

*UN Vision Project on Global Public Policy Networks*

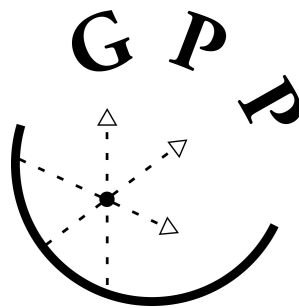
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## CREATING A GLOBAL PUBLIC POLICY NETWORK IN THE APPAREL INDUSTRY: THE APPAREL INDUSTRY PARTNERSHIP

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Case Study for the UN Vision Project on Global Public Policy Networks



## 1. INTRODUCTION

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The Apparel Industry Partnership (AIP) was initiated in August 1996, after President Clinton brought leaders of the apparel and footwear industry, labor unions, consumer groups and nongovernmental human rights organizations to the White House to work together in the United States and abroad to ensure that products are manufactured under humane working conditions and to communicate that information to consumers. The partnership adopted a code of conduct defining decent and humane working conditions, and principles for monitoring the code, in April 1997. After further negotiations, the partnership also announced in November 1998 that it would work to establish the Fair Labor Association (FLA), a not-for-profit association, to develop an independent external monitoring system and appropriate consumer education mechanisms.

The creation of this evolving global public policy network can be broken down into three phases. The first phase, from the early 1990s to 1996, preceded the formation of the AIP and saw the proliferation of corporate codes of conduct among individual companies striving to cope with the emerging human and workers' rights issues associated with the international sourcing of apparel and footwear production. The second phase, the negotiating period, began with the formation of the AIP in August 1996. This phase consisted of establishing the code of conduct and monitoring principles on which the AIP would be based, which was achieved in April 1997. The members of the AIP wrangled over the mechanics, definitions and details for implementing the AIP's code of conduct during the third phase. When agreement was reached in November 1998, the fourth phase began: as steps were taken to establish the Fair Labor Association, some members of the AIP decided not to support the FLA, while new actors decided to join in the effort, giving the FLA momentum, but at times threatening to derail the project. The most striking feature of the AIP is its character as a universal code and compliance program initiated on a unilateral basis but underpinned by multilateral principles. Looking toward the future, the greatest challenges for this *global* public policy network will be whether the AIP can broaden its membership base to include the majority of apparel and footwear producers, both U.S. and foreign-based, and how such private-sector initiatives will relate with public multilateral approaches at the intergovernmental and international organization levels.

## 2. PHASE I: THE LIMITS OF THE REGULATORY APPROACH AND THE APPEAL OF NETWORKS: EARLY 1990S TO AUGUST 1996

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In the early 1990s, the time was in many ways ripe for the emergence of global public policy in the apparel industry. By the end of this period, a new consensus had been forged among state and non-state actors, both for-profit corporations and non-profit non-governmental organizations (NGOs), that there was indeed a problem that existed and needed to be addressed: the (re-)emergence of sweatshops both in the U.S. and abroad. There was a growing recognition among government, business and NGO actors that their efforts should be directed at the goal of improving working conditions and quality of life for workers. However, the limits of binding regulatory and voluntary public multilateral approaches were exposed during this period. The drawbacks of private voluntary efforts of the apparel industry at self-regulation were also becoming apparent. Thus there was increasingly a sense that sweatshops were a shared responsibility, and if progress was to be made, it would require a trisectoral approach involving concerted actions and partnerships throughout the supply chain -- from retailer to manufacturer to contractor to subcontractor to consumer to government regulators and NGO overseer.

### **2.1 The Regulatory Approach at the International Level**

At the international level, several shifts were occurring that favored the emergence of a global public policy network. The end of the cold war had two major effects in this regard. First, it created the conditions for a unified global market in which production and consumption were increasingly internationalized. As states liberalized and deregulated their economies, and international economic integration deepened, corporations increasingly were perceived as unregulated and uncontrollable as they searched for the lowest wages and lowest standards in which to manufacture their products. Second, the end of the cold war ushered in a shift in the human rights agenda. With civil and political rights more established in developing countries and less threatened by the delegitimized totalitarian Soviet model, economic, social and cultural rights -- particularly worker rights -- increasingly moved to the forefront. Along with holding governments accountable, human rights campaigners were increasingly seeking to hold corporations accountable as well. (Human Rights Watch, 1999)

Thus in the early 1990s, multinational corporations (MNCs) that availed themselves of opportunities to invest and manufacture abroad were increasingly facing societal expectations

that investing abroad should neither serve as an excuse for evading their corporate responsibility to workers and consumers at home, nor for acting irresponsibly when they manufacture abroad. Changes in the international trade regime also meant that states were beginning to confront ways to bring textiles into the GATT regime, breaking down the illiberal protectionist regime that had governed apparel trade previously. For developed countries, this meant the prospect of further job losses and wage pressures in the apparel sector and heightened competition from manufacturers based in the developing world where workers' wages are significantly lower. For the U.S., in particular, this challenge was compounded by the introduction of the North American Free Trade Agreement (NAFTA) in 1994 which was perceived as further eroding the bargaining power of U.S. apparel workers and putting further pressure on garment manufacturers to source production where the wages were lowest.

Among unions and human rights NGOs, these changes were arousing fears of 'social dumping' -- the unfair competitive advantage gained by the denial of worker rights -- and generating calls for the establishment of a 'global New Deal' that would lay out minimum international labor standards for all producers regardless of the country of location. The International Labour Organization (ILO) was one of the logical candidates for the development of such core labor standards, and to some extent, it could be said that the ILO was already serving that function. However, precisely because of the built-in institutional weaknesses of the ILO's regulatory approach, international labor standards often went unenforced. Indeed, with the exception of freedom of association, states that have not ratified ILO Conventions are not bound by them, and very few states have ratified all seven core conventions. The ILO's enforcement and supervisory mechanisms have traditionally been weak levers to ensure compliance by states, relying on cooperation and good will, and lacking the power to sanction non-compliance beyond the use of moral suasion.

The other logical instrument to establish and enforce labor standards is through linkage in trade agreements. The so-called 'social clause' could be harnessed to establish minimum labor standards enforceable through trade sanctions. However, this linkage has encountered vigorous resistance from business actors in developed countries and from developing countries which view it as a new form of protectionism that undermines the developing countries' competitive advantage of lower wages and standards. Thus, the effort to secure a social clause was blocked in the Uruguay Round of negotiations establishing the World Trade Organization (WTO) in 1994-5, as it was again at the first ministerial meeting of the WTO in Singapore in December

1996, in spite of the support of the U.S. government and the lobbying of unions.<sup>1</sup> Even the labor side accord to the NAFTA negotiated by the Clinton Administration, honoring a campaign pledge to labor supporters to improve the agreement and to soften the blow to U.S. workers, only secured a commitment for the parties to enforce national law, not enforce international labor standards.

## **2.2 The Regulatory Approach at the Domestic Level**

The domestic context in the U.S. also shifted in this period in ways that favored the emergence of a global public policy network in the apparel industry. The new left-leaning and labor-friendly Clinton Administration entered office in 1993 with a Secretary of Labor dedicated to revitalizing the promotion and enforcement of labor laws at home and labor standards abroad. In fact, Robert Reich's leadership role in initiating this network went far beyond acting as a policy entrepreneur, seizing on an issue at a crucial juncture. Rather Secretary Reich can be credited with serving as an agent provocateur, taking concerted actions to raise public awareness that a problem existed that needed to be solved, and instigating actions that attempted to solve the problem.<sup>2</sup>

Domestically, Secretary Reich focused his attention on the low-wage apparel sector and instituted the 'No Sweat' campaign in 1993, publicized on the Department's website, that aimed to attack sweatshops through enforcement, education and recognition. However, Secretary Reich realized from the start that public/private partnerships would be crucial to the success of the No Sweat campaign and sought to encourage such partnerships in carrying out each strategy.<sup>3</sup> First,

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<sup>1</sup>Secretary Reich illustrated, somewhat facetiously, the resistance among governments even to broaching the idea of a social clause, in his description of a joint communique issued by G-8 Ministers of Trade and Labor in April 1, 1996: "In the end, we all agree to a tortured circumlocution suggesting that perhaps there might be, under unspecified circumstances, some occasion when certain ministers might want to explore possible linkages between trade and labor standards, at least somewhere, maybe." See Reich (1997: 308).

<sup>2</sup>As Bud Konheim, president of the apparel firm Nicole Miller (a future AIP member), and a supporter of Reich's aggressive approach, "In this industry, the only reason to change is because someone has got a great cattle prod that keeps jabbing you in the rear end. That was Robert Reich." Cited in Varley (1998: 11).

<sup>3</sup>Indeed, in the midst of the domestic debate on budget deficits, Reich argued that if the public sector was going to do less, then the private sector would need to do more. Reich (1997: 292-3).

there would be aggressive enforcement of U.S. labor laws, particularly the ‘Hot Goods’ provision of the 1938 Fair Labor Standards Act, which allows goods made in violation of wage and hour laws to be seized, as a lever to secure back wages for workers. However, with only 800 federal inspectors (plus about the same number of state inspectors), it was unrealistic to think that the Department could monitor the estimated 28,000 registered garment shops, so Reich began a program to invite manufacturers to sign agreements with the Labor Department that pledged voluntary monitoring of their contractors, and encouraged other local compliance initiatives such as the L.A. Compliance Alliance that committed manufacturers to independent monitoring of their contractors.

The most notable event in this enforcement campaign came on August 2, 1995 when Thai immigrant workers were discovered in a garment shop living and working in slave-like conditions in El Monte, California. Reich parlayed the publicity surrounding this event, and the discovery of invoices from major retailers who had contracted with the garment maker, to support his second strategy of education of manufacturers, retailers, and the consuming public.<sup>4</sup> Reich went public with the names of the major retailers and issued an invitation to the nation's retailers to join in efforts to eradicate sweatshops and to meet to discuss possible solutions at a Retail Summit in New York on September 12, 1995. The retailers at the Summit were furious at the negative publicity Reich had subjected them, telling Reich he had no right to tarnish their image, that they had no way of knowing what was going on, and that it was not *their* responsibility to crack down on sweatshops, but rather the Labor Department’s responsibility. (Reich, 1997: 269)

Reich reasoned that the apparel companies had only participated at the Retail Summit because their customers were concerned about the issue, otherwise they would not have agreed to participate. Compared to the tepid reactions of the apparel companies to the Labor Department’s stepped-up enforcement of ‘Hot Goods,’ Reich concluded that shaming the companies publicly was the only real source of leverage to get them involved in fighting

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<sup>4</sup> Reich and the Labor Department also pursued quieter efforts to educate manufacturers and retailers, offering manufacturers seminars on improving compliance, meeting in 1994 with national retailers to encourage involvement in improving compliance, and in October 1995, inviting manufacturers to join national efforts to eradicate sweatshop at a meeting of the American Apparel Manufacturers Association. The Labor Department also began publishing regular Garment Enforcement Reports to inform retailers and consumers about contractors that violate wage and hour laws and the manufacturers that do business with them.

sweatshops. Thus Reich's message to the retailers at the Summit was that "it's in your interest to police against sweatshops," because the bad press would continue when violations were detected.<sup>5</sup>

At the same time, Reich pursued several strategies to recognize apparel companies that were taking pro-active steps to monitor their contractors and address sweatshop practices. In November 1995, he issued an invitation to retailers to be recognized for their efforts to fight against sweatshops, to showcase their good practices and industry leadership. In December 1995 the Labor Department announced the first Trendsetter List of retailers and manufacturers that pledged to help eradicate sweatshops in America and to try to ensure that their shelves were stocked with only 'No Sweat' garments. In November 1995, the Secretary recognized and encouraged two campaigns to educate consumers about sweatshops: the first, by a coalition led by the National Consumers League that aimed to reach out to seniors, religious groups, women, labor unions, and consumer advocates; the second, by the National Retail Federation that aimed to inform the public about a list of 100 retailers that had signed a statement of principles to take action against sweatshops. Finally in June 1996, Secretary Reich announced that the Labor Department was exploring the idea of an international label that would assure consumers that the goods they purchase have not been made with child, forced, or exploited labor.

In fact, because Reich saw the reappearance of domestic sweatshops as being intricately tied to the prominence of sweatshop abroad, he used a similar strategy of enforcement, education, and recognition to fight sweatshops and promote enforceable labor standards abroad.<sup>6</sup> In the fight against overseas sweatshops, Secretary Reich seized on the issue of child labor to tie

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<sup>5</sup>This section is based on Reich's description of the incident.(1997: 269-70)

<sup>6</sup>In his July 1996 congressional testimony, Secretary Reich reviewed the Labor Department's various efforts to put the child labor issue on the map. Domestic enforcement measures included aggressive enforcement of child labor laws at home, especially in the garment industry, and pressing for U.S. ratification of ILO conventions. At the international level, Reich pressed the issue at the ILO, resulting in a proposal for a new convention on the worst forms of child labor that built on Convention 138 with strengthened enforcement provisions. In terms of education, Reich sought to raise the child labor issue in bilateral talks and to place it on the international agenda, asking the ILO to research and report on the prospect and applicability of social labeling programs, and pressing for a working party for trade and labor standards at the WTO.(Department of Labor, 1996B)

the promotion of worker rights at home to worker rights abroad, and used the rhetoric of corporate social responsibility to prod companies to act in fighting child labor.<sup>7</sup>

### **2.3 Changes in the Apparel Industry and Consumer Expectations**

Increasingly in the 1980s and intensifying in the 1990s, U.S. apparel and footwear manufacturers were shifting to new patterns of production, relying on contractors to produce goods for them rather than manufacturing the clothing themselves. As retailers turned to intermediary suppliers (who often contracted out the work) and manufacturers turned to contractors to produce goods for the U.S. market, tremendous amounts pricing pressure squeezed the contractors and the workers at the bottom of the supply chain. In an industry traditionally characterized by slim profit margins and undergoing consolidation during this period, this new system of out-sourcing production brought with it the return of sweatshop conditions both at home and abroad.

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<sup>7</sup>Noteworthy among these efforts, in 1993, in response to a congressional mandate, the International Labor Affairs Bureau (ILAB) of the Labor Department created the Child Labor Group to conduct research and produce reports on child labor and to administer grants to the ILO's International Program for the Elimination of Child Labor (IPEC). For instance, ILAB's third report on child labor, published in late 1996, served as a gateway to address worker rights issues more generally by focusing specifically on child labor in the apparel industry and the codes of conduct many companies had by then adopted to address the issue. See ILAB (1996).

As sourcing gained in prominence, some firms began to recognize the dilemma this posed for their reputations and brand image. U.S. consumers might begin to hold them accountable for the welfare of their ‘workers’ -- even though they no longer directly employed those workers. Apparel and footwear companies in the fashion industry sell an image as much as they sell goods; they quickly recognized that to be tainted with the image of sweatshops would not be good for the profitability of their firms. In fact, labor NGOs worked to make sure that apparel retailers and manufacturers did not escape responsibility for the workers who made their clothing, beginning with a 1993 lawsuit brought by labor advocates against the clothes maker Jessica McClintock to recover lost wages for one of its contractor’s workers in the U.S..(Sweatshop Watch, 1996) This dilemma was even more acute for companies when it involved international sourcing, because the human rights aspect of labor standards became entangled with the economic impact of labor standards and worker rights on international trade. Linda Golodner of the National Consumer’s League (a future co-chair of the AIP) pointed out what this signified for U.S. consumers: increasingly, the globalization of production, and the perception that U.S. jobs were being transferred abroad in search of lower wage workers, meant that consumption could be an act of complicity in human rights abuses.(Golodner, 1997)

Labor and human rights NGOs were able to find common ground on this issue and seized upon the sensitivity of companies to the dual concerns of conscientious consumers and anxious U.S. workers. Several campaigns against high-profile companies were launched to pressure them to take responsibility for the working conditions of their suppliers abroad. One labor NGO, in particular, the National Labor Committee (NLC), led a coalition of activists in campaigns against Liz Claiborne in 1994, the Gap in 1995, and Nike in 1996 to mobilize public opinion and consumer pressure as forces of change.<sup>8</sup> Secretary Reich’s ‘No Sweat’ campaign also implicitly recognized that the best leverage for holding companies responsible for the working conditions of their workers abroad came from consumers pressure. More pragmatically, promoting market mechanisms such as the focus on the rights of consumers to buy sweatshop-free goods, rather

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<sup>8</sup>While the campaign against Liz Claiborne succeeded in pushing the company to adopt a code of conduct, the NLC’s campaign against the Gap yielded the most significant victory for the NGOs prior to the formation of the AIP. As a result of this campaign, in December 1995 the Gap agreed to allow independent monitoring of its supplier Mandarin International’s factory in El Salvador, breaking ranks with the rest of the apparel industry by acceding to the demand for external monitoring by local human rights and religious NGOs. See Varley (1998: 281-307).

than regulating producers or pushing the labor agenda through legislation, promised to be the most politically acceptable way to advance workers' rights and hold companies accountable.

#### **2.4 Code Building Efforts: Multilateral, Unilateral, and Corporate**

In the absence of international rules regulating foreign investment and the conduct of MNCs, several attempts have been made at the international level to construct codes of conduct to control the activities of MNCs through political guidance and moral suasion.<sup>9</sup> Prominent among these multilateral code-building efforts, the United Nations began to draft a code in 1977, a contentious process which continued until the early 1990s, by which point support for the code had faded. Ultimately the U.N. code was not adopted either as a binding international convention or as a voluntary set of guidelines establishing standards of conduct. Other international organizations did adopt codes, notably the Organization for Economic Cooperation and Development (OECD) in 1976 and the ILO in 1977. However, both the OECD's Guidelines for Multinational Enterprises (-- an annex to a declaration) and the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, relied on the non-binding voluntary efforts of MNCs for enforcement. The OECD Guidelines, which reflected the consensus of the developed countries at the time, explicitly state they are not legally enforceable. The ILO Tripartite Declaration reflects the views of developed and developing countries as well as the views of labor and business, but it suffers from a very weak enforcement mechanism which merely invites governments to report periodically, after consultation with employers' and workers' organizations, on the effects of the Declaration.<sup>10</sup> These guidelines are not completely

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<sup>9</sup>The failure of governments to adopt rules governing foreign direct investment after the demise of the International Trade Organization in 1950 (in comparison to the adoption of international rules for trade, money, and finance within the frameworks of the GATT/WTO, IMF and the World Bank) perhaps underscores the limits of the traditional intergovernmental approach in this issue area. Sensitivities among governments to labor standards, with its implications for human rights, economic competitiveness, and political control may be too strong for the states to restrict their range of options, in relation to MNCs as well as other states.

<sup>10</sup>This section is based on Baade (1980). International Non-Governmental Organizations such as the International Confederation of Free Trade Unions (ICFTU) and International Chamber of Commerce (ICC) have promulgated their own codes, the ICFTU with the Mexico Charter of Trade Union Demands for the Legislative Control of Multinational Companies in 1975, and the ICC with its Guidelines for International Investment in 1972. Code building efforts among regional organizations are not addressed here.

without effect, however; they allow state actors to maximize national governmental prerogatives within the framework of a formal intergovernmental agreement.(Kline, 1985: 51) More significantly, these guidelines publicly shift the burden onto MNCs to live up to the standards of behavior established in the codes, even while the imprecise nature of the standards allow MNCs to retain flexibility in their actual policies and behaviors.

The failure of public code-building efforts to construct meaningful instruments for enforcement was the permissive environment for the emergence of private sector initiatives to address labor standards.<sup>11</sup> In this regard, once Levi Strauss and Co. publicly introduced the first corporate code of conduct and internal monitoring program for supplier's worker rights standards in March 1992, the landscape in the apparel industry shifted. Levis' code was formulated because of the recognition within the company of the new dilemmas posed by international

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<sup>11</sup>The inherent weaknesses of these voluntary multilateral codes and their enforcement mechanisms were mirrored in the unilateral code building efforts of the Clinton Administration in 1994-1995 in response to the domestic fight over China's MFN trading status. Recognizing that binding human rights standards were politically unfeasible, the Clinton Administration, in order to legitimize its support for renewal of China's MFN trade status and its decision to delink trade and human rights in the debate, turned to the promotion of voluntary efforts by business to advance human rights concerns abroad. However, U.S. businesses put up stiff resistance to the effort because they feared retaliation from the Chinese government against U.S. firms that might adopt the principles. The Clinton Administration consequently abandoned the China-specific approach and, in 1996, proposed instead the Model Business Principles as a template for businesses to use in developing their own codes for their overseas operations. However these voluntary standards were vague, generalized for all industries, and had no enforcement mechanisms. Consequently, while the State and Commerce Departments have publicized and promoted the model principles, they made little headway among U.S. businesses. See U.S. Department of State (1997).

sourcing, but it was spurred on by negative publicity from media reports on its overseas contractors' poor working conditions. Some companies, such as Nike and Reebok, quickly introduced the codes they had been developing, for the same reasons as Levis. Other apparel and footwear companies soon found themselves being pressed by NGOs to introduce their own codes of conduct and monitoring programs. Liz Claiborne, for instance, agreed in 1994 to establish a detailed code of conduct in response to a nationwide effort organized by the NLC to pressure major U.S. corporations to improve working conditions offshore.

Corporate codes of conduct are attractive to MNCs for several reasons. Individual codes allow companies to publicly communicate a message about their own expectations for the social behavior of their enterprises.(Diller, 1999: 102) By committing to the company's own corporate standards, codes permit the flexibility of self-regulation in addressing the complexity of issues, and may forestall further binding governmental regulation of labor standards. However, the proliferation of company codes with differing standards and criteria for monitoring posed new problems for companies, consumers, and activists alike.<sup>12</sup> Indeed as company codes proliferated, it became clear that there was a basic tension in the underlying motivation of the codes: whether they were aimed at improving working conditions for workers or at assuring consumers that the products they purchase are produced ethically. In either case, the lack of clear definition of terms and lack of consensus on the appropriate content of codes, threatened to undermine either underlying motivation. For instance, few of the codes included mention of freedom of association or the right to organize and the variation of terms among the codes that did include these minimum labor standards were certain to breed consumer confusion. Moreover, the codes relied on internal monitoring to ensure compliance, which by its nature is not transparent, not standardized among companies, and thus potentially, not credible as an enforcement mechanism that could earn consumer trust.

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<sup>12</sup>“Most importantly, the Council on Economic Priorities (CEP) found great inconsistency in the contents and the implementation of codes of conduct. This inconsistency points out five related key barriers to the widespread development of codes of conduct: 1) Internal codes are inherently expensive and inefficient to develop and monitor due to duplication of effort; 2) Codes lack consistency, so consumers can't easily distinguish between strong and weak; 3) They are weakly audited; 4) They tend to be unclear about interfacing with laws and customs that vary widely by country and region; and 5) Workers do not know about the codes. Many fear retribution for revealing problems to their employer's customers in the absence of guarantees that their anonymity will be protected.” See CEP (1998A: 1).

## **2.5 Union Tactics: Old and New**

Organized labor in the U.S. did not embrace the private code-building initiatives by companies as ends in and of themselves, or as a solution to sweatshop working conditions. The unions did see them as a supplemental means to hold MNCs accountable, and to further the push for enforcement of labor standards through greater domestic legislation and international regulation of MNCs.(UNITE, 1998A) The unions praised the aggressive enforcement approach of the Labor Department, and demanded that manufacturers enact minimum labor standards overseas, but to the extent they valued corporate codes of conduct, it was as a transition to organizing workers.<sup>13</sup>

However, in late 1995, organized labor began to make changes to revitalize itself in the U.S. under the new leadership of John Sweeney at the AFL-CIO. With a new focus on recruiting members, organizing in new sectors, and forming alliances with immigrant, academic and religious groups, organized labor increasingly turned its attention to low-wage workers and sectors. The apparel industry was a natural fit, allowing unions to condemn sweatshop practices at home and to launch an assault on companies that moved production abroad, so that companies would find it more costly both to leave the U.S. and to produce abroad. By joining in coalition with other labor and human rights NGOs, and calling for solutions in the form of workers organizing at home and codes of conduct where workers were unable to organize abroad, the

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<sup>13</sup>As Richard L. Rowan and Duncan C. Campbell had observed much earlier of the public code-building efforts: “Important too is the fact that these guidelines appear to be the focus of the drive by international unions to obtain multinational corporation recognition and, eventually multinational bargaining.” See Rowan and Campbell (1983: 72).

unions were hoping to send a message to the companies that they could not escape their responsibilities to workers regardless of whether they produced at home or abroad.

## **2.6 Secretary Reich Visits Kathie Lee Gifford's Sweatshop Nightmare**

While it is possible that a network could have evolved on its own through the various initiatives of the companies and NGOs alike,<sup>14</sup> the incident that sparked the formation of a global public policy network occurred in May 1996 when the contractor in Honduras producing celebrity-endorser Kathie Lee Gifford's line of clothing was exposed for sweatshop abuses by the NLC. Further investigation by the Labor Department also found that Gifford's line of clothing, sold exclusively by Wal-Mart, was being produced under sweatshop conditions in New York. The ensuing maelstrom of bad publicity was perhaps more responsible for linking the issue of sweatshops at home to sweatshops abroad in the public's consciousness than any other event. At this point, Secretary Reich acted as a policy entrepreneur, and seized the opportunity to bring the industry, NGOs, and unions together under the auspices of the government to initiate a dialogue about working conditions in the apparel industry.<sup>15</sup> On May 31, 1996, Secretary Reich and

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<sup>14</sup>Events seemed to be moving in the direction of a network. For instance, Jerome Chazen, Liz Claiborne, chairman and CEO, stated during an October 21, 1994 meeting with NLC director Charles Kernaghan, "Your work [NLC] has helped refocus Liz Claiborne, putting us back on the track of aggressively promoting and monitoring respect for the human rights of our offshore employees. This is now one of our top priorities. This should also have an impact in moving our entire industry. With the help of the National Labor Committee, I want to approach other companies, manufacturers and retailers, to propose setting up an association which pro-actively promotes human rights standards offshore." Cited in NLC (1998B). To coincide with the Retail Summit in September 1995, the newly created UNITE published an ad in the New York Times calling on the Labor Department to form a high-level commission to address sweatshops, propose solutions, and facilitate partnerships between business and NGOs to fight sweatshops. And at her June 6, 1996 meeting with the NLC, Kathie Lee Gifford agreed "that the nation's retailers and apparel manufacturers should create an alliance that supports the establishment of a program of independent third party monitoring of plant conditions." Cited in NLC (1998A).

<sup>15</sup>When the Gifford story broke, his staff at the Labor Department suggested he call Gifford. Why? Reich relates the course of events in the following manner: "'To make a *deal*,' says Maria [Echaveste, Administrator of the Labor Department's Wage and Hour Division]. 'You offer her a way of saving face. She joins our No Sweat crusade and becomes a spokesman for corporate responsibility. In return, you praise her leadership and courage. It's a win-win.'" In fact, Gifford's public relations advisor immediately understood the deal: "Rather than try to

Kathie Lee Gifford announced the Fashion Industry Forum (FIF), as the network was initially named, to be held in July 1996 to bring together some of the industry leaders in the crusade against sweatshops.

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defend herself, Kathie Lee should go on the offensive against sweatshops and the major manufacturers and retailers that contract with them.” See Reich (1997: 314-315).

## **2.7 The Fashion Industry Forum**

The Fashion Industry Forum thus began a process to investigate the challenges embodied in eradicating sweatshops and the importance of working together in identifying and implementing solutions. On July 16, 1996, more than 300 fashion industry representatives -- retailers, manufacturers, designers, workers, labor and consumer advocates, celebrity endorsers, and licensing companies -- gathered at a forum in Arlington, Virginia for problem-solving and learning about innovative efforts to eliminate sweatshops. The FIF represented the first time that all segments of the industry (including most of the future AIP members) had publicly recognized that sweatshops and labor standards were a problem that must be addressed.

But as Reich stressed in his congressional testimony the day before the FIF, now that the issues of child labor and sweatshops were on the agenda, the talks were really intended to lead to action -- actions that required enforcing existing national and international labor standards, and not imposing U.S. values abroad.(Department of Labor, 1996B) Moreover, as Secretary Reich had indicated in his invitation letter to FIF participants, because “It is up to all players to take affirmative steps to end sweatshops,” their participation at the forum was also recognition that the key to effective action would be to involve the whole supply chain in the apparel production process. And this, in turn, implied that partnerships among the actors would be needed (Department of Labor, 1996A).

Consequently, at the FIF, discussions centered on defining the problem and outlining the challenges facing the industry, exploring steps some industry leaders were taking, and how to form partnerships to end sweatshops, step up enforcement, and provide the industry with compliance assistance. For instance, Secretary Reich pointed out the three incentives manufacturers have for compliance: the Hot Goods provision of U.S. labor law, avoiding public embarrassment, and increasing productivity and quality; possible solutions to these problems included a ‘No Sweat’ label, third party monitoring, and increased responsibility of quality-control inspectors, respectively. The complexity of the issue for companies was highlighted in comments made by representatives from Levis, Kmart, Liz Claiborne, and Wal-Mart. They reiterated that this was not just a problem for retailers but a supply-chain problem, and that not mandated solutions, but flexibility and partnerships in monitoring were needed to address sweatshop conditions -- particularly to avoid the duplication of efforts. Companies would need to commit resources and to develop the internal managerial and operational capacities to oversee monitoring efforts. Moreover, one of the unintended byproducts of monitoring might be the

rationalization and establishment of more long-term relationships with a fewer number of vendors, perhaps partly reducing the flexibility and attractiveness of international sourcing in the first place.<sup>16</sup>

## **2.8 Points of Consensus on the Eve of the AIP Formation**

On the eve of the AIP formation, several points of consensus were emerging among governmental, business and NGO actors on the sweatshop issue. First, sweatshops were perceived as a problem by all sets of actors, and rather than eschew accountability, all sides were coming to recognize the need to cooperate to take responsibility to improve the lives of apparel workers. Apparel companies and industry representatives were well aware that sweatshop operators were unreliable business partners, and introduced unfair competition that hurt the bottom line of legitimate operators. Second, efforts to eliminate sweatshops had to focus on continuously improving working conditions abroad, not punishing contractors for violations by withdrawing production -- which would neither help to improve the working conditions for poor workers left without jobs or the quality of life in developing countries deprived of foreign investment, nor reassure consumers at home.<sup>17</sup> Third, government enforcement was not the answer; although it could be strengthened, the past failure to get governments to change their policies and to adequately enforce their laws reflected a fundamental weakness of this approach. Rather, market mechanisms, based on consumer pressure to hold companies accountable and to raise the costs of non-compliance, were required to change the incentives of an economic system

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<sup>16</sup>On the other hand, several participants at the FIF indicated the how difficult developing a credible and operational monitoring system would be: its success hinged on the willingness of customers to pay more; if it involved labeling it might not be credible to consumers without external monitoring; furthermore, as Jay Mazur of UNITE suggested, to be legitimate, monitoring would have to be done by unions or NGOs because allowing companies to do the monitoring was akin to ‘allowing the fox to watch the chickens.’ This section is based on Department of Labor (1996C).

<sup>17</sup>As Reich later observed, for apparel companies this might entail establishing minimum international standards and perhaps going beyond those standards to set an example higher than the prevailing standards, but not necessarily the wholesale export of U.S. standards to all foreign operations, a form of ‘backdoor protectionism’ which would undermine the competitive advantage and reason for investing in developing countries. See Reich (1998).

that rewarded the exploitation of workers. This, in turn, required private enforcement through credible monitoring systems.

Where the burden of responsibility lay remained a point of contention, however, among the various actors.(Online Newshour, 1996). Many of the large apparel companies felt the emphasis on the industry leaders was misplaced; in general, their business practices were far better than smaller less reputable contractors and sub-contractors -- the 'bad apples' at the bottom of the supply chain that would always remain. Moreover, it was generally not U.S.-owned factories overseas, but rather the foreign-owned (particularly Taiwanese and Korean) factories based in other host countries that U.S. companies buy from, that constituted the worst offenders. The unions and NGOs, on the other hand, insisted that this burden be shouldered by the big retailers and manufacturers that had the ability to clean up their acts and, because of their market power, to force their suppliers to do likewise. Nevertheless, as President Clinton would later report about the industry and NGO representatives who gathered at the highly visible White House meeting and ceremony in August 1996 to announce their intention to form the Apparel Industry Partnership, there was a sense of shared outrage and a shared determination to do something about it (White House, 1997).

### 3. PHASE II: AUGUST 1996 TO APRIL 1997: COMING TO TERMS WITH SWEATSHOPS: THE AIP WORKPLACE CODE OF CONDUCT AND PRINCIPLES OF MONITORING -- FIRST STEP OR FIG LEAF?

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#### **3.1 Initial Formation of the AIP**

On August 2, 1996, apparel and footwear industry leaders publicly announced that they had committed to the President Clinton to participate in a voluntary, non-governmental partnership to develop options to assure consumers that the items they purchase are produced under acceptable labor conditions. This effort, timed to coincide with the one year anniversary of the El Monte, California raid, formally involved leading manufacturers, retailers, designers, trade unions, and human rights groups.<sup>18</sup> The AIP was charged with the tasks of agreeing on enforceable labor standards to change oppressive sweatshop conditions and developing voluntary steps for the industry to take, and was asked to report back to the President within six months.

#### **3.2 AIP Members Preferences: NGOs and Unions**

For some of the NGOs, the formation of the AIP represented a significant victory and a milestone in their efforts to fight child labor and sweatshops. It simultaneously forced some apparel companies to recognize their responsibilities to the workers that made their goods, and to come to the negotiating table to join efforts to fight sweatshops, an important step in itself. It also drove a wedge between the AIP company members and other apparel companies that had not recognized their responsibilities to workers and consumers, a fact which the NGOs could use for leverage both to hold those in the AIP accountable for higher standards of behavior and to those companies outside the AIP to pressure them to follow the example of the industry leaders.

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<sup>18</sup>The participating members of the AIP at the August 1996 announcement included the companies Nike, Liz Claiborne, Warnaco, Philips-Van Heusen, L.L. Bean, Tweeds, Patagonia, Nicole Miller, Karen Kane, Kathie Lee Gifford; unions included the Union of Needletrades, Industrial and Textile Employees (UNITE) and the Retail, Wholesale, and Department Store Union of the AFL-CIO; and NGOs were represented by the National Consumers League (NCL), Lawyers Committee for Human Rights (LCHR), and the Interfaith Center on Corporate Responsibility (ICCR). Reebok, the business association Business for Social Responsibility (BSR), and two NGOs, the International Labor Rights Fund (ILRF) and Robert F. Kennedy Memorial Center for Human Rights (RFK Center), joined shortly afterwards and participated in the negotiations drafting the code and monitoring principles.

The International Labor Rights Fund (ILRF), for instance, was founded in 1986 by labor and religious leaders, policy makers, and human rights activists, to fight for worker rights abroad. The ILRF was instrumental in creating the Rugmark program to fight child labor in the rug-making industry in India in 1993, and led the fight for the labor standards and trade linkage at the WTO. The National Consumers League (NCL), with over 100 years of experience in fighting child labor, was part of the Rugmark campaign. The NCL also had experience in social labeling, having led the fight for the integrity of the 'Made in the USA' label in the 1990s just as it had developed and overseen the use of the 'White Label' for garments made under good working conditions in the U.S. in the early 1900s. Moreover, both the ILRF and NCL had been involved with Secretary Reich's earlier efforts raise consumer awareness of sweatshop conditions in the U.S. garment industry and to elevate child labor onto the international agenda. In fact, they helped to form the Child Labor Coalition that aired public service announcements and distributed the Labor Department's 'Clues for Consumers' to help shoppers support efforts to end sweatshop working conditions.

The Interfaith Center on Corporate Responsibility (ICCR) was also a leader in the fight against sweatshop. The ICCR relied on different instruments -- socially responsible investment and the moral suasion of its religious constituent members -- to encourage companies to engage in dialogue with their shareholders in order to bring about positive changes in corporate practices. The ICCR agreed to participate in the AIP fully aware of the possibilities and limitations of the partnership. As ICCR Executive Director Timothy Smith observed, "On one hand, the advisory group is heavily dominated by industry so we hope industry leadership will press other companies to follow their lead. On the other hand, we anticipate considerable resistance to creative options like independent monitoring."(ICCR, 1996: 1)

For the other two NGOs members, the Lawyers Committee for Human Rights (LCHR) and the Robert F. Kennedy Memorial Center for Human Rights (RFK Center), the AIP was perhaps less of a victory than a positive and pragmatic sign of change in the business community that it was ready to begin to play its part and bring its resources to bear in the fight for human rights. These two organizations had already begun to cooperate with business actors to promote human rights around the world. For instance, in 1992, LCHR partnered with Reebok to form Witness, an organization that hoped to fight human rights abuses by facilitating the documentation of testimony about abuse around the world through the distribution of video cameras to human rights activists. Moreover, both LCHR and the RFK Center had served on the

Reebok Human Rights Award Advisory Board; in turn, the LCHR honored Reebok in 1994 for its leadership efforts in the field of human rights.

The union members of the AIP, UNITE and the Retail, Wholesale, and Department Store Union of the AFL-CIO, saw the initiative as important and timely, and were of the view that President Clinton's commitment was exactly what was necessary to improve labor standards.(UNITE, 1998B) From the outset, the union members were clear in their view that no voluntary code was enough to adequately protect the rights of workers. But for a voluntary code to be helpful rather than harmful, at a minimum, the union stance was that it must have standards that permit workers to live and work with dignity and effective enforcement mechanisms for those standards. Thus for the unions, the danger was that the AIP would reenforce the view that voluntary codes are a substitute -- instead of a supplement -- for enforcement of existing laws and the adoption of legislation and trade agreements designed to protect the rights of workers in the global economy.(UNITE, 1998A)

### **3.3 AIP Members Preferences: Business**

The kinds of companies susceptible to outside pressures calling for codes of conduct are high profile companies with easily identifiable products, often with highly quality-conscious customers. These companies are often found in highly competitive industries, such as the apparel industry, with easily substitutable products and a wide range of consumer choice.(U.S. Council for International Business, 1998) Patagonia, for instance, had a long-standing commitment to quality products. It recognized that this was not the same as concern for human rights, however, so it began on its own initiative to audit and enforce human rights standards. In 1996 the company added external audits of any facility making goods for the company, because it wanted a defense ready should any surprise allegations surface. For Patagonia it was simply a matter of investing in insurance against a public attack on the company's credibility and reputation, and not a reaction to a perceived problem with sweatshops.

Since Patagonia had no experience with sweatshops, and did not consider itself an industry leader in this area -- Patagonia did not even consider itself part of the fashion industry, but rather an 'outdoor gear' company -- it was surprised to be invited to the FIF in July 1996 and even more surprised to be invited to the White House meeting that led to the AIP's formation. At first, Patagonia was wary of joining the AIP because of the public association with sweatshops it would bring to the company's name, but it decided to participate anyway because

its managers felt that once asked, it was the right thing to do. As far as Patagonia was concerned, it wanted high labor standards for U.S. companies. But it also recognized that for Patagonia, whose customers are quality- and socially-conscious, have a unique relationship with the company, and would be willing to pay for quality and for values, it would be far easier to make this commitment than it would be for others companies whose products are at the low-end of the industry.<sup>19</sup>

Because of this vulnerability to negative publicity and the whims of consumers, those companies susceptible to pressure for codes were likely to have taken proactive steps to address potential problems. Liz Claiborne, for instance, had attacked the problem in several ways, and considered itself an industry leader in the U.S. and abroad because of its standards of engagement required of all suppliers and its recognition of the importance of enforcing

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<sup>19</sup>This and the preceding section based on Sweeney (1997).

compliance through monitoring.<sup>20</sup>(Liz Claiborne, 1999) It was the belief of Paul Charron, Chairman and CEO of Liz Claiborne, that the company had a responsibility as a large company

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<sup>20</sup>According to Liz Claiborne, its efforts to improve its contractors working conditions are long-standing. It has followed an outsourcing strategy since its 1976 founding, so it does not own any factories but rather works with approximately 250 suppliers in over 28 countries including the U.S.. In 1993 the company took proactive measures to address potential problems in its suppliers' factories, leading to a formal process for reviewing potential new suppliers which included several questions on human rights conditions; by July 1994 the company had developed a formal written code of conduct for suppliers to follow, which has since been updated and improved. In 1994 the first of many workers' rights fact-finding missions to Honduras and elsewhere began, showing how much needed to be done, but making clear that the goal for the company should be an ongoing process of continuous improvement. The company asked NGOs and human rights groups to help plan its next trips to El Salvador and Honduras in the winter of 1996 and Guatemala in October 1996 and May 1997, to help overcome the reticence of workers to talk to outsiders. By 1995 it had joined BSR, bringing it to the attention of Secretary Reich, who invited the company to participate in the FIF, leading to the August 1996 meeting with President Clinton and the formation of the AIP. See Liz Claiborne (1999).

to leverage its size and name to effect positive change. Moreover, when pressed, these companies were likely to agree to work to address the problem with added steps.<sup>21</sup>

Indeed, for the companies involved in the AIP, the partnership satisfied their need to do something, if only for public relations to protect their reputations, and to forestall any further movement toward binding government regulations. When Nike joined the AIP, its CEO Phil Knight made clear that although he felt the company's record on working conditions was good, "We need to do better at publicly describing the actions we've taken to promote fair labor practices, including a code of conduct, internal monitoring, and external audits." (PR Newswire, "Nike Joins," 1996) The NGO campaigns against Nike were beginning to portray the company as the 'poster child' of sweatshops, so Nike was the center of attention in the NGOs' drive to push for regulation and legislation. Thus the AIP may have given at least some of the business participants an opportunity to mollify consumers and sidestep outside regulation -- to avoid

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<sup>21</sup>Kathie Lee Gifford, for example, when confronted with the evidence of her clothing being made in sweatshops, did not run away from the problem but faced it. Her initial contract with Wal-Mart had in fact specified that the contractors must be declared in the contract, but the problem arose when the work was sub-contracted and sub-sub-contracted to other suppliers. As a result, Gifford decided to begin her own monitoring in addition to Wal-Mart's monitoring. Moreover, in her July 1996 Congressional testimony about sweatshops, Gifford endorsed proposed legislation to allow the Labor Department to create an accreditation and labeling process to monitor working conditions abroad.

making real changes according to AIP critics. Furthermore, as Liz Claiborne's representative later pointed out, the government can enforce labor standards, but it would simply not be enough; real change would not be possible without industry participation.(Liz Claiborne, 1999)

The AIP allowed the companies to address the issue as an industry, with the intention of leveling the playing field, so that individually they would not be subject to the costs of higher standards while their competitors were not.(Sheehy, 1999) This was the primary consideration of L.L. Bean in joining the AIP, because it felt that any individual company's efforts at internal monitoring would inevitably lack credibility. Only through a collaborative process involving all sectors of the industry could a credible and operational universal standards and compliance system be created.<sup>22</sup>

Business for Social Responsibility's (BSR) involvement in the AIP followed from its role as a resource base on companies' best practices in monitoring supplier working conditions. In fact, BSR had already gained valuable experience in this area during late 1995 and 1996 as part of the working group that helped the Gap to devise and operationalize the system of independent monitoring by NGOs for its supplier's factory in El Salvador.(Varley, 1998) By providing training for companies on these issues, BSR allowed firms to lower the costs of acquiring the relevant knowledge and expertise, and to avoid the duplication of cost, time and effort in inventing monitoring programs from scratch for each company. In addition to lowering the costs of monitoring and capacity building within the company, cooperative industry efforts also held the best prospect of maximizing the influence of manufacturers on suppliers to effect change.(Cramer, 1998) To some extent, BSR's role was also to represent companies outside the AIP, for if the playing field was to be level, it had to be on a plane that other companies would feel comfortable joining.<sup>23</sup>

In these efforts, the companies of the apparel industry would have to be collaborators as well as competitors, in order to establish the norms of behavior above and beyond profit-making

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<sup>22</sup>Moreover, as a private company, L.L. Bean felt that participating in the AIP would be consistent with the values of its main stakeholders, its quality-conscious customers. See Sheehy (1999).

<sup>23</sup>Clearly this would be difficult, for the view of many businesses left out of the AIP on codes of conduct reflected a deep unease about outside interference in questions at the heart of corporate governance: how to control and overrule management decision-making; making companies responsible for things over which they have no control, in particular, for local human resources questions among local managers along the sourcing chain. See U.S. Council of International Business (1998).

that were increasingly expected by society of companies in the U.S.. Nevertheless, because company members were able to retain flexibility in their internal efforts to address the problems within the AIP framework, a competitive dynamic may have been introduced to the enforcement of minimum labor standards. Companies may have begun to recognize that a commitment to social responsibility could pay off in the marketplace, or at a minimum, shift the burden onto other 'less responsible' companies.(Campaign for Labor Rights, 1999A) Reebok was one of the companies that appeared to see early-on the value and competitive edge that could be derived from investing in its reputation for social responsibility, at one point in September 1996 even publicly challenging Nike to cooperate with Reebok to eliminate sweatshops by forming an independent system to monitor their factories abroad.

One thing that was clear at the outset of the AIP, however, was that building minimum levels of trust among the AIP's members would be one of the critical aspects of the whole process if any meaningful changes were to take place. If the AIP was to be more than an opportunity for companies to exploit the public relations benefits of participating, as many of the NGOs feared, or for the NGOs to embarrass the companies by exposing every instance of abuse (as inevitably would arise) as evidence of the companies' bad faith and insincerity, some minimum levels of social capital would need to be established.

### **3.4 Informal Network Members**

Informally, members of the socially responsible investing community and religious groups played a significant role by generally helping to keep pressure on apparel companies with their efforts to raise the public profile of the sweatshop issue. These groups held the AIP company members to their commitment to make progress, keeping them from backsliding by reminding them of the pressure they continued to apply to companies outside the AIP.<sup>24</sup> The National Labor Committee and National Retail Federation, so central in first raising public awareness, did not join the AIP. However, both groups continued to push the issue onto the public agenda

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<sup>24</sup>For instance, on September 19, 1996, a group of socially responsible investors representing over \$56.8 billion in assets called upon all levels of the apparel industry to eliminate sweatshops. On October 22, 1996, more than three dozen national religious leaders joined Secretary Reich in a stand against garment sweatshops by enlisting the support of their congregations across the country.

through their campaigns targeting corporations and their advertising campaigns to educate consumers about retailers that were working to address sweatshops, respectively.<sup>25</sup>

Yet the most crucial informal actor was the U.S. government, for without the imprimatur of the U.S. government and the prestige of the White House's endorsement, the AIP effort would have lacked credibility. However, while the AIP would not have come about without the role of the U.S. government, it was clear in the domestic political environment at the time, that the partnership would and could only go forward as a voluntary effort among business and the NGOs. Constrained by the fight over the balancing the budget and the Republican party's assault on government regulation and intervention in the economy, the voluntary industry-driven nature of the AIP effort was for the Clinton Administration a rather costless way (politically, administratively, and financially) to make progress on sweatshops. Moreover, in the midst of a presidential election campaign, the AIP allowed President Clinton to promote workers' interests both at home and abroad, but without threatening his administration's free trade agenda. Thus the U.S. government, while clearly part of the network, confined itself to the informal role of facilitator and cheerleader. Along with its continued aggressive enforcement of the law, the Labor Department provided technical help to study labor laws, conducted research on the positive effect of codes as a first step to address child labor and worker's rights issues, and continued to recognize the efforts of companies to tackle sweatshop in the Trendsetter List.

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<sup>25</sup>In December 1996, for instance, the National Retail Federation placed ads in major papers before Christmas urging customers to be wary of goods made in sweatshops, and listing the names of major retailers pledging not to deal with sweatshops. The National Labor Committee joined with UNITE in January 1997 to launch the Stop Sweatshop campaign to educate consumers about sweatshops at home and abroad. More information on these programs can be found at their websites, [www.nlcnet.org](http://www.nlcnet.org) and [www.sweatshops-retail.org/](http://www.sweatshops-retail.org/).

### **3.5 Excluded Members of the Network**

It is also important to remember who was not included in the AIP. Other countries were not included in the U.S. based effort, perhaps a necessary requirement to launch the effort to begin with, but one that meant eventually this unilateral effort based on universal principles would have to be multilateralized. In particular, the need to rely on the underlying shared norms and values of a small core of U.S. based actors reflected the strong resistance by developing country governments to the idea of enforceable minimum labor standards that might undermine their economic competitiveness.

It is also notable that the very workers whose quality of life was under discussion were largely excluded. While the U.S.-based NGOs served as surrogates for the workers and for overseas NGOs, an identity of interests cannot be assumed among Northern and Southern NGOs and workers. For it may be possible to argue that improving working conditions and quality of life for workers in the North is tied to helping workers in the South. But the latter's exclusion from the AIP might have left the lingering suspicion for some Southern NGOs that the Northern NGOs were after backdoor protectionism and that improving the lives of workers in the South was secondary to improving the lives of workers in the North.<sup>26</sup> Furthermore, the ILO questioned the AIP's exclusive emphasis on workers in the export sectors of developing countries where MNCs were active, suggesting that the AIP's remedial value for workers in developing countries would be incomplete at best.

### **3.6 Bargaining Power and Resources**

At first blush, the business actors in the network might have been expected to possess a preponderance of the resources and bargaining power in the network. In organizational and operational capacities, the companies had distinct advantages: their quality-control inspectors were frequently and intimately interacting with their contractors to help train management and improve product quality in the factories making goods for them. And because of this, the apparel

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<sup>26</sup>As the NGO Sweatshop Watch observed: "While the large majority of garment workers in the U.S. and around the world are non-white and female, the Task Force itself hardly reflects this composition. Moreover, with the exception of UNITE, no one on the Task Force even purports to represent the very people whose lives are at stake: garment workers themselves. See Sweatshop Watch (1997).

companies clearly held a superior position in gathering basic information about the policies and practices of the suppliers' operations.<sup>27</sup> These power asymmetries stand in contrast to the more limited capacities of U.S.-based NGOs and unions to gather information about factory and working conditions and to interact with (hostile) factories managers. Instead, the NGOs must rely on input from workers often scared to speak out against abuses, and workers organizations, some of which are not independent of government or factory control and are likely to have significantly less influence with factory managers.

However, the NGOs and unions were not without significant resources they could marshal in the negotiations. What advantage the companies' possessed in financial resources to put forward their public policy positions through public relations and public affairs spending, was countered by an increasingly effective ability by the unions and NGOs to mobilize quickly and cheaply against the companies in transnational grassroots coalitions, in conjunction with

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<sup>27</sup>In fact, many NGO activists point to these asymmetries in resources as evidence that if the companies were truly committed about eliminating sweatshops, they could do so. Just as the companies possessed the market power to force their suppliers to make changes to improve quality and to eliminate counterfeiting, the activists argue, companies could demand compliance with their efforts to fight sweatshops. The fact that they do not, or that they resist this argument, is evidence in the eyes of some activists that they are not serious about the issue or accord it a low priority.(Online Newshour, 1996) On the other hand, company representatives emphasize that their control over suppliers is often exaggerated: where a suppliers makes a 100% of its production for a manufacturer, it can control that supplier; where it accounts for significantly less, it can only attempt to influence a supplier.(Kidd, 1999)

allied NGOs in the North and the South, bound together by the internet.<sup>28</sup> Moreover, all the brand image advertising that companies invest in makes them extremely vulnerable to any attacks on their reputations. NGOs have been adroit at exploiting this weakness, by publicly embarrassing companies with bad press, and successfully convincing them that these tactics and the issue of sweatshops were not likely to fade away any time soon.<sup>29</sup>

For this reason, time was a source of leverage for the NGOs and unions against the companies. More significant perhaps, the AIP operated under the principle of consensus, not majority rule, in its decision-making. Therefore, intransigence as a negotiating tactic could also serve to restore some symmetry to the balance of resources and bargaining power for the NGOs.

Indeed, a significant feature of this global public policy network is that the AIP relies on the consuming public to be the ultimate third-party enforcer of the effort to establish enforceable labor standards. In the public arena, the business representatives might initially have been privileged with expert status as ‘business people’ that best knew how to run businesses that, after all, must make a profit to survive. However, the variation among company codes and differences in business policies and practices allowed the unions and NGOs to demonstrate over time to the

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<sup>28</sup>As Tom Friedman perceptively noted, “if it works, it can be a model for how to deploy the power of networks and the Internet to make every consumer a potential human rights enforcer and to deprive global corporations of anywhere to hide.” See Friedman (1999A).

<sup>29</sup>Activists found Nike’s slogan “Just Do It” particularly amenable to their cause, manipulating the phrase to ask Nike to “Justice Do It!” and “Do It Justice” among others.

public that there were many business practices that were consistent with making a profit and with socially responsible behavior. In this respect, NGOs were aided by the fact that public opinion in the U.S. is especially skeptical of business actors, so NGOs generally have more credibility and legitimacy in the public's eyes than do business actors.

### **3.7 Points of Contention in the AIP Negotiation Process**

During this phase, the negotiations focused on the definition and implementation of three central issues as the AIP struggled to agree on a code of conduct and principle of monitoring: wages, freedom of association, and the type of monitoring required to be credible to the public. The AIP spent considerable time reviewing international conventions and developing country labor laws; meanwhile a subcommittee dealing with independent monitoring, led by the ICCR's representative, solicited input from outside members on this question. As the AIP deliberated, it found achieving a consensus extremely time-consuming and difficult, but ultimately that collaborative process was the key to the integrity and credibility of the resulting code and principles of monitoring, and allowed the AIP members to build up some trust between the NGOs and companies.(Sheehy, 1999)

In fact, after six month of contentious negotiations, the deadline passed in February 1997 without the AIP producing an agreement and the AIP was rumored to be on the verge of collapse.(Varley, 1998: 464) On March 20, 1997, a report on Nike's factories in Vietnam by the NGO Vietnam Labor Watch was released, embarrassing Nike with its criticisms and details of poor working conditions which documented the shortcomings of the company's enforcement of its code of conduct. Shortly thereafter, in April 1997, the AIP announced agreement on a prototype code and principles of monitoring.<sup>30</sup>

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<sup>30</sup>According to LCHR's AIP representative Justine Nolan , the slow pace of the negotiations reflected the inherent complexity of the issue and the decision to negotiate by consensus; for the AIP participants, such external shocks were not viewed as a principal motivating factor pushing the process forward. (Nolan, 1999) Nevertheless, it is clear that the announcement of the Workplace Code boosted the companies with a dose of good publicity on the sweatshop issue for a change. The Workplace Code itself can be found at the Department of Labor's website: [www.dol.gov/dol/esa/public/nosweat/partnership/report.htm](http://www.dol.gov/dol/esa/public/nosweat/partnership/report.htm).

### **3.8 Adoption of the AIP Workplace Code of Conduct and Principles of Monitoring**

Although elements of the codes engendered less resistance (such as provisions for no employment of children under 14, a maximum workweek of 60 hours, a ban on harassment and abuse, and no forced labor), ultimately, this breakthrough was made possible mostly because the AIP members agreed to disagree on the three most contentious issues.

On the first two issues, freedom of association and the appropriate standard for wages, the AIP arrived at a grand bargain of sorts. The code called for the minimum wage by local law or the prevailing industry wage, whichever was higher, but it also included an ambiguous statement that employers recognize the ‘basic needs’ of workers. The NGO and union members had insisted that this provision be included to keep alive the issue of a ‘living wage’, a standard which the companies resisted vigorously.<sup>31</sup> The NGOs and unions saw the concession on minimum wages as acceptable in order to gain the companies’ concession for recognition of the right to freedom of association and collective bargaining -- something few of the individual corporate codes included.

The relative balance of the parties’ bargaining power was most apparent in the compromises worked out over what kind of monitoring the AIP would agree to and who would pay for it. As the Economist pointed out, “credible enforcement is not easily achieved, because western consumers understandably put more faith in the campaigners than in the multinationals.” (1999) So while the company AIP representatives were hesitant to embrace external monitoring outside their control, arguing that internal monitoring was sufficient, ultimately the intransigence of the NGOs in adhering to the principles of external monitoring won out. The compromise was that audit firms hired directly by the companies as well as local independent NGOs would be allowed to carry out the monitoring on two conditions: they must consult with local NGOs or workers’ representatives (if any)<sup>32</sup> and they must be accredited by the body to be created to

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<sup>31</sup>Dr. Ruth Rosenbaum of the ICCR defines a sustainable living wage as one that enables workers to meet their immediate needs, save some money for long-term purchases or emergencies, and provides some discretionary income to support small businesses in local communities. The AIP companies refused the linkage of pay to basic human needs, contending it would be too difficult to establish a standard in each country where they operate. However, the Purchasing Power Index (PPI) developed by Dr. Rosenbaum, provides a method to do so, using a local basket of goods necessary to meet basic human needs, which the ICCR views as both an accurate and reliable tool to determine a sustainable living wage. See ICCR (1997A).

<sup>32</sup>Regular consulting with local NGOs would also be required of a company’s internal monitoring program.

implement the principles of monitoring adopted by the AIP. Even these monitoring requirements were too stringent for some of the companies to feel comfortable with signing on to the code.<sup>33</sup>

### **3.9 Points of Consensus in the AIP Workplace Code**

The code embedded several points of consensus that had been established among the AIP members. First, the desire for a universal code to establish and enforce voluntary minimum labor standards for U.S. companies operating at home and abroad, based on the inclusion of representatives from business, labor, and human rights NGOs, was deemed a positive first step.<sup>34</sup> Second, by establishing the principle that manufacturers are responsible for their own and their supplier's labor standards (even though they are only the 'buyers'), the code signified that MNC actions have social consequences that must be addressed. Thus when trouble came to light, a company needed to take the responsibility to correct the problem (with future contracts conditional on effective remediation) rather than simply canceling the supplier's contract -- which would only punish the workers left without work. Third, it was acknowledged that only

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<sup>33</sup>Neither Warnaco nor Karen Kane signed on to the April code, and both dropped out of the AIP, even after expending considerable company time and resources in shaping the code during the negotiations. Warnaco later explained its position in a letter to the Investor Responsibility and Research Center: the company, "had already engaged an independent professional monitoring company to ensure that its own strict labor standards are satisfied. The proposed monitoring reports suggested by the Partnership were duplicative of Warnaco's own activities and the company was concerned that sensitive business information obtained by the Partnership's committee could not and would not be kept confidential." Cited in Varley (1998: 466).

<sup>34</sup>As Gene Sperling, the Chair of President Clinton's National Economic Council and a facilitator of the AIP, quipped, "You could always argue this glass is half-empty or this glass is half-full, but the fact is there wasn't any glass before." Varley (1998: 467).

external monitoring could allow for a potentially transparent, objective, and credible monitoring system.

#### 4. PHASE III: APRIL 1997 TO NOVEMBER 1998: FORGING THE FAIR LABOR ASSOCIATION -- THE ROAD TO IMPLEMENTATION

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On April 14, 1997, when the AIP members presented the landmark agreement to the President to adopt an industry code of conduct, to launch new independent monitoring of work sites, and to form an independent non-profit association to oversee compliance with the code of conduct, the work of implementation began. Over the next six months, the AIP was charged with developing ways to provide the public with confidence in code compliance. In spite of the quasi-official seal of approval from President Clinton and the full weight of the White House's prestige behind the effort, however, the AIP soon deadlocked over the plans for implementing the code. As the negotiations stalled past the transition period, and drifted on for over a year and a half, both the companies and the unions and NGOs refused to compromise over the details and definitions for implementing the code. While mistrust grew, some companies pushed ahead individually, and new external actors pushed the process along, until finally in November 1998, the deadlock was broken by a subgroup of the AIP.

##### **4.1 Conflict and Deadlock over Contentious Issues**

The areas of contention in implementing the code revolved around the key issues of a living wage, the right to freedom of association, and the nature of independent external monitoring.<sup>35</sup> For several of the NGOs and unions, the central issue remained the fight for a 'living wage' as opposed to the minimum or prevailing wage the companies were willing to offer. From the AIP business members' perspective, this demand threatened to kill the entire effort, even before it had begun. It was characterized as an effort by the NGOs to go far beyond the goal of eliminating sweatshops, to *alter* the AIP Code, and to burden the AIP with an issue outside of its capacities and more properly within the scope of governments. Meanwhile, from the NGOs' perspective, it

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<sup>35</sup>Other unresolved issues included: the disclosure requirements of monitoring reports; whether there would be a 'No Sweat' label permitted and other mechanisms to inform consumers about the code and company compliance; the composition of the future monitoring association's governing board and whether it would act by consensus or majority rule; the criteria for joining and maintaining membership in the future monitoring association; the criteria for accreditation as an external monitor; the design of the audits and other instruments for establishing baseline monitoring principles; and devising methods to enable companies to better fulfill their obligations under the code.

was a violation of the spirit of the code to require only the minimum or prevailing wage; for countries that intentionally set the minimum wage below the poverty or subsistence level in order to attract foreign investment, adhering to this standard simply reenforced and validated the notion that workers should be condemned to work in sweatshops.<sup>36</sup>

The code's recognition of the right to freedom of association left unresolved whether companies should withdraw production from suppliers producing in countries -- China in particular -- where that right was not respected and independent unions were not allowed. With the NGOs advocating for, and the companies refusing, this interpretation, UNITE President Jay Mazur's insistence that the AIP must deal with this issue put up another obstacle in the path to implementation.

The precise definition of 'independent external' monitors also divided the AIP members.<sup>37</sup> Did this require the monitoring to be done by local NGOs or workers' organizations themselves -- not just that they be consulted -- as the unions and NGOs maintained? Or would audit firms hired directly by the companies to inspect the factories be sufficient, as the manufacturers suggested? The NGOs insisted external monitoring by audit firms could not be independent, because their financial dependence made them beholden to the companies' and not the workers' best interests.<sup>38</sup> Ultimately, for monitoring to work, the workers must trust the monitors, so the NGOs argued that the corporate members' effort to retain control of the monitoring process with auditing firms would backfire since the public would not have confidence in the credibility of the monitors.<sup>39</sup>

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<sup>36</sup>Indeed, it was the ICCR's view that , "A factory may be clean, well-organized and harassment free, but unless its workers are paid a sustainable living wage, it's still a sweatshop." ICCR (1997A).

<sup>37</sup>On July 30, 1997 a subcommittee on independent external monitoring of the AIP held consultations in San Francisco and Washington, D.C. on this issue, with testimony from 23 representatives from NGOs, monitoring groups, trade associations, unions, accounting and consulting firms, plus written testimony from others. ICCR (1997B).

<sup>38</sup>In order to preserve their legitimacy, and eliminate the companies' lingering suspicion that their activism was motivated more by concern for maximizing their budgets than for the lives of workers overseas, several of the NGOs felt that they should restrict their role to oversight and supervision and not serve as paid monitors (or, at the least, not be paid directly by the companies for their monitoring work).

<sup>39</sup>On a related point, the cost of external monitoring was a factor that neither side could ignore in determining the percentages of suppliers subject to independent monitoring each year, because it would determine

## **4.2 The Negotiations Stall, NGO Campaigns Continue, and Mistrust Grows**

With the NGOs' and unions' insistence on setting strict criteria to improve the lives of workers clashing with the companies' efforts to make the standards loose enough so that the others companies would join, the inevitable result was a stalemate in the negotiations with little movement in the six months following the April press conference.(Sweeney, 1997) Despite the intransigence on both sides, the effort perhaps persisted because both the companies involved and the unions and NGOs recognized their stakes in its success and the high costs of failure.

The NGOs recognized that this was their best opportunity to get the companies to commit to minimum industry-wide labor standards, so they turned up the heat in the public arena to push their living wage and independent monitoring agenda when the deadline for the implementation transition period passed in October 1997. The aid of NGOs outside the AIP helped to sustain momentum for the sweatshop issue.<sup>40</sup> Thus informal network actors specifically targeted their campaigns to impact the AIP: the NLC's massive public relations campaign, for instance, called the Holiday Season of Conscience to End Sweatshops and Child Labor was launched in October 1997 with the support of the ICCR, UNITE, and the AFL-CIO to advocate for a living wage and independent monitoring.<sup>41</sup>

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the net costs and benefits for companies deciding whether or not to join the monitoring association. As Kevin Sweeney of Patagonia pointed out, audits are expensive and, ultimately, companies are self-interested: the benefits of preventing bad publicity and harm to the company's reputation may be outweighed if costs of audits are tremendous. Thus while none of the companies currently in the AIP intended at the time to attach a 'No Sweat' label to their garments, the label idea had to be retained to attract future members to the AIP as a potential benefit of joining to help offset the real costs of monitoring. See Sweeney (1997). The NGOs, on the other hand, had a different reason to be concerned about the costs: if the costs of monitoring were not passed on to consumers, but imposed on suppliers instead, the added pricing pressure might harm rather than help workers.

<sup>40</sup>For instance, on September 22, 1997, leaders of the socially responsible investment community issued their second call to action challenging the apparel industry to make a commitment to ensure that their goods were not produced in sweatshops.

<sup>41</sup>This six month campaign by the NLC attempted to embarrass the apparel industry into acting by claiming to show that nothing had changed in the 18 months since the NLC had exposed Kathie Lee Gifford's line of clothing for Wal-Mart being produced in sweatshops. In spite of their promises to improve their codes of conduct and to monitor their vendors, said the NLC's Director Charles Kernaghan, "These companies have failed, and failed miserably." Wal-Mart, for instance, announced it hired an independent monitor, but according to the NLC, had not

The companies of the AIP reacted angrily to these pressure tactics against them, complaining that instead of pressing a few companies in one industry for a living wage, the NGOs should be pushing for other companies to join the AIP. The logic was simple: if the AIP could grow beyond its current membership to encompass most of the industry, then in a few years perhaps it could tackle the living wage issue. And because of the growing concentration of the retail industry, targeting just five companies which sell more than 50% of the retail clothes in the U.S. with campaigns to pressure them to join the AIP, would cause the rest of the industry to follow. However, the NGOs' public pressure against the AIP corporate members was scaring off other potential members. Thus, "there is still a great deal of the skepticism that reigned when we started this process," declared one AIP company member at the time.<sup>42</sup>

#### **4.3 The Companies React and Some Members Push Ahead Individually**

The companies thus realized that the NGO campaigns and the sweatshops issue were not going to simply fade away. In fact, throughout 1997 and 1998, the number and intensity of campaigns against Nike, in particular, reached something of a fever pitch.<sup>43</sup> In response, the companies launched their own counter-offensives, responding to the NGO campaigns with their own initiatives outside the AIP framework. Admitting that the company's name had become synonymous with sweatshops in the public's consciousness, in May 1998 Nike Chairman and CEO Phil Knight launched a new set of labor initiatives to update and strengthen its code of conduct that suggested Nike would move forward on its own whether or not the AIP

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carried through on that pledge, despite its claim that 3,500 factories were inspected in 1996 and 100 prohibited from making goods for it. See Reuters, "Sweatshops Still?" (1997).

<sup>42</sup>This section is based on Sweeney (1997). Patagonia's Sweeney was clearly not optimistic about the AIP's prospects toward the end of 1997 because he observed that many NGOs gain media visibility by making negative attacks, regardless of the accuracy of their claims. Furthermore, because the ability of some NGOs to raise funds is often tied to the perceived depth of their opponent's evil, Sweeney felt that there were "groups who will continue to attack the Partnership and its approach" no matter what the companies do, which would inhibit others from joining.

<sup>43</sup>Among the things Nike had to contend with during this period were: campus organizing and demonstrations, the second annual Nike Day of Protest in October 1997, ridicule in the comic strip *Doonsbury* and in the documentary film "the Big One," the leaking by an NGO to the *New York Times* of a confidential audit by Ernst and Young of its Vietnam factories that documented continued abuses, and a lawsuit alleging consumer fraud filed in California in April 1998.

progressed.<sup>44</sup> In May 1998 Reebok also initiated a pilot program of independent monitoring at two of its suppliers factories in Indonesia and committed to publicly release the report's findings.

These initiatives partly drew on the experiences learned from the AIP, and perhaps demonstrated evidence of learning by the companies in the network. For instance, when the NLC released a report and sent a letter to the White House in September 1998 complaining of abuses at Liz Claiborne's supplier DoAll in El Salvador, it noted that the company was the co-chair of the AIP, and should therefore be held to a higher standard. Liz Claiborne did not react defensively. Rather its AIP representative Roberta Karp responded that its was working with the owners and managers to fix the problems, but the best way forward would be to continue to work through the AIP to pressure factory owners and foreign governments to change.<sup>45</sup>

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<sup>44</sup>Nike's hiring of former Ambassador Andrew Young to investigate its Vietnam factories, in response to the criticism of the March report by Vietnam Labor Watch, moved a step toward third party monitoring by NGOs. However, his June 1997 report was widely dismissed as a whitewash by NGO critics. Thus the May 1998 initiatives pledged not only to end child labor and to strengthen health and safety standards in its factories, but committed to allow some independent monitoring of its factories by NGOs; it did not, however, include any concessions on the wage issue. Yet in October 1998, Nike responded to the economic crisis in Asia by raising the wages of its workers in Indonesia by 25%.

<sup>45</sup>If Nike's and Reebok's initiatives showed some element of learning by the companies -- that for apparel companies it was no longer sufficient to adopt a code of conduct, or even to monitor the code internally, but that external monitoring by independent NGOs was the bar that companies would be expected to uphold to maintain the confidence of consumers -- it was far from the only example. For instance, another Kathie Lee Gifford contractor was exposed in December 1997 for sweatshop conditions; upon being informed, she immediately made good on her contractor's share of back wages, a positive step demonstrating responsibility toward the workers of her supplier (although she immediately ceased to do business with that contractor, contrary to the idea of working for continuous improvement). And the learning generated by the AIP was perhaps spilling over to companies outside the network; the Ralph Lauren Polo brand owned by Warnaco, no longer a member of the AIP, withdrew from Burma after discussions with the AIP about the exploitation of workers there. Similarly, in a September 1998 letter to the Labor Department, the American Apparel Manufacturers Association (AAMA) stated: "On that point [industry-driven standards], we would note a major trend within the apparel industry to develop codes of conduct to govern work place standards among manufacturers and their suppliers, both foreign and domestic. Driven not by government, but by the industry's own self-assessment that a safe, healthy, and legal workplace yields the highest quality products, apparel producers are devoting more resources to self-monitoring programs." See AAMA (1998).

#### **4.4 The Labor Department Adopts A Less Aggressive Approach as New External Actors Push the Process Forward**

When Alexis Herman took over as Secretary at the Labor Department, its No Sweat campaign continued, albeit in a less confrontational mode, which may have reflected a change in style more than a change in substance. As Reich noted at the time about the less aggressive, more cooperative approach, “Now that everyone knows there is a problem out there, and the industry knows it can’t duck its responsibilities, comes the hard and practical job of working out detailed solutions. Often that requires a quieter mode of operation.”(Cited in Varley, 1998: 11) Thus, in September 1998 the Labor Department announced that in lieu of the Trendsetters List, it would look for other innovative ways to recognize ‘best practices’ in the industry.

Meanwhile, new external actors emerged that began to compete with and have an impact on the network. Students on campuses across the country began to organize and press their universities to require adequate worker rights standards of the licensees making apparel for the universities. The first student victory came in March 1998 when Duke University adopted a code of conduct for its 700 apparel licensees, a move soon followed at other universities. The Collegiate Licencing Company through which many universities licensed their apparel began drafting its own code of conduct in 1998 to preempt the growing demands of the students. The Labor Department encouraged this student movement and in October 1998 hosted ‘No Sweat University’ at the Smithsonian Institution, a forum to provide college and university officials, students, and representatives from licensing companies and licensees an opportunity to explore strategies for developing and implementing codes of conduct. In fact, the students campaigns began to press even further than the AIP code of conduct called for, seeking to require the full disclosure of the suppliers and factories making apparel for licensees, demanding that only NGOs be allowed to monitor compliance rather than audit firms, and insisting on a living wage for workers.

Moreover, other efforts at voluntary code-building and monitoring were progressing and perhaps put pressure on the AIP to produce an effective and operational monitoring system. The most notable of these was the Council on Economic Priorities’ Accreditation Agency (CEPAA) Social Accountability (SA)-8000 standards and monitoring program, an effort initiated by companies and NGOs in early 1997 and in the process of being implemented by the end of 1998. Based on the principle of continuous improvement in the management systems of suppliers’ factories, aiming to certify individual factories rather than companies or brands, the SA-8000

code was in some respects more stringent than the AIP code because it included a requirement for a living wage covering basic needs and some discretionary income.<sup>46</sup>

#### **4.5 A Subgroup Pushes Ahead to Break the Deadlock and Potential for Failure**

As the negotiations dragged on into 1998, it was reported that, “The process hit a snag last summer when representatives of textile workers and other task-force members balked, complaining that the industry representatives weren’t serious about wages and worker’s bargaining rights.”(Feit, 1998) When the deadlock was finally broken on November 2, 1998, it was by a subset of the AIP members. This subgroup, composed of the NGOs the RFK Center, ILRF, LCHR, NCL, and the companies Liz Claiborne, Nike, Philips-Van Heusen, Reebok plus BSR, began meeting informally in the summer of 1998 to address the unresolved issues of the AIP. They had agreed on a draft preliminary charter over the terms of implementation of the code for monitoring and for an accreditation agency to oversee code compliance, to be called the Fair Labor Association (FLA), at a October 23 meeting in New York after an arduous negotiating process involving compromises by all the members.<sup>47</sup>(Manning 1999)

The nine members of the subgroup committed to moving forward on the basis of the preliminary agreement, and encouraged the remaining eight other AIP members to join. Four companies quickly signed on, Kathie Lee Gifford, Nicole Miller, Patagonia, and L.L. Bean. However, UNITE and the Retail, Wholesale, and Department Store Union complained the

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<sup>46</sup>Other efforts included: the American Apparel Manufacturers Association (AAMA) Worldwide Principles for Responsible Production (WRAP); a Basic Code of Labor Practice adopted in December 1997 by the International Confederation of Free Trade Unions (ICFTU) to serve as an aspirational model or benchmark for negotiations between management and labor; and in Europe, the Clean Clothes Campaign (CCC) and Base Code of the Ethical Trading Initiative (ETI) in the United Kingdom were tackling the same issues. Meanwhile, in August 1998, a New York law was passed after lobbying from UNITE adding the joint liability of manufacturers to the Hot Goods provision of the state’s labor laws -- demonstrating that domestic legislation and regulation was still an option if the industry’s self-regulation proved inadequate.

<sup>47</sup>“Nike, a company at the flashpoint of the Asian sweatshop controversy, was often at the center of the heated negotiations inside the partnership. At least one member said that the new agreement would not have happened without the company and its Washington, D.C. lobbyist Brad Figel. ‘There were times when Nike and Brad really held this thing together,’ said Kevin Sweeney, director of communications for Patagonia, a Ventura, Calif., outdoor apparel company.” See Manning (1999).

preliminary agreement had been offered on a take-it-or-leave it basis; they rejected it and withdrew from the AIP. So did the ICCR which announced after meetings with the other NGOs of the AIP that they could not agree to sign on.<sup>48</sup>

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<sup>48</sup>The ICCR did praise some elements of the final agreement -- notably the provisions on internal and external monitoring, the third party complaint procedure, and the companies' pledge to work in partnership to address sweatshop issues -- and held the door open to endorsement of a future strengthened Agreement. See ICCR (1998).

## 5. PHASE IV: AFTER NOVEMBER 1998: WHO'S DRIVING THIS VEHICLE? POST-AGREEMENT FALLOUT AND THE PROSPECTS FOR OUTSOURCING ENFORCEMENT OF LABOR STANDARDS TO PRIVATE ACTORS THROUGH THE FLA

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### **5.1 Critical Compromises on the Three Key Issues**

The companies had succeeded in holding the line in defining the minimum standards called for in the code of conduct in regard to the wages, freedom of association, and independent monitoring. However, the NGOs were able to persuade the companies to go beyond the Workplace Code, and commit the FLA to take practical steps to enable the association to revisit and address these issues constructively in the future.<sup>49</sup>

On wages, for instance, the FLA Charter calls for the Department of Labor to conduct a wage study to establish poverty levels and the basic needs of employees in the apparel and footwear industries around the world, and the relationship between minimum or prevailing wages and basic needs taking into account poverty levels. As UNITE (1998C) pointed out, the FLA Charter does not call for the FLA itself to establish a process to determine the living wage, as the NGOs had proposed, but rather commits the FLA to review the results of this wage study (and other existing research on methodologies used to study the purchasing power of wages in meeting basic needs), and to consider the implications for the Workplace Code, if any.<sup>50</sup>

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<sup>49</sup>For comprehensive analysis and views of the FLA, see among others: the Sweatshop Watch website at [www.sweatshopwatch.org/swatch/headlines/1998/FLA.html](http://www.sweatshopwatch.org/swatch/headlines/1998/FLA.html); the Department of Labor press release at [www.dol.gov/dol/opa/public/media/press/opa/opa98440.htm](http://www.dol.gov/dol/opa/public/media/press/opa/opa98440.htm); the LCHR website at [www.lchr.org/sweatshop/summary.htm](http://www.lchr.org/sweatshop/summary.htm); the ILRF at [www.laborrights.org/aip/assessment.html](http://www.laborrights.org/aip/assessment.html); and Global Exchange's analysis at [www.globalexchange.org/economy/corporations/sweatshops/fla.html](http://www.globalexchange.org/economy/corporations/sweatshops/fla.html).

<sup>50</sup>While a subtle difference, for the ICCR it may have been more significant in its view that the FLA does not sufficiently address the sustainable living wage issue: "A key criticism of religious groups is that the Agreement does not provide for a process to determine what is a living wage. While the Agreement calls for a Department of Labor wage study to compile existing wage data, the Fair Labor Association is not empowered to do the purchasing power studies necessary to determine whether or not wages are sufficient to meet a worker's basic needs and provide some discretionary income, according to Rev. Schilling." See ICCR (1998).

In regard to freedom of association, it was agreed to add a provision to the FLA Charter on ‘Special Country Guidelines’ that recognizes as one of the FLA’s goals the encouragement of positive change toward the recognition, respect and enforcement of these rights, in countries where such rights are routinely denied. Companies will be obligated under the FLA to take positive steps to ensure that employees have the ability to exercise these rights without fear of discrimination or punishment, and “shall not affirmatively seek the assistance of state authorities to prevent workers from exercising these rights.”<sup>51</sup> (AIP, 1998)

Finally, the percentage of external monitoring of factories was settled at 30% over the initial two to three year implementation period and 10% annually thereafter, which the unions and ICCR criticized as too low a threshold. Thus the AIP members built into the Charter a requirement for the FLA, after the association’s first three years of existence, to reassess the level of external monitoring necessary (at a statistically valid sample of not less than 5% and not more than 15%) to certify compliance with the FLA’s standards.<sup>52</sup> With approximately 5000 factories supplying the AIP members, this resolution reflected more pragmatic consideration as well: how to encompass enough of a brand’s production, be able to process the data, give consumers assurance, and yet not give companies a free-ride without earning it.(Harvey, 1999)

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<sup>51</sup>This is far from the maximalist position expounded by prominent FLA critics like the NGO Global Exchange, which maintained that the FLA should call on companies to advocate on behalf of political prisoners, especially union leaders, to pressure governments to pass and enforce laws on worker rights, to give financial support to human rights groups, and if no progress is made, to withdraw from those countries. See Benjamin (1999A).

<sup>52</sup>Critics have noted that this percentage excludes de minimus facilities (factories that make less than 10% of their production of a participating company) and that certification may be sought for a brand rather than the whole company’s production. Their concern is that even before certification a company could market itself as approved by the FLA, even though just a brand, and only 10% of that brand’s facilities -- not the entire company -- would be covered by external monitoring. On this point, the FLA’s defenders say that during the three year phase-in period, the companies will show whether they are acting in good faith, and if not, the companies will not be certified and the FLA will not work. The need for the FLA to reassess the wage issue and the percentage of facilities subject to external monitoring in the future also reflects the fact that these issues are not adequately addressed in international standards, according to Pharis Harvey of the ILRF.(Harvey, 1999)

## **5.2 Is the FLA Credible Without Unions?**

While the union members dropped out of the FLA, the labor-NGO ILRF voted to endorse the FLA despite internal opposition from union representatives. The ILRF felt that it was important for a pro-labor voice to advocate for workers within the FLA, in the hope that if it succeeds the unions could re-enter at a later time. The ILRF also felt that continued external pressure by unions and other informal actors would be crucial to holding the companies participating in the FLA accountable. Indeed, the negotiations may have been influenced all along by the companies' recognition of the possibility that the unions would never sign on to an agreement that even partially legitimizes the export of jobs.(Sweeney, 1997) Nevertheless, the FLA Charter does partly reflect the union agenda, and at least one of the unions held out the possibility of joining in the future.<sup>53</sup> Thus the absence of the unions by itself does not seem to pose an insurmountable obstacle to the credibility and effectiveness of the FLA's work.

## **5.3 Praise for First Step**

Moreover, the fact that the negotiations proceeded by consensus meant that, ultimately, the parties felt they gained by participating, and because they had 'ownership' of the final product, the FLA was more likely to be a robust and sustainable agreement. In fact, the LCHR's Executive Director Michael Posner captured the significance of the FLA, characterizing it a first step toward holding companies publicly accountable, and though easy to criticize, a breakthrough industry-wide standard for monitoring and reporting that would change how the apparel industry operates.(Light, 1998; Dow Jones, 1998) Indeed, the FLA was clearly in the

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<sup>53</sup>In contrast to UNITE's hardline opposition to the FLA, for Lenore Miller of the Retail, Wholesale and Department Store Union, the association would simply be another tool to help workers, which could neither accomplish, prevent, or replace the ultimate weapon for helping workers -- organizing. And so to prevent a split in the labor movement's position from becoming the focus of the press' attention, Miller agreed to sign on to a joint statement of non-participation with the AFL-CIO holding out the possibility of joining the FLA in the future.(Miller, 1998) Said Miller, "Labor's job is to push the envelope a little further... Of all such agreements I've seen this is the best of them. In my view, the door is not closed to labor's participation." As AIP co-chair Roberta Karp of Liz Claiborne said: "The unions were part of the deliberations. Their imprimatur is on the code and the monitoring principles...While it does not satisfy on all scores an entire union agenda, it does satisfy what we set out to do, which is to improve working conditions around the world." Both cited in Greenhouse (1998B).

interests of the participating companies.<sup>54</sup> Roberta Karp of Liz Claiborne foresaw that companies that joined the FLA and became certified would have an edge in appealing to consumers.(Szekely, 1998) Nike's CEO Phil Knight declared at the FLA's announcement that, "This is a historic agreement for everyone involved -- manufacturers, workers and nongovernmental organizations -- all who sought a level playing field within the global marketplace. It is a good beginning with more work still to be completed."(Cited in Manning, 1998)

If there was one actor in this trilateral network whose commitment may have been flagging, it was the U.S. government. Labor Secretary Herman released a short statement praising the agreement, and encouraged others to join; however, the prestige and backing of the White House was noticeably lacking at the announcement of the FLA Charter. In contrast to the launch of the AIP and the announcement of the Workplace Code, there was no highly visible public ceremony at the White House or praise from President Clinton. With the prospects at the outset of this experiment in privatized enforcement of labor standards uncertain, it is perhaps not surprising in the face of union opposition to the association that the Clinton Administration did not wish to expend significant political capital to promote the FLA on the eve of an election.<sup>55</sup>

#### **5.4 Learning: Building Institutional Capacities and New Political Spaces**

Indeed, the FLA Charter with its new means and goals reflected a great deal of learning among the actors in the network. In terms of the network's goals, the FLA aspires to: formalize public oversight; build NGO capacity in their roles as monitors, consultants to the monitors, or overseers filing complaints; provide information to consumers, allowing companies to compete for consumers on basis of working conditions as well as price and quality; and establish independent accredited external monitoring, and through an accrediting body, set standards for internal monitoring with transparency to the association.(ILRF, 1998) In terms of new means,

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<sup>54</sup>Too much in their interests, according to critics, who viewed the FLA as a recipe for business as usual, and even a step backwards, because they claimed companies would be able to market their products as sweatshop-free -- without actually making changes to sweatshop practices abroad. See Dow Jones (1998).

<sup>55</sup>A November 6, 1998 White House press release on the Clinton Administration's labor accomplishments does not even mention the AIP or FLA. See White House (1998).

the FLA system helps to: build NGO and union capacities to hold companies accountable; nurture respect for a union-building environment; put consumer pressure on companies from both inside and out to provide information on factory conditions; and it does not substitute dispute resolution by any body apart from worker organizations although it has independent means to verify if companies respond to worker complaints.(ILRF, 1998). In short, not only had companies come to publicly declare their responsibility for workers making their products, but detailed and credible enforcement mechanisms had been devised to operationalize and begin a process to make good on that responsibility.<sup>56</sup>

If these efforts are to succeed, then, the key will be in developing the institutional capacities of companies and of NGOs and unions to undertake monitoring. For companies, this entails building the external capacities to communicate with the public, to partner and consult with NGOs, and to communicate with workers, and the internal capacities to manage such issues.<sup>57</sup> Nike, for instance, has engaged in several capacity-building initiatives.(Schmit, 1999) Internally, the company's oversight capacity has been strengthened: it now has 28 people working on labor issues as opposed to none three years ago; three years ago, Nike's on-site production manager in each plant was not required to monitor working conditions at all, but

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<sup>56</sup>To see how radical this seemingly simple formulation is, compare it to the actions of one large manufacturer outside the network, the California apparel maker Guess, Inc.. In July 1999, Guess settled a 1996 lawsuit backed by UNITE for up to \$1 million, which had emerged out of an union organizing drive at the company in 1996, alleging underpayment by contractors for Guess in the U.S.. Without admitting wrongdoing (the company was particularly vulnerable because it had signed an agreement with the Department of Labor promising to monitor its contractors for compliance with wage and hour violations), the company said it only settled the suit because of mounting legal bills: "None of this has been proven. It's all hearsay," [Guess attorney Glenn] Weinman said. "These people were not our employees. They worked for our contractors, and those contractors were not working exclusively for Guess...We've always denied liability," Weinman added. Since then, Guess has moved most of its production to Mexico and the union's organizing drive is on hold. Cited in Cleeland (1999B).

<sup>57</sup>Doug Cahn of Reebok summed up the state of the art on developing internal capacity at a June 25, 1998 Ethical Trading Initiative (ETI) seminar with the following observations, among others: gaining the trust of workers requires monitors of the same age and gender as the workers; empty worker questionnaires mean more education is needed; direct channels of communication need to be established with workers; companies need to work with NGOs; scheduled inspections show that the company is committed to implementing a monitoring system and making real changes, while unscheduled visits verify the permanence of the changes; focusing on all aspects of a code at once will fail, so there is a need to prioritize; creating a corporate culture that values social responsibility requires getting senior management on board, with direct links to the CEO if possible; and quality-control inspectors can be trained as an additional set of eyes, to be an early warning system. See Cahn (1998).

today spends 20% of his or her time on monitoring; and concern for working conditions has been forced down the supply chain as higher standards have been required of sub-contractors supplying Nike's contractors. Nike has sought to improve communication among workers and managers by training factory managers in the local language and culture; it has fired at least ten managers for poor behavior in recent years. Nike has allowed some independent monitoring of health and safety conditions at its Vietnam factories. And in an effort to improve the lives of workers and their communities, in 1999, Nike formed the Global Alliance for Workers and Communities together with Mattel, the International Youth Foundation, the World Bank and the MacArthur Foundation. This effort aimed to encourage dialogue among the workers and managers by including workers in decision-making teams to address the development needs of the workers and their communities. ("Global Alliance," 1999)

Companies have also become more adept at communicating their message to the public, particularly through the use of effective websites that confront the sweatshop issue in a forthright and accessible manner for consumers. Simply addressing the matter publicly shows a new level of appreciation by companies of their social responsibilities to workers and consumers. Thus in October 1999, Reebok made public the full results of an independent monitoring pilot program initiated in May 1998 at two of its Indonesian factories, including both the poor conditions that were found, the steps it has taken to address the problems, and the lessons it has learned from the reporting and monitoring experience.<sup>58</sup>

According to Pharis Harvey of the ILRF, codes of conduct are meant to regularize the relationship between workers and managers. Monitoring systems, therefore, should aim to help workers form unions or, at a minimum, to create a more conducive environment for labor in which new channels of cooperation between workers and managers can be fostered. (Harvey, 1999). Building NGO capacity to monitor is crucial in this respect. Thus the ILRF initiated a

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<sup>58</sup>Notably, Reebok found that, in spite of the \$35,000 it paid for the report itself and the more than \$500,000 for factory improvements that it required from its suppliers, improving conditions does not have to cost a lot of money: because violations are often not intentional, it is mostly a matter of improving communication between management and workers. Moreover, corporate social responsibility helps to improve productivity by fostering a culture of learning and innovation to find better solutions to problems. (IHS, 1999) While Reebok's report received positive reviews from critics who compared it to the 1997 Young report for Nike, some were not convinced. Jeff Ballinger, of the labor NGO Press for Change, chided Reebok, "This is the company that moved to China and Indonesia to get away from union contracts...They say that this is a communication problem. It's really a power distribution problem. These workers lack the power to represent themselves." (Cited in Krupa, 1999).

project in June 1999 to prepare local NGOs in the South for the FLA monitoring process. Supported by funding from a group of colleges and universities, this one year pilot program with a total budget of \$200,000 is aimed at increasing the capacity of NGOs (including unions) in four countries in Latin America and Asia to participate effectively in the monitoring process, to develop materials and protocols for the FLA to use in the future to train NGOs, and to identify NGOs which might be accredited by the FLA.(ILRF, 1999)

### **5.5 Operationalizing the FLA: Staffing and Financing**

A year after the FLA's announcement, and three years after the establishment of the AIP, the operationalizing of the FLA has had mixed success. The FLA has a charter, but still lacks full-time staffers. Only in September 1999 did it name a Chair for the Association's Board of Governors, former White House Counsel Charles Ruff, who will participate in recruiting FLA staff, starting in the near future with the Executive Director. The FLA Board is currently engaged in working out protocols for a meaningful monitoring accreditation process. Active operations are set to begin next fall, with the first inspections expected in early 2000. Having pushed this start date back several times already, the slow timetable may reflect the sense of the FLA members that, at this juncture, it would be better to get things right so the system is workable rather than simply to rush ahead.(Nolan, 1999)

Operationalizing the FLA, which is incorporated as a non-profit, also requires securing the financing that will make the association sustainable. The financing is expected to come from three sources: the U.S. government, other non-profit foundations, and annual assessments of member companies. Some start-up funding commitments have been secured from the State Department and Agency for International Development.(Nolan, 1999) Ultimately, the bulk of the funding will have to come from the annual assessments of companies, which will range from a minimum \$5000 to a maximum \$100,000 for a company with revenues over \$10 billion.<sup>59</sup> However, during the implementation phase, companies will be reimbursed by the association for the costs of external monitoring at a rate of 50% in the first year, 40% the second and 30% the third. This will only apply during the first five years of the FLA's existence, to lower the up-

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<sup>59</sup>UNITE has raised the possibility that such relatively low company assessments will assure that the FLA will be chronically underfunded and incapable of doing its job appropriately.(1998C)

front cost burden for companies that might inhibit them from joining, and as an incentive for companies to join at the FLA's launch rather than later.

### **5.6 Operationalizing the FLA: Bringing in New Members to Sustain the Network**

The FLA's success will hinge also on its ability to recruit new members, an effort in which it has only been partly successful. Indeed, there has been no rush by apparel manufacturers to join the FLA. In July 1999, Levis Strauss joined the FLA, a logical step for the company, building on its experience of internal monitoring of its own code of conduct.<sup>60</sup> Levis, in fact, had not participated in the AIP up to that point because its own monitoring program was already operational while the FLA was under discussion. Moreover, while it had resisted calls for external monitoring, it had developed independent evaluation pilot projects with NGOs during 1998 to review compliance in the Dominican Republic and Philippines which helped it refine its internal monitoring process. Its decision to join the FLA (and in Europe the ETI) was partly a result of its recognition of how difficult and time consuming the independent monitoring process could be for one company on its own.(Rajan, 1999)

Leading U.S. manufacturers not yet participating in the FLA can expect growing pressure to join, especially as the association becomes functional and monitoring begins in the next few years, raising consumer awareness. The company members of the FLA are doing their best to encourage others to join. Reebok's 1999 report, for instance, sought to encourage other MNCs to open the doors to monitoring by demonstrating that companies did not need to be fearful of

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<sup>60</sup>According to Gare Smith, Vice President for External Affairs of Levis, "In joining, we saw the opportunity to help shape an industry-wide approach to codes of conduct and independent monitoring. We believe that this approach will level the playing field for companies that take the rights of their workers seriously and build consensus among a broad range of a stakeholders. Both groups add a level of transparency to the work we have been doing for the past eight years. In addition, the FLA provides us with a framework for independent monitoring and offers economies of scale associated with contractor inspections."(Smith, 1999)

external monitoring and that possible embarrassment about exposure of abuse should not prevent companies from joining the FLA.(Fireman, 1999B)

In spite of the fact that this global public policy network is emerging from the actions of actors in the U.S., it may acquire a more open universal character as foreign companies join and activist campaigns gain strength abroad. In fact, German-based Adidas joined the FLA in July 1999, responding to a Clean Clothes Campaign (CCC) report on abuse in its supplier's factory in El Salvador.<sup>61</sup> Many European companies have adopted codes of conduct, but have resisted independent monitoring, but the growing momentum in Europe of activists campaigns means that European companies that have avoided the public pressure facing American producers may no longer be able to do so. The U.S. government has attempted to encourage this trend, holding an EU/U.S. symposium on codes of conduct in December 1998, for instance, to discuss joint initiatives to promote standardization and monitoring of corporate codes.<sup>62</sup>

The biggest success of the FLA in recruiting new members to date has been to coopt the growing student movement at college campuses across the U.S.. In response to pressure from Secretary Herman, the four NGOs of the FLA, and heavy lobbying by Nike (the subject of most of the campus organizing), seventeen universities decided to affiliate with the FLA in March 1999 to utilize the association for monitoring its licensees. This move came despite opposition from the main student group United Students Against Sweatshops (USAS) which continued to push for full disclosure of all supplier factories, living wages, and independent monitoring by NGOs.<sup>63</sup> In fact, changes were proposed and made to the FLA Charter in June 1999 adding a

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<sup>61</sup>“Our brand is associated with high ideals such as commitment and honesty, and consumers need to be sure that these words apply to our supply chain as well as sports arena,” said David Husselbee, Adidas’ director of social and environmental affairs (--formerly of Save the Children, the NGO that led the effort against child labor in Pakistan’s soccer ball industry). Cited in Echikson (1999).

<sup>62</sup>Together the U.S. and EU account for 40% of global apparel consumption, so this market power combined with the same minimum standards as the floor for competition, could largely help to eliminate the ‘race to the bottom’ for worker rights.(Echikson, 1999) Additionally, in Canada in May 1999, the federal government, labor groups (including the Canadian UNITE branch), religious and NGO representatives met with retailers and manufacturers to form a joint working group to develop a Canadian basic code of labour practice to safeguard worker rights in consumer products initially, and then to look at supplier compliance over the next six months. See Canada Newswire (1999).

<sup>63</sup>USAS’s demands closely mirror the NGO and unions agenda, unsurprisingly, since they have joined with the ICCR, NLC, Global Exchange, and UNITE to formulate their demands and put forth an alternative draft code for

university representative to the FLA board with full voting rights in the association's governance (elected by a university advisory council of affiliated universities), laying out the criteria required of licensees, and establishing a full time FLA staff person who will report back to the advisory council. To date, over 100 universities have affiliated with the FLA, giving the nascent association a major boost.

The inclusion of the universities has also opened the door to new issues that may push the FLA to broaden its scope in the future. Notably, the universities and students have pushed two issues that they see as necessary to strengthen the FLA, looking to see how the association can encompass specific provisions regarding women's rights and placing disclosure of factories onto the FLA's agenda, even if as a long term goal.<sup>64</sup> In fact, Nike responded in October 1999 to this pressure by disclosing all the factories producing for five universities using Nike as their licensee, a significant move since previously the companies had argued that disclosure of such information would undermine a company's competitive advantage.<sup>65</sup> Yet as Roberta Karp of Liz Claiborne stressed, even though universities were free to demand higher standards of their licensees, the FLA itself would not agree to complete disclosure of its monitoring reports. (Greenhouse, 1999A)

If the universities joined the FLA in order to placate the protesting students, the move backfired; the students immediately began to push their demands harder. The strong criticism

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monitoring. In fact, many of the USAS members began their involvement as 'Summeristas' -- student interns with UNITE as part of a AFL-CIO sponsored program for college students.(Wall Street Journal, 1999) Thus, to some extent, the unions have found in the student movement, via the universities affiliated with the FLA, a way to effect the FLA through the backdoor.

<sup>64</sup>The university role in the FLA may promote spillover to other industries, especially since universities may begin to require licensees for all products made for them to adhere to the standards enumerated in the FLA. See Durkee (1999)

<sup>65</sup>According Nike's manager of labor practices Simon Pestrige, "If a university decides that disclosure is the way to go, then that university has an absolute right to know where that product is produced. We've never disagreed with the philosophy that students and universities have a right to know that." (Cited in Greenhouse, 1999B) The NLC's campaign, along with several other NGOs, had been pushing this as the best alternative to the FLA to enforce labor standards. As Medea Benjamin of Global Exchange made clear, "A better watchdog mechanism would require companies to publicly disclose the names and locations of the factories making their products. Consumers and human rights groups could then make direct links with employees to hear their concerns and support their demands." (Benjamin, 1999B)

from students at universities that joined the FLA has been a handicap for the FLA as it has attempted to get off the ground.<sup>66</sup> USAS claimed that for those universities with a code of conduct, affiliating with the FLA was a step backward; for those universities without a code, the student organization sought a 'good' code of conduct, and was opposed to affiliation with the FLA. USAS thus proposed an alternative model code in November 1999, the Worker Rights Consortium, with provisions for a living wage, a wage floor for contractors, and full public disclosure.<sup>67</sup> Clearly intended to spur the FLA to move toward the student demands, at the same time, it threatens to delegitimize and derail the FLA as USAS actively campaigns against it.<sup>68</sup>

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<sup>66</sup>According to Michael Posner of LCHR, "It doesn't solve all the problems. But to try to destroy it before it's even up and running would be counterproductive. Let's give it a chance to work and then build on what we learn from it."(Cited in Greenhouse, 1999A)

<sup>67</sup>According to USAS, "The Worker Rights Consortium does not aim to set up a permanent system of factory policing, contributing to the privatization of national labor law enforcement. Rather, the Consortium aims to build the capacity and open up the space for workers and their allies to advocate on their own behalf." To some extent, this proposal is complementary to, and not a substitute for, the FLA because it would increase the base of information and monitoring of factories, but without financial resources and industry backing, it does not offer a comprehensive monitoring system like the FLA. See the proposal at the NLC website: [www.nlcnet.org/elsalvador/wrcandes.html](http://www.nlcnet.org/elsalvador/wrcandes.html).

<sup>68</sup>Others informal network members have opposed the FLA as well: in August 1999, the United Church of Christ voted to oppose the FLA, calling for a more credible agreement with requirements for a living wage, and monitoring not controlled by the companies.(Stop Sweatshop News, 1999)

## **5.7 Evidence on Compliance and Network Impact so Far**

The dilemma for companies posed by the FLA is that if they do not accede to the code, they will continue to be targeted, but if they do, activists will find cases where they fail to live up to code and they might find themselves in a more difficult bind than before.(Business Week, 1998) Reebok, for instance, has taken several steps to encourage worker input and complaints against managers, either by phone or in suggestion boxes or prepaid mailing envelopes attached to pay stubs.(Buzbee, 1999) It has facilitated worker participation in training programs by the American Center for International Labor Solidarity of the AFL-CIO in five factories in Indonesia from late 1998 through 1999 to teach freedom of association skills. And in early 1999, Reebok's CEO took the step of publicly releasing a letter sent to the Indonesian government urging the release of an imprisoned labor rights activists. Yet the company is still criticized by activists for running sweatshops and their motives for taking these initiatives are still challenged.(Campaign for Labor Rights, 1999B)

Nike, too, has made strides, demanding that its contractors in Vietnam give workers what they want -- a day off and double time pay for overtime work, for instance. The company has worked for cleaner air in its factories, banned training wages, and has allowed no minimum wage exemptions in Vietnam since 97.(Schmit, 1999) However, other actions taken by Nike have stirred doubt among NGOs as to the sincerity of their commitment to the principles of the FLA and the feasibility of the entire effort. For instance, doubt has been cast on the good faith of

Nike to consult with NGOs as called for in the FLA after one of its executives in Vietnam undermined the efforts of an NGO involved in monitoring its operations in that country.<sup>69</sup>

Other FLA members have come under scrutiny. Philips-Van Heusen has been criticized for closing down its Guatemala factory in December 1998 shortly after its workers organized a union there in March 1997, raising questions about its commitment to the right of workers to organize freely and bargain collectively.(USAS *et al.*, 1999) In spite of spending \$500,000 for her own monitoring, Kathie Lee Gifford once again came under criticism from the NLC, which claimed in September 1999 that abuses in the Salvadoran factory making clothing for her label showed that, “none of Gifford’s promises have been kept.”(Dobnik, 1999) Thus it is unclear at this point whether global social capital has resulted from the AIP effort or whether instead mistrust is simply magnified when incidents such as these test the commitment of companies and NGOs alike to the minimum standards and principles of the AIP code of conduct and FLA monitoring.

Finally, the widespread sweatshop abuses claimed by NGOs against the contractors making apparel for leading U.S. manufacturers in the U.S. territory of Saipan are cited as evidence that nothing much has changed in the industry in spite of the efforts of this emerging global public policy network. In fact, a new campaign against the Gap, which is not a FLA member, was launched in October 1999 because the company refused to agree to independent monitoring in Saipan or enter into dialogue with the NGOs investigating working conditions in Saipan.(Cleeland, 1999A)

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<sup>69</sup>The January 29, 1999 letter by the Nike executive in Vietnam criticizing the NGO Vietnam Labor Watch elicited a response from the four NGOs of the FLA which urged Nike to take steps to redress the damage. Nike did make some efforts in this regard, but was criticized for not fully repudiating this action.

## **5.8 Future Challenges for the FLA: Public Pressure, Consumers, Rival Monitoring Programs and Unintended Consequences**

Two assumptions underlying the prospects for the FLA's success in the future have yet to be tested: that public pressure will continue to hold companies accountable, and that consumers will play their part by rewarding companies in the marketplace that assume their social responsibilities and punish those that do not.<sup>70</sup> Public and media attention may fade over time, at which point it is unclear if companies will go back to 'business as usual' or whether, convinced that this issue is not going away, they will have integrated social responsibility into their normal business operations.<sup>71</sup> Consumers, on the other hand, may be subject to the collective action

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<sup>70</sup>Reebok's Chairman and CEO Paul Fireman clearly believes consumers will play this role: "As concern for human rights issues grows among consumers, particularly younger consumers, we believe our leadership and reputation will translate into greater preference for our brands and products." See Fireman (1999A).

<sup>71</sup>For some of the FLA members, this point is already settled. According to Roberta Karp of Liz Claiborne, "Firms have to understand that business as usual is no longer an option." Moreover, "You have to have transparency, you have to have input from people outside industry, rather than hoping you can keep flying under the radar screen... This issue is not going away." Cited in Collier (1999).

dilemma, knowing that their individual choices matter little to the overall outcome, and thus might fail to participate.(Laurence, 1999)

Free-riding by non-FLA companies may also be a major threat to FLA's viability. Indeed, the proliferation of monitoring schemes raises the possibility that non-FLA companies might find potential avenues to escape their responsibilities through less stringent requirements or by shifting the primary responsibility onto their suppliers.<sup>72</sup> Nevertheless, the proliferation of monitoring programs is likely to have beneficial consequences for raising minimum labor standards. Indeed these programs may be complementary -- a factory-based certification program would clearly close many of the loopholes in a brand or company-based certification program. Thus their promoters are seeking ways to enhance the overlap and cooperation among the different programs to maximize the potential impact of monitoring. There is also a natural competition among these programs to recruit members and prove their worth and effectiveness that is likely to raise the floor for standards in the apparel industry overall.

Finally, one of the unintended byproducts of the network may be to generate a new consensus about the responsibilities of business for the working conditions of their supplier's workers around the globe. Thomas Friedman has noted one example, observing that a supplier for the Limited Co., which has not joined the FLA, has demanded from its supplier in Sri Lanka that it improve working conditions at its factories. In essence, the nature of competition has been redefined around the notion that working conditions are just as important a factor in competitive advantage as price and quality today.(Friedman, 1999B) Thus like the U.N. Code of Conduct, the FLA may paradoxically succeed even if it fails operationally, because it could generate new

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<sup>72</sup>Along with the CEP's SA-8000 code and Accreditation Agency, and the AAMA's WRAP factory certification program launched in October 1999, several other monitoring program may find themselves competing to recruit companies. Members of the ETI are committed to self-reporting on adherence to the Base Code and carrying out pilot monitoring programs. The Dutch branch of the CCC has developed the Fair Trade Charter and Foundation. And several companies have agreed to an independent monitoring program to settle a lawsuit seeking redress for their supplier's working conditions in Saipan which could become a model for other monitoring efforts.

knowledge about the social role and responsibilities of MNCs in the global economy that will inform other efforts in the future.(Weiss, 1989)

## 6. PHASE V: LOOKING FORWARD -- THE REGULATORY APPROACH AND THE ROLE OF INTERNATIONAL ORGANIZATIONS: SUBSTITUTE OR COMPLEMENT TO THE FLA?

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Whether public and consumer pressure will keep up; whether companies and NGOs can develop the internal capacity; whether the FLA can develop the institutional capacity to carry out monitoring -- all of these are short-term threats to the FLA. However, perhaps the greatest challenge to the FLA's viability, is that the very purpose of the FLA, which has emerged from the failure of the regulatory approach, is to serve as a short-term fix until long-term changes at the public level can be made. There is a danger, then, that the FLA may impede progress, becoming an excuse for not doing more to make the required long-term changes that can really address the problem and that are not subject to the short-term weaknesses of the FLA. Yet, the increasing salience of this issue and the commitment of companies to the privatized enforcement of minimum labor standards is likely to have a spillover effect in public initiatives to enforce minimum labor standards.<sup>73</sup>

In fact, the regulatory approach to enforcing labor standards has reemerged in the labor-trade linkage debate in negotiations for the multilateral trade regime. Indeed, as the WTO readies itself to launch a new round of trade liberalization talks in November 1999, the issue of a social clause has reemerged with renewed strength, and not just because of the efforts of NGOs and organized labor to place it there. Both the U.S. proposal of a working group within the WTO and the EU proposal for a joint WTO-ILO working party to study the labor-trade linkage reflect the emerging consensus in the U.S. and the EU that new trade agreements can only be sold to domestic constituents if this issue is addressed. Although such proposals have met vigorous opposition from developing countries, the possibility that they might accept the inclusion of this issue on the trade agenda in exchange for concessions in other high-priority areas is growing.<sup>74</sup> What is different this time from 1996 when the linkage was last proposed at

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<sup>73</sup>For instance, after lengthy negotiations among labor advocates, industry manufacturers and retailers, California adopted a tough new law in September 1999 to fight sweatshops which imposes a 'wage guarantee' for workers and joint liability to hold manufacturers accountable.(Sweatshop Watch, 1999)

<sup>74</sup>For instance, in the negotiations for a Free Trade Agreement of the Americas (FTAA), the developing countries of the Americas have agreed to the U.S. proposal to place this issue on the agenda.(Pearlstein, 1999)

the WTO is that some MNCs are much less hostile to the idea, a change at least partly attributable to global public policy networks such as the AIP/FLA.<sup>75</sup>

Other multilateral institutions such as the ILO may be well-placed to enhance the networks' private enforcement of labor standards by initiating and assisting unions and employers to develop and implement codes of conduct. In this regard it may be significant to note the influence of the 1977 non-binding ILO Tripartite Declaration of Principles on Multinational Enterprise and Social Policy as an instrument for change and a reference point or benchmark for best practice for companies, unions, and governments to turn to as they seek to resolve disputes. Rather than look to the Tripartite Declaration as a mechanism of soft international public law in itself, the ILO could significantly advance the cause of promoting

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<sup>75</sup>Levis, for instance, has publicly called for the inclusion of a social clause at the WTO as well as in other multilateral fora. (Smith, 1999) And the U.S. Business Principles for China, a code of conduct endorsed in May 1999 by Mattel, Levis, and Reebok, and formulated by the ILRF and Global Exchange, may see new adherents as China is brought within the WTO's ambit. See Global Exchange (1999). Furthermore, ILO Executive Director Juan Somavia has observed that the trend of businesses adopting codes of conduct underscores a new consensus that social justice and economic growth are not mutually exclusive, but mutually reinforcing, and is indicative that business is aware of its social responsibilities. Said Somavia, "Even more, and this I find really intriguing, I get the feeling that business is becoming more aware that following for example good labor standards contributes to long term profitability. Perhaps one day soon Wall Street will start paying attention to labour standard performance as an indicator of the internal health of companies and thus of their future earnings potential." (Somavia, 1999A) Somavia's words were prescient, as in September 1999 the Dow Jones company introduced a new set of global stock market Sustainability Indexes that do indeed look at social and labor standards as benchmark indicators of future profitability. (Dow Jones Sustainability, 1999)

worker rights through the private enforcement of global public policy networks such as the FLA by offering its support and expertise to business and unions in using ILO standards as benchmarks for corporate practices, and in developing systems of labor inspection and verification. At a minimum, the ILO could serve to coordinate the various private monitoring programs that are emerging and help bring some uniformity to the competing standards they promote.

Nevertheless, the last time public code building was attempted at the ILO, the effort was supported by workers, governments were generally ambivalent, and business was hostile. In the current international environment, with a more receptive business sector, newly empowered workers in the South and newly reinvigorated unions in the North, the timing may be auspicious for governments to renew their commitment and devise more stringent enforcement mechanisms for implementing the Tripartite Declaration. Coupled with support for the June 1998 ILO Fundamental Declaration on core labor rights, and the June 1999 Convention on Child Labor, a renewed commitment by governments to implementing the ILO Tripartite Declaration could mark a turning point for global worker rights and the effort to give globalization a human face, to create what ILO Executive Director Juan Somavia has called 'Decent Work' for workers all over the world.<sup>76</sup>

As the FLA and other private enforcement systems are implemented in the coming years, the ILO and its member states may find this combination of public and private initiatives -- with

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<sup>76</sup>Somavia's (1999B) vision calls for a pragmatic results-oriented approach, with an understanding of the developing world's needs, and has four goals: fundamental principles and rights at work; greater opportunities for women and men to secure decent work and income; better social protection; and stronger relationships and dialogue between governments, workers, and unions to secure these goals.

the support of business and human rights and labor NGOs -- to be mutually reinforcing and capable of generating a robust and sustainable global public policy network for establishing minimum international labor standards.

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