

The Future of 'Ethical Production' for Cambodia's Garment and Footwear Industry: What Role for Trade Agreements with Labour Clauses?

Edlira Xhafa and Veasna Nuon

A large, stylized gear graphic is the central element of the cover. It is composed of several interlocking gear shapes in various shades of blue, purple, and green. The largest gear is a dark blue with a white circular center. To its right, a smaller green gear is partially visible. Further right, a thin, light green line forms a jagged, mountain-like shape. The background features a grid of small white plus signs on a light blue field, which is partially obscured by the gear shapes and other design elements.

CLS+

Core Labour Standards Plus

Linking trade and decent work in
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Contents

List of Figures	V
List of Tables	V
List of Boxes	V
List of Abbreviations	VI
Foreword	VII
Introduction	IX
Objective of the research	IX
Methodology	IX
1. Cambodia's economy: A snapshot	1
A success story of economic growth and poverty reduction	1
The other face of the "success" story	3
2. Garment and footwear industry: A general overview of the context and main characteristics	7
The trade regime context	7
United States – Cambodia Trade Agreement on Textile and Apparel	7
European Union – Cambodia trade relations	8
3. The trajectory of economic upgrading in the garment and footwear industry	9
Organisation of production and position of Cambodia's garment and footwear factories in the global value chain	9
Main challenges to economic upgrading	11
4. The trajectory of social upgrading in the garment and footwear industry	14
Compliance with Core Labour Standards Plus	15
Freedom of association and collective bargaining rights	15
The elimination of all forms of forced labour and abolition of child labour	16
The elimination of discrimination in respect of employment and occupation	17
Occupational health and safety, and wellbeing	17
Fair remuneration and inclusive minimum wage fixing mechanism	18
Limiting hours of work and regulation of rest days	19
Social protection and protective social policies	20
Job security	20
Labour inspection	21
Tripartite consultations	22
5. The future of compliance with CLS+ from the perspective of the main stakeholders in the industry	23
The Government	23
Employers and buyers	25
Trade unions	26
International Labour Organization	26

6. By way of conclusion: Trade agreements and social and economic upgrading - Policy proposals	28
Policy proposals	29
Enhance compliance with international labour standards in law and in practice	29
Strengthen social dialogue and collective bargaining at industry level	31
Support industrial upgrading	31
Strengthen regional strategies to improve working conditions and labour rights	31
Trade regimes which support social and economic upgrading	32
Notes	33
Bibliography	35
Stakeholder interviews and data sources	38

List of Figures

Figure 1: GDP growth rate 1996-2016 (annual, %)	1
Figure 2: Sectoral employment as a share of total employment (%) – selected years: 1998-2012	2
Figure 3: Foreign direct investment, net inflows (% of GDP): 1995-2015	2
Figure 4: Main FDI sectors, by approvals and inflows, 2005-2012	4
Figure 5: Poverty indicators	3
Figure 6: Current account and trade balance (% of GDP): 1995-2016	4
Figure 7: Composition of exports and imports in 2012	5
Figure 8: Sectoral value added (%) – 2000-2016	5
Figure 9: Market share in garment and footwear exports of Cambodia, Vietnam, Bangladesh and Thailand (% of total developing and emerging economies)	9
Figure 10: Cost structure of the garment industry in Cambodia	12
Figure 11: Cambodia's garment export price index (per dozen) to its major markets (index, 2012=100)	13
Figure 12: Labour productivity in the Cambodian garment and footwear sector 2003-2015p	13
Figure 13: Statutory minimum wages and employment in the garment and footwear sector (December 2000 – December 2015)	14
Figure 14: Nominal and real minimum wage in the Cambodian garment and footwear sector (January 2000 – January 2016)	19

List of Tables

Table 1: Sectoral share of GDP and exports	2
Table 2: Exports and imports 2013-2015	11
Table 3: Employment and number of garment factories	14

List of Boxes

Box 1: H&M sourcing arrangements in Cambodia	10
Box 2: The relationship between buyers and local factories	12
Box 3: The National Strategic Development Plan 2014-2018	24
Box 4: The Industrial Development Policy 2015-2025	24
Box 5: The National Employment Policy 2015-2025	24
Box 6: Decent Work Country Programme 2016-2018	27

List of Abbreviations

ACILS	American Center for International Labour Solidarity	GDP	Gross Domestic Product
ACT	Action, Collaboration, Transformation	GIZ	German Development Agency
ADB	Asian Development Bank	GMAC	Garment Manufacturers Association in Cambodia
AGOA	African Growth and Opportunity Act	GSP	General Scheme of Preferences
ASEAN	Association of Southeast Asian Nations	GSP+	General Scheme of Preferences Plus
BASIC	Bureau for the Appraisal of Social Impacts and Costs	HDI	Human Development Index
C.CAWDU	Coalition of Cambodia Apparel Workers Democratic Union	HR	Human Resource
CAMFEBA	Cambodian Federation of Employers and Business Associations	HRW	Human Rights Watch
CATU	Cambodian Alliance of Trade Unions	ID	Identification Cards
CBA	Collective Bargaining Agreement	ILO	International Labour Organization
CDRI	Cambodia Development Resource Institute	ITUC	International Trade Union Confederation
CITS	Cambodia Trade Integration Strategy	MFA	Multi-Fibre Agreement
CLS	Core Labour Standards	MoU	Memorandum of Understandings
CLS+	Core Labour Standards Plus	MoLVT	Ministry of Labour and Vocational Training
CMT	Cut, Make and Trim	MRS	Most Representative Status
CNV	Christelijk Nationaal Vakverbond (National Federation of Christian Trade Unions in the Netherlands)	NIS	National Institute of Statistics
DWCP	Decent Work Country Programme	NSSF	National Social Security Fund
EBA	Everything But Arms	OECD	Organisation for Economic Co-operation and Development
EU	European Union	OHS	Occupational Health and Safety
FDC	Fixed-Duration Contracts	OSH	Occupational Safety and Health
FDI	Foreign Direct Investment	UDC	Undetermined Duration Contract
FES	Friedrich-Ebert-Stiftung	UNCTAD	United Nations Conference on Trade and Development
		UNDP	United Nations Development Programme
		US	United States
		WTO	World Trade Organization

Foreword

The issue of global trade has been discussed controversially for many years. While on the one hand it is considered beneficial for all trading partners and said to bring growth to the so-called developing countries, on the other hand it is criticized for its negative effects such as entrenching inequalities along the global value chain and putting downward pressure on working conditions. Proof for both positive and negative effects have been brought forward extensively. Therefore, as so often, it is fair to assume that effects are manifold and complex, and that trade has different effects depending on the type of trade arrangement and power relations between all actors involved.

This publication therefore aims at analysing these complex effects to determine “who benefits from trade?” in the case of Cambodia. Friedrich-Ebert-Stiftung (FES) is thankful that the authors Edlira Xhafa and Veasna Nuon have accepted the task to conduct this research and now present such an excellent and comprehensive study.

The authors examine how trade regimes, and particularly the trade arrangements with the European Union (EU) and with the United States, have affected working conditions and socioeconomic development in Cambodia. The country is deeply integrated in the global economy. The export-led growth of the country has been mainly fuelled by the garment and footwear industry. This growth has been accompanied by a general reduction of poverty, an increase in employment and in recent years by increasing wages, as well. “Ethical production” has been showcased as a comparative advantage of the Cambodian industry where compliance with labour standards is inspected on a voluntary basis in many factories. So, is this proof that the benefits of trade do reach the so-called developing countries?

The picture is mixed: inequality is still high in Cambodia, and the country ranks below the regional average in terms of the Human Development Index. In terms of workers’ rights, recently, widespread violations of labour standards such as extensive use of short-term contracts, excessive overtime and denial of rest breaks, as well as occupational health and safety hazards, have been

reported. In addition, violations of freedom of association and collective bargaining rights are common. Looking at the economy as a whole, without any substantial economic upgrading, investment in technology or diversification, Cambodia remains stuck at the end of the global value chain, vulnerable due to its strong export dependence. Even though foreign investments have been essential to build the strong garment and footwear industry, multinational companies (MNC) benefit from tax breaks and most of the profits do not remain in the country. Common references to regional competition and price pressure by MNCs underline the global power asymmetries and imbalances in profit.

In this publication, the authors do not only take stock. They also conclude their findings with policy recommendations on how to create a better distribution of the benefits of trade and how to avoid the negative effects it has been having on workers and producing countries so far. Two important recommendations are the compliance with international labour standards in law and in practice and the strengthening of workers’ representation, social dialogue and collective bargaining.

The study is part of the “The regional project Core Labour Standards Plus (CLS+)” which was launched by FES in Asia in 2016. It aims to promote and develop binding labour standards in trade and global value chains. With growing consumer concern and strong criticism of free trade agreements in Europe, there is momentum to push for binding social clauses in international trade. If governments can show that trade agreements contribute to making the life of workers in Asia better, the growing scepticism towards such agreements could be reduced.

The scope of the CLS+ project is ambitious in the sense that it goes beyond the ILO core labour standards. These core conventions are recognised as an important element of decent work and are used by the EU in trade agreements, but they do not cover other important rights such as living wages, maximum working hours including overtime, and safe and healthy workplaces. A living wage is, for example, crucial to lift people out of poverty.

In the first phase of the project, four countries—Bangladesh, Cambodia, Pakistan, and Vietnam—were selected to explore the link between trade and labour standards in key industries characterized by global value chains, namely garments, footwear and electronics. These countries were chosen because they have experienced different schemes of trade preferences, notably with the EU, but also with the United States.

We would like to thank everyone who has contributed to this study, all the stakeholders and experts that have shared their knowledge and insights, and particularly the two authors.

Adrienne Woltersdorf and Stine Klapper
FES Office for Regional Cooperation in Asia

Introduction

In the mid-1990s, after years of conflict and international isolation, Cambodia started opening up to the global economy. Similarly to other developing countries, Cambodia followed the policy prescription of exporting garment and footwear products as a way of integrating into the global supply chains. Various arrangements were enacted to facilitate this integration. In particular, the US-Cambodia Trade Agreements on Textile and Apparel of the late 1990s and early 2000s led to a substantial increase in exports. Due to the labour clauses of these agreements, Cambodia earned the reputation of an “ethical production hub”. Subsequent preferential treatment under the European Union’s General Scheme of Preferences have helped Cambodia sustain its garment and footwear exports.

Recent studies, however, provide increasing evidence of widespread violations of labour standards such as extensive use of short-term contracts, excessive overtime and denial of rest breaks, occupational health and safety hazards, pregnancy-based discrimination, sexual harassment, and the denial of maternity benefits. The decline in labour standards is worsened by serious violations of freedom of association and collective bargaining rights. Recent policy measures seek to respond to increased regional competition and criticism over violations of labour standards and rights.

The Cambodian model of integration in the global value chains questions its reputation of “ethical production hub”. The model also raises a number of critical questions which are relevant beyond the Cambodian context. Can a country consolidate its industry through backward and forward linkages in the economy in the context of race-to-the-bottom competition unleashed by free trade? Can a country ever achieve sustained social and economic progress if it relies on poor wages and working conditions, and the suppression of workers’ rights? Under what conditions can trade agreements with labour clauses play a role in supporting and advancing social and economic progress?

Objective of the research

This research is part of the Friedrich-Ebert-Stiftung (FES) regional project in Asia—Core Labour Standards Plus

(CLS+)—that stands for shared prosperity through trade and decent work in global supply chains. The project aims to promote and develop binding labour and social standards in trade agreements and preference systems.

In the framework of the FES regional project, **the main objective of this research** is to contribute to strengthening the policy dialogue framework for promoting compliance with CLS+ in the garment and footwear industry in Cambodia, including through trade agreements.

More specifically, this study looks at:

- 1) The position of Cambodia’s garment and footwear industry in the global value chain and the main challenges facing the sector (economic upgrading);
- 2) Labour conditions in the garment and footwear industry and trends of compliance with international labour standards (social upgrading);
- 3) Trade regime context and its impact on economic and social upgrading; and
- 4) Views and strategies of the main stakeholders in the garment and footwear industry related to the development of the sector, including compliance with labour standards.

The findings are used to support policy dialogue on social and economic upgrading among the relevant stakeholders in the industry by proposing a package of policy recommendations in a number of policy areas, including in trade agreements with labour clauses.

Methodology

This research is based on an extensive review of literature and in-depth interviews with key informants conducted during the period August-October 2016. The key informants included representatives from: two national trade unions (the Cambodian Labour Confederation and the Cambodian Confederation of Unions), two international trade unions (the International Trade Union Confederation and IndustriALL), two government

agencies (the Ministry of Labour and Vocational Training and the Ministry of Commerce), compliance managers from three garment factories (Star FuYa, GDM Enterprise

and CHU HSing Factory), the H&M office in Cambodia, and the US Embassy and the EU Delegation (officers in charge of labour and trade issues).

1. Cambodia's economy: A snapshot

A success story of economic growth and poverty reduction

The performance of Cambodia's economy in the last two decades has been in many ways remarkable. Its gross domestic product (GDP), for example, has grown by an average of 7.4 per cent per year although reaching a high of 13.3 per cent in 2005 and a low of 0.1 per cent in 2009 (Figure 1). Since 2013, however, real GDP has grown by an average of 7 per cent (ILO 2015 & 2016).

The strong growth is attributed to three main sectors: garment and footwear exports, construction, and services (World Bank 2016). In 2015, the contribution of the construction (and real estate) sector to the real economy was estimated to be almost 30 per cent (ibid.). The sector "is projected to remain the second most dynamic driver of growth after the garment sector" (ibid.: 7).

As Table 1 shows, garments and footwear are the main exports followed by agricultural products, which consist of milled rice, rubber and cassava. Meanwhile, Cambodia is slowly integrating into the global automotive value chains as major automakers in Thailand and Vietnam are

expanding their supplier networks into Cambodia, Laos and Myanmar (Elms and Low 2013). These dynamics have diminished the reliance on agriculture and have resulted in important structural transformations of the economy as seen in the distribution of GDP by sector in Table 1.

Industry and services have also become increasingly important in terms of employment, although agriculture continues to be the main source of jobs. As Figure 2 shows, between 2008 and 2012, there was a significant drop in agricultural employment which was accompanied by an equivalent increase in employment in industry and services.

The inflow of foreign direct investment (FDI) has been a main driver of the Cambodian economy, particularly in sectors such as garments and footwear, but increasingly also in banking and agro-industry (Figure 4). Despite ups and downs (Figure 3), in recent years FDI has averaged 10 per cent of annual GDP.

More specifically on the structure of FDI, data from the Cambodian Trade Integration Strategy 2014-2018 (Kingdom of Cambodia 2014) show that the top five sectors

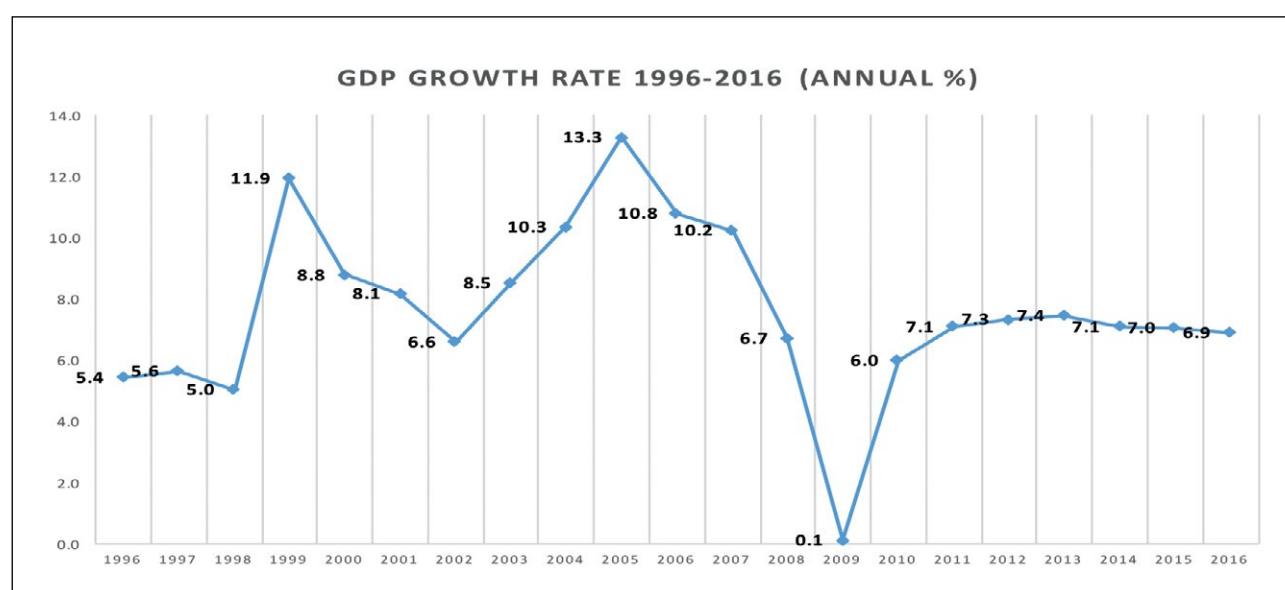


Figure 1: GDP growth rate 1996-2016 (annual, %).

Source: Graph constructed by the authors using data from the World Bank's World Development Indicators.

Table 1. Sectoral share of GDP and exports

Distribution of GDP by sector (%) – 1998-2013				Sectoral share of exports (%) – 1998-2013			
Sector	1998	2008	2013		1998	2008	2013
Agriculture	44.5	32.8	31.6	Processed agricultural products	10	10	7.9
Industry	16.7	22.4	24.1	Manufacturing			
- <i>Manufacturing</i>	12.7	15.3	15.5	Garments & footwear	80	70	77
				Non-garment & footwear	0.1	0.5	1
Services	34.8	38.8	38.5				
Taxes on products less subsidies	4	6	5.8				

Source: Table extracted by the Royal Government of Cambodia (2015: 14), Table 2 & 3

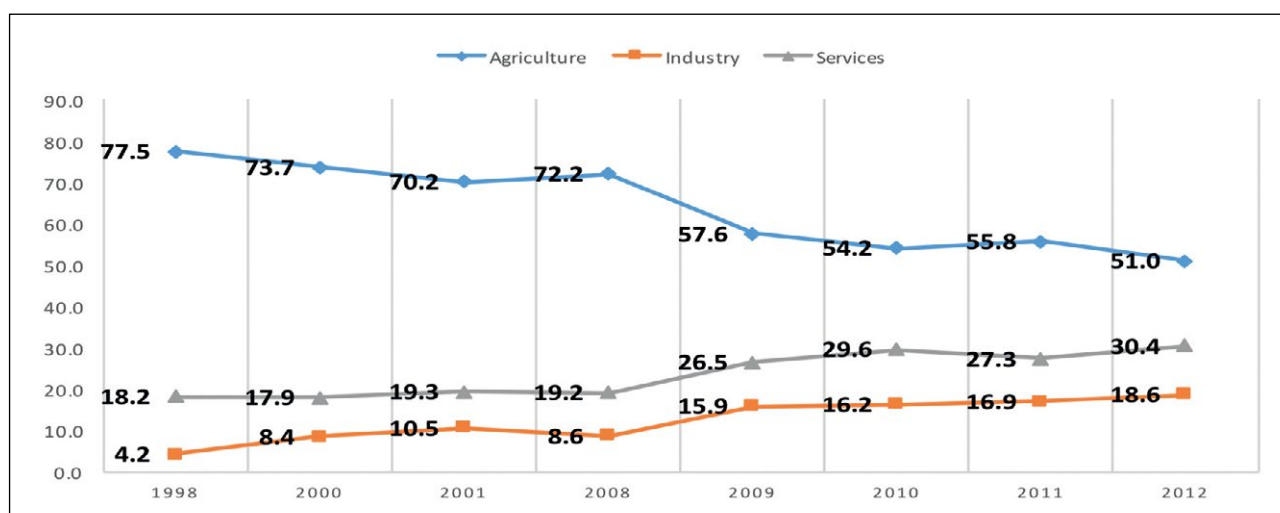


Figure 2: Sectoral employment as a share of total employment (%) – selected years: 1998-2012.

Source: Graph constructed by the authors using data from the World Bank's Jobs Data.

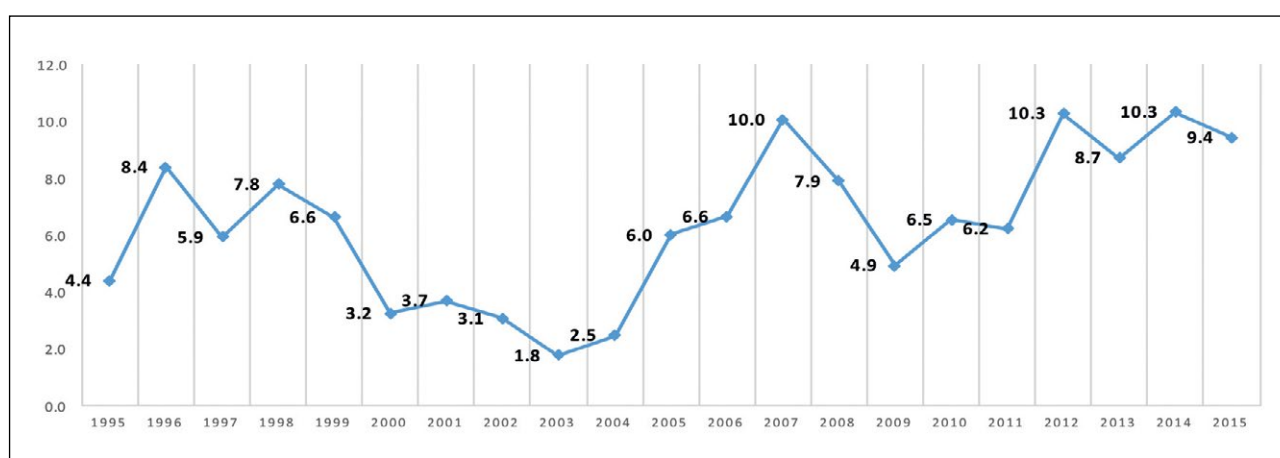


Figure 3: Foreign direct investment, net inflows (% of GDP): 1995-2015.

Source: Graph constructed by the authors using data from the World Bank's World Development Indicators.

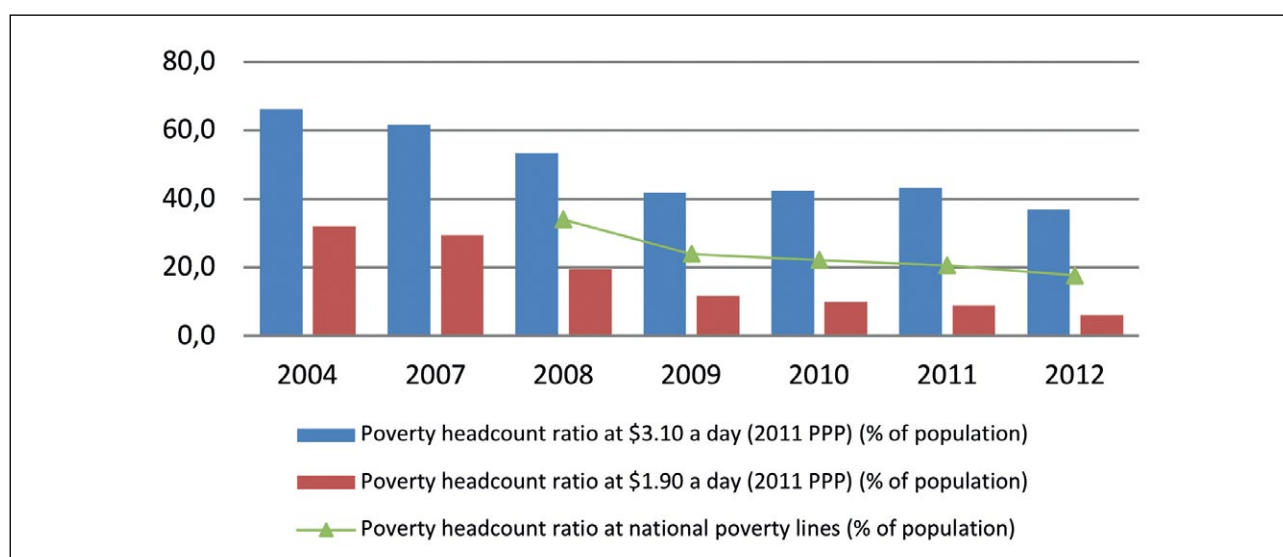


Figure 5: Poverty indicators.

Source: Serrano and Nuon forthcoming: 31, Figure 11.

receiving FDI inflows from 2005-2012 were commercial banking (28 per cent), garments and footwear (25 per cent), agro-industry (17 per cent), telecoms (6.3 per cent), and tourism (6 per cent). Investment in other sectors, such as infrastructure, agriculture, telecommunications and tourism, is growing more rapidly than investment in the garment and footwear sector (ILO 2016a). The rapid expansion of modern, high-rise residential and commercial buildings is increasingly attracting FDI, mainly from South Korea and China (World Bank 2016). According to some commentators, the interest in investing in the construction sector has been stimulated by the transition of Cambodia to a lower middle income economy and the related demands for improved industry standards in real estate (ibid.).

Due to the sustained economic growth of the last decade, in 2016, Cambodia moved from the low-income economy group of countries to the lower-middle income group. To some extent, the economic growth has also translated into poverty reduction. Using different indicators, Serrano and Nuon (forthcoming) show that there was a downward trend in poverty levels and the Gini index between 2004 and 2012 (Figure 5). Referring to findings from the latest Social-Economic Survey, the World Bank argues that the trend of poverty reduction continued at least up to 2014. Meanwhile, UNDP data show that between 1990 and 2014, the country's HDI value increased by 52.4 per cent,

placing Cambodia in the medium human development category, positioning it at 143 out of 188 countries and territories (Serrano and Nuon forthcoming).

The other face of the “success” story

Despite remarkable achievements both in terms of increasing exports and attracting FDI, the Cambodian economy is marked by continuous current account deficits (Figure 6).

The lack of backward linkages in the economy for the main sectors driving economic growth—garments and footwear, and construction—is a major factor contributing to the negative trade balance (Figure 7). The strong merchandise imports are also fuelled by rising demand for consumption goods such as vehicles, electronics, and beverages (World Bank 2016).

The integration of Cambodia's economy into the value chains is at their lower end as the value added is only “a small fraction of the value of the finished consumer product” (Kingdom of Cambodia 2014: 15). As Figure 8 shows, the growth of the value added for the main economic sectors in the last two decades has been uneven, with industry recording a better performance. The trajectory of the industry sector is not unproblematic.

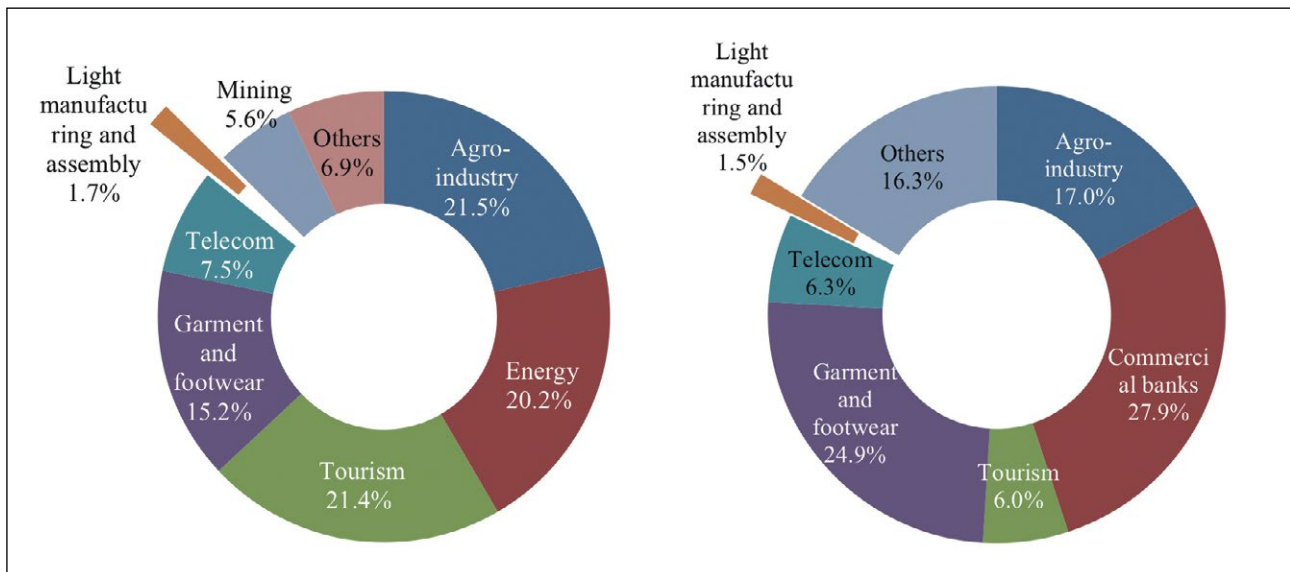


Figure 4: Main FDI sectors, by approvals and inflows, 2005-2012.

Source: Kingdom of Cambodia 2014: 139, Figure 5.3.

Dominated by small enterprises (97 per cent), the manufacturing sector is marked by a “lack of diversity in industrial base, an informal and missing middle structure, a weak entrepreneurship, an urban-centred industry, a low value addition and low level of technology application”

(ibid.: 1). Its main manufacturing exports—garments and footwear, and bicycles—consist mainly of assembling imported materials and parts into finished products for export (ibid.). Similarly, Cambodia's agricultural exports consist mainly of unprocessed products (ibid.).

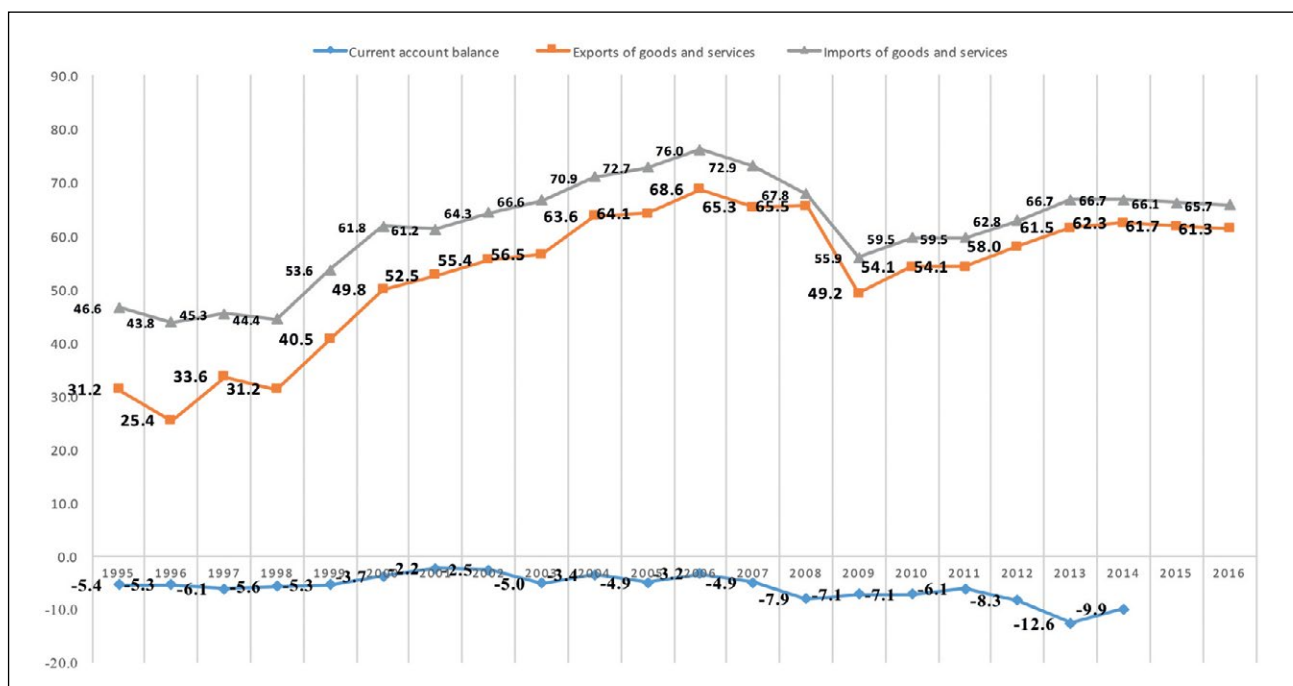


Figure 6: Current account and trade balance (% of GDP): 1995-2016.

Source: Graph constructed by the authors using data from the World Bank's World Development Indicators.

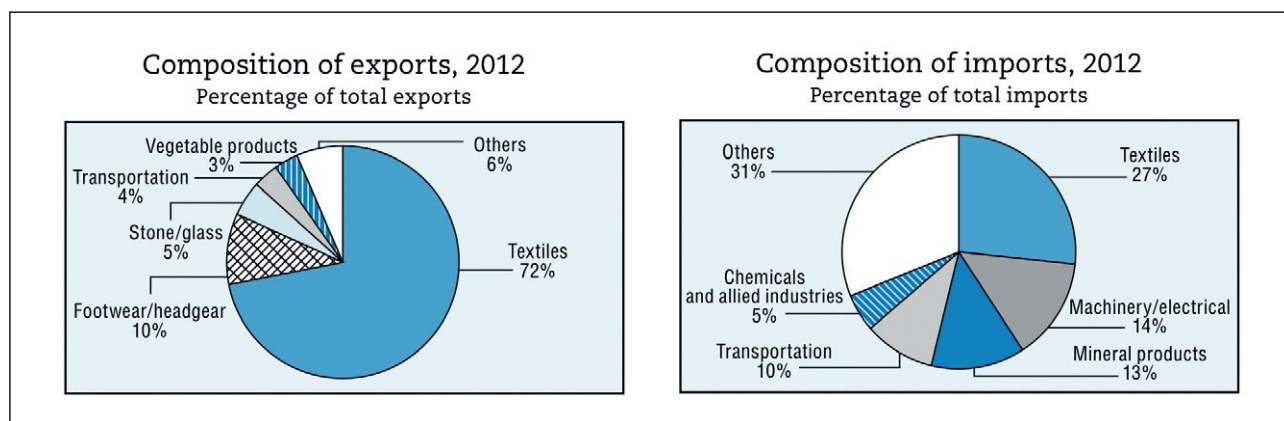


Figure 7: Composition of exports and imports in 2012.

Source: OECD 2012: 2.

Certain characteristics of the economic model make the Cambodian economy vulnerable to external shocks and natural disasters (ADB 2014). For example, the very high level of dollarization of the economy—over 90 per cent of deposits at banks are in US dollars (Kingdom of Cambodia 2014)—limits the government's room for monetary policies with a critical impact on the country's competitiveness (World Bank 2016). Also, agricultural products are subject not only to weather conditions

(intermittent rainfall and drought) but also to continued depressed international agricultural commodity prices (ibid.).

Finally, while Cambodia's HDI has improved significantly, it remains below the average in the medium human development group and below the average for countries in East Asia and the Pacific (Serrano and Nuon forthcoming). Despite important achievements in reducing poverty and

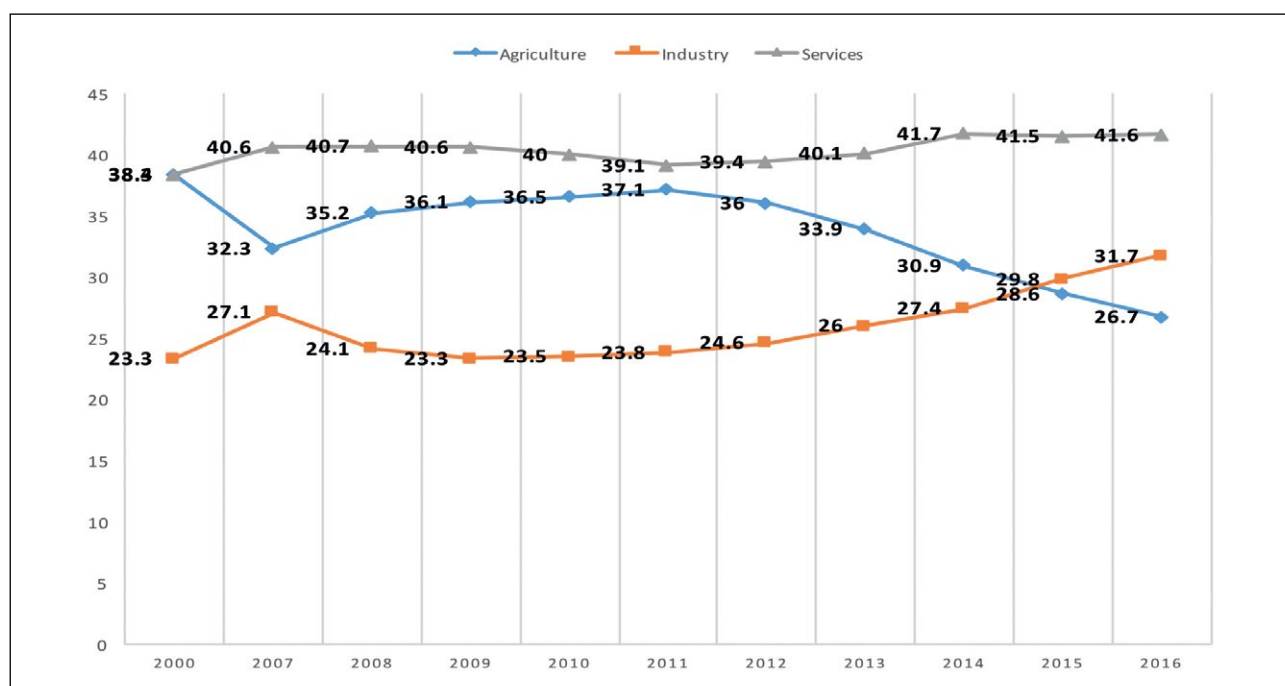


Figure 8: Sectoral value added (%) – 2000-2016.

Source: Graph constructed by the authors using data from the World Bank's World Development Indicators.

inequality, the poverty incidence in rural areas is still high (World Bank 2016) and so is income inequality (ibid.). Malnutrition remains a particular concern, especially among children (OECD 2017). A significant share of the population has not escaped extreme poverty and many of those who have are just above the poverty line (ibid.). Both groups are considered to be highly vulnerable to shocks (ibid.). The overwhelming majority (over 80 per cent of workers aged 15 or older) are employed in the

informal sector (Merk 2016). A great majority (82.5 per cent) of workers are in vulnerable employment (ILO and NIS 2013). Women are particularly affected; they are employed mainly in vulnerable, low-paying jobs in the garment industry (ADB 2014). Meanwhile, the limited social protection system in place leaves Cambodian households highly vulnerable to the impact of negative shocks (such as droughts, regional unrest, etc.) (World Bank 2016).

2. Garment and footwear industry: A general overview of the context and main characteristics

The trade regime context

The Cambodian garment industry developed in a context of limited competition. Not being part of the quota system under the Multi-Fibre Agreement (MFA), sheltered Cambodia's garment and footwear exports from competition, especially from China and India, which had reached their quota and could not expand their exports. In addition, Cambodia gained a significant comparative advantage over countries operating at their maximum quota when the country was granted the Most-Favoured-Nation status as a non-WTO member in 1996. The Trade Agreements on Textile and Apparel with the US (1999-2004) played a critical role in the impressive growth of Cambodia's garment and footwear exports.

Joining the World Trade Organization in 2004 and the phasing out of the MFA in 2005 exposed Cambodia's exports to free competition. Meanwhile, the Everything But Arms (EBA) arrangements, which became important for Cambodia only in 2011, have provided Cambodian products with favourable access to the European market. Cambodia has also been part of other formal trade and/or investment agreements, mainly with other Southeast Asian nations and through its membership in the ASEAN group.

We look in more detail into the trade arrangements with the US and the EU, which have been particularly important in helping to expand and sustain Cambodia's garment and footwear exports.

United States – Cambodia Trade Agreement on Textile and Apparel¹

The ground-breaking three-year Trade Agreement on Textile and Apparel between the US and Cambodia was signed in January 1999. The quota negotiations took place in a context of protests and pressure from labour groups in the US over poor working conditions and abuses of workers' rights in Cambodia's garment industry (Polaski 2006).

In what was considered a "unique step", the agreement established a "close temporal connection between the behaviour of firms and government in one year and the rewards that would flow from good behaviour during the following year" (Polaski 2006: 3 & 14). The agreement provided for a programme to improve working conditions, which was to include "internationally recognized core labour standards" incorporated in the 1997 Cambodian Labour Code (ibid.). The decision on the quota the US government allocated to Cambodia required "reliable, timely and credible information" on the labour conditions in Cambodian factories (ibid.: 5). Thus, a monitoring initiative, initially called the ILO Garment Sector Working Conditions Improvement Project, which later came to be known as Better Factories Cambodia, was launched in May 2000 and was tasked to:

- Establish and operate an independent system to monitor working conditions in garment factories;
- Provide assistance in drafting new laws and regulations where necessary as a basis for improving working conditions and giving effect to the labour law;
- Increase the awareness of employers and workers of core international labour standards and workers' and employers' rights under Cambodian labour law;
- Increase the capacity of employers and workers and their respective organizations to improve working conditions in the garment sector through their own efforts; and
- Build the capacity of government officials to ensure greater compliance with core labour standards and Cambodian labour laws (Sibbel and Borrmann 2007: 237-8).

The scheme provided strong incentives for compliance: since the quotas depended on performance in the textile industry as a whole, companies failing to comply were pressurised by their peers and also by the government and the workers (European Commission 2008). In recognition of "Cambodia's progress in reforming labour conditions in textile factories" (Office of the United States Trade Representative 2012), the first agreement was amended and extended in 2001 for another three-year

period. Due to progress reported in working conditions during the years the trade agreements were in force, the US provided a 9 per cent bonus quota for the years 1999 to 2002, 12 per cent for 2003 and an unprecedented 14 per cent in 2004.

Since the Project was conditional on the voluntary registration of the factories with the Project, the Ministry of Commerce issued Prakas² 108 (March 2001) to 'encourage' registration which stipulated that "only registered factories would be eligible to use allocated export quotas and/or buy export quotas through official bidding for the export of textiles to the United States" (Sibbel and Borrmann 2007: 238). By 2006, almost all factories in the sector had registered with what became Better Factories Cambodia (ibid.). This included signing a Memorandum of Understanding with the ILO, thus providing the ILO with full access to factory premises for announced and unannounced visits (ibid.). The factory visits were to be guided by an extensive checklist/audit questionnaire containing over 500 items, such as employment contracts, wages, hours of work, leave, safety and health, and healthcare and specific rights for women concerning maternity leave, breast-feeding, day-care centres, and sexual harassment.

Enterprise visits included an initial meeting with management, a tour of the business, observation of the workplace, interviews with workers and their representatives, both inside and outside the factory, collection of relevant documents (payroll, sample contracts, leave records, etc.) and an exit interview with the management. The ILO periodic reports of the findings of the monitoring system for a certain period were to be made publicly available in Khmer and English to all interested parties, including the parties to the US–Cambodia Trade Agreement. After the removal of export incentives, the public reports of Better Factories Cambodia became less transparent and its monitoring started to resemble more factory auditing programmes: "providing confidential factory monitoring reports to factory owners, and, on a for-pay basis, to international buyers" (Sonnenberg and Hensler 2013: ii).

European Union – Cambodia trade relations

In 2001, the EU, under its General System of Preferences (EU-GSP), launched the Everything But Arms

arrangements to give all Least Developed Countries full or reduced duty-free and quota-free access to the EU for all their exports except for arms and armaments. The scheme is divided into three distinct types. The General Scheme provides reduced tariffs for two-thirds of all product lines imported from developing countries. The Everything But Arms initiative provides these countries with duty-free and quota-free imports for all product lines except arms and armaments. The GSP+ scheme provides for the full removal of duties for the same product lines coming from countries committing to ratifying and implementing ILO core labour standards. It has a monitoring mechanism and has more leverage than Everything But Arms.

Everything But Arms has provided Cambodia with preferential access over its competitors (Vietnam and China) which were not eligible due to their status as middle income countries; it allowed Cambodia duty and quota-free access to EU markets, which otherwise would have been subject to a 12-per-cent import tariff for garments and 17 per cent for shoes (Samsen et al. 2016). Until 2011, the scheme's rule of origin stated that only products where at least 30 per cent of value was added in Cambodia qualified for preferential treatment. Given that the industry relied heavily on the import of textiles, Cambodia could not meet this rule. In 2011, the EU changed this rule for textile products from Least Developed Countries, which qualified Cambodian garment exports for duty-free and quota-free access.

Everything But Arms does not contain any labour clause or mechanism to promote or even monitor labour compliance. According to an interview with the EU office conducted for this research, however, the General Scheme of Preferences can be revoked if systematic and severe human or labour rights abuses are documented. Additionally, the New Transparency Rules on Social Responsibility for Big Companies adopted by the EU in 2014, require some big EU companies to report annually on their respect for human rights, social and employee-related matters, anticorruption efforts and environmental concerns (Human Rights Watch 2015).

After two decades of trade agreements which have facilitated the industry's integration into the global supply chains, what has been the trajectory of its economic and social upgrading?

3. The trajectory of economic upgrading in the garment and footwear industry

The ILO defines economic upgrading as “the process of suppliers moving to higher value activities in global supply chains” (ILO 2016d: 27).

Over the last two decades, the country’s garment and footwear share of exports to the global market grew from 0.1 per cent in 1995 to 1.8 per cent in 2014 (ILO 2016a). As Figure 9 shows, however, the global market share of Cambodia remains lower than that of Bangladesh (5.5 per cent) and Vietnam (6.9 per cent) and much lower than China’s (54.5 per cent), which continues to dominate the global market for garments and footwear (ILO 2016a).

After more than two decades of integration in the garment and footwear supply chains, the majority (75 per cent) of garment exports are relatively unsophisticated and have remained largely the same: sweaters/pullovers, men’s trousers, women’s trousers, and t-shirts/singlets

(Samsen et al. 2016). Although a large export-oriented industry, “very few operators are engaged directly in international trade and have the ability to attract orders or identify markets into which it could expand” (Kingdom of Cambodia 2014: 191).

Organisation of production and position of Cambodia’s garment and footwear factories in the global value chain

In the division of labour in the global value chain of the garment industry, the US and EU engage in product designs and large orders, Japan provides sewing machines, Taiwan and China supply the fabric, and low-wage countries such as Cambodia sew garments (Samsen et al. 2016). Thus, the main buyers sourcing from Cambodia are H&M, Nike, Levi, Old Navy, Adidas,

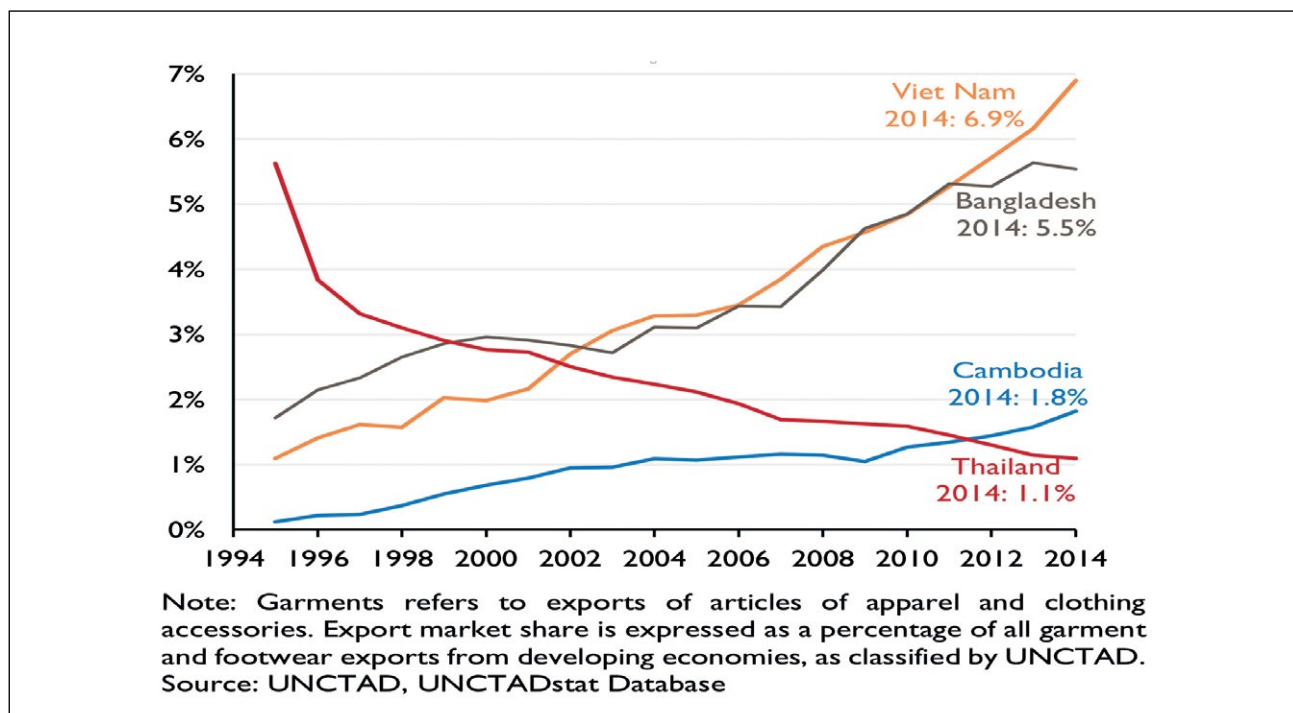


Figure 9: Market share in garment and footwear exports of Cambodia, Vietnam, Bangladesh and Thailand (% of total developing and emerging economies).

Source: ILO 2016a: 5, Figure 3.

Box 1. H&M sourcing arrangements in Cambodia

According to the H&M supplier list, the model involves *manufacturing factories* and *processing factories*. Manufacturing companies are either owned or contracted by H&M. The final manufacturing takes place in these factories which are usually called "cut and sew" factories. When the companies of H&M suppliers do not possess the required facilities for making certain products (creating prints, washings or embroideries etc.), they can outsource specific tasks to *processing factories*. This is considered subcontracting and must be announced to H&M. The analysis of the list of suppliers shows that one supplier can own or contract one or more manufacturing companies in Cambodia. On the one hand, the manufacturing companies can subcontract work to one or more processing factories. On the other, a processing factory may be doing work for one or more manufacturing companies.

Company sources

Calvin Klein, Gap, Puma, Marks and Spencer, Tesco, Inditex, N Brown Group, Tchibo, Next, New Look, C&A and Walmart (World Bank 2016).

These buyers can be divided into two main groups: *specialty retailers* who specialise in certain apparel products and target certain markets such as H&M and Nike; and *mass merchandisers* which offer a variety of products such as Target and Walmart (Oka 2012).

The allocation of production to countries sewing garments, such as Cambodia, is done in a number of ways. Some buyers go through *intermediaries*, some others deal with *vendor factories* and some others place the orders directly with *local factories* (Samsen et al. 2016) or *contract manufacturers* (an example of such arrangements is provided in Box 1).

Intermediaries are large and powerful multi-national enterprises themselves known otherwise as mega-suppliers (Hobbes 2015). They own factories in multiple countries and their power derives from the fact that "they have a lot of flexibility to decide which country and factory they are sourcing from" (Samsen et al. 2016: 12). Because they can control marketing arrangements, distribution networks, and relations with the international buyers, they are able "to capture significant value from the global garment value chain" (Kingdom of Cambodia 2014: 191). The revenues of Li&Fung, for example, which is the largest apparel "mega-supplier", total 19.2 billion US dollars, surpassing the revenues of Ralph Lauren, Armani and Tommy Hilfiger combined (Hobbes 2015). It has 15,000 supplier factories in 40 countries, but does not own or operate any of them (ibid.). It is a coordinator, configuring cotton suppliers, textile mills, stitching and sewing houses into a straight line just long enough to deliver one order to

one buyer, and then reconfiguring them for the next (ibid.). The intermediaries operating in Cambodia include Li&Fung producing among others for Walmart, and Yue Yuen Industrial Holdings producing for Nike, Adidas and Rebook (ITUC 2016). Both these intermediaries have their headquarters in Hong Kong, and the latter is part of Pou Chen Corporation with headquarters in Taiwan.

Vendor factories "are locally incorporated production units of foreign corporations. They are directly managed by their overseas headquarters, which allocate orders to factories according to capability, cost structure, and capacity" (World Bank 2013: 1). Depending on the available capacity, unit production costs and required skill level, "the parent company will "arrange the delivery of the inputs and components to the factory in Cambodia according to the buyers' specifications" (Kingdom of Cambodia 2014: 190). Whereas the vendor factories are responsible for arranging domestic movements of inputs and production, the parent company arranges the international movement of the finished product (ibid.).

Contract manufacturers are usually foreign-owned factories which operate as independent enterprises providing Cut Make Trim (CMT) operations (ibid.). They either take orders from buyers who provide the design and specify the inputs or take the responsibility to source inputs and prepare samples in accordance with the buyer's specifications which in many cases includes a list of authorised suppliers from the buyer (ibid.). This, too, limits the possibility of local garment factories to source inputs from local suppliers (ibid.).

Most garment factories in Cambodia are vendor factories or contract manufacturers (Kingdom of Cambodia 2014). Only a quarter of garment factories in Cambodia cover the full operations, i.e. purchasing the fabric, packaging

Table 2. Exports and imports 2013-2015

	2013	2014	2015
Garment and footwear exports (US\$ million)	5,320	5,960	6,827
Retained imports of garment materials (US\$ million)	-2,490	-2,571	-2,949
Value added (garment and footwear, % of GDP)	10.2	10.7	10.6

Source: Authors' own summary based on data from ILO bulletins (2015; 2016; 2017)

and shipping the orders to wholesalers or retailers (ibid.). While these factories are able to capture a larger part of the financial benefits in the value chain, they also face significantly higher risks if an order is not completed as planned (ibid.).

The dominance of vendor factories and contract manufactures points to the low value of Cambodian garment and footwear products. This is also highlighted by the analysis of the index of the number of production stages required to realise a final product and the index of distance to final demand.

According to the OECD, the index value of the number of production stages required to realise a final product measures the length of the global value chain in a given industry (Serrano and Nuon forthcoming). Its value increases when intermediate inputs from the same industry or other industries are used in the production of the final good, with some industries, such as garments and footwear having the highest level of fragmentation and the longest value chains (ibid.). In the case of Cambodia, the index increased from 2.6 in 1995 to 2.9 in 2009 indicating increasing reliance on imports for its garment and footwear products (ibid.). Indeed, as Table 2 shows, the negative values of retained imports of garment materials have not only persisted but have even shown an upward trend.

Similarly, the index of distance to final demand³ provides an indication of the country's position in the value chain, taking high values for industries involved in upstream activities and low values for those involved in downstream activities (ibid.). Data suggests that the index for the garment and footwear industry dropped from 1.6 in 1995 to 1.2 between 2005 and 2009 (ibid.).

Main challenges to economic upgrading

The interplay of a number of factors has locked Cambodian factories in low value-added products, unable to move up the value chain, thus undermining the industry's contribution in the national economy and the prospects of technological and skill upgrading.

On the one hand, problems such as corruption⁴, long and complicated procedures⁵, poor infrastructure, and higher energy costs⁶ than those of competitors in the region have kept the production costs of Cambodian factories high and have resulted in a higher lead time⁷ than that of Vietnam (Samsen et al. 2016). Meanwhile, the high dollarization of the economy deprives the government of the possibility of using the exchange rate as a way of making its exports cheaper (ILO 2017a).

On the other hand, the lack of cheap, domestically produced raw materials means that over 90 per cent of materials, from textiles and fabrics to packaging are imported, mainly from the other countries in the region (World Bank 2012). With only two textile factories producing knitted fabrics for the garment industry (Merk 2016; Samsen et al. 2016), it is not surprising that the 'material' component is the largest in the cost structure of the garment products (Figure 10).

The strengthening of backward and forward linkages in the economy, and thus of increasing the value added of products, is undermined by the *monopsony* character of the supply chain—i.e. a relationship of highly asymmetric power between international players (international buyers and intermediaries) and local factories (vendor factories and contract manufacturers). Decisions over pricing, countries for sourcing materials, components, and production are negotiated between international buyers and intermediaries. This process of negotiation

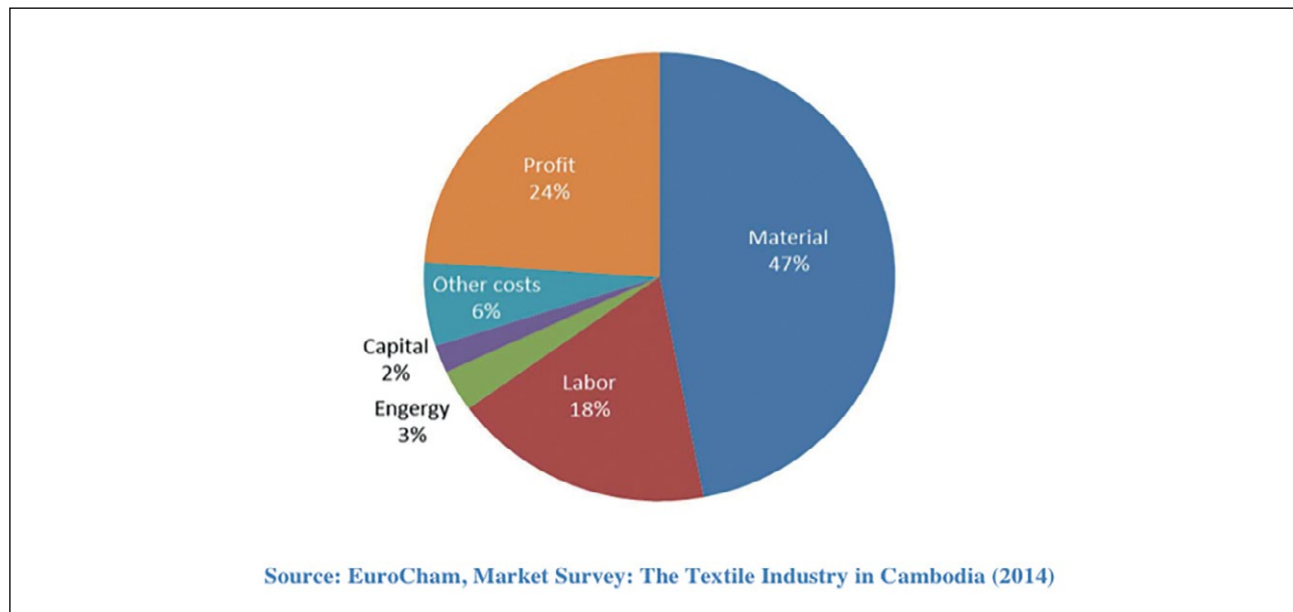


Figure 10: Cost structure of the garment industry in Cambodia.

Source: Samsen et al. 2016: 26, Figure 15.

excludes the local factories, the majority (70 per cent) of which are vendor factories, operating as subsidiaries or affiliates of these intermediaries, with little decision power over the inputs (Samsen et al. 2016).

Local factories are completely powerless in negotiating better production prices. Indeed, the highly asymmetric power relationship in the production chain allows international buyers or intermediaries to easily transfer the effects of price fluctuations in the global market to local suppliers by the mere threat of switching production location. The heavy reliance of supplier factories on particular markets and/or lack of product diversification, has forced some subcontracting factories with only one operation or which depend on low labour costs to close down (Samsen et al. 2016) and many others to accept lower production prices (Box 2). As Figure 11 shows, between 2005 and 2015, local suppliers saw the average price of garments (per dozen) sold to the US

market fall by 29 per cent and to the EU markets by 18 per cent (ILO 2016b). The decline in purchasing prices⁸ is also confirmed by interviews conducted for this research with the management of three factories.

The threat of easy relocation is indicative of yet another major issue with Cambodia's garment and footwear industry, i.e. "very limited initiatives for long-term capital investment and transfers of know-how" from international buyers/intermediaries (Samsen et al. 2016). Moreover, vendor factories or contract manufacturers are tightly controlled by offshore companies, which has limited the scope for local initiative or entrepreneurship (Kingdom of Cambodia 2014). While shortages of skilled labour⁹ are reportedly prevalent in Cambodia, this is more pronounced for the management, supervisory, technical and design level (ILO 2015). Indeed, the majority (80 per cent) of the middle managers at the garment factories are foreigners (Merk 2016). This has limited the possibility

Box 2. The relationship between buyers and local factories

"We are not able to negotiate with the buyers although we have tried many times. The response from buyers is that they have other factories which can accept the prices they set. We have no choice but to accept these low prices."

"Generally, they don't transfer any technology. We have to study and make efforts on our own to use hi-tech equipment or methods."

Interviews with compliance managers from two factories

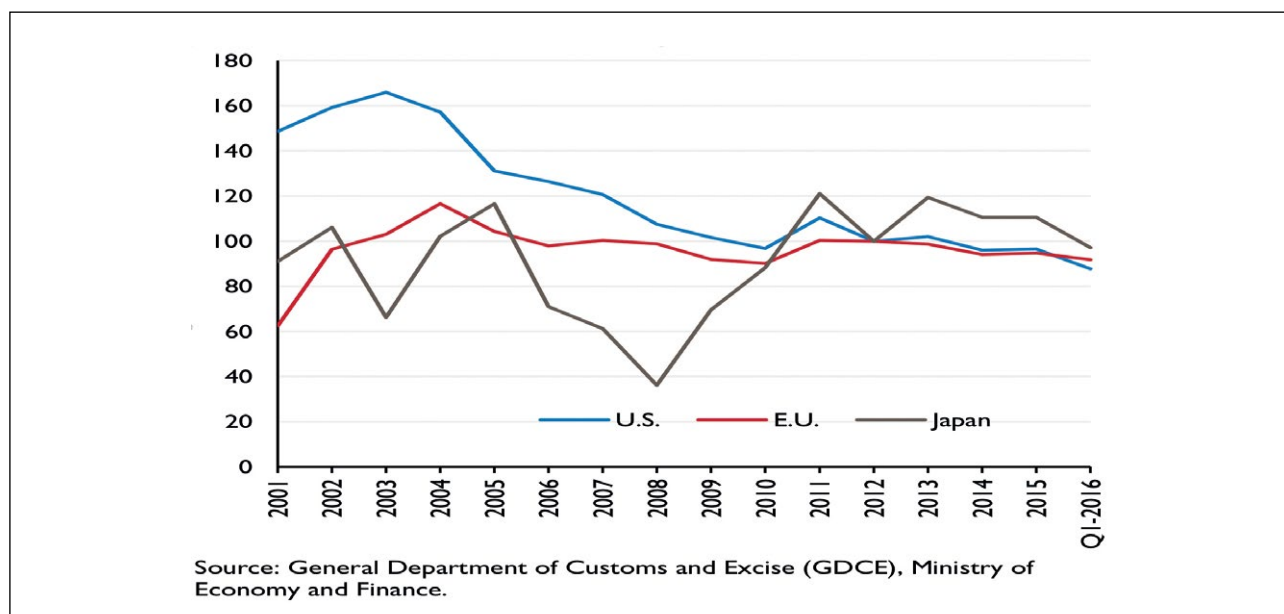


Figure 11: Cambodia's garment export price index (per dozen) to its major markets (index, 2012=100).

Source: ILO 2016b: 1, Figure 1.

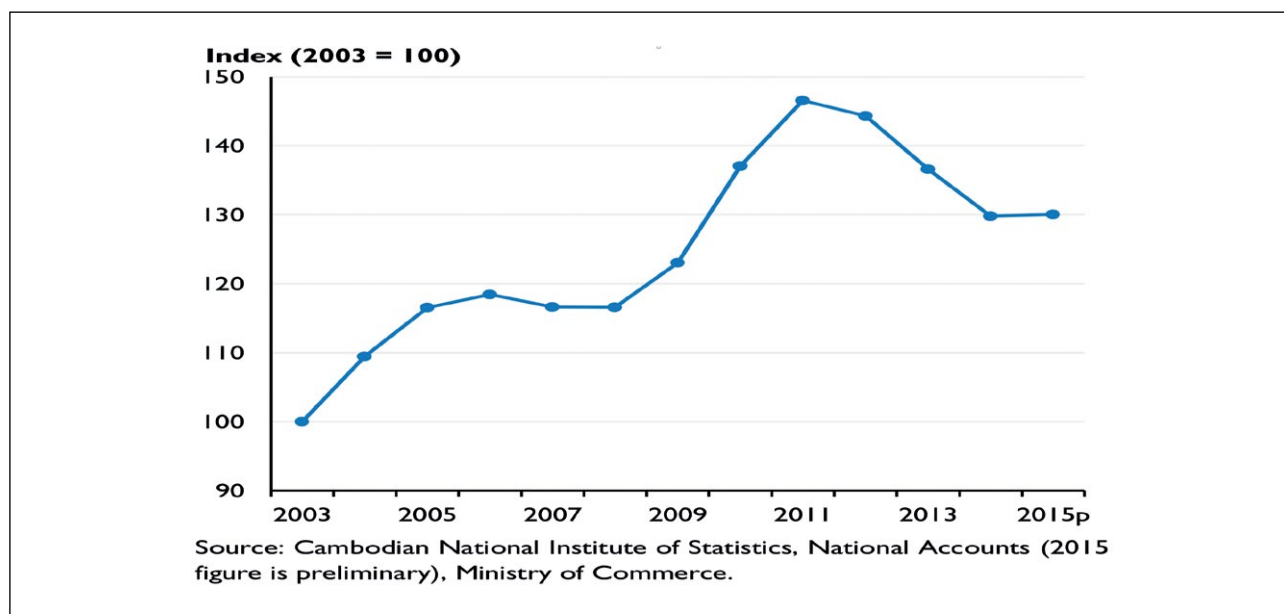


Figure 12: Labour productivity in the Cambodian garment and footwear sector 2003-2015p.

Source: ILO 2016b: 4, Figure 8.

of skills development for the local managers and has contributed to tensions, misunderstandings and conflicts (Merk 2016; Samsen et al. 2016). These factors have

undermined the potential for productivity improvements in the industry, which according to some data is lower than in other countries in the region¹⁰ (Figure 12).

4. The trajectory of social upgrading in the garment and footwear industry

The ILO defines social upgrading as “the process of achieving decent work in global supply chains” (ILO 2016d: 27). As the data shows, the garment and footwear industry in Cambodia has contributed significantly to expanding wage employment, especially for women.

Thus, according to ILO estimates, the garment and footwear industry employs 77 per cent of all manufacturing employees or 6 per cent of the total labour force (ILO 2015). The number of jobs has grown from a mere 20,000 workers in 1996 to 623,000 workers in 2015 (ILO 2016a).¹¹ Arguably, for every job created through direct employment there is another job created

through indirect employment mainly in retail, trade and transportation (World Bank 2016). A great majority (around 90 per cent) of garment workers are women, mainly young women from rural areas (the Clinic 2011; Samsen et al. 2016; Reeve and Hwang 2015).

Table 3 provides a summary of changes in employment and garment factories during a 20-year period (1995–2015).

As Figure 13 shows, such increases have not affected employment which has remained solid even in the years the minimum wage has increased relatively rapidly¹² (ILO 2016a).

Table 3. Employment and number of garment factories

	1995	2000	2005	2010	2011	2012	2013	2014	2015
Employment in garment factories (000)	18	161	284	319	327	360	418	475	522
Number of garment factories	20	190	247	262	300	400	469	558	626

Source: World Bank 2016: 24, Table 2

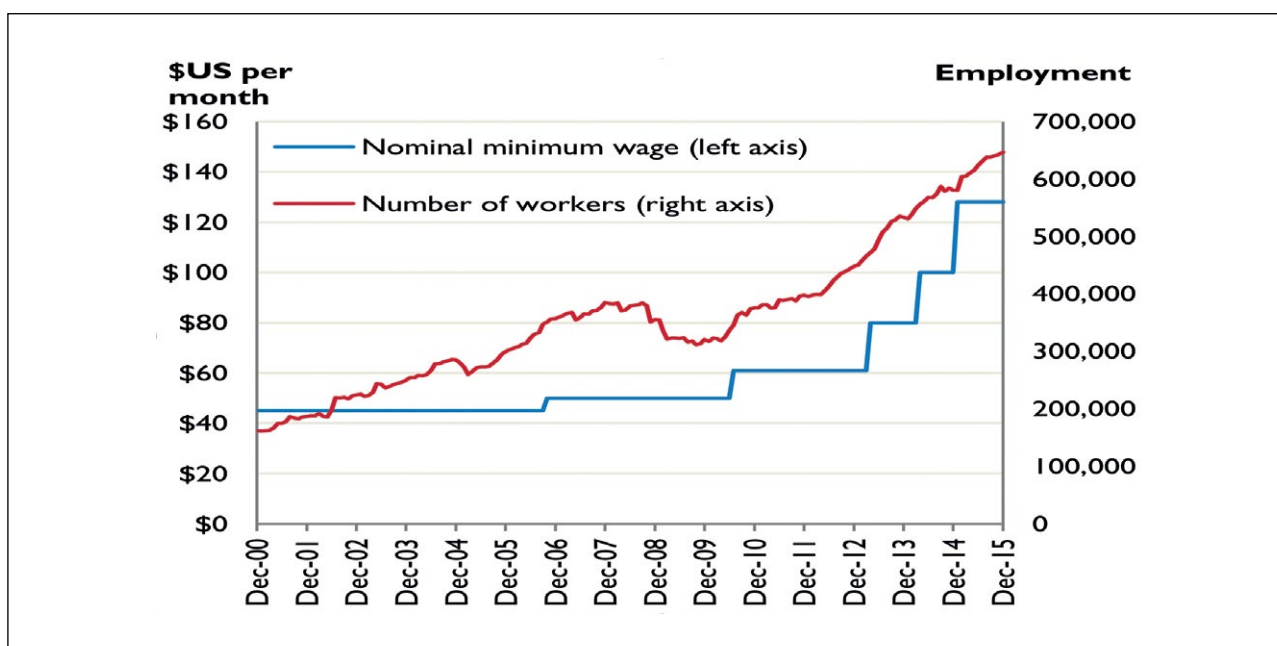


Figure 13: Statutory minimum wages and employment in the garment and footwear sector (December 2000 – December 2015).

Source: ILO 2016a: 5, Figure 4.

Compliance with Core Labour Standards Plus

In assessing the trajectory of social upgrading, we focus on a more detailed analysis of the compliance with labour standards. This has a crucial and direct impact on the lives of hundreds of thousands of workers and their families and is a good measure of the degree of social upgrading.

Compliance with CLS+ is also critical to the future of the industry and to the realisation of its potential for economic upgrading. Thus, the poor working conditions and the related labour unrest have resulted in the interruption of production, delays in delivery, significant losses, the closure of some factories, and in increased uncertainty about future orders and potential investment (ILO 2014; the Clinic 2011). Research has also shown the negative effect of poor wages and under nourishment on productivity¹³. Productivity is also affected by the widespread use of fixed-duration contracts which limit labour mobility and the “possibility for creating stable, skilled and more productive workforce”, decreases investment in human capital and in job training, and increases worker turnover (the Clinic 2011: 3). The potential conflict between the increased use of short-term contracts and the need to train someone to become a line manager, which takes about one year, has discouraged the development of a Khmer middle-management base—84 per cent of production planners and 54 per cent of line supervisors are foreign—with a negative effect on the industry's performance (ibid.).

The core labour standards are laid out in eight conventions that all ILO member states must respect, promote, and realise irrespective of their formal ratification. These comprise:

1. Freedom of association including the right to strike and the effective recognition of the right to collective bargaining (C. 87 and C. 98);
2. Elimination of all forms of forced and compulsory labour (C029 and C105);
3. Effective abolition of child labour (C138 and C182); and
4. Elimination of discrimination in respect of employment and occupation (C100 and C111).

Other important standards critical to decent work, CLS+, include:

5. Occupational health and safety (C155 and C187);
6. Fair remuneration and inclusive minimum wage fixing mechanism (C095, C026 and C131);
7. Limiting hours of work and regulation of rest days (C001 and C014);
8. Social protection and protective social policies (C102 and C117);
9. Job security and employment promotion (C122);
10. Labour inspection (C081 and P081);
11. Tripartite consultation and labour administration (C144 and C150).

Cambodia has ratified all ILO conventions related to core labour standards and only two conventions somehow related to CLS+¹⁴.

Freedom of association and collective bargaining rights

Violation of freedom of association and collective bargaining rights, in law and especially in practice, have placed Cambodia among the world's worst countries for workers. In 2014, the ITUC Global Rights Index gave the country the worst rating (1=best, 5=worst), that is policies that offer “no guarantee of rights” for workers (ITUC 2014).

Despite improvements, the 2016 Trade Union Law contains provisions which violate international standards such as: undue administrative and legal burdens on unions that undermine the process of union formation; government control of union finances; restrictions on who can be elected as union office bearers; dissolution of a union if individual officials act illegally, upon a decision by the Labour Court; hefty penalties for unions found to have breached the law; broad scope of what constitutes unfair labour practices; and onerous restrictions on the right to strike which affect the exercising of collective bargaining rights.

Various reports indicate severe violations of fundamental worker rights. Impunity regarding “[a]cts of anti-union discrimination, intimidation, and retaliation” is widespread (US State Department, cited in Merk 2016: 9). During the 2013-2014 violent crackdown against unionists and workers, Cambodia's military police fired

into a crowd of demonstrators, killing five protestors and injuring dozens (ITUC 2014). The allegations by the Garment Manufacturing Association in Cambodia against six independent union federations for inciting workers to violence during the 2013-2014 demonstrations have resulted in restricting these federations' right to public assembly, movement, expression and union activities.

Practices of employer interference include the creation of 'management-controlled' unions, discouraging or intimidating workers from joining unions, and blocking the union formation process by dismissing, discriminating, demoting, harassing or bribing the elected union members (Merk 2016; Human Rights Watch 2015; Nuon and Serrano 2010). Fixed-duration contracts are used extensively by employers to either discontinue the contracts of trade unionists and activists, or to hire men on shorter term contracts than their female counterparts allegedly in an attempt to discourage unionization (Human Rights Watch 2015; the Clinic 2011). The use of fixed-duration contracts poses an additional impediment to the process of union formation which takes time (the Clinic 2011). Meanwhile, they also "make anti-union discrimination harder to prove" (Human Rights Watch 2015: 61). There is also evidence of factories informing each other of 'undesirable' union activists as observed with trade union activists fired for participating in the minimum wage strikes and who found it difficult to be re-employed (Merk 2016).

The general repressive environment, the discriminatory practices, and employer and government interference have contributed to union proliferation and infighting, high levels of mistrust and conflictual labour relations (Ritchotte 2010). These factors have also undermined the possibility of improving working conditions through collective bargaining, despite a relatively high unionisation rate. For example, out of 620 factories operating in Cambodia in 2014, the MoLVT had registered only 37 collective agreements, most of which focus only on single or *ad hoc* issues (Ward and Mouly 2016). Confined to company level, collective bargaining coverage remains scattered and of low quality¹⁵ partly due to low compliance with legal provisions, which forces unions to focus on compliance rather than negotiating improvements (Merk 2016; ILO 2016c; Reeve and Hwang 2015), but also because the room

for negotiations at factory level is limited given the structural power imbalances in the industry discussed above. Meanwhile, independent unions, in particular, find it very difficult to obtain the Most Representative Status from the MoLVT. Finally, the lack of negotiating skills among unions has also affected the extent and quality of collective bargaining.

The elimination of all forms of forced labour and abolition of child labour

The legal framework governing the elimination of forced labour and abolition of child labour conforms with international standards. The law allows for the employment of young workers aged 15 and above in light work and work for a maximum eight hours a day (with 13 consecutive hours off between shifts). Young workers below the age of 18 are banned from night work. The law also requires factories to keep a record of all children employed, their age and proof of age.

Whereas Better Factories Cambodia has not reported cases of forced labour (Merk 2016), other sources have shown that the practice of subcontracting orders has been "extended to prison wardens accepting lucrative subcontracting orders to run so-called vocational training' programs in prison" (Sonnenberg and Hensler 2013: 21).

The situation of child labour appears to be even more serious (ILO 2016c; Merk 2016; Human Rights Watch 2015). Due to serious problems with labour inspections and enforcement "Cambodian child labour provisions are frequently violated" (Human Rights Watch 2015: 132). Numerous testimonies of children under the age of 18 employed in factories show they work alongside adults with equal pressure to meet targets and do overtime work while receiving less than the minimum wage (ibid.). During the reporting period March 2013 to April 2014, the Better Factories Cambodia report covering 371 factories indicated an increase in child labour cases (Merk 2016). However, subsequent reports showed a significant decrease in child labour cases.

The number of underage workers in unregistered factories, which are not monitored by Better Factories Cambodia, is allegedly much higher due to the widespread use of fake IDs (ibid.).

The elimination of discrimination in respect of employment and occupation

The Labour Law forbids discrimination on the basis of sex at the time of “hiring, defining and assigning work, vocational training and advancement”. The Cambodian Constitution forbids firing women on the basis of pregnancy. Mothers returning from maternity leave “are only expected to perform light work” for the first two months. The Labour Law is silent on pregnancy-based discrimination in hiring and promotion and in providing reasonable accommodation of women workers’ needs during pregnancy. The law entitles women workers to three months of maternity leave irrespective of the period of employment and maternity pay for workers with a year’s uninterrupted service. Although the Labour Law prohibits sexual harassment, it does not provide a general definition of the term and of complaints procedures/channels for workers to secure a safe working environment.

Various reports show that some forms of discrimination at the workplace are quite common. A 2014 ILO report found that despite improvements, women earned 26.6 per cent less than men in 1996, 13.3 per cent less in 2004–08, and 11.5 per cent less in 2009 (ibid). There are also reports of discrimination in terms of the hiring process: whereas male workers are typically hired for ironing, cutting, pressing and security positions, female workers are predominantly hired to do the sewing and have little opportunity to be considered for other functions (Merk 2016). Although age and/or gender is not specified in job ads, in practice workers are hired based on their gender (ibid.).

A 2012 ILO study found that nearly three-in-four respondents believed that factories discriminated at the time of hiring and almost half said they had experienced discrimination based on sex, pregnancy, marital status or age (Human Rights Watch 2015). Nearly half of the investigated 70 factories failed to accommodate the needs of pregnant workers such as frequent bathroom breaks or lighter work without loss of pay. The report also indicates that visibly pregnant women are either not hired or their contracts are terminated once they become visibly pregnant, pushing some women to wear very tight clothes to squeeze their belly in so they can hide their pregnancy or in some cases to end the pregnancy.

Cases of pregnant women being harassed, and verbally abused were not uncommon (ibid.). The fixed-duration contracts are used to either not renew their contracts, or to add a gap of few days between contract renewals lowering women’s chances to benefit from maternity entitlements (ibid.). In addition, very few factories comply with requirements to establish breastfeeding and childcare centres in factories with more than 100 female workers (ibid.).

Women are also exposed to harassment, including sexual harassment, verbal abuse and bullying. Harassment practices include sexual comments and advances, inappropriate touching, pinching, and bodily contact by both managers and co-workers, verbal insults, cursing and humiliation, and physical violence such as throwing things at women workers (ibid.).

Meanwhile, independent mechanisms through which workers could complain and seek redress for workplace sexual harassment are lacking (ibid.). In the few cases brought before the Arbitration Council, the Council has insisted “that women workers have the onus of proving such discrimination” (ibid. 2015: 128). It comes as no surprise that sexual harassment goes underreported (Merk 2016).

Occupational health and safety, and wellbeing

Cambodia has not ratified any of the key conventions on occupational health and safety (OHS). The Labour Law, however, contains provisions for OSH protection of individuals as well as general requirements for safe, healthy and hygienic workplaces, including workplace medical care, access to safe drinking water, noise levels, lighting, heat and ventilation. A number of Prakas address some of the key issues related to OSH issues, but the legal framework suffers from a lack of coherence (interview by the research team with the OSH department).

OSH practices and public awareness in Cambodia are generally poor (ILO 2016c). Many workplaces are characterized by heat, noise, poor light, little ventilation, uncontrolled and undeclared use of chemicals, excessive dust, little access to personal protective equipment and lack of preventive education (Merk 2016). A publication by Better Factories Cambodia and the International

Finance Corporation on fire safety, building and worker safety risks reveals the presence of serious dangers, such as unprotected fire hazard materials and equipment, fire hazard activities, inadequate automatic fire suppression systems, inappropriate means of escape, improperly maintained electrical installations, lack of emergency awareness and training, ineffective firefighting equipment, substandard building construction and design, and poor building maintenance (ibid.). Another Better Factories Cambodia report covering 152 factories revealed cases of them locking their emergency exits during working hours (15 per cent), blocking access paths for the workers to immediately vacate or pass through in case of fire and emergencies (53 per cent), and failing to provide masks for workers and proper equipment for labelling and handling chemicals (more than 50 per cent) (Davis 2013). Recent research shows that demands for substantial improvements to health and safety issues are met with marginal fixes by employers (Oka 2015, in Reeve and Hwang 2015). Meanwhile, a Better Factories Cambodia report revealed that 71 per cent of the factories had no OSH committees (2014).

In recent years, a number of OSH issues have made the headlines:

- *factory collapses* which have killed and seriously injured several workers;
- *mass fainting* involving up to several hundred workers—in factories supplying Puma, Adidas, H&M and Polo Ralph Lauren—due to the prevalence of malnutrition¹⁶ and poor working conditions (excessive overtime, denial of rest periods, stress, heat and inadequate ventilation); and
- *unsafe forms of transportation* for workers commuting to and from work, which have led to a high number of traffic accidents which are considered by the law to be work-related accidents (Merk 2016) and which are reportedly having an impact in terms of increased fatigue and higher levels of stress affecting workers' health and productivity (Powis and Sovranatnak 2016).

Fair remuneration and inclusive minimum wage fixing mechanism

Although the country has not ratified any of the related conventions, the Labour Law provisions regarding

minimum wage-setting follow the ILO principles regarding decent standards of living for every worker and evidence-based adjustment following recommendations made by the Labour Advisory Committee (ILO 2016). According to the Labour Law, the wage setting mechanism is expected to be complemented by enterprise level bargaining. Currently, the minimum wage is applicable to all workers (regular, probationary and piece rate) in the garment/footwear industry¹⁷ (ibid.).

For many years, however, the Labour Law lacked a mandated timeframe for setting/revising the minimum wage. The provisions which empowered the Labour Advisory Committee to conduct research on the minimum wage were not implemented in practice and the Labour Minister established minimum wages without any explanation (Merk 2016). This had an effect on the minimum wage, which stagnated for more than a decade (Figure 14).

After several years of discussions and labour unrest in 2013-2014 which led to some improvements in the minimum wage, the parties agreed on an annual review process and on a number of criteria for minimum wage calculations: (1) regular and annual adjustment, (2) gradual, steady and predictable adjustment, (3) interest-based strategies for negotiation, (4) recommendations on the minimum wage set by consensus, and only where this is not possible, a vote, and (5) social and economic criteria, which include factors related to the cost of living, inflation, the needs of workers and their families, productivity and competitiveness, the economic benefits of the sector, labour market and employment (Reeve and Hwang 2015).

The monthly minimum wage more than doubled from 61 US dollars in 2010 to 153 US dollars in 2017 (ILO 2016a), but the bonuses and fringe benefits have grown much more slowly¹⁸. However, the real (inflation-adjusted) minimum wage, including compulsory bonuses and allowances, started to grow only in 2013 (ibid.). Meanwhile, the average monthly wage has increased from 124 US dollars in 2013 to 175 US dollars in 2015 or in real terms from 113 US dollars in 2013 to 151 US dollars in 2015 (ibid.).

Although data on prevailing wages are lacking, the low number and quality of collective agreements, as

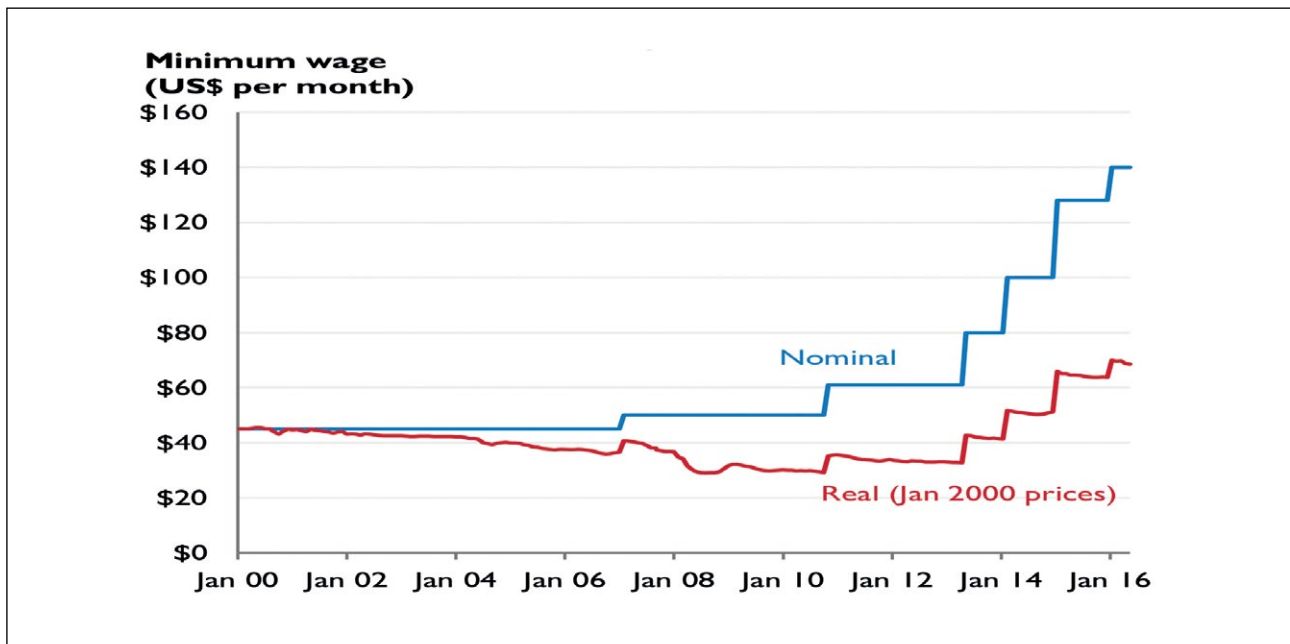


Figure 14: Nominal and real minimum wage in the Cambodian garment and footwear sector (January 2000 – January 2016) .

Source: ILO 2016b: 4, Figure 7.

discussed above, suggest that the minimum wage has become the ceiling wage (Merk 2016). According to research conducted by trade unions in 2016, most workers received the minimum wage of 140 US dollars/month, while the average wage, including overtime and bonuses, was at 221 US dollars/month (Centre for Policy Studies 2016). This is similar to the situation in other countries in the region where “given the overall low-skill composition of the workforce and existing weaknesses in the collective bargaining and merit-based system” the “minimum wages often serve as an indicator for the prevailing wage” (ILO 2015). Moreover, the significant non-compliance rate with the minimum wage (25.6 per cent) means that more than one in four Cambodian garment workers are paid below the minimum wage with rates of non-compliance for women being slightly higher (4.4 per cent) than for men (ILO 2016e).

Meanwhile, according to stakeholders interviewed by Merk, “the minimum wage is far from sufficient, failing to meet even survival needs of a single person”, especially for workers living in and around Phnom Penh where the living costs are higher (2016: 32). The argument echoes the survey findings of Cambodian garment and footwear workers supported by IndustriAll, which concluded that

the current minimum wage is below the living wage estimated to be 207 US dollars (ibid.).

The domination of the Labour Advisory Committee by the government, employers and government-aligned unions leaves limited room for independent unions to push for higher wages in the Committee. Indeed, it was only due to the massive worker mobilisation of 2012-2014 that wages increased significantly in a short period.

Limiting hours of work and regulation of rest days

The Labour Law stipulates that overtime work be limited to “exceptional or urgent work” and be no more than 12 hours (beyond a regular 48 hours) per week or about 2 hours per day. The law also establishes that overtime work should be voluntary, and workers who choose not to do overtime should not be penalized. All work done after the regular working hours should be paid at the overtime rate which differs whether the work is done on a weekday, a weekly day off or on a public holiday.

Various reports, however, have shown that overtime is used excessively, although interviews with H&M and national trade unions C.CAWDU and CATU conducted for this research suggest that the situation may have

improved recently. The Better Factories Cambodia reports show widespread and consistent violations of rights related to hours of work and regulation of rest day, making these rights the most commonly violated in the industry (Merk 2016). They also show that work weeks of 70 hours are not uncommon; only 6 per cent of the factories do not demand excessive overtime and only 24 per cent require less than two hours of overtime per day (ibid.). Similarly, the 2015 Human Rights Watch report found that the majority of workers interviewed work 3-5 hours of overtime per day.

In some cases, workers are forced to consent to overtime to supplement their insufficient wages; in other cases workers cannot refuse overtime or even take a break under the threat of dismissal (non-renewal of contract), wage deductions, and punitive transfers of workers from a monthly minimum wage to a piece-rate wage (Merk 2016; Human Rights Watch 2015). Under pressure to meet the production targets, workers are subjected to shorter lunch breaks, denial of break time to rest, drink water and use the washroom, physical intimidation for being "slow" and (full or partial) deduction of monthly attendance bonus if they take a single day off with approved sick medical leave (Human Rights Watch 2015; the Clinic 2011). For workers on fixed-duration contracts, overtime work is part of everyday work and so is the punishment for refusing to do overtime (Arnold 2015; Human Rights Watch 2015; the Clinic 2011).

Excessive overtime leaves workers unable to recover from the previous work day and has been identified as one of the main causes behind mass fainting. For example, the H&M factory workers who fainted in 2012, were allegedly working up to six hours overtime per day (Merk 2016). Overtime also has a dramatic impact on families: women workers with young children cannot develop mother-child-family relationships as they are forced to live apart from their children, so they can work more overtime hours (ibid.).

Social protection and protective social policies

The obligation to cover all citizens with a social security scheme is enshrined in the Constitution. The Law on Social Security (2002) mandated the establishment of the National Social Security Fund (NSSF), a public, legal and financially autonomous entity. The NSSF is

designed to alleviate the difficulties of old age, disability, death, work risks, and other incidents such as maternal illness. A tripartite governing board, comprised of high-ranking public officials from relevant ministries and representatives from both employers and workers and headed by an official from the Ministry of Labour and Vocational Training, supervises the NSSF.

The social protection scheme is considered to be "at an early stage of development" (OECD 2017: 13). The Health Equity Fund, which is the largest social protection scheme, offers healthcare services to at least 2 million poor and vulnerable individuals (ibid.). The social insurance scheme, which provides only employment injury insurance and social health insurance, covers only workers in formal employment—that is a very small share of the population. (ibid.). The scheme does not provide pension and unemployment benefits (ibid.). This means that a great majority of Cambodians are not covered by any social health protection and are thus subjected to devastating health costs (ILO 2012).

The social safety net projects and programmes that have been enacted are marked by limited coordination among stakeholders and are considered to be patchy, ad-hoc, and donor-dependent (Arnold 2015). However, plans are under way to strengthen the social protection scheme¹⁹.

Job security

Cambodia has not ratified the ILO instruments related to the use of short-term contracts. Nevertheless, the Labour Law specifies that fixed-duration contracts can be used to replace a worker who is temporarily absent, for seasonal work, occasional periods of extra work or non-customary activity of the enterprise, but it does not specify that short-term contracts not necessitated by the "nature of the work" or circumstances of the task are indeterminate (Human Rights Watch 2015). The use of fixed-duration contracts is limited to two years and their renewal should be in writing. The law also provides that workers employed on fixed-duration contracts and casual workers enjoy the same rights as regular workers.

The end of preferential agreements with the US seems to have been a turning point as by 2005-2006 factories started to move away from undetermined-duration contracts (UDC) and use more fixed-duration contracts

(FDC) as a way of keeping the industry competitive (the Clinic 2011). Better Factories Cambodia reports and other reports have consistently shown that fixed-duration contracts are used systematically to avoid the application of labour law provisions on the minimum wage, maternity leave, seniority benefits, sick leave, special leave, annual leave, attendance bonuses, the 5 per cent wage payment at the end of a fixed-duration contract and others (Merk 2016; Human Rights Watch 2015; the Clinic 2011). Some estimates show that “the savings from the reduced benefits that factories pay out on fixed-duration contracts amount to 20-30 US dollars per year on each contract converted from a UDC to an FDC” (the Clinic 2011: 69). Because the renewal of fixed-duration contracts is at the total discretion of the employer, they are also used to suppress wages, and fire pregnant women workers, workers who join unions, refuse overtime work or take sick leave (ibid.).

The fixed-duration contracts vary from 21 days to one year, but are most commonly between three and six months (Human Rights Watch 2015). The evidence of the pervasive use of fixed-duration contracts is solid. Workers who were once employed on undetermined-duration contracts, were re-employed on fixed-duration contracts which are repeatedly renewed so frequently so that only two factories had all their workers on undetermined-duration contracts (the Clinic 2011). The Better Factories Cambodia reports indicate a declining trend of compliance with the two-year rule between 2011 and 2014 (Human Rights Watch 2015). Nearly 80 per cent of the 127 factories surveyed by the Worker Rights Consortium employed “most or all of their workers on fixed-duration contracts” and “at least 72 per cent violate the Labour Law’s two-year limit on successive fixed-duration contracts (ibid. 46). According to some estimates, about 90 per cent of the workers in the industry do not have a permanent contract (Arnold 2015). The increase in the use of fixed-duration contracts has been confirmed also by interviews with the national trade unions of C.CAWDU and CATU conducted for this research.

Employment on a casual daily or hourly basis, as well as seasonal outsourcing to home-based workers, is common for factories working on a subcontracting basis (Arnold 2015). The working conditions of workers employed by these factories are even more precarious (Human Rights

Watch 2015). Although employed under “*Kechsaniya Karngea Madong Makal*” (once in a while work contract) or casual contracts, they work six-day weeks for months (ibid.). Most casual workers lack worker identity cards or other proof of employment which undermines their ability to claim their rights (ibid.). Home-based workers are in the worst position: they are not counted as workers and thus receive less than the minimum wage, their wages have remained the same or even decreased over the years, their work remains unregulated, and they are unable to unionise (ibid.).

Labour inspection

The task of inspecting and monitoring compliance with labour regulations as well as disseminating and clarifying related information rests with the Department of Labour Inspection in the Ministry of Labour and Vocational Training. The law empowers labour inspectors to conduct unannounced factory inspections, write reports on the level of compliance with the labour law, advise factories to take remedial measures within specified time periods and impose sanctions on factories that refuse to take such measures.

Various reports show that the enforcement of labour law “remains abysmal, in large part due to an ineffective government labour inspectorate” (Human Rights Watch 2015: 6). Despite provisions which stipulate fines and imprisonment in case of non-compliance with minimum wage requirements, such violations are commonplace (Merk 2016). The limited government data (2009-2013) show a very low number of penalties given the pervasiveness of violations, suggesting that the government has failed to hold the factories accountable for labour rights violations and apply sanctions as outlined in the labour law (Human Rights Watch 2015). For example, the government has turned a blind eye to monitoring and applying sanctions on the illegal endemic use of fixed-duration contracts (ibid.). Labour inspectors have also failed to disseminate information about labour rights to garment and footwear workers, who have limited knowledge of their entitlements and rights.

Insufficiently trained and underpaid labour inspectors have made the work of an understaffed labour inspectorate ineffective. Moreover, corrupt practices

in the judiciary and labour inspectorate are reportedly widespread (ibid.). Numerous examples indicate the existence of the "envelope system" where labour inspectors are bribed by factory managers seeking favourable reports (ibid.). The Better Factories Cambodia monitoring helps to complement the monitoring gaps in export-oriented factories and a few subcontracted factories but cannot substitute the function of the labour inspectorate, especially given that some of the worst violations occur in factories subcontracting work for the export factories (ibid.).

Tripartite consultations

At the national level, the Labour Advisory Committee established in 1999 is comprised of 14 representatives from the Royal Government of Cambodia, including the chairman, as well as seven representatives from employers and workers. The Labour Advisory Committee provides a mechanism for the tripartite constituents to engage on issues of labour disputes and labour complaints, labour law reforms, employment, wages (including setting the minimum wage), vocational training, migration, improvement of the material and moral conditions of workers, and health and safety.

The Arbitration Council is an independent tripartite body. Although its awards are non-binding and non-enforceable—unless parties decide otherwise—it has a reputation among buyers and trade unions of being efficient and neutral. In an attempt to support the work of the Arbitration Council, in 2010, employers and trade unions negotiated a Joint Memorandum of Understanding (MoU) on Improving the Industrial

Relations in the Garment Industry. The MoU, which was renewed and revised in 2012 and 2014, commits parties to take action in these nine areas: (1) respect for national laws; (2) support for CBAs to achieve certainty, predictability and the protection of rights and working terms and conditions; (3) support the MRS union as the exclusive bargaining agent; (4) application of CBAs negotiated by the MRS union to all employees in the enterprise, and no strike, lockout or any further claim during the term of the agreement; (5) binding arbitration on rights disputes in the case of disputes during the agreement; (6) use of national dispute procedures if there is no CBA and no strike or lockout during the process; (7) a working group on FDCs and UDCs; (8) a national policy dialogue on productivity; and (9) selection process of arbitrators.

Other non-formal venues for tripartite consultations include forums initiated by any of the tripartite constituents or other actors, such as the ILO and Friedrich-Ebert-Stiftung on various labour-related issues.

Tripartism in general, and in the garment and footwear industry in particular, is characterised by "heavily skewed power towards the interest of government and employers" (Arnold 2015: 2). Over the years, the Garment Manufacturers Association in Cambodia has effectively succeeded "to get things done with the government, in particular the Ministry of Commerce" (ibid.: 9). Moreover, the Council is dominated by government-aligned unions (Reeve and Hwang 2015; Merk 2016). The informal venues for tripartism, too, "are often ad hoc, irregular, informal and not that conducive to actual bargaining" (Merk 2015: 22).

5. The future of compliance with CLS+ from the perspective of the main stakeholders in the industry

After two decades of rapid expansion, the garment and footwear industry faces a number of interrelated challenges to and opportunities for its future social and economic upgrading.

One set of challenges is related to the trade regime context and developments in other countries. The emergence of Myanmar, another country with low wages and abundant labour (World Bank 2016), is adding to the existing pressure coming from the low wage exports of Bangladesh. Also, since the UK is the most important destination for the exports to the EU²⁰, Brexit via its effect on the depreciating pound, has made Cambodian exports more expensive (ILO 2017a). As indicated earlier, the high level of dollarisation of the economy leaves Cambodia unable to make use of its monetary policy as a way of mitigating these effects.

The upgrading of Cambodia's economic status from the Least Developed Countries group to Middle-Income Countries group by the World Bank may be followed by a similar upgrade by the UN which would make the country ineligible for Everything But Arms (ibid.). According to an interview with the EU representative, however, although Cambodia's status has changed to a lower-middle income country, most likely it will continue to be eligible for preferential treatment under Everything But Arms for the coming decade. Meanwhile, the chances that Everything But Arms may develop into a General System of Preferences+ scheme which includes the garment and footwear industries are slim at least in the short to medium term.

Finally, under the new changes to the US General System of Preferences introduced in June 2016, Cambodia²¹ is granted duty-free access to the US market for travel goods, such as suitcases, handbags, wallets, vanities and similar products. This is expected to boost travel goods investment and exports in the coming years. This may help Cambodia face the challenge of product diversification. The US GSP conditions on product origin include a value-added threshold of at least 35 per cent in the country of origin to qualify for preferential treatment (ILO 2017a). According to a press release²² of

the US Embassy in Cambodia, however, the preferential treatment for travel goods under the General Scheme of Preferences from the US can be limited or withdrawn depending on "whether a country is taking steps to afford internationally recognized standards for worker rights".

In facing these challenges and opportunities, the industry stakeholders are pursuing various strategies towards economic and social upgrading. The following analysis is not meant to provide a comprehensive overview of all strategies and policies, but rather to highlight some of the elements and issues which affect compliance with CLS+.

The Government

The main government structures involved in the sector are the Ministry of Labour and Vocational Training (MoLVT) and the Ministry of Commerce. The MoLVT is responsible for the formulation and implementation of the labour law and regulations, the regulation of technical and vocational training institutions, facilitating relations between employers and workers, and the settling of collective and individual disputes. The Ministry of Commerce is another government agency involved in the sector as it registers producing factories, regulates exports and imports and determines the country's trade policies.

Meanwhile, the Government has issued a number of policy documents which have an impact on the garment and footwear industry (Box 3-5).

The policy documents aim at enhancing both economic and social upgrading, including stronger compliance with CLS+. In interviews carried out for this research, representatives of the Labour Inspection Department in the Ministry of Labour also indicated the government's commitment to promote labour standards for ethical production and to strengthen the inspection programme through awareness raising, monitoring and forcing employers to comply, including the subcontracting

Box 3. The National Strategic Development Plan 2014-2018

Sets a number of objectives and policy priorities in relation to the development of the labour market, namely:

- *Strengthening the social protection* policy framework, institutional coordination, coverage for the informal economy and for employment injury, health insurance and pensions.
 - *Improving labour conditions* through better implementation of the labour law and social security schemes, and support for the Better Factories Cambodia programme.
 - *Strengthening harmony in industrial relations* through the new law on trade unions and labour law; adherence to work discipline and professional ethics; better implementation of labour dispute prevention and resolution, including mechanisms to prevent and address labour protests; stronger capacity and role of the labour inspectorate in dispute mediation and resolution; and the establishment of labour courts.
 - *Establishment of a mechanism for regular research* on minimum-wage setting by region and sector considering national economic conditions and the protection of the interests of workers and employees in case of factory bankruptcy.
-

Box 4. The Industrial Development Policy 2015-2025

Focuses on (i) attracting investment; (ii) modernising small and medium-sized enterprises; (iii) improving the regulatory framework; and (iv) coordinating supporting policies. The policy identifies and seeks to support a number of priority sectors with the capability to break into new markets with high value addition and to develop creative and highly competitive products. It also aims to support a number of sectors, including textiles, and their regional and global value chains serving both forward and backward linkages. More specifically on labour relations and working conditions, the policy aims at:

- Strengthening labour market mechanisms to improve the living standards of workers by improving the mechanism for minimum-wage setting and *enhancing harmony in industrial relations* based on the principles of *positive union and the kindness of employers towards their employees*.
 - Strengthening the working conditions auditing mechanism by extending the Better Factories Cambodia programme or by exploring the possibility to form a joint task force to conduct regular audits for audit effectiveness.
-

Box 5. The National Employment Policy 2015-2025

Developed with extensive ILO support, sets the following goals and strategies:

- More decent and productive employment opportunities through macroeconomic policy and sectoral development policies supporting decent/productive employment and formalisation;
- Enhanced skills through core employability skills, access to quality education and technical and vocational training in line with labour market needs; and
- Improved labour market governance through: better quality and access to labour market information and employment services; better working conditions and worker protection, including stronger labour inspection, possibly new ratifications of ILO conventions, and broader social security coverage; harmonised industrial relations and strengthened wage-setting mechanisms (Arbitration Council and Labour Advisory Committee, evidence-based wage-setting mechanism, labour dispute mechanism, and capacity-building on representation and collective bargaining at all levels); establishment of an unemployment insurance scheme, and better protection for migrant workers.

companies which are not subject to ILO monitoring. These measures need to be complemented with changes in buying practice and the observance of compliance, including subcontracting companies, by international buyers; greater commitment to compliance from the Garment Manufacturers Association in Cambodia and its members; and improved respect for the law, including efforts to fight corruption within unions (ibid.). In contrast, a Ministry of Labour senior official considered the focus on compliance with labour standards to be

“useless”. “Why do the US and others want Better Factories Cambodia if they do not differentiate us from others in terms of tariffs?” (interview by Arnold 2015).

Meanwhile, stakeholders in the industry interviewed for this research have raised a number of issues related to these policy documents. The H&M interviewee, for example, while expressing support for the Ministry of Labour and Vocational Training accredited skills training and the Industrial Policy, noted that the policy was seen

as “very vague in terms of implementation” and in need of government “leadership in improving the industry”. Similarly, a Better Factories Cambodia interviewee noted that “labour compliance is not emphasised enough in the (investment) policy”.

The policy documents’ reference to “enhancing harmonious industrial relations”, “adherence to work discipline and professional ethics”, “positive union and kindness of employers towards their employees”, sends mixed signals on the Government’s commitment to compliance with CLS+. Rather than compliance with CLS+, the government may be more committed to suppressing labour conflicts and genuine trade unions in favour of yellow trade unions as shown by recent revisions of the labour law, which have added more barriers to the functioning of independent unions.

Employers and buyers

The peak employer organisation in the sector is the Garment Manufacturers Association in Cambodia (GMAC). It has a membership of 545 factories, mainly garment but also some footwear factories, and a small number of non-exporting subcontracting factories (GMAC 2017). All exporting factories have to be members of the GMAC to receive their export licence. The GMAC is affiliated to the Cambodian Federation of Employers and Business Associations (CAMFEBA), which represents Cambodian employers at the ILO and other international organisations.

Interviews conducted for this and other research show that both local employers and buyers are increasingly focusing on the importance of increasing productivity. Thus, the Garment Manufacturers Association in Cambodia is setting up²³ a Garment Training Center to upgrade the skills of workers from basic sewing to higher level specialists such as merchandisers and pattern workers. International buyers, too, such as H&M have reiterated the need to improve productivity and efficiency by contributing to the training curriculum of the Garment Training Center, among others (H&M interview). H&M has also developed a vocational training structure for managerial positions within supplier factories, but that “did not really work well” as “most

trained staff ended up back doing low-skilled processes in the factory” (ibid.).

Compliance with labour standards is also an important consideration, especially for some brands and those local factories dealing directly with them. For example, H&M has developed its own methodology of assessing compliance with the labour law and is focusing on its ‘strategic suppliers’ to deal with issues of industrial relations, fixed-duration contracts and occupational health and safety issues (ibid.). In 2014, H&M embarked on a two-phase project with the ILO and the Cambodian government. Phase 1 aimed to “eliminate unlawful practices, including bribery and corruption, and promote enterprise-based approaches based on international standards, including collective bargaining and gender equality” (Crothers 2014). Phase 2 focused on issues of Most Representative Status for unions and on a template collective bargaining agreement for factories (H&M interviewee). H&M is reportedly also looking at the possibility of negotiating an industry-wide agreement with the Garment Manufacturers Association in Cambodia on less controversial issues such as occupational health and safety (ibid.).

The rising pressure for productivity increases and compliance with CLS+, however, has not been accompanied by the transfer of technology, skills training, more stability in production orders or increases in production prices. Interviews with the managers from three factories in direct relationships with buyers highlight the challenges they face: it is “expensive, time consuming and difficult to comply ... they (buyers) don’t accept our request for higher price orders” or for more time to complete production orders and yet put more pressure on compliance so “we just encourage workers to work harder”. Meanwhile, factories get inspection visits “not only from the Ministry of Labour, but also the Ministry of Industry and the Ministry of Environment”, and buyers’ auditing too.” (ibid.).

Despite references to compliance with CLS+ in the policy discussions regarding the future of the sector, the cost advantages continue to play an important role. Employers interviewed by Arnold noted that producing in Cambodia is “still profitable despite low productivity” and high electricity prices. It has a shorter lead time and “although minimum wages in Cambodia and Vietnam

differ only slightly, take home pay for garment factory workers in Vietnam are significantly higher than in Cambodia" sic (ibid.: 63). The main reason investors come to Cambodia is low labour costs and "to remain competitive this has to be maintained" (ibid.: 63).

Trade unions

In the last two decades, the number of Cambodian trade unions in the garment and footwear industry has grown rapidly. Currently, there are 98 union federations representing around 60 per cent of workers in the garment sector. While many of these unions are controlled by the government, favoured by employers and over-represented in the tripartite bodies, independent trade unions have been vocal and to some extent successful in improving wages and working conditions.

Interviews with independent trade unions (the Coalition of Cambodian Apparel Workers Democratic Union (C.CAWDU) and the Cambodian Alliance of Trade Unions (CATU) conducted for this research indicate that ratification of CLS+-related ILO conventions and strengthening collective bargaining are the main trade union strategies for enhancing compliance with labour standards.

The interviewees are mindful, however, of the constraints to factory-level collective bargaining posed by the position of local factories vis-à-vis international buyers and brands and the related pricing practices. Thus, the IndustriALL-affiliated trade unions have joined the regional strategy of IndustriAll for industry bargaining. Cambodia will also be one of the first countries to test the approach developed by the Action, Collaboration and Transformation (ACT) initiative²⁴. The ACT process aims at the establishment of "systems of industry agreements supported by brand purchasing practices as the primary means of wage-fixing in the global garment industry" (Holdcroft 2015: 6). The said agreements are to be registered and legally enforceable under national laws as a way of ensuring the agreed rates are paid (ibid.). The interviews with C.CAWDU and CATU representatives for this research noted that the process was slow and would potentially require more time than expected.

They also emphasised the importance of a multi-pronged approach which requires all the stakeholders to play a more active role in enhancing compliance with labour standards and in supporting collective bargaining. According to them, the pricing practices "should ensure stability, transparency and confidence", and "orders should be long-term and connected to labour compliance". The government and employers should take immediate steps to improve working conditions, especially with regard to fixed-duration contracts, and invest in modernization of the sector and skills upgrading which are considered critical to productivity increases. There is also a need for strengthening the role of labour inspection and the Better Factories Cambodia programme and a stronger focus on industrial relations, freedom of association and collective bargaining, and stronger sanctions for non-compliant factories, including making public the name of these companies.

International Labour Organization

The ILO's policy priorities for Cambodia are set in the Decent Work Country Programme (DWCP) 2016-2018 (Box 6).

According to the ILO/Better Factories Cambodia representative, a commitment by all the stakeholders for compliance with labour standards, especially among subcontractors, to "continue being an ethical production source" is seen as one of the ways of ensuring the sustainability of the industry (interview with the ILO/Better Factories Cambodia representative). The ILO is aware, however, of the different priorities and interests of the key stakeholders, and the difficulty of getting them to "make genuine and sustained efforts to ensure compliance" (ibid.). For example, the Ministries of Labour and Commerce which have the mandate to enforce the law and ensure compliance, "only act for serious cases and just recently" (ibid.). Thus, the ILO seeks to provide evidence and convince the stakeholders of the value and advantage of compliance, raise awareness and build the capacities of stakeholders to improve compliance and working conditions and strengthen the labour inspection system (ibid.).

Box 6. Decent Work Country Programme 2016-2018

1. Improve industrial relations and rights at work by:

- strengthening the professional and technical capacities of social partners;
- improving laws, mechanisms and processes for industrial relations, dispute prevention and resolution and wage setting; and
- more effective application of equality and rights at work;

2. Create an enabling environment for decent employment growth and sustainable enterprises, with a particular focus on young people, which includes interventions at national and enterprise level to enhance enterprise productivity, competitiveness and working conditions;

3. Strengthen social protection coverage and occupational health and safety through:

- awareness raising and accessible information;
- strengthened legal framework for the occupational health and safety/labour inspection system;
- empowerment of labour inspectors to enter workplaces and enforce compliance;
- establishment/strengthening of OSH structures at enterprise and national level; and
- strengthening the capacities of OSH authorities to enforce compliance with OSH standards, including stronger collaboration with Better Factories Cambodia.

6. By way of conclusion: Trade agreements and social and economic upgrading - Policy proposals

This research has analysed with a number of critical questions related to the Cambodian model of garment and footwear industry and its (potential) contribution to social and economic upgrading. In this regard, the research has highlighted the important contribution of the garment and footwear industry to Cambodia's economic growth, employment and poverty reduction. Yet, nearly two decades since the industry's integration into global supply chains, there are real concerns that the Cambodian model of the garment and footwear industry suffers from systemic problems which may have undermined its potential for social and economic upgrading.

The export-oriented model of the industry was shaped by the trade regime context and in return was used to make the case for more free trade. In particular, the US-Cambodia trade agreements and the mechanism established to promote and monitor compliance with labour standards (Better Factories Cambodia), aimed at demonstrating a causal link between export-oriented manufacturing, international trade and sustainable development (Arnold 2015). Thus, the improvements in working conditions and workers' rights reported by Better Factories Cambodia during the US-Cambodia trade agreements helped Cambodia earn the reputation of an "ethical production hub" and attract more orders and investments in return.

In reality, these improvements were less impressive. Cambodia's labour unrest²⁵ over poor wages, hours of work, use of fixed-duration contracts and working conditions was testimony to the illusory image of an "ethical production hub". Indeed, during the period of preferential trade agreements, wages remained stagnant and real wages declined (Figure 13). Although all factories adopted some of the monitors' suggestions, none was found fully compliant (Polaski 2006). Moreover, concerns over the Better Factories Cambodia reporting—workers not being able to speak frankly about problems at the factory and reports of coaching workers by factory management (Human Rights Watch 2015)—suggest that the reported improvements may have been even less substantial. Finally, while the incentives scheme of

the preferential trade agreements provided the conditions for a rapid increase in unionization, they also resulted in union multiplicity "leaving many unions weak, underfunded, competing with one another, and subject to corruption and political interference" (Arnold 2013: 416). This has undermined the possibility of improving working conditions through collective bargaining and has further complicated a dysfunctional tripartite dialogue (Arnold and Shih 2010).

The intensive competition unleashed by the trade liberalisation context of the post-MFA period has strengthened the highly asymmetric power relations in the garment and footwear global value chains and has resulted in fluctuating and declining production prices. The interplay of these factors has locked Cambodia in a vicious circle of the inability of local firms to negotiate better prices and technology transfer, low production prices, lack of investment in technology and know-how, low productivity and low value-added products, undermining the possibility of consolidating the industry through backward and forward linkages. These dynamics have reinforced issues related to highly confrontational industrial relations, poor implementation of the labour law, high levels of corruption and an authoritarian political regime lacking any interest in and commitment to labour standards (Arnold 2015, Merk 2016).

This context has placed increasing pressure on the modest improvements achieved during the preferential trade agreements. In response, local factories have engaged in strategies of competing on labour costs which have resulted in serious, interrelated violations of CLS+. Indeed, following the MFA phasing-out and declining export prices, women's salaries in the clothing industry in Cambodia fell immediately (ILO 2014). Reports show that work intensification (excessive overtime, violations of hours of work and rest time, and revising the target system upwards making it more difficult for workers to meet daily quotas) and work flexibilisation (more frequent and shorter fixed-duration contracts, and increased casual and home-based work) have become pervasive in the industry. There are also

concerns over practices of child labour and forced labour. Moreover, the frequent violations of labour rights have undermined genuine worker representation and collective bargaining.

Meanwhile, recent ILO data also suggest an increase in the number of subcontractor factories operating in the sector (ILO 2017b). These dynamics may point to yet another major strategy for employers to adjust to the competitive context created under free trade agreements and the fluctuations in production prices, i.e. subcontracting. The working conditions in these factories, which are not covered by Better Factories Cambodia reporting, are “significantly worse than the Garment Manufacturers Association in Cambodia member facilities” (Sonnenberg and Hensler 2013: 21). These factories subcontract work from Garment Manufacturers Association in Cambodia members, which are under the Better Factories Cambodia monitoring, and in some cases are reported to be operated by the Garment Manufacturers Association in Cambodia factories themselves (ibid.). In this way, the industry is being restructured into multiple-tiers characterised by different levels of compliance with CLS+. On the one hand, there are factories monitored by Better Factories Cambodia reportedly showing improved working conditions. On the other hand, the rest of the industry is dominated by “poverty wages and precarious work [which] continue to be the norm in Cambodia’s garment factories” (Arnold 2013: 2). Here, the compliance with CLS+ deteriorates at the lower levels of the subcontracting chain with casual workers and home-based workers exposed to even lower wages and poorer working conditions.

Clearly, despite its contribution to improved compliance among the Garment Manufacturers Association in Cambodia members, Better Factories Cambodia has been unable to influence the culture of non-compliance in the industry²⁶. Although only a small number of factories are registered with Better Factories Cambodia²⁷, its reports are used to perpetuate the image of an “ethical production hub”. This has prompted some observers to criticise Better Factories Cambodia “for playing into global retailers and brands desire to protect their image” (Arnold 2013a). Meanwhile, despite widespread violations of labour standards and workers’ rights, Cambodia’s reputation as an “ethical production hub” is used by buyers to continue sourcing from Cambodia

while taking advantage of the country’s abundant, young and low-cost labour force, investment incentives (the duty exemption for raw materials and machinery), tax holidays and duty-free market access to the EU (Sibbel and Borrmann 2007, World Bank 2012).

In conclusion, the inherent problems of the Cambodian garment and footwear industry pose a critical challenge to a model premised on linking export-oriented manufacturing and international trade with sustainable development. The modest improvements achieved under the preferential trade agreements need to be understood in the specific context of a regulated global garment and textile industry, outside the WTO free trade rules. While labour clauses in trade agreements may result in some improvements in working conditions and workers’ rights, the significance and the sustainability of said improvements are dependent on comprehensive policy measures which empower the industrial relations institutions, actors and processes and support the industrial development of the country.

Policy proposals

Engaging with the questions posed by this research in a meaningful way sheds some light on the possible elements of a comprehensive policy package which addresses the systemic problems of the industry and puts the industry on the path of genuine transformation towards an “ethical production hub”. Some of these elements²⁸ are discussed in the following sections.

Enhance compliance with international labour standards in law and in practice

- a) Fully align the labour law with the principles deriving from international labour standards in the following areas:
 - *Job security* is critical to reducing discrimination in the workplace, especially in relation to protection for pregnant workers, maternity benefits and trade union rights. It is also important for increasing productivity as employers are more willing to train a stable workforce. Addressing the legal gaps related to job security requires legal measures which limit the number of times a fixed-duration

contract can be renewed before it is converted into an undetermined-duration contract; set a minimum duration for fixed-duration contracts; require valid, business-related reasons for the non-renewal of fixed-duration contracts; and which provide for calculating seniority and length of continuous employment for the purposes of calculating statutory benefits (such as paid maternity leave and seniority bonuses) from the date of initial employment and not from each renewal of a fixed-duration contract. It also requires establishing the enforcement of adequate safeguards, including robust sanctions, to discourage the illegal use of fixed-duration contracts.

- *Violence-free and non-discriminatory workplaces* require introducing legal measures which forbid pregnancy-based discrimination in hiring and promotion, provide for reasonable accommodation of pregnant women's needs, and define clearly harassment and bullying at the workplace, including sexual harassment. The legal measures should also provide complaints procedures for those affected by discrimination at the workplace, as well as substantial sanctions for the violators.
 - *Effective and genuine representation and collective bargaining* require revising the New Trade Union Law (2016) provisions to address problems related to undue administrative and legal burdens on unions undermining the process of union formation; government control of union finances; restrictions on the election of union office bearers; dissolution of a union if individual officials act illegally upon a decision by the Labour Court; hefty penalties for unions found to have breached the law; the broad scope of what constitutes unfair labour practice; and onerous restrictions on the right to strike which affect the exercising of collective bargaining rights. Finally, the scope of application of the Law needs to be expanded to ensure that all groups of workers, including informal workers, have the right to form or join a union.
- b) Given that the major violations of the CLS+ are observed in the enforcement of the labour law, there is a need to:
- *Strengthen the Labour Inspectorate* by adequately staffing the institution with well-trained, well-

paid and committed labour inspectors. The labour inspectorate also needs to systematically monitor and penalise both formal and informal factories for CLS+-related violations, such as cases of anti-union discrimination, disruption of collective bargaining, forced and child labour, and the illegal use of fixed-duration contracts which thus far has been outside the scope of their work. There is also a need for a mechanism and speedy procedures which deal with cases of corruption among labour inspectors.

- *Improving the monitoring system of Better Factories Cambodia* involves addressing some of the main concerns with the programme, that is broadening the scope of issues and factories to be monitored, including subcontractors which often operate informally, with a stronger focus on worker rights; ensuring better responsiveness to complaints by workers and unions; improving the transparency of findings from the monitoring with the aim of holding non-compliant factories and buyers sourcing from these companies accountable for violations; and expanding its role in the remediation plans of factories found to violate the labour law.
- *Training of independent trade union representatives*, to participate in the monitoring process and support the work of the Labour Inspectorate and Better Factories Cambodia.
- *Establishment and/or strengthening of OSH committees* in all factories will be critical to enhancing the enforcement of occupational health and safety regulations. This needs to be accompanied by an intensive awareness raising campaign and the training of worker representatives and unionists on such regulations. Specific training and awareness-raising on women-related OSH issues is especially important given that the sector is dominated by women workers.
- *Enhancing the complementarity of various monitoring schemes* such as Better Factories Cambodia and those of international buyers such as the H&M scheme of compliance on industrial relations for strategic suppliers to strengthen the role of Labour Inspectorate. Here, occupational health and safety may be an area of experimentation to build a complementary strategy in monitoring and enhancing compliance.

Strengthen social dialogue and collective bargaining at industry level

This research has highlighted the highly asymmetric power relations in the global value chain of the garment and footwear industry, which limit the room for improvements at the factory level. In this regard, there is a need to:

- *Strengthen sectoral social dialogue* on issues concerning the industry. Negotiations for renewing the Memorandum of Understanding on Improving the Industrial Relations in the Garment Industry need to be inclusive of independent unions and introduce schemes for monitoring and enforcing labour standards among suppliers and their subcontractors.
- *Support industry bargaining* to remove labour costs from competition and thus compel employers to invest in innovation and skills upgrading as a way of enhancing competitiveness. In addition, industry bargaining may lead to improved compliance with labour standards in the industry as employers themselves are interested to ensure that they are not undercut by other employers who try to escape their obligations under the industry agreement. It also helps take conflict out of the workplace, and thus enhance the stability of the industry with a positive impact on productivity. Possible measures may include:
 - *Experiments in industry bargaining* which may include initiatives of multi-employer bargaining to kick-start the process of industry bargaining. Given the susceptibility of brands to image pressure, multi-employer bargaining may initially involve some of the major brands and their suppliers.
 - *Establishment of structures supporting industry bargaining*, such as ad-hoc joint bargaining committees or industry bargaining councils. Additionally, regulatory measures which make the principal employer responsible for violations of the labour law down the subcontracting chain, may facilitate multi-employer bargaining. The existing legal provisions which provide for the extension of an agreement reached by the main social partners to the whole industry may also prove helpful. This may provide an incentive for

employers to associate and result in stronger employer organisations which is a critical condition for industry bargaining.

Support industrial upgrading

The preferential, duty-free access of travel goods to the US may be an important opportunity for Cambodia to enhance compliance with labour standards and to engage in higher-value added exports. In addition to the initiatives of various industry stakeholders to improve the skills of the workforce, including managerial skills, there is also a need to strengthen other policy measures which help facilitate the transition to higher value-added products, such as:

- *Reversing the declining trend in production prices* which would require the international buyers and intermediaries to adopt production prices which factor in compliance with international labour standards, technology transfer and skills upgrading. Better Factories Cambodia can play a critical role in estimating fair production prices. At the same time, Better Factories Cambodia can deepen its engagement with key international buyers to whom it provides services of monitoring compliance, to ensure their commitment to long-term sourcing from suppliers which comply with international standards and for investment in technology transfer and skill upgrading. The industry bargaining can also take up the issue of technology transfer and skills upgrading.
- *Investing in the country's infrastructure and public services* which would be critical to the process of the industry transitioning to higher levels of the value chain.

Strengthen regional strategies to improve working conditions and labour rights

The achievements and challenges of the industry point to the critical role of a regional strategy in enhancing compliance with CLS+ in an industry which is characterised by a high mobility of production orders under the slightest pressure on production costs. This is all the more important for countries, such as Cambodia, where the vast majority of companies are vendor factories from China—notorious for their disregard for labour standards—which could easily relocate at the slightest

pressure on production costs. Specific recommendations here include:

- *Strengthen Better Work programmes* in the countries in the region taking into account the improvements and suggestions regarding Better Factories Cambodia (Recommendations 6.1.1b and 6.1.3).
- *Promote cross-border dialogue in the industry.* This may involve extending existing experiments, such as those undertaken by ACT in Cambodia involving key buyers, to sub-regional or regional level.

Trade regimes which support social and economic upgrading

Cambodia's temporary and shallow "success" as an "ethical production hub" shows that trade agreements with labour clauses alone will do little to ensure that export-oriented manufacturing brings social and economic upgrading. It also emphasises the importance of making trade agreements with labour clauses conditional on a comprehensive policy package (as

discussed above) which supports the social and economic upgrading of the country's industry. In addition, the trade agreements should include:

- *Tariff incentives* for governments and employers who comply with CLS+. Preference should be given to those countries which establish industry bargaining structures and are committed to a process of achieving living wages in the industry.
- *Effective monitoring mechanisms* which not only address the failures of Better Factories Cambodia, but are incorporated in the national institutions.
- *Provisions for fair production prices* which factor in compliance with labour standards, technology transfer and skills upgrading.
- *Provisions for fair taxation* which allow, among others, for the development of backward linkages in the national economies. The EBA's rule of origin—only products where at least 30 per cent of the value was added in Cambodia qualify for preferential treatment—should be complemented with measures which support the strengthening of the local industry.

Notes

1. The official title of the agreement: Agreement Relating to Trade in Cotton, Wool, Man-made Fiber, Non-Cotton Vegetable Fiber and Silk Blend Textiles and Textile Products, US-Cambodia, Jan. 20, 1999.
2. A prakas is a ministerial or inter-ministerial decision.
3. The index of distance to final demand measures the number of stages of production before the goods or services produced by an industry reach final consumers (Serrano and Nuon forthcoming).
4. A study by the World Bank and Asian Development Bank found that nearly 80 per cent of interviewed firms reported to have made informal payments to public officials as compared to 40 per cent in Vietnam and Bangladesh (Samsen et al. 2016). Informal payments remain high compared with Vietnam, Bangladesh and Sri Lanka (ibid.).
5. The number of documents required for exporting and importing is higher than those of comparable countries and the processing time is longer, having an effect on the lead time, but also on retaining investors (Samsen et al. 2016).
6. One main reason behind the high electricity costs is that over a third of Cambodia's electricity supply is imported from Vietnam and Thailand (Samsen et al. 2016).
7. Lead time refers to the days between the placement of an order and its delivery to the buyer. Cambodia's average lead time is in the range of 45-120 days (Samsen et al. 2016). This is higher than Vietnam's (50 days), but lower than Bangladesh's (120 days) (ibid.).
8. This general picture, however, conceals some important differences in the behaviour of international buyers and intermediaries with *speciality retailers* offering better production prices and being more likely to invest in a relationship with suppliers than *mass merchandisers*, signalling a higher degree of reputation-consciousness (Oka 2012).
9. According to the Cambodian Labour Force (2012), 13 per cent of the labour force had no education; 45 per cent completed only primary school and 36 per cent completed secondary education. More specifically, in the garment sector only 11 per cent of workers completed their upper secondary education (grade 12); 40 per cent completed lower secondary education and 46 per cent completed only primary education (Samsen et al. 2016).
10. There are contradictory assessments of productivity. According to Merk (2016) and Samsen et al. (2016), the productivity of Cambodia's garment and footwear industry is lower than productivity levels in similar factories in China and Vietnam. Thus, for the same product and style, the productivity of factories in Cambodia is 20-30 per cent lower than that of China; meanwhile the productivity of factories in Vietnam is only 10-20 per cent lower than that of China (Samsen et al. 2016). Meanwhile, ILO data (2016d) show that the labour productivity of the sector—defined as gross value added in current prices per employer person, with official nominal exchange rates applied—for Cambodia (1,848 US dollars) is higher than Bangladesh (991 US dollars), Vietnam (1,741 US dollars) and India (1,783 US dollars), but lower than Pakistan (2,282 US dollars), Indonesia (4,149 US dollars), the Philippines (4,646 US dollars), and Thailand (8,178 US dollars)
11. The employment figures vary depending on estimates: the World Bank (2016) puts the figure at 522,000 workers (2016). Merk (2016) argues that if the informal sector is considered the figure could be up to 800,000 workers.
12. Employment growth averaged 14.2 per cent per annum over the past three years, a period in which statutory minimum wage growth was relatively rapid and the average monthly wage of workers increased by an average of 13.7 per cent per year (ILO 2016b).
13. According to the ILO's Better Factories Cambodia project, the French Development Agency and local research firm Angkor Research and Consulting Ltd, the health and productivity of the workers has declined due to under-nourishment and anaemia. The study also showed that 43.2 per cent of garment workers suffer from anaemia and 15.7 per cent are underweight.

14. Employment Policy Convention, 1964 (No. 122); Labour Administration Convention, 1978 (No. 150).
15. The vast majority of the CBAs include provisions stipulated in the labour law and include provisions on frequency of wages payment; only a small number include provisions about bonuses, working hours, health and safety and others (Merk 2016; Reeve and Hwang 2015).
16. A survey of 1,200 workers by the Centre for Policy Studies (2016) shows that since workers bear considerable pressure to support their family, they have to save as much as possible. The food they consume is cheap; often just rice and a bit of other food such as soup or one egg for a meal (ibid.). A study by Makurat et al. indicates the high prevalence of being underweight, anaemia and poor iron levels (2016).
17. While the current statutory minimum wage is applicable only for the garment and footwear industry, there are ongoing discussions for a national minimum wage applicable to all sectors.
18. Attendance bonus has increased from 5 US dollars in 2000 to 7 US dollars in 2011 to 10 US dollars in 2012; meal allowance from 0.25 US dollars in 2000 to 0.5 US dollars in 2011; seniority bonus from 2-5 US dollars per month in 2000 to 11 US dollars in 2011.
19. At the time this research was being prepared for publication, the Government introduced the Social Protection Policy Framework which aims to integrate all existing social insurance and social assistance services under the umbrella of the National Social Protection Council.
20. Since 2014, the European Union has become the main destination for Cambodian garment and footwear exports (ILO 2017a). In the first half of 2016, nearly half (45 per cent) of Cambodia's garment and footwear exports were absorbed by the European Union (ibid.).
21. Along with Cambodia, the preferential treatment is accorded also to other Least Developed Beneficiary Developing Countries (LDBDCs) as well as African Growth and Opportunity Act (AGOA) countries.
22. <https://kh.usembassy.gov/duty-free-access-travel-goods-made-cambodia/>
23. At the time this research was being prepared for publication, the Garment Training Center has been already established.
24. ACT, which covers at least 17 brands, is a collaborative process towards living wages for workers in global textile and garment supply chains.
25. Garment Manufacturers Association in Cambodia data show that between 2002 and 2014 there was an average of 80 strikes per year in the garment sector and that in 2013 alone there were 888,527 days lost (Reeve and Hwang 2015).
26. Whereas some commentators have argued that the Better Factories Cambodia programme has had a positive effect on industrial relations through better communication between management and workers (Rossi and Robertson 2011), others have argued that during the 11 years of the Better Factories Cambodia programme, "wages and basic job security have actually declined for Cambodian garment workers, and that ... genuine bargaining between employers and workers and basic elements of occupational safety and health, continue to be elusive" (Sonnenberg and Hensler 2013: ii).
27. Today only 10 per cent of the factories registered with Better Factories Cambodia use its advisory services (Human Rights Watch 2015).
28. These elements are drawn from various reports cited in this research (Merk 2016; Samsen et al. 2016; Arnold 2015; Holdcroft 2015; Human Rights Watch 2015; Sonnenberg and Hensler 2013; the Clinic 2011).

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Stakeholder interviews and data sources

The following is a list of stakeholders interviewed between June and November 2016.

Government

- Ministry of Labour and Vocational Training, Mr. Chanthou Ouk, Director of Labour Inspection
- Ministry of Commerce, Siv Yong Ho, Director of Export-Import

Private sector

- Factory 1 (Star FuYa Garment), Ms. Loeung Youkbing, Compliance Manager
- Factory 2 (GDM Enterprise), Mr. Taing Meng, Compliance/HR Manager
- Factory 3 (CHU HSing Factory), Ms. Mey Chou, HR Manager
- H&M representative, Cambodia office

Global union federations and Cambodian trade unions

- International Trade Union Confederations, Sis. Monina Wong
- IndustriALL, Sis. Annie Adviento, Regional Secretary
- Cambodian Labour Confederation representatives, Bro. Thorn Ath, President and Bro. Athit Kong, Vice President
- Cambodian Confederation of Unions, Sis. Sophorn Yang, Acting President

Local and international labour NGOs

- Center for Alliance of Labour and Human Rights (Central), Mr. Tola Moeun, Executive Director
- Solidarity Center Cambodia, Mr. William Conklin, Country Director

International organizations

- ILO Better Factories Cambodia, Ms. Esther Germans, Program Manager
- EU Delegation representative
- US Embassy trade representative

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