

# FAIR TRADE AND ETHICAL LABELING IN THE CLOTHING, TEXTILE, AND FOOTWEAR SECTOR: THE CASE OF *BLUE JEANS*

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## I. INTRODUCTION

Consumer labels are quite common in the clothing, textiles, and footwear industry. The most common labels are washing prescriptions, general product information, and quality claims (e.g., *the wool mark*). Labels on social conditions in manufacturing also have a long history, originating in the United States in the 19<sup>th</sup> Century.<sup>1</sup> Initiatives came from labor unions (e.g., the United Garment Workers of America) and from consumer organizations, such as the National Consumers League that issued the *White Label* in 1899 for women's underwear not made under sweatshop conditions, and without workers less than sixteen years of age.<sup>2</sup> At present, there is a revival of social labels, for example focusing on child labor in developing countries in the sportswear and carpet industries.<sup>3</sup> While these labels emerged in Western consumer markets, some developing

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1. DRUSILLA BROWN, CAN CONSUMER PRODUCT LABELS DETER FOREIGN CHILD LABOR EXPLOITATION? (Tufts Univ. Dep't of Econ., Discussion Paper 99-19, July 1999), at <http://ase.tufts.edu/econ/papers/9919.pdf> (examining the question of the effectiveness of 'no child' labels with the help of a simple general equilibrium model; concluding that it is unlikely that 'no child' labels can really improve the fate of the children employed in the targeted foreign industry and that if the label would be effective, it would be inefficient in the sense that there would be less expensive instruments to achieve the same aim – basically a direct transfer of money to an educational fund for the children).

2. JANET HILOWITZ, INTERNATIONAL PROGRAMME ON THE ELIMINATION OF CHILD LABOR [IPEC], LABELING CHILD LABOR PRODUCTS: A PRELIMINARY STUDY, Pt. 1 (Int'l Labor Office 1997), available at <http://www-ilo-mirror.cornell.edu/public/english/standards/ipec/publ/policy/papers/labelling/part1.htm> (last modified Oct. 18, 2000).

3. See *id.*

countries have started to create their own *no-child* labels.<sup>4</sup> Environmental labels emerged in the last century, either focusing on noxious substances in the products themselves or focusing on the entire array of environmental impacts during production, use and disposal.<sup>5</sup> Recently, some labels began to combine both social and environmental concerns. This paper aims to provide insights into the functioning and relevance of labeling and certification schemes in the textiles, clothing and footwear sector, with a special emphasis on blue jeans.

Blue jeans are something of a cultural icon of our times and there is a diversity of social and environmental problems connected to their production. These problems range from sweatshop labor in industrialized countries, to generally poor labor standards in developing countries, including child labor, to environmental problems in the cultivation of cotton (pesticides, insecticides, water use) and in the processing of the jeans, especially dyeing and stonewashing. A number of initiatives have been undertaken or are underway to address these issues. In the Fair Trade business, the organization Solidaridad recently introduced Kuyichi jeans as a social and environmental alternative to mainstream jeans.<sup>6</sup> Armani introduced *bio-jeans* with the Ecotex label a few years ago.<sup>7</sup> Notwithstanding initiatives like these, blue jeans do not seem to figure prominently in eco-labeling and social (no-child) labeling schemes. This gives rise to a somewhat paradoxical situation. Blue jeans are a highly visible consumer product, especially popular with young, progressive and (presumably) environmentally conscious consumers. The social and environmental problems in the production of blue jeans are well known and are capable of arousing popular outrage when exposed by the mass media. But, strikingly, ethical claims in the form of labels do not seem to play a prominent role in their marketing. Why is this so and what are the particular barriers that seem to prevent the introduction of labeling initiatives in this product category?

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4. *See id.*

5. VEENA JHA ET AL., U.N. CONF. ON TRADE & DEV. [UNCTAD], ECO-LABELLING AND INTERNATIONAL TRADE at 1, U.N. Doc. UNCTAD/OSG/DP/70, GE. 93-53875 (1993).

6. For an insider's account, see NICO ROOZEN & FRANS VAN DER HOFF, FAIR TRADE: HETVERHAAL ACHTER MAX HAVELAAR-KOFFIE, OKE BANANEN EN KUYICHI JEANS [FAIR TRADE: THE TALE BEHIND MAXIMUM HAVELAAR-COFFEE, OKE BANANAS AND KUYICHI JEANS] (Van Gennip, 2001).

7. Logan Bentley Lessona, *Needles and Pins Part 1*, ITALIAN FASHION NEWSL. (Made in Italy On Line), June 1999, at <http://www.made-in-italy.com/fashion/newsletters/news9/jun99pn1.htm>.

## II. STRUCTURE OF THE INDUSTRY AND ITS MAIN STAKEHOLDERS

The structure of the blue jeans industry is fairly complex. There are long, mobile supply chains with multiple layers of ownership and ever shifting factory locations. The structure includes retailers, marketers, manufacturers, middlemen, contractors and subcontractors in dynamic, global chains that can stretch from continent to continent including hundreds, if not thousands, of individuals.<sup>8</sup>

At the top end of the chain are developed countries' retailers, marketers, and brand-name manufacturers.<sup>9</sup> For a variety of reasons, but mainly for cost considerations, these agents have over the past three decades increasingly relied on overseas sourcing of their product and have concentrated their activities on high-value research, design, sales, marketing and financial services.<sup>10</sup>

The next link of the chain is occupied by the middlemen: buying offices, buying houses, importers, agents and traders, between which there is a very vague differentiation.<sup>11</sup> These middlemen are the link between the buyers, which are often based in Europe or the United States, and the manufacturers, who tend to be in Asia, Eastern Europe and Africa.<sup>12</sup> All of these middlemen are concerned with the same basic duties.<sup>13</sup> These duties are various, and start with handling communication between the buyer and factory, solving any disputes or problems that arise between the two.<sup>14</sup> They also handle the sourcing of new factories and workshops that can produce the desired product at the lowest cost to the buyer.<sup>15</sup> Quality control is yet another of their duties, and it involves sampling and conducting a series of inspections to ensure that the product meets specifications prior to shipment.<sup>16</sup> Sometimes the middlemen are expected to

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8. Gary Gereffi, *International Trade and Industrial Upgrading in the Apparel Commodity Chain*, 48 J. OF INT'L ECON. 37 (1999) [hereinafter Gereffi, *Apparel Commodity Chains*]; Gary Gereffi, *The Organization Of Buyer-Driven Global Commodity Chains: How U.S. Retailers Shape Overseas Production Networks*, in COMMODITY CHAINS AND GLOBAL CAPITALISM 95, 108-9 (Gary Gereffi & Miguel Korzeniewicz eds., Praeger Paperback 1993) [hereinafter Gereffi, *Buyer-Driven Global Chains*].

9. Gereffi, *Buyer-Driven Global Chains*, *supra* note 8, at 108.

10. *Id.* at 44-9.

11. *Id.* at 108-9.

12. *Id.* at 109.

13. *See id.* at 108-9.

14. *See* Gereffi, *Buyer-Driven Global Chains*, *supra* note 8, at 109-10.

15. *Id.* at 110.

16. *Id.* at 110.

procure the raw materials for the production process, but most often, that responsibility is left to the factories.<sup>17</sup>

The manufacturers organize the procurement of materials, and place orders for the cutting, stitching and finishing work with contractors.<sup>18</sup> The contractor finds factories to do the cutting, stitching and finishing for a specified amount of product.<sup>19</sup> If the contractor does not think that the target will be reached, then part of the production process can be subcontracted out to another factory at a lower price, and the subcontracting can go in a chain all the way down to small factories and home workers.<sup>20</sup>

The contracting and subcontracting chains can cross national borders into different countries, and the jeans company that placed the original order might not even know who is actually making their product, and under what conditions.<sup>21</sup> Industry representatives and Non-Governmental Organizations (NGOs) alike agree that this complex supply chain makes it very difficult for companies to do supply chain monitoring.

Globalization in the apparel industry is a very dynamic phenomenon.<sup>22</sup> In the late 1950's and early 1960's, factories in the United States and Europe began to close and production moved to Japan, later followed by low-wage locations such as South Korea, Taiwan, Tunisia, and Hong Kong.<sup>23</sup> In the 1980's, manufacturing moved yet again to a new set of countries including China, Sri Lanka, India, Bangladesh, Thailand, and the Philippines.<sup>24</sup> The newer hot spots for manufacturing include Cambodia, Laos, Burma, Vietnam, Eastern Europe, and Central America (Mexico) and the Caribbean region.<sup>25</sup> The reasons for the successive geographic shifts in production include exchange rate and trade policies (especially the Multi-fiber Arrangement (MFA) that sets country-specific quantitative import restrictions on exports of clothing and textiles to industrialized markets), the process of industrial upgrading by which incumbent manufacturing countries specialize in higher-value activities in the chain and move basic

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17. *Id.* at 111.

18. *Id.* at 109.

19. Gereffi, *Buyer-Driven Global Chains*, *supra* note 8.

20. *Id.*

21. Arnt Meyer, *What's in it for the Customers? Successfully Marketing Green Clothes*, 10 BUS. STRATEGY & THE ENV'T 317, 318 (2001).

22. Gereffi, *Apparel Commodity Chains*, *supra* note 8, at 49.

23. *Id.* at 49.

24. *Id.*

25. *Id.*

production offshore, and, undoubtedly, by the desire to keep searching for locations with lower production costs.<sup>26</sup>

Due to the highly complicated structure of the production process, many companies are not aware of exactly where their product is being produced. The main concern seems to be that the quality of the product is good, and production costs are low. Production is very easy to shift around due to the fact that the clothing and textiles industry does not need much capital investment, and advanced communication technology has also made it easier.<sup>27</sup> According to NGOs, companies are now always on the lookout for locations that have lower wages, better infrastructure, more tax breaks, better import–export conditions, no unions, and lax labor and environmental standards.<sup>28</sup>

In principle, consumers have much power over company behavior through their purchasing habits, and companies do listen to these *votes* to determine which products are successful and which end up failing. The problem is getting consumers to actually make the connection between their buying behavior and social and environmental issues, and to change their habits for the benefit of the environment and for other *ethical* reasons.

Environmentally friendly products appeared in the mass consumer market in the early 1990s, and many companies were eager to serve this market.<sup>29</sup> Some surveys had shown that about eighty percent of consumers said that they would be willing to buy environmentally friendly products instead of their more polluting conventional products.<sup>30</sup> The shock came later when the eco–products did not sell as well as expected.<sup>31</sup> Several pioneering green companies left the market.<sup>32</sup> Some of the reasons consumers gave were that the quality of the products was not as good, the green products cost more, the brands were not familiar to the consumers, and people had to change their habits in order to get the eco–products.<sup>33</sup> Some research suggests that consumers are more likely to pay a premium for an environmentally sound product when they can see the direct link

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26. *Id.* at 51.

27. For an account of the social and environmental ills in the blue jeans industry, *see, e.g.*, CLEAN CLOTHES CAMPAIGN [CCC], MEAN JEANS, at <http://www.cleanclothes.org/publications/jeans.htm> (last visited May 12, 2005).

28. *Id.*

29. Meyer, *supra* note 21, at 318.

30. *Id.*

31. *Id.*

32. *Id.*

33. JOEL MAKOWER, RAND CORP., CONSUMER POWER, at [http://www.rand.org/scitech/stpi/ourfuture/Consumer/sec6\\_consumption.html](http://www.rand.org/scitech/stpi/ourfuture/Consumer/sec6_consumption.html) (last modified Dec. 22, 2003).

between what they are buying and a specific environmental problem, or health benefit, as with organic foods and clothing.<sup>34</sup> However, for most consumers the environmental attributes of clothes appear to be subordinate to characteristics such as appearance, functionality and price.<sup>35</sup> Moreover, in the clothing sector many consumers appear to associate *green* clothes with a high price and a lack of shape and color.<sup>36</sup>

Globalization of the jeans industry has implications for workers and unions.<sup>37</sup> Bair and Gereffi carried out a detailed case study on the effects of the opening-up of the blue jeans industry in Torreon, Mexico, in response to the North American Free Trade Agreement (NAFTA).<sup>38</sup> The industry has boomed in size, and there were also qualitative changes.<sup>39</sup> While the apparel firms in Torreon used to specialize in sewing cut parts for United States manufacturers, they have now increasingly diversified their operations to include the purchasing of the textiles, cutting, assembling, laundering, packaging and distributing.<sup>40</sup> Hence, this particular case of globalization led to industrial upgrading.<sup>41</sup> Bair and Gereffi report, however, that the effect on labor unions has been disastrous, while the effects on labor are mixed.<sup>42</sup> Labor conditions have improved, in part because of the presence of large United States buyers such as The Gap and JC Penney that have issued Codes of Conduct on working conditions that firms should respect in order to service these buyers.<sup>43</sup> Wages have gone up because of the high demand for labor.<sup>44</sup> However, Bair and Gereffi also note that effective representation and collective bargaining have virtually disappeared.<sup>45</sup> The experience in Torreon, Mexico, seems to capture the process of globalization in a nutshell. On the one hand, globalization offers opportunities to

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34. Wesley Nimon & John Beghin, *Are eco-labels valuable? Evidence from the apparel industry*, 81 AM. J. OF AGRIC. ECON. 801 (1999).

35. Meyer, *supra* note 21, at 320.

36. *Id.* at 320–21.

37. Jennifer Bair & Gary Gereffi, *Local Clusters in Global Chains: The Causes and Consequences of Export Dynamism in Torreon's Blue Jeans Industry*, 29 WORLD DEV. 1885, 1886 (2001).

38. *Id.* at 1885.

39. *Id.*

40. *Id.* at 1894.

41. *Id.*

42. Bair & Gereffi, *supra* note 37, at 1896–97.

43. *Id.* at 1897.

44. *Id.* at 1898.

45. *Id.*

firms and workers, on the other hand, old *protective* institutions, such as labor unions, are crumbled under its force.<sup>46</sup>

Governments have many *hats*, for example, many interests and responsibilities with respect to the clothing, textile, and footwear industry. The primary concern of many governments with respect to clothing, textile, and footwear seems to be with employment in that sector in their home countries. On the other hand, governments also have responsibilities with respect to the consumer, the environment, trade-related issues as agreed under The World Trade Organization (WTO), and with all the other legal constraints imposed by national, regional (e.g., EU) or international law. Most governments seem to take a somewhat passive role in issues related to labeling and certification, but closely follow developments that take place in the private sector.<sup>47</sup>

In recent years, the influence of NGOs on corporate policies has increased.<sup>48</sup> NGOs are non-government, non-profit groups that advocate change in certain issue areas, and they range “from small-scale grassroots groups . . . to . . . professionally managed international institutions like Amnesty International and The World Wildlife Fund.”<sup>49</sup> Increasingly, their strategy includes the *targeting* of firms, especially multinational firms, to persuade them to further the causes that they (the NGOs) pursue.<sup>50</sup> NGOs can employ many tactics to this end: “letter writing campaigns, [media attention], picketing, shareholder resolutions, [calling for consumer] boycotts,” and so forth.<sup>51</sup> Companies in the clothing, textile, and footwear sector have been *targeted* frequently, predominantly as a means to improve working conditions and human rights in the factories of their overseas suppliers.<sup>52</sup> One typical example was the campaign against the sportswear company Nike that was and still is accused of allowing child labor and substandard working conditions in the facilities of its overseas contractors.<sup>53</sup>

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46. *Id.*

47. See, e.g., the discussions on voluntary eco-labeling schemes in the World Trade Organization’s (WTO) Committee on Trade and Environment at [http://www.wto.org/english/tratop\\_e/envir\\_e/bull\\_e.htm](http://www.wto.org/english/tratop_e/envir_e/bull_e.htm) (last visited May 10, 2005).

48. Debora Spar & Lane La Mure, *The Power of Activism: Assessing the Impact of NGOs on Global Business*, 45 CAL. MGMT. REV. 78 (2003).

49. *Id.* at 79.

50. *Id.*

51. *Id.* at 81.

52. See generally *id.* at 79–81.

53. The Nike story is particularly well documented. See, e.g., Spar & La Mure, *supra* note 48; RONNIE LIPSCHUTZ, REGULATION FOR THE REST OF US? GLOBAL SOCIAL ACTIVISM, CORPORATE CITIZENSHIP, AND THE DISAPPEARANCE OF THE POLITICAL (Ctr. for Global, Int’l & Reg’l Stud.

Spar and la Mure examined the responses of companies to NGOs pressure.<sup>54</sup> Basically, companies can try to resist this pressure or concede, and they can also preempt NGOs pressure.<sup>55</sup> Spar and la Mure contend that their response is to some extent determined by a straightforward calculus of cost and benefits.<sup>56</sup> The costs of conceding are the costs of changing operations – *switching* costs – for example as a result of moving operations to another country.<sup>57</sup> The benefits of conceding are the foregone losses to reputation and other potential financial harm.<sup>58</sup> Some companies may use *social responsibility* as a way to distinguish themselves from other companies and thereby improving their competitive position.<sup>59</sup> This may be a positive motive to preempt NGOs pressure.<sup>60</sup>

This calculus would allow explaining, to some extent, variations between sectors in response to NGOs pressures.<sup>61</sup> The costs of conceding would be less as when *switching* costs would be less and the benefits of conceding would be greater when the potential harm to *reputation* would be greater.<sup>62</sup> Brand-name companies in the clothing, textile, and footwear industry, with flexible production networks and highly valued reputations in the consumer market would then be particularly vulnerable to NGOs pressure and would be likely to concede to this pressure.<sup>63</sup> By contrast, oil and gas exploration companies with potentially high *switching* costs and low reputation amenities would be less likely to concede and would therefore also be less promising targets for NGOs.<sup>64</sup> In a recent survey, professor Lipschutz counted no less than 34 NGOs targeting the American apparel industry.<sup>65</sup> This has led to responses in the apparel industry where companies have, alone or in association with NGOs, established Codes of Conduct and have engaged in other forms of responsible corporate behavior. In some instances – but not always – companies that adopted such policies have affixed a label to their products with a claim of *good*

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[CGIRS], Paper CGIRS–2003–1, Aug. 30, 2003), available at <http://repositories.cdlib.org/cgirs/CGIRS-2003-1>; Richard Wokutch, *Nike and Its Critics: Beginning a Dialogue*, 14 ORG. & ENV'T 207 (2001).

54. Spar & La Mure, *supra* note 48, at 78–9.

55. *Id.* at 83.

56. *Id.*

57. *Id.*

58. *Id.*

59. Spar & La Mure, *supra* note 48, at 83.

60. *Id.*

61. *Id.* at 94.

62. *Id.* at 95.

63. *Id.*

64. Spar & La Mure, *supra* note 48, at 81.

65. LIPSCHUTZ, *supra* note 53.

*behavior* or they have let their products be certified by a more or less independent organization and affixed a label on their products with the logo of the certifying organization.<sup>66</sup> Whether these corporate responses have really improved worker conditions and human rights at overseas contractors is a point of some controversy. Whether the companies really have the power to make substantial changes in these issues in foreign countries is another point of debate.<sup>67</sup>

### III. THE VALUE OF ETHICAL LABELING

Ethical labeling refers to certain characteristics of products that are invisible to the consumer, both before and after the purchase of the product.<sup>68</sup> These characteristics are sometimes called *credence* goods: as the consumer cannot verify the label's claim by herself, she has to trust the truthfulness of the claim on face value.<sup>69</sup> Ethical claims can be divided in social and environmental claims.<sup>70</sup> Examples of social claims for clothing, textile and footwear products are *no-child* labels, indicating that the products have not been manufactured by children, *no-sweatshop* labels, indicating that the conditions for the workers who manufactured the product met certain standards, and *fair trade* labels, indicating good conditions for workers, and a *fair*, that is, above-market price for the (developing-country) manufacturers.<sup>71</sup> Examples of environmental claims include *no toxic substances* claims, indicating that the items of clothing do not contain (residues of) noxious chemical substances (from, e.g., pesticides or dyes), and *environmental* claims, indicating that the product is produced by environmentally superior production methods.<sup>72</sup> A specific environmental claim is the *organic* claim, indicating that the product is made of organically grown fibers.<sup>73</sup>

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66. *Id.* at 2.

67. *See, e.g., id.* at 2; BROWN, *supra* note 1.

68. *See, e.g.,* Robert J. Luibicic, *Corporate Codes of Conduct and Product Labeling Schemes: The Limits and Possibilities of Promoting International Labor Rights Through Private Initiatives*, 30 LAW & POL'Y INT'L BUS. 111 (1998); *see also* Ethical Consumerism: France sets the Standard, BIOPHILE, May 4, 2005, available at <http://biophile.co.za/biofiles/ethical-consumerism-france-sets-the-standard>.

69. Stefanie Kirchhoff, *Green Business and Blue Angel*, 15 ENVTL. & RES. ECON. 403, 404 (2000).

70. *Id.* at 404.

71. Nicolien van der Grijp & Luke Brander, *Multi-sector and sector-specific schemes*, in SUSTAINABILITY LABELING AND CERTIFICATION 75-91 (Mar Campins Eritja ed., Marcial Pons 2004).

72. *Id.*

73. *Id.*

An important question concerns the market value of these claims, for example, what are consumers willing to pay for these *ethical* attributes? Market research has shown that consumers are not all equally sensitive to ethical, for example, environmental claims.<sup>74</sup> In green marketing, consumers are divided into categories such as *deep greens*, *greens*, *sprouts*, and *browns*, based on their willingness to let environmental considerations influence their purchasing behavior.<sup>75</sup> However, the typical *green* or *socially conscious* consumer is still somewhat elusive. Although there are many surveys that show that green and/or socially conscious consumers are in principle willing to pay a premium for environmentally or socially superior goods, it is very difficult to predict their buying behavior in case of actual labeled products.<sup>76</sup> In the clothing, textile and footwear sector it has become quite clear that actual buying decisions are quite complex, and that the consumer always judges an item on multiple criteria, including appearance (fashion), functionality, and price, and that environmental and/or social performance is, at the most, only one of these criteria.<sup>77</sup>

Most of the research into willingness to pay for environmentally or socially superior products is based on surveys that measure intentions, rather than on the measurement of actual behavior. For the apparel sector, a notable exception is the study by Nimon and Beghin on the value of *organic*, *environmentally-friendly dyes*, and *no dyes* claims on items of clothing in the U.S. market.<sup>78</sup> Nimon and Beghin used data on price and product characteristics from United States retail order catalogs to derive a hedonic price function for the attributes *organic*, *environmental-friendly dyes*, and *no dyes*.<sup>79</sup> Their main conclusions were that *organic* sold at a premium of about one third of the price for conventional items of clothing, which is about equal to the difference in production costs.<sup>80</sup> *No dyes* sold at a *discount* of about 15 percent, comparable to the cost savings achieved by

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74. *Id.*

75. See, e.g., Meyer, *supra* note 21; JACQUELYN A. OTTMAN, GREEN MARKETING: OPPORTUNITIES FOR INNOVATION 19–23 (NTC–McGraw–Hill 1st ed.1998).

76. OTTMAN, *supra* note 75, at 23.

77. See Meyer, *supra* note 21; Marsha Dickson, *Utility of No Sweat Labels for Apparel Consumers: Profiling Label Users and Predicting their Purchases*, 35 J. OF CONSUMER AFF. 96 (2001).

78. Nimon & Beghin, *supra* note 34.

79. A hedonic price function measures the value of a specific attribute of a product to the consumer. Consider a consumer who has the choice between two items of clothing, identical in every respect but price and 'organic' label. If the price of the item with the label was higher than the item without the label and the consumer would chose the labeled item, then the value of the label for the consumer would be at least as large as the price difference between the two items.

80. See, e.g., Nimon & Beghin, *supra* note 34, at 803.

not dying items of clothing.<sup>81</sup> Finally, the data did not show any premium for *environmentally-friendly dyes*.<sup>82</sup> It should be noted that the premium for *organic* only reflects the additional willingness to pay of those consumers who actually buy organic items of clothing (still a minority).<sup>83</sup> The conclusion from this research is that the market for environmentally superior clothing is quite competitive and that price premiums (if they exist) closely follow differences in production costs.<sup>84</sup> This conclusion also suggests that the U.S. market for environmentally superior (in this case: *organic*) clothing is in equilibrium.<sup>85</sup> Therefore, the market share for this type of clothing can only expand if either consumer preferences for environmentally superior clothing increase or production costs fall. In general, the market share of *organic* products in most developed countries has been stable for some time now.<sup>86</sup> This would suggest that labeling should perhaps be embedded in innovative marketing strategies to change the market.

#### IV. DEVELOPING COUNTRIES' PERSPECTIVES

Developing countries are in general skeptical towards certification and labeling programs initiated in the North. Developing countries are afraid such schemes may negatively affect their exports. For example, a number of products exported by developing countries (including textiles and clothing items), are produced in the informal sector where completion of on-site plant inspection is impractical.<sup>87</sup> Moreover, most certification and labeling schemes have failed to involve representatives of developing

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81. *Id.* at 807, tbl. 1.

82. *Id.* at 807, tbl. 1.

83. *Id.* at 807, tbl. 1.

84. *Id.* at 807.

85. Nimon & Beghin, *supra* note 34, at 809.

86. *Id.* at 810.

87. *See, e.g.*, the 2004 U.S. Organic Cotton Survey of the Organic Trade Association that finds a 67 percent decrease of the area of organic cotton planted in the U.S. between 1993 and 2003. The report concludes:

Organic cotton production in the U.S. is in decline and without significant market changes, this decline is likely to continue. To sustain and expand production of this organic crop, growers will need a stronger, more consistent market. Opportunities for creating such a long-term market for organic producers include consumer education and developing increased demand for organic cotton grown in the U.S.

SALLY PICK, ORGANIC TRADE ASSOCIATION [OTA], 2004 ORGANIC COTTON SURVEY: 2003 U.S. ORGANIC COTTON PRODUCTION & THE IMPACT OF THE NATIONAL ORGANIC PROGRAM ON ORGANIC COTTON FARMING, at [http://www.ota.com/2004\\_cotton\\_survey.html](http://www.ota.com/2004_cotton_survey.html).

countries in the process of writing eco-criteria.<sup>88</sup> Second, many observers from the South question the environmental legitimacy of the arguments used.<sup>89</sup> They argue that the schemes are made with the consumer in mind but do not take into account the views and positions of the stakeholders in the exporting countries.<sup>90</sup> Third, they argue that such practices are a new form of protectionism indulged in by Northern countries to protect their market from the much cheaper products from the South.<sup>91</sup> Finally, they are afraid that the developing countries will be forced to buy modern technologies from the North.<sup>92</sup> One of the industries that are sure winners in the certification and labeling game are, no doubt, the (Northern) certification industry itself.<sup>93</sup>

There is another aspect of certification and labeling that warrants attention from a developing country perspective. It is no surprise that the sustainability labeling initiatives in the jeans industry are predominantly taken in the *designer* or upper segment of the market. There are two principal reasons for this.<sup>94</sup> In the first place, there is the obvious reason that the rents that are earned in this upper segment of the market make it relatively easy to pay for environmental and social improvements in production. In the second place, and this is most relevant to the argument we are developing here, the production *chains* of mass-market and designer jeans show important differences in the level of vertical integration and control. For high-fashion companies it is of extreme importance to respond fast to changing fashion trends.<sup>95</sup> The Spanish clothing chain Zara, has therefore embraced a fully vertically integrated business model, where products are developed in a design-and-manufacturing center in La Coruña, with most of the sewing carried out by around four hundred local subcontractors.<sup>96</sup> Designers are in constant contact with store managers to

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88. Vasantha Bharucha, *The Impact of Environmental Standards and Regulations Set in Foreign Markets on India's Exports*, in TRADE, ENVIRONMENT AND SUSTAINABLE DEVELOPMENT: A SOUTH ASIAN PERSPECTIVE 123, 126 (Veena Jha et al., St. Martin's Press 1997).

89. *See id.* at 136.

90. Kamal Nath, Selected Statements on Environmental and Sustainable Development (Government of India, 1993).

91. *Id.*

92. *Id.*

93. *Id.*

94. *See, e.g.*, ROOZEN & VAN DER HOFF, *supra* note 6; Bentley Lessona, *supra* note 7.

95. WERNER STENGG, THE TEXTILE AND CLOTHING INDUSTRY IN THE EU: A SURVEY (Enter. Directorate-Gen. of the European Comm'n, Enter. Papers No. 2-2001, June 2001), available at [http://europa.eu.int/comm/enterprise/library/enterprise-papers/pdf/enterprise\\_paper\\_02\\_2001.pdf](http://europa.eu.int/comm/enterprise/library/enterprise-papers/pdf/enterprise_paper_02_2001.pdf).

96. *See id.* at 9.

find out the latest trends.<sup>97</sup> Because of the integration of activities, it is possible for Zara to make a new line of clothing from start to finish within three weeks, while the average time for the clothing industry is nine months.<sup>98</sup> The Kuyichi concept is based on vertical integration, including design, cotton production and processing, manufacturing and marketing.<sup>99</sup>

If a basic framework for monitoring and control does not exist, as in mainstream confection, it must be created to become eligible for certification and labeling. Should certification and labeling become important in this industry, it is likely that companies will reorganize their business model in order to minimize transaction costs. This will, *ceteris paribus*, lead to a geographical concentration of various production activities, an increase in the share of easy-to-monitor factory production, and a decrease in the share of informal and difficult-to-monitor home and cottage-industry production, especially in those areas with sub-standard information and communication infrastructure.<sup>100</sup> In other words, increasing monitoring and control necessary for certification and labeling could lead to a further marginalization of the poorest people (women and children engaged in informal subcontracting) in the poorest countries (with the poorest infrastructure to enable monitoring and control). For the European clothing industry, this could mean a retreat from global markets to increased sourcing from, and outward processing activity in, Central and Eastern Europe and, possibly, the Maghreb. This trend towards regional concentration could be reinforced if and when the pan-Euro-Mediterranean Free Trade zone will become a reality.

#### V. FAIR TRADE: KUYICHI<sup>101</sup>

Fair Trade may offer a modest alternative to this trend. Kuyichi is a private scheme that wants to improve access of Southern products to EU markets. The idea for Kuyichi jeans was borne at a meeting between farmers and representatives from the Dutch development organization SOLIDARIDAD at the Fair Trade coffee cooperative, *Unión de Comunidades Indígenas de la Región del Istmo* (UCIRI) (*Indigenous Communities' Union of the Isthmus Region*) in Oaxaca, Mexico in 1998. To stimulate employment in the region it was decided to try to start a garment factory at

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97. *Id.*

98. *Id.*

99. *Id.*

100. ROOZEN & VAN DER HOFF, *supra* note 6.

101. Much of the material in this section is taken from ROOZEN & VAN DER HOFF, *supra* note 6 (an insider account of SOLIDARIDAD's efforts to develop fair trade networks for three products: coffee, bananas and jeans).

the cooperative, primarily for the women. The wives and daughters of the coffee farmers of UCIRI were frequently forced to find employment in the garment industry elsewhere in Mexico, often at a considerable distance from Oaxaca. It would be very convenient for them if a nearby garment factory would enable them to combine housework and a paid job. The production of blue jeans was considered. As the Fair Trade coffee at the cooperative was grown organically, it was considered important that the factory would only employ organic cotton as a raw material. In addition, it was agreed that it would be examined if the blue jeans could be exported to Europe, under fair trade conditions.

Within the SOLIDARIDAD partner network, a source of organic cotton was found in Peru in the Cañete Valley, 150 km south of Lima. Cotton culture in that valley is already more than a century old and a high-quality variety of cotton is produced. In the early 1990s, cotton farmers discovered that it would be relatively easy to switch to organic production methods. At the moment, farmers are switching to certified organic cotton production with the help of the agricultural extension service *Instituto Rural Valle Grande (Grand Rural Valley Institute)*. Some farmers have already received the organic EKO label of the SKAL certification organization. The farmers have jointly created their own exporting company: the *Oro Blanco (white gold)*.

Meanwhile, UCIRI created a garment factory in Xhiiña Guidxi. To broaden the manufacturing base, cooperation was sought and established with CooperJeans and CooperFinishing, two worker cooperatives in the neighborhood of Sao Paulo, Brazil. It was soon discovered that the garment factories would need additional technical expertise to produce for the export market. This technical expertise was found within the Spanish research and consultancy bureau *Jeanologia*, a leading expert on jeans technology. A number of technical experts were sent to the Xhiiña Guidxi garment factory to set up production.

SOLIDARIDAD had some experience in the marketing of new products, like Max Havelaar coffee and Oké bananas, but it had no previous experience in the marketing of garments or blue jeans. Experts in the blue jeans industry make it very clear that there is no demand for socially responsible and environmentally sound jeans. Consumers do appreciate socially and environmentally responsible behavior by firms, but they do not want to wear cloths with an *explicit* social image. However, of crucial importance in the jeans industry is the value added of a *brand name*. Consumers are willing to pay a considerable bonus for a trendy brand. So, it was decided to try to position the jeans in the trendy, fashionable, upper-part of the market, with the brand name *Kuyichi*. The primary image of the

jeans is trendy and fashionable; the social and environmental aspects of production are communicated as a subordinate, secondary message.

In addition to denim products, the 2003 Kuyichi collection included t-shirts, shirts, and pullovers. Denim textiles, produced almost exclusively from *Oro Blanco* cotton, were manufactured in Mexico and Brazil, but also in Peru (*Cañete Tops*) and Tunisia (*Faitements Marathon*). Other textiles were produced in India (*TubeKnit* and *Topstich*) and Turkey. *Oro Blanco* cotton was also the raw material for Kuyichi t-shirts.

Kuyichi uses existing *ethical* standards. For environmental aspects, the company wants to attain the SKAL standards for organic cotton. For social aspects, Kuyichi uses the SA8000 standards of Social Accountability International. Taken together, SKAL and SA8000 can be considered as a comprehensive, professional, and up-to-date set of sustainability standards. Kuyichi strives for certification of all activities according to SKAL and SA8000. Certification procedures have started with cotton producers and garment factories. In due course, the target is to certify the whole production chain.

Cotton farmers in Peru have begun the process of SKAL certification in 2000. It was expected that a first group of 80 farmers would get the SKAL certificate in 2003. The other farmers in the *Oro Blanco* co-operative must comply within a few years.

All garment factories must become SA8000 certified. The India partners *TubeKnit* and *TopStich* already received this certificate in 2001. Partners in Tunisia and Turkey started SA8000 certification in 2004. In Peru, *Cañete Tops* became a subsidiary of *Oro Blanco* in 2003. If successful, *Oro Blanco* and *Cañete Tops* will, by 2008, develop into a vertically integrated company that can handle the whole production chain from cotton till jeans.

Kuyichi is an offspring of the Fair Trade movement in the Netherlands. The organization has recruited members from the existing SOLIDARIDAD network. By striving for certification according to SKAL and SA8000 standards, the company uses comprehensive and up-to-date sustainability standards. Sustainability standards are applied not only to founding partners in Latin America, but also to future market partners in Asia and Africa. Kuyichi seems to have been able to get a foothold in the competitive jeans market.

As a private scheme in the Fair Trade movement, Kuyichi pays more than prevailing market prices to cotton and garment producers. Moreover, producers have been made co-owner of the Kuyichi Company. Kuyichi puts many efforts into increasing transparency and accountability. If the label will grow in the future, present-day sustainability standards must apply to all partners in the production chain.

Kuyichi puts much effort into increasing transparency and accountability. By using well established SKAL and SA8000 schemes, it will be possible to guarantee sustainability standards of production. Because the Latin American co-operatives are co-owner of Kuyichi, they should be able to have influence on business policies. It is the intention to have long-standing contacts with a limited number of cotton and garment producers, instead of the short-term contracts prevailing in the conventional blue jeans industry.

Having said this, one must keep in mind that Kuyichi is a niche player with a previous history. Partners are all from the SOLIDARIDAD network, which means that they have a common mindset aimed at Fair Trade. In the Kuyichi organization, subcontractors and home workers are absent. This makes chain control much easier. Finally, Latin American partners are formally involved in ownership and chain management. The small number of owners at present enables this.

In the years to come, organic cotton from Peru will remain the foundation of Kuyichi denim products. Long standing partners in Asia and Africa will be assessed according to the same criteria as the founding partners in Latin America. Kuyichi strives for a production chain where SKAL and SA8000 criteria are fully applied.

## VI. CONCLUSIONS

One of the major obstacles to *ethical* labeling in the blue jeans industry that were identified in this paper is formed by the complexity of the product chain. The chain may include retailers, middlemen, manufacturers, contractors and subcontractors that can stretch from continent to continent including hundreds, if not thousands, of individuals and companies in more formal or informal settings. In such circumstances, it is extremely difficult for any company to set up a *waterproof* certification system. Given the high visibility of the blue jeans industry in consumer countries and the frequent media attention for abuses in this industry, it seems necessary that the certification system that would guarantee the claims made by a label would be very reliable and indisputable. This requires a level of oversight and control over the entire chain that is not present at the moment.

Another obstacle may be the simple fact that the blue jeans industry is dominated by big *brands*, and that competition is based on the image of *trendyness* that these brands try to transmit to the consumer. Companies invest heavily in marketing brand names, and it is considered unlikely by the industry that any label, unconnected to the brand, would have any additional marketing value. Indeed, it is doubted by the industry whether there would be much demand for jeans with an *explicit* social or environmental image.

Finally, there are distinct social and economic issues to take into account. Certification of the multiple processes that play a role in the blue jeans product chain could lead to significant changes in the structure of the industry. These changes could lead to the relocation of parts of the industry from less advanced to more advanced countries where production processes can be better monitored, and in general to a shift from the informal to the formal sector, where processes and people can be better monitored and managed. This shift would leave many informal workers, many of them women and children, in the cold. Labeling and certification schemes could thus give rise to trade barriers for the poorest countries where professionalization of production is least developed and they could lead to the further marginalization of the most vulnerable groups, the workers in the informal sector.

These considerations, amongst others, led the NGO *SOLIDARIDAD* to approach the promotion of socially and environmentally sound blue jeans from a slightly different angle. Instead of developing a strict certification scheme, *SOLIDARIDAD* started producing and marketing its own brand of blue jeans, called Kuyichi jeans. After extensive marketing research, they decided to manufacture and market jeans that are in the first place trendy and fashionable, while social, environmental, and *fair trade* aspects of production are only communicated as a subordinate, secondary message. Labeling and certification schemes are used by Kuyichi to educate its workers and to guarantee its claim of social and environmental soundness to consumers, but not as a primary marketing tool. Kuyichi is still a young brand, so it is too early to know whether its success will last. However, if its approach proves successful, it may be an example of an innovative way of integrating sustainability aspects into an industry that is dominated by fashionable brands. The main message seems to be: if you cannot beat fashionable brands, become a fashionable brand yourself!