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Vicki Crinis^a

^a Centre for Asia Pacific Social Transformations Studies (CAPSTRANS), Faculty of Arts, University of Wollongong, NSW, Australia

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Sweat or No Sweat: Foreign Workers in the Garment Industry in Malaysia

VICKI CRINIS

Centre for Asia Pacific Social Transformations Studies (CAPSTRANS), Faculty of Arts, University of Wollongong, NSW, Australia

ABSTRACT *In the last decade factory owners, in response to brand-name Corporate Social Responsibility (CSR) parameters, have joined associations that verify (through a monitoring and audit system) that management does not exploit labour. There have been no reports of violations of codes of conduct concerning Malaysian workers but for foreign workers on contract there are certain areas that have been reported. These areas, including trade union membership, the withholding of workers' passports and unsuitable accommodation, generally escape notice because auditors who monitor factory compliance do not question the terms of contracts as long as they comply with national labour standards. This paper is based on research with foreign workers in Malaysia and argues that despite the success of the anti-sweatshop movement in a global context, the neo-liberal state in Malaysia continues to place certain restrictions on transnational labour migrants which breach garment industry codes of conduct. Available evidence does not support the assumption that CSR practices provide sufficient protection for both citizen and foreign workers on contract in the garment industry.*

KEY WORDS: Corporate Social Responsibility (CSR), codes of conduct, contract, foreign workers, garment industry

In a media report aired on national television in Australia in 2008, labour activist Mike Duffy (2008) claimed Vietnamese workers were being exploited in a Malaysian factory. The most significant claim in the report he detailed was not about the workers but the brand name of the garments produced in the factory. The report exposing labour exploitation is part of the naming and shaming strategies of anti-sweatshop labour activists against global brand-name buyers.¹ On a local level the exposure is detrimental to the manufacturing industry because unless action is taken by the manufacturer to ensure minimum labour standards, this brand-name company will stop placing orders with manufacturers in Malaysia.

Globalisation brought new challenges to labour activists to stop the spread of sweatshops and exploitation of workers in developing countries (Ross, 2004). The activists focused their attention on the brand-name buyers and retail giants who have their garments manufactured in low-wage countries where workers often face

Correspondence Address: Vicki Crinis, Centre for Asia Pacific Social Transformations Studies, (CAPSTRANS) Faculty of Arts, University of Wollongong, Room 1007, Building 19, Northfields Ave., North Wollongong 2500, NSW, Australia. Email: verinis@uow.edu.au

exploitative working conditions. In buyer-driven global commodity chains, brand-name companies do not manufacture their garments, but attain a high economic rent through marketing and creating brand “image” to which consumers aspire (Barrientos, 2002: 65). In this buyer-driven system the owners/directors of the brand-named company, usually from the West, maximise their profits by forming a global commodity chain that undermines wages in developed countries and keeps wages low in developing countries (Gereffi, 1994). At the same time these buyers create high levels of competition among manufacturers in developing countries. According to global commodity chain analyses, this type of pressure is more likely to be extreme among manufacturers that produce for the low end of the market (mass consumption) than in countries, such as Malaysia, that are not involved in mass production but produce for the high end of the export market. It is also assumed that in the global commodity chains where manufacturers complete full package production for the high end of the apparel market and levels of technology and skill increase, workers have more bargaining power.

However, this is only one side of the story; labour relations are far more complex and this is exemplified when manufacturers producing for the high end of the market employ foreign workers. The government in Malaysia allows manufacturers in the garment industry to recruit foreign workers on short-term contracts from less-developed nations in the region. These workers have less industrial power than citizen workers and have proven to be more flexible workers in an industry that relies on a quick response to seasonal changes. At the same time, neo-liberal states such as Malaysia have been effective in preventing the growth of a strong labour movement across Southeast Asia, resulting in a combination of flexible workers with little worker protection (Crinis, 2002).

It is assumed, however, that when corporate social responsibility (CSR) initiatives are introduced, all workers in a factory, whether citizen or foreign, are included under the minimum labour standards. So while the codes have played a role in reducing child labour and addressing health and safety issues in many developing countries, in Malaysia there are certain grey areas for foreign workers on contract, such as overtime rates, trade union membership, unsuitable accommodation and the withholding of workers’ passports, which are not usually reported. These issues generally escape notice because auditors who monitor factory compliance are not in a position to question national labour standards.

Overall, we know little of how these codes are monitored. Monitoring reports are very confusing and tell the reader very little about the working conditions in particular factories. For instance, in many audit reports the factories have numbers rather than names and, according to Worldwide Responsible Accredited Production (WRAP) and Social Accountability, SA8000, factory names are not disclosed in the report unless permission is given by the company. In tracking charts of six Malaysian factories submitted to the Fair Labour Association (FLA) by independent monitors in 2003, the areas of health and safety are reported in great detail but the section titled “Freedom of Association and Collective Bargaining” is left empty in the tracking charts of the six factories monitored. The section on “Wages and Benefits” notes that workers must be paid the minimum wage required by local law and under the section titled “Hours of Work” workers can work only the overtime allowed by the laws of the country (FLA, 2003). While the laws of the country are usually in line

with International Labour Organisation (ILO) labour standards, certain national laws surrounding trade union membership and minimum wages have been adjusted to meet the needs of the developing state and export manufacturing industry.

According to the main critics of CSR and codes of conduct, there is insufficient close empirical scrutiny happening in developing countries. This paper provides empirically-based research on garment manufacturers, CSR and foreign workers in the garment industry in Malaysia.

While there have been a number of studies on foreign workers in the domestic and service sector – except for Pangsapa and Smith's (2008) article (which looks at the working conditions of migrant workers in garment factories in the borderlands of Thailand within the context of the governance of the global supply chain) and an earlier paper by Arnold and Hewison (2005) on Burmese workers in factories in Thailand – there is a limited amount of information on foreign workers in the manufacturing industries of Southeast Asia. This is surprising considering that in Malaysia the largest percentage of foreign workers are employed in the manufacturing industries. This paper addresses both the gap in the literature on foreign workers in the manufacturing industries and the ways that corporate initiatives do not recognise the differences between foreign workers and citizen workers. This study of foreign workers in the garment industry in Malaysia is part of a larger collaborative project of the garment industry in the Asia-Pacific since the end of the Multi-Fibre Arrangement.

The research for this paper is based on fieldwork conducted between 2005 and 2008. Ten key sub-contractors/manufacturers in the garment industry, the president of the Malaysian Textile Manufacturers Association, the president of the Malaysian Knitting Manufacturers Association (MKMA) and six key respondents from the Malaysian Trades Union Congress (MTUC) and the Textile Trade Unions were interviewed between 2006 and 2007. While no government officials were interviewed, government publications and the *New Straits Times* (NST) were utilised to indicate the government's position on labour standards and export manufacturing. A sample group of 20 Malaysian workers were interviewed in May 2008 as well as 20 foreign workers who were interviewed outside their workplaces in September and October 2008.

The interviews with industry and union personnel were conducted in official factory and union offices using a tape recorder with set questions and open-ended answer technique. The interviews with Malaysian workers were conducted in trade union offices and outdoor eateries in the company of trade union officials. The interviews with foreign workers were facilitated by trade unionists and non-governmental organisations (NGOs). Interviews with Vietnamese workers were conducted in collaboration with Professor Angie Ngoc Tran, an expert in the study of Vietnamese labour relations. For these interviews it was necessary to use a search and snowballing technique whereby workers are approached outside their place of employment. The research was explained to the worker and if the worker agreed to an interview, a time and place was organised. Once the worker was interviewed he/she assisted in finding other workers who were willing to be interviewed.

The paper is divided into three sections, with the first section providing an outline of the history of CSR and the debate concerning the negative and positives aspects of codes of conduct. The second section highlights the response of the Malaysian garment industry to CSR and codes of conduct. The third section discusses the

labour standards of Malaysian workers and the experiences of foreign workers in comparison and highlights the grey areas between contracts and codes of conduct.

The Garment Industry: Brand-name Manufacturers and Codes of Conduct

For over two decades the anti-sweatshop movement has successfully highlighted the exploitation of workers by sub-contractors producing garments for brand-name corporations in the clothing, textile and footwear industries. As a result, CSR has now become the mainstream direction adopted by brand-name designers for dealing with wayward manufacturers and labour exploitation. CSR is a voluntary form of self-regulation that involves buyers setting labour standards based on ILO principles, manufacturers adopting codes of conduct and a monitoring system that investigates the results in the sourcing factory. The core standards set by the buyers centre around prohibitions on child labour, forced labour, non-discrimination in the workforce, the right to associate, and the right to bargain collectively; or national labour standards.

International labour activism, more specifically the anti-sweatshop movement, started in the 1970s when globalisation of garment production did not parallel the globalisation of worker protection. During the following two decades, the anti-sweatshop movement grew in momentum. In Europe, the UK and the USA, international labour rights groups, including Behind the Label, Clean Clothes Campaign, Maquila Solidarity Campaign, NoSweat, Working Women Worldwide and the United Students against Sweatshops, pressured associations such as the World Trade Organisation (WTO), American Garment Manufacturers Association (AGMA) and the ILO to urge manufacturers to take responsibility for the conditions of workers who produce their garments. By the mid-1990s the National Labor Committee in the USA conducted a mass media campaign and million-dollar lawsuits were brought against a number of brand names for labour exploitation (Carty, 1997; Clean Clothes Campaign, 1999).

Retail chains renowned for selling “cheap” garments were exposed for exploiting labour in developing countries. This was exemplified by the case of a Korean sub-contractor manufacturing clothes for Wal Mart who smuggled Vietnamese workers into American Samoa and was consequently imprisoned for 40 years and required to pay workers US\$1.8 million in compensation (Crocombe, 2007). In 2008, the Clean Clothes Campaign and the Maquila Solidarity Network, together with the International Textile, Garment and Leather Workers Federation, used the slogan “Play Fair 2008,” targeting popular sportswear companies making billions while paying a pittance to workers producing garments and equipment for the Beijing Olympics (Clean Clothes Campaign, 2008). As a result of the actions of labour rights groups, all buyers sub-contracting in the Asia Pacific fear exposure and subsequent tarnishing of their brand name. In response, brand-name manufacturers and retail giants have made a commitment to improve working conditions in the supply chain and set codes of conduct for contractors in developing countries. Given that these Codes of Conduct are based on labour standards set out under the ILO and other international conventions, their adoption is generally seen as a positive response to the exploitation of workers in developing countries (Pearson and Seyfang, 2001), but national labour laws in developing countries are not always the same as the ILO conventions.²

The question of the role of corporations and the possibility of brand-name multinational companies shaping labour standards in developing countries through CSR is at the heart of contemporary labour debates about the global garment industry and its workers (Beauchamp and Bowie, 2004; Frost and Ho, 2006; Hale and Willis, 2005; Hughes et al., 2008; Jenkins et al., 2002; Miller, 2004; Murray, 2004; Perman et al., 2004; Shaw and Hale, 2002; Zumbansen, 2006). Some theorists (O'Rourke, 2003) argue that CSR represents a way for retailers in the developed world to claim that the workers who make their clothes are no longer exploited because their sub-contractors comply with the codes of conduct. The main problem for many labour scholars is lack of transparency. Reporting is not followed up unless it is possible to trace the connection between the workplace and the buying company (O'Rourke, 2003). Some companies promote the implementation of codes in the first level of the supply chain but overlook sister factories in other countries. This results in codes of conduct being unlikely to reach workers at the end of the complex sub-contracting chain (Appelbaum, 2004; Pangsapa and Smith, 2008). Other scholars (Elias, 2007) argue that codes of conduct are calculated around norms relating to employment that are prejudicial towards the full-time citizen male worker with permanent employment status. More importantly, Kabeer (2004: 13) demonstrates that codes of conduct and uniform compulsory labour standards may not meet the needs of women workers in developing countries in the same way they do workers in almost fully developed countries.

In addition, labour unions perceive a negative outcome for workers because workers' rights and labour standards can be set out without the consultation of worker organisations or the empowerment of workers. There is nothing in the codes that state that employers have to increase workers' wages or that workers have the right to organise and fight for higher wages and improved working conditions. The codes are set and the sub-contractor must comply with the codes. In actual fact, fighting for labour standards is removed from the domain of workers and their organisations and moved into the realm of the employers. To put it simply, the people in power are making the decisions about wages and conditions while the workers have no input.

Other scholars, such as those writing for the *Business Ethics Journal* (Cragg, 2000; Egels-Zanden and Hyllman, 2006; Hooghiemstra, 2000; Rivoli, 2003; Wang, 2005), are more optimistic, suggesting that there may be positive outcomes providing responsible companies change from a compliance and monitoring system to a "proactive organisational integrity approach" (Santoro, 2003: 411). This approach forms relationships between manufacturers and buyers as well as enhancing training and remediation for contractors who exploit workers. Accordingly, they argue that there are benefits for both worker and company when the buyer and contractor act together with reliable NGOs to improve the working conditions and subsequent efficiency of the workers. The types of NGOs employed to monitor and work with buyers, however, is another point of contention (Pearson and Seyfang, 2001). The type of monitors used to check factory compliance has been highly criticised by labour unions as inappropriate because auditors rarely know what to look for as many do not understand the garment factory manufacturing system. In many cases the factory inspection does not include other factories in the commodity chain that may belong to the same company. This author happened to be interviewing a

manufacturer (human resource manager) the week of an audit and the atmosphere was clearly one of a school inspector's visit, the office staff and managers were working overtime to get the place "in order."

CSR: Garment Industry Responses in Malaysia

The growth of Malaysia's textiles and apparel industry under Chinese-Malaysian management accelerated in the early 1970s when the country embarked on a path of export-orientated industrialisation (Rasiah, 1993). Malaysia did very well under the multifibre and bilateral trade agreements and, by 2004, with exports valued at RM 9.7 billion (US\$2.56 billion), the industry was the sixth largest contributor to total earnings from manufactured exports. However, since 2001 the garment and textile sector has been under pressure due to trade liberalisation and the gradual removal of the quota system under the WTO. The industry has faced increasing competition from low-wage neighbouring countries in South and Southeast Asia and particularly from China. In 2002, textile and garment production declined by 9.9% and by another 4.3% in 2003 (Mahmood and Cheng, 2007: 159-60) after quotas on baby clothes were lifted and China absorbed the bulk of baby-wear production (MKMA, 2009a). Some Malaysian manufacturers, however, are managing to hold onto their contracts by introducing higher levels of technology and full package production for the top end of the mostly sportswear fashion industry. The government has supported the textile and garment industry's move up the production chain by offering manufacturers special incentives to invest in cutting-edge machinery and training. In 2008, to combat the effects of the global economic crisis the government reduced import concessions for thirty-two lines of textile and accessories inputs for the industry (MKMA, 2009b). There are about 662 licensed companies in production, ranging from companies listed on the stock market to small family businesses. Currently, the industry employs more than 68,000 workers and many workers are transnational labour migrants (MIDA, 2008).

The attraction of manufacturing in Malaysia is no longer dependent on the lure of cheap wages but also on performance improvement and the adoption of codes of conduct. Currently, the most significant change in the Malaysian garment industry is the movement back to factory production where buyers pressure manufacturers both for compliance of codes of conduct and for on-time production. Previously, manufacturers in developing countries such as Malaysia were renowned for using sub-contractors, outworkers and small backyard factories but now buyers insist on manufacturers becoming more visible in their operations. According to one manufacturer, the buyers have started cutting down the number of vendors. In other words, buyers are going to the larger manufacturers who can meet the new rules and small manufacturing enterprises (SMEs) are missing out on orders because, according to one manufacturer, "SMEs with a T-shirt mentality have to change a lot to become tailors for high brand names like Armani" (interview, 2006).

Although some manufacturers complained about the buyers' rules and regulations, the CSR movement has been rather well received overall by both garment associations and large factory owners in the export industry in Malaysia. According to the MKMA spokesperson: "more control and regulation enforcement in China like what has been done to those polluting industries will get rid of the bad wood and

allow the factories in compliance with environmental and labour codes to survive and prosper” (Cheong, 2008).

Interviews in 2007 with ten directors and human resource managers in ten medium to large garment factories in Malaysia made clear that priorities had changed. Most large manufacturers had joined associations, such as WRAP and SA8000. Others have signed company codes of conduct. The following discussion includes a shortened version of the principles or codes cited in WRAP and various SA8000 websites. WRAP includes Apparel Certification Program Principles where WRAP monitors the factory for compliance and manufacturers of sewn products will comply with laws and regulations in all locations where they conduct business. Manufacturers of sewn products will pay at least the minimum total compensation required by local law, including all mandated wages, allowances and benefits. Manufacturers of sewn products will recognise and respect the right of employees to exercise their lawful rights of free association and collective bargaining (Worldwide Responsible Apparel Production, 2007). Social Accountability 8000 is based on the UN Universal Declaration of Human Rights, Convention on the Rights of the Child and various ILO conventions. It covers the: freedom of association and right to collectively bargain; respect workers’ rights to form and join trade unions and bargain collectively; where law prohibits these freedoms, workers can facilitate parallel means of association and bargaining. Working hours no more than 48 hours per week with at least one day off for every week; voluntary overtime paid at a premium rate and not to exceed 12 hours per week on a regular basis; overtime may be mandatory if part of a collective bargaining agreement. Wages paid for a standard working week must meet the national industry standards (SA8000, 2002).

These codes mean buyers can claim that the workers who make their clothes are no longer exploited because their sub-contractors comply with the codes of conduct and are monitored on a regular basis. The manager of one garment factory said that:

[Nike people] will come for a regular audit. To check the labour, whether we pay correctly, the calculations, whether we follow the Malaysian employment Act, or whether we have all the contracts signed. So Nike does a compliance check – safety audit, management audit. They are especially concerned with the pay-roll calculations: those must be in accordance with the Malaysian Employment Act. The most important thing is not to under-pay and that they cannot employ any under eighteen workers [sic] Nike is very strict in terms of compliance (interview, 2006).

When asked if they had altered their responsibilities to buyers/manufacturers, one spokesperson answered that, in the past, buyers “were more concerned about quality, but now more concerned about terrorists, chemicals, compliance and human rights” (interview, 2006). Another contractor recalled that:

in the old days, I would say prior to 2000 the factory owner run [sic] the factory on their own, but now there is [sic] so many compliance requirements, that the factory owner no longer want [sic] the factory any more, they have to shift the control to a lot of compliance requirements, counts as cost cutting, but so in order to survive you still need to meet all these requirements (interview, 2006).

These requirements, including codes of conduct and annual auditing, were further evidenced by managers, noting that “they check the factory conditions before they order.” And another affirmed that buyers influence labour practices “yes they do, in fact, very strict with Malaysia.” Interestingly, when asked what the five most important areas of concerns for manufacturers were, most answered: “are you complying with human rights; quality – can we produce the quality, pricing – does your pricing compete worldwide, lead-time – how fast can you produce and labour and currency” (interview, 2006).

There is considerable evidence that the industry’s future focus is on the manufacturing of high-end apparel as well as the production of Malaysian-branded apparel for export. According to a manufacturer:

Certain brands have come to dominate the market in Malaysia at certain times but as these brands want cheaper prices there appears to be a shift whereby the company moves to other cheaper locations and the higher end of the market brand names start to contract in Malaysia. For example ten years ago Esprit was the buyer of this region, but now they have gone down and Gap has gone up. But even Gap last year has started to taper off. There are other buyers coming here, companies like Nike and Adidas. Other brands keep changing according to what the market needs and to what your workforce is capable of. We do change. Wal Mart, Starlight, Kmart are brands that have gone so cheap we cannot work with them anymore so we go up the rung to DKNY or Gap (interview, 2006).

A variety of strategies have been employed for maintaining contracts. One manufacturer maintained contracts with Puma by opening up a factory in Cambodia where the cost of producing garments is less than in Malaysia. Another manufacturer, with Nike as their main buyer, services the company from a variety of countries – the head factory is in Malaysia and sister factories in Sri Lanka and China – they must have Nike’s approval before they can start manufacturing in other countries. The same manufacturer stated that: “we are trying to have a good partnership with Nike, right now I think they are focusing on the Malaysian factories to have a centre of excellence, that means the design will be sent direct to our country and we can cut the material on the spot” (interview, 2006).

Nevertheless, Malaysia remains a popular sourcing country. It has a proven performance record, efficient communication and infrastructure and government support for business investors and, most importantly, a stable workforce. Nike and other brand names insist on the lowest possible costs and the highest possible quality from their manufacturers (interviews, 2006). In this setting, buyers have been keen to move into their suppliers’ business operations to make sure that they are following the codes and, in the case of Malaysia, to make sure they receive quality garments and the lowest prices.

Labour Standards: Malaysian Workers

From the point of view of all the stakeholders then, Malaysian manufacturers are good contracting sources because they do not usually attract the negative attention that has plagued their factories in other countries, such as China. Codes of conduct

in Malaysia enforce labour standards such as those set out under the Government's Employment Act of 1955. Under this Act there is no set minimum wage. Workers must work a 40-hour week, an eight-hour work day and female workers are entitled to 60 days' paid maternity leave. The Act also provides for paid annual leave, sick leave and payment for overtime work as well as paid holiday pay on any day declared as a public holiday under section 8 of the Holiday Act 1951. In general, labour standards have improved in line with the industrialisation of the country. The wages of many factory workers in the established section of the clothing industry increased in the 1980s compared to its neighbours (Crisis, 2004). Since the 1990s, full employment has led to a shortage of skilled workers and subsequent increases in wages and working conditions of Malaysians (Rasiah, 1993). In 2006, salaries of skilled and unskilled production workers in the manufacturing industries ranged from Malaysian ringgit (MR) 444 (US\$125) to MR1003 (US\$238). The Department of Labour is responsible for the administration of labour laws in order to maintain industrial harmony. The labour law stipulates the minimum requirements that apply to all types of labour (MEF).

Table 1 shows the average minimum and maximum salaries of selected non-executive positions in the manufacturing sector. It must be remembered, however, that this wage table on the government's website "doing business in Malaysia" is for manufacturing wages in general. In the apparel industry, wages are usually paid on a piece-rate system and foreign workers are paid according to their contracts. According to the Malaysian Trades Union Congress (Rajasekaran, 2007), the minimum wage was around MR900 per month with a MR300 living allowance.

Table 1. Salaries of non-executives in the manufacturing sector per month

Non-executive positions	Min. RM	Max. RM
Secretary	1381	2745
IT supervisor	1363	3248
Chargeman	1270	2544
Production/technical supervisor	1142	2364
Foreman	1100	2758
Boiler man	993	2154
Maintenance technician	947	2192
Quality control inspector	941	1878
Storekeeper	870	1900
Electrician	862	2039
Production officer (semi-skilled)	843	2033
Welder	758	1707
Accounts clerk	713	1666
Clerk/typist	696	1612
Telephone operator	696	1533
Laboratory assistant	685	1514
Data entry clerk	671	1522
Lorry/truck driver	628	1676
Security guard	606	1380
Production operator (unskilled)	444	1003

Note: US\$1 = RM3.5445.

Source: Malaysian Employers Association (cited in MIDA, 2006).

Interviews with Malaysian workers in textile and garment factories have shown that these unionised textile workers receive between MR600 and 900 depending on age, gender, skill and length of service. Garment workers receive between MR400 and 900 depending on piece rates and overtime. They receive days off, holiday pay and are entitled to additional benefits as set out under the Malaysian Employment Act. The Employees Provident Fund Act 1991 also stipulates a compulsory contribution for employees. Under the Act, all employers and employees must contribute to the Employees Provident Fund (EPF) at the minimum rates of 12% (for the employer's share) and 11% (for the employee's share) of the employee's monthly wages, respectively. All employers must register their employees with the EPF immediately upon employment except for those who are exempted under the Act, such as employees who are not Malaysian citizens. Interviews conducted with male and female Malaysian garment and textile workers support the assertion of the International Confederation of Free Trade Union (ICFTU, 2006) that labour standards in Malaysia are fair except in the areas of freedom of trade unions and minimum wage.

The Malaysian government is reluctant to enforce a minimum wage and strong worker-protection laws. The government views cheap labour as one of the major assets they can offer to attract investment by multinational companies, which they argue creates jobs and provides capital for development. The government, however, has ratified a number of ILO Labour Conventions as testament to good faith in its attempts to look after its citizen workers but it has not ratified the International Convention on the Protection of the Rights of all migrant workers and members of their families. So while Malaysian citizen workers expressed some dissatisfaction with the monotony of the work or the companies' reluctance to give pay rises, they felt compensated by the employers paying their family medical benefits and/or offering free travel to and from the factory. In addition, other workers felt relieved that they never had to do more than ten hours overtime each week (interviews, May 2008). Overall, the working conditions of Malaysian citizens employed in the garment and textile industry appeared to be satisfactory. Their conditions differ, however, from a large majority of foreign workers who work in the industry.

Protecting Foreign Workers in the Garment Industry

Labour shortages since the 1990s saw the Malaysian government allow large numbers of foreign workers into the country to sustain Malaysia's export industries (Ministry of Finance, 2005). Malaysia became a net importer of labour in order to continue to increase foreign domestic investment and provide a comparative advantage for their manufacturing industries. Rather than introduce a long-term policy of industrial upgrading, the government relied on foreign workers to keep the manufacturing and agricultural sectors competitive. In 2008 there were approximately 2.8 million documented foreign workers, mostly Indonesian, and large numbers of undocumented foreigners, representing more than a quarter of the total labour force of 11.8 million (*The Star*, 16 April 2008).

Since 2005 the government has given approval for the manufacturing sector to recruit foreign workers from Indonesia, Nepal, Pakistan, Cambodia, Laos, Myanmar, Vietnam, the Philippines and Sri Lanka, with female workers only from Indonesia and male workers from the Philippines (MKMA, 2005). Table 2 indicates

Table 2. Country of origin of foreign workers in Malaysia, 2007

Country	Domestic	Construction	Manufacturing	Services	Plantations	Agriculture	Total
Indonesia	294,764	211,016	206,780	41,012	290,454	103,974	1,148,000
Nepal	31	4493	172,311	1904	2584	8080	189,403
India	126	7382	28,446	60,049	22,451	23,575	142,029
Myanmar	61	14,857	29,906	6	1484	7911	54,225
Vietnam	31	5251	104,948	2951	79	645	113,905
Bangladesh	21	40,497	128,664	21,843	14,207	12,006	217,238
Philippines	10,443	1640	2858	1103	4562	2577	23,173
Thailand	426	1122	793	15,532	53	530	18456
Pakistan	2	4947	3140	1708	971	6045	16,813
Cambodia	7458	173	2582	240	207	95	10,755
China	18	2284	959	3137	221	14	6633
Sri Lanka	883	106	1580	731	91	295	3686
Laos	1	13	16		1	1	32
Uzbekistan		6	1	4			11
Total	314,265	293,787	682,984	150,220	337,365	165,748	1,944,358

Source: Immigration Department (cited by Majid, 2008).

the numbers and ethnicity of foreign workers in the various employment sectors. Approximately 35% of foreign workers are employed in the manufacturing industries. Importantly, labour standards for these foreign workers have not reached the same standards as Malaysian citizens.

There have been several attempts to remedy this disjuncture. Several memorandums of understanding (MOUs) have been signed with various countries to authorise legal recruitment of workers. Malaysia and Indonesia, for example, signed a MOU in 2004 and another in 2006 that sets out a standard contract for Indonesian guest workers in the manufacturing industries. Other bilateral agreements with Burma and Nepal (in 2001) and Vietnam and Bangladesh (in 2002 and 2003) and with Pakistan (in 2004) enabled legal recruitment of foreign workers through government channels in order to stop the existing flows of undocumented migrant workers. In addition, a work permit system based on offshore recruitment was introduced to reduce the dependency on traditional source countries, such as Indonesia and the Philippines, for foreign workers.

In the wider international community, leaders of the ten Association of South East Asian Nations (ASEAN) countries during the 2007 Summit signed the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers. It commits receiving states to prepare charters that ensure decent working conditions, protection from all forms of abuse, and a guaranteed minimum wage to migrant workers from within the region. The accord calls for tougher penalties on smugglers and traffickers but is not legally binding and does not require governments to change their labour law (Chavez, 2007). Various embassies, such as those of Indonesia and Vietnam, now have labour sections which focus on making sure that workers have support in “guest worker”-receiving countries, such as Malaysia.

On the local scene, the MTUC has an agreement with the Indonesian Trade Union Confederation that aims to protect Indonesian migrants in Malaysia. The MTUC argued for the enforcement of Malaysia’s 22 laws protecting local and foreign workers since many migrants complained to unions about non-payment of wages. In 2002, the MTUC asked the government to conduct a study on foreign workers that would cover issues such as payment of wages and benefits, working hours, occupational safety and health but this did not happen (*NST*, 2 February 2002). While the MTUC did not support the utilisation of foreign workers in Malaysia it could not be silent when foreign workers were being exploited and abused by employers. The MTUC has responded to the migrant worker issue, with support from the ILO, by meeting with unions and NGOs from the countries of the various guest workers. However, according to the MTUC, the meeting outcome was not as expected because the people attending the meeting were not decision makers and, as a result, nothing has changed (Crisis, 2008). Overall, however, most migrant workers arriving in Malaysia have little knowledge of labour laws or their rights to organise and, in many factories in most states, no unions exist for them to join anyway.

Except for two companies, the manufacturers interviewed said foreign workers made up the bulk of their production workforce. Some factories employed 80% foreign workers compared to 20% Malaysian workers in their production section. One employer stressed that the majority of foreign workers in his factory came from Vietnam and Indonesia as well as Nepal, but he would take whatever workers he could get: “right now we have a majority of women, a few men from Nepal, Pakistan

and India and we have applied for workers from Sri Lanka but after now [sic] most of our women workers recruited will come from China and Cambodia” (interview, 2006).

The employment of multinational workforces is further complicated by changing government regulations. An employer of Indonesian, Chinese, Filipino and Thai workers complained that the government’s foreign labour policy keeps changing:

we asked the Government to have a single long policy, but they keep changing. They open up a few countries, like Myanmar which we do not feel is suitable. Not many in the textiles, more in the food industry, because they are not very dedicated [skilled] workers, in textile industry you need dedicated workers [skilled-machinists] not like the hawkers, Myanmar is more in the restaurants (interview, 2006).

While another manufacturer with a majority from Vietnam and Indonesia, stressed that Bangladeshi workers are good textile workers but the government has put a ban on workers from Bangladesh:

Bangladeshi workers should be in textiles but the government is continually trying to diversify their labour supply so they do not have too many Indonesians, but it is like a market. Vietnamese do not really want to come to Malaysia, because it is a long way away, but the Indonesians want to come but because of government policies there is quite a lot of Vietnamese workers now (interview, 2006).

The multicultural mix of foreign workers in the industry also appears to be the result of the government’s latest “outsourcing” policy which enables manufacturers who require fewer than 50 workers to use specialised recruitment agencies (Malaysian Knitting Manufacturers Association, 2005). Apparently the outsourcing company employs the worker and the manufacturer pays the outsourcing company (Omar, 2008). According to both the government and the MTUC the outsourcing system precluded the formation of unions (*NST*, 22 July 2008).

Foreign Workers: Contracts, Labour Conditions and Lived Realities

According to two Malaysian manufacturers in Johor Bahru, foreign workers are treated the same as Malaysian workers, because:

they are on a two to three year contract and if you treat them well, they will stay longer, it depends on how you work with your workers, especially the foreign workers that comes here, their main aim is money, if I say we can fulfil their requirements, they will stay (interview, 2006).

Another manufacturer stressed that:

we have a shortage of workers presently in this industry, especially on the manufacturer of garments, need a lot of labour, not only with certain skills to

operate machines but in order to have good quality work, labour is our main factor, it is very important to us because the international factor is challenging on the lead time, but we still have to worry about pricing (interview, 2006).

According to workers interviewed in these two factories they were treated well, no levy was deducted from their wages and they received what was promised by the recruitment agents. In the other factories, foreign workers seem to be protected from various forms of labour exploitation. But, as the codes of conduct in Malaysia are based on national laws in which there is no minimum wage and workers are not encouraged to join trade unions, then the codes tend to endorse the failures in national labour laws to provide a safety net for workers and the foreign worker contracts emphasise these failures even further. There is very little foreign workers can do to change the system. Government policies regarding contracts and work permits leave unskilled foreign workers in a vulnerable position and worker organisations such as trade unions are unable to represent the large numbers of foreign workers in the garment manufacturing industries due to restrictive government policies regarding workers in export industries.

With promises of better employment, foreign workers sign three-year contracts which can be renewed, covering labour conditions, the rights of the employer and the rules for the employee. According to contracts seen between 2002 and 2008, the worker must pay for their recruitment costs including the airfare to Malaysia and, after the contract expires, the employer pays the return flight. The Malaysian government charges the employer a levy of MR1200 to hire a foreign worker and most employers deduct the cost of the government levy from the worker's wages each month (Malaysian Government, 2009). If the contract is terminated by the employee, the worker must pay the full cost of the levy.

In addition to the recruitment costs, before coming to Malaysia workers must pay to attend a ten-day pre-departure induction course in their home country on communication skills in English or Malay, Malaysian culture, laws and regulations. After entering the country, foreign workers are charged MR180 to undergo a medical check-up within 30 days of arrival at any clinics registered under FOMEMA, a company partly owned by the government's investment arm to manage and operate health screening for foreign workers to detect communicable diseases and pregnancy (*Migration News, Southeast Asia*, April 2006; interview, 2008). Once the medical results are transmitted to the Immigration Department, the employer then applies for a work permit. Foreign workers are then trained for three months. Young workers pick up sewing quickly. Older workers find it more difficult but the employer usually finds other jobs for them in the sweeping, cleaning and packaging sections.

Despite the need for foreign workers in the garment manufacturing industries, foreign workers are on a contract under which they are paid a daily rate of MR18.5-26 and other allowances (depending on the employer), which usually amounts to around MR440 less the MR100 levy costs deducted each month. The wages received are a lot less than the MR600 to MR900 that Malaysian workers receive and less than the amount promised by recruiting agents. For example, Vietnamese labour export companies stated that the wages paid in Malaysia range between MR550 and MR750 per month (VietNamNet Bridge, 2008). But Vietnamese workers do not

receive anywhere near this amount unless they work overtime (interviews with workers, 2008). According to Indonesian Embassy personnel, some workers do not receive wages for the first six months because the recruitment debt and the levy costs incurred in coming to Malaysia are so high compared to the wages they receive (interview, 2008). Outsourcing companies have been blamed partly for the low wages foreign workers receive. Apparently the outsourcing company employs the worker and the manufacturer pays the outsourcing company. The outsourcing company then pays the worker minus the companies' fee which in some cases works out to be a lot more than specified at the outset. It appears that despite the low wages received by workers the outsourcing company reduces their wages further (interview with Trade Union Secretary, Johor October 2008).

Employers and recruiting agents, in particular, lead foreign workers to believe that they will earn enough to live frugally and send money to help support families in the sending country. One young Vietnamese woman signed a contract with a garment factory but she did not get paid the amount she was promised. This worker was very angry because she said after working for one year in the garment factory she could not save anything. She had nothing left after the money to pay her debts was taken out of her wages. Because there was not much overtime work in her factory the flat rate was not enough to survive on. She rang the recruiting agency many times but they could not help. According to this worker:

It is an agency from the North [Vietnam] who promised us that we would earn enough to save around MR300 per month to pay back our debt and help out our family. But when I came here to work for garment factory, I only earned on average MR500 per month, and when they deducted MR100 for the levy and my basic expenses, I did not have enough money even to pay the interests on my loan to come here. Some months it [wages] can go as low as MR300 (interview with worker, 2008).

She left the factory after the first year and is now employed in an outdoor eatery – but is an unauthorised worker. She earns MR500 per month and gets two meals a day. She saves MR400 and will be able to go home in about four months as it costs MR1200-1400 to get papers and buy the plane ticket to return to Vietnam. She rents a room with other workers, who are in a similar situation (interview with worker, 2008).

Employers in Malaysia also have problems observing minimum working hours (Adidas-Salomon, 2000). Some of the contract conditions mean that foreign workers must work longer hours to earn decent wages. According to Malaysian workers, they only had to work ten hours overtime each week because foreign workers are allocated most of the overtime in the factory. In one factory, the foreigners worked four hours overtime per shift but despite the long hours, feelings of fatigue and loss of weight, foreign workers are happy to work overtime so they can earn extra money to send home to the family (Malaysian Worker interviews May, 2008). As one worker stressed: “we want overtime; we go to the assembly line that has overtime so we can work overtime to pay back the debts that we had (either from family members or from the banks), and send some money home” (interview with worker, 2008).

Many foreign workers are in a very vulnerable position. They can be lucky and work for a responsible employer who does not take the employer levy out of the

worker's wages and pays decent wages so foreign workers can save as planned: "Unlike other companies, this factory is a pretty good company. They keep all their promises on the labour contract: paying workers MR18.5 per day, not deducting the MR110 levy per month . . . ," which is supposed to be employers' responsibility all along, "paying some of healthcare costs (MR18 per visit). With overtime work, I can earn up to MR26 per day if I worked from 7am to 9pm." Overtime payments depend on the piece-rate values of the batch that this worker was given at any given time: the higher the piece-rates, the more she gets paid doing overtime work. But it does not go beyond MR26 per day. She added: "I was able to send 20 million [Vietnamese] dong [about US\$1,250] home per year after using the first year's earnings to pay off my debt to a Vietnamese recruitment company in Hanoi. But I have to repeat that other companies are not as nice as our company" (interview with worker, 2008).

Another worker, told the researcher:

I make from MR400 to 900 per month depending on whether there is overtime work which is far and few between. We work along well with other foreign workers from Nepal, Myanmar, and Thailand. I've not yet paid back the debt, but have to send some money home to my family (interview with worker, 2008).

Workers do not complain about their long hours of work; in fact most of the complaints to labour courts centre around the fact that wages are less than that which was agreed in the contract and/or about excessive deduction from the workers' wages without their consent or approval (MTUC, 2005). On the other hand some workers complained about both the wages and the harsh factory discipline: "When I did something wrong, the line leader scolded me badly and deducted my salaries as punishment. I cannot stand this big difference between the contract I signed and real treatment in the factory" (interview with worker, 2008).

These workers had very few opportunities to improve their situation. There were no worker organisations for them to join and very few NGOs to turn to. In a few cases, workers themselves have protested and demanded better rates of pay and living conditions (Murali, 2002; *ST*, 28 January 2003) but most of these workers have been deported back to their country of origin. As a result, most workers do not complain because they do not want to lose their jobs and be deported (VietNamNet Bridge, 2008).

Under the Trade Union Act 1959 and the Industrial Relations Act 1967, it is clear that a foreign worker is not prohibited from being a trade union member and, under the Employment Act, workers are entitled to join a trade union. However, the term "worker" in the legislation causes some confusion because it is unclear if it applies to non-citizens. According to an interview with a textile union spokesperson conducted in 2008, the term "worker" applies to all workers employed in Malaysia. Nevertheless, the contract conditions sighted by this researcher specify that foreign workers are not permitted to join a trade union nor participate in any political activities in relation to trade unions in Malaysia. If foreign workers attempted to join a trade union and go against their contract conditions they would more than likely have their contract cancelled by their employers and be repatriated to their country of origin. There is one exception where a few foreign workers in two factories are in a trade union in Johor Bahru, but the number is small compared to the number of

garment factories and the numbers of foreign workers employed in Malaysia (interview, trade union spokesperson, 2008).

In reality, very few Malaysian citizens – let alone foreign workers – are in trade unions. Out of a workforce of around 68,000 there are approximately 4000 workers in the state textile and garment trade unions (Crisis, 2008). This is largely the result of government development policy whereby trade unions are not allowed to unionise workers in the Free Trade Zones and special zones unless more than 50% of workers want to become members. Workers in general are not encouraged to join trade unions, to strike or to join rallies. The Internal Securities Act (a relic of colonial days) has been employed on numerous occasions to arrest people attending rallies and strikes considered a threat to national security (*The Star*, 15 September 2008). All worker gatherings and rallies must be registered with the government and permission must be given before a rally or strike can take place.

The other reason why trade unions have so few factories on their books is because some employers stop both Malaysian and foreign workers joining the unions. For example, in 2002, workers in two US-owned companies operating in Malaysia agreed to allow textile workers to join the textile and garment workers trade union in Johor Baru and the union has tried to register with the Industrial Relations Department but the registration remains pending. In 2004, the textile and garment workers union tried to register workers in a garment factory and this registration is also still pending. According to the union secretary, factory management is behind the hold up. They do not want the workers in the union and continue to block the move. The Industrial Relations Department does not give the union any reason for the hold-up even though they keep reminding them of the delay. According to the union secretary, interviewed in 2008, the Trade Union Act was amended in August 2008 to make it more difficult for unions to register factories and the workers. The union must reapply after 21 days if nothing has happened, or the Director removes the application to register, in which case, the union has to remember to re-apply every three weeks (interview with trade union spokesperson, 2008).

Despite these issues, the government claims that foreign workers enjoy protection from the labour courts. However, such protection is inefficient and inadequate, as proven by delays in processing labour claims and refusal on the part of employers to comply with the court rulings. According to the MTUC (2005) there is a one- to two-year backlog of court cases to be heard. While the government issues a special permit to allow foreign workers to remain in Malaysia, the MR100 per month cost of the permit effectively excludes most, if not all, foreign workers from remaining in Malaysia; in response the government suggests they can remain in detention camps until the case is heard. Workers are not allowed to work for another employer while waiting for the court case and they must find the money to live as well as pay the permit costs. This is particularly worrying to both trade union and worker because many foreign workers have left the country before their case is heard and it is too costly to return to Malaysia solely for such a court case (MTUC, 2005). One of the factories in the research sample closed its doors and left 50 newly recruited foreign workers without a job. According to the trade union, these workers approached the union to file a case against the employer for back pay in June 2008 but the Labour Department has ruled that all workers must appear before the court before a verdict can be reached. This is unrealistic considering all 50 workers would have to pay

airfares to return to Malaysia from Vietnam to attend the court case (interview with trade union spokesperson, 2008).

The “Other” Living Conditions

The lack of a clear-cut policy on the employment, recruitment and labour conditions of foreign workers causes further problems. Foreign workers have complained that employers hold their passports. In August 2008 a number of Vietnamese workers complained to a labour activist that Malaysian employers held their passports against their will. This is a violation of the law, but in May 2004, Malaysia signed a MOU with the Indonesian government and, under this agreement, it allowed Malaysian employers to hold employees’ passports and other documents for “safekeeping” (*Migration News*, April 2005). Since then, in contracts seen by the author, it is more often written into the contract that the employer holds the workers’ passports and many recruitment agencies also suggest the employer holds the passport so the worker does not run away.

The provision of accommodation is also a point of concern in foreign worker contracts. Under the contract conditions, the garment employers must provide basic accommodation but many foreign workers are forced to live in sub-standard, unhygienic and overcrowded conditions (interview with trade union spokesperson, Johor, 2008). As already noted, at the outset, in August 2008 numbers of foreign workers in a Nike sub-contracting factory in Kuala Lumpur complained to labour activists and a journalist over the living conditions in their hostel. Together they made such an outcry that Nike had to send a representative to the factory to make sure the living conditions improved (Sananayagam, 2008; Sittamparam, 2008). In another incident in 2006, five Pakistani workers in a garment factory complained to a local Labour NGO (*Tenaganita*) that they were forced to live in a hostel with 35 other male workers and were often locked in the room by the hostel manager. According to a letter to the police written by one of the workers and signed by the others:

My Pakistani colleagues and I have work[ed] in the ... garment factory located [identifying information deleted] as an exporting operator for the past 8 months. I would like to make a complaint because our employer has only given us a small room to accommodate 35 people. It’s very uncomfortable and inappropriate (interview with trade union spokesperson, 2008).

After reporting the living conditions and bullying to the police, the workers were beaten up and later picked up by *Rela* or volunteer “migrant police” (see below) and transported to the nearest detention centre. Before the trade union representative could contact them, they were deported (interview, trade union spokesperson, Johor 2008). In these situations, employers would rather have workers deported than deal with the changes necessary to accommodate large numbers of workers with different ethnic backgrounds. In rare cases, the poor living conditions faced by foreign workers and outside pressures have led to fights and murders (*NST*, 17 October 2007; *NST*, 4 February 2008; *NST*, 8 February 2008).

Foreign workers told of the fear of robbery. Apparently workers’ hostels were burgled on a number of occasions. A young Vietnamese worker at a garment factory

said that workers in her factory stopped work to pressure the management to erect a higher fence and put a security guard on the door to stop robbers coming into their hostel (interview with worker, October 2008). According to this worker their hostel housed 300 mostly Vietnamese workers. She said:

The most scary thing is the security issue in our hostel. There were some robbery incidents, so we decided to go on strike for two days in March 2008 to improve the security situation. A Vietnamese representative delivered our collective message in Malaysian to the manager, requesting that management beef up the security measures in our hostel. Thanks to our collective effort, management put in another security guard, and put in barbwire around the hostel. While this is still not very effective since the fence is very low, thus far no more robbery incident has occurred (interview with worker, 2008).

Security is a major issue for both male and female foreign workers. One male worker claimed that he had been beaten up on at least one occasion and told how his two friends had left the factory because an Indian Malaysian had picked a fight with one of his friends and because he retaliated he lost his job. Another left his place of employment because he was the target of attacks. Both these workers are on the run, they have no jobs and no money to return to Vietnam and only one has a passport. As already noted, it cost about MR1200 to 1400 to get the necessary papers and plane ticket to return to Vietnam. According to the worker, his friends are looking for someone to help them as they have already been cheated out of money by extortionists promising to get them a legal path to return home (interview with worker, 2008).

Despite the fact that work contracts are highly problematic, being without important documentation has its particular difficulties. Irene Fernandez from *Tenaganita* believes foreign workers without work permits are subjected to harassment by the police, immigration officials and the People's Volunteer Corps or "*Rela* teams". Some 500,000 private citizens had been deputised to arrest unauthorised migrants (Kuppusamy, 2006). Under the Essential Regulations (*Ikatan Relawan Rakyat*) amended in 2005, *Rela* volunteers were given additional powers to carry firearms, and to arrest and handcuff illegal foreigners. They were allowed to enter workplaces and worker accommodations without warrants, after receiving permission from *Rela* leaders, and were paid MR60 per foreign worker apprehended (*Migration News*, 12 April 2006; *Migration News*, 2 July 2007). While many foreign workers are working in Malaysia without the appropriate work visa, *Rela* teams do not know the difference between unauthorised workers and workers with documents. According to *Tenaganita* "paramilitary vigilantes have no place in a democratic society and should never be given power over migrant workers, already a very vulnerable group" (Kuppusamy, 2006: 1). *Rela* people (with the employer's permission) were responsible for having the five Pakistani garment workers deported. Apparently, when the workers went to the police and made a formal complaint, the employer called in the *Rela* people and the workers were taken to the detention centre and later deported. Despite written requests to the Immigration Department from *Tenaganita*, partially cited below, the Pakistani workers were deported:

We would like to bring to your attention that the five Pakistani workers named above, have been arrested by *Rela*, the request of their employer, even though they still have legal right to work here. We are begging for action from you, to take appropriate steps to stop the deportation of the above five complainants. It is necessary for the five complainants to be at the Department of Employer Relation, to attend their case trial (interview with trade union spokesperson, Johor, 2008).

The main problems for foreign workers in Malaysia appear to be the violation of their rights by employers – low wages, poor working and living conditions and other breaches of contract. The increase in the numbers of “unauthorised” foreign workers is a consequence of desertion, which is a corollary of such poor working conditions. The estimated number of undocumented foreign workers stands at around two million but all estimates are merely indicative as the precise figure is difficult to obtain. Of the 2.3 million Indonesians in Malaysia, approximately 700,000 are illegal (personal communication, Indonesian Embassy spokesperson, May 2008). According to trade unions, NGOs and manufacturing sources, undocumented workers are not subject to any labour standards and are vulnerable to exploitation including abuses by their employers, and wage discrimination, non-payment and poor living and working conditions (Sananayagam, 2008; Sittamparam, 2008).

Conclusion

The incorporation of foreign labour into the Malaysian garment industry is fraught with problems which centre upon the work contract. Even though the anti-sweatshop movement has been successful and the standards of workers in global commodity chains have improved to some degree, the case study of Malaysia has highlighted the tensions between corporate codes of conduct, foreign worker contracts and national labour standards. While the monitoring of factories in Malaysia has stopped the practice of sub-contracting among Malaysian manufacturers and the exploitation of Malaysian workers in brand-name global commodity chains, it has not stopped the exploitation of foreign workers. As long as a contract is signed by the foreign worker and the worker’s rights (such as rate of pay and payment of overtime) are specified in the contract and signed by the worker, the manufacturer and buyer do not have to follow the same labour standards that apply to Malaysian citizen workers.

Most tellingly, this paper argues that despite monitoring and compliance with labour laws being a condition of many global buyers, the right to organise and a guaranteed living minimum wage continue to be part of the domain of the nation. In summary this research suggests that CSR does not guarantee that workers are paid decent wages without the necessity to take on many hours of overtime nor does it guarantee that workers have the right to join a trade union. Overall CSR in Malaysia does not guarantee that “sweated labour” is not a reality for foreign workers in today’s global clothing trade, especially in nations that employ the comparative advantage of other nations to maintain their own labour-intensive industries.

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Notes

- ¹ The term “exploitation” in this article includes not just wage labour exploitation in the Marxist sense but the exploitation of vulnerable migrant labour central to the labour process and to the chain of profit making in the global commodity garment industry. Transnational labour migrants in Malaysia face precarious employment with short-term contracts with certain conditions of contract that deny them the support of worker organisations.
- ² The ILO formulates international labour standards in the form of Conventions and Recommendations setting minimum standards of basic labour rights: freedom of association, the right to organise, collective bargaining, abolition of forced labour, equality of opportunity and treatment and other standards addressing conditions across the entire spectrum of work-related issues. (ILO, 1996).

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