Preserving the Garment Industry Proviso: Protecting Acceptable Working Conditions Within the Apparel and Accessories Industries

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NOTE

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PROVISO: PROTECTING ACCEPTABLE WORKING
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I. INTRODUCTION

Most Americans are unfamiliar with the garment industry proviso of the National Labor Relations Act ("NLRA").1 The garment industry is unique in that its business structure and production processes are different from other commercial industries.2 While the clothing and apparel manufacturers are responsible for the design and ultimately the distribution to retailers of the finished product, the goods are produced in factories that they do not own. Thus, the manufacturing process in the garment industry is more integrated than the production of other manufactured goods. The "jobber-contractor system," as it is commonly known to people in the trade, is unique to the garment industry, as well as to the accessory industry,3 specifically to the production of handbags.

This Note examines the garment industry proviso and suggests that it should not only protect the garment industry laborers, but the workers who produce handbags in the accessory industry as well. Part II describes the unique structure of the jobber-contractor system. Part III discusses the NLRA's garment industry proviso, the reasons behind its

creation, and its purpose. Additionally, this section focuses on secondary boycotts and hot cargo clauses, which are generally prohibited, but are allowed in the garment industry. The reasons behind the exception that the garment industry enjoys to the general ban on secondary boycotts and hot cargo clauses are discussed in detail. Part IV examines the importance of unions in the garment industry and the handbag manufacturing industry. The history of unionization is discussed, as is the state of union organizing today, both in America and abroad. Part V looks at the structure of the clothing and apparel industry, describing how production occurs, and the unique location of the production at outside contracting shops. The manufacturing process of handbags, a leading accessory, is discussed in Part VI, along with the similarities to the production processes of clothing and the reasons why the garment industry proviso should be extended to cover handbags as well as apparel.

Part VII examines the continued existence of the garment industry proviso in an industry that is filled with poor labor standards. The dichotomy of the industry is that it produces large profit margins for professional retail companies yet pays well below minimum wage standards to the production workers.\(^4\) Garments and accessories are manufactured in sweatshops,\(^5\) which contain working conditions that violate many labor laws and create hazardous working conditions for employees.\(^6\) Workers' rights are often overlooked and huge disparities exist between the incomes of the producers of the goods, who make virtually no money, and the large retail companies, who bring in millions of dollars in revenue each year. Thus, Part VII examines the continued need for the coexistence of the garment industry proviso with other labor enforcement provisions to protect both American sweatshop workers and those who work abroad from labor violations.

Finally, Part VIII concludes that something needs to be done to change the fact that in the last twenty-five years, production of accessories has grown and become a large part of the garment industry's yearly profits without being subject to the garment industry's rules. Large retail corporations, the manufacturers who are the beneficiaries of

\(^4\) See Lam, supra note 2, at 627-28.


the sweatshop system, \(^7\) should be held accountable for labor law violations. \(^8\) The production of handbags and other accessories is typically manufactured by contractors outside the manufacturer's shop. \(^9\) Because the nature of the manufacturing processes of handbags is similar to the production of apparel, handbag accessory production should fall under the garment industry proviso exemption to sections 8(e) and 8(B)(4)(b) of the NLRA.

II. STRUCTURE OF THE GARMENT INDUSTRY

A. The Players Involved in Production

The integrated structure of the garment industry is unique to the field of production of apparel and accessories. A different player performs each step in the manufacturing process, while they all work together to create products that ultimately reach the customer. The system is typically referred to as the "jobber-contractor" system of production. \(^10\)

At the top of the chain is the retailer, usually a department store or boutique that sells the merchandise; \(^11\) for example, Bloomingdale's department store. The retailer obtains its goods from a manufacturer, the next link in the chain. \(^12\) A famous retailer in the garment industry is Levi-Strauss & Co. \(^13\) A jobber is primarily responsible for the manufacture of the finished product. \(^14\) The jobber designs its products, usually supplies the fabric to be used, sometimes cuts the fabric in accordance with design specifications, and is ultimately responsible to the retailers. \(^15\) The contractor is an independent entity that has a relationship with the jobber. \(^16\) The contractor runs a shop that employs workers who actually construct the product according to the designs

\(^7\) See Lam, supra note 2, at 628.
\(^8\) See generally An Overview of SAI and SA8000, at http://www.cepaas.org/introduction.htm (last visited Nov. 4, 2002) (providing an overview of the formulation and operations of Social Accountability International, which was founded in 1997 and addresses consumer concerns about labor conditions around the world).
\(^11\) See Lam, supra note 2, at 629.
\(^12\) See id.
\(^13\) See id.
\(^14\) See Botany, 375 F. Supp. at 494.
\(^15\) See id.
\(^16\) See id.
given to them by the jobber.17 The workers cut the fabric, if it has not already been done by the jobber, sew the pieces together and adorn the garment with finishes.18 Contractors own neither the cloth nor the garments as the jobbers hold possession of them throughout the production process.19 The final steps of the production process involve returning the completed merchandise from the contractor’s shop to the jobber for distribution to the retailer.20

While the jobbers and contractors function as separate entities, each managing their own employees and handling labor and management concerns on their own, they depend upon each other in order to maintain their businesses.21 Thus, the jobber-contractor system is so highly integrated and the two entities are so economically dependant upon each other that they need one another for survival of their respective enterprises.

B. Examples of the Jobber-Contractor Integrated System of Production

Hazantown, Inc. is the jobber in the leading case interpreting the garment industry proviso.22 Hazantown employs designers to create dress designs and patterns that are utilized by outside contractors to manufacture the garments.23 The contractors are all located outside of New York City, where Hazantown has its headquarters.24 Contractors directly employ workers who cut the fabric, operate the sewing machines and pressers, and finish the garments as specified by the designs given to them by Hazantown.25 Once the work is complete in the contracting shop, it is shipped back to the jobber in New York City to be distributed to the retailers who sell the Hazantown dresses.26 Thus, the links in the chain work together to design and manufacture the garment, as defined by the jobber-contractor system.

The same integrated system of production occurs in the accessory industry, specifically in the manufacture of handbags. A jobber—for example, J.Crew—employs designers who formulate ideas for handbags.

17. See id.
18. See id.
21. See id.
22. See Joint Bd. of Coat, Suit & Allied Garment Workers’ Unions, 212 N.L.R.B. at 739.
23. See id.
24. See id.
25. See id.
26. See id.
These designs, along with the fabric, are shipped to outside contractors who produce them in their own factories. The finished bags are then shipped back to the J.Crew headquarters in order to be distributed to the individual stores for sale.\(^{27}\)

The highly integrated structure of the garment industry is virtually identical to the organization of the handbag production industry, a subsection of the accessory industry. Thus, both industries employ retailers, jobbers, and contractors to design and construct their products.

### III. THE NATIONAL LABOR RELATIONS ACT'S GARMENT INDUSTRY PROVISO

#### A. The Creation and Purpose of the NLRA

The NLRA, otherwise known as the Wagner Act, was created as one of the first major federal laws governing collective bargaining processes between unions and unionized employers.\(^{28}\) The establishment of American labor laws was facilitated by a desire to encourage the formation of labor as a collectivity.\(^{29}\) The intent of the lawmakers when passing the NLRA was to promote industrial stability in the workforce\(^ {30}\) and “to eliminate . . . substantial obstructions to the free flow of commerce . . . by encouraging the practice and procedure of collective bargaining.”\(^ {31}\) The creation of the Labor Management Relations Act of 1947 (“LMRA”) was facilitated by the recognition of lawmakers that certain labor practices within the American workforce tended to obstruct the free flow of commerce.\(^ {32}\) Legislators amended the LMRA in the

\(^{27}\) See Telephone Interview with Tiffany Hoffman, Employee at J.Crew Corporate Headquarters' Accessories Division (Oct. 29, 2001).


\(^{30}\) See Rappa, supra note 28, at 1062.

The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent . . . of burdening or obstructing commerce by . . . causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.


\(^{32}\) See Rappa, supra note 28, at 1062.
NLRA to prohibit certain union unfair labor practices. The NLRA was enacted with the intention of preventing unfair labor practices by promoting collective labor and declaring that employees have a right to organize and act together to achieve their goals. The NLRA’s creation of the National Labor Relations Board (“NLRB”) permits employees to organize and bargain collectively. The NLRB can conduct union elections and certify the union who receives a majority of votes from the current employees as the exclusive bargaining agent. The NLRB also regulates employer conduct “that interferes with employee free choice and action in the union formation process.” The NLRB regulates an employer’s action by the establishment of the five employer “unfair labor practice” provisions and employer obligations. The five employer “unfair labor practice” prohibitions and obligations are placed on employers actions in the workplace to protect employees’ rights to organize, bargain and act collectively. The NLRA was created to protect worker’s rights and interests by allowing employees to form groups. The NLRA’s five employer unfair labor practice provisions further the aim of the statute “by helping to create and protect an employee group entity” through the collective form of labor.

B. Secondary Boycotts and Hot Cargo Agreements

A common type of unfair labor practice that unions engage in is the secondary boycott. A secondary boycott is a ‘boycott of one who is
not a direct party to the principle dispute and as a combination to influence a principle by exerting some sort of economic or social pressure against persons who deal with the principle. In a secondary boycott, a union exerts economic pressure against an employer who deals with the union’s employer but is not a direct party to the labor dispute. Secondary boycotts have been illegal under federal labor laws since the enactment of the Taft-Hartley Amendments to the NLRA in 1947. As Senator Taft stated, “the secondary boycott ban is merely intended to prevent a union from injuring a third person who is involved in any way in the dispute or strike, and therefore should not suffer economic damage simply because of the action of a labor union.”

Primary activity is the attempt by a union to exert pressure against an employer with whom the union has the labor dispute, whereas secondary boycotts are with the “objective of forcing the third party to bring pressure on the employer to agree to the union’s demands.” There are factors for determining whether the activity the union is engaged in is primary or secondary activity. Secondary activity is established when the employer against whom the union is exerting pressure is a neutral party, and the union is attempting to “affect its relations with its employer or is instead attempting to achieve ‘union objectives elsewhere.’”

The NLRA’s prohibition on secondary pressure by unions against unrelated employers to the original dispute was enacted to protect businesses neutral to the dispute. With the “enactment of the Taft-Hartley amendments of 1947 and the Landrum-Griffin amendments of 1959, section 8(b)(4)(B) of the Act (NLRA) now imposes restrictions on secondary boycott activity by labor unions.”

Another unfair labor practice prohibited by the NLRA is the hot cargo agreement. Section 8(e) of the NLRA is the provision in the

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44. Rappa, supra note 28, at 1063 n.5 (quoting S. REP. No. 1139, at 2 (1960)) (reporting also that certain judicial determinations revealed secondary boycotts as being “in the nature of conspiracies in restraint of trade,’ and several states outlawed the activity”).
45. See id. at 1063.
46. See id.
47. 95 CONG. REC. S8709 (1949) (statement of Sen. Taft).
48. Rappa, supra note 28, at 1062 (quoting NLRB v. Local 825, Operating Eng’rs, 400 U.S. 297, 303 (1971)).
49. See Rappa, supra note 28, at 1062-63.
51. See Rappa, supra note 28, at 1063.
52. Id.
statute prohibiting hot cargo agreements.\textsuperscript{53} Hot cargo agreements can be defined as agreements whereby a union and an employer contract that the union "will not be required to handle goods manufactured or transferred by another employer with which the union has a dispute or whom the union considers to be unfair to organized labor."\textsuperscript{54} A hot cargo clause is one that requires an employer, a neutral party, to refrain from handling products of another, or to cease doing business with another person with whom the union has a dispute.\textsuperscript{55} The ceasing to do business element of section 8(e) of the NLRA is proved by a showing that prohibitions to form additional relationships with other companies are enforced by an agreement between an employer and a union.\textsuperscript{56} The ceasing to do business element can also be established by showing that relationships with other companies that existed prior to the employer-union hot cargo agreement will be prohibited now.\textsuperscript{57} Hot cargo clauses, also referred to as hot goods clauses, were often generated as a result of the collective bargaining process, and negotiation of these agreements maximized union economic pressure.\textsuperscript{58}

\subsection*{C. History of the Ban on Secondary Boycotts and Hot Cargo Agreements}

The history of the legislature's enactment and the courts' interpretation of secondary pressure is long and detailed. Strongly-held opposing views have marked the controversy throughout history over the labor industry's use of the boycott.\textsuperscript{59} That Congress intended "to prohibit only 'secondary' objectives clearly appears from an examination of the history of congressional action on the subject."\textsuperscript{60}

The beginning of the industrial age was accompanied by a lack of protections of workers and employees. There were no protections to ensure safe and healthy labor conditions. Before the enactment of labor laws, employees that engaged in labor disputes with their employers

\begin{itemize}
\item \textsuperscript{53} See id.
\item \textsuperscript{54} Id. at 1064.
\item \textsuperscript{56} See Nat'l Woodwork Mfrs. Ass'n v. NLRB, 386 U.S. 612, 620 (1967); W. Wash. Cement Masons Health \\ & Sec. Trust Funds, 612 P.2d at 440; see FLORIAN BARTOSIC \\ & ROGER HARTLEY, LABOR RELATIONS LAW IN THE PRIVATE SECTOR 138 (1977).
\item \textsuperscript{57} See BARTOSIC & HARTLEY, supra note 56, at 138.
\item \textsuperscript{58} See id.
\item \textsuperscript{59} See Nat'l Woodwork Mfrs. Ass'n, 386 U.S. at 620.
\item \textsuperscript{60} Id.
\end{itemize}
were criminally prosecuted under the criminal conspiracy doctrine.\textsuperscript{61} Following the abolition of labor disputes as being criminal activity, employers could obtain injunctions against any collective activity. The first judicial act dealing with labor disputes began with the Sherman Anti-Trust Act where federal court injunctions that were previously freely issued against virtually all collective activity of labor were ruled as unlawful restraints on trade.\textsuperscript{62} Congressional response to the numerous labor protests came with the creation of section 20 of the Clayton Act in 1914.\textsuperscript{63} The Act purported to limit the injunction power of the federal courts to only “controversies involving, or growing out of, a dispute concerning terms or conditions of employment.”\textsuperscript{64} Under its terms, the Clayton Act prohibited restraining any person from “ceasing to perform any work or labor” or “from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do.”\textsuperscript{65} Initially, labor organizations were thrilled about the lift immunizing collective activities from antitrust laws.\textsuperscript{66} But the Supreme Court later held that section 20 of the Clayton Act only immunized trade union activities directed against an employer by his own employees.\textsuperscript{67}

Primary activity, whereby a union will exert pressure against an employer with whom the union is in dispute (the primary employer) is legitimate union conduct, fully permissible under federal labor law regulations.\textsuperscript{68} Traditionally, labor legislation “has attempted to insure that particular union weapons, such as strikes, boycotts, and picketing,
would be used only against primary employers.

Unlawful secondary activity occurs when a union attempts to persuade the primary employer to cease business with another employer, known as the secondary employer, by economic threats. Secondary activity is impermissible because it puts unnecessary economic pressure on a business, separate and uninvolved with the labor dispute. Common law courts condemned any secondary pressure that targeted a neutral secondary employer for the purposes of forcing that employer to cease dealing with the primary employer. Secondary pressure could hinder the promotion of business and free trade, which undermines the American ideology of capitalism. At first, understanding the concept of a secondary boycott can be confusing, but it has been described as "a combination to influence A by exerting some sort of economic or social pressure against persons who deal with A." To qualify as secondary pressure it "must be calculated to "[force] the third party to bring pressure on the employer to agree to the union's demands." Enacted in 1932, the Norris-LaGuardia Act protected union activity and broadened the scope of the Clayton Act by further narrowing the circumstances when federal courts could issue injunctions in a labor dispute. The Norris-LaGuardia Act sought to ease the restrictions still in place on union activity. Despite the goals of the Norris-LaGuardia Act, broad labor abuses resulted from its enactment. Unions and union members refused to handle non-union products, even when non-union employers had nothing to do with the production of the products. Innocent employers and the public were harmed by the Norris-LaGuardia Act. Many employers and small businesses were driven into bankruptcy. Some employees lost their jobs or were forced into union representation. Many unions regularly imposed strikes that enforced the
Because the Norris-LaGuardia Act granted broad immunity to labor organizations, pressuring both primary and secondary employers, the Taft-Hartley Act prohibitions against secondary activity were enacted in section 8(b)(4) of the NLRA.81

The use of secondary boycotts and hot cargo agreements between unions and employers was targeted by Congress. The enactment of the NLRA sections 8(b)(4) and 8(e) was a Congressional action that sought to outlaw secondary boycotts and hot cargo agreements.82 The full text of section 8(e) is as follows:

It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforceable [sic] and void: Provided, That nothing in this subsection shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work: Provided further, That for the purposes of this subsection and subsection (b)(4)(B) [of this section] the terms “any employer”, “any person engaged in commerce or an industry affecting commerce”, and “any person” when used in relation to the terms “any other producer, processor, or manufacturer”, “any other employer”, or “any other person” shall not include persons in the relation of a jobber, manufacturer, contractor, or subcontractor working on the goods or premises of the jobber or manufacturer or performing parts of an integrated process of production in the apparel and clothing industry: Provided further, That nothing in this subchapter shall prohibit the enforcement of any agreement which is within the foregoing exception.83

Section 8(e) of the NLRA prohibits hot cargo agreements.84 However, the proviso to section 8(e) exempts the garment and apparel

80. See id.
83. 29 U.S.C. § 158(e). The original intent of the NLRA’s prohibition of union and employer unfair labor practices was to promote and facilitate organized labor by allowing employees to receive representation through a union and collectively bargain with their employer. See 29 U.S.C. § 151.
84. See id. § 158(e).
industry from the ban on hot cargo agreements and specifically allows unions and employers in the garment and apparel industry to formulate hot cargo agreements to protect their workers. To avoid unionization, garment manufacturers abandoned their “inside shops.” Manufacturers quickly transformed themselves into jobbers and then engaged contractors to do the actual manufacturing.

The jobber had no direct dealing with employees, was not responsible to them for wages, and was unconcerned with hours and adequate standards. The contractors were in fierce competition with one another for the patronage of jobbers and inside manufacturers. The essential basis of this intense competition was reduced labor costs. The brunt of this economic rivalry was borne by the workers and reflected itself in depressed wages and substandard labor conditions.

Since the unionization of a contractor would be ineffective if the jobber could turn to a non-union competitor and refuse to work with union-organized workers, the unions could require the jobber to agree to deal only with unionized contractors in the garment and apparel industries.

The prohibition of secondary boycotts is outlined in section 8(b) of the NLRA. Section 8(b)(4), as codified, states that it is an unfair labor practice:

(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—

85. See id.
87. See id. Before the abandonment by many manufacturers of their “inside production shops” to avoid unionization, eighty percent of the workers in the garment industry worked in the shops of contractors. See id. This was usually referred to as the “outside system of production.” See id. It has its genesis in a fiercely competitive struggle by manufacturers of garments at the turn of the century, which caught mostly newly arrived immigrant workers, depressed their wages, and resulted in intolerable working conditions. See id.
88. Id. at 687.
89. See id. at 688.
(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by subsection (e) of this section;

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 159 of this title: Provided. That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing.\(^9\)

The unique structure of the garment and apparel industry exempts garment and apparel unions from the prohibition on secondary pressure in addition to enabling unions to contract hot cargo agreements with garment industry employers.

The enforcement of hot cargo clauses was regulated under section 8(b)(4)(A) prior to the enactment of section 8(e).\(^9\) "However, both the NLRB and the courts have had difficulty ascertaining the legality of the enforcement of such clauses against secondary parties" and enacted NLRA section 8(e).\(^9\) With the enactment of section 8(e), Congress sought to entirely eliminate the execution of hot cargo clauses in collective bargaining agreements.\(^9\)

Congress intended for sections 8(e), (8)(b)(4)(A), and 8(b)(4)(B) to prohibit, not only secondary pressure by unions onto third parties, but also to continue to allow strikes, picketing, and boycotts against the primary employer.\(^9\) "[S]ection 8(e) prohibits agreements with secondary objectives where the enforcement of such agreements would violate

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90. 29 U.S.C. § 158(b)(4)(A), (B) (1998). The original NLRA allowed employees to organize and bargain collectively to prohibit employer unfair labor practices, but the Act was amended later to also prohibit union unfair labor practices. See Labor Management Relations Act of 1997, ch. 120, sec. 101, § 8(b), 61 Stat. 136, 141-42 (1947).
91. See Rappa, supra note 28, at 1070 (footnote omitted).
94. See id. at 625.

[It would not be lawful for a union to engage in a strike against employer A for the purpose of forcing that employer to cease doing business with employer B; nor would it be lawful for a union to boycott employer A because employer A uses or otherwise deals in the goods of or does business with employer B.

Id. (quoting S. REP. NO. 105, at 22 (1947)).
section 8(b)(4)."95 The Supreme Court has interpreted Congressional enactment of section 8(e) of the NLRA holding that "Congress intended to reach only agreements with secondary objectives."96 The Supreme Court has refused to read section 8(b)(4) as prohibiting primary activity, stating that "however severe the impact of primary activity on neutral employers, it was not thereby transformed into activity with a secondary objective."97

At times, it can be difficult to determine whether a clause is secondary in nature and prohibited by section 8(e) or is just merely a lawful work preservation provision. Work preservation clauses will allow agreements between a union and an employer when there is work that has been traditionally performed by a group of employees in a particular bargaining unit.98 The Court in the Longshoremen case set forth a two part test to determine whether an agreement between a union and an employer was a valid work preservation agreement or an illegal hot cargo agreement:

(a) Is the objective of the clause the preservation of work traditionally performed by the employees represented by the union?; (b) Does the contracting employer have the power to give the employees the work in question, i.e., right to control? If the answer to both questions is in the affirmative, the clause is a lawful work preservation provision and is not violative of Section 8(e). Even if the clause applies whenever the employer has only indirect control, the clause may still be lawful.99

However, in Longshoremen, the Court held that "if the contracting employer has no power to assign the work, it is reasonable to infer that the agreement has a secondary objective, that is, to influence whoever does have such power over the work."100

95. Rappa, supra note 28, at 1074-75; see also St. Antoine, supra note 72, at 206-07.
When an agreement is brought into question under section 8(e) . . . the test generally should be whether a union would violate the secondary boycott ban of section 8(b)(4)(B) by inducing employee conduct of the type authorized by the agreement, or by inducing employees to make their employer do what he has committed himself to in the agreement. If the inducement would be a violation of section 8(b)(4)(B), the agreement should be held a violation of section 8(e). But if the agreement does not sanction a secondary boycott it should be sustained.


98. See Rappa, supra note 28, at 1064. "[C]ourts consider negotiation and enforcement of work preservation clauses to be primary activity falling outside the scope of sections 8(b)(4)(B) and 8(e) proscriptions." Id.


100. Int'l Longshoremen's Ass'n, 447 U.S. at 504-05.
D. The Garment Industry Proviso’s Exemption to the NLRA’s Ban on Hot Cargo Agreements and Secondary Boycotts

The garment industry is one of the few industries that are exempt from the provisions of the NLRA sections 8(e) and 8(b)(4) prohibiting hot cargo agreements and secondary boycotts. When Congress began to consider the prohibition of hot cargo agreements, an exemption for the garment industry was proposed to preserve stability within the industry. Although the garment exemption is intended to be a limited one, its application is directed at labor organizations and employers who actively participate in the integrated production process that flows throughout the garment and accessories industries. The garment industry is exempt because of the unique integrated process of production in which the profession operates. The industry is unique because of the jobber-contractor relationship. Although the garment industry is characterized by the jobbers, contractors, and subcontractors, who all operate their own shops with independent business concerns, they are totally dependent on each other for their economic existence and ultimate survival.

When the prospective enactment of section 8(e) was being considered by Congress, other considerations led representatives of the garment workers union to feel that something more was needed to ensure that workers’ needs were met. The result was the garment industry proviso. As Senator Javits noted during the Senate proposal debate, the proviso was intended to permit the International Ladies Garment Worker’s Union (“ILGWU”) to continue “present unionization practices throughout the integrated production process” without being hampered by the Landrum-Griffin Act. Senator Javits of New York pointed out that without the garment industry proviso, the apparel and clothing industries become chaotic, opening up the expansion of

103. See id.
104. See id. at 494.
105. See id.; supra Part II.A.
106. See Botany, 375 F. Supp. at 494.
107. See Danielson v. Joint Bd. of Coat, Suit & Allied Garment Workers’ Union, 494 F.2d 1230, 1235 (2d Cir. 1974).
108. See id.
sweatshops, racketeering, sweetheart contracts, and various other scandals, which society seeks to prevent.\textsuperscript{110}

In addition, the House of Representatives Conference Report of the House Managers indicated that the statutory language of the NLRA section 8(e) confers a limited exemption for the garment industry because of the relationship between a primary and a secondary employer, which is that of a jobber, manufacturer, contractor, or subcontractor.\textsuperscript{111} The enactment of the garment industry proviso was an extension of the thought processes used in the original purposes of the NLRA in 1935.\textsuperscript{112} The belief prevailed that through unionization, the wages and working conditions of employees could be maintained or raised and thus, the economy strengthened.\textsuperscript{113}

The garment industry proviso is not the only proviso to section 8(e). But the garment industry proviso differs significantly from the construction industry proviso, which precedes it in enactment.\textsuperscript{114} The construction industry proviso states: "[t]hat nothing in this subsection shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work."\textsuperscript{115} Since the construction industry proviso contains no reference to section 8(b)(4), "it has been read to allow striking and picketing to obtain an agreement regulating subcontracting at the job site, but not to authorize the use of economic weapons to enforce an agreement once obtained."\textsuperscript{116}

"In contrast, because of the reference to § 8(b)(4) in the garment industry proviso, secondary picketing is clearly permissible in cases within its ambit."\textsuperscript{117} Both the construction and garment industry provisos were added to section 8(e). The purpose of the construction industry proviso was to preserve the status quo in the construction industry and the purpose of the garment industry proviso was to exempt the garment industry from the prohibitions on hot cargo agreements and secondary boycotts to counteract the effects of sweatshop conditions in an industry

\begin{thebibliography}{117}
\bibitem{110} See id.
\bibitem{111} See Danielson, 494 F.2d at 1234.
\bibitem{112} See The American Worker, supra note 1, at 115 (statement of James W. Wimberly, Jr. of Wimberly, Lawson, Steckel, Nelson & Schneider, P.C.).
\bibitem{113} See id. at 114-15.
\bibitem{114} See Danielson, 494 F.2d at 1235.
\bibitem{116} Danielson, 494 F.2d at 1236 (footnote omitted).
\bibitem{117} Id.
\end{thebibliography}
with a highly integrated process of production between the jobbers, manufacturers, contractors, and subcontractors.  

The garment industry proviso allows garment workers only to preserve their jobs against subcontracting or prefabrication by making agreements or engaging in strikes and boycotts to enforce them. Similarly, the construction industry proviso, which permits hot cargo agreements only for jobsite work, “would have the curious and unsupported result of allowing the construction worker to make agreements preserving his traditional tasks against jobsite prefabrication and subcontracting, but not against non-jobsite prefabrication and subcontracting.”

The construction industry proviso, unlike the garment industry proviso, is limited to work at the construction site.

On the other hand, if the heart of § 8(e) is construed to be directed only to secondary activities, the construction proviso becomes, as it was intended to be, a measure designed to allow agreements pertaining to certain secondary activities on the construction site because of the close community of interests there, but to ban secondary-objective agreements concerning non-jobsite work, in which respect the construction industry is no different from any other [industry].

The provisos are therefore substantial probative support that primary work preservation agreements were not to be within the ban of section 8(e). Although the garment industry proviso is broader than the construction industry proviso, it is still not unlimited in its application.

The garment industry proviso allows a union to engage in coercive conduct, including picketing, to force an apparel industry company to sign an agreement that it will only contract with approved union contractors. Accessories production should fall within the garment industry proviso because “regardless of the label that an employer attaches to its relationship to other entities [within its line of business], the extent or control exerted over the [production processes] by the

119. See id.
120. Id.
123. See id.
124. See The American Worker, supra note 1, at 110 (statement of James W. Wimberly, Jr. of Wimberley, Lawson, Steckel, Nelson & Schneider, P.C.).
125. See id. at 113.
employer will determine whether the Garment Industry Proviso applies.126

IV. UNION ORGANIZATION AND THE GARMENT INDUSTRY

A. The Early Days of Unions

Workers need to be protected from the abuses of their employers. Large manufacturers are especially likely to take advantage of their employees if they are not able to fight for themselves via a union. Thus, since 1900, there has been a movement among garment industry unions to organize factory workers to protect them from poor working conditions and low wages that are characteristic of the garment industry.127 In 1900, the ILGWU, the leading union representing workers who produce women’s clothing, began its campaign to unionize the factories where workers manufacture apparel.128 In the early 1900s, the union was successful in employing strike tactics to pressure the Triangle Shirt Company to give its workers wage increases and decrease the hours in their work week.129 The result of this four month strike was that the ILGWU reached agreements with over three hundred manufacturing firms in New York and gained credibility in doing so, leading a similar strike later in the year that had even more astoundingly positive results for the workers.130

In 1914, the ILGWU’s brother union was formed, focusing its efforts on organizing employees who manufacture men’s clothing.131 The Amalgamated Clothing Workers of America (“ACWA”), along with the ILGWU, were able to unionize “68.8 percent of the garment industry”

126. Id. at 111; see generally Geoffrey Beene, Inc. v. N.Y. Coat, Suit, Dress, Rainwear & Allied Workers’ Union, 562 F. Supp. 1316 (S.D.N.Y. 1983). In Geoffrey Beene, Inc., the court denied the plaintiff union’s assertion that Beene Bags, which were being produced by Geoffrey Beene, fell under the garment industry’s proviso to sections 8(e) and 8(b)(4)(B) of the NLRA. See id. at 1323. Because the employer, Geoffrey Beene, maintained control over the Beene Bag’s manufacturing, the production process was not sufficiently integrated; therefore the exemption to 8(e) and 8(b)(4)(B) did not apply. See id. at 1321.

127. See Zachary Katznelson, Hanging by a Thread: Garment Unions, International Competition, and the Garment Industry Proviso to § 8(e) of the National Labor Relations Act, in GLOBAL COMPETITION AND THE AMERICAN EMPLOYMENT LANDSCAPE: AS WE ENTER THE 21ST CENTURY: PROCEEDINGS OF NEW YORK UNIVERSITY 52D ANNUAL CONFERENCE ON LABOR 981, 985 (Samuel Estreicher ed., 2000); see infra Part VII (describing the poor conditions that are typical of the garment industry sweatshops).

128. See Katznelson, supra note 127, at 985.

129. See id. at 985-86.

130. See id. at 986.

131. See id.
by 1923, establishing a forty-four hour workweek and a fixed salary payment method for the workers they represented.\(^\text{132}\)

Not only did unions organize garment workers, but leading unions represented accessory producers as well. The International Pocketbook Workers’ Union (“IPWU”) was created in the early 1900s to benefit the laborers working for manufacturers of pocketbooks.\(^\text{133}\) Ossip Walinsky, the manager of the IPWU, “helped gain the first collective bargaining agreement with the manufacturers” of handbags in both New York City and New Jersey.\(^\text{134}\) While the IPWU was predominantly located in New York City—at the center of handbag manufacturing—the union sought to expand its organization to other cities that employed laborers that produced handbags, such as Baltimore, Maryland and Bridgeport, Connecticut.\(^\text{135}\) The IPWU is associated with the American Federation of Labor.\(^\text{136}\)

Through strikes and pickets, the unions succeeded in gaining hot cargo agreements with the manufacturers employing the members they represent.\(^\text{137}\) Thus, the NLRA exemptions discussed in Part III benefit the unions immensely.

**B. Union Presence in the Garment Industry Today**

In 1976, the ACWA joined forces with the Textile Workers Union of America (“TWUA”)\(^\text{138}\) to form the Amalgamated Clothing and Textile Workers Union (“ACTWU”).\(^\text{139}\) More recently, in 1995, the ACTWU united with the ILGWU to form the Union of Needletrades, Industrial and Textile Employees (“UNITE”) representing a merger of America’s

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132. Id. at 987.
136. See Levy & Devaney, 114 Conn. at 320-21. The American Federation of Labor-Congress of Industrial Organization (“AFL-CIO”) is a “voluntary federation of 65 national and international labor unions” that focuses its goals on bringing “fairness and dignity to the workplace.” AFL-CIO, This Is The AFL-CIO, at http://www.aflcio.org/about/meet_main.htm (last visited Nov. 4, 2002).
137. See Katznelson, supra note 127, at 990.
138. See UNITE: A New Union with a Long History, at http://www.uniteunion.org/research/history/unionsisborn.html (last visited Nov. 4, 2002). The TWUA was founded in 1939. See id.
139. See id.
UNITE has made its mark as the collective bargaining force for "over 250,000 workers across Canada, the United States, and Puerto Rico."

Not only has UNITE been a leading organizer for the textile and apparel industries, but it has also sought to unionize the accessory industry as well. In June 1998, "1,500 workers at Iris Hosiery in Montreal overwhelmingly" chose UNITE as their bargaining representative after they completed a strike in protest of "authoritarian work rules" that were being employed at the factory. Additionally, employees producing handbags for leading manufacturers have been the target of recent UNITE organizing.

UNITE organizers tried to plan an election for the employees of Terner's of Miami, a company that manufactures both luggage and handbags. When one of the company's workers, who was instrumental in the organizing campaign, was fired, UNITE handed out flyers stating that "[b]y firing one of our strongest activists, Primitivo Salcedo, Terner's is once again breaking the law." Not only did the manufacturer fire a union organizer, it also told its workers that "the factory would be forced to move its operations to Costa Rica if the union was brought in." Various forms of intimidation, as employed by Terner's, were in violation of the NLRA section 158(a), which makes it an "unfair labor practice for an employer... to dominate or interfere with the formation or administration of any labor organization or... by discrimination... to encourage or discourage membership in any labor organization." As a result of the unreasonable tactics employed by Terner's, UNITE filed charges with the NLRB on behalf of the workers.

Similarly, UNITE has tried on various occasions to organize workers that produce handbags for Kate Spade, Inc., one of the country's leading pocketbook manufacturers, created by owners Kate and Andy

140. See id.
141. Id.
142. Id.
143. See Elise Ackerman, Freedom of Speech in Handcuffs: Miami Police Use an Obsolete Law to Arrest Two Union Activists. Too Bad They Didn't Know the Ordinance Was Being Taken Out of the Code, MIAMI NEW TIMES, May 1, 1997, at 1.
144. Id. (quoting a flyer "referring to the federal law that prohibits employers from firing workers for lawful union activities").
145. Id.
147. See Ackerman, supra note 143, at 1.
Although “Kate Spade has taken the stance that it has no control over the labor practices of its contractors” because they contract out to factories that the company does not own, it can learn to deal only with unionized factory workers. By utilizing hot cargo agreements, Kate Spade, as well as other handbag manufacturers, can ensure better working conditions for those employed at outside contracting factories. Thus, unions such as UNITE benefit the workers in the United States.

Likewise, union pressure on manufacturing plants that are located overseas may be attained for the betterment of working conditions in those locations. UNITE has “won union contracts with manufacturers and retailers that contain codes of conduct to be applied to any overseas vendors with which the manufacturers . . . do business.” The ILGWU’s “Code of Conduct for Overseas Vendors” ensures that business contractors comply with local laws relating to worksite safety, hours, wages, and benefits. Thus, not only do American unions have effects in the states, but also abroad.

V. THE MANUFACTURING PROCESS OF APPAREL

A. Design and Manufacturing Steps

The apparel market consists of the design and production of men’s, women’s, and children’s clothing. The chain of production in the apparel industry starts with the designers who create appealing products. Designers and their assistants work with pattern makers to translate the designs into production patterns. Each pattern is then graded to fit the different sizes that the article will be produced in. The next step is making a paper pattern layout that can be used to cut the actual fabric. Workers assemble the pieces of fabric by sewing them together to create a garment.

149. Edward Wong, Dispute With Handbag Maker Taken to Store, N.Y. TIMES, Aug. 4, 2000, at B7; see also Toy, supra note 148, at B1.
151. See id. at 403-04.
152. See DIAMOND & DIAMOND, supra note 9, at 14.
153. See id. at 35-36.
154. See id. at 36.
155. See id. at 96.
156. See id.
157. See id. at 98.
process are finishing and labeling. During finishing, buttons and decorations are sewn onto the garment. Lastly, the company’s label is affixed to each product so as to identify its origin.

A production manager oversees the operations at a textile plant. Assembly-line workers are employed to assemble the final product. Similar to the cutting process that employs either machines or individual cutters, most companies utilize machines to sew the garments together. However, in certain cases, individuals will perform the work by hand—for example, in couture houses, where much time and effort is put into the production of each item.

**B. Where Production Occurs**

The manufacturer, before production begins, must decide where it will take place. While some companies choose to produce their products in factories that they own, in the apparel industry, it is common to ship the materials out to a production facility that is not owned by the manufacturer. The production may take place either in the United States or overseas. Many American manufacturers sought alternatives to domestic production when the cost of manufacturing rose. More than fifty percent of all American manufacturers’ garments are produced in countries other than the United States. Hong Kong, South Korea and the Philippines focus on production rather than design of apparel. Countries such as these became attractive places to produce goods because they allow for “lower wages and expert tailoring.”

While the production that takes place overseas might not be affected by the rules and regulations that govern the laborers in the United States’ sweatshops and contracting factories, regulations such as the International Labor Organization (“ILO”) shed some light into the rules that overseas contractors have to comply with.

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158. See id. at 99.
159. See id.
160. See id.
161. See id. at 32.
162. See id. at 98.
163. See id. at 97-98.
164. See id. at 97.
165. See id. at 90.
166. See id. at 90-91.
167. See id. at 14, 90.
168. Id. at 14.
169. Id.
169. These international regulations try to enforce the notion that substandard working conditions are unacceptable, similar in concept to the laws that govern the United States garment workers. See infra Part VII.B.3.
When a company chooses to use offshore facilities for the production of its garments, there are three different ways they can opt to conduct business. The manufacturer can buy a factory in the foreign country and have complete control over the production that occurs there. The manufacturer finances and operates the factory and has the power to employ its own personnel and use its own manufacturing techniques. Or, the manufacturer can opt for a “joint-venture” in which it forms a partnership with a contractor that will produce the garments for it. The benefit of this arrangement is that the costs of production are shared, while the manufacturer still has some control over production. The final option is for the manufacturer to hire an outside contractor who is paid for the production of the garments.

Before the manufacturer makes a choice as to where the products will be made, he should consider such things as import tariffs, quotas, reorders, and quality control. Import tariffs are added costs that must be factored into the cost of a product made overseas. The additional cost that the importer incurs is placed on the garments in order to give domestic-made products a competitive advantage in the industry. Similarly, restrictions such as quotas are designed to eliminate unfair competition for the country that is importing. A quota is the amount of merchandise that a country’s government will allow for import. The United States only imposes quotas on merchandise produced in the Far East because labor costs are much lower there than in the importing country.

Reorders are a factor to be considered when the manufacturer decides where to produce its garments. When an item sells successfully, and retailers choose to replenish their stock, timing becomes a significant factor if the garment is produced overseas. Thus, many vendors only reorder domestically-made products because there is too much of a risk that products originating in the Far East will not be shipped on time, thus resulting in potentially late deliveries. If that is the

170. See DIAMOND & DIAMOND, supra note 9, at 91.
171. See id.
172. See id.
173. See id.
174. See id.
175. See id. at 91.
176. See id.
177. See id. at 93.
178. See id. at 92-93.
179. See id. at 93.
180. See id. at 94.
case, the stores are likely to cancel, leaving the manufacturer with unwanted goods and disgruntled business associates.\(^1\)

Quality control is another factor that is wise to consider when deciding where to produce a product. When a manufacturer chooses to produce goods in an outside factory, it runs the risk of encountering problems that could be avoided by strict scrutiny at an inside factory.\(^2\) Since the early 1990s many European manufacturers have chosen to switch from outside to inside production in order to increase quality control over their garments.\(^3\) For example, Gucci cancelled most licenses to outside production factories and instead moved back to in-house production.\(^4\) Once Gucci bought the French company Yves Saint Laurent in 1999, it utilized the same strategy of buying back production plants and its franchises in order to keep a close eye on production.\(^5\) Similarly, Robert Triefus, Georgio Armani’s Corporate Vice President of Communications explained that “‘[p]rotecting the Armani name and brand image means taking control of manufacturing and distribution.”\(^6\)

In addition, Patrizio Bertelli, the chief of Prada, “is adamant about owning all or part of the company’s production plants.”\(^7\) All of the stores in the Prada Group are either wholly owned or in the process of being purchased from franchisees as a means of closely watching production and distribution.\(^8\)

C. Cost of Production

Manufacturers must consider the cost of materials and trimmings, labor, transportation, and distribution when they determine where they will have the goods produced. Only after these costs are realized can the manufacturer set a price for its garment that will enable the company to profit.\(^9\) The exact amount of fabric per unit for articles of apparel must be determined and figured into the products’ cost.\(^10\) Additionally, the

181. See id.
182. See id. at 93.
184. See id.
185. See id.
186. Id. Armani’s accessory line is also produced in-house because of concerns for quality control. See id.
187. Id.
188. See id.
189. See DIAMOND & DIAMOND, supra note 9, at 82.
190. See id.
individually-priced trimmings, such as bows, buttons, zippers, flowers, and pins must be incorporated. 191

Production labor is more difficult to assess because it encompasses several stages of production. While some manufacturers utilize inside shops to produce their garments, many contract out to production factories that they do not own or operate. 192 When the former is the case, cutters and assemblers are calculated by hourly or weekly increments, as are costs for patternmakers, graders, and markers. 193 However, it becomes more difficult to calculate labor costs when a garment is made in an outside factory. There is an individual contract for the total cutting and assembling labor that is performed in the factory. 194 The total cost is divided by the number of garment units to be sewn, giving the company the cost per item. 195 That cost is then added to the cost of the rest of the work performed at the inside shops. 196 If a manufacturer chooses to pay workers on a piece basis, in which case the laborer is paid a set amount for each product he works on, it is much easier to determine the cost of labor. 197

Transportation costs are also dependent upon where the production occurs. If a garment is made in a factory owned by the manufacturer, there are no transportation costs incurred. However, if the company contracts out, it must account for movement from one production point to another. 198 In addition to considering the transportation costs of products made at outside factories back to the manufacturer, distribution costs to the retailers are an added expense that should be factored into the total cost of a garment. 199

D. Distribution

The final stage of apparel production is distribution, when the completed apparel garments are distributed to retailers. Once the manufacturer obtains the garments from the production factories, it must
divide the merchandise into the orders that have been placed by specific retailers in order to ship them in a timely fashion. Many manufacturers produce more than the retailers demand, as they hope that reorders will be made and that they will be able to quickly respond to their customers' requests.

E. Relevance to the Garment Industry Proviso

The entire manufacturing and production process that occurs in the garment industry is highly integrated, with numerous classifications of people working together to produce a final product. As in many situations, when the garments are produced in a factory not owned by the manufacturer, that manufacturer still has some control over the production process. The garment industry proviso is an exemption from the NLRA's hot cargo provision because of the integrated nature of the garment industry. In all other industries, workers are prohibited from secondary boycotting, but employees in the garment industry are allowed by law to do so because the contracting facilities are so highly incorporated into the production of the garments that they are viewed as primary employers just as the jobbers are. Likewise, production in the accessories industry—specifically production of handbags—also occurs in an integrated fashion. Therefore, employees in this related field should be afforded the same benefits with respect to secondary picketing as are garment industry workers.

VI. THE MANUFACTURING PROCESSES OF ACCESSORIES

A. Background

Accessories are "adornments and enhancements . . . that complete the wearer's outfits." Items that fall into the broad category of accessories are shoes, jewelry, scarves, belts, hosiery, gloves, hats, and handbags. Although not all accessories are made in the same manner because they vary in size and type, handbags are produced in an integrated process similar to that of the garment industry. Therefore, while all accessory industry workers should not be included in the

200. See id. at 99.
201. See id.
202. The only other industry that is exempt from the NLRA's hot cargo provision is the construction industry. See supra notes 114-18 and accompanying text.
203. DIAMOND & DIAMOND, supra note 9, at 14.
204. See id. at 15.
garment industry proviso’s exemption, workers who produce handbags should.

B. Handbag Design and Manufacturing Steps

Comparable to the design and production of apparel, the plan for handbags starts with a designer who creates a design on paper, which is then transformed into a pattern. Individual pieces of the handbag are assembled either by machine or by hand, depending on the nature of the bag, the materials it is made of, and the degree of individuality the manufacturer seeks to give to it. Once the bag is assembled, producers insert stiffening materials between the body of the bag and the lining to provide support. After the body is made, it is then fitted to the frame and attached to handles and closures and decorated with ornaments. After production, the bags are inspected and labeled before being shipped in boxes, either individually or together with others, to retailers for sale.

C. Where Production Occurs

Similar to the production of clothing and apparel, handbags are either produced in factories that manufacturers own, or a more popular alternative, in factories that outside contractors run.

1. J.Crew Accessories

J.Crew, a manufacturer that not only makes clothing and apparel, but accessories as well, utilizes a procedure that employs overseas vendors who produce the handbags. After a design is drawn on a design card, the manufacturer sends the card to various vendors who then compete for the spot of producer. Several vendors, using their own materials, send samples to J.Crew for approval. The manufacturer then selects its favorite samples and has the chosen producers create a second sample that is in the exact form specified by the design, including color assortments and fit. The manufacturer chooses from the “Assortment Two” samples and selects a vendor to sign a purchase order with.

205. See id. at 352-53.
206. See id. at 353.
207. See id.
208. See id. at 353.
209. See id.
210. See Tiffany Hoffman, supra note 27.
Sometimes agents, who earn commission for their sales, act as representatives for production factories, in which case the manufacturer will deal solely with the agent when forming a contract. In other situations, the manufacturer deals directly with the factory itself, represented by a vendor. The J.Crew accessories department deals mostly with agents. In either case, the production occurs in factories not owned by J.Crew.\(^2\)

2. Karl Lagerfeld Handbags

Karl Lagerfeld’s leather accessories line is designed in Paris by Lagerfeld and produced in France by Guene Group’s Dimp Division. Thus, outside contractors are responsible for the manufacturing of Lagerfeld handbags. Once produced and distributed worldwide, the handbags are shown in the H.B. Accessories showroom in Manhattan.\(^2\)

3. Joomi Joolz Accessories

Joomi Lim, creator of the Joomi Joolz accessories line, partnered with Holly Moore in 1999 to design handbags to include in her collection. In the summer of 2000, Joomi added t-shirts to her line, thus entering the apparel industry. Both handbags and t-shirts are contracted out to be produced in factories separate from her design studio in Wilshire, California.\(^2\)

4. Tommy Hilfiger Accessories

The Tommy Hilfiger Accessories line, which is owned by Jones New York, is produced in factories in Japan. The manufacturer does not own the factories, as all of the accessory production is contracted out.\(^2\)

5. Calvin Klein Accessories

Accessories made by Calvin Klein as well as the CK collection are all made in other parts of the world, such as Italy and Asia. Calvin Klein does not own any of the factories that make accessories; they are produced in outside contracting shops.\(^2\)

\(^{211}\) See id.

\(^{212}\) See Reillon Inks Lagerfeld Leather Line Agreement, WOMEN’S WEAR DAILY, May 4, 1988, at 14.

\(^{213}\) See All That Glitters: Joomi Lim Leaps From Accessories To Glam T-Shirts, Spreading Glitz Along The Way, WOMEN’S WEAR DAILY, July 25, 2000, at 22.

\(^{214}\) See Interview with Lauren Selzer, Employee at Jones New York (February 9, 2002).

\(^{215}\) E-mail from Caroline Tepper-Marlin, Employee at Warnaco (Mar. 12, 2002, 14:51:08 EST) (on file with the Hofstra Law Review). Warnaco holds the license for men’s accessories for Calvin Klein and CK Collection. See id.
D. Relevance to the Garment Industry Proviso

As is customary of the accessory industry, the manufacturers contract out the production of goods, making the production process highly integrated, as is the process by which clothing and apparel is produced. Therefore, employees who work in the accessory production industry, specifically those involved in the production of handbags, should be protected by the garment industry proviso if they picket their employers or outside contractors who are involved in the manufacturing process.

VII. THE NECESSITY OF THE CONTINUED EXISTENCE OF THE GARMENT INDUSTRY PROVISO

One of the purposes in enacting the garment industry proviso was to improve labor conditions of garment industry workers and hold violators of federal labor laws accountable. The enactment of the proviso brought hope to lawmakers and garment industry workers to simply allow collective bargaining within the apparel industry to continue as it had in the past and to not introduce change to an already peculiar market structure. There is enormous uncertainty and instability for maintaining employment and securing work in the garment industry. Without the proviso, individual contractors would be unable to specify future terms and conditions of employment or ensure enforcement of manufacturers to collectively bargain with the union representative.

Before the enactment of the garment industry proviso, the garment industry was completely controlled by manufacturers who managed the wages and working conditions of laborers in contracting shops that sew,

216. See supra Part V.B.
217. See generally The American Worker, supra note 1 (hearing testimony on the rationale for enacting, and the effects of the garment industry proviso, as well as other garment industry related issues). The House of Representatives Subcommittee convened in 1998 to discuss the garment industry proviso. See id. at 2. Union representatives contended that the garment industry proviso protects workers by allowing unions and garment manufacturers to enter into hot cargo agreements. See id. at 12 (statement of Jay Mazur, President, Union of Needletrades, Industrial and Textile Workers). Unions may also put secondary pressure on a neutral third party to achieve their goals. Contestants of the garment industry proviso argued that the garment industry proviso should be abolished because the garment industry still maintains poor working conditions and numerous problems. See id. at 16-17 (statement of Robert T. Thompson, Sr., Esq., of Thompson and Hutson).
218. See id. at 8 (statement of Honorable John Dunlop, Lamont University Professor, Emeritus, at Harvard University and Former U.S. Secretary of Labor).
219. See id. at 7.
220. See id. at 7-8.
tailor, and produce their products. Although the working conditions in the garment industry still need great improvement, manufacturer responsibility is required today more than ever. Without the proviso, many garment industry workers and their families would lose their employment benefits, health care, pensions, prescription drug plans, holidays, and paid vacations. The proviso also ensures workers are afforded the benefits of the collective bargaining process. The garment industry proviso works as an enforcement mechanism by allowing unions to collect liquidation damages from contract violators. With a union in place, the contract covering the workers can force the manufacturer to provide certain minimal working conditions. The expansion of the garment industry proviso to cover both apparel and handbag accessory producers is vital to the continuation of improving labor standards.

In the last ten years there has been a rise in consumer imports, leaning retailing practices within the apparel industry, and the growth of a large immigrant population in America. The apparel industry must strive harder to protect its workers in America and abroad. The world is now globalized and the market and labor standards should be a component of the rules governing international transactions. The growing role of retailers who are outside the scope of the garment industry proviso, the weakening of the garment industry, the rising tide of imports from low-wage countries where labor rights are routinely abused, and the growing availability of immigrant workers increase the need for the garment industry proviso's expansion to other industries which maintain integrated production processes similar to the apparel industry. Without the institution of the proviso, there would be a greater incentive to cheat and escape labor law standards because of the

221. See id. at 11 (statement of Jay Mazur, President, Union of Needletrades, Industrial and Textile Workers).
222. See id. at 17 (statement of Robert T. Thompson, Sr., Esq., of Thompson and Hutson). UNITE forces employers to sign jobber-contractor agreements that bind jobbers to give all production to unionized shops (which is the ultimate purpose of the garment industry proviso). See id. at 19 (statement of Joel E. Cohen, Esq., of McDermott, Will & Emery). If the jobber violates the jobber-contractor agreement and contracts out to a non-union shop, the union can collect liquidated damages from the company. See id. The liquidated damages are used to benefit workers by dispensing employment benefits and establishing justice centers. See id. at 28-29 (statement of Jay Mazur, President, Union of Needletrades, Industrial and Textile Workers).
223. See id. at 23.
224. See id. at 10 (statement of Hon. Ray Marshall, Audre and Bernard Rapoport Centennial Chair, Economics and Public Affairs, University of Texas at Austin and Former U.S. Secretary of Labor).
225. See id.
competitive advantage the violator would achieve.\textsuperscript{226} The garment industry proviso needs to remain in place to continue to improve working conditions alongside other federal, state, and world labor enforcement provisions.\textsuperscript{227}

\section*{A. The Existence of Sweatshops in the Garment Industry}

The garment industry is unique in character because most of the goods are produced in overseas shops or in the United States in sweatshops. To avoid increasing the amount of sweatshops and endorsing illegal labor conditions, the garment industry proviso is as necessary today as it was when it was first enacted in 1959.\textsuperscript{228} Accessories production can also be characterized as an industry filled with sweatshops and labor law violations.\textsuperscript{229} "[A] ‘sweatshop’ is a business that regularly violates both wage or child labor laws and safety or health regulations."\textsuperscript{230} Sweatshops characterize the garment and accessories fields because there are over a million workers in an industry dominated by small companies.\textsuperscript{231} During the twentieth century, sweatshops became common throughout the United States and abroad.\textsuperscript{232} In the United States, the largest apparel production comes out of big cities like Los Angeles, New York City, and San Francisco.\textsuperscript{233} In the mid-twentieth century, many people wondered why sweatshops grew at a rapid pace. The primary factors leading to the proliferation of sweatshops in the United States are the presence of a large immigrant community desperate for work, the labor intensity and low-profit margins of the garment industry work, and the rapid growth of

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\textsuperscript{226} See id. at 30 (statement of Joel R. Cohen, Esq., of McDermott, Will & Emory).
\textsuperscript{227} See, e.g., id. at 9 (statement of Honorable John Dunlop, Lamont University Professor, Emeritus, at Harvard University and Former U.S. Secretary of Labor).
\textsuperscript{228} See, e.g., id.
\textsuperscript{229} See Dexter Roberts & Aaron Bernstein, Wal-Mart's Self-Policing in the Chun Si Factory was a Disaster. What Kind of Monitoring System Works? (2000), at http://www.sweatshopwatch.org/swatch/headlines/2000/chinaswtshp_oct00.html (indicating that Chun Si, which made Kathy Lee Gifford handbags as well as handbags sold by Payless Shoe Source, had continual poor working conditions where immigrant workers were demanded to work long hours and sometimes managers even hit employees) (last visited Nov. 4, 2001).
\textsuperscript{230} Lora Jo Foo, The Vulnerable and Exploitable Immigrant Workforce and the Need for Strengthening Worker Protective Legislation, 103 YALE L.J. 2179, 2181 (1994).
\textsuperscript{232} See Marino, supra note 5.
\end{flushright}
subcontracting. Most large companies in the garment trade are clueless about how their garments are made. Everyone working in the garment industry from the Chief Executive Officer of a major retailing corporation to the overseas workers are constantly being time pressured to produce large quantities of items in short amounts of time. As a result, the vast majority of retailers do not do anything to check the working conditions of the products that bear their names.

Traditionally, the majority of clothing bought and sold in the United States was manufactured domestically. In the 1950s, only four percent of the clothing purchased in the United States was made abroad. However, in the 1960s and 1970s many companies began to move operations abroad to seek out cheaper labor in Asian and South American countries. By the 1980s, over sixty percent of apparel was manufactured abroad. Presently, many apparel and accessories retailers contract out to foreign producers to manufacture their items. However, recently the garment industry has brought some production back to the United States because of “unstable political climates in foreign countries, increases in U.S. import duties, significant decreases in product quality, and increased demand for higher wages abroad.” The continuation and expansion of the garment industry proviso is essential to protect workers from poor labor conditions whether production occurs in the United States or abroad. Although sweatshops are still present in the garment industry more than forty years after the enactment of the proviso, without this proviso, workers would have even fewer working benefits and lower pay scales. Absent the proviso, workers would lose many of their employment benefits and collective bargaining protections. Also, there would be fewer apparel and accessories producers in the United States, leading to higher unemployment rates and economic recession.

The typical sweatshop is both unsanitary and unsafe for workers. Inside the sweatshop, workers sit in a crowded space, wearing surgical

234. See id. at 407.
235. See Marino, supra note 5.
236. See id.
237. See Halem, supra note 233, at 408.
238. See id.
239. See id.
240. See id.
241. Id.
242. See generally The American Worker, supra note 1 (hearing testimony on the rationale for enacting, and the effects of the garment industry proviso, as well as other garment industry related issues).
243. See Lam, supra note 2, at 633-35.
masks to protect them from dust and debris (but only if they are lucky enough to be provided with one), and "hunched over ... sewing machine[s] ... pushing fabric past a speeding needle as quickly as [their] hands [can] manage." The sweatshop is usually "damp and hot, cramped with piles of highly flammable materials, poorly lit, with blocked exits, battered doors, and grime-coated windows." In many sweatshops, seamstresses and workers are found sitting in a small crowded space, inhaling dust and lint. The rooms are overcrowded, with poor ventilation, dangerous stairways in disrepair, unsanitary bathrooms and eating areas, young children playing near dangerous machines, and workers preparing food next to their machines and eating on littered floors.

The public rarely hears on the news or local media providers about the abuses within the apparel and accessories industries. In the United States, sweatshop workers are kept quiet about the abuses they endure in sweatshops because of employers' threats to report them to the Immigration and Naturalization Service ("INS") if they complain about working conditions. Garment workers also find it difficult to escape the life of a sweatshop because of their inability to speak English. Many sweatshop workers are poorly educated and untrained in other occupational fields. Many workers believe that a low-skilled job like sewing is their only option in the United States because of their immigrant status and because of their low level of English proficiency and education. Garment workers are usually females of Hispanic or

244. Lam, supra note 2, at 634 (quoting Steven A. Chin, Sweatshops: Bay's Ugly Secret, S.F. EXAMINER, Feb. 13, 1989, at A1; see William Serrin, After Years of Decline, Sweatshops are Back, N.Y. TIMES, Oct. 12, 1983, at A1. Often garment industry workers must walk three or four flights to their factories, up dark, dingy, littered hallways. Elevators, when they exist, are often old and small and overburdened; it would take a long time to wait for them.

Cloth seems to fly through the machines as seamstresses make blouses, skirts, dresses, trousers.

The factories hum with the noise of the machines—electric cutting knives, sewing machines, pressing machines. Radios play loudly, and there is the babble of foreign languages and the steam and smell of the food that workers often eat at their benches. Floors often are littered with cloth remnants and stacked with cut goods or rolled goods.

The factories are hot or cold, depending on the season.

Id.

245. Lam, supra note 2, at 633-34 (footnotes omitted).
246. See id. at 634.
247. See id.
248. See Halem, supra note 233, at 406.
249. See Lam, supra note 2, at 632.
250. See Foo, supra note 230, at 2182.
Asian descent. Sweatshops workers sometimes believe that reporting abuses within the sweatshops will result in being “blacklisted” from other local sweatshop factories, which will result in the inability to retain new work, causing their families to starve.

Wages and work conditions in sweatshops are well below what is acceptable and legal. Sweatshop owners take advantage of their workers’ precarious condition and require workers to work twelve-hour days, six days a week. Many sweatshops do not memorialize or record payments made to the employees in order to avoid complying with international, federal, and local labor standards. Sweatshop workers are paid low salaries, usually amounting to half the proscribed federal minimum wage requirements. Wages for sweatshop workers are usually calculated by either the “piecework” wage system or the “homework” wage system. In the piecework wage system, the worker is paid per garment. At the end of the day, the total amount of garments assembled and produced are calculated to pay the worker. Other industries calculate the salary based on the amount of hours worked.

The piecework system pays workers varying amounts. The speed of the worker is the most important quality in determining the amount of money the employee will receive; the faster a seamstress can sew, the more garments she produces and the more money she will make.

In the homework wage system, a contractor sends employees home with a garment to be completed by the next day. Contractors like the homework wage system because they can avoid paying workers legally mandated overtime wages and breaks. In the homework system, the employer can also save on factory costs by requiring the workers to produce the goods at their homes. Because homework records are usually not kept by the workers and are unknown to the employers, it is almost impossible to pay employees for all the work accomplished.

251. See Lam, supra note 2, at 632.
252. See id. at 640.
253. See Halem, supra note 233, at 406.
254. See id. at 407-08.
255. See Lam, supra note 2, at 633.
256. Id. at 635-37.
257. See id. at 635-36.
258. See id.
259. See id.
260. See id. at 636.
261. See id.
262. See Chaiyarachta, supra note 231, at 177.
263. See id.
264. See id.
The piecework wage system is ultimately the primary means of wage distribution in the garment industry.⁶⁵

Although not all sweatshops are reprehensible, many still exploit vulnerable immigrant workers in our nation and abroad. Sweatshops are on the rise and increased rapidly throughout the 1990s.⁶⁶ More than fifty percent of apparel produced in the United States is made in sweatshops.⁶⁷ In 1995, spot tests were conducted of registered garment industry manufacturing operations by the United States Department of Labor.⁶⁸ Labor Department officials discovered wage and overtime violations in forty-six of the fifty production facilities that were investigated.⁶⁹ Garment shop owners and operators were discovered to have withheld more than $500,000 dollars from more than 600 employees’ collective wages.⁷⁰ In New York City, there are estimated 6000 garment shops, including at least 2000 unlicensed shops, with over 3000 labor violations.⁷¹ In San Francisco, labor standards investigators found violations in more than seventy-two percent of the garment shops.⁷² Although sweatshops are predominately located in New York and California, sweatshops exist “wherever a large, illegal alien workforce [is] willing to work for sub-minimum wages.”⁷³ Labor officials have found and documented labor violations in all major cities across the United States, including Chicago, Dallas, Miami, and Washington D.C.—probably because these cities maintain substantial immigrant populations residing within their borders.⁷⁴

Garment industry workers ponder why the use of sweatshops to produce garments has been increasing over the last fifty years rather than shrinking with the institution of stringent labor standards.⁷⁵ The INS has contributed to the use and increase of sweatshops because of their efforts to crack down on border patrols at the Mexican and Canadian borders rather than looking at employers in the garment industry shops already within the United States’ borders.⁷⁶ Half of the immigrants that come to

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⁶⁵ See id.
⁶⁶ See Halem, supra note 233, at 409.
⁶⁷ See id. at 408.
⁶⁸ See id.
⁶⁹ See id.
⁷⁰ See id.
⁷¹ See id. at 408.
⁷² See id.
⁷³ See Lam, supra note 2, at 634.
⁷⁴ See id. at 634-35.
⁷⁶ See Lam, supra note 2, at 635.
⁷⁷ See Halem, supra note 233, at 409.
⁷⁸ See id. at 410.
the United States enter on legal visas and simply overstay the time limits, continuing to work illegally with no labor laws to protect them from poor working conditions.\textsuperscript{277}

Because of the competitive nature of the garment industry, consumers and retailers are not concerned and do not check the working conditions of the products that bear their names.\textsuperscript{278} Recently, consumers have become more aware of the working conditions where their products are made since human rights activists revealed that some of Wal-Mart’s Kathy Lee Gifford handbags came from sweatshops in New York City and Honduras.\textsuperscript{279} The institution of the “No Sweat” campaign now makes public every three months the names of cutting and sewing shops found in violation of federal wage and hour laws and the manufacturers who are under contract with the shops.\textsuperscript{280} Some retailers, such as J.C. Penney and K-mart, agreed to factory inspections and programs to decrease the use of sweatshops.\textsuperscript{281} Other retail companies, such as Reebok International, Ltd. and Levi Strauss & Co., attempted to monitor working conditions of their labor workers in the last ten years.\textsuperscript{282} The problem for the retail industry is that competition forces apparel companies to control costs by keeping retail prices down and profits up. Cost control is accomplished by contracting the production of garments to the lowest bidder.\textsuperscript{283}

B. \textit{The Need for the Coexistence of the Garment Industry Proviso with Other Labor Enforcement Provisions to Protect Garment Industry Workers in America and Abroad}

1. Changing Times and the Production of Labor

The garment industry proviso must be preserved and extended because of the recent change in the garment industry’s labor production in the last twenty years. The implementation and adoption of the North American Free Trade Agreement (“NAFTA”) and the World Trade Organization (“WTO”) changed the scheme of labor enforcement both

\textsuperscript{277} See id.
\textsuperscript{278} See \textit{Marino}, supra note 5.
\textsuperscript{279} See id.
\textsuperscript{280} See id.
\textsuperscript{281} See id.
\textsuperscript{282} See id.
\textsuperscript{283} See id.
Many apparel manufacturers, such as Guess, Reebok, Levi Strauss & Co. and other manufacturers, moved much of their production to foreign factories. Without the garment industry proviso protecting garment industry workers, American production of garments would have been wiped out completely by the cheap labor costs abroad. The unions must be preserved to protect the garment industry workers in the United States. The ability of garment industry unions to engage in secondary pressure and formulate jobber-contractor agreements preserves the garment trade in the United States. Allowing unions to extend their agreements with employers to cover workers in foreign shops would also better the working conditions in the garment and accessories industries. The United States needs to extend its push for harsher labor standards to be incorporated into the enforcement powers of the WTO and NAFTA. Expanding labor regulations to cover trade accords would not be astounding since labor standards have appeared in some commodity trade agreements; for example, rubber, tin, and sugar. It is outlined in United States law that the United States’ representatives at the World Bank and International Monetary Fund must push for human rights and labor standards in their trade agreements with foreign nations.

The United States’ claim of jurisdiction over international human rights violations and the United States’ assertion over other countries’ labor laws suggest the need to extend the garment industry proviso to cover contractors who work overseas and who supply and produce goods for the sale and distribution in the United States. Laborers outside the United States supplying goods to United States’ retail corporations should be represented by unions and be granted the protection of American labor laws to improve the garment industry’s working conditions.

2. The Enactment of the Fair Labor Standards Act

There are numerous agencies and regulations that govern labor standards in the United States and in foreign nations. There is a necessity to preserve the garment industry proviso in addition to the other labor
regulations. The unique integrated structure of the garment and accessories industries forces it to need extra help in working towards its goal of improved labor conditions and worker rights. Because of the garment industry’s poor working conditions, provisions of the garment industry proviso need to be restructured to strengthen the worker protections along with additional labor regulatory schemes.\textsuperscript{291}

The United States regulates minimum wage standards, employee hours, overtime pay, and child labor by the Fair Labor Standards Act ("FLSA").\textsuperscript{292} The purpose of the FLSA was to change and improve United States labor standards, forcing corporations to meet requirements necessary to preserve the health, efficiency and well-being of workers.\textsuperscript{293} Expansion in the manufacturing industry and the rise of the working class population in the early twentieth century increased the need for labor standards.\textsuperscript{294} For the first time in United States history, the FLSA “set a national wage standard and established a standard workweek [sic] of forty hours, with additional hours paid at time-and-a-half.”\textsuperscript{295} The FLSA defines a work week as any regularly recurring period of seven consecutive twenty-four hour periods that may begin at any hour of the day or week; each work week stands alone and cannot be averaged.\textsuperscript{296} For all hours worked in excess of a forty-hour work week, an employee must be compensated at a rate of one-and-a-half times the regular rate of pay.\textsuperscript{297}

The garment industry proviso crafts an exception to the traditional employee-contractor relationship. The apparel manufacture’s liability for violations of the FLSA is consistent with the peculiar nature of the garment industry expressed by the NLRA’s garment industry proviso. There is a need for consistency in order to promote efficiency in the garment industry; therefore, the garment industry proviso and the FLSA should provide special protections to the garment industry worker by holding accountable the apparel manufacturer who is the true beneficiary.\textsuperscript{298} Unionization efforts have thus far only reached a small

\begin{itemize}
  \item \textsuperscript{291} See \textit{The American Worker}, supra note 1, at 9 (statement of Hon. John Dunlop, Lamont University Professor, Emeritus, at Harvard University and Former U.S. Secretary of Labor).
  \item \textsuperscript{292} See 29 U.S.C. §§ 201-219 (1994).
  \item \textsuperscript{293} See Chaiyarachta, supra note 231, at 179.
  \item \textsuperscript{294} See id.
  \item \textsuperscript{295} Id.
  \item \textsuperscript{296} See id. at 180.
  \item \textsuperscript{297} See id.
  \item \textsuperscript{298} See Lam, supra note 2, at 644.
\end{itemize}
fraction of garment workers and need to be expanded.\(^{299}\) The weakness of these efforts is a result in large measure of industry resistance.\(^{300}\) Congress must (1) work to preserve the 1959 garment industry proviso of the NLRA, which allows manufacturers to agree to use only unionized contractors for cutting and sewing, (2) encourage federal labor law reforms that would empower garment industry employees through strengthening the collective bargaining process like the FLSA, and (3) support federal joint-liability legislation, in particular the Stop Sweatshops Act. This legislation will help to improve the garment industry in the twenty-first century.\(^{301}\)

The FLSA's definition of "employee" created some problems for coverage under the Act. The FLSA defined an employee as "any individual employed by an employer."\(^{302}\) Coverage under the FLSA was limited to individual employees who were engaged in commerce, in the production of goods for commerce, or in any employment related to production of goods.\(^{303}\) The definition of employee under the FLSA was not easily discernible; sometimes it protected an employee in the assembly line, but not a janitor at the same plant.\(^{304}\) The arbitrary coverage under the FLSA led to an amendment to the FLSA in 1961 shifting the focus of coverage from the employees to the employers.\(^{305}\)

Oftentimes, employees do not want to report violations of the FLSA for fear of being fired. To ensure the enforcement of the FLSA, section 15(a)(3) was designed to remove the risk of employer retaliation when employees report employer violations.\(^{306}\) There is an Administrator of the Wage and Hour Division of the Department of Labor who is responsible for administering and overseeing the FLSA provisions.\(^{307}\) The Administrator investigates complaints and inspects records to determine if the FLSA violations occurred.\(^{308}\) The Administrator may


\(^{300}\) See id.

\(^{301}\) See id.


\(^{303}\) See Chaiyarachta, supra note 231, at 179-80.

\(^{304}\) See id. at 180.

\(^{305}\) See id.

\(^{306}\) See id. at 181; see also Mitchell v. Robert DeMario Jewelry, Inc., 361 U.S. 288, 292 (1960) (indicating that Congress did not intend to secure compliance with the FLSA by continuing detailed federal supervision). Instead, Congress chose to rely on employee complaints, and compliance with the FLSA could not be accomplished unless employees felt free to approach officials with their grievances. Thus, section 15(a)(3) proscribes retaliatory acts against employees.

\(^{307}\) See Chaiyarachta, supra note 231, at 181.

\(^{308}\) See id.
also issue subpoenas to investigate labor violations. Once an employee issues a written request for a civil action for a FLSA violation, section 16(c) of the FLSA authorizes the Secretary of the Labor Department to commence a civil action for unpaid minimum wages and overtime pay. The United States Department of Justice may also institute criminal proceedings against voluntary or willful violators of the FLSA.

The FLSA regulation, instituted to remove sweatshop conditions in the garment industry, ultimately has not been very effective. Sweatshops remain in effect partly because enforcement of labor violations is aimed at the shop owner and not the manufacturer. The manufacturer should bear the responsibility of labor violations because it is the manufacturer who is ultimately in control and who receives the most income from the cheap labor production of apparel and accessories. Penalties for the FLSA violations are small and generally inadequate to deter potential violators. And even where violations of state labor law standards are enforced in addition to the FLSA standards, shop owners will pay the fines and consider it a cost of conducting business. The penalties to the shop owners are small in comparison to the profits to be made in keeping the working conditions as is.

Although judicial interpretation makes it clear, federal labor laws must be further extended to cover undocumented aliens as well as United States citizens. Many of the workers producing goods are illegal immigrants who came to the United States to earn higher wages. The lack of liability extended to manufacturers for labor law violations contributes to the continuance of sweatshops in the apparel and accessories industries. The legislative history of the FLSA reveals that Congress intended the Act to have broad coverage. The purpose of labor laws “is to protect workers with little or no bargaining power: the lowest paid, hardest worked, and least organized.” The drafters of the FLSA intended to sanction manufacturers of apparel and accessories for their labor violations. The garment industry proviso is needed in

309. See id.
310. See id.
311. See id.
312. See Lam, supra note 2, at 643.
313. See id.
314. See id. at 643-44.
315. See id. at 644.
316. See id. at 643.
317. See id. at 647.
318. Id. (footnote omitted).
319. See id. at 648.
addition to the FLSA because the FLSA only deals with wages, overtime issues, and child labor, whereas the garment industry proviso sweeps through a broader range of collective bargaining issues.\textsuperscript{320}

3. Other Labor Enforcement Standards: ILO, ISO, \& SAI

International labor standards have begun to develop in response to the awareness of poor working conditions in the garment industry throughout the world. Companies who try to avoid the quality of contractors' working standards are sometimes now required to comply with the International Labor Organization. The ILO was created in 1919 at the end of the First World War, is based in Geneva, Switzerland, and operates as an independent agency of the United Nations.\textsuperscript{321} The motivation for the institution of the ILO was humanitarian, economic, and political.\textsuperscript{322} The ILO seeks to improve the condition of exploited workers.\textsuperscript{323} The ILO differs from the garment industry proviso because it specifically requires contractors of large corporations to seek certification by an auditing firm that they have met international labor standards.\textsuperscript{324} The ILO also reports on several issues concerning basic worker rights through publications, conferences, and the Internet, to name a few.\textsuperscript{325} In 1969, the ILO was awarded the Nobel Peace Prize and today, the ILO continues to be a viable part of the regulation of the labor industry.\textsuperscript{326}

Numerous organizations developed in response to the substandard working conditions in the apparel industry. The International Organization for Standardization ("ISO") has been responsible for creating notable labor standards as well. The ISO created the ISO9000, to ensure quality working standards, and the ISO14000, to ensure a safe environment for workers.\textsuperscript{327}

\begin{footnotesize}
\begin{enumerate}
\item See The American Worker, supra note 1, at 8 (statement of Hon. John Dunlop, Lamont University Professor, Emeritus, at Harvard University and Former U.S. Secretary of Labor).
\item See ILO, supra note 321.
\item See id.; see also White et al., supra note 321, at 2.
\item See White et al., supra note 321, at 2.
\item See ILO, supra note 321.
\end{enumerate}
\end{footnotesize}
The Social Accountability International Organization ("SAI") was built on the ILO's existing framework of creating labor standards.\(^{328}\) Using the same approach that companies have used to ensure worldwide quality standards, SAI, formerly Council on Economic Priorities Accreditation Agency ("CEPAA"), has tried to create a uniform workers' right standard.\(^{329}\) Historically, worker codes of conduct have been expensive, varied, and inefficient to hold accountable workplace violations.\(^{330}\) But SAI aims to address global labor issues through the adoption of codes of conduct, the monitoring of international companies, and public reporting requirements.\(^{331}\) To comply with SAI labor standards, companies may either certify their facilities to the SAI standards by allowing internal audits or by having the company choose a signatory member who will report its compliance with SAI over a period of time.\(^{332}\)

Companies wishing to comply with the SAI are required to meet nine standards.\(^{333}\) SAI prohibits child labor workers under the age of fifteen years old and it prohibits forced labor of any kind.\(^{334}\) Workers are to be provided with a safe and healthy working environment.\(^{335}\) Workers must have the right to organize and join unions and collectively bargain.\(^{336}\) Discrimination towards workers on the basis of religion, race or national origin is also prohibited.\(^{337}\) Working hours are to comply with applicable laws and workers will work no more than forty-eight hours per week and have at least one day off in a seven-day period.\(^{338}\) Physical and mental abuse of workers is prohibited. Worker wages must meet the legal and industry standards and must be sufficient to meet the basic needs of the workers and their families.\(^{339}\) Deductions of wages as a disciplinary action are also prohibited.\(^{340}\) To ensure long-term compliance with SAI standards, companies must set up internal management facilities to monitor working conditions.\(^{341}\)

\(^{328}\) See White et al., supra note 321, at 2.
\(^{329}\) See id.
\(^{330}\) See id. at 1.
\(^{331}\) See id.
\(^{332}\) See id. at 2.
\(^{333}\) See id. at 3.
\(^{334}\) See id.
\(^{335}\) See id.
\(^{336}\) See id.
\(^{337}\) See id.
\(^{338}\) See id.
\(^{339}\) See id.
\(^{340}\) See id.
\(^{341}\) See id.
The garment industry proviso’s importance is not undermined by the recent development of new labor standards. The garment industry proviso exempts the apparel industry from NLRA prohibitions by allowing the industry to enter into hot cargo agreements and engage in secondary boycotting. The garment industry proviso specifically focuses on the ability of unions to enter into hot cargo agreements, forcing manufacturers to deal only with union contractors. The garment industry proviso also permits unions to engage in secondary pressure against a neutral third party to coerce manufacturers only to do business with the unionized contractor. However, recent attempts to improve the garment industry’s labor standards focus on the need of manufacturing corporations to report financial earnings and company reports. The idea is that by forcing companies to disclose information to the public and accountability standard boards, the more likely the corporations will want to appear altruistic and comply with labor standards.

VIII. CONCLUSION

There has been a recent increase in fashionable use of handbags as they are no longer only functional, but stylish as well. Many clothing manufacturers have branched out and created accessory lines that coordinate with their clothing and apparel. Kate Spade, Inc. primarily focused on designing handbags modeled after 1950s and 1960s bags that were “unpretentious and simple complements to outfits.” Since the company has become successful in selling handbags and matching accessories, Kate Spade, Inc. has expanded its business to include clothing. The Fall 2000 line included bags cut from the same cloth as suits and coats that are part of the same collection. Similarly, Versace and Fendi introduced matching shoes and handbags in the fall of 2000, as did Michael Kors, and Ferragamo. Furthermore, Liz Claiborne, Inc., designer of women’s clothing, seeks to outfit the career woman with collections that include apparel, as well as accessories, including coordinating handbags and shoes. These manufacturers, as well as

344. See id.
346. See id.
348. See Ferragamo Cleans Up at Christie’s, FOOTWEAR NEWS, Nov. 15, 1999, at 8.
many others, create and sell both clothing and accessories, specifically handbags. It is likely that all of their products are created in a similar fashion, especially when the same fabric is used for both.

The preceding sections are evidence that both the clothing and apparel industry and the handbag accessory industry operate in a similar integrated process. Handbag factory laborers are subject to the same substandard working conditions as the apparel industry workers. Thus, just as garment industry workers are sometimes organized for collective bargaining purposes, handbag industry workers are involved in unions as well. The President of UNITE, Jay Mazur, and two former Secretaries of Labor, Ray Marshall and John Dunlop, share the view that “the [garment industry] proviso has been critical to achieving health, safety and decent wages in the industry, and that removal of the proviso would turn back the clock to a time when workers had no voice and employers no fear of retribution for illegal business practices.”

In 1996, two former chairmen of congressional labor committees introduced an anti-sweatshop bill that amends the FLSA to permit the government to issue penalties for any garment industry manufacturer that violates labor laws. These jobbers would be liable to the employees working for its contractors who are underpaid and overworked, enduring the hazardous working conditions in their factories. According to Jay Mazur, the bill “closes a glaring loophole in our labor laws that has allowed sweatshop production to . . . invade the apparel industry.” Senator Edward Kennedy, one of the congressmen who introduced the bill, felt that it “sends a clear message to garment industry employers . . . [because the] [e]xploitation of workers will not be tolerated.”

While the federal bill has yet to become enacted into legislation, New York has created a labor law that mirrors the proposed bill. It “holds [jointly] liable for unpaid wages any manufacturer who knew or should have known with the exercise of reasonable care and diligence that goods they had contracted out were made in violation of wage and hour laws.” It is advisable for the federal government to follow New York’s lead in enacting a similar statute that would place more

352. See id.
353. Id. (quoting Jay Mazur, President of UNITE).
355. Katznelson, supra note 127, at 1036 n.255 (citing N.Y. LAB. LAW § 345-a (McKinney 2000)).
responsible on manufacturers for labor law violations in the apparel and handbag production industry.

Like the retailers in the apparel industry, handbag accessory retailers defy labor law standards as well. Therefore, not only should employees in the clothing and apparel industry be afforded the protection of the garment industry proviso under sections 8(e) and 8(b)(4)(B) of the NLRA against violations resulting from secondary boycott activity and hot cargo agreements, but workers in the accessory industry, specifically those that assemble handbags, should be protected as well.

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