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## *Presentation of the study*

With support from the Swedish International Development Corporation Agency we conducted a minor field study in India as a part of our Master Thesis in International Public and Labour law at the School of Economics and Commercial Law, Göteborg University. The aim of our minor field study was to review the issues relating to the impact of globalisation on labour standards, focusing on India's garment export industry as a case study. Our field study concentrates on the view of the manufacturers in the labour intensive garment industry, since their views are significant because as employers, they implement labour standards and compete in the global market.

A debate has taken place on whether or not a social clause should be included in the framework of the WTO. The social clause would link international trade with basic worker's rights. A breach of the basic labour standards agreed in international conventions, such as the eight core labour standards conventions from the ILO, would give other states a right to impose trade sanctions upon the breaching party. The overarching aim of such sanctions should be to ensure and promote the respect of the core labour standards worldwide. However, sanctions may not be the best way to advance labour standards; they may not even improve the situation in developing countries at all. Many developing countries strongly oppose any such measures. Our objective has been to gain a deeper understanding of international labour and trade law from India's views concerning core labour standards and trade, trade sanctions, international competition, and its impact on working conditions.

Our main questions at issue were:

- What is the attitude of the manufacturers towards working conditions in general and what problems do they face regarding labour issues?
- How do manufacturers view trade unions, bonded labour, child labour and discrimination?
- What is the relationship between manufacturers, sub-contractors and buyers?
- What is the situation concerning consumer pressure, buyers demand and codes of conduct?
- From where do the manufacturers' competitors come, what do they think of international competition and do working conditions play a significant role in where investors go?
- How do quotas affect manufacturers and what do they think of the phase out of the MFA?
- Would a social clause and trade sanctions in the framework of the WTO de facto ensure an increased compliance with core labour standards?

We started by giving the reader a theoretical framework and context, in which the empirical findings could be understood. In chapter two we discussed the regulation of the WTO system, followed by a discussion in chapter three of the ILO system for promoting the core labour standards. In chapter four we discussed the suggested attempt to link these two systems through the incorporation of a so-called social clause in the framework of the WTO. Moreover, there are other means to promote core labour standards, which we briefly described in chapter five. In order to understand the legal context in which the Indian manufacturers operate, chapter six contains a brief introduction to Indian labour law, especially the core labour standards. The field study including our empirical findings constitutes chapter seven. In chapter eight our analysis and conclusions are found. Finally, chapter nine contains a summary.

# **“A case study illustrating the relationship between core labour standards and trade, international competition and its impact on working conditions in the Indian garment export industry”**

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# 1 Introduction

As the flow of goods and services across the borders expands, international trade integrates national economies and labour markets closer together. Production for export and trade generates income, employment and foreign exchange capital which poor countries need for their development. All the member states of the International Labour Organisation (ILO) have an obligation to respect, promote and realise the core labour standards. However, a comparative system faces the world's manufacturers and their governments, which threatens to compel lower social standards. These standards could increasingly be used to facilitate trade expansion, leading to a "race to the bottom". Consequently, a debate has taken place on whether or not a social clause should be included in the framework of the World Trade Organisation (WTO). The social clause would link international trade with basic worker's rights. A breach of the basic labour standards agreed in international conventions, such as the eight core labour standards conventions from the ILO, would give other states a right to impose trade sanctions upon the breaching party. Those sanctions could be to restrict or stop imports of products, originating from a breaching country, industry, or firm. The overarching aim of such sanctions should be to ensure and promote the respect of the core labour standards worldwide. However, sanctions may not be the best way to advance labour standards; they may not even improve the situation in developing countries at all. Many developing countries strongly oppose any such measures.

Our objective has been to gain a deeper understanding of international labour and trade law from the views of the developing world concerning core labour standards and trade, trade sanctions, international competition, and its impact on working conditions. Hence, we have chosen to focus on one developing country and one labour intensive sector, namely India and the garment export industry. India is a member of the WTO as well as the ILO. Therefore, it is interesting to look into the relationship between the Indian national labour legislation, particularly regarding the core labour standards, and the two international regulation systems of the WTO respectively the ILO. In other words, we will investigate how Indian labour law has implemented the core labour standards, and how the Indian garment export industry regards these standards. The proposed linkage between the core labour standards, expressed in eight ILO conventions, and the world trading system through the social clause will be investigated from the perspective of the Indian garment export industry.

## 1.1 Purpose and questions at issue

With support from the Swedish International Development Cooperation Agency (SIDA) in the form of a Minor Field Study-scholarship we spent October-December 2001 in India. We conducted the minor field study as a part of our Master Thesis in International Public and Labour Law at the School of Economics and Commercial law, Göteborg University.

The aim of our minor field study was to review the issues relating to the impact of globalisation on labour standards, focusing on the Indian garment export industry as a case study. The reason for choosing India was that it is an important actor among the developing countries in Asia and that we could easily communicate and access information in English. It was furthermore natural to focus on

the garment export industry since it is highly labour-intensive and exposed to international trade. This sector is very mobile, in contrast to e.g. the textile industry, because one does not need much investments, infrastructure or high technology in order to open or move a garment unit. Moreover, when discussing the suggested possibility to impose trade sanctions, it is natural to focus on the export sector, since it would be most affected by trade restrictions.

When looking closer at earlier studies conducted in India, they have been either theoretical or focusing on the perspectives of the workers, trade unions and non-governmental organisations (NGOs), thereby overlooking the opinions of employers. We therefore decided to concentrate our field study on the view of the manufacturers in the labour intensive garment industry. The manufacturers' view is significant because as employers, they implement labour standards and compete in the global market.

Our main questions at issue were:

- What is the attitude of the manufacturers towards working conditions in general and what problems do they face regarding labour issues?
- How do manufacturers view trade unions, bonded labour, child labour and discrimination?
- What is the relationship between manufacturers on the one hand to sub-contractors and buyers on the other?
- What is the situation concerning consumer pressure, buyers demand and codes of conduct?
- From where do the manufacturers' competitors come, what do they think of international competition and do working conditions play a significant role in where investors go?
- How do quotas affect manufacturers and what do they think of the phase out of the Multi-Fibre Arrangement (MFA)?
- Would a social clause and trade sanctions in the framework of the WTO de facto ensure an increased compliance with core labour standards?

The empirical findings from our interviews will be described in chapter seven, and in chapter eight we will analyse the material and present our conclusions. However, we will start to give the reader a theoretical framework and context, in which the empirical findings can be understood. In chapter two we discuss the regulation of the WTO system, followed by a discussion in chapter three of the ILO system for promoting the core labour standards. In chapter four we will discuss the suggested attempt to link these two systems through the incorporation of a so-called social clause in the framework of the WTO. Moreover, there are other means to promote core labour standards, which we will briefly describe in chapter five. In order to understand the legal context in which the Indian manufacturers operate, chapter six contains a brief introduction to Indian labour law, especially the core labour standards. As mentioned the field study including our empirical findings constitutes chapter seven. Within each section in this chapter we first present the manufacturers' view as given to us without valuating it. Thereafter the views of the buying houses, consultants, professors, NGOs, international organisations, governmental representatives and trade unions are stated. In chapter eight our analysis and conclusions are found. Finally, chapter nine contains a summary.

## 1.2 Delimitation

As explained above, our study is limited to India and its garment export industry. We have not investigated the situation of labour standards in the Indian industry in general nor have we studied the domestic sector. We further limited our study to cover only Northern India. More precisely, we conducted the study in three main production areas for the garment export industry, i.e. Delhi, where we include the industrial areas Noida and Gurgaon although they belong to the state of Haryana, Jaipur in Rajasthan and Ludhiana in Punjab. We concentrated on the views of the manufacturers, since we consider it to be important to also take their views into consideration when it comes to working conditions.



*Map of India indicating the three cities where the field study was conducted*

Although we will discuss other labour standards as well, we have concentrated on the core labour standards, i.e. the freedom of association and the right to collective bargaining, the prohibition of bonded labour, the abolition of child labour and discrimination. Regarding discrimination, the caste system is officially abolished and prohibited in India. However, it is still present in the Indian



society, and is a very complex cultural phenomenon. We have chosen to not focus our study on discrimination due to caste but to focus on gender discrimination.

### **1.3 Method**

Our field study in India is based on thorough interviews with owners and senior managers of sixteen garment exporters. In order to confirm the information from the manufacturers and to receive a broader view, we also met with several other persons with knowledge of the situation within the Indian garment industry. These persons represented buying houses, consultants, professors, NGOs, international organisations, governmental representatives as well as trade unions. It is though important to emphasise that it is the view of the manufacturers that primarily is the subject of our study. We have for example only spoken to a few trade unions. Nevertheless, we had planned to meet with different trade unions in Jaipur and Ludhiana, but at a late stage we learned that the trade unions are not active within the garment industry in those cities.

Professor S.K. Bhardwaj at the National Institute of Fashion Technology (NIFT) was our supervisor in field. The meetings in Delhi with the manufacturers, buying houses and consultants were organised with invaluable help from him. He also provided us with the contacts to the United Nations Industrial Development Organisation (UNIDO), Rajasthan Chamber of Commerce and Industry (RCCI) and the Institute of Labour Development. In Jaipur we received further assistance by the RCCI to meet with different manufacturers. The director of the Institute of Labour Development also provided us with contact information to governmental representatives. In Ludhiana the local UNIDO office helped us to arrange meetings with various manufacturers as well as with professors at the Punjab University. The help from these organisations was necessary since their close connections with the garment industry enabled us to meet with key persons within the garment export industry.

We found most of the manufacturers to be frank and to a large extent they expressed their true opinions concerning their difficulties, international competition, trade sanctions, trade unions and corruption. However, the manufacturers- particularly those in Delhi- were more reserved regarding social securities, regular employment and overtime payment. None of the manufacturers asked us to keep their names confidential but concerning certain topics they did not want to be quoted. Since our aim was not to criticise specific manufacturers, we have chosen only to refer to each manufacturer, the person interviewed and the date of the interviews in the list of references.

The garment manufacturers were mainly into export of middle to up-range garments to Europe and the United States, but they also exported to the Middle East, South America and Japan. Five of them were located in Delhi, five in Jaipur and six in Ludhiana. We would like to point out that our interviews were held close after the September 11 and the terror attacks on the USA. This tragic incident had negatively affected most of the companies' orders and brought a higher insecurity as to future orders are concerned. Their annual turnover ranged from approximately 500,000 US\$ to about 4,500,000 US\$. Seven of the manufacturers had an annual turnover between 500,000 to 1,000,000 US\$, two between 1,500,000 and 2,000,000 US\$, three between 3,500,000 and 4,500,000

US\$ and one manufacturer had started the production in 2001 and thus had no figures. Finally, from three manufacturers we have no information, but considering e.g. the number of workers and the size of their units, and the high number of produced garments, we would think that their annual turnover is rather high. Moreover, in different surveys there is a distinction between the organised and unorganised sector. However, there is no clear definition, and thus it can be difficult to determine whether or not a certain company belongs to the organised or the unorganised sector. In brief, the organised sector refers to enterprises that are registered, come under the purview of some or several acts and maintain annual accounts and balance sheets.<sup>1</sup> The unorganised sector comprises of enterprises that are, if at all, only marginally affected and regulated by labour and industrial laws, the enterprises are usually very small, provide low wages and harsh working conditions, the workers are rarely unionised and feel often insecure. We characterise the companies that we met as belonging to the organised sector, but with some unorganised elements, like no unionisation among the workers. Some of their sub-contractors belonged to the unorganised sector, e.g. those in the home-based industry.

We met with three actual buying houses, namely Primetex, KSP and Li & Fung. However, throughout the thesis we refer to H&M as a buying house since their liaison office function as a buying house, with the exception that it only purchases for H&M and not for different clients. Another difference between H&M liaison office and other buying houses is that H&M is not allowed to make profit. The four buying houses were all located with offices in Delhi. Two of them, namely KSP and Li & Fung, had their headquarters in Hong Kong, Primetex in France and H&M in Sweden.

During the interviews we used a questionnaire as basis for the discussion. However, the conversation was not bound to these specific questions, but circulated round certain topics like the core labour standards, trade sanctions, general attitude towards working conditions and international competition. The discussions were rather free, and not formally constrained by certain specific questions on a questionnaire. The interviews ranged between one and a half to three hours. We believe that this method was best suited in order to get a clear picture over their situation and what they think of core labour standards, working conditions and international competition as well as for us to understand the problem they face and their values. Hence, this method helped us to obtain qualitative information. Moreover, we did not visit the factories to investigate the actual working conditions; rather we concentrated our research on the manufacturers' perspectives. Due to practical circumstances we did neither talk to the workers employed when we visited the factories nor examined the companies' records.

There are some research problems one has to take into consideration. Immense traffic problems, mainly in Delhi, restricted the number of interviews that could be held. We conducted 16 interviews with garment manufacturers. Consequently, their views and problems do not represent the view of the whole Indian garment export industry. However, since the information we obtained from them to

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<sup>1</sup> Venkata Ratnam (III), p. 20.

large extent was confirmed by other sources in India as well as in Geneva, we do hope that our findings are quite accurate and reflect the main trends and opinions concerning the questions at issue. We have chosen not to present any answers in percent, since if only one or two manufacturers would have answered differently on our questions, the proportion of manufacturer stating something could change drastically. In other words, if we had presented any statistics, the margin of error would have been significant. Sometimes we do not have complete answers to all of our questions due to different reasons; some did not understand the question or the interview had to be finished earlier due to the hectic business life that is a reality for many garment exporters. Hence, the number of manufacturers commenting certain issues does not always constitute sixteen. Later we completed some questions that did not require longer statements or in-dept discussions by e-mail. Another methodological problem to observe is that the manufacturers we spoke with do not constitute a cross section of the Indian garment export industry, since the really small manufacturers and manufacturers of low-segment garments were not included in our field study.

After the field study in India was conducted, we spent one week in Geneva, Switzerland, in order to further confirm our findings in India. During our visit we met with several representatives from the ILO as well as the WTO. In Geneva we also met with the International Textiles and Clothing Bureau, representing garment exporting developing countries, including India.

## **2 Free Trade and the WTO**

### **2.1 Free Trade**

Trade can bring growth and prosperity. Production for export and trade can generate income, employment and foreign exchange capital, which e.g. poor countries need for their development. The classical theory behind free trade is simple. It is called the theory of comparative advantage and implies that countries should specialise in producing and exporting goods in which its comparative advantage is the greatest, or comparative disadvantage is the smallest. Consequently, countries should import goods in those sectors where its comparative advantage is greatest.<sup>2</sup> Hence, for countries it is a matter of specialisation, which will benefit all countries. For instance, if Sweden is good at producing mobile phones and India makes good and cheap software products, the two countries should emphasise on their speciality and purchase the other product from each other. However, in the market economy of today, the comparative advantage quite often lays on the company level instead of on the state level. Accordingly, in the mentioned example both Sweden and India could have companies with comparative advantages or disadvantages producing mobile phones.

According to free trade proponents, the expansion of international trade and capital flows has generally coincided with strong economic growth, and countries with less trade orientation show a relatively poor growth record.<sup>3</sup> Increased international trade and competition stimulates technical

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<sup>2</sup> Trebilcock and Howse, p. 4.

<sup>3</sup> WTO annual report 1998, Special topic: Globalisation and trade, p. 33f.

development resulting in better and cheaper production, which ultimately benefits the consumer. Basically, an increased amount of goods is created by same amount of resources.

The central ideas of the modern world trade system are multilateral negotiations, reciprocity, rule based dispute settlement procedures and neutral enforcement. Reciprocity is important since if a country can liberalise its own trade policy and while persuading its trading partner to liberalise their trade policy as well, it will generate benefits on both the export and import side.<sup>4</sup> In summary, the theory of trade focuses on the movement of goods and services, and in particular upon barriers to their mobility in the form of tariffs.<sup>5</sup>

## 2.2 Regulatory competition

Free trade can also bring problems. One of them concerns the so-called regulatory competition. The background is as follows. The flow of goods and services across borders expands, and international trade integrates national economics and labour markets closer together. The rapid expansion of foreign investment into many countries erodes boundaries between labour markets and it has become easier for companies to move production abroad, and for investors to transfer capital to other countries. A division of labour exists locally and internationally because production occurs where it is manufactured most rationally and efficiently in accordance with the theory of comparative advantage. Basically, it is this continuing expansion of the global markets for goods, services and capital in addition with the continuing trade liberalisation that has resulted in the discussion concerning regulatory competition.<sup>6</sup>

The fear is that it puts countries under pressure to lower the labour or other standards, or at least not raise them, in order to gain a competitive advantage on the global market.<sup>7</sup> Thus, one country sets a certain level of its labour standards in order to gain an advantage vis-à-vis legal systems of other countries.<sup>8</sup> In other words, countries compete with their legal systems. As implied, there is a distinction between lowering the labour standards, which is called a "race to the bottom", and "regulatory chill" in which some countries try to raise their labour standards while other countries do not follow suit.<sup>9</sup> Regulatory competition is not only a possibility between countries. It could also occur within countries, primarily countries with a federal legal structure like the United States and India. The classical example concerns American company law, where the state of Delaware has attracted many companies registered on the New York Stock Exchange due to its management friendly regulation concerning hostile takeovers. It was in this context that William L. Cary created

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<sup>4</sup> Trebilcock and Howse, p. 7.

<sup>5</sup> Leary, p.233.

<sup>6</sup> Cacdac, p 310f.

<sup>7</sup> Cacdac, p 355.

<sup>8</sup> Charny, p. 283.

<sup>9</sup> Staiger, p. 7.

the expression "race to the bottom".<sup>10</sup> Moreover, regulatory competition is for instance happening between the different Indian states.<sup>11</sup>

The phenomenon of regulatory competition has during the last decade attracted more and more attention.<sup>12</sup> Accordingly, regulatory competition is discussed within different legal disciplines. Environmental law is one such example, where inter alia the occurrence of so-called pollution havens in the developing world is debated. The fiscal regulation can be exposed to regulatory competition, when governments might lower the tax rates in order to create an attractive legal environment for companies. Company law, competition law and intellectual property law could also be plausible areas for regulatory competition. In our study we however focus on the regulation of labour standards. Consequently, we discuss the regulatory competition from a labour law perspective. As mentioned above, the fear is that increased mobility of capital and the freedom for firms to locate investments anywhere in the world could put countries under pressure to lower their labour standards in order to attract those investments.<sup>13</sup> Otherwise job opportunities in developed countries might move to the developing world due to lower labour cost. The regulatory competition in the field of labour law does not necessary mean that it is the lack of cheap labour that is the problem for companies located in the developed world. One example concerns highly skilled labour, namely Indian software professionals. After the United States has imposed visa restrictions upon them, American companies in California considered moving to India since they could not get enough skilled labour.<sup>14</sup>

It is also important to mention that regulatory competition might not be a problem at all. Regulatory competition, or regulatory diversity, is according to some proponents of free trade only one dimension of the comparative advantage of a country and the best solution would be to do nothing.<sup>15</sup>

The regulatory competition, provided it is a true problem, could be avoided in different ways. A theoretical possibility would be to stop the present trade liberalisation and disconnect the national economies with each other. In other words, to create regulations that makes it difficult for companies to move from one country to another, and prevent investors from transferring capital all over the world. The national economies would be more closed and not so dependent upon each other. However, in the process of globalisation this solution is today probably neither realistic nor desirable. Another possibility, mainly proposed by developed countries, trade unions and NGOs, would be to implement some form of international regulation, which contains a basic minimum regulation for all countries. It is in this framework the debate takes place whether or not a so-called social clause should be implemented in the WTO system. We will discuss this issue more in detail in chapter four.

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<sup>10</sup> Cramér, p. 4ff.

<sup>11</sup> Interview with Professor Venkata Ratnam on 10 October 2001.

<sup>12</sup> Cramér, p. 8.

<sup>13</sup> Cacadac, p. 355.

<sup>14</sup> Venkata Ratnam (III), p. 282.

<sup>15</sup> Cacadac, p. 355.

In the doctrine there are differing views and opinions concerning regulatory competition.<sup>16</sup> According to the Organisation for Economic Co-operation and Development (OECD) there is no evidence that countries with low core labour standards enjoy better export performance than countries with high labour standards. Countries that do not respect core labour standards, with the exception of China, receive only a very small share of investments.<sup>17</sup> Moreover, if regulatory competition exists it is probably more plausible between countries that have a similar economical, political and social structure.<sup>18</sup> Accordingly, a regulatory competition concerning the basic labour standards would probably be a south-south one and only take place between the developing countries. Even if developing countries do not lower their basic labour standards, the problem could be that they will remain stuck with low standards without being able to raise them.<sup>19</sup> According to other views some developing countries might, however, deliberately choose to keep their labour standards low.<sup>20</sup>

The question is if regulatory competition really exists, and constitutes a problem for among others the national legislators and those who the laws aim to protect, i.e. the workers. In order to motivate legislative measures against regulatory competition, there must be strong indicators that companies actually do move to countries with a lower level of labour laws, and that this negatively affects the employment rate in the developed and developing countries. Presume that there is no race to the bottom regarding core labour standards, or that it only takes place between the developing countries, i.e. it is a south-south problem, and that Europe and North America would not lose any jobs to the developing world, and additionally investors neither prefer a low level of labour regulation nor lenient legal enforcement, there would be no need to lower the level of labour standards, nor would there be a need for developed countries to demand trade sanctions. Furthermore, in the developing world, governments would not feel the need to lower the labour regulations. The pressure on governments to make the legal regulations more investor friendly, or at least not to impose stricter labour regulations, presumably comes from the industry. Consequently, it is interesting to take part of the garment exporters' view and how they perceive the international pressure, because their perception of the situation influences the signals they send to the legislators.

### **2.3 World Trade Organisation**

The World Trade Organisation (WTO) was established on 1 January 1995, and is the legal and institutional foundation of the multilateral trading system. On 1 January 2002 the number of members was 144.<sup>21</sup> One can notice that India is one of the founding members, the European Community (EC) is an independent member of the WTO, and China became member in December 2001.

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<sup>16</sup> Lee, p. 181.

<sup>17</sup> OECD, International trade and core labour standards, 2000, p. 33f.

<sup>18</sup> Cramér, p. 30.

<sup>19</sup> Elliot, p. 169f.

<sup>20</sup> Howard, paragraph 11.

<sup>21</sup> The homepage of the WTO, [www.wto.org](http://www.wto.org).

The Agreement Establishing the World Trade Organisation contains the main provisions on the WTO. In its article 2 the essential functions of the WTO are mentioned, namely to administer and implement trade agreements, to act as a forum for multilateral trade negotiations, to seek to resolve trade disputes, to review national trade policies, and to co-operate with other international institutions. The highest authority of the WTO is the Ministerial Conference, composed of representatives of all the member states. It shall meet at least once every two years, and the first meeting took place in Singapore in December 1996, and the last in Doha, Qatar, in November 2001. Between the meetings the General Council, composed of all members, handles the day-to-day work. Moreover, there is a secretariat headed by a Director-General.

The multilateral trading system is rule based in order to provide security and predictability. Hence, in order to find a resolution to trade conflicts, there is a dispute settlement mechanism, regulated in the Understanding on Rules and Procedures Governing the Settlement of Disputes. The Dispute Settlement Body (DSB) with representatives from all members of the WTO administers the rules and proceedings, and establishes panels in case of a dispute. The panel issues reports, which could be appealed to an Appellate Body. Finally, the DSP has the power to adopt reports from either the panel or the Appellate Body.

The world trading system contains of several agreements. The most important are the General Agreement on Tariffs and Trade (GATT), the General Agreement on Trade in Services (GATS), and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

## **2.4 GATT and its main principles**

In this section we will describe the main principles and provisions of GATT, which was established in 1948. A former preferential and protectionist system, which was regarded to have contributed to the outbreak of World War II, was to be replaced by a system of trade liberalisation. When the WTO was created, it integrated GATT into the WTO framework. The GATT's main objective is trade liberalisation, based on the theory of comparative advantages on the basis of market openings.

### **2.4.1 Tariffs**

GATT provides a framework for negotiations on reduction of tariffs between the countries. The preamble to the GATT commit states to enter into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade. In multilateral trade negotiations, so-called rounds, tariffs have been gradually reduced. Until now eight negotiation rounds have been completed, and in the negotiations countries have agreed to make tariff concessions, and to bind these tariffs. Under article II of the GATT, countries are prohibited from raising the tariff above the agreed limit after a tariff has been bound. However, a country could voluntarily apply lower tariffs than the committed tariff level, and later raise the tariff up to the agreed level.<sup>22</sup> There is an exception to the prohibition of raising the tariffs above the agreed limit. Under article XXVIII of the GATT, countries can modify trade concessions, but must

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<sup>22</sup> Interview 2002-02-20 with Zdenek Drabek, counsellor at the Economic and Research and Analysis Division, WTO.

in that event offer other trade concessions to countries that have an interest in the modified concessions. Consequently, there must be a general level of reciprocity and the result must be mutually advantageous.<sup>23</sup>

During the last tariff negotiations, the so-called Uruguay Round between 1986 and 1993, substantial reductions of tariffs was achieved. Especially the tariffs on industrial products were reduced, with an average tariff level of 3.8 %.<sup>24</sup> Almost all of the tariff lines of the developed countries have been bound. However, for some categories the tariff levels will remain comparably quite high. This is the case with the textiles and clothing sectors, where many tariffs are between 15 and 35 %.<sup>25</sup>

#### **2.4.2 Principles of most favoured nation and national treatment**

Non-discrimination is one of the cornerstones of the GATT. It is expressed in the most favoured nation principle in article I, and furthermore in the principle of national treatment in article III.

Under article I of the GATT a country is obliged to provide the same favourable conditions for like products to every other member state, as it gives to the state that it has given the most favourable conditions. The most favoured nation principle is designed to constrain discrimination by member states amongst different foreign exporters.<sup>26</sup> However, there are exceptions to this rule. In article XXIV of the GATT it is stated that a country can deviate from the most favoured nation principle in relation to other countries belonging to the same customs union or free trade area. The European Union (EU) and the North American Free Trade Agreement (NAFTA) are examples of regional trading blocks authorised under article XXIV. Furthermore, there are trade preferences given to developing countries, e.g. in the form of Generalised System of Preferences (GSP), which could deviate from the most favoured nation principle.<sup>27</sup> The preferential treatment could be based on part IV of the GATT, entitled Trade and Development, and on a waiver under article XXV (5).

The principle of national treatment establishes that imported products must not be treated less favourably than like domestic products. As will be discussed further below, the term "like products" is of central importance in order to decide if e.g. restricting national measures would be allowed. The purpose of article III is to prevent domestic policies from favouring domestic products to imported products.<sup>28</sup> This principle aims at stopping the discrimination once a foreign product has passed the border.

#### **2.4.3 Prohibition of quantitative restrictions and exceptions**

High tariffs are one example of hindrance to international trade. Moreover, in order to establish free trade, there must be no restrictions on trade between countries. Restrictions could be quotas, import

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<sup>23</sup> Trebilcock and Howse, p. 26.

<sup>24</sup> Trebilcock and Howse, p. 123.

<sup>25</sup> Trebilcock and Howse, p. 123.

<sup>26</sup> Trebilcock and Howse, p. 29.

<sup>27</sup> Trebilcock and Howse, p. 115.

<sup>28</sup> Trebilcock and Howse, p. 29.



or export licences and other measures that prohibit or restrict trade. Consequently, quantitative import and export restrictions are prohibited under article XI (1) of the GATT. In other words, non-tariff trade barriers are not allowed. However, there are several exceptions to this principal rule, and unilateral trade restrictions are unlawful under GATT if they could not be justified by an exception. An example of unilateral trade restrictions is section 307 of the American Tariff Act from 1930, which prevents importation of goods produced by forced labour, prison labour or indentured labour under penal sanction, including forced or indentured child labour under penal sanction. The U.S. Customs Service is entitled to indicate goods with either a red flag if there are strong indicators that forced or indentured child labour under penal sanction have been used, or yellow flags that signal the need for additional investigation to determine whether forced or indentured child labour under penal sanction is being performed in a facility.<sup>29</sup> With the exception of prison labour, this American regulation is probably unlawful under the GATT.<sup>30</sup>

As mentioned, several articles in the GATT contain exceptions to the prohibition of quantitative restrictions. One exception concerning critical shortage of food supply or other essential products is found in article XI (2), and exceptions concerning the possibility for countries to safeguard its external financial position and the balance of payment are explained in article XII. Furthermore, the safeguard clause, i.e. article XIX, gives countries the possibilities to temporarily protect a domestic industry in a serious crisis. The Agreement on Safeguards contains detailed provisions regarding safeguards. Other exceptions are found in article XXI, which concerns the essential security interests of a country, respectively actions taken in accordance with the United Nations Charter. Finally, there are general exceptions in article XX, which will be further discussed in the next section.

#### **2.4.4 General exceptions in article XX of the GATT**

Under article XX, states are entitled to adopt or enforce measures that normally constitute violations of the GATT. In order to make an exception, some general requirements in article XX must be observed. Firstly, the measure must not be an arbitrary or unjustifiable discrimination between countries where the same conditions prevail. Secondly, the measure must not be a disguised restriction on international trade.

Article XX contains ten exceptions. For examples, countries could prevent the import of goods if it is necessary to protect public morals, necessary to protect human, animal or plant life or health, or essential to the acquisition or distribution of products in general or local short supply. The burden of proof concerning the application of an exception is placed on the country that invokes the exception.<sup>31</sup> These exceptions have been interpreted strictly in the dispute settlement mechanism of the WTO.

The only exception regarding the methods of production is in article XX (e) GATT. According to this provision, products made by prisoners can be subject to trade restrictions. Accordingly, other

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<sup>29</sup> US Customs Service, Advisory International Child Labour Enforcement, p. 5ff. ([www.customs.gov](http://www.customs.gov)).

<sup>30</sup> McCrudden and Davies, p. 52.

<sup>31</sup> Schoenbaum (II), p. 274.

restrictions concerning the methods of production, such as goods made under poor labour conditions or produced by children, are not allowed.

#### 2.4.5 The jurisprudence of the GATT

There have been no cases concerning labour standards in the dispute settlement mechanism of the WTO. However, it is not impossible to imagine that a country imposes some kind of import restriction for goods that are supposed to have been made by child labour, and the exporting country challenges this restriction in the dispute settlement mechanism.

In the absence of such cases, it could be interesting to see how the panels and Appellate Body in environmental cases have made a distinction between the product itself and the method of production. The basic idea is more or less the same concerning labour and environmental issues, namely that a country wants to restrict the import of goods made under undesirable methods of production. Regarding labour standards it could be the use of child labour, and regarding the environment it could be the use of fishing methods that are not dolphin-friendly.

The *Tuna/Dolphin I case* concerned a ban by the United States on tuna from countries that did not prohibit fishing methods that risked the destruction of dolphins.<sup>32</sup> The argument by the United States was that the restrictions on tuna were also applicable on American fishermen using illegal fishing methods, and thus permitted under article III of the GATT. The panel concluded that article III concerns the nature of the product itself, and not the method of production, i.e. the fishing method. Hence, the tuna itself is the same irrespectively of which fishing method that had been used, i.e. it is like products, and accordingly the ban on tuna caught in a manner that threatened dolphins was not justified under article III.<sup>33</sup> Instead it was a quantitative restriction under article XI, which had to fall under an exception in either article XX (b) or (g) in order to be permitted. However, the panel found that none of these exceptions were applicable. Nevertheless, the United States was permitted to use a so-called dolphin-safe label. It is worth mentioning that the GATT Council never adopted this panel report, and that the United States and Mexico solved the dispute through diplomatic negotiations.<sup>34</sup>

A couple of years later a panel had to decide in the *Tuna/Dolphin II case*.<sup>35</sup> This time it concerned an American embargo on tuna from countries that did not have a primary embargo of its own on tuna caught in a manner that threatened dolphins. In contrast to the first Tuna/Dolphin case, the panel found that global environmental measures could be justified under articles XX (b) and (g). However, in this case the exceptions could not be applied since the American measures had the sole environmental impact of inducing other countries to change their policy.<sup>36</sup> Thus, the embargo by the United States was a violation of article XI.

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<sup>32</sup> United States - Restrictions on imports of tuna (1991) 30 ILM 1594.

<sup>33</sup> Schoenbaum (I), p. 710.

<sup>34</sup> Trebilcock and Howse, p. 410.

<sup>35</sup> United States - Restrictions on imports of tuna (1994) D29/R.

<sup>36</sup> Trebilcock and Howse, p. 411.

The strict view that all trade restrictions based on foreign methods of production constitute violations of the GATT has however been revised to some extent.<sup>37</sup> In the *Shrimp/Turtles case* some Asian countries, including India, challenged the American prohibition on shrimp products from all countries that did not require fishers to use turtle-excluder devices.<sup>38</sup> The Appellate Body stated that a balance must be found in the individual case between the right to invoke an exception under article XX, and the duty to respect other countries' rights under GATT. The Appellate Body avoided a generic analysis of the import restriction on the basis of methods of production, and instead analysed the facts in this specific case.<sup>39</sup> However, the United States lost this case, but not on the ground that it could not ban products due to methods of production. Instead the Appellate Body found that the restrictions did not consider the different conditions in other countries, and that also shrimps caught in a turtle-friendly way were banned if they came from countries that did not require the use of turtle-excluder devices. Furthermore, the United States lost the case because no administrative process rights had been granted to the foreign countries and exporters in order to challenge American decisions, and the United States had discriminated between different countries concerning technology transfer, phase-in periods and negotiations on environmental treaties.<sup>40</sup>

#### **2.4.6 Anti-dumping**

The regulation of anti-dumping is found in article VI of the GATT and in the Agreement on Implementation of Article VI. Dumping normally means that a company exports goods below the price at the home market of the exporter, and this practice threaten the domestic industry of the importing country. Accordingly, anti-dumping occurs when importing countries take action against the foreign exporter in the form of duties or undertakings on pricing by the exporter. In contrast to subsidies, where it is the state that gives benefits to companies, dumping is the result of the pricing policy of an individual company. It is more common that countries use antidumping compared to the other remedies in GATT, i.e. safeguards and countervailing duties.<sup>41</sup> Countries are obliged to notify their anti-dumping legislation or regulations to the WTO. On 30 June 2000 more than 1120 anti-dumping actions were in force, and 236 anti-dumping investigations had been initiated during the period from 1 July 1999 to 30 June 2000.<sup>42</sup> India had taken 91 anti-dumping actions, and 11 Indian exporters were subject to anti-dumping measures.

According to article VI (1), dumping occurs when products of one country are introduced into the commerce of another country at less than the normal value of the products, provided it causes or threatens material injury to an established industry or materially retards the establishment of a domestic industry. The normal value is the comparable price for like products when destined for consumption in the exporting country. If the product is only exported, then the comparable price is either the highest price for like products exported to third countries or the cost of production plus a

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<sup>37</sup> Shaffer, p. 513.

<sup>38</sup> United States - Import prohibition of certain shrimp and shrimp products (WT/DS58/AB/R).

<sup>39</sup> Shaffer, p. 511.

<sup>40</sup> Shaffer, p. 511ff.

<sup>41</sup> Trebilcock and Howse, p. 166.

<sup>42</sup> WTO annual report 2001, p. 65.

reasonable selling cost and profit. The anti-dumping duty that countries can levy on dumped products cannot be greater in amount than the mentioned price difference. In order to avoid this anti-dumping duty, the exporter can, in accordance with article 8 in the Agreement on Implementation of Article VI, voluntarily undertake to revise the price so the effect of the dumping is eliminated.

#### **2.4.7 Subsidies and countervailing duties**

Subsidies and countervailing measures are regulated in articles VI and XVI of the GATT respectively in the Agreement on Subsidies and Countervailing Measures. It is countries that grant subsidies, and under article XVI they are obliged to notify the WTO when they grant subsidies that directly or indirectly affect the export or import. Countries have to consult with other countries whose interests are threatened by the subsidies or suffer serious prejudice because of them.

If the effect of the subsidy causes or threaten to cause material injury to an established domestic industry, or to retard materially the establishment of a domestic industry, countries can impose countervailing duties. The definition of countervailing duties in article VI (3) is that it is a special duty levied for the purpose of offsetting any direct or indirect subsidy bestowed upon the manufacture, production or export of any merchandise. Moreover, the countervailing duties cannot be greater in amount than the granted subsidy. On 30 June 2000, 95 countervailing measures were in force and 21 countervailing investigations, including four against India, had been initiated.<sup>43</sup>

### **2.5 Multi-Fibre Arrangement**

The Multi-Fibre Arrangement (MFA) was signed in December of 1973. The GATT Council adopted the text, and thereby legalised the breakaway of the textile and clothing sector from the general system of world trade. The textile and clothing industry was no longer an integrated part of GATT, and import restrictions in the form of quotas were introduced. A significant point is that the low price products from developing countries gradually ousted the developed countries from the textile market, since the developed countries did not possess the comparative advantages of the free market system in the textile and clothing sector. The large cheap labour force in the developing countries caused the developed countries to suffer from the increased competition in the textile and clothing industry. The textile sector was, for example, the first competitive industry of India,<sup>44</sup> and India has been considered to be competitive in garment export.<sup>45</sup> Consequently, the purpose of the MFA was to restrain access to the markets of the developed countries by instilling quotas and regulations of the textile and clothing trade.<sup>46</sup> Due to these quotas developing countries suffer very large losses, and estimations show that the clothing export from developing countries would increase with almost 130 % if all import restrictions were removed.<sup>47</sup>

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<sup>43</sup> WTO annual report 2001, p. 64.

<sup>44</sup> Jiménez Cortez, p. 34, 59, 81.

<sup>45</sup> Prasad, p. 4.

<sup>46</sup> Jiménez Cortez, p. 113.

<sup>47</sup> Trebilcock and Howse, p. 376.

The final goal of the MFA was a gradual and orderly trade liberalisation. The MFA covers only textile and clothing trade between developed and developing states. It was supposed to be a temporary arrangement in order to give the developed states time to adjust their economies to the increased textile and clothing export from developing countries. Due to strong protectionist lobby in the industrialised states, the MFA has been renewed several times but will finally be phased out in 2005.<sup>48</sup>

The phase out of the MFA started in 1995 when the Agreement on Textiles and Clothing (ATC) entered into force. It is a ten-year transitional agreement in order to gradually integrate textile and clothing products in the WTO.<sup>49</sup> The phase out will take place in three stages over a 10-year period, and the last stage started on 1 January 2002. Today quotas are still used by Canada, the EU and the United States. One should remember that the textile industry is still important in a few states in the United States, and in Mediterranean countries in the EU like Portugal and Spain. Norway has on the other hand voluntarily removed the quotas in advance. India maintained quotas on textiles and clothing products under the balance-of-payments provisions of the GATT for a transitional period until April 2001.<sup>50</sup> When the MFA has been phased out in 2005, the textile and clothing trade will be subject to normal GATT rules. However, concerning China there will be special safeguards until 2008, which China accepted in the negotiations with the WTO.<sup>51</sup>

The important question for the future is what will happen when the MFA has been phased out in 2005, and how that will affect garment-producing countries like India. We will return to this topic in chapter seven.

### **3 International Labour Organisation**

In this chapter we will discuss the definition of core labour standards. We will also describe the eight core labour standards conventions from the ILO and the 1998 Declaration on Fundamental Principles and Rights at Work. The ILO monitoring and enforcement system will be described and illustrated with the Myanmar case. We will start with a brief overview of the history of labour standards and the ILO and its structure.

#### **3.1 ILO and brief history of labour standards**

The modern history of labour standards started with the introduction of the British Factory Act in the early nineteenth century, which was followed by similar legislation in other European countries, the United States, Canada, Australia and New Zealand. These labour laws only covered women and children, and regulated requirements of the minimum age and the maximum number of working hours. Regulations concerning men were introduced later, since adult men were considered to be individuals with the power and capacity to freely choose and influence their working conditions. The British textile industry was the first industry to be affected and covered by these labour laws

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<sup>48</sup> Lal Das, p. 69f.

<sup>49</sup> WTO annual report 2001, p. 54.

<sup>50</sup> WTO annual report 2001, p. 31.

<sup>51</sup> Interview 2002-02-20 with Alberto Campeas, director at the Textile Division, WTO.

since it was the largest industry and had the largest share of women and children employed.<sup>52</sup> On the international level the regulation of international labour standards started with bilateral agreements between the western countries only in the late nineteenth century. However, no major achievements were reached internationally until the International Labour Organisation (ILO) was established.<sup>53</sup>

The ILO was created in 1919 at the peace conference that took place after World War I. Part 13 of the Treaty of Versailles contains the ILO Constitution, which is the basic document of the ILO.<sup>54</sup> The purpose of the ILO was to improve the labour conditions in order to create social justice, which would contribute to universal and lasting peace.<sup>55</sup> It is worth mentioning that the connection between labour standards and international trade was recognised as early as in 1919. The preamble in the ILO constitution states that the failure of a country to adopt humane labour conditions is an obstacle to other countries wishing to improve their own labour standards. In 1944 the Philadelphia Declaration was adopted, which consists of guiding principles, aims and purposes for the ILO. These are inter alia that freedom of association is essential and that all human beings have the right to pursue their material well-being and spiritual development in conditions of freedom, dignity, economic security and equal opportunity. When the United Nations (UN) was created in 1946, the ILO became a special agency of the UN with the main function to develop and set international labour standards.<sup>56</sup>

Today the ILO has 174 members. It has a tripartite structure, consisting of member states, employers' organisations and trade unions. The legislative body is the International Labour Conference, which adopts conventions that are open to ratification for the member states, and non-binding recommendations, declarations and resolutions. The number of conventions counted to 184 in March 2002.<sup>57</sup> Moreover, the International Labour Conference elects the 48 members of the Governing Body, which e.g. deals with complaints from the ILO members. Finally, there is the International Labour Office, which is the permanent secretariat lead by a Director-General.

### **3.2 Definitions and distinctions of labour standards**

Labour standards could in principle refer to any regulation of working conditions, and international labour standards could be any internationally agreed standard. As mentioned above, the ILO has adopted over 180 international conventions on labour standards, with issues ranging from forced labour to social security. However, in the discussion concerning e.g. the linkage between labour standards and trade some labour standards have been recognised as more basic than other. It is necessary to clarify which rights that constitute those fundamental standards, which also are referred to as core labour standards.

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<sup>52</sup> Engerman, p. 12ff.

<sup>53</sup> Engerman, p. 17ff.

<sup>54</sup> Cox, p. 452.

<sup>55</sup> Preamble to the ILO Constitution.

<sup>56</sup> Cox, p. 452.

<sup>57</sup> From the homepage of the ILO ([www.ilo.org](http://www.ilo.org)).

The standards that are often described as core labour standards are freedom of association and the right to collective bargaining, the prohibition of forced labour, child labour and discrimination in employment. Accordingly, the core labour standards that were recognised at the 1995 World Summit for Social Development in Copenhagen cover these areas. The summit agreed on the universality of

- *the elimination of all forms of forced or compulsory labour*
- *the effective abolition of child labour*
- *the freedom of association and the effective recognition of collective bargaining*
- *the elimination of discrimination in respect of employment and occupation*

and stated that the observance of them are the responsibility of every government.<sup>58</sup> Through the adoption of the 1998 ILO Declaration on Fundamental Principles and Rights at Work these core labour standards have been further recognised as universal standards.

There are a few advocates of the inclusion of occupational safety and health, as well as a minimum wage fixing, among the basic labour standards.<sup>59</sup> However, criticism has been raised that some of the standards in the 1998 ILO Declaration are neither universal nor fundamental. When it comes to occupational safety and health and minimum wage there is hardly any common understanding that they constitute core labour standards, and consequently they were not included in the 1998 ILO Declaration. The most controversial issue is whether or not the prohibition of all child labour below a certain minimum age should constitute a core labour standard, taken into consideration that very poor children without other options could be made worse off if they are denied the opportunity to work.<sup>60</sup> However, the fact that the prohibition of the worst forms of child labour, e.g. practices similar to slavery, prostitution or work that is likely to harm the health, safety or morals of children, constitute a core labour standard is not questioned. Furthermore, some questioned if the right to organise and bargain collectively constitutes a universal core labour standard, since unionisation has little relevance for an overwhelming majority of poor workers in developing countries, which are engaged in either rural agricultural activities or the urban informal sector.<sup>61</sup>

When we mention core labour standard we refer to the above mentioned four core labour standards, which were adopted in the 1998 ILO Declaration.

### **3.3 Core labour standards conventions**

The ILO has adopted eight conventions on fundamental rights. They constitute four groups, each group containing two conventions, out of which India has ratified conventions Nos. 29 and 105 on forced labour, and conventions Nos. 100 and 111 on discrimination. Under chapter six we will

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<sup>58</sup> Commission of the European Communities, Promoting core labour standards and improving social governance in the context of globalisation, Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee, COM(2001) 416 final, 2001, p. 5.

<sup>59</sup> Cadac, p. 377.

<sup>60</sup> Elliot, p. 167.

<sup>61</sup> Srinivasan, p. 76.

further discuss the relationship between these conventions and the Indian legislation. In this section we will briefly describe each convention, and the number of countries that have ratified these core labour standards conventions refers to the situation on 24 March 2002.<sup>62</sup>

### **3.3.1 No. 29 and No. 105; The elimination of all forms of forced or bonded labour**

The Forced Labour Convention (No. 29) from 1930 has been in force since 1 May 1932, and 160 countries including India have ratified it. Under article 1 the ratifying countries undertake to suppress the use of forced or compulsory labour in all forms. Article 2 (1) defines forced or compulsory labour as all work or service that is exacted from any person under the menace of any penalty and for which the said person has not offered herself or himself voluntarily. However, there are some exceptions in article 2 (2), i.e. military service, normal civic obligations of the citizens, work as a consequence of a conviction in a court of law, work in the case of an emergency like earthquake, fire, flood and violent epidemic diseases, and finally minor communal services. In article 4 it is stated that the authorities shall not impose or permit forced or compulsory labour for the benefit of private individuals, companies or associations.

The Abolition of Forced Labour Convention (No. 105) from 1957 came into force on 17 January 1959. 157 countries have now ratified this convention, and India is one of them. Under article 1 the ratifying countries undertake to suppress and not make use of any form of forced or compulsory labour for certain purposes. The purposes concern political coercion or education, punishment for holding or expressing political views, use of labour for economic development, labour discipline, punishment for having participated in strikes, and racial, social, national or religious discrimination.

### **3.3.2 No. 138 and No. 182; The effective abolition of child labour**

The Minimum Age Convention (No.138) from 1973 came into force on 19 June 1976. 116 countries have ratified this convention, but not India. Under article 1 the ratifying countries undertake to pursue a national policy designed to ensure the effective abolition of child labour. Countries shall progressively raise the minimum age to a level consistent with the fullest physical and mental development of young persons. Article 2 states that each country shall specify a minimum age, which shall not be less than the age of compulsory schooling and in any case not less than 15 years. However, in the course of education the age limit could be lower, and for light work countries might permit employment for persons 13 years of age. On the other hand, for work that is likely to jeopardise the health, safety or morals by young persons, the minimum age shall in accordance with article 3 be 18 years. Article 5 gives developing countries, i.e. countries whose economy and administrative facilities are insufficiently developed, the possibility to meet the responsibilities under this convention in a progressive manner. After consultations the developing country could initially limit the application of this convention. Developing countries may also specify the minimum age to 14 years.

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<sup>62</sup> From the homepage of the ILO ([www.ilo.org](http://www.ilo.org)).



The Worst Forms of Child Labour Convention (No. 182) from 1999 entered into force on 19 November 2000. So far 117 countries have ratified it. Hence, this convention has the fastest ratification record among the ILO conventions.<sup>63</sup> India has, however, not ratified this convention. Under article 1 the countries that have ratified this convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour. A child is defined in article 2 as a person under the age of 18. The worst forms of child labour is defined in article 3 as all forms of slavery or practices similar to slavery, prostitution or pornography, or the use, procuring or offering of a child for illicit activities. Moreover, there is a general definition, which considers work that is likely to harm the health, safety or morals of children to be worst forms of child labour. Article 5 states that countries must have appropriate monitoring mechanisms, and article 6 obliges countries to design and implement programmes of action in order to eliminate the worst forms of child labour.

### **3.3.3 No. 87 and No. 98; Freedom of association and the right to collective bargaining**

The Freedom of Association and Protection of the Right to Organise Convention (No. 87) from 1948 came into force on 4 July 1950, and has been ratified by 139 countries, however not by India. According to Article 2 the representational security at work is based on the freedom of workers and employers to form and join organisations without fear of reprisal and intimidation. The definition of the term “organisation” is stated in article 10 and it means any organisation of workers or of employers for furthering and defending the interests of workers or of employers. Article 3 states that the public authorities shall refrain from any interference which would restrict the workers’ and employers’ organisations to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities as well as to formulate their programmes. Furthermore, workers’ and employers’ organisations shall have the right, according to article 5, to establish and join federations and confederations as well as the right to affiliate with international organisations of workers and employers.

The convention on the Right to Organise and to Bargain Collectively (No. 98) from 1949 came into force on 18 July 1951 and has today been ratified by 151 countries. India belongs not to the ratifying countries. Whereas convention No. 87 can be said to regulate the right for workers and employers to organise free from the interference of the state, convention No. 98 secures these rights with the protection of the state. Consequently the workers shall enjoy protection against acts of anti-union discrimination in respect of their employment. Article 1 state that the worker shall particularly be protected against acts that make the employment subject to the condition of non-membership, and dismissal or otherwise prejudice against the worker by reason of union membership or due to union activities outside working hours. Furthermore, workers and employers’ organisations shall enjoy adequate protection against any acts of interference by each other. According to Article 2 acts that are designed to promote the establishment of workers' organisations under the domination of employers' organisations shall be prohibited.

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<sup>63</sup> Speech by Kari Tapiola in Tokyo on 19 December 2001.

### **3.3.4 No. 100 and No. 111; Elimination of discrimination in respect of employment**

The Equal Remuneration Convention (No. 100) from 1951 came into force on 23 May 1953. 156 countries have ratified it, India included. The main provision of the convention is article 2, which obliges the ratifying countries to promote and ensure the principle of equal remuneration for male and female workers for work of equal value. Definitions are found in article 1. Remuneration includes the ordinary, basic or minimum wage or salary and any additional emoluments, directly or indirectly in cash or in kind, from the employer to the worker arising out of the employment. Equal remuneration for male and female workers for work of equal value refers to rates of remuneration established without discrimination based on sex. However, according to article 3, differential rates between workers do not violate the principle of equal remuneration for male and female workers for work of equal value, if the difference is based on objective appraisal without regard to sex.

The Discrimination (Employment and Occupation) Convention (No. 111) from 1958 entered into force on 15 June 1960. 154 countries have ratified this convention, and India belongs to those countries. In contrast to convention No. 100, this convention concerns not only gender discrimination. Consequently, article 1 defines discrimination as any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, natural extraction or social origin. Discrimination could also be other forms of distinction, exclusion or preference, determined by an individual country, which has the effect of nullifying the equality of opportunity or treatment in employment or occupation. Under article 2 countries undertake to have a national policy that promotes the equality of opportunities and treatment in respect of employment and occupation. Accordingly, the aim is to eliminate any form of discrimination of certain workers.

## **3.4 The 1998 Declaration on Fundamental Principles and Rights at Work**

In June 1998 the International Labour Conference adopted the 1998 ILO Declaration on Fundamental Principles and Rights at Work.<sup>64</sup> The main objective of the declaration is to ensure universal recognition of core labour standards.<sup>65</sup> The central provision is article 2, which states that the International Labour Conference

Declares that all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those conventions, namely

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour; and
- (d) the elimination of discrimination in respect of employment and occupation.

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<sup>64</sup> Cox, p. 457.

<sup>65</sup> Commission of the European Communities, Promoting core labour standards and improving social governance in the context of globalisation, Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee, COM(2001) 416 final, 2001, p. 5.

Thus, all members of the ILO have an obligation to respect, promote and realise the core labour standards. This obligation is derived from the membership of the ILO, since these principles and rights are enshrined in the ILO Constitution. Consequently, even countries that have not ratified all the above-mentioned eight core labour standard conventions, like India, have this obligation. Furthermore, it is important to notice that in article 5 it is stated that labour standards should not be used for protectionist trade purposes, and that the comparative advantage of any country should in no way be questioned. The last statement clearly aims at issues like low wages, which is considered to be a comparative advantage of developing countries.

In November 1998 the ILO Governing Body adopted an annex for follow-up procedures to the 1998 Declaration. This follow-up contains two promotional reporting tools, namely the annual review respectively the global report. In the annual review governments from countries, which have not ratified one or more of the core labour standards conventions, shall report the efforts made to respect and promote the core labour standards. Worker and employers' organisations shall comment the work by the government. A group of independent experts also comment on the national reports. The other reporting tool in the annex for follow-up procedures is the global report, which is presented by the Director-General. The global report contains a global picture regarding one of the four core labour standards, both in countries that have ratified the core conventions and those who have not ratified them. In 2000 the report focused on the freedom of association, and in 2001 on forced labour.

Criticism has sometimes been raised that the ILO lacks teeth. However, arms could be more important than teeth.<sup>66</sup> In other words, technical co-operation and support, institutional building and knowledge play an important role in promoting the fundamental principles and rights. Accordingly, in order to promote the 1998 Declaration the ILO also has technical co-operation activities. It includes inter alia advising on legislative reforms, training programs for governmental officials, strengthening of the tripartite constituents and support for education structures.<sup>67</sup> Since the adoption of the 1998 Declaration, the ILO has received more money due to assistance from developed countries, which will benefit the technical co-operation activities.<sup>68</sup>

### **3.5 Supervisory mechanism and enforcement of labour standards**

The ILO has different measures to use in order to monitor the application of its conventions. These measures are applied regarding all the ILO conventions, including the core labour standards conventions. There are two systems of supervision, one regular and one special system.

Under the regular system of supervision countries must in accordance with article 22 of the ILO constitution provide regular reports on measures taken to apply the labour standards conventions

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<sup>66</sup> Interview on 18 February 2002 with Zafar Shaheed, director for Promotional Activities, ILO.

<sup>67</sup> Commission of the European Communities, Promoting core labour standards and improving social governance in the context of globalisation, Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee, COM(2001) 416 final, 2001, p. 6.

<sup>68</sup> Interview on 18 February 2002 with Zafar Shaheed, director for Promotional Activities, ILO.

they have ratified. Due to the high workload the reports must only be submitted every fifth year on normal conventions and every second year on the core conventions and some priority conventions like the convention on tripartite consultation.<sup>69</sup> The Committee of Experts on the Application of Conventions and Recommendations (CEACR), which consists of independent lawyers and has as its main function to monitor the compliance with ratified conventions, examine these reports. CEACR makes a direct request to the concerned member state if either the report or the compliance is inadequate. For more serious concerns regarding the compliance CEACR makes a so-called observation.<sup>70</sup> Finally, they produce a report where they give positive and negative comments on the application of international labour standard conventions.

The special system of supervision provides more specific measures on the basis of complaints. Under article 24 of the ILO constitution, employers and workers' organisations are entitled to make a formal complaint, a so-called representation, about the failure of a member state to secure the effective observance of a ratified convention. The ILO Governing Body will then establish a subsidiary tripartite committee, which will investigate the representation, and communicate it to the government in question. Moreover, article 25 states that the representation could be published if either the government does not reply or the statement is not satisfactory. In the latter case also the reply from the government could be published. However, quite often the threat to publish is sufficient in order to bring the member state to take due action, since countries normally want to avoid being named and shamed in front of the international community.<sup>71</sup> Furthermore, the special system of supervision includes the right in article 26 for countries to make complaints regarding the effective observance of conventions by other member states. A prerequisite is that both the countries have ratified the convention in question, i.e. reciprocity prevails.

For freedom of association and the right to collective bargaining there is a special permanent Committee on Freedom of Association.<sup>72</sup> It is a tripartite body, which investigates complaints against both ratifying and non-ratifying countries concerning these specific rights. In order to make an investigation, the consent of the member state in question is not needed.

In summary, the sanction for countries that do not observe the ILO conventions is normally exposure in the international community. The sanction is of moral character.<sup>73</sup> However, under article 33 the International Labour Conference can recommend ILO members and others to take action in order to ensure the compliance with ratified conventions.

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<sup>69</sup> Interview with Coen Kompier at the ILO office in Delhi.

<sup>70</sup> Cox, p. 455.

<sup>71</sup> Cox, p. 454.

<sup>72</sup> Cox, p. 454.

<sup>73</sup> Cox, p. 452.

### 3.6 The Myanmar case

In order to illustrate the monitoring and enforcement system of the ILO we have chosen to briefly describe the specific case of Myanmar (Burma). The situation as well as the measures taken by the ILO was rather special.

The background was as follows. Severe violations of the ILO Convention on Forced Labour (No. 29), which Myanmar had ratified in 1955, had been reported during the nineties. Consequently, an ILO Commission of Inquiry under article 26 of the ILO Constitution was established in 1998. The commission confirmed the existence of widespread and systematic use of forced labour in Myanmar. The commission found that both authorities and the military had used forced labour for different tasks, such as construction and maintenance of military camps, roads and railways. Sometimes the forced labour had been imposed for the profit of private individuals. Even children, elderly people and women were used as forced labour.<sup>74</sup> Accordingly, the commission issued recommendations that no more forced labour should be used, and that Myanmar should bring its legislation in line with the Forced Labour Convention. However, the use of forced labour Myanmar did not cease.

In June 2000 the International Labour Conference decided to approve a resolution under article 33 in the ILO Constitution. Article 33 states that

In the event of any Member failing to carry out within the time specified the recommendations, if any, contained in the report of the Commission of Inquiry, or in the decision of the International Court of Justice, as the case may be, the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith.

It was the first time in the history of the ILO that this article was used.<sup>75</sup> The resolution concerning Myanmar recommended the tripartite representatives of the ILO to review their relations with Myanmar, and to take appropriate measures in order to ensure that their relations to Myanmar did not perpetuate or extend the use of forced labour. The resolution also invited other international organisations to reconsider any co-operation they might have with Myanmar, and to cease as soon as possible with any activity that directly or indirectly could support the use of forced labour.<sup>76</sup>

The recommendation resulted in different measures taken by the tripartite members of the ILO against Myanmar. The United States has for instance imposed diplomatic and political sanctions against Myanmar, which includes e.g. suspension of economic assistance, an embargo of arms, suspension of trade benefits under the GSP programme, and a ban on American investments in Myanmar. Furthermore, if this would not help the United States prepares to undertake additional

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<sup>74</sup> International Labour Office. Stopping forced labour, p. 45.

<sup>75</sup> OECD, International trade and core labour standards, 2000, p. 48.

<sup>76</sup> Commission of the European Communities, Promoting core labour standards and improving social governance in the context of globalisation, Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee, COM(2001) 416 final, 2001, p. 6.

measures, including trade sanctions. The EU has also suspended GSP trade privileges, and has declared itself ready to take additional measures if necessary.<sup>77</sup>

It can be mentioned that Myanmar is a member of the WTO. The relationship between action in accordance with article 33 of the ILO Constitution and the WTO rules, especially articles XI (the prohibition of quantitative restrictions), XX (general exceptions) and XXI (actions taken in accordance with the United Nations Charter) of the GATT, is still unclear.<sup>78</sup> If countries would choose some kind of trade sanctions, as the US seems to consider, it would in practice be similar to the implementation of a social clause in the GATT. Since there is yet no exception covering these type of trade sanctions, they would constitute a violation of the GATT.

## **4 Linking core labour standards with trade**

In this chapter we will discuss the social clause debate. We start with an overview of the evolution of the debate. Thereafter, we will describe the main pro and contra argument, as well as proposals on the enforcement. Finally we will discuss the eventual linkage between trade and core labour standards through the DSB of the WTO.

### **4.1 Evolution of the social clause debate**

On the international level there are two separate regulation systems; one regarding international trade in the framework of the WTO, and the other regarding international labour standards in the framework of the ILO. The social clause debate concerns the eventual linkage between these two regulation systems. The link would consist of the incorporation of a social clause in the GATT, i.e. in the WTO framework, which would ensure the observance of basic labour standards. Accordingly, a breach of these basic labour standards agreed in international conventions, such as the core labour standards conventions from the ILO, would constitute a breach of the GATT, and give other states a right to impose trade sanctions upon the breaching party. The trade sanctions could be to restrict or stop imports of products, originating from a breaching country, industry or firm. It is the possibility to use trade sanctions in order to enforce the core labour standards that makes the incorporation of a social clause in the GATT interesting for many of its proponents. Compared with the ILO, the enforcement power of the WTO is stronger.<sup>79</sup> The social clause debate revolves around the question if trade measures, i.e. sanctions, should be used as a means of enforcing core labour standards.<sup>80</sup> To sum up, the debate concerns whether or not international trade should be linked with core labour standards and enforced through the WTO.

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<sup>77</sup> International Labour Office. Developments concerning the question of the observance by the Government of Myanmar of the forced Labour Convention, 1930 (No. 29), ([www.ilo.org](http://www.ilo.org)).

<sup>78</sup> Commission of the European Communities, Promoting core labour standards and improving social governance in the context of globalisation, Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee, COM(2001) 416 final, 2001, p. 6.

<sup>79</sup> McCrudden and Davies, p. 57.

<sup>80</sup> Weiss, p. 80.

The idea of establishing a link between trade and labour standards is not new. Proposals to link the regulation of international trade with labour standards have been raised repeatedly during the last 50 years. The Havana Charter from 1948, which if it had come in force would have established the International Trade Organisation, contained a provision that linked labour standards and trade.<sup>81</sup> During the fifties there were proposals by among others the United States that unfair labour standards should be addressed in the framework of the GATT.<sup>82</sup> In 1986 the United States tried to put the issue of workers rights, that is labour standards, on the agenda for the Uruguay Round of trade negotiations. Moreover, one year later the United States requested the establishment of a working party, which would discuss the relationship between internationally recognised workers rights and trade. The Nordic countries, the EC, Israel and Japan gave their cautious support, but many others, mainly developing countries, opposed the establishment of the working party. Consequently, both of these American attempts failed.<sup>83</sup> During the last stage of the negotiation prior to the 1994 Ministerial Meeting in Marrakesh, Morocco, there were renewed attempts to put labour standards on the agenda. This time the United States and France tried to seek agreement that the WTO would consider the link between trade and internationally recognised labour standards.<sup>84</sup> Once again many developing countries rejected the attempt to link labour standards with trade, which they considered to be protectionism or neo-colonialism. The result at the Marrakesh meeting was to keep the issue under review until next meeting, namely in Singapore in 1996.<sup>85</sup>

The issue concerning an eventual linkage was once again discussed in Singapore. The 1996 Singapore WTO Ministerial Declaration states:

We renew our commitment to the observance of internationally recognised core labour standards. The International Labour Organization (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them. We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. We reject the use of labour standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question. In this regard, we note that the WTO and ILO Secretariats will continue their existing collaboration.<sup>86</sup>

Consequently, the outcome was a compromise, since the members of the WTO agreed to respect the core labour standards, while also stating that the WTO was not the appropriate body to deal with these issues. Instead the ILO should remain to have the responsibility.

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<sup>81</sup> McCrudden and Davies, p. 44.

<sup>82</sup> Weiss, p. 92f.

<sup>83</sup> Weiss, p. 93f.

<sup>84</sup> Cacadac, p. 311.

<sup>85</sup> McCrudden and Davies, p. 46.

<sup>86</sup> The Singapore Ministerial Declaration, paragraph 4.

In 1997 the Director-General of the WTO emphasised the need for the WTO to stay away from issues that are not collateral to its work.<sup>87</sup> However, in the WTO Ministerial conference in Seattle 1999 some industrial countries once again wanted to put trade and labour standards on the agenda, but without result. According to the Commission of the European Communities, it was the desire of at least one major WTO member to link labour standards with trade sanctions that contributed to the failure of the conference in Seattle.<sup>88</sup> It can be mentioned that the EU opposed any sanction-based approach concerning the issue of trade and labour standards. The WTO Ministerial Meeting in Doha, Qatar, in November 2001 reaffirmed the above-mentioned declaration on core labour standards made at the meeting in Singapore, and added that they had taken note of the ILO work on the social dimension of globalisation.<sup>89</sup>

## 4.2 Arguments in favour of a social clause

Despite the fact that the incorporation of core labour standards in the WTO system has been rejected several times by the WTO Ministerial Meetings, there are proponents of a social clause. Some developed countries will most likely always be interested in and push for the issue of labour standards within the framework of the WTO.<sup>90</sup> Moreover, there is sometimes a strong pressure on governments in developed countries from different groups concerning labour standards and other issues. Several NGOs and most trade unions in the developed countries are proponents of a social clause and thereby in favour of the linkage of trade and core labour standards.<sup>91</sup> The International Confederation of Free Trade Unions (ICFTU), representing trade unions both in developed and developing countries, has been very active in the social clause debate and propose a strengthening of the world trading system through the respect of the core labour standards.<sup>92</sup> Finally, there are also some academic scholars in favour of a social clause. In this section we will give an overview of the main arguments in favour of the introduction of a social clause in the GATT.

One basic argument in favour of a social clause aims at the regulatory competition. As mentioned earlier, there is a fear that in order to attract investments countries lower their labour standards. Accordingly, countries that make use of unacceptable labour practices gain an unfair cost advantage in the international competition.<sup>93</sup> This unfair competition pressures other countries to weaken their labour standards in order to compete, and the incorporation of a social clause in the GATT would stop the race to the bottom.<sup>94</sup> It would set a limit, which states would not be allowed to go beneath, and thereby level the playing field.<sup>95</sup> A closely related argument is that the costs of having higher

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<sup>87</sup> Cacadac, p. 312.

<sup>88</sup> Commission of the European Communities, Promoting core labour standards and improving social governance in the context of globalisation, Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee, COM(2001) 416 final, 2001, p. 8.

<sup>89</sup> Ministerial Declaration, adopted on 14 November 2001, paragraph 8 ([www.wto.org](http://www.wto.org)).

<sup>90</sup> Interview on 20 February 2002 with Patrick Low, director at the Development and Economic Research Division, WTO.

<sup>91</sup> Leary, p. 178.

<sup>92</sup> Howard, p. 1.

<sup>93</sup> de Wet, p. 447f.

<sup>94</sup> Elliot, p. 166.

<sup>95</sup> Lee, p. 179.



labour standards are borne by the producers in those countries that have high standards, because the lower producing costs in other countries leads to a falling world market price. If a social clause were adopted, the consumers would pay the extra costs, since all countries would adopt higher standards, which would lead to a higher world price. The consequence would be that the industry in countries with higher standards would not suffer.<sup>96</sup>

Another important aspect is of moral character. To disrespect core labour standards, which also constitute basic human rights such as prohibition of forced labour, is recognised to be morally unjustifiable. Low labour standards are seen as contrary to the public good, and therefore universal moral obligation to work against inhumane working conditions is necessary. A social clause would benefit workers both in developing and developed countries, because everyone should be entitled to decent working conditions. The moral argumentation in favour of a social clause could not be overridden by economic arguments, not even if there were some evidence that the observance of core labour standards would have negative impact on the competitiveness.<sup>97</sup> In other words, the main reason to oppose e.g. forced labour is not because it is inefficient but because it is morally wrong and violates basic human rights principles.<sup>98</sup>

Proponents of the linkage between trade and core labour standards have also taken the legitimacy of the WTO in consideration.<sup>99</sup> The WTO has so far been justified by economic reasons, e.g. the advantages of free trade and access to foreign markets. However, in order to be justified among the citizens today and in the future, the WTO needs to introduce among others a social dimension. This aspect has become more highlighted after the protests at the WTO Ministerial Conference in Seattle, which might undermine the support for liberal trade policies. Thus, the introduction of human rights law in the framework of the WTO could offer the regulation of world trade both moral, constitutional and democratic legitimacy.<sup>100</sup> Moreover, the support for liberal trade policies in countries with higher standards could be undermined if labour issues were not integrated in the WTO, which might result in increased protectionism.<sup>101</sup> In other words, the best way to avoid unilateral trade restrictions according to these proponents is to include labour issues in the WTO.<sup>102</sup> Today there is a broad consensus in the world that the core labour standards should be observed. The adoption of the 1998 ILO Declaration on Fundamental Principles and Rights at Work clearly shows this fact. As expressed by among others the Swedish trade minister, it is strange that countries can agree in one international forum (ILO) that everyone should respect the core labour standards, but in another international forum (WTO) the same countries do not want to protect these basic

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<sup>96</sup> Lee, p. 180.

<sup>97</sup> Lee, p. 180f and 186.

<sup>98</sup> Langille, p. 35.

<sup>99</sup> Interview on 21 February 2002 with Richard Blackhurst.

<sup>100</sup> Petersmann, p. 24.

<sup>101</sup> Elliot, p. 166.

<sup>102</sup> Charnovitz, p. 33.

rights.<sup>103</sup> Consequently, the countries that have signed the core labour standards conventions in the ILO, should work for their promotion also in the WTO.

Some proponents of a social clause have noticed that the WTO regulates and protects intellectual property rights through the TRIPS Agreement. These rights constitute human rights, e.g. in article 27 of the 1948 Universal Declaration of Human Rights.<sup>104</sup> Accordingly, the WTO could also protect other basic human rights such as the right of non-discrimination in the form of a social clause. The World Intellectual Property Organisation (WIPO) specialises in intellectual property rights, but this has not prevented that issues concerning intellectual property rights are also included in the WTO system. Accordingly, labour standards could also be on the agenda of the WTO, even if labour issues are primarily dealt with in the ILO.<sup>105</sup>

Many proponents of a linkage between trade and labour standards have suggested the establishment of a working group in the WTO to study this issue.<sup>106</sup> The member states should agree to take steps to ensure the observance of the minimum labour standards, which could be specified by an advisory committee established by both the WTO and the ILO.<sup>107</sup>

### **4.3 Reasoning on articles XX, XXIII and the enforcement of a social clause**

Spokesmen of the social clause believe that since the member states of the WTO have already agreed upon exceptions for working conditions on work done by prisoners in article XX (e) of the GATT, they have already recognised problems concerning working conditions. Consequently, exceptions should also be made in GATT for basic working conditions, since the work done by regular prisoners do not differ very much from those engaged in, for example, bonded labour.<sup>108</sup> Other suggestions also concern article XX of the GATT, which include several exceptions under which a country has the possibility to restrict the trade. The core labour standards would be added to the other exceptions in this article.<sup>109</sup> Violations of the core labour standards would give countries the right to impose trade sanctions, provided they are non-discriminate and not a disguised restriction of trade. Moreover, a suggestion is that the WTO should start with amending article XX (e) in order to also cover forced and bonded labour, since it is motivated by the broad consensus that it is unacceptable to obtain a comparative advantage by using forced labour.<sup>110</sup> It would be easier for countries to accept a social clause if it was limited to forced and bonded labour only.

One suggestion is to strengthen the renegotiation and non-violation nullification or impairment provisions in article XXIII of the GATT. According to some proponents it might solve the problem

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<sup>103</sup> Speech by Leif Pagrotsky on 10 October 2000 (www.ud.se).

<sup>104</sup> Petersmann, p. 21.

<sup>105</sup> Leary, p. 201.

<sup>106</sup> Leary, p. 201.

<sup>107</sup> Caccac, p. 313.

<sup>108</sup> Elliot, p. 173.

<sup>109</sup> Blackett, p. 35f.

<sup>110</sup> Elliot, p. 173f.

of regulatory competition.<sup>111</sup> The regulation could be applied when a country feels that obtained benefits under the GATT are being nullified or impaired through measures by another country. The conditions for a successful non-violation complaint are that a reciprocal tariff concession has been negotiated, a governmental measure has been introduced subsequently that negatively affects the market access, and that this measure was not reasonably anticipated at the time of the tariff concession negotiation.<sup>112</sup> Hence, the lowering of labour standards would be seen as a governmental measure that affects the market access, e.g. products exported from countries that have lowered their labour standards get cheaper. The nullification or impairment procedure results first in renegotiations between the countries. If no satisfactory adjustment is made, the question is referred to the contracting parties of the GATT, which may authorise the suspension of concessions or obligations under the GATT. Another opinion is that article XXIII is to apply, and that in the first stage of the renegotiations, the ILO should also be consulted and involved, e.g. to launch investigations, issue reports, and moral persuasion.<sup>113</sup> Moreover, the advantage of using article XXIII instead of article XX would be that a country could not unilaterally start to enforce trade measures such as trade sanctions.<sup>114</sup>

In the social clause debate the question in which the manner the social clause should be enforced has been very crucial. An enforcement regime that links the WTO and the ILO has been suggested and described in detail by some proponents. Member states in the WTO or the ILO, employers' organisations and workers' organisations should be entitled to make complaints, which must fulfil certain criteria. The most important are the requirement of some documentary evidence of gross and reliably confirmed violations of labour standards, the specification that a country has failed to secure the effective observance these labour standards within its jurisdiction, and identification of the industrial sector respectively product that the violation concerns. If the complaint were admissible, a joint ILO/WTO dispute panel would be established. The panel would make a report on its findings, and recommend a reasonable time for compliance, technical assistance programs and possible countermeasures, which could be an export ban on all products made in violation of international labour standards. There would also be a certification process in order to identify products that are not made in violation of these standards. Moreover, there would be a right to appeal this report to the International Court of Justice, whose decision would be final.<sup>115</sup>

The formation of a human rights arm of the WTO, called the Human Rights Body, has been suggested in doctrine. It would include a standing committee, which would receive reports from e.g. member countries in the WTO, individuals or NGOs. The committee would investigate the case and adopt a panel. If the panel would find that there are violations, the suggested Human Rights Body has the possibility to adopt the report with a recommendation for trade sanctions.<sup>116</sup>

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<sup>111</sup> Staiger, p. 33.

<sup>112</sup> Staiger, p. 29.

<sup>113</sup> de Wet, p. 457ff.

<sup>114</sup> Leary, p. 195.

<sup>115</sup> Cacdac, p. 386ff.

<sup>116</sup> Cacdac, p. 384f.

Another suggestion connects the implementation of a social clause with a moratorium. This moratorium should last perhaps eight years, and during this period no enforcement through trade sanctions would be allowed. The demander countries in the developed world would have to give concessions and the developing countries would be forced to act in order to make necessary changes regarding the core labour standards rather than to argue against trade sanctions. Moreover, there would be due time to give voluntary commitments a chance to work.<sup>117</sup> Furthermore, some proponents of linking labour standards with trade are of the opinion that the enforcement must be based on the principle of reciprocity. It means that only countries that have accepted the standard in question, e.g. by ratification in the ILO, can be subject to different kinds of trade measures.<sup>118</sup> Finally it has been suggested that the social clause should be linked with reduced tariffs for countries that comply with the core labour standards.<sup>119</sup>

#### **4.4 Arguments against a social clause**

In this section we will give an overview of the main arguments against the social clause. Those who oppose linking core labour standards with international trade are mainly governments in the developing countries, free trade economists, and private companies in developed countries.<sup>120</sup> Hence, both the International Organisation of Employers and the International Chamber of Commerce share the view that only the ILO should deal with labour standards.<sup>121</sup> Moreover, there has been a statement called TWIN-SAL by several academics from developing countries such as the Indian professor Jagdish Bhagwati, and NGOs like the Consumer Unity and Trust Society (CUTS), opposing the social clause.<sup>122</sup> The signatories are predominantly from India.

The Indian official opinion in the social clause debate is clear. At the WTO Ministerial Meeting in Doha last November, the Indian Minister of Commerce and Industry stated that India firmly oppose any linkage between trade and labour standards. He continued to say that negotiations in the areas of environment and labour standards are Trojan horses of protectionism.<sup>123</sup> In March 1995 a National Consultation on the social clause in multilateral trade agreements such as the GATT took place in New Delhi. Representatives from various sectors as well as trade unions were present, and the result of the conference was a unanimous statement that the social clause is motivated by protectionism purposes. Moreover, it was agreed that the social clause could not be suitable for a social policy that ensures the rights of the working people. Hence, India is one country where almost everybody, trade unions included, opposes the social clause.<sup>124</sup>

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<sup>117</sup> Charnovitz, p. 32.

<sup>118</sup> Cacdac, p. 379.

<sup>119</sup> Weiss, p.105.

<sup>120</sup> Leary, p. 177f.

<sup>121</sup> Venkata Ratnam (III), p. 284.

<sup>122</sup> Bhagwati and others. Third World Intellectuals and NGOs statement against linkage (TWIN-SAL), on 15 November 1999.

<sup>123</sup> Statement by Murasoli Maran, Indian minister of commerce and industry, on 10 November 2001, paragraph 10 ([www.wto.org](http://www.wto.org)).

<sup>124</sup> Cacdac, p. 370ff.

One important argument questions the race to the bottom, at least when it comes to core labour standards. In the literature there is no consensus whether or not the race to the bottom is taking place.<sup>125</sup> The OECD has found that core labour standards do not play a significant role in trade performance. Furthermore, core labour standards will not affect the comparative advantage negatively, and countries that do not respect these standards receive a very small share of investments.<sup>126</sup> The observance of the core labour standards does even strengthen the economic performance, and have a favourable effect on productivity.<sup>127</sup> Hence, if core labour standards have a favourable effect on both investors, economical development and productivity, there ought to be no need for countries to lower their labour laws or to join in a race to the bottom. Subsequently there would be no need for a social clause.

The classical economical argument is that labour conditions would improve faster in a free market without a social clause because of higher economic growth. Forced international labour standards could interfere in the market process, prevent efficiency and investments, and thus constrain the growth. The market mechanism is the best way to regulate labour standards, provided that the labour market is somewhat competitive, since employers that offer unsatisfactory working conditions will be unable to retain their workers unless they offer improved working conditions.<sup>128</sup> When the economic situation of the companies is secured, they can pay attention to the workers' demand for improved working conditions without going under.

The principle of sovereignty is central among the arguments against a social clause. The idea is that it would be an infringement of the sovereignty of a free state and interference in its domestic affairs to try to impose labour standards against the will of a country.<sup>129</sup> Accordingly, each state should alone decide the labour standards applicable within its territory. Countries should in other words respect policy choices made by other countries in legitimate political processes.<sup>130</sup> Additionally, some East Asian governments assert that different cultural values make it impossible to reach universal norms on labour standards. There should for example be a difference between so-called Asian values and Western norms.<sup>131</sup>

Most opponents of a social clause, e.g. CUTS and the International Textiles and Clothing Bureau, question if there are any true humanitarian concerns behind the proposed linkage between trade and labour standards. Hence, if the citizens in developed countries that say they care about the situation for workers in developing countries really were concerned, they would press their own governments to lift all the trade and immigration restrictions. Moreover, if they cared they would encourage and support development aid.<sup>132</sup> The opponents from developing countries mean that instead of

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<sup>125</sup> Lee, p. 181.

<sup>126</sup> OECD, International trade and core labour standards, 2000, p. 33ff.

<sup>127</sup> Langille, p. 39f.

<sup>128</sup> de Wet, p. 446f.

<sup>129</sup> Lee, p. 183.

<sup>130</sup> Langille, p. 43f.

<sup>131</sup> Lee, p. 183f.

<sup>132</sup> Srinivasan, p 74f.

primarily having a moral argument in mind, the proponents of a social clause have protectionist purposes. Hence, a social clause within the GATT would only constitute disguised protectionism from the developed countries.<sup>133</sup> This protectionism is driven by high unemployment in the developed world, which puts pressure on the governments in those countries to take actions. Furthermore, there is a fear that some developed countries are determined to prevent developing countries from development.<sup>134</sup> The social clause would be an attempt in order to deprive them the comparative advantage of cheap labour.

The developing countries claim that they are already doing their utmost in order to improve labour conditions. The main problem is that they cannot afford to improve the working conditions as much as they would like to do. Moreover, a social clause would take away one of their last competitive advantages knocking out the domestic industry and thus lead to job retrenchments. Poor labour conditions are seen as an unavoidable side effect of underdevelopment and poverty.<sup>135</sup> Similar poor working conditions were accepted in Europe and the United States at the time of the industrial revolution, but the working conditions improved through economic growth.<sup>136</sup> Hence, economic growth in the developing countries will also lead to better working conditions. Opponents have noticed that it is unfair to aim trade sanctions at the export sector where working conditions are frequently better compared to the domestic sector.<sup>137</sup> It is by no means certain that trade sanctions would force countries to raise the level of working conditions, or help the workers. Instead of raising the labour standards, a country could deny itself from the gains of export.<sup>138</sup> Moreover, the workers would be hurt if their factories were forced to close due to trade sanctions.

Another argumentation aims at the WTO, which is not considered to be the appropriate international organisation to deal with labour issues. The WTO lacks experience in the field of core labour standards, and there is a risk of overburdening the WTO system with too many issues.<sup>139</sup> It would be inappropriate for the WTO, which has primarily expertise in trade, to interpret core labour standard in the framework of its DSB.<sup>140</sup> On the contrary, it is the ILO that has the necessary knowledge concerning this issue. Accordingly, only the ILO should deal with labour standards, and opponents of a social clause mean that such specialisation makes eminent sense.<sup>141</sup> Finally, the suggested incorporation of core labour standards in article XX has been criticised because it permits countries to unilaterally impose trade sanctions on basis of their own judgement. This could lead to abusive use of trade sanctions.<sup>142</sup>

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<sup>133</sup> Leary, p. 182 and Srinivasan, p. 73.

<sup>134</sup> Venkata Ratnam (III), p. 282.

<sup>135</sup> Lee, p. 177.

<sup>136</sup> Malmberg and Johnsson, p. 6.

<sup>137</sup> de Wet, p. 451f.

<sup>138</sup> Srinivasan, p. 74 and Ward, p. 620f.

<sup>139</sup> Weiss, p. 104.

<sup>140</sup> McCrudden and Davies, p. 61.

<sup>141</sup> Srinivasan, p. 72.

<sup>142</sup> Leary, p. 204.

## 4.5 Linkage through the jurisprudence in the DSB of the WTO

Even if it is not possible to renegotiate the GATT in order to incorporate a social clause, due to the present political situation, there could be other ways to link the regulation of international trade with core labour standards. Some academic scholars have argued that it might be possible to justify trade sanctions through interpretation of the present wording of article XX.<sup>143</sup> The view on methods of production by the Appellate body in the Shrimp/Turtles case, mentioned above in chapter two, might to some extent have opened for such an interpretation through the jurisprudence in the DSB. In this case the Appellate Body concluded that a line of equilibrium must be marked in the specific case. In other words, there must be a balance between competing rights and policy interests in a treaty, i.e. between the general exceptions in article XX and articles III and XI. Moreover, the Appellate Body stated that the line of equilibrium is not fixed and unchanging, but moves as the kind and shape of the measures at stake vary and the facts making up specific cases differ.<sup>144</sup>

One exception that might be invoked to justify trade restrictions concerning products made in violation of the core labour standards is article XX (a) of the GATT.<sup>145</sup> The prerequisite for restrictions must be that it is necessary to protect public morals. The term public moral is non-static, and might be considered to encompass contemporary concerns of the international community.<sup>146</sup> Hence, the meaning of public moral could be interpreted in a way that some or all of the core labour standards are included. It has been noticed that the international community increasingly identifies, prioritises and consolidates the core labour standards, e.g. through the 1998 ILO Declaration. Out of these standards, public moral could at least be interpreted to include bonded labour, since it is close to widely recognised *jus cogens* prohibitions such as slavery and slavery-like practices.<sup>147</sup> Furthermore, trade restriction must be considered as necessary in order to be justified under article XX (a). It might be interpreted as necessary if a country fails to prevent or curb practices like bonded labour, despite repeated efforts by the ILO in order to stop such practice.<sup>148</sup>

Another provision under which restrictions of trade might be adopted or enforced is article XX (b) of the GATT, if it is necessary to protect human, animal or plant life or health.<sup>149</sup> The protection would be of humans in another country. In accordance with the above-mentioned second Tuna/Dolphin case, measures related to things or matters outside a country's own territory is not always unthinkable.<sup>150</sup> Hence, it could be possible to include the protection of basic worker's rights in other countries. Finally, in the case of forced or bonded labour, article XX (e) concerning prison labour might be invoked in order to justify trade sanctions.

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<sup>143</sup> Blackett, p. 5.

<sup>144</sup> Blackett, p. 75f.

<sup>145</sup> Moorman, p. 558f.

<sup>146</sup> Blackett, p. 72.

<sup>147</sup> Blackett, p. 76ff.

<sup>148</sup> Blackett, p. 78.

<sup>149</sup> Weiss, p. 100.

<sup>150</sup> Trebilcock and Howse, p. 411.

Whether or not some of the present exceptions in article XX could be used in order to justify trade restrictions in the field of core labour standards could only the DSB of the WTO decide. There are some possibilities that the DSB will have to decide if trade sanctions are justifiable due to violations of core labour standards. As mentioned earlier, the ILO Governing Body has recommended the members of the ILO to take appropriate measures in order to stop the use of forced labour in Myanmar. Hence, a WTO member might impose trade sanctions on Myanmar, which at least the United States considers. As a member of the WTO, Myanmar could in that case request the establishment of a panel.<sup>151</sup> Another possibility to bring the question of core labour standards to a panel would be that a country challenges the American import restrictions on products made by forced labour mentioned earlier. However, most likely are developing countries with e.g. general problems of child labour hesitant to request the establishment of a WTO panel, since they do not want to be connected with the use of child labour, or be depicted as a country that favours child labour. Hence, they would probably choose to live with the trade restrictions even if their export industry is hit by the restrictions.

## **5 Other means to promote core labour standards**

### **5.1 Generalised System of Preferences**

Developed countries use Generalised Systems of Preferences (GSP) in order to promote the respect for core labour standards among the developing countries. The basic idea is that if developing countries respect the core labour standards, they will be granted more favourable trade conditions like lower tariff levels. GSP programs can be seen as including both a carrot and a stick. Hence, the carrot is that if developing countries respect core labour standards they will be granted tariff preferences, and the stick is that if developing countries that have been granted preferences would violate the core labour standards these tariff preferences could be withdrawn. Most eager to use the GSP are the United States and the EU. In this context it is worth mentioning that international agreements with developing countries could also be used as tools to promote the core labour standards. One example is the Cotonou Agreement between the EC and 77 African, Caribbean and Pacific states, where the contracting parties reaffirm their commitment to the core labour standards, and agree to co-operate concerning e.g. labour legislation and educational and awareness-raising programs. However, at present India is not a contracting party in any such agreement nor has the Indian garment export industry been granted preferential treatment under any of the major GSP systems. Only a few countries have for instance applied for GSP benefits from the EU. The reason might be that the procedure is too complicated, or that countries do not want the EU to monitor their compliance with the labour standards in question.<sup>152</sup> Furthermore, the trend is that the tariff levels get lower and lower and the GSP becomes less important for developing countries.<sup>153</sup> Consequently, in the future the GSP will probably not be a strong tool in order to promote the respect for core labour standards. We will not enter any deeper into this issue.

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<sup>151</sup> Interview on 20 February 2002 with Jan-Eirik Sørensen, director of the Trade and Environment Division, WTO.

<sup>152</sup> Interview on 21 February 2002 with Dinora Diaz at the International Textiles and Clothing Bureau.

<sup>153</sup> Trebilcock and Howse, p. 375.



## 5.2 Technical assistance and training programs

The ILO uses technical assistance in order to promote the core labour standards. The ILO InFocus Programme on Promoting the 1998 ILO Declaration and the ILO InFocus Programme on Child Labour concentrate on the core labour standards. The ILO has also introduced programmes on freedom of association and the right to collective bargaining respectively on forced labour. In 2003 a programme on discrimination in employment and occupation should be adopted.<sup>154</sup> All the core labour standards will thereby be subject to specific ILO programmes concerning technical co-operation. Since the adoption of the ILO 1998 Declaration the developed countries have given more money to the programmes of the ILO<sup>155</sup> and the EU has expressed its willingness to provide increased financial support for the ILO technical assistance.<sup>156</sup> Technical assistance could include advising on legal reforms, training of governmental officials and strengthen the capacity of the tripartite structure and co-operation. Furthermore, other international organisations like the UNICEF, UNCTAD and the World Bank have programmes, particularly on child labour, to promote core labour standards.

As a part of technical assistance provided by the ILO on company level, we would also like to mention the five main programmes in this field by the ILO department for management corporate citizenship. Firstly, there is a management-training programme on the principles of the Global Compact. The objective of this training programme is to develop the competencies of managers and others like employers' organisations, trade unions, NGOs and certification organisations to implement and realise the core labour standards. The second programme aims at presenting the benefits for managers that companies have from respecting international labour standards, i.e. positive business performance and building the human and social capital in the long run. The ILO also collects company submissions and stakeholders comment on positive results when companies implement the international labour standards in their operations. Thirdly, there is a programme concerning productivity and competitiveness. The purpose behind this programme is that long-term productivity and competitiveness can only be achieved by inter alia good work organisation, human resource development and social partnership. Fourthly, there is a training programme on management systems and decent work management training. The last training programme concerns productivity improvement through non-discrimination.<sup>157</sup>

We cannot enough emphasise the importance that technical assistance, and further development aid, has in order to promote the respect of core labour standards. Violations of core labour standards are quite often connected with poverty. Moreover, poor governance and extensive informal sectors often

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<sup>154</sup> Interview on 18 February 2002 with Kari Tapiola, ILO.

<sup>155</sup> Interview on 18 February 2002 with Zafar Shaheed, ILO.

<sup>156</sup> Commission of the European Communities, Promoting core labour standards and improving social governance in the context of globalisation, Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee, COM(2001) 416 final, 2001, p. 15.

<sup>157</sup> Interview on 19 February 2002 with Michael D. Urminsky at the ILO, and [www.ilo.org](http://www.ilo.org).

lead to a weak implementation of core labour standards.<sup>158</sup> We strongly believe that a broad policy to reduce the poverty will help the observance of core labour standards. However, it lies beyond the scope of our study to investigate the impact that development aid and technical assistance have on the Indian garment export industry.

### 5.3 Codes of conduct

The growing public awareness and interest in social issues, e.g. corporate social responsibility and ethical standards like the respect for core labour standards, has led to several voluntarily initiatives, mainly the introduction of codes of conduct. The regulation of working conditions in the form of codes of conduct function parallel to the national labour legislation. A code of conduct is a commitment by a company to respect a number of ethical rules, including labour standards.<sup>159</sup> It is important to remember that this commitment is voluntarily, without any legal obligations. However, a company that buys garments from a manufacturer in India can include their code of conduct in the contract, and thus impose a contractual obligation upon the manufacturer to observe the code of conduct. Violations of the code of conduct constitute a contractual breach, which entitles the other contracting party to take legal action. The number of codes of conduct is constantly increasing, and they are particularly common in the textile and garment sector. This industrial sector is highly exposed to pressure concerning working conditions from e.g. consumer groups and media because it is very labour intensive, highly internationalised and mainly located in the third world.<sup>160</sup>

Codes of conduct could be either drafted by the management of a company, or by a group of companies together with e.g. employer's organisations, trade unions or NGOs. The first category consists of individual codes of conduct, while the latter consists of more standardised codes of conduct. The trend is that the content of different codes of conduct, even in individual codes of conduct, becomes more and more standardised. Codes of conduct very often comprise prohibitions on child labour, bonded labour and discrimination. The freedom of association and the right to collective bargaining is however less frequently mentioned in the codes of conduct.<sup>161</sup> Moreover, it is common that codes of conduct have references to the respect of national legislation, particularly the labour legislation. In order to make codes of conduct meaningful in the day-to-day operations they are often accompanied by measures such as the creation of compliance offices, internal monitoring, record-keeping practices and sometimes external auditing.<sup>162</sup> Furthermore, it is important to explain the meaning of the codes of conduct for the workers in a simple way in their own language.<sup>163</sup>

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<sup>158</sup> Commission of the European Communities, Promoting core labour standards and improving social governance in the context of globalisation, Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee, COM(2001) 416 final, 2001, p. 11.

<sup>159</sup> Faure, p. 1f.

<sup>160</sup> Wick, p. 19.

<sup>161</sup> Sajhau, p. 37ff.

<sup>162</sup> Sajhau, p. 51.

<sup>163</sup> Wick, p. 82.

International organisations have developed codes of conduct for enterprises to use. One example is a recommendation called the OECD Guidelines for Multinational Enterprises, issued by the Organisation for Economic Co-operation and Development (OECD).<sup>164</sup> Another code of conduct drafted by an international organisation is the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. It addresses multinational enterprises, governments, employers and workers, and covers all aspects of social policy such as employment, training, working conditions and industrial relations and is naturally based on several ILO labour standards conventions.<sup>165</sup> The codes of conduct from OECD and ILO were drafted during the seventies but have been reviewed on a regular basis. They both include the core labour standards.

The Global Compact was initiated in 1999 by Kofi Annan, the United Nations Secretary-General, when he asked the world business to promote and apply nine universal principles.<sup>166</sup> Hence, the Global Compact is a recommended code of conduct for socially responsible corporate behaviour, which aims at realising universal values concerning human rights, the environment and labour standards. In other words, the objective is that private enterprises shall enact these principles in their corporate practice. Out of the nine principles, four mirror the core labour standards.

## 5.4 Certification

Codes of conduct could be connected with certification. One model is that the brand gets certified, and another that the factory gets certified. All the certification models involve an independent body, normally a NGO or an auditing firm, which conduct social auditing, verifications and grant the certification. There are several NGOs that provide codes of conduct, monitoring and verification, like the Ethical Trading Initiative, the Fair Labour Association and the Worker Rights Consortium. Below we will describe two examples more in detail, one illustrating factory certification and the other illustrating brand certification.

In October 1997 the Social Accountability 8000 (SA 8000) standard was adopted by the Social Accountability International (SAI), which is a non-profit making organisation. SA 8000 was drawn up in co-operation with enterprises, trade unions and NGOs, i.e. the result of a social dialogue between social partners. The objective was to establish a standard concerning labour standards that can be applied to all kinds of industries. Companies that observe these standards can apply for certification. However, SA 8000 shall not certify products or brands, but certify individual production sites or factories. Furthermore, the certification does not apply to the sub-contractors, though there are recommendations for sub-contractors. When a company has applied, it is granted applicants status for one year. After verifying and monitoring by one of the independent and accredited certification auditors, certification is granted, provided that all requirements are observed. The SAI has accredited seven auditors<sup>167</sup>, and in India we met with one of them, namely SGS, which we will describe further in chapter seven. SA 8000 comprises all the core labour standards as well as

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<sup>164</sup> OECD, International trade and core labour standards, 2000, p. 70ff.

<sup>165</sup> Introduction to the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.

<sup>166</sup> The homepage of the Global Compact is [www.unglobalcompact.org](http://www.unglobalcompact.org).

<sup>167</sup> Faure, p. 35ff.

issues like health and safety, working hours and wages. Accordingly, when a company applies for SA 8000 certification, it undertakes to respect and apply all the standards included in SA 8000 and the companies must introduce a management system regarding policies for social accountability. When a company has obtained a SA 8000 certificate, surveillance audits take place every six months. The auditing teams speak with managers and workers, get briefed by trade unions and NGOs and check the records of the factory. Third parties have the possibility to file complaints about inappropriate factory certification, which will be investigated and the complainant will be advised of the result. The certification has to be renewed every third year. Over 70 factories worldwide have been SA 8000 certified, but only three of them, out of which two are garment industries, are located in India.<sup>168</sup>

The main criticism raised concerns the costs involved with SA 8000, which altogether have to be born by the manufacturers in the developing countries. The costs are considerable high particularly in the garment industry with its many small manufacturers. The manufacturers must pay application fees, travel and translation costs and costs for surveillance audits every six months. For example, only the surveillance audits generally amounts to more than 20,000 US\$ yearly.<sup>169</sup>

Another independent verification system is run by the Clean Clothes Campaign, which is active in several European countries like the Netherlands, Switzerland, Sweden and France. The organisation has focused on working conditions in the garment and sportswear industry, and conducts independent monitoring and verification. In contrast to SA 8000, the Clean Clothes Campaign uses brand certification.<sup>170</sup> The Swedish Clean Clothes Campaign has developed a verification system called DressCode and was launched together with four Swedish garment retailers. The aim was to create a body for independent verification that DressCode's code of conduct is observed. This code of conduct includes all the core labour standards, as well as provisions on issues like safety, minimum wage, working hours and the respect of national laws. In order to become a member of DressCode, a company must adopt the code of conduct, draw up an internal management system and finally accept independent verification measures at its suppliers. The approval of a company as a member is a three-stage process. The first stage consists of the introduction of a management system for the code of conduct, and information to the suppliers, which also must accept the code of conduct. At this step one inspection at the headquarters takes place. The next stage involves inspections of a selection of suppliers. At this stage the company can inform customers and others that it has an agreement with DressCode. The final stage involves broader inspections of a larger number of suppliers.<sup>171</sup>

## 5.5 Social labelling

Social labelling means that the product is market with a label, which informs that the product has been made in accordance with certain labour standards. The idea is that the market forces in the

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<sup>168</sup> Interview on 10 October 2001 with Venkata Ratnam.

<sup>169</sup> Wick, p. 36ff.

<sup>170</sup> Wick, p. 58f.

<sup>171</sup> Andersson, DressCode code of conduct for the garment industry.

form of enlightened consumers shall promote fair labour standards by only buying clothes that carry a certain social labels.<sup>172</sup> Hence, social labelling is voluntarily, and the consumer and the producer can freely choose to buy respectively with or without label. One example of social labelling is the *Rugmark* label for carpets that signalise that the carpet is produced without the use of child labour. However, criticism has been raised concerning the credibility of the label. Firstly, the label could be copied and used by producers that do not respect the labour standards since it cannot be verified by testing the product that the label is correct. The information the consumers get could be inaccurate, e.g. there is a risk that consumers consider all products without social labels as made in unethical manners. Secondly, the consumer sanctions could be biased towards practices that emotionally appeal to the consumers like child labour, while equally important violations of labour standards like freedom of association and the right to collective bargaining attract less notice since they have less emotive appeal.<sup>173</sup> Thirdly, there are problems regarding monitoring. Finally, there is a huge co-ordination problem among the consumers. If a manufacturer that violates certain standards should be forced to stop the violations and to respect the standards, there is a risk that either the manufacturer will loose all customers and thus vanish, or that no consumer at all would stop purchasing with the consequence that the manufacturer are not forced to change the production at all. Hence, individual consumers cannot achieve this without some co-ordination.<sup>174</sup>

## 6 Short introduction of central Indian labour laws

India is a federal state. Consequently, there are both federal and state laws. We will focus on the federal Indian labour legislation. However, it is important to notice that the minimum wage regulation is mainly on state level, which leads to different minimum wages in different states. The Indian law rests on the Common Law due to the British influence on India as a former colony. First we will describe how the core labour standards are regulated in India. Thereafter we will also briefly describe some other important labour regulations since these provisions will be mentioned late in the paper when we discuss problems that the manufacturers face regarding working conditions.

### 6.1 Legislation on bonded labour

Bonded labour is still a problem in India. Officially over 240 000 bonded labourers have been identified, but the actual number could be much higher.<sup>175</sup> However, it is mainly in the agricultural sector and in rural areas that bonded labour is a problem.<sup>176</sup> As mentioned under the next chapter, bonded labour is a very rare malpractice in the garment export industry, and consequently we will not discuss it to any larger extend.

Forced labour is prohibited in article 23 in the Indian Constitution. According to this provision is traffic in human beings and other forms of forced labour prohibited. In 1976 India also adopted the Bonded Labour System (Abolition) Act. The Supreme Court of India has in the case *Sarjit Roy vs.*

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<sup>172</sup> Malmberg and Johnsson, p. 29f.

<sup>173</sup> Lee, p. 186f.

<sup>174</sup> Basu, p. 8.

<sup>175</sup> International Labour Office. Stopping forced labour, p. 39.

<sup>176</sup> International Labour Office. Stopping forced labour, p. 34.

*State of Rajasthan* further defined what constitutes forced labour. Accordingly, those workers, who due to hunger and poverty are compelled to accept employment for remuneration that is less than the statutory minimum wage are to be defined as forced labour. The Supreme Court has put the burden of proof of non-existence of bonded labour on the employers.<sup>177</sup>

India has ratified both ILO's Forced Labour Convention (No. 29) and the Abolition of Forced Labour Convention (No. 105).

## **6.2 Legislation on child labour**

The prohibition of child labour covers de jure most parts of the garment export industry. However, it is possible for children to work in units with less than ten workers or in the home based industry, as long as it is not hazardous or the occupation is listed in the Child Labour (Prohibition and Regulation) Act, which is described further below. De facto, children are not employed in any wider extent in the export industry. Child labour is mostly a part of the domestic industry and approximately 5 % of the children are commonly estimated to work in the export sector. Furthermore, in the textile, clothing and footwear industry in India the number of child labour is negligible in formal sector companies, and the children that work tend to do so at home or in small workshops.<sup>178</sup>

Article 24 of the Indian constitution states that no child below the age of fourteen years shall be employed to work in any factory, mine, or engaged in any other hazardous employment. Furthermore, in 1986 India adopted the Child Labour (Prohibition and Regulation) Act. The act defines a person who has not completed his or her fourteenth year of age as a child. According to section 3, no child is permitted to work in any of the occupations or processes listed in schedules in the act. Examples from the schedules are slaughterhouses, carpet-weaving, cement manufacture, cloth printing, dying and weaving, and wool cleaning. Additionally, the Factories Act from 1948 prohibits in section 67 the employment of children that have not completed their fourteenth year of age in factories, i.e. an establishment with access to electrical power where ten or more workers are employed. If the factory has no electrical power, the act is only applicable if the number of workers is 20 or more. Consequently, all forms of child labour are not prohibited. The Indian government is however considering enacting a law that would have 14 years as a minimum wage for all occupations, with the exceptions of agriculture in family and smallholdings producing for their own consumption.<sup>179</sup>

In those cases where child labour is allowed today, i.e. when it is not in a factory, mine, hazardous or listed in the Child Labour (Prohibition and Regulation) Act, the Child Labour (Prohibition and Regulation) Act is applicable. It states that children shall not be required to work neither overtime nor between 7 p.m. and 8 a.m. There are also special provisions on issues like working hours and periods of rest.

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<sup>177</sup> Swamy, p. 63.

<sup>178</sup> International Labour Office, Labour practices in the footwear, leather, textiles and clothing industries, p. 56.

<sup>179</sup> International Labour Office. Annual Review under the ILO Declaration Follow-up, p. 304.

Regarding conventions from the ILO, India has neither ratified the Minimum Age Convention (No. 138) nor the Convention concerning Immediate Action to End the Worst Forms of Child Labour (No. 182). However, India is moving towards ratifying the last convention on the worst forms of child labour.<sup>180</sup> A former commerce minister of India has written that despite all efforts by the Indian government to eliminate child labour, it would be unrealistic to give any commitment regarding total elimination of child labour in the short or medium term.<sup>181</sup> India will only ratify ILO conventions when the government is certain that the conventions will be observed.<sup>182</sup> Accordingly, India will probably not ratify the ILO convention No. 138 in the near future.

## 6.3 Legislation on trade unions

### 6.3.1 Freedom of association

The constitution of the Republic of India from 1950 guarantees in article 19 the principle of freedom of association. Hence, the workers are free to form and join trade unions without prior authorisation from the Indian government or authorities. This constitutional right is fundamental, which means that it cannot be overruled by normal legislation.<sup>183</sup>

There is also a separate act on trade unions, called the Trade Unions Act from 1926. The act regulates inter alia the right to form trade unions in more detail. Section 1 (2) of the act states that it is applicable all over India. According to the definition of trade unions in section 2 (h), trade union means "any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more trade unions". Hence, the right to form trade unions is applicable on workmen, i.e. workers. Trade unions are free to affiliate with international trade union organisations, e.g. the All India Trade Union Congress (AITUC) is affiliated with World Federation of Trade Unions, and the Indian National Trade Union Congress is affiliated with the International Confederation of Free Trade Unions (ICFTU).<sup>184</sup>

In accordance with section 4 (1) of the Trade Unions Act, any seven or more members of the trade union can register a trade union. Consequently, it leads to a multiplicity of trade unions. In 1995 there were more than 57,000 registered trade unions in India.<sup>185</sup> Out of these trade unions, approximately 10,000 are affiliated to ten major trade union federations.<sup>186</sup>

It is worth mentioning that section 15 of the Trade Unions Act contains in detail provisions on how the general funds of the trade union shall be spent. One object on which general funds can be spent

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<sup>180</sup> Venkata Ratnam (III), p. 291.

<sup>181</sup> Swamy, p. 65.

<sup>182</sup> Interview on 15 October 2002 with Coen Kompier.

<sup>183</sup> International Labour Office. Annual Review under the ILO Declaration Follow-up, p. 58.

<sup>184</sup> Swamy, p. 50.

<sup>185</sup> International Labour Office. Annual Review under the ILO Declaration Follow-up, p. 59.

<sup>186</sup> Venkata Ratnam (I), p. 4.

is the conduct of trade disputes on behalf of the Trade Union or any member. Another object is the prosecution or defence of any legal proceeding to which the trade union or any member is a party, when protecting or securing a right of the trade union or a right arising out of the relations of a member with his employer.

Some provisions in the Trade Unions Act have been criticised. The criticism has been raised e.g. because today it is possible for persons not working at a specific industry to become office bearers of the trade union at this industry. Office bearer is defined in section 2 of the Trade Unions Act as a member of the executive in a trade union. According to opinions in the doctrine no outsider should be allowed as office bearer since they cannot have any interest in the welfare of employees of the industry. The reason is that outsiders only create problems in the functioning of the industry in order to get personal gains, which causes misery for the workers.<sup>187</sup> There are also suggestions that office bearers charged with moral turpitude or imprisonment for a criminal offence should be disqualified. Furthermore, there are proposals that it should be compulsory for the registration of trade unions to have at least 100 workers or 10 % of the work force, in order to limit the number of trade unions.<sup>188</sup>

The right to form and join unions is also applicable in export processing zones (EPZ).<sup>189</sup> However, the International Confederation of Free Trade Unions (ICFTU) has pointed out that although the unions can organise in theory in EPZs, in practice the employers obstruct the organisation.<sup>190</sup>

### **6.3.2 The right to collective bargaining**

In the Indian constitution there is no provision on the right to bargain collectively. However, this issue is regulated in the Industrial Disputes Act from 1947. According to section 18 (1) of the Industrial Disputes Act settlements between the employer and his workmen are binding for the parties to the settlement. Settlement is defined in section 2 (p) of the act as "a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding".

There is a problem with the Indian legislation on collective bargaining. On national level there is no law on the recognition of trade unions for the purpose of collective bargaining.<sup>191</sup> Hence, the Indian legislation stipulates a problem for the employers when it comes to collective bargaining. They face difficulties when they shall decide with which trade union they shall bargain with when there are several trade unions active at the factory. Some states have however enacted laws with provisions on the recognition of trade unions.

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<sup>187</sup> Charya, p. 94.

<sup>188</sup> Abraham, p. 17.

<sup>189</sup> Swamy, p. 50.

<sup>190</sup> International Labour Office. Annual Review under the ILO Declaration Follow-up, p. 61.

<sup>191</sup> Venkata Ratnam (II), p. 21.



Today the right to bargain collectively does not play an important role in India, since not even two percent of the work force participates in collective bargaining.<sup>192</sup> In the unorganised sector collective bargaining is very rare.<sup>193</sup>

The right to strike is according to inter alia a report from the ILO the logical corollary of the effective realisation of the right to collective bargaining.<sup>194</sup> The Indian trade unions have the right to strike<sup>195</sup> and chapter V of the Industrial Disputes Act contains regulations on e.g. strikes and procedures in case of strike.

### **6.3.3 Non-ratification of ILO conventions**

Although the freedom of association is recognised in the Indian constitution, India has not ratified the ILO convention number 87 on the Freedom of Association and Protection of the Right to Organise. Neither has India ratified the ILO convention number 98 on the Effective Recognition of the Right to Collective bargaining. Regarding conventions it is important to remember that the goal is not the ratification itself, but to apply and safeguard its principles in an effective way in the national legislation.

For the private garment export industry there are formally no legal restrictions regarding the freedom of association and the right to collective bargaining.

According to the Indian government, the two ILO conventions could not be ratified since there are problems of technical nature regarding government servants.<sup>196</sup> The government wants its servants to perform their functions in an unbiased and political neutral manner, which would have been a problem if they had had the same trade union rights, since the trade unions are very politicised and linked to different political parties. Moreover, the governmental servants enjoy a high degree of job security according to special provisions in the Indian constitution. There are also joint consultative machinery and administrative tribunals to use for the governmental servants. According to Professor Venkata Ratnam this is not a valid reason for non-ratification, since it is possible for India to exempt certain services when ratifying. The real reason could be that the Indian government wants to deny the right of collective bargaining to industrial workers in governmental undertakings such as the Railways, Post and Telecommunications, and Central Public Works department. The government alone decides the salaries of these workers. Another reason not to ratify could be that the government wants to restrict the freedom of association to only manual workers, and exclude supervisory and managerial workers.<sup>197</sup> As mentioned above, the Trade Unions Act only gives the

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<sup>192</sup> Venkata Ratnam (I), p. 6.

<sup>193</sup> Venkata Ratnam (II), p. 23.

<sup>194</sup> International Labour Office, *Your voice at work*, p. 37.

<sup>195</sup> Swamy, p. 50.

<sup>196</sup> International Labour Office. *Annual Review under the ILO Declaration Follow-up*, p. 62.

<sup>197</sup> Venkata Ratnam (II), p. 20.

right to form trade unions to workmen. Furthermore, another reason not to ratify these conventions is that ratification would give the governmental servants the rights to strike.<sup>198</sup>

## 6.4 Legislation on discrimination and gender issues

The Indian constitution prohibits in article 15 all discrimination on grounds of religion, race, caste, sex, or place of birth. In 1976 India also enacted the Equal Remuneration Act. This act provides for equal remuneration for men and women for work of equal value under the same employer.<sup>199</sup>

However, criticism has been raised that the scope of this act is not in accordance with the ILO convention on equal remuneration, because the act requires equal remuneration for the same work or work of a similar nature, while the convention requires equal remuneration for work of equal value. The convention uses the word "value" instead of "same" or "similar", since the convention aims at eliminating inequality of remuneration in female-dominated sectors where wages tend to be lower.<sup>200</sup>

Regarding the ILO conventions on this topic, India has, as implied above, ratified the Equal Remuneration Convention (No. 100) as well as the Discrimination (Employment and Occupation) Convention (No. 111).

In the labour law legislation there are some specific provisions on women. As will be mentioned beneath, the Employees State Insurance Act from 1948 gives some benefits to women during six weeks before and six weeks after they have given birth. Furthermore, the Maternity Benefit Act from 1961 gives women additional benefits. Under this act they are protected from dismissal during their maternity period. Women are also permitted to have two daily breaks so they can nurse their children. This right lasts until the child reaches the age of 15 months. If the woman cannot get medical care in another way, the employer must provide it.<sup>201</sup>

The Factories Act from 1948 contains provisions regarding women. According to section 48 of the act the employers must provide crèches in factories with at least 30 women employed. A crèche is a suitable room for workers' children under the age of six years. Additionally, in section 66 it is stated that women shall be employed between 6 a.m. and 7 p.m. only. This ban on night shifts for women has resulted in women not being preferred for employment.<sup>202</sup>

## 6.5 Other labour legislation

When we describe in the following chapter what the manufacturers and others think and what problems they face concerning working conditions, it is good to be aware of the legal framework in India. Hence, this section contains a brief presentation of central Indian labour provisions like the Factories Act from 1948, which regulates issues such as working hours, health and safety in the

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<sup>198</sup> Swamy, p. 59.

<sup>199</sup> Swamy, p. 66.

<sup>200</sup> CEAR, Individual observation concerning convention No. 100, India, published 1999, paragraph 2. ([www.ilo.org](http://www.ilo.org))

<sup>201</sup> Monte, p. 1131.

<sup>202</sup> Abraham, p. 18.

factories. The labour regulation in India is quite complicated. There are about 165 different labour legislation regulations, including 47 central labour acts.<sup>203</sup> Furthermore, in addition there is state legislation. The definitions in different laws vary, and the application of the acts is complicated. Consequently, there are advocates for harmonisation and unification of the labour laws.

Several of the labour laws prescribe fines or other penalties for non-compliance of the provisions. The problem for an effective enforcement is however that the fines are comparably extremely low. With fines of only a few thousand rupees, it is hardly exemplary for the employers.<sup>204</sup> Furthermore, most of the laws lack a minimum stipulation of the fines.<sup>205</sup> The consequence is that the legal system is quite vulnerable to the reduction of the fines by unfair means, i.e. corruption. On the other hand, when the fines are low, there is no meaning of bribing the labour inspectors, since it might be cheaper to simply pay the fines.

### **6.5.1 Health and safety**

The Factories Act from 1948 aims at protecting workers that are employed in factories against industrial and occupational hazards. The regulation is in other words intended for the welfare of the workers.<sup>206</sup> The act is applicable on factories with 10 or more workers. However, several of its specific provisions require a higher number of workers.

The act regulates in detail issues like the cleanliness of the factory, ventilation in the workspace, control of temperature, lightning, overcrowding, specifications for clean and accessible toilet facilities. In factories employing more than 250 workers, the employers must provide canteens with subsidised food and cool drinking water in the summer.<sup>207</sup> Regarding the safety in the factory, there are mandatory safety measures, e.g. covering of dangerous parts of machinery, prevention of fire, and safety equipment like goggles and gloves.<sup>208</sup>

### **6.5.2 Working hours**

The Factories Act from 1948 contains regulation on the maximum number of working hours. In section 51, it is stated that no worker is allowed to work in a factory for more than forty-eight hours in any week. Sunday is a day of rest for the workers. Furthermore, according to section 54 no worker is allowed to work more than nine hours per day. After five hours of work, the workers are entitled to rest for at least half an hour. Additionally, according section 79 every worker who has worked for 240 days or more per year has the right to have holiday with wages for a number of days. In order to prevent workers from working more in another factory, section 60 of the Factories Act prohibits workers from working in other factories on the same day as they have already worked.

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<sup>203</sup> Hazra, p. 71.

<sup>204</sup> One US\$ was approximately 47 rupees in November 2001.

<sup>205</sup> Hazra, p. 79.

<sup>206</sup> Goyal, p. 65.

<sup>207</sup> Monte, p. 1129.

<sup>208</sup> Goyal, p. 66.

If workers work more than the time limits mentioned above, the employers have in accordance with section 59 to pay them extra for overtime, which is twice the normal wage. The maximum number of overtime hours during three months is 50 hours.<sup>209</sup> Employers must maintain a register of the workers, which e.g. shows the names of the workers and the nature of their work, so the inspectors can monitor effectively.

### 6.5.3 Wages

In the Minimum Wages Act from 1948 there are rules regarding the wages for the workers. Every industry in India is covered.<sup>210</sup> This act is national, and provides so called floor level wages, which means that the states have to regulate the level of minimum wages in detail. It leads to variations between the different states in India.<sup>211</sup> One could say that to some extent a race to the bottom concerning wages is taking place among the Indian states.

There is no provision on how the minimum wages shall be upgraded in the form of an index. The result has been that the minimum wages have declined in real terms.<sup>212</sup> In other word, they are not in accordance with the inflation, and the purchase power of the workers is decreasing.

### 6.5.4 Hire and fire

Regular workers have a secure position at their company, since there are formal procedures in which the employers need the prior approval from the government in order to retrench or lay-off workers. The procedure is regulated in the Industrial Disputes Act from 1947. The provisions are according to chapter 5B section 25K applicable on industrial establishments in which not less than one hundred workmen are employed. In order to lay-off or retrench any worker whose name is on the muster rolls of the industrial establishment, the employer needs in accordance with sections 25M and 25N the prior permission by the government. For closing down a unit, the prior permission by the government is also necessary according to section 25O. However, there are some exceptions to these rules since the provision is not applicable regarding casual workmen and badli workmen, defined as a workman employed in the place of another workman.

The need to get approval from the government has been criticised inter alia in the doctrine.<sup>213</sup> The prior permission prevents employers from operating in an efficient manner. The general opinion is that the government rarely gives the approval. However, statistics from last years show that this might not be true.<sup>214</sup> Moreover, the permission is regarded to be unnecessary since workers would in any case be entitled to compensation in accordance with chapter 5A of the Industrial Disputes Act, and he or she can also himself or herself challenge the action of the employer.<sup>215</sup> There are even

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<sup>209</sup> Goyal, p. 67.

<sup>210</sup> Monte, p. 1129.

<sup>211</sup> Hazra, p. 75.

<sup>212</sup> Hazra, p. 75.

<sup>213</sup> Charya, p. 93.

<sup>214</sup> Venkata Ratnam (III), p. 190f.

<sup>215</sup> Charya, p. 91.

proposals to drop these provisions.<sup>216</sup> There is also a bill from the central government, which suggests that the number of workers should be increased from today's 100 to 1000 workers concerning the need for prior approval, which have been severely criticised by trade unions.

### **6.5.5 The Employees State Insurance**

Provisions on social welfare for the workers can be found in the Employees State Insurance Act from 1948. The purpose with the Employees State Insurance (ESI) is to bring social justice to the poor labour class.<sup>217</sup> Both the worker and the employer finance the insurance. The contribution from the worker is 1.75 % of their monthly wages, and the employer pays 4.75 % of the wages to the insurance. The employer must keep record of all the workers, which includes information on the paid wage.<sup>218</sup> ESI is only applicable to non-seasonal factories that employ at least ten workers. Furthermore, workers earning more than 6500 rupees per month are excluded from ESI.

The act provides different social benefits to the insured workers and the state governments also contribute to the cost of medical care. In case of sickness the worker is entitled to receive sickness benefits, and if he or she would suffer from an injury in the course of the employment he or she is entitled to disablement benefits. The families of the workers will get so called dependents benefits and funeral benefits if the workers would die because of the employment. Women are also entitled to maternity benefits during a period of twelve weeks. Finally, workers covered by the ESI can receive medical benefits such as drugs and medical consultation.

### **6.5.6 Provident fund and the payment of gratuity**

In order to provide for a secure future for retired workers, there are compulsory provisions on provident funds. The rules are in the Employees Provident Fund And Miscellaneous Provisions Act from 1952. The workers start to receive payment from the fund when they retire. If the worker passes away before retirement, his family receives pension. In contrast to the ESI, the payment to the provident fund (PF) is only mandatory for employers when the factory has 20 workers or more. The worker is covered by the PF from the first day of the employment.<sup>219</sup> The wage limit to be entitled to PF is 5000 rupees per month.

The contribution to the fund is eight and one-third per cent of the basic wages according to section 6 of the act. Both the employer and the employee pay this sum. Beside to contribute himself, the employer has to deduct and deposit the contribution from the workers too. Furthermore, the employers must keep records on how much that are paid to the PF for every worker each month, and also pay administrative and inspection fees.<sup>220</sup>

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<sup>216</sup> Abraham, p. 17.

<sup>217</sup> Goyal, p. 104.

<sup>218</sup> Goyal, p. 105.

<sup>219</sup> Goyal, p. 119.

<sup>220</sup> Goyal, p. 120.

There are more laws for the social benefit of the workers. After a long and faithful employment, workers can get gratuity in accordance with the Gratuity Act from 1972. The regulation can be seen as a complement to the PF mentioned above. Workers, who has earned maximum 2500 rupees per month and been employed for at least five years, are entitled to get gratuity when they leave their employment. The amount is based on the monthly wages and the number of years of employment, but cannot exceed twenty monthly wages.<sup>221</sup>

### **6.5.7 Contractors**

The issue of contractors is regulated by the Contract Labour (Regulation and Abolition) Act from 1970. Several definitions are stated in section 2 of the act. A worker is employed as contract labour when he or she is hired either by or through a contractor. Furthermore, a contractor is a person that undertakes to produce a given result for an industry through contract labour or to supply contract labour for any work of the industry.

The act is applicable when 20 or more workers are employed as contract labours. However, it is not applicable for establishments where the work is of an intermittent or casual nature. According to the act itself, this is not the case when the work was performed for more than 120 days in the preceding twelve months, or is of seasonal character and is performed for more than sixty days in a year. In section 10 of the Contract Labour (Regulation and Abolition) Act, the appropriate government can prohibit employment of contract labour in any process, operation or other work. Before prohibiting, the government shall among others consider whether the work is done ordinarily through regular workmen, or whether it is sufficient to employ considerable number of whole-time workmen. In other words, if the work is of permanent nature, contract labour is liable to be abolished.<sup>222</sup> The Supreme Court of India stated in the case *Air India vs. United Labour Union and Others* that contract labourers that have been affected by abolition should be absorbed as regular employees.<sup>223</sup> Moreover, section 12 of the Contract Labour (Regulation and Abolition) Act states that no contractor to whom the act applies shall undertake any work through contract labour except under a licence issued by the authorities.

In some cases, the principal employer also has responsibilities towards the contract labour. If the contractor fails to pay the wages, as well as to provide facilities like rest rooms and first aid, the responsibility goes over to the principal employer.

## **7 Results of interviews conducted focusing on the Indian Garment Export Industry**

Our field study concentrated on the view of the manufacturers in the labour intensive Indian garment industry. Their views are significant because as employers, they implement labour standards and compete in the global market. In this chapter we will describe our empirical findings in India, which

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<sup>221</sup> Goyal, p. 131.

<sup>222</sup> Abraham, p. 18.

<sup>223</sup> Venkata Ratnam (III), p. 273.

we collected through thorough interviews with sixteen garment exporters. As described in chapter one, we tried to verify the findings by interviewing several consultants, buying houses, governmental representatives, international organisations, NGOs, professors as well as trade unions.

In section 7.1 we will give a short overview of the Indian garment export industry. The results from the interviews will be presented in 7.2-7.9. When we mention amounts in Indian rupees in our presentation of the empirical findings, one US\$ was equivalent to approximately 47 rupees in November 2001. In section 7.2 we begin with the attitudes toward working conditions in general, followed by a detailed discussion of the core labour standards, i.e. bonded labour, child labour, trade unions and discrimination, in section 7.3. The following section contains several other problems regarding working conditions that the garment manufacturers face. In section 7.5 we will discuss the important relationship between the garment manufacturers in India and their buyers and consumers abroad. International trade and competition, regulatory competition and the phase out of the MFA are some of the issues in section 7.6. In section 7.7 the social clause and trade sanctions will be discussed from the perspective of the Indian garment manufacturers. Certification and social labelling have been mentioned as alternatives to the social clause, which we discuss in section 7.8. Finally, we will render other means to promote the respect for core labour standards and other working conditions that were suggested during the interviews.

## **7.1 Brief overview of the Indian Garment Export Industry**

The garment industry can be seen as a part of the textile industry, which as well as garments include products like silk, cotton, wool and other fabrics. It emerged as an industry in the late 1940s, and became a significant export industry in the early 1970s.<sup>224</sup> The export of garments consists of two kinds of products, which are knitwear and woven wear.

The garment industry is vital for the Indian economy. Together with the textile industry, it employs about eighty million people and contributes to 20 % of the industrial output. It is India's largest net foreign exchange earner.<sup>225</sup> In 1999 the value of the garment export was 5.32 Billion US\$, which constitutes about 14 % of the total export from India. With a share of 2,6 % of the total world garment export, India is among the ten largest garment exporters in the world.<sup>226</sup> The export mainly travels to Europe and North America, although the export to other Asian countries like Japan and the United Arab Emirate has increased. In 1996 the garment export to the European Union was almost 45 % of the total Indian garment export, followed by about 26 % to the United States.<sup>227</sup> As mentioned, the garment industry, as well as the whole textile industry, is very labour intensive. Therefore it has been a natural first step towards industrialisation in developing countries.<sup>228</sup> Accordingly it is not unusual that this sector has been and still is important for India's economy.

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<sup>224</sup> Kruijtbosch, p. 21.

<sup>225</sup> Debroy, p. 78.

<sup>226</sup> Agrawal and Singh, p. 5.

<sup>227</sup> Statistics from the homepage of the Apparel Export Promotion Council ([www.aepcindia.com](http://www.aepcindia.com)).

<sup>228</sup> Debroy, p. 75.

The Indian garment export industry is mainly located in seven centres, namely Bangalore, Chennai, Delhi, Jaipur, Ludhiana, Mumbai, and Tirupur. Two thirds of the export comes from Delhi and Mumbai.<sup>229</sup> As explained in chapter one, we focused our study on the garment export industry in three of these centres, namely Delhi, Jaipur and Ludhiana. Furthermore, buying houses that purchase garments from the manufacturers are mainly located in New Delhi. In Delhi and Jaipur, the manufacturers are specialised in making garments using a lot of handwork, complex styles and lightweight fabrics. The speciality in Ludhiana is woollen and cotton knitwear.<sup>230</sup> Primarily the garment export consists of cotton-made garments, as opposed to synthetic made garments.<sup>231</sup>

The focus of the Indian garment export is on summer and spring clothes.<sup>232</sup> Accordingly, the garment export industry is characterised by a high degree of seasonality. It affects the employment of workers, which we will discuss in section 7.4 more in detail. Briefly it can be mentioned that the use of contracted labour is common. Moreover, many workers are paid on a piece-rate basis rather than on a monthly basis.

In 2001, more than 23,000 garment exporters were registered in India, of which about 20,000 are merchant exporters and approximately 3000 are manufacturing exporters. It was the allocation of quotas to different categories of exporters that lead to the high number of garment exporters. Merchant exporters do not have their own production lines, but instead they secure the orders and sub-contract to production units. Manufacturing exporters have the facilities to produce the garments themselves. There are combinations of these two types of exporters; a manufacturing exporter can for instance sub-contract different parts of the production process instead of maintaining it in-house.<sup>233</sup> Smaller units constitute the base in the system of sub-contracting, and they provide the exporters with different kinds of services in the production process. Hence, the garment sector consists of a high number of small units, and sub-contracting is very common. The garment industry is either located in industrial areas, or in residential areas.<sup>234</sup> The big garment manufacturers only constitute approximately 15 % of the total number of manufacturers. However, even if they are not that many they stand for a major part of the garment export.<sup>235</sup> Another characteristic of the Indian garment industry is that very few exporters sell in the domestic market, and clearly very few domestic producers do export.<sup>236</sup>

Garments can be manufactured in two different ways. The assembly production line is one form, which involves specific categories of workers constituting every stage of the production. In other words production is split up in independent stages. These entail steps pattern making, cutting, tailoring, thread cutting, zipping, button stitching, checking, ironing, and finally packing. This form

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<sup>229</sup> Agrawal and Singh, p. 3.

<sup>230</sup> Agrawal and Singh, p. 8.

<sup>231</sup> Banik and Bandopadhyay, p. 20.

<sup>232</sup> Debroy, p. 79.

<sup>233</sup> Kruijtbosch, p. 27.

<sup>234</sup> Interview on 24 November 2001 with Mr Khan at ASK.

<sup>235</sup> Interview on 30 October 2001 with Shubi Singh.

<sup>236</sup> Debroy, p. 79.



of production is more common in larger factories. The other method is called complete ready-made production, whereby an individual worker then makes the whole garment.<sup>237</sup>

## 7.2 Attitude towards working conditions in general

### Manufacturers' views

Regarding the importance of working conditions and human resources, 11 of the manufacturers we visited thought that these are important issues today, two were more hesitant and two disagreed. Moreover, seven of the manufacturers thought that there has been a major improvement and five said that there have been some improvements as far as the working conditions are concerned the last 5-10 years.

Several manufactures explained that most managers today understand the value of good working conditions and that "a happy worker is a good worker". 12 of the manufactures said that increased working conditions definitely improve both quality and productivity and that they are necessary components to be competitive in a globalised market. However, the views differed as far as if it is costly to increase the working conditions. Five thought that it is costly, four said that it is only costly to some extent and three did not think that improved working conditions are costly at all.

Social issues used to be neglected but the focus has turned to this area and almost all of the manufacturers thought that the physical working conditions such as light, ventilation, sanitary and safety measures have improved over the last 5-10 years. There have been general improvements of the working conditions and a couple of manufacturers thought that it could be because the new generation of managers has a different view on labour. Another aspect mentioned is that the garment industry is not very organised, but one manufacturer thought that it is getting better and thereby the working conditions improve as well. Several manufacturers pointed out that the workers are human beings and if it is neat and clean in the factory the workers work more efficiently. One manufacturer expressed that the worker should be able to focus on the work and this is only possible if he has no other troubles on his mind. One of the bigger manufacturers in Jaipur pointed out that it is also important for the production that there is at least a small career possibility for the worker. Hence, a worker must know that good performance could bring a brighter future within the company and therefore they make sure that good workers advance to e.g. supervisors.

Two manufacturers said that it is indeed costly to build for example emergency exits or to pay double overtime but that it is finally a question of mentality. A manufacturer in Ludhiana explained that not all understand that when one invests in e.g. toilets on every floor, it will not only be more hygienic and comfortable for the workers, it will also save time and make the production more efficient. As an example of non-costly measures, a manufacturer told us that his company had hired a medical doctor for only 1000 rupees, who gave a few workers in every department two days of medical training. The manufacturer, whom had been working in the family run company for over two decades told us that a lot of changes have taken place over the years. The latest steps had been

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<sup>237</sup> Kruijtbosch, p. 28.

to hire more workers daytime in order to get rid of unnecessary and unhealthy overtime. This brought better quality and productivity and a positive side effect was that once the number of overtime hours was reduced, they could afford to pay double for overtime, which is required by law.

Four manufacturers had a more reserved attitude towards working conditions. Three of them believed that good working conditions improve both quality and productivity and that the employer has a social responsibility but that improvements must be introduced gradually. One smaller manufacturer in Jaipur explained that he had tried to take care of the workers since the importance of human resources was clear to him from the very beginning. However, when he started the company, he could initially not afford to pay neither social security, nor he could afford to pay the workers off-season, because every improvement cost money. The second manager, who today has units in both Delhi and Ludhiana, told us that he had started the company in two rooms. He said that one must realise that without money, one cannot help the workers even if one wants to. The third manufacturer, with an export unit in Ludhiana, agreed and said that he and his brother had started very small and could not do everything they wanted regarding working conditions in the beginning. Gradually they increased the working conditions, started to pay to the provident fund and to the employees state insurance, gave the workers interest free loans for scooters, and today they plan to provide the workers with subsidised lunch.

One manufacturer in Delhi thought that most of the changes only constitute a cosmetic change. The set working conditions by European and American buyers has not affected the productivity at all and it has hardly affected the quality. However, he did think that working conditions and human resources are an important moral issue, but the working conditions should be at par with the general living conditions in the country in question. In order to get the maximum productivity and efficiency the worker must feel comfortable, which they normally do if the conditions at work are better than what they are used to in their homes. However, the working conditions should not be set to the standards of living in the Western Hemisphere nor should the American's needs be central, but those of the Indian workers. Hence, the company tries both to comply with the labour laws and to satisfy the workers needs, not somebody else's.

### **Buying-houses, consultants and others' views on the attitude towards working conditions in general**

All buying houses, consultants and NGOs recognised the positive effect good working conditions had on both quality and productivity, though some were also concerned about the costs connected with the improvements. Mr Kohli at World Fashion Exchange and Mr B.P Mukherjee at the Rajasthan Chamber of Commerce and Industry (RCCI) were most hesitant as to what extent better working conditions improves quality and productivity and to what extent it only brings higher costs. Mr Srivastav at the buying house KSP said that the productivity increases when the workers are happy. Nevertheless, improved working conditions are most of the time equivalent to higher costs, which has to be covered by the marginal. Mrs Palmqvist at H&M agreed that there is a certain cost involved when reaching desired working conditions such as extra emergency exits, dining room, and

more space between the machines. These are however necessary long-term investments and during the last three years the quality has improved and much is due to improved working conditions. Mr R.S. Antil, director at the Institute of Labour Development, agreed that one needs money to improve the working conditions but that these types of investments are necessary since a good working environment results in a better production.

If the efficiency increases, they can offer better prices, and according to Mr Sahni at KSA there are three main ways to gain higher effectiveness: One can increase technology, train the manpower or tighten the supply chain. Mr Arora at the United Nations Industrial Development Organisation (UNIDO) in Ludhiana, said that the working conditions by those manufacturers that export to Europe are rather good due to the pressure from the buyers and because it is necessary to maintain high quality. Mr Sharma and Dr Bryden at SGS pointed out that the buyers do pay attention to the working conditions, such as working hours, since it affects quality. With international competition, it is only a matter of who understands the value of better working conditions faster and in order to survive exporting companies have to improve their standards.

Both Mr Singh at UNIDO in Delhi and his colleague Mr Arora in Ludhiana had noticed significant changes of working conditions within the Indian garment industry. Two years back it was even difficult to talk to the management about these issues. Mr Saksena at the Textiles Committee also thought that views of the management notably changed from 1994 and onward. The Textiles Committee opened its lab in 1996 and in those days people were not aware of the importance of good working conditions. Today they realise that it is important with job-satisfaction as well; otherwise a worker cannot produce the right quality. Mr P.N. Panday, deputy director at the Industries department of the Rajasthan government, had noticed gradual improvements as far as wages, working hours, overtime payment, weekly rest, and working environment is concerned during the last 20 years. There are generally very few complaints within the garment industry, according to Mr R.P. Pareek, Joint Labour Commissioner in Jaipur, i.e. labour inspector. The garment export units are definitely considered to be a good workplace. The working conditions have to be good to meet the standards. He furthermore thought that the work done by different NGOs, as well as the increased literacy rate among the workers, have resulted in a raised awareness among the people and among the employers. Mr Sharma and Dr Bryden confirmed that the raised working conditions have led to an improved quality level the last 5-6 years. The companies start to look after their people and the standard of work ethic is improving. However, this is only valid for the exporters; to affect those who produce for the domestic market is a different issue. They did not believe that the better working conditions would have a spillover effect to the domestic market. Mr Sahni on the other hand was optimistic and confident that the changes will spread from the export sector to the domestic manufacturers. It is important to talk about these issues and to raise the awareness and to create pressure.

Mr Khan, director of the NGO Association for Stimulating Know How (ASK), said that the situation regarding working conditions are not the best in small units located in the residential areas. The situation, and the problems, is different in the industrial areas where the physical working conditions

are good from the beginning since the facilities are designated to be a factory but where the situation changes when the production expands. Instead of adding facilities they add workers and if the factory then accommodate 300 workers instead of 100 as it was designated for, the working conditions deteriorate when it becomes overcrowded. The reason for not investing in new facilities, as well as the reason not to employ workers on a regular basis, is that the order may be dropped next day. Hence, the main problems are not the physical working environment but the lack of security among the management and consequently among the workers.

Mr Sahni at KSA and Mr Kapur, consultant at the Surya Marketing and Engineering Services, thought that the average garment factories have decent working conditions, but not very comfortable or ideal. However, a lot of positive changes have taken place the last five years as far as working conditions are concerned. There is more focus on this issue today and workers, supervisors and management are now realising the value of a good working environment. The next important step is when employers and workers realise that it is not enough only to be comfortable. Mr Kapur pointed out that it is only half the job to create better physical working conditions; the manufacturers also have to pay the workers more so they can live a good life and improve their general living conditions. Mr Sahni added that it is even more important to feel happy, safe and to feel as a part of the system. Furthermore, one has to spend more money on humans than on object. When a company opens a business they never question the purchase of a big conference table, but when it comes to human resources they count every penny. Job-security, i.e. to be regularly employed and to receive training, is more important than getting little higher salaries.

### **7.3 Attitude and thoughts regarding the core labour standards**

#### **7.3.1 Bonded labour**

##### **Manufacturers' view**

Not a single manufacturer had even heard about the usage of bonded labour within the garment export industry. Moreover, they all claimed that bonded labour had never been used and that bonded labour is no issue in the export garment industry.

Needless to say, all manufacturers thought that bonded labour is wrong and that such a usage constitutes a severe violation of the fundamental rights. Three manufacturers found bonded labour to be such a severe violation that trade sanctions should be used against countries alternatively against companies that use bonded labour. One manufacturer thought that the WTO should find out means to monitor a social clause. Some manufacturers thought that China was able to produce to low prices due to bonded labour. One manufacturer disagreed and said that perhaps bonded labour exists in some remote areas in India, but it is not possible to use bonded labour in the industries and consequently he was sceptical if Chinese garment manufacturers were able to use bonded labour.

##### **Buying houses, consultants, NGOs and others views on bonded labour**

Mr Kompier, specialist on international labour standards at the ILO in Delhi, said that although bonded labour is not a problem within the garment industry; the Indian government denies that there

are any widespread problems with forced and bonded labour. The official number is approximately 200,000, but according to Mr Kompier other estimations indicates that there are between 1.7 and 10 million people used as bonded or forced labour today in India. Mr Tapiola, executive director for the ILO division Standards and Fundamental Principles and Rights at Work in Geneva, added that the ILO has had problems particularly with India and its present government. It denies the problem with bonded labour because they are afraid that if they would openly admit it, it could be used against them.

As far as the garment export industry is concerned all buying houses, consultants, NGOs, professors and governmental representatives verified what the manufacturers had said; bonded labour does not exist in the garment export industry. Mr Sachdev at the trade union AITUC told us that they have not come across a single case of bonded or forced labour within the garment export industry.

One NGO and one buying house did mention one problem within the garment industry in general that resembled bonded labour. Mr Khan at ASK has come across companies where they provide housing for the workers and he is negative to this type of facilities because there is a risk that the workers cannot move or talk freely. Hence, even if this is not bonded labour it resembles captured labour. Mrs Palmqvist at H&M has not had any problem with bonded labour in the garment export industry in India. However, she also told us that in some countries she has witnessed factories with housing inside the factory premises, which were very small, dirty and crowded and the workers were not allowed to exit unless it was to participate in religious activities.

### **7.3.2 Child labour**

#### **The manufacturers' views**

According to the manufacturers there are no children employed in the garment export industry, with perhaps an exception for the home-based industry. All manufacturers opposed the worst forms of child labour and thought it should be completely abolished. Ten manufacturers definitely thought that child labour should be abolished, and one manufacturer even thought that a social clause would be a good thing against those who used child labour. Five were a bit more hesitant towards a total abolition due to the present social and economical situation in India. None of the employers said they employed any children, and they were all very careful not to be connected to the use of children in their production.

Child labour in the production is associated with very bad image and several manufacturers told us that even those buyers that showed no general concern about working conditions did normally ask if the manufacturers used child labour. Two companies in Delhi told us that there were times when manufacturers had suddenly lost buyers because the buyer had come and seen small boys bring tea to the workers. Accordingly, it took long time until they could convince the buyers that the child was not employed by them, but worked for a restaurant outside. Most of the companies did not allow anybody below the age of 18 even to enter the factory premises, and at a couple of companies we saw big boards at the entrance saying the same. However, one manager told us that his personal

feelings were that it depends on the type of work if child labour should be allowed. As long as it is not hazardous, for example to deliver newspaper and work in McDonald's, it should be allowed.

One manufacturer in Delhi thought that as far as child labour, bonded labour, freedom of association or discrimination is concerned it is not something that the garment industry in India should worry about, since these malpractices are not prevalent in today's garment export industry. According to him most exporters of today already understand the importance of the norms set forth by the United Nations and the international community. Another Delhi manufacturer said that child labour only occurs in rural areas of India where families cannot afford to pay neither education nor food. 10-15 years ago nobody looked into working conditions but at present, the working conditions are good and he agreed that there are no children employed in the garment export industry.

The person responsible for banking and commercial in a company with factories in both Ludhiana and Delhi said, when we visited the Ludhiana unit, that they adhere to all international restrictions and standards, such as child labour, fire fighting equipment and well-lighted and ventilated workplace. Later we met with the general manager in Delhi who confirmed that they do not employ child labour. However, he said that one could not stop child labour in general. He continued to tell us that his family runs two private schools with 1300 children. Today 40 of the workers' children attend this school and his company pays the monthly fee of 500 rupees. The education is very good and he felt very proud when one of the worker's children got 92 points out of 100 on the national board exam. Nevertheless, when it comes to children from poor families that do not have access to any formal schooling he thought that it is better if the child works, than if it is out on the street begging. Most important is that the children learn a skill and are upgraded.

One of the younger managers in a company based in Delhi agreed that child labour should not be used. However, should a 10-year old child with poor parents go to school or earn for the family? The world should ask this question. In many countries like Bangladesh, where education is not available, it is better to earn money with dignity than to starve and he did not believe it to be right to punish children that are employed by firing them. A Jaipur manufacturer tries to encourage the workers to send their children to school. He considers giving those workers who send their children to school a slightly higher salary. However, he said that we must realise that the situation in the western societies is different. In poor countries everyone in the family wants to be a source of income, even the children.

Two manufacturers in Ludhiana said that, due to production reasons, it was not possible for them to employ children. However, it was sometimes moral difficult for them to turn down a worker who begged them to employ his children, since the children had no access to descent education and had to learn a skill. The educational level among the workers is really poor and the general manager told us that he tries to convince the workers that they shall let their children reach at least 10th grade before they send them to work. Another garment exporter in Ludhiana said that both bonded labour as well as child labour is wrong. It is not possible with child labour or bonded labour in the industries but it might still exist in some remote areas. None of the manufacturers in Ludhiana

employed anyone below the age of 18. However, another manufacturer added that one might find children working in the home-based industries in the villages.

### **Buying houses', consultants' and others' views on child labour**

The general opinion among buying houses, consultants, governmental representatives is that there are basically no children involved in the garment export industry. According to professor Debroy, director at the Rajiv Gandhi Institute for Contemporary Studies, less than 5 % of the child labour can be found in the export industry and that it is not an issue in the garment export sector. Some of those we spoke with in India opposed a total ban, and thereby also the pressure from the western countries, against all forms of child labour without taking into consideration the different social problems within India. Moreover, Mr Tapiola, executive director at the ILO division on Standards and Fundamental Principles and Rights at Work in Geneva, together with Mrs Diaz and Mr Ahmad at the International Textiles and Clothing Bureau in Geneva, said that poverty is the main cause for child labour. According to Mr Tapiola, child labour and bonded labour are not a problem in the export industry.

In Ludhiana we met with Professor Pratibha Goyal at the Punjab University, who had conducted the first study on child labour in Punjab. The study covered 20 manufacturers that were totally or partly engaged in export. She had found 4,7 % of the workers to be child labourer, i.e. persons who have not completed their 14th year. She found that the majority was between 12-14 years old. Out of the 90 children that she found, 9 were girls. They came with their mothers in order to learn the skills of embroidery. The children were mostly engaged in unskilled activities such as sweeping, label stitching, washing, packing, loading and unloading. Approximately a third was engaged in skilled activities such as operating linking machines, folder machines, winding yarn or pulling thread. The children are paid the same as the adult, but some are on piece-rate and then they earn less because they are not as productive. Professor Goyal verified that the manufacturers in Punjab did not have to engage children but that they give in when poor migrant workers plea for them to employ their children. 77 % of the workers in Punjab are migrated from Uttar Pradesh, Bihar and Nepal. The Punjabi workers normally send their children to school but the drop out rate is extremely high since the family lack orientation towards education. The families cannot afford to send their children to private schools and the conditions in the public schools are very poor. The children want to stay in school but at the same time they would like to learn something that can make them employable further on. The families did not think that the education could lead to a future job. Professor Goyal understood that the children must learn an art but they should not be deprived of education. Hence, the government and NGOs must focus on quality in the formal education.

Mrs Shubi Singh, researcher and consultant, said that in e.g. Jaipur, one can find smaller factories with child labour, but children are not used in the export units. Moreover, one will rather find child labour in residential and rural areas than in factory areas. Mrs Singh had also noticed a difference between northern and southern India. In contrast to Tirupur in southern India, no child labour will be found in the export garment industry of Delhi.

Mr Jain at the buying house Primetex said that child labour is not being used in the garment industry, and Mr Srivastav at the buying house KSP added that neither forced nor child labour should be allowed anywhere. Mrs Palmqvist at H&M admitted that they have had problems with child labour but she said that there have been remarkable changes since the introduction of their codes of conduct. They demand a minimum level of 14 years for all the workers by their suppliers. However, if they would find any person below this age, the last thing they would want is for this child simply to be dismissed. Instead a NGO would be contacted to make sure the child could go to school. The supplier receives a very strong warning, and if this would happen repeatedly, they would get rid of that particular supplier. Mrs Palmqvist considers it to be easier to work in big cities, because people there know about negative effects of child labour.

When the buying house Li & Fung check a factory, they also check if child labour is being used, and they never accept child labour. Personally Mr Singh at Li & Fung feels that if parents give their consensus to letting their child work, they are poor and there is no school available, then it is better for the child to work. It will learn a skill and it will not have to beg on the street. He questioned if it is really correct to say no if the working conditions are ok and the child is 12-14 years old with no other chance of education. The child must desperately learn a skill in order to survive. If there is no formal education available, what is the answer? The western people only say "you cannot do this, you cannot do that". It would be of greater interest for the developing countries to find out what they actually *can* do.

Mrs Shubi Singh explained that part of the problem is that the parents are so low paid. A semi-skilled worker for example gets approximately 2400 rupees per month, but it is not sufficient to take care of his family responsibilities, e.g. rent, clothes and send the children to school. They cannot even always afford milk. Mr Sahni at KSA added that it is important to understand how the society is organised and how the people look at work. Most of the Indian population is used to the concept of having the whole family, including the children, working since they used to be farmers. The only changes for them when they work in the industry are the fixed working hours. Only those who have money or a social security can behave differently.

Mr Kohli at World Fashion Exchange thought that a strict prohibition of child labour is a good concept in the west, where there are schools. However, in developing countries there are things that are worse for a child than to work in a factory. It would be good to totally ban child labour in the developing countries as well, provided that there are other alternatives for the children. According to Mr. R. P. Pareek, Joint Labour Commissioner, employers in general are conscious about child labour today and consequently children are not used within the garment export industry. However, countries and companies in the west use the issue of child labour for protectionism purposes. It is easy to claim that child labour is used, although it is not true. It is simply a conspiracy against Indian employers in order to protect their own industries. Mr P.N Panday, deputy director at the Industries department of the Rajasthan government, agreed that children are not involved in the export garment industry, but asked why the western countries find it so harmful if children and women work part time to contribute to the family's maintenance.



Mr Saksena at the Textiles Committee recognised that child labour is a problem in the domestic sector but pointed out that it is totally banned in the export industry. Mr K.L. Mahendra, general secretary of AITUC, said that though child labour is not common, it is still there. Mr D.L. Sachdev at AITUC added that in order to eliminate child labour one must first introduce compulsory primary education and secondly increase the wages of the people living below the poverty line. He was also in favour of different types of seminars in order to increase the awareness among employers.

Regarding different certification systems, they all include the prohibition of child labour according to Mr Sharma and Dr Bryden at SGS. However, they thought that it is a self-regulating system and that exporting companies have to improve their standards, with or without certification, in order to survive. The use of child labour has decreased along with increased quality pressure since a child cannot perform in a satisfying way.

### **7.3.3 Trade unions**

There is no institutionalised union for the garment industry. Instead there are five main national unions, as well as approximately 50,000 small registered unions, albeit not all of the registered unions are active. Out of these the following five trade unions can be considered to be major: India National Trade Union Congress (INTUC), Bharatiya Mazdoor Sabha (BMS), Hind Mazdoor Sabha (HMS), All India Trade Union Congress (AITUC) and the Centre of India trade Union (CITU). All of them are linked to various national political parties.<sup>238</sup>

#### **Manufacturers' views**

All manufacturers were very sceptical and negative towards the trade unions. Most of them thought that the Indian trade unions are not concerned with the workers at all. Rather, trade union leaders are into "money mining". They are active and corrupt and pump money both from the workers and from the employer. The trade unions make no effort to keep an effective and disciplined labour.

Furthermore, manufacturers are of the opinion that union workers do a mediocre job of representing workers and that labour welfare is the least of their concerns. Consequently, both the workers and the exporter suffer and according to the manufacturer, the only one who benefits is the labour union.

In Ludhiana and Jaipur there are no active trade unions in the garment industry, consequently none of the factories that we visited had any in-house trade unions or any workers belonging to out-side trade unions. One exporter said that he did not think that there is much unionisation in Punjab, or that part of the country in general, and that the trade unions do not do much good for the workers. One of Jaipur's bigger exporters told us that six or seven years ago the trade unions from outside tried to get in and start to misguide the staff. "We told them that we were not happy with them". He continued to tell us that there is no flexibility if the unions are involved and one cannot survive without quality and on time-delivery. Sometimes there is a need to work overtime due to shipment. "When there are in-house unions they prevent you to work even five more minutes after 6 p.m."

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<sup>238</sup> Naidu, p.82.

Another manufacturer added that the trade unions never benefit the workers since they only want to be benefited personally.

The manufacturers we met with could not find any room for the Indian trade unions of today within their garment industries. They said that trade unions are generally very active and corrupt. One general manager, an owner of units in both Ludhiana and Delhi, thought that trade unions are needless in the garment business since there is a peak season with migrant labour and the number of employees varies. He ascertained that if the workers are satisfied with the owner of the factory, the unions have no role to play. It is a self-regulating situation, because if you do not have a good environment, you cannot have good production. The company has no court-cases running against them. The workers are paid well and are well looked after; "they are human beings". However, he gave somewhat contradictory information when he told us that in Okhla, where the unions are stronger and the labour inspections more regular, the company is watched more closely. To this effect, all of his 160 workers were regularly employed and receive monthly salaries as well as Employees State Insurance (ESI) and Provident Fund (PF). This stands in sharp contrast to the employment situation in the Ludhiana unit where less than 10 % of the actual regular workforce is officially employed.

The major areas for garment export in and surrounding Delhi are Okhla, Noida, Maiapuri, Naraina and Gurgaon. There are very few unions, but a high number of migrant and contracted labour in Noida. Migrating labour is more vulnerable and feels deserted. In Okhla, workers have been there for a while and are more aware of their labour rights and of the unions' presence.<sup>239</sup> Another industrial scenario, which is exemplified in Delhi, is big units in residential areas. In for example East Kailash one will find several two stores buildings where garment manufacturing takes place. Unlike e.g. companies in Okhla, Naraina and Noida, these are not registered companies and they lack proper legal identity.

A Human Resource Director in Okhla complained about the multiple trade unions with an anti-company attitude. In one unit he had 300 workers regularly employed and another 500-700 on contractual basis. Since the Trade Unions Act only requires any seven workers for registration of a trade union, he would not benefit from negotiating with one group since so many other trade unions waiting around the corner. Even if the management did negotiate they would never be guaranteed any piece-obligation. The Human Resource Director told us that he had problems with outside unions. They had a case going on, where a worker who only had been working at the company for 2-3 months claims that he had been employed for much longer but without salary. The worker had gone to an outside trade union, which consequently went to the labour inspector.

A manufacturer in Noida told us that if one employed as many as 200 people, is it impossible to have unions, since they only make trouble. However, one cannot escape private unions outside of the company. The trade unions are strong and are more often bad for the workers than good. Hence,

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<sup>239</sup> Interview on 30 October 2001 with Shubi Singh.

the trade unions push the workers to make some trouble so the company has to fire them, and then they will get compensation of which the trade unions get 40 %.

In Naraina we met with one of India's oldest, and previously biggest, garment exporter. The founder and managing director did not hide what he felt for the unions. At one time they had 3500 workers employed: "I have had my taste of union and of strikes. I had non-unionised staff attack unionised, and vice versa". Today do they only employ 500 workers and this time on contractual basis only. "When I do not have work I call it a day" said the general manager and points out that this is crucial since he only has peak production 6-8 months per year. He does no longer allow his workers to unionise and said that the problem with trade unions has almost vanished today in the garment sector.

Most of the problems are individual, i.e. in advance payment, fights between two workers or that a worker wants extra leave because of sick family members, and it is rare that the management has to deal with problems on collective basis. As examples of problems they mentioned the collective demand for a water-cooler or better lightening. Instead of turning to the trade unions, the workers turn to the labour officers or come to the management with their problems through the supervisors. Several managers told us that they try to create an atmosphere where no complaints are necessary.

None of the companies that we interviewed had any collective bargaining agreements. However, one medium size exporter in Jaipur said that the workers did come to him in group to discuss their salaries and that they received a yearly increase of 10 %. This manufacturer felt that the contact between him and the labour was good, he had no strikes and the supervisors handled 90 % of the problems.

### **Buying houses and consultants' views on trade unions**

All consultants and buying-houses expressed their concern about the trade union of today in India and confirmed most of the criticism mentioned above. However, they shared a more distanced and nuanced approach towards the trade unions than the manufacturers.

Mr Jain at Primetex told us that one of his suppliers actually has an active in-house union, but the relationship between the union and the management was not very healthy. Regrettably the Indian trade unions do not work very smoothly and according to Mr Jain they are surrendered by a negative aura. Mrs Shubi Singh, researcher and consultant, agreed that the picture of trade unions in India is bad; the trade unions are politically active and get militant. The approach of the producers towards unions is that they would rather close the factory than have in-house unions. Workers are also not interested in joining the trade unions. If they bring a problem to the trade union they will stand without work for three months. Sometimes the trade unions side up with the employers and if they win any money later on the trade union take approximately 40 %. Mr Khan at ASK said that everything negative that the employers had told us about the trade unions were absolutely true; they are very political, criminal and do not contribute to the growth of the industry and he agreed that workers do now refrain from joining the unions. Mrs Singh could not recommend any good trade

union since she considers the trade unions in India to constitute a black picture. Nevertheless, she mentioned one successful case where the trade unions had helped the employees. A company within the EPZ in Noida, had not allowed union members inside the compound. However, the trade union CITU had their presence at the gate itself. This was taken up by media and the EPZ authorities and pressure was put on the factory to regularise some of the employees and give them the statutory benefits under e.g. the Payment of Wages Act and the Factories Act.

Mr Sharma and Dr Bryden, consultants at SGS, also thought that trade union leaders are using the workers to get their own needs satisfied. It is not good when the trade unions are too strong. The trade unions were very strong in Calcutta in the state Bengal (East India); they asked for too much and were unrealistic so the industry moved to the south. The unions are very active, too active according to Mr. Srivastav representing the buying house KSP. He ironically added that the trade unions could write a book called "How not to work". Manufacturers try to make friendlier relationships with the unions. They ask for more constructive thinking trade unions. Mr. Srivastav suggested that one way is to let the workers elect representatives among themselves. The problem is that these representatives would only constitute a smaller unit of a bigger politically linked trade union. If the party is in opposition, the union connected to it will be used as a tool. The trade unions will not overlook anything and since the employer cannot possibly observe all the laws, they will make trouble e.g. by encouraging strikes, in order to disturb the government.

Mr Kapur, consultant at Surya Marketing and Engineering Services, had a somewhat more nuanced view on the trade unions. According to him unions are quite active, though not in small-scale units. If unionism is good or bad varies, it depends on the attitude of both the unions and the management. Mr Khan at ASK explained that much violence surrounds the trade unions, however both from the union activists and from the management. In the late 80's Mr Khan had started to work for a manufacturing company when the workers started to get organised and the management told his boss to take care of the problem. Mr Khan witnessed how they hired and paid "anti-social elements" to start a fight with the trade union leaders. Stabbing took place, the police arrived and a domestic inquiry, which lasted for 1,5 years, started against the four trade union leaders who were suspended from their workplace. "This happened 14 years ago and it still happens today". Mr Khan said that the trade unions today are bad, political and criminal and that there is violence in both ends. Mr Sharma and Dr. Bryden added that it would bring the trade unions bigger benefits if they changed their attitude and applied a broader perspective on the garment industry, the company and the country economy. Union leaders only look for their own survival and corruption is a problem. For example, "if we negotiate salaries with the workers representatives and give them one final raise of i.e. 10 % they won't be satisfied, they will want more negotiations. However, if we only give them 3% raise at first, and then negotiate with them another two times and give them another 3 % each time, then they will be happy." This is very ineffective, costly and time-consuming. The trade unions also have to change their approach towards the "hire-and fire" problem, which we will describe in section 7.4.3. According to Mr Singh at the buying house Li & Fung, the most negative aspect of trade unions is that they influence people to non-performance because the jobs of the workers are secured.

According to the books, H&M's suppliers must allow trade unions to be active, a reason why they cannot use certain suppliers from Bangladesh Export Processing Zones where no unions are allowed according to law. Mrs Palmquist told us that in India they have had severe problems with the unions. As to her knowledge, none of their suppliers had any in-house unions. Once, when she visited a factory in Okhla industrial area, she and the management had to lock themselves in a room to be safe. The union was like a mob, more or less tearing down the factory. They did not get out until the police had arrived. Hence, it was difficult to always make the suppliers allow unions as such, but a minimum requirement is that the workers are allowed to organise themselves.<sup>240</sup>

Mrs Shubi Singh separates trade unions and the freedom of association. She thinks that the freedom of association should be recognised within the factories, but without the involvement of unions. Instead the workers could elect representatives from each floor that could represent them and their problems. Another idea could be to import trade unions from the western countries in order to show a positive example. However Europeans must be aware that people in India are not used to demand their rights in the same way that Europeans are due to humbleness and other cultural reasons. It is true for other Asian countries as well. Mr R.S. Antil, director at the Institute of Labour Development, told us that there is an existing option for the workers to associate. In Rajasthan annual elections do take place in some medium and large enterprises. The workers elect their representatives on a local level but totally disconnected to any trade unions.

According to Mr. Sharma and Dr Bryden freedom of association must be allowed, but there are different ways to implement it. SGS pointed out that the workers must be able to speak as a group. Good complaint systems as well as an organisation that properly deals with the complaints are necessary. SGS' clients are looking into a system where the workers can put forward their views. There could be something like a suggestion box. If it would be revised properly, it could fulfil the job of the trade unions.

### **Trade unions' views**

We met with the General Secretary Mr K.L. Mahendra and with the Secretary Mr D.L. Sachdev at the national level of AITUC. They told us that the trade unions are very strong in the organised sector in Delhi, however the garment industry is not organised. In the export processing zones there are more or less no trade unions. The workers are only employed for 5-6 months during the peak season and then they move to other occupations, only to return again next year. Since they go from one employer to the other or go back to farming, the worker think it is difficult to join a trade union. Simultaneously, their uncertainty as to job security prevents them of forming trade unions. The general secretary Mr Sachdev understood that the need for manufacturers to occasionally run overtime, but objected to the situation where it has become a daily routine for the workers to work long hours without adequate payment. This also obstructs for the workers to organise themselves,

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<sup>240</sup> Later we met with a supplier where they had un-unionised workers representatives. The managing director told us that he hoped that the workers would not join the classical unions because it would only be an additional cost for the workers – and for the management- without any benefits.

since after 10-12 hours of daily work there is no time for such discussions. Further aggravating is that 60-70 % of the low paid workers are women and it is even more difficult for them to organise themselves because they have so many other family-connected responsibilities. According to AITUC the situation today is very earnest because the level of working conditions is directly linked to the level of organisation. By splitting the manufacturing into smaller units, by employing sub-contractors, by making sure that the workers cannot proof their employment further preserves the low level of organisation.

In Ludhiana we met with advocate O.P. Mehta, general secretary of AITUC in Punjab. He verified that there are no trade unions in the garment industry in Ludhiana, but AITUC and CITU are active in the traditional spinning units. The garment industry is rather new in Ludhiana and it really begun in 1995-1996. Mr O.P. Mehta considers the working conditions to be good in the garment units. The wages paid in this sector are also better, though overtime is not paid double. Furthermore the machine operators are very well paid, but this does not go for the unskilled worker. AITUC tries to get this sector unionised as well, but it is difficult. The employers will throw out the contracted workers if they become members of a trade union. The trade unions in Ludhiana try to educate the workers, out of which 80 % are uneducated migrated labour, about their rights. Mr O.P. Mehta told us that a lot have changed since the days of the trade unions mass-movements in the 70's and 80's. They used to organise mass-strikes every second year, which covered some 30,000 workers. Due to the terrorist movement that took place in Punjab between 1984-1995 there were no strikes. Since 1995 there is a recession in the market and the unions have to be more careful. In order not to harm the industry, they only organise very short strikes –maximum two days long – in the single units. Before 1980 there were fights between members and non-members, but not any more.

Mr O.P Mehta continues to say that when the workers need help they come to the trade union. They pay an annual fee of 30 rupees. Furthermore, 10 % of what the employer has to pay to the worker in compensation goes to the trade union if they win in court. In case of mistreatment the union, or the individual worker, turn to the labour department (assistant labour commission) for labour conciliation with the management. If the dispute is not settled, they go to the labour department who refer to court. However, since the court procedures drag over years they now try to reach a quick settlement in a local court called “lok adalal”. This people court is based on a mutual understanding and the judgement is final and it is not possible to appeal. The court consists of one employer, one labour and one governmental representative. According to Mr O.P. Mehta this court has settled over 3000 cases and it is fast and very fair.

In Delhi we also met with workers and advocates at the All India General Mazdoor Trade Union (AIGM), which is affiliated to AITUC. Advocates Kumar Sharma and Anil Kumar as well as the workers informed us about the different malpractice in the garment industry. Regarding the freedom of association and the right of collective bargaining, they said that the employers discourage the workers to join the trade unions because they know that the unions would inform them about their rights. The workers suffer because they have no job-security. A court procedure takes a long time but is normally decided in favour of the workers, however the employer always enters an appeal

against the decision and a case can drag for almost 20 years. Meanwhile the worker is blacklisted and is unable to receive any other jobs within the industry and face severe difficulties in order to support himself and his family. We spoke to one worker who told us that he was discharged in 1990 and had been unable to get a job ever since. The employers start to harass or discharge the workers if they talk to the trade union, file complaints or start a court procedure. The workers employed on a regular basis stand stronger against the employer and cannot be as easily dismissed.

We met one female worker who had just returned from court because her employer refused to give increase in salary. She had been working for one exporting company as a final checker for the last five years. Her employer knows that she is member of the trade union and the employer does not mind. Approximately half of the 100 workers are member of a trade union, most of them also belong to AIGM, and she says that the five workers who belong to another trade union regret it now since their trade union agreed on lower wages. She said that AIGM's general secretary Mr Pramod Kumar Rajpoot truly cares for the well being of the workers. Hence, when they have any problems they can turn to him, he talks to the employer and if necessary files a suit against them. She told us that the workers are very concerned about the production, because only if the production goes well they have a job. Furthermore, Mr Rajpoot never encourages them to strike. During her five years the workers have only gone on strike one single time and that was to support the Muslim workers who wanted to be able to perform their religious rituals for Namag.

#### **Authorities, institutes and international organisations views on trade unions**

Mr R.S. Antil, director at the Institute of Labour Development, told us that the unions are almost gone within the garment industry. Where the trade unions were active in Rajasthan, the factories have closed and the workers are on the street. The trade unions used to organise strikes on national level, then on state level and finally on factory level. The workers saw that the unions' activities made them loose their jobs. Hence, they have less faith in the trade unions than they have in the management. Today there are trade unions in the medium and large-scale industries but they are not very effective. The employers try to employ a mixture of migrated and local labour in order to prevent the workers from uniting. In the small-scale sector it still happens that a few workers unite and create an unhealthy environment and the employers try to get rid of them.

Professor Pratibha Goyal at the department of business management at Punjab University has recently conducted a survey on workers satisfaction in the hosiery industry as well as a study on child labour in the carpet industry. She told us that though trade unions are active, communism has come down and trade unions are not that strong any more. There are no trade unions in the small-scale industry in Ludhiana. Some trade union leaders are very respected and co-operative leaders. However, there are very few good trade union leaders who work in the interest of the workers. Furthermore most of the workers in Ludhiana are migrated labourers that are not aware of their rights. The employer does not explain their rights because then they start to make demands. The trade unions do not explain their labour rights either because then they could not exploit them for their own purposes. Unfortunately, most of them utilise their position for political motives. The

private sector in India not only discourages unionisation but also harass workers that try to organise or who join a trade union.

Trade unions were only interested in their own demands said Mr Singh at UNIDO. However, changes are taking place now and the trade unions are starting to work in the interest of the workers. Mr Kompier, specialist on international labour standards at the ILO in Delhi, said that the trade unions in India are very weak and weakly organised. ILO tries to change the attitude of the trade unions but it is very difficult because they are rigid with very old trade union leaders. The trade unions leaders still believe in a confrontational approach between workers and employers. Furthermore the employers fear the trade unions. Mr Kompier said that it is hard to name a good trade union, but that there are definitely examples of good leaders. Further problems that most developing countries face are the export processing zones (EPZ). Bangladesh and Pakistan are the worst but the situation in India is not good either. Officially the law is applied but unions have no access to these zones. ILO tries to discuss the situation with the government but it is very difficult.

Mr Tapiola, executive director at the ILO division on Standards and Fundamental Principles and Rights at Work in Geneva, explained that the structure of the trade unions in India is old. In the private sector it is the praxis that is the problem, not the legislation concerning trade unions. Trade unions are not united but divided, which creates problem. In India, Pakistan and Bangladesh the trade unions have not succeeded in organise themselves in order to get a strong negotiation position. However, one shall not blame it all on the trade unions. If employers do not want to co-operate with the trade unions, the result is that trade unions take more extreme positions. Employers also encourage violence between organised and non-organised workers.

According to Dr Kapur at the Punjab University, it is not important to be a trade union leader but to be a leader, since what is good for business, is good for the workers. In Ludhiana there are no trade unions in the garment industry so the manufacturers do not need to split up the production in many units in order to avoid unionisation. Mr Sajhau, executive secretary at the Textiles, Clothing and Footwear Meetings at the ILO in Geneva, said that the cost of labour is not the key issue anymore. Instead good quality and delivery in time are important. Accordingly the companies do not want to be interrupted by strikes, and therefore employers do not want to have any trade unions. The trade unions are linked to political parties. Indian manufacturers would dream of having trade unions as in China, where the trade unions are linked to one single political party, which is controlled by the government.

It is difficult for trade unions to change gear according to Mr Shaheed, director for Promotional Activities of the Infocus Programme on Promoting the Declaration at the ILO in Geneva. Trade unions are good at practising lobbying at national level. However, new issues must be dealt with on the level of the work place, not in the parliament. They should look at what really matters for the workers. If e.g. women are employed, trade unions could focus on crèches and other concrete matters. The entry point for trade unions must be very concrete matters. The big issues in the garment sector due to Mr Shaheed are that the units are relatively small, there is lots of sub-



contracting and contractors are used. The trade unions should consequently concentrate on these issues.

Regarding the suggestion to create new trade unions, Mr Tapiola replied that it involves big risks. It must be done extremely careful because it could lead to trade unions controlled by the employers, which is in contradiction to the whole idea of trade unions, namely that they must be independent. Otherwise it could be as in South America, where the relationship between employers and trade unions is good, but this is only superficial with no factual result for the trade unions. The ILO works on the company level and helps with developing a dialogue and collective agreements, which shall lead to genuine trade unions that are more or less representative for the workers. Moreover, it is important that the workers elect their representatives. Mr Sajhau did not think that the ILO had the capacity to restructure the trade unions as such. Instead the ILO works on strengthening the trade unions, and sometimes even organising them. Within the ILO, ACTRAV works with improving the industrial relations between workers and employers, in the form of e.g. courses on industrial relations and on collective bargaining. The aim is to strengthen the negotiating skills of workers so that they can conclude better and fair collective bargaining agreements.<sup>241</sup>

#### **7.3.4 Discrimination and gender issues**

##### **Manufacturers' views**

The manufacturers did not think that discrimination as such was an issue in the garment export industry and all were of the opinion that any discrimination in respect of employment and occupation should be eliminated.

None of the manufacturers mentioned the caste system when we talked to them about discrimination. However, one manufacturer in Jaipur told us that it was important for them to hire workers from different religious backgrounds to prevent that all left for the same religious holidays. Accordingly, they paid attention to religion when they employed workers in order to keep production running at all times. One manufacturer in Ludhiana told us that most of the workers were migrated labour from Uttar Pradesh and Bihar, some Muslim workers came from nearby places in Punjab. He said that the Punjabi workers are normally more skilled and consequently received higher jobs like supervisors. Most of the manufacturers discussed the situation between men and women in the garment industry, which we will deal with in detail.

Regarding the employment rate between men and women by the manufacturers, three of them employed less than 10 % women, seven employed between 11-20%, two employed between 31-40% and two manufacturers had 50 % women. A manufacturer in Jaipur thought that the reason for employing mostly male workers is that they migrate from the countryside and work when they are free from agriculture. Another manager told us that he had tried to train women, but the interest was very low since they did not like to be machine operators. All of the manufacturers said that the female and male workers that perform the same job also get the same salary. We only saw one unit

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<sup>241</sup> Simon, Workers Activities and Progress Report 2000-2001.

in Ludhiana and one unit in Delhi with female tailors and operators. The problem according to the manufacturers is that the men and women seldom perform the same tasks and that women are into low skilled and bad paid jobs. One manufacturer said that, although sexual harassments sometimes occur, there is no discrimination in general within the garment industry and they try to pay men and women the same but it is difficult since the skills are different. At all the 16 manufacturers' factories the women were primarily engaged in thread cutting, checking and finishing whereas the men were employed as tailors and operators, i.e. more skilled jobs.

One of Delhi's oldest garment manufacturers was not convinced that the problem with lacking equality between men and women was a problem exclusive for the developing countries. Nevertheless, he did say that the value system is different in Asia; the woman feels it is her responsibility to look after the home and that in e.g. China or Japan there are no women in higher positions. He did however feel that changes are taking place in India, at least in the garment sector and as an example he mentioned that the highest supervisor in his factory is a woman. Where there is a big Muslim population, like in Delhi and Jaipur, women are in general not allowed to work outside the home. Especially in northern India within the working class, it is not looked well upon women working. Several manufacturers pointed out that they cannot change the fact that it is socially not acceptable for women to work in the industry and despite their desire to employ more skilled women they cannot.

One manufacturer in Jaipur who tried to take care of his workers explained the situation the least paid workers in the garment industry, the thread-cutters, face. They are unskilled and the most vulnerable in the society. These are normally women, who would not have left their homes unless they were absolutely forced to. They might be divorced; their husbands might be drinking or due to other reasons unable to support them. There are plenty of them, so there is no problem to let them go and to employ new ones during peak-production time. However, to keep them is not very costly because low skilled workers are so cheap, i.e. they are only paid 65 rupees per eight hours plus provident fund and social security, an insignificant cost for the manufacturer that saves them from disaster. The manufacturer asked "if I kick them out, where should they go?" Once the women get old, they are not that productive, but he did not think that it made a significant difference to keep them.

The manufacturers also explained that there are problems involved when employing female workers. One manufacturer said that "they are absent due to childbirth, they loose training and it is hard and difficult for ladies to work late hours." Some employers do not want to employ women due to all problems. Furthermore, the manufacturers complained that women could not work very late after dark due to safety problems when they return home, they are furthermore prohibited to work night shifts and almost all stop working after they get married. Another problem is that the woman traditionally moves in with her husband, which can be in another place, and once married with children they are expected to stay home and take care of their families. A human resources manager in Delhi illustrated the problem when he said that the women are "either illiterate, unskilled or housewives".

Seven of the manufacturers said that they, despite the problems involved, would like to employ more skilled women since they considered women to be better employees. The women are less absent, more loyal, sincere and do not gossip as much as the men do. However, the most severe problem that faced the manufactures when employing women is that they are unskilled and not educated.

In order to receive more skilled women, three of the manufacturers that we met in Ludhiana had sponsored a training program at the Government Polytechnic Institute for Women. The women receive one to six months of training and the program is partly sponsored by the government and partly by the industries. The fund-raising had been done by UNIDO and besides money the manufacturers have donated machines and material. One manufacturer in Ludhiana was positive to the six-month training program because the industry gets better workers and the women will get better paid once they learn how to stitch.

Another manager and his wife that contributed to the training program were rather unusual since half of the stitchers in their newly opened factory were female. Initially, the reason why they wanted at least half the workforce to be female was the advice given from their spiritual leader to employ more women than men. Furthermore, the owners have had positive experiences in their factory in Dubai with female workers, whom they found to be more loyal, better working and less absent than the male workers. The manager told us that they had sent the women to the training school, but that they will need to train the women for another three months before they can employ them. The couple has however had difficulties with the female workers in India since they are not as skilled or experienced as the male workers. They run some overtime, but not more than two hours per day since the women are not ready to stay late hours. Other problems are that the women normally stop working after they get married. Consequently the girls do not stay long in the industry in order to gain experience and might therefore only be able to stitch more easy parts. Their capacity and efficiency is less, hence they receive easier work and earn a little bit less than the men. According to both the spouses, there are no problems between the men and the women and a reason could be that the wife purely works with the women and that they provide certain special facilities for the women such as busses for pickup and dropping, separate toilets and canteens. However, since they do not employ women that bring their children to the factories they did not think there was a need to provide crèches.

The third manufacturer who contributed to the training program thought that the women were as skilled as the men. They would like to keep more women and hence trained some more female tailors in the UNIDO programme. However, since none of the factories in their industrial area of Ludhiana provided a transportation system, they only employ local female workers. Thus, once they start to employ more women, they will arrange for transportation.

### **Buying houses, consultants and others views on discrimination and gender issues**

None of the buying houses or governmental representatives mentioned the caste system as a cause of discrimination within the garment industry. However, Mr Kompier, specialist on international

labour standards at ILO in Delhi, said that the caste system is functioning everywhere and the worst states are Uttar Pradesh and Bihar. Professor Goyal at the Punjab University did not think that castes constitute a problem in Punjab. A few consultants commented the caste system. Mr Bryden and Dr Sharma thought that, despite the fact that the caste system is breaking down, it is still a big problem when SGS e.g. tries to help reorganising companies since some workers do not perform certain work. The consultant and researcher Mrs Shubi Singh agreed that the caste system prevails even today and added that almost every worker comes from lower castes. However she did not think that discrimination is a problem within the garment export industry.

All concerned parties confirmed that there are differences between the type of work that men and women do as well as between the salaries they get, albeit it did not mean that manufacturers discriminated between men and women. The explanations for these difference, as well as if there are regional discrepancies, varied.

The employers want women since their productivity is higher, and they perform more seriously. Mr Sajhau at the ILO in Geneva agreed that female workers are normally preferred in the garment industry because they are more flexible. Dr Chandan Sukhani, president of the Garment Exporters Association of Rajasthan in Jaipur, confirmed that the manufacturers prefer female workers. Mr R.S. Antil, director of the Institute of Labour Development, added that in general ladies are preferred because they cause less problems, are more sincere, can sit for longer hours, do not need smoking pauses, are nimble and shy in nature and are paid less. Moreover, the moment a woman gets married or gets a child, she leaves the job. Consequently there is no problem with firing. Mr Sahni, consultant at KSA, said that the Indian women are used to work hard, even if they traditionally work at home or with agriculture. He mentioned Orissa as an example where the men do not work, only the women do. Hence, the manufacturer knows that if a woman takes a job within the industry, she clearly understands that she has to work hard and that she has to do overtime hours if necessary. He furthermore thought that it is only positive to hire women since they normally work between the age of 19 and 25 when they are young, interested and energetic. Mr Sahni also pointed out that it is not necessarily negative for the companies that women stop working once married. On the contrary, it is often cheaper to hire women, because men work longer and reach 30-50% higher salaries.

Mr R.S. Antil said there are a few laws that restrict women from working, e.g. they are not allowed to work nighttime and are therefore excluded for works that require night shifts. Mrs Shubi Singh agreed and said that as far as female workers are concerned, one problem is that the law prevents them to work overtime and night-time, another problem is that it is practically difficult for them to travel home from work, particularly when it is dark.

According to professor Goyal, women labour is quite cheap in the home-based industry. However, she said that the women who are employed in the garment industries are paid equally as the men doing the same job. Her colleague at the Punjab University Dr Kapur disagreed and said that the women are paid less than the men. Regarding the question of discrimination, Mr Jain at Primetex thought that female workers are not always paid as much as the men, but the reason is that the men

have been in the garment business for a longer time. Mr Sahni added that e.g. Delhi has a lot of migrated labour and there are generally fewer women in the industries since they have to stay behind and take care of the families. Mrs Shubi Singh agreed that the women are socially tied to the households, e.g. they are the ones who have to stay back if anyone in the household is sick. They are also supposed to take care of the children, which she thought was difficult within the industry because very few factories provide crèches. Dr Kapur added that when there are inspections in the factories, the women are sent home due to the fact that there are no crèches.

Mr Sahni explained that tailors make the most money and that this has been a profession reserved for men. Mr Panday, deputy director at the Industries department of the Rajasthan government, said that the problem for women is not to get the same pay when they do the same work. The problem within the garment industry is that it is a new field for women; hence they are less trained and engaged in less skilled and less paid work such as finishing and value adding. 80-90 % of better paid jobs such as cutting and stitching are performed by men. Dr Chandan Sukhani confirmed that the women that work in the garment units have low skilled jobs and are mostly into checking, whereas men hold the positions as operators and supervisors. Mr R.P. Pareek, Joint Labour Commissioner, pointed out that the illiteracy rate, particularly among women, is very high in India and that this could be a reason why they are employed in low skilled activities. Mr Khan at ASK said that though the literacy rate is higher among men, this had very little to do with one's skills in garment. Mr Jain at Primetex agreed and said that most women lack the skill to work as a tailor but that they are perfectly qualified as e.g. operators and supervisors. Mr Khan was concerned that there are hardly any female supervisors since these constitute the link between the workers and the management. The problem is extra severe when the workers are female and the supervisors are male.

The Equal Remuneration Act from 1976 states the same wages for the same work and the labour inspector Mr R.P. Pareek has not received any complaints concerning discrimination in the industry for ready-made garments. However, he added that the situation is different for those women who are employed in the home-based industry. Since any extra rupee is a contribution to the family economy, they settle with very little payment. Mr B.D. Mukherjee, research officer for textiles at RCCI in Sanganeer, added that the women employed in the home-based industry are housewives that parallel to their house duties try to earn some extra money. They are paid less than the minimum wages requires and they receive no social securities. Mr B.D. Mukherjee also said that their working conditions are very poor; however he claimed that they are used to this type of environment since they live under the same conditions. Mr K.L. Jain, secretary general at RCCI, added that in the small household units, each with 8-10 workers, 75 % are women, whereas only 30-35 % are women in the factories. Hence, fewer women are employed in the organised sector. Mr Khan agreed that mainly men work in the organised units.

In southern India, where the female and male workers are engaged in the same type of activities and where the majority of the tailors and operators are female, one can tell that there is discrimination since women may not always get the same payment for the same type of job according to Mr Khan.

Mr Saksena at the Textiles Committee did not either think that there is a problem between men and women by exporters in general, but he said that problems exist locally and that there are differences between southern and northern India. He also added that there are more factories down south and more women are employed because they are paid less than the male labour force. In contrast to southern India, Mr Khan and Mr Saksena both said that one very rarely finds factories with women in north since they normally work at home and do not prefer to go outside. The consultant Mr Kohli at World Fashion Exchange added that especially in Muslim areas, women are uncomfortable and often prohibited from working in an environment with mostly men. Hence, the consultants thought that the inequality between men and women is a big general social problem. However, they did not think that discrimination is a big problem within the garment export industry in neither Delhi, Jaipur nor Ludhiana and that it is difficult to accuse the companies of discrimination since men and women are not doing the same type of job.

## **7.4 Terms and conditions of employment and organisation**

### **7.4.1 Cost of labour, payment, turnover of workers and social securities**

#### **Manufacturers' views**

Several manufacturers told us that the main interest of the workers was not the physical working conditions but how much they earn. Seven manufacturers said that timely payment was very important for the workers and that this was normally a reason why the workers would stay with them. On the question what the cost of labour was in percentage as part of total production cost several of the manufacturers said that this was difficult to estimate since it depended on the type of garment and the work that had to be done. One manufacturer in Ludhiana thought that nobody looks at the labour costs separately but that the net direct labour costs as to wages should make out 10 % of the total costs. However, this percent could go down to 5 % due to high factory overheads. Two other manufacturers also estimated the cost of labour to be less than 10 %, one thought it was between 10-15 %, three said that it was between 25-40 % and two thought it made 50 % of the total production cost.

Labour is generally more costly in Delhi than in other parts of the country. One manufacturer with units in both Delhi and Ludhiana estimated the cost of labour to be approximately 10 % in Ludhiana compared to 12-13 % in Delhi. He estimated that the labour is 30 % more expensive in Delhi than in Ludhiana, but the working culture is also different. In contrast to Delhi, where the workers are more dedicated and professional, the workers in Ludhiana are not that committed. To make sure that they return accordingly after vacation, the manufacturer gives them a bonus if they come back within 20 days after a holiday. Another manufacturer explained that it is not possible to avoid the minimum wage regulation in Delhi and that the capital is one of the most expensive places in India. One more problem is that Delhi faces three different state borders. Every state has its own labour laws and competes with each other regulation regarding minimum wages in order to attract investments and companies. Furthermore, the companies are actually moving from Delhi to e.g Gurgaon in the state Haryana due to cheaper labour. One manufacturer in Jaipur with 60 regular employed workers said

that one big problem is that he must, and feels a moral responsibility, pay his workers even when there is no production. The year of 2001 has been extra difficult due to September 11. However, he claimed that since the workers do not get an extra share when the company is going well, why should they have to carry any burden when it is not? He pays them throughout the year, and they receive an annual increase of 10 %, which is among other possible because the labour is almost 25 % cheaper in Jaipur than in Delhi. However, he still calculates the total cost of labour to be 25-28 % of the total production cost.

A few complained that the workers are like nomads that switch factories as soon as they are being offered a couple of rupees extra somewhere else and half of the manufacturers said that they had a high turnover of workers. Only four manufacturers said that they had an average turnover of worker with both rotations of workers and workers that had stayed with them for a long time. The same number of manufacturers thought that the workers stayed with them for a long period of time and that they did not have a high turnover of workers. More than a third of the manufacturers had mainly migrated workers from other states, four had a mixture of local and migrated workers, and five said that they had mostly local workers from the state where the production unit is located. One problem connected with the migrated workers is that when they go back home, even if it is only for a short holiday, they do not return until they have finished their money.

India faces the problem of demand vs. supply at the labour market resulting in high unemployment. There is a surplus of unskilled workers and 10 manufacturers did not think that it was difficult to get skilled workers either. Four thought that it was somewhat difficult, particularly in peak season, but only one thought that it was generally difficult to get skilled workers. Payment, terms of employment and working hours often differed for skilled and unskilled workers as well as for regular and contracted workers. The workers can be paid on piece-rate or monthly salaries with or without incentives. Key staff such as masters, checkers and supervisors was regularly employed but few workers were kept on a regular basis with monthly salaries. The tailors were normally on piece-rate payment with no working time restrictions.

The views differed greatly among the manufacturers how piece-rate and monthly payment affected the quality and productivity. One part thought that piece-rate was the only way to keep a high productivity and by giving each worker a number, they could trace the garment, and by returning garment with default, they could keep up with quality as well. Moreover, according to some manufacturers the highly skilled tailors often refused to work unless they were paid per piece since this gave them a higher income. One manufacturer in Delhi was very negative towards monthly payment as well as to different types of incentives. According to him the Indian workers are highly unproductive and minimum wages with extra incentives only work in the beginning. After a year the trade union will come and claim that the bonus shall be a part of the basic salary. Hence, the only option is to keep the workers on piece-rate payment. The other part of the manufacturers disagreed and was convinced that only monthly payment, perhaps with incentives, could result in a satisfaction and even quality. Furthermore, one manufacturer had made the experience that since it takes longer

time initially to make a new complicated style, many tailors would leave if they were not paid monthly since they would make less money the first week if they were on piece-rate.

Even with the piece-rate system, a few manufacturers pointed out that the minimum wage is followed and the manufacturers' view was that most other export industries do pay minimum wage. One manufacturer in Delhi said that tailors paid on piece-rate basis make an average of 150 rupees per day and between 3000-8000 rupees per month. Another manufacturer explained that the piece-rate workers are supposed to get extra for overtime, but the money they get per piece is set after they have calculated how much they should receive after a whole day of work, which is considerably more than the minimum wages. If they do work overtime they receive an additional tea break. Another manager in Delhi agreed that piece rate workers generally receive minimum wages, but since they have to work 12 hours or more per day he did not think that this was adequate payment.

According to one manager in Ludhiana they do not pay to the provident fund because the workers are not interested in contributing with their part; they want the money immediately and do not understand the importance of savings. Another manufacturer in Delhi explained that it was particularly difficult with the casual workers, who only work for a short period of time, and neither value nor necessarily trust the system of social securities and prefer the total salary in cash. However two manufacturers, one in Jaipur and one in Ludhiana, who both said that since they felt a social responsibility towards their workers, paid social securities and the workers did contribute with their shares. Both said that since 90 % of the workers are uneducated, there were problems initially to make them understand the benefits of the employees state insurance and provident fund and that the money they contributed to the provident fund would eventually be paid back to them. Another manufacturer in Ludhiana told us that in one of their units, the one that is GAP-approved; all of the 80 workers receive the benefit of social security. It was indeed difficult in the beginning, but slowly the workers realise the benefits of social security and the manufacturers are now working on introducing the same standards in all units.

Two manufacturers, one with production in Ludhiana and the other with units in both Delhi and Ludhiana, said that it was not mandatory for them to pay social securities to the workers paid per piece-rate since the workers earn 6500 rupees or more per month. However, the other manufacturers in Ludhiana did not pay their workers this much, for example the GAP-approved manufacturer, paid their workers between 2800-3200 rupees a month.

### **Buying-houses, consultants and others' views on the cost of labour, payment, turnover of workers and social securities**

The percentage, regarding how big parts the labour costs make out of the total cost, varied. The Garment Exporters Association of Rajasthan, the buying house Primetex and UNIDO estimated the labour cost to 20-25 % of the total production cost. However, the consultant Mr Kapur at Surya Marketing and Engineering Services thought that the labour cost was limited to 12-15 %. The labour is more costly in Delhi than in Jaipur and the costs moreover varied within the different industrial areas of Delhi. Regarding Ludhiana, Mr Deepak Arora at UNIDO said that the city has among the



highest wages in the country and an average high skilled contracted worker can make up to 6000 rupees per month for eight hours. A reason for this is that it is difficult to get formally trained and highly skilled workers, and that these workers have formed a cartel i.e. they are informally unionised.

The turnover of workers is a problem. According to Mr B.D. Mukherjee, Senior Research Officer for Textiles at RCCI in Sanganeer, one reason is that India is very religious and that the workers leave for different holidays and do not return until they run out of money and another is the high turnover in workers. Mr Sahni at KSA and Mr Khan at ASK agreed that the manufacturers have problems due to the high turnover of workers. However, both pointed out that the turnover of workers is very high mainly since they lack job security. Consequently the workers need to maximise their earnings and therefore change factory for a salary raise of only 10 rupees. The answer to the problems lies in the hands of the employers, it is up to them to offer a secure employment in order to make the workers feel safe.

Professor Goyal said that the workers prefer monthly payment because it brings security but that they are normally paid per piece. The buying houses confirmed that operators are normally on piece-rate payment. Dr Sukhani, president at the Garment Exporters Association of Rajasthan, said that the workers prefer piece-rate because they can make more money and the manufacturers are in favour of piece-rate payment since it brings up the productivity. However, Mr Jain said that although piece-rate systems are rampant in the garment industry, Primetex would not work with factories with piece-rate systems out of fear that the individual products would be different, and out of consideration for social compliance with labour regulations.

Mr R.P. Pareek, Joint Labour Commissioner, said that the labour inspectors are supposed to look into the payment of wages, and the workers within the garment industry, with an exception for the home-based industry, receive more than the minimum wages for eight hours. According to ASK and the buying house KSP, most workers directly employed in the garment export industry, receive minimum wages. Unskilled workers may however get less, for them the minimum wages has become the maximum wage. Mr Sharma and Dr Bryden at SGS thought that although the average worker reaches the minimum wage, the system has failed since they workers have to work 12 hours or more to reach this level. Mrs Shubi Singh agreed and suggested that as far as piece-rate is concerned, the requirements should stipulate that piece-rate workers are guaranteed at least minimum wages for eight hours. The system of contracted labour makes sure that the labour never gets any wage-increase and Mrs Singh had never heard of any wage-increase whatsoever for the workers in the garment industry.

As far as social securities are concerned the manufacturers try to get away with these responsibilities according to both consultants and buying houses. Mrs Shubi Singh said that the labour laws support the workers, but in the reality they do not get a regular income and employers do not pay for leave, bonus or social security. One way to cut the cost when the margin shrinks is to avoid social securities by hiring a labour contractor. Professor Goyal agreed that the contracted labour is

sometimes in a disadvantage compared to the regular workers regarding e.g. social securities but she was clear about the fact that it is not difficult to follow the Indian labour laws if one only wants to. Regarding social securities for contracted labour the principal employer is responsible for social funds if the contractor is not fulfilling his duties. On the payday a person representing the principal employer should be present when the contract workers are paid. Professor Goyal said that the workers do understand the benefit of the provident fund and they feel happy because the employer is also contributing to their security. Mr B.P. Mukherjee at the RCCI said that the sub-contractors normally only keep 2-3 workers on regular basis and the rest were contracted labourer who did not receive any type of social security. Mr P. N Panday, deputy director at the Industries department of the Rajasthan government, agreed that most workers are employed on contractual basis but that he had never come across a single case where they are not paid minimum wages. According to him the government ensure that the workers are being paid properly and he questioned how workers could be exploited in a democratic country like India.

A big problem, according to Mr R.S. Antil at the Institute of Labour Development and Mr D.L. Sachdev at AITUC, is that the workers do not receive any letter of employment and thereby unable to prove that they have worked for a company. Since there are no records of these workers, and the workers lack any document to prove their employment, the manufacturers can avoid the regulations stipulating payment to the provident fund or to the employees state insurance. The workers and advocates at Mazdoor trade union mentioned another way to get away with paying social securities and overtime payment to the workers that do get a pay slip. Hence, the worker receives i.e. 3500 rupees but signs a blank payslip. Subsequently, the manufacturer fills in a sum in the size of 6000 to 6500 rupees, which exempts him/her from the duty to pay social securities.

#### **7.4.2 Working hours, overtime and overtime payment**

##### **Manufacturers' views**

Regarding overtime, two manufacturers in the outskirts of Jaipur as well as a Delhi manufacturer told us that their tailors normally worked 12-14 hours per day and they did not think that this had a negative effect on the quality. However, the vast majority of the manufacturers were negative towards both long working hours and overtime because they thought that it had a negative effect on the quality. One manufacturer said that since it is a very labour intensive business the productivity of the workers is crucial. Unfortunately it is hard to estimate future orders and more orders are taken than there is capacity, which results in high number of overtime hours. They are however trying to change their production planning since the workers cannot work 12-14 hours for a longer period of time without it having a negative effect on productivity.

According to one manufacturer a problem, which creates pressure, is that there are pitfalls between the day the order is taken and the fixed delivery date. Another Delhi manager added that the pressure from the buyers had increased along with increased competition and that they are often forced to accept 45 days instead of a 90-100 days lead-time. During peak season the working hours can in exceptional cases extend up to 15 hours and he furthermore thought that the Indian labour

laws, particularly the overtime regulations, need some reforms. Regarding the lead-time and pressure two manufacturers thought that a lot could be avoided with good management. According to one manufacturer in Jaipur, 45 days of leading time was normally enough to meet the orders on time. Hence, with good planning and good management one could successfully avoid a lot of overtime hours. One of the bigger manufacturers in Jaipur was ISO 2001-2002 certified and verified that once they had changed their management system and learnt how to look at the production planning with different eyes, they no longer had to run a lot of overtime. Another possibility was to run two shifts, but this option was not used by many of the producers. One manufacturer had however tried to run two shifts during the peak season in one unit, and they will try to introduce it in the other units as well.

Six of the companies had full production 4-6 months, five had 7-9 months and three had 10-12 months per year. A common problem among the manufacturers' was that the workers wanted to work overtime in order to receive some extra money. One manager explained that what some western buyers do not understand "is that the labour under consideration are used to these working hours and many of their household economies depend on a few hours of overtime in a month." Another manufacturer added that the casual workers constitute a particular problem because they only work for a short period of time, and they are happy to work 20 hours a day. A third manufacturer thought that it is a question of payment. His workers did not have to work longer hours to get their money and even with piece-rate payment the working hours were normally 8,5 to 9 hours per day. A fourth manufacturer, who strongly disapproved of overtime hours, said that thus the workers normally want to work overtime since the season is very short, he never allowed more than a maximum of two hours per day and a total of 14 hours of overtime per week. He had been able to decrease the amount of overtime hours and since six months he had increased the overtime payment from 1,5 to double payment.

Most manufacturers in Delhi claimed that they paid double for overtime as by law. However, one manager said that the overtime rate is so high that overtime is not seen as something bad among the workers and he thought that it would have been more manageable, and realistic, to require that the workers were paid 25-30 % extra for overtime. One manufacturer with production in both Delhi and Ludhiana said that, due to more frequent visits by labour inspectors as well as the presence of trade unions, they were forced to pay more to the workers in Delhi. Nevertheless, he assured that garment producers everywhere kept double registration cards for overtime and that it was very unusual that one paid more than 1,5 of the salary for overtime. The manufacturers in Ludhiana were very open with the fact that they only paid some extra for required overtime hours. According to manufacturers in both Jaipur and Ludhiana it was more common that manufacturers paid single for overtime but that they provided the workers with extra tea, and sometimes with dinner, when overtime hours were required.

## **Buying-houses, consultants and others' views on working hours, overtime and overtime payment**

All buying-houses, consultants and governmental representatives told us that the workers have to endure long hours and work a lot of overtime. It was rather common to pay one and a half times of the usual salary, or less, for overtime rather than double salaries as required by law.

According to SGS' and Primetex' representatives the manufacturers strive to reduce the number of overtime hours. However, Mr Jain at Primetex explained that it is hard to escape from the negative overtime spiral, because the workers get used to earn extra money and want to have overtime. The consultant and researcher Mrs Shubi Singh explained that "Just On Time Delivery" makes it difficult for the management to plan and to spread out the production. The workers can come to the factory in the morning, only to learn that they are only needed for half a day. Hence there is no security for the workers and they never know how much they can earn since they are paid per piece. The situation for the workers is aggravated by the fact that the manufacturers fix the piece-rates very low. As an example she mentioned that a semi-skilled worker get approximately 2400 rupees per month, but this is not sufficient to take care of his family responsibilities, e.g. rent, clothes and sending the children to school. Consequently the workers' economic situation forces them to do overtime. Nevertheless, Mrs Singh could to some extent understand the brand companies who shut their eyes when their suppliers must run over-time. If the employer would deny their own workers to work overtime, they would only go to another factory and work overtime there instead, and come back the next day just as tired. Provided that over-time is voluntary, it is better that the worker stay with one company and that this company pays him decent money for his normal work and additional for overtime.

Advocate O.P. Mehta, general secretary of AITUC in Punjab, said that the garment industry in Ludhiana is rather new and that the working conditions are good. However they are not paid double for overtime and only the regular employed workers receive social securities. Moreover, they get higher wages in the garment industry compared to other industries the minimum wages are not sufficient for the workers although. D.L. Sachdev, secretary at AITUC, said that the trade unions are worried since most workers are paid per piece and that the wages are very poor. He explained that the trade unions recognise that there is a need to run overtime hours. However, none of the companies, not even the multi nationals, pay double for overtime. Advocate Sharma at All General Mazdoor Trade Union added that besides the problems with long working hours and no extra payment for overtime, the workers lack job and income security and would have liked to receive monthly wages instead of piece-rate payment.

### **7.4.3 The problem of hire and fire**

#### **Manufacturers' views**

Four manufacturers, all with their main production in Delhi, complained that it is too difficult to fire workers. Considering that the garment industry is seasonal they need certain flexibility regarding the number of employed workers, something that the stringent "hire-fire" law prohibit. One

manufacturer said that after the multinational corporations entered the scene the competition increased even more, but the laws have not been changed the last 30-40 years and are not up to date. He furthermore pointed out that nobody fires people because they want to, but because they do not perform satisfactory. Another manager agreed and said that it is not possible to hire and fire even if it is established that a worker has done something wrong unless one pays compensation.

Two manufacturers in Jaipur did not recognise the above-mentioned “hire-fire” problematic. One of the manufacturers, who had a total of three units and 2000 stitching machines, said that although the unit we visited had 300-500 workers employed on a regular basis they had not difficulties with hire and firing. The second manufacturer was smaller and only employed 60 workers, all on a regular basis. The manufacturer said that the workers left when they were not happy but that he had almost no turnover in workers. On the contrary, the workers normally stayed with him for a very long time since he paid them all through the year and the continuation of work was so important to them.

### **Buying-houses, consultants and others’ views on the problem of hire and fire**

A manufacturer with more than 100 workers needs to apply to the labour department and receive the labour departments permission in order to retrench or layoff workers. According to Mr R.S. Antil, director at the Institute of Labour Development, such an approval has never been granted. The consultant Mr Kapur agreed and said that it is too difficult to fire people. According to Mr Srivastav at KSP, the manufacturers should be able to evaluate the workers, and be able to fire those workers who do not perform. The consultants Mr Sahni at KSA and Mrs Shubi Singh, understood why the law was originally instituted, i.e. to protect the workers, but both thought it made more harm than good for the workers. The employers are afraid that workers with regular jobs become complacent and that they cannot fire a worker once he is permanently employed. Mr K.L. Jain, president at the RCCI, agreed and said that the biggest hurdle is that there is no exit policy and consequently the manufacturers are forced to employ contracted labour, which is not a healthy practice.

According to Mr R.S. Antil, a bill has been presented with proposed amendments of Chapter 5 of the Industrial Disputes Act, which regulates the firing procedures. The new proposal says that this chapter should only be applicable on factories with more than 1000 workers. He was positive to the new proposal provided that the manufacturers would observe the other provisions regarding three months notice and gratitude payment. Mr R.P. Pareek, Joint Labour Commissioner, was also positive to the proposed amendments since he thought that the manufacturers would start to employ regular instead of contractual workers if the bill would be passed.

The trade unions are very negative to any changes in law that would simplify the firing of workers. Mr D.L. Sachdev at AITUC said that it is true that only 5-10 % of the workforce is employed on a regular basis, but that one shall not blame the situation on the difficulties with firing since there is no substantial data that supports that the labour laws restrict the flexibility of the employers in a way that limits their business. Hence, the trade unions oppose any proposal to raise the required number of workers in order to limit the scope of the law.

#### **7.4.4 Contracted labour, casual workers and the split up of units**

##### **Manufacturers' views**

The use of contracted labour was very common. Also the companies with low turnover of workers employed contracted labour over several years. One manufacturer explained that, except for supervisors and checkers, most of the in-house workers are contracted workers. One main reason was that workers are not needed when the manufacturers do not have any work for them. One manufacturer, who had earlier employed thousands of workers, explained that he today only had workers on contractual basis. "When I do not have work I call it a day" he said and pointed out that this is crucial since he only has peak production 6-8 months per year. Another manufacturer added that the only way to get productivity is to use labour contractors and to pay the workers per piece.

Casual workers constitute another category of workers who are only supposed to work on short terms. The number of casual workers, as well as their terms of employment, varied from company to company. There is however a trend that large units are split into units with less than 20 machines. This makes it possible for them to prevent that the workers organise themselves. They can also avoid those laws that requires a certain number of workers in the factory in order to be applicable.. The three main problems behind this trend is that "you cannot divorce the worker", i.e. the problem with firing, the working hours and finally the role of the trade unions. Furthermore, the companies do not normally have the capacity to fight a case against the authorities. Two other manufacturers in Delhi explained that they had split up their units in order not to have more than some 50-100 workers in each. According to them, having 500 people working together will lead to labour problems. The workers would start fighting with each other and they might start to organise themselves.

##### **Buying-houses, consultants and others' views on contracted labour, casual workers and the split up of units**

Mr R.S. Antil and Mr R.P. Pareek, stated that the contractual system prevails within the garment industry. According to Mr Khan the cause for many problems lays in the fact that 80% of the workers are employed through a labour agent who supply labour on contractual basis. The labour agents are not registered and do not follow great parts of the labour laws. Stitchers, pressmen, finishers, helpers and washers are all on contract with "zero bargaining power". The managers are very selective in choosing permanent workers. Only the highly skilled workers such as cutters, pattern makers and master tailors are on the regular payroll and they have a very strong negotiating power.

As mentioned above, several manufacturers stated that they were unable to give the workers regular employment and that their high turn-over in workers was due to them being farmers. Mrs Shubi Singh rejected these statements and asked which human does not want permanent work? In the absence of a regular employment they return to the farms to fulfil their minimum basic needs such as food. Workers do not get regularity. When they do not have any work during low season, they return to their farms, which normally are too small to support them. "When the factory close, I

cannot pay my children's school fees", the workers had complained. Besides, if the workers would receive three weeks of paid leave per year, they would have enough time to go home for harvesting. According to Mrs Singh, there are few workers that want to return to the farm, and it is only an excuse from the employers not to give them a regular job. According to Mrs Singh the employers are afraid that workers with regular jobs become complacent and that they cannot fire a worker once he is permanently employed.

Mr Deepak Arora at UNIDO claimed that there is a willingness to have regular workers since they work better, but most manufacturers feels restricted since they do not run production during the entire year and cannot keep the workers all year round. In order to have flexibility most of the units use contractors. Mr R.P. Pareek on the other hand was not convinced that the regularly employed were better workers since they do not work as hard as contracted workers do when they know that their job is secured.

Two advocates, as well as three workers that they represented, who belonged to All India General Mazdoor trade union, said that the main problems among those workers that actually were employed on a regular basis, was that they had to sign a blank paper when they started to work. Later when discharged, without the required governmental approval, the manufacturer could claim that they had an agreement with the worker. Regarding the split up of units, Mr D.L. Sachdev at AITUC said that the reason behind it is to avoid the duties stipulated in different laws. Regarding the home based industry, the trade unions demand that the government should change the law so that the home-based workers are guaranteed social security and they furthermore demanded that minimum wage requirements should be enforced. Moreover, AITUC and All India General Mazdoor, said that the vast majority of the exporters, including the bigger manufacturers, used contracted labour and sub-contractors and that working conditions by the sub-contractors are worse than by the main manufacturer supplying to the buyers.

#### **7.4.5 Sub-contracting**

##### **Manufacturers' views**

The vast majority of the manufacturers considered it important to keep the same sub-contractor in order to maintain quality. Only one of the manufacturer said that they frequently changed sub-contractors, depending on style, garment and price, and ten of them thought that they had a long-term relationship with their sub-contractors. All manufacturers used sub-contractors, but to what extend and for what stage of the production varied. They all out-sourced dying and printing and most sent out embroidery for out-house production in the home based industry. Two of the bigger manufacturers tried to move more and more of the production in-house due to quality problems that the use of sub-contractors involves. One of the manufacturers explained that since he does not approve of the home-based industry he plans to take embroidery in-house. However, one of the oldest manufacturers in Delhi said that they have constantly moved out of manufacturing since "it is dangerous to have a big production, it is like a tiger; once you ride you cannot allow yourself to fall

down because he will eat you up". Accordingly, they hand a larger part of the production, such as stitching, finishing, and easier styles to sub-contractors.

Regarding the working conditions by the sub-contractors six of the manufacturers did not know the state of working conditions by them. One of the managers explained that most manufacturers only check the quality of the work produced by the sub-contractors, it is not common to inspect the working conditions, and they never visit those in the home-based industry. However, two of the manufacturers thought that the working conditions were good and two found that the working conditions were satisfying by their sub-contractors.

One Delhi manufacturer said that he has had the same sub-contractors for the last 15 years. They do have frequent inspections of all units working with for them and he considered the working conditions by their sub-contractors to be good. The second manager, also with production in Delhi, said that the company does not normally change their sub-contractors and that they make sure that their sub-contractors comply with the regulations. However, the sub-contractors themselves also keep sub-contractors, to whom the principal manufacturers have no relations at all.

Two manufacturers did not consider the working conditions by the sub-contractors to be as good as by themselves. One of the manufacturers said that all the workers employed by the sub-contractors are on piece-rate, they may work 14 hours to maximise their earnings and to compensate for the period when the production is lack and they are without work. Both of the manufacturers pointed out that the sub-contractors normally lack the necessary capital to invest in better working conditions.

### **Buying-houses, consultants and others' views on sub-contracting**

Non-branded buyers turn to smaller factories that also involve the home-based industry. The branded go to units with in-house production since it is easier to control. According to Mr K.L. Jain at RCCI 50 % of the value adding is made in-house and 50 % is made in the home-based industry. The advantage of sub-contracting to the home-based industry is that the cost is reduced. Two consultants remarked that only exclusive brands used value adding, such as hand embroidery, made by workers in the home-based industry. However, all big brands have an agreement with the suppliers that all production should be done in-house according to Mr Khan at ASK.

Out of Rajasthan Garment Exporters Association's 165 members in Jaipur, approximately 65 of the exporters get the stitching done from out-house, home based industries whereas 100 of the exporters have in-house production, which brings better control, productivity and quality. According to the president Dr Sukhani, it is not necessarily more expensive with in-house production although it requires good infrastructure. Dr Kapur at the Punjab University said that the manufacturers in Ludhiana prefer in-house production, since they do not have the faith in sub-contractors regarding quality and time limits for delivery and since they are afraid that their design will leak out. Mr Singh at UNIDO had noticed that 10-15 % of the manufacturers, i.e. medium and large companies, set up units with assembly lines and total in-house production. Mr Sharma and Dr Bryden at SGS agreed that the garment manufacturers are increasing their in-house production since they can better



manage the supply-chain with a good infrastructure. However, in the process they try to keep the same sub-contractors. Mr Singh further explained what he referred to as “the process of sub-contracting”.

According to Mr Singh it is a common scenario that one manufacturer “M” produces garments and have several sub-contractors, among other people that pick up the material and stitch it in home-based units. Over a period of time M accumulate a certain amount of capital, invest in larger buildings and new machines, and ask the same workforce to come and work there. Hence, the sub-contractors are absorbed into one place while remaining separate juridical persons. The positive aspect of this process is according to Mr Singh that it increases both quality and working conditions. It is now M’s responsibility to provide proper physical working conditions such as light, ventilation and toilets. Furthermore the centralisation enables M to control the entire stage of production and M’s buyers can monitor the sub-contractors as well. There is however an immense risk connected with this process of sub-contracting since it demands a larger infrastructure and it binds capital. Hence M must be sure to have enough buyers. Another negative aspect mentioned by Mr Singh is that this process may obstruct the participation of women in the north, since they can no longer work at home.

According to Mr Saksena at the Textiles Committee, the working conditions are very good even by the sub-contractors in the export industry. Mr Deepek Aurora at UNIDO in Ludhiana shared this view and said that the working conditions by the sub-contractors, with an exception for the home-based industry, were more or less the same as in the main bodies. Nevertheless, he did not think it possible for the small units to comply with all the complicated labour laws. Mr Sharma and Dr Bryden were more concerned about the working environment by the sub-contractors and said that, since it takes time to change their work culture, the sub-contractors often constitute problems by certification regarding for instance SA 8000. Mr Sahni at KSA added that when they try to change the management mentality of the sub-contractors, the first problem is that it is difficult to reach out to them. Secondly, the sub-contractors cannot afford the consultation. Mr Kompier, specialist on international labour standards at the ILO in Delhi, also mentioned that the main problems concerning working conditions start with sub-contracting and out-sourcing, since there is very little control over the working conditions further down the production chain.

#### **7.4.6 Labour inspections and corruption**

##### **Manufacturers’ views**

Eleven of the manufacturers thought that the governmental monitoring and inspections are regular. Four did not think that the labour inspectors paid frequent visits. 14 of the manufacturers thought that corruption was a problem, two did not know since they did not deal with the labour inspectors themselves. One manufacturer summed up the situation when he said that there are regular labour inspections, but as in all developing countries, the inspections are carried out within a very corrupt system.

Two manufacturers in Delhi and Jaipur thought that there are problems today with all the different labour laws that have resulted in a widespread corruption. The implementation machinery is inadequate, and there are many small units, which make it even more difficult for the government to monitor in a sufficient way. There are too many duplications of the labour laws: there are 137 of them today, bureaucracy is too high, even if one would like to follow them all it is impossible. They explained that the regulations are very extensive in India, that it is difficult to find out when old laws have changed and there is no transparency regarding the implementation of new regulations. Consequently, one got penalised for violating a new regulation every year and in order to minimise the penalties they have to pay different governmental officials.

Several manufacturers, particularly in Delhi, expressed that the sum to pay the labour inspectors decreased as the compliance with the labour laws increased. One manufacturer thought that it was better to pay the workers orderly than the labour inspectors. In the beginning he had questioned why he should have to keep paying when he did everything right, but in the end he got tired of fighting with the labour inspectors since it was both frustrating and time-consuming. Two manufacturers in Ludhiana agreed and explained that even if they would follow all the labour laws to 100 % they would have to have good relationships with the labour inspectors, they have to be put on the pay-roll as well, which makes the production more costly. A manufacturer in Jaipur added that the law proceedings against the government take very long time, almost never-ending due to different court of appeals. The companies do not normally have the capacity to fight a case against the authorities and in order to avoid difficulties they bribe the inspectors or split the production into small units.

One manufacturer explained that the labour inspectors have to be paid everywhere; there are regional differences within the country. In Ludhiana, where they produce sweaters, they have 151 workers out of which 26 are women. However, officially they only employ 30 workers on a regular basis. Therefore only 24 of the men and six of the women have received all benefits and they get away with it by paying the labour inspectors who come once or twice per year. In Delhi the labour inspectors conduct 4-5 visits per year and the manufacturer also has to pay some money. However, in Delhi, where the trade unions are stronger and the labour inspectors more regular, all 160 workers are regularly employed and receive monthly salaries.

### **Buying-houses, consultants and others' views on labour inspections and corruption**

The view on the labour inspectors was rather dark by almost everyone that we met. Only the international organisations and trade unions used slightly less critical words when talking about the corruption among the labour inspectors.

Mr R.P. Pareek, Joint Labour Commissioner, defended the labour inspectors. According to him, along with increased international competition there are fewer inspections. Furthermore, the inspectors have changed from a punitive approach to a more understanding approach in order to protect the industry and thereby the workers. However, when they receive complaints they send a team to the factory for inspection. The inspectors have a monthly salary of 10,000 rupees and as far as corruption is concerned, he said that some inspectors, just like all other governmental

representatives, are corrupt. Nevertheless, he pointed out that there are also sincere and dedicated persons working as labour inspectors.

Mr Srivastav at KSP used very harsh words when we asked him about the monitoring by the officials. “The Indian workers do not know the name of the president in India, but they do know where the office of the labour inspectors is located and a factory is in deep trouble if somebody complains by the labour department.” He continued to say that the inspectors used to be honestly corrupt, i.e. not coming back once bribed. Today, even if one pays the inspectors, they will come back in three days. Hence, the best way is to go and fix what the inspectors complain about to minimise the bribes. According to the consultant Mr Kapur and Mr Srivastav all the formalities and required certifications from authorities create problems since they are equal to more visits and more corruption. Mr R.S. Antil, director of the Institute of Labour Development, recognised the problems the manufacturers face since the corrupt labour inspectors create problems even when the working environment is good, which is normally the case among medium and large scale manufacturers.

Mr Kompier at the ILO in Delhi said that the labour inspections are not functioning because the labour inspectors are badly trained, badly paid, badly equipped with e.g. computers, and highly corrupt. However, the situation is just as bad in the other developing countries because all improvements are costly for the governments. Another problem is that the labour inspectors act too late. There is no mechanism or policy on how to solve disputes before they arise. ILO is therefore working hard to change the working method from a reactive one to a preventive one.

According to Mr Sachdev at AITUC there is a lot of corruption but there is also less and less labour inspections. Mr Pramod Sharma at All India General Mazdoor trade union thought that some labour inspectors worked honestly, but that there are too few inspectors and that one cannot expect them to solve all the problems. Another of the advocates, Mr Anil Kumar, was less critical towards the labour inspectors and said that most of them are concerned about the workers but they have very limited power. They can impose a penalty of a couple of hundred rupees, but the sums are insignificant.

## **7.5 Relationship with the buyers, consumer pressure and buyers’ demand**

As mentioned earlier, we focused our study on the garment export industry and the views and opinions of manufacturers regarding working conditions, labour issues and international competition. Therefore we thought it necessary to research what has influenced the manufacturers, what pressure they feel concerning working conditions from buyers and consumers in the western countries and to what extent codes of conduct are being used. When we talk about buyers, we refer to buyers from outside of India, mostly in the US and Europe. In some cases, buyers also mean buying houses in India, but working as agents for buyers abroad. Buyers can be retailers, brands or other labels and non-branded companies. We define consumers as the customers who buy the clothes from shops for personal use.

We believe that the buyers have the power to influence the situation of the workers in Indian garment factories, because they can demand that manufacturers apply certain working conditions. They can choose to place their orders only by buyers that comply with those conditions. Furthermore, the buyers can pay a price that enables the producers to raise the working conditions. Due to increased competition, the manufacturer must normally fulfil the demands of the buyers, or he or she may risk losing the buyer. It lies, in other words, in the hand of the buyer. Hence, it is of interest to see whether the buyers make use of their potential power to influence the working conditions.

### **7.5.1 Buyer pressure: their interest in working conditions and monitoring**

#### **Manufacturers' view**

In our study seven of the manufacturers said that their buyers definitely demand specific working conditions. Furthermore, three said that some of their buyers at least raise some demands concerning working conditions. Several manufacturers told us that compliance with the demands of the buyers is important and if a factory improves the working conditions, it will definitely attract more customers. Some manufacturers said that in the absence of pressure basically nobody would improve the working conditions more than what is already required for production. According to many manufacturers, nobody looked into working conditions 10-15 years ago. Today, however, newspaper articles in the West concerning the exploitation of workers in developing countries have increased the awareness among the buyers. A good social accountability policy has become an important part of a good market strategy. Six producers gave us another view, namely that buyers are not normally worried about the working conditions, and do not demand anything at all when it comes to working conditions. Instead they are solely concerned about price, quality, and punctual delivery.

It is important to notice that the distinction between different categories of buyers. Smaller buyers do not generally care about the working conditions because they only feel that it increases the costs without affecting the sale. Accordingly, the main problem lies with buyers of non-branded products and small importers, because they tend to be satisfied as long as they can buy directly from a cheap manufacturer. Even those buyers that in general were not concerned about working conditions did ask about child labour. In general, big multi-national brands like GAP care more about working conditions and demand more from their suppliers than other buyers do. Consequently, it helps the manufacturers to be GAP-approved since it automatically means that their factories comply with the demands of all other buyers as well. Furthermore, there seems to be some differences between American and European buyers in relation to working conditions. Some manufacturers were of the opinion that the American buyers are more stringent than the European buyers and that they are very specific on how every person in the organisation should work. A manufacturer in Delhi explained that the Europeans make compromises or keep their eyes closed to some things.

By asking questions about the working conditions the buyers send signals implying that social issues are not unimportant to them. The behaviour of the buyers was not homogeneous. Some

manufacturers said that buyers only care about the quality; others told us that buyers do ask about issues such as light, hygiene, sprinkling systems and safety in the factories. Naturally, the best way for buyers to emphasise the importance of issues on working conditions is to visit the factory themselves, or even by appointing a specialist that conducts a social audit. Six of them said that the buyers do check the working conditions, and four told us that the buyers sometimes check or at least do not inspect so thoroughly. The buyers could for instance look at the factories and sometimes a general discussion took place about the working conditions. Albeit one manufacturer pointed out that it is enough if the buyers check the factory with respect to quality, because good manufacturing conditions often go hand in hands with good working conditions. However, six producers said that their buyers did not check working conditions at all.

It has become common that companies create new departments for compliance issues. Another trend among bigger brands is to open their own offices in Delhi. It enables buyers to place their orders directly instead of going through buying houses, and they can easily check the prices by different manufacturers, which could lead to less cost for the buyers. Hence, it is easier to visit the factories in order to check the working conditions, and also of course the quality of the products. Consequently, it has become more and more difficult for factories to hide bad working conditions.

### **Buying houses, consultants and others' views on buyer pressure: their interest in working conditions and monitoring**

The buying houses confirmed that compliance with demands from the buyers is important, and if a factory improves the working conditions, it will attract more customers. Furthermore, big brands often demand more than others. Mr Srivastav at the buying house KSP pointed out that the requirements concerning working conditions are normally less stringent when the price is lower. However, it does not necessarily mean that producers of cheap clothes have bad working conditions in their factories because they can, for example, buy cheap fabric in order to maintain low prices. Neither does it follow that because one buys very expensive brands the working conditions are any better. Big stores generally question the origin of the product and from whom they buy. Professor Debroy, director at the Rajiv Gandhi Institute for Contemporary Studies, agreed that the working conditions by the brand names are rather good. The working conditions are poorer among the manufacturers of cheap garments but are still better compared to those producing for the domestic sector. Many consultants thought that buyers in general should ask more about the source of the garments and importers should be more responsible as from whom they purchase the garments. Mr Kohli at World Fashion Exchange, who had previously worked at the human resources department of Reebok, thought that the pressure for products to be made ethically comes mostly from the population in the United States. Mr Khan at ASK told us that pressure should not be the end, i.e. only demands, but move into responsibility among the buyers. There is an absence of awareness among the non-branded buyers regarding working conditions, and according to a consultant some of the buyers even think that the observance of human rights is equal to that of anti child labour. Mr. Antil, director at the Institute of Labour Development, agreed and added that the pressure from the western countries only concerns child labour.

The buying houses and consultants also confirmed that it has become very common to have human rights departments. However, Mr Kohli pointed out that the human rights department of the companies is a non-productive work force that could be made redundant if the company wants to cut costs.

The buying houses generally evaluate the factories before they start to work with them. The evaluation also includes analysing working conditions, beside issues like quality, management and production systems. Professor Debroy added that very few garment manufacturers have direct contact with the buyers. Therefore, as mentioned by Mr Khan at ASK, the buying houses play an important role since they act as an agent between manufacturer and retailer. The four buying houses we met all said that they evaluate the working conditions.

The buying house Li & Fung in Delhi told us that when they evaluate factories, their staff visits the factories and a questionnaire is handed out. They give codes of conduct to the factories, which they have to apply if they want to work with Li & Fung. The evaluation is the same for factories producing either unbranded or branded garments. When a factory has been evaluated and approved, perhaps after some changes, it goes into their system. The quality control group check the factory almost daily after the business has started. Working conditions are also checked, e.g. to investigate the possibility of any child labour or if the workers work long hours.

When the buying house Primetex looks at a factory, they focus more on the management than on the machines. Most of the clients of Primetex do not visit the factories themselves, although one upper-range brand is more concerned to investigate. According to Primetex, their clients are satisfied and have nothing to comment on or complain about concerning the working conditions in the factories.

The factory evaluation by the buying house KSP consists of inter alia the observance of labour regulations and the level of working conditions. After the evaluation, they can calculate the EQL, which stands for the enquired quality level. The lower the number the higher the degree of compliance. The EQL-inspections are made over 2-3 months, and then KSP receives an average, called the observed quality level. First KSP test the producer with a few orders, and if a factory reaches 4-5 % over the required level, they receive a warning. If the producer then makes improvements, the situation is rectified. However, if the factory remains 9-10 % over the required level over a longer period, KSP will not continue to work with them.

H&M said that they have four full time employees who only work in monitoring the different factories. This is to prevent what Mrs Palmqvist referred to as the "GAP-situation", where a factory becomes GAP-approved for lifetime. One of the reasons that H&M switched to centralised production areas in Tirupur, Bangalore, Delhi and Ludhiana was to enable more effective and easier monitoring. During the last three years they have brought the situation as to physical working conditions under control. All the factories are now compliant with requirements such as light, water, ventilation, and emergency exits. They no longer have to be after the suppliers as far as these issues are concerned. Today the problems lie in payment of benefits for the workers such as overtime,

provident fund, and employees state insurance. They have to focus on records and bookkeeping and therefore it has become a real detective job to monitor their suppliers. As regards H&M a producer in Delhi said that they are no longer supplying them, but that they used to inspect the factories unannounced.

In order to get a true picture, it is normally better for the buyers to make unannounced inspections in the factories, because if the manufacturer knows in advance when the buyer will come, everything in the factory could be streamlined. However, according to Mr Kohli it is complicated and difficult to change the production one day each month for the day when the buyer comes and visits the factory. Consequently, it might not be worth trying to fool the buyers too much, at least not concerning the physical working conditions. Child labourers and workers that are not on the official payroll can, however, be sent home if an inspection is known by the manufacturer.

Mr. Kohli at World Fashion Exchange said that the new technology can offer new solutions regarding monitoring. One can install a web-camera in the factory and pictures of the workers can be shown. Buyers can for example see that there is no child labour involved in the production. He thought that web-cameras could be a cheaper form of certification for the manufacturers.

### **7.5.2 Codes of conduct**

#### **Manufacturers' view**

Buyers can provide their suppliers with codes of conduct, which is a more structured and clear way to regulate what the suppliers shall observe and how they shall behave. Codes of conduct vary from buyer to buyer, but they normally contain provisions on issues like factory conditions, health, minimum age requirements, safety, wages and working hours.

Slightly more than half of the manufacturers we spoke with applied codes of conduct. Some producers in Jaipur and Ludhiana also had codes of conduct. All manufacturers said that each buyer's code of conduct was different but the contents, with some minor differences, were more or less the same. Buyers that provide codes of conduct are quite conscious about various social needs such as health, safety, environment, and compliance with statutory requirements e.g. working hours and social security. Moreover, it is more common by larger manufacturers to have codes of conduct. Producers point out that it is more difficult for smaller units to comply with codes of conduct. Bigger brands are more eager to introduce codes of conduct and conduct social auditing and if the codes of conduct are not observed, no orders will be given. Consequently, the working conditions have improved in factories producing for them.

The manufacturers were not totally positive regarding the application of codes of conduct and one manufacturer was fully against it. Only three producers thought it is very good to have codes of conduct, and seven said it could be good to some extent. As a positive example, one manufacturer mentioned that the implementation of codes of conduct made the factory much more disciplined. However, several manufacturers were somewhat sceptical as to the real intention of the buyer. The manufacturers questioned if the buyers honestly cared about human development and about the

working conditions, or if they simply used codes of conduct as a marketing tool. Some of the demands of the buyers are unrelated to better working conditions or a better working environment. As an example he told us about a Swedish buyer who demanded that all workers should wear uniform clothing, which was something that the managing director refused since according to him, it would have a negative impact on the working environment and would look as if it were a hospital.

Another manufacturer, who was in favour of codes of conduct in general, said that they had to be practical and reasonable in order to be successful. The buyers have to consider the working environment, the competition and the laws in India. He explained that if the buyer for instance insists that the producer pays for labour according to the minimum wage (or comparable) in the USA, then neither can the manufacturer afford it, nor can their product retain saleability any longer. But if the buyers insist that the producer pays according to the minimum wage set by the Indian government, then it is fair and reasonable. Another example would be when the buyer regulates the working hours. He runs production six days a week and eight hours a day, and the workers are paid for overtime; all according to the official regulations. Nevertheless, some buyers insist that the manufacturer cannot work more than 40 hours a week and they do not permit any overtime at all. What they do not understand is that these working hours are normal for any industry in India. Hence, the labourers under consideration are used to these working hours and many of their household economies depend on a few hours of overtime in a month.

### **Buying houses, consultants and others' views on codes of conduct**

The buying houses that we met had different practices concerning codes of conduct. Li & Fung demand that each factory that supplies them shall apply their codes of conduct. Primetex on the other hand only demand that the suppliers should apply codes of conduct if a specific buyer requires it. Today H&M demands the same codes of conduct from their suppliers in all the countries. The buying houses experienced that most competitors demand similar codes of conduct.

Mr Kohli agreed that the demands concerning working conditions must meet the needs of the workers in each particular country. During his days at Reebok's human rights department, he had become aware of the differences between Europe and the United States concerning the meaning of human rights. According to him there must be communication between the people working in human rights, and those working directly with the suppliers. Mr Panday, deputy director of the Industries department of the Rajasthan government, agreed and said that the standards set in the codes of conduct must be acceptable for the manufacturers.

Mr Kompier, specialist on international labour standards at the ILO in Delhi, confirmed that the number of codes of conduct is booming. The reason for buyers to provide codes of conduct is according to Mr Sajhau, executive secretary for the Textiles, Clothing and Footwear Meetings at the ILO in Geneva, that buyers want to have a good reputation and image. Unfortunately they are not willing to pay more in order to receive these benefits. Mr Arora at UNIDO said that the problem for smaller manufacturers is that in order to comply with codes of conduct, they need money, which is not always available. Mr. Sachdev at AITUC was of the opinion that individual buyers are not



interested in codes of conduct, but because of pressure from among others the trade unions codes of conduct have to be applied.

### **7.5.3 Willing to share the costs or make guarantees, long term relationship**

#### **Manufacturers' view**

To implement better working conditions, i.e. by building more toilets, pay double overtime and social securities could make the products more expensive. The question is whether the manufacturers would bear this cost themselves, or whether the buyers would be willing to pay more for the garments in order to share the costs. The answer was that none of the producers we spoke with thought that buyers would be willing to pay more in order to cover the full costs, despite the fact that the buyers normally demand that a certain level of working conditions must be observed.

A manufacturer was of the opinion that only buyers can encourage manufacturers to follow the regulations regarding working conditions by going to those manufacturers that fulfil their demands. Producers told us that buyers ought to pay more for compliance with their demands, but that is something they are not willing to do due to tough competition. Regrettably the price is not a function of the working conditions. Buyers keep pressing the prices; they will only pay according to the world market and therefore turn to the cheapest supplier irrespective of the working conditions. Nobody seems to look at the labour costs separately.

However, from five manufacturers we heard that some of the buyers sometimes were willing to pay some extra. One of these manufacturers said that even if a buyer pays a little bit extra, it does not cover the expenses he has on working conditions. Another told us that it is indeed slightly more costly to build new, attractive factories, although buyers do pay a little extra. A few producers added that American buyers sometimes are willing to pay a little bit extra to cover the costs. A producer in Delhi said that regular buyers understand that their demands can lead to higher costs and are therefore ready to share these costs. However, the new buyers or their agents in India require the same level of working conditions as in western countries, but wanted typical Indian prices in respect of product pricing, i.e. minimum possible. He continued to say that it makes it increasingly difficult to expand the business, since on the one hand India gets branded as a cheap manufacturing country, and on the other hand producers in India are required to follow standards that according to the producer not always practical in India and are almost always expensive.

Since the buyers are not willing to pay more for increased working conditions, many producers would like to have more committed buyers, closer co-operation with them, and if possible some form of guarantee regarding future orders. The producers are aware of the fact that buyers know that they do not have to give any promises and next year they can shift to other companies or countries. Hence, the manufacturers feel insecure if they could risk larger investments when it comes to improving the working conditions. Almost all manufacturers said that although they have long term relationships, i.e. 5-7 years, with the buyers, they are not willing to give any securities as to future

orders. However, three manufacturers were of the opinion that their buyers are willing to make long-term commitments and even place more orders, if the demanded working conditions were observed.

### **Buying houses, consultants and others' views on willing to share the costs or make guarantees, long term relationship**

The buying houses, professors and consultants we spoke with confirmed that buyers are not willing to pay extra for raised working conditions. H&M for instance said that they do not pay extra for any of their demands. According to Li & Fung, factories that produce non-branded garments must generally upgrade their standards more in order to receive approval in their evaluation, but Li & Fung does not bear this cost. Mr Khan at ASK agreed that buyers are not willing to share the costs, but they do contribute to surveys of the working conditions. Mr Singh from UNIDO had the same view and said that there is a need to adopt a holistic approach towards these issues. One has to sensitise the buyers as well.

Not only are the buyers unwilling to pay more, the price seems to decrease. According to Mr Kohli at World Fashion Exchange the price has been reduced by 15 % during the last couple of years. Mr Srivastav at KSP explained that the buyers' pursuit to earn money in combination with increased competition forces the price to go down. He continued to say that buyers ask if the companies want the business, and if the answer is yes, they have to accept the price. There are so many other producers for the buyers to go to instead. If the retail price goes down, the importer's profit level remains the same but the producer in India is disadvantaged. Mr Khan added that retailers get advantages of social marketing and social accountability, but the supplier is still paid the same price for the shirt although he has made the improvements regarding working conditions. Furthermore, according to Mr Sahni at KSA the buyers do not care about the consequences of pressing the price. They force the suppliers to come down in price, and either the producer makes the workers work on extra hour without extra pay, or they cannot accept the order. The consultant Mr Kumar at Surya Marketing and Engineering Services said that the profitability in the garment business varies from 5-25 % and that buyers like GAP should pay more when they buy since they can afford it. The problem is that the buyers only demand without paying extra to the manufacturers. The whole thinking process has to change in order to improve the situation for the workers according to Mr. Kohli. Mr Ahmad at the International Textiles and Clothing Bureau in Geneva said that the buyers are not even willing to make commitments to continue working with the same manufacturer.

With regard to the insecurity expressed by the manufacturers, the consultants confirmed the unwillingness of buyers to make long-term commitments. A buying house in Delhi gave an example to us, which illustrates the problem. A supplier to a European buyer was asked to set up a factory, which complied with all the requirements from the buyer. The supplier made investments in the factory in order to comply, but the year after the buyer ceased to buy from them. It is when producers know that they have buyers that they can invest in better working conditions. Mr Khan at ASK also confirmed the need of security for the manufacturers in order to be ready to make investments.

H&M said that compliance with their demands by the suppliers does not guarantee orders in the future. Mrs. Palmqvist did regret that they never guarantee any co-operation or even that they could place the same type of order next season. Every future design is handed to more than 20 production offices all over the world and each one tries to get the best offer for that particular garment. It is impossible to tell what the situation will be in another country, what price they can offer, or what type of garment or design that will be produced, since it is a very fashion sensitive business.

It was interesting to note that despite what was stated above, the buying houses we spoke with claimed that they normally work for a long time with their suppliers. According to H&M it is more convenient for them to try to work with the same suppliers because it is time consuming, bothersome and difficult to find new ones. Before they try to find new suppliers they prefer to make the old suppliers grow, so that they can increase their production capacity to match their mass orders, and then try to find new suppliers. Consequently, H&M has worked with 7 % of their suppliers for less than 2 years, 2-5 years with 50 %, 5-10 years with 33 % and for more than 10 years with 10 %. However, some suppliers could also be kept because of nostalgic reasons. It might be hard to quit after many years of close co-operation. Primetex agreed that it is hard to establish a new relationship with a manufacturer. Especially as smaller buyers lack the resources required to start new relationships with producers that tend to be geographically far away.

#### **7.5.4 Consumer pressure**

##### **Manufacturers' view**

It is interesting to look into the role of the consumers and how their attitude concerning working conditions has influenced buyers and manufacturers. If most consumers would decide to buy only garments produced in accordance with basic human rights and working conditions, the retailers would have to turn to factories that actually observe these standards. This would ensure that they remained in the garment business, provided that the factories could be monitored in one way or another and correct information could be given to the consumers. Thus theoretically the consumers have the opportunity to make the situation better for workers in the Indian garment industry. However, consumer pressure could also be used for protectionist purposes. It is therefore interesting to see how the producers in India apprehend the attitude of the consumers.

Six manufacturers said that consumers in the developed world are aware of how the clothes that they buy are produced and that pressure from them concerning working conditions exists. Consumer pressure is normally stronger towards bigger brands. However, eight producers said that the consumers do not really concern themselves with working conditions when buying clothes, and only price, quality and factors like colour matter for them. Some manufacturers were of the opinion that consumer pressure existed, but that it is more a marketing strategy.

In India the situation among the domestic consumers is totally different due to another social context. On the Indian domestic market there is no awareness at all. Almost every producer said that Indian consumers do not care at all, and the only thing they want is a good price. They have a lot of

other basic needs that worry them more, such as food, shelter and health. To bother about working conditions for other people is a luxury, only reserved for rich western consumers.

### **Buying houses, consultants and others' views on consumer pressure**

The buying houses thought that some of the consumers or consumer groups in the developed countries created pressure concerning the social aspect of the production of garments, but that they are not ready to pay more. Mr Kari Tapiola, executive director at the ILO division on Standards and Fundamental Principles and Rights at Work in Geneva, pointed out that consumer products like garments are more in focus regarding working conditions than other products like raw material and agricultural products. When it comes to higher prices, however, the consumers are not ready to pay more for clothes manufactured in accordance with basic working conditions. H&M told us that western consumers put an incredible amount of pressure on the company as to working conditions, but they are not ready to pay more. All consultants as well as Mr Shaheed, director for promotional activities at the Infocus Programme on Promoting the Declaration at the ILO in Geneva, confirmed that consumers abroad put pressure regarding the means of production but on the other hand they are not willing to pay more. Consultants furthermore thought that awareness and pressure among consumers is not enough, it is equally important that they are willing to pay more for their clothes in order for the producers to raise the workers' salaries and working conditions.

Mr Sahni at KSA had a lot to say regarding pressure from the consumers. He said that retailing is all about supply and demand, and wholesalers buy what the consumers look for. The retailers are not the one pushing, it is the consumers that want to buy cheaper. They want to buy the same product next time, but cheaper. Many retailers only make 6-9 % profit due to immense marketing costs and overheads. The manufacturer has to understand that if he or she wants to remain in the market with the same product he has to be more efficient and offer better prices. Consequently the consumers squeeze the buyers, who squeeze the manufacturer, who finally squeezes the subcontractor. According to Mrs Diaz at the International Textiles and Clothing Bureau in Geneva, the consumers do not seem to act when they purchase garments. When it comes to buying a product they will buy it if they like it without reflecting over how the situation is for the workers who have made it.

One major problem is that it is almost impossible today to know whether that extra amount the consumers pay for their clothes actually goes all the way to the workers. Mr Sahni said that is it impossible to control how much someone pays to anyone. He believed that it would be possible to make the labour costs as mandatory information in the annual reports. It should be a part of the auditing to check how much of the pricing goes on labour costs. However, the consultant Mr Kumar at Surya Marketing thought that if buyers and consumers put pressure on the retailer, it would go all the way down to the workers in the factories and benefit them. Professor Venkata Ratnam at the IMI mentioned as an example that the producers in developing countries are paid 2 US\$ per shirt, but that the consumers in Europe pay 15 US\$ for the same shirt. Hence, the consumer should question where their money goes. Mr Drabek at the WTO economic research and analysis division in Geneva said that multinational companies are very conscious due to consumer pressure, and it is important

for them to have a good image. Therefore these companies tend to treat the workers better and pay more compared to domestic companies.

A problem with consumer pressure according to Mr Mehta at CUTS is that it could be counter-productive, because workers could lose their jobs due to the pressure. This is especially sad when innocent companies are affected, that is companies where the conditions are not as bad as the consumers think. Moreover, Mr Panday, deputy director at the Industries department of the Rajasthan government, said that Indian manufacturers must convince the consumers in developed countries that they are no demons, and that a whole country could not be condemned if only a few manufacturers do not follow the labour laws. Regarding consumer groups, Mr Kompier at the ILO in Delhi said that some ought to change attitude, turn less radical and get acquainted with the reality in the developing countries.

## **7.6 International trade and competition**

One of the issues raised concerning the introduction of a social clause is the race to the bottom. As mentioned earlier in chapter two, there is a discussion taking place whether or not investors turn to countries with the most lenient laws and/or with the most lax legal enforcement. Hence, in order to attract foreign investments countries are supposedly lowering their national regulations creating a fear of negative effects ultimately reaching the developed countries. Proponents of linking working conditions with trade claim that trade sanctions are necessary in order to stop the race to the bottom. However, among others researchers<sup>242</sup> have questioned if and to what extent regulatory competition and the race to the bottom exist. Some say that trade is never free and it will never be fair, but that the WTO is better than individual agreements. Trade proponents are more positive and think that in order to help the poor one has to make them richer, which is possible through the WTO system. There have been examples of successful poverty reduction and the reason has been spectacular growth rate because of among others international trade.<sup>243</sup> Trade has been an engine of economic growth and in order to help the garment exporters they say that trade with clothing and textiles should be open and free. The Indian trade unions on the other side believe that the strategy of reliance on foreign investments has not yielded any positive results for the workers.<sup>244</sup> In light of this debate, it was with great interest that we looked into the experiences of garment manufacturers and examined the views of consultants, buying houses and other interested parties in order to see if the race to the bottom is a reality. In addition, we wanted to poll all these parties to determine how they considered working conditions to be affected by international competition.

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<sup>242</sup> Cramér, p. 24-25

<sup>243</sup> Interview with Mr Zdanek Drabek on the 20 February 2002.

<sup>244</sup> Joint statement against anti-people, anti-worker policies from AITUC, BMS, CITU, HMS, TUCC, UTUC-LS on the 12 January 2002.

## 7.6.1 The situation within India due to global competition

### Manufacturers' view

Many producers claimed that profit margins are shrinking and the current profit of export has decreased because of the global recession. According to one manufacturer in Delhi, the Indian garment export industry is losing its comparative edge and Indian garment export is down by 18 % due to the global recession. Furthermore the manufacturers felt that India has been unable to meet international expectations due to higher costs and expensive labour. One manufacturer in Ludhiana said that if they would follow all the labour laws rigidly, the production cost would increase. As far as competition is concerned he thought that there must be a reason why garments are so cheap in other countries and he believed it was because labour is paid less.

One of the oldest garment producers in Delhi told us that India's industry is gradually following the rules, such as the prohibition of child labour, social security, labour welfare, and environmental regulations. India is a democratic country where researchers and journalists can act freely and the manager thought it troublesome that people are so straightforward and not as good as camouflaging malpractice like in other less democratic countries are. Hence, when India is scrutinised through a magnifying glass, India suffers from this openness. He concluded that to follow all these rules makes the costs much higher, and India is therefore edging itself out of the competitiveness.

As further discussed below, the manufacturers felt that China is the "sleeping giant that has awakened" and that India would have been more competitive if the government would have continued to support the garment exporters with e.g. incentives and draw-backs. On the contrary, the government has withdrawn subsidies, taxes has been introduced on export two years ago, and the time it takes for goods to leave the country is quite long, due to bureaucracy and bad infrastructure. After the multinational corporations arose the competition increased even more, but according to the manufacturers the labour laws have not been revised accordingly.

The Indian garment industry is still not well organised, but the situation is improving. The manufacturers producing for the upper segment of garment told us that globalisation has brought about higher social responsibilities and that they realised that working conditions are beneficial to quality and productivity and therefore necessary components in order to be competitive. According to them, the market is self-regulating and they claimed that the other garment exporters realise this as well and those who cannot maintain standards will perish. Better working conditions do not affect the cost significantly and a few manufacturers felt fit to compete with the world market with regards to quality and pricing. Moreover, another problem mentioned by a couple of manufacturers was that the garment industries in India are disorganised and too few investments are done to upgrade the technology. Management training, along with the training of supervisors and workers would bring a more streamlined production to the Indian garment exporters. Furthermore it is of importance today to invest in human resources as well as to keep long relationships with the buyer. Another manufacturer, who had units in Sri Lanka as well as in Ludhiana, added that the Indian workers need

the same type of formal training as the Sri Lankan workers get in order to become more professional, export oriented and effective.

### **Buying houses, consultants and others' views on the situation within India due to global competition**

Most manufacturing for Li & Fung has been concentrated in Asia due to consideration of labour costs. The reasons for choosing India were good access to raw material, more machine-equipped factories, the quality of the products and finally the customer's fancy for individual factory. KSP is also present all over Asia, but they have their own manufacturing only in Sri Lanka and China, and would not open any factories of their own in India. Mr Srivastav at KSP agreed that India has potential, but that it is limited because India is a socialist country. According to him companies in India cannot be competitive due to social costs stipulated in the national labour and welfare laws. Moreover, there is a productivity waste because companies cannot fire workers based on evaluation.

Regarding the question how international trade has affected the workers and the working conditions, Mr R.P. Pareek, Joint Labour Commissioner, told us that as far as he could tell and with regards to the labour inspections in Jaipur, the workers have benefited from international trade. Job opportunities have increased and conditions in the export units are very good, since the garment exporters need better working conditions in order to improve the quality of the products. Professor Venkata Ratnam stated that even though the quality of work has not necessarily been improved, international trade has still been beneficial to the poor because "It is better to have a bad job than not having one at all". The consultant and researcher Mrs Shubi Singh also thought that the workers have it better now because they earn money and thereby have a choice, even if the choices are limited.

#### **7.6.2 Regulatory competition and what attract buyers and investors**

##### **Manufacturers' views**

There is a small group of exporters, who do "ethnic-type" garments, which do not face competition. But this group constitutes less than 1 % of total exporters according to Dr Sukhani, president of the Garment Exporters Association of Rajasthan. All manufacturers unanimously stated that, beside competitors from within India, their main competitors come from other developing countries in Asia such as Bangladesh, China, Indonesia, Pakistan, Sri Lanka and Thailand. Thus, it is clearly a south-south competition, however some competition also comes from Eastern Europe and Mexico. One manufacturer remarked that in a new trend, buyers are turning to Africa in order to find new cheap garment producers. The opinions differed when it came to naming the cause for buyers and investors to turn to other countries.

According to almost a third of the manufacturers, lax legal enforcement was definitely a reason why buyers choose a particular country. Several manufacturers thought legal laxity could play some role in buyer's choice and one third were not of the opinion that buyers prefer countries based on lenient legal enforcement. Two companies did not know about the extent to which lax legal enforcement

influenced the buyers' choice of country. Additionally, one third of the companies thought that buyers/investors go to other developing countries because of cheaper labour and one third thought that cheap labour influenced them to some extent. However, almost one third did not believe cheap labour to be the main reason for choosing a supplier.

One manufacturer in Jaipur said that one should not forget what happened initially, when investors in developed countries moved their labour intensive industry to developing countries. "The companies moved from the developed world to Korea, because Korea had cheap labour. The Korean economy grew, their labour became more expensive and the companies once again moved to other developing countries. The day the labour component will be expensive in the developing countries is the day that companies will move back to the developed world." The manufacturer pointed out that this is exactly what happened with jeans production. At first, it moved from the United States to Asian countries with cheap labour. Later the production became more industrialised with expensive machines and the industry moved back to the United States.

According to the manufacturers, other equally and sometimes even more important factors besides low labour costs, were good infrastructure, cheap raw material, disciplined labour, high productivity, good technology, quotas and different subsidies from the government.

Not all manufacturers thought that countries with lower labour cost automatically had a competitive advantage. One manager told us that their main competitors abroad come from Bangladesh, Sri Lanka and Pakistan. However, he had not observed a single case where any buyer of quality products had gone to Bangladesh or Sri Lanka due to lower labour costs. One of the bigger manufacturers, who also deliver to H&M, told us that investors do not necessarily prefer countries with lax enforcement of labour laws. He furthermore explained that their unit costs is actually higher than that of many other competitors, but buyers keep coming to them anyway. Another manufacturer agreed and added that the important issue is whether or not the labour is highly productive. India should therefore implement more scientific production methods in order to increase the productivity, which is very low in India.

### **Buying-houses, consultants and others views on regulatory competition and what attract buyers and investors**

All consultants and buying-houses thought that there is strong global competition and that buyers go to countries with low labour costs. Mr Sajhau, executive secretary for the Textiles, Clothing and Footwear Meetings at the ILO in Geneva, thought that the competition depends on the segment of products. He was the only one to mention that for high fashion or niche products, it is a north-south competition. The consultants and buying-houses verified the manufacturers' views and said that the competition is mainly a south-south phenomenon. Indian garment exporters' competitors come from other developing countries, with China as the main competitor. They added that there is lot of competition from Eastern Europe as well and that there has been an expansion of production units closer to the customers in Europe and the United States, i.e. in the Mediterranean, Eastern Europe and Central America. Mrs Diaz at the International Textiles and Clothing Bureau in Geneva



explained that a number of countries are constantly changing their markets in order to avoid quota restrictions. One example is that the investments in North Africa have increased in order to get access to the European market. Moreover, since it is easy to close and open garment factories, the clothing industry moves quite frequently and the industry is labour cost sensitive.

Consultants and buying houses in India thought that comparative advantages in other developing countries are among others low labour cost, access to good fabric, the import structure and duties, good shipment possibilities, high level of workmanship and the commitment of the workers. Mr Tapiola, executive director at the ILO division on Standards and Fundamental Principles and Rights at Work in Geneva, said that if cheap labour would be the main issue, all the investments would have been in the developing countries today. During the 80's he was in a committee that found that wages and working conditions were on the sixth place for investors, after issues like political stability, clearness in the legislation, level of education among the workers, sub-contractors and the domestic market. Mr Shaheed, director for promotional activities at the Infocus Programme on Promoting the Declaration at the ILO in Geneva, added that labour regulations seem to be minor compared to e.g. good infrastructure, return on investments, legal framework and economical stability. Threats from companies to move unless the labour laws change, are normally empty threats since commercial regulations are far more important than labour regulations. Mr Drabek at the WTO economic research and analysis division in Geneva added that dynamic and business friendly countries are preferred by investors than bureaucratically countries. Accordingly, India will have problems since countries like Singapore, South Korea, Malaysia and Thailand are more business friendly than India. He does not believe that investors go and force governments to lower labour standards. However, the nature of business is to take advantage of different existing regulations. Even if the labour cost is not the key issue, it is still important for some producers according to Mr Sajhau. Especially for those manufacturers that do not produce top range of garments, including India whose export consist of mostly middle ranged quality garments.

Mr Jain at Primetex said that India competes with the other Asian countries such as China and Bangladesh, as well as with other low cost countries, for example Marocco and Eastern European countries. However, he said that it is a trend of the past to move production to countries with extremely poor working conditions. This happened 10 years ago. Buyers can no longer go to sweatshops, but there are still other low cost alternatives. Mr Kompier at the ILO in Delhi explained that one can find garment producers in Japan and Korea that outsource to other countries with very cheap labour. Mr Khan at ASK agreed that investors are tempted to go to countries with cheap labour, where they are not hassled by laws or face quota restrictions. However, he also added that social responsible investments are an up-and-coming concept.

Mr Tapiola has not seen any examples of regulatory competition concerning the core labour standards. On the contrary, the ratification of the core labour standards conventions has increased. Neither Mr Campeas, director at the WTO textiles division in Geneva, had heard of countries that modify labour laws in order to attract investments. Regarding the labour laws in general, professor Debroy, director of the Rajiv Gandhi Institute for Contemporary Studies, mentioned Bangladesh as

an example where a country has liberalised labour laws in order to allow more flexibility and hence attract foreign investors. Regarding the race to the bottom professor Venkata Ratnam at the International management Institute was convinced it is happening between the developing countries as well as between the Indian states. Furthermore, he confirmed that even when the laws are quite similar, the differences are significant regarding their enforcement. Mr Kompier agreed that a race to the bottom is definitely taking place de facto within southern countries, even if those countries are not officially lowering standards in their national labour laws. A clear example hereof is the increasing amount of new EPZ in Asia, mainly in the garment sector. The EPZ are worst in Pakistan and Bangladesh but they are not much better in India. He pointed out that although the labour laws are equally applicable de jure between EPZs and other areas in India, the race to the bottom can definitely be noticed in these zones. Mr Kompier continued to tell us that the labour inspectors from one entity of the state are being blocked by other governmental officials, i.e. those who are appointed to promote export. Hence, he thought that governments are lowering their standards in order to attract investors and buyers. Accordingly, it is difficult for the ILO to discuss these sensitive issues with governments. The central government has received complaints about obstacles in the way of union activities in the EPZ, and these complaints “ have been looked into by the enforcement machinery for taking appropriate corrective action.”<sup>245</sup>

Mr R.P. Pareek, Joint Labour Commissioner, did not think that Indian manufacturers were competitive with China, Malaysia, Indonesia, Singapore or Taiwan as far as technology, productivity, price or infrastructure are concerned. Furthermore the Indian work culture is very different and productivity is very low, among the lowest in the world. Globalisation has brought fewer orders to the Indian manufacturers and hence a greater struggle for survival, work and job opportunities. However, when comparing exports areas with areas where ordinary production for the domestic market takes place, than Mr R. P. Pareek found the export areas to be significantly better. Thus, he also thought the working conditions in the EPZs to be good. The reason was that when competing internationally, the product has to be up to market standards and in order to reach the required quality; one must provide better working conditions. Mr P.N. Panday, deputy director at the Industries department of the government in Rajasthan, added that as far as the workers are concerned, regardless of the increased competition, the manufacturer cannot lower working conditions once workers get used to a certain standard. Moreover, he thought that in a democratic country like India it would be impossible to lower labour laws or shut one's eyes in order to attract investments.

Mr D.L. Sachdev, general secretary at AITUC, was not positive towards the EPZ. According to him, these export zones have constituted problems for labour since they impose more restrictions on workers. However, he added that a low number of garment workers are employed in these processing zones.

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<sup>245</sup> International Labour Office, Freedom of association and collective bargaining. p. 63.

### **7.6.3 The fear of China**

#### **The manufacturers' views**

All the manufacturers felt that the competition has increased and that the buyers have become more price-conscious. The majority of manufacturers had suffered from the slow-down of the global economy and their fear of Chinese competition transpired through all the interviews. Almost all manufacturers found the competition to be tough and several believed that most companies will turn to China in 4-5 years. One high fashion garment producer in Delhi said that “only manufacturers with exclusive production, high quality, good service, good pricing and punctual time delivery will survive and have a future in India.” She was sure that the Indian garment producers will face more competition in the next years than people can imagine. Even those companies that did not directly compete with China, because they were of smaller scale, or more exclusive production, did in one way or another comment the situation in China. The opinions differed as to how the working conditions were in China, if the labour was cheaper what constituted China's main competitive advantages.

All but one producer thought that labour is cheaper in China. Some even suspected that bonded and child labour were the cause for the cheaper Chinese production. All agreed that the Chinese industry was more productive than that of India. Several manufacturers pointed out the difficulties they faced when trying to compete with a non-democratic country. A producer in Ludhiana explained that “the working mentality is different in a communistic system and they have no turnovers in workers; the workers have no choice but to work, they live in the factories and cannot leave.” A few manufacturers thought that the legal environment was more lenient and that Chinese garments were cheaper because the manufacturers receive strong governmental support and subsidies instead of legal hassle. Some manufacturers hoped that China would be more transparent and that the competition would be fairer once when China became a member of the WTO.

Furthermore, China has an advantage in centralised marketing and another comparative advantage in the form of large-scale production, which makes production cost per unit very low. However, despite the fear of China, the vast majority of the manufacturers did not think that China could match their quality.

#### **Buying-houses, consultants and others views on the fear of China**

China's comparative advantages, as mentioned by the different consultants and buying-houses, were lower labour costs, larger production, greater raw material base, increased governmental support to the industry and greater experience in terms of time in the organised garment business. According to the buying house KSP, companies in China are able to keep labour cost down because they do not follow labour laws. Moreover they do have an upper hand, since labour is managed in the old communist way: "No talking, only working". Mrs Shubi Singh criticised that nobody studies China and the working conditions there. The reason NGOs, media and researchers travel to India instead of China is because it is a democratic country where they can access information.

Mr Singh at UNIDO was concerned about the implementation of environmental and labour laws, since it increases the cost. "Frankly, when you talk about international competition, you have to compare with China where these issues are ranked very, very low". He had been to China and found their main competitive strength to be their productivity, but their standards were comparatively very low. Since the buyer is not interested in social standard but in price, the question arises as to how the manufacturers can compete with China while applying environmental and labour laws. Mr Khan at ASK agreed that China is a major threat and that investors do not bother with social responsibility. Despite the fact that human rights are not rigorously observed in China, Mr Sharma and Dr Bryden at SGS pointed out that the Chinese producers and government have realised the value of certification. Economies of scale always benefit from certification and more companies are getting certified with SA 8000 in China than in India.

Mr P.N Panday, deputy director at the Industries department of the government in Rajasthan, said that though the competition is south-south, with China as the main actor, most garment manufacturers in Rajasthan had little reason to be afraid of China because it is mainly into mass production of cheaper products. Since the quality is not so good, buyers will sooner or later get disappointed.

#### **7.6.4 The phase out of the MFA, quotas and other trade barriers**

##### **The manufacturers' views**

The manufacturers were rather uncertain with regards to what would happen after 2005 when the Multi-Fibre Arrangement (MFA) is totally phased out. The attitude towards the phase out of the MFA was divided and rather indecisive. However, a few manufacturers were hopeful and thought that they would benefit from a quota free trade, some feared the free competition and others doubted that the trade would ever be truly free. Once again, Indian manufacturers confirmed their fears from Chinese competition once the quota restrictions are repealed.

The quotas constitute an artificial trade barrier and the quota system creates problems for export to both the United States and Europe. As an example a producer told us that there were times when the price of the quotas was as high as the production cost, but fortunately the quota-prices have decreased.

One manufacturer in Delhi agreed that the quota system definitely affects them and that it was anything but fair. It was not uncommon for manufacturers to complain that Bangladesh had an unfair competitive advantage since they were favoured through lower tariffs and had no quota restrictions to the United States. Quota systems are there to give political favours and to protect the domestic market. Furthermore, the manager was critical to any free-trade agreements, such as NAFTA, that favours a single country like Mexico. He thought that the world is talking in double standards. One can take a look at terrorism and Pakistan for instance. Despite the fact that Pakistan does not observe the standards concerning working condition and environment, they are given trade concessions due to other political motives. Another manufacturer added that the United States has

been playing games with India and only removed the quotas from categories of goods that are not important for Indian exporters.

When the quotas are completely removed in 2005 the manufacturers hope that it will be easier to increase export, but on the other hand manufacturers also realise that competition will increase as well. A few manufacturers in Jaipur represented those that were not as concerned about the quotas. One manufacturer explained that quotas only truly matter when it comes to low value and big quantities and since he was into specialised garments he was not really affected. Another manufacturer in Jaipur felt confident even though he thought that competition would be tougher in 2005 when the MFA is phased out, since "once you have quality, no one can beat you."

### **Buying-houses, consultants and others views on the phase out of the MFA, quotas and other trade barriers**

The consultants, buying houses and international organisations all thought that the Indian garment manufacturers would face difficulties once the MFA is phased out. Most doubted that there would ever be free and fair trade. According to Mr Campeas, director at the WTO textiles division in Geneva, the phase out of the Agreement on Textiles and Trade is working very well but no one at the WTO really knows what will happen in 2005 when the trade in textiles and clothing will be subject to normal GATT rules.

Mr Jain at Primetex said that although no one really knows what will happen after 2005, he did not think that buyers would change their suppliers only because the quotas are removed. Relationships are built over time and it is indeed very hard to establish a new relationship. It is a matter of confidence since the buyer is far away from the manufacturer. 90 % of the clothing business in the EU comes from buyers employing less than 100 people, and most of them do not have the resources required to change the retail-chain.

Mrs Shubi Singh on the other hand thought that when the quotas are removed in 2005, it would become easier to move production to China. Compared to India, China's production cost is 40 % lower. The efficiency is higher there, they produce larger volumes and the quality is the same as in India. Mr Campeas at the WTO pointed out that China had to accept special safeguards and quota restriction until 2008. Still everyone fears China because it has potential and is a big producer of garments. Professor Venkata Ratnam at the IMI was not surprised that the Indian manufacturers particularly feared China and what will happen after the MFA phase out since business people do not care about democracy or labour laws. As long as they can earn money they invest in countries that neither respect fundamental human rights nor are democratic. Professor Debroy agreed that the garment and textile producers certainly face competition from other developing countries such as Indonesia and Bangladesh but he was not sure to what extent China was a competitor in this segment today. Furthermore, he agreed that there is a general fear within India for China and particularly for what will happen after 2005 when the MFA is phased out. Though it is difficult to compete with China, professor Debroy pointed out that there is not much evidence today proving that China is actually out-competing the Indian garment manufacturers. Mrs Diaz at the

International Textiles and Clothing Bureau in Geneva added that the Chinese market will absorb a lot of its own production later on, which was the case with Japan. The MFA started because countries feared the Japanese textile export, but today Japan is a net importer of textiles, and has turned to other industries. On a positive note, with the MFA phased out, Indian producers will realise they are no longer protected by quotas, and they will therefore have to find other solutions to increase productivity. At least Mrs Shubi Singh hopes that they realise that it will not benefit them to try to increase pressure on workers. Mr Kompier at the ILO in Delhi added that the employer should not make the workers work harder but rather should encourage them to work smarter.

Professor Debroy explained that once the quotas are gone, the tariffs still remain and they are extremely high on the developing countries. Mr Campeas at the WTO in Geneva said that the importing countries have already agreed to remove the quotas, and it is questionable if they would also reduce the tariffs since they have had protected markets for a very long time. Mrs Palmqvist at H&M was worried as to whether or not the Indian suppliers will be able to compete when the MFA is phased out. There will be stiffer competition and therefore manufacturers must prepare themselves accordingly. Indians have not kept up with know-how or technology development; rather they tend to hire more people. If India cannot offer a good price, the order will go to other countries. Moreover, Mrs Palmqvist agreed that the suppliers receive no support from the government. Together with other trade and industry representatives, she had been invited by the Indian government to discuss necessary changes to make the industry competitive and ready for 2005. "But there were only lots of old men drinking whisky, talking of things they may have to do. They did not realise that they have to act now if the industry should have a chance at all". According to Mr P.N. Panday, deputy director at the Industries department of the Rajasthan government, the quota system is good for the old established companies, but it has constituted a block for the new entrepreneurs. He did not think that the manufacturers in Jaipur will face problems when the MFA is phased out because they are mainly handlooms based and this type of exclusive production will remain competitive. However, other manufacturers have to raise their productivity and produce in larger scale in order to avoid problems. Mr Saksena at the Textiles Committee recognised the manufacturers' worries concerning the fact that the government has not undertaken steps to remain competitive. According to him, there will be an open market in 2005 and the companies must be certified as far as working hours and quality are concerned, or they will lose the buyers.

Mr Low, director at the WTO development and economic research division in Geneva, said that when the quotas disappear, some countries would have it difficult unless they make strong industrial adjustments. Dr Kapur at the Punjab University was convinced that those Indian manufacturers that do not adjust to the new situation, probably the small ones, would be wiped out. Mr R.S. Antil, director at the Institute of Labour Development, agreed that the Indian manufacturers are likely to suffer from increased competition because they are not willing to upgrade their technology. However, he did not think that one could totally blame the government. For example, very few manufacturers have taken advantage of the Technology Upgrade Fund provided by the Ministry of Textiles and the government works for improving the infrastructure. The manufacturers are not willing to change since they are still making a profit. However, the Indian market has gone from bad

to worse and the profit margins are decreasing. The south-south competition has had a negative effect on investments and on employment in India. Mr R.S. Antil did not think that the Indian workers had an advantage in international trade.

Mr Kompier was positive to the phase out of the MFA since he thinks that the quota system is artificial. He could not say if the workers would benefit from free trade or not. Up to now, he thought that international competition has been detrimental to the workers and social security is already almost absent for the workers. Mr Kompier feared that in order to face increased competition from nations such as China and Cambodia, the race to the bottom would intensify. He added that the working conditions were generally better in the export industry.

What one can do about the south-south competition is difficult to say, according to Mr Singh at UNIDO, because a lot of the trade barriers depend on the political situation. He was rather sure that the MFA would be replaced by other non-tariff trade barriers and considered SA 8000 to be an example of it. Working conditions have sensational value when looked from the standpoint of consumers abroad and e.g. Germany has already used active dyes - and the UK has done away with child labour - in order to prevent certain garments to enter their markets. According to Mr Singh these are typical examples of using consumer pressure as non-tariff trade barriers. Mr Sharma and Dr Bryden at SGS, who are working with the certification of SA 8000, said that with increased international competition, it is only a matter of who understands the value of better working conditions first. In order to survive exporting companies have to improve their standards.

Mr Singh at Li & Fung did not believe quotas will go away, rather the United States will try to keep control over the trade in some way or the other. Mr Mehta at CUTS in Jaipur said that one would have to wait and see what would happen after the phase out of the MFA, but that one should be prepared from foul play from powerful actors such as the United States and Europe. Mr Mehta was particularly concerned about new non-tariff trade barriers and that e.g. anti-dumping investigations will increase in the future. The European Union has already started four anti-dumping investigations towards Indian companies, but without any success in the substantiation of their accusations. Professor Debroy shared this concern and said that these investigations constitute severe harassment, particularly on small exporters.

Mr Bunker, Joint Director-General of Foreign Trade at the Rajasthan government, also complained that the garment manufacturers had already faced different investigations from Europe and the United States. Even though the Americans never found the shirts to be highly inflammable and the EU never found that any dumping had occurred with bed linen, the regular supply was disturbed and the cost increased due to the investigations. Mr Bunker was worried that the Indian manufacturers will have to face increased non-tariff trade barriers in the form of different investigations once the MFA is phased out. He did however think that the export should increase after 2005, provided that the developed countries do not introduce some kind of new trade barriers. Mr Bunker said that India has already opened its gates, i.e. removed all quantitative restrictions, but the gates to American and European markets have yet to be opened.

According to Mr Drabek at the WTO development and economic research division in Geneva, there is a legitimate fear in India concerning non-trade tariff barriers. Mr Low, director of the same division, agreed that one could ask what the policy response from the developed countries will be after 2005? According to him, there is definitely a risk that it will be anti-dumping and countervailing duties. These instruments are very protectionistic and easy to use since one must simply show that there is a price difference between the domestic market and the export. Mr Campeas, director at the WTO textiles division and Mr Sørensen, director at the WTO trade and environment division, said that these investigations would most likely have a negative effect on the trade flow, since as soon as an anti-dumping investigation starts, the importer will turn to another importer. Hence, the developed countries will increase the use of anti-dumping investigations. However, Mr Sørensen pointed out that developing countries in general, and India in particular, use anti-dumping measures. He thinks that India will be the first country to use anti-dumping against China.

According to AITUC, free trade will take place in 2005 after the MFA phase-out and the increased competition will affect workers. AITUC was afraid that Indian garment exporters were not ready to meet the increased competition and that exporters are not conscious about the importance of quality and skilled labour. Even if the Indian employer realises the importance of these things and would like to do investments, he or she will face a problem because there must be a surplus by the employer in order to be able to make changes. Labour will be more vulnerable towards unfair competition after the phase-out of MFA if the competitors do not have the same good intentions. According to Mr Sachdev, the government has not improved the infrastructure to meet the demands but at least it has awakened and has started providing training for workers. Moreover, the Indian trade unions have unanimously opposed the removal of quantitative restrictions on imports since the jobs within the Indian industries must be protected.<sup>246</sup>

## **7.7 The social clause and trade sanctions**

### **Manufacturers' view**

The manufacturers did not think that the Indian garment export industry faced problems with bonded labour, child labour or discrimination. Regarding the introduction of trade sanctions either on countries or on companies that do not respect the core labour standards, all manufacturers were against the linkage when it came to the freedom of association and the right to collective bargaining since these issues are close connected with the Indian trade unions. As far as linkage between trade and the three other core labour standards, i.e. the worst forms of child labour, bonded labour and discrimination, the opinions were to some extent diversified. Three companies were strongly in favour of a social clause. The management in one company had total opposite views, four companies could not give us any answer because they found the topic to be very complex and/or they were not familiar with the issue and seven companies were against any form of a social clause.

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<sup>246</sup> Joint statement against anti-people, anti-worker policies from AITUC, BMS, CITU, HMS, TUCC, UTUC-LS on the 12 January 2002.



All three companies that were positive towards a social clause had their main manufacturing units in Ludhiana. These companies favoured a social clause and trade restrictions towards those who do not follow the core labour standards, because those who violate the labour laws receive a cost advantage and compete unfairly. Two of the companies discussed the problems of monitoring. One of the managers said that a social clause would be a “very, very good thing” provided that agencies appointed to monitor “simply check without harassing”. The other thought that WTO should not allow bonded labour and child labour and he added that thus monitoring would not be easy, they should find out means to monitor these severe malpractices.

A married couple, which ran one of the bigger manufacturing units in Ludhiana, had totally different views on a social clause. The husband remarked about the situation in China and the truly poor working conditions that prevailed there. He could not understand why buyers allowed those types of conditions. Accordingly, those who did allow it should face trade sanctions and he furthermore thought it would be possible to monitor trade sanctions. His wife was more negative towards a social clause. She said that it is a self-regulating situation where the one breaking the standards will suffer in the long run. The quality would be negatively affected when the set norms are broken. Hence, there is no need for trade sanctions since the manufacturer will not get any more orders after a while.

One manufacturer told us that most of the garment exporters of today already understand the importance of their humanitarian responsibilities. Regarding the manufacturers that were against a social clause, they all emphasised that the human rights and that basic labour standards must be respected, but that linking trade with core labour standards would not solve any problems. The manufacturers doubted if international regulations would reach down to the smaller units. Moreover they questioned how such a system would be enforced and controlled. If it would be introduced company wise, it would be impossible to monitor. If it would be introduced country wise, innocent would be struck.

A manufacturer in Jaipur explained that theoretically a social clause, forcing bad companies to change, would be good. In reality, a social clause based on individual companies would definitely be impossible to enforce and if enforced on a country as a whole, “it would be discriminating, difficult and a mess”. Instead, incentives should be given to individual companies that do follow the rules and set standards. Less tariffs or preferred orders would be examples of positive incentives. He suggested some type of certification system as an option to trade sanctions, provided it would be reachable standards and not too costly.

When it came to setting the standards, three companies mentioned that it is important to keep the social context in mind so that the standards are not too harsh on the industry. It is important, explained a Jaipur manufacturer, that the standards must be achievable and not identical to European or American standards, because these become hard for small units and would only help big units. One of the manufacturers in Ludhiana found it sad to compare developed countries with the developing countries, which do not have the infrastructure or the money required to improve their situation. Hence, he was sceptical towards a future linkage between trade and labour because “the

problems in the developing countries will not diminish over night". Furthermore, if the Western countries would stop trade with developing countries, it would not benefit the development or the situation of the workers. Decisions within the WTO should be fair, but the strongest eat the weak, which means that the rich countries would crunch the poor if labour standards would be enforced by the WTO. He could not give us any opinion on a social clause per se, but did believe that the local laws should take course, not trade sanctions, if the basic working conditions were violated.

A general manager said that the only way to monitor the compliance with set labour standards is to involve the local authorities or the government into such a move. One cannot change a whole country with a social clause and trade sanctions are not the right way to promote labour standards. It would not help to force companies to observe certain working conditions through a social clause. One manufacturer took child labour as an example, since this is what most Western countries focus on, and that one cannot stop child labour or help the children by enforcing trade sanctions. The manufacturer told us that the men working in his factory brought embroidery work home for their wives. Although this manufacturer, just like all the other manufacturers we met, was careful not to employ children in his factory, he questioned if it was really wrong if other family members, children included, also helped out with the embroidery brought home by the fathers. The families are poor and their children have no access to adequate formal schooling. In order to survive, the children need to learn a skill. There is a need to review the social structure in India by the government, media and the NGOs, but trade sanctions cannot change the social problems more than it can bring education to the children.

### **Buying-houses, consultants and others views on the social clause and trade sanctions**

The official position of the central Indian government is that it opposes any linkage between trade and core labour standards.<sup>247</sup> Nevertheless, two governmental representatives working at state and central level directly with the export industry, as well as two main garment export associations of Rajasthan, favoured linkage between trade and some of the core labour standards. However, the overwhelming majority of those that we interviewed were against the linkage between international trade and core labour standards. None of the buying houses thought that a social clause would be practically good or possible to monitor. Only one consultant was positive to trade sanctions against manufacturers that do not follow the rules and regulations and that the WTO should look after the compliance with labour regulations.

According to the Garment Exporters Association of Rajasthan one should not buy goods from companies that violate the basic labour laws, i.e. basic salaries, medical and health provisions and working hour regulations and furthermore trade sanctions would be good against them. Mr K.L. Jain, Honorary Secretary General at RCCI, made a distinction between labour standards in general and parts of the basic labour standards and fundamental human rights. He said that one cannot ask the developing countries to change immediately, it will take time for them to meet the western

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<sup>247</sup> Statement by Murasoli Maran, Indian minister of commerce and industry, on 10 November 2001, paragraph 10 ([www.wto.org](http://www.wto.org)).

standards and that social barriers would kill the developing countries. However, he continued to say that countries like China should be stopped and forced to “take away the unethical standards”. Countries that allow bonded labour, the worst forms of child labour and violate human rights by suppressing the freedom of speech, press and other media should face trade sanctions.

Mr Abraham at SISI, who handles the governmental support to the small-scale industries in Rajasthan, thought that members of the WTO should be compelled to ensure a compliance of minimum labour standards. He believed that there must be a level playing field with uniform regulations for minimum wages and basic working conditions. Consequently, higher tariffs and trade sanctions should face those who do not respect basic working conditions. Mr Abraham did not think that it would be any problems with the enforcement of a social clause.

Considering that it is even hard to manage the quotas today Mr Jain at Primetex did not think that a core social clause would work on the level of the individual company. On the question if a social clause for core labour standards should be implemented, Mr Singh at Li & Fung answered: "Who will evaluate this? How do you implement it?" It is no point to make a law that cannot be implemented. Even if it theoretically would be possible to implement, he found it difficult to answer if it would be good to have a social clause. Mrs Palmqvist at H&M also found it difficult to say if a social clause would be good or not. Who would check whom and how would they check the production? Thus, she thought that if everything were brought in daylight the big companies would be the winners.

Mr Srivastav said that it would be great if a company that violates basic standards would face trade sanctions, since it would benefit KSP. However a social clause would never work and he agreed that the problem is the monitoring, which would have been very subjective in practice. Punitive actions if basic standards were not followed would theoretically be good, but it is not possible to enforce. The Indian economy is independent, self-sufficient with a big domestic market. Everything in India is business oriented, there is a strong money circulation and the workers will spend instead of saving money and trade sanctions would therefore have no effect on India. It is however not the same in Bangladesh, Pakistan and Sri Lanka. A social clause would hit those countries harder. Furthermore, one can do punitive actions against small countries like Fiji, but nobody has the capability to tell the big countries what to do. He said that there should be no dual standards but still multinational companies have different standards for China and for the rest of the world. It is not possible for the western countries to be fair, because it would harm their interests. No country in the world dares to influence and take actions against China, because the business interests are more important than philosophy and human rights and nobody would risk losing the Chinese market.

According to Mr Singh at UNIDO one must define some minimum standards, but a social clause would bring inequality in the implementation. He said that it is difficult to understand all the sub-clauses in the WTO and hence it is not easy to say if a social clause or other trade sanctions could be good. However, he did not think that one could impose better working conditions; rather one should link social and environmental issues to productivity. Moreover, in order to use a market solution, the

consumers and buyers must be sensitised. Mr Saksena at the Textiles Committee also had mixed feelings towards what had to be done in order to ensure the compliance with core labour standards. He said that the introduction of a social clause to control the core labour standards would ultimately be a good thing. However, it would be difficult to implement and he thought that these problems would be solved by themselves through a raised awareness and e.g. certification like SA 8000. Buyers will not place their orders where the working conditions are bad, and they are willing to pay more. Things are gradually changing and it is not difficult if the management wants to. One must accept that it will require some time before things improve. Mr Sharma and Dr Bryden at SGS also thought that the problem will sort itself out without trade sanctions since companies on export have to improve their standards in order to survive. Instead of raising barriers, there should be some benefits to the companies that do comply with the set labour standards. However, they did not believe that better working conditions in the export sector would have a spillover effect to the domestic industry.

Issues like child labour are social problems and Mr Mehta at CUTS in Jaipur said that they have, as mentioned above, worked hard within CUTS to bring well-funded arguments against the introduction of a social clause into the debate. Mr Sandeep Singh at CUTS pointed out that it would be economically impossible to enforce trade sanctions within the WTO. The organisation would not have the financial possibilities to monitor and implement a social clause. Moreover, countries that have been positive to a linkage between international trade and working conditions are not willing to contribute with more money to the WTO. Mr Khan, director at ASK, said that a social clause would have been good if it would have been possible to implement it in a way where both the buyer and the manufacturer would be held responsible for violating the core labour standards. However, Mr Khan did not know how it would be possible to monitor such a system since only the monitoring of Indian and Chinese factories would cause horrendous costs. If it were possible to monitor, half of the factories in China would have to be closed down which would be politically impossible since no one would stop trading with China.

Mr Kompier, specialist on international labour standards at the ILO in Delhi, pointed out that workers should be respected everywhere, not only in the developing countries. Thus demands for decent working conditions should be applicable on the sweatshops in the United States as well. The main arguments against a social clause among strong developing countries like India, is that cheap labour is a comparative advantage in their developing stage and that they will improve the standards along with their development. Moreover, India felt that any linkage would serve protectionist purposes only. Therefore India was very suspicious of the western call for working conditions. As far as garment is concerned, Mr Kompier questioned if it was correct to assume that e.g. the European industry tried to protect itself from competition from the developing countries since it is into high fashion, i.e. a total different segment of garment. He said that it is a bit ironical that India is accusing the United States for protectionism, when they are doing it themselves. Nevertheless, Mr Kompier did not think that trade sanctions would have improved the conditions for any worker, since it would have target the wrong people. The best way is to show that there are advantages in applying labour standards i.e. to use a carrot instead of a stick. Mr Kompier was very clear when it

came to ILO's position as far as the social clause is concern: ILO is not trying to link the WTO and the ILO, and there should be a clear distinction between trade and labour standards. The response from the ILO to the social clause discussion was the adoption of the 1998 declaration on fundamental principles and right at work.

Referring to Mr Kari Tapiola, executive director at the ILO division on Standards and Fundamental Principles and Rights at Work in Geneva, the fundamental rights are not a problem in the export industry, with trade unions as an exception. Concerning the social clause, Mr Tapiola does not believe in a mechanism within the WTO even in the interest of the workers. It would lead to chaos, because the WTO might interpret labour standards differently. Furthermore, trade sanctions would not be a solution to 90 % of the cases since most countries already want to implement the core labour standards but are not successful due to different circumstances. Dr Kapur at the Punjab University would have liked those manufacturers that do not follow the core labour standards to face trade sanctions. Unfortunately trade sanctions would only touch the top of the iceberg, since each core standard has to be tackled in a different way. Most westerners do not understand the poverty problems that India faces.

Mr P.N. Panday, deputy director at the Industries department of the Rajasthan government, confirmed that the government of India strongly opposes both the exploitation of workers as well as an implementation of a social clause. The introduction of trade sanctions in order to punish those who do not comply with the core labour standards would be pure protectionism measures in order to restrain import of developing countries' goods. He said that the government fears that instead of promoting better labour standards, it would stop the export of the developing countries because the western countries could impose standards that are too hard for the Indian manufacturers. Mr P.N. Panday explained that he was not defending any type of exploitation of workers, but that there are different standards of living and working conditions. Hence, working conditions have to be viewed in a social context. Mr Srivastav at KSP added that there has to be a balance regarding the interference from Europe and the United States. Accordingly, foreign countries have no right to tell a particular country like India what to do concerning labour laws, when they are not willing to pay more and only want to have everything for free. The penalties for violations have to be decided by the national government in each country. Professor Venkata Ratnam at the IMI said that independent states should not put pressure on other independent states, but respect their sovereignty.

Mr B.P. Bunker, Joint Director-General of Foreign Trade at the Rajasthan government, said that he personally definitely found the competition unfair, but that it is not possible to make a level playing field due to a number of different factors such as labour, education and wages. The Indian labour laws have teeth, and they are not that easy to get away with violations because India is an open country since trade unions, foreign journalists and the ILO are present.

Mr K.L. Mahendra, General Secretary at AITUC, said that AITUC along with the other main Indian national trade unions firmly oppose the linkage between trade and core labour standards because a social clause would only be used for protectionist purposes. WTO should work with trade issues and

labour standards should be dealt with in the tripartite body of ILO. Furthermore, linking trade with labour issues would only hinder the trade from the developing countries. Mr Sachdev, secretary of AITUC, said that the industrialised countries are not concerned about poor workers in the developing countries.

All the directors we met at the WTO in Geneva were clear when it came to the social clause: It is totally off the agenda of the WTO, and the WTO has no mandate to link trade with labour standards and the issue of labour standards should be dealt with within the ILO. In the declaration at the WTO Ministerial meeting in Singapore only a limited mandate was given, which enables collaboration between the WTO and ILO Secretariats. So far there has been very little of such co-operation and the WTO will only participate in the World Commission on the Social Dimensions of Globalisation and give comments on economical research from the ILO, according to Mr Sørensen, director at the WTO trade and environmental division in Geneva. Finally, from the directors at the WTO we heard that there is a strong resistance among several member states to the introduction of a social clause.

## **7.8 Social labelling and certification**

### **Manufacturers' views**

Within the garment industry of northern India, none of the manufacturers had heard of any existing social labelling. Some did not quite understand the concept of social labelling and answered that they would sew on any label the buyer required. Five manufacturers would have welcomed some type of certification as well as social labelling, whereas three were hesitant towards these measures.

Regarding social labelling as such, one manager with production in both Delhi and Ludhiana was sceptical since he had heard of the corruption that was associated with "Rugmark" in the carpet industry. One of the bigger manufacturers in Delhi had mixed feelings towards social labelling since it required additional certification that would involve extra costs and would make it even more difficult for him to stay competitive. However, one of the smaller manufacturers in Jaipur said that it would have been good for those that complied with the labour laws, and who cared for their workers, if they were able to get certified and to indicate this by social labelling. Nevertheless, he also emphasised that in order not to exclude the small manufacturers, it was necessary that the required labour standards were possible to observe, and that the certification would not be too costly. Regarding the cost aspect, one manager said that although the buyers would not pay more if one followed their codes of conduct or were certified, they would probably give more orders. The company would definitely look into some kind of certification system later on since it would benefit the marketing.

Concerning certification, one manager told us that during the last 10 months they are gradually changing their management system in order to fulfil the ISO-9000 requirements and appreciated the changes it had brought. Higher working conditions improve quality and productivity and the next step for the company is to start looking into what is required to become SA 8000 certified. He made a difference between certification provided by SAI and demands from consumer groups like the

Clean Clothes Campaign. According to him consumers cannot speak like that; it is a political game resulting in different campaigns that work just like trade barrier against certain countries. Hence, he had big reservations to these types of actions since it only makes the poor countries even poorer and more isolated.

### **Buying houses, consultants and others' views on social labelling and certification**

According to Primetex and Li & Fung, none of their customers used social labelling since they expect that the goods do not come from sweatshops. It should be normal to follow the rules and since the consumers expect the retailers to sell clothes that have been produced in accordance with basic working conditions, there is no use for social labelling. Another reason to be critical to the introduction of social labelling on garments is that there would be a battle between different labels, which would not benefit the consumers. Mrs Palmqvist at H&M had a different opinion since she knew that there are plenty of e.g. small expensive Scandinavian brands that have their garments made under really bad conditions. She would have favoured both certification systems like the "DressCode" and social labelling, provided that a trustworthy NGO would conduct the monitoring. Knowing the difficulties H&M had had with not trustworthy NGOs, she was hesitant to these types of systems.

According to Mr Sharma and Dr Bryden at SGS, social labelling would probably work within the garment sector if it were properly monitored. One area where it could be useful could be the home-based industry since it is difficult to apply e.g. SA 8000. An alternative would be that a NGO conducts the monitoring and that an independent body would furthermore monitor these observations. This is exactly how it works in the soccer ball industry where SGS monitors FIFA's program. Professor Goyal at the Punjab University was not convinced that social labelling would be good for garments produced in the home-based industry. She has conducted a study on workers' satisfaction in the carpet industry, which is totally home-based, and it is difficult to monitor this sector. There are two social labels for the carpet industry, *Rugmark* that is international and *Kaliin* that is provided by the Indian government. Unfortunately corruption is there among NGOs as well. Professor Goyal was not positive towards social labelling and she had not noticed any improvements due to this practice.

Social labelling is a marketing tool, but Mr Kohli at World Fashion Exchange thought that since the monitoring conducted by a company like SGS is very expensive, not many consumers would buy garments as long as they are more expensive due to the social label. Hence, in order to stay competitive and to keep the prices down, the pressure on producers and workers would increase even more. Mr Srivastav at KSP added that different agencies make money on certification and that the developed countries are the only one benefiting. No one wants to make charity, including the buyers, who only care about the price and not if SA 8000 is followed. Mr Kompier at the ILO in Delhi was negative towards social labelling since it requires expensive additional supervisions, which would be superfluous if one simply paid the producers more. Mr Mehta at CUTS agreed and said that though social labelling could work, and even if it is definitely to prefer compared to a

social clause, there is a risk that only bigger producers could afford it. Consequently, social labelling could just as well be a new type of trade barrier.

Mr Sharma and Dr Bryden both work with SA 8000-certification at SGS. They explained that an approved unit gets a certification for three years and thereafter they have to be re-approved. During the certification period there are check-ups every six months. A negative aspect is that the producer knows in advance when they will be checked upon. However, Mr Sharma and Dr Bryden did not think that the management changed the last months' production systems only to satisfy one day of inspections. Furthermore, they make a thorough crosscheck with the company's production records, they talk with different NGOs and with the workers in the absence of the management and they conduct group meetings with the workers. One problem is that though the information should not be connected with any particular worker, the company does know which worker they talk to because all meetings and interviews with the workers are kept within the company premises.

SGS also work for UNIDO with their cluster program in Tirupur. The cluster already has their own unified codes of conduct and in a couple of years they will most likely be SA 8000 certified. To bring the participating companies to a certification level NGOs, companies and third parties conduct certain awareness programs and the results of such a tripartite work has been good. SGS have been engaged in running one of the awareness programs, with the goal to introduce the meaning of SA 8000, how to look at it and how to act accordingly. It is a long process to reach the mind of the top-management as well as the middle management but Mr Sharma and Dr Bryden estimated that the Indian manufacturers will need another three to five years to reach the level of SA 8000. The external pressure is noticeable and some manufacturers only head for certification in order to satisfy their clients, others do it because they want to be more efficient. It is costly to use SGS in order to become SA 8000 approved, but according to Mr Sharma and Dr Bryden it is even more costly not to engage them.

Mr Singh at UNIDO explained that they had engaged SGS so that the manufacturers are able to show their principals that they are free from certain malpractice. The cluster in Tirupur has already faced false propaganda from competitors abroad and Mr Singh said that once the MFA expires, the use of consumer pressure as non-tariff barriers will increase. One example of such non-tariff trade barrier is the SA 8000, and it is essential that the companies overcome at least one barrier, by being certified, once the market is open in 2005. There have been calls in northern India, among others in Ludhiana, to organise similar types of cluster as they have in Tirupur. The concept of the clusters down south is to use "collective brand promotion" as a marketing tool. There will be a brand i.e. "Tirupurnit" that will indicate that the product is produced without any social or environmental complications since the manufacturers are SA8000, ISO1400 and ISO9000 (social, ecological and quality) certified.

There are difficulties since the SA8000 is very rigid in certain aspects, some laws are problematic to implement and to monitor and there are many loopholes. Consequently Mr Singh would have appreciated if SA 8000 were more practical regarding the implementation. UNIDO does not



contribute so much with money, as they do with know-how and involvement through workshops. However, one problem remains and that is that the buyers are not willing to pay one cent extra for a T-shirt only because it has been produced by a certified company. UNIDO has at least sensitised the export industry about minimum labour standards, and if a company manages to get certified it will at least be free from certain non-tariff barriers.

The Textiles Committee is engaged in the cluster development in Tirupur and Mr Saksena was positive to results the companies had achieved. The Textile Committee furthermore conducts a 2-day awareness programme all over India, for small and middle sized companies, to make the employers realise what raised working conditions means and to explain the benefits. Improvements are taking place and they work with a Quality Map System in order to get the companies ISO 9000, ISO 14000, OMLSIS 18001 (occupation, health and assessment services) and SA 8000 certified.

We also met with ASK, a NGO, which conducts social audits on a non-profitable basis. ASK has conducted around 30 social audits within India in Delhi, Gurgaon, Noida, Okhla, Tirupur, Chennai and Bangalore since 1996. The last four years they have identified local teams who after training have conducted audits in Bangladesh, Sri Lanka, Far East. The director, Mr Khan, told us that it is important to avoid the situation that many companies experience when they send their own controllers to India, who are specialists in quality control and not in social control, and who do not understand the Indian context. Mr Khan explained that they only use local people originating from the country where the audit is conducted since they have to understand not only the language but the culture as well. The teams always consist of one lead auditor, who interacts with the management, one co-auditor who check pay rolls, records etc and two other auditors who interview the workers. They have to announce the audit in advance and they know that the management will try to clean up a little bit, however they announce the audit less than 24 hours before they conduct the two-three days visit. Mr Khan said that they have come across honest managers but normally the management distorts the data. It is still important to talk to the management primarily to learn their views and secondly to occupy them so that the other auditors can work without interference. The only way to achieve objectiveness is to cross-check from different sources and they rely more on different records and on interviews with the workers. In order to guarantee that the workers identity is kept strictly confidential, all interviews are kept off premises. ASK has only conducted audits on those supplying for brand names. Mr Khan emphasised that the retailer and the supplier always share the cost of auditing. Thereby the audit constitutes a joint responsibility where the retailer indicates a will to have a long relationship with the supplier and the supplier shows that s/he is willing to improve. According to Mr Khan it is important that the manufacturer gains something from investing in better working conditions and for complying with the buyers' codes of conduct. This way at least the cost of auditing is shared and the retailer indicates an interest of a long-term relationship.

When we asked Mr Khan what he thought of SA 8000, he said that it is being made more local appropriate and is more flexible today. The certified auditing firms are also looking more and more into participation from local NGOs, which is good. However, Mr Khan was negative towards the fact that the interviews held with the workers are kept within the premises, which make it difficult

for the workers to talk freely, and includes a risk that the workers will be punished when the auditors have left. Mr Khan was furthermore hesitant towards giving certificates since he knows of at least one SA 8000 certified factory in China where the facilities have changed after they had been certified. Hence, ASK does not give certifications since things may change quickly once the certificate has been given.

Mrs Diaz at the International Textiles and Clothing Bureau in Geneva has doubts if the purpose of certification is to benefit the workers and if it would really protect them. The manufacturers must pay to become certified and social auditing is expensive. The International Textiles and Clothing Bureau started in 1984 due to the quota system and today they represent the interest of 25 developing countries. According to Mrs Diaz, there is a new form of protectionism today, such as SA 8000, which hinder trade. Concerning SA 8000, other certification systems and social labelling Mr Campeas, director of the WTO textile division in Geneva, said that they could function as non-tariff trade barriers, though he had not observed much so far concerning these issues.

## **7.9 Other suggestions for improvement**

### **Manufacturers' views**

The manufacturers would have welcomed governmental support regarding direct financial contributions, better infrastructure and less bureaucracy. They also asked for a revision of labour laws, particularly concerning the "hire-fire" problem, in order to become more competitive and thereby enabling them to provide better working conditions. In a longer perspective, the government must provide more and better schools in order to help the workers' children to a better future.

Moreover, the consumers in West must realise that if they demand good working conditions, they should also be willing to pay more for the garments. The manufacturers thought that media could play a more active and fair role and that there was a need to highlight those manufacturers that tried to compete while observing the core labour standards and other working conditions. Furthermore, the retailers and buyers should distribute the money all the way down the supply chain. Two manufacturers proposed positive quotas, i.e. lower tariffs, as incentives and encouragement for those manufacturers that wanted to respect the workers right while staying competitive.

### **Buying houses, consultants and others' views on other suggestions for improvement**

All parties agreed that trade sanctions are not the right way to promote neither the core labour standards nor better working conditions for the workers in general. In order to enable improvements the buyers either had to pay more or make long term commitments. There was no further homogeneity regarding what had to be done to improve the compliance with the core labour standards or how to improve other working conditions.

The problem that buyers are not willing to pay more for garments produced under good working conditions was mentioned by all parties. However, along with awareness raising actions consultants, NGOs and buying houses said, as stated above, that the manufacturers needed commitments. Since

the buyers pressed the prices, commitments are particularly important if the manufacturers are to invest in better working conditions and in order for them to provide the workers with security such as regular employment and social securities. Hence, long-term commitments should be given to the vendors, their sub-contractors and to all the workers. The relationship between the manufacturer and the subcontractor must be less opportunistic and turn more into a partnership. One non-governmental representative emphasised that in order to improve the situation for the workers the manufacturers themselves must feel secure. Therefore the buyers should start to buy from a less number of different manufacturers. The retailers are getting all the advantages from social accountability, since they can use it in their marketing and thereby get a better price due to good brand image, but the supplier is still paid the same price for the shirt although he has bared all the costs for the improvements. It is a fact that the buyers are not willing to share the costs of improvements regarding working conditions, but at least they can assure a long term relationship with the suppliers and that the supplier will receive more orders in the future.

In order to improve the situation for the workers, many of those involved with the garment industry would have welcomed positive incentives for those manufacturers that were transparent with their working conditions. Mr Panday, deputy director at the Industries department of the Rajasthan government, and Mr Khan at ASK both suggested positive quotas, reserved for those companies that comply with labour standards, so they could invest in working conditions and be sure to sell their goods. Mrs Diaz at the International Textiles and Clothing Bureau in Geneva did not believe in positive quotas on the individual company level and added that such quotas would not be in accordance with the regulatory framework of the WTO. She and the director, Mr Ahmad, thought that instead one should help people to develop by helping them with education, health facilities and infrastructure. Anything else will have marginal effect. They were convinced that one should focus on the causes and deal with them. The main cause for the violations of core labour standards is underdevelopment. One must only look at the level of education to realise that illiteracy is linked to bad working conditions. In order to reduce it, the number of schools as well as the level of education in the developing countries must increase. Dr Kapur at the Punjab University agreed that basic education is important but one must add a skill to the education.

Regarding the problem that the money paid for a garment is not equally distributed along the retail-chain some of the consultants proposed that the cost of labour should be made a mandatory information in the annual reports of the retailers. Both Mr Sahni at KSA and Mr Khan at ASK thought that all retailers should be required to include a social report in their annual reports. Mr Sahni said that it is not difficult to count the minutes of work that goes into every garment and then decide how much one is willing to pay for it. Unfortunately it is impossible today to know or to control how much someone pays to anyone since it is a top secret in the garment industry. However, Mr Sahni believed that it would be possible to make these costs mandatory information in the annual reports and that the number should show clear and that the companies should have somebody responsible to answer questions about their labour policies. Notwithstanding the problems of bribing and cheating, he favoured such a suggestion and said that even if as many as 30 % would keep double books in order to hide what they paid their workers, it would still be worth it. Mr Singh at Li

& Fung was somewhat sceptical to this idea since it would require major changes to show in annual reports in order to show for example how much the workers are paid in the factories. He strongly doubted that there is a way of knowing that whatever extra the customers pay for the garments really go to the workers. Mr Deepak Aurora at UNIDO in Ludhiana said that if the consumer truly wants improvements for the workers, they should demand that the retailers set of money marked for certain acknowledged local NGOs who could use it for schools, health care etc.

Both consultants and governmental representatives explained that the management must learn to understand the value of labour and to promote and safeguard feedback from the workers. Mr Saksena at the Textiles Committee said that since it is the labour that does the stitching, there must be teamwork from top to bottom if the manufacturers want to increase their market share, productivity and profit. According to Mr Singh at UNIDO the process of changes must involve more social parties. The consumers must stay active and demand better working conditions, the government must update and review the law, and media must play an active role in order to guarantee that those manufacturers who are improving their working conditions are not falsely accused of suppressing the labour. He furthermore favoured some kind of indexing and certification. Mr Sharma and Dr Bryden at SGS agreed that it would probably lead to better working conditions among the smaller manufacturers if less rigid and costly certification systems were introduced. The consultant and researcher Mrs Shubi Singh added that it is a slow process to raise the level of working conditions and that everyone, i.e. the government, media, producers, retailers, unions and workers, must be involved. However, how clothes are produced is not an issue for most people in India and industrial workers are normally considered to be better off than most other Indian people who do not even have food, clothes or a place to live. According to Mrs Singh, the working conditions in the developing countries have been enough highlighted in Europe, the issue must now be brought closer home.

According to Mr Kompier at the ILO in Delhi, the strongest tools of the ILO are that they can mobilise political pressure and thereby force countries to take actions. Thereafter the ILO can help identify obstacles to implement the fundamental standards as well as providing them with technical assistance. They also promote corporate social responsibility as a part of the Global Compact initiative and India is one of the countries included in a case study concerning this topic. It is important to highlight, which have been successful in improving the working conditions since one company can influence many other companies. Mr Shaheed, director for promotional activities at the InFocus Programme on Prompting the Declaration at the ILO in Geneva, said that the ILO promotes countries and employers organisations to document good practices. He suggested that responsible multinational enterprises should be highlighted on the UN home page in order to positive influence others.

Mr Tapiola, executive director at the ILO division on Standards and Fundamental Principles and Rights at Work in Geneva, thought that one must have a broader perspective than only labour standards and trade. The whole social development must be in focus. He was positive towards the recently started World Commission on the Social Dimensions of Globalisation. It is a tripartite

working group in the ILO, which will have a broad perspective with the participation of among others the World Bank and the WTO. There is another joint programme on development co-operation between ILO and UNCTAD. They will approach both ministries of labour and ministries of trade and commerce in order to raise the awareness concerning development and labour issues. According to Mr Shaheed, this programme is similar to that of the World Commission on Social Dimensions of Globalisation, but more practical.

The trade unions are strongly against any forms of trade sanctions, including social labelling since it constitutes restrictions in trade. Instead they favoured common actions between different trade unions within and outside of India. It would be a good start once the trade unions could agree upon common slogans and common actions. Consequently, some regional understanding could perhaps be reached within the southern countries through conferences held by e.g. the South Asian Regional Cooperation.

## **8 Analysis and Conclusions**

The observance of the core labour standards is essential. We disagree with those that claim that first comes work and later one can introduce rights. We support Professor Venkata Ratnam, who holds that “work without rights is the way to poverty. Labour rights must be guaranteed at an early stage or one will not have any rights in any foreseeable future.”

### **8.1 Bonded labour and child labour**

In section 7.3.1 and 7.3.2 manufacturers maintained that bonded labour and the worst forms of child labour were neither beneficial, nor that they existed in the Indian garment export industry. All parties that we met, including those at ILO in Geneva, confirmed that bonded labour was not used in the Indian garment export industry. As further stated in section 7.3.2, all manufacturers in Delhi, Jaipur and Ludhiana opposed the worst forms of child labour and thought it should be completely abolished. Three manufacturers felt that trade sanctions should be used towards companies that use child or bonded labour. They were probably eager to introduce trade sanctions because the use of child labour and bonded labour is neither a problem for them, nor for other Indian garment producers, and trade sanctions would take away an unfair competitive edge out of countries like China.

As Indian experts and the ILO confirmed (see section 7.3.2), besides the worst forms of child labour, other types of child labour are rare. For example, the export industry employees less than 5% children, and the garment export sector probably employees even less. One third of the manufacturers were wary of a total ban of all forms of child labour until the social and economical structure presented other options to the children and their families. Understandably, manufactures hesitated in supporting a total ban of child labour, such as prohibiting children to perform simpler tasks. They feared that many children would face a worse destiny such as begging on the street. Supporting the prohibition of all forms of child labour is easy when one is a safe distance from it and does not have to face the desperation face to face. We experienced this dilemma ourselves one

day while waiting for transportation in Ludhiana. A little shoeshine boy, 7-9 year old, wanted to polish our shoes. Theoretically, one should say no to all services children offer, but refusing the service is difficult when one knows that by saying no, one makes life even more difficult for a particular individual. We finally decided that, perhaps to clear our own conscience, to let the boy polish our shoes while paying the double rate required by adult shoe-polishers. Hence, we understand the difficulties two manufacturers expressed when refusing the appeal from their workers to provide their children with jobs. No economical or social circumstances could, however, justify the use of the worst forms of child labour. Nonetheless, trade sanctions are not a solution to the problem of child labour, since child labour is truly caused by desperation and poverty.

When viewing child labour, the main problems appeared to be a lack of adequate primary education, insignificant social security and uneducated poor families with many children. As mentioned in section 7.3.2, buying houses, consultants and governmental representatives said that to improve the situation for the children good primary education must be available for all. Therefore, making primary education compulsory in India is necessary. The level of education must be such that it motivates parents to send their children to school and stimulating so that children want to stay in school. We met with children who had spent almost 10 years in public schools and who barely knew how to write their own names. The manufacturers were aware of the negative impacts of child labour on both the children, as well as for production. Several of them even tried to help their workers send their children to school. Raising awareness about the value of an education is important, not only among the manufacturers, but among the parents too. Section 7.3.2 noted how trade union representatives pointed out the negative effects that child labour had on wages and the exploitation of regular labour. The non-existence of living wages and social security have a negative effect on child labour. Lack of social security triggers insecurity, particularly for unskilled workers, who feel a need to have many children, especially boys, in order to provide for them when they reach their old age. Accordingly, the combination of low wages and many children makes sending children to school even more financially difficult for parents.

## **8.2 Trade Unions**

### **Non-ratification of ILO conventions**

As stated above in section 3.3 and 6.3 India has not ratified convention No. 87 and No. 98. Nonetheless, as far as the garment industry is concerned, the national legislation fulfils the requirements for the garment export industry laid out in these conventions concerning freedom of association and the right to collective bargaining. Unfortunately, in Delhi, not a single factory, which we visited, had an in-house trade union. Moreover, no active trade unions existed at all in the garment sectors of Jaipur and Ludhiana. Furthermore, as discussed in section 7.3.3, none of the manufacturers voluntarily allowed the workers to join the unions, and since only a single manufacturer had any type of collective settlements for salaries. Thus, the laws have no effect, since they are not being followed.

## **The views on trade unions**

Our survey did not focus on the trade unions in India; rather, it focused on the views of the manufacturers in the Indian export garment industry. As discussed in section 7.3.3 the manufacturers believed that the trade unions were corrupt, led by political motives rather than the well being of the workers, misguided the workers, thereby creating unrest. Accordingly, the manufacturers do not support Indian trade unions. Determining whether their statements represent the complete truth is difficult. However, a key point is that authorities, consultants, buying houses, professors, NGOs and international organisations shared most of the manufacturers' opinions.

In Delhi, we had the opportunity to meet with national leaders of All India Trade Union Congress (AITUC) - the country's oldest trade union - and with their colleagues in Ludhiana, who were helpful, committed, balanced, and rather realistic. As mentioned in section 7.3.3, advocates and workers belonging to All India General Mazdoor Trade Union told us about the cases they were running in court, and that their local union leader was someone who truly cared about them. However, since we only spoke with one of the five main trade unions, and only with a handful of workers, our material is too thin for us to be able to draw any conclusions that could verify the manufacturers' views. Moreover, only the AITUC and one other national trade union are spearheading the movement toward greater unity among Indian trade unions.<sup>248</sup>

Without jumping to any conclusions, as clearly stated in section 7.3.3, those interviewed had no confidence in the Indian trade unions. Furthermore, the public image of trade unions has undergone a change in that trade unions no longer enjoy the same respect in the eyes of the general public. All over India, trade unions are losing their credibility with workers fast, and they no longer enjoy the undisputed support of the workers.<sup>249</sup> A reason for this lack of support may be that the trade unions have taken actions, which may not benefit their members, and strikes have been called to support causes other than those that relate to union work.<sup>250</sup> Naturally, a certain tension will exist between trade unions and employers—this tension always exists between two negotiating partners. Notwithstanding this consideration, the situation between manufacturers and the trade unions in India appeared to be extremely unhealthy.

## **Rethinking from management and trade unions**

As stated in the 1998 ILO Declaration on Fundamental Principles and Rights at Work and other works, see section 3.4, the freedom of association and the right to collective bargaining constitute basic elements to safeguard the workers' rights, of which none are observed today in the export garment industry. The manufacturers must become aware of the rights and learn to understand the importance of respecting these fundamental rights. Moreover, one of the most important and difficult challenges for the future is to rebuild functioning and responsible workers' representations.

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<sup>248</sup> Rao and Patwardhan, p. 131

<sup>249</sup> Mahadevan, p. 122.

<sup>250</sup> Rao and Patwardhan, p 130.

Manufacturers and buying houses appeared to have a different perception of the trade unions' role. As mentioned in section 7.3.3, they did not express an understanding for the workers' right to associate or their right to bargain collectively. As long as they took care of the workers and made sure that the working conditions were good, they thought that the trade unions had no role to play.

As discussed in section 7.4.1, the employers and consultants thought that only the highly skilled workers had strong bargaining powers. Less than one fourth of the manufacturers said that getting skilled workers was difficult; naturally, they had no difficulties in recruiting semi-skilled or low skilled workers. A need to create awareness among the trade union members exists—they need to take necessary steps to upgrade their capabilities and skills through workers' education and training programs. We disagree with those manufacturers that felt that trade unions are unnecessary. India is a huge country with high unemployment, high availability of workers but few jobs. Therefore, a single unskilled or semi-skilled worker will certainly not raise his or her voice when a constant threat of retrenchment is present. Unless the worker belongs to the highly skilled within the garment industry, he or she will never be in a position to advance his or her economic status since the workers cannot raise their voices collectively. Several of the managers had a humanitarian attitude, but the well being of the workers and their fundamental rights should not be dependent on good-hearted employers. Consequently, even if no severe malpractice occurs, and even if the physical working environment is good, the employers must realise the importance of providing for freedom of association. Some equality of power between parties must exist if collective bargaining shall take place. The freedom of association, as well as the right to collective bargaining, definitely constitute fundamental human rights and are important cornerstones for social development and thereby a key to economical and political stability.

People have increasingly recognised that worker participation improves the productivity and competitiveness of companies in general.<sup>251</sup> Considering the above-mentioned attitude of the employers towards trade unions in general, raising the awareness among the employers through, for example programmes and seminars, is important. Workers that have participated in the decision-making at the companies are more likely to be committed to their work. The respect of the freedom of association and the right to collective bargaining could, in other words, be good business, which is important for the Indian garment manufacturers to realise. As discussed in section 7.3.3, we understand that manufacturers do not trust the Indian trade unions, but we do not agree with their general attitude that these rights are unimportant. On the contrary, these rights are crucial for companies to stay productive and competitive and the respect for these rights is crucial for the improvement of workers' rights.

Both management and trade unions have to re-orient their thinking and attitudes. The trade unions must address the question of what they really seek to achieve for their members with fragmented structures, discredited leaderships, slender membership and rivalry.<sup>252</sup> The trade unions must realise

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<sup>251</sup> International Labour Office, *Your voice at work*, p. 18.

<sup>252</sup> Rao and Patwardhan, p. 125.



that the survival of an enterprise, and consequently the workers daily livelihood, depend upon the competitive edge that the enterprise is able to develop in the global market. The trade unions must upgrade their capabilities to prepare the workers in meeting the challenges of economic liberalisation and globalisation. Simultaneously, one must raise the awareness among the manufacturers in understanding why freedom of association and the right to collective bargaining are considered to be so vital for their and the workers well-being. A common understanding is, of course, that all parties have to refrain from violent actions.

All the trade union leaders, that we met, consisted of elderly male individuals. Today, no retirement age for union leaders exists in India because most of them continue to lead the same union throughout their life. The union leadership is made up mostly of people who are socially conscious. Since they work in an honorary capacity, few ever consider retiring.<sup>253</sup> Though keeping knowledge and experience within an organisation through senior leaders is important, a need exists to introduce new leaders, both male and female. The trade union leaders of the 21st century will most likely have to consider development of their internal management systems within their own organisations.<sup>254</sup> If the workers shall still be represented within the framework of the traditional trade unions, rethinking their structure is necessary, in addition to implementing professional training and research inputs. This help would allow the trade union leaders to reach an understanding for long term plans for the growth of the company and for securing jobs.

Since we come from a country with extremely high unionisation, the Indian organisation of trade unions appeared rather complicated to us.<sup>255</sup> As described in section 7.3.3, a multiplicity of trade unions affiliated to political parties has divided the labour force in India. The trade union pluralism has taken extreme forms not only in India, but also in most of South Asia.<sup>256</sup> A fragmented trade union structure not only weakened the movement, but also made bilateral negotiations and collective settlements extremely difficult and rare. Every worker should be free to choose any union or organisation, which can best represent his or hers interests. However, since the export garment industry faces increased international competition, the trade unions understanding the company and the market where the company is active is very important to ensure that the unions make reasonable demands, which result in far reaching positive changes for the workers. The trade unions in India today cannot require knowledge of each and every industry. Rather than specialising, strengthening and focusing on one industrial sector, such as the garment industry, they are competing with each other. Accordingly, a consolidated and specialised trade union structure would generally be more beneficial than a fragmented one. The workers in the garment industry would be able to seek aid from a trade union, which is aware of the particular difficulties in their trade. It would then represent the workers' needs and unite them. The union would be more aware and better prepared for any challenges that are facing the workers and the manufacturers.

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<sup>253</sup> Mahadevan, p. 123.

<sup>254</sup> Rao and Patwardhan, p. 142.

<sup>255</sup> 80% of the Swedish workers are unionised and are considered to be one of the most highly organised workers in the world.

<sup>256</sup> Simon, Workers Activities & Progress Report 2000-2001.

As described in section 7.3.3 the manufacturers are moving from highly unionised regions, such as Kerala and West Bengal, to less militant regions and to EPZ, in order to keep the trade unions away.<sup>257</sup> If the opinions of manufacturers, consultants and other interviewed parties reflect a fairly accurate picture, the reluctance of the garment producers to inviting trade union into their organization is understandable. Also, if the trade unions are totally blocked from the units, then their compulsion to use unconventional and harsh methods may be understandable. The main obstacle lies in the background of mutual hostility and suspicion. Each side operates with a preconceived adverse or negative image of the other. Furthermore, the top leadership and management of the unions have not produced the main obstacles. The lower levels of the union leadership and the managerial hierarchy are very difficult to change because they have to deal with specific ongoing problems on a daily basis.<sup>258</sup> Positive changes are definitely possible, but one shall not forget that changing the negative images at senior, middle and junior levels of hierarchy for both the management and the trade unions is a difficult and time-consuming task. However, the need for collective representation of employees will mostly not be eliminated in work organisations, particularly not in such a labour dense industry as the garment sector. A formally constituted body such as a registered trade union may initiate collective representation. However, until the trade unions have undergone a constructive change and regained the confidence of the general public, they will most likely not be very effective. This reform may also come from some employee groups within the factory. Consequently, the manufactures starting a dialogue with the workers involved in their own units may be advisable. For example, the manufacturers could encourage them to elect representatives, with whom the management can negotiate and communicate. In either case both the management and the workers' representative body, irrespective of whether the organisation is called a trade union or not, will have to develop a new kind of relationship. Hopefully the work conducted by ACTRAV, which is mentioned under section 7.3.3, will improve the industrial relations between workers and employers. Their courses on industrial relations and collective bargaining appear to be a positive step, since they aim at strengthening the negotiating skills of workers, thereby teaching them to bargain more effectively.

As stated in section 7.3.3, one problem for trade unions is that court proceedings take a very long time. During that time, workers experience great difficulties earning a living. Many workers also consider starting a court battle meaningless, even though they would probably prevail ten years later. A faster procedure would definitely benefit the workers and the observance of labour regulations. Thus, the introduction of local courts called "lok adalal", mentioned in section 7.3.3, which are based on mutual understanding and where the judgements are final, would be a welcome reform.

### **8.3 Discrimination and Gender Issues**

From the interviews held, see section 7.3.4, the results showed no indication of manufacturers engaging in religious discrimination. As mentioned in section 6.4, the garment industry has

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<sup>257</sup> Mamkoottam, p.103.

<sup>258</sup> Mund and Sinha, p 143.

officially abolished the caste system, and the constitution is supposed to guarantee all people identical rights. Nevertheless, the castes in India still play a central role within the society and it constitutes a complicated and sensitive issue. As noted in section 7.3.4, the manufacturers did not discuss the caste when questioned about discrimination issues, and a discussion on the caste system appeared to be a topic, which they preferred not to talk about at great length.

Next, examining gender discrimination is important. We only observed two units with female operators, while all the rest engaged women in low-skilled and low-paid jobs. Women tended to receive equal pay for equal work in the export units. However, as stated in section 7.3.4, women are mostly uneducated and not often employed in high skilled activities and are therefore paid less. Accordingly, the issue is not one of discrimination; rather, the problem is that they are seldom engaged in similar activities. The manufacturers are not solely to blame for this situation. India is a male dominated society with widespread suppression of women. In northern India, the concept of married women working outside the home is still not socially acceptable. Furthermore, the female child rarely has any access to a quality formal or informal education, and the more skilled tasks such as tailoring have been exclusively passed on to the men. Keeping a job is very difficult for women because they are expected to move into the home of their husband's family after they get married. Moreover, travelling to and from work is hard for them. Even though manufacturers should not be blamed for the social structure, manufacturers, Indian society, and the international community promoting and supporting female workers is important. In examining the legal provision, see section 6.4 above, the safety regulations in section 66 of the Factories Act that prohibit the women to work later than 7 p.m. and to take night shifts are not constructive. One beneficial regulation is section 48 of the Factories Act, which states that the employer should provide crèches in factories with at least 30 women. As discussed in section 7.3.4, all manufacturers said that taking care of children is the woman's responsibility. Nonetheless, they complained that women stopped working once they got married. Therefore, understanding why very few manufacturers provide crèches is difficult, since this provision would be a non-expensive solution to parts of both the manufacturers' and the women's problems. If the manufacturers started by providing crèches, they would not only help women enter the garment industry, but they would also enable many women to stay once they are married and have children.

We were positively surprised to learn that demand exists among a majority of the manufacturers for skilled women. As mentioned in section 7.3.4, the manufacturers consider women to be more loyal, hardworking, and sincere. Any initiative and training programs in order to raise the skills of women as well as to provide them with facilities, such as transportation and crèches that facilitate for them to work would be a welcome reform. However, a darker side exists towards the manufacturers' desire to employ more women. They may do so because women are less eager to create trouble, they do not organise themselves, and they rarely raise any demands. Moreover, a key problem was that the industry employed very few women as supervisors. In order for women to raise their voices, especially in a male dominated society like the Indian, women receiving middle and higher management positions is vital.

Taking into consideration the consultants', buying houses' and NGOs' views as discussed in section 7.3.4 concerning gender discrimination, the situation is not very severe within the export garment units. A major concern is that women are mostly employed in the unorganised sector, such as the home-based industry, and that they thereby are deprived of most working rights and are paid only a fraction of the minimum wage. Nonetheless, an important acknowledgement is the importance for women to be able to work at home, particularly where the society and/or religion still prohibit them to seek other employment, or where practical difficulties with transportation to external units exists. Despite this acknowledgement, their basic rights should still be guaranteed.

#### **8.4 General attitude, terms and conditions of employment and organisation**

The findings in section 7.2 and 7.3 illustrate an increasing awareness concerning the importance of good working conditions exists among the manufacturers, and that major changes have occurred in the last 5-10 years, at least regarding the physical working conditions at the first stage of production. This stage consists of the main manufacturing unit, which has direct contact with buyers or buying houses in the garment export industry. Except for freedom of association and the right to collective bargaining, which include the involvement of trade unions, the manufacturers thought the observance of core labour standards to be crucial for a functioning production. Furthermore, a vast majority of the manufacturers thought that improved working conditions had a positive effect on both quality and productivity. As discussed in section 7.4.1, consultants, NGOs and international organisations thought that employment terms and social security were important for the well-being of the workers and consequently valuable for production. However, many manufacturers do not share these views. Even though the physical working conditions have improved, similar improvements have not taken place for salaries, working hours, and social securities.

In reference to section 7.4.2, overtime is a frequent problem, specifically for the exporters, who cannot influence and foresee the coming orders as domestic producers can. The industry is seasonal, sensitive to fashion swings and has increasingly shorter lead-time. Generally, workers endure long hours, and manufacturers do not pay them double for overtime, as the law requires. According to several consultants, better management could correct many problems. Several manufacturers did recognise the negative impact that long working hours had on quality, at least when the working day extended beyond 12 hours. However, they often faced difficulties when they tried to reduce overtime, since especially piece-rate workers want to work long hours to increase the wages.

As described in section 7.4.1 and 7.4.2, the manufacturers reported problems not only with overtime hours but with high turnover in workers as well. The biggest concern for workers in general are not the physical working conditions, but the fact that many do not know if they will have a job, for how long they will be engaged in work, or if they will earn enough money to support themselves and their families. Indian workers, just like most of us, value regular employment with a secure social environment. If this security had been provided, they would not have switched manufacturers for a couple of rupees extra. Moreover, those manufacturers who said that they employed workers on a regular basis, made timely payments, and provided social security, were the same one who stated

that they had almost no turnover in workers. Certainly, determining if the manufacturers that claimed that they employed the workers on regular basis and paid social securities actually did so is difficult. However, the fact that we saw old women working and taking into consideration that the average age of the workers was significantly higher compared to other manufacturers visited indicates that the workers stayed for longer periods and that regular employment with a secure social environment plays an important role for workers. Unfortunately, most workers know that they will lose their jobs during the low season, and therefore, feel a need to work as much as possible when they have the opportunity to. Consequently, and as mentioned in section 7.4.2, the manufacturers face difficulties when they want to reduce the number of overtime hours. Difficulties that would also be easier to master once the workers felt secure in their employment.

Social securities, such as payment to the provident fund and the employees state insurance, are a somewhat complicated issue since as described in section 6.5.5 and 6.5.6 both workers and employers have to contribute financially to the government. As shown in section 7.4.1 the workers, who lack education, need money instantly, and who do not necessarily trust the system are not always initially willing to pay their parts. The employers appeared to take advantage of this situation in order to save money and to decrease the production costs. Further ways to avoid certain responsibilities are, as described in section 7.4.4 and 7.4.5, to split up the production units, engage contractors, and to use sub-contracting. These practices allow companies to evade the organisation of workers and labour regulations, not only the Employees State Insurance Act and the Employees Provident Fund and Miscellaneous Provisions Act, but also Chapter 5B in the Industrial Disputes Act. Moreover, contracting also complicates the monitoring of working conditions. However, it also maintains flexibility in the face of rapidly changing market. The employers' fear of being stuck with a large working force during a low season and business recession is understandable. Nevertheless, contracting also prevents efficient production and therefore many manufacturers are turning to "the process of sub-contracting" to bring more of the production in-house.

Buying houses, consultants and governmental representatives agreed that the regulations regarding retrenchment and lay-off, see section 7.4.3 and section 6.5.4, probably caused more harm than good. The manufacturers complaints about "hire and fire," as described in section 7.4.3, are probably not empty words. For example in Rajasthan, despite its large industry, only four applications concerning closure and retrenchment of workers were made between 1991 and 1995, but only one was granted, and during the same time in Delhi both applications regarding closure were denied. Totally in India, out of 290 applications, 158 were not granted.<sup>259</sup> In summary, the present regulations concerning "hire-fire" do not provide the workers with adequate and reasonable protection on one hand, and the governmental implementation is on the other hand blocking a flexible and normal business life.

As stated in section 7.4.4, corruption and bribes appeared to be necessary to make the daily business run smoothly, and labour inspections were more frequent at the bigger companies. Unfortunately, corruption, double records, and contracted labour were common means used to avoid obligations

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<sup>259</sup> Venkata Ratnam (III), p. 191.

such as social responsibilities. The corruption was surprisingly widespread, and manufacturers even spoke openly about bribing the labour inspectors. Corruption is definitely a problem for the general development of India, as well as a hindrance when to safeguarding the workers' rights. Nonetheless, the sum of the bribes did seem to decrease when a company followed labour laws, and this step is a small move in the right direction for securing workers' rights.

Without any deeper study of the Indian legal system, the legal system appears to have numerous problems. As mentioned in chapter 6 and section 7.4.6, one problem is that the fines for violations of labour laws are comparatively extremely low. Many of the laws are old and the fines have not been adjusted in accordance with the inflation. To pay an infinitesimal sum when violating the labour laws is not an exemplary punishment for the average employer. It will hardly prevent further violations. Moreover, as stated in chapter 6, another basic problem is the large number of labour acts, and that applications for the acts differ quite widely often depending on the number of workers employed. Therefore, a revision of the Indian labour laws would be a welcome improvement. When the employers can understand them, they will find it easier to observe them.

## **8.5 Relationship with the buyers, consumer pressure and buyers' demand**

As mentioned in section 7.5, the interest of the buyers primarily lies in price, quality, and punctual delivery. The level of working conditions is of secondary interest to manufacturers. Larger brands care more commonly about working conditions and ask questions. Smaller buyers on the other hand tend to turn a blind eye, or more often simply do not bother to check the working conditions.

We noticed varying degrees of concern among buyers regarding working conditions. As described in section 7.5.1, not all buyers asked questions or visited the factories. Some buyers only asked about child labour and others only checked the general production conditions, which indirectly also affect the working conditions. Also, some buyers were more eager to ask questions about working conditions and about half of the buyers provided codes of conduct. The most rigid buyers also conducted social auditing and inspections of the factories. When buyers demand a certain level of working conditions, they must do their best to monitor that those working conditions actually are observed. They must clearly show their suppliers that the demanded working conditions are not only empty talk. Moreover, a new idea mentioned in the same section to overcome the distance problems would be to use web-cameras in the factories. This suggestion sounds interesting, but it is not realistic to expect that this system would be implemented to any larger extent in the near future. Also this type of monitoring may not promote respect in terms of the workers' personal integrity. According to section 7.5.1, buyer with their own offices in Delhi often monitored their own factories. This monitoring is quite natural since the closer the buyers are, the easier examining is. However, one possibility is that once a buyer has opened a local office in India, the buyer has an easier time switching from one manufacturer to another. Hence, the pressure and the competition are more direct, and perhaps this fact is one explanation for the expressed insecurity among the manufacturers. Despite the long-term relationships they actually have, the buyers must be sending out negative signals, otherwise the manufacturers would not feel so insecure.

Even if the buyers really care about the level of working conditions of their suppliers, receiving an overall picture can sometimes be quite hard for them. One reason, as described in section 7.4.4 and 7.4.5, is that quite often production is divided into different units. The use of sub-contractors also complicates the monitoring. We experienced this ourselves when we visited a manufacturer, who only showed us one unit, where the working conditions were quite good. Later, we heard that the company only shows the better factories for the buyers and other visitors. Next to their factory, at least one other factory exists with quite different working conditions. However, from an outsider perspective, it appears as if it was a separate unit, and therefore, buyers do not generally recognise or visit it. Furthermore, when we visited a factory supplying to a buying house, we were informed that this buying house checks the factory, but neither asks any questions nor controls the working conditions, despite telling us that they did ask questions and control working conditions. This information may indicate that manufacturers and buying houses claim to take certain actions in improving working conditions, when they do not always do so in reality.

As stated in section 7.5.2, more than half of the manufacturers applied codes of conduct. The use of codes of conduct is a positive step. Even if they are imperfect, incomplete, or not totally observed, the use of them results in working conditions becoming an issue. By becoming a topic of consideration, buyers and manufactures must at least discuss them. In other words, working conditions come up on the agenda. In general, the bigger the buyer the harder the pressure is to strictly comply with their codes of conduct to be accepted as a supplier. The negative opinions concerning codes of conduct among the manufacturers, as described in section 7.5.2, revealed that some demands neither affected the working conditions or the production, nor reflected the workers true wishes. Incorporating the workers concerns about the codes of conduct should be an important point for the buyers, since the purpose of using codes of conduct is inter alia to safeguard good working conditions for the workers. Section 7.5.2 mentioned that some manufacturers and consultants questioned whether the intentions of the buyers to use codes of conduct. Although some manufacturers thought that the codes of conduct were used as a marketing strategy, irrespectively of the true purpose, the application of them is positive. Moreover, some buyers complained that small manufacturers could not afford to comply with codes of conduct. However, at least when maintaining core labour standards, no lasting problems should prohibit the observance of the codes of conduct, perhaps with some exceptions for trade unions. As this study concludes, the codes of conduct provided by different buyers are already similar, and thus further standardizing would make following them easier and more manageable.

One key issue is the price. As explained in section 7.5.3 the buyers are unwilling to pay the manufacturers for the costs incurred in raising working conditions. Instead, they cut prices every year. Only a few buyers were willing to pay slightly more for better working conditions, which normally a results in higher quality products or faster time delivery. The buyers must realise that if they demand a certain level of working conditions, it naturally leads to some extra costs for the manufacturers. Hopefully, international enterprises exist, which are willing to pay a little bit more. Many enterprises would not take the risk of violating core labour standards. Even if the buyers' real

intentions regarding working conditions are questionable, their reasons are not as important as them actually taking positive steps to improve working conditions of workers.

As laid out in section 7.5.3, most manufacturers have long-term relationships with their buyers. As long as the costs do not increase too much, the buyers will most likely continue to do business with the same manufacturers. However, the buyers provide no guarantee that they will place the orders with the same producers. Accordingly, despite the long-term relationship, the manufacturers felt insecure. As described in the section mentioned above, the manufacturers' main concern was the risk involved in any larger investments such as building emergency exits, as well as employing workers on a regular basis. The buyers' lack of commitment to future orders caused this risk and contributed to a feeling of insecurity, which negatively affects the workers. Even if buyers cannot or will not pay more, a different attitude concerning commitments towards the suppliers would be constructive. A crucial point is that if the manufacturers feel insecure, this insecurity will spread through the organisation and consequently, also deny the workers this necessary security. In order to reduce the insecurity, a dialogue between manufacturer and buyer should take place. Of course, buyers should not be committed to buy from the same suppliers for the next hundred years, but some forethought would certainly be desirable. Especially when buyers demand certain standards, they should commit themselves to buy for the next season, provided that the quality and price are the same. A significant issue is that the manufacturers feel that they benefited from raising the working conditions in e.g. the form of future orders. Furthermore, if the buyers would concentrate on a fewer number of suppliers, having buyers work more closely with their suppliers would be easier. In summary, the buyers should take more social responsibility.

Section 7.5.3 interestingly points out how about half of the manufacturers considered the consumers in the western countries to be aware of the working conditions. However, gauging whether or not this consumer concern is genuine is difficult. A reader of this paper, who presumably is interested in this topic, should consider what he or she views as a decisive factor in purchasing clothes. Are working conditions weighed as heavily as price, design and quality? a. If the reader actually questioned the method of production, did she or he also do so when buying other products, such as pens, matches, jewellery, furniture as well? The basic issue is whether one truly cares about the working conditions, or if consumers' concern is simply an image certain lobbyists provided. A note worthy point is that many manufacturers, consultants and NGOs said that the interest in working conditions emerged around 1994-95. A pure coincidence may be that this interest occurred simultaneously when the phase out of the MFA started. A risk is present that competitors or protection purposes could misuse consumers. A single article in a tabloid press concerning the working conditions could be enough for consumers to avoid a certain company for a significant period of time. Consumer organisations can be especially effective in exerting significant pressure on buyers and manufacturers. Raising the awareness among consumers is important in the developed world and in India. This awareness must, however, be done in a controlled and responsible manner.



As illustrated in section 7.5.4, consumers must understand that their desire for cheaper clothes might negatively affect the working conditions in the developing world. However, one must also remember that the overhead costs such as fabric and transport costs, which could be especially high for big brand names, could be reduced, while productivity is improved. Cheaper clothes do not necessarily indicate bad working conditions. Section 7.5.4 delineates the supply chain. Consumers should question where their money really goes, such as if it really benefits the workers or only some middlemen. For example, exclusive brand name companies sell products such as fine embroiders. The consumer pays a high price for the garment; while the worker in the home based industry rarely gets even minimum wages. Hence, the great challenge is to ensure that the workers' situation and environment really improve when consumers pay extra for clothes. Today, a major gap in information is present, which makes it very hard for consumers to know if their money goes towards actually helping to improve working conditions for workers and their families. The importing companies must therefore openly provide information on working conditions to their suppliers and actively work on social issues. In their annual reports, they should describe their work on these issues. Trustworthy independent monitors, such as auditing firms and NGOs, could be a part of the solution, provided that their fees are affordable. Responsible media companies also have a role to play, as long as they provide consumers with thoroughly controlled facts and no biased stories and lies.

Looking forward, more and more buyers becoming increasingly socially responsible and caring about the working conditions of their suppliers' labour would be a welcome reform, since the buyers' behaviour has an impact on the latter. Also, managing the supply chain is important, such as, finding suppliers with good working conditions and rewarding them by working with them for a longer period of time. Furthermore, consumer awareness is a crucial step towards improving working conditions. Due to market pressure, companies will be encouraged to be socially responsible. Finally, the willingness to pay slightly more needs to be present, both among buyers and consumers. This willingness would hopefully improve the situation for workers in the Indian export garment industry.

## **8.6 International competition, regulatory competition and the phase out of MFA**

As stated in section 7.6.2, the manufacturers, buying-houses and consultants all thought that the competing countries are mainly Asian, but the opinions varied in naming the cause for the competitiveness of other countries. This field study confirms that the major international competition that Indian garment exports face is Southern. , The manufacturers thought that lenient legal enforcement, cheap labour, better-trained and more efficient workers, better infrastructure, cheaper raw material, and large-scale production to be the competitive advantages of other developing countries. The differences in what the Indian manufacturers and the others believed attract investors surfaced when the Confederation of Indian Industries asked foreign investors why they did not invest in India. The main reason for not investing was bureaucracy and corruption. This reason was followed by bad infrastructure such as roads, power supply and communications, and

finally labour problems.<sup>260</sup> Cheap labour and lenient legal enforcement are an important motivating factor for investors, but they are not necessarily decisive. As highlighted in section 7.6.2, good infrastructure, high productivity, skilled and dedicated labourer with a high level of workmanship, centralised marketing, good shipment possibilities, good technology and import structure and duties are other important factors for attracting buyers and investors. Buyers and investors consider these factors when choosing manufacturing units and countries for production.

In examining regulatory competition, a country adjusting their labour laws to become more attractive for investors is likely. In reference to section 7.6.2, widespread opinion in India confirmed that competing states lower their labour laws to attract investors. As discussed in section 7.6.2, international trade, labour and textiles experts, confirmed that countries are lenient in the implementing of labour laws to attract investors and that the EPZ are examples hereof. Manufacturers, as well as governmental representatives and NGOs, expressed that Indian garment producers staying competitive would be difficult if they had to follow the labour laws, when competitors were not forced to observe the same strict regulations. Today, heated debates take place in India when discussing whether or not the labour laws should be liberalised and reformed. However, developing or developed countries lowering their laws as far as the core labour standards are concerned are more or less impossible. In Geneva, ILO experts on fundamental principles, along with other trade experts at the WTO shared our view and confirmed that regulatory competition was not an issue when observing the fundamental principles at work and that no country should dilute their laws as far as the core labour standards are concerned.

Buying-houses that are active in several different countries constitute an important link between producers and buyers and they have, if any, very few factories of their own. Accordingly, buying-house can easily switch suppliers and counties of production. Consequently, when focusing on how international competition affects the garment industry and the working conditions, the role of the buying houses should be further examined.

As discussed in section 7.6.4, many manufacturers were unsure of what would happen when the MFA was phased out. Moreover, trade and garment experts are also hesitant in predicting what the future holds. Some of the manufacturers believed they would not be affected at all; others believed they would be able to export more. Most people who were afraid of the increased competition believed that China posed the greatest threat. They all agreed that those manufacturers with good quality, high technology and well-trained labour would have a better chance to keep the buyers. The Indian producers requested higher transparency, and many hoped this transparency would coincide with China's membership in the WTO. The Indian manufacturers, consultants and governmental representatives feared increased new non-tariff trade barriers. Since the textile and garment sector is a very important sector for many countries, they will probably continue to protect their markets and interests. The trade experts at the WTO also thought that the risk for increased projectionist

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<sup>260</sup> Interview with Professor Venkata Ratnam in Delhi on the 10 October 2001.

measures such as anti-dumping duties, technical barriers and different standardisations and certifications were overwhelming.

As mentioned in section 7.6.1, several manufacturers and consultants questioned whether India being scrutinised so closely was fair, when less democratic countries were not. Since students like ourselves, researchers and media have more or less free and easy access to India, a risk exists that democratic countries like India are highlighted and given disproportionate amounts of negative publicity in different publications and media. As mentioned above, an interesting point is that many manufacturers, consultants and NGOs said that the interest in working conditions within the garment industry emerged around 1994-95. A pure coincidence may be that in 1995 the phase out of the MFA started. The focus towards garments is very intense and every individual should ask why they focus on the workers' producing garment. A risk is present that competitors and protectionist purposes could misuse consumers. A point of emphasis is that the core labour standards and other working conditions should be promoted for all workers in every industrial sector worldwide.

As pointed out in section 7.6.1, a few governmental representatives and consultants expressed that international trade has created more jobs. Nonetheless, drawing any final conclusions on how international trade has affected working conditions is difficult. As mentioned in section 7.4, the demand for skilled workers is increasing within the Indian export garment industry. Furthermore, differences between the general working conditions and wages of skilled workers and that of low and unskilled workers appear to be widening. The pressure and insecurity has increased among manufacturers and workers along with increased competition. Nevertheless, working conditions in the export garment industry compared to the domestic sector are better, and workers do prefer to work for exporting companies.

In summary, neither manufacturers, consultants nor trade-experts know what will happen after the phase out of the MFA, or exactly where investors and buyers will go. Even though the costs of labour and legal enforcement are not necessarily the decisive factors in determining where buyers go, they do play an important role. Despite the fact that countries tend to be lenient with the implementation of labour laws to attract investors, exporting positively influences working conditions. Furthermore, quotas constitute artificial trade barriers, and a positive reform may be abolishing them. However, a concern is non-trade tariff barriers that are likely to arise and that will further block exports, thereby obstructing the social progress of a developing country like India.

## **8.7 Social Clause and Trade Sanctions**

Many people, primarily in the developed countries, feel that countries that do not observe the core labour standards receive an unfair and immoral competitive advantage. Chapter 4 provides a short theoretical overview of the positive and negative effects of a social clause. The implementation of a social clause in the framework of the WTO, to put pressure on countries to observe the core labour standards, could at first glance seem to be a satisfactory solution to countries violating core labour standards and the problem of the race to the bottom. However, as expressed below, a social clause or other forms of trade sanctions would not promote compliance for core labour standards.

As mentioned in the previous section, a doubt exists to whether the North and South are racing to the bottom in regards to the core labour standards. Today, an unthinkable proposition is that developed countries would lower their standards in regards to child labour, discrimination and freedom of association. As seen earlier, garments are mainly produced in the developing world, with the exception of some high fashion products. As concluded in section 7.6.2, the developing countries mainly compete with each other, and not with developed countries. Hence, an eventual race to the bottom concerning core labour standards would most likely only occur among developing countries, and the race to the bottom should not be an argument used by the North when lobbying for a social clause containing core labour standards.

In examining a de jure race to the bottom around core labour standards among the southern countries, this race, as expressed by labour experts at the ILO in Delhi and Geneva, is probably unlikely although it occurs occasionally. A few countries have for instance chosen not to allow trade unions in EPZs. The Indian parliament would mostly likely not lower the laws on core labour standards to attract investments. On the contrary, as indicated in chapter 6, the labour laws in India are quite stringent. However, issues surrounding implementation and enforcement are more complex. In this context, a distinction must be made between forced labour and the worst forms of child labour on the one side, and the freedom of association and the right to collective bargaining, discrimination, and minimum age on the other side. In investigating the first category, countries would almost never allow forced labour or the worst forms of child labour, such as slavery or child abuse, to attract investors. On the contrary, they normally work to stop and prevent these forms of exploitation. However, as far as following other core labour standards, developing countries may turn a blind eye.

The problems with India's legislation regarding core labour standards are the following: minimum age convention, the conventions regarding freedom of association, and the right to collective bargaining. As stated in section 3.3, India has not ratified any of ILO conventions. As pointed out in section 6.3, national laws for the private sector correspond to ILO conventions Nos. 87 and 98. However, a key problem is that the governmental servants are not guaranteed freedom of association or the right to collective bargaining. Moreover, as explained in section 6.2, the Indian labour legislation does not prohibit all forms of child labour. Children are still allowed to perform work in the small-scale and home-based industry, when the work is neither hazardous nor included in a list of certain occupations such as carpet weaving, cloth printing, dying and weaving, and wool cleaning. Accordingly, Indian labour laws do not comply with the minimum age convention, and ratification would require adjustments of laws. However, as concluded in section 6.2, no formal obstacles exists for India to ratify convention No. 182, since the Indian regulation already covers the worst forms of child labour.

As mentioned in section 7.7 and section 4.4, the official position of the central Indian government is that they oppose any form of linkage between trade and labour standards de facto and de jure. Also, an interesting point is that the Indian trade union movement is one of the few in the world that does not consider a social clause suitable, when safeguarding the rights of the workers.

As discussed in section 7.3.4, the main de facto problem for the Indian garment export sector is the lack of freedom of association and the right to collective bargaining. Accordingly, all manufacturers strongly opposed linking the freedom of association and the right to collective bargaining with trade. They opposed this linkage because they could not imagine accepting trade unions within their units and thus feared being struck with trade sanctions as a result. Nevertheless, opinions differed as to the adoption of the other three core labour standards. A surprising finding, as delineated in section 7.7 was that three manufacturers, other spokespersons for the garment industry, as well as some governmental servants at both state and central level would have welcomed a social clause, which contained provisions for bonded labour, child labour and discrimination. Though not explicitly stated by all of them, they appeared to favour the social clause and trade restrictions, because producers that violate the labour standards receive a cost advantage and compete unfairly. As mentioned in section 7.6.3, the industry feared that other countries, such as China, would out-compete them, since these countries violate the core labour standards. Moreover, as described in section 7.3, everyone agreed that bonded labour, child labour and discrimination do not constitute problems in the garment export industry. If a social clause included these provisions, the Indian garment export industry would not be struck by any trade sanctions. Hence, advocating for trade sanctions for practices that do not concern oneself, and opposing trade sanctions for those malpractices that occur in one's own country is easy.

Nevertheless, as described in section 7.7, those that favoured a linkage between core labour standards and trade were few, and the majority of the manufacturers, along with buying houses, professors, NGOs and trade unions strongly opposed any linkage. The opponents of a social clause did believe that human rights and the respect of core labour standards are important issues, but that trade sanctions are not the right way to improve them. Generally, a social dimension exists behind the non-observance of the core labour standards. Poverty is a main cause for countries not observing core labour standards. . Poor families cannot afford to send their children to school and are forced to send them to work. In addition, the quality of education is very poor in public schools, which thus results in many parents choosing to not send their children to school. Moreover, in examining discrimination issue, a key point to remember is that the social structure in Indian society is very complex, male-dominated and the suppression of particularly women is a far-reaching problem. Finally, the structure of the trade unions within India and their connection to different political parties contribute to the mistrust among both employers and workers towards the trade unions. Thus, a social clause and trade sanctions would hardly improve the observance of core labour standards, since it cannot change the social structure of a society. Trade sanctions would only exacerbate poverty in India, because a decrease in export increases the unemployment and reduces the necessary tax revenues. Furthermore, violations of core labour standards seem to be more common in the domestic sector. Hence, trade sanctions affecting the export sector aim at the wrong target.

As noted in section 7.7, many of the manufacturers believed a market solution to be superior to trade sanctions. The reason is that competing without observing core labour standards is impossible, since poor working conditions negatively affect quality and productivity. Rather than attempting to implement trade sanctions, those promoting workers' rights would achieve better and faster results,

if they approach the managers and communicate the positive effects good working conditions have for production. The ILO InFocus programs on fundamental rights and principles, as well as ILO's and UNIDO's management training programs, all briefly described in section 5.2, represent examples of a useful approach.

Also practical problems are involved with the enforcement of a social clause. If trade sanctions were imposed on country level, such as including all products exported from a certain country, then even those companies that observe all core labour standards would be hurt. This result is unfair. In order to be fair to manufacturers that respect the core labour standards, their products must be distinguished from those products made in violation of core labour standards. Problems with monitoring are then raised. As described in section 7.7, a social clause may have been advantageous if monitoring and enforcement were possible. However, as most of the manufacturers and all of the buying houses, consultants, NGOs, governmental representatives, professors and trade unions expressed, monitoring a social clause appears unfeasible. Proponents of a social clause should pose the following question: What actions would they take if they were in charge of a WTO division working with the enforcement of a social clause?<sup>261</sup> The large number of manufacturers, the complicated sub-contracting chain, the split up of units, and widespread corruption make guaranteeing an effective monitoring of a social clause almost unachievable. Small units functioning as sub-contractors to a sub-contractor would be very hard to detect, localise and find. The WTO does not have unlimited financial resources needed to monitor the observance of a social clause. Hence, monitoring all companies, sub-contractors, and home-based industry would result in huge costs and consume many resources, thereby risking overburdening the WTO. Also, today the WTO does not have the legal resources to monitor the compliance of labour standards within sovereign countries. A commission cannot be sent to a certain country against the will of the government in that country. Furthermore, the ILO manages the core labour standards, not the WTO. As described in section 3.3, the ILO has adopted the core labour standards conventions. In other words, the WTO has limited expertise in making judgements how to apply the ILO's core labour standards. In addition, a risk is present that great confusion would result if both the ILO and the WTO attempted to interpret the core labour standards. The case law would be incoherent since both would have their own interpretations of, for example, the meaning of "work of equal value" when determining if discrimination is present. Also, having the ILO deal with core labour standard is preferable to having the WTO deal with them because the ILO has a tripartite structure. All social partners, such as governments, employers' organisations and trade unions, must be involved in the process. The ILO framework could only achieve a constructive result.

Also, a danger exists that the social clause could be misused as a basis for disguised restrictions to trade. A county using a social clause for protectionism purpose is likely. For example, developed countries could impose trade sanctions based on pure suspicions of the use of, for instance, child labour or gender discrimination. Even unfounded accusations would hurt the industry because they would interrupt trade during the dispute settlement process. For a seasonal based industry, such as

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<sup>261</sup> Interview with Richard Blackhurt on 21 February 2002.

the garment industry, the disturbance of trade for only a few months would be disastrous. Moreover, a risk is present that a company would try to harm their competitors with false accusations of violations of core labour standards. However, one advantage of enforcing core labour standards through the WTO would be a more formal structure for investigating social clause issues. Individual firms would be less vulnerable to NGOs and individual making unfounded accusations.<sup>262</sup>

As clearly stated in section 7.7, the WTO does not have the implementation of a social clause on its agenda today. The directors at the WTO were very reluctant to discuss the issue of core labour standards. Moreover, as explained in section 7.7, several member states expressed a strong resistance to discussing the issues of labour standards within the WTO. The WTO incorporating social clause into its framework in the near future is doubtful. The principle of one country, one vote prevails, and most countries oppose a social clause. However, one should not forget that some powerful countries will always have an interest in labour standards. As mentioned in section 4.5, notarising the issue of bonded and forced labour is possible in the DSB of the WTO. Moreover, a panel may even interpret article XX of the GATT in such a way that allows trade restrictions on goods produced using forced labour. A WTO panel could even conclude that forced labour is immoral—allowing forced labour would not survive in a court of public opinion. Accordingly, in extreme case, this panel may deem that trade sanctions would be justifiable.

In summary, more productive means exist to promoting a respect for core labour standards than adopting a social clause and applying trade sanctions.

## **8.8 Certification, social labelling and other suggestions**

During our interviews, we met with several manufacturers that showed a genuine concern for their workers. Means need to be in place to promote the deeds of these employers. Motivating India and its manufactures to raise working conditions is necessary. As described in section 7.8, certification and social labelling are possible options. However, social labelling is risky, since it would not guarantee social compliance because of other factors, such as corruption and unfair practices. Certification may be a viable option provided that several trustworthy non-profit organizations, such as ones the ILO accredited, conducted the social auditing. A key point would be ensuring that the costs of certifications were kept to a minimum. Keeping the costs down could be possible if organizations such as the ILO provide financial support for conducting the audits. As explained in section 5.4, the costs for SA 8000 auditing and certification are very high, especially for smaller manufacturers. Therefore, the work the UNIDO conducted, where they helped a cluster of smaller manufacturers to get SA 8000 certified, is positive. This work is described more in detail in section 7.8. The introduction of less costly certification systems than SA 8000 would also benefit smaller manufacturers that want to show their customers that they comply with basic working conditions, but cannot afford to be SA 8000 certified. The organisation administrating the certification and auditing must however be trustworthy and not subject to corruption. As delineated in section 7.8, ASK is conducting well thought out audits. When the retailers share the costs involved in social

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<sup>262</sup> Interview with Richard Blackhurt on 21 February 2002.

auditing together with the manufacturers, they show that working conditions are an important issue for them, and they help the manufacturers to bear the costs.

Naturally, certification system must be carefully established, thereby ensuring that it does not include disguised protectionist measures by excluding certain manufacturers or certain countries. The aims and methods must be focused on improving the working conditions and the welfare of the workers. Simultaneously, the setting of these standards must be accomplished in a way that does not harm the garment industry in a multilateral trading system.

As explained in section 7.9, the Indian government should make efforts to reduce the bureaucracy, simplify the labour laws, provide better infrastructure, and fight against widespread corruption. Furthermore, a crucial point is that India must provide a quality education for the children of the workers. All these measures represent ways to improve the situation for the garment manufacturers, and thus the workers.

In order to raise the level of working conditions, everyone in India, including the government, media, manufacturers, retailers, trade unions and workers, must be involved. Different awareness raising programs, focusing on manufacturers and buying houses, appear to trigger positive results. If manufacturers realise that they would benefit from raising the level of working conditions in the form of increased productivity and improved quality of their products, the workers would benefit quite a lot. As mentioned in section 5.2, the ILO works with programmes that illustrate the advantages of raising the level of working conditions in general and observing the core labour standards in particular. Manufacturers that have been successful in raising the working conditions could serve as models for other companies. Hopefully, these successful results would compel other manufacturers to follow suit, instead of being dragged into a race to the bottom. The adoption of the 1998 ILO Declaration on Fundamental principles and Rights at Work, described in chapter 4, was a leap in the right direction in promoting the adoption of core labour standards. In conjunction with the ILO InFocus programmes on core labour standards, this ILO initiative is a positive step towards eliminating violations of core labour standards. This path is superior to the implementation of a social clause in the framework of the WTO, considering that the key goal is to improve the situation for workers.

## **9 Summary**

On a scholarship from the Swedish International Development Corporation Agency, we conducted a minor field study in India as a part of our Master Thesis in International Public and Labour law at the School of Economics and Commercial Law, Göteborg University, Sweden. The aim of our minor field study was to review the issues relating to the impact of globalisation on labour standards, focusing on India's export garment industry as a case study. Accordingly, our field study concentrates on the view of the manufacturers in the labour intensive garment industry. This chapter contains a brief summary of our main findings and conclusions.



## **Bonded labour and child labour**

The manufacturers maintained that bonded labour and the worst forms of child labour were neither beneficial, nor that they existed in the Indian garment export industry. Everyone that we spoke with confirmed that these malpractices do not exist in the garment export industry. Additionally, other forms of child labour are not common in this industrial sector. Estimations exist that no more than 5 % of the child labourers are engaged in the export industry.

The main problems seemed to be a lack of adequate primary education, insignificant social security and uneducated poor families with many children. Understandably, some manufactures hesitated in supporting a total ban on child labour, such as prohibiting children from performing simple tasks. They feared that many children would face a worse destiny by, for example, being forced to beg on the street. In order to improve the situation for the children, qualitative primary education must be provided to all children in India, together with raised awareness among the parents concerning the benefits of education for their children.

## **Trade unions**

In Delhi, not a single factory, which we visited, had an in-house trade union. Moreover, no active trade unions existed at all in the garment sectors of Jaipur and Ludhiana. The manufacturers believed that the unions were corrupt and misguided the workers, thereby creating unrest. Everyone including Indian authorities, buying houses, consultants, NGOs, and professors more or less confirmed these views. Certainly, good trade union representatives, such as some of those we met at AITUC, exist. They are doing their best to improve the workers' situation, but the overall picture of the Indian trade unions is dark.

In the Indian garment export industry, the law formally safeguards the fundamental rights of freedom of association and collective bargaining. In practice, however, they are not observed. The situation between manufacturers and trade unions in India appeared to be extremely unhealthy. In order to change, both manufacturers and trade unions must change their attitudes. Rethinking is necessary. The manufacturers must become aware and learn to understand the importance of respecting these fundamental rights—respecting these rights could even improve the productivity as well as the quality of the garments. The trade unions must understand that the survival of an enterprise, and consequently the workers daily livelihood, depend upon the competitive edge that the enterprise is able to develop in the global market, and thus make reasonable demands.

The trade union movement in India consists of many different trade unions, which are all connected to political parties. These connections lead to rivalry, a fragmented structure and leaders quite often striving for personal gains and power. A consolidated and specialised union structure would generally be better placed than fragmented ones. Instead of competing with each other, the trade unions should specialise, strengthening and focusing on one industrial sector like the garment industry.

## **Discrimination and gender issues**

We could not find any evidence of discrimination due to religion. The caste system is officially abolished, but in practice it is still present in society. Manufacturers preferred not to discuss this topic in detail. Nonetheless, this factor does not mean that they necessarily discriminate on the basis of an individual's caste. As far as discrimination due to gender is concerned, we only saw two units with female operators while all the rest engaged women in low-skilled and low-paid jobs. In terms of gender equality, women tend to get equal pay if they perform equal work in the export units. However, the women are mostly uneducated and not often employed in high skilled activities and are therefore paid less. The manufacturers are not solely to blame for this situation. Women do not receive the same opportunities for learning skills, and India is a male dominated society with a widespread suppression of women. In northern India, the concept of married women working outside the home is still not socially acceptable. The main problem is the home-based units, where women are deprived most working rights and are paid only a fraction of the minimum wage. In a society where women have the responsibility for housework and children, the importance for women to be able to work at home is understandable, but women should still not be deprived their basic rights. Although the manufacturers should not be blamed for the social structure, they must take their responsibility as employers to promote and support female workers.

We were surprised to learn that a majority of the manufacturers demanded skilled women. They consider women to be more loyal and hardworking, but on the other hand, consider them to be less eager to create trouble and easier to manage. Training programmes for women represent a positive reform. Women could qualified for highly skilled jobs, and thereby get the same salaries as male workers.

## **General attitude, terms and conditions of employment and organisation**

Our findings illustrate that manufacturers have an increased awareness regarding working conditions, and that major changes have occurred in the last 5-10 years, at least concerning the physical working conditions at the first stage of production. This stage consists of the main manufacturing unit, which has direct contact with buyers or buying houses in the garment export industry. Except for freedom of association and the right to collective bargaining, which includes the involvement of trade unions, the manufacturers thought the observance of core labour standards to be crucial for a functioning production. A new and more aware generation has reached management positions and implemented improvements in several family-run companies. Furthermore, a vast majority of the manufacturers thought that improved working conditions generally had a positive effect on both quality and productivity.

Today, many workers appeared to depend on the employer to explain the benefits of contributing to social security funds— something the employer often preferred not to explain, just like they preferred not to pay their share. The main problems for the workers are that they do not know if they will have a job, for how long they will be engaged in work or if they will earn enough money to support themselves and their families. Indian workers, just like most of us, value regular

employment with a secure social environment. The insecurity for the workers is more difficult than the level of the physical working conditions.

Overtime is a frequent problem, specifically for the exporters, who cannot influence and foresee the coming orders in the same way as domestic producers. The garment export industry is seasonal—sensitive to fashion swings and has increasingly shorter lead-time. Generally, workers endure long hours, and employers do not pay them double for overtime, as the law requires. Better management might correct many problems. Several manufacturers did recognise the negative impact that long working hours had on quality, at least when the working day extended to 12 hours. However, they often faced challenges when they attempt to reduce overtime, since piece-rate workers want to work long hours to increase their wages. The workers are mostly migrant labourers, who are aware that they will lose their jobs during a low season, and thus feel forced to work as much as possible when they have the opportunity. The demand for skilled workers is widening, as well as their general working conditions and wages, compared to the low and unskilled workers.

The trend in India is to use contractors. Contracting avoids regular employment and payment of social security and allows sub-contracting to small low-wage business units. This practice, along with the split-up of bigger units, allows companies to evade labour regulations, such as “hire-fire” problems, social securities and the organisation of workers. It also maintains flexibility in the face of rapidly changing markets. However, contracting complicates the monitoring of working conditions and prevents efficient production. Buyers, buying houses, and manufacturers rarely asked questions or checked the working conditions by sub-contractors.

The labour inspections were more frequent at the bigger companies. No one hid that everyone bribed the labour inspectors though the sum did decrease if a company observed the labour laws. Corruption and double records are further ways to avoid obligations like social responsibilities and double overtime payment. Corruption is a setback both to the general development of India as well as a hindrance when safeguarding the workers’ rights. The Indian legal system faces more challenges than simply corruption. The fines for violations of labour laws are comparatively very low. Another basic problem is the large number of labour acts, which leads to a system of labour laws that even for lawyers is hard to survey. Therefore, a revision of the Indian labour laws would be a welcome improvement. When the employers can understand them, they will find it easier to observe them.

### **Relationship with the buyers, consumer pressure and buyers’ demand**

All buyers were concerned about quality, price and timely delivery. Working conditions seemed to be of secondary concern. Even though the big brand names demanded certain working conditions and provided the manufacturers with codes of conduct, only the most rigid buyers, like those with offices in India, inspected the factories. Buyers must accept their share of responsibility for the working conditions. This responsibility cannot amount to only a marketing strategy to provide the manufacturers with codes of conduct. When buyers demand a certain level of working conditions, they must do their best to monitor that those working conditions actually are observed. They have

the power to influence the manufacturers to respect core labour standards and other working conditions. The buyers must also realise that if they demand a certain level of working conditions, it naturally leads to some extra costs for the manufacturers.

The willingness to pay slightly more is however not present. The competition has increased and buyers cut prices every year. Buyers were not willing to pay extra money for the costs incurred in raising working conditions. The main concern for the manufacturers was the risk involved with any larger investments such as building emergency exits, toilets or air-conditioning as well as employing workers on a regular basis. The buyers' lack of commitment to future orders caused this risk and contributed to a feeling of insecurity, which negatively affects the workers.

Opinions differed regarding whether true consumer pressure really existed. Consumers stating that they care about working conditions are quite different from them showing this concern when purchasing clothes. The style, model, quality and price rather than working conditions are still decisive factors for most consumers.

### **International competition, regulatory competition and the phase out of MFA**

The competitors of the Indian garment exporters only come from other developing countries, and many producers feared China in particular. Cheap labour and lenient legal enforcement play an important role in determining where investors go, but those factors are not necessarily decisive. The competitive advantages of developing countries could also be good infrastructure, high productivity, skilled and dedicated labour with a high level of workmanship, centralised marketing, good shipment possibilities, good technology and import structure and duties. In terms of regulatory competition, lowering core labour standards is impossible for developing or developed countries.

Many manufacturers were uncertain about what would happen in 2005, when the MFA will have been phased out. Some believed they would not be affected at all; others believed they would be able to export more. Moreover, many feared increased competition as well as new non-tariff trade barriers. Quotas constitute artificial trade barriers, and their disappearance may be beneficial. However, a true concern, as the manufacturers' and other trade experts' expressed, is the likely rise of non-trade tariff barriers. These barriers will further block the export and thereby obstruct the social progress of a developing country like India. A crucial point is that many manufacturers, consultants and NGOs said that their interest in working conditions within the garment industry emerged around 1994-95. This occurrence may be a pure coincidence, but in 1995 the phase out of the MFA started. The focus towards garments is very intense and every individual should ask why they focus particularly on garments and not on other products.

### **Social clause and trade sanctions**

The findings concerning international competition and the question of whether a core labour standard clause should be implemented in the framework of the WTO were very interesting and partly differed from existing international literature. It was surprising to learn that some manufacturers as well as representatives for the garment exporters favoured the introduction of trade

sanctions, at least as far as bonded labour, discrimination and the worst forms of child labour. No one favoured trade sanctions in areas of freedom of association and the right to collective bargaining. The official position of the Indian government is that they oppose any form of linkage between trade and core labour standards. All consultants, professors, NGOs, buying houses, international organisations and trade unions shared this view. Also, many of the manufacturers were against them as well. Some supported a social clause on a theoretical level, but most, and we have to agree, thought that monitoring the compliance of core labour standards within the WTO system would be impossible. The following factors demonstrate why a social clause would be too difficult to monitor: large number of manufacturers, complicated sub-contracting chains in different levels, split up of units as well as widespread corruption. The WTO also lacks both the necessary financial resources and the competence required for monitoring and enforcing a social clause.

Generally a social dimension exists behind the non-observance of the core labour standards, such as poverty in the case of child labour. A social clause and trade sanctions would hardly improve the observance of core labour standards, since it cannot change the social structure of a society. Furthermore, violations of core labour standards seem to be more common in the domestic sector, and trade sanctions affecting the export sector aim at the wrong target. Also a risk is present that a social clause would be misused for protectionism purposes.

A significant position is that today the social clause is totally off the agenda of the WTO, which was stated once again at the WTO Ministerial meeting in Doha, Qatar, last year. WTO representatives confirmed this point. Within the WTO, most of the member states oppose the linkage between trade and core labour standards - this lack of support does not help the implementation of a social clause. Strong voices might once more be raised in the future in favour of linking labour standards and trade. If a social clause is unavoidable, only the most fundamental and unacceptable practices should be the base for trade sanctions. Only severe, widespread and systematic violations of conventions No. 29 and No. 105 on forced and bonded labour could constitute such unacceptable practices that they should be included in a social clause. Nevertheless, better ways definitely exist to promote the respect of core labour standards than a social clause and trade sanctions.

### **Certification, social labelling and other suggestions**

Certification and social labelling have been mentioned as possible options for safeguarding the respect for the core labour standards. Social labelling is a dubious practice. Due to corruption and unfair practices the social compliance would not be guaranteed. Certification may be a beneficial development. This option could be advantageous provided that one or a few trustworthy non-profit organisations, accredited by organisations such as the ILO, conduct the auditing. The main problem with certification is however the costs involved, which especially smaller manufacturers cannot bear. Therefore, financial support to the non-profit organisations that conduct the social audits would be useful. The introductions of a less costly certification system is another positive way for assuring that smaller manufacturers could be certified. This certification would allow them to demonstrate that they too are capable of observing the core labour standards.

Different awareness raising programs would be very beneficial—and they should focus on the Indian manufacturers and buying houses. If the manufacturers realise that they would benefit from raising the level of working conditions through better productivity and quality of their products, the workers would be the true winners. If companies begin to display success by raising working conditions, they will serve as models for other companies to follow, thereby preventing a race to the bottom. , The adoption of the 1998 ILO Declaration on Fundamental principles and Rights at Work and the introduction of the ILO InFocus programmes on core labour standards are positive steps towards eliminating violations of core labour standards. This path is far superior to the implementation of a social clause in the framework of the WTO, and it should result in improving the working conditions of workers.

### **Final remarks**

India has a large labour intensive garment industry. Accordingly, the easiest, albeit not the most efficient, way for India's manufacturers to remain competitive in labour-intensive industries is to cut labour costs. Our research demonstrates that even if the labour laws are not followed, international trade has positively influenced the working conditions, and that economic advantages exist in raising labour standards.

The focus towards garments is very intense; it was intensified around 1995 when the phase out of the MFA started. Every individual should ask why they focus on the workers' producing garment. Every consumer should take responsibility for examining this industry, but a risk exists that competitors and protectionists causes could misuse consumers The core labour standards and other working conditions should be promoted for all workers in every industrial sector worldwide. Today, a major information problem is present, and consumers can never be sure that their money actually improves the conditions for workers and their families. In order to improve the situation for workers, the manufacturers themselves must feel secure. Since the buyers press prices, long-term commitments are particularly important if the manufacturers are to invest in better working conditions. Moreover, the importing companies must disclose information regarding working conditions among their suppliers, and actively work on social issues. More retailers including a social report in their annual reports would be helpful.

The biggest concerns for the Indian garment export workers are not the physical working conditions, but the fact that many do not know if they will have employment, for how long they will be engaged in work or if they will earn enough money to support themselves and their families. The Indian workers should not be denied regular employment. Accordingly social protection and social safety nets are urgently needed.

In order for the workers to protect their interests, the awareness among workers must be raised. Various workshops for trade unions are important, thereby allowing trade unions to raise the awareness among workers. The freedom of association and the right to collective bargaining constitute basic elements to safeguard workers' rights, of which none are observed today in the export garment industry. The manufacturers must become aware and learn to understand the

importance of respecting these fundamental rights. Furthermore, one of the most important and difficult challenges for the future is to rebuild functioning and responsible workers' representations.

Motivate India's engagement in the raising of working conditions is necessary. Simultaneously, the setting of these standards must be accomplished in a way that does not harm the industry in a multilateral trading system. Different awareness raising programs would have a positive influence on labour standard — particularly if they are focused towards the Indian manufacturers and buying houses. If one desires to take the workers situation in a developing country like India seriously, one must not introduce trade sanctions. Rather, one should focus on education, infrastructure and improved management systems. In order to further raise the level of working conditions everyone in India, including the government, media, manufacturers, retailers, unions and workers, must be involved.

One supplier told us, "almost anything one says about India, the opposite is equally true." Still, International trade, working conditions and the welfare of the workers are crucial for India's development. However, trade sanctions would be very difficult to monitor and a social clause, even if it were limited to core labour standards, would probably not achieve the desired results.

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2001-11-09  
*Kunj Bihari*  
Namdev Exporters

2001-11-09  
*Vikram Tambi*  
Tambi International

2001-11-10  
*Mohan Agnani*  
Jetex Garment Exporters

2001-11-26  
*Subhash Kejriwal*  
Mg. Director, Limassol Apparels  
*S.H.A. Majeed*  
Pr. Manager, Limassol Apparels

2001-11-26  
*Ajit Lakra*  
Mg. Director, Superfine Knitters

2001-11-26  
*Satish Bansal*  
Mg. Director, Sriyansh Knitters  
*Neetu Passi*  
Merchandiser, Sriyansh Knitters

2001-11-27  
*Ashwani Dhawan*  
Director, York Exporters

2001-11-27  
*Balbir Kumar and Harsh Kumar*  
Octave Apparels

2001-11-27 and 2001-11-29  
*Sanjay Nayyar and Sandeep Jain*  
Petit Fashions

30-11-2001  
*Ranjit Bhatia*  
Director, Golden Strand  
*Aneet Singh*  
Manager Co-ordination, Golden Strand

### Other interviews conducted in India

2001-10-10 and 2001-10-25  
*C.S. Venkata Ratnam*  
Professor, International Management Institute  
Delhi

2001-10-11  
V.D. Das  
Factory Head, Krishna Labels, Delhi

2001-10-13  
*Triveni Mehta*  
Manager - Human Resources, DCM Benetton  
India, Delhi

2001-10-15  
*Coen Kompier*  
Specialist on International Labour Standards, ILO  
Delhi



2001-10-16  
*Rajesh Kumar Srivastav and Rajvot Singh Gill*  
 KSP (buying house), Delhi

2001-10-17  
*Rajveer Singh*  
 National Officer, United Nations Industrial  
 Development Organisation (UNIDO), Delhi

2001-10-17  
*R.K. Kapur*  
 Managing partner, Surya Marketing and  
 Engineering Services (consultant), Delhi

2001-10-18  
*Harminder P. Sahni*  
 Associate Director, KSA-Technopak (consultant)  
 Delhi

2001-10-18  
*Sudarshan Sharma*  
 Divisional Manager, SGS India (consultant)  
*John M Bryden*  
 Director, Laboratories and Certification Services,  
 SGS India (consultant), Delhi

2001-10-18  
*Ms. Ishwar*  
 Mona Design. Delhi

2001-10-22  
*Vishwadeep Saksena*  
 Textiles Committee, Government of India, Delhi

2001-10-22  
*Bibek Debroy*  
 Director, Rajiv Gandhi Institute for Contemporary  
 Studies, Delhi

2001-10-25  
*Vikas Kohli*  
 VP-Sales and Marketing (South Asia), World  
 Fashion Exchange (consultant), Delhi

2001-10-30  
*Shubi Singh*  
 Researcher/Consultant, Delhi

2001-10-31  
*Viraj Singh*  
 Li & Fung (buying house), Delhi

2001-11-01  
*K.L. Mahendra*  
 General Secretary, All India Trade Union  
 Congress  
*D.L. Sachdev*  
 Secretary, All India Trade Union Congress, Delhi

2001-11-01  
*Anchal Jain*  
 Primetex (buying house), Delhi

2001-11-05  
*Pradeep S. Mehta*  
 Secretary General  
*Sandeep Singh*  
 Consumer Unity & Trust Society (CUTS), Jaipur

2001-11-06  
*R.S. Antil*  
 Executive Director, Institute of Labour  
 Development, Jaipur

2001-11-06  
*R.P. Pareek*  
 Joint Labour Commissioner, Jaipur

2001-11-07  
*D.C. Gupta*  
 General Manager, District Industries Centre,  
 Jaipur

2001-11-07  
*P.N. Panday*  
 Deputy Director, Industries department, Jaipur

2001-11-07  
*B.P. Bunker*  
 Joint Director General of Foreign Trade, Jaipur

2001-11-08  
*K.L. Jain*  
 Honorary Secretary General, Rajasthan Chamber  
 of Commerce & Industry (RCCI)  
*Raj Kumar Jani*  
 Senior Manager, Rajasthan Chamber of  
 Commerce & Industry (RCCI), Jaipur

2001-11-08  
*Jaya Pujara*  
 Aviette Overseas, Jaipur

2001-11-09  
*B.D. Mukherjee*  
Senior Research Officer (Textiles), Rajasthan  
Chamber of Commerce & Industry (RCCI), Jaipur

2001-11-09  
*Vikram Joshi*  
Rangotri Block Printed Textiles, Jaipur

2001-11-09  
*Chandan Sukhani*  
President, Garment Exporters Association of  
Rajasthan, Jaipur

2001-11-22  
*Anna Palmqvist*  
H&M India Liaison Office, Delhi

2001-11-22 and 2001-11-24  
*Aqueel Khan*  
Director, Association for Stimulating Know How  
(ASK)  
*Monica Ramesh*  
Programme Officer, Association for Stimulating  
Know How (ASK), Delhi

2001-11-23  
*Pramod Kumar Sharma and Anil Kumar, as well  
as workers*  
Advocates, All India General Mazdoor Trade  
Union, Delhi

### **Interviews conducted in Geneva**

2002-02-18  
*Kari Tapiola*  
Executive Director, Standards and Fundamental  
Principles and Rights at Work, ILO

2002-02-18  
*Zafar Shaheed*  
Director for Promotional Activities, InFocus  
Programme on Promoting the Declaration, ILO

2002-02-19  
*Alberto Campeas*  
Director, Textiles Division, WTO

2001-11-26  
*Deepak Arora*  
National Expert, United Nations Industrial  
Development Organisation (UNIDO), Ludhiana

2001-11-26  
*Amrik Singh*  
Executive Secretary, Apparel Exporters  
Association of Ludhiana, Ludhiana

2001-11-28  
*Pratibha Goyal*  
Professor, Department of Business Management,  
Punjab University, Ludhiana

2001-11-28  
*Sandeep Kapur*  
Professor, Department of Business Management,  
Punjab University, Ludhiana

2001-11-28  
*O.P. Mehta*  
Advocate, All India Trade Union Congress  
(AITUC), Ludhiana

2002-02-20  
*Patrick Low*  
Director, Development and Economic research,  
WTO  
*Bijit Bora*  
Counsellor, Economic Research and Analysis  
Division, WTO

2002-02-20  
*Zdenek Drabek*  
Counsellor, Economic Research and Analysis  
Division, WTO

2002-02-20  
*Jan-Eirik Sørensen*  
Director, Trade and Environment Division, WTO

2002-02-20  
*Michael D. Urminsky*  
Programme Officer, ILO

2002-02-21  
*Jean-Paul Sajhau*  
Executive Secretary, Textiles, Clothing and  
Footwear Meetings, ILO

2002-02-21  
*Dinora Diaz*  
Economic Officer, International Textiles and  
Clothing Bureau  
*Munir Ahmad*  
Executive Director, International Textiles and  
Clothing Bureau

2002-02-21  
*Richard Blackhurst*  
Professor and Editor, World Trade Review

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### **Homepages on the Internet**

Apparel Export Promotion Council India	<a href="http://www.aepcindia.com">www.aepcindia.com</a>
Global Compact	<a href="http://www.unglobalcompact.org">www.unglobalcompact.org</a>
International Labour Organisation	<a href="http://www.ilo.org">www.ilo.org</a>
Swedish Foreign Ministry	<a href="http://www.ud.se">www.ud.se</a>
U.S. Customs Service	<a href="http://www.customs.gov">www.customs.gov</a>
World Trade Organisation	<a href="http://www.wto.org">www.wto.org</a>

### **Cases under the WTO Dispute Settlement Understanding**

United States - Restrictions on imports of tuna (1991) 30 ILM 1594

United States - Restrictions on imports of tuna (1994) D29/R

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### **Cases in the Indian Supreme Court**

Sarjit Roy vs. State of Rajasthan

Air India vs. United Labour Union and Others