

EAST AND SOUTHEAST ASIA REGIONAL LABOR RESEARCH REPORT

Prepared by Nina Ascoly and Ineke Zeldenrust
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Glossary of Terms

APLU: Asia Pacific Labour Update

AFTA: ASEAN Free Trade Area

AGOA: The African Growth and Opportunity Act; went into effect in 2000, authorizing the duty and tariff-free export of garments from 36 sub-Saharan African countries to the United States.

APEC: Asia-Pacific Economic Cooperation

ATC: Agreement on Textiles and Clothing. This WTO agreement replaced the MFA on January 1, 1995 valid until January 1, 2005. This is intended to be a transitional tool to facilitate the liberalization process that seeks to enlarge existing quotas until they are totally removed.

Brand name companies: Companies that own one or more brands. In the context of the garment industry, brand name companies carry out marketing and sometimes design functions for their products. Usually they contract (or source) with manufacturers (referred to as suppliers or vendors and subcontractors) to carry out the actual production of the garments. Brand name companies may own a few manufacturing units for key products (ex. Levi Strauss). Brand name companies may also be major retailers (ex. department store chains or own a few stores in key areas for market development (ex. Nike).

Buyer: The person who purchases (purchasing agent) goods for a company, such as a brand name company. The term is used to refer to the employee of a company who carries out the buying task, but is sometimes used to refer to the actual company, also referred to as sourcing company, that seeks to purchase the goods (As in “Nike is one of the buyers at Factory X”).

Buying agents: Business that locates and inspects foreign suppliers/manufacturers, negotiates with suppliers/manufacturers, and often monitors production for quality control and compliance with other requirements. Sometimes they also locate and arrange for the purchase of raw materials (in this context this function is sometimes referred to as sourcing). Buying agents may be used by foreign companies that do not have a large presence abroad (for example, those companies that do not have buying offices outside their home countries) or in addition to a foreign company's buying staff. A buying house performs similar functions as a buying agent but is usually a larger operation.

CCC: Clean Clothes Campaign

CMT (Cut-Make-Trim): Costs directly related to both materials and the cost of labor in assembling (ex. the variable costs of production). The manufacturer (often) does not provide design or pattern cutting facilities. This is where the labor-intensive part of production takes place.

Direct costs: Costs related to production of goods, for example the cost of materials, labor costs, transport and commission.

Duty: Tax. An import duty is a tariff.

ESEA: East and South East Asia

FLA: Fair Labor Association

FOB (Free on Board): Refers to the price charged for a product by a supplier. The price does not include delivery and insurance for the goods.

Garment (or clothing, apparel) production: Production of garments, which is distinct from textile or yarn production and refers to the processes that take place after a piece of cloth has been produced. Traditionally, the textile-garment industry has been horizontally structured with the manufacture of cloth and the manufacture of

clothing being separate and distinct. The flow sequence begins with fiber (textile) producers and farmers supplying raw material to yarn manufacturing plants, which in turn sell yarn to weaving and knitting facilities. Manufactured fabric (either woven or knitted) is then sold to a fabric finisher, and then sold to the garment manufacturer. The phrase “from sheep to shop” is used to refer to garment production when the textile or yarn phase of production is included.

In the textile and garment industries, operations can be wholly integrated – meaning that one company is in charge of all phases of production. In practice garment production units (whether manufacturers, suppliers, or subcontractors) can be more or less integrated into the textile industry, depending on the type of garment they are producing, the region, or historical processes. For example, part of the finishing or the knitting may be done in-house at the garment factory.

Generalized System of Preferences (GSP): Tariff preferences for developing countries, by which developed countries let certain manufactured and semi-manufactured imports from developing countries enter at lower tariffs than the same products from developed countries.

Indirect costs: Costs indirectly related to the production of goods, for example overhead costs, design costs, cost of samples, cost of the factory building, and administration costs.

Living Wage: A wage that provides for basic needs (housing, energy, nutrition, clothing, health care, education, potable water, child care, transportation, and savings), includes additional discretionary income, and takes into consideration dependents. There are two main approaches to quantifying a living wage: the simpler “formula approach” (which uses a formula that is usually calculated on the basis of average household size, cost of basic needs per person and savings, or on a fixed proportion of the national median wage) or a “negotiated approach” based on consultations with workers, which allows definitions to be tailored to local circumstances but is problematic when unions are weak or suppressed.

Macro costs: Costs related to the country where the products are made, for example taxes, tariffs, infrastructure, and education.

Manufacturers: In the context of the garment industry, these are companies primarily engaged in the design, cutting, sewing, and trimming of fabric to make and also package garments. Their clients can be retailers, merchandisers, brand name companies or their intermediaries (agents, buying houses, or importers). Generally, manufacturers are responsible for purchasing raw materials (textiles, yarn, accessories) but it is also possible that buyers or their intermediaries do this. Larger manufacturers often contract production out to many subcontractors, locally and abroad. Some manufacturers are vertically integrated, meaning that they produce the textiles from which they make garments, or even operate retail outlets.

Most Favored Nation (MFN) status: The status given by the U.S. to some non-members of the GATT/WTO whereby they are charged MFN tariffs (The tariff level that a member of the charges on a good to other members) even though they are eligible for higher tariffs.

MNC: Multinational corporation

Multi-fiber arrangement (MFA): An agreement negotiated in 1973 among developed country importers and developing country exporters of textiles and apparel to regulate and restrict the quantities traded.

Retailers: Companies primarily engaged in the sale of products (in this context, of garments) to consumers; they are also involved in distribution and merchandising of the goods. Apparel retailers include department stores, mass merchandisers, specialty stores, national chains, discount and off-price stores, outlets, and mail-order companies. Some retailers who sell their own private labels go beyond their traditional role as distributors and act as sourcing companies and become directly involved in the design and sourcing of garments from manufacturers and suppliers.

Sourcing: To locate a manufacturer or supplier to produce or supply, in this context, garments of certain specifications or the raw materials needed for garment production.

Sourcing company: Company that places an order with an agent or a supplier/vendor.

Sports shoe (or athletic shoe or sneaker) production: The production process that refers to the assembly (gluing, stitching) and packaging of sports shoes. It is organized similarly to garment production, but manufacturers/suppliers of sports shoes are usually larger and there is less subcontracting (primarily because the assembly process of sports shoes is more capital intensive than garment manufacturing). The sourcing of the components (45 to 55 different ones in a typical sports shoe) is usually done by the manufacturer/supplier, based on the specification of the buyer.

Sportswear: Clothing and shoes (also referred to as sports shoes, athletic shoes, or sneakers) that are originally designed for use by athletes.

Subcontractors: Company hired by the manufacturer or the supplier to carry out part of the processes of cutting, making, or trimming. Subcontractors usually get the necessary materials from the company that gives them the order.

Suppliers: Companies primarily engaged in the cutting, making, trimming, and packaging of the garments, they do not design, sometimes also referred to as vendors. Otherwise, their function is the same as that of manufacturers. While these tasks can be the same as those assigned to a subcontractor, usually the term supplier is reserved for companies in the first tier of the subcontracting chain; lower down it becomes a subcontractor (or sub-sub contractor). The term contractor, which refers basically to the same function as supplier, is used less often.

Supply chain: The network of facilities that procure raw materials, transform them into intermediate goods and then final products, and deliver the products to customers through a distribution system. For the purpose of code monitoring and verification the garment supply chain ends where garment production ends and therefore though it includes the procurement of materials (organized by garment manufacturers/suppliers) it does not include the manufacture of textiles, yarn, fibers or accessories such as zippers or buttons. Equally, the sports shoe supply chain does not include the production of components. Some people argue that the use of the term “chain” suggests a linear relationship that does not, in fact, exist and therefore prefer to use the term “supply network.”

Tariff: A tax on trade, usually an **import tariff** but sometimes used to denote an export tax.

TBT: technical barrier to trade

Preface

This study was commissioned by Novib in the context of a larger research program initiated by NOVIB's East and South East Asia (ESEA) desk. This report is a study of existing literature and materials that examine the causes of and nature of labor rights violations in the garment industry in the region and their impact on women workers. The main purpose of this report is to compile compelling evidence of the violation of women's labor rights in ESEA's garment sector, particularly in the sportswear sector, which can be used in campaigns that seek to improve industry conditions and empower women workers. Importantly, this study seeks to identify gaps in existing research in relation to the central hypotheses. In the next phase of this project, research organizations in the region will be commissioned to carry out research projects to address these gaps. Already, for example, the *Asia-Pacific Labour Update* (APLU) has been commissioned to undertake a study on the garment industry in Taiwan and Taiwanese investment in this sector outside of the region.

As part of the preparation of the Oxfam International (OI) "labor wedge," a six-month campaign (part of Oxfam's "Make Trade Fair campaign" and the OI/Clean Clothes Campaign (CCC)/International Confederation of Free Trade Unions (ICFTU) Play Fair at the Olympics campaign) slated for 2004 that will focus on precarious employment of women workers, country-based research has been commissioned in Asian countries. These country studies will consider similar hypotheses as those taken up in this study, and have similar aims. Therefore this study should be viewed in conjunction with these country studies; an attempt has been made not to cover similar ground.

An ESEA reference group was formed, and participated in this project. A draft of this report was circulated to the regional reference group for feedback. Some of the issues raised in this regional research report, and other concerns, were discussed during Oxfam's second Labour Roundtable for this region, which took place in Indonesia, in December 2003. This regional research report is intended to be a source of input for the development of Novib's and Oxfam International's longer-term research and campaigning agenda in the ESEA region.

Introduction

The central hypotheses that this report aims to cover fall into three broad categories: those relating to labor, capital, and the broader economic and political context. They are (in order of priority):

a. Labor:

The purchasing practices that international sourcing companies use in their global value chains are part of a production model that depends upon and encourages the gendered roles of women to make them the conveniently “flexible” workers that they are;
the harmful impacts of being employed in this way in the global labor market fall upon women workers and their families; and
this applies equally to migrant women and woman workers in informal employment as to women workers in formal employment.

b. Capital:

The policies of EU and US sourcing companies in global value chains are one of the factors influencing labour practices in the region;
increasingly, Asian multinational corporations (MNCs) are playing an important role in supply chains in the region and this has an impact on labor practices as well;
this results in changing dynamics between all actors (EU/US sourcing companies, Asian MNCs, local suppliers, workers) throughout the supply chain.

c. The economic and political context:

National labor laws fail to protect women workers, specifically due to their inadequate implementation;
the impact of trade agreements (such as the MFA) on production patterns gives rise to increasingly precarious employment;
neo-liberal practices are not the only cause for the “race to the bottom” – as is illustrated by deliberate economic policies of communist countries such as China and Vietnam.

This report begins with a brief description of the garment and sports shoe industries in the region, and the changing role of the region within these sectors globally. The role of different actors is discussed. In order to better understand how the conditions are created that women garment workers must navigate, information relating to the hypotheses posed in relation to capital (those listed under point “b”) and the economic and political context (point “c”) is presented first. After examining the role that multinational corporations, labor laws, and trade policies play in shaping labor practices in the global garment industry, the impact on women workers and their families in the ESEA region is considered in relation to the hypotheses posed in point “a.” This paper concludes with a summary of key issues and observations.

1. The garment and sports shoe industries in the ESEA region

The garment and sportswear industries, due to their high labor intensity, were among the first sectors to develop globalized production networks. These production networks are also known as commodity, value, or subcontracting chains. According to the International Labor Organization (ILO) “the garment industry is possibly the most widespread example of a buyer-led global commodity chain” (ILO: 2002, 28).

1.1 Mobile production

In the 1960s, the U.S.-based Nike started to contract for (“source”) the production of their sports shoes in Asia. By the early 1980s, Taiwan and South Korea had become the world’s most important sports shoe producers, responsible for 90% of Nike’s production, and 45% of world athletic footwear production. (Merk 2003:6). Later, production shifted to Indonesia, Thailand, and China, and, more recently, to Vietnam.

For garments, which require less capital investment than sports shoes and are produced through more intricate and varied layers of subcontracting, the picture is more complex and diverse. Hong Kong, Taiwan, and Korea -- the first generation of Asian “tiger” economies (also referred to as “newly-industrializing countries”) -- all had significant export-oriented garment-production industries.¹ The second generation of countries with substantial garment production were Thailand, Malaysia, Indonesia, and the Philippines. In the course of the 1990s (former) socialist and communist countries in the region -- Cambodia, Vietnam, Laos,² and China -- emerged as sites of garment and sports shoe production, as did the military dictatorship of Burma.

For example, by the late 1990s the Thai garment and textile industry was eyeing Laos as the place to invest, with GSP given by the EU and probable MFN status with the U.S. “Taking into account the two privileges in Laos, and relatively low production costs particularly on labor, Thai investors should use Laos as garment production base for export to third nations,” said Pongsak Assakul, president of the Thai Weaving Industry Association. *Business Thailand* magazine was urging Thai industries to relocate to Laos, Burma, and Cambodia, or to place factories along the border to be able to take advantage of the plentiful cheap foreign labor (Xinhua, 1998; *Business Thailand*, 1999). China is emerging as a production powerhouse -- experts estimate 50–60% of garment production will be based in China by 2005 (Scheffer quoted in Ascoly 2003; Brandsma 2002:34). The development of these industries in Vietnam, Cambodia, and China is further discussed in section 3.1 and 3.3.

Evidence is presently emerging that also Mongolia and North Korea are developing garment production.³ In Mongolia in 2001 textiles and clothing reportedly accounted for 46% of total export.⁴

¹ It is important to realize that “miracle of the Asian tigers” came at the price of political oppression and abuse of human rights. “Korea has known 32 years of dictatorship, until 1992. Taiwan was under martial law for 38 years up till 1987. Singapore’s Prime Minister Lee Kwan Yeh ruled the island state since 1965, and his successor Coh Chok Tong has continued his repressive regime since 1997. (...) The Second generation of tigers (Thailand, Malaysia, the Philippines and Indonesia) also included regimes which all were, with exception of Malaysia backed by military. Marcos ruled the Philippines from 1965 till 1986, Suharto ruled from 1965 till 1999 Thailand was ruled by various dictators (with short interludes) from 1953 until 1992. Presently, Malaysia ‘harbours the last of the old style strongmen’ Mahatir has been in charge since 1982” (Nolten 2003: 23, 27).

² Garments earned US \$79 million, or 24% of total foreign currency earnings, in 2000, according to the Asian Development Bank (McKinley, 2003).

³ Even in the authoritarian and generally quite closed economy of North Korea the garment industry has made inroads in the form of the Pyongyang Women's Garment and Trading Centre (PWGTC). This initiative, set up with the assistance of UNIFEM, cooperates with importers and retailers in the EU, China, and Japan (including Caritas, Regatta, C&A, Tiara, and Dandong Trading). “It is the only state owned firm to operate as an independent business enterprise able to keep and reinvest surplus profit, as well as the only registered company run by women. In return for being allowed to keep their own profits the business contributes 30 per cent of its profit earnings in tax to the government. PWTGC started with 100 women; today 200 are directly employed at the centre and its network of satellite factories and women's cooperatives has a workforce of a further 6,000 women. The company is free to subcontract additional capacity to any other state owned firm. As a pioneering industry in DPR Korea it has been fully licensed by the government for all aspects of import and export trading and manufacturing.” (Just-style.com, May 28, 2003).

⁴ Using GSP plus quota free status, so the big question is what happens after 2004. See: http://www.intracen.org/worldtradenet/docs/whatsnew/colombo_workshop_may2002/country_papers/country_paper_mongolia.pdf

However, garment production still remains an important industry for some of the countries in the region that served as earlier locations of production. For example, in the Philippines the garment industry remains the country's second major export earner.

Today, the first generation of producers (Taiwan, S. Korea, Hong Kong) are the site of little production, but these countries have considerable consumer markets of their own. Thailand and Indonesia have growing local markets as well, while the newest generation of "production" countries (Laos, Cambodia, and Vietnam) have very small local markets. China is also seen as a strategic location in proximity to these growing Asian markets and for the potential of its own huge internal market (1.2 billion people, the world's most populous nation; roughly double the size of the 10 ASEAN countries put together (Nolten, 2003 29).⁵

Companies involved in the garment and sports shoe industries have moved their operations (reorganized production) for a number of reasons. Many relate to the direct costs of producing their goods (ex. wages, materials, transport) in specific locations. But also indirect or macro costs (see box below) associated with the location (ex. government incentives and the regulatory environment -- including local labor laws in production countries and their level of enforcement) and trade agreements (which facilitate access to lucrative markets, such as the EU or US) play a role in determining where companies choose to source the production of their goods. The political environment can also be a factor in sourcing decisions. The role of labor law and trade agreements, as well as company policies, in shaping supply networks, the labor practices found within these networks, and their impact on workers is discussed in section 4 and 5.

It is important to note that the Asian financial crisis of 1997 had a major impact on the economic situation in the region thereby affecting these industries and workers in the region. Severe recession, massive layoffs and prolonged periods of unemployment obviously had drastic impact on the situation of the workers and the effects of the crisis continue to be felt.⁶

Box 1: Going Beyond Direct Costs

Increasingly garment and sports shoe sourcing companies realize that they have to take into account macro and indirect costs when making sourcing decisions. Macro costs are costs that are related to the country where the products are made. Indirect costs are related to the mills, factories, and agents involved in making the goods. Direct costs are costs related to the goods themselves, and include the following: (1) material costs (fabric, trim); (2) making (cutting, sewing, finishing, pressing and packaging, including labor costs), and the (3) agent's commission (Birnbaum 2000:2-13).

A recent sourcing study from the industry analysis and consultancy firm Kurt Salmon calculates both a labor cost per country and an index of factors unrelated to direct costs.

According to KSA these include:

Political situation, language/cultural barriers, internal transport system, telecommunications, profit transfer/investment ease, worker training level, management ability, shipping time to EU, raw material supply and direct sourcing and quick response.

⁵ For example in 1998, when Levi Strauss & Co. announced plans to expand its China operations Jim Fraser, president of Levi Strauss Asia Pacific at that time, noted China's potential to become "the key manufacturing nation for the company's Japanese and South Korean markets, which generate two-thirds of its \$468 million in Asian revenue" (quoted in Landler 1998).

⁶ For example, in 1998 in Indonesia 25 million workers (or 26% of the industrial workforce) were fired. In Thailand two million workers became jobless in 1998. The crisis also had an impact on migrant workers, the Asia Migrant Centre estimates that as a result of the crisis 900,000 migrants were deported (many of them forcibly). Of course the garment industry benefits from the increasing flexibilisation of the workforce, however the impact is not that clear cut, for example many of the smaller local suppliers have been economically devastated by the crisis (which of course, had its impact on the workers they employed).

Considering these factors results in a very different picture of a country's "attractiveness" for sourcing, rather than direct or indirect costs alone or purely considering the cost of labor cost. Egypt, China, Madagascar, or Russia look like winners when considering the cost of labor only, each scoring below US\$ 0.10 for the cost of labor per standard attended minute.⁷ India, Tunisia, Mexico, and Turkey are between US\$ 0.10 and US\$ 0.20 per minute, while the UK at US\$ 0.25/minute and Germany at US\$ 0.40/minute rank near the top for labor costs. However, when looking at non-cost factors Madagascar is the most expensive, followed by Egypt, then Russia, and then China. When balancing the costs versus what they term "non-cost" factors, KSA concludes that the mid-ranking countries (India, Tunisia, Mexico, and Turkey) actually provide the better choice for companies looking to make cost-conscious sourcing decisions.⁸

Increasingly industry sees direct sourcing (buying directly from the production site without using middlemen) and quick response (diminishing the amount of time between market demand and delivery) as ways to cut costs. Proximity of supplier to retailer is assuming greater importance (Mamic 2003:117). Industry analysts stress however that many retailers "perceive they are sourcing direct but continue to use middlemen of one sort or another."⁹

1.2 Mobile workers

The highly mobile nature of the industry has a major impact on labor in the region, creating significant insecurity for workers who constantly fear that corporate decisions to relocate will cost them their jobs. Employers sometimes use the threat of relocation to quell labor disputes. Workers are told that if they continue to press for enforcement of the law and improved working conditions, costs will go up, the factory will lose its competitive edge, and clients will opt to place their orders elsewhere.

Importantly, the mobility of capital involved in these sectors is coupled with the flexibility of labor that is also premised on mobility. Streams of migrant workers have often supplied the labor needed to fuel these industries in the ESEA region. Workers have and continue to migrate from rural areas to the industrial areas where garment and sports shoe factories are clustered. For example, a survey of nine factories in or near Jakarta, Indonesia producing for Nike found that nearly 68% of the workers were migrants from West Java and Central Java (CSDS, 2001: 21). A 1999-2000 study of workers at five footwear and two apparel factories in Vietnam, producing for Nike, showed that levels of migrant workers ranged from 11% up to 53% (CESAIS, 2000:12). The footwear industry in Vietnam employs approximately 400,000 workers, a number which has the potential to increase very rapidly over the coming five years. The workforce is predominantly female, age 20-25. About one-half are married and between 30% and 40% migrated from another – typically rural- region (World Bank 2002: 5). In 2000, in the wake of the reform of state enterprises in the late 1990s there were approximately 150 million internal migrants in China (Richie in Nolten, 2003; Liu 2002). In addition to internal migration, there is migration within the region of people who take up employment in these industries. In Taiwan for example, in the mid-1980s, when many industries closed operations in Taiwan and moved overseas, the remaining factories imported large number of cheap migrant workers from the Philippines, Thailand, and Indonesia. Burmese and Cambodian workers are presently employed in the Thai garment industry.¹⁰ Their migrant status has had specific consequences for the workers. Workers from the ESEA region also migrate to other regions (ex. Africa, Russia, North America) to take up work in these sectors. The concerns of migrant workers are further discussed in section 4.2b and 5.

1.3 Export Processing Zones

Many of the garment factories in the region have been located in export processing zones (EPZs) -- industrial zones set up to attract foreign investors by offering special incentives (usually tax abatements, infrastructure, large supply of workers at low wages, and a strategic location in relation to market access). These zones, both government and

⁷ Standard attended minute is used as a unit to indicate the amount of time needed given the average productivity in a certain country to produce (parts of) a garment.

⁸ Just-Style.com, "Who needs a sourcing strategy?" June 19, 2002.

⁹ Just-Style.com, "Who needs a sourcing strategy?" June 19, 2002.

¹⁰ The Asian financial crisis also had a huge impact on the situation of migrant workers. Before the crisis, Korea had about 250,000 documented and undocumented migrant workers. Within 2 years the number decreased to 150,000. (CAW 2001b: 36)

privately-owned, began to appear in greater number in the 1970s. They were and still are a mainstay in the foreign investment-led, export-oriented model of industrial development. According to the ILO, approximately 27 million people now work in some 850 export processing zones around the world; in Asia alone there were 225 zones (leaders in the region are China with 124 zones, the Philippines with 35, and Indonesia with 26 (ILO1998: 3)).¹¹ With governments putting resources into the development of these zones (ex. infrastructure), they have a vested interest in their success, which is sometimes at odds with the interests of workers (see for example section 4.1).

This type of export-oriented industrial development has been regularly criticized as being at the expense of the development of integrated production, specifically cotton and textile production. Even countries with a traditional base in such areas, or those that could have developed these areas, did not because of the way in which the trading framework developed. This not only cost jobs, but also had other negative impacts (no development of related services or knowledge based economy) on the country and for the people (consumers). This is further discussed in section 3.

Work in these sectors has not only been organized within EPZs that occupy an enclave position, but has been dispersed through wide subcontracting networks that are increasingly based upon informalized employment. This report examines the impact of the increasing informalization of employment in these sectors in the region (see section 2.4b).

1.4 Feminization of the labor force

Those who worked in the garment and sports shoe industries in the region during the earlier phases of export-oriented industrialization tended to be women. For in the early 1980s the share of women in EPZ industries was: 60% in Singapore; 75% in South Korea, 60% in Hong Kong, 85% in Malaysia, 74% in the Philippines, and 90% in Indonesia (Joekes in Sen, 1999: 22). This phenomenon of feminization of the labor force in conjunction with industrialization in the ESEA region, and its gendered causes and impacts, has been documented and examined in a number of studies.¹²

Generally, in later phases of expansion of these industries to other countries in the region, women continued to be the dominant source of labor for the garment and sports shoe sectors. For example, in the mid-1990s, the Bataan EPZ in the Philippines, where the biggest percentage of factories is garment factories, nearly 73% of the workers were women. At the same time, in the Cavite EPZ, where 39 garment companies were located, approximately 87% of the workers in the zone were women (Perez, 1997:122, 127).

Most recent figures suggest that this trend toward a highly feminized workforce in these sectors continues in the countries where the industries are now most significant (ex. China) or are growing (for example in Cambodia, the garment industry workforce is overwhelmingly women (Hall, 1999: 33); while in Vietnam the Tan Thuan EPZ, for example, which houses textile, garment and leather factories 75% of the workers were women in 1995 (Hoang, 1998: 188). A survey of five footwear factories and two garment factories in Vietnam showed levels of female employment of between 84 and more than 88% (CESAIS, 2000: 13).¹³ The great majority worldwide (estimated at over 80%) of garment workers are women (ILO 2002:28). See section 2.4b, box 3, for a discussion of how women have been constructed as “flexible” workers to meet the needs of garment and sports shoe companies, and see section 5 for more on the harmful impacts they experience due to the quality of these jobs. Because of their gendered roles, which vary according to local contexts, bad working conditions experienced by women workers – migrant/non-migrant, formally employed/non-formally employed -- have not only had a profound impact on their lives, but on their families as well. These impacts are also discussed in section 5.

¹¹ For a thorough discussion of EPZs, please see “Labour and Social Issues relating to EPZs”, ILO 1998; for more on zones in the region see “We in the Zone” (AMRC, 1998), which includes reports on EPZs in South Korea, Taiwan, Hong Kong, Malaysia, Thailand, Indonesia, Vietnam, China, and the Philippines.

¹² For example: Standing, G. (1989) “Global Feminization through Flexible Labor,” *World Development*, vol. 17, no. 7, pgs. 1077-1095; Elson and Pearson (1981); and Mitter (1992).

¹³ It has been observed (Sen, 1999:5) that in some locations the number of women workers in export-oriented production has been declining (Mexico, Mauritius, and Malaysia), and there is some debate about what this means and the implications for women workers. While it is important to monitor these developments, generally the sectors in ESEA that are the focus of this paper remain sufficiently feminized that we will not expand on this point here.

Recommendation: The development and mobility of the garment industry in the region could be better conveyed visually. We would recommend commissioning the research and production of a map(s) that clearly indicates the location of the industry during its different phases. Number and location of EPZs could also be included. Either incorporated into this same graphic or in a related graphic, should be the number of workers employed in the industry (by sex, by formal and informal economy). As well, a map documenting the flow of migrant workers employed in these industries would be useful to illustrate that flexible production makes use of a workforce whose flexibility is also predicated upon their mobility.

2. Supply chain dynamics in ESEA

The dominant powers (or so-called lead firms) in the garment and sports shoe production networks have traditionally been US and EU-based retailers and brands. Companies such as Levi Strauss, VF (Lee and Wrangler brands), Gap, Wal-Mart, Nike, and Reebok, for example (all US-based) and adidas (German), C&A (Dutch), Carrefour (French), or H&M (Swedish). Generally, all these brands source out their production to other companies. They might outsource to companies in their own country, but those firms generally function as middlemen (agents, importers) who place orders for the actual production to be carried out in other countries. Umbro, for example, reportedly sources almost all its footwear from China (60%) and Vietnam (40%). Fila sources in Thailand, China, Vietnam, Malaysia, Hong Kong, Indonesia and Taiwan. Umbro, Fila, Puma, Reebok, Puma, adidas, Asics, and Nike all produce garments in Thailand, and they as well as Lotto are all present in Indonesia. A Vietnam-based Pou Chen factory makes Lotto and Puma shoes as well as Reebok and adidas.¹⁴

2.1 Sourcing companies

Brand name companies and large retailers in the US and EU focus their own operations on design and marketing of these goods. Subcontracting chains can be quite long and complex to the extent that they are better understood as subcontracting networks, not linear chains.¹⁵

Also in countries in the region whose role in garment supply chains have been less-documented, the same list of names appear as major buyers: “The larger and more established Malaysian apparel manufacturers are heavily involved in contract manufacturing for many of the major world brand names including adidas, Calvin Klein, Camel, Christian Dior, Crocodile, Donna Karan, Guess, Gucci, Guy Laroche, Levi Strauss, Lee, Liz Claiborne, Nike, Pierre Cardin, Ralph Lauren, Reebok, Slazenger, Van Hausen, and Yves St. Laurent” (Just-style.com, July 19, 2002).

Labor rights advocates seeking to improve conditions in the industry target those companies who dominate market share because they seen as setting the standards in the industry. As substantial clients to the industries in these “production” countries they are seen as having substantial leverage in pushing for improvements in the industry.

Sportswear and shoes, which are the particular focus of this report, are important for the high value that is placed on branded image, making them particularly vulnerable to charges of labor rights violations. Enormous sums are spent on marketing and advertising these brands, in what is considered a highly competitive market within the already competitive garment sector. Sponsorship of individual athletes, athletic teams, and events are used as means by these companies to promote their brand image.¹⁶

Currently, the top three companies in the sportswear/sports shoe market are Nike, Reebok (US), and adidas (German). “Secondary” brands include Asics (Japanese), Puma (German), Fila (US), Umbro (British), Lotto and Kappa (Italian), New Balance (US), and Mizuno (Japanese). Therefore, in addition to the US and EU, Japanese capital cannot be discounted in this part of the sector. Again, because of the concentration of market share among these companies¹⁷ the policies and practices of these companies in relation to labor practices, but also including pricing and scheduling policies shapes the working conditions experienced by most women working in these export-oriented industries. This is discussed more extensively below.

The actual production (as opposed to design, marketing and retail) of sports shoes is now concentrated in the hands of a few Asian production companies, themselves multinational corporations, who have emerged as key players in this sector. Asian MNCs are also active in more general garment production. Therefore their policies and practices are also important factors in determining workplace conditions.

¹⁴ Data compiled by CCC based on reports from many different sources.

¹⁵ To understand the importance of foreign buyers on these industries in the region, and the power dynamics among those foreign investors, consider the example of the Philippines. In 1998 49% of the US \$2,000 billion sales in the Philippines was generated by only 30 US buyers. Quoted in Final Report of the GTEB Enhancement programme, page 6, <http://dirp4.pids.gov.ph/ris/taps/tapspp9933.pdf>

¹⁶ For example, footballer David Beckham receives e2.1 million per year from adidas; tennis star Venus William receives s9.4 million from Reebok; football team Manchester United is paid e13.5 million per year by Nike (*Clean Clothes* newsletter, no. 16, February 2003, pg. 8-9, 32).

¹⁷ We are expecting recent data on this from OGB, who are gathering these as part of their labor wedge research.

2.2 The role of Asian multinational corporations

Asian MNCs fulfil a variety of roles in these sectors in the region – Asics and Mizuno, for example, mentioned above, are Japanese-based sportswear companies that have a major market presence with their branded goods; while trading companies such as Li & Fung,¹⁸ are multi-billion dollar supply chain managers in the garment and footwear industries (SOMO, 2003b). Recently multinational companies that deal mainly in supplying labor (employment brokers) have begun to play a bigger role in the region. Perhaps the most prominent role though in recent years is that of production multinational. These companies often began as small producers of garments or sports shoes themselves (for example, Pou Chen)¹⁹ and then with the pressure to remain “competitive” began to outsource their production to other countries in Asia, where costs were seen to be lower and workers and the work environment more advantageous (flexible).²⁰ Trade agreements and marketing strategies have also played a role in their choice of where to relocate or expand operations. Asian companies have been significant investors in these sectors in other countries in the region (for example in the Philippines the foreign MNCs that dominate garment production are from ESEA – 10 firms are Taiwanese-based, eight are from Hong Kong, five from South Korea and one from the People’s Republic of China) and specifically in export processing zones in other countries in the region (ex. the top investors in China’s Special Economic Zones are nearly all East Asian: Hong Kong 54%; Japan 8.34%; Taiwan, 8.27%, the U.S. 7.9%, Singapore 3.95%, S. Korea, 2.6%; the first EPZ in Vietnam was built by a Taiwanese company) (Philippine Resource Center 2002:15);²¹ ILO1998: 9; AMRC, 1998: 3). And have also invested outside the region (ex. in Africa and Central America). Often these companies have stable supplying relationships with their Western clients. Because they usually do not market or sell branded goods themselves, they occupy a lower profile in the supply network. This “invisibility” has shielded them for the most part to pressure to take responsibility for working conditions. However, with increased research and awareness of their role and the extent of their power in some supply networks, these Asian MNCs have become targets of campaigners seeking improvements to workplace rights violations.²² See appendix A for the case of Nien Hsing, the Taiwanese denim and jeans giant and the efforts of workers and labor rights campaigners to push this company to improve its labor practices.

An example of the role an Asian MNC might play in the supply network for garments, goes as follows: orders for the production of garments are received by a Taiwanese-based company, the company ships fabric from China to Vietnam where the production of the garments is carried out. From Vietnam the garments are exported back to Taiwan and/or directly to the EU or US buyer. The Taiwanese company supplies the machinery used in these operations, the managerial resources, the capital, the distribution and the research and development. While many of these MNCs are small or medium-sized they play an important role in supply networks. Hong Kong, as a hub for the sourcing of garment production, plays a key role, not just regionally but globally.

2.2a Examples of Asian production MNCs in the first generation NICs

Hong Kong: Fantastic Garments based in Hong Kong, is an example of an Asian MNC active in the region. Production for this firm is carried out at Fantastic Garments – Philippines using fabric supplied by Fantastic Garments – Peoples Republic of China. Fantastic Garments – Philippines, in turn contracts out some of the orders it cannot produce on time to Philippine subcontractors. Fantastic Garments – Philippines exports some of its goods directly to importers in the UK and the US. Some are sent to Hong Kong and are re-exported by Fantastic Garments – HK to other importers. Labels ordered by UK and US buyers in 2000 include Dillard’s, Nautica, Ralph Lauren, and Tommy Hilfiger (Philippine Resource Center 2003:18).

¹⁸ Li & Fung manages supply chains for companies such as Abercrombie & Fitch, the Limited Brands, and Reebok. The company reported in August 2003 that it was close to signing a deal with Levi Strauss which will see it design, make, and market clothing under the Levi Strauss signature label in the US for the autumn of 2004 (Just-Style.com, August 13, 2003).

¹⁹ For a profile of the Taiwan-based MNC, please see Merk (2003).

²⁰ For example the Hong Kong Trade and Development Council reports in November 2002 that for Hong Kong based garment companies production networks now extend to practically all over the world, including Australia, Bangladesh, Cambodia, Indonesia, Madagascar, Mauritius, Mexico, South Africa, South Korea, Sri Lanka, Thailand and Vietnam. With the Chinese mainland being the favorite by far according to TDC’s last survey on offshore trade, 54% of garment exports made by Hong Kong manufacturers are produced on the mainland.

²¹ Paper to be published as part of Women Working Worldwide research reports on subcontracting chains, forthcoming September 2003.

²² For more on the rise of Asian production MNCs, please see SOMO (2003b).

Taiwan: A major player in the international denim and jeans market is Taiwan-based **Nien Hsing**. This company is an example of an Asian MNC that is active outside the region. Nien Hsing, which produces for such brands as Gap, Cherokee, and major U.S. retailers Sears and Kmart, has factories in Central American and Africa (see appendix A for more on Nien Hsing).

The Taiwanese firm **Makalot Industrial Co. Ltd** was established in Taipei in 1990. The company established strategic alliances with production companies in the region, for example between 1990 and 1998 with five plants in the Philippines. After this, Makalot expanded their network to China, Indonesia, and Cambodia, in addition to working with alliances they also own two factories in Indonesia and two in El Salvador. They plan to establish their own factories in China and Vietnam this year, and are also looking at Jordan and sub-Saharan Africa. Customers include big US retailers such as Wal-Mart, Kohl's, JC Penney and the Gap.²³ The company they work with in the Philippines is the **Leader Garments Corporation**, itself Taiwanese owned. For the past three years, Leader Garment has been the Philippines' leading garment manufacturer, producing for 20 foreign brands. As of December 2001, Leader Garments Corporation was responsible for nearly US \$57 million or about 2% of the US\$2.97 billion total garment exports of the Philippines. It also supplied the greatest part of total Philippine orders placed by the Gap – the Philippines' biggest single buyer. Other labels produced by Leader include: Chance Encounter, Courtney & Co., Disney, Eaton, Express Tricot, Faded Glory, Jaclyn Smith, Kathy Collection, Moments, Nike, Partners, and Vanity Fair, White Stage, Bridgestone, Callaway, Dunlop, Honma, Lynx, Ping, Precept, Ram, Slazenger, Tailor Made, Titleist, Tommy Armour, Top Flite, and Zebra. Leader Manufacturing Corp. also operates a yarn and fabric factory. The yarns and fabrics factory source its raw materials from abroad. Its sister company – Leader Garments, absorbs the bulk of its fabric products. The rest are sold to other Philippines-based garment-manufacturing firms and to fabric importers in Hong Kong and China (Philippine Resource Center 2003:16).

South Korea: S. Korean ownership of factories comes up frequently in cases of labor rights violations brought to the attention of the Clean Clothes Campaign. For example, Korea Lanka, Sri Lanka (1995); PT Sandrafine (1998); Youngone, Bangladesh (1999); PT Tae Yung, Indonesia (1999-2000); PT Tong Kyung, Indonesia (1999-2000); Kuk Dong/Mexmode, Mexico and Indonesia (2001); Daewoosa, American Samoa (2001); PT Global, PT Metro, PT Tongkyung Makmur Abadi, PT Indolim, PT P, K Garment, all in Indonesia (2001); Cosmos Mackey, Sri Lanka (2002); PT Busana Prima Global, Indonesia (2003).

Recommendation: Given the important role of Taiwanese, Hong Kong, and Korean companies in the region and in global supply networks, emerging consumer-based labor rights campaigning in those countries, and the paucity of information on these companies, we would recommend further research on Korean, Hong Kong, and Taiwanese production and trading MNCs. Practical programs to increase capacity for local groups (NGOs and trade unions) to facilitate the resolution of disputes in workplaces with Taiwanese, Hong Kong, and Korean ownership is also needed.

2.2b Examples of Asian production TNCs in other countries

While Taiwan, Hong Kong and South Korea are home to the largest garment/sports shoe MNCs in Asia, companies in other countries, including those from the “second generation” production countries in the region have also gone multinational. For example:

Malaysia: In Malaysia rising labor costs, a shortage of labor, and various trade agreements have provided incentives for garment companies to expand into other countries. “Their main choice of location appears to be Cambodia (duty free to Europe), AGOA-approved countries such as Madagascar (for basic goods destined for the USA), China and Myanmar (for production destined for non quota markets)” (just-style.com, July 19, 2002). **Prolexus Berhad** for example recently “revealed plans to build a factory in China in a bid to cut production costs. The firm, which makes casual, sports and children’s apparel for leading brands such as Nike, Fila, and Gap, said the new plant will allow it to take advantage of the phasing out of world textile quotas in 2005. Prolexus currently operates two factories in Malaysia as well as a third plant in Bangladesh which employs 250 people” (source: just-style.com, May 6, 2003).

²³ APLU, Preliminary draft of Taiwan textile and garment investment trends, 2003

Singapore: In February, leading apparel maker **Ocean Sky International Ltd** announced plans to raise approximately US \$10 million in part to set up and expand factories in Central America, China, Brunei, and Cambodia. The company, which employs nearly 7,000 people produces for such brands as the Gap. (source: SINGAPORE: Ocean Sky Unveils Singapore IPO, Feb 10, 2003, just-style.com)

Even among the most recent generation of production countries in the region, some production companies are on the road to becoming multinational corporations. For example:

Vietnam: In May 2003 **Bitas**, a Vietnamese women's footwear company, announced plans to open a US \$2 million factory in Moscow, as part of a joint venture with a Russian company.²⁴ Vietnamese factories are also subcontracting in Cambodia, according to Quan An, chairman of the Vietnam Textile & Apparel Association (Just Style, 29 May 2003; McKinley, 2003).

2.2c Towards "Full Service Suppliers"

Asian MNCs have been at the forefront of trends toward so-called one-stop shopping, by offering to handle more than the cut-make-trim phases of garment production for their clients. Within the ESEA region, such full-service suppliers are concentrated in Hong Kong. An important characteristic of some of these companies is that they are also quite vertically integrated in the sense that they have a base in textiles or yarn manufacture (ex. Japan, South Korea and Taiwan have strong bases in synthetic fibers and fabrics). Industry experts predict that countries that will emerge as the strongest in the industry are those with a strong textile industry or free access to such industries. Trading blocs and regional development will be important in facilitating this process of consolidation, they predict (Scheffer, in Ascoly, 2003). According to Monina Wong of the Hong Kong Christian Industrial Committee Asian production MNCs have used economies of scale and additional "value-added" in the form of research and development, better quality control, and computerization to make themselves more attractive to clients. Some are involved in forward integration (moving upstream towards the retailer end) and help their customers to manage their global supply chains, set up overseas distribution centers, and provide other post-production services, according to Wong.²⁵

Examples of Asian MNCs that are vertically integrated include:

Hong Kong: The **Esquel Group**, a family-owned multinational with 47,000 employees, had 17 plants in nine countries in 2002. The company's vertically-integrated operations span cotton farming, spinning, weaving, knitting, garment and accessories manufacturing, exporting, and retailing. Esquel's garment manufacturing facilities are located in Malaysia, Vietnam, Mauritius, Sri Lanka, and China. Customers include Abercrombie & Fitch, Brooks Brothers, Marks & Spencer, Nordstrom, Ralph Lauren, and Tommy Hilfiger. Esquel, which reportedly makes more men's cotton shirts than any other company in the world, had revenues of more than US\$500 million (*Fortune*, 2002; Esquel.com).

Malaysia: **Ramatex Berhad** is Malaysia's largest integrated textile and garment manufacturer. With profits in 2002 of approximately US\$ 18.9 million, this company's operations include yarn manufacturing, and dyeing and knitting mills. This year, Ramatex, which already has direct subsidiaries in China and Namibia, announced that they will spend US\$10 million to buy several medium-sized garment factories in Cambodia, Indonesia, and in Africa (Ramatex.com.my, 2003; Musa, 2003).

2.3 Supply networks: growing and increasingly informalized

While the one-stop shopping trend can be documented in the region, at the same time there is also an additional trend toward increased subcontracting and informalization in the garment industry. To understand how these two seemingly contradictory trends can occur simultaneously it is useful to think of garment production orders being funneled in the shape of an hourglass – a great many orders are sent to an increasingly concentrated number of

²⁴ Just-style.com, May 29, 2003

²⁵ HKCIC are among those currently conducting more research into this. commissioned by Oxfam GB as part of the labour wedge.

agents or production MNCs, they in turn distribute these orders to a great number of suppliers, who in turn are distributing work to what amounts to a large network of subcontractors. These producers are increasingly operating in the informal economy, discussed below, in a number of different arrangements (see box 2 for more on the different forms that subcontracting arrangements in the garment industry take). It is important to distinguish between garment production and sports shoe production: sports shoe production is increasingly consolidated in a relative small number of large suppliers, with direct links to sourcing firms. This obviously has implications also for the labor situation.²⁶ Although the trend towards consolidation is stronger in sports shoe it is also visible in garment production. In June 2003, several of the major global garment producers including Bossa, Hugo Boss, Gap, JC Penney, Liz Claiborne, Kellwood, Wal-Mart, gathered together at the IAF World Apparel Convention, reported that while they used to source from 50 or more nations, that number is now shrinking. Now they source from fewer nations (approximately 30 to 40, though they predict that this number soon may be as low as 10) and from fewer and bigger suppliers.²⁷

Box 2: Different Forms of Subcontracting

Many types of subcontracting exist in these sectors in the ESEA region. Traditionally we tend to think about subcontracting as a process whereby (part of) the order goes to a separate workplace, either a factory or a less formal workplace. In addition to this general model there are many other types of subcontracting that exist. One attempt to itemize them²⁸ is as follows:

- Factory workers and supervisors are subcontracted by the factory to finish certain procedures and receive payment according to the amount of pieces they do. This type of sub-contracting is usually done after work in the evening or on weekends (in the factory).
- Factory supervisors act as an agent, distributing work to others outside the factory. These workers manufacture parts of goods and do not receive the same amount of income and benefit as prescribed by law and cannot form a union.²⁹
- The factory owner opens a new company within the same factory and recruits workers to work in the production department. Workers may or may not receive the same amount of pay and welfare as other existing workers.
- The factory owner lets another company, agent or individual hire workers to work in the production department of his company but they are not considered employees and the work is short-term. In this model within the same factory, some production lines are in fact filled with workers who are not employed by the company that runs the factory, but by someone else. The situation is similar to a workplace where part of the workers are employed by an employment or dispatch agency, but where employment agencies usually operate legally the dispatchers in the garment industry rarely do. The workers will sometimes work during the night shifts and receive lower wages than those employed by the main company. They cannot become union members or participate in union activities. They are often unprotected by law.
- The form most commonly known is where work is subcontracted to small workshops and to homeworkers who often do not have contracts and have little or no legal protection or rights to form unions.

²⁶ A recent ILO report analyzing implementation of codes of conduct in the footwear and apparel sector finds that evidence from their research visits “suggests that the footwear sector outpaces the apparel and retail sectors in meeting such [labour, social and ethical] obligations (...) this can be attributed to historical reasons such as greater investment, a more stable supply base, greater leverage by MNEs due to an increased presence within the factories”. (Mamic 2003:57).

²⁷ just-style.com (2003) "World Apparel Convention focuses on quota freedom," July 8.

²⁸ Based partly on the WWW subcontracting chain research, 2002, see for example the FOW report on Thailand.

²⁹ Ofreneo et al report that in the Philippines, some garment industry subcontractors “are now paid to train the workers that their satellites [sub-sub contractors] are going to use. In effect, they have become employment agencies for subcontracted garment workers” (2002: 95).

Increasingly flexibilized production, through these diverse forms of subcontracting, goes hand in hand with the informalization of these sectors. According to the ILO there has been a “rapid growth in cross-border commodity and value chains in which the final producer in many cases is in the informal economy in developing countries and, increasingly, in transition countries. A large share of the workforce in key export industries work under informal arrangements, including those producing garments, textiles, [and] sport shoes” (ILO 2002:27). According to the ILO, “more and more firms, instead of using a full-time, regular workforce based in a single, large registered factory or workplace, are decentralizing production and reorganizing work by forming more flexible and specialized production units, some of which remain unregistered and informal.”³⁰ (ILO 2002:5). Companies often have a small core of wage employees who work under regular terms and conditions, but beyond this small labor force is a larger, geographically scattered (including cross-border) network of workers that are considered “non-standard” or “atypical.”³¹ It is important to understand that informal work *extends into* regular, formally-operating factories (see subcontracting box) and is not limited to informally-operating workplaces, as is the case with homework.

2.4 The informal economy

The terms informal employment, unregulated, unprotected, excluded, atypical, and precarious employment are presently being used interchangeably to describe the situation of the majority of the women workers in export industries. Each term brings with it slightly different meanings, and usually the choice for one or the other is political.

2.4a The use of the term

The term “informal economy” instead of “informal sector” is now increasingly used to describe the workers and enterprises that operate informally. The term informal sector was seen as misleading as it masked the diversity and complexity of these arrangements, situations and processes, and seemed to imply that such processes were limited to one sector or industry. The concept suggest a dichotomy while in reality what exists is a continuum, in which the ‘poles’ are often linked via subcontracting arrangements. Furthermore, “formal” sector employment situations can include workers operating in informal conditions (no contract for example). According to the Committee for Asian Women “in more and more situations, workers in so-called informal employment work side by side under the same roof as workers in formal employment. Many times, though not always, these workers with informal employment status are migrant workers either from the same country or from overseas. They are often involved in the infamous “3-D (dangerous, dirty and difficult) jobs” (CAW 2001a: 2). Another objection comes from the ICFTU who argues that “the benign nature of the term always makes it easier to overlook the failure of governments to perform some of their most proper and basic functions.”

The ILO now refers to the term ‘informal economy’ to move away from the notion of a specific kind of economic activity implicit in the term ‘sector,’ and to establish that the concern is with the heterogeneous and growing number of economic units and workers who have been marginalized, de-linked or excluded from the mainstream economy and society and legal frameworks. The ILO views the ‘informal economy’ as comprising these marginalized economic units and workers who are characterized by serious deficits in decent work: labor standards deficits,

³⁰ The ICFTU estimates that even in the industrialized countries informal work accounts for a third of the gross national product (DGB, EAD and AAB, 2000 quoted in CAW 2001: “Women Workers in the informal economy and organizational challenges – a perspective”, published as part of materials for the Regional Workshop on Women Workers in Informal Work, 6-8 November 2001, Bangkok.

³¹ Non-standard wage employment for example home workers, industrial outworkers and casual, temporary and part-time workers are not necessarily “informal” workers. The ILO notes that “in some countries temporary and part-time workers and teleworkers operating from home are covered by labor and social security legislation (although the level of pay and benefits is lower than for regular full-time workers and the prospects for career advancement, training or skills enhancement are limited). However, casual workers, subcontractors and agency workers often do not have labor and social protection. In developing and transition countries, home-based work and that done in sweatshops and by outworkers or casual workers are typical rather than atypical, but often are not recognized or protected by labour law or covered by social protection” (ILO 2002).

productivity and job quality deficits, social protection deficits and organization and voice deficits.³² Reducing these deficits in the informal economy, they believe, will promote the transition to recognized, protected, legal – and, therefore, “formal” – activities and ensure decent work.

2.4b Informal employment in the garment and sports shoe industry

In the garment and sports shoe industries informal economy workers can include home workers, whose employment relationship with an employer is not recognized or protected, those who run micro-enterprises, who face various barriers and constraints to setting up and operating formal enterprises, and those who work for them, as well as other arrangements.

Women’s organizations discussing informal employment in Asia at a seminar organized by CAW in 2002 felt that an important distinction to make was between those working with identifiable employers, such as part time workers, contract worker and dispatch workers (those employed by a recruitment agency for relay to temporary work positions within companies), and those working with non-identifiable or shifting employers such as home-based workers (including both “own account” and contract workers). Own account workers are one-person or family businesses with unpaid family workers. With unknown employers more traditional methods and strategies for unions and other forms of labor organizing are closed off.

Although official dispatch work is not very common in the garment industry, being employed by a contractor who is not the factory owner, and being ‘dispatched’ to the workplace in question is a common occurrence in the garment industry, the CCC has received reports from Thailand for example about factories where workers at different lines are in fact employed by different people (this is also a common practice in India).

Recommendation: While there is qualitative data on the informal economy in the region, by country, there is a lack of how this is manifested specifically in the production of garments. More information on the specific subcontracting arrangements for garment production in the region is needed. Such information would also facilitate a better understanding of supply network relations. As informalization is on the rise, it will be important to provide support for the development of organizing strategies by unions and labor rights organizations that specifically target workers in the informal economy.

Challenges facing workers in the informal economy include:

- No recognition or protection under legal and regulatory frameworks (discussed further in section 4)
- Low visibility means concerns are not heard, difficult to draw attention to legal/regulatory gaps,
- Difficulties in organizing,
- Unstable work situation,
- Little access to or completely excluded from public infrastructure and benefits,
- Have to rely on informal, often exploitative institutional arrangements, for information, markets, credit, training or social security, and poverty, even more so for women in the informal economy.³³

In the garment and sports shoe industries the processes of work force feminization, flexibilization, and informalization are interconnected. As mentioned above, women have long been a significant source, if not overwhelming majority, of labor for these industries. This comes about because of gendered notions of their

³² See for example CAW 2001a and the preparatory materials and report of the IRENE/WIEGO seminar on “Decent working conditions for Informal Economy Workers” April 2002. All available from: <http://www.cleanclothes.org/campaign/homeworkmain.htm>

³³ See also the Report of the Regional Workshop on Women Workers in Informal Work, 6-8 November 2001, organized by CAW and HomeNet. During this meeting participants categorized the needs of women in the informal economy as follows: self-confidence and identity as workers; credit, economic, political, autonomy, multi-faced organizing, redefinition of existing structures, solidarity, advocacy, challenging legal frameworks, organizing for resistance and changes in policy, and research and information and other support needs of women workers (2001:50-52). For an overview of problems faced by Indonesian home-based workers, including Jakarta-area garment industry homeworkers, please see Ayuni and Rudiono, 2002: 18. Several earlier studies have shown that in the view of women casual workers, their primary needs are greater regularity of work (and payment) and higher level of income (Baud, 1994, with reference to Beneria & Roldan 1989).

flexibility as workers, which positions them as more desirable employees. Informalization is an example of flexibilization, and therefore, in the context of these industries that rely so clearly on flexibilized labor, this trend is also reliant on gendered processes.³⁴ Women are an important source of labour in the informal economy and this is true in the garment industry as well. Please see the box below.

Box 3: Gender, flexibilization and informalization

In the Philippines, for example, Ofreneo et al report that “the garment sector is the biggest employer of home-based subcontracted women.” The garment industry is officially the second largest employer in manufacturing, however the authors say that employment in the sector is grossly underestimated because this only covers formal sector workplaces that employ ten or more workers (2002: 88, 90).³⁵ Approximately 75% of the 11.2 million formally employed in the global garment industry are women. While it is difficult to estimate the size of the garment sector operating in the informal economy, “conservative estimates would suggest that the total number of women employed in the garment industry is nearer to 35 million” when those active in the informal economy are factored in (Shaw, 2002: 12).

Government policies have sometimes specifically encouraged women to work in the informal economy. For example, in Taiwan beginning in the 1970s, the government actively promoted a “Home As Factory” policy, that encouraged women to do processing work in their homes (CAW 2001b:43).

Generally speaking, the gendered ideas relating to flexibility suggest that women are merely supplementary earners, not “real” workers, who will therefore accept lower wages, and less formal working arrangements. As only part-time or temporary workers, whose “real” work is seen as being reproductive (i.e. the tasks assigned to mothers, wives, and daughters, of caregiver and homemaker) it is often seen as culturally acceptable to propel women in and out of the productive workforce.³⁶ Gendered biases about whether or not married or pregnant women, or women with children should still be employed (because they have too many other responsibilities and cannot give 100% to their paid jobs, or will be entitled to increased benefits) have been manipulated to push these women out of the formal workforce when they are seen to be “less flexible” workers.³⁷ For example, pregnancy testing has been used in the Philippines to prevent soon-to-be mothers from employment.³⁸ In China pregnant footwear factory workers have been fired to avoid payment of benefits.³⁹ Thus it is not unusual for women in the informal economy to be older women and mothers. In Indonesia, the ICFTU reports that “one major reason for employers employing women as casual labourers is because they are not liable to pay benefits such as maternity pay.” (2003: 6). Homeworkers in the garment industry in Dongguan, China were reportedly middle-aged, married, local women, some with factory experience. They became homeworkers due to reproductive responsibilities: they had children or had to be at home

³⁴ Sen summarizes the two aspects of gender as it relates to labor markets. “The first relates to the sex-based division of labour by which men and women not only do different kinds and amounts of paid and unpaid work but occupations are segregated by gender, male-female earnings differentials are significant, and there is a distinct hierarchy between women and men in relation to work overall” (Sen, 1999: 6). For Asia, as opposed to other regions, a high proportion of female-dominated occupations are in the category of production type jobs, particularly jobs such as spinners, weavers, knitters, fiber preparers, tailors and sewers, embroidery workers, textile machine operators, and sewing machine operators (Anker, in Sen, 1999: 7). It is interesting to note that in the region, the proportion of women among production workers is above world averages. Sen notes that “in absolute terms, segregation is still high and...shows little sign of decreasing unlike elsewhere in the world” (1999:8). The second sense of ‘gendering’ is the way in which gender roles, ideologies and norms shape the above sex-based division of labour, assign multiple work burdens and responsibilities to women, and determine workers’ vulnerability and bargaining strength... This second sense in which we use the concept of ‘gendering’ may be seen to underpin the first, determining thereby both the division of labour and the hierarchy between female and male labour” (Sen, 199: 6).

³⁵ In 1995 for example, the Industry and Trade Statistics department of the National Statistics Office in the Philippines reported that there were 16,067 firms involved in manufacturing garments. Of these, 12,628 employed one to four workers, and 1,181 employed five to nine workers (Ofreneo et al, 2002: 95).

³⁶ See for example Saffioti, 1975; Beechey, 1978; Vaughan, 1977 on this point, cited in Ruiz, V. and S. Tiano, eds, (1987) *Women on the U.S.-Mexico Border*, Allen & Unwin, Boston.

³⁷ This phenomenon is euphemistically known as “natural wastage” (Elson and Pearson 1981: 149).

³⁸ This trend, once documented only in the EPZs is now reportedly on the increase beyond the bounds of the zones, see Philippine Resource Center paper to be published as part of Women Working Worldwide research reports on subcontracting chains, forthcoming September 2003.

³⁹ For example, at Lizhan Footwear Factory, Guangdong (Kernaghan, 2000: 54).

to take care of family members (Wong, in WWW, 2003: 15). These gendered biases also result in age discrimination. Because women of a certain age are seen to be more likely to have more reproductive duties, they are seen as less flexible. For example, women over 25 years will usually not be employed in labor-intensive industries in Indonesia and the Philippines, according to Pun (1995: 30). The same policy has been reported at footwear factories in China (Kernaghan, 2000: 48, 54).

“Natural” qualities are generally attributed to women, which are supposed to predispose them to factory work include “...naturally nimble fingers, ... naturally more docile and willing to accept tough work discipline, and naturally more suited to tedious, repetitious, monotonous work” (Elson and Pearson, 1981: 149). “In this model of work organisation, the global companies use women’s labour because, to quote an industrial expert, ‘women in the subcontracting units make the most flexible robots of all’” (Mitter, 1992: 3). Women workers are seen as more agreeable, and less likely to be knowledgeable or speak out in relation to their legal workplace rights, which in any case might be fewer than their male counterparts (see section 4.2c). In some cases migrant women workers, because of their combination of flexibility due to gendered reasons and vulnerability associated with their migrant status are positioned as more flexible workers. The use of migrant women workers is a trend spotted throughout the different phases of the industry in the region. In Taiwan, for example, when industries sought to become more competitive cost wise Taiwanese workers were replaced by large number of migrant women workers, who were paid less and had a weaker bargaining position (Wang, 1998: 30) In Guangdong, China’s garment industry, internal migrant workers -- single, young (16-30) women from rural villages in distant provinces -- were willing to work long overtime hours and were much more tolerant of rights abuses in the factory than their colleagues of local-origin (Wong in WWW, 2003: 17).⁴⁰

It is difficult to generalize across the region regarding the profile of women workers in the industry. Many women are young, single, and from rural areas, who have entered the formal labor force for the first time. However, this profile varies from country to country. Some women are relatively highly qualified, but are unable to find employment in other sectors. Many workers have children, however they do not live with them. Some women workers live in dormitories or boarding houses, others live at home. Some stay with their jobs for short periods of time, some for 10 or more years (Rosier, 1993: 84-85). Clean Clothes Campaign and SOMO research in the garment and sports shoe industries during the past decade continue to show that there is no one “model” of a female worker in the industry.

However, since the early days of female employment in export-oriented industries, women have been shown to contribute significantly to their family income. According to a 1970 study of young female Hong Kong factory workers, 88% were giving more than half their earnings to their parents (Fuentes and Ehrenreich, 1989:18). Indeed this continues to be true. For example, a survey of workers at five footwear and two apparel factories in Vietnam in 2000, where on average over 80% of the workers were women, nearly 70% were working to help support their households, for more than 20% theirs was the only source of household income (CESAIS, 2000: 14). The importance of women’s earnings is also true of women working in the informal economy. For example, in a study of women embroidery homeworkers in the Philippines the women said their productive work was crucial for the survival of their families (either as a “big help” or as the main source of income) (Ofreneo, et al, 2002: 101). But while women might be significant earners for their families, gender bias in some cases prevents them from being socially or legally recognized as such and less able to access benefits male earners would be entitled to. For example, in South Korea women who are the main earners for their families are not recognized as such if their husbands live with them and are denied the benefits a breadwinner would be entitled to. Women workers surveyed at nine Nike contract factories in Indonesia reported that their family members, including children often did not have access to the factory’s health clinics (Global Alliance, 2001: 50). Gender bias coupled with informalization can be a powerful combination used to prevent women from accessing rights and benefits workers might be entitled to under national labor laws (see section 4.1 and 4.2c).

While the stereotype is that women are passive, docile, and less likely to speak out and demand their rights, in fact there are countless examples of women workers in the garment and sports shoe industry taking action and

⁴⁰ There has been a trend toward increasing feminization in migration. Migration of women in (both internal and between countries) Asia has increased “exponentially” during the past 20 years (Hugo, in Sen, 1999:2). Sen observes that female migration was traditionally often related to marriage or was associational, however recent decades “have seen women migrating in larger number for work and by themselves, both domestically and internationally” (1999: 3).

organizing. This was true from the early days of the industry, as well. For example, in 1976 70 young women garment workers in Thailand locked out their Japanese bosses, increased their wages by 150% and continued to produce jeans and hats for export (Fuentes and Ehrenreich, 1989: 44). Women workers continue to exercise their rights in workplaces in the sector throughout the region. Women workers in these sectors in Indonesia and Thailand have been particularly active in organizing, but workers in such countries as Cambodia and Vietnam have also taken action to demand their workplace improvements.

Gender based discrimination as a tool for flexibility is real. For example, in Laos (CAW 2001b: 83), where women workers reportedly experience discrimination in almost all sectors, women are paid approximately 61% less than male workers. In the Philippines meanwhile, according to a 2000 study (IBON cited in CAW 2001b: 67) women workers also earn substantially less than male workers. For every peso earned by men in manufacturing, women earn 0.39 (for more on legal discrimination, or the failure of laws to take up issues of discrimination, see section 4.1. Gendered processes and gender bias place obstacles in the path of women workers having opportunities (ex. lack of time due to the other reproductive responsibilities) to access or shape agendas of traditional workers' organizations (ex. trade unions). Gendered ideas also play a role in keeping women workers from receiving more training or opportunities for advancement. For example, a report on two Indonesian factories producing for Reebok found that though women were the majority of the workforce (84% and 81%), only male workers were trained in how to use fire extinguishers (IHS, 1999: 14). In these same factories, women were significantly underrepresented as line leaders and supervisors.⁴¹ In Cambodia, where women are the overwhelming majority of the workforce, men are overwhelmingly the managers (Hall, 1999: 33).

Because of gendered harassment, women are less mobile (ex. threats to their safety mean it is difficult to travel home at night) and this can be manipulated to make women more available for work (ex. they live in or nearby factory premises). In Laos for example, female workers often live in the factories because they are afraid to return home after dark and must pay 60,000 K/month rent to the owner (CAW 2001b: 83). Gendered notions of acceptable behavior in some cases make it acceptable for managers or supervisors to intimidate or behave abusively toward female workers (for example in Cambodia, as cited by Hall, 1999: 33).

Flexibilization through informalization has been alternatively seen as good for women workers, for the very reason that it is flexible and therefore better accommodates their reproductive work,⁴² and bad for women workers because of the very negative characteristics of informal economy work, such as lower wages, isolation, fewer opportunities to organize, less leverage with employers, lack of legal coverage, etc.

Some women homeworkers do report positive aspects of working at home. For example, in the Philippines, homeworkers saw the benefits as: "earning income while near their children and inside their homes, using the skills traditionally taught to women such as sewing and embroidery, and gaining self-respect and self confidence because of their earnings." They also said that having their own income "...has provided them a sense of entitlement to make purchases for their own needs (as opposed to collective family needs) and improved their bargaining position vis-a-vis their husbands/partners" (Ofreneo et al, 2002: 100-101). Garment industry homeworkers, in Dongguan, China reported that they found "working at home freer than working the factories." They could decide when to work and when not to and felt that there was less pressure. If they were working at the factory and worked fast, the unit price would be lowered (WWW, 2003:15-16).

Sen observes that in the Asian context "homework does allow somewhat greater flexibility in combining domestic responsibilities and work with contracted labour, but the cost in terms of reduced earnings and risk of job loss is great." She concludes that "the desperation, vulnerability, and fragmentation of home-based workers is usually greater even than of the young women in the factories and ensures docility and compliance" (1999: 9).

⁴¹ Following the report, a program to familiarize women workers with the fire extinguishers was initiated.

⁴² The argument is that formal work is something structured around the idea of a male worker, and is inconsistent with the needs of women workers, and therefore choosing informal work could be perceived as an example of women exercising their agency. For more on this, see for example, CAW 2001: "Women Workers in the informal economy and organizational challenges – a perspective", published as part of materials for the Regional Workshop on Women Workers in Informal Work, 6-8 November 2001, Bangkok.

An increasing number of groups are becoming active on the issue of women workers in informal employment. CAW, Homenet and WIEGO are examples of (international) networks undertaking research and organizing strategic debates to support emerging groups of women homeworkers and other informal economy workers organizing to demand improvements in their working conditions. Though in the garment industry these are still few and far between, the emerging strategic agenda provides points of concrete action with respect to lobbying, organizing and campaigning.

2.5 Corporate responsibilities within supply networks

Given the dynamics at play within garment and sports shoe supply networks, involving various processes and various actors, there is considerable discussion over who is responsible for workplace conditions. Is it the company that places an order and sets an increasingly vast supply network into motion? Is it the employer who is in direct contact with the workers who actually produce the goods? Or is it a company somewhere in the middle, for example an Asian production MNC? Or is it a combination?

Presently, even the ILO concludes: "With specific reference to flexible specialization on a global scale in commodity or supply chains, a burning issue is who should ultimately be responsible for the rights and protection of all workers in the chain, including those at the bottom of the chain who work from home.... It is true that many lead firms may not know how many workers work for them, or where and under what conditions, in global subcontracting chains that are often long and dispersed. But one view that has been increasingly supported by both workers' and employers' organizations is that it is the lead firm in the chain who is the real employer of the workers further down the chain and who therefore has responsibility for the rights and protection of all the workers in the chain. The lead firm is the one that outsources production, even if it is only a retail firm" (ILO 2002:11).

Indeed labor rights campaigners have placed responsibility for working conditions squarely upon the companies at the "top" of the supply chain, and since the late 1980s have campaigned internationally to make this responsibility more visible and to press companies (generally US and EU MNCs) to take up those responsibilities. More recently, they are drawing attention to the purchasing practices of those companies, which are at odds with corporate declarations to adhere to good labor standards in the workplaces where their goods are produced (ex. corporate "codes of conduct").

2.5a Compliance and Purchasing Practices

Schedules for production, agreed upon delivery dates, and the prices paid for orders are all part of the purchasing policies of companies that place orders with garment and sports shoe producers. These factors all have an impact on the costs of producing garments and in turn on what workers are paid, the number of hours they work, and other working conditions. Short-term relations between sourcing companies and suppliers also have repercussions in terms of working conditions (ex. insecurity of employment). Therefore, in the view of rights advocates, purchasing policies must be adapted to allow for the compliance with wage and hour standards, as well as the cost for compliance with other standards for labor practices (ex. those outlined in national labor laws and voluntary codes of conduct). However, both labor rights advocates and industry insiders agree that for the most part purchasing policies have not been adapted to accommodate the cost for compliance to such standards.

According to industry expert Simon Zadek, large sourcing companies have failed to integrate their labor standards compliance and labor management into their incentive systems (i.e. the rewards they give to buyers or procurement teams; currently, Zadek says, incentive systems usually reward behavior that is actually at odds with compliance goals); their stock inventory systems; and their reporting systems (ex. information from compliance people is not being distributed to other departments within the company) (Ascoly, 2003).

"Compliance is contradicted by the sourcing practices," reports one social auditor who monitors compliance with labor standards in China. "Every year the buyers are lowering the prices, and with new product designs the orders are

getting shorter, especially in this very competitive market where trends are changing so fast, this makes compliance very hard, for example managers know that if they miss a deadline they have to ship at their own cost.”⁴³

US garment companies, for example, sourcing in the Philippines (they buy 75% of Philippine exports) depressed their prices by 20 cents per piece in 1998 compared to prices paid the year before. This price differential resulted in a total price difference or additional earnings of more than US \$159 million in 1998 (Philippine Resource Center 2003:10). A Vietnamese shoe supplier states that the buyer demands they pay 40\$ salary per worker per month instead of the 35\$ demanded by law, adding significantly to their cost, without paying more. Another supplier reports the ‘cost of doing the code’ adds a dollar per pair, and that buyers refuse to reflect that in the price (Mamic 2003: 76).⁴⁴

One Chinese factory owner producing garments for European and North American companies, commented on the difficult position that pricing policies put him in with relation to enforcing good working conditions: “Now we have 800 workers. Even if we hire 400 more right now to diminish overtime this would increase the overhead costs in turn and buyers then cannot get the price they want.”

Because of the link between purchasing policies and an employer's capacity to pay better wages and improve other aspects of working conditions, campaigners believe that companies at the top end of garment supply chains, not just direct employers, have an important role to play in ensuring that garment workers receive a living wage and that other standards are implemented. In their view, focusing on changing policies and practices at the supplier level alone is unlikely to result in compliance with labor standards (SOMO, 2003a).⁴⁵

If the wage cost really makes up such a small (between 1 and 5 %) part of the end price of the product, campaigners have noted, then sourcing companies can easily increase prices to allow for higher wages.⁴⁶ However, calls to simply raise prices paid to suppliers are viewed as simplistic attempts at solving this problem. It is difficult to ensure that more money paid to suppliers will translate into higher wages and shorter hours for workers. Recognizing the complexity of factors that effect pricing, labor rights advocates are attempting to shed more light on the costs associated with production and the possible pressure points where they can push for changes that will have a positive impact on workers.⁴⁷

2.5b The position of the Asian production MNCs

With the increase of Asian production MNCs the question emerges: who is the “lead firm”? Some Asian MNCs are highly profitable operations, whose earnings sometimes outstrip those of their EU or US-based clients. Taiwanese sports shoe giant Pou Chen, for example, makes nearly double the profit of Reebok.⁴⁸ Some of these Asian MNCs own their own factories while others subcontract everything. Meanwhile, many of these production MNCs are not Pou Chens or Nien Hsings – they are small or medium-sized and most likely fairly dependent on a limited number of

⁴³ The World Bank also acknowledged this problem, stating that “Because contracts negotiate price of delivered goods, the manufacturer must bear the cost of air transport if it fails to complete production in time to utilize the cheaper option of transport by sea” (World Bank 2002: 22).

⁴⁴ The ILO report unfortunately does not provide information on whether or not the supplier actually paid the workers the \$5 per month extra, nor do did they check the claims of the suppliers about the prices back with the buyers in question.

⁴⁵ Beyond wages, other costs associated with improving conditions include: paying social security and taxes, necessary investments for safe and healthy workplace, getting registered, and training of workers.

As mentioned above, there are situations where formal workplaces hire workers informally, and in other cases the workplace and the workers both operate informally. In the second case costs associated with bringing a supplier into legal compliance will be higher. Compliance for the second group will also rely on more than prices paid and will depend to a certain extent upon national governments and legislative changes, as well as on changing, more sustainable sourcing policies from retailers and brands.

⁴⁶ In 2002 for example, the CCC reported wages in China of US\$ 0.15 per hour, and was calling for an increase in these wages during its World Cup Football campaign.

⁴⁷ See also report on day two of the International Seminar on Pricing in the Global Garment Industry (2003) available upon request via the CCC international secretariat and other pricing related materials, available via <http://www.cleanclothes.org/news.htm>

⁴⁸ Annual net profits for 2001 in million US\$ were: Nike: 589,7; Adidas: 208; Reebok: 102,73 and Pou Chen: 213. Source: annual reports. In the first quarter of 2003 Pou Chen’s profits were US \$92 million (SOMO, 2003b).

clients. And then there are suppliers who are not MNCs, most who are small, and extremely dependent on their clients and operate nearly on the margins.

The policies and practices of which company within the supply network are actually the most influential when it comes to shaping the working conditions where goods are produced? Though the importance of answering this question seems to have been missed by the ILO in its discussion of “lead firms,” it has been on the agenda of garment and sports shoe industry labor rights campaigners for some time.⁴⁹

We can conclude that for each supply network this question of power dynamics will have to be assessed. This will mean considering more than who is making the most profit, but what is the relationship and balance of power between each member of the network and the actual producer of the goods. This implies that to achieve improvements in industry practices, not only is there a need to improve industrial or labor-management relations, but also relations within supply networks. However, while Asian suppliers, MNCs or not, will have some responsibility for working conditions, those who are in control of the supply network will also always have a role to play in ensuring that labor practices where their goods are made are in compliance with the law and meet internationally-accepted standards.

⁴⁹ These issues were raised in 2001 at the meeting of the Clean Clothes Campaign’s international network. The CCC concluded that there was a need for more information on and campaigns targeting Asian production MNCs (Ascoly and Zeldenrust, 2001, 48). Also in 2001 Asia Monitor Research Center (AMRC) launched Asian Transnational Corporations Monitor (ATNC Monitor) with the support of organizations in Hong Kong, Japan, Korea, Taiwan, Thailand, the Philippines, Sri Lanka, and New Zealand, to focus attention on such companies in the region and elsewhere (ATNC 2002).

3. The role of trade agreements in supply network dynamics

Trade agreements have an impact on supply network dynamics in the garment and sports shoe sectors. For the ESEA region generally, the Multi Fibre Arrangement (MFA) has an impact, as do agreements involving ESEA countries (ex. the bilateral agreement between US and Vietnam; the agreement between US and Cambodia, and the ASEAN Free Trade Agreement (AFTA) that requires the reduction of tariffs and import barriers among all ASEAN member nations by 2006.).⁵⁰ But also trade agreements that ESEA countries are not a party to, for example the Africa Growth and Opportunity Act (AGOA) and the North American Free Trade Agreement (NAFTA) have an impact on supply chain dynamics⁵¹ and therefore workers in the region.

One of the difficulties in describing the effect of trade agreements on labor is that these effects are rarely straightforward. Trade agreements shape (re)location patterns, which basically will bring jobs to workers in some countries, but at the same time prevent growth in others, or lead to job loss. However, as discussed in sections (insert section numbers) in relation to subcontracting and pricing, trade agreements are not the only factor influencing decisions on where companies locate their production operations.

3.1 The MFA

The MFA, presently being phased out under the 1995 Agreement on Textiles and Clothing (ATC), has shaped the pattern of production in garment and textiles for the past three decades by binding countries to maximum quotas of export for specific product categories. The MFA was a protectionist measure (it came into force in 1974), meant to safeguard the garment and textile (in practice mainly the textile) industries in the US and the EU from cheaper imports from developing countries. Intended to be temporary in nature, it has lasted much longer than foreseen.

The MFA created industries in certain countries that would not have emerged on their own and were unsustainable. Countries that had a potential to develop an integrated sector, for example the Philippines, abandoned the development of cotton production and of their textile industry because under the MFA it was more profitable to use imported textiles to fulfil their garment industry product quota. Countries that, if the agreement had not been in place, would never have developed a garment industry because they lack access to cotton or other inputs, such as Thailand, became very dependent on the garment industry for their exports. Other countries in the region, such as Indonesia, claim that the quota hindered them in fully developing their garment industry, and that with the abolishment of the MFA exports would be higher. Meanwhile, the lives of millions of workers in the region became connected to these industries, which gave provided them with low quality and temporary jobs. Sourcing companies “follow” the quota: if quotas are used up in one country, the companies source production in another country that still has quota available, alternatively the company obtains quota illegally. Many methods facilitate the circumvention of quotas, such as the altering of “made in” labels, the transshipment from the producer country to a second country and from there to the final importing country, or the falsification of documents.

The MFA though, paradoxically, because of its long-standing macro-nature also provided a certain level of stability: countries could be reasonably sure of a certain level of quota, and thereby of orders, jobs, and foreign exchange.

The big question that everyone, from labor campaigners to industry representatives to government officials, is currently asking is “what will happen after the MFA phase-out?” Likely “winners” in the region are China (see related box below) and Indonesia. Thailand and the Philippines are predicted to be “losers” once the MFA is gone. The lifting of MFA quotas has already had a negative impact on the Philippine garment industry. The decline in garment exports in 1996 was in part due to the initial phase-out of quotas^{52 53}(Ofreneo et al, 2002: 92-93).

⁵⁰ The Free trade zone that will be created by China plus ASEAN will have a combined market of 1.8 billion people and a GDP of at least US 2 trillion. Note the immense importance of China to the region: with its 1.2 billion inhabitants it is roughly double the size of the 10 ASEAN countries together (Nolten 2003: 24).

⁵¹ These agreements also lured a lot of Asian investment outside of the region to Africa and Central-America.

⁵² Garment exports as their share of total exports fell from 21.7% in 1990 to just 8% in 1998 (Ofreneo et al, 2002: 91). Ofreneo states that lifting the quotas will put in jeopardy Philippine garment exports because they are of mediocre quality by world standards and are only used as secondary sources.

⁵³ Of course EPZs vary. For a discussion of the factors (such as tightness of labor market, origins of foreign investment, government policies regarding standards, the sector, the size of the union, and consumer pressure) that influence conditions in EPZs, please see Ponnia and van Heerden (1998).

Box 4: China

The ATC was signed when China was not a World Trade Organization (WTO) member. Once China joined the WTO, US imports for garments and textiles from China in 2002 rose in volume by 125%. EU textile and garment imports from China increased by 53% in value and by 164% in volume in 2002.⁵⁴

Under the accession agreement a transitional period is allowed during which other WTO members can re-impose import restrictions on China. The “special textile arrangements” arranged as part of the accession agreement allow that for three years from the end of the ATC (that is, to 2008), rich countries may impose quotas on Chinese apparel/textile imports, if certain conditions, relating primarily to the disruption of orderly (sic) trade are met.

Such quotas may last for no more than a year (for each case), and while consultation about quotas is going on, China must hold its export growth to 7.5% or less (that is, to a slower rate than the industry has achieved in the past decade).⁵⁵ Industry trade groups like ATMI (Association of Textile Manufacturing Industries) in the US are continuously pressuring the US government to invoke the safeguard mechanism.

Industry expert Michel Scheffer believes that China’s share of the world garment production, presently already 40%, will increase to 50 or 60%.⁵⁶ But will all production go to China? Currently, this is a threat frequently made to workers in the industry around the world who attempt to organize to defend their rights. It does not seem very likely. Though China can build the capacity to “clothe the world” and has access to both textiles and cotton, sourcing companies will not risk relying on just one country for all their production. The outbreak of the SARS virus in China made the risk of such a strategy quite clear.⁵⁷ China does not have the lowest labor costs in the region, though it does provide a relatively good business environment. Industry observers note that while “it is possible that the ATC improves China's competitive strength more than the other Asian countries...the ATC takes a large amount of cost out of the industry overall, and will be an immediate spur to ratcheting many prices down, especially in the key Asian countries.”⁵⁸

But, predictions are extremely hard to make. An indication of the present use of quota (that is, the extent to which a certain category of quota is actually fulfilled in a country) may provide additional insight into the impact of the quota phase-out in a particular country (see related box).

Box 5: MFA Quota Situation per Country

China, Hong Kong, Macao, Indonesia, the Philippines and South Korea have been seriously restrained in their export of important categories of textiles and garments to the US. China, Hong Kong, Indonesia, Vietnam, and North Korea (!) have been held back in their export to the EU (only the US, the EU, Turkey and Canada currently have quota restrictions, note that other ‘rich’ countries like Australia and Japan do not).

Cambodia, Malaysia, and Burma have been held back in a few categories to the US, and Malaysia, Macao, Thailand, the Philippines, and South Korea to the EU. In practice, China and Indonesia have “shown the most consistent and

⁵⁴ Note: average unit prices decreased by 42 per cent. Addressing the members of the Chinese representation with the EU at a conference organized in May 2003 by the EU, the president of the French Textile Industry Association, asked: "A 42 per cent price decrease, and that would be no dumping? I openly ask you: do you want to destroy us or to share with us the yields of growth?" (Just-style.com, May 19, 2003).

⁵⁵ Just-style.com, 2003, 10 lessons, p15.

⁵⁶ CCC 2003: Pricing in the Global Garment Industry, page 5.

⁵⁷ At a conference on the consequences of the MFA phase-out organized by the EU in May 2003 Daniel Bernard, PDG of Carrefour, with 400,000 employees the world's second largest distributor (after Wal-Mart), confirmed that China would gain importance in Carrefour's sourcing policy. But he said the company, like other global players, would continue to source from India and other Asian countries and as well from the EuroMed region (Just-style.com, May 19, 2003).

⁵⁸ Just-style.com, 2003, Apparel Sourcing 10 lessons

widespread near-saturation of whatever quotas they may have had, for yarn, fabric and garments.” The phase-out only applies to WTO members; the most important non-member in the region is Vietnam. Vietnam has quota set by the EU. Cambodia has applicant status, so does Laos. These two have “surveillance status” for exports to the EU. This is a category used by the EU to flag the option of quota imposition, that relevant imports are being monitored, but that quotas are not currently imposed. Laos has quota set by the US, so does Cambodia, which in 2002 used them up almost completely in at least one category. They both have LDC (Least Developed Country) status; the common assumption is the LDC applicants will definitely be WTO members by 2005.⁵⁹

The ATC comes to an end on December 31, 2004. By this date all the quotas should be phased out. The main mechanism to regulate trade imports will then be: tariffs, anti-dumping measures, and bilateral trade agreements.

3. 2 Tariffs, Anti-dumping, and TBTs

When an order of garments or sports shoes reaches the border of the importing country usually import duties have to be paid. Together with the cost of freight this makes up the LDP (landed duty paid) price. The LDP price can be substantially different from the FOB (free on board) price, which only includes all the costs up to the moment that the goods reach the ship.

The table below illustrate this difference:

Influence of macro costs on landed duty price

Country	FOB	Quota	Duty	Freight	Clearance	LDP
China	\$5.75	\$2.50	\$1.21	\$0.40	\$0.15	\$10.01
U.S./Mexico	\$8.13	0	0	\$0.15	\$0.15	\$8.43

Source: Birnbaum 2000: 140

The level of the import duty (or the levels of the tariff barrier) is influenced by trade agreements and the status that countries are given. For example, lack of normal trading relations (NTR) status with the United States results in extremely high tariffs barriers for Lao products. With NTR, Lao products would face an average 2.4% tariff. Without this status, Lao exports receive an effective average 45.3% tariff (Robertson in AMRC 2003: 185).

Generally speaking, “the US imposes relatively high import duty on apparel (averaging 17%), although this often reduces to zero if US raw materials are used. The EU appears to impose rather lower duty (averaging 8.9%), and only on apparel from a small number of countries; over 100 countries are, in theory, not liable to import duty on apparel. However, the EU applies rules of origin to apparel from countries that are theoretically duty-free (garments must be made from "European" or local raw materials to be duty-free), most "duty-free" countries have limited spinning and weaving, and the EU charges the duty rate applying to the raw material supplier - almost always the highest available rate - if local or "European" materials are not used. So import duties slightly protect the domestic apparel industry and substantially protect the domestic textile industry.”⁶⁰ Industry analysts believe that neither the US nor the EU are likely to increase import duties as a result of the ATC, however others predict that after implementation of the Uruguay Round agreements, the average tariff imposed on textiles and clothing globally will have fallen to 12% percent, compared with 15% prior to the round. This is still three times higher than the post-Uruguay Round average tariff for all other industrial products, meaning that this important sector will continue to be heavily protected. Even if tariffs are lowered, rules of origin requirements are of huge influence on the duty that gets paid. If a textile or clothing product does not fulfil the rules of origin requirements (e.g. the raw material is not from the country itself, that is the EU or US) then the higher tariff will still apply even if the tariff on the products has been lowered. The WTO says that regional (or bilateral) free trade agreements need to substantially free most products and not be more discriminatory as before but does not seem to say much about rules of origin, only about duties.

⁵⁹ See just-style.com, 2003, Apparel Sourcing 10 lessons, page 10.

⁶⁰ just-style.com, 2003, Apparel Sourcing 10 lessons, page 13.

Industry expert Michel Scheffer predicts a shift in focus from quota to tariffs. “There will be a fight to keep tariff protections as they are,” he said, “and rules of origin will be used to keep production in the European area. More non-tariff barriers will also develop (for example along the lines of the restrictions that were developed regarding the use of cancer-causing AZO dyes) and this will create uncertainty,” said Scheffer.⁶¹

Under the WTO agreement countries facing a surge in imports, especially if those imports are arriving at non-commercial prices, have the right to adopt so-called emergency measures, called “emergency anti-dumping duty.” The EU recently did this for footwear and bed linen.⁶² In addition to anti-dumping measures, so-called technical barriers to trade (TBTs) are grounds for limiting the entry of products under the WTO rules. Generally, if certain inherent specifics of a product present a danger to health or the environment that constitutes a TBT. Developing countries frequently express the fear that in the future the non-application of social standards might be considered a technical barrier to trade. Presently this is not possible since social aspects are considered to be a part of the production process, and not a specific characteristic of the product itself.

3.3 Bilateral and Regional Agreements involving countries in ESEA

The effects of bilateral and/or regional trade agreements on the patterns of relocation of the industry can be quite substantial. This is evident in the example of Vietnam (see related box).

In some cases bilateral trade agreements get connected to labor issues, as for example has been the case in Cambodia, where a monitoring program under the supervision of the ILO has been set up as part of a trade agreement that links up to respect of the core labour standards (see related box). Connecting trade agreements to labor standards, a strategy promoted by some within the organized labor movement (trade unions) and the broader movement to improve working conditions in the industry movement (mainly US based groups), has been heavily criticized by others (including the CCC) for the inherent acceptance such a strategy implies of US or EU dominance in trade relations and of a biased and unsustainable trade system that commodifies workers. Also the use of trade sanctions inevitably hurts the entire industry (including the workers) rather than a specific company abusing workers in a specific global supply network, as is often the case. Obviously there are exceptions (Burma). Also a difference can be seen in using incentives in trade agreements rather than sanctions, (as has been done in the case of the bilateral agreement with Cambodia, and more lately also under the AGOA agreement).

Box 6: Cambodia

Garment exports to Cambodia, a mere US \$20 million in 1994 had gone up to US \$1.3 billion, or 85% of the country’s foreign exchange, by 2002; according to Ministry of Commerce, Secretary of State Sok Siphana.⁶³ The three-year US-Cambodia Textile Agreement that was signed in January 1999 influences this growth to some extent. The agreement was extended in December 2001 for another three years.⁶⁴ The agreement ties annual increases in Cambodia’s garment and textile export quota to compliance with Cambodia’s labor code as well as to the observance of the ILO’s core labor standards. The ILO is entrusted with monitoring registered factories to ensure they meet the relevant standards. It is voluntary to register, but since registration means extra quota most formal workplaces in these sectors have done so. Both Nike and Gap had left or diminished orders in Cambodia after reports of gross labor violations were publicized in 2000.⁶⁵ In January 2000 workers at a factory producing for Nike and others went on a five-day strike over a dispute regarding payment of a holiday bonus (a settlement was negotiated). In June a reported 10-20,000 workers throughout the industry went out on strike in relation to a number of issues, most importantly a new minimum wage, and concerns regarding working hours and freedom of association. Then in October of that year a BBC documentary exposed bad working conditions (including alleged child labor) at a factory

⁶¹ CCC 2003: Pricing in the Global Garment Industry, page 3.

⁶² It did to a certain extent backfire, duty was being increased on whole categories of goods while consignments were in transit, leaving importers with a higher landed price than they might have expected (Just-style.com, 2003, 10 lessons, p15).

⁶³ Prime minister Hun Sen has stated publicly that the industry contributed US 25 million to government revenues in 2000, but received tax exemptions worth US 163 million. Yuko Maeda cited in WAC 2001: 13, cited in Nolten 2003: 32).

⁶⁴ When Cambodia becomes a WTO member, this provision [the one linking quota to compliance with labour standards] would remain in force and would therefore have to be reconsidered by the Textiles Monitoring Body (overseeing the ATC).

⁶⁵ According to an interview that WRC conducted with Cham Prasidh, Minister of Commerce,

Gap sent back a \$10 million shipment that was actually in mid-ocean at the time that a particularly damaging report came out.

producing for Nike and Gap. The workers eventually won their fight for a higher minimum wage. The CCC and other labor rights advocates pressured the companies not to cut and run and instead work with their supplier to make improvements (CCC case files, 2000). The companies returned to Cambodia after the ILO agreed to monitor the conditions. During this quota year, compared to last quota year, GAP increased orders by 50% and Nike has almost doubled its order volume.

Sok reports that attention to labor standards is one of the ways the country is luring investors. According to Sok imposing these high labor standards on the garment industry has forced prices up, but he believes that if producers charge for this premium service that consumers are demanding then retail clients will continue to pay the price (McKinley, 2003) The Workers Right Consortium (WRC) reports that according to the suppliers their profit rate has dropped from 7% to 3%, and that the buyers are refusing to pay extra.⁶⁶

This points to one major problem related to the trade agreement, also expressed by labor groups in Cambodia: it puts pressure on the Cambodian government and on subcontractors to improve conditions, while the brands or the multinational production companies who are the major players take no share in the responsibility of improving working conditions.

The ILO publicly reports on the results of the monitoring program. In the first reports the situation at the suppliers is described, and where violations are found they are given deadlines for improvements. If these are not met, the company names are made public in the subsequent reports. The reports detail improvements in certain areas, but labor rights violations continue to be reported. In June 2003, two people were killed (one worker, one police officer) when more than 1,000 garment workers protested at the Terratex garment factory regarding pay and working conditions and the confrontation turned violent (Cropley, 2003).

In the Philippines industry decided to participate in a US test program (similar to the existing Caribbean Basin Initiative), which provides preferential quota treatment for apparel made of US fabrics (so-called 809 quotas). Upon presentation of the plan in 2001 a link was also made to ethical standards. GTEB (Garment and Textiles Export Bureau) executive director Serafin Juliano said that as part of their participation they aim to “reform the industry and prod industry players to upgrade their operations to world-class standards, focus on high-end, high-margin products, and adhere to ethical manufacturing standards in exchange for getting more quota allocations from the US.”⁶⁷ The GTEB encourages companies to become part of a program called RAPP, which stands for Responsible Apparel Production Principles (also known as the GTEB accreditation or sometimes re-accreditation program. Reportedly, by the end of 2001 470 out of 561 (member) firms were “seeking accreditation.”⁶⁸

Even where bilateral or regional trade agreements can bring some positive results (the AGOA agreement appears to have contributed to the improvement of the labor laws in Swaziland,⁶⁹ and the ILO monitoring project in Cambodia appears to have resulted in some improvements in workplace conditions⁷⁰) it should be kept in mind that such agreements create temporary growth of an industry that can be taken away by one party at will (see the example of Vietnam). These jobs also usually come from somewhere else, for example the growth of the industry in Cambodia is partly due to the shift of orders (and thereby of jobs) from Thailand and Indonesia. The disadvantages of relocation in many ways may outweigh the benefits to workers of a labor clause in a trade agreement. Additionally, there are the political consequences of advocating a strategy that appears to ignore the uneven power balance between the parties signing on to a trade agreement. It is equally important to consider the extent to which bilateral trade agreements only promote production of garments to the expense of the development of a local textile base.

⁶⁶ WRC comments on a conversation with members of the Garment Manufacturers' Association of Cambodia (GMAC) in 2003.

⁶⁷ PRC WWW report

⁶⁸ See www.gteb.gov.ph, final report on the GTEB enhancement programme. It is unclear to what extent the programme is linked to the US WRAP (Worldwide Responsible Apparel Programme), which reportedly has cooperated with the GTEB. Companies accredited to audit against the RRAP are SGV & Co. and Intertek.

⁶⁹ See De Haan and Phillips, 2002: 10.

⁷⁰ <http://www.ilo.org/public/english/dialogue/ifpdial/publ/cambodia6.htm>

Box 7: Vietnam

In 1986 the Vietnamese government embarked on a policy of transition from a state-planned economy to a market socialist-oriented economy. In 1987 the National Assembly passed the “Law on Foreign Investments in Vietnam.” By 1995 six EPZs had been authorized, only one was operational. Included in that zone (Tan Thuan) were a number of textile, garment, and shoe factories representing an investment of approximately US\$ 95 million. Most investment at that time was from Taiwan, Japan, and South Korea. A 1995 study reported that a number of companies in the zone violated the labor code, and meanwhile workers were unaware of their legal rights. At that time garment workers reported hot and dusty conditions and night work was required although they lived far from the factories. Women complained of a double burden, because all reproductive work (care for children and elderly, and housework) was considered “women’s work” (Hoang, 1998: 184-187). Other instances of labor rights problems in the industry include the example of two-day strike at a Korean-owned shoe factory over pay issues in 1997, which ended when workers were threatened with dismissal (AMRC, 1998: 182); a 1997 report released by Vietnam labor watch detailing how Nike factories did not pay workers the minimum wage, forced them to work more than the legal amount of overtime, and did not fairly compensate them for overtime work; a leaked report from Ernst & Young detailing many problems at a Nike factory (corroborating the Vietnam Labor Watch findings) and also highlighting the use of poisonous chemical in violation of legal limits (VLW, 1997). Also in 1997 the case of a manager at a Taiwanese-owned Nike shoe factory who was sentenced to six months in prison for abusing workers received a great deal of publicity. This followed revelations that she had forced 56 women workers to run laps as punishment for failing to wear the right shoes. Twelve of the workers were reportedly hospitalized as a result of this treatment (Stewart, 1997).

In 2001 the US normalized trade relations with Vietnam; prior to that the country had been more dependant on the EU and Japan as trading partners. As part of the agreement, Vietnam was given normal trading relations (NTR) status by the US, which “has been vital to Vietnam's success because it provides the country with access to the US market at ‘most favoured nation’ tariff rates - the same as those afforded to World Trade Organisation (WTO) members”. Prior to the establishment of NTR, Vietnam faced prohibitively high tariffs in the US market”.⁷¹ Vietnamese textile and clothing exports rose by almost 40 per cent in 2002, from US\$1.96 billion to around US\$2.7 billion. Back in 1989 they were worth less than US\$100 million.

By early 2003 garments had become Vietnam’s second biggest export item, following crude oil. As often happens, the US took steps to limit access of these cheap imports to the US market. “From May 1, 2003, quotas are to be imposed on 38 product categories, restricting Vietnam's apparel and textile exports to the USA. Introduced in response to pressure from the US textile industry lobby, these quotas could seriously restrict the future growth of the Vietnamese textile and apparel industry at a time when other countries are having their quotas removed. (...) The new quotas could seriously restrict the future growth of the Vietnamese textile and apparel industry. (...) Vietnam is not a member of the WTO, which means that importing countries do not have any obligations to remove quota restrictions on Vietnamese exports” (just-style.com, May 7, 2003).

3.4 Impact of regional trade agreements outside the region

Trade agreements that do not directly involve countries in ESEA can however have an important impact on the region and its workers. As in the case of bilateral agreements involving countries in the region, which encourage investors to set up operations in specific countries, by creating new opportunities to access lucrative markets (for ex. the U.S.), trade agreements outside ESEA lure investment out of the region to other parts of the world. The relocation of operations, or decision to expand in other locales, can have a negative impact on the growth of the industry in ESEA or on workers who are left jobless (and as mentioned above, are not always properly compensated).

In their study of the Philippine garment industry Ofreneo et al find that the World Trade Organization, the Asia-Pacific Economic Cooperation (APEC), the ASEAN Free Trade Area (AFTA), and NAFTA have had a significant negative impact on the Philippine garment industry, by generating increased competition for the Philippines by

⁷¹ Just-style.com, May 7, 2003.

increasing the participation of other countries (China, India, Bangladesh, Sri Lanka, Indonesia, Mexico, the Caribbean Basin countries, and Eastern European countries) in the export of low-cost garments. NAFTA and the Caribbean Basin Initiative (CBI), by giving US market access to garments from Mexico and the Caribbean has had a particularly negative effect on the industry in the Philippines because the main destination for Philippine garment exports has been the United States (2002: 92, 93).

In Africa the African Growth and Opportunity Act (AGOA), which went into effect in 2000, authorizes the duty and tariff-free export of garments from 36 sub-Saharan African countries to the United States. This preferential access to the U.S. market, as well as low labor costs, and access to European Union (EU) markets under the Cotonou Agreement, have been a powerful lure for investors, particularly from Asia. Researchers report that southern Africa has drawn Asian investors mainly from Taiwan, Hong Kong, Malaysia, and Sri Lanka (De Coster, 2002).

In Swaziland, for example, new investment in the garment and textile industries was once primarily South African, however now investment predominantly comes from Taiwan. Investors say that it is not only the AGOA provisions, but also tax incentives (such as five-year tax holidays) that bring them to Swaziland. Further south in Lesotho, there has also been a similar increase in Asian (mostly Taiwanese) investment in the garment industry during the 1990s.

Access to the North American market and the absence of quota restrictions or easy access to new quotas due to the North American Free Trade Agreement (NAFTA) and the Caribbean Basin Initiative encouraged Taiwanese and South Korean investment in Central America in the 1990s. In 1998 the Mexico/CBI block for the first time surpassed the combined value of shipments of China, Hong Kong, Taiwan and South Korea (ILO 2003:116).

In some cases, Asian MNC home countries also give companies incentives to follow up on these opportunities to set up operations overseas. The Taiwanese government, for example, provides financial support and tax rebates to companies that invest in Central America and Africa (SOMO, 2003b).

4. National labor laws fail to protect garment/sports shoe workers

There are numerous ways in which national labor laws in the ESEA region fail to protect women workers in the garment and sports shoe industries. This failure is due to one or more of several reasons: the labor law is not implemented or enforced; the labor law is not applicable to the workers or does not address the issues and problems faced by the workers (because they are women, migrants, or informal economy workers); or the labor laws are weak (far below internationally-accepted standards) and/or the solutions/mechanisms they provide are insufficient.

In their useful overview of labor law in the region, AMRC states that, “despite the wide variety of historical, economic and political circumstances there are a number of clear trends that emerge... regulations are contradictory or ambiguous, the law does not cover all workers, other laws or government policies may annul labour laws, current labour laws are under attack, governments do not implement or enforce the laws, or the historical circumstances of labour law formation deny workers access to rights” (AMRC2003: 4-8). While this implies legal loopholes, even where there are no loopholes there are often cases where workers do not understand or know where they stand in relation to the law. For example, it is often unclear to workers where they stand in relation to their legal rights on hours and wages. When they are paid it is not always clear how many hours of work they are being paid for. For example, at two Indonesian factories producing for Reebok in 1999 workers were not given any documentation of the regular and overtime hours they had worked (HIS, 1999: 15).⁷²

Although the ILO optimistically writes about governments who have “not yet been able to extend effective protection afforded by national law to all workers” (ILO 2002: 48) there is a disturbing trend that, where countries are changing their labor laws, this is in the direction of more flexibilization and not in the direction of extending coverage to the more informal workers. For example:

As a result of the new Indonesian Manpower Act there has been a massive upsurge in "outsourcing" of workers. Employers of all sorts, from factories to service companies, are laying off their workers, and then rehiring them through "labor agents." The workers essentially become daily hires, since the company using their labor can tell the agent not to bring back a particular employee. The agents follow few of the labor laws, like paying severance or length-of-service pay. And often, the employees get a pay cut in the changeover because the primary employer has to pay for the services of the agent. We've had reports that some garment manufacturers have already switched to "outsourcing" and a number of others are threatening to do so. Even though the new law says "outsourcing" is not permitted for the primary functions of the business, employers are ignoring that part of the law.”⁷³

In South Korea “increasing labour market flexibility in compliance with the demands and pressure from management of foreign and domestic capital has been an important focus of most government policy since the early 1990s. The 1998 revisions in labour laws to the detriment of workers and unions were in line with this obsession. These revisions resulted in major deregulation of protective legislation and legalized casualisation. Only due to pressure from unions and NGOs did the government enact a Basic Life Protection Law in 1998, whereby the poor could receive some amount as part of the social safety net” (CAW 2001b: 35, 37).

Vietnam adopted a comprehensive labor code in 1994. With the transition to an open market economy, the code was amended to allow for increased flexibility of employers to hire and fire workers (World Bank 2002: 6).

4.1 Unimplemented and Unenforced

Some countries in the region have good labor laws (for example China and Cambodia), but they are not implemented or enforced. In Mongolia, for example, “the weak enforcement of a comprehensive labour law is a major cause of workers’ disappointments in the obvious gap between the expectations of a new democracy and the results of the transition towards the market economy (...). In private enterprises, especially in the mainly foreign-invested textile sector, even minimum conditions are not applied. Mongolian labour law stipulates that employees should be paid for overtime work by at least 1.5 times average compensation. However 62% of workers responding to a union survey

⁷² After this report was released, time cards were made available for workers at one of the factories to look at or copy and at the other time sheets were introduced, which were also available for workers to look at or copy.

⁷³ E-mail to CCC from Rudy Porter, Solidarity Center Indonesia, July 7, 2003, describing the situation 3.5 months after the new law was put in effect.

indicated that they did not receive overtime payment of any kind”⁷⁴ Export processing zones, where garment and sports shoe industries are often located, have often been a site where labor laws are not enforced, despite the fact that in most countries the zones are not exempt (not officially or openly) from labor laws and industrial relations legislation. For example, in its recently released report on core-labor standards in Indonesia, the ICFTU found that though national labor laws apply to Indonesia’s seven EPZs “there is insufficient protection against anti-union discrimination, especially for workers in EPZs” (2003:1, 5). “There are numerous reports of violent intimidation and assault of union organizers, as well as dismissals for union activities,” reports the ICFTU, adding that the ILO has noted improved union access in one of the EPZs.

According to the ILO: “Labour standards and labour relations are the most critical and controversial elements of EPZs. The classic model of labour regulation – with a ‘floor’ or framework of minimum labour standards, and free trade union and employers (individually or collectively) coming together to negotiate binding agreements that regulate their interaction – is extremely rare in EPZs. The reasons for that rarity are complex, but the fact remains that many zones are not fully applying adequate labour standards or developing a sound system of labour-management relations. As a result, problematic factors such as high labour turnover, absenteeism, stress and fatigue, low rates of productivity, excessive wastage of materials and labour unrest are still too common in zones” (ILO 1998: 21, 26). This is not to say that working conditions in EPZs are the worst in the industry. Often garment production for domestic markets is done in conditions that are worse than those for export. And the subcontractors used by the EPZ factories also often have far worse and unregulated workplaces. Across the board, there are examples of different kinds of workplaces in these industries where the laws are simply not enforced.

4.1a Examples of labor law violations

In many cases the labor rights violations reported to the Clean Clothes Campaign (in the context of the CCC’s urgent appeal case work or rights violations documented by various researchers) constitute violations of labor law. For example:

Failure to pay the **minimum wage**. For example, in 1998 workers reported violations of minimum wage regulations at two Indonesian factories producing for Levi Strauss, one in Bogor and the other in Tangerang (CCC, 1998a). In 2003 wage violations were reported in Indonesia at PT Kahatex; in 2002 wage violations were reported in Indonesia at PT Great River and PT Sandrafine (at this last company also in 1998 minimum wage violations were reported); and in Cambodia at D.A. Corporation in 2001 and Winner Knitting in 2002. Reebok reports that sub-minimum wage payments are common among their suppliers in China, specifically where factories calculate wages exclusively based on piece rate (as opposed to hourly rates) (FLA 2003: 133).

Non-payment of **back wages** upon closure (ex. PT Doson, Indonesia, 2002), and **non or late payment of wages in general**, is a frequent phenomenon reported in the garment industry. In some cases, the government will give companies exemptions from wage laws. In China for example, “Wage arrears are by far the most common cause of collective disputes... While the law states that wages may not be ‘deducted or delayed without justification, supplementary guidelines state that ‘wages may be delayed by a company in economic difficulties once it has obtained permission of the union. This, of course, is often not a problem; in fact one area in Guangdong, dominated by the garment industry, “is so notorious for wage arrears that the practice has been dubbed a local custom. A lawyer representing workers chasing unpaid wages was told by a cadre at the town’s labour bureau office: we’ve got rules here in Nanhai that allow an employer to keep back one to two months wages” (Su and Leong, 2003:117).⁷⁵

Substandard **overtime compensation**. For example, reported in Indonesia in 2002 at PT T&S.

Failure to pay legally-mandated **severance pay**. For example, reported in Thailand at Thai Iryo in 2001 and at Bed & Bath in 2002. When Thai Iryo garment factory closed in August 2000 workers requested international help to get the severance pay they were owed. When Nike cancelled orders to PT Doson, an Indonesian footwear factory, the

⁷⁴ AMRC 2003: 11.

⁷⁵ Late payment of wages is in itself a widescale problem. In Indonesia workers at PT MGSU in Indonesia (2003) reported waiting months to receive the wages they were owed. This is also an issue for informal sector workers. Homeworkers in Balingasa in the Philippines producing ready-to-wear for factories complained of delayed payments. Those who give them orders pay them with post-dated checks (Ofreneo et al, 2002: 102)

factory closed and 7,000 workers were left jobless. An international campaign continues to see that these workers are paid the severance pay they are owed.

Failure to allow workers **time off** as legally required. For example, regarding **vacation time**, workers surveyed at seven factories in Indonesia producing for Nike reported that annual leave was often denied, cut, or compensated with money (CSDS, 2001: 25). Obstacles are created to prevent workers from obtaining the benefits they are entitled to. In nine Nike contract factories in Indonesia, workers reported that it was difficult to get permission to take **sick leave** to get access to medical care. In one factory for example, workers had to get signatures from five different people before they could take sick leave. In some cases, a substitute worker had to be found before the worker could take sick leave (CSDS, 2001: 43). Workers at two factories producing for Nike in Indonesia reported that denial of sick leave and medical attention contributed to the death of a worker in or just outside each factory (CSDS, 2001: 40-41).

Women in Indonesia are legally entitled to three months **maternity leave**, however when they take leave they are fired (ICFTU, 2003: 6). For examples at two factories producing for Levi Strauss (PT Sandrafine and Yunlinda Duta Fashion) in Indonesia in 1998, women workers reported they either were prohibited from taking maternity, **breast-feeding** or **menstruation leave** because the procedures were too complicated to enable them to take advantage of these legally-entitled benefits (CCC 1998).

Violations of **health and safety laws**. In Vietnam for example, inspectors found that at a factory producing for Nike, in addition to a number of health and safety problems, exposure levels to a number of chemicals violated government standards (O'Rourke and Brown, 1999). Violations of health and safety regulations in the workplace can have even more tragic results when worker dormitories are in the same building. In 1991 a clothing factory in Dongguan, China, caught fire, the fire spread to the workers' dormitory, housed in the same building. Seventy-two women workers perished, and 48 others were injured (Pentland, 2002: 28). This also includes limits put on access to toilets. The Washington Post, August 4, 2002, reports serious **health and safety** problems at a Taiwanese-owned Anjia Footwear Factory, that supplies mostly US customers like Payless Shoes. The glue used in this factory contained n-hexane, a hazardous solvent also found in spray paint and cleaners. Exposure to it damages the peripheral nervous system, causing numbness, muscle weakness and eventually paralysis. Management didn't allow workers to use the fans because the glue would dry up and less easy to spread. Thirty-four (former) workers with symptoms were traced back and brought to hospital for treatment.⁷⁶

Physical abuse. For example, 14% of workers surveyed at nine Nike contract factories in Indonesia reported that they had observed physical abuse from a line supervisor or manager directed toward workers (including throwing objects, hitting, pushing, and shoving). Workers from one factory reported that a supervisor went to a dormitory to force a sick worker to come to work. Punishments at one factory included being made to sit in the sun for two hours for being late, cleaning the toilets, running around the factory grounds, denial of use of the toilet. **Verbal abuse** is reported by nearly 57% of the workers (CSDS, 2001: 31-32). Physical abuse is reported also in the Han Fei factory in Tianjin, controlled by Korean capital. Management forced women workers, who (they think) work slowly, to kneel down with their hands on their heads. If they refused the managers used violence to kneel them. A Taiwan-owned factory in Putian, Fujian province, has various humiliating methods of punishment: "by requiring workers to spread eagle themselves on the ground, sometimes to crawl like a dog, sometimes to jump up and down like frogs and sometimes to stand up and walk around in circles."⁷⁷

Violations of the **maximum hours of work and overtime** laws. For example workers in China's garment industry in Guangdong working in first tier supplier factories put in at least 10-12 hours per day and had to work compulsory overtime. Workers at second tier suppliers had to work 12 hours, compulsory overtime and during peak season had no days off; in the low season they were dismissed (Wong in WWW, 2003: 18). One shoe factory worker in Dongguan, China, seven months pregnant told researchers she worked more than 12 hours per day and had not had a day off for three months (Pentland, 2002: 11). Chinese law limits hours of work to 40 per week and overtime 36

⁷⁶ "Poisoned Back Into Poverty As China Embraces Capitalism, Hazards to Workers Rise" By Philip P. Pan, *Washington Post* Foreign Service Sunday, August 4, 2002; Page A01

⁷⁷ Quoted in "Sport Shoe Workers Newsletter," draft version 19 July 1999, produce by Irene, CCC, and HKCIC.

hours per month, it has however “become common practice for factories to obtain exemption certificates from local authorities or acquire illegitimate certificates that appear to be signed with consent from workers” (FLA 2003: 126). After researching the working hour pattern in 30 to 40 of their factories in 10 Asian countries, adidas found that in many factories working hours were much higher than 60 hours a week⁷⁸ (FLA 2003: 127).

Violations of **freedom of association** were reported in numerous instances (please see box 7).

The above list documents violations of labor laws at garment and sports shoe factories in the ESEA region, please see appendix C for examples of labor rights violations at ESEA-owned factories outside the region.

Box 8: Enforcing the Right to Organize

In June 2003 the ICFTU released a statement that trade unions in Asia were hampered by laws that restrict their ability to fight for better labor rights. It said that “it deplors the depressing continuation and even partial worsening of trade union rights violations” in Asia. “Both in legislation and practice, the right to strike is generally not respected in the region.” The ICFTU went on to describe unions in China, Burma, North Korea, Laos, and Vietnam as “political instruments for controlling workers... whilst free trade unions are strictly forbidden and any hint of free union activity is very harshly repressed.” Malaysia was criticized for long delays in examining applications to get trade unions recognized, and Indonesia was denounced for using force, including paramilitary groups backed by the army and the police, to repress workers rights (ICFTU 2003).

In the case of Indonesia, the ICFTU notes that “apart from legal restriction of the rights to freedom of association and collective bargaining, there is considerable anti-union sentiment and activity in Indonesia, and even those rights recognized in law are not always protected in practice. Frequently, when workers try to set up trade unions, companies either fire or demote union leaders and members, making workers afraid to organize or join a union. Trade unionists also cite a growing number of attacks on their organizers by paramilitary groups, supported by the military and police and paid for by employers, in order to intimidate workers or break strikes”(2003: 4).

Indeed, violations of freedom of association in the region in the garment and sports shoe industries are numerous. Workers who attempt to organize their fellow workers often face harassment, intimidation, are demoted, reassigned to tasks/departments where they have only limited access to other workers, or are fired, blacklisted, and sometimes arrested on trumped up criminal charges. Union organizers and members are sometimes legally harassed, and suffer individual financial ruin or the union itself is drained of funds, as they are dragged through long legal proceedings. For example, in Indonesia, where independent unions have been legal since 1998, those organizing still must fight stiff opposition from employers. More often the law in Indonesia is used a vehicle of prosecuting workers and unions, not companies, noted one Indonesia garment union labor lawyer. The workers become the criminal for forming a union. For example:

- In 2001 Ngadinah Binti Abu Mawardi, secretary of the Footwear Workers’ Association (PERBUPAS) at PT Panarub, a factory in West Java, Indonesia producing for adidas was arrested and put in prison for her union activities. Ngadinah’s union work included pushing management to come in compliance with Indonesian law: to pay the legally-mandated rate for overtime and to allow workers to take unpaid menstrual leave. An international campaign for her release was initiated, and after a month she was released from prison, but the charges were not dropped. Finally, more than two months later she was found not guilty (Connor, 2002: 13-14).

- In 2002 and 2003 a number of legal cases were filed against union members at Gina Form Bra Co., a Thai factory producing for a number of major U.S. brands. Gina Form management filed suit against five employee committee members (also union committee members). When 24 workers were unfairly dismissed and lodged a complaint against the company for unfair practice, there was a ruling in their favor, however, management appealed to the labor court, which also ruled in favor of the workers, again management appealed, this time to the supreme court. A separate case involving 11 additional workers followed the same path through the courts, as did the case of the union

⁷⁸ One of the reasons was the seasonal order pattern of the industry, which adidas reportedly now tries to address with a “pull forward” system, where some of the peak orders are advanced to the low season (FLA 2003: 127).

treasurer who was also unfairly dismissed. Management encouraged the introduction of a “yellow” union at the factory in order to block the Gina Relations Workers Union organizing efforts.

- In 1999 Indonesian union leader Haryanto was fired from PT Lintas, a Nike shoe factory. Haryanto had founded the PERBUPAS union. He was fired for his organizing activities and for doing such things as distributing the Nike Code of Conduct. Following an international campaign on his behalf, Haryanto was reinstated.

- Union members at Ladybird Garment in Thailand in 2001 were not allowed to work overtime, a source of income necessary for workers to survive. When the union’s struggle to negotiate better conditions for workers intensified, 77 workers were locked out.

- The president of the union at a Philippine garment factory producing for Jordache jeans was unfairly dismissed in late 2002 after he intervened when management requested that employees sign a blank sheet of paper. In January 2003 Workers went on strike to protest his dismissal and were fired (CCC case file).

- In 2003 two workers involved in a struggle to press management to pay the legal minimum wage at PT Kahatex were arrested. Management told the more than 500 workers, who had legally gone out on strike over the wage issue and were now locked out of the factory, that they could arrange for the two to be released only if the workers signed a “severance package” that was illegally low. Fearing for their colleagues, the workers signed. Management at PT Kahatex (which produces sweaters for a number of US and European brands) then used this as an excuse to block their reinstatement.

- Workers at PT Nikomas Gemilang, a Taiwanese-owned (Pou Chen) factory producing for Nike and adidas, reported in 2001 and 2002 that they feared that union involvement put their lives in danger. Worker organizers reported receiving death threats and having their houses ransacked. One union official was attacked so severely he was hospitalized for one week and unable to work for a month (Connor, 2002: 11-12).

- In 1997 more than 400 Thai workers were locked out after they requested that management negotiate regarding wages and poor working conditions (CCC, 1998b: 13)

Companies fire unionized workers before their length of employment qualifies them for severance pay. Unions face other problems when companies shut factories down to avoid meeting workers demands, for example, claiming worker organizing has scared away sourcing companies (ex. Gina Form case mentioned above, also Par Garment case, in Thailand), filing for bankruptcy or shifting orders elsewhere. In this way companies avoid implementing the minimum wage and as a consequence the workers have to re-organize all over again (CCC, 2003).

The FLA, whose member companies include Nike, Reebok and adidas, reports that “freedom of association may well represent the greatest challenge to the FLA system, both because of the extent of the problem and the difficulty of monitoring and remedying it (FLA 2003: 111).

In some countries in the region, it is simply illegal for workers to be represented by the union of their choice, or to build up a trade union movement. For example:

- In China, independent unions are illegal: The All China Federation of Trade Unions (ACFTU), a subsidiary body to the Communist Party, is the official government union federation. Its operations require approval from the party-state, and, according to ACFTU head Wei Jianxing, are meant to strengthen the power of the party and state (quoted in Leung, 2002). In practice new unions can be formed, but they have to receive ACFTU approval. Unions independent of the ACFTU are not possible under the current system.

- In North Korea neither the Constitution nor the labor law contains the right to organize a trade union. “Workers are only allowed to join ‘mass organisations’ depending on the category into which they are assigned” (AMRC 2003: 11).

- Malaysian law restricts trade union membership to workers in similar trades, occupations, and industries, thereby preventing the emergence of large trade union federations (the Malaysian Congress of Trade Unions MTUC is registered under the Society Act and not the Trade Union act) (Somhasundaram in AMRC, 2003:214).

- A key weakness of Lao labor law is “its failure to provide real freedom of association to workers. Article 3 provides that ‘workers and employers shall have the right to organise and belong to any mass and social organisation *that has been formed lawfully*’” (emphasis added, Robertson in AMRC 2003:187).

In some cases workers are not legally entitled to organize because they are not recognized as workers or their workplaces are not recognized as workplaces. Workers in the informal economy may not be covered by freedom of association legislation. For example in Thailand the 1975 Labour Relations Act does not provide coverage to workers in enterprises employing less than 10 persons. Also in Thailand workers were campaigning in 2001 for inclusion of the right of informal workers to unionize in the new labour relations bill (CAW 2001a: 34).

The ILO has called upon countries where this is the case to guarantee that this right is guaranteed to workers in the informal economy. The ILO notes that “In some cases, a country’s legislation does not recognize persons active in the informal economy as workers and employers, or rules require authorization prior to the establishment of an organization, which delays or prevents such establishment. Regulations requiring an onerously high number of workers in order to form a union may also prevent the establishment of such an organization in the informal economy. More directly, self-employed workers may be excluded from the application of legislation or prohibited from organizing for professional purposes by law” (ILO 2002: 45). And as mentioned in section 4.2b, in many cases labor laws in host countries do not cover foreign workers. Organizing in a sector that is highly informalized and relies on migrant labor, therefore clearly present a very challenging context for enforcing the right to organize.

However, despite the failure of governments to take steps to implement legally-entitled rights to freedom of association, their failure to develop laws to support freedom of association for all categories of workers, and the failure of sourcing companies to take sufficient action to support worker organizing, it is extremely important to recognize that workers in these industries continue to try to form unions or other organizations to defend their rights. As mentioned above, it is simply a myth that women in these industries do not organize around workplace issues (see box 3 in section 2.4b on gender, flexibilization, and informalization for more on this gender bias).

4.1b Lack of political will or resources

As well, in countries where the labor laws are weak the laws are also not enforced. For example, in Laos “the problems caused by the contradictions and loopholes in the labour law are compounded by the relatively low level of worker education, a general lack of labour law education programmes and the almost systematic non-enforcement of labour law by the Ministry of Labour and Social Welfare” (Robertson, 2003:190).

There are many examples of laws diverging on certain points from international minimum standards especially concerning freedom of association and the right to collective bargaining. Minimum wages are often set below the living wage, and the right to strike also regularly fails to be properly enshrined by law. The maximum working week under Malaysian law for example, is 104 hours, though there is also a set maximum number of hours within a longer time period (Just Style, July 19 2002). However, this falls short of the ILO standard, which is 48 hours with a maximum of 12 hours overtime. Laws can also be weakened by the inclusion of provisions that are contradictory.

In many cases enforcement resources are lacking: the labor inspectorate is understaffed, inadequate or corrupt. For example, in Ho Chi Minh City, an industrial center with 12,557 factories, there are only six inspectors (World Bank 2002: 6). In the Philippines the Department of Labour and Employment with 250 labour inspectors “is only able to inspect around 4% of over 820,000 sites per year, not to mention the informal sector of the economy where close to half of the labour force works” (Quintos in AMRC 2003: 284). In Thailand management of a supplier reports that the local labor inspector comes once a year, a union representative though states there has never been an inspector during 9 years of working in the factory (ILO 2003:139).

Often there is a lack of political will with regard to implementing the law, where governments seek to accommodate employers in order to facilitate investment in their countries. One Indonesian garment union labor lawyer noted that the government protects supply chain companies as a way of encouraging investment (CCC, 2003: 18). In Macao, taking a case labor law violations to court is reportedly “not efficient since large corporations often have great leverage” (Su and Leong, 2003: 200).

If workers file a complaint at a local labor court, this can be the start of a very long, complex, and bureaucratic process. If a case makes it to the court at all, it can take months or even years for it to go through the proper channels by the end of which the workers concerned will have had to move on.⁷⁹

In Indonesia, where, reports that key challenges to compliance with labor legislation come from Taiwanese and Korean companies who have bad labor practices, Garteks union attorney Venny Damanik, reports that even if workers are able to collect proof of clear violations workers often give up because of the length of time it takes to resolve court cases. There is also confusion about court jurisdiction (CCC, 2003: 18).

In a Chinese sports shoe factory, workers went out on strike to protest the long hours and low wages, and were all fired. When asked why they did not file a complaint with the local labor bureau, the strike leader said “it is useless to approach the labor bureau even if there are deaths in the factory” (Kernaghan, 2000:54).

Fines are often no disincentive to lawbreakers as they can be ridiculously low. It is far cheaper for employers to pay up occasionally than to prevent the violations occurring. In Mongolia for example, fines of US 5\$ are reported (Tsagaan in AMRC 2003: 227). In South Korea, women continue to be illegally discriminated against in hiring practices (employers advertise vacancies for men only, give full-time status to men and part-time to women, and set extra physical conditions for women) because there are only small penalties for violations (Lim et al in AMRC 2003: 322).

4.2 Laws not applicable to most workers in the garment and sports shoe industries

National labor laws might fail to protect workers in the garment and sports shoe industries because those workers are not within the scope of coverage. In some cases, this is because they are working in what is known as the informal economy or they are migrant workers.

4.2a gaps in national labor law coverage for informal economy workers

Informal economy workers are not recognized under the law and therefore receive little or no legal or social protection. They are either without contracts or are not in a position to push for the enforcement of contracts. Homeworkers in the Philippines for example wanted: “a clear contract between themselves and their subcontractors and facilitation of their membership in the Social Security System (SSS) to be able to claim sickness, maternity, disability, retirement, and death benefits. They also want to receive the piece-rates due them, to be paid on time, and to have fair compensation for rejects that they have redone” (Ofreneo et al, 2002: 104).

In their conclusions to a study on home-based workers in Indonesia (including garment workers in the Jakarta area), researchers from the Humanika Working Group found that there were at least three ways in which these all the workers surveyed lacked social and legal protection due to the weaknesses of their contracts: the ‘work-contract’ consists mainly of establishing the obligations on and sanctions against home-based workers; there is no mention of their rights, except to state their wages; the ‘work-contract’ is one-sided and is in favor of the employer; the ‘work-contract’ is merely oral; and the workers are unable to access their rights (Ayuni and Rudiono, 2002: 27).

As mentioned above informal sector workers are sometimes legally not permitted to organize in unions (see related box).

Examples of the gaps in coverage for informal economy workers in ESEA include:

- In Hong Kong “At present, employment laws only provide protection for workers who work continuously for the same employer for 4 weeks and for not less than 18 hours per week. Under the current trend of casualisation, many women are employed on a part-time or temporary contract basis and are not protected by employment laws” (CAW: 23).

⁷⁹ Also literally they will have moved on: since many are migrant workers, in the absence of any income they will have returned to their homes in often rural and remote areas.

- In South Korea before October 1998 workers in small businesses were not covered by unemployment insurance. Because women workers (62%) were usually employed in businesses with four or fewer employees, they received no benefits when they lost their jobs (that includes women laid off at the height of the financial crisis in 1997-1998) (KWVAU, 2000: 40).
- Cambodian labor law, though reportedly progressive, only covers workers in the formal sector who account for approximately 25% of the total labor force” (Falkus and Frost, 2003:9).

The lack of legal provisions to ensure the rights of workers in the informal economy is linked to some extent to the legal status of their workplaces. According to the ILO (ILO 2002: 52) a critical reason why informal workers may not enjoy the rights accorded in labour legislation or are not covered by labour administration is because the enterprises they work in are not regulated. The Director-General’s 1991 Report also noted that “the non-observance of labour legislation is therefore linked with the precarious existence of most informal sector enterprises, and the problem will not be entirely overcome until such enterprises are able to operate profitably in a more stable environment.”

Illegal/unregistered workplaces, obviously uninspected and often not in compliance with health and safety standards, can be death traps for workers. In China for example, a 2001 fire in a building housing two illegal garment factories killed three workers and seriously injured nine others (Pentland, 2002: 29).

4.2b gaps in national labor law coverage for migrant workers

Migrant workers have played an important role in the garment and sports shoe industries for decades. This includes migrants from other countries (ex. Burmese workers coming to Thailand to work in the Thai garment and sports shoe industries) and migrants from other parts of the same country (for example women from northern or western provinces of China travelling to the south east to work in nation’s booming garment and sports shoe industries). Migrant workers, whether “internal” or from other countries are often denied coverage by national labor laws due to their residency status. For example:

- In Singapore, “many migrant workers are excluded from the provisions of the Employment Act” (CAW 2001b: 59).
- In China, migrants from other parts of China who worked in Guangdong’s garment industry were not legally entitled to social security provision in Guangdong (Wong in WWW, 2003: 17).
- In South Korea, most labour protection legislation does not apply to foreign workers (Lim et al in AMRC:2003: 322).
- In Brunei, most labor laws apply only to Brunei citizens. This means over 33% of workers in the Sultanate are excluded from protection under the labor law. In May 2001 several Filipino garment workers went on strike because the employer allegedly did not pay overtime. Intimidation and threats followed, and in the end 269 workers found the situation so threatening that they asked to have their contracts terminated early and be repatriated (AMRC 2003:70).
- Many countries (ex. Taiwan and Hong Kong) have separate wage categories for migrant workers. Malaysia has no national minimum wage, but in some cases the Malaysian government has agreements with migrant-sending countries that cite a basic wage for immigrant workers from these countries. (FLA 2003: 100). A specific problem for migrant workers is that they have to pay high recruitment fees to be placed in the factory. In Taiwan, migrant laborers reportedly pay between US\$ 364 and US\$ 5,454. Workers often have to borrow at high interest rates to pay this off (FLA 2003: 100).

Given their very weak position vis-a-vis the law, the stakes are high for migrant workers who press to improve conditions. For example, in the Mae Sot area of Thailand, near the border with Burma, garment factories routinely employ Burmese migrants who are unprotected by law and deported if they dare to complain about their conditions. On April 2001 500 illegal Burmese were rounded up during raids by Thai officials, and again more recently in 2003

Burmese garment workers. According to the Thai Labour Campaign, support for both legal and illegal migrant workers is best given by extending the Labour Protection Act to include them.⁸⁰ Again in June 2003 Burmese migrant garment workers in Thailand, earning less than 50% of the legal minimum wage, were dismissed and deported after they made a formal complaint regarding wages, forced overtime, and other issues to the Tak Labor Protection and Welfare Office (CCC case file).

Women workers from the ESEA region who migrate to other regions to take up work in these sectors often experience working conditions that violate national law (unsafe working conditions, wages, hours, forced labor, trafficking) in the countries where they work. Some of these violations have been successfully challenged in the courts (ex. U.S.), others have not (ex. Mauritius):

- In American Samoa, where garments bearing “Made in USA” labels enjoy tariff-free entry to the U.S. market, South Korean factory owner Lee Kil-soo was found guilty of human trafficking in the largest such case ever brought to court in the United States. Lee employed 251 workers from Vietnam and China in appalling conditions described by the US attorney general as “nothing less than modern-day slavery.” Beaten, deprived of food and wages, and forced to pay (illegal) recruitment fees to get their jobs, the workers who were making garments for US retailers Sears and JC Penney successfully pressed their claims in court. In April 2002 they were awarded a total of US \$3.5 million by the High Court of Samoa (Fickling, 2003; Greenhouse, 2002).
- In Saipan, an island that is part of the Commonwealth of the Northern Mariana Islands, a U.S. territory located in the Western Pacific, garment factories received more than 1,000 citations for violating U.S. Occupational Safety and Health Administration standards, many of which were characterized as “capable of causing death or serious injury,” according to Sweatshop Watch, the US-based anti-sweatshop organization. These manufacturers, predominantly Chinese, South Korean, and Japanese-owned, as well as the well-known U.S. retailers they were producing for (such as Gap, Levi Strauss, The Limited, and Target), were charged with using indentured labor--predominantly young women from Asia --to produce their goods. The immigrant workers (30,000 participated in the class action suit) alleged that they had to sign contracts that denied them their basic human rights; pay exorbitant recruitment fees that keep them in a state of indentured servitude; work up to 12 hours a day, seven days a week, often without overtime pay; and live in overcrowded housing in unsanitary conditions. After more than four years, a U.S. Federal judge approved a settlement in the Saipan cases in April, establishing a \$20 million fund to pay back wages to the workers and create an independent monitoring system of Saipan garment factories (Branigan, 1999; Sweatshop Watch 1999-2003).
- Workers, recruited through agencies in China, for example, to work in garment factories in Mauritius complained about the differences in payment between what has been promised by the agencies and what was actually paid by the factories. Most of the workers had taken out loans to be able to pay the recruitment agency fee. Some workers take on additional jobs at night to earn extra money, in restaurants or even as prostitutes. Foreign workers live packed in dormitories, with four or more in one small room. Some of the dormitories are on the top floors of factory buildings. Several workers said that they had a curfew, and could not leave the building after a certain hour. They are not allowed to join unions nor engage in any union activities for fear of being deported and repatriated (De Haan and Phillips, 2002).

For internal and foreign migrant workers in these industries, inside the ESEA region and beyond, restrictions to their mobility (in some cases in violation of the law) have been noted. The FLA, for example, finds that especially in countries where there is a high presence of internal migrants or foreign migrant workers there are situations where factory management, for example, confiscates personal identification documents of the workers. They report that in one factory in China the factory kept the identification cards of new employees for a month, thereby restricting the ability of workers to terminate their employment (FLA 2003: 87).

4.2c gaps in national labor law coverage of women’s concerns

⁸⁰ www.thailabour.org/docs/BurmeseMigrants.html

Laws do not take up issues that women workers have identified as priority concerns (ex. child care, harassment), or the laws are discriminatory.⁸¹

No legal right to childcare or requirement that workers have access to such facilities. In a survey of workers (83% women) at nine Nike contract factories in Indonesia (seven footwear, one apparel, one equipment and accessories), more than half the worker said that childcare was an important issue to them, however none of the factories provided any day care services (CSDS, 2001:50).

Recommendation: Childcare is often cited as a need yet it appears not to be legally required, however there is a lack of data on this issue in the context of the garment and sports shoe industries. Possibly a topic for further research.

Provisions for paid maternity leave vary from 30 days in the Philippines to 8 weeks in Taiwan and Singapore; 90 days in South Korea and 4 to 6 months in Vietnam. For other countries this information is not readily available. Given the frequency of discrimination in hiring practices for pregnant women or married (read women expected to get pregnant), and the possible issues of wages levels and leave (ex. paid maternity leave, unpaid leave, or partially paid) there should be more research on this issue.

More research is equally needed into the laws on (sexual) harassment. The problem is widely reported on by workers in the garment industry: for example in five Nike contract factories in Indonesia workers reported sexual harassment (unwanted touching and squeezing of the upper and lower parts of workers' bodies) by expatriates and line supervisors. In one factory workers reported that job welfare was could sometimes be secured in exchange for sexual favors (Global Alliance, 2001: 31). In some countries the issue is taken up, a new law in South Korea takes initial steps in obligating companies with more than 30 employees to adopt measures to prevent and punish such offences (Lim et al in AMRC 2003: 347). A cross-country comparison and analysis remains to be done.

Recommendation: More research on legal provisions in the region regarding maternity leave and sexual harassment, and how this relates to the reality of the situation of women workers in the garment and sports shoe industry.

Not recognized as head of household. For example, KWWAU notes that in South Korea, even if a woman is the breadwinner, if a husband is living in the house, she is not legally considered the head of the household or the primary earner, which is the biggest obstacle preventing women from receiving unemployment benefits (2000:40).

Various problems encountered by women working in these industries relate to discrimination:

- Forced pregnancy testing: Employers fear that women will have children and then demand maternity and other benefits and be less available for work.
- Married women experience discrimination in some contexts because they are seen as having too many reproductive responsibilities (child care, elderly care, etc) that would be at odds with their productive work (ex. would need to take days off to care for sick children or elderly, would be unable to work long hours).
- Discrimination against older women: relates to the above. Employers prefer not to hire married women with children, because they do not want to pay maternity benefits or fear that workers will miss work due to family obligations.
- Discrimination against women in terms of opportunities for training or advancement. In the garment and sportswear industry, men usually occupy supervisory and management positions. For example, a report on two Indonesian factories producing for Reebok found that though women were the majority of the workforce (84% and 81%), they significantly underrepresented as line leaders and supervisors (IHS, 1999: 14).

⁸¹ It's relevant to know that the ILO has formulated recommendations on many of these same issues: Equality of remuneration; discrimination, employment and occupation; maternity protection (developed and agreed upon in 2001); workers with family responsibilities; Special measures that cover night work, underground work, part-time work, homework and other health related issues.

- Women are paid at lower rates than male workers, as mentioned above (see box 3 in section 2.4b).

Gaps in national labor law, and failure of coverage as described above, also influence the scope of codes of conduct. A significant number of codes refer to national labor laws (especially concerning wages and hours) and evidence suggests that even where this is not the case (and the codes refer to ILO or other standards) in practice national law is used as a reference by auditors and compliance personnel. This is because local law is more specific and comprehensive, but also because it is more acceptable to local management that their compliance with local labor law is checked, rather than their compliance to other standards (Mamic 2003: 137).

5. Negative consequences for women workers⁸²

All the processes and characteristics of economic restructuring in the garment and sports shoe sectors, as played out at the global, regional, and local levels, and described in the sections above, have an impact on women workers.

As the evidence presented above demonstrates, the working conditions in these sectors are often below internationally-accepted standards of good practice (as set out by the ILO and model codes of conduct, such as the CCC or ICFTU codes). Conditions also often violate local labor law and the voluntary in-house codes of labor practice developed by brand name garment and sports shoe companies.

5.1 Sub-standard conditions of work

The sub-standard conditions that women workers in ESEA face include unhealthy and unsafe conditions. The result is a direct negative impact on workers. In cases where workers are denied medical, disability, and death benefits (either because employers violate the law or because they are excluded from these benefits due to their employment status or migrant status) they are particularly hard hit. Their families also feel the impact of these unsafe or unhealthy conditions. As important earners for their families, when women garment or sports shoe workers suffer accidents or illnesses, the temporary or permanent loss of income has an impact on their dependants. Illness, disability, or death also has an impact on the families of women workers, because these women are also often expected to carry out reproductive roles at home (child care, elderly care, and care for the sick). Their inability to carry out these roles creates an additional burden for families. Meanwhile, because these tasks are often assigned to women workers, the dual burden of these two jobs (reproductive and productive) can take a toll on their health.

Low pay and long hours as documented above results in a low standard of living for workers. It is difficult for workers to become financially independent, as they live from pay check to pay check. Irregular or incomplete payment adds to the precarious financial position of women workers in these sectors, which can land them in seemingly inescapable debt cycles. Workers with families to support face even more difficult choices when wages are not living wages. These include putting in long hours of overtime or taking second jobs to increase income in order to cover the costs of supporting families. This means little free time for workers (for worker organizing, education, leisure activities, socializing, or rest, for example) and little time to be shared with family. Long hours

⁸² Without doubt there are some positive aspects to women's experiences working in these sectors, though exploring this is beyond the scope of this paper. There has long been a debate about whether work in export-oriented industries is exploitative or empowering. With empowerment defined as "a process of gaining control over the self [our own intelligence and creativity, as well as feeling of self-esteem and confidence, for example], resources [including physical, human, intellectual, and financial], and ideology" (Batliwala, 1993: 7-8), it is clear that for women in this context, this process implies a redistribution of power as it presently exists. The pros and cons of factory work have been summed up as: "job turnover, lack of mobility, hazardous working conditions, and low wages" versus "...some opportunities to defy traditional familial constraints, ...some economic independence, and ...a chance to come together in a gender-segregated setting where they can recognize their joint interests as women workers" (Ward, 1990: 14). Sen, (referring to earlier perspectives on the subject, including those of Lim 1990; Sainsbury, 1997; and Kabeer 1995) observes that there are various factors that play a role in how empowering such work is: "the worker's own characteristics (age, marital status, educational level, number of dependents); the rigidity of gender norms and practices in the community from which the worker comes; the conditions of the work itself (pay, working conditions, possibility of skill development and promotion); and gender norms and practices in the workplace and in the community in which the worker lives." She concludes that "it is obvious from this set of factors that there can be no simple answer to the question of empowerment, and there may well be contradictory tendencies" (Sen, 1999: 10-11).

also present a threat to women's health and safety, studies show long hours lead to more on-the-job accidents (Siegele in Ascoly, 2003: 7) and women are placed in dangerous situations when walking home from work late at night. Second jobs taken by women in these sectors can often be low quality jobs as well (low paid, dangerous, or sexually-exploitative). Another example of the type of difficult choice faced by women workers that have impacts on family is removing children from school (because school fees cannot be paid or children need to enter the workforce to contribute to the family's income) or sending children to be raised by others. Women workers in the informal economy and migrant workers are often paid lower wages. They therefore feel the need to put in longer hours, or take second jobs.

For example:

- In a 1999 study of home-based workers in the Philippines, stagnant or declining piece rates and fewer job orders meant that workers' incomes did not cover the needs of their families. To cope they sought other income. While their first choice was to set up their own businesses, they lack the capital and contacts to do so (Ofreneo et al, 2002: 97). With little savings and limited access to credit, women home-based workers have little chance to make the shift on their own to sustainable, alternative livelihoods.
- Wages were so disappointingly low and the debt burden of paying back fees paid to recruiters were so high, that garment workers who migrated from ESEA to Mauritius took up second jobs, including (prostitution). The impact on families was acute: workers reported not seeing their children for years (SOMO, unpublished).
- Most of the migrant workers at seven factories producing for Nike in Vietnam surveyed in 1999-2000 worked six days per week and had little choice of when they could take their annual leave. About 30% of the migrant workers told researchers that they rarely visited their homes more than once every two years (CESAIS, 2000: 14). Some migrant workers to China's Guangdong Province,⁸³ reported that they had to leave their children with relatives (Pentland, 2002).
- In Indonesia, the financial difficulties for those who try to keep their children with them, or the heartbreak of those who have to send their children to live with others, has been documented in several reports (CSDS, 2001; Connor, 2002). Unable to pay for child care and with none provided by their employer (factories producing for Nike and adidas), workers in Java send their children to live with relatives in their home villages, and can only afford to visit them every one to six months, depending on how far the child is from the workplace. However, for migrant workers from other islands, the separation was even more extreme: they could see their children once every couple of years (Connor, 2002: 23).

5.2 Specific problems for women

Women workers face additional workplace problems precisely because they are women. As documented above, they are discriminated against because of their reproductive role (ex. fired or not hired because they are pregnant, fired when they try to take legal maternity leave), they have to contend with sexual harassment in the workplace, and have fewer opportunities for advancement or training. When these obstacles mean loss of income, the impact is felt not only by the worker, but by her dependants as well. Outside of the productive work sphere, women workers also face discriminatory attitudes because their gendered identity as women is at odds with the gendered notions of what it means to be a worker (for example, being perceived as "bad" or "loose" women or unsuitable for marriage because of their experiences working outside the home or migrating to work elsewhere and living away from home) (Fuentes and Ehrenreich: 25). These factors also create psychological stresses on women. If employers view women as disposable labor inputs -- for example in China women factory workers are viewed by managers as "used up" by the age of 25 (Kernahan: 54) due to the harsh work demands (though as stated above this is used to propel women out of the formal workforce) -- this can hardly bode well for their physical and emotional well-being. Displaced workers reported that their "self-esteem and sense of security were affected by being labeled as useless, and their hard-earned skill as obsolete".⁸⁴ Where women stay on longer in the industry this also appears to have the potential for negative consequences on their social status and emotional wellbeing. For example women workers in Thailand recently interviewed by the CCC complained how working long hours in a women only environment prevented them from meeting potential male partners.

Women workers are also impacted by a lack of support from the state in the region. The section on national labor laws highlighted a number of failures of the law (due to poor enforcement or scope) to protect women workers from the negative impacts of current labor practices in these sectors. Some of these failures were due to the fact that the workers are women (for example in relation to benefits given to heads of households), migrants (for example no or limited access to social security provisions), or occupy positions within the informal economy (again, little limited

⁸³ Government statistics peg the migrant labor population in Guangdong at 30 million workers (Pentland, 2002: 6).

⁸⁴ Introduction to research project for OGB/labor wedge, Hong Kong Women Workers Association, 2003.

access to social security provisions). In addition to the failure of these governments to implement labor laws that exist or develop and implement laws that cover the needs of women workers in these sectors, governments in the region sometime offer incentives that favor employers/investors, not workers. They also sometimes actively repress workers' attempts to improve conditions (ex. imprison activists or use military and police to stop organizing attempts).

Workers are also affected by the lack of support from companies that lead the supply networks that they work within. These companies (generally North American and EU based MNCs) often do not take sufficient responsibility for working conditions. While some companies say they do (by adopting codes of conduct) most do little in practice to support such statements, as witnessed by the purchasing policies they follow which contradict their own codes and bring about violations in local labor laws, as well as the sourcing decisions they make (ex. they "cut and run" when workers assert their rights). These practices on the part of these companies have a negative impact on women workers, as do the policies and practices of Asian-based production MNCs.

Direct employers of women garment and sports shoe workers are often unable or unwilling to improve labor practices. Some create obstacles to worker organizing; some will not or cannot assign resources to improve conditions. Beyond implementing the law or good standards because it is the correct thing to do, many employers lack the training to understand the value (the "business case") that compliance to laws, codes and other standards presents to other supply network actors.⁸⁵

5.3 Relocation and job insecurity

Job insecurity – due to restructuring (including informalization and relocation) and the footloose nature of the capital invested in these industries (in part due to the phasing in or out of trade agreements) -- is a constant threat to women workers in these sectors. Workers who take the risk of organizing to demand better working conditions are often met with threats that orders will go to other, more flexible workers (those occupying other positions within their employer's own production network or beyond, to elsewhere in the international sourcing company's supply network). Workers already operating within the informal economy have less bargaining power, as do migrant workers who are often excluded from formal trade union activities, have less legal recourse, and are isolated from local workers due to language, culture, or barriers set up by employers.

When garment or sports shoe production shifts to another location within a supply network (due to sourcing decisions that favor informalization or a more favorable location due to government incentives or trade agreements), the women left behind suffer a number of consequences. For example, Hong Kong women workers in the EPZs who lost their jobs in the late 1980s and early 1990s when factories relocated to mainland China and other countries in the region faced several problems: they were not able to get service sector jobs after years in the industrial sector, many could not afford to take the service sector jobs because the wages were lower and would not cover the cost of child care. They either stayed at home to look after their children, or worked part time. Many who had entered the workforce at age 12 or 13 in the 1960s or 1970s sacrificed their education and were unable to find jobs when industries relocated. Even with retraining, they felt they had little chance of getting service sector jobs, blaming age discrimination, and the influx of migrant workers (from mainland China) who would work for lower wages. They became financially vulnerable, burdened with their reproductive role and unable to express their frustration (HKWWA et al, 1998: 43, 50-51).

When manufacturing jobs left South Korea and Hong Kong, women were the first to experience job loss, which resulted in either unemployment or underemployment, and were not properly compensated (ex. in terms of severance pay and other benefits). When the factories did not completely shut down, but experienced massive layoffs, those workers who remained employed experienced an intensification of their workload. When formal jobs left, there was an increase in "subcontracted" jobs (already prevalent in South Korea) in which wages were lower, conditions were worse, hours were longer and there were fewer opportunities to organize (Pun, 1995: 27-28). Older women, who were often the first to be fired when relocation took place, experienced particular difficulty in finding new sources of employment. A similar example comes from Taiwan. After the recent crisis, when factories began to close and

⁸⁵ The ILO for example documents that managers in footwear plants have seen defects falling from 7 or 8 percent to 2 percent after they had improved the ventilation in the sole melt area. In another factory improved airflows led to a two-degree temperature drop, which increased productivity by 10 to 15 percent and cut defect rates by 75% (Mamic 2003: 67).

workers lost jobs, of all the jobs lost 80% were lost by women and a number of similar negative impacts were reported.⁸⁶ Older women who were thrown out of manufacturing jobs became home-workers or took up work in other marginal or unregistered industries (such as the soft-sex industry or selling food on the street) (CAW 2001b: 44).

⁸⁶ Also, in Thailand, workers displaced following the Asian financial crisis, reported:

- severe personal and familial distress.
 - work available has been with much lower wages, unstable working conditions and insecure.
 - workers' children have suffered and some have had to leave education.
 - health of laid-off workers has suffered enormously. Tensions, mental problems are common and their physical well-being has been threatened.
 - there is a great deal of indebtedness.
 - rural families that were dependant on workers have suffered as well.
- welfare and benefits were abolished, increasing the vulnerability of workers and their families.
- trade unions and other organizations have been ineffective, as most members and activists have to spend longer time doing earning activities.
 - workers who were forced to go back to the rural areas find it difficult to adjust.

The positive impact has been that relationship between family members have changed for the better in some cases, where there has been some mutual consultation and collective problem-solving" (CAW 2001b: 63).

6. Summary of Findings and Key Observations

This report documented the extent of the garment and sports shoe industries in the ESEA region and the role of increasingly globalized production networks in these industries. The leading role of US, EU and Japanese branded firms, and increasingly Asian production MNCs, were highlighted.

As posed in the hypothesis, under the current production model these industries were found to rely mainly on women as a source of flexible labor. Importantly, this flexibilization was found to be increasingly based on the informal nature of employment, especially in the garment sector. Migrant labor was also found to be a significant characteristic for a segment of the workforce in these sectors. Migrant workers were seen by employers as more flexible (ex. more accepting of longer hours and substandard conditions, and less bound by legal requirements vis-à-vis benefits) than local workers.

Harmful impacts for workers employed in these industries were documented. These included working long hours, incomes below levels to live in dignity, separation from family (including young children), insecurity of employment, and negative impacts on the health and well-being of workers. These negative impacts were shown to be felt not only by workers, but also by their families (ex. the spillover effect of low incomes, long hours, negative health impacts, and lack of social security coverage). While the hypothesis posed that these negative impacts were experienced equally by migrant workers, workers in the informal economy, and those formally employed, based on available information, when there are negative impacts associated with working in these sectors, they appear to be felt most strongly by those working in the informal economy and by migrant workers. Reasons for this included their more vulnerable position in relation to the law and limited access to unions or other organizations that represent or advocate for their rights severely limits their bargaining power when trying to negotiate better conditions with their employers.

The role of sourcing policies, influenced by cost concerns (that go beyond the price of labor) and trade agreements, was discussed. These sourcing policies, employed by EU and North American sourcing companies were shown to have an impact on working conditions in these industries. As suggested in the hypotheses, Asian MNCs have an increasingly important role in global supply networks in these industries, and their policies and practices were found to have an impact on working conditions in these sectors. The impact of these corporate policies was not confined only to workplaces in the ESEA region.

Decisions to relocate sourcing from place to place are an important characteristic of sourcing practices currently employed by EU, North American, and Asian MNCs operating in these sectors. The resulting mobile nature of these industries (especially evident in the garment industry) was highlighted, as were the impacts on workers.

The contradictory nature of purchasing policies (for example those that stipulate pricing levels and scheduling), and demands for compliance with labor standards was noted, as were examples of employers creating obstacles to prevent the implementation of such standards (including legal standards).

Because corporate policies and practices at different levels (EU and North American based sourcing companies, Asian-based production MNCs) were shown to have important consequences for others in the same supply network (ex. factory owners and workers), they can therefore correctly be seen as changing supply network dynamics, as was suggested in one of the hypotheses.

Trade agreements were shown to have an impact on sourcing decisions, as they create more attractive conditions or incentives to invest or carry out production in certain countries or regions. Such agreements are often limited in terms of period of application (ex. by 2005 the framework set up under the MFA will no longer be applicable) or new agreements can be signed at any time, therefore the field for investment is a changing one. Jobs that are linked to industries that flourish due in large part to these agreements cannot be considered secure. Also jobs once seen as secure might be lost as they have to compete with new industries set up under new trading regimes. In this sense, the impact of trade agreements on production patterns can be seen as contributing to increasingly precarious employment, as hypothesized. Trade agreements also lead to specific type of growth, often only in the garment part of the supply chain, preventing countries from developing more integrated production chains, which could theoretically lead to more stability.

The failure of national labor laws to protect women workers in these industries in the region was documented. Failures to enforce existing labor legislation were noted in a number of categories (including in relation to wages, hours, benefits, and the right to organize). However, while it was hypothesized that this failure to provide legal coverage to women workers in these industries was due specifically to their inadequate enforcement and implementation, these findings suggest that there are also other important reasons that working in these industries in ESEA are not protected by national-level labor laws.

Findings from various countries in the region show that in many cases labor laws are simply not applicable to workers in these industries, or fail to address their needs and concerns, or are discriminatory. These legal shortcomings were due to the fact that the workers were women, had migrant status, or were working in the informal economy. In addition to being unenforced or lacking in scope of application, in some cases national-level labor laws were found to be weak, and therefore not providing sufficient protection to women workers in these industries. This has an impact also on code implementation, since often national law is used as the reference tool against which to measure compliance, even where international standards are in fact the ones included in the code.

Significant trends noted in relation to the lack of sufficient legal protection for garment and sports shoe industry workers included the increasing flexibilization of labor laws and a lack of political will with regard to implementing the law, where governments seek to accommodate employers in order to facilitate investment in their countries. Lack of resources necessary to implement the law was also noted.

Importantly, governmental failures to enforce good labor laws were noted in both nominally communist/socialist and non-communist/socialist countries in the region. This, as well as the fact that so-called communist countries (ex. China and Vietnam) are home to growing garment and sports shoe industries that are characterized by the same sub-standard conditions and rights violations found elsewhere, suggest that it is incorrect to state that only the policies of openly neo-liberal economies create such conditions. Such nominally communist/socialist governments also enter into trade agreements that court investment from EU, North American, and Asian corporate investors in these sectors (ex. Vietnam). Neo-liberal practices, supported by both openly neo-liberal economies and those which still maintain that they are following communist/socialist economic models, fuel the “race to the bottom.”

Based on these findings, the following observations can be made:

- Sourcing companies have failed to ensure that international labor standards, whether outlined in national labor laws or in their own codes, are being enforced in their contract facilities in the region. Some leading companies⁸⁷ now admit that this is the case, however ensuring remediation, which necessitates among other things adaptation of the current business model, seems a long way off. Companies will need to rethink the strategies needed to ensure implementation of labour standards (enshrined in their codes and national labor law). Initiatives presently underway to implement and verify codes of conduct will have to move from measuring (non) compliance to ensuring improvements. Workers and their organizations will have to be directly involved in determining and executing corrective actions and remediation programs that seek to address these rights violations.
- There are varying levels of corporate responsibility to be assigned throughout supply networks. This ranges from brand name companies who control supply networks and develop policies and practices that impact compliance with laws and codes of good labor practice; to production multinationals (increasingly based in ESEA); to direct employers of garment and sports shoe workers. These responsibilities are not being met. Because of the complexity of supply networks and questions about who is the actual lead firm in the production of a particular item, it is important that the multiple relationships within a network be considered (ex. retailer, buying agent, production MNC, supplier, subcontractor, homemaker) in order to assess varying levels of responsibility in relation to ensuring that workers rights are respected.
- The state has a responsibility to enforce and develop good labor laws. This responsibility is not being met. Campaigns to improve conditions for workers in these industries in the region will need to continue to target the role of the state. Legislative change is especially necessary to protect informally employed workers and migrant workers. Other strategies, parallel to developing appropriate legislation, will have to be pursued as

⁸⁷ See for example FLA 2003, and the report of the Ethical Trading Initiative conference of May 2003, forthcoming.

well. Organizing and ensuring that workers are aware of their rights are central to developing successful strategies to improve conditions for informal economy and migrant workers.

- Informalization and the needs of workers in the informal economy is a major issue in relation to the garment industry. In this regard, the garment industry differs from the sport shoe industry, which features more fixed business relationships, and where production is more concentrated. More documentation of the actual forms that informal economy work in these industries, in the region, take is needed in order to devise better strategies for defending workers rights.
- Gender plays an important role in shaping the processes that have negative impacts on women workers (ex. failure to provide legal coverage, informalization, flexibilization) and therefore must be an important lens through which strategies for improvement or potential solutions are considered. Gender-focused analysis and strategies are particularly essential in relation to the right to organize, which is critical for obtaining sustainable change. If labor rights advocates aim to increase the level of organizing in the garment industry they will have to specifically acknowledge and address the barriers that *women* workers face, and embrace strategies specifically suited to encouraging women workers to organize.
- Labor practices of Asian MNCs have an impact on women workers in the region, but also beyond. An inter-regional approach is needed to develop strategies and solutions to improve labor practices. Relocation from region to region is now common practice within the industry, and this is also a challenge that the labor rights movement will have to address. Not only mobility of capital, but also mobility of labor is an important dynamic evident in the context of these industries in the region. More information on the conditions and needs of migrant workers in the industry is needed.

Appendix A

ASIAN MNCS AND CAMPAIGNS TO IMPROVE WORKING CONDITIONS: NIEN HSING

(reprinted from “Asian MNCs in Global Supply Chains,” *SOMO Bulletin on Issues in Garments & Textiles*, no. 2., July 2003)

The Taiwan-based Nien Hsing Textile Co., a denim and jeans manufacturing giant, reported US \$56.3 million profits in the last year period, up from the year before. Nien Hsing, which is reportedly the world’s biggest jeans supplier, has just two small factories in Taiwan, employing approximately 700 people, however in factories in Central America and Southern Africa the companies employs many thousands more. Nien Hsing has come into the spotlight in recent years due to high profile cases linking the company to serious labor rights violations. In both cases, organizing efforts at the factory level were coupled with sustained international pressure to successfully pressure Nien Hsing to make concessions to workers’ demands.

First in 2000 management at Nien Hsing’s Chentex factory, in the Las Mercedes Free Trade Zone in Nicaragua, was charged with union repression and illegal dismissal of union members. A year-long campaign ensued to press for reinstatement of the fired unionists and an end to the company’s anti-union stance. Activists throughout the United States, where the jeans produced at Chentex were sold, carried out more than 400 actions to protest conditions at the factory. In Taiwan a coalition of organizations came together to form “Taiwan Solidarity for Nicaragua Workers,” to put pressure on Nien Hsing in their home country. The Taiwanese activists held rallies and spoke at Nien Hsing’s shareholder’s meeting, drawing media attention to the reality of working conditions at the Chentex factory, where mostly young single mothers were earning an average of 20 cents per pair of jeans that retailed for US\$30. Legal battles were launched in Nicaragua and lawsuits against Chentex and Nien Hsing were filed in the United States, while in Europe CCC activists and others also took up the case. A trade union leader from Lesotho, where Nien Hsing also has factories, came to Nicaragua to express solidarity with the Chentex workers. In 2001, the Chentex union signed an accord with management and the union leaders and workers were reinstated. This precedent-setting victory reportedly was instrumental in encouraging union organizing drives at other factories in the Las Mercedes zone.

In 1991 Nien Hsing had opened its first jeans factory (C&Y) in Lesotho. With the African Growth and Opportunity Act (AGOA) opening up more possibilities to access the U.S. market through Africa, a second factory was opened 10 years later right across the street. By 2002 Nien Hsing employed approximately 7,500 people at these two facilities that produced jeans for U.S. and Canadian clients, including Kmart, Sears, Gap, and Cherokee. A third facility, a textile mill, was under construction at a cost of US \$8.6 million. In September 2004, those seeking to take advantage of the provisions of AGOA requirements, fabric will have to be sourced from southern Africa; with this new mill supplying fabric to their factories Nien Hsing will be in compliance with the AGOA requirements.

A variety of problems were reported at the Nien Hsing facilities: taking advantage of Lesotho’s high unemployment rate workers were employed on a “casual” basis, at a lower minimum wage. This is legal for casuals employed for less than six months, however at C&Y some casuals had been working at the company for ten years. Workers also reported verbal harassment, physical abuse, unsafe conditions (including locked emergency exits) and non-payment of benefits. The Clean Clothes Campaign took up the case, as did unions and NGOs in the United States and Canada. In July 2002 the ITGLWF-Africa and the Lesotho Clothing and Allied Workers Union (LECAWU) started an organizing campaign at the two Nien Hsing factories. With increasing pressure on all these fronts, LECAWU and Nien Hsing signed a memorandum of understanding in mid-July that committed the company to recognize the union and enter in collective bargaining negotiations once the union recruits a majority of workers at each facility (just.style.com, 2003b; Chen, 2003; CLR, 2001; de Haan and Philips, 2002; Workers College and ITGLWF Africa, 2002).

Appendix B:

Labor Rights Violations at ESEA-owned Factories Outside the Region

The main body of the research paper focuses on the impact of various factors on working conditions in the garment and sports shoe industries in ESEA and the impact of these labor practices on women workers and their families. It is also relevant to consider conditions in ESEA-owned factories in other parts of the world. The following are examples of violations of labor rights at Asian-owned garment, textile, and sport shoe factories in other parts of the world:

- In 2001 workers at the Kuk Dong factory in Puebla, Mexico went on strike to protest a variety of labor rights abuses (forced overtime, low wages, verbal abuse, failure to give legally mandated benefits). The factory, which produced for Nike and various U.S. universities, was owned by Kuk Dong International, a Korean-based company with large factories in Indonesia, Brazil and Mexico. The Mexican Kuk Dong workers entered into a difficult nine-month struggle to form an independent union. Finally, in September 2001 the workers succeeded in gaining recognition of their union. A collective agreement was signed by the union, known as SITEMEX, and the company (by then operating under a new name, MexMode). Campaigners continued to pressure Nike and other Kuk Dong clients to continue to place orders with the factory now that workers were represented by the union of their choice (SOMO, 2003b).
- Tuntex Textile is one of the leading Taiwanese investors in Swaziland, having invested more than US\$10 million since it came to the country in 1998. When researchers visited one Tuntex facility in Swaziland in 2002 interviews with workers revealed a variety of problems, including forced overtime, low wages, and unhealthy and unsafe conditions (including locked exits). Though management told researchers they had signed a collective bargaining agreement with the union, workers reported that management had in fact refused to recognize the union even though membership exceeded the 50% mark necessary for recognition (SOMO, 2003b).
- At a Taiwanese-owned factory in Swaziland producing T-shirts and tracksuits management has refused to recognize the union although the union has the required number of members for recognition. Researchers found the factory dusty and a number of workers suffered from lung problems. Factory doors were locked. At a second Taiwanese-owned factory in Swaziland, researchers also found locked exits and anti-union behavior by management (De Haan and Phillips, 2002: 62, 65).
- At a Singapore-owned factory in Swaziland producing knitted garments, workers reported verbal and physical abuse, as well as sexual harassment. Overtime is compulsory, production targets are high, and unionizing is discouraged by management (De Haan and Phillips, 2002: 62).
- In Madagascar, workers at a Hong Kong-owned garment factory workers reported sexual harassment, locked exits during night shifts, limited access to toilets, physical abuse, compulsory overtime, and denial of sick leave (De Haan and Phillips, 2002: 74-75).
- At a Hong Kong-owned garment factory producing jeans in Lesotho workers reported wages were below the legal minimum. Workers told researchers that management tells workers on a daily basis that they are not allowed to form a union (De Haan and Phillips, 2002: 89).
- At a Taiwanese-owned garment factory in Lesotho workers reported forced overtime, verbal and physical abuse. One worker was reportedly raped when leaving the factory after working overtime, when no transport was provided. At a second Taiwanese-owned factory in Lesotho researchers found emergency exits to be locked (De Haan and Phillips, 2002: 90-91).
- At a Singapore-owned factory in Lesotho workers reported verbal and physical abuse by management (De Haan and Phillips, 2002: 93).

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