a year to daily, however, in whatever frequency the visits take place, the company can make it its policy to explicitly instruct their staff to talk to the suppliers on the implementation of the code and/or check on the performance of the supplier. The company might call this monitoring. Since the main job of this company staff is not monitoring working conditions, they will not be specialized in this field. Also it is unclear what the company staff is supposed to talk about or to check. We therefore interpret this step as part of implementation, though one could argue there is some overlap with monitoring, especially in the case where the company staff reports back to the company on what they found at the production locations.

Hij Herenmode has signed the VGT code on child labour. They instruct the buyers to look for child labour if they visit the production locations (interview with a Hij buyer, 1996).

The American US Department of Labor (1996: 54) found that 28 of 48 respondent companies used a form of what they call internal monitoring. "Monitoring of labor policies is usually combined with monitoring for quality and other standards. While the personnel conducting the visits are usually specifically trained to monitor for quality control, it is not always clear that they are trained to monitor compliance with labor policies" (ibid).

2.2. Criteria for Implementation

In the criticism expressed in 2.1 on the steps that companies take to implement their code we can distinguish 4 core points of criticism. These can be transformed into 4 criteria for how implementation should be done.

2.2.1. Record Keeping

As we have seen, companies sometimes not even know who are their suppliers or lack other crucial information on what is happening in the subcontracting chain. Implementation of a code of conduct can only be ensured if one has access to correct and relevant information on what is happening in the company and its suppliers. Companies must therefore have records (company profiles) on all their suppliers, suppliers must have records (company profiles) on all their subcontractors and so on. To be able to check on wages and working hours, there must be a personnel administration at every production location. Every company and supplier must therefore have records on all their employees (personnel administration). Companies must have access to the records of their suppliers.

2.2.2. Communication

We have seen sometimes suppliers are unaware of the existence of a code or of its contents. Sometimes suppliers know, but their subcontractors don't. It is a rare case that workers are aware of the existence of a code.

Therefore, all suppliers of the company must be informed on the code and what it means, their rights and obligations. All employees of all suppliers must be informed on the code and what it means, their rights and obligations. "It is critical that all actors affected by a code -buying agents, contractors, subcontractors, union representatives and the workers themselves- be aware of its provisions. Research conducted for this report suggests that codes of conduct conceived in the headquarters of US apparel importers are not necessarily well known in the overseas facilities that produce their garments" (US Department of Labor 1996: 9). Sending some paper around is not enough. There must be clear guidelines for how all stakeholders must be informed and involved. Aspects that are often mentioned are: trainings for all involved staff, posting of the code in all production locations in the local language, inform all workers orally and in writing in their language, informing workers on who to contact in the case of problems or questions regarding implementation of the code, informing shareholders and consumers.

2.2.3. Streamlining the Suppliers

Not many companies do public statements on their policy on how they check which suppliers are meeting the standards and which don't. Some companies (such as the Gap) have their direct suppliers fill in a questionnaire. Some do audits without much consequence (as in the Otto example). Critics claim this is not a coherent policy and the consequences of such steps are not clear.

Therefore, after informing everybody there should be a phase in which the company looks into all its suppliers to find out which of its existing⁸ suppliers already meet the standards in the code and which do not. This must be done in a structural way, using standardized questionnaires, and involving all production locations. It is unlikely that 100% of suppliers already meet all standards. Since it is the explicit aim of every good code of conduct to improve the situation for each worker, as we have seen in Chapter 1, it is no solution if the company shifts production from the suppliers that do not meet the standards to those who do. The company must urge the suppliers that do not meet all standards to start complying with them, and assist the suppliers in this if necessary. Also, the company should enable their suppliers financially to abide by the code, or at least not disable them to do so. If the company pays such bad prices to a supplier that it is constantly on the verge of bankruptcy, the company cannot expect the supplier to pay decent wages and to invest in the factory.

2.2.4. Contractual Obligations

The last core point of criticism is aimed at the lack of enforcement of the code. Even if a company takes steps to implement the code, if they do not enforce this on their suppliers there is a huge chance the suppliers will not take the trouble of making any changes.

Therefore, after informing all the suppliers, following the correct procedures for communication and training, the code of conduct should be part of regular business. This means it has to be included in all contractual obligations the

⁸ When selecting new suppliers the company must make an evaluation of the prospective supplier before doing any business with them. The evaluation must show that the supplier can live up to the company's standards.

company makes with its suppliers. Violating the code must be explicitly mentioned as a reason for cancelling the contract, even though this must only be done in the last instance if improvement is not possible. Making the code part of the contracts without taking the previous steps of informing and assisting suppliers is not likely to lead to any improvement.

If a company has taken these 4 steps we can say it has implemented the code of conduct. However, it would be naive to expect that all suppliers now abide by the code and everybody lives happily ever after. The implementation and carrying out of the code needs to be checked. The tool to do this is called monitoring⁹. We will first look into the steps companies have taken so far to monitor their codes. From the criticism on these approaches we will derive criteria for how monitoring should be done. This will be worked out in detail.

2.3. Monitoring a Code of Conduct; the Company's Approach

2.3.1. Hire Special Staff or Establish a New Subsidiary

As we have seen in 2.1.2, the very first step in monitoring is instructing the staff that visits production locations to check on the code. A step further is to hire special staff or establish a new subsidiary to do this. Since this is their only task, they will be more specialized in this field and therefore be better able to check. However, special staff will most likely visit production locations in a lower frequency than regular staff, and therefore it will not always be an improvement if it is no longer a task of the regular staff to check on working conditions.

Companies can set up a 'human rights division' or whatever name they want to give to this department. It can also be a new subsidiary especially set up for this

⁹ Other terms for (parts of this) process are circulating, eg. inspection, verification or third party auditing. We prefer to stick to the term 'monitoring' since it is being widely used in the sense given especially for people who do not have english as first language.

aim. It depends of course a lot on what resources are allocated to this division or subsidiary whether they are able to check all suppliers on a regular basis. Also the quality of the checking is still an open question.

C&A has a code of conduct that stipulates that suppliers must ensure all manufacturing processes are carried out with 'proper and quality regard for the health and safety of those involved'. Also wages and benefits must be fully comparable with local norms, comply with local legislation and conform to the general principle of fair and honest trade. Suppliers must disclose 'all facts and circumstances concerning production, including the use of subcontractors and of other third parties'. The right to organize and collective bargaining is not included. In 1996 C&A set up the Belgium registered company SOCAM, an 'independent auditing company'. Since May 1996 SOCAM is said to have conducted 1.000 unannounced spot checks at production locations for C&A. However, all information collected by SOCAM is only available to C&A who subsequently decides how to act on it. So far it seems that violations of the code mainly lead to cancelling contracts and not to improvement of working conditions. However, since the information on how SOCAM is doing its job is not public, there is no clear view on the consequences of SOCAMs monitoring on working conditions.

In March 1997 Reebok advertised a job opportunity for a 'Manager, Human Rights Monitoring'. This person has to "support the rapid expansion in monitoring of workplace conditions in factories making Reebok products by: leading the Far East human rights monitoring team to ensure compliance with Reebok's code of conduct, the Reebok Human Rights Production Standards". At the same time there are job opportunities for an associate manager for human rights monitoring and 4 coordinators for human rights monitoring.

In April 1997 research by the Hong Kong Christian Industrial Committee and Surprise Weekly shows that Reebok's code is not implemented. In Hon Tim Factory in China workers have to work 16 to 17 hour a day on average and get 2 days off per month. Refusal to do overtime will be treated as absent,

which means no payment for that day. The workers earn less than the minimum wage, and ridiculous fines are being imposed on workers such as a fine if they reject to do morning exercises or if they do not walk on the designated road while travelling between factory and dormitory (Hong Kong Christian Industrial Committee 1997: 2).

In the Women's Centre on the edge of an industry zone in Sri Lanka, we talked to about 20 women working in various factories. We asked them about the buyers' visits and whether the buyers ever talk to the employees, but no one had ever heard of this happening. What does happen, they tell us, is that the factories are given a huge clean before the buyers' visit.

Later, we are told the same thing. In Bangladesh, we talked to a trade union and decided to visit the factory they told us about. It took us about a week to gain entrance, during which time we met the trade unionists several times. They told us they had spent two days cleaning the factory, and the workers had been told to put on clean clothes on the day of our visit (Clean Clothes Campaign 1997: 22).

On the day we made an official visit with Nike representatives to the Sam Yang plant in Ho Chi Minh City, we found that the doors to the six factories of this facility were wide open, as stipulated in the fire codes. However, on the day, we made a surprise visit to the same facility, we found three factories had their doors closed, while workers were still working inside. A small industrial fire in any of these factories could easily lead to the loss of many lives (Vietnam Labor Watch 1997: 4).

The last two examples make clear the need for unannounced spot checks by the monitor. A substandard factory will still turn out to be a substandard factory by announced spot checks, for example in terms of health and safety (light, ventilation, fire safety). If the factory management decides to improve the working situation in this respect because a monitoring team is coming, the improvements will probably last. However on other issues it is relatively easy for

the factory management to look a lot better for a day if they know they will be checked. They can for example give the child workers a day off, clean the toilets, buy some mineral water for the workers, tidy up, do some overdue maintenance and send everybody home after 8 hours of work.

2.3.2. Hire an External Company

The company can also hire an external company that was not set up by them, to check on the implementation of the code. Often this is a direct result of criticism on the lack of transparency of the companies' monitoring. 'External monitoring' is a booming business that accounting firms, quality controlling companies, consultants and others are ready to leap into. None of them is specialized in monitoring working conditions, the quality of the monitoring therefore leaves much to be desired as we will see in the examples. However, it is a step further beyond keeping it all within the company since it shows a company is willing to pay and starts to take the issue seriously.

As in setting up a separate division or subsidiary, the company might claim that what they do is 'independent monitoring'. They mean it is independent from their buying department or even from their company. However, the information gathered by the department or company is only available to the company itself and the company decides on its own what action they undertake. It is therefore not what we call independent. We will therefore call this 'company controlled monitoring' despite the claims of the company that they do not do the monitoring themselves. In 'independent monitoring' there has to be a form of public access to the information gathered by the monitor and direct input of workers' organisations has to be guaranteed. Later in this chapter we will look into the concept of independence in depth.

Nike has the implementation of its code of conduct monitored by Ernst & Young. Ernst & Young has to conduct independent unannounced audits that include employee reviews, research into any grievances filed, and more traditional payroll audits. Ernst & Young has done this in Indonesia and China.

There is not much information on the findings of Ernst & Young other than the public relations statements by Nike on wages and working conditions. Labour groups find many examples of violations of Nike's code of conduct. Such a list of examples suggests that violations are quite common practice, however, without independent monitoring, this remains unclear. Some recent examples of supposed violations of Nike's code:

* Nike claims that workers in its factories in Vietnam can earn triple the wage offered in state-run factories. Research by the Vietnam Labor Watch (1997: 6) showed pay stubs in which a full-time worker received less than \$27 for March and April 1996; the minimum wage in Vietnam at that time was \$35. The Vietnam Labor Watch also found pay stubs of other workers who received less than \$38 a month between November 1996 and February 1997; the minimum wage in Vietnam since July 1996 is \$45 (ibid).

* In the June '96 issue of Life Magazine, Sydney Schanberg (author of *The Killing Fields*) documented child labour being used in Pakistan in the production of Nike soccer balls - for 60 cents a day (Vietnam Labour Watch 1997: 15).

* The March 16 edition of the New York Times carries a story of union busting by Nike shoe contractors in Indonesia. One worker was "locked in a room at the plant and interrogated for seven days by the military, which demanded to know more about his labour activities" (Vietnam Labour Watch 1997: 15).

* The October 17 edition of the CBS program 48 Hours has a segment on Nike's labour rights abuses in Vietnam, including: beatings, sexual harassment and forcing workers to kneel for extended periods with their arms held in the air (Vietnam Labour Watch 1997: 15).

* On November 3, an article by Australian labour scholar Anita Chan was published in the Washington Post. She described Chinese shoe factories - producing for Nike and other companies- where supervisors submit workers to a military boot camp style of control (Vietnam Labour Watch 1997: 15).

* On March 14 1997, Reuters carried a report on a Nike factory, Pouchen in Dong Nai, forced 56 Vietnamese women workers to run around the factory's

premise, 12 fainted and were taken to the hospital emergency room (Vietnam Labour Watch 1997: 15).

* On April 24th 3.000 workers at a South Korean company producing shoes in Vietnam for US footwear giant Nike Inc. stages a one-day strike to protest their salaries and working conditions. Managers reportedly locked employees in the factory cafeteria for three hours when they attempted to contact local trade unions ('Justice Nike' mailinglist 28-4-1997).

* On April 22 and April 25 1997 10.000 workers went on strike at a Nike factory in Indonesia to demand they be paid the new basic minimum monthly wage of 172.500 rupiah that went into effect on April 1. The company asked the government for permission not to pay the new minimum wage on the grounds that the 20-cent-a-day increase would be a financial hardship. After a meeting at the parliament the company agreed to pay 200.000 rupiah monthly. Nike spokesman Jim Small virtually threatened to pull out of Indonesia if the minimum wage gets any higher. ('Justice Nike' mailinglist 23-4-1997, 28-4-1997, 1-5-1997).

Disney hired SGS to monitor (toy)factories in China for them on working conditions. The audits look into 4 issues: age (no child labour), wages (minimum wage and no forced overtime), safety, including safety of the dormitories and health. The audit consists of 3 parts:

1. Disney made a 10 page questionnaire concerning these 4 areas. The factories have to fill this in.

2. The factories are visited by an auditor with a checklist. He/she will observe and ask questions. The auditor will be a local person so he/she can take into consideration the local norms as well as the official regulations. The auditor will check a.o. the electric wiring, the fire extinguishers, access to warm and cold water (in the dormitories), the number of toilets and the state they are in.

3. The auditor will then give a rating for each of the 4 areas and whether the factory is acceptable for each of the 4 areas, based on the questionnaire and the visit. This will be written down in a 2 page summary report per factory

and sent to Disney. It is up to Disney what they do with these reports. The idea is that Disney will demand improvements from the factories and have SGS check on the implementation of the improvements.

In the questionnaires there are questions about subcontracting but the subcontractors will not be visited by the auditor. An integral part of the audit is to explain to the factory, before and after, why they do this and what is expected of the factory. Sometimes the factory does not want to participate, especially if Disney is not an important client for them.

An interesting question is if workers are being interviewed. The answer is yes, but there is always someone from the management present. During the visit to the factory, when the auditor is being shown around by management, the auditor will select a number of workers who will be questioned about their working situation. If a worker does not want to answer, the auditor will select another worker. Sometimes the interviews are done in the dormitory or in the canteen, however, also in this case there will be management present.

Concerning working hours, the law specifies 36 hours overtime per month is allowed. However, there is a peak and a low season and during the peak season there will be more overtime. SGS will take an average and sees 72 hours per month as acceptable. The crucial issue is if the workers want to do the overtime, but according to SGS usually they do (SOMO 1997: 43-44).

2.3.3. Involve a NGO

A lot of the criticism on companies' monitoring focuses on the fact that it is not independent i.e. there is no involvement of trade unions and ngo's. All the above mentioned steps do not do anything about this criticism. The first example of a company in the garment sector that took a step in this direction is the US garment retailer The Gap. In December 1995 an agreement was signed between The Gap and US ngo's and trade unions. A short history:

When workers at the Korean-owned Mandarin clothing factory in El Salvador sought to put an end to harsh and degrading treatment that included being forbidden to talk while working, beatings and sexual abuse, their attempts to

form a union were brutally suppressed. In the course of a vicious anti-union campaign over 350 mostly women workers were fired.

In the United States a pressure campaign directed at Mandarin's biggest customer, the US retailer The Gap, was supported by trade unions, religious, consumer, women's and students' organisations. At first, The Gap which is one of the largest clothing companies in the world, sought to deny that its sub-contractor was guilty of exploitation and human rights violations. In the face of the overwhelming evidence that the charges were true, and in the face of mounting pressure including from shareholders and politicians, The Gap announced that it would pull out of El Salvador. But the campaigners demanded that The Gap reconsider this decision and instead use its influence that workers rights were protected.

The Gap agreed to remain in El Salvador, to translate its hitherto ignored codes of conduct into the languages of the 47 countries where clothing is produced for the company and to make sure that the code is posted prominently in each factory. The Gap also accepted responsibility for the working conditions where its products are made and agreed to independent monitoring of its sub-contractors by a third party" (International Textile Leather and Garment Workers Federation, 1996).

The Gap set up a pilot 'independent industry monitoring program'. A monitoring team consisting of El Salvadorean religious and academic groups has been engaged to verify that conditions in the Mandarin plant meet The Gap's standards. This independent monitoring group consists of the Jesuit University's Human Rights Department, the Catholic Archdiocese and the Center for Labour Research.

It is an important step for a company to accept that implementation and monitoring must not be entirely in their hands. The fact that The Gap recognizes it needs cooperation with ngo's is to be applauded. However, this is not enough, since they only allow independent monitoring of their production in El Salvador. Given the number of countries producing for the Gap, it is likely to take centuries before all their production is covered by the monitoring program if they

continue at the current speed. Also there is the risk that companies go in search for a 'pet-ngo' that will give them a seal of approval, thereby passing over criticism that might have been expressed by other ngo's and trade unions.

2.4. Criteria for Monitoring

Based on all this criticism on the company's approach we can distinguish 2 core points of criticism. These can be transformed in criteria on how monitoring should be done to make it effective. Subsequently these criteria will be looked into in depth.

2.4.1. Transparency

Much of the criticism focuses on the fact that all the information on what the company is doing in respect to monitoring and on how it is doing this, is kept within the company itself. Even if they hire an external company to check for them, there is still no public access to this information. We would therefore have to believe the company on its word. Obviously this would be very naive. Therefore there is a strong demand for 'independent monitoring', where other stakeholders are involved. In 2.5 we will look into this criterium.

2.4.2. Quality

Another core point of criticism focuses on the quality of the monitoring. If the information that is collected is incorrect or insufficient, it is not possible to make an quality check on implementation of the code. It must therefore be specified what information must be collected and how this information should be collected. In 2.6 we will look into this criterium.

2.4.3. Feasibility

A third criterium that we will look into is feasibility. This is not derived from criticism from trade unions and ngo's. However, obviously any system that one develops on paper must be feasible for all involved actors in the system. If not, it

simply won't work. We will therefore look into the different stakeholders that are supposed to play a part in a monitoring system and their specific needs. We will do this in 2.7.

2.5. Independent Monitoring

Now, even if a company has a good code of conduct and it has done its utmost to implement it, we still have to believe the company on its word. The staff of the company, or the special division or the subsidiary or the external company only report back to the company that hired them. If you are not in the management of this company you do not know if they found any violations, how many, of what kind and what steps were undertaken to improve the situation, to just name some of the obvious questions. The interest of the company is to make profit, not to ensure good working conditions. History teaches us that a company will only ensure good working conditions if forced to do so (by a government, a trade union, public opinion or whatever force). Monitoring the working conditions in the locations that produce for them should therefore not be left to the companies themselves.

There must be involvement of appropriate trade unions and ngo's in every step of the monitoring process. This does not mean the monitoring itself (the actual spot checks and interviews) must be carried out by trade unions and ngo's. Independent monitoring means that trade unions and ngo's must be involved in how the monitoring is set up, how the monitoring is carried out and what is done with the results of the monitoring, in terms of who should have access to the information collected and what action should be undertaken as a result of the collected information.

We did not find examples of independent monitoring in the garment and sportswear sector, apart from The Gap in El Salvador. This has been described in 2.3.3. On all other production locations of The Gap, there is no structural form of monitoring, as the following example shows.

"A factory manager in Sri Lanka: "The Gap gives you a questionnaire, so you fill it in. They evaluate it and send a quality controller through their buying office. Then they place the order" (Schone Kleren Kampagne 1996: 19). In the Philippines we get to see this questionnaire. It is very extensive, The Gap asks everything you could possibly want to know. However, according to the manager of the factory in the Philippines, they do random checks only, for example they don't count the fire extinguishers, they just check on some departments if there are any (Schone Kleren Kampagne 1996: 19-20).

As part of the 'independent industry monitoring program' The Gap "also employs local Sourcing Compliance Officers, who check whether contractors operate in compliance with local laws and The Gap's Code of Vendor Conduct. They are responsible for the education and training of factory management and supervisors about The Gap's code and they liaise with local groups to inform them and maintain a dialogue" (NEF/CIIR 1997). We can interpret this as 'hiring special staff' with a move in the direction of independence by contacting local groups. However, 'contacting local groups' so far has consisted of asking information from local ngo's, not giving it back¹⁰. There is no involvement of trade unions and ngo's in how the monitoring is set up, how it is carried out and what is done with the results of the monitoring. Therefore we conclude that The Gap is not independently monitored.

The monitoring proposals in the two new initiatives we discussed in 1.5. also have something to say about independent monitoring. Do they meet the standard for independent monitoring?

¹⁰ For example the Hong Kong based Asia Monitor Research Center has been approached by The Gap. The Gap wanted addresses of local ngo's they could contact and information on how to do monitoring. This sort of approaches is growing in number and stresses the need for trade unions and ngo's to come with united and clear proposals, as to not being played out against each other and to make sure companies do not get away with some half-hearted initiative they take themselves.

The Apparel Partnership code:

In the preamble of the code it is stated that the companies are determined to "adhere to the Code and to implement as soon as reasonably practicable a monitoring program consistent with the attached 'Principles of Monitoring', by adopting an internal monitoring program consistent with such Principles and utilizing an independent external monitor that agrees to conduct its monitoring consistent with such Principles". This in itself is not enough, since with hiring an external monitor we still have company control monitoring as we explained in 2.3.2.

In the 'Principles of Monitoring' there is a distinction between 'Obligations of companies' and 'Obligations of independent external monitors'. One of the obligations of the company is to "Establish Relationships with Labor Union, Human Rights, Religious or Other Local Institutions". However, it is specified as: "Consult regularly with human rights, labor union (including legally constituted unions representing employees at the work site), religious or other leading local institutions that are likely to have the trust of workers and knowledge of local conditions and utilize, **where companies deem necessary** [own emphasis], such local institutions to facilitate communication with company employees and employees of contractors and suppliers in the reporting of noncompliance". Obviously this leaves a large loophole for companies to escape.

In the obligations of the external monitor we find again the phrase on "Establish Relationships with Labor Union, Human Rights, Religious or Other Local Institutions". Here it is specified as: "In those instances where independent external monitors themselves are not leading human rights, labor, religious or other local institutions, consult regularly with human rights, labor union (including legally constituted unions representing employees at the work site), religious or other leading local institutions that are likely to have the trust of workers and knowledge of local conditions". This one can call independent monitoring.

However, the agreement leaves open a number of questions like: who decides who is a leading human rights etc. institution? Who decides how often consultation needs to take place? Who decides what is done with the

information gathered in this way? How transparent is this process? These are very crucial questions that turn up in every debate on monitoring.

The Apparel Industry Partnership has tried to solve this problem by stating that within the next 6 months they would form a nonprofit association that would have to deal with some of these matters. Some of its tasks will be to "develop criteria and implement procedures for the qualification of independent external monitors, to design audit and other instruments for the establishment of baseline monitoring practices and to develop means to maximize the ability of member companies to remedy any instances of noncompliance with the Code". This nonprofit association will be governed by a board whose members would be nominated by companies, labour unions and consumer, human rights and religious groups.

We will have to wait and see what they come up with before we can come with any conclusions on the level of independence of the monitoring of this initiative. Some critics have severe doubts: "The agreement leaves the foxes even more firmly in control of the proverbial hen house, which now carries the label 'Fox Free'" (Greg Smith, 'Justice Nike' mailinglist 25-4-1997). "It doesn't look as if the monitoring will be independent enough" (Charles Kernaghan, National Labour Committee). There is broad consensus on the need for constant pressure to make this initiative worthwhile. "The code is so littered with loopholes its impact will probably be limited unless public and press attention remains fixed on the problems of sweatshop workers (New York Times editorial 16-4-1997). "Certainly only continued public pressure on this issue can make commission's efforts succeed (Washington Post editorial, 16-4-1997).

An initiative to set up a system of independent monitoring that shows a lot of similarity with the direction the US initiative is taking, is the Foundation Model as developed by the Dutch Clean Clothes Campaign. In this model there is a Foundation, equally representing trade unions, ngo's, producers and retailers in its board, that is responsible for the monitoring. All parties in the Foundation agree on the contents of the code of conduct and on the principle of independent monitoring. If a company wants to adopt the code of conduct that

is being advocated by the Foundation, it can sign a contract with the Foundation, specifying the obligations of each of the parties. The Foundation will be responsible for the monitoring and it will use among others record checks, unannounced spot checks, interviews with workers and a complaint procedure¹¹ to do that. Part of the monitoring can be subcontracted to a third party, for example a quality control company (the Monitor). The company must give information on where they source to the Monitor, the Monitor has to guarantee the confidentiality of these data. The Monitor will report its findings to the Foundation, who will decide what steps must be taken. The advice from the Foundation to the company is binding; if the company does not follow the advice, the contract between the company and the Foundation can be cancelled. In the Netherlands a Foundation is currently being set up and will start working before the end of 1997 (Clean Clothes Campaign: 1997: 10-11). On a European level a draft for a similar model is currently in development, connected to the Code of Conduct for the garment and sportswear industry as described in 1.5.

The big advantage of such a Foundation is that it enables direct involvement of all parties in all phases of monitoring. This system also acknowledges the fact that experiences with monitoring are still relatively rare and that whatever system you set up, you will need constant evaluation, debate and improvement. The Foundation can do that. However, it will be complicated to arrange this in a way that avoids stalling practices and endless delays, due to the fact that one must come to an agreement within the Foundation on what action needs to be undertaken.

¹¹ Every worker, trade union, ngo, journalist or whomever finds a violation of the code, has the right to file a complaint. Through a safe local accessible contactpoint, the complaint will be passed on to the Foundation, who will investigate it and give a binding advice to the company on how to deal with the case.

2.6. Quality Monitoring

Now, even if we have a company who accepted a good code of conduct, who has gone to all lengths to implement it and who has accepted independent monitoring, if the quality of the monitoring is not good, we still know nothing or the wrong things. The information that is collected must be correct and sufficient to be able to evaluate the performance of the company. The information must be available to those who need it and it must be there in time, to just name some of the obvious demands. In this paragraph we will specify criteria for quality monitoring. To do that, we will first distinguish three sub-tasks of monitoring:

- 1) checking on the implementation of the code
- 2) ongoing checks on compliance with the code
- 3) establishing and carrying out procedures in case of violations of the code

We will look into each of these three and define criteria that must be met in each of these tasks in order to fulfil the quality standard. Before we do that, we will look into one general criterium that must be met in every aspect of monitoring: the safe involvement of workers.

For an effective monitoring of working conditions it is of course crucial that workers' voices are heard. If workers' rights are being violated by the management of the factory, for obvious reasons the management of the factory will not tell this to buyers or monitoring staff. By just looking around in the factory one can say something about health and safety conditions and get a general impression. However, it is not possible to check on a number of rights like wages, working hours or the right to organize; these cannot be seen. It is therefore necessary in any monitoring system that workers are being interviewed on their working conditions.

It is very important that this is done with guarantees for the workers' safety. If a complaining worker gets fired after the monitoring staff has left, in the future no worker will say anything negative about the working conditions. A minimum

requirement is therefore that the interviews take place without a representative of the management present and without the management knowing which workers have been interviewed. However, it will be necessary to take additional steps to ensure that workers speak out. A white man in a suit whom they have seen talking with the management, asking questions about working conditions, even if he is telling them that speaking out will have no repercussions, will in many cases not be trusted by the workers. "They feel they're employed by the company and you open your mouth and suddenly you end up in the ironing section where you're on your feet 12 hours a day" says National Labor Committee's director Charles Kernaghan (New York Times 13-4-1997). Involvement of local organisations that are known and trusted by the workers can help. However, apart from that it is crucial that workers are informed, know their rights and the procedures for what to do when these rights are violated, in short they should play an active role in the whole monitoring process. If this is neglected, workers will not feel part of the monitoring process so why should they take the risk of repercussions or losing their job by speaking out? And if they refuse to speak out, how can any outsider find out what is going on in the factory?

Bearing this in mind, we will now return to the three sub-tasks of monitoring as described above and look into what criteria must be met here in order to fulfil the quality standard.

2.6.1. Checking on the Implementation of the Code

Monitoring must check on if the code is implemented. The following three questions must be answered:

1) what steps does the company plan to make to implement the code?

This can simply be answered by the company.

2) are these steps sufficient to implement the code?

The statement of the company on what they plan to do must be checked against criteria for implementation.

3) did the company take the steps they planned to make?

Can the company prove they took the steps as stated by them? Do random checks confirm this?

2.6.2. Ongoing Checks on Compliance with the Code

*** record checks**

The relevant information collected by companies on suppliers, by suppliers on subcontractors and on workers must be cross checked with information from other sources.

*** Spot checks**

Production locations must regularly be visited by the monitor. During a spot check the monitor will look at the working situation and interview the management. A standard checklist and a standard questionnaire will be used, which have been approved by companies, trade unions and ngo's. These checklists and questionnaires must be evaluated regularly. Spot checks must be done down the entire subcontracting chain. The spot checks must be unannounced.

*** interviewing workers**

In the example of SGS monitoring for Disney we have seen how this should not be done. Asking some random questions to a worker while the manager is listening is useless. Levi Strauss claims their audits "often include interviews with employees, both at the factory and away from the factory" (US Department of Labor 1996: 55). Also Nike claims "the auditors conduct interviews with employees away from the management" (US Department of Labor 1996: 58). It is difficult to establish the truth of such claims; the fact that no ngo or trade union can confirm the claim does not prove it is not true. This again makes clear the need for independent monitoring! It also shows that companies start to acknowledge the fact that involvement of workers is necessary in any monitoring system.

We can distinguish the following criteria for interviewing workers:

- The interviews must be conducted according to a standard questionnaire, which has been approved of by companies, trade unions and ngo's. The questionnaire must be evaluated regularly.

- The interviews must be conducted in the first language of the worker. Preferably the interviewer also speaks this language. If an interpreter must be used, this interpreter must have quality knowledge of both languages AND have quality knowledge of the situation of garment workers.

- The interviewer must be trained in interviewing workers, have knowledge of the situation of garment workers and "knowledge about the work process under review and an appreciation of what is common practice and what is not" (Bernard 1997: 2).

- Interviewing workers has to be done in a way that ensures no repercussions are taken against these workers and in a way that ensures that workers believe no repercussions will be taken against them.

Concerning ensuring no repercussions are taken against workers, three conditions should be fulfilled:

1) Interviews should be conducted outside the factory either at the workers' house or at a safe place like an office of the local church/mosque/temple, a university, a human rights organisation or a trade union.

2) No management or other employee of the factory must be present or have access to the information that was given by a worker.

3) The interviewing of workers should be arranged in a way that makes it impossible for the management to know which workers have been interviewed. This can be arranged in a number of ways, depending on local conditions. In any case the monitor will have access to the personnel administration and therefore to the addresses of the workers, so she/he can visit them at their houses.

The second aspect, ensuring that workers believe no repercussions will be taken against them, is more complex and depends even more on the local conditions. Of course practice is the best proof: if workers experience the benefits of working in a monitored factory and experience that speaking out has no repercussions, they will want to cooperate. The first phase is therefore crucial and much can be gained and lost here. Involvement of local trade unions and ngo's that are trusted by the workers is crucial. They must be consulted on how the monitor should work to gain the confidence of the workers and also play a role in carrying this out. Depending on the local context it might be necessary

that the interview is conducted by a person of the same sex as the worker. It might be necessary that a third person that has some official status and it trusted by the worker is present at the interview or even conducts the interview in the first phase of monitoring when workers are still very suspicious of what the consequences will be.

2.6.3. Procedures in Case of Violations of the Code

"Enforcement of corporate codes of conduct refers to how US companies respond to violations of their codes. Enforcement is essential to the success of a corporate code" (US Department of Labor 1996: 65).

An example of Nike's poor response when confronted with proof of violation of their code of conduct:

"At 4:40 a.m. on the morning of August 18, 1996, Kim Sung Rat went to inspect passing an area where there were four Vietnamese female workers working in the computer embroidery room. Kim Sung Rat let two of the workers take a break and called the other two female workers, NTH and NTVP, to come to the storage area at the farthest end of the factory where there was no one working, about 50 meters away from the computer room. Here Kim Sung Rat called NTVP into the storage area and made a gesture that she should take off her shirt. After that, Rat tore the shirt of P and felt her up. P furiously resisted and was able to run and escape.

At that moment Rat grabbed a hand and pulled H into the room. Again with a very obscene action, he rubbed her chest, pulls the pants zipper of H, and rubbed her private parts. After that, Rat made a sign by his finger in a very obscene matter indicating sexual intercourse. Although weaker than P and being unable to escape nevertheless, H furiously resisted. Being able to guess the activity of Rat in the storage room, as he had done with her, Miss P had run to call the guards, and R was caught in the act" ('The Worker' newspaper, Nguoi Lao Dong, 23-8-1996, in: Vietnam Labor Watch 1997: 13).

The Nike subcontractor where this occurred tried to bribe the two harassed workers in order to keep them quiet. This failed. Excerpts of an interview with the victims:

NTH: "After this took place, the leadership of the company put forth their 'separate condition' with me and P. The company agreed to compensate us in order to smooth over this matter. Two times they gave to me and to P, each of us, an envelope full of money in order to buy us off and smooth over the action of this expert Kim. But we refused. I answered them, we will not for money sell our dignity or our honour" ('The Worker' newspaper, Nguoi Lao Dong, 25-8-1996, in: Vietnam Labor Watch 1997: 14).

At the shareholder meeting in September 1996, Nike CEO Phil Knight commented on this case. From the transcript:

"Fairly recently in Vietnam, that basically there was a situation on the night shift where four of the women th- who were in the stitching fell asleep. And - and the night watchman who again was Korean in coming through the room, two of them woke up and fled the room. And the shock the other two. And in the shaking of one of 'em, there was perhaps some inappropriate behavior. And then he touched a part that he should not have. That basically she protested. And - and basically, it comes about as close as you can get to sexual harassment in US terms, as you can get. The night watchman was sent back to Korea. And - essentially, trying to rectify the situation. However, it was reported in one of the Vietnam - at least one of the Vietnamese newspaper as a rape" (Vietnam Labor Watch 1997: 13).

Now even if companies do enforce their code, they often do that by cutting all contracts with suppliers who are found to violate the code. However, this is usually not desirable from a workers' point of view. As stated in Chapter 1, the primary aim of a code of conduct is to improve the working situation for each worker. Cutting contracts is not beneficial to that aim and might even deteriorate the situation for workers since it might lead to closing down factories or firing workers because there are less orders. For companies however, cutting contracts in case of violations of the code might be attractive since it is the

fastest way of 'solving' the problem. Therefore there must be procedures for what actions must be undertaken by whom when a violation of the code is found. These must at least consist of:

- getting the facts straight
- attempts to improve the situation
- investigation in the results of the attempts
- decision if the supplier can stay on as supplier
- decision if the action undertaken by the company to attempt to improve the situation was sufficient

2.7. Feasible Monitoring

The last of the three basic criteria is feasibility. We will first look at for whom the system has to be workable, in other words who are the key stakeholders¹². Then we will look into feasibility criteria: what are the factors that make a system functioning in real life, not just on paper.

2.7.1. Stakeholders

The key stakeholders in a monitoring system for the garments and sportswear industry are the following:

*** workers**

All workers producing products for the company, whether or not they are employee of the company, including homeworkers, sweatshop workers, migrant workers and workers without legal status.

¹² "This is a term which gained currency in management theory in the 1980s, and has more recently been popularized by Labour leader Tony Blair in his speech in the 'stakeholder economy'. It is used to describe anybody affected by, or who can affect, an organisation, from staff, customers, suppliers and shareholders to the media, legislators and communities in which the organisation operates. Although this seems to open the door to everyone, in practice it is usually clear who are the key stakeholders" (NEF briefing: 1).

*** consumers**

All consumers who buy the finished products from the company, either directly or through retail outlets which are not owned by the company.

*** trade unions**

Independent and democratic trade unions, representing the interest of the workers, both in the North and in the South.

*** ngo's**

Ngo's involved in representing workers' rights (especially in the absence of trade unions, when they don't exist or when they are forbidden) and ngo's involved in promoting codes of conduct and independent monitoring. Consumers organisations, women's organisations, researchers, solidarity groups, development agencies, legal aid organisations etc

*** accredited monitors**

Agencies or companies that are hired to do the actual monitoring (spot checks, interviews, record checks, implementation checks). This can be a quality control company, an accounting firm, labour consultants etc. Monitors must be jointly accredited by companies, trade unions and ngo's.

The different company structures in the garments and sportswear industry can not always be clearly distinguished. Production can be arranged in many different ways, and since this has consequences for the monitoring system we will first look into definitions and the different strategies companies use.

*** retailers**

"Retailers are primarily engaged in the distribution, merchandising, and sale of garments to consumers. Retailers include department stores, mass merchandisers, specialty stores, national chains, discount and off-price stores, outlets, and mail-order companies... retailers who sell their own private labels go beyond their traditional role as distributors and become directly involved in the

design and sourcing of garments from manufacturers and contractors" (US Department of Labor, 1996: 15-16). Especially big retailers do this. Examples: C&A, H&M, Marks & Spencer, Next, Otto Versand.

*** producers**

Producers produce items that are sold in many different retail outlets. Actual production can be subcontracted to suppliers, just like with retailers. We use the term producers when the company can influence the retailer to whom they sell the goods, in other words they are more than just a supplier. Usually they have strong brands and/or a high quality that the retailer can not obtain from its own suppliers. Producers usually do not own stores. Especially in sportswear we find well-known producers, as in jeans. Examples: Nike, Reebok, Levi's, Lee. Other examples: Coats Viyella, Triumph, Sara Lee, Hugo Boss, Laura Ashley.

*** suppliers**

Suppliers are "Manufacturers primarily engaged in the design, cutting and sewing of garments from fabric. Some manufacturers are contractors of subcontractors, which generally manufacture apparel from materials owned by other firms. Larger manufacturers often contract production to many such contractors and subcontractors" (US Department of Labor, 1996: 15-16). Usually suppliers are responsible for the buying of raw materials, it is also possible that this is done by the (intermediary of) the retailer. Usually suppliers have no control over retail, though in some cases (big) suppliers in Asia start their own sales office in Europe to improve their position in relation to the retailers. Suppliers work for several retailers or production companies, some have a small number (3 or more) of regular clients, others differentiate more.

*** intermediaries**

Between the retailer or producer in Europe or the US and the actual manufacturer who does the cut, make and trim there is usually one or several intermediaries. This can be buying offices, buying houses, importers, agents or

traders. These terms are not always clear since again there is no strict division of tasks going with certain names. Based on research in Hong Kong (SOMO 1997) we will explain the different ways in which the relations within the sector can be structured. The tasks of intermediaries usually are:

- communicating between retailer and supplier, problem shooting.
- sourcing: finding (new) suppliers that can produce what the retailer wants.
- quality control: sampling, in-line inspection, final inspection (pre-shipment inspection).
- (sometimes) sourcing of raw materials (often this is a task of the supplier).

Intermediaries owned or controlled by retailers:

If the intermediary is owned by the retailer we call it a buying office. It often has the same name as the parent company. A buying office only works for the company it is a subsidiary of. If the intermediary is not owned by the retailer we call it a buying house. A buying house can have more clients, as long as they are not competitors (not operating in the same country).

Herma Ltd is a buying house for Manor in Switzerland, Vroom & Dreesman in the Netherlands and La Redoute in France (SOMO 1997: 2).

Intermediaries not owned or controlled by retailers:

These are called agents or traders. In Hong Kong they are also called manufacturers: these often used to be 'real' manufacturers, but nowadays hardly any production takes place in Hong Kong. This has all been shifted to mainland China. Therefore these manufacturers work as agents or traders. They accept an order from a retailer and subcontract this to a supplier in China. Sometimes they own or control suppliers to which they subcontract (usually the best) orders, while also using suppliers not owned or controlled by them.

K.Y. Garment Manufacturing has its own factory in China (100% owned). Their capacity is not very big so they sometimes subcontract the more basic items to a nearby factory that also produces for Adidas and Puma (SOMO 1997: 16).

Sometimes a trader plays the role of a supplier, taking care of delivery of all raw materials at the right moment, the packaging etc.

Li & Fung Ltd, the largest trader in Hong Kong did a big order for Limited Stores, 150.000 pants in 1 style, delivery time 30 days. So they place the order at 4 or 5 factories to have it ready in time, but make sure they use the same fabric, the same zippers etc. (SOMO 1997: 14).

Usually owning or controlling intermediaries is a strategy chosen by larger retailers and after a period of working with agents and traders. It is safer and cheaper to have your 'own' company working for you, though of course it requires investment and is therefore not an option for small retailers. If a company uses this strategy, they usually still do part of the sourcing through agents and traders. This means the 'own' buying office/house must compete with these agents and traders. "Buying agents ... may be used by US [or European] companies that do not have a large presence abroad, or in addition to a US [or European] company's buying staff" (US Department of Labor, 1996: 15-16).

"Cortefiel started in Hong Kong 12 or 13 years ago, first with traders and agents, then they slowly started to approach manufacturers directly" (SOMO 1997: 6).

"Next sources about 35% of the total sourced through Hong Kong via this office. They have another 18 companies in Hong Kong they buy from, this buying office is the only office actually owned by Next" (SOMO 1997: 4).

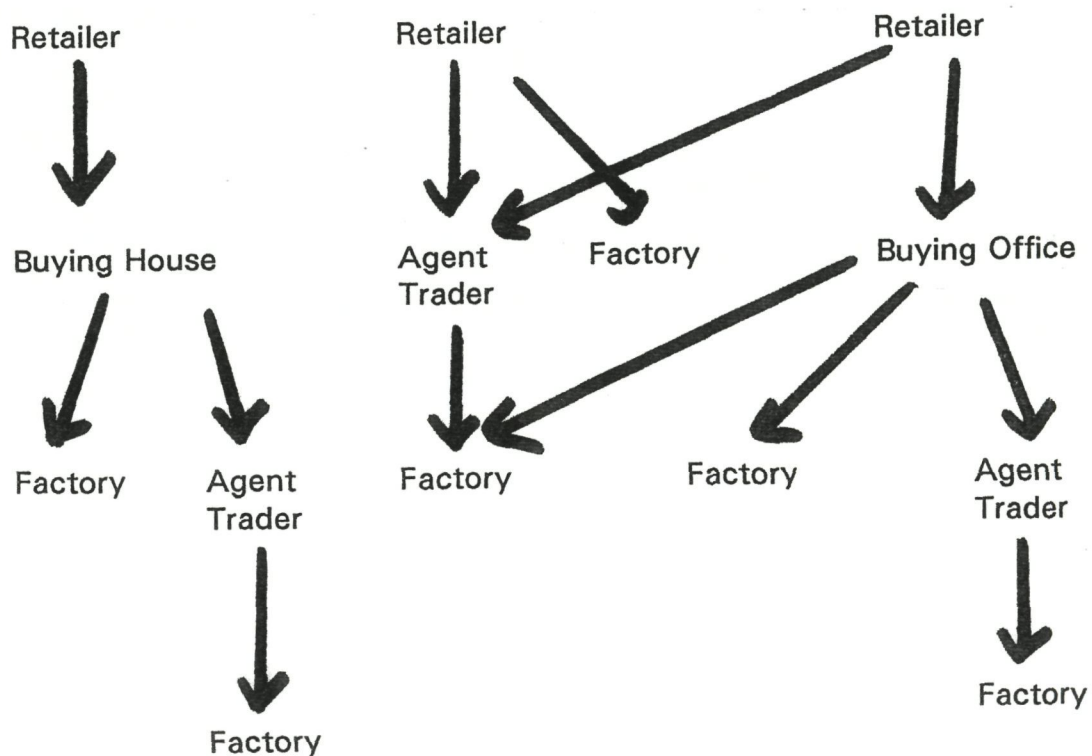
Laura Ashley: "At first they worked via agents and traders, but this was not ideal and the price was high. 4 years ago this office was established [buying office in Hong Kong]" (SOMO 1997: 8).

Sometimes the 'own' intermediary gets the best deals and the riskier ones go to the agents and traders. Also the buying office/house can subcontract to an agent or trader, for example to get rid of the responsibility for quality control, if they do not want to do this themselves.

Shelsham Trading Company works almost entirely for major retailers in Europe such as C&A, B&S, Littlewoods, Debenhams, Burtons, Next and Makro; mail order companies such as La Redoute and Otto and some producers (no names given, too sensitive) which is then sold in big department stores such as Peek & Cloppenburg. "Buying offices of the retailers themselves, like Mondial [for C&A], are for the safe items, the ones you can always sell. The risky items are placed via others. They prefer to pay the percentage and have the agent, the trader or the importer take the risk" (SOMO 1997: 12-13).

Marketing Partners Ltd is a buying office for K&L Ruppert. "For bulk items like t-shirts they will also work with traders since they will not go to themselves to Northern China or something" (SOMO 1997: 1).

Figure 1: Subcontracting in the Garment and Sportswear Industry



2.7.2. Feasibility Criteria

2.7.2.1. Time

If in Bangladesh you file a complaint with the Ministry of Labour, they will investigate the case and come with a verdict. Labour legislation in Bangladesh is quite good and usually if you are in your right you will win the case. Amirul Haque Amin, trade union leader and lawyer tells us: "We have just won a case. The owner of a factory unlawfully fired some workers for organizing a union. This was in 1985. Now it is 1995 and we have won and the owner has to pay wages for all these years. He probably will not do this. That means we have to start a new case to force him to pay. That will again take years (interview with Amirul Haque Amin, 1995).

This makes clear the need for criteria on time. There should be procedures to avoid stalling practices on all levels. Procedures should be as less time consuming as possible, while not damaging the quality and the transparency.

2.7.2.2. Money

Obviously if we create a monitoring system that is so expensive that each company that adopts it goes bankrupt, there is no gain. Companies are usually quite fast in claiming they go bankrupt if they have to pay things they are not happy with (Nike threatening to leave Indonesia because they can not afford the high wages, see 2.1.4.) so some scepticism is in its place. The system should be designed in such a way that also smaller companies can afford to work with it. There should be clear procedures for payments, it should be transparent who pays how much to whom and procedures must be designed to avoid corruption.

2.7.2.3. Access to Information/Confidentiality of Information

Each stakeholder should have access to that information that she/he needs to do her/his part of the work. At the same time, confidential information should be treated confidentially. Therefore we need clear procedures for which information must be given to whom and which information may not be given to whom.

2.7.2.4. Putting the Responsibility where it Belongs

To do a job properly, it must not demand that you control things which are not in your power. Generally retailers have power over suppliers, since retailers place the orders, and decide on quality, delivery time and price. This control is not absolute and there is a limit to the demands the retailer can make of the supplier. There is a point where the supplier will prefer to lose the retailer as a client, depending on the consequences the demands have for the supplier and the understanding the supplier has of the situation. We will therefore take a deeper look in how retailers select their suppliers and what is likely to happen if retailers start to demand that their suppliers improve working conditions.

There are two main strategies companies can use in selecting their suppliers. Of course in real life companies are often somewhere in between.

Strategy 1: Quality Buyers

The retailer selects the suppliers mainly on quality, less on price. Quality demands are very high; only those suppliers that can meet those demands are accepted. Of course they are the more expensive suppliers. The advantage of this strategy for the retailer is the low level of quality control that is needed since these suppliers are able to do their own quality control.

Cortefiel has one person in charge of quality control in their Hong Kong office, who will soon be joined by an assistant. Their strategy is to find good quality suppliers and then hold them responsible. If the supplier is already doing quality control, why would they do it double. New factories are checked once or twice per order, with established factories they feel they can trust this is less (SOMO 1997: 7).

Marks & Spencer: quality control is the responsibility of the factory/supplier. Every aspect of this is discussed with the management before they start doing business, M&S staff goes to factories to check whether this is set up according to their requirements. Sometimes they station staff at the factory.

M&S pays a good price and pays quick, so they expect their requirements to be met. From the buying office they will send people to a factory maybe two times per year (SOMO 1997: 11).

Strategy 2: Price Buyers

The retailer selects the suppliers on the product requirements and on price. The cheaper the better. The company then needs to do a lot of quality control to make sure the supplier meets the product requirements and the delivery times.

Next: "You need your own people inside the factory during the production, if not you'll always have problems". Everywhere he has local people going in on a daily basis. Some is done from Hong Kong, but for example in Shantou, China, he has 3 local people with a company bicycle going to the factories to check. Then he has some senior people monitoring them. Factories are selected on the basis of quality of the products and price. "A factory may look like a hole but still turn out quality garments" (SOMO 1997: 5).

We can also distinguish several sorts of factories.

Conditions on the work floor

- There are factories that look good. They are clean and tidy, ventilation, light, fire safety and equipment are usually regular to good. These things cost money; this means there is investment. If an owner invests in a factory he/she will want the rewards of that. That explains why the factory is clean and well-maintained.
- At the other end of the spectre we find the factories that indeed look like holes: sewing machines without needle guards, 10 store factories without fire stairs, dusty, dirty, dark and messy. One cannot see any sign of investment, and logically there is not much interest in maintaining the little equipment that is there.

Atmosphere

- There are repressive factories: work pressure is high, atmosphere is tense, workers are afraid to look up from their work, nobody is talking or laughing. Supervisors yell at workers and physical and sexual violence occurs. Ridiculous fines and sentences are imposed on workers, visits to the toilet are limited. Organizing is extremely difficult when it is prohibited to talk to your co-workers.
- At the other end of the spectre there are factories where the atmosphere is relaxed, people are talking, the radio is playing, and work pressure is not so high. The relation between workers and supervisors is not based on authority but on cooperation. Often there will be some form of organisation within the factory, either an official trade union or a high level of solidarity among workers.

Combinations

There are factories with bad conditions on the work floor and a repressive atmosphere. We found these factories are not the most common. If they get the chance, the workers will leave. These factories will either pay slightly better to attract workers, unless unemployment is so high they will always find people accepting the conditions. This category also has the highest level of forms of forced labour, like migrant workers whose work permit is bound to one factory, so workers cannot to try to find a better job.

Factories that have good conditions on the work floor and a relaxed atmosphere are even rarer. Almost always they are heavily unionized. 'Enlightened' factory owners who think that investing in the workers is the best way to turn out efficiently a quality product are the rarest phenomenon in the garment sector.

A more common category is factories with bad conditions on the work floor and a relaxed atmosphere. Here efficiency is low, business is going bad, they have to accept the orders nobody else wants. They pay bad and get away with it by claiming a sort of loyalty from the workers ("business is bad, we can not afford to pay you better, we would go bankrupt and you would lose your job"). Factories are very eager to make this sort of claims, however, in the case of these factories it is often true.

Also quite common are factories that have good conditions on the work floor and are very repressive. They see the worker as an essential part of the machine and not as human beings with a right to labour in dignity. They demand as much from the workers as they can get away with, believing that that will bring the highest reward.

Quality buyers will go to factories that produce quality and are reliable. Factories with good conditions on the work floor are better able to meet those requirements. Most of these factories are repressive. Now quality buyers will not necessarily want repressive factories, and efficiency can also be established by investing in your workers. If quality buyers want to improve conditions, they can urge their suppliers to change their working atmosphere and invest not only in factory conditions but also in the workers.

Price buyers will go to factories that are cheap. That usually means factories with bad conditions on the work floor, since they compete mainly on price. To improve working conditions, price buyers should urge these factories to invest in the factory conditions. This is more complicated than in the case of quality buyers. If a factory with bad conditions on the work floor starts to upgrade, it will lose its clients who came because they were the cheapest of the cheapest. It has to attract clients that are more interested in quality, i.e. quality buyers. If only one of its buyers demands that they make such changes, this will not be feasible for them. The factory will only make such a change if (most of) their buyers want them to and are willing to pay accordingly. Or if only one buyer demands it, the factory will need a lot of assistance in attracting other buyers.

Therefore we can conclude that for quality buyers it is easier to demand from their suppliers to improve conditions. Price buyers source from the sort of factories for whom it is more difficult to respond to such demands. That is not to say that price buyers should not make demands, nor should they simply change their suppliers. The basic issue is always improvement. Shifting production from one factory to another does not result in any improvement for the workers. However, price buyers who start to make demands on working

conditions from their suppliers will to some extent have to become quality buyers, and assist their suppliers in changing accordingly.

In this chapter we have looked at the implementation and monitoring of codes of conduct. We have looked at what companies have done so far in this respect. We have looked at the criticism that has been expressed by trade unions, ngo's and others and we have designed criteria that must be met by a monitoring system. These criteria can be used as an checklist to evaluate any existing monitoring system. In the next chapter we will translate the criteria into a system, in terms of actors, responsibilities and information flows.

CHAPTER 3: A SYSTEM OF INDEPENDENT MONITORING

In this chapter we will describe a system of monitoring in terms of actors, their role and their interaction.

3.1. The Actors

3.1.1. Monitoring Body

In 2.5 we have seen that the initiatives in both Europe and the United States where trade unions and ngo's are involved, propose a system with a Monitoring Body in which all parties are represented. In this report we will give an outline of how such a Body could be constructed and what its tasks could be.

The Monitoring Body will consist of representatives of companies (associations of retailers and suppliers), trade unions and ngo's. The Monitoring Body is the highest institution of the monitoring system. The purpose of the Monitoring Body shall be to:

- conduct, directly or indirectly through other organisations, the independent monitoring of compliance with the code
- assist companies in implementing the code
- provide a means to inform consumers about observance of the code and more generally about labour conditions in the industry

To these ends the Monitoring Body shall:

- establish standards for the independent monitoring and for the accreditation of independent monitors
- train, or to arrange for the training, of independent monitors
- prepare an auditable checklist of labour practices to be used in monitoring the code
- prepare and publish guidelines for participating companies on the implementation of the code

- provide other technical assistance to companies in implementing the code
- prepare and publish the code in various languages as required by participating companies
- establish a means to interpret the provisions of the code, provided that this means is based on the recognised jurisprudence of the International Labour Organisation
- provide a means by which workers and any others can report on a confidential basis observance of the code

establish, based on independent monitoring, a system certification concerning labour practices which can be used by consumers

- collect information from all sources on working conditions in the apparel and sportswear industry and to make this information available to consumers
- to promote the code of labour practice and to encourage all companies operating in the industry to adopt it

to make effective recommendations with respect to any disputes arising out of the implementation or the certification process

- conduct or otherwise cause to be conducted independent monitoring of compliance by specific companies with the code of labour practice
- receive reports of such independent monitoring and to make effective recommendations based on these reports to the companies concerned
- investigate any substantiated reports concerning compliance by participating companies and to make effective recommendations based on the findings of such investigations

The Monitoring Body is financed via contributions from its membership and payments from contracting companies. The Monitoring Body ensures that the process of independent monitoring is documented and transparent according to explicit standards. The Monitoring Body can use the expertise and technical assistance of the ILO. ILO jurisprudence is the basis for interpreting the meaning of international labour standards.

Since all parties are directly represented in the highest decision making body of the system, they can discuss any problems they might encounter in doing their part and contribute to a solution.

3.1.2. Companies to be Monitored

These are retail companies or production companies (see 2.7.1) that have accepted a code of conduct as described in Chapter 1. The company agrees to implement the code and to incorporate the code into all of its operations and to make the code an integral part of its overall philosophy and general policy.

3.1.3. Intermediaries and Suppliers

These are all companies that the companies to be monitored subcontract their production to. These include buying houses, agents, traders, suppliers that do the actual production of garments and sportswear for the companies to be monitored and their subcontractors. Buying offices are excluded since according to our definitions of 2.7.1. a buying office is a subsidiary of the company to be monitored and therefore we consider it part of this company.

3.1.4. Monitors

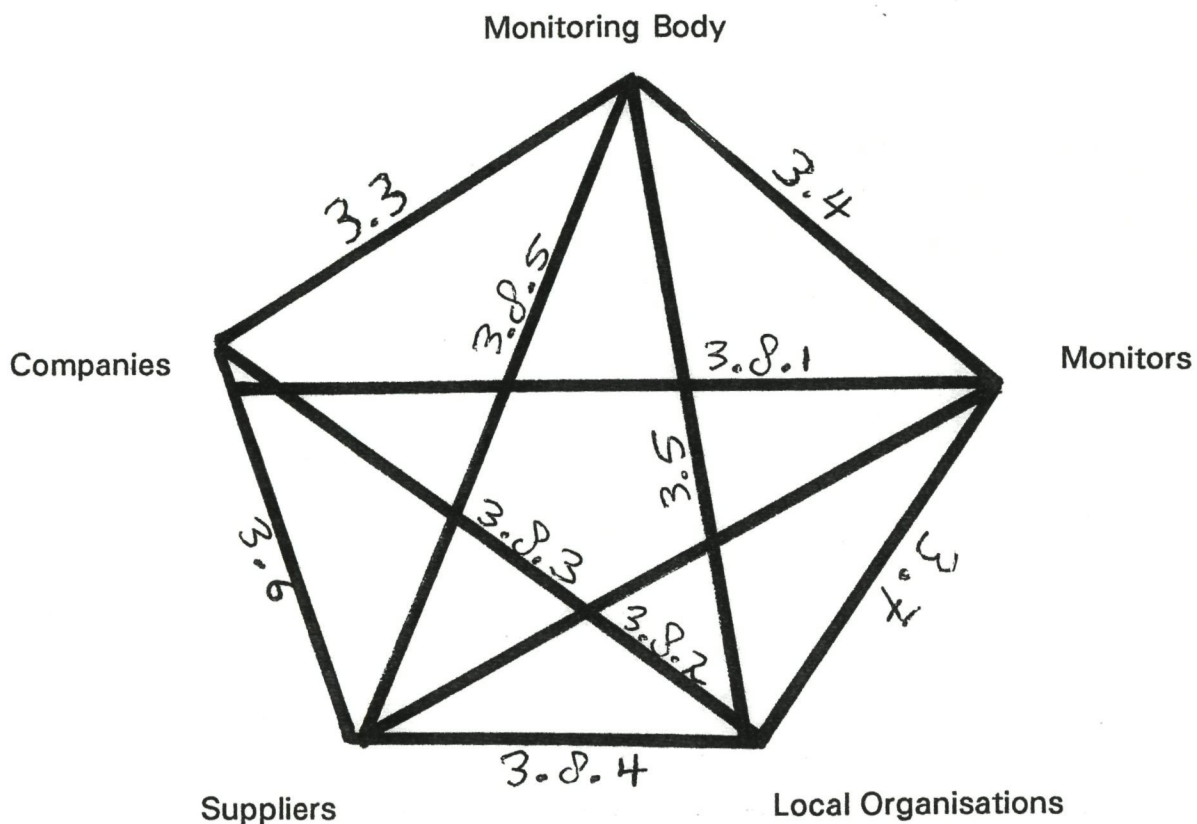
These are the accredited professional bodies that, commissioned by the Monitoring Body, do part of the monitoring. A Monitor will need to have knowledge of the apparel business, this will be easier for quality control companies than for accountants. For example, when monitoring staff visits a factory, she/he must be able to see if the factory is on its time schedule for the order. If not, the factory is probably subcontracting part of the order. However, the monitoring staff will only notice such things if she/he is aware of how much time a factory needs to set up a production line. Monitors must of course also have accounting knowledge to be able to check the suppliers' wage records and workers' pay stubs. Monitors must be able to interview workers according to the criteria in 2.6.2. Monitors are not necessarily from Northern industrialised countries.

3.1.5. Local Organisations

As we have explained in 2.6., a general criterium that must be met in every step of monitoring is that workers' voices must be heard and listened to. Workers are represented in the Monitoring Body by the trade unions and ngo's. However, these are international operating organisations and may be quite difficult to reach for an average garment worker. To increase the feasibility of the system for workers, we need to add a link in the structure making it much closer to the local level and to workers. It has been suggested to identify 'Consultation Points' or 'Monitoring Committees' in each country and/or region that produces garments and sportswear for a company to be monitored. These would consist of local trade unions and ngo's, or form an intermediary between the local organisations and the Monitoring Body. It still needs to be discussed internationally what structures need to be developed to facilitate a direct input by workers in the system, who needs to be involved, what pre-conditions must be met for such a structure to function and how this must be organized in the different countries. In this report we will refer to 'Local Organisations' as the general term for such a structure and describe what would be their function within the monitoring system in terms of when they should be consulted, what information they should receive etc.

The monitoring system consists of these 5 main actors and their interaction. In figure 2. this is visualized and it is shown in which paragraph the regular interaction between the different actors is described in detail. In 3.9. the interaction between all actors in case of violations of the code is described. However, we will start with the starting procedures that come into action when a company makes clear it wants to accept a code of conduct as specified in Chapter 1 and it is willing to accept a system of independent monitoring.

Figure 2: Interaction between Actors in the Monitoring System



3.2. Starting Procedures

In this paragraph we will describe the sequence of actions after a company approaches the Monitoring Body or is approached by the Monitoring Body to talk about a code of conduct and system of monitoring, and the company decides it wants to go ahead with it.

The first step is that the Company to be Monitored signs the code of conduct, and agrees to implement it and to accept a system of independent monitoring. In that phase the company does not receive a trademark and is not allowed to make any publicity regarding the code. First it must enter into the second step: the implementation of the code and the development of an internal system of monitoring.

The company must implement the code of conduct according to the implementation criteria specified in 2.2. This implementation will consist of the following steps:

- a. The company communicates its new policy within the company. All employees of the company will be informed about the code of conduct and its meaning and about the system of monitoring. Those staff and divisions that will have any direct relation with the execution of the code will receive a more extensive training on what the code and the monitoring mean for their job, what the consequences of the implementation and the monitoring will be for them.
- b. Responsibilities for the implementation of and compliance with the code will be clearly established within the company. The company will inform the Monitoring Body on where the responsibilities are located; which persons and divisions are responsible for what parts.
- c. The company makes an overview of all its production locations, down the entire subcontracting chain.
- d. The company communicates its new policy to all these production locations. This communication will have at least the following contents:
 - * The company translates the code of conduct to all the languages spoken in these production locations and sends it to them.
 - * The company has a meeting with the management of all production locations where it explains what this code means, why it is accepted, what will be the consequences for the supplier, what the monitoring system is, what the benefit of this change will be for the supplier and what procedures will be followed. The Monitoring Body can assist the company in this stage.
- e. The company checks if all these production locations have a personnel administration that includes names and addresses of all workers, their ages, the

wages paid to them (regular and overtime) and the number of hours worked (regular and overtime). If the company finds production locations that do not meet this standards, the company will insist the supplier will immediately set up such a personnel administration and assist the supplier in this if necessary.

f. The company arranges that the translated texts of the code are being put up at all production locations and that the workers of all production locations are being provided with a copy of the text of the code in their language, including a local address where a complaint can be filed.

g. The company investigates which suppliers already meet the standards laid down in the code and which do not. This investigation will be carried out in a structured way, making use of standard questionnaires and will consist of visits to all production locations, interviews with management and with workers, according to the criteria specified for confidential interviews with workers. For those suppliers that do not meet the standards it will be specified on which issues they do not comply and the severity of the non-compliance. A grading system may be used in this phase. The company can be assisted by the Monitoring Body in this investigation.

In cooperation with the Monitoring Body and the monitor, the company will start to urge the suppliers that do not yet meet all the standards in the code to start complying. If necessary the company will assist the supplier in this. The company will then make the code an explicit part of any contract or business agreement it enters with an intermediary or supplier and the regular monitoring process can start.

3.3. Interaction Monitoring Body - Companies to be Monitored

The company signs a contract with the Monitoring Body, which specifies:

a) the time-frame in which the production in the different facilities should comply with all the standards in the Code.

b) the information the company has to give to the Monitoring Body.

- c) the payments the company should make to the Monitoring Body.
- d) the procedures for the implementation of the code and the internal monitoring by the company
- e) the procedures for the external monitoring.
- f) the use of this contract by the company in its public relations.

In this model the monitor would be hired by the Monitoring Body, not by the company to be monitored. This is a crucial difference. One can also think of a model where the Monitoring Body is only responsible for developing criteria and certifying monitors, after which the companies choose one of the monitors out of the pool of certified monitors. In such a system the company to be monitored would presumably sign a contract with the monitor. Often companies have a preference for such a model since they feel the confidentiality of their company data is better protected this way. They prefer giving sensitive data to one audit company only instead of giving it to an international body that also monitors other companies, perhaps even their main competitors. The companies might fear that there is not enough control over who has access to the information. However, there are several arguments against such an audit model, mainly having to do with the safe and direct involvement of workers. We will explain this first and then return to the question of confidentiality of company data.

There are four reasons why a model where the Monitoring Body hires the monitor is to be preferred over an audit model where the company to be monitored does so. First of all, it is hard to imagine a situation where workers will feel safe reporting complaints directly to either the company or to a certified commercial enterprise that is under contract by the company. By creating a direct channel for complaints to the Monitoring Body, (that includes ngo's and trade unions at the highest, decision-making level), this becomes more feasible. Secondly, having a direct channel for ngo's and trade unions makes it possible to complain about the monitors and to have a check on them. It is difficult to envision all the possible grounds for disqualification (or qualification) in advance, since there is very little experience yet with such monitoring systems. In the

end, a monitor will only be really qualified if all parties have confidence in its abilities and will be really disqualified if one or more parties lose confidence.

Thirdly, having a contract between the monitor and the Monitoring Body instead of between the monitor and the company to be monitored creates a system for what to do in case of non-compliance with the code. In the system where the monitor is hired by the company, the monitor would have to make decisions on what action the company should take. However, the monitor does not represent workers, the Monitoring Body does. Even when the monitor would be obliged to consult workers' organisations etc., to guarantee workers' influence in every step of the monitoring process it is better to have their direct influence on the highest decision making level.

Lastly, to avoid conflicts of interest it is to be preferred if the monitor receives no direct payments by the company it is monitoring. Even though the monitor might be completely trustworthy and independent and doing its job properly, if paid by the company the suggestion might be raised that the monitor is also speaking with the voice of the company, especially in countries where corruption is common practice and trust in independence is very low. Since confidence in the monitor and in the monitoring system is so crucial for its success, this should be avoided.

Returning to the question of confidentiality of company data, companies are usually afraid that their competitors will know who their suppliers are. This fear is perhaps a bit exaggerated, since such knowledge is not exactly top-secret. Suppliers are usually willing to tell who their buyers are, since they see that as advertisement, especially if they produce for big and famous retail stores or brands that have high quality demands. Especially in the sportswear industry that is dominated by a few big multinational brands, we find that these (Nike, Reebok, Adidas) often have their products produced in the same factories. In the garment industry there is some more diversion since there are much more different retailers, however, it is rare to find a supplier producing for one retailer only. Suppliers are already in a dependent position with the retailers and therefore prefer to have more than one customer.

However, even though a bit exaggerated, companies have of course a real interest that sensitive company data are not accessible to everybody. This interest can also be protected by a model with a Monitoring Body. In the contract between the company and the Monitoring Body it will not only be specified what information the company must give to the Monitoring Body, but also what the Monitoring Body is allowed to do with this information. Such a clause in the contract will give companies confidence that their right to confidentiality will not be violated. If this right would be violated it would be a contractual violation and the company can then make legal claims to whomever is to blame in this matter.

We will look into the contract between the Monitoring Body and the companies to be monitored in some more detail, following the 5 key issues specified above.

Concerning the time-frame in which the production in the different facilities should comply with all the standards in the Code, this has a lot to do with implementation. In 2.2. we have specified criteria for implementation. These steps must be taken by a company before the contract can be signed. The Monitoring Body can assist the companies with the implementation of the code, such as instructions to staff, translations of the code, clauses in contracts etc).

One of the reasons not to wait until the company complies with all the standards in the code for all its production locations is that the Monitoring Body should have some influence on how the company goes about this. The code is aimed at improvement. If a company uses production locations that are not fulfilling the standards, the first step should always be that the company tries to improve the conditions. If it is completely left to the company how they are going to comply, it might be an 'easier' road to simply shift production from the 'bad' locations to the 'good' ones. This will not lead to improvement for the workers with bad working conditions and might even deteriorate their situation because they might lose their jobs because of lack of orders.

After implementation and the signing of the contract, there should be a time frame in which all the production for the company to be monitored must meet the standards specified in the code.

Concerning the information the company has to give to the Monitoring Body, this will include information on:

- * all their (contracts with) intermediaries and suppliers
- * all action they undertake to implement the code
- * all action they undertake in case of a violation of the code

There will be standards for how (detailed) this information has to be provided to ensure that the Monitoring Body receives comparable information from different companies. That also ensures that different companies that are monitored have the same obligations and therefore do not have competition advantages or disadvantages over each other that are related to being monitored.

In the contract it will also be specified what the Monitoring Body is allowed to do with this information. The information will be accessible to the monitor, since they need that to do their job. However, the monitor is under contract with the Monitoring Body and reports everything back to the Monitoring Body. The Monitoring Body will guarantee the confidentiality of this information, as long as the company follows the advice of the Monitoring Body. The company will be notified before any information is made public.

Concerning the payments the company should make to the Monitoring Body, these payments should be related to the size of the company. In that way also small companies can afford to be monitored. The payments the companies make to the Monitoring Body will not be the sole income of the Monitoring Body. It will also receive payments by the organisations that it consists of. Since the companies do not pay directly to the monitor, this decreases the possibility for conflicts of interest by the monitor and the suggestion of such conflicts.

Concerning the procedures for the implementation and internal monitoring by the company the following aspects can be identified:

- * The company will assign responsibility for all matters pertaining to the Code within its organisation and inform the Monitoring Body and other relevant bodies where this responsibility is assigned.
- * The company will maintain full and up-to-date information on all intermediaries and suppliers obliged to observe the code, including the nature and location of all workplaces, and to provide this information to the Monitoring Body or its agents in a timely manner upon request.
- * The company and all its intermediaries and suppliers shall maintain records of the names, ages, hours worked and wages paid for each worker, and make these records available for inspection by the Monitoring Body and its agents, and to allow them to conduct confidential interviews with workers.
- * The Board of Directors (or other governing Body) of the company shall periodically review the operation of the code, including the reports of internal and external monitoring.
- * The company will make observance of the code a condition of all agreements that it enters into with intermediaries and suppliers. These agreements will obligate these intermediaries and suppliers to require observance of the code in all agreements that they make with subcontractors in fulfilling their agreement with the company.
- * The company will provide or ensure the provision of translations of the code in the languages used at the production locations and provide authorised texts of the code to intermediaries and suppliers for their use.
- * The company and all its intermediaries and suppliers will refrain from disciplining, dismissing or otherwise discriminating against any employee for providing information concerning the observance of the code.

Concerning external monitoring, see the next paragraph.

Concerning the use of this contract by the company in its public relations, the company will be allowed to profile itself as a company with an independently monitored code. The company will be granted the right to use a company trademark that it can use to inform their customers on the conditions under

which the garments and sportswear they sell are being produced. This adds to the feasibility of the system for the consumer, who will in this way be able to distinguish between companies that are independently monitored and companies that are not.

3.4. Interaction Monitoring Body - Monitors

The Monitoring Body hires the monitor to collect (part of) the information needed to check the company's performance. The Monitoring Body sets standards for training the monitors and for monitoring methods. The monitors receive information from the Monitoring Body and check on the implementation of the code and do ongoing checks on compliance with the code, according to the criteria in 2.6. Methods include at a minimum:

- * check if the implementation plan of the company meets the implementation criteria (see 2.2).
- * make unannounced spot checks at all production locations to check if the company undertook the actions in their implementation plan and to check if the suppliers meet the standards in the code.
- * analyze the company information and cross-check with information from other parties.
- * conduct confidential interviews with workers outside the workplace.

In the contract between the Monitoring Body and the monitor it will be specified how often the monitors must report back to the Monitoring Body and what standards they have to use for the reports. It will also be specified how often each production location has to be visited and how many workers have to be interviewed. It will be the task of the Monitoring Body to make these specifications. The Monitoring Body will set the ground rules for monitoring and will constantly evaluate these rules.

3.5. Interaction Monitoring Body - Local Organisations

The Monitoring Body will arrange for workers to report on the observance of the code in a way that is safe and direct, as specified in 2.6. This is done through interviews by the monitors, but also the workers can file a complaint with the Monitoring Body. Other persons and organisations also have the right to file complaints with the Monitoring Body. Because in most cases the Monitoring Body will be too far from the workers, thereby creating a too high threshold to file a complaint, the worker should be able to file the complaint via a Local Organisation.

To ensure that workers know about the right to file complaints and know what to do, at least the following steps must be taken:

- * at each production location the text of the code is posted in the local language, including information to assist workers in reporting violations of the Code to the Monitoring Body or its agents taking into account the difficulties that workers will face in doing this and the need for confidentiality in order to protect workers.
- * each worker of each production location receives the text of the code in the local language, including information to assist workers in reporting violations of the code to the Monitoring Body or its agents taking into account the difficulties that workers will face in doing this and the need for confidentiality in order to protect workers.
- * the workers of each production location are orally informed about the code and its meaning, including explanation on how a complaint can be filed. The Monitoring Body must consult Local Organisations on how to do this.

Local Organisations will also play a role in the procedures in case of a violation of the code, see 3.9.

3.6. Interaction Companies to be Monitored - Intermediaries and Suppliers

Abiding by the code must be an explicit part of each contract that a company to be monitored enters with any intermediary or supplier. Such a contract must include the following issues:

- * Companies must ensure that their intermediaries and suppliers have records (company profiles) on all their subcontractors and that all suppliers have a personnel administration (records on all their employees, wages and working hours) to which the companies have access.

- * All intermediaries and suppliers of the company must be informed on the code and what it means, their rights and obligations. The company must ensure that the intermediaries and suppliers inform all employees on the code and what it means, their rights and obligations.

- * The company investigates all its suppliers to find out which meet the standards in the code and which do not (and on what aspects). This must be done in a structural way, using standardized questionnaires, and involving all production locations.

- * The company must urge the suppliers that do not meet all standards to start complying with them, and assist the suppliers in this if necessary. Also, the company should enable their intermediaries and suppliers financially to abide by the code, or at least not disable them to do so. If the company pays such bad prices to a supplier that it is constantly on the verge of bankruptcy, the company cannot expect the supplier to pay decent wages and to invest in the factory.

- * The company will ensure all contracts with intermediaries and suppliers allow for the termination of the contract when the intermediary, supplier or any of their subcontractors violate the code.

If the company itself finds a violation of the code at one of its suppliers, the company may authorise a procedure with fixed time limits to rectify situations. The agreement by the intermediary or supplier to abide by this procedure would enable the continuation of the agreement with the company. The company may also authorise intermediaries or suppliers to institute similar procedures with

respect to their subcontractors. Such procedures shall be authorised only when the following four conditions are met:

- a) there is a reasonable expectation that the situation will be corrected and that the code will be observed in the future.
- b) the period specified for correcting the situation is reasonable.
- c) recognisable and unmistakable violations of the code are ceased immediately.
- d) the procedures are put forward to the Monitoring Body for approval.

With respect to child labour, such procedures shall require that there be no further engagement of children and that child workers should be replaced by adults, where possible from the same family.

Procedures should also include measures to assist the children concerned through provision of educational opportunities and transitional economic support.

Intermediaries and suppliers must, as part of their agreement with the company, agree to terminate any contract or agreement with any subcontractor not fully observing the code, or they must seek and receive approval from the company to institute a procedure with fixed time limits to rectify situations where the code is not being fully observed.

Where there is repeated failure to observe or to ensure observance of the code by a particular intermediary or supplier, the agreement should be terminated. Repeated failure shall be defined as three occasions or the same or similar violation, or when the Monitoring Body decides so.

In situations where it is not clear whether a particular practice constitutes a violation of the code, relevant international labour standards of the International Labour Organisation (ILO) and the expert advice available from the Monitoring Body shall be sought for guidance. When such situations are determined to exist, the company agrees to inform and consult the Monitoring Body.

3.7. Interaction Monitors - Local Organisations

Their relation is a complex one. On the one hand the Local Organisations should have a task in assisting the monitors, especially in the aspect of how to ensure workers' participation in the whole monitoring structure. Local Organisations must be consulted on issues like: how to do interviews with workers, how to inform the workers on the existence of the code and its meaning and in general how to gain the confidence of the workers. This could be done either by the Monitor or by the Monitoring Body, who will then instruct the Monitor using this information. We have seen in 2.6.2. that this is necessary for the quality of the monitoring. On the other hand Local Organisations should have a general watchdog task, including checking on the monitors. If they find the monitor is not doing its job properly, they can file a complaint with the Monitoring Body. The Monitoring Body will then have this complaint investigated, of course by another monitor than the one the complaint is about. This other monitor will talk to all parties involved and report back to the Monitoring Body. The Monitoring Body will then decide what action must be undertaken. If it was found that the monitor was not working according to the standards and specifications set by the Monitoring Body, the Monitoring Body can reprimand the monitor. If the monitors' faults are severe or repeatedly, the Monitoring Body can terminate the contract with the monitor.

3.8. Other Interaction

3.8.1. Interaction Companies to be Monitored and Monitors

Most of the interaction between the companies to be monitored and the monitors goes through the Monitoring Body. The companies give information to the Monitoring Body, who passes the relevant parts on to the monitor. For practical reasons the Monitoring Body can ask the companies to give information directly to the monitor, however, the obligation to do so is between the companies and the Monitoring Body. This is also valid the other way around: the monitor will report its findings to the Monitoring Body, who will then inform the

companies. The Monitoring Body can ask the monitor to inform the companies directly on some issues, however, the obligation is between the monitor and the Monitoring Body.

3.8.2. Interaction between Intermediaries & Suppliers and Monitors

Again most of this interaction is indirect. The intermediaries and suppliers must allow the monitors to visit their production locations, to check their records and to interview their workers, however, all these obligations are obligations from the supplier to the company to be monitored. However, the supplier and the monitor are in direct contact and their communication is therefore important. The monitor should play a role in making the supplier understand what is expected and why. If the supplier has difficulties in living up to the standards, it might be easier for the supplier to discuss this with the monitor than with the company to be monitored, since theirs is also a business relation.

3.8.3. Interaction Companies to be Monitored and Local Organisations

There will probably not be any direct contact between these two. Their interaction will occur through the Monitoring Body.

3.8.4. Interaction Intermediaries and Suppliers and Local Organisations

There might be some direct contact between these two, even though the obligations will be between other parties. If the Local Organisations play a direct part in informing the workers, the suppliers will be obliged to allow them to do so. This obligation is an obligation from the supplier to the company that it produces for.

3.8.5. Interaction Monitoring Body and Intermediaries and Suppliers

They do not have any contractual obligation to one another, this is arranged through the companies to be monitored. Direct contact between them will be rare since this will be the task of the monitor.

3.9. Procedures in Case of Violations of the Code

They are dealt with separately because they involve all actors.

There are 3 ways how a violations can become known, with different procedures.

- 1) the company itself finds a violation: see 3.6.
- 2) the monitor finds a violation.
- 3) a complaint is filed either directly at the Monitoring Body or through one of the Local Organisations.

If a monitor finds a violation or a complaint is filed, the Monitoring Body will play a crucial role. In general, the Monitoring Body establishes and carries out procedures in case of violations of the code, though it will ask others to collect the information. As we have seen in 2.6.3. these procedures must involve at least:

- getting the facts straight
- attempts to improve the situation
- investigation in the quality and the results of the attempts
- decision if the supplier can stay on as supplier
- decision if the action undertaken by the company to attempt to improve the situation was sufficient

If a complaint is filed, the Monitoring Body will ask the monitor to investigate the complaint. All parties must be heard: the person or organisation that filed the complaint, the supplier, the workers of that supplier, the relevant Local Organisations and others if necessary. The monitor will report to the Monitoring Body what it found. If the monitor was the one who found the violation, it will also report this information to the Monitoring Body.

The Monitoring Body will discuss the findings of the monitor and decide:

- * if improvement is necessary, in other words is there a violation of the code
- * if so, what this improvement should consist of, in other words what is the required situation at the end of the whole procedure

* what is the way to get to this situation and what is the required action by the different actors.

The Monitoring Body will now inform the different actors what action is required on their part. The actors will report back if they undertook this action and what has been the result. Since the supplier only has a contractual relation with the company to be monitored, it will be this company that should play the major part.

At the same time the Monitoring Body will ask the monitor and the Local Organisations for their input. The company has to take certain steps which must lead to certain results. The monitor must check if the company undertook these steps, and to some extent if that lead to the required results. However, also the Local Organisations should be asked for their opinion on the results. For this part of the procedure there will be a time frame, to avoid stalling practices and the case dragging on for months, as we have seen the necessity for that in 2.7.2.1.

Now the Monitoring Body has gathered all the information on the action by the company and the results to which that lead. The Monitoring Body must now take two decisions:

* if the action undertaken by the company has been sufficient, in other words did the company follow the advice by the Monitoring Body? In other words did the company violate its obligations to the Monitoring Body or not? And if it did, what should be the consequences? The consequences will depend on the severity of the violation and whether this has happened before or not. If the company violated its obligations in any case the Monitoring Body will reprimand the company and make the case public. In the worst case the Monitoring Body will terminate the contract with the company.

* did the action undertaken by the company lead to the required results? In other words did the supplier get back on track or is it continuing to violate its obligations to the company? If so, what should be the consequences of that? Are there any further steps that can be taken to get the supplier back on track and to improve the situation for the workers? Or is the situation so bad and/or the supplier so unwilling to cooperate that the only solution is for the company to terminate the contract with the supplier? Since this is certainly not going to

lead to any improvement for the workers this is a desperate step that must only be taken if all else has failed. If this step is taken, it is not the end of the responsibility of the company. For example: some workers have been fired by supplier 1 for organizing a union. Supplier 1 refuses to accept the union and also refuses to rehire the fired workers. All attempts to mediate have failed and the company terminated the contract with supplier 1. Now if the company also buys from supplier 2 which is located near supplier 1, the company could ask supplier 2 if it has any job vacancies and if so, if it is willing to hire the fired workers of supplier 1. The Monitoring Body will make recommendations to the company on what action to take to improve the situation for the workers after terminating the contract with a supplier, if there are any possibilities to do so.

3.10. Conclusions

In this chapter we have described a system for monitoring a code of conduct in the garments and sportswear industry in terms of actors, their roles and their interaction. This is not meant to be the final, one and only system of such monitoring. If this system is established it will need to be constantly evaluated and improved. We welcome everybody's ideas and comments at all times.

TOOLKIT

CHECKLIST FOR FACTORY VISITS

This list is to be used for on the spot checks. It is NOT a questionnaire, it is to be used by the person who does the check. It only deals with question that can be answered by looking around. For a report on the situation in a factory it will always be used in combination with interviews with management and workers.

1. GENERAL

This part deals with question that are not directly related with one of the demands in the FTC. Some of these questions are qualitative rather than quantitative. They can only be answered within the assumption that the person who does the check visits more than one factory and is able to compare them.

1.1 GENERAL IMPRESSION

Is the factory spacious/regular/crowded?

Is there proper space for walking between the different workplaces? Yes/No

Is the factory tidy? Yes/No

Is the factory clean? Yes/No

1.2 ATMOSPHERE

Is the atmosphere in the factory tense/regular/relaxed?

Does there appear to be high work pressure? Yes/No

Do workers seem to be afraid to look up from their work? Yes/No

Is it possible to make eye contact with workers? Yes/No

Do you see supervisors yell at workers? Yes/No

1.3 CANTEEN

Is there a canteen? Yes/No

Is the canteen big enough that all the workers can eat there? Yes/No

How many workers can be seated in the canteen? ...

Is the canteen clean? Yes/No

1.4 TOILETS

How many toilets are there in the factory? ...

Separate toilets for men and women? Yes/No

How many for men and how many for women? ... for men, ... for women

How does this relate to the number of male and female workers?

...% of workers is male, ...% is female

Are all toilets functioning? Yes/No. ... are not functioning.

Are the toilets clean? Yes/No

2. HEALTH AND SAFETY

2.1 MEDICAL FACILITIES

Is there any sort of medical facility? Yes/No

What does it consist of?

first aid kit - what is in it?

beds - how many?

other medical equipment?

nurse - permanent or visiting (how often)?

doctor - permanent or visiting (how often)?

2.2 SAFETY EQUIPMENT

Do all sewing machines have needle guards? Yes/No. If not, how many lack needle guards? ...

How many cutters wear protective steel gloves? ...

2.3 ERGONOMY

How many workers are standing? ...

How many workers are sitting on stools? ...

How many workers are sitting on chairs with a back? ...

Of how many chairs can the height be adjusted? ...

2.4 LIGHT

Does daylight enter the factory? Yes/No

What sort of artificial light is used in the factory?

Is there enough light in the factory? Yes/No

"In order to achieve a sufficient degree of uniformity of light in the working place, the distance between the lines of light should not exceed 1.5 times their height above the working place. With broken lines, the longitudinal distance between neighbouring luminaires should not be greater than two thirds the height" (ILO 1989: 112).

2.5 AIR

What sort of temperature regulation does the factory have? Airco? Fans?

Is this sufficient? Yes/No

What is the temperature in the factory? (MEASURE!) ...

Is there any system of air circulation to filter the dust out of the air? Yes/No. If so, what does it consist of?

Is it dusty in the factory? Yes/No

Are there any signs of fluff visible in hair/on clothes of workers? Yes/No

How many workers wear dust caps for mouth & nose? ...

2.6 FIRE FIGHTING

How many exits does the factory have? ...

Is there an emergency staircase? (if -part of- the factory is not at ground level) Yes/No

Are the emergency exits/staircase clearly indicated? Yes/No

Is there an emergency light system? Yes/No

Are the emergency exits/staircases accessible? Yes/No

Are the emergency exits/staircases unlocked? Yes/No

Are there fire extinguishers? Yes/No How many? ...

How old are the fire extinguishers? What is the latest date that they have been checked? ...

Are there fire blankets? Yes/No How many? ...

2.7 WATER

Are the workers provided with clean drinking water? Yes/No

3. CHILD LABOUR

Are there any workers who appear to be under 14? Yes/No

What are their jobs?

QUESTIONNAIRE FOR WORKERS IN FACTORIES

This questionnaire will be adjusted for different countries, depending on the local situation. This is indicated in the questionnaire with [].

1. LIVING WAGE

[There are many ways of calculating and measuring wages. They can be taken with or without overtime, bonuses and other extras. What we are interested in is whether the wage covers basic needs, so we want to know the amount of money that is available to the worker, including all extras. The person conducting the interview will know what is the legal minimum wage and what is the amount of money that covers basic needs in this country].

Are you on piece rate or on hourly/daily/monthly wage?

If there is a piece rate, can a typical worker on average speed earn the minimum wage?

What is your job in the factory? (machine operator, helper, supervisor, cutter)

What is your basic wage? What is the basic wage of a machine operator?

Are there any additional bonuses or incentives? Like attendance bonus, productivity bonus, incentive for reaching the target etc?

Are you paid extra for overtime? How much does overtime pay?

How much money did you take home altogether last month/week?

Is your wage sufficient to live on? If not, how much more would you need? Do you have other sources of income? How do you manage?

Compared with other factories that you know of, does this factory pay good/regular/bad wages?

Is the factory ever late in paying the wages and overtime payments? If so, how often does that happen?

Do you always receive payment for all the hours you have worked?

Do you have any complaints concerning your wages?

2. WORKING HOURS

How many hours do you work on an average working day? At what time do you start in the morning and at what time do you leave?

Is there a lot of overtime?

Is it possible to refuse to work overtime?

How many overtime hours did you work last month?

How many days per week do you work? Do you have to work 7 days per week sometimes? If so, how often did that happen in the last two months?

Do you get paid holiday? How many days? Is it difficult to take these days? Can you always take all your holidays?

Do you have any complaints concerning your working hours?

3. THE RIGHT TO ORGANIZE AND COLLECTIVE BARGAINING

Is there a union in the factory?

if so:

What is the attitude of the management towards the union?

How many people are member of the union? Are you a member?

Do you have a CBA? If so, how often is it negotiated?

What are the main demands of the union?

if not:

Is there any other form of workers' organisation? What does it consist of? Is it a democratic organisation? Do you get to vote about who represents you?

Do you know of an attempt to set up a union in the factory? Why did it fail?

Would you like to have a union in the factory? Why (not)?

4. NO DISCRIMINATION

[Discrimination on grounds of sex, skin colour, ethnicity, sexual preference, religion, political beliefs or other. The following questions are for discrimination on grounds of sex. Depending on the local situation, questions will also be asked on the other themes].

Is there a difference in wages for men and women? If so, what is the difference?

Are the supervisors men or women? How many are men and how many are women?

Is it difficult to make promotion? Is it more difficult for men or for women? Why? Are men and women treated the same by supervisors/management? If not, what are the differences?

Do supervisors make sexual advances on workers?

Has a supervisor ever requested sexual favours from you or someone you know in exchange for more pay or something else?

5. CHILD LABOUR

Are there people under 15 working at the factory?

If so, how many?

How old are they?

What are their jobs?

Do they work as many hours as the adult workers?

6. HEALTH AND SAFETY

Are there any medical facilities at the factory? If so, what do they consist of?

first aid kit - what is in it?

beds - how many?

other medical equipment?

nurse - permanent or visiting (how often)?

doctor - permanent or visiting (how often)?

If you feel ill, are you allowed to take a rest?

Do you have access to the medical facilities?

Can you go to the doctor?

Do you have to pay for this?

Do you have a medical insurance?

Who pays for the medical insurance?

Do you get paid sick leave? Up to how many days?

Do you get paid maternity leave? How many days?

Is this paid for by the company or by the state?

Is there enough light in the factory?

Is the temperature regulation in the factory sufficient? Is it hot in the factory?

Is it dusty in the factory?.....

Do you get to wear dust caps for mouth & nose?

Are the workers provided with clean drinking water?

Do you have any health problems that are related to your work? What are they?

Do you know of other workers in your factory who have health problems that are related to their work? What problems do they have?

Does the company do anything about these health problems?

Have any improvements been made in the health and safety situation in the factory?

Do you know of any accidents that happened in your factory?

What did they consist of?

What happened to the workers who were involved in this accident?

Have you noticed if there is fire fighting equipment in the factory?

If so, what does it consist of?

Do you know if there is an emergency exit? Is it accessible at all times?

Do you ever get fire drills?

Do you have any complaints about the health and safety situation in the factory?

GENERAL

Would you consider your factory a good, a bad or a regular factory to work for, compared with other factories that you know of? Why?

What would you consider the most important improvements that you would like in your working situation?

Do you have any complaints or remarks about your working situation that we have not discussed yet?

THE CODE OF CONDUCT

Do you know what a code of conduct is?

Do you know there is one for your factory?

Have you ever seen the text of the code of conduct?

Did the management inform you about the code of conduct?

Do you know you have certain rights because of this code of conduct?

Do you know what these rights are?

Do you know you can file a complaint if your rights are violated?

Would you know how to do that?

Would you consider filing a complaint if your rights are violated?

QUESTIONNAIRE FOR FACTORY MANAGERS

0. GENERAL

When did you hear about company X's code of conduct?

Was it clear to you what this meant?

Was it possible for you to meet the standards in the code of conduct?

What measures did you take to implement the code of conduct?

Did you communicate this to the workers? If so, in what way?

Was it necessary to make any improvements in the working situation? If so, which ones?

Did company X assist you in this matter?

Was this assistance sufficient?

Do you currently encounter problems in implementing the code of conduct?

Can you solve these problems or would you need more assistance in this than you currently get?

Do you see this development with the code of conduct as an improvement? Why (not)?

1. WAGES

Is there a piece rate system or hourly/daily/monthly wages?

If there is a piece rate, how high is it? Examples.

What is the basic wage of a machine operator?

How much do you pay for overtime?

Are there any additional bonuses or incentives? Like attendance bonus, productivity bonus, incentive for reaching the target etc? What do they consist of?

Are there any additional benefits? Like insurance, savings programs, etc? What do they consist of?

2. WORKING HOURS

How many hours is the factory producing on an average day? Do you work in shifts?

How many hours was the factory producing last week? Was that an average week?

How many days per week does the factory produce? Do you produce up to seven days per week sometimes? If so, how often did that happen during the last two months?

How many paid days off do the workers get?

Do workers have the choice if they want to do overtime?

Do you have any policy on a maximum number of working hours for workers?

3. THE RIGHT TO ORGANIZE AND COLLECTIVE BARGAINING

Is there a union in the factory?

if so:

What is the relation with the union? Do you see their role as a constructive one?

Is there a CBA? If so, how often is it negotiated?

Have you had any problems with the union? What did they consist of?

if not:

Is there any other form of workers' organisation? What does it consist of? Is it organized by the workers or by the management?

Would you object to have a union in the factory? Why (not)?

4. NO DISCRIMINATION

[Discrimination on grounds of sex, skin colour, ethnicity, sexual preference, religion, political beliefs or other. The following questions are for discrimination on grounds of sex. Depending on the local situation, questions will also be asked on the other themes].

Is there a difference in wages for men and women? If so, what is the difference?

Do you have any policy on equal opportunities?

5. CHILD LABOUR

Are there people under 15 working at the factory?

If so, how many?

How old are they?

What are their jobs?

Do they work as many hours as the adult workers?

6. HEALTH AND SAFETY

Are there any medical facilities at the factory? If so, what do they consist of?

first aid kit - what is in it?

beds - how many?

other medical equipment?

nurse - permanent or visiting (how often)?

doctor - permanent or visiting (how often)?

Who pays for medical expenses of the workers? Is there a medical insurance?

Who pays for the medical insurance?

Do you give paid sick leave? Up to how many days?

Do you give paid maternity leave? How many days?

Is this paid for by the company or by the state?

Do you provide the workers with dust caps for mouth & nose?

Do you provide the cutters with protective steel gloves?

Are the workers provided with clean drinking water?

Do you notice workers having health problems related to their work?

Does the company do anything about these health problems?

Have any improvements been made in the health and safety situation in the factory?

Did any accidents occur in your factory?

What did they consist of?

What happened to the workers who were involved in this accident?

Is there fire fighting equipment in the factory? If so, what does it consist of?

Is there an emergency exit?

Is it accessible at all times?

Do you ever do fire drills?

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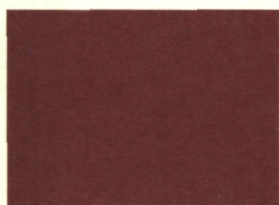
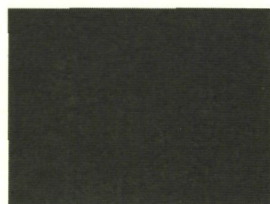
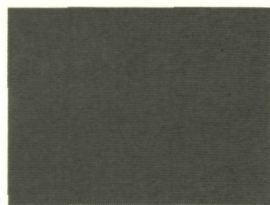
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