

**Corporate Codes of Conduct and Labour-related
Corporate Social Responsibility
Analyzing the Self-regulatory Mechanisms of Multinational
Enterprises and their Impacts to Developing Countries**

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Acronyms and Abbreviations

| | |
|-----------------|--|
| AIP | Apparel Industry Partnership |
| AmCham | American Chamber of Commerce |
| BSR | Business for Social Responsibility |
| CBCC | Council for Better Corporate Citizenship |
| CCC | Clean Clothes Campaign |
| CSR | Corporate Social Responsibility |
| EICC | Electronic Industry Code of Conduct |
| ETI | Ethical Trading Initiative |
| ETU/TCL | European Trade Union Federation for Textile, Clothing and Leather |
| FIFA | Federation of International Football Associations |
| FLA | Fair Labour Association |
| FWF | Fair Wear Foundation |
| GATT | General Agreement on Tariffs and Trade |
| GISPRI | Global Industrial and Social Progress Research Institute |
| GUFs | Global Union Federations |
| ICCR | Interfaith Center on Corporate Responsibility |
| ICFTU | International Confederation of Free Trade Unions |
| ILO | International Labour Organization |
| IOE | International Organization of Employers |
| ISO | International Organization on Standards |
| ITGLWF | International Textile, Garment and Leather Workers' Federation |
| JILPT | Japan Institute for Labour Policy and Training |
| JOEA | Japan Overseas Enterprises Association |
| JPC | Japan Productivity Centre |
| MNEs | Multinational Enterprises |
| MOL | Ministry of Labour of Japan |
| MSIs | multi-stakeholder initiatives |
| NGOs | Non-governmental Organizations |
| OECD | Organization for Economic Co-operation and Development |
| OSH | Occupational Safety and Health |
| SAI | Social Accountability International |
| SMEs | Small and Medium-sized Enterprises |
| SRI | Social Responsible Investment |
| TIE Asia | Transnational Information Exchange Asia |

| | |
|---------------|---|
| UN | United Nations |
| UNIDO | United Nations Industrial Development Organization |
| UNICEF | United Nations Children's Fund |
| USAS | United Students Against Sweatshops |
| WBCSD | World Business Council for Sustainable Development |
| WRAP | Worldwide Responsible Apparel Production |
| WRC | Worker Rights Consortium |
| WTO | World Trade Organization |

Corporate Codes of Conduct and Labour-related Corporate Social Responsibility Analyzing the Self-regulatory Mechanisms of Multinational Enterprises and their Impacts to Developing Countries

Abstract

The social responsibility of business has been much debated during the past decades. In the 70's and 80's, attention was primarily focused on the impact on the external environment. However, in the 90's focus has expanded to what is known as corporate social responsibility (CSR). In recent years, human rights, particularly labour rights and working conditions, have become a focus of discussion related to the responsibilities of corporations.

Voluntary codes of conduct have been an important part of efforts to improve labour rights and labour standards in global supply chains. Over the last ten years these codes of conduct and systems for their implementation have proliferated. Corporations are faced with various codes of conduct and their suppliers are confused by the numerous standards and monitoring systems.

This paper examines why and how the development of global trade resulted in the proliferation of corporate codes of conduct and an increasing emphasis on labour-related CSR. Also, it analyses the case of labour-related codes and standards, one out of several social issues in CSR.

This paper tries to explore whether voluntary codes of conduct can ensure worker rights in developing countries. The key of the difficult problems in the compliance of voluntary codes of conduct is corporate trade-off with more commercial interests. Developing countries are also suspicious about the effectiveness of the voluntary codes of conduct. Nevertheless, voluntary codes provided a new market-oriented regulatory mechanism in improving labour rights and working conditions, and acted as a complementary mechanism for the governmental mandatory regulation.

1. Overview of the research

1.1 Introduction

Corporate social responsibility (CSR) has flourished as a major corporate trend since the 1990s. With no universally accepted definition, CSR generally refers to corporate business practices that reach or go beyond the ethical, legal and public expectations. A number of factors have over the years shaped and developed the idea of CSR, such as globalization, trade liberalization, and stronger expectations of citizens around the world, especially the growing use of global supply chains and supplier codes of conduct in multinational Enterprises (MNEs), which have brought out proliferation of CSR standard. At the same time, CSR standards promulgated by inter-governmental bodies concerning activities of MNEs on labour and environment, as well as those stipulated by industrial associations, non-governmental organizations (NGOs) and other civil social organizations, have helped to embed these social norms to their activities of MNEs in global supply chain.

As a matter of risk management, MNEs strive to ensure that practices of global suppliers do not damage their reputation, with CSR initiatives undertaken to show that their operations reach or exceed legal requirements and societal norms in their home country or abroad. Conceptually, CSR practices are largely voluntary.

Actually, the modern concept of CSR has been developed against a backdrop of domestic legal regimes and international norms. CSR in its modern form also reflects a heightened public desire to ensure that corporations' behave in a socially responsible manner in local places where they do business, and that they report publicly on their behavior. As a result, an increasing number of MNEs and large domestic companies, throughout the global value chain, are adopting a variety of voluntary initiatives that aim to improve their social, environmental, and labour rights and human rights. Such initiatives include, for example, voluntary codes of conduct, guidelines, principles, voluntary agreements, participation in certification and labeling schemes, dialogue with stakeholders¹ and partnerships with NGOs and public agencies, increased support for community development programmes and corporate philanthropy, etc.

¹ In the broadest sense, stakeholders can be considered to be anyone affected by the activities of an enterprise, or whose activities affect the enterprise. Generally, stakeholders include, for example, employees, shareholders, investors, consumers, regulators and NGOs. These stakeholders have taken an increasingly important role in promoting the concept of CSR and sustainability, especially through their efforts to develop standards and certification programmes.

1.2 Voluntary codes of conduct—focus of the research

Terms like CSR, corporate citizenship, business ethics, sustainability and environmental responsibility, etc (see table 1), sometimes interchangeably, have become buzzwords in the process of globalization. In view of its complex and broad range of issues: business ethics, human rights, environmental management, community development and more, there is no single, commonly accepted definition of CSR (see box 1). The term CSR is in vogue at the moment but as a concept it is vague and means different things to different people (David Crowther and Lez Rayman-Bacchus, 2004).

Table 1: A Myriad of Terms and Concepts

| | |
|-----------------------------------|-------------------------------------|
| ■ business ethics | ■ corporate citizenship |
| ■ corporate social investment | ■ Corporate social performance |
| ■ corporate philanthropy | ■ corporate social rectitude |
| ■ corporate social responsibility | ■ corporate social responsiveness |
| ■ organizational citizenship | ■ organizational ethics |
| ■ social accountability | ■ social impact investment |
| ■ socially responsible investment | ■ Social responsibility of business |
| ■ sustainable business | ■ sustainable development |
| ■ triple bottom line | |

Box 1

The various definitions of CSR

The World Business Council for Sustainable Development(WBCSD) define CSR as “the commitment of business to contribute to sustainable economic development, working with employees, their families, the local community and society at large to improve their quality of life” (WBCSD, 2003).

Business for Social Responsibility (BSR) states that “it generally refers to business decision making linked to ethical values, compliance with legal requirements, and respect people, communities and the environment.”²

The European Commission defines CSR as “a concept whereby companies integrate social and environmental concerns in their business operations and in the interaction with their stakeholders on a voluntary basis ” (European Commission, 2002)

Keizai Doyukai (The Japan Association of Corporate Executives, 2003) defines CSR as

² see: www.bsr.org/resourcecenter/

³ See Corporate Social Responsibility (CSR) in Japan, current status and future challenges, CSR Survey 2003, Keizai Doyukai, Japan:www.doyukai.or.jp

an active approach through which more competitive businesses and better societies can be built as a mechanism for synergistic development between companies and the society.³

These differences are mainly manifested in two aspects: on the one hand, different businesses in different sectors inevitably put emphasis on different aspects of CSR. For example, a natural resource business may emphasize on community engagement, whereas, a retailer may focus on supply chain management. On the other hand, different societies around the world have varying expectations and cultures, and the CSR definition varies depending on the region, its history and development (WBCSD, 2000). For example, in Europe, where a wide variety of countries and nations occupy a limited area, CSR has been used to strategically focus on issues of diversity, employment, and labour relations. But in the United States, CSR has been viewed from the standpoint of corporate governance and market valuation, partly because accounting frauds at Enron, WorldCom and other companies led to the enactment of the Sarbanes-Oxley Act, which aims to reform corporate abuses. Japanese companies have been more emphasized external environment.

Perhaps we should not be looking for a single definition since social issues are highly controversial (Richard Welford, 2003). The term “labour rights”, however, is more precise. In the context of labour-related CSR, voluntary codes of conduct are used by companies to communicate their commitment to a set of labour standards and working conditions. The most labour-related CSR initiatives are directly or indirectly linked to initiatives that strive to ensure compliance with minimal labour standards or improve working conditions. In fact, the most significant developments of corporations have to do with these issues: reasonable working time and conditions, compliance with the laws, no discrimination or harassment, elimination of child labour and forced work, training, and others. The standards have been key issues to which CSR policies have been addressed. Through voluntary commitment to codes of conduct, companies hope to send a positive signal about their behavior to their various stakeholders.

Since the early 1990s there has been a spectacular growth of voluntary corporate codes of conduct dealing with labour conditions. The emergence of voluntary corporate codes is both a manifestation of, and a response to, the process of globalization. The increased significance of brand and corporate reputation makes the Northern MNEs call for the Southern suppliers to take responsibility not only for aspects such as quality and environmental impacts, but also for labour rights and working conditions through

the global value chains. At the same time, changing public attitudes are also an important part of the context in which corporate codes of conduct have been adopted.

1.3 Purpose of the research

This paper addresses the subject that corporations use voluntary codes of conduct to promote labour rights and improve working conditions throughout the supply chain. It discusses several questions raised by the trend of voluntary self-regulation in labour standards. Firstly why would an increasing number of MNEs voluntarily constrain their own behavior to go beyond what is required by national and international regulation on social standards? Secondly, what are forms and contents of the codes of conduct on labour provision? Thirdly, how do the participants in voluntary codes of conduct deal with issues of enforcement, accountability, transparency, and credibility? Fourthly, how should governments view these corporations and civil society's voluntary initiative activities? Fifthly, what are Japanese corporate supply chain policies on labour standards currently? Sixthly, how do the supply chain's voluntary labour codes impact on the developing countries?

The purpose of this research is to identify and examine the drivers that account for the growth of voluntary codes of conduct, and the ways in which MNEs adopt, implement, monitor and evaluate policies regarding codes of conduct in their global business operations, and to explore the effectiveness of voluntary self-regulation to promote labour-related CSR. This paper also tries an attempt to analyze the impact of the MNEs-led codes of conduct movement on worker rights and labour standards to developing countries.

1.4 Methodology and limitations

This paper is based on extensive literature review, cases study, investigation and interview, and some information available from internet resources.

There is no precise information on the extent to which enterprises around the world have adopted codes of conduct with labour-related provisions in their operations. Available information focuses on the significant number of large enterprises and various types of multi-stakeholders initiatives that have done across the apparel or retailer chain of global operations. Information on corporate supply chain operations in labour codes mostly appears to be focused on enterprises in Europe and the United States, and that information on Japanese corporate is limited. Little public data is available to analyze how well these supplier labour codes are currently performing in developing countries. Besides some case-study approaches, in this paper, it is an attempt to get a

more deeply and broader analysis, thus partially filling a gap in available data.

2. The Emergence and development of voluntary codes of conduct

2.1 The definitions of voluntary and codes of conduct

The term *voluntary*⁴ refers to the mechanisms used by companies, both individually and in conjunction with other companies and organizations, to design and enforce the rules themselves. The rules that govern their behavior are adopted voluntarily, either going beyond current regulatory requirements or establishing new standards in areas in which government rules or standards are lacking (Virginia Haufler, 2001). The definition on voluntary generally includes two broad categories:

Self-regulation: corporations or business associations set their own regulations/rules—codes of conduct, corporate guidelines or mission statements, etc—and pledge to abide by themselves.

Co-regulation: co-regulation denotes regulatory arrangements between business and one or more other parties, which can include governments, trade unions, NGOs, and/or other civil social organizations.

Co-regulatory arrangements initiated by government authorities are likely to differ significantly from those initiated by civil society organization or by business associations. It is sometimes considered as a hybrid system. As a matter of fact, the boundary between voluntary and mandatory standards is becoming increasingly blurred and in some sectors CSR criteria are becoming civil regulation (UNIDO, 2002).

Self-regulatory mechanisms in corporations are based on voluntary standards, usually embodied in codes of conduct, which specify norms and rules by which to evaluate factory performance. The term “codes of conduct” refers to a written policy, or statement of principles, and intended to serve as the basis for a commitment to particular corporation conduct. These standards are sometimes quite specific, detailing precise rules of action, while in other cases presenting only general principles of good practices (Douglas, 2001; Braithwaite & Drahos, 2000).

Based on different form of content, ILO has outlined three types of codes of conduct:

) Compliance codes: directive statements giving guidance and prohibiting certain kinds of conduct;) Corporate credos: broad general statements of corporate commitments to constituencies, values and objectives;) Management philosophy

⁴ In comparison with “public regulation”, which refers to the imposition of rules by a government or by parliament, backed by the use of penalties and the authority of the state, that are intended to change the behavior of individuals or groups.

statements: formal enunciations of the company or CEO's way of doing business.⁵ According to World Bank estimates, there are 1,000 codes of conduct in existence today, developed by individual companies on a voluntary basis (World Bank, 2003).

Voluntary self-regulation is an emerging trend in the governance of social and economic activity both at the national and international levels. Such self-regulatory mechanisms are likely to be more effective than statutory regulation in addressing specific social issues because they are flexible enough to adapt to changing circumstances (Jenkins, 2001). It took hold in corporations in the earlier 1990s, when the globalization of economic activity and rising of neo-liberal ideology results in a state both less able and less willing to perform many of its regulatory functions (Jenkins, 2001). In this context, new emphasis was placed on the self-regulation and social responsibility of business. Self-regulatory policies include: voluntary agreements, programmes, standards, codes of conduct, guidelines, principles, etc., adopted by a company, industry, government or civil social organizations.

Voluntary self-regulatory movements involve three forms of market-oriented activity in MNEs and their global supply chain. Firstly, some publicize human and workers' rights violations or environmental pollutions in subcontracting plants in order to encourage consumers to boycott specific companies, generate pressure on market share and embarrass company executives. Secondly, some movements seek to develop certification programs whereby produced under acceptable conditions may be labeled to this effect. Thirdly, corporations are being urged to adopt and implement "Corporate Codes of Conduct" , which stipulate a set of minimum working conditions and labour standards that must be met in their own and their subcontractors' factories (see O'Rourke 2000; Fung, O'Rourke, and Sabel 2001; Haufler 2001). Key elements of voluntary self-regulatory Initiatives include:

- ✧ *commitment*: the political will to achieve effective implementation;
- ✧ *content*: meaningful goal or scope;
- ✧ *co-operation*: full involvement of stakeholders in preparation of the initiative;
- ✧ *checking*: monitoring of implementation and of results;
- ✧ *communication*: reporting to the public on results, as well as listening to feedback.

⁵ ILO, Corporate codes of conduct, see online at:
<http://www.itcilo.it/english/actrav/telearn/global/ilo/code/main.htm>

2.2 The generation and development of voluntary codes of conduct

Although CSR is often regarded as a modern phenomenon, reform movements of labour-related CSR to improve the employment environment and working conditions—such as on the employment of woman and child, hours of work, safety of the workplace, etc—driven primarily by ethical considerations, date back to the early nineteenth century in Europe (Brown et al. 1996). In 1919, ILO was established as a part of the implementation of the Treaty of Versailles. Since then on, ILO, with workers, employers and the state represented in its decision-making bodies, has been the premier organization in promoting better labour standards through international agreements and moral suasion.

Since 1919, ILO has adopted over 180 conventions, many of which relating to workers' rights. Although ILO is a tripartite international organization, composed of delegates from the business and labour unions as well as from governments, and business thus had a full role in the writing of the conventions, the adoption of these international labour standards has had little discernible effect on business practices around the world (William, 2001).

Codes of conduct relating to multi-national enterprises' behavior originated in the late 1970's when OECD announced its *Declaration and Decisions on International Investment and Multinational Enterprises* and ILO established its *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy*.

The concept resurfaced as a result of heightened awareness of CSR among various stakeholder groups in the early 1990s. This developed into a broad movement involving companies, NGOs, trade unions, and governmental/inter-governmental organizations to establish – jointly and independently – codes of conduct. Voluntary codes of conduct ranged from vague declarations of business principles applicable to international operations, to more substantive efforts at self-regulation.

In the mid-1990s some well-known MNEs, primarily in the footwear and apparel industries, adopted their own codes of conduct regarding workers' rights and labour conditions in their production workplace. In large part, the increasing focus on CSR has been exposed by a number of events in recent years, such as Gap, Disney, Nike and Levi for the use of sweatshops and child labour, and for abusing their workers in their Southern supplier workplaces.

In the late-1990s, accompany with civil social movement, sparked the creation of several codes of conduct that various firms could adopt, with monitoring to be done “externally” by independent inspectors, rather than only “internally” by each firm itself. The intent was to provide codes reflecting a broad consensus on labour standards, and

to give the codes of conduct process more credibility by supplementing internal with external monitoring.

In recent years, some NGOs, as well as international consultant companies were offering social audit services to corporations. And more and more corporations are embedding codes of conduct and labour standards to their business practices and supply chain management. The industries that adopted codes of conduct and labour standards also started from the narrow industry of apparel and sportswear to more wider industries, such as chemical, agricultural, mining, automotive, electronics and other industries.

2.3 Factors influencing on voluntary codes of conduct

A number of factors have influenced the current voluntary codes of conduct and will continue to shape its future development. Parties that are seen as stimulating business to adopt CSR practices include consumers, supply chain partners, investor and workers, NGOs, governments, and inter-governmental bodies.

2.3.1 Globalization and changes in the character of business

Much of the existing literature explains voluntary self-regulation as a response to two connected trends: the shrinking role of national governments (due to globalization, neo-liberal movements to shrink the state, or simply the failure of state bureaucracies) and the strengthening of multinational enterprises (Strange, 1996; Evans, 1997; Schmidt, 1995; Cutler, Haufler, & Porter, 1999).

Trade liberalization and deregulation have created more space for businesses to pursue their economic objectives. The increased trade in goods and services across borders, including outsourcing, has been accompanied by the rising importance of MNEs and prevalence of global supply chains. The relative importance of MNEs in the world economy has increased dramatically since 1980s. The current production of MNEs amounts to approximately one-quarter of world output. Siemens annual income is greater than that of either Ireland or Chile, Mitsubishi is larger than Indonesia, General Motors larger than either Denmark or Norway. The combined income of the largest 200 corporations is larger than that of 182 nation states. Corporations control more than a third of the world's productive assets. The 225 richest individuals, mainly corporate directors or owners, have a combined wealth equal to that of half of humanity.⁶ There are now approximately 64,000 MNEs—defined as firms that engage in international production—with over 870,000 foreign affiliates.⁷ In 1997, these firms

⁶ globalization: the role of corporation, see <http://www.heureka.clara.net/gaia/global05.htm>

⁷ UNCTAD, World Investment Report, 2000: Cross-Border Mergers and Acquisitions and

controlled \$12 trillion in foreign assets, employed 30 million workers and earned \$9.5 trillion in revenues—larger than the annual GDP of the United States or the European Union (Joseph J. Savitsky, Shahid Javed Burki, 2001). Today, there are more than 800 Nike subcontractors in 50 countries around the world, employing more than 600,000 workers (Boje 2002; Nikebiz 2003). Although investment in developing countries is still less than that in developed world, some developing countries such as China, India and Brazil manage to attract a significant share of investment. As ultimately, investment is the engine for growth and increasing living standards, the positive impact of the private sector cannot be ignored, especially in an age when the role public sector is constantly shrink: “in the developing world during the 1990’, public investment fell from \$60bn to \$50bn and private investment rose from \$30bn to \$300bn”(James Wolfensohn, President, World Bank, 29 November 2000). It stands to reason that the increasing power of the MNEs is beyond doubt. The MNEs undoubtedly have the largest single influence on society.

On the other hand, many areas traditionally seen as “public services” to be owned and operated by the public sector have been privatized or contracted to private agents. With the shrinking government resources, governments have become increasingly dependent on MNEs’ international operations to remain technologically competitive (Stephen J. Kobrin, 2001). The political and economic power has shifted from states to markets. like Susan thinks it well, “the centre of gravity in world politics has shifted during the last quarter century from the public agencies of the state to private bodies of various kinds, and from states to markets and market operators” (Susan, 1996).

As the most important beneficiaries of globalization and liberalization of trade regimes, MNEs are increasingly seen as having obligations in the international arena in which they operate. Indeed, a lot of leading MNEs have adopted voluntary initiatives and codes of conduct concerning their social, economic and environmental activities around the world.

2.3.2 Ethical consumption campaign

Customers are changing their ways of consuming: from mass consumerism attitude in the 1960s, they evolved in the late 1970s by requiring that purchased products comply with the stated quality, in the 1980s by asking for environmental friendly products and in the late 1990s by demanding that producers become socially responsible. It is an era of ethical consumer (Punter & Gangneux, 1998). A recent U.S. marketing survey indicated that 64% of consumers felt that a company’s record on environmental and social behavior influenced their purchasing decisions (Costa, 1998). A Canadian

marketing survey found that 25% of consumers had boycotted products in the previous year as a result of concerns with the perceived behavior of companies (Costa, 1998). Ethical consumerism in the United Kingdom was worth almost \$44 billion in 2004 (Deborah, 2005).

Major consumer campaigns are gaining ground across Europe and North America by joining forces with NGOs and trade unions to demand respect for workers' basic rights. The roots of the campaigns go back to the late 1980s, when NGOs and trade unions began working together to mobilize and channel growing public awareness of outrage over exploitative labour practices as countries, particularly in the South, competed for foreign investment by denying workers' fundamental rights, and large companies relocated factories from a country to another country in search of cheap labour.

The campaigns were basically referred to as ethical trade initiatives. NGOs, trade unions, consumer groups and human rights activists press large MNEs to adopt codes of conduct respecting minimum labour standards for their factories and those of their suppliers in Southern countries.

One high profile operation took aim at giant Nike, the athletic shoes manufacturer, which agreed to accept a code of conduct after a heated consumer campaign in North America and Europe backed up by media exposes of labour abuse in Indonesia, China and Thailand. An increasing number of MNEs also adopted codes to protect their brand names. In a 1998 report, ILO counted and reviewed Over 80% of the codes had been adopted by MNEs, mostly based in the North⁸.

2.3.3 Growing investor pressure

Investors are changing the way they assess companies' performance and making decisions based on criteria that include ethical concerns. "Investors weigh in considering how socially conscious a company is, but labour issues are typically one of the top two concerns, right up there with environmental policies", says Adam Kanzer, general counsel and director of shareholder advocacy at Domini Social Investments (Michelle, 2005). Ethical investing is now becoming a mainstream force. There were 313 green, social and ethical funds operated in Europe in 2003 (See Figure 1), representing a 12% increase over 18 months since the end of 2001.⁹ Socially Responsible Investing (SRI) funds in the U.K. alone increased from £22.7 billion pounds in 1997 to £224.5 billion in 2001.¹⁰ Socially responsible investment makes up about 12% of the US\$19.9

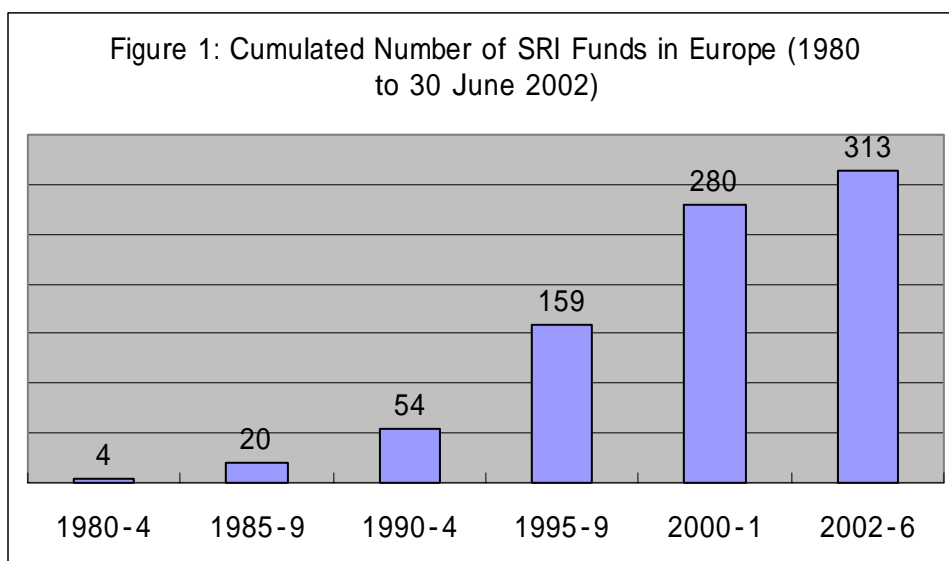
⁸ Codes of Conduct for Multinationals, ILO, see: <http://www.itcilo.it/english/actrav/telearn/global/ilo/guide/main.htm>

⁹ Sustainable Investment Research International, see: www.siricompany.com

¹⁰ Ibid.

trillion in investment assets under professional management in the world.

Companies addressing ethical and social responsibility are growing rapidly because of their ability to attract social responsible funds. A 2003 survey indicated that 78% of fund managers and analysts believed that the management of environmental and social risk has a positive impact on companies' long-term market value.¹¹ Major stock exchanges in Europe, North America and Japan, have now created indices comprised of ethically responsible companies, such as FTSE4Good indexes and the Dow Jones Sustainability Indexes, Nikko Ecofund. They offer investors an opportunity to differentiate companies on the basis of their CSR performance.



Source: www.siricompany.com

2.3.4 Role of government/inter-government bodies

Legislation, regulation and trade agreements are examples of roles governments play that influencing CSR activities. The forms of interventions range from setting standards, to providing technical assistance, to strengthening corporate transparency through mandatory reporting requirements.

With regard to trade agreements, governments are finding innovative to encourage improvements in labour standards through capacity building programmes and traditional form of trade-labour linkages. One agreement that does have enforcement provisions is the US-Cambodia textile agreement which links annual increases in quotas to progress in reform and enforcement of labour standards. Another tool used by governments to encourage CSR is legislation governing corporate disclosure on CSR activities. France marked the first year that publicly traded companies were required to report on their CSR activities. Outside that of legislation, and trade agreements, there

¹¹ Ibid.

are many roles governments do play to encourage and support CSR activities.

Institutions like the United Nations (UN) and ILO have articulated basic social norms of acceptable corporate conduct at the global level in the form of some modern “soft laws”. Targeting corporate behavior directly, these inter-governmental instruments include the UN Global Compact, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, and the OECD Guidelines for Multinational Enterprises. ILO's Tripartite Declaration is reckoned to be by far the most important inter-governmental CSR instrument. The UN Global Compact, which consists of universal principles covering human rights, labour and environment, is recognized to be a serious act in defining substantive social expectations globally, while providing a flexible structure of corporate-oriented initiatives.

2.3.5 The rising of NGOs influence

Since the early 1990s there has been a rapid growth in the NGO sector worldwide. Currently, there are approximately 40,000 internationally operating NGOs (Anheier et al, 2001), 90% of which have been formed in the past 30 years (Edwards, 2000). It is clear that NGOs represent a vital role, if disparate force in globalization discourses about social issues. They act as a source of publicity and information, often readily available through the Internet. In some cases they are actively involved in local campaigns involving trade unions and activists in the developing world¹². The significance of NGOs for the codes of conduct issue is that they can act as agents shaping the environment in which firms operate (and in which they sell their finished products in developed countries). They are potentially important actors in changing the cost/benefit analysis of firms, individual managers and people in their supply chains when they make their various calculations about how to fulfill their share of the co-production of labour regulation.

2.3.6 The rising of CSR standards as a corporate managerial idea

Employee/worker is thought the most important stakeholder. According to a survey conducted by the Japan Productive Centre cited in Lewin (et al, 1995), the most important stakeholders to Japanese corporations are employees. Another survey in Finland, 82% of Finnish CEOs also consider responsibility towards employees as a very important area of CSR (Habisch et al, 2005).

A code of conduct can do more than just safeguard a company's public image. Improved labour standards result in long-term financial benefits, particularly in the industrial sector. Employers who have invested substantial capital are interested in

¹² NikeWatch is an example of such integrated campaigning.

promoting health and safety standards, since these tend to increase the productivity of workers and an increase in the level of workforce commitment. Treating the workers well is expected to make them more efficient, in turn leading to higher efficiency, profitability and competitive edge---a win-win strategy.

Besides many MNEs that have staff dedicated to CSR activities, there is also a wide range of CSR activities handled by consultants and companies offering social audit services to corporations (including advice on and verification of compliance with management standards and codes of practices) in recent years. Other audit companies are involved in CSR-related publications, sponsoring conferences and initiatives, and promoting and reporting on the interests in CSR activities.

In addition, through a growing number of electronic CSR newsletters and CSR websites, the Internet has considerably enhanced the ability to track corporate activities globally and to disseminate information concerning these activities.

3. The theoretical basis of corporations adopting self-regulation mechanisms

The voluntary approaches that are central to the CSR agenda have a powerful, ideological and theoretical grounding. Neo-liberalism, which has guided the process of economic liberalization since the late 1970s, critiques certain forms of “command-and-control” regulation and state intervention on the basis that they interfere with both individual freedom and efficiency. In relation to social, labour, and environmental standards, the implication is that private enterprise can, to some extent, regulate itself through corporate self-regulation and voluntary initiatives. It will do so largely in response to a variety of market and social signals, and give its innate capacity to innovate (Peter Utting, 2005).

Khanna (2001) concludes that the main reasons for engaging in self-regulation involve stakeholder pressure and avoid regulatory pressure.¹³ In debates about the purpose and efficacy of regulation, it is now a commonplace that fixed rules, created centrally by governments and backed by inflexible sanctions, are ineffective, expensive and counter-productive (Christopher D. Stone, 1975; Eugene Bardach and Robert A. Kagan, 1982; Robert Baldwin, 1990; Fiona Haines, 1997; Jill Murray, 2004). Others emphasize on the “hollowing out” of the State by the very processes of globalization (Harry Arthurs, 1996). In this context, corporate self-regulation is seen as one answer to the problems of governance (David Hess, 1999).

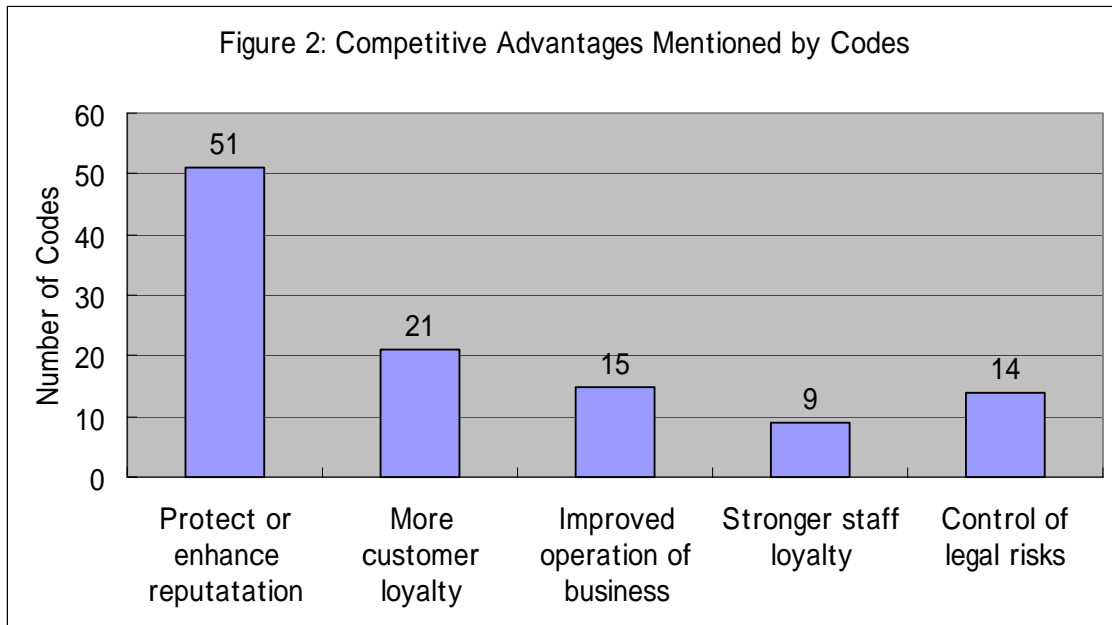
¹³ firms engage in self-regulation in order to avoid what they perceive to be more costly government imposed regulation.

Periodically, the business case for CSR is threatened by crisis and instability. Some leading corporations hope to govern not through force but through consensus, exerting moral, cultural, and intellectual leadership, and building good relations with civil society that cultivate certain values and opinions conducive to stability and the avoidance of “radical” alternatives (Levy 1997; Bendell and Murphy 2002). Business elites are not only responding defensively, they are proactively trying to influence, control and lead the agenda of institutional reform and social and economic change (Peter Utting, 2002).

Many scholars have contributed to the development of stakeholder theory over the last decades (Freeman, 1984; Jones and Wicks, 1999; Donaldson and Perston, 1995). Freeman’s classic definition of a stakeholder is “any group or individual who can affect or is affected by the achievement of the organization’s objectives” (Freeman, 1984). Clarkson (1995) further developed stakeholder theory by defining primary and secondary stakeholders based on stakeholders’ level of engagement in transactions with the corporations and their importance for the corporation’s survival. Stakeholder and governance theory suggests that modern business should no longer be preoccupied exclusively with the interests of shareholders and relations with the state and trade unions, but must respond to the concerns of multiple stakeholders, including NGOs, consumer, environmentalists, and local communities. The stakeholder theory represents the most influential set of ideas affecting the way that corporate currently practice.

The rationale for the companies to adopt self-regulation can be seen in the emergence of brand imaging as a factor influencing the success of firms as business practices are increasingly coming under public scrutiny (See Figure 2). Reputation is critical to corporate success. The brand image and reputation of a company have become its most valuable asset. A research conducted by a famous consultancy found that the proportion of a company’s value derived from intangible assets rose from 17% in 1981 to 71% in 1998 (Fombrun and Shanley 1999). Brand has become a crucial element of competitiveness in global economies (Ries and Trout, 1997). A commitment to CSR (including everything from philanthropy, environmental protection, community engagement, labour and human rights) can enhance the relationship of brand of a company and its customers, employees, and business partners. When a corporate adopts a corporate code for social responsibility, it gains advantages in consumer marketing, public affairs, and employee relations (Virginia Haugler, 2001). In many cases, a crisis such as the exposure of sweatshop conditions in a factory triggers the mobilization of pressure groups and leads to the development of new industry principles. Global brands

may be powerful but are also vulnerable, and society's expectations of standards of corporate behavior are rising. CSR is increasingly synonymous with reputation management and good brand management.

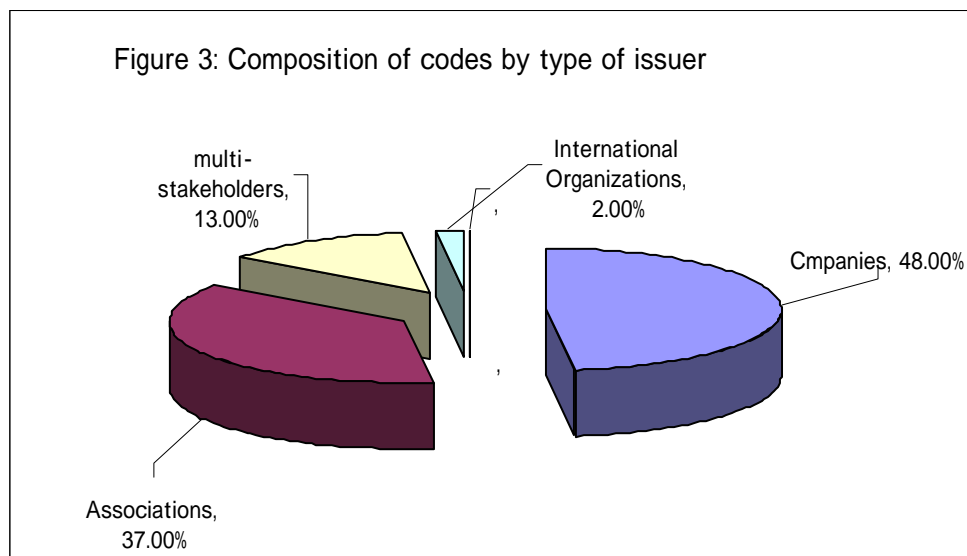


Source: OECD, 2001

4. Types of voluntary codes of conduct

Based on different initiator, it is used to distinguish from the following types of codes: company codes, business association codes, intergovernmental codes, and multi-stakeholders codes.

According to OECD investigation on 246 codes in the world in 2001, 48% were issued by individual companies, 37% by industry and associations, 13% by multi-stakeholders including unions and non-governmental organization (NGOs), and 2% by international governmental organizations (See Figure 3).



Source: OECD, 2001

4.1 Company Codes

Company codes refer to those voluntary initiatives adopted unilaterally by individual corporations themselves. Company codes are concentrated on sectors where brand reputation and export orientation are important. Available information suggests that the world's larger multinational enterprises, especially those in the textile, clothing, footwear and leather industry (TCF) and related commerce retailing, have led the trend toward the usage of codes as a means of responsible sourcing. Motivated partly by extreme public pressure directed at them for real and perceived abuses in overseas operations, some of the famous MNEs have developed their own company codes such as Reebok and Nike, Gap, etc (see Appendix 1: Nike Code of Conduct).

4.2 Business Association Codes

Business association codes may be developed by business associations, industry groups or employers' organizations (see Appendix 2: Nippon Keidanren Charter of Corporate Behavior). In contrast to single enterprise codes, these codes reflect a negotiated consensus among association members. Available information suggests that, business associations, while becoming more aware and active on issues of social responsibility, in general do not adopt codes as tools to address labour concerns. This trend may be the result of a lack of consensus among widely differing business sectors represented in the membership of such associations. In contrast, industry associations, both sectors and multi-sectors, have developed a notable number of initiatives relating

to codes but few contain references to international labour standards. However, at the global level, associations in the toy, tea, sporting goods, retail and chemical sectors, among others, have developed codes with labour provisions. Examples are the Athletic Footwear Association, Tea Sourcing Partnership, Responsible Care (chemical industry), International Council of Toy Industries and World Federation of the Sporting Goods Industry, Worldwide Responsible Apparel Production (WRAP, developed by American Apparel and Footwear Association). Some of these associations have been criticized for inadequate provisions for implementation and insufficient incentives to encourage retailers to invest in, and work with, suppliers.

4.3 Intergovernmental codes

Intergovernmental codes generally fall within the purview of public international law as negotiated instruments developed and adopted by national governments. These codes originated during the 1970s with the OECD's guidelines for multinational enterprises and (see: Appendix 3) the ILO's Tripartite Declaration of Principles Concerning Multinational Enterprises. Other intergovernmental codes are the EU Codes of Conduct, the UN norms of Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights. With no binding effect on the domestic or global behaviour of MNEs, intergovernmental codes exist as a body of documentation founded on internationally recognized and accepted principles applicable to, among other things, labour and workforce activities. A critical debate currently exists regarding the evolution of these international agreements into a body of standards that can form the basis for defining and verifying accepted corporate conduct and practices.

4.4 Multi-stakeholder codes

Most multi-stakeholder codes are initiated by NGOs and operate through the subscription method. Typically, the "stakeholders" involved in such code initiatives are companies, trade union organizations, other workers' organizations, labour and human rights NGOs, relevant government departments, and/or academics. Such "multistakeholder" codes have evolved in response to the regulatory vacuum in which corporate codes have developed. Stakeholders, in particular trade union organizations and NGOs, have sought to address this vacuum by setting certain minimum requirements, both in terms of what labour standards they believe a corporate code should contain, and in terms of how such a code should be monitored and implemented. The participation of NGOs in codes of conduct involving labour practices has shifted the

traditional balance between worker and employer at the negotiating table. In recent times, trade unions have increasingly been accepted by enterprise management and NGOs as important contributors to the initiatives (Michael Urminsky, 2001). The FLA code (see: Appendix 4), The ETI Base Code, and the SA 8000 standard, are examples of multi-stakeholder codes.

5 The content of codes of conduct with labour provisions

Codes of conduct which address labour practices have become a key element in the debate over improving worker rights and working conditions worldwide. Codes related to labour standards were originally quite diverse (OECD, 2000; Varley, 1998; Diller, 1999; Compa & Hinchliffe-Darricarrere, 1995), but now it appears to be converging around the ILO core standards and basic principles¹⁴ regarding forced labour, child labour, discrimination, the protection of health and safety, wages and hours, etc. Although the general range of issues addressed in these systems is fairly similar, the details of codes can vary considerably (Van Tulder & Kolk, 2001). Appendix 5 presents variations in some influential codes.

OECD carried out a survey of 246 voluntary codes of conduct and prepared a chart of the various elements they encompassed. Labour-related content included the following:

Table 2: The labour contents of codes

| Labour content of the codes | Percentage of codes mentioned |
|---------------------------------|-------------------------------|
| Reasonable working environment | 75.7 |
| Compliance the laws | 65.5 |
| No discrimination or harassment | 60.8 |
| compensation | 45.3 |

¹⁴ these standards and principles include: ILO Conventions 29 and 105 (Forced & Bonded Labor) ;ILO Convention 87 (Freedom of Association); ILO Convention 98 (Right to Collective Bargaining); ILO Conventions 100 and 111 (Equal remuneration for male and female workers for work of equal value; Discrimination); ILO Convention 135 (Workers' Representatives Convention); ILO Convention 138 & Recommendation 146 (Minimum Age and Recommendation); ILO Convention 155 & Recommendation 164 (Occupational Safety & Health); ILO Convention 159 (Vocational Rehabilitation & Employment/Disabled Persons); ILO Convention 177 (Home Work); ILO Convention 182 (Worst Forms of Child Labor), etc. in addition, also include some UN conventions and declarations such as Universal Declaration of Human Rights; The United Nations Convention on the Rights of the Child; The United Nations Convention to Eliminate All Forms of Discrimination Against Women, etc.

| | |
|--|------|
| No child labour | 43.2 |
| No forced labour | 38.5 |
| Provision of training | 32.4 |
| Working hours | 31.8 |
| Freedom of association and collective bargaining | 29.7 |

Source: OECD, 2001

5.1 Forced Labour

Forced labour is any work or service that a worker performs involuntarily or under threat of penalty. Forced labour takes a variety of forms, for example, prison labour, in which imprisoned persons are forced to work as a requirement of sentence and without compensation; indentured labour, whereby an employer forbids a worker to leave employment at the worker's discretion; and bonded labour, in which a person, often a child, works not for compensation, but to pay off a debt incurred by another in exchange for the worker's labour.

The prohibition against the use of forced labour was one of subjects of the first global human rights campaigns. ILO passed the Forced Labour Convention (No. 29) in 1930, and augmented it several years later with the Abolition of Forced Labour Convention (No. 105) in 1957, both of which prohibit the use of any type of forced labour.

Many codes of conduct are characterized by self-definition, primarily by prohibiting “forced labour” without any further definition of the term (Michael Urminsky, 2001). Some firms, like Wal-Mart code, require a written document for each employee stating that employment and overtime are voluntary. Some firms, like Reebok, as well as some non-corporate codes (SA8000, for example), stipulate that workers not be required to lodge “deposits” or identity papers. Some other codes, for example, CCC code directly require abide by ILO conventions.

5.2 Child Labour

“Child labour” as defined by ILO conventions (No. 138, No. 182) is: work by children under the age of 15 (or 14 in certain countries) or the age for completing local compulsory education; and work by children under the age of 18 that is hazardous to the physical or mental health of the child.

Many codes also provide standards with regard to child labour in addition to guidelines regarding age, though there is a divergence among codes in terms of the remediation efforts that are offered to combat child labour, such as the provision of

education and training programs.

Among firms, some accept a minimum age of 14 or the legally established minimum working age. Nike sets a minimum age of 16 for the production of apparel, and the minimum age of 18 for the production of footwear. However, it allows contractors who legally used 15 years old at the start of their production for Nike to continue to use such employees.

FLA defines child labour as the employment of any person under the age of 15, or 14 where the law of the country of manufacture allows. ETI stipulate “there shall be no new recruitment of child labour”, and provide “for transition of child labour to educational programs until they are no longer children” and that “children under 18 shall not be employed at night or in hazardous conditions”. SA8000 stipulate that the minimum age for employees is 15, or 14 if the country of manufacture allows, unless the local minimum age or the age for completion of mandatory schooling is older than 15.

5.3 Discrimination

Companies with operations and business partnerships throughout the world encounter cultural practices and traditions that vary from region to region and that impact the workplace environment. Provisions against discrimination are common in codes. Many of codes conform in some part to ILO Convention No. 111 on Discrimination in Employment and Occupation, which prohibits discrimination in access to employment, training, and working conditions on grounds of race color, gender, religion, national origin, social origin, or political opinions.

Some firms treated against discrimination in general safeguards, such as no “unlawful discrimination”, or enumerated grounds of discrimination, such as race, national origin, gender, religion, age, disability, marital status, membership of associations, etc. Nike and Reebok, provide for non-discrimination in hiring and wages, benefits, training, advancement, and retirement, etc. FLA, ETI and SA8000 provide that there be no discrimination with respect to hiring, compensation, advancement, termination or retirement on basis of gender, race, religion, age, nationality, political opinion.

5.4 Freedom of Association and collective bargaining

Freedom of association refers to the right of workers to choose freely whether to unite as a group or union in order to facilitate the joint promotion of their welfare. ILO Convention No.87 concerns Freedom of Association, and Convention No. 98 provides for the Right to Organize and Collective Bargaining.

In spite of extensive recognition internationally, freedom of association continues to be shaped by the larger political and social context within which it operates. Freedom of association is sometimes restricted for political and/or economic reasons¹⁵. In most countries, laws also regulate the existence, structure, and activities of trade unions, while local laws sometimes restrict freedom of association in contravention of internationally accepted principles.

Some codes of conduct reflect the inherent difficulty of enforcing these rights by stipulating that they are allowed to the extent possible under local law. As a result, many firm and non-corporate codes refer generally to “recognizing and respecting lawful rights” of freedom of association and collective bargaining. For instance, Reebok maintains the most progressive policy regarding freedom of association and collective bargaining. In addition to recognizing these rights, the firm ensures that workers are represented on safety committees, problem-solving committees, and planning committees, and they are allowed to elect worker representatives. Some company, such as Nike, avoids this issue in the code of conduct.

In recent years, stakeholder groups in developed countries -- including labour and human rights organizations have aggressively demanded that MNEs and their business partners recognize and respect freedom of association in their global manufacturing operations. Union movements in producing countries have also become more active in demanding greater power. SA8000 and ETI state that where rights are restricted under law, the firm should facilitate a parallel means of organizing, and seek to ensure that union representatives are not subject to discrimination and have access to members in the workplace.

5.5 Harassment and abuse

The definition of harassment and abuse refers to a feeling of intense annoyance caused by being tormented or cruel and inhumane treatment. Codes reference to harassment and abuse is commonly found and usually demonstrate a strong commitment to the standard. Many codes offer general comments regarding the fundamental “dignity” of employees.

Some firms, like Adidas and Reebok, offer comprehensive statements that explicitly prohibit physical, sexual or verbal harassment or abuse. While some firms, Nike, for example, simply states “free of harassment, abuse and corporal punishment”.

FLA, SA8000, ETI and WRAP all prohibit employee abuse. For example, FLA

¹⁵ see: <http://www.bsr.org/CSRResources/IssueBriefDetail.cfm?DocumentID=49812>

provides that against “any physical, sexual, psychological or verbal harassment or abuse.” And SA8000 stipulates no “sexually coercive, abusive, or exploitative behavior”. A code that seeks to adequately address these problems must clearly define unacceptable practices, as well as establish a verifiable system to address and resolve matters in an appropriate manner.

5.6 Wage and benefits

Codes commonly refer to a minimum (or living) wage for workers and demonstrate a strong commitment to the standard. The minimum wage generally refers to a wage that is sufficient for workers to meet their basic material needs, plus some discretionary spending. Many codes stipulate certain pay practices, including such provisions as the compensation of workers for overtime in compliance with local laws; forbidding deductions from wages as a disciplinary practice; requiring to provide clear and accurate pay slips to employees for each pay period; prohibiting pay deductions not stipulated by law or agreed to by the worker; and requiring that workers be allowed to check themselves in and out of work. Another aspect of pay practices is the provision of legally mandated benefits.

Many corporate codes of conduct stipulate wage and compensation. Nike, for example, stipulate to provide each employee “at least the minimum wage, or the prevailing industry wage, whichever is higher”, and “a clear, written accounting for every pay period; and does not deduct from employee pay for disciplinary infractions”, and “all legally mandated benefits”.

Recently, stakeholders such as socially responsible investors, NGOs, churches and labour unions have called upon companies to pay their employees and contractors' employees a living wage. A component of nearly every corporate code of conduct governing labour conditions in contractors' facilities is that workers be paid at least the country's legal minimum wage, or the prevailing industry wage, whichever is higher. FLA, SA8000 and ETI require that minimum wages be at least the legal or industry minimum, and WRAP requires factories to provide no less than local minimum wages. SA8000 and ETI also stipulate that wage meet the basis needs of employees and provide discretionary income.

Defining an acceptable minimum wage level, or a 'living wage' in various countries is particularly difficult, and there is currently no consensus about the standard that should be used or the method of calculation. The most frequently offered suggestion for calculating a living wage is to determine the price of a market basket of goods which represents at least the minimum subsistence for an average worker in that particular

country. No universal standard, however, defines what should be considered an individual's basic material needs.

5.7 Working hours

Codes referencing work time is quite common, including some of the primary issues that should be covered in a provision on work time, such as clear limits on regular and overtime hours, the requirement of a day of rest a week, and the inclusion of paid annual and sick leave. Some codes also specify that overtime work must always be voluntary unless the worker's contract clearly stipulates some amount of mandatory overtime. The most comprehensive of the codes also require employers to provide maternity leave and nursing breaks for female employees.

Many codes of companies stipulate a regular 48 hours of work per week or 60 hours per week including overtime, and provide for at least one day off in every seven period.

Reebok mandates that regular working hours, including overtime, be no more than 10 hours per day, also stipulates that working hours must include reasonable meal and rest breaks. Nike provides "one day off in seven, and requires no more than 60 hours of work per week on a regularly scheduled basis, or complies with local limits if they are lower".

FLA, SA8000 and ETI require working hours at 48 hours per week or the legal limit, whichever is less, and that at least one day off be given in every seven. WRAP stipulates that work and overtime hours be restricted to legal limits and that employees be given at least one day off in every seven. On the issue of overtime, Nike, FLA, SA8000 and ETI all require that overtime is fully compensated according to local law.

5.8 Health and safety

Many codes of conduct stipulate the Health and safety provisions. However, there is also great variation within substantive content of the standard itself. Codes may use general self-regulations, while some codes cite national law or international standards as a basis for their health and safety standards. Some go into great detail regarding specific practices to be targeted for improvement, such as inclusion of examples of related fire safety, adequate lighting and ventilation standards, which is significant in that it helps factory management to clarify the goals of a given MNE code. Codes statements may also require that health and safety standards applied in the factory be extended to any dormitory facilities maintained by the factory.

FLA, WARP, SA8000, and ETI all require "safe and health working environments". FLA provides a checklist of health and safety elements during visual inspections,

including fire safety mechanisms, evacuation plans, fire extinguishers, electrical wiring, medical facilities and first aid kits, personal protective equipments, and guidelines for hazardous and combustible materials use, storage and control. Both SA8000 and ETI indicate that steps should be taken to prevent accidents and injury, and that regular health and safety training should be conducted for workers, for example, access should be given to clean toilet facilities and potable water, sanitary food storage should be provided, etc.

Many codes of companies, for instance, Nike, Gap, Levi's, Reebok, require a "safe and healthy working environment". Furthermore, some of these firms list some health and safety practices that are specifically required, usually with respect to housing facilities, toilets, dining facilities, and occupational practices.

6. Monitoring systems of global supply chain practices

For a code of conduct to be effective, it should contain a clear method of implementation and means to ensure compliance. Monitoring typically involves four types of activities: () visually inspecting workplaces primarily for health and safety and visually obvious violations; () interviewing management to understand workplace policies and practices; () reviewing wage, hour, age and other records for integrity and accuracy; and () interviewing workers to verify workplace policies and practices.

Companies have experimented with three types of monitoring of codes: internal, external and independent.

6.1 Internal Monitoring

Internal monitoring is conducted by a company itself to ensure its subsidiaries, suppliers and sub-contractors to comply with standards of code. To ensure that their business partners engage in humane labour practices, increasing numbers of companies are monitoring their suppliers' practices on labour rights and working conditions. In addition, businesses are designating and training their staffs to monitor adherence with their standards on human rights and labour practices, which are often referred to as "codes of conduct," as well as with local legal requirements.

The monitoring systems developed by companies to promote sustainability typically contain the following elements:

(1) A set of formal policy documents, usually including a code of conduct and a set of policies addressing labour standards and working conditions.

(2) Designated organizational units and specialist positions responsible for helping to drive change in these areas and for providing support to operations.

(3) A process for assessing social performance, as well as economic and technical risks when developing these activities.

(4) An auditing regime for monitoring compliance with corporate policies at site level.

(5) Regular public reporting on corporate performance in labour rights and working conditions, including remediation/penalty advice.

In practices, most internal monitoring is done by a company's quality control staff, personnel staff or others with the same responsibilities. Some companies are now establishing new CSR department in charge of internal monitoring.

Many large brands and retailers have developed procedures for monitoring supplier compliance with their newly created codes of conduct. The Gap, for instance, has a vendor compliance department with over 100 staff responsible for monitoring the implementation of the company's code of conduct throughout its global supply chain¹⁶. Levi's, Disney, Walmart, H&M, and other companies have all established similar programs.

In 1992, Nike established a code of conduct on labour and environmental practices for its network of suppliers. Suppliers compliance with the code is monitored through a program of internal evaluation conducted first by Nike staff, and then reviewed by external consulting firms. Nike has developed internal monitoring tools such as its SHAPE (Safety, Health, Attitude of Management, People Investment, and Environment) audit and MESH (Management, Environment, Safety, and Health) program, which allow the company to integrate the evaluation of labour and environmental issues into broader management practices and training. Nike now has over 80 staff who monitor labour and environmental conditions in the company's contractor factories.¹⁷ Other companies, such as Reebok and Adidas, have also established similar programs.

The advantage of internal monitoring is that monitors may be allowed free access to all information relevant to the production process without the risk of jeopardizing any privileged information, such as trade secrets. While the basic problem of internal monitoring is that it relies on the "good faith" of a company itself. A company has a genuine desire to be a good corporate citizen, to improve its labour practices for reasons of improved efficiency and stability, and to avoid negative publicity, so monitoring system that individuals entrusted may be able to enforce real compliance with these standards. However, in many cases, the monitoring is being done merely to placate those hostile consumers, and efforts to monitor may be restricted to a mere exercise in public relations. Moreover, those companies with the best of intentions will have no

¹⁶ http://www.gapinc.com/public/SocialResponsibility/sr_facmonitor.shtml

¹⁷ see: www.nikebiz.com/labour/mesh.shtml

incentive to reveal their suppliers' bad practices to the public. This is because the fact that a company has always established long term stable relationship with its suppliers and neither of them hopes to lose each other. Under such circumstances, it is not strange that many organizations and individuals suspect the information presented by the company to the public. In fact, a code that includes a statement of principles concerning business behavior does not necessarily result in the application of those principles in the firm's operations. the International Organization of Employers (IOE), for example, has estimated that 80% of codes are really just statements about general businesses ethics and contain no implementation plan.¹⁸

6.2 External monitoring

External monitoring is conducted by a third party that is contracted with the company to verify workplace compliance with codes of conduct. The third party may be industry associations or employers' organizations. It can also be professional inspections or auditing firms. In the past several years the Nike has hired the accounting firm Ernst and Young to provide labour audits of its plants in Southeast Asia.

External monitoring can utilize knowledge and experiences of external specialists, find out more questions in a company's supply chain management. However, external monitoring carries an information flow problem similar to that of internal monitoring. Since the external monitor is on contract with the company, the monitor is not free to disseminate information of inspection to the public. Instead, the external monitor provides merely a labour-related CSR report to the company, whether or not disseminate it depending on the company itself. This was a problem which arose in the Nike/ Ernst and Young example (O'Rourke, 1997). The Nike was discovered with serious health and safety hazards at its producing facilities in Vietnam, but this information was precluded from publicizing. Despite its findings, Ernst and Young nonetheless certified that Nike was in compliance with its code. Nike chose not to correct the violations, and continued to assert publicly that the audits were assisting suppliers to improve their labour conditions. But later, to the company's embarrassment, an independent NGO representative discovered and publicized the violations uncovered by Ernst and Young.

Another criticism leveled against external for-profit monitors is that they may not have the expertise or sensitivity necessary to conduct accurate interviews with workers.

¹⁸ Joint Views of the IOE and ICC on the draft norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights, July 22, 2003, International Chamber of Chamber of Commerce, online: www.iccwbo.org

Workers may be afraid to provide accurate information to external monitors, whom they perceive as company representatives.

A major critique of external monitoring is that the "third party", a "monitor-for-hire", is under contract to the company on a for-profit basis. This potential conflict of interest raises concerns that external monitoring is not "independent" and thus may miss or cover up problems in factories.

6.3 Independent monitoring/Verification

Independent monitoring is that a company enters into agreements with NGO-led coalitions to monitor and produce reports. It may also use local organizations, such as labour, religious, human rights or other community-based groups, to conduct labour investigations where such groups are located. Independent monitoring model with NGOs and trade unions pursue accreditation systems with certification fees.

Many stakeholders believe that independent monitoring reviews are more credible than reviews conducted by the companies themselves or even external monitoring. Independent monitoring relies upon local organizations that have the capacity, resources and interest to inspect and report on suppliers' labour standards and their working conditions.

In recent years, Nike also relies on independent monitoring conducted through FLA to provide it with an objective snapshot of working conditions in its supply chain. FLA, of which Nike is a participating company, is a consortium of brands, universities and NGOs. FLA accredits independent monitors to perform unannounced audits of 5% of Nike supply chain each year.¹⁹ For each member, FLA reviews audit findings, oversees remediation efforts and internal compliance processes, and reports publicly on all of these activities.

Independent monitoring also suffers from criticism such as the higher certification fees and that trade unions are noticeably absent from many of these arrangements. Who should play the major role in code verification is still on debate. The subject will be further discussed in the following section.

7. Multi-stakeholder initiatives

The limitations of company codes of conduct and internal monitoring have been addressed in recent years and suffered some criticism from stakeholders, especially some NGOs. Many stakeholders are suspicious of firms-driven voluntary initiatives. They demand that firms work within broad, credible, multilateral frameworks, and be

¹⁹ <http://www.nike.com/nikebiz/nikebiz.jhtml?page=25&cat=monitoring&subcat=fla>

based on universal values such as those affirmed in the ILO Core Labour Conventions and the UN Declaration of human rights. In this context, a number of multi-stakeholders initiatives (MSIs) have been produced, involving setting standard, facilitating dialogue, reporting, monitoring, auditing, and certification related to social standards.

Most MSIs are initiated by NGOs, although industries, trade unions and multilateral organizations have also taken the lead in some cases. The major MSIs emerged in the United States and Europe: Clean Clothes Campaign (CCC), Ethical Trading Initiative (ETI), Fair Labour Association (FLA), Fair Wear Foundation (FWF), Social Accountability International (SAI) and the Work Rights Consortium (WRC) certification programs. Each of these programs has a code of conduct based on the ILO core standards and the UN principles.

The motivation for companies to participate in these schemes varies. In some cases, certification has become a condition of doing business. For example, some Northern buyers require their Southern suppliers to be certified. Sometimes a particular scheme is adopted because it is seen as providing a useful management tool (David Brereton, 2002). More typically, however, companies signed up these schemes because of the reputation benefit derived from participating. Even if companies see little inherent advantage in joining such a scheme, they may still choose to participate in order to avoid the public criticism which non-participation may suffer from.

7.1 Clean Clothes Campaign (CCC)²⁰

Founded in Netherlands in 1990, the CCC is a network of over 300 unions and NGOs — consumer organizations, solidarity and church groups, world shops, research institutions, and women organizations which closely cooperate with partner organizations in developing and transformation countries.

The CCC aims to improve labour conditions in the worldwide garment and sportswear industry through information consumers, influencing companies, supporting workers' organizations and campaigning on legal issues.

In 1998, having got close consultation with worldwide partners and international union organizations, the CCC adopted its "Codes of Labour Practices for the Apparel Industry including sportswear". There were more than 250 signatories including the International Textile, Garment and Leather Workers' Federation (ITGLWF), the European Trade Union Federation for Textile, Clothing and Leather (ETU/TCL), the Asia Monitor Resource Center (AMRC), the Transnational Information Exchange Asia

²⁰ <http://www.cleanclothes.org/>

(TIE Asia), etc. The CCC code was shaped according to the model codes of the International Confederation of Free Trade Unions (ICFTU).

As a result of negotiations between retailers/brand and the CCC in these years, a number of pilot projects have been carried out in the Netherlands, France, Sweden, Switzerland, the UK and Germany. In these pilot projects, the CCC code was adopted by the parties concerned to function as an immediate or longer term reference document.

7.2 Ethical Trading Initiative (ETI)²¹

The Ethical Trading Initiative (ETI) was initiated in England in 1998. ETI is an alliance of companies, NGOs, and trade unions, working to “identify and promote good practice in the implementation of codes of conduct of labour practice, including the monitoring and independent verification of the observance of code provisions” (ETI, 2001). ETI was established explicitly as an experimental, learning initiative, designed to help identify and disseminate information on how to implement labour codes that benefit workers in global supply chains.

The ETI uses various instruments: a) the ETI Based Codes, which outlines the social standards and the implementation/verification principles; b) experimental and research projects; c) monitoring corporate performance; d) building capacity; e) other activities such as the “Joint Initiative on Corporate Accountability and Workers’ rights”

The ETI base code refers to the relevant ILO conventions. Freedom of association, working conditions, wage levels and child labour are regarded as key aspects.

ETI has conducted pilot projects in a number of countries, including China, South Africa, India, etc. Pilots are key to the ETI strategy, as they generate information on issues such as how to monitor for child labour, how to evaluate the quality of 1-day audits, how different actors can contribute to auditing, how to establish worker complaint systems better, etc. ETI reports the findings of its pilots and company internal auditing to member organizations but not to the general public.

The ETI experimental projects offer a broad variety of approaches to the implementation of international labour standards in global supply chains of transnational companies involving commercial auditing and various forms of multi-stakeholder verification. In some instances, progress consisted in building bridges between stakeholders, meanwhile in others it went as far as establishing local inspection bodies and contacts to local governments as well as improving labour conditions.

²¹ www.ethicatrade.org

7.3 Fair Labour Association (FLA)²²

Fair Labour Association (FLA) was founded in 1998 on the basis of the Apparel Industry Partnership (AIP), which was initiated to address labour rights standards in USA and world-wide apparel industries. The aim of FLA is to improve working conditions in factories in the garment and sports shoe sector in USA and abroad. To date, FLA comprises 16 companies, 191 colleges/universities and 33 NGOs.

FLA has developed a “Workplace Code of Conduct and Principles for Monitoring”. According to the FLA monitoring program, participating companies agree to internal and independent external monitoring as well as remediation in order to promote compliance with the provisions of the FLA codes. FLA monitoring is conducted in the form of unannounced visits.

All internal and external monitoring reports will be provided fully to the FLA. The FLA publishes annual public reports on the global compliance record of each its participating companies. The information related to monitored and independently verified factories is disclosed on its website.

In August 2004, FLA published its Year Annual Public Report on the independent external monitoring. According to this report, FLA conducted independent external monitoring visits to 110 facilities in 20 countries in the year 2003.

Labour and human rights organizations are encouraged to undergo the accreditation training process. FLA currently accredited the following 12 monitors to perform the work of independent external monitoring: A&L Group, Cal Safety Compliance Corporation, Cotecna Inspections, COVERCO, Bureau Veritas, Global Standards/Toan Tin, Grupo de Monitoreo Independiente de EI Salvador, Kenan Institute Asia, LIFT-Standards, Phulki, SGS, T-Group Solutions.

7.4 Fair Wear Foundation (FWF)²³

FWF launched in Netherlands in 1999, with aims to promote humane labour conditions in worldwide factories that produce garments for the Dutch market. Its memberships include business association, trade unions and NGOs. The FWF code of conduct is based on the model code of the ICFTU.

The FWF member companies accept responsibility for labour conditions in their own company and their supply chains including suppliers and subcontractors. The member companies must monitor the implementation of labour conditions in the entire supply

²² www.fairlabor.org

²³ <http://www.fairwear.nl>

chain based on the social standards of the FWF code of conduct.

FWF has developed different instruments to achieve its aims: complaint procedures for employees, external factory audits, contacts with local organizations, and audits of management systems. FWF builds networks of partner organizations composed of trade unions, employer organizations, NGOs and public bodies in countries or regions where its members' suppliers locate.

The external verification takes place at two levels: the FWF verifies 1) the implementation of labour conditions, and 2) the management system requirements. Consultations with local organizations play a key role in the verification of the FWF.

The FWF verification relies on an effective complaints mechanism of workers. Members of FWF partner networks and other interested parties have the possibility to file complaints to the FWF which assesses whether or not it is related to the FWF code of conduct. Member companies are then responsible for dealing with the complaint and initiating corrective action. All parties involved are informed regularly. The FWF is ultimately responsible for ensuring that the complaint is adequately being dealt with.

7.5 Social Accountability International (SAI)²⁴

In 1997, the US-based SAI (formerly known as the Council on Economic Priorities Accreditation Agency (CEPAA), a US corporate responsibility research institute) developed the "Social Accountability 8000 (SA8000)" standards, with the support of NGOs, trade unions, and companies. The main purpose of SA8000 is to help companies "maintain just and decent working conditions throughout the supply chain". The SA8000 standard is mainly based on the experience gained from the ISO 9000 norm on quality management. It consists of a set of labour standards, a management system standard (for managing the implementation of labour standards), a certification procedure (which includes trainings and audits), the SA8000 certificate, and an accreditation system for auditors. Unlike many other codes, SA8000 is a global code that can be implemented in any country and in any sector.

SA8000 provides the necessary definitions and management systems to develop an auditable system, which can be checked by qualified auditors. SAI accredits certification firms and NGOs to audit and certify companies. It is the first auditable standard on working conditions. The majority of the companies adopting SA8000 are in the retail sector, manufacture clothing, toys and shoes. The greatest Interest lies in the sectors where there are well-known brands that need to be protected. Interest in SA8000 is growing among the agricultural, chemical and electronic sectors. As of December 31,

²⁴ www.cepaa.org

2004, Companies adopting SA8000 had a combination of 363,702 employees, and SA8000 certificates have been issued in 45 countries to over 572 companies.²⁵

The increasing impact of SA8000 is that it can be auditable. It also has management systems to embed the standard into the company culture, and this makes it easier for large companies to adopt SA8000.

7.6 Worker Rights Consortium (WRC)²⁶

WRC was founded in 2000 on the initiative of “United Students Against Sweatshops” (USAS). The purpose of WRC is to improve labour conditions in the sportswear supplier factories of companies producing goods under license for US universities (Nike, Adidas, Reebok, etc.). WRC supports and verifies licensee compliance with the codes of conducts for apparel manufactures which US colleges and universities have developed in recent years to ensure that the licensed goods sold on their campuses are produced under humane working conditions. The WRC had 143 college and university members as of 2004 and focuses primarily on factories producing apparel with university logos.

WRC employs three broad strategies: (1) inspections of factories from which WRC has received worker complaints; (2) proactive inspections in countries with patterns of poor practice and worker organizing efforts; and (3) information disclosure requirements. WRC does not certify company compliance with a code of conduct, conduct systematic monitoring, or accredit monitors. Instead, it encourages (not requires) participating universities to adopt codes of conduct that closely resemble the WRC’s model code, which includes strong provisions for a living wage, women’s rights, and worker’s rights of freedom of association. The WRC requires member universities to commit to broad public disclosure and to develop mechanisms to verify information reported by companies and their suppliers.

The WRC’s goal is to ensure which factories that produce university-branded apparel comply with a base code of conduct and, in particular, with rights of freedom of association and collective bargaining. The WRC also seeks to educate workers themselves about university codes so that workers may report code violations to local NGOs or the WRC. The WRC aims to work collectively with its university affiliates, the licensee corporations (the manufacturers), and local NGOs to correct problems that have been identified. The WRC’s investigative efforts rely on collaboration with local NGOs and activists; personnel from either its board WRC, or affiliated university

²⁵ SA8000 Certified Facilities - as of December 31, 2004, see: <http://www.sa-intl.org/index.cfm?fuseaction=Page.viewPage&pageID=513&grandparentID=473&parentID=617>

²⁶ www.workersrights.org

members; and labour and human rights experts.

Comparing above various MSIs, there are some differences among them (See Appendix 6). Firstly, the composition of their membership is different. There are not industry representatives in their members of the WRC and the CCC, while FLA has no union members participation and government observer is involved in the ETI. Secondly, the scope of application is different. All the MSIs share the goal of improving labour conditions in the worldwide apparel and sports shoe industry. However, the FLA, the ETI and SA8000 do not confine themselves to this industrial sector. The FLA also addresses companies in other sectors which manufacture licensed products for US colleges and universities. The ETI's field of activity includes the food, and horticulture sectors. SA8000 can be applied to all industries. Thirdly, the model of monitoring is different. Under both SA8000 and FLA, companies choose and hire the social auditors, either private sector firms or NGOs, from those that have been accredited in these programs. ETI has decided to avoid, at least for the present, accrediting auditors or certifying factories. Instead, ETI is experimenting with pilot projects to evaluate different models for verifying code compliance. ETI pilot project approach offer advantages to southern and northern NGOs interested in playing a direct role in factory monitoring and social auditing. It would allow NGOs to test out their possible roles in monitoring, social auditing, and the possibility of North/South collaboration.

MSIs have been somewhat successful in addressing certain weaknesses associated with corporate self-regulation. Particularly, they attempt to impose a degree of coherency on the confusing proliferation of company codes, and the attention they have directed to issues of labour rights and working conditions, independent monitoring, the responsibilities of suppliers in MNEs value chains. MSIs also rely upon local organizations and activists that have the capacity, resources and interest to inspect and report on factory conditions. These models of MSIs bring into decision-making processes a broader range of actors and can, therefore, have positive impacts to address governmental enforcement of laws, and respect for individual human beings, and improve working conditions in global chain of MNEs.

However, there are major differences in the extent to which these MSIs integrate trade unions, local-level monitoring and verification organizations, or more civil society actors in Southern countries. Questions have also arisen regarding the accountability, legitimacy and credibility of some MSIs and the NGOs with a dominant position in these new systems of corporate regulation, including their representation of workers' interests and their close association with the corporations they seek to regulate. Many

trade unionists suspect that behind the new enthusiasm for codes of conduct and related monitoring plans is an agenda aimed at replacing the bargaining role of trade unions and their effectiveness in the political arena. Some see the real goal of MSIs by corporations' supporting as the destruction of strong, class-based workers' organizations (Compa, 2001). Many Northern advocates oppose a monitoring role for international accounting firms or other corporate-oriented social auditors. Others oppose monitoring even by Northern-based NGOs or unions, and insist that only indigenous, locally-based NGOs and unions should monitor codes of conduct.

Workers, unions and NGOs in many Southern countries have additional criticisms. For many of them, the movement for codes of conduct is a peculiarly Northern phenomenon. Some Southern actors suspect the aim of those NGOs and privates coming from Northern whether they real address to improve worker's rights. In fact, the languages of codes have been rarely disseminated to workers in Southern countries (Compa, 2001).

In addition, the cost and complexity of many MSIs' procedures, and the limited capacities of many NGOs or other organizations involved both quantity and scale (UNRSD, 2004). Furthermore, most firms remain fairly immune to the pressures and incentives that are driving CSR and that might encourage them to participate in MSIs. (See table 3)

**Table 3: Multi-national Corporations, Certification and Reporting:
Participation in Selected Multistakeholder Initiatives**

AS OF 2002: TOTAL MNCs=64,000; TOTAL AFFILIATES=870,000

| Multistakeholder initiative | Entities | As of |
|------------------------------------|-----------------|--------------|
| SA8000 certification | 572 | Dec. 2004 |
| Fair labour Association | | |
| -participating companies | 12 | Dec. 2003 |
| -affiliated companies (licensees) | 1266 | Dec. 2003 |
| Ethical trading Initiative | | |
| -participating companies | 34 | Dec. 2003 |
| -affiliated companies | n/a | |
| Fair Wear Foundation | | |
| -participating companies | 15 | Mar. 2005 |
| -affiliated companies (licensees) | n/a | |

Sources: UNRSD, Corporate social responsibility and business regulation 2004; Wick (2005), Workers' tool or PR ploy? a guide to codes of international labour practice; SAI, FLA and ETI Web sites.

8. Voluntary and public regulatory approaches to policy

Regulating MNEs requires establishing rules to influence corporate practices in public interest. Traditionally, the global economy forces were governed by two approaches. One approach is to pursue a formal-legal institutional framework, either through multinational agreements involving organizations such as ILO and WTO, or through such bilateral agreements as social clauses in trade agreements. Another approach is that direct activists press on firms to adopt labour standards, which are ultimately enforced by consumer pressure. This approach, which may bypass governments and international organizations, typically seeks to influence corporate behavior directly through the adoption of voluntary codes of conduct. It is oriented toward getting corporations to change their behavior voluntarily, using such incentives as the threat of a consumer boycott or certification to improve a company's standing in consumer markets. Needless to say, these two approaches each has its strengths and weaknesses.

8.1 International trade link with social clauses

Calls for including a social clause dealing with labour and environmental issues in international trade policy have been mentioned for several decades, but all of labour's efforts to achieve this through international organizations of governments, primarily the General Agreement on Tariffs and Trade (GATT) and its successor, the World Trade Organization (WTO), have been rebuffed. Even efforts merely to create a WTO working group just to study the idea of linkage, were roundly rejected at WTO ministerial meetings in Marrakech in 1994, Singapore in 1996, and Seattle in 1999. The clash between developing and developed countries on this issue contributed to ministers' failure to reach consensus on the launch of a new round of trade negotiations.²⁷

The linkage of trading to labour standards was viewed with great suspicion by many developing country governments. They saw such clauses as a new form of northern protectionism aimed at keeping cheaper southern goods out of their markets. Sanctions would have their most damaging effect on the workers themselves, and could trigger a trade war. They are also opposed by corporations, which are pushing for ever-greater freedom and deregulation in their relentless global searches for cheap labour and lax

²⁷ The 1996 WTO Ministerial affirmed the primacy of the International Labor Organization (ILO) in developing and enforcing international labor standards, effectively removing itself from the process of developing a social clause. The WTO, which although has the power to impose sanctions for violation of its rules, has refused to create labor and environmental standards codified as part of the world trading system in Seattle conference in 1999, claiming them already existing in the ILO.

environmental policies. It is feared that concerning over standards could threaten global liberalization trade.

ILO is one vehicle for generating multilateral standards. In recent years, ILO has committed itself to developing greater coherence among multilateral institutions concerned with labour standards and trade. However, ILO is far from becoming a global arbiter or enforcer of labour standards, for ILO is unable to impose penalties for violations of these rules, as the implementation of which is entirely voluntary on the part of member nations. The issue of labour rights, therefore, has been left in the hands of an organization structurally incapable of enforcing its own provisions and mandate (Richard, 2000). Absent from truly global governance institutions, adoption and enforcement of labour standards remain the ultimate respective national governments. As is well known, governments can be highly selective in their ratification of ILO labour standards (See table 4), and even more selective in terms of implementation and enforcement. Even if in ratified countries, the effects of enforcement are also weak.

Table 4: Ratifications of ILO core conventions (as of 22 Feb 2003)

| Core principle | Convention | Countries ratified | U.S. ratified | Japan ratified | China ratified |
|--|---|---------------------------|----------------------|-----------------------|-----------------------|
| Forced labour | Forced labour, convention No.29 | 161 | N | Y | N |
| | Abolition of forced labour, convention No.105 | 159 | Y | N | N |
| Freedom of association and collective bargaining | Freedom of association NO. 87 | 141 | N | Y | N |
| | Right to organize and collective bargaining, convention No.98 | 152 | N | Y | N |
| Discrimination | Equal remuneration, convention No.100 | 161 | N | Y | Y |
| | Discrimination, convention No.111 | 158 | N | N | N |
| Elimination of child labour | Minimum age, convention No.138 | 121 | N | Y | Y |

| | | | | | |
|--|--|-----|---|---|---|
| | Worst Forms of Child labour, convention No.182 | 133 | Y | Y | Y |
|--|--|-----|---|---|---|

Source: ILO website

The voluntary code campaigns can be seen as a response to the stark failure of governments and multilateral institutions to help ensure a fair distribution of trade benefits to workers and small producers. With businesses increasingly hostile to statutory regulation and trade unions since the late 1980s, the campaigning groups have focused on market-based mechanisms to achieve social and environmental goals. In addition, the voluntary code campaigns have made it easier to build consensus between northern and southern NGOs than previous attempts at reforming the world trading system.

8.2 The Comparison of Regulatory and Voluntary Approaches

Voluntary regulatory initiatives have become popular in recent years. They cover a range of approaches including corporate codes of conduct that lay out the social commitments the company makes; management and accounting systems that translate those commitments into specific roles and responsibilities within the organization; and monitoring, auditing, certification, and labeling programs that testify to successful achievements. They have been heralded by many businesses as effective ways of encouraging action that goes “beyond compliance” (David, 2002).

At the conceptual level, there is general consensus that sustainable development can not be achieved through a regulatory approach alone. Voluntary initiatives are needed to help meet the complex and urgent challenges of sustainable development. Both regulatory and voluntary approaches have their own benefits and limits. (See table 5).

Table 5: Comparing Regulatory and Voluntary Approaches

| Regulatory Approaches | Voluntary Approaches |
|---|--|
| <p>Main advantages</p> <ul style="list-style-type: none"> ✓ Transparency ✓ Great credibility ✓ Compulsory application to all ✓ Cost is borne by the entire society, and ✓ The availability and range of sanctions | <p>Main advantages</p> <ul style="list-style-type: none"> ✓ Great flexibility ✓ Lower compliance and administrative costs ✓ Speed in establishing and amending rules ✓ Avoidance of jurisdictional concerns, and ✓ Internalization of responsibility |
| <p>Typical limits</p> <ul style="list-style-type: none"> ✓ Inflexibility ✓ Expensive operation costs | <p>Typical limits</p> <ul style="list-style-type: none"> ✓ Low credibility ✓ Low transparency |

| | |
|---|--|
| ✓ Jurisdictional limitations, and | ✓ Process often dominated by industry, and |
| ✓ slow in developing or amending law | ✓ A limited array of potential sanctions |

Voluntary regulation has emerged to fill some legal and normative vacuum (John J. Kirton, 2004). In fact, such as “soft law”, that reflected in voluntary codes and certification schemes, faced with the complex global social environment---greater flexibility and harmonization, has some important advantages over “hard law”. Most obviously, it is easier to adopt as it need not go through the laborious process of achieving governmental approval, something which can be particularly difficult at the international level. In addition, precisely because it works through market mechanisms, it is more palatable to policy-makers and many citizens in developing countries. The latter have often strongly opposed the efforts of some western governments and many western activists to use trade policy that restrictions represent a disguised form of protectionism. Private systems of regulation are less objectionable since they rely on voluntary agreements between western firms or consumers and developing country producers.

While these codes of conduct are private voluntary self-regulatory mechanisms for regulating labour practices and promoting respect for international labour standards in supply chains, they can’t substitute for intergovernmental cooperation or international labour standards. Nor can they substitute for national law and the enforcement thereof or for systems of industrial relations (involving trade unions and collective bargaining). Where national and other applicable law and the workplace standards in these codes address the same issue, the provision that is the highest workplace standard will apply.

8.3 Government and codes of conduct

Although CSR initiatives has traditionally been regarded as an activity that companies engage in voluntarily, the growth and influence of the “corporate citizenship movement” has led to increasing calls for governments to regulate the social behavior of companies (Gianni Zappala, 2003). Governments all over the world are beginning to recognize the importance of addressing the activities of CSR initiatives. Increasingly the words CSR initiatives and sustainability are emerging in public policy discussions. More recently, the focus has shifted to the relationship between public policy and CSR initiatives.

There may be several ways to categorize the different approaches of government’s involvement in codes of conduct campaign. In some cases, the government initiatives the approaches, in other cases the government plays only an indirect role. The influences that governments had shaped private corporate initiatives include:

8.3.1 Enforcement strategies and legal and regulatory risk management

Regulatory enforcement has increasingly relied on private initiatives as the first line of enforcement (OECD, 2001b). Because such a strategy often involves creating an incentive for firms to adopt particular management practices and systems, and it often boosts firms' reliance on such systems. In some OECD countries, this creates powerful incentives to identify major risks and to devise systems of internal control designed to manage such risks. These often include codes of conduct and supporting management systems and practices.

In May 2002 the French government adopted a new law requiring that listing companies should provide information on how the company takes the social and environmental consequences of its activities into account.²⁸ The New Economic Regulations (Nouvelles Regulations Economiques – NRE) is the first law passed on this issue in the world. The decree includes not only social and environmental information, but also information such as relations with subcontractors, the impact of the firm's activities on local development, and also the respect for human rights in the subsidiary companies abroad. The law makes it mandatory for all nationally listed companies to report on social and environmental issues in annual reports. It is a legal obligation to disclose information on the social and environmental impact of company activities and should not be confused with a reporting device.

In 2001, with the support of the German Federal Ministry for Economic Cooperation and Development (BMZ), the Roundtable on Codes of Conduct was set up. Industrial associations, companies, NGOs, trade unions and representatives of the German government all participated in it.²⁹ The Roundtable calls for the introduction of voluntary codes of conduct in German firms with production plants or suppliers in developing countries. This is a contribution to the socially responsible shaping of globalization and supports the emergence of socially equitable market economies in developing countries. In a joint effort, recommendations on the introduction, monitoring and verification of social standards are worked out and pilot projects are developed.

In 2001, the European Parliament deliberated a European code of conduct for transnational corporations located in Europe and operated in developing countries, as well as required companies to report on their environmental and social performance.

8.3.2 Taxes relief and financial support

²⁸ Shari Nourick (2004) Advancing the CSR Agenda in the EU: National and Local Level approaches, <http://www.lux-ias.lu/PDF/Nourick.pdf>.

²⁹ Codes of conduct on social standards, the Roundtable on codes on conduct, Germany. See: http://www.coc-runder-tisch.de/coc-runder-tisch/inhalte/publikationen_rt/Guide_social_standards_2004_engl.pdf

Some OECD governments provide favorable tax treatment to the non-profit sector and define the non-profit sector for tax purposes so that it includes the NGOs that operate in this field. At times, this favorable tax treatment is available for contributions to other institutions (professional societies and universities) that are also active in this field.

Governments and intergovernmental organizations tend to play supportive roles in selected hybrid code systems, serving as catalysts, facilitators, endorsers and even financial supporters (Gianni Zappala, 2003). The Ethical Trading Initiative receives its core funding from the Government of the United Kingdom³⁰, SAI and WRC both have a part of fund which comes from government.

In particular, NGOs have played central and varied roles in the development of many corporate responsibility initiatives. This has indirectly shaped the CSR movement and has probably been quite important in the countries where tax incentives for non-profit activity are high. NGOs have monitored the activities of particular corporations. They have issued model codes of conduct that they hope will be influential. They have provided expert advice in the field on matters of CSR. They have also created information systems designed to shed light on various aspects of firms' behavior.

8.3.3 Direct participation in initiatives

The UK government sends a representative to observe the ETI board meetings. The Apparel Industry Partnership was developed with the encouragement of the Government of the United States. The code prepared by the Federation of International Football Associations (FIFA), with international trade union secretariat assistance, led to an agreement to run cooperative projects to eliminate child labour from particular industries in South Asian countries, where the ILO and the United Nations Children's Fund (UNICEF) cooperate with industry groups, workers, governments and NGOs.

8.3.4 Contributions to specialists and technique

Some governments have played important and varied roles in the development of managerial and technical expertise that underpins voluntary initiatives. These include provision of government expertise to the organizations that discuss and design standards.

The FLA (Apparel Industry Partnership Agreement) was promoted by the United States Department of Labour in response to concerns that various apparel manufactures were using child labour in hazardous, sweatshop conditions, both domestically and internationally. The partnership, convened by the government,

³⁰ ETI is funded by a grant from the government (40%) and by membership fees(60%).

brought together representative of industry, consumer and human right groups to discuss these issues.

9. Japanese corporations' CSR practices and supplier chain codes of conduct

In recent years CSR has come to be an important management subject and has drawn much attention in Japan. With discussions of CSR having increased in US and European countries during the past few years, Japanese corporations have started to pay more attention to CSR practices in US and Europe. Many Japanese managers abroad learn various CSR practices and bring them back to Japan (Hirofumi Ideshita, 2002). As described by Keizai Doyukai (Japan Association of Corporate Executives) in "the 15th Corporate White Paper" in March 2003, the importance of corporations taking socially responsible actions begins to penetrate slowly into the minds of business leaders, and the dissemination of CSR concept in the Japanese society seems to shift from "why" to "how"(Keizai Doyukai, 2003). However, compared to the European and American societies which are more concern about labour rights and human rights in CSR, Japanese society shows a relative low-key response in this aspect in general (Paul, 1992; GISPRI, 2003; Kanji Tanimoto & Kenji Suzuki, 2005).

9.1 labour-related CSR in Japan

It is argued that the concept of CSR is not new in Japan, as well as in other societies. Japanese companies have been traditionally seen as having widely perceived themselves as social institutions. Companies have long been engaged in initiatives that furthered the interests of the community, and manifested most predominantly by philanthropic contributions and conventional beliefs in life-long employment. However, in contrast to the old idea of CSR, its modern concept today is voluntarily and largely driven by constituencies such as consumers, NGOs, investors, international trade union organizations, activists, and the corporations themselves.

In Japan, the focus on CSR began with environmental efforts. In recognition of their dedication to the environment issues, Japanese companies hold a much higher proportion of the ISO 14000s certifications than other industrialized countries (CBCC, 2003). Starting in the mid 1990s, an increasing number of Japanese companies began developing environmental management systems aimed at ISO14001 certification. By the late 1990s, the term "kankyo keiei" (meaning "environmental management" in Japanese) began to come increasingly into use, and companies began to prepare environmental reports to disclose their environmental management efforts. As of 2003,

about 600 companies in Japan have published environmental reports. If site-based reports separated from branches and factories are counted, this number exceeds 1,000, indicating the country's outstanding performance in this area (Hiroyuki Tada, 2003).

But today CSR has expanded to human rights, fair labour standards, consumer protection, and health and safety issues, etc. The Nippon Keidanren's 'Corporate Behaviour Charter' (established in 1991, revised in 1996, 2002, 2004) calls upon members to strive to respect diversity, individuality and differences of their employees, to promote safe and comfortable workplaces, and to ensure mental and physical well-being of their employees.

The Keizai Doyukai in its '21st Century Declaration' (2000) advocated corporate responsibility for creating not only "economic wealth" but also "social and human value". Their strong commitment to CSR principles was reaffirmed in its 15th Corporate White Paper "Market Evolution and CSR Management" in 2003.

According to a Keizai Doyukai 2004 report, about 32% of all the companies that have submitted self-evaluations reported that they had established department in charge of CSR. However, the ratio of corporate codes of conduct which have article on labour is still small in Japan (GISPRI, 2003). According to one review of Japanese case studies, "only 30% of Japanese large corporations have written codes of ethics and more than 70% do not have any system for monitoring ethical behavior" (Nakano Chiaki, 1999). The issue of human rights as one of the CSR areas has not progressed so far as the development of other activities regarding to CSR in Japan (GISPRI, 2003). Even Nippon Keidanren's Charter of Corporate Behavior and the recent white paper on CSR management published by Keizai Doyukai allocate few lines for human rights issues.

There are some reasons to explain the relative scarcity of labour standards and workplace issues : Firstly, employees have traditionally been considered as stakeholders of a company and there exists a perception on the part of companies that they have for long addressed the issues and thus less need to address them systematically umbrella of CSR (Kee, 2004); Secondly, company policies on environmental issues and community health have been in place the longest, while labour rights and human rights having a comparatively shorter lifespan (World Bank/IFC, 2003); Thirdly, Japanese companies are highly aware of CSR, but tend to avoid formal administrative processes, which are preferred by Western companies. Instead, Japanese firms predominantly use cultural mechanisms such as philosophy and guiding principles to address such issues. The planning and management of most important issues are conducted through teams or committees, while little formal monitoring is conducted (Lewin et al, 1995). In addition, some scholars, Paul (1992), for example, stated that the lack of political and religious

debate issues of justice and social problems also led to the fact that the idea of CSR in Japan had developed slowly.

9.2 Social Responsible Investment (SRI) in Japan

The CSR movement is supported by socially responsible investing (SRI), a type of investment which actively supports companies that exercise social responsibility. In Japan, several SRI “Eco-funds” were launched in 1999. As of the end of 2003, the net asset value of all of Japan’s 16 SRI funds totaled about 80-90 billion yen (about US \$770-870 million). This amounted to only 0.3% of the total assets of investment funds in Japan. Even including the operating assets of institutional investors, these funds’ net asset value remained at the less-than -100 billion yen (about U.S. \$960 million) level. This is incredibly small compared to the much larger SRI markets in Europe and U.S.³¹

According to a survey conducted by the Japan Research Institute on CSR management trends at Japanese companies, Japanese firms are likely to face less demand to address workplace issues from investors. Reflected in the prominence of eco-funds in SRI, Japanese investors have a relatively lower interest in the social aspects of CSR compared with environmental issues. A Ministry of Environment survey suggests that private individuals in Japan, who are either investors or interested in investing generally, are concerned significantly more about environmental measures and customer health and safety than about workplace issues, in contrast to US and Europe (Ministry of Environment, 2003).

9.3 Japanese corporate suppliers’ codes of conduct and their global supply Chain Policies

Interest in supply chain policy appears as a relatively recent wave of CSR internationally (Moon, 2003) and reflects Japanese companies, particularly MNEs, taking greater responsibility for community, society and environmental responsibility of their suppliers and business partners in recent years. An survey conducted by Kyoko Fukukawa & Jeremy Moon (2003), revealed that over half (51% by the top 50 companies on their home web-sites) of the companies established policies or guidelines for business practices in relation to suppliers, particularly in the area of environmental responsibility.

It is clear that concerning more about environmental responsibility is a distinguished character of Japanese companies' oversea supply chain policy. There are some examples of Japanese MNEs' CSR practices in their supply chain management:

³¹ http://www.csrjapan.jp/research/trend/pdf/csr2003_summary.pdf

One example is that Hitachi Group established its self-regulation on CSR activities in 2005, the Group is aware of the need to enhance its corporate value not only by observing all relevant laws and regulations, but also by fulfilling its social responsibilities as a good corporate citizen. The Hitachi Group has drawn a new Environmental Vision Sustainability Compass. The ultimately aim is to create a recycle-oriented society and co-exist in harmony with the nature. Utilizing Design for environment, Hitachi is striving to minimize the impact that products have on the environment. In order to reduce environmental impact at each of its production sites, Hitachi is now creating eco-factories working to prevent global warming through energy conservation measures, reduction of waste and management of chemical substances. By the end of March 2005, 277 of Hitachi's companies in Japan and overseas have obtained ISO14000 certification.

Another example is that NEC Group established Green Procurement Guidelines for suppliers in 2004, NEC has been making company-wide efforts to implement a green procurement policy that gives priority to purchasing materials with low environmental impact. Based on Green Procurement Guidelines, NEC awards green certifications and environmental ratings to suppliers, with the goal of ensuring that all purchasing meets green procurement criteria by the end of 2006.

In comparison to other western countries, with regard to supplier codes of labour conduct, Japanese MNEs that adopted such rules of behavior are much less than US and European MNEs. The labour standards and workplace issues of CSR concerning, are considered less important in Japanese business dealings with business partners. The suppliers note that buyer companies readily request specifications on quality, privacy of confidential information, and environment, but workplace criteria are frequently not prerequisites for business partnerships (Kee, 2004). Japanese corporations' supply chain policies tend to focus on internal ethical matters rather than international societal issues (Kolk, A. & R. van Tulder, 2003).

However, some corporations are willing to establish suppliers' codes of labour conduct in recent years. For example, the Sony Group established its supplier codes of conduct in June 2005³². The code outlines standards to ensure that the labour rights and working conditions of its supplier. Sony Group expects its suppliers to adhere to its basic policies on compliance with applicable laws and regulations respecting human rights and safeguarding the environment. It appears to reflect a kind of "competition"

³² see:

<http://www.sony.net/SonyInfo/Environment/management/chain/qfhh7c000006e5vx-att/qfhh7c000000z9c.pdf>

that increasing Japanese companies are adopting codes of conduct with labour rights and working conditions. But some factors make it a “dilemma” that the corporations address international labour issues: Japanese imports are increasing, making overseas labour issues more relevant to Japan, so the growing concerns about labour standards in America and Europe may bring more pressures on Japanese companies; and there is potential danger that labour issues could become barriers to trade with developing countries—which would make it more difficult for Japanese companies to maintain and build new relationships with developing country suppliers.

10. Estimating the impact of voluntary codes of conduct to developing countries

The diversity of current codes and monitoring systems has led to both confusion and debate about the benefits and limitations of self-regulatory strategies. The versions of voluntary mechanisms are range from individual factories paying to be certified, to multinational brands internally monitoring their contractor factories, to multi-stakeholder initiatives accrediting third-party organizations to inspect factories, to independent NGOs inspecting factories individually or in coordination with worker organizations. While no comprehensive assessment of the effectiveness of this voluntary self-regulation to date, there is no public data available to analyze how well these systems of regulation are currently performed in developing countries. However, there are some sporadic materials getting from some programs.

10.1 Case study 1: Working conditions of Vendex KBB suppliers in India and Sri Lanka

In 2001, the Dutch CCC commissioned SOMO, the center for Research on MNEs in Netherlands, to investigate working conditions in factories of India and Sri Lanka producing for Vendex KBB, the Dutch largest retail group that have codes of labour standards.³³ Vendex KBB claimed that they were monitoring their suppliers for compliance with their codes of conduct, but refused to reveal anything about the way the monitoring was being done, how many factories had been checked so far, and what kind of methodology was used to obtain information on the working conditions.

However, the investigation findings revealed that Vendex KBB's current code of conduct and monitoring system, and those of its subsidiaries, were ineffective in preventing labour rights violations, and that many violations of minimal standards still

³³ The reality behind corporate social responsibility: Research on labor conditions in supply chain of Vendex KBB, see: <http://www.cleanclothes.org/news/newsletter15-12.htm>

existed on a large scale. Numerous violations of the basic labour rights endorsed by Vendex KBB were found in this investigation.

The investigation found that the major obstacles for garment workers in India and Sri Lanka were the lack of freedom of association and the right to organize, long working hours (60 hours a week on average, sometimes even 90 hours), forced overtime, and low wage levels. Some of the factories paid wages that were even below the legal minimum wage, which was around \$40 to \$50 (US) per month. The only improvements in recent years seemed to have taken place with respect to child labour and health and safety, though the conditions in these factories were still far from safe and garment workers continued to suffer from health problems. Improvements could be seen in the areas that were possible to be checked by physical factory inspections, but even the management said that Vendex KBB had never carried out factory inspections. Most of the workers that were interviewed for this research project had never been interviewed by "social auditors" working for Dutch retailers (or any other Western retailers for that matter). The few workers that had been interviewed by auditors said they had been told by management beforehand what they should say, and they were too afraid to tell the truth.

10.2 Case study 2: CSR-implementation in the Footwear and Textile Industries in Vietnam

During January 2003 to March 2004, the World Bank implemented a program of technical assistance on government roles for strengthening CSR in Vietnam.³⁴ This program focused on CSR issues of labour standards through a case study of the footwear and textile industries in Vietnam.

The survey showed that although most requirements of codes of conduct were relatively similar to Vietnamese laws, to comply with the requirements of these "national standards" was not easy in fact. Foreign investment factories and internal factories which were new set up had more advantages, while factories which were constructed a long time ago (over 10 years) or factories with limited infrastructure were difficult implementations, especially those middle and small enterprises.

According to the survey, factories which had initiated and implemented requirements of codes of conduct must carry out improvement mass activities, such as improvement

³⁴ Study on corporate social responsibility labour-related practices, Ministry of Labor-Invalids and Social affairs (MOLISA) and Institute of Labour Science and Social affairs (ILSSA), Vietnam, 2004. see: http://siteresources.worldbank.org/INTPSD/Resources/Vietnam_ILSSA.pdf

on OSH and working conditions, renovating the production arrangement, developing and improving internal monitoring and management system, training, etc. This investment process was very costly. In CSR-implementing and CSR-initiating firms, such investment was taking important position in total of the investment.

The implementation situation of some main codes of conduct in the Vietnamese enterprises was encouraging, but not so satisfactory. For example, in general, all surveyed enterprises were complying well with Vietnamese legislation and rules of the codes, however some enterprises were detected to have some violations such as asking for payment from workers in recruitment, forcing workers to work overtime, restricting the time of using toilet at work time, etc.

On the whole, there were some difficulties and challenge in CSR's implementation:

1) Further investment for improvement. CSR-implementing and CSR-initiating factories had to spend much money on upgrading and improving other infrastructures, such as: storage, internal path, canteen, toilet, fire control facilities, lighting system, ventilation, garbage treatment, etc.

2) Working hours. Although footwear and textile enterprises were allowed to extend overtime hours to be up to 300 hours/year, many viewed that such level was too low to fit with the real demand. Most of enterprises had overtime hours exceeding the stipulated level of labour legislation. As stated by enterprises, it was unavoidable to work overtime in some period in the year, because of delivery deadline, especially those were producing for different partners without long-term contract. Furthermore, the issue was more difficult because the workers wanted the extra money and would often willingly take the overtime, even if illegal, despite the increased risk of injury due to fatigue. Other issues related to working hours included mandatory overtime and inadequate compensation for extra working hours.

3) Workers turnover. The instability of production is caused by nature of orders, seasons and material sources. This phenomenon is widespread among footwear and textile industry. Workers turnover makes not only difficult to organize production but also hard to implement some mandatory regulations or provisions on codes of conduct.

4) Vague awareness and limited understanding on codes of conduct. Although workers were aware of the codes' existence in factories, they only had a vague knowledge about it. The codes seemed to be interpreted solely as a vehicle for establishing and reinforcing legitimate expectations regarding working conditions. Furthermore, many factories stated that even when they had implemented a certain code of conduct, they were still lack of information of origin, source and underlying reasons for its performance.

Nevertheless, through CSR-implementing, firms developed and improved internal monitoring management. They specified function, responsibility, personnel, facilities and detailed work plan to each management unit, etc. Managers stressed that adherence to the code was very important as it could affect the number of future orders, and managers at some workplaces believed it could also improve performance.

10.3 Case study 3: SA8000 verification in China

In recent years, various Chinese media have produced many reports about CSR. The CSR debate in China is mainly focused on foreign companies, particularly European and U.S. companies and their supply chains, concerning about corporate codes of conduct and certification processes.

In the various codes and monitoring systems, the SA8000 verification system was widely referred in China. SA8000 enables companies to guarantee to their customers that their commitment to good working conditions meets a certain (minimum) standard, which largely conform to China's labour law. The main "performance requirements" of SA8000 address eight labour issues: 1) child labour; 2) force labour; 3) health and safety; 4) freedom of association and the right to collective bargaining; 5) discrimination; 6) disciplinary practices; 7) working hours; 8) compensation.

Failure to comply with SA8000 verification has a potential market sanction, so some Chinese companies and government agencies worried that the European and US governments were planning to limit Chinese imports that did not adopt these CSR standards' factories. Such a measure would effectively force Chinese exporting manufacturers to adopt these social standards, which would involve various costs and thus limit China's competitiveness as a manufacturing and exporting economy. To date, in fact, no western government is intending to close its country to products that are not certified. However, although no immediate cause exists for Chinese manufacturers to adopt one of CSR standards, in some sectors pressure from foreign buyers to raise labour standards and to do so in a verifiable way is already being felt. This applies particularly to Chinese suppliers to international brand companies in the footwear, clothing and toy sectors.

As of December 31, 2004, the number of SA8000 certified factories in China was 79.³⁵ The certified industries mainly include: toys, apparel, textiles, accessories, electronics, etc.

Compared with other supplier's codes of conduct, SA8000 verification is carried out by independent organizations or private companies (e.g. consulting company). All the cost

³⁵ <http://www.sa-intl.org/sa8000/>

is undertaken by supplier. A survey conducted by the ILS (Institute for Labour Studies, China) showed that the cost associated with SA8000 audits or achieving certification ranged from \$1500 to \$15,000 depending on the size of the business. This does not take into account the cost of infrastructure upgrades, staff training, consulting on changes in management systems, or other expenses associated with bringing the company to the point of compliance. Companies that are faced with capital limitations have great difficulty in undertaking the certification process.

the most occurring motivations for factories to adopt SA8000 are: 1) meeting the demand of Northern buyers: some Northern buyers requires their suppliers in China to be certified, as result, some export-oriented companies adopt SA8000 with a hope to get more orders and partners and to extend the market; 2) self-awareness of enterprises: some provident companies inherent desire to maintain high labour standards and working conditions, and with a consider taken for SA8000 standards' implementation as a strategic plan in business and production development, especially for high-quality labour force, high-yield productivity, better product quality and image, and effective business and production; 3) pressed by other stakeholders: including local NGOs, labour organization, and activists, consultant firms, etc.

In essence, consumer pressure regarding labour rights and working conditions originated in U.S. and Europe. Labour rights and working conditions in these export-oriented enterprises are thought to be below local labour law and ILO standards. Actually, China labour law is at least as strict as ILO standards. Likely SA8000 standards are inspired primarily by ILO conventions and other international principles and local laws. The main practical problems on the workplace are high number of working hours, low salaries, and inadequate health and safety measures. Under the current conditions in China, the main impact of SA8000 seems to be not so much in the direct improvement of working conditions in individual factories, although in individual cases it may play an important role in raising awareness among workers regarding labour rights. The main impact seems to be in a longer term development where SA8000 helps putting labour issues on the agenda of government authorities, companies, industry organizations, trade unions, auditing firms and other stakeholders' organization.

10.4 The potential positive impacts of voluntary codes of conduct to developing countries

Although too few research data is available to allow drawing conclusions regarding the impacts of voluntary codes of conduct to developing countries, there

are definitely some potential positive impacts in the further development:

10.4.1 Strengthening law and regulation

Voluntary codes and monitoring systems provide an important, complementary mechanism to strengthen the existing legal systems, and may foster greater desire to improve those systems. Through adopting a code, a corporation could also acknowledge its responsibility to abide by local labour laws. In most cases, local labour laws even in developing countries offer adequate protections for workers, conforming to at least minimum international standards on subjects such as working hours, overtime compensation, forced labour and child labour. However, labour issues still occur frequently because governments lack adequate enforcement budgets, or are shortage of labour inspection staff and other facilities. They are not able to fulfill the duty to handle with the related labour issues. Therefore the implementation of CSR standards acts as a supplement and enforcement to local laws and international principles. And the voluntary corporate supervision mechanism has significantly supported national and local labour supervision system.

10.4.2 Access to contracts and new markets

Good compliance with codes can help corporations gain specific contracts or trading relationships with MNEs or companies in Northern markets, as well as can help them enter international market.

10.4.3 Better performance on taking care of workers

Another important effect of voluntary codes of conduct is better performance on taking care of workers. Codes of conduct act as a check on problematic corporate behaviour and have generated some improvements in labour conditions, in which health care, salary, social welfare, working hours, labour contract are taken more notice. In addition, workers' awareness of the legal protections can be strengthened through codes of conduct and monitoring systems. Furthermore, the codes of conduct provide an alternative dispute resolution mechanism for workers, as well as providing public agencies with incentives to better enforcement of existing labour laws and regulations.

10.4.4 More ability to attract and retain employees

As a potential management tool, improving labour relations and working conditions can reduce absenteeism, staff turnover and the cost of replacing and training staff. CSR standards can also improve motivation and job satisfaction so as to attract and retain employees and increase their loyalty to the corporations. In addition, good working conditions can help companies to improve the quality and productivity of their output.

10.5 The challenge of voluntary codes of conduct

Although the initiatives to promote codes of conduct, and independent monitoring and verification systems have made progress in recent years, there remain several outstanding issues on debate, the following are a number of limitations that must be considered:

10.5.1 No-tariff Technical Barriers to Trade

An important voice coming from developing countries is that CSR standards are a mechanism for retaining jobs, trade and investment in developed countries. The process of globalization has result in MNEs transferring labour-intensive production from the developed countries in order to raise profitability by taking advantage of lower labour costs. This process is most keenly felt by older semiskilled workers in the developed countries where employment is limited (Stephen J. Frenkel, 2004). Unions and some civil society organizations representing the benefit of these workers hold that MNEs be responsible for unfair labour competition. This has been the most controversial in relation to motivations of making CSR standards mandatory, or linking them to trade agreements. Low-wage developing countries fear that any regulation to protect even minimum labour standards in their countries will lead MNEs to shift direct investment to another country where there is less regulation. For instance, the 2002 version of the annual white paper prepared by the American Chamber of Commerce (AmCham) claimed that labour costs in China were now higher than in many other parts of Asia, so the government's attempts to force the private sector to bare the brunt of social welfare for workers alike was unreasonable. "Recent legislation requiring a minimum wage and benefits for part-time workers has also placed an additional cost burden on employers".³⁶ Efforts of developing countries to raise labour standards lead to loss of productive investment, exports and employment opportunities, so under globalization labour rights protection gets increasingly difficult.

10.5.2 The burden of monitoring and auditing and improvement

The proliferation of standards makes compliance difficult and costly. Failure can mean losing access to key markets. Besides the direct costs of making improvements, monitoring compliance with CSR standards involves significant costs both in terms of the administrative burden and the costs of external auditing and certification. Independent auditors can be more expensive, particularly where they involve international professional firms. Many firms are producing for a number of foreign

³⁶ The American Chamber of Commerce, People's Republic of China, "labor and benefits," 2002 White Paper: American Business in China, 2002, see: <http://www.amchamchina.org.cn/publiccations/2002/en-9.htm>

companies, each with their own standards. These firms are probably audited by various Northern buyers. This overlap audit work can increase the burden of certified firms. To meet the requirements of CSR standards, many manufacturers had to invest in buildings, workshops, offices, occupational safety and health (OSH) equipments, fire control and prevention facilities, reformed management systems and consultation services. For the manufacturers in developing countries, these costs could be highly expensive in relation to their small scale and outputs. The high compliance costs mean the potential loss of competitive advantages such as cheap labour and low operating costs.

10.5.3 The defect of Standards for auditing

Despite the proliferation of different codes, in reality these are almost all based on the core ILO conventions, covering the same themes and with similar standards that fall back on local law and industry standards as minimum standards. However, there is still extensive debate about what these standards actually mean on the ground. Some issues have yet to be fully developed, for example, how to implement working hours standards to cope with seasonal fluctuations in production. The instability of production is caused by nature of orders, seasons and material sources. This leads to low business efficiency and high labour turnover. In response to this, enterprises have to increase shifting working hours especially at peak time. This phenomenon is widespread among textile and footwear manufacturers.

11. Conclusions

CSR has been increasing as a result of the recognition of the essential contribution of businesses to social, environmental and Human Rights progress, as well as pressures from consumers, investors, employees, governments, international organizations, NGOs, media and other civil society organizations. A growing number of businesses have already taken CSR as a priority in their agendas. Voluntary of labour codes and associated management and reporting systems are private initiatives designed to help firms achieve a variety of goals—protecting corporate reputation, improving employee morale, enhancing consumer loyalty, avoiding costly sanction, etc. These voluntary initiatives are widely acknowledged to be one of the most important developments in international business.

While it is hard to determine how much improvement MNEs-led codes of conduct and monitoring programs could achieve. The key of the difficult problems in the compliance of voluntary codes of conduct is corporate trade-off with more commercial interests. The effects of global civil society campaigns are both controversial and uncertain. Some critics argue that social regulatory standards are a “cultural” feature of specific societies

and should not be subject to global harmonization (Ronnie D. Lipschutz, 2003). Indeed, domestic legislation in the home country is the most important influence on these initiatives (OECD, 2001). Some economists point out that labour regulation would reduce the economic attractiveness of host countries, undermine their comparative advantage in low-labour, and increase unemployment. Developing countries are also suspicious about the effectiveness of the voluntary codes of conduct. They worried about the developed countries act the linkage of trading to labour standards as new Non-tariff technical barriers to trade.

Nevertheless, the voluntary codes of labour conduct campaigns are in general a positive development. After all, they provided a new market-oriented regulatory mechanism in improving labour rights and working conditions, and acted as a complementary mechanism for the governmental mandatory regulation. Compared with mandatory regulation, the voluntary self-regulation mechanisms have some important advantages in facing with the complex labour issues in global society. But the main impact seems to be still depending on the endeavor of local governments in a longer term.

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Appendix 1:

Nippon Keidanren Charter of Corporate Behavior³⁷

4th version released: May 18, 2004

Member corporations of Nippon Keidanren (hereafter referred to as "Members") believe that corporations exist not only as economic entities designed to pursue profits through fair competition, but also as social entities which must make a contribution to society at large. Members are expected to respect human rights and to conduct themselves in a socially responsible manner toward the creation of a sustainable society, observe both the spirit as well as the letter of all laws and regulations applying to their activities both in Japan and abroad in accordance with the following ten principles.

1. Members, by the development and provision of socially beneficial goods and services in a safe and responsible manner, shall strive to earn the confidence of their consumers and customers, while taking necessary measures to protect personal data and customer related information.

2. Members shall promote fair, transparent, free competition and sound trade. They shall also ensure that their relationships and contacts with government agencies and political bodies are of a sound and proper nature.

3. Members shall engage in communication not only with shareholders but also with members of society at large, including active and fair disclosure of corporate information.

4. Members shall strive to respect diversity, individuality and differences of their employees, to promote safe and comfortable workplaces, and to ensure the mental and physical well-being of their employees.

5. Members shall recognize that a positive involvement in environmental issues is a priority for all humanity and is an essential part of their activities and their very existence as a corporation, and shall therefore approach these issues more proactively.

³⁷ <http://www.keidanren.or.jp/english/policy/cgcb.html>

6. As "good corporate citizens," members shall actively engage in philanthropic activities, and other activities of social benefit.

7. Members shall reject all contacts with organizations involved in activities in violation of the law or accepted standards of responsible social behavior.

8. Members shall observe laws and regulations applying to their overseas activities and respect the culture and customs of other nations and strive to manage their overseas activities in such a way as to promote and contribute to the development of local communities.

9. Management of members shall assume the responsibility for implementing this charter and for taking all necessary action in order to raise awareness in their corporation and inform their group companies and business partners of their responsibility. Management shall also heed the voice of their stakeholders, both internally and externally, and promote the development and implementation of systems that will contribute to the achievement of business ethics.

10. In the case of incidents contrary to the principles of this charter, management of members must investigate the cause for the incident, develop reforms to prevent recurrence, and make information publicly available regarding their intended actions for reform. After the prompt public disclosure of information regarding the incident, responsibility for the event and its effects should be clarified and disciplinary action should be taken, including the highest levels of management where necessary.

Appendix 2:

Nike Code of Conduct³⁸

Implicit in that act was the determination that we would build our business with all of our partners based on trust, teamwork, honesty and mutual respect. We expect all of our business partners to operate on the same principles.

At the core of the NIKE corporate ethic is the belief that we are a company comprised of many different kinds of people, appreciating individual diversity, and dedicated to equal opportunity for each individual.

NIKE designs, manufactures and markets products for sports and fitness consumers. At every step in that process, we are driven to do not only what is required by law, but what is expected of a leader. We expect our business partners to do the same. NIKE partners with contractors who share our commitment to best practices and continuous improvement in:

1. Management practices that respect the rights of all employees, including the right to free association and collective bargaining
2. Minimizing our impact on the environment
3. Providing a safe and healthy work place
4. Promoting the health and well-being of all employees

Contractors must recognize the dignity of each employee, and the right to a work place free of harassment, abuse or corporal punishment. Decisions on hiring, salary, benefits, advancement, termination or retirement must be based solely on the employee's ability to do the job. There shall be no discrimination based on race, creed, gender, marital or maternity status, religious or political beliefs, age or sexual orientation.

Wherever NIKE operates around the globe we are guided by this Code of Conduct and we bind our contractors to these principles. Contractors must post this Code in all major workspaces, translated into the language of the employee, and must train employees on their rights and obligations as defined by this Code and applicable local laws.

While these principles establish the spirit of our partnerships, we also bind our partners to specific standards of conduct. The core standards are set forth below.

Forced Labour

The contractor does not use forced labour in any form -- prison, indentured, bonded or otherwise.

Child Labour

³⁸ <http://www.nike.com/nikebiz/nikebiz.jhtml?page=25&cat=code>

The contractor does not employ any person below the age of 18 to produce footwear. The contractor does not employ any person below the age of 16 to produce apparel, accessories or equipment. If at the time Nike production begins, the contractor employs people of the legal working age who are at least 15, that employment may continue, but the contractor will not hire any person going forward who is younger than the Nike or legal age limit, whichever is higher. To further ensure these age standards are complied with, the contractor does not use any form of homework for Nike production.

Compensation

The contractor provides each employee at least the minimum wage, or the prevailing industry wage, whichever is higher; provides each employee a clear, written accounting for every pay period; and does not deduct from employee pay for disciplinary infractions.

Benefits

The contractor provides each employee all legally mandated benefits.

Hours of Work/Overtime

The contractor complies with legally mandated work hours; uses overtime only when each employee is fully compensated according to local law; informs each employee at the time of hiring if mandatory overtime is a condition of employment; and on a regularly scheduled basis provides one day off in seven, and requires no more than 60 hours of work per week on a regularly scheduled basis, or complies with local limits if they are lower.

Environment, Safety and Health (ES&H)

The contractor has written environmental, safety and health policies and standards, and implements a system to minimize negative impacts on the environment, reduce work-related injury and illness, and promote the general health of employees.

Documentation and Inspection

The contractor maintains on file all documentation needed to demonstrate compliance with this Code of Conduct and required laws; agrees to make these documents available for Nike or its designated monitor; and agrees to submit to inspections with or without prior notice.

Appendix 3:

OECD Declaration and Decisions on International Investment and Multinational Enterprises³⁹

The 1976 Declaration by the Governments of OECD member countries on International Investment and Multinational Enterprises constitutes a policy commitment to improve the investment climate, encourage the positive contribution multinational enterprises can make to economic and social progress and minimize and resolve difficulties which may arise from their operations. All parts of the Declaration are subject to periodical reviews. The most recent review concerned the Guidelines for Multinational Enterprises and was completed in June 2000. All 30 OECD member countries, and nine non-member countries have subscribed to the Declaration.

The Declaration consists of four elements, each of which has been underpinned by a Decision by the OECD Council on follow-up procedures:

- The Guidelines for Multinational Enterprises constitute a set of voluntary rules of conduct for multinational enterprises. Observance of these Guidelines is encouraged and facilitated by adhering governments through National Contact Points;
- National Treatment : Adhering countries shall accord to foreign-controlled enterprises on their territories treatment no less favorable than that accorded in like situations to domestic enterprises;
- Conflicting requirements : Adhering countries shall co-operate so as to avoid or minimize the imposition of conflicting requirements on multinational enterprises;
- International investment incentives and disincentives : adhering countries recognize the need to give due weight to the interest of adhering countries affected by laws and practices in this field; they will endeavor to make measures as transparent as possible.

³⁹ <http://www.oecd.org/>

Appendix 4:

FLA Workplace Code of Conduct⁴⁰

Forced Labour There shall not be any use of forced labour, whether in the form of prison labour, indentured labour, bonded labour or otherwise.

Child Labour No person shall be employed at an age younger than 15 (or 14 where the law of the country of manufacture⁴¹ allows) or younger than the age for completing compulsory education in the country of manufacture where such age is higher than 15.

Harassment or Abuse Every employee shall be treated with respect and dignity. No employee shall be subject to any physical, sexual, psychological or verbal harassment or abuse.

Nondiscrimination No person shall be subject to any discrimination in employment, including hiring, salary, benefits, advancement, discipline, termination or retirement, on the basis of gender, race, religion, age, disability, sexual orientation, nationality, political opinion, or social or ethnic origin.

Health and Safety Employers shall provide a safe and healthy working environment to prevent accidents and injury to health arising out of, linked with, or occurring in the course of work or as a result of the operation of employer facilities.

Freedom of Association and Collective Bargaining Employers shall recognize and respect the right of employees to freedom of association and collective bargaining.

Wages and Benefits Employers recognize that wages are essential to meeting employees' basic needs. Employers shall pay employees, as a floor, at least the minimum wage required by local law or the prevailing industry wage, whichever is higher, and shall provide legally mandated benefits.

Hours of Work Except in extraordinary business circumstances, employees shall (i) not be required to work more than the lesser of (a) 48 hours per week and 12 hours overtime or (b) the limits on regular and overtime hours allowed by the law of the country of manufacture or, where the laws of such country do not limit the hours of work, the

⁴⁰ <http://www.fairlabor.org/all/code/index.html>

⁴¹ All references to local law throughout this Code shall include regulations implemented in accordance with applicable local law.

regular work week in such country plus 12 hours overtime and (ii) be entitled to at least one day off in every seven day period.

Overtime Compensation In addition to their compensation for regular hours of work, employees shall be compensated for overtime hours at such premium rate as is legally required in the country of manufacture or, in those countries where such laws do not exist, at a rate at least equal to their regular hourly compensation rate.

Any Company that determines to adopt the Workplace Code of Conduct shall, in addition to complying with all applicable laws of the country of manufacture, comply with and support the Workplace Code of Conduct in accordance with the attached Principles of Monitoring and shall apply the higher standard in cases of differences or conflicts. Any Company that determines to adopt the Workplace Code of Conduct also shall require its licensees and contractors and, in the case of a retailer, its suppliers to comply with applicable local laws and with this Code in accordance with the Principles of Monitoring and to apply the higher standard in cases of differences or conflicts.

Appendix 5:

labour provisions in Various codes of conduct

| Code Content | Nike Inc. | Ethical Trading Initiative (ETI) | Fair Labour Association (FLA) | Social Accountability International (SA8000) | Worldwide Responsible Apparel Production (WRAP) |
|----------------------|--|--|---|---|--|
| Forced labour | "the contractor does not use forced labour" | "there is no forced, bonded or involuntary prison labour" | "there shall not be any use of forced labour" | "shall not engage in or support the use of forced labour, nor shall personnel be required to lodge 'deposits' or identity papers" | "will not use involuntary or forced labour" |
| Child Labour | the minimum age of 18 to produce footwear or 16 to produce apparel, accessories or equipment. "If at the time Nike production begins, the employees of the legal working age who are at least 15, that employment may continue, but will not hire any person going forward who is younger than the Nike or legal | "there shall be no new recruitment of child labour", "to develop or participate in programs to enable child labour to attend and remain in quality education until no longer a child", "Children under 18 not be employed at night or in hazardous conditions", "These policies and procedures shall conform | Minimum age: 15; or 14 where the law of the country of manufacture allows; or age for completing compulsory education | Minimum age: 15; or 14 if meets developing country exemption; or local minimum age which is higher | Minimum age: 14; or age for completing schooling or minimum age established by law; whichever is greater |

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|---|--|--|---|---|--|
| | age limit, whichever is higher” | to the provisions of the relevant ILO standards” | | | |
| Discrimination | “decisions on hiring, salary, benefits, advancement, termination or retirement must be based solely on the employee’s ability”, “no discrimination based on race, creed, gender, marital or maternity status, religious or political beliefs, age or sexual orientation” | “no discrimination in hiring, compensation, access to training, promotion, termination or retirement based on race, caste, national origin, religion, age, disability, gender, marital status, sexual orientation, union membership or political affiliation” | “no discrimination in hiring, salary, benefits, advancement, discipline, termination or retirement, on basis of gender, race religion, age, disability, sexual orientation, nationality, political opinion, or social or ethnic origin” | “No discrimination in hiring, compensation, access to training, promotion, termination or retirement based on race, caste, national origin, religion, disability, gender, sexual orientation, union membership, or political affiliation” | “employ, pay, promote, and terminate workers on the basis of their ability to do the job, rather than on the basis of personal characteristics or beliefs” |
| Freedom of Association and Collective Bargaining | n/a | “Workers have the right to join or form trade unions of their own choosing and to bargain collectively”, “Where the right to freedom of association and collective bargaining is restricted under law, the employer facilitates, and does not hinder, the development of | “shall recognize and respect the right of employees to freedom of association and collective bargaining” | “shall respect the right of all personnel to form and join trade unions of their choice and to bargain collectively”, “Where right restricted by law, employer facilitates parallel means for free association and bargaining” | “will respect the right of employees to exercise their lawful rights of free association and collective bargaining” |

| | | | | | |
|-----------------------------|--|--|---|--|---|
| | | parallel means for independent and free association and bargaining” | | | |
| Harassment and abuse | “must recognize the dignity of each employee, and the right to a work place free of harassment, abuse or corporal punishment” | “physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation shall be prohibited” | “no employees shall be subject to any physical, sexual, psychological or verbal harassment or abuse” | “shall not engage in or support the use of corporal punishment, mental or physical coercion, and verbal abuse” | “will provide a work environment free of harassment, abuse or corporal punishment in any form” |
| Wage and benefits | To provide each employee at least the minimum wage, or the prevailing industry wage, whichever is higher; to provide a clear, written accounting for every pay period; and not deduct from employee pay for disciplinary infractions. To provide all legally mandated benefits. | Wages and benefits paid for a standard working week meet, at a minimum, national legal standards or industry benchmark standards, whichever is higher. In any event wages should always be enough to meet basic needs and to provide some discretionary income | the minimum wage required by local law or the prevailing industry wage, and legally mandated benefits | Legal or prevailing industry wage, and meet basic needs/provide discretionary income | “will pay at least the minimum total compensation required by local law, including all mandated wages, allowances and benefits” |
| Working hours | To provide one day off in seven, and less 60 hours of work per week on a regularly scheduled basis, | 48 hours per week and one day off in every seven period; overtime shall be voluntary and 12 hours overtime | 48 hours per week and 12 hours overtime or the limits on regular and overtime hours allowed by the law of the | 48 hours per week and 12 hours overtime maximum per week. Personnel shall be provided with at least one day | “one day off in every seven-day period, except as required to meet urgent business needs”, “shall not |

| | | | | | |
|--------------------------|--|---|---|--|--|
| | or complies with local limits if they are lower. | maximum per week. | country. One day off in every seven period | off in every seven-day period. “overtime work shall be voluntary” | exceed the legal limitations of the countries” |
| Health and Safety | “to minimize negative impacts on the environment, reduce work-related injury and illness, and promote the general health of employees” | “A safe and hygienic working environment shall be provided”, “Toilet facilities and accommodation, shall be clean, safe, and meet the basic needs of the workers” | “shall provide a safe and healthy working environment to prevent accidents and injury to health arising out of, linked with, or occurring in the course of work or as a result of the operation of employer facilities” | “shall provide a safe and healthy working environment and shall take adequate steps to prevent accidents and injury to health arising out of, associated with or occurring in the course of work, by minimizing, so far as is reasonably practicable, the causes of hazards inherent in the working environment” | “will provide a safe and healthy work environment” |

Source: organizational websites

Appendix 6:

Multistakeholders External Monitoring/Certification Systems

| | Clean Clothes Campaign (CCC) | Ethical Trading Initiative (ETI) | Fair Labour Association (FLA) | Fair Wear Foundation (FWF) | Social Accountability International (SA8000) | Workers Rights Consortium (WRC) |
|---------------------------------|---|---|---|--|---|---|
| Year of foundation | 1990(adopted codes in 1998) | 1998 | 1996 | 1999 | 1997 | 2000 |
| Members/ governance | unions, NGOs, activists | Companies, unions, NGOs, observer from the government | Companies, NGOs, colleges/ universities | Companies, business associations, unions, NGOs | Companies, NGOs, unions, lawyer, consultant | Colleges/ universities, academics, unions, NGOs |
| Scope of application | Apparel industry | Apparel, food, horticulture | Apparel, university licensees | apparel | All industries | Apparel, university licensees |
| Objectives | Improvement of labour conditions in the worldwide garment and sportswear industry | Improvement of labour conditions in the worldwide garment and food industry and in horticulture | Improvement of labour conditions in the worldwide garment industry and all industries producing under license for US university | Improvement of labour conditions in the worldwide garment factories producing for the Dutch market | Improvement of labour conditions in all industries | Improvement of labour conditions in the sportswear factories of companies producing goods under license for US universities |
| Monitoring/ verification | Pilot projects in monitoring and | Pilot projects complete and several under | Monitors accredited and selected by the | Verification of 10% of each member | Monitors accredited and selected by SAI | WRC agency undertakes spot-check |

| | | | | | | |
|------------------------------|--|--|--|---|--|--|
| | verification under way | way, each pilot project operates according to a different model of internal or external monitors of academics, unions and NGOs | FLA to conduct periodic inspections of at least 30% of their facilities during their initial 3 year participation period. All monitoring must involve consulting local NGOs. Monitors use a combination of announced and unannounced visits. | company's supplier facilities every 3 years. FWF verification in cooperation with networks of partner organizations in producing countries. | perform certification audits of factories; certification lasts for every 3 years | inspections in selected licensee supplier factories. Investigation and remediation reports in close cooperation with local NGOs, and academic experts |
| Reporting/ disclosure | CCC gathers information about workplace from a variety of sources (factory workers, independent research, media) and makes it public | Company reports go to the ETI. ETI informs the public annually about the verification results | Annual reports on each company based on internal and external monitoring. Participating companies are publicly listed on website. No disclosure of locations of certified factories. | Member companies must publish annual reports and communicate a supplier register to the FWF. FWF publishes annual verification reports. | Audit reports go to SAI and to the companies. Auditors inform NGOs and unions about the outcome. Public list of certified factories. | WRC verification and remediation reports go to all parties involved. Disclosure of all production facilities of licensee suppliers. The WRC updates its factories list quarterly |
| Member company fee | n/a | Basis on the annual revenues ranging from | A minimum of \$5,000 depending on their | Yes; but No public specific amounts | Basis on company sales ranging from | No company participation |

| | | | | | | |
|--------------------------|-----|--|--|--|-----------------------------|--|
| | | \$3,600 to 54,100 | annual revenues. | | \$13,000 to \$90,000 | |
| Certification fee | n/a | Yes; but No public specific amounts | Yes; but No public specific amounts | Yes; but No public specific amounts | From \$1,500 to \$15,000 | Yes; but No public specific amounts |

Source: Wick (2005), Workers' tool or PR ploy? A guide to codes of international labour practice; **organizational websites**