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# Considering complaint mechanisms

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An Important Tool for Code  
Monitoring and Verification

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*While a number of organizations participated in the SOMO project, and provided valuable input for this paper, this document reflects the opinions of the authors only.*

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## 1. Introduction

Labour rights advocates maintain that for a system that monitors and verifies compliance with a code of labour practices to be complete, it must include a mechanism to handle complaints. Such a complaint mechanism or procedure would be used to bring workplace concerns to the attention of multi-stakeholder monitoring and verification initiatives (MSIs) or sourcing companies. Complaint procedures are seen as a means to ensure direct input at any given time from workers and their organizations in the monitoring and verification process, and to balance and supplement the limited scope of social audits, which only provide a “snapshot” of labour practices at a specific moment in time.

The Clean Clothes Campaign (CCC), for example, referred to the need for a complaint mechanism within a monitoring and verification system in its model code of conduct, drafted in 1997. At that time, they referred to such a mechanism as a “second track” of monitoring and verification, with the first track being social audits.<sup>1</sup>

Unlike social audits, varying methodologies for which have been and continue to be tested by various organizations, complaints mechanisms in this context have received only limited attention. It has been suggested that this is due to the considerable commercial and corporate interest in social auditing, which has promoted audits as the key tool for demonstrating corporate accountability to good labour practices.<sup>2</sup> This has had an impact on the activities of NGOs and trade unions involved in monitoring and verification debates, who have had to assign capacity and resources to take up auditing issues, in an attempt to prevent the development of auditing techniques from being dominated by corporate and commercial interests.

This is not to say however that there have been no interesting developments in relation to complaint mechanisms in this context. A number of multi-stakeholder monitoring and verification initiatives (MSIs) are developing and working with such systems, and some companies are developing internal systems to process and follow-up on complaints of rights violations. The challenge of developing a timely and orderly process for resolving worker complaints has also begun to be discussed

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<sup>1</sup> CCC (1998) Code of Labour Practices of the Apparel Industry, Including Sportswear, <http://www.cleanclothes.org/codes/ccccode.htm>

<sup>2</sup> Ascoly, Nina and Ineke Zeldenrust (2001) “Discussing Key Elements of Monitoring and Verification,” September, SOMO, Amsterdam <http://www.somo.nl/monitoring/related/disc-key-elements.htm>

in a number of fora.<sup>3</sup> Already there is a broadening in perceptions surrounding complaint systems. Once seen largely as a mechanism to balance auditing and allow for worker participation, such systems are now also seen by some companies as a means for solving problems and by labour rights activists as another avenue for pressuring companies to make improvements.

This paper is intended to raise key issues in relation to complaint procedures being developed in conjunction with code compliance monitoring and verification initiatives for the garment and footwear industry. As often as possible, examples drawn from the experiences of existing complaint mechanisms are used to highlight these issues. Generally, these come from experiences with systems that have been set up by multi-stakeholder initiatives: the Workers Rights Consortium (WRC), the Fair Labour Association (FLA), the Ethical Trading Initiative (ETI), Social Accountability International (SAI), and the Fair Wear Foundation (FWF).<sup>4</sup> Where possible complaint systems developed by companies themselves have been mentioned. However, there is not a great deal of information available on the internal systems companies have for handling complaints. Transparency in this regard will be crucial to facilitate learning on this important issue among all stakeholders. The experience of the CCC in raising complaints with companies has also provided useful insight into these issues. While this paper does draw upon a variety of experiences it is not intended to be a critique of any existing initiatives, but instead as an input intended to help strengthen these complaint mechanisms.

It is important to recognize that complaints of labour rights violations are often filed with labour law enforcement authorities at the local level where they occur. In most cases, violations of code of labour standards also constitute violations of local labour law. In cases where code compliance complaint mechanisms might be invoked governmental bodies are also approached regarding the rights violation, or for example, the Organization for Economic Cooperation and Development (OECD)

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<sup>3</sup> For example, a workshop was dedicated to complaints during a SOMO/CCC conference on code compliance in October 2001, [http://www.somo.nl/monitoring/reports/conference\\_rep\\_eng.htm](http://www.somo.nl/monitoring/reports/conference_rep_eng.htm)

<sup>4</sup> The following documents were used as reference material throughout this paper (unless otherwise indicated in the text): The Fair Wear Foundation Principles and Policies; <http://www.fairwear.nl/Policy%20document.pdf>; The third party complaint procedure; <http://www.fairlabour.org/all/complaint/index.html>; and FLA first annual report: "Towards improving workers lives", <http://www.fairlabour.org/all/transparency/Public%20Report%20Y1.pdf>; the October 2001 ETI Guidelines for Code Allegations, the ETI workbook (2003) and the ETI annual reports; <http://www.ethicaltrade.org/pub/publications/ann-rep/main/index.shtml>; SAI Guideline 304 "Making a complaint or appeal" and 304 a "How to file a Complaint or an Appeal related to the SA8000 certification system" <http://www.sai-intl.org/Accreditation/CertificationComplaints/ComplaintIndex.htm>; The WRC Investigative Protocols and Factory Assessment Programme; <http://www.workersrights.org/fap.asp>;

or the International Labour Organization (ILO).<sup>5</sup> Often workers or labour rights organizations simultaneously file grievances wherever they can, both to increase pressure for a resolution of a specific case but also to draw broader attention to what are often systemic issues that transcend a single workplace. This paper will not look at these other avenues for filing grievances.

As a framework for presenting the key issues in relation to complaint mechanisms, this paper looks at the different concerns that arise during different phases in the complaint process, beginning first with the filing of a complaint (who files complaints, where are the complaints filed, on what basis are complaints accepted for follow up), then moving on to the investigation of complaints and action taken to solve the problems raised in the complaint. Next, the broader issues of time, funding, and reporting are discussed. In each section key issues are summarized at the end.

## 2. Filing a Complaint

Complaints are filed to:

- workplace management
- sourcing company
- MSIs

Clearly workers (or trade unions) are the ones to file complaints to workplace management, and certainly anyone can try to contact a sourcing company and complain. The majority of complaints filed to sourcing companies (both those who are member of MSIs and those who are not) about code violations originate from labour rights activists, though there is no one system that handles this flow of information. Generally, activists receive reports of rights violations and requests to take action on these problems from local unions and labour support organizations. These so-called “urgent appeals” form part of an international “snowball system” whereby, if a company is non-responsive to a complaint from activists, they initiate letter-writing and pressure campaigns targeted at the company or companies concerned (and other relevant parties, generally governmental bodies). Activists distribute information on the complaint and enlist others (consumers and

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<sup>5</sup> For example, in the recent case of union repression at the Jaqalanka factory in Sri Lanka, the European Commission was notified, vis-à-vis EU-Sri Lanka preferential treatment in trading relations and a complaint was filed by the ITGLWF to the ILO’s committee on Freedom of Association; in July 2001 the India Committee of the Netherlands, a member of the Dutch CCC, filed a complaint with the OECD against Adidas charging a variety of labour rights violations.

organizations) to contact the companies to lodge complaints as well. Activists take up these cases both as part of their commitment to direct solidarity and support and partly to test and challenge codes of conduct, as the complaints often allege that corporate codes have been violated.<sup>6</sup> These cases form an important body of learning for MSIs currently wrestling with an increasing number of complaints.

The MSIs have developed mechanisms to receive complaints themselves. In some cases they have also developed provisions for their member companies (or certified companies) to implement regarding (a) ensuring that suppliers have a system for handling complaints filed by workers to workplace management, and/or (b) receiving complaints directly from workers. These provisions are all based on the assumption that attempts to solve problems will first be made at the workplace level --between workers and management.<sup>7</sup>

As a condition of certification, SAI requires that suppliers have a mechanism in place to handle complaints made by workers to management. As a certification system SAI focuses on supplier responsibility and therefore has a fairly detailed procedure, compared to the other multi-stakeholder initiatives in relation to worker-to-management complaints.<sup>8</sup>

Additionally, anyone can file a complaint directly to SAI itself (or to the certification body that certified the facility) regarding a certified company or an accredited auditor, or can file an “appeal” regarding the handling of or decision made regarding a complaint. Usually such complaints or appeals made to SAI will first be passed on to the supplier in question or the certification body that certified the supplier, for resolution. In the case of appeals a special appeals review panel (selected from the advisory board) makes the final decision.<sup>9</sup> Sourcing companies

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<sup>6</sup> The International Secretariat of the Clean Clothes Campaign for example, processes approximately 25 -30 cases per year.

<sup>7</sup> This also conforms with way in which workplace complaint systems seem to be generally set up, beyond this context. Most procedures usually indicate that whenever feasible complaints should be resolved at the lowest possible administrative level, meaning with employees immediate supervisor.

<sup>8</sup> SAI certified companies must appoint a management representative responsible for ensuring that there is a confidential, accessible system for workers to lodge complaints. Workplaces further have to have an elected SA8000 representative who can be contacted by the workers for more information or assistance in taking the complaint to the member of management responsible. If management fails to rectify a complaint, an *appeal* may be lodged by any interested party with the certification body that certified the workplace concerned and SAI, or just SAI and they will contact the certification body. The appeal must include documented evidence, but the certification body is charged to protect the identity.

<sup>9</sup> The role of the certification body in the process raises some issues of worker trust: why would workers have confidence that the same organization that certified the factory in the first place would adequately represent and seek a just resolution of their complaint? SAI reports they are seriously considering changing this as part of their upcoming review of their complaints mechanisms. SAI also reviews the handing of by certification bodies of all complaints lodged with

related to SAI (via its Corporate Involvement Program) are not required to have a process for directly receiving complaints.

The WRC concentrates on the complaints it receives directly, usually filed by NGOs or trade unions, but also investigates pro-actively. They are looking towards developing a more detailed mechanism for workers to be able to file complaints directly to WRC (via local partners).

Contrary to the other initiatives the WRC does not have member companies, and therefore does not have an official role in setting up complaint systems for sourcing companies. The WRC, to a certain extent, can be seen as an institutionalized variant of the activist urgent appeal phenomena: if an appeal from a local union or support organization concerns a collegiate apparel factory, the WRC investigates the complaint, and develops a suggested course of action for the sourcing companies concerned. The leverage provided by the WRC's university members, the final buyers of the product, means that sourcing companies are more likely to meet their demands. In the "normal" course of appeals, leverage over sourcing companies has to be obtained by media and consumers. To date five investigations have been carried out.

The ETI has developed a mechanism that channels complaints directly to their member companies (the sourcing companies). Complaints have to be filed by an ETI member organization (NGO, trade union, or, presumably, a company) to the member company concerned, with a copy to the ETI secretariat. They are assumed to originate from partners of ETI member organizations.<sup>10</sup> The ETI secretariat only becomes directly involved if parties fail to reach an agreement. Presently ETI is testing out their guidelines, which will be reviewed after three cases are completed.

ETI member companies are also expected to provide workers with confidential means to report failure to observe the ETI Base Code directly to the member company. ETI's annual reports do not provide information on what these means were and how they functioned.<sup>11</sup> There is no obligation for member companies to

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them. Complaints (or appeals) can also be filed about the accreditation of a certain auditor (certification body). SAI has directly received eight complaints in total of which four concerned workplace conditions. These were filed by labour support NGOs or trade unions, or in one case were reported upon in a publication, and then taken up by SAI even though no official complaint was filed. <http://www.sa-intl.org/Accreditation/CertificationComplaints/ComplaintIndex.htm>

<sup>10</sup> There is a possibility left open for an ETI member to file an allegation on behalf of a non-member, though it is not clear then if the non-member becomes an official party to the complaint.

<sup>11</sup> Member companies have an obligation to report to ETI about their progress, the aggregated results of which are made public. It is possible that individual member companies gave information

ensure that their suppliers have in place a mechanism to handle worker-to-management complaints.

Similar to ETI, the FLA, as part of its internal monitoring obligations, also requires that member companies provide workers with a confidential reporting channel with which to report non-compliance directly to the member company. It is recommended that member companies also ensure that their suppliers have mechanisms in place for worker-to-management complaints.<sup>12</sup>

FLA members report several methods to fulfil this obligation, for example through pre-paid mailers (Reebok), providing workers with (mobile) phone numbers and addresses of the (local) compliance staff via posters (LCI, Reebok), complaint boxes (PvH), by checking reports of meetings of worker-management communication committees (Reebok), or most commonly by having auditors leave their business cards with the workers after interviewing them (Adidas, Levi, Nike). Unfortunately no information is available about response rates.<sup>13</sup>

In addition to that (and different from ETI) anybody can file a complaint directly to the FLA itself. The FLA (after review) passes the complaint on to the member company for remediation but takes an active role in this process (ultimate responsibility for which lies with FLA). Between August 2001 and August 2002, the FLA received four complaints.

The **Fair Wear Foundation** is still in the process of setting up a complaints procedure that would be accessible to workers and others. The FWF plans to have members of its partner networks locally manage the procedure and report complaints to the Foundation, which will be responsible for follow up. The FWF is considering that the first step in the process will be that the complaint goes to the member company to handle, and if this fails to resolve matters then the FWF will become directly involved. At this time it is unclear in what way member companies will be obliged to develop channels to directly receive complaints or to ensure that their suppliers have mechanisms to handle worker-to-management complaints. So far the FWF has received two complaints, both in the context of its pilot projects in India, filed by local partners after the pilot audits were conducted.

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on complaints mechanisms as part of their own social reporting, we have not checked reports for all member companies.

<sup>12</sup> For example, FLA member Liz Claiborne International reports only encouraging suppliers to have such systems.

<sup>13</sup> Some FLA member companies report that as part of their obligation to “provide employees with opportunity to report non-compliance” they are developing relationships with local groups, who in several cases then file complaints.

## Key issues

The entry points into a complaint system, and the subsequent journey that a complaint takes toward resolution can be unclear to those seeking to access such a system. **Clarity** regarding any complaint mechanism is important. The ETI has developed a flow chart that clearly presents an overview of their system for handling complaints. FLA has an easy to read and understand FAQ section on its website, and translations in local languages. SAI provides a clear overview of the status of each of the complaints directed to SAI on its website.

Other initiatives are encouraged to develop such clear text or visual representations of their systems, as this will help communicate to others (workers, workers' support, or workers' representative organization) how the system works.

Only very limited information is available concerning the **effects and effectiveness** of the complaints systems set up for workers to report directly to the sourcing companies. More research on the methods currently in use seems essential. Are these actually effective ways for workers and others to access complaint systems? This remains unclear.

Because complaints are filed at different levels (to workplace management, sourcing company, or MSI) it is important that the **relationship** between these different levels of complaints are understood and that they facilitate the speedy resolution of workplace problems. There is a potential for confusion and duplicated efforts, which potentially can have a negative impact in terms of wasted resources and loss of credibility (i.e. workers are unlikely to trust a mechanism that they perceive as bureaucratic and one that stalls their efforts to resolve their problems).

A specific challenge in this regard is understanding when worker-to-management complaints need to be brought to the attention of the MSI. How will such complaints be "fed into" the monitoring or verification system? In such cases, and in situations where the complaints are filed directly to the sourcing company, what role will the monitoring and verification system play in resolving such complaints?

The different roles and responsibilities that sourcing companies and MSIs have for processing and following-up on complaints must be clearly elaborated.<sup>14</sup> The

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<sup>14</sup> In some ways the difficulties in assigning responsibility relate to the difficulty in fully separating the internal monitoring processes from those of verification. Because complaint mechanisms are used as a tool of internal monitoring and verification the processes can overlap and issues of responsibility become blurred.

current MSIs take varying amounts of responsibility. When the ETI receives a complaint, they expect that the organization filing the complaint and the member company first attempt to solve the problem on their own. The FWF seems to be leaning toward this model as well.<sup>15</sup> The SAI process also gives the certified auditors and the certified company (rather than the plaintiff and the sourcing company) the task of solving the problem. Only after an appeal regarding the decision does SAI itself (via the appeals committee, made up of advisory board members) become active. However, because in practice complaints are often filed simultaneously with the sourcing company and the MSI, and the issues are generally serious and urgent, workers will not want to wait for the sourcing company concerned to fail to deal with the issue. They will expect the MSI to take up their concerns immediately.

**Accessibility** is an important characteristic of a complaint mechanism. Accessibility for workers is crucial: while audits or investigations are scheduled by the sourcing company or verification system, an accessible complaint mechanism can potentially provide workers with direct access to the sourcing company or verification system. Attention to complaint systems has focused primarily on complaints originating from NGOs or trade unions. However, procedures for handling NGO and trade union complaints will differ from those geared toward receiving and processing complaints directly from workers.

Clearly complaints originate from the workers themselves, and can be channelled via organizations. However, if organizations are limited from accessing MSIs, as in the case of the ETI which only accepts complaints from members, it can mean that workers also have less access or less timely access.<sup>16</sup> At a time when systems to accommodate complaints directly from workers are still being sorted out, limits on their indirect access to systems should be minimized. An advantage of ETI's system of channelling complaints via member organizations is that some necessary screening of complaints takes place (see section 3 for more on this).

This is not to say that systems to which workers and organizations can directly file complaints are without problems. This can create **inflated expectations** that

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<sup>15</sup> The two complaints raised during one of the India pilots were both first presented to the company, who were asked to report back to both plaintiff and FWF within a specified (30 days) period of time, during which FWF did not actively intervene.

<sup>16</sup> Upon receiving the recent appeal from CAT on Tarrant (Mexico) considerable time was spent by the CCC International Secretariat in finding an ETI member organization who could file the complaint, due primarily to capacity concerns among member organizations. The BJB case, in which both the FLA and WRC were active, took 14 months from start to finish.

complaints that are quickly filed will be quickly processed and resolved.<sup>17</sup> Its very obvious that none of the MSIs presently have the capacity to deal with substantial numbers of complaints. This also connects back to the issue of responsibility, and who should/can deal with certain issues. Some thought should be given to exploring the possibilities of assigning immediate responsibility for the timely processing of complaints to different actors, perhaps based on the type of issue in question (health and safety complaints go to the sourcing company, freedom of association to the MSI?) or the level of conflict that characterizes the complaint (ex. Is it a deep conflict between workers and management?).

The WRC and ETI both address the role of workers in initiating complaints for systematic follow-up,<sup>18</sup> but this could be made more explicit, to prevent the possibility that cases might be brought forward without **workers' consent**. This is problematic because filing a complaint and drawing attention to labour rights violations can put workers at risk (risk of being reassigned, fired, blacklisted, intimidated, or physically assaulted). They must be the ones to decide if they want to take such a risk.<sup>19</sup> It is important to verify the link that the organization (either representative or support organization) has with the workers.<sup>20</sup>

It is important to note that there are also cases where complaints have not been filed to MSIs by workers or organizations connected to them, but by member companies themselves (ex. a complaint regarding the BJB factory in the Dominican Republic was filed by Adidas and Nike to the FLA). This could be because a member company runs into a problem they feel unable to solve on their own (probably relating to high conflict issues, such as freedom of association). In such cases

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<sup>17</sup> At the time of the complaints filed to FWF, the organization had one staff member. Obviously this severely limits the possibility of actively intervening in the case, something that can require huge amounts of time and resources. The FLA also reports capacity issues as the first and foremost barrier to effectively handling complaints.

<sup>18</sup> See also the next section on acceptance criteria.

<sup>19</sup> Decisions to pursue rights violations without proper consultation with the workers directly involved does not necessarily happen in bad faith, nor does it necessarily imply that the outcome is detrimental to the workers. For example when systemic issues that cover all suppliers in a certain region, such as blacklisting of workers involved in organizing efforts in Central America, are put forward to sourcing companies and MSIs as an issue to be dealt with intensively. In such a case the complaint is made to flag the issue, rather than to follow up on the concerns of one particular set of workers.

<sup>20</sup> An example of a complaint filed by a representative organization is the recent complaint filed with the FLA by the Free Trade Zone Workers Union in Sri Lanka regarding rights violations at the Jaqalanka factory, a VF and Nike supplier. An example of a complaint filed by a support organization is the case of rights violations at the Tarrant factory, a Mexican supplier to Levi Strauss, recently raised with the ETI by the Central American Women's Network.

simultaneous intervention by several companies, or intervention by a third entity that is perceived to be independent is seen as the only way to resolve the problem. It becomes in the interest of the member company to get the MSI involved.

### 3. Criteria for acceptance

No information is presently available about the criteria of sourcing companies for accepting complaints. The criteria among MSIs for accepting a complaint for follow-up vary. Generally, most systems ask organizations filing a complaint to describe the complaint and give as many details as possible. ETI and WRC have the most specific criteria for accepting complaints for follow-up.

**SAI** requires complaints to be filed in writing and to include “objective evidence.” A complaint form is available upon request, and is required for use in filing appeals of complaints decisions.

Complaints to the **FLA** must detail the alleged non-compliance and include any evidence or other supporting information. The complaint must contain “reliable, specific and verifiable evidence or information.” The FLA has a short form that can be filled in, but this is not obligatory and complaints can also be filed by phone or e-mail. Complaints to the FLA are assessed by the executive director, taking into consideration both the nature and extent of prior monitoring and remediation relating to the complaint and the reliability of any past complaint made by the same third party, then it is forwarded to the company.

The **WRC** requires that the complaint be specific enough so that they can decide whether or not an investigation is necessary. If the complaint is not specific enough the WRC will follow up trying to obtain additional information. As in the FLA procedure, the executive director assesses the complaint. The WRC outlines its “mandatory threshold criteria” as: (1) reasonable cause to believe that a party has engaged in actions constituting a non-trivial violation of the university’s code of conduct, or of the WRC Code of Conduct, and (2) substantial cause to believe that the workers who are or may be affected by an investigation desire that the WRC initiates an investigation (for example, the complaint is submitted by workers). Additional considerations include the relative importance, severity and pervasiveness of the violation; relative probability that the investigation will result in remediation (or progress toward remediation); degree to which/probability that the investigation will concurrently empower and strengthen the capacity of local groups, workers, etc.; and the probability that it will yield information, innovation, etc. to serve the general purposes and activities of the WRC.

The ETI has a somewhat different procedure. ETI member organizations file their complaints in writing directly with the member company involved in the complaint. While the ETI does not provide a complaint form, they do list the topics that should be covered in the written complaint.<sup>21</sup> This letter of complaint and subsequent correspondence relating to the complaint must be dated and signed and also sent to the ETI secretariat and the appropriate Global Union (formerly referred to as International Trade Secretariat), to give the unions the opportunity to participate in the process.

To be taken up by the ETI system, complaints (referred to as allegations) have to be either (1) specific and very serious, requiring an instant response, or (2) specific and on-going, requiring prompt investigation. If information is not specific enough to trigger the ETI complaint process the information is still supposed to be communicated to member companies who can use the information in planning their supply chain monitoring activities. ETI specifies that parties in each case should discuss with each other whether they are dealing with background information, or “guideline triggering information” (information that puts the complaint process into motion). For a complaint to be accepted under the ETI criteria it must be within the scope of the ETI’s base code and it must be proven to the satisfaction of both parties that the workplace in question is part of the member company’s supply network.

Another provision of the ETI criteria concerns “transient suppliers”: those suppliers only used for a short period of time or those suppliers used before the allegation was made and whom member companies have no immediate plans to use again. The ETI member company and the secretariat both record the allegations. ETI requires that the supplier be investigated prior to any future use.

Thus far, the FWF has not specified any criteria for accepting complaints.

All MSIs make it possible for the identity of the complainant to be kept in confidence from the company concerned. The ETI qualifies this, and requires that workers involved in a complaint be named, unless there is a risk of victimization. ETI waives this requirement if the complaint involves large numbers of workers.

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<sup>21</sup> This includes if the grievance is being simultaneously through other channels, if the employees affected have expressed their own preference for a solution, what the relationship is between the organization making the allegation and the employees affected by the allegation, and if there are relevant organizations that should be contacted if an investigation is decided on, or local complexities they should be aware of.

WRC is most concerned on this issue, and states it will only name workers if they indicate in writing that they want to be named and if this is double-checked by the executive director.

## Key issues

Information that must be supplied in order for a complaint to be taken up will have to **go beyond a clear description** of the problem and the subsequent events. It will be important to ask those filing complaints to specify what steps they have undertaken to ensure that the complaint is genuine (the violation has occurred) and to what extent workers have agreed to have the complaint filed. This last point is especially important. Such **consultation** will have to take place not only initially, but will need to occur throughout the process of following-up on the complaint. In most systems an investigation follows acceptance of a complaint, therefore at an early stage in the process it will be useful to have information on how a credible investigation would be organized in that specific context. Workers and their organizations can and should provide input on this. At some point a corrective action plan will be drawn up, and (ideally) the organization that filed the complaint will have to agree on the provisions contained in the plan. Again, those filing a complaint could indicate possible actions to be taken and how ideas on corrective actions would be checked back with the workers and their organizations.

Initial contact surrounding complaints however, should not be delayed by the need for this more extensive information. The interface between the MSIs and those filing a complaint should not be intimidating. There should be an **easy gateway** to the initiatives, which facilitates people getting in touch, and does not create obstacles to raising concerns. Somebody with a complaint should be able to pick up a phone, write an e-mail or a fax and be assured that someone is listening and able to guide them through the procedure. Perhaps viewing this as two stages is simpler: one for intake of the complaint, and the second one for providing or gathering the information needed according to the different criteria. It should not be the responsibility of the person/organization filing the complaint alone to come up with this information: in reality those who file a complaint might not have the necessary capacity, skills, or awareness to gather the detailed information needed under the different criteria (ex. Local labour law, knowledge of all past or present activities undertaken that are relevant to the problem, etc.) and they might not be the one with whom the MSI has sustained communications regarding the problem in question. Clearly there is a role here for the NGOs and trade unions involved in the MSIs.

The ETI requires proof that the workplace in question is part of its member company's **supply network**. Requiring agreement on such **proof** could introduce delays in processing workers' complaints and often can actually only be uncovered in the course of the investigation of the complaint. In the CCC's experience, supply chain responsibility is often disputed in cases of workers rights violations. While some companies do acknowledge their responsibility to follow up on queries regarding reports by workers/workers' organizations of rights violations, many still continue to deny their business relationship with the workplace. Claims of unauthorized subcontracting or outright denial of any connection to the offending workplace are common responses.<sup>22</sup> If parties to the complaint do not agree that there is a link through the supply network, efforts to follow up on the complaint should not be stalled. In the garment industry in particular, delays can make complaints "disappear": for example garment workers illegally fired for organizing to receive the minimum wage might be able to spend several months demanding back pay, reinstatement, or severance benefits but eventually will need to continue working elsewhere to support themselves or their families or, as many are migrant workers, they will return to their often distant home towns when blacklisting prevents them from being hired elsewhere. It does make sense to gather as much information as possible regarding supply network links in the processing of the complaint, and include the investigation of such links as one of the first steps of the subsequent investigation.

A thorough complaint system will need to satisfactorily take up the issue of **short-term suppliers**. Despite the complexities of confronting this aspect of global supply networks, artificial limits on the responsibilities of sourcing companies, that imply an "expiration date" for workers rights should not be established by complaint mechanisms. The nature of the garment industry is such that there is no guarantee of a business relationship beyond the present order, although often in practice longer-term relationships do develop. Are companies that allegedly produce "just one order" at factories with extensive workplace problems exempt from taking responsibility for implementing better labour practices?<sup>23</sup> Corporate responsibility

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<sup>22</sup> For example, in 2003 the German company Tom Tailor first denied outright that they were sourcing at PT Kahatex in Indonesia when contacted about illegal dismissals and violations of the minimum wage at the factory, but eventually admitted this was not the case; in the case of Shree Jee, where 44 people died in a fire in 2002, Stylo (Barratts) denied any connection to the factory while acknowledging that their agent sourced their orders there, in the 2003 case of rights violations at PT Busana Prima Global in Indonesia, Head and Lotto tried to deflect responsibility by stating it was their licensees who sourced at the factory (CCC urgent appeals, 2202-2003, [www.cleanclothes.org](http://www.cleanclothes.org)).

<sup>23</sup> See for example the debates surrounding Puma's role at Matamoros (2002/2003) and Levi's role at Tarrant (2003).

does not mean overlooking the workplaces where rights violations are most likely occurring.

While it might make sense to exclude violations that occurred in the past if there is no current business relationship, because it will be difficult for the sourcing company to pressure the supplier for improvements (the “lack of leverage” argument), on the other hand, the nature of some violations is such that it is more likely that they will be reported at a later date (for example, sexual harassment, or health complaints manifested only after a period of time). A company should at least be responsible for labour practices during the time it has orders produced by a supplier. A related point is a sourcing company’s commitments as part of its membership with a verification system: under the FLA provisions, even if a sourcing company terminates its FLA membership, it is bound by the FLA complaints procedure if the violation occurred during the membership period.

Similarly, sourcing companies will regularly claim that they are only “small customers” without leverage to push for improvements. After how many orders (two, three?) does the relationship move out of the “short term” and become something more, and within the scope of monitoring or verification system complaint mechanisms? Exemptions for short-term suppliers and so-called small customers run the risk of rewarding bad behaviour and encouraging short-term relationships between sourcing companies and suppliers. More insight is needed into the whole issue of **leverage**, meanwhile instead of excusing companies due to these reasons, it is clear that sourcing companies will need to cooperate. There is some recognition that this is the case (in the ETI guidelines, companies are encouraged to seek such cooperation) and in some cases companies have actually been working together (ex. via the FLA in the Bed & Bath case in Thailand).

The ETI complaint process is used to funnel information to companies regarding information of workplace concerns that might not be specific enough to put their complaint process into play. This provision is important because it **connects the information** generated through the complaints mechanism to all the other aspects of monitoring and verification. Such information adds to the information gathered through audits and background studies, which are crucial to understanding working conditions and making the changes that are needed.

#### 4. Investigating the complaint

Once MSIs agree to take up a complaint the next step is investigating the specific allegations. An investigation is also usually a key demand to sourcing companies to whom complaints are directly filed.

Who investigates or who decides who investigates a complaint is important, and constitutes a fundamental difference between the complaint mechanisms of several of the existing initiatives. There are, as discussed in section 2, also differences in when exactly the MSI itself intervenes in the process.

The WRC forms an investigation team, selected by the executive director, who decides on the division of labour and has final supervisory responsibility and authority. The WRC has guidelines for the composition of the team (including workers from the area, though not from the workplace under investigation, and their local or regional representation, WRC staff or board members, local/regional organizations, specialists, and others).<sup>24</sup> There is a full consultation with all the members of the team, then evidence gathering takes place, an analysis, and recommendations for remediation are developed. Teams can prepare additional investigative reports. WRC documents the entire process. Apart from the procedures for agreeing on remediation, the WRC appears to provide the most extensive guidelines for investigating complaints.

Within the SAI system, complaints to management are investigated by management (a “root cause analysis”), while those to the certification auditor are left to them to investigate (possibly via an unscheduled audit). An investigation has to be made in 30 days. The general guidelines for auditing then apply (including effectively obtaining and maintaining information about working conditions from regional interested parties, NGOs and workers). Usually the same firm that approved the original certification goes again, which has some advantages (they know the company) but it also has its drawbacks, since the same techniques and sources that may have failed to uncover the problem, are likely to be used again. In the case of PT Kasrie (Indonesia, 2002) for example, the same certification auditor basically restated the original conclusions, essentially creating delays in uncovering the problems and incurring unnecessary expenses.

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<sup>24</sup> Members of the team need to publicly disclose any other investigative, reporting or capacity-building activities they are involved in that relate to the matter under investigation, and cannot be engaged in such activities at the same time as the investigation. Given this last requirement, it is unclear how workers representatives would be able to participate in an investigation and carry out their duties.

The ETI process calls for a meeting between the company and the organization filing the complaint to discuss a plan for following up on the complaint (manner of investigation, degree of confidentiality, timetable, additional resources and who will pay for them, and remediation) which is documented in a memorandum of understanding (MoU). The MoU also indicates whether other ETI member companies should become involved in the case or if it is appropriate to seek joint action with companies that are not ETI members but are sourcing from the workplace in question. The ETI specifies that parties should maintain continuity of representation throughout investigation and remediation.

Unless parties agree on a different approach the company should engage investigators (own staff or outside), who conduct off-site interviews and also consider the findings of other investigations. If the company and the organization filing the complaint do not agree on the investigation findings, then hiring an independent investigator agreeable to both sides is an option, with both parties involved in drawing up the terms of reference. The ETI calls for a “no victimization” policy for the duration of the investigation to the supplier; as part of this policy names of individual non-managerial employees who provide information for the investigation are not disclosed.

The FLA gives its member company 45 days to follow up on the complaint and report to the executive director on the progress of its remediation plan, but in several recent cases FLA staff was actively involved in this period (sometimes because the companies themselves filed the complaint). The FLA does not really have a set process for conducting the investigations, although they adhere to the standards developed for their independent external monitoring process. The investigations of complaints can be conducted by FLA staff or by differing combinations of staff, FLA accredited monitors or outside experts. In one case a complaint was received about a supplier to Eddie Bauer, which turned out to also supply Levi Strauss and LCI. The initial investigations by the companies were coordinated among them, and all three confirmed parts of the complaint, after which an investigation was undertaken by an FLA accredited monitor. Another example of the investigation mechanisms they are developing is a program in Central America which makes use of local ombudspople (appointed in cooperation with WRC) to receive and investigate complaints.

So far the FWF does not specify what its process will be for following-up on complaints, but does state that a verification audit is an option. FWF uses teams made up of local experts, following the advice of members of its local partner network (which includes trade unions and labour rights NGOs). The audit includes

worker interviews in a safe environment and consultation of partner network members.

Again, not much is known about how sourcing companies deal with complaints that they receive as part of their monitoring process, or about the extent to which guidance in this is provided by the MSI. The experience of the CCC in filing complaints with different sourcing companies provides some insight into how companies investigate complaints. Those with local staff in the country or region concerned (ex. GAP, H&M, C&A) will usually first send those to talk with management, and subsequently communicate management's view (which usually contradicts the view of the organization filing the complaint) back to the CCC. Companies without local staff will write to management, and perhaps at a later stage, after sustained pressure, send in a lawyer (ex. the Limited with Gina Form in Thailand) or auditor (ex. S.Oliver at PT Kahatex in Indonesia) or go themselves (ex. As Puma did in the Matamoros case in Mexico). Often in this first phase no communication with workers or related organizations takes place. Across the board, there is an enormous hesitancy by companies, sometimes especially by local staff, to get directly in touch with the workers, or their unions or the organizations supporting them (ex. Nike with Bed & Bath, Thailand). Subsequently a protracted debate about the labour law might take place, where interestingly enough those filing the complaint usually cite the law in some detail to prove their case, and sourcing companies tend to rely on information obtained from local management, which more often than not turns out to be incorrect (ex. many Indonesian cases). The quality of the investigations carried out can be questionable and based on faulty methodology, for example workers might not be interviewed at all or those who are interviewed are selected by management.

### Key issues

While investigating complaints, the WRC for example calls for maximum **participation of local and regional actors**, as they seek to concurrently empower and strengthen the investigative capacity of local and regional actors. This raises the same important problem that has surfaced in relation to local stakeholder participation and audits: the skills and capacity often do not currently exist at the local level and need to be developed. Although this can be perceived as being at odds with the need to follow-up on complaints in a timely and efficient manner, investing in capacity building will be needed to develop better-functioning complaint mechanisms.

The fact that some of the MSIs mention off-site interviews and local stakeholder participation in information gathering points to the need for **guidelines on carrying out investigations** to be as detailed as those for auditing. Problems with gathering information directly from workers and their organizations, being sidetracked by management-controlled workers organizations, and obtaining accurate legal analyses of issues contained in complaints have all been issues that have come up in terms of the quality of investigations carried out by sourcing companies.

The quality of an investigation could be linked to the quality standards being hammered out by the MSIs for auditing, as outlined elsewhere. This will mean dealing with such issues as: what constitutes a thorough investigation? What standards to set for confidentiality and non-victimization of workers who participate in complaints or contribute information to the investigation? If sourcing companies are initially given time to sort out complaints what is a reasonable amount of time, given the urgency of the issues? How much time should elapse before a second investigation? Learning more about **how companies handle complaints** is important in this regard, also for the MSIs who begin their processes by sending complaints directly to the sourcing companies for resolution.

There are important **communication** issues involved in the different stages of handling complaints. Not only do the different parties to the complaint sometimes have radically different backgrounds, cultures, and experiences, but the complaint is also dealt with at different geographical levels (in the country concerned and at the international level). This also extends to the remediation/corrective action phase, see point 5. Facilitating better communications is one of the reasons that the ETI requires **continuity of representation** throughout the follow-up to a complaint. Changes in representation can also create delays to processing complaints, which can have a negative impact on workers who are urgently seeking a resolution to the alleged rights violation.

Discussion of **joint action** (as mentioned in the ETI process) as early as the investigation phase of processing a complaint is important. In practice, joint action or action by more than one sourcing company is often necessary to get results (for example, in the recently-resolved case at Gina Form Bra in Thailand).

## 5. Remediation/Corrective action

If the complaint process reveals rights violations a plan will be developed to address the problems. This plan is usually called a remediation or corrective action plan.

Within the ETI a remediation plan is negotiated between the member company and the supplier, though the views of the supplier workforce and of the organization in the supplier country where the allegation originated from should be taken into account. The plan is required to include a description of each code breach addressed, the nature of and schedule for remediation action, and any changes in the ETI member company's trading practice necessary to make remediation effective. The member company has to monitor the supplier's compliance with the remediation plan, and once complete, inform all parties. If the individual or organization filing the complaint does not agree that remediation is complete, they have to communicate that to the member company, and a discussion follows on how to proceed. In case of continuing disagreement the issue is referred to a tripartite sub-committee, whose decision will be final and binding.<sup>25</sup> If the remediation is not complete after six months, an interim report and timetable are sent to the ETI secretariat and board. The maximum time limit for "completion and final report" is one year, after which unresolved issues are automatically referred to the ETI board.<sup>26</sup>

For the FLA, SAI and FWF by and large the same procedures that govern corrective action in case of violations uncovered during audits apply. Sourcing company and suppliers (or in the case of SAI certification auditors and suppliers) have to agree on the provisions of the plan. SAI specifically indicates that management has to undertake not only corrective action (following the auditors advice), but also preventive action, so that the violations do not occur in the future. In some cases the FLA has been acting more as a mediator, also looking for agreement from other parties involved (ex. Choi Shin, Guatemala 2003, where the remediation consisted of drawing up a collective bargaining agreement).

The WRC does not specify what the procedure is/should be for agreeing to the remediation, but it is clear that they will not consider a complaint to be solved until the organization that filed it is satisfied. They do indicate that investigation activities can continue during the remediation period.

Remediation or corrective action is by necessity specific to the local context, and therefore hard to proceduralize. Again, not much is publicly known about remediation undertaken in the course of regular internal monitoring.

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<sup>25</sup> The same procedure is also invoked in case of disagreement in earlier stages of the process.

<sup>26</sup> ETI guidelines have a specific timeline for the adjudication committee to adhere to:

Interpretation of guidelines: 1 month, Allegation in correct form: 1 month, Investigation process: 2 months, Remediation: 3 months

Examples of corrective actions undertaken as a result of complaints include: assisting suppliers in hiring full-time human resources staff, or in working with local experts (labour lawyers, payroll experts, health and safety experts) to draft and help implement new policies; training and educational programs for management and workers; develop procedures for management to communicate more effectively with workers (via grievance mechanisms, committees, meetings); verification of union membership with a view to union recognition or assistance in working towards negotiation of a CBA; creating changes in local laws (ex. the laws governing homework in the UK); back pay or settlement money for workers after closure (ex. Bed & Bath); organize forums for employers, trade unions, local government and NGOs to discuss more systemic issues; general awareness raising programs.

## Key issues

**Who decides on a remediation plan** (supplier and sourcing company? A broader group of stakeholders?) and **how that plan is prioritized** are key issues to be considered. Quality of remediation plans is obviously connected to the quality of the investigation and in many cases there is a need for a high level of detail (and associated expertise) to draw up such plan.

An important issue in dealing with remediation of code violations will be who has **responsibility** for different tasks: the supplier, the sourcing company, or the MSI. On the one hand it is clear the MSIs have a role to play where sourcing companies alone cannot (ex. because of lack of leverage) or should not (ex. because the issue requires expert knowledge they don't have). On the other hand member companies have to play an active role in investigating and solving problems; they cannot depend on the MSIs to which they belong to solve all problems for them. Striking a balance in terms of responsibility is necessary: while expert guidance and input is important, code compliance should not be a task that is outsourced, it must be something that a company integrates into its business practices.

While sourcing companies have demonstrated a tendency to end their business relationship with suppliers when complaints are first made public ("cut and run"), this can also be a problem later on in the process, for example during the investigation or remediation phase of handling a complaint. MSIs will need to be clear about when the complaint process has run its course, and when it is acceptable for sourcing companies to make such a decision. Situations where a supplier apparently refuses to cooperate with any of the suggested changes (ex.

Tarrant in Mexico, PT Kahatex in Indonesia, both in 2003) receive special attention. Given the increasing numbers of large supplier conglomerates in these sectors (often multinational corporations themselves, built with or controlled by Asian capital) it is entirely possible that in some cases the power dynamics in the supply network are such that a supplier can easily afford to lose a client. On the other hand, sourcing companies have too often used lack of leverage as an excuse from the start, without fully exploring all options, including promising long term relations and/or investments, good quality contracts, and cooperation with other buyers. The key will be to ensure that workers filing a complaint continue to be involved in **decision-making regarding the demands that are put to suppliers** and in related negotiations.

Sometimes it is hard to distinguish between investigation and remediation.<sup>27</sup> It should be clear to those in the process what stage they are in (ex. initial investigation or investigation/visit as part of remediation or monitoring remediation) so that progress through the process is clear (then for example it will be clear when and if a sourcing company is justified in terminating its relationship with a supplier who fails to comply with code standards).

It will not be possible to solve certain problems (especially those relating to freedom of association and living wages) by focusing on remediation at just one workplace: there are **systemic problems** that will need collective action to achieve real and sustainable solutions. Similarly, it might not be possible to solve certain problems during the duration of one order (and as discussed above, sourcing companies often do not make a commitment to a supplier for more than one order). Therefore, the formulation of remediation plans will need to take up the issue of **ongoing leverage** in a workplace. Again, this points to the need for sourcing companies to work together to push for improvements.

There is a need for more information on **how companies remediate problems** that come out through their internal monitoring, because it could provide more insight for others interested in developing solutions. This connects to the issue of public reporting (see section six).

## 6. Reporting issues

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<sup>27</sup> Factory visits for example are a tool both in the investigation and during the remediation stage, and so is consultation with local partners. Often the same people or organizations are likely to be involved. See f.e. the case study of BJ&B, involving FLA and WRC.

Provisions need to be made on how information on a complaint is reported back to the workers, companies, and organizations involved, as well as the public; during as well as after the complaint process.

The WRC makes its investigative reports (preliminary and follow-up, including recommendations) and remediation reports available to everyone.

SAI shares its reports with those who file complaints and does not make them public.<sup>28</sup>

The ETI makes investigative and remediation reports available to member and supplier, relevant employees, the person/organization with whom the complaint originated in the supplier country, the ETI member who filed the complaint, and the relevant ITS. The ETI calls upon its members to refrain from publicizing a case in the media while member company is investigating/addressing the problem, though they recognize that sometimes cases are already public knowledge. How to communicate with the public is also an issue that is taken up in the MoU.

Both SAI and ETI stress the importance of good record keeping and written responses during the complaints handling process, to formalize steps and ensure that the process is documented, for the benefits of both sides.

The FLA now issues a public annual report (the first one, published in 2003 covering August 2001 to August 2002) which includes information in detail on all its member companies and the complaints filed to the FLA. Also included is one case study of a complaint filed to the FLA. The FLA also posts on its website “tracking charts” that give information on all the suppliers they have verified (information beginning in 2001 to the present) and includes information on complaints made by workers directly to workplace management and remediation efforts.

FWF as yet has no provisions on reporting.

### Key issues

When considering reporting on complaints, a balance needs to be struck between **confidentiality and transparency**. Different target groups (workers, workers’ representative or support organizations, supply company management, sourcing

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<sup>28</sup> A public report is available concerning SAI’s first complaint, the Thika plantation in Kenya, written by the Kenya Human Rights Commission at <http://www.sa-intl.org/AboutSAI/DeMonteBook.pdf>

companies) have different informational needs. These should be considered in light of the level of confidentiality necessary, for example disclosing worker names and supplier addresses. Systems should also ensure that these needs are met in a timely manner without running the risk of information overload.

To some extent, in discussions about transparency there has been a focus on transparency of findings, however there is also a need for transparency regarding remediation, systems, and procedures. Priorities in communicating information should be such that **workers get information** as soon as it is available. And as mentioned above, good communications will include not only clearly conveying the findings of investigations or other stages of the process, but also clearly communicating what the process is.

## Key issues

There is general consensus that handling complaints in practice requires huge amounts of time from all parties involved, and this is time that is difficult to schedule in advance. Frequently an intensive time investment has to be made in a relatively short period. Given the importance of handling complaints effectively in order for code compliance to have credibility, all stakeholders will need to recognize that serious investment in terms of capacity is needed. It would be useful to begin to track and compare the time invested in all the different stages of handling complaints.

Time, on the other hand, should not be drawn out unnecessarily. Filing a complaint at the local level to local authorities is sometimes used as a stalling technique, and management and sourcing companies will sometimes say they are waiting for the dispute to be settled through these legal means. Similarly, sourcing companies have often responded to consumer queries about rights violations with the assurances that “they are investigating.” Complaint systems set up by MSIs would be a failure if they became a process used to defer action or deflect negative attention. The different phases of the complaints procedure should be of limited duration to ensure credibility for the entire process (ex. the time between receiving a complaint and investigating should not be several months, and an investigation should also not take several months).

Curiously little debate is going on about the costs incurred during the different stages of handling complaints. If a complaint is filed directly with a sourcing company, they carry the cost of the investigation. If it is filed to an MSI, the costs associated with investigating a complaint are covered by the MSI (ex. WRC and FLA), the supplier (SAI, ETI) or member company (ETI), or the certification body (SAI). SAI reports having absorbed some of the (substantial) expenses in handling complaints itself. Remediation costs are generally supposed to be covered by the supplier or the sourcing company. Obviously how this is balanced will influence the acceptance and feasibility of the remediation plan. Assessing and dividing the costs of remediation or corrective action, generally presumed to be much higher than the costs of investigation, deserves more attention.

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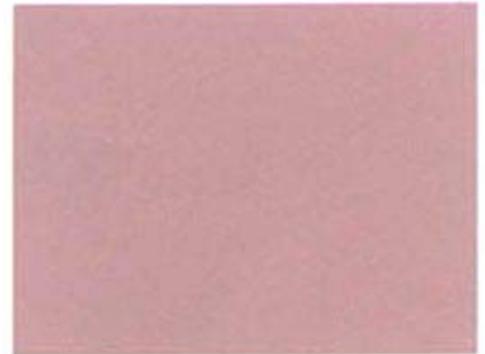
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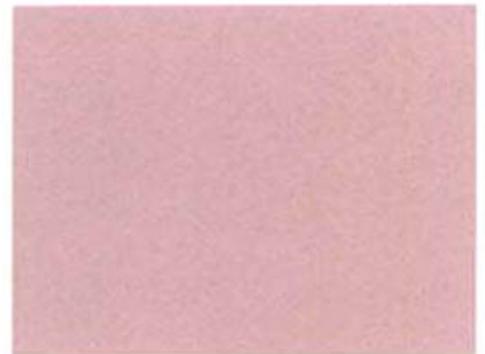
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