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**“The Strengths and Limits of Consumer-Driven Codes of Conduct,
and a Mid-Stream View of the Apparel Industry Partnership”**

Patagonia, Inc. is a California-based company that designs and distributes high quality outdoor clothing and gear. Our roots are in the climbing industry: our founder is a blacksmith who forged the first readily available hard steel pitons for climbers. We've branched out into other sports beyond climbing and alpinism, and we now outfit paddlers, anglers, mountain bikers, surfers, and others. Our climbing roots led us to retain an unrelenting commitment to the highest possible quality. Our clothing is often used in situations where, if the gear fails, the user dies -- an incentive for quality, particularly if the designer is the user, as is often the case in our company.

We sell products through our own retail stores, through a mail order catalog and through more than 1,000 specialty outdoor shops. We sell our products on five continents. In our most recent fiscal year, we had sales of approximately \$160 million. As a company, we're in very good shape: we have grown when we've wanted to grow and we've consciously slowed our growth when we've wanted to do that, which is more often than not.

While our reputation with our customers is based solidly in a commitment to quality, much of our public reputation is based on how we conduct our business. We have an on-site child care center and innovative family leave policies -- including parental leave for new mothers and new fathers. We have a very informal work atmosphere.

Most significant is the company's strong commitment to environmental protection and restoration. We give one percent of sales to environmental groups. We grant leaves of up to two months for employees to work for nonprofit environmental organizations -- while still receiving their full compensation from Patagonia. Our retail stores are used as host sites for numerous environmental events. We make synthetic fleece -- Synchronia -- from recycled plastic soda bottles. Two years ago, after years of research convinced us of the devastating impact of the synthetic pesticides used to produce conventional cotton, we shifted our entire line of sportswear to organic cotton. We also announced at the time that our shift was permanent, that there was no going back -- that if we could not make and sell organic cotton sportswear successfully, we would never make cotton products again.

The fact is, over the years, our focus on environmental issues has been nearly singular. And as a result, we gave little, if any, direct attention to the issues of international human rights. My colleagues at Patagonia are compassionate, humane individuals -- and the overwhelming majority of them are well-informed on these issues. But as a company, we took no conscious steps in this area.

Avoiding Sweatshops: A Focus on Quality

That said, we've had no instances whatsoever that would link us in any way to a sweatshop. This, again, was not by design. We had a strong human rights record because of our commitment to quality, which we believe is not something that can be pursued piecemeal. You either believe in quality, or you don't; it shows up everywhere, or it doesn't show up at all. There are important linkages: quality products, quality workplace, quality of life for your employees, even a respect for quality of life on earth. If a company's goal is to make the best products, it must pursue quality everywhere. If the goal is to make the best alpine jackets, as we claim to do, one has no alternative but to source in a high quality factory using a well-trained and stable workforce.

Quality is best achieved not by focusing on the bottom of the funnel -- in a quality control department that searches for defects -- but at the top of the funnel where the ingredients are selected. It's about the process of quality. Our internal field auditors are at every factory that helps make our gear at least twice a year; at most facilities, it's much closer to once every two months. What they look for is whether or not a company is managing for quality, whether or not the process is one that will naturally lead to a quality product.

So we had avoided human rights abuses not by focusing on them -- but by committing to quality.

In 1996, however, we added a layer to this process by committing to regular, independent human rights audits of any facility making Patagonia products. The auditors looked to see if the facilities were in compliance with all local laws regarding such issues as wages, age of workers and hours worked. We did this despite the fact that we had no concerns whatsoever that any of the factories where we did business resembled anything like a sweatshop. We did this because we wanted to have a defense ready should we be surprised by any allegations that we were connected to sweatshops. We know, at some point, that one of our auditors or contract managers could make a mistake. We also know that there are counterfeit Patagonia products being made, and that a reporter or activist finding such products in a sweatshop might not stop to ask us for -- or listen to -- an explanation. The investment in these audits is, pure and simple, insurance against a public attack on our credibility as a company. They do nothing to eliminate sweatshops -- because we are dealing with high quality firms who in fact treat their employees well on a relative scale. They represent, for good or bad, how money often gets spent these days.

We did make one significant change in company policy in 1996 as a response to the public exposure of sweatshop issues. We decided that we would no longer tolerate

indirect relationships. In very rare cases, some of our accessories had been produced with the help of an agent -- an intermediary business that would find a facility that made the products to our specifications. In 1996, it was one factory making one product, but we terminated that relationship, and committed to the policy moving forward.

It should be obvious from this introduction that we had not had a great deal of experience, and had shown little leadership, in dealing with sweatshop issues. We also have never considered ourselves part of the fashion industry, or even the conventional clothing industry. Rather, we think of ourselves as making outdoor gear. So we were surprised to be invited to speak at the Fashion Industry Forum, convened at Marymount University in July 1996. And we were even more surprised by the invitation to participate in the White House meeting that led to the formation of the Apparel Industry Partnership (AIP).

Choosing Involvement: The Apparel Industry Partnership

We were hesitant to participate because it would imply that we presumed to be leaders in this area -- when we have no such presumption. We were also, frankly, not excited about having our company name and the term “sweatshop” used in the same media stories -- a concern I know other companies felt as well. But we chose to get involved.

We chose to get involved in the issue because we felt, once invited and once very clearly conscious of the problems, it would be wrong to say no. So many organizations, among them the Lawyers Committee for Human Rights and the Interfaith Center for Corporate Responsibility, have helped to expose the inhumane conditions under which clothing is made in far too many countries -- including our own. Wages that are far too low, work weeks that are far too long, forced labor -- all of these woes are tied to our industry. Perhaps worst of all, ILO estimates suggest that nearly a quarter of a billion children may be working today.

We chose to get involved because of the holistic nature of many global problems -- and many potential solutions. More and more, it is becoming clear to activists that the many progressive movements ongoing today are in fact one movement. Some come to it because of a love for nature; others come to it because they see injustice more clearly than others. They can be seen as different approaches to the same fundamental issue of how we treat the land and each other. The environmental crisis will not be solved without resolving difficult issues of class and economic justice. And issues of economic and social justice are inherently linked to the kind of respect that is required to preserve and protect natural resources.

We chose to get involved because we want high standards. We want credible entities to set standards for competition. We were angered when domestic business groups fought, under the General Agreement on Trade and Tariffs (GATT), an effort by German consumers to set voluntary standards for the manufacture of clothing. We wondered why strong businesses -- or a strong nation -- would be afraid of high standards. High standards are a way of rewarding those companies -- and those countries -- with smart,

dedicated workers and courageous, visionary leaders. We think that's true of Patagonia and we think it's true of the United States. So an effort to raise the standards seemed like a reasonable risk.

Having said that, it is important to note that setting and meeting high standards, admittedly, may be easier for Patagonia than it is for most other companies. We make high end products -- and our customers have shown a willingness to pay for quality and for values. We also have a unique relationship with our customers -- a relationship built on a common appreciation of quality and, increasingly, on a set of shared environmental values. The fact is, our customers trust us already.

The challenge of living up to high standards -- and successfully selling the product -- is far more difficult for those who make commodity products or clothing and fashion items for which quality expectations are quite low. Adding seventy-five cents to a garment's sewing cost in order to meet a higher ethical standard can, in many cases, add more than two dollars to the retail price. On \$20 children's pants, that is no small increase, and it may lead shoppers to look further down the retail rack.

The Partnership on the Brink of Success

Now, we find ourselves some fourteen months after the AIP was founded. We are on the brink of a tremendous success. Human rights organizations, religious partnerships, trade unions and several corporations have signed on to a Workplace Code of Conduct, which would require both internal and external monitoring. The agreement could, if implemented in its current form, take great strides towards eliminating those factories that clearly fit the common description of a sweatshop. The measure would place a cap on the number of work hours each week and provide for mandatory days off. It would ensure that local wage standards are met. It would be a major help in ridding the industry of child labor. It would require the participating companies to internally monitor manufacturing facilities, in addition to engaging outside entities to provide independent monitoring. It would establish an association that could serve as the credible entity that could serve consumers by telling them which companies were manufacturing under the Code of Conduct and which ones were not. It would give consumers a way of knowing that the clothes they wear were not made by children or by others who were working in sweatshops.

The agreement has been roundly criticized by human rights organizations and others. But the agreement, objectively, was historic, and my own view is that it still has a chance to make a difference.

It can make a difference -- a positive difference -- if the Partnership grows beyond its current membership. Currently, there are but a handful of corporations participating. If the group focuses very clearly and exclusively on the goal of eliminating sweatshops, the number of participating companies can grow substantially. Because of the growing number of bankruptcies and consolidations in the retail sector, there is a growing

concentration of large corporations at the retail level; the five largest retail companies now account for more than 50 percent of total retail sales in the US. This could mean that the Partnership may be only five commitments -- admittedly not easy ones to gain -- from affecting an overwhelming majority of the garments sold in the US. With increased visibility, and pressure applied by the participating NGOs, the Partnership's allies could focus on each of those major retail chains -- one by one -- to bring them into the fold. In five years, it is quite possible that nearly every garment sold in a retail chain of any reasonable size would be made under the proposed Code of Conduct. That would be a great accomplishment.

Obstacles on the Path to Progress

Despite these prospects for success, however, I am not currently optimistic about the future of the Partnership.

I'm not optimistic because this is a very difficult time for public discourse and for any agreement on a public solution. NGOs and others gain media visibility by making negative attacks, and their ability to raise funds is often linked to the perceived depth of their opponent's evil. Demonizing of a perceived adversary has become a useful tool these days, and it's a habit that is not easily lost. And so there are groups who will continue to attack the Partnership and its approach -- in part because the AIP can legitimately be attacked and in part out of old habits. When a group has made its name attacking Nike, it's difficult for that group to say anything positive about an effort in which Nike is playing a major role. (And I would add that I find the improvements Nike is making in its practices to be impressive.) And many reporters, in the pursuit of the kind of fairness that always allows one positive and one negative quote for each sensitive topic, seek out these groups and legitimize their attacks, occasionally giving disproportionate emphasis. But these continued attacks on AIP member companies continue to stop other companies from joining.

After its initial accomplishments, the group has done very little since the White House press conference announcing agreement on the Code of Conduct. It is a long time to go without momentum. The different factions inside the group will give different reasons for the lack of movement. Some will say this is because the corporations are not interested in moving beyond the minimum requirements and will not, ultimately, sign onto an operational plan that does not allow them to fully control and substantially limit the external monitoring component. Others say the human rights organizations are focused on how their organizations can make money by providing the external monitoring functions. And others will say it is being dragged out by a split in the NGO community, and that it is impossible to expect a major US trade union to allow the process to succeed, given that this process might ultimately allow an American consumer to feel good about buying a product made overseas. There is still a great deal of the skepticism that reigned when we started this process; I'm hopeful that a renewed focus on what we were asked to do by the President can help us look beyond our differences to see the many issues on which we in fact agree. I'm also hopeful that some positive encouragement, perhaps

coming from participants in this conference, will bring new energy to the process and move us toward success.

I am concerned about issues of cost. We've not yet determined the extent of external monitoring that will ultimately be required. One assumption holds that a model based on generally accepted accounting practices would suffice: a statistically valid sample would be reviewed unless or until irregularities were discovered. Another assumption holds that a much larger percentage of contractors -- or even 100 % of all contractors -- must need an annual independent audit. In either case, the audits will be expensive. And what marketplace advantage does that additional expense bring? At this point, it looks like very little. None of the companies currently participating intend to attach a "No Sweat" label to their garments. None have given serious consideration to aggressive in-store or point-of-sale marketing efforts. To the extent that they are participating in self-interest (as all of us are in some way), they are looking to show that they are working in good faith to meet a high human rights standard. If the additional costs brought on by external monitoring end up being very substantial, they might dwarf the potential marketplace advantage of joining. The prospect of applying a label to individual garments must be retained -- as a means of attracting future members to the Partnership. But it is important to recognize that, while it is clear there could be substantial economic costs for joining the Partnership, the economic benefits of joining are not yet evident.

Taking on the Living Wage Issue

Lastly, and most importantly, I am concerned about the issue of a "living wage." There is an ongoing effort, run in part by one of the NGOs in the Partnership, to alter the AIP agreement to require participating companies to go beyond paying workers the legal minimum, and instead "tie wages to the basic cost of living in each country." Massive public relations efforts are seeking to gain visibility for this demand, starting with a series of rallies -- called "A National Day of Conscience to End Sweatshops" -- held this past weekend in cities across the country. A petition circulated before and during these rallies suggests that this increase in wages is something "the multinationals can easily afford." (Their petition also proposes to change the AIP agreement by insisting that "corporations must open their plants to independent monitoring by respected local religious and human rights organizations.")

Joining together to bring a genuine living wage to workers around the world is an important goal -- and one that is far more ambitious than the AIP's original task of eliminating those facilities that anyone would describe as sweatshops. The elusiveness of a living wage holds hundreds of millions of workers in lives of poverty, even though those workers regularly put in far more hours than the average American does. A living wage must, ultimately, be the goal of those who strive for justice; those who are forcing this issue onto the international social and political agenda clearly have justice in mind, and are among the most thoughtful advocates of impoverished workers.

If the National Day of Conscience to End Sweatshops were based on one issue or another -- eliminating sweatshops or guaranteeing a living wage for all workers -- its chances of success would increase dramatically. But such is not the case.

The petition associated with the Day of Conscience is targeted at the Apparel Industry Partnership, directly challenging the group to take on this issue of a living wage. As important as this issue is, as horrid as the wage conditions are for hundreds of millions of workers around the world, the Partnership is simply not the vehicle to achieve such a goal. Demanding that it do so will lead to the failure of the Partnership -- before its work to end sweatshops has even begun.

Sticking to the original goal -- the elimination of sweatshops -- is the only method by which the Partnership can succeed. The apparel industry has been home to sweatshops for more than a century; indeed, when most people think of sweatshops, they likely picture a garment factory. With a focus on this one major problem in the very industry known for the biggest abuses, we actually have a chance of success. But that chance disappears if we are expected to also tackle the issue of a living wage. The living wage issue goes well beyond our industry, touching nearly every industry in every part of the globe. It is an appropriate battle for governments and trade unions to lead; it is simply too massive of a goal for a Partnership that currently has half a dozen companies in one industry.

The Partnership's chances of success increase exponentially if our membership grows quickly. If the National Day of Conscience instead put pressure on other companies to join the Partnership, we would begin to make quick progress in chasing sweatshop owners down and driving them out of business. Bringing in to the Partnership, through persuasion or through public pressure, dozens of major clothing manufacturers would send a clear signal to sweatshop owners. Bringing in the five major retail chains would be an even greater step. But these additions will work only if the Partnership takes the "big tent" approach. That is, we can only succeed by recognizing that we need to have hundreds of partners working with us. And that won't happen if we keep changing the rules or if we keep raising the standards even before we've taken real steps.

The Partnership's growth will also be restrained -- indeed paralyzed -- if new and more controversial issues are constantly added to the agenda. It will also be restrained if the group continues its divisive tactics. The participating companies, unions and activist organizations all agreed on a set of criteria -- the Workplace Code of Conduct. We stood with the President and together said that meeting the standards in the Code would make a difference for millions of workers around the world. But when the White House press conference ends and Partnership members then begin applying very public pressure to reopen the Code of Conduct, it tells prospective corporate members that the group's work is not settled, that the Partnership is not moving forward cohesively. That gives us a pup tent instead of a big tent.

Ridding the world of sweatshops would of course not rid the world of poverty. But it would be a significant contribution to working conditions around the world. Indeed, it would likely be the greatest accomplishment any Partnership member would ever be part of. By keeping our focus on sweatshops, we can close down unsafe worksites, end absurdly long work weeks for many workers, and dramatically reduce the number of children working.

The living wage issue is, again, a vital one. But the Partnership is not the group that can successfully advance this issue. At least today it can't. But look ahead five years. If the Partnership at that stage has hundreds of members, if we've made significant progress in dramatically reducing child labor and forced overtime, and if consumers are joining with us in the battle to end sweatshops, those who seek justice in the workplace might have a much more visible and much more powerful allies. But we can only build that power and that momentum if we choose our goals carefully at the outset.

The Long-Term Focus: Changing the Trade Regimes

The challenges I've raised thus far may stop the Partnership from making any real progress. But they are short-term problems, ones that can in fact be addressed by the Partnership members themselves. A much bigger challenge is one posed by the existing international trade regimes.

If the Apparel Industry Partnership is successful, it will most certainly be challenged as a *de facto* trade barrier under GATT. That specter looms on the horizon, and the group's fate may well be determined by a small group of World Trade Organization (WTO) judges.

But more important is the fact that existing trade regimes require that this continues to be a voluntary, consumer-driven effort -- and I have doubts as to the long-term potential of such efforts. As noted earlier, the marketplace benefits of participation are limited at best. The most effective benefits may be the opportunity to avoid negative attention. A major retail chain, for example, might want to avoid being the target of boycotts or negative media attention if it is one of the few major chains to stay outside of the Partnership. A corporation might gain short-term promotional benefits upon joining the group or in making certain policy changes to come into compliance. But these benefits will last only so long as the issue retains public and media attention.

To be effective in the long-term, these improvements must have the full force and effect of law. Having the force of law in the country of manufacture would require no changes in international trade laws -- but it is unlikely that such legal changes would occur on a scale that would significantly alter international working conditions. Alternatively, applying the force of law in the country of sale would require significant changes in the trade regime -- but this is a required step if the standards are to be raised permanently. Applying the force of law in the country of sale would allow us to move beyond the "lowest common denominator" approach to trade standards. It would allow individual

countries, or groups of a countries, to raise the standards in such a way that all nations wanting to sell their products globally would need to meet that higher standard.

Currently, the GATT prevents nations from trying to raise standards as they apply to both domestically produced and imported products. As a recent Ecologist article noted, "If anyone was in any doubt as to the true nature of the WTO, its action in the three years since it was created paint a depressingly clear picture. As feared, in every case brought before it to date, the WTO has ruled in favor of corporate interests, striking down national and sub-national legislation protecting the environment and public health at every turn."

In 1996, Venezuela and Brazil filed a challenge to prevent the US Environmental Protection Agency from raising clean air standards for gasoline sold here in the US. The standards were too high for Venezuelan and Brazilian exporters to meet without making significant improvements in their refining capabilities. The WTO ruled that the higher standards discriminated against the polluting nations. A year later, the US EPA changed the clean air regulations to comply with the WTO.

In another case, the US Marine Mammal Protection Act placed an embargo on tuna caught using methods that commonly killed dolphins. Rather than leading to the protection of a charismatic aquatic species, the measure was challenged as a protectionist trade weapon, and the law was declared illegal under GATT.

In the third case, the WTO declared that a European Union ban on imports of beef raised with artificial growth hormones violated the trade regimes and was therefor illegal.

Three efforts to legally raise standards -- to protect air quality, to ensure the safety of foods, and to save a species from reckless poaching -- all have been struck down by the World Trade Organization.

But the very extreme nature of these decisions is in part what makes me optimistic that these trade regimes will not last much longer than this century. People in this country and elsewhere want clean air, they want safe foods and they want to see nature preserved. When they find out that a small group of faceless judges and trade lawyers is preventing them from attaining these goals, they will be justifiably angry -- and they will take steps to dismantle these trade regimes. In Europe, chronic high unemployment is already leading political leaders to seek scapegoats; the trade regimes, which limit domestic political options, are an obvious and growing target. In the US, populist or charismatic candidates for national office will continue to use the trade regimes as a foil; they will likely find increasing success, because the trade regimes are stopping the American people from reaching goals on which there is in fact a rare consensus.

On both continents, more citizens are aware of the fact that their own nation's democracies now have less power than another nation's corporations. As governments cede authority to international corporations and institutions, the power to set a nation's standards and to define the quality of life within its borders -- a power that not long ago

rested with voters -- now lies in the hands of a select group: corporate shareholders. A new poll tax. This issue can -- and I believe will -- be used successfully by emerging leaders on both continents, leading to a breakdown in the existing trade regimes and a wave of national or regional trade standards. Some of these standards will be undeniably protectionist. But many of them can be successful attempts to improve the quality of life in a nation and on earth.

This is not something we should fear; it represents both obstacles and opportunities. Nations and businesses which try to deny this trend will suffer; those which embrace it will flourish. Those which seek out the highest standards, and meet them, will be able to sell their products in the broadest range of markets.

While the long-term focus must be on changing the international trade regimes, I want to close by returning to the Apparel Industry Partnership and its role today. Even if my assumption is true that the long-term focus for our efforts must be on attaining the full force and effect of law, voluntary measures such as this one play an essential short-term role. By "short-term," I mean roughly the length of a childhood. With a quarter of a billion children working today, waiting for a long-term solution would deprive them of one of the most fundamental of human rights: the right to a childhood. And that is why the Partnership -- with a useful life that will likely be the length of a childhood -- needs support.