

A CRITICAL GUIDE TO CORPORATE CODES OF CONDUCT:

VOICES FROM THE SOUTH



**A Critical Guide to
Corporate Codes of Conduct
Voices from the South**

Asia Monitor Resource Centre

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The Asia Monitor Resource Centre is an independent non-governmental organisation which focuses on labour concerns in the Asia Pacific region. The centre provides information, research, publishing, training, labour networking, and related services to trade unions, labour groups, and other development NGOs in the region. The centre's main goal is to support democratic and independent labour movements in the Asia Pacific region. In order to achieve this goal, AMRC upholds the principles of workers' empowerment and gender consciousness and follows a participatory framework.

A Critical Guide to Corporate Codes of Conduct: Voices from the South

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Preface

This publication is a result of on-going attempts of labour organisations in the Asian Transnational Corporations Monitoring Network (ATNC Monitoring Network) to understand the nature of corporate codes of conduct and utilise them in improving working conditions of millions of workers in Asia. Since its establishment as an information network in 2001, the ATNC Monitoring Network has been strengthened through coordinated research, education and training programmes, and now consists of 12 organisations in 8 Asian countries, which are monitoring labour conditions in TNCs. TNC monitoring has a long history. Consumer movement organisations in developed countries have been playing a particularly important role in pushing TNCs to improve working conditions by organising consumer boycotts. In response to this sort of pressure, firms introduced corporate codes of conduct and external inspections to monitor compliance to the codes. Accordingly, professional and systematic regulation of the labour practices of TNCs has developed, accompanied by the emergence of a standardised monitoring process performed by auditing companies, and various certifications, such as SA 8000.

However, organisations working in this area have been witnessing a lot of problems in practice. In many cases, factory owners are informed about inspections beforehand, allowing them to prepare for them. Interviews with workers are arranged by management, and in any case, most workers have no freedom to tell the truth, for fear of being laid-off or disciplined. Even if inspections are done 'independently' and can bring provisional improvements, workers play a very passive role in the process, and it is therefore not likely to be sustainable.

Nevertheless, more and more labour organisations and activists

have been attracted to the code-based strategy, almost as if it provides an alternative to trade unions and other forms of worker-organising. The ATNC Monitoring Network began with a criticism of this trend. We believe that, rather than pressuring brand-names to implement codes in supplying factories, assisting workers to organise in workplaces largely managed by ATNCs is the sustainable way to improve labour conditions in Asia. We are now trying to develop a participatory labour monitoring system, thorough which external monitoring groups can work for better working conditions, together with workers and without harming workers' autonomy.

This book is designed for this purpose. The introductory chapters introduce us to the basic concepts surrounding codes of conduct, bringing together information on existing codes of conduct as well as a brief history of their development. This is followed by papers by Apo Leung, Monina Wong and Junya Yimprasert, which describe both the utility and limits of corporate codes of conduct in improving working conditions, based on the authors' varied experiences in critically utilising corporate codes of conduct. In the last chapter, my own contribution explores the rather intrinsic limits of codes of conduct, and tries to identify conditions on which we can engage with TNCs on codes, rather than falling back into the myths that have been created surrounding them.

Many people and organisations have been involved in compiling and completing this book. Financial and moral support from War on Want made it possible for us to publish these papers. Pranjali Tiwari wrote the introductory chapters, and edited and laid out of all the other pieces in a reader-friendly form. We thank the authors who spent significant time writing and revising their work, in spite of their busy schedules as activists. Most of all, we would like to thank the workers whose continual struggle has made it possible for us to develop a critical approach to codes of conduct. We hope that this book contributes to promoting further discussions on participatory monitoring and solidarity between workers and external monitoring groups.

Dae-oup Chang,
Co-ordinator, Asian Transnational Corporations Monitoring Network

Introductory Chapters

Chapter 1

What are Codes of Conduct?

Codes Of Conduct

Introduction

Codes of Conduct for transnational corporations (TNCs) have been the subject of much fanfare and debate over the past 10 years. The term has become increasingly popular as a 'buzzword' in the corporate world, alongside such phrases as 'corporate social responsibility', 'corporate citizenship', or 'corporate governance'. More and more companies are adopting this sort of language in a bid to proclaim their 'ethical business standards'. Indeed, many TNCs operating or contracting out to facilities in Asia cite Codes of Conduct as a solution to abuses in the workplace, and as a means of achieving fair and just working conditions, and thus the number of Codes drafted around the region is growing. Labour activists and campaigners have remained sceptical of such claims, however, claiming that there are severe limitations to such Codes of Conduct, even in the best case scenarios.

But what is a Code of Conduct, and what does it hope to achieve? What are the problems and concerns surrounding them? Finally, what approaches and strategies have unions, labour activists, and workers in Asia taken towards Codes of Conduct? Can these documents be of any use to us, or are they fundamentally flawed?

In this booklet, we seek to address these and other basic questions that arise on the issue of Codes of Conduct. The introductory chapters will seek to define and outline Codes of Conduct and the issues around them, as well as provide some examples of CoCos. The following chapters will address various responses to Codes of Conduct. The concluding chapters will hope to provide a strategic outlook on the issue, aiming to suggest approaches that NGOs, activists, and unions could take.

What is a Code of Conduct?

A Code of Conduct (sometimes called a Code of Practice or Charter) can be loosely defined as a document that outlines a set of principles and expectations regarding behaviour. A Code of Conduct can be created for any structure: a company, government, union, or charity. The purpose of a Code of Conduct, however, is generally the same in any organisation: to regulate the behaviour of a person or entity who is a member.

The key issues involved with such a document include not only the content, or the principles themselves, but also the implementation and monitoring of them.

In terms of manufacturing, Codes of Conduct for industrial sectors, as well as individual companies, have been increasingly popular with corporations and governments over the past 15 or so years. The contents of these Codes generally promote standards of 'ethical business practice', outlining how companies should behave towards workers, and the rights that workers should enjoy. Some have also referred to broader issues, such as protecting the environment. As mentioned above, companies often refer this to as 'Corporate Social Responsibility', or 'Corporate Governance'.

It is hard to pinpoint the origins of these particular Codes of Conduct, but attempts at regulating the activities of corporations were made at the international-level as early as the 1970s. These attempts did not involve corporations, and instead centred around NGO, UN, and civil society actors attempting to have a say in the trend of radical economic restructuring (so-called "globalization") that was leading to greater freedom for capital and increasing social degradation worldwide.

In 1977, for example, the International Labour Organisation (ILO) issued the 'Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy'¹, which sought to "guide the governments, the employers' and workers' organisations and the multinational enterprises in taking such measures and

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actions and adopting such social policies... that further social progress."² Similar declarations were made by organisations such as the UN OECD, for example, in its 1976 'Guidelines for Multinational Enterprises' (reproduced in part as Appendix A). But, among other factors, a lack of means to enforce these guidelines and principles led to difficulties in implementing such documents.

In the years since then, Northern TNCs in particular faced increasing pressure from the anti-corporate globalization movement, including activist groups and consumer-campaigners in Northern countries. Groups such as the Clean Clothes Campaign in Europe and the anti-sweatshop movement in the US targeted TNCs based in Northern countries for their abuses abroad.

Perhaps as a result, a flood of company Codes of Conduct arrived in the early 1990s, particularly from corporations involved in the garment, footwear, and textile industries (often singled out for criticism by activists). These were quite different in nature from the ILO and OECD documents mentioned above. Most of the Codes were internal, issued by TNCs and industry-run organisations based in the US, UK, and Australia³. The OECD describes these Codes as "voluntary" commitments made by companies and industry organisations, and counts 246 of these to have been drafted in the 1990s.

The statistics on these Codes are quite interesting, and are perhaps indicative of their nature. 118 Codes were drafted by corporations themselves and 92 by industry organisations. The rest were issued through partnerships with unions and NGOs, and by inter-government groups. A mere 11% of the total number included provisions for 'external monitoring' (as opposed to 'internal monitoring', where the company monitors itself) to ensure compliance with the Code of Conduct.

Among the Codes that related specifically to the garment and textile industries, around 62% made no mention of monitoring mechanisms, and only 50% mentioned freedom of association as a basic right to be enjoyed by workers.

Reaction

Such internal Codes of Conduct were criticized for their lack of credibility by virtually all independent unions, activists, and NGOs. Many groups argued that while Codes of Conduct could possibly be an effective means of holding companies responsible for their activities, corporations presently enjoyed complete control over the drafting, monitoring and enforcement processes, and therefore used the Codes of Conduct for little more than publicity for their own aims.

Campaigns against the abuses of TNCs gathered momentum in many countries, and a number of high-profile cases of abuse highlighted by activists began to have an impact on the image of several TNCs.

As far as Asia was concerned, important cases highlighted in the 1990s by activist groups and NGOs were the fires at factories in Kader, Thailand, and Zhili, China. The Kader fire in May 1993 killed 188 workers and injured over 400. The Zhili factory, which produced toys for a European company, caught fire in November 1993, killing and injuring around 150 workers. Both fires were linked to criminal negligence of safety provisions on the part of the factory owners and managers, and they became major features of Occupational Health and Safety (OSH) campaigns in Asia. After the Zhili Fire, one of the demands of campaigners in Hong Kong was that the toy industry in the area endorse a Code of Conduct guaranteeing safe working conditions in toy-producing factories.

Other tragic situations and campaigns around the world forced corporations and industries to consider the issue for Codes of Conduct more seriously.

Unfortunately for workers and campaigners, corporations were again able to take the initiative at this point in time. This was mainly due to a lack of organisation among workers and their supporters, lack of knowledge surrounding the Code of Conduct issue, and lack of sufficient pressure on companies.

Instead of allowing workers the right to organise independ-

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ently, define their own problems and monitoring procedures, several corporations, often with governments involved, drafted sectoral and even seemingly external Codes of Conduct which outlined a set of “ethical” business standards and promised to uphold a set of “labour rights”. The main criticism of such Codes of Conduct – such as Social Accountability 8000 (SA8000), the White House Apparel Industry Partnership, and the Ethical Trading Initiative – was that they defined the concept of “labour rights” and promised to monitor and uphold these rights, without actually involving labour in any of the processes.

Developing parallel to these codes were such industry-heavy organisations such as the Fair Labor Association (FLA) in the US. The FLA is a garment industry supported monitoring organisation that claims to promote ‘independent monitoring’ of production facilities in order to safeguard workers’ rights. Its members include 13 of the largest corporations in the industry, as well as university administrations, and members of the legal community. Such an institutionalisation of the Code of Conduct process allowed corporations to use as publicity and even proclaimed their membership of groups such as the FLA as proof of their commitment to labour rights. The US footwear corporation Nike, for example claims prominently on its website that their goal through Codes and FLA membership is to “provide workers making our products with improving workplaces.”⁴

Activists, however, maintained that institutional initiatives such as the FLA were “insufficient to make changes in the apparel industry, serving as no more than a public relations cover up for garment industry giants.” The main criticisms of such groups have been “the amount of power given to corporations in the organisation, lack of commitment to public disclosure and accountability, and failure to include organisations representing apparel workers in its organisational structure and monitoring programmes.”⁵

The FLA is not the only institutional measure aimed at providing values or guidelines for industry, however. Many other measures exist, and often involve different actors and participants with an interest in the production process. These measures are often

known as 'stakeholder initiatives'.

One example of such a measure is the Global Alliance (GA). The GA is essentially a multilateral coalition launched in April 1999, and involves foundations such as the International Youth Foundation, multinational corporations such as Nike and Gap, and international institutions such as the World Bank. In its mission statement, the GA says that its aim is to collect feedback from workers and identify their workplace issues, then design and implement training programmes based on this feedback. Training is also given to management regarding labour issues and possible means of improving the workplace. Despite such claims, the GA has faced similar criticism of its credibility as the FLA. Many campaigners and labour advocates have argued that corporations and neoliberal institutions such as the World Bank dominate the GA's membership, and that it therefore has a very skewed approach to 'workers rights'.

The United Nations is another, different sort of actor that has come up with a stakeholder initiative aimed at providing guidelines for corporations. The document known as the 'Global Compact' has been drafted at the UN, and it is hoped that companies will sign on to the Compact, pledging to uphold a set of nine basic principles in the areas of human rights, labour, and the environment. These principles themselves are derived from existing UN documents such as the Universal Declaration of Human Rights, the Rio Declaration on Environment and Development, and the ILO Declaration on Fundamental Principles and Rights at Work. The principles include the stipulations that corporations should:

- .. Support and respect the protection of internationally proclaimed human rights within their sphere of influence
- .. Make sure that they are not complicit in human rights abuses.
- .. Uphold the freedom of association and the effective recognition of the right to collective bargaining;
- .. Uphold the elimination of all forms of forced and compulsory labour
- .. Uphold the effective abolition of child labour
- .. Eliminate discrimination in respect of employment and occupation.

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- .. Support a precautionary approach to environmental challenges
- .. Undertake initiatives to promote greater environmental responsibility
- .. Encourage the development and diffusion of environmentally friendly technologies

Though the Global Compact is an attempt by a major international organisation to make companies 'act responsibly', the agreement is not binding on its members in any way, legally or otherwise. Therefore, implementation is essentially voluntary, and the Compact can, at best, only encourage companies to follow the values and principles it outlines.

One institutional measure that is often popular with workers' advocates is known as the Workers' Rights Consortium (WRC). The WRC is an American-initiated measure that has been drafted by student activists, university administrations, labour researchers and campaigners, and some workers. The WRC was basically created to be an independent and external factory-monitoring organisation, one that had more credibility and freedom from corporate interests than a group such as the FLA. The WRC was also created with a very specific scope, exclusively targeting factories that produce merchandise and clothing for universities in the United States. Many of these factories are located in Asia and Central America, and the WRC states as its aim that these facilities should "respect the basic rights of workers".

The WRC has come up with its own model Code of Conduct which it hopes to have adopted by university administrations, and which it will then enforce through its own monitoring. The Code of Conduct states in its introduction the basic premise that "Universities participating in the Worker Rights Consortium are each committed to conducting their business affairs in a socially responsible and ethical manner consistent with their respective educational, research and/or service missions, and to protecting and preserving the global environment." The Code then goes on to outline the workplace standards – such as wages and working hours – that are acceptable, rules for compliance and disclosure, and remedies for violations. (The full text of the WRC Model Code of Conduct is reproduced in Appendix B).

There have been some interesting practical examples in which the WRC has been involved, that give us an understanding as to how the group operates. One very recent example involved the PT Kolon Langgeng factory in Jakarta, Indonesia. This factory produces shirts, pants, jackets, and shirts for the US multinational Nike – products which also bear the logos of US colleges and universities – and faced allegations of abuses against employees. Workers at the factory had complained to WRC representatives that the factory was involved in violations of Indonesian labour laws in the areas of minimum wage and health & safety. After a preliminary assessment, the WRC sent an ‘assessment team’ to the facility. The team included Jakarta-based labour lawyers, labour rights experts, and experts in occupational health and safety. This assessment team confirmed the complaints voiced by workers, and acknowledged the existence of violations of the WRC Code of Conduct, after which the organisation produced a formal document assessing its findings. The WRC’s subsequent debriefing of the incident states that since this assessment procedure, “there has been some substantial progress at PT Kolon Langgeng, especially in the areas of freedom of association, legally mandated health benefits, and the reinstatement of unlawfully terminated workers.”⁷ A similar incident was reported and assessed at the Tarrant Ajalpan factory in Mexico, with comparable results.

Student activist groups in the US have used the WRC as a pressure tool at some university campuses, and a campaign group called United Students Against Sweatshops has developed, stating membership the WRC as one of its central demands for all universities. In that sense, the WRC could also be an example of how institutionalized Code of Conduct have been useful in creating more concrete and tangible demands for activists in the north.

Fundamental Issues

However, many activists and advocates continue to argue that even if the best existing examples of Codes of Conduct – such as the WRC’s model Code – were fully implemented, there may indeed be an improvement in factors such as wages or working conditions, but the

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basic issue of workers' rights would still not be addressed. In this sense, many campaigners argue that even the 'independent monitoring' proclaimed by the WRC or many corporations would not be enough even if it were fully implemented. This is because workers would continue to have no say in the matters of where, when, and how they work. TNCs and their 'independent monitors' would essentially continue to run workers' lives, determining what their rights were, and whether or not they were being exercised.

A fundamental issue surrounding Codes of Conduct, then, is credibility, and the extent to which they can be taken seriously. This, in turn, depends both how (and by whom) the Code is designed, and how (and by whom) it is monitored and enforced. A more basic point is one of power: who has the power to determine what is acceptable in the workplace, and who has the power to make sure these standards are met? These are some fundamental questions that continue to be posed by groups dealing with the issue of Codes of Conduct, and are questions that are faced by workers on shop floors

Appendix A

Organisation for Economic Co-operation and Development

Statement by the Chair of the Ministerial

Peter Costello

June 2000

Over the past two years, OECD has conducted a major review of its *Guidelines for Multinational Enterprises* to ensure their continued relevance and effectiveness in the rapidly changing global economy. I am pleased to announce that, today, the governments of 29 member countries and four non-members – Argentina, Brazil, Chile, and the Slovak Republic – have adopted a new set of *Guidelines* and enhanced implementation procedures.

The *Guidelines* are recommendations on responsible business conduct addressed by governments to multinational enterprises operating in or from the 33 adhering countries. While many businesses have developed their own codes of conduct in recent years, the OECD *Guidelines* are the only multilaterally endorsed and comprehensive code that governments are committed to promoting. The *Guidelines* express the shared values of the governments of countries that are the source of most of the world's direct investment flows and home to most multinational enterprises. They apply to business operations world-wide.

This initiative is very timely. It is widely recognised that foreign investment is important for economic growth and that multinational enterprises contribute to economic, social, and environmental progress. At the same time, public concerns remain about the impact of their activities on home and host countries. The new *Guidelines* represent an important step in responding to some of these concerns while improving the climate for international investment. The basic premise of the *Guidelines* is that principles agreed internationally can help prevent conflict and to build an atmosphere of confidence between multinational enterprises and the societies in which they operate.

The *Guidelines* are not a substitute for, nor do they override, applicable law. They represent standards of behaviour supplemental to applicable law and, as such, do not create conflicting requirements.

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The new text of the *Guidelines* contains far-reaching changes that reinforce the economic, social, and environmental elements of the sustainable development agenda. Recommendations have been added on the elimination of child labour and forced labour, so they now cover all internationally recognised core labour standards. A recommendation on human rights has been introduced, and new chapters on combating corruption and consumer protection have been added. The environment section now encourages multinational enterprises to raise their environmental performance through improved internal environmental management and better contingency planning for environmental impacts. The chapter on disclosure and transparency has been updated to reflect the *OECD Principles on Corporate Governance* and to encourage social and environmental accountability.

Implementation procedures have been significantly improved. While the *Guidelines'* recommendations are addressed to business, governments through their network of National Contact Points are responsible for promoting the *Guidelines*, handling enquiries, and helping to resolve issues that arise in specific instances. The Review has provided considerable guidance to help National Contact Points to carry out their duties and it has established mechanisms for promoting transparency, accountability, and best practice. The OECD Committee on International Investment and Multinational Enterprises (CIME) remains the responsible body for clarifying the meaning of the *Guidelines* and overseeing their effectiveness.

The review process itself deserves special mention. The CIME conducted an extensive series of consultations with the business community, labour representatives, non-governmental organisations, and non-member countries. Opportunities for public comment were offered via the Internet. This effort towards increased transparency and openness provided essential inputs for the Review and reflects an important evolution in the way OECD goes about its business.

For decades, the OECD has promoted co-operation on international investment through its Declaration on International Investment and Multinational Enterprises. The Declaration sets forth non-binding principles and standards addressed both to governments and to enterprises. The *Guidelines*, which are addressed

to enterprises, remain an important part of this balanced package and contribute to a favourable investment climate. The other elements of the package contain commitments by governments to provide national treatment for foreign-controlled enterprises, to avoid imposing conflicting requirements on enterprises and to co-operate regarding investment incentives and disincentives. Non OECD Members are encouraged to adhere to this Declaration.

As a final point, I would like to emphasise that the task of making the Guidelines a meaningful instrument for the international business community has only just begun. The ongoing support and involvement of the business community, labour representatives, and non-governmental organisations will be crucial if the revised *Guidelines* are to be a useful reference point and tool for promoting corporate social responsibility. Non-adhering governments too have an important contribution to make. Ultimately, the success and effectiveness of the *Guidelines* will depend on the responsibility and good faith of all parties involved with their promotion and implementation.

'Guidelines for Multinational Enterprises'
(excerpts)

Commentary on Employment and Industrial Relations

This chapter opens with a chapeau that includes a reference to “applicable” law and regulations, which is meant to acknowledge the fact that multinational enterprises, while operating within the jurisdiction of particular countries, may be subject to *national*, *sub-national*, as well as *supra-national* levels of regulation of employment and industrial relations matters. The terms “prevailing labour relations” and “employment practices” are sufficiently broad to permit a variety of interpretations in light of different national circumstances - for example, different bargaining options provided for employees under national laws and regulations.

The International Labour Organisation (ILO) is the competent body to set and deal with international labour standards, and to promote fundamental rights at work as recognised in its 1998 Declaration on Fundamental Principles and Rights at Work. The *Guidelines*, as a non-binding instrument, have a role to play in

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promoting observance of these standards and principles among multinational enterprises. The provisions of the *Guidelines* chapter echo relevant provisions of the 1998 Declaration, as well as the ILO's 1977 Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. The Tripartite Declaration sets out principles in the fields of employment, training, working conditions, and industrial relations, while the OECD Guidelines cover all major aspects of corporate behaviour. The OECD Guidelines and the ILO Tripartite Declaration refer to the behaviour expected from enterprises and are intended to parallel and not conflict with each other. The ILO Tripartite Declaration can therefore be of use in understanding the *Guidelines* to the extent that it is of a greater degree of elaboration. However, the responsibilities for the follow-up procedures under the Tripartite Declaration and the *Guidelines* are institutionally separate.

The first paragraph of this chapter is designed to echo all four fundamental principles and rights at work which are contained in the ILO's 1998 Declaration, namely the freedom of association and right to collective bargaining, the effective abolition of child labour, the elimination of all forms of forced or compulsory labour, and non-discrimination in employment and occupation. These principles and rights have been developed in the form of specific rights and obligations in ILO Conventions recognised as fundamental.

The chapter recommends that multinational enterprises contribute to the effective abolition of child labour in the sense of the ILO 1998 Declaration and ILO Convention 182 concerning the worst forms of child labour. Long-standing ILO instruments on child labour are Convention 138 and Recommendation 146 (both adopted in 1973) concerning minimum ages for employment. Through their labour management practices, their creation of high quality, well paid jobs and their contribution to economic growth, multinational enterprises can play a positive role in helping to address the root causes of poverty in general and of child labour in particular. It is important to acknowledge and encourage the role of multinational enterprises in contributing to the search for a lasting solution to the problem of child labour. In this regard, raising the standards of education of children living in host countries is especially noteworthy.

The chapter also recommends that enterprises contribute to the elimination of all forms of compulsory labour, another principle

derived from the 1998 ILO Declaration. The reference to this core labour right is based on the ILO Conventions 29 of 1930 and 105 of 1957. C. 29 requests that governments “suppress the use of forced or compulsory labour in all its forms within the shortest possible period”, while C. 105 requests of them to “suppress and not to make use of any form of forced or compulsory labour” for certain enumerated purposes (e.g. as a means of political coercion or labour discipline), and “to take effective measures to secure [its] immediate and complete abolition”. At the same time, it is understood that the ILO is the competent body to deal with the difficult issue of prison labour, in particular when it comes to the hiring-out of prisoners to (or their placing at the disposal of) private individuals, companies or associations.

The principle of non-discrimination with respect to employment and occupation is considered to apply to such terms and conditions as hiring, discharge, pay, promotion, training and retirement. The list of non-permissible grounds for discrimination which is taken from ILO Convention 111 of 1958 considers that any distinction, exclusion, or preference on these grounds is in violation of the Convention. At the same time, the text makes clear that the terms do not constitute an exhaustive list. Consistent with the provisions in paragraph 1d), enterprises are expected to promote equal opportunities for women and men with special emphasis on equal criteria for selection, remuneration, and promotion, and equal application of those criteria, and prevent discrimination or dismissals on the grounds of marriage, pregnancy, or parenthood.

The reference to consultative forms of employee participation in paragraph two of the *Guidelines* is taken from ILO Recommendation 94 of 1952 concerning Consultation and Co-operation between Employers and Workers at the Level of the Undertaking. It also conforms to a provision contained in the 1977 ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. Such consultative arrangements should not substitute for employees’ right to bargain over terms and conditions of employment. A recommendation on consultative arrangements with respect to employment arrangements is also part of paragraph eight.

In paragraph three of this chapter, information provided by companies to their employees is expected to provide a “true and fair view” of performance. It relates to the following: the structure of the

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enterprise, its economic and financial situation and prospects, employment trends, and expected substantial changes in operations, taking into account legitimate requirements of business confidentiality. Considerations of business confidentiality may mean that information on certain points may not be provided, or may not be provided without safeguards.

In paragraph four, employment and industrial relations standards are understood to include compensation and working-time arrangements. The reference to occupational health and safety implies that MNEs are expected to follow prevailing regulatory standards and industry norms to minimise the risk of accidents and injury to health arising out of, linked with, or occurring in, the course of employment. This encourages enterprises to work to raise the level of performance with respect to occupational health and safety in all parts of their operation even where this may not be formally required by existing regulations in countries in which they operate. It also encourages enterprises to respect employees' ability to remove themselves from a work situation when there is reasonable justification to believe that it presents an imminent and serious risk to health or safety. Reflecting their importance and complementarities among related recommendations, health and safety concerns are echoed elsewhere in the *Guidelines*, most notably in chapters on Consumer Interests and the Environment.

The recommendation in paragraph five of the chapter encourages MNEs to recruit an adequate workforce share locally, including managerial personnel, and to provide training to them. Language in this paragraph on training and skill levels complements the text in paragraph four of the General Policies chapter on encouraging human capital formation. The reference to local personnel complements the text encouraging local capacity building in paragraph three of the General Policies chapter.

Paragraph six recommends that enterprises provide reasonable notice to the representatives of employees and relevant government authorities, of changes in their operations which would have major effects upon the livelihood of their employees, in particular the closure of an entity involving collective layoffs or dismissals. As stated therein, the purpose of this provision is to afford an opportunity for co-operation to mitigate the effects of such changes. This is an important principle that is widely reflected in the

industrial relations laws and practices of adhering countries, although the approaches taken to ensuring an opportunity for meaningful co-operation are not identical in all adhering countries. The paragraph also notes that it would be appropriate if, in light of specific circumstances, management were able to give such notice prior to the final decision. Indeed, notice prior to the final decision is a feature of industrial relations laws and practices in a number of adhering countries. However, it is not the only means to ensure an opportunity for meaningful co-operation to mitigate the effects of such decisions, and the laws and practices of other adhering countries provide for other means such as defined periods during which consultations must be undertaken before decisions may be implemented.

Commentary on the Environment

The text of the Environment Chapter broadly reflects the *principles* and objectives contained in the Rio Declaration on Environment and Development, in Agenda 21 (within the Rio Declaration). It also takes into account the (Aarhus) Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters and reflects *standards* contained in such instruments as the ISO Standard on Environmental Management Systems.

Sound environmental management is an important part of sustainable development, and is increasingly being seen as both a business responsibility and a business *opportunity*. Multinational enterprises have a role to play in both respects. Managers of these enterprises should therefore give appropriate attention to environmental issues within their business strategies. Improving environmental performance requires a commitment to a systematic approach and to continual improvement of the system. An environmental management system provides the internal framework necessary to control an enterprise's environmental impacts and to integrate environmental considerations into business operations. Having such a system in place should help to assure stockholders, employees and the community that the enterprise is actively working to protect the environment from the impacts of its activities.

In addition to improving environmental performance, instituting an environmental management system can provide eco-

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conomic benefits to companies through reduced operating and insurance costs, improved energy and resource conservation, reduced compliance and liability charges, improved access to capital, improved customer satisfaction, and improved community and public relations.

In the context of these *Guidelines*, “sound environmental management” should be interpreted in its broadest sense, embodying activities aimed at controlling both direct and indirect environmental impacts of enterprise activities over the long-term, and involving both pollution control and resource management elements.

In most enterprises, an internal control system is needed to manage the enterprise’s activities. The environmental part of this system may include such elements as targets for improved performance and regular monitoring of progress towards these targets.

Information about the activities of enterprises and associated environmental impacts is an important vehicle for building confidence with the public. This vehicle is most effective when information is provided in a transparent manner and when it encourages active consultation with stakeholders such as employees, customers, suppliers, contractors, local communities and with the public-at-large so as to promote a climate of long-term trust and understanding on environmental issues of mutual interest

Normal business activity can involve the ex ante assessment of the potential environmental impacts associated with the enterprise’s activities. Enterprises often carry out appropriate environmental impact assessments, even if they are not required by law. Environmental assessments made by the enterprise may contain a broad and forward-looking view of the potential impacts of an enterprise’s activities, addressing relevant impacts and examining alternatives and mitigation measures to avoid or redress adverse impacts. The *Guidelines* also recognise that multinational enterprises have certain responsibilities in other parts of the product life cycle.

Several instruments already adopted by countries adhering to the *Guidelines*, including Principle 15 of the Rio Declaration on Environment and Development, enunciate a “precautionary approach”. None of these instruments is explicitly addressed to enterprises, although enterprise contributions are implicit in all of them.

The basic premise of the *Guidelines* is that enterprises should act as soon as possible, and in a proactive way, to avoid, for instance, serious or irreversible environmental damages resulting from their activities. However, the fact that the *Guidelines* are addressed to enterprises means that no existing instrument is completely adequate for expressing this recommendation. The *Guidelines* therefore draw upon, but do not completely mirror, any existing instrument.

The *Guidelines* are not intended to reinterpret any existing instruments or to create new commitments or precedents on the part of governments — they are intended only to recommend how the precautionary approach should be implemented at the level of enterprises. Given the early stage of this process, it is recognised that some flexibility is needed in its application, based on the specific context in which it is carried out. It is also recognised that governments determine the basic framework in this field, and have the responsibility to periodically consult with stakeholders on the most appropriate ways forward.

The *Guidelines* also encourage enterprises to work to raise the level of environmental performance in all parts of their operations, even where this may not be formally required by existing practice in the countries in which they operate.

For example, multinational enterprises often have access to technologies or operating procedures which could, if applied, help raise environmental performance overall. Multinational enterprises are frequently regarded as leaders in their respective fields, so the potential for a “demonstration effect” on other enterprises should not be overlooked. Ensuring that the environment of the countries in which multinational enterprises operate also benefits from available technologies is an important way of building support for international investment activities more generally.

Enterprises have an important role to play in the training and education of their employees with regard to environmental matters. They are encouraged to discharge this responsibility in as broad a manner as possible, especially in areas directly related to human health and safety.

Appendix B

Workers' Rights Consortium Model Code of Conduct

Member schools may adopt this code as the standard they will require of licensees. The Worker Rights Consortium will use this code of conduct as the basis for its investigations.

I. Introduction

A. The Universities participating in the Worker Rights Consortium are each committed to conducting their business affairs in a socially responsible and ethical manner consistent with their respective educational, research and/or service missions, and to protecting and preserving the global environment.

B. While the Consortium and the Member Institutions believe that Licensees share this commitment, the Consortium and the Member Institutions have adopted the following Code of Conduct (the "Code") which requires that all Licensees, at a minimum, adhere to the principles set forth in the Code.

C. Throughout the Code the term "Licensee" shall include all persons or entities which have entered into a written "License Agreement" with the University manufacture "Licensed Articles" (as that term is defined in the License Agreement) bearing the names, trademarks and/or images of one or more Member Institutions. The term "Licensee" shall for purposes of the Code, and unless otherwise specified in the Code, encompass all of Licensees' contractors, sub-contractors, or manufacturers who produce, assemble, or package finished Licensed Articles for the consumer.

II. Notice

A. The principles set forth in the Code shall apply to all Licensees.

B. As a condition of being permitted to produce and/or sell Licensed Articles, Licensees must comply with the Code. Licensees are required to adhere to the Code within six (6) months of notification of the Code

and as required in applicable license agreements.

III. Standards

A. Licensees agree to operate work places and contract with companies whose work places adhere to the standards and practices described below. The University prefers that Licensees exceed these standards.

B. Legal Compliance: Licensees must comply with all applicable legal requirements of the country (ies) of manufacture in conducting business related to or involving the production or sale of Licensed Articles. Where there are differences or conflicts with the Code and the laws of the country(ies) of manufacture, the higher standard shall prevail, subject to the considerations stated in Section VI.

C. Employment Standards: Licensees shall comply with the following standards:

1. Wages and Benefits: Licensees recognise that wages are essential to meeting employees' basic needs. Licensees shall pay employees, as a floor, wages and benefits which comply with all applicable laws and regulations, and which provide for essential needs and establish a dignified living wage for workers and their families. [A living wage is a "take home" or "net" wage, earned during a country's legal maximum work week, but not more than 48 hours. A living wage provides for the basic needs (housing, energy, nutrition, clothing, health care, education, potable water, childcare, transportation and savings) of an average family unit of employees in the garment manufacturing employment sector of the country divided by the average number of adult wage earners in the family unit of employees in the garment manufacturing employment sector of the country.]

2. Working Hours: Hourly and/or quota-based wage employees shall (i) not be required to work more than the lesser of (a) 48 hours per week or (b) the limits on regular hours allowed by the law of the country of manufacture, and (ii) be entitled to at least one day off in

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every seven day period, as well as holidays and vacations.

3. **Overtime Compensation:** All overtime hours must be worked voluntarily by employees. In addition to their compensation for regular hours of work, hourly and/or quota-based wage employees shall be compensated for overtime hours at such a 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 one and one-half their regular hourly compensation rate.

4. **Child Labour:** Licensees shall not employ any person at an age younger than 15 (or 14, where, consistent with International Labour Organisation (ILO) practices for developing countries, the law of the country of manufacture allows such exception). Where the age for completing compulsory education is higher than the standard for the minimum age of employment stated above, the higher age for completing compulsory education shall apply to this section. Licensees agree to consult with governmental, human rights, and non-governmental organisations, and to take reasonable steps as evaluated by the University to minimise the negative impact on children released from employment as a result of implementation or enforcement of the Code.

5. **Forced Labour:** There shall not be any use of forced prison labour, indentured labour, bonded labour or other forced labour.

6. **Health and Safety:** Licensees 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 Licensee facilities. In addition, Licensees must comply with the following provisions:

a. The Licensee shall ensure that its direct operations and those of any subcontractors comply with all workplace safety and health regulations established by the national government where the production facility is located, or with Title 29 CFR of the Federal Code of Regulations, enforced by Federal OSHA (Occupational Safety and Health Administration), whichever regulation is more health protective for a given hazard.

b. The Licensee shall ensure that its direct operations and subcontractors comply with all health and safety conventions of the ILO ratified

and adopted by the country in which the production facility is located.

7. Non-discrimination: 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.

8. Harassment or Abuse: Every employee shall be treated with dignity and respect. No employee shall be subject to any physical, sexual, psychological, or verbal harassment or abuse. Licensees will not use or tolerate any form of corporal punishment.

9. Freedom of Association and Collective Bargaining: Licensees shall recognise and respect the right of employees to freedom of association and collective bargaining. No employee shall be subject to harassment, intimidation, or retaliation in their efforts to freely associate or bargain collectively. Licensees shall not cooperate with governmental agencies and other organisations that use the power of the State to prevent workers from organising a union of their choice. Licensees shall allow union organisers free access to employees. Licensees shall recognise the union of the employees' choice.

10. Women's Rights

- a. Women workers will receive equal remuneration, including benefits; equal treatment; equal evaluation of the quality of their work; and equal opportunity to fill all positions open to male workers.
- b. Pregnancy tests will not be a condition of employment, and will not be demanded of employees.
- c. Workers who take maternity leave will not face dismissal nor threat of dismissal, loss of seniority or deduction of wages, and will be able to return to their former employment at the same rate of pay and benefits.
- d. Workers will not be forced or pressured to use contraception.
- e. Workers will not be exposed to hazards, including glues and solvents that may endanger their safety, including their reproductive health.

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f. Licensees shall provide appropriate services and accommodation to women workers in connection with pregnancy.

IV. Compliance and Disclosure

Licensees (for themselves and on behalf of their contractors, subcontractors, or manufacturers) shall disclose to the Worker Rights Consortium, the University, and the public the information set forth in Sections A, B, and C below.

A. Upon execution and renewal of the License Agreement and upon the selection of any new manufacturing facility which produces Licensed Articles, the company names, contacts, addresses, phone numbers, e-mail addresses, and nature of the business association for all such facilities which produce Licensed Articles;

B. at least sixty (60) days prior to the end of each contract year of the License Agreement, written assurance that (i) Licensees are in compliance with the Code and/or (ii) licensees are taking reasonable steps to remedy non-compliance in facilities found not to be in compliance with the code;

C. at least sixty (60) days prior to the end of each contract year of the License Agreement, a summary of those steps taken to remedy material violations, and/or difficulties encountered, during the preceding year in implementing and enforcing the Code at all of Licensees' facilities which produce Licensed Articles.

V. Verification

It shall be the responsibility of Licensees (for themselves and on behalf of their contractors, subcontractors, or manufacturers) to ensure their compliance with the Code. The WRC and its Member Institutions will undertake efforts to determine and clearly define the obligations associated with the development of adequate methods and training for independent external monitoring, as guided by the principles in the founding document of the Consortium.

VI. Labour Standards Environment

In countries where law or practice conflicts with these labour standards, Licensees agree to consult with governmental, human rights, labour and business organisations and to take effective actions as evaluated by the University to achieve full compliance with each of these standards. Licensees further agree to refrain from any actions that would diminish the protections of these labour standards. In addition to all other rights under the Licensing Agreement, the University reserves the right to refuse renewal of Licensing Agreements for goods made in countries where:

- A. progress toward implementation of the employment standards in the Code is no longer being made; and
- B. compliance with the employment standards in the Code is deemed impossible. The University shall make such determinations based upon examination of reports from governmental, human rights, labour, and business organisations and after consultation with the relevant Licensees.

VII. Remediation

Remedies herein apply to violations which occur after the Effective Date of the Code.

A. If a Licensee has failed to self-correct a violation of the Code, the University will consult with the Licensee (for itself and on behalf of its contractors, subcontractors, or manufacturers) to determine appropriate corrective action.

B. The remedy will, at a minimum, include requiring the licensee to take all steps necessary to correct such violations including, without limitation:

1. Paying all applicable back wages found due to workers who manufactured the licensed articles.
2. Reinstatement of any worker found to have been unlawfully dismissed.

C. If agreement on corrective action is not reached, and/or the action does not result in correction of the violation within a specified rea-

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sonable time period, the University reserves the right to

1. require that the Licensee terminate its relationship with any contractor, subcontractor, or manufacturer that continues to conduct its business in violation of the Code, and/or
2. terminate its relationship with any Licensee that continues to conduct its business in violation of the Code.

D. In either event, the University will provide the Licensee with thirty (30) days written notice of termination. In order to ensure the reasonable and consistent application of this provision, the University will seek advice from the Worker Rights Consortium regarding possible corrective measures and invocation of options 1 and 2 above.

Introductory Chapters

Chapter 2

Corporate Codes of Conduct

Codes Of Conduct

Introduction

There is no standard definition of a 'corporate Code of Conduct', and there are different types of such Codes. In general, they can be defined as statements, issued by corporations, which relate to ethical standards and 'values' for the conduct of their business. Aside from this general similarity, there are often vast differences in the content of corporate Codes, and they can address virtually any issue, including workplace standards, workers' rights, or just overall outlook of a corporation. They can either be for internal or external viewing.

There are also many differences from company to company in the way corporate Codes are drafted and implemented. An important general point in this regard, however, is that these Codes are completely voluntary and dependent on the corporation itself for creation and implementation. In the past, authors of corporate Codes have included company founders, boards of directors, CEOs, high-level management, legal departments, or hired consultants. Sometimes the creation process involves employee representatives or selected employees, but this again depends on the will of the company.

Types of Corporate Codes

Some organizations have observed three general types of corporate Codes:

- Compliance codes: statements that guide and prohibit certain activities.**
- Corporate credos: extremely general statements of a corporation's 'values' and 'ethics'.**
- Management philosophy statements: Formal pronouncements by the company or CEO regarding the conduct of business (a term usually used by US corporations).**

The US Labor Department notes other formats:

·**Special documents:** Public documents regarding the way a corporation intends to do business with suppliers, customers, consumers, and shareholders.

·**Circulated letters:** Letters to suppliers, contractors, and/or buying agents outlining ways of conducting business.

Compliance certificates: More formal statement of standards.

Suppliers, buying agents, and contractors often have to certify in writing that they will follow them.

Purchase orders or letters of credit: Suppliers have contractual obligations to adhere to standards set by company.

Examples

Below is an example of a very general corporate Code of Conduct, drafted by the Japanese corporation Mitsubishi in 2000, and revised in 2002 and 2003. This would probably be an example of a 'Corporate credo.'

This particular style of Code is more like a mission statement or very broad definition of principles. It does not deal with manufacturing or any specific sphere of activity, and essentially is a general call for "fairness" and "respect" in all company activities. The scope of this Code, as well as the terms it uses, as often so vague that it has little value other than for corporate PR and internal documentation purposes.

Mitsubishi Corporation Code of Conduct

Basic Policy

All officers and employees of Mitsubishi Corporation (the "Company") must comply with applicable laws, rules, and regulations where they operate, international standards and rules, and all internal corporate rules and policies. In addition, all officers and employees of Mitsubishi Corpora-

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tion must act in a socially responsible manner by complying with generally accepted standards in the conduct of their business.

Basic Principles

- 1. Respect human rights, and refrain from discriminating on any basis and engaging in any form of harassment.*
- 2. Maintain a high regard for environmental considerations in conducting our business operations, and ensure that our business is conducted in an environmentally sustainable manner, and comply with treaties, laws, and regulations concerning the environment.*
- 3. Promote fair business practices and comply with trade rules and regulations.*
- 4. Comply with the rules and regulations of international trade*
- 5. Protect and properly use confidential and proprietary information, protect the rights of the Company and respect the rights of others.*
- 6. Refrain from engaging in insider trading.*
- 7. Avoid conflicts of interest with the Company; maintain a distinction between corporate and private business.*
- 8. Maintain proper legal and ethical standards with respect to gifts and entertainment.*
- 9. Resolutely oppose any organization, group, or individual engaged in unlawful activities, and do not provide money or other types of economic benefits to them.*
- 10. Disclose and report promptly either to the superiors, the Group Compliance Officers, the individuals in charge of Compliance for each domestic block the individuals in charge of Compliance for each foreign branch/office, the relevant departments, the Secretariat for the Compliance Committee, or the outside counsel in charge of Compliance upon discovering or committing any violations of this "Code of Conduct."*

Supplementary Provisions

- 1. This Code of Conduct applies to all officers and employees of the Company (including corporate advisors, contract employees, expatriates, and national staff). This Code of Conduct is also applicable, with appropriate modifications, to all officers and employees of each subsidiary (Genchi Hojin) of the Company and temporary staff of the Company.*
- 2. The detailed rules attached hereto based upon the above Basic Policy and*

Principles have been prepared for situations where the laws of Japan are applicable. All the heads of overseas offices and subsidiaries (Genchi Hojin) are requested to produce their own detailed rules with such additions, deletions, and supplements, as may be necessary, to incorporate the spirit of the Detailed Rules to the extent possible.

3. Any violation of this Code of Conduct shall be treated in the same manner as a violation so any Internal Corporate Rule, and the discipline resulting from such violation shall be determined after considering the nature and the extent of the violation in accordance with Internal Corporate Rules, including the Office Rules and Regulations.

4. The Chief Compliance Officer is responsible for this Code of Conduct (the Legal Dept. is the Secretariat) and any significant revisions are subject to the approval of the Executive Committee.

5. This Code of Conduct is effective as of September 5, 2000, and revised on November 1, 2002 and on January 1, 2003.

Below is a self-described 'management philosophy statement' from the US retail corporation Borders. Such statements tend to be more internal and blunt regarding the conduct of business. This particular statement outlines the corporation's management philosophy regarding unions, and is intended for managers at individual branches.

UNION AWARENESS TRAINING FOR BORDERS MANAGERS

Borders' Position On Unions Our Management Philosophy Statement

Borders is committed to maintaining an employee relations climate which promotes maximum personal development and achievement. We are dedicated to treating our employees fairly and providing good working conditions, competitive wages and benefits, and above all, the respect that each employee deserves. We also believe in open and direct communication which permits the resolution of employee problems in an atmosphere of mutual trust, responsive to individual circumstances. The company shall continue

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its efforts to enhance these objectives.

We do not believe that our employees would benefit from outside intervention into these relations, but firmly believe that the best interests of our employees can be served without third-party interference, particularly a union. We greatly value our ability to work with employees individually without their being subjected to burdensome union costs, complicated rules, and costly work stoppages.

We will vigorously strive to preserve an environment which nurtures the fulfilment of these goals.

Union Activity at Borders

Why is Borders Experiencing So Much Union Activity?

Unions have made a major effort this year to try to organize many businesses, especially those in the service industry. Union membership has declined steadily in the last ten years, especially due to downsizing and layoffs in the many industries. Unions are businesses which survive solely on the dues of their members. In order to improve and stabilize their financial situation, unions need to increase the number of dues-paying members.

Unions typically look at three things when deciding whether or not to target a company for a union drive.

- 1. what types of employees do they have? Full-time or part-time? Educated? Will they have a philosophical bent towards unionization? Are they liberal or conservative?*
- 2. is the company undergoing explosive growth? If so, there are likely to be problems within the organization associated with change and growth. The seeds of discontent may have been planted by the growth.*
- 3. what is the makeup of the Board of Directors? Do these people run/own / work for companies that have unions or do they support unions?*

Borders is a national corporation with a large pool of full-time employees who generally tend to be a little left of centre. We are a very high growth company which has undergone a great deal of change in the last two years. Change is unsettling. Some of our employees look to a union to try to control the changes in the company. Unions likely look at us as an important business to organize - one with great potential for them for years to come. Even companies with the most enlightened personnel policies will face

problems with unionization.

Below is a very different style of Code of Conduct, drafted by the US corporation Nike in 2000. This would probably be categorized as a 'compliance Code', and is the type of corporate Code that campaigners and activists have been most interested in.

This particular Code is much more specific, and deals directly with the sphere of production. This is partly because it is a response by Nike to campaigners and activists who had brought to light several cases of abuse in factories producing parts for Nike in Asia, Central America, and the Caribbean. Given that Nike wanted to restore its image and paint itself as a responsible corporation in the face of such criticism, this Code seems to be written for external viewing, and directly calls for such things as workers' rights and even the freedom to organize. However, there is no involvement on the part of labour in the drafting process, and there is no call for workers' involvement in monitoring their own situation:

Nike Code of Conduct

Implicit in that act was the determination that we would build our business relationships based on trust, teamwork, honesty, and mutual respect. We expect all of our business relationships 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 intend 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 looks for 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*

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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 are directed to 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, and advancement are directed to be based solely on the employee's ability to do the job. Contractors are directed not to discriminate 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 direct our contractors to follow these principles. Contractors are directed to post this Code in all major workspaces, translated into the language of the employee, and to train employees on their rights and obligations as defined by this Code and applicable local laws.

While these principles establish the spirit of our relationships, we also provide our contract factories with specific standards of conduct. Existence of the Code and other standards of conduct cannot guarantee a contract factory's compliance. Nike is committed to working toward improvement in workplace conditions. It's a long and challenging road.

The core standards are set forth below.

1. Forced Labour. The contractor does not use forced labor in any form – prison, indentured, bonded or otherwise.

2. Child Labour. 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.

3. 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.

4. Benefits. The contractor provides each employee all legally mandated benefits.

5. 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.

6. Environment, Safety, and Health (ES&H). From suppliers to factories to distributors and to retailers, Nike considers every member of our supply chain as partners in our business. As such, we've worked with our Asian partners to achieve specific environmental, health and safety goals, beginning with a programme called MESH (Management of Environment, Safety and Health).

7. 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.

Nike is proud of its richly diverse workforce throughout the world and offers its Code of Conduct in several languages

Skirting the Issue: The Switcher Code of Conduct

A Case Study

The case of the Swiss retail company Switcher gives us an interesting look at the process of drafting and implementing corporate Codes of Conduct. This particular case is somewhat unusual in the sense that the corporate Code was drafted according to the demands of a European consumer campaign group, the Clean Clothes Campaign (CCC), and was a direct response to the demands of their campaign. One could say that this is an example of the 'best case scenario' from a consumer campaign's point of view. Although the adoption and implementation of the Code was still voluntary, and Switcher corporation maintained control of the drafting process, it did allow direct involvement from CCC in terms of deciding content and also in the monitoring process. The Switcher Code of Conduct that resulted contained the main provisions of the *Code of Conduct for the Apparel Industry including Sportswear* advocated by the CCC. The full text of this Code of Conduct is included at the end of this chapter.

To implement the newly created Code, CCC worked together with Switcher to create a project for monitoring compliance on the part of the company's producers, whose facilities were all based in China. The result was a monitoring group that carried out its first visit to one of the Chinese factories, Wongsheng Garments, in April 2002. This group submitted a report to both the Swiss parent company and the Chinese subcontractor, identifying the areas of operation that needed improvement. Three Hong-Kong-based researchers then continued the monitoring process later that year, when they interviewed a sample of Wongsheng Garments workers. These interviews were carried out in the factory canteen or in the workers' dormitories, reportedly with no interference with management. The results were then shared with the pilot project director who carried out the inspection of the factory a few days later. A follow-up

visit was made in January 2003 to “assess the level of implementation of the corrective action plan (CAP)..”

Compliance with the Code of Conduct, based on this monitoring process, was found to be relatively satisfactory. The monitoring team reported that there was no forced or compulsory labour at the factory, and no discrimination in respect of employment and occupation. Moreover, certain issues that had been highlighted at the initial inspections had also been dealt with in a manner that the monitoring team found satisfactory, including the non-payment of annual leave with wages and deductions from the wages for disciplinary reasons, lack of transparency in the calculation of wages, lack of wage slips; and delay in the payment of wages.

Both the management and the CCC came out of this process happy, seemingly convinced that the Code of Conduct process works. Indeed, the net result of the above case seems to be a worker-friendly environment, respecting the needs of workers, from whom input and involvement is part of the process. The report even goes so far as to highlight such points as “workers had received a summary of the Code in Chinese”, that “management was not involved”, and that the group’s “visits to the factory were unannounced”, suggesting that the monitoring process was conducted free of coercion, and in the best possible conditions.

However, even these seemingly important provisions are essentially red herrings, skirting the basic issue. The fact remains that the only part that workers play in the entire Code of Conduct scheme, are as subjects to be interviewed and from whom information is gathered. The basic point of workers’ power to determine their own rights, needs, and is still not addressed, even though the best case scenarios may see an improvement certain variables such as safety levels, compensation, or working hours. The welfare of the workers remains a process from which they are removed, and outside actors such as consumer campaigners or NGOs, often along with management, are the ones determining the terms and applying pressure on companies: this is essentially an extremely dangerous situation. Although this may change something in the short term, these groups would have their own interests and outlook that may

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not reflect those of the workforce. In any case, one cannot depend on sustained pressure from these outside sources lasting forever. For a more long-term solution within the Code of Conduct framework, the process should change so that workers would at least have to have the right to determine the content, monitor their own situations, and have these rights protected by an effective mechanism. The only real determinant and enforcer of labour rights, then, is labour itself, despite even the best intentions of outside actors.

Appendix A

SWITCHER CODE OF CONDUCT

I. Factory

A. The factory does not engage in or permit physical acts to punish or coerce workers.

B. The factory does not engage in or permit psychological coercion or any other form of non-physical abuse, including threats of violence, sexual harassment, screaming or other verbal abuse.

C. The factory complies with all applicable laws regarding working conditions, including worker health and safety, sanitation, fire safety, risk protection, and electrical, mechanical, and structural safety.

D. Work surface lighting in production areas such as sewing, knitting, pressing and cutting is sufficient for the safe performance of production activities.

E. The factory is well ventilated. There are windows, fans, air conditioners, and/or heaters in all work areas ensuring adequate circulation, ventilation, and temperature control.

F. There are sufficient, clearly marked exits allowing for the orderly evacuation of workers in case of fire or other emergencies. Emergency exit routes are posted and clearly marked in all sections of the factory.

G. Aisles, exits and stairwells are kept clear at all times of work in process, finished garments, bolts of fabric boxes and all other objects that could obstruct the orderly evacuation of workers in case of fire or other emergencies. The factory indicates with a "yellow box" or other

markings that the areas in front of exits, fire fighting equipment, control panels, and potential fire sources are to be kept clear.

H. Doors and other exits are kept accessible and unlocked during all working hours for orderly evacuation in case of fire or other emergencies. All main exit doors remain open to the outside.

I. Fire extinguishers are appropriate to the types of possible fires in the various areas of the factory, are regularly maintained and charged, display the date of their last inspection, and are mounted on walls and columns through-out the factory so they are visible and accessible to workers in all areas.

J. Fire alarms are on each floor and emergency lights are placed above exits and on stairwells.

K. Evacuation drills are conducted on an annual basis, at minimum.

L. Machinery is equipped with operational safety devices and is inspected and serviced on a regular basis.

M. Appropriate personal protective equipment such as masks, gloves, goggles, earplugs and rubber boots are available, at no cost, to all workers and instruction manuals are provided.

N. The factory provides potable water for all workers and allows reasonable access to it throughout the working day.

O. The factory places at least one well-stocked first aid kit on every factory floor and trains specific staff in basic first aid. The factory has procedures for dealing with serious injuries that require medical treatment outside the factory.

P. The factory maintains throughout working hours clean and sanitary toilet areas and places no unreasonable restrictions on their use.

Q. The factory stores hazardous and combustible materials in secure and ventilated areas and disposes of them in safe and legal manner.

R. The factory provides where ever possible sitting working positions

II. Child Labour (ILO convention 138)

Factories shall employ only workers who meet the applicable minimum legal age requirement, or are at least 16 years of age, whichever is greater. Factories must also comply with all other applicable child labour laws and with ILO 138.

Factories are encouraged to develop lawful workplace apprenticeship

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programmes for the educational benefit of their workers, provided that all participants meet both Switcher SA minimum age standard of 16 and the minimum legal age requirement.

- A. The factory employs workers who are at least 16 years of age and meet the applicable minimum legal age requirement.
- B. The factory complies with all applicable child labour laws, including those related to hiring, wages, hours worked, overtime and working conditions.
- C. The factory encourages and allows eligible workers, especially younger workers, to attend afternoon classes and participate in work-study programmes and other government sponsored educational programmes. An educational programme for young employees between 16 and 20 has to be set up by Switcher suppliers. A transition programme for kids younger than 16 has to be set up also.
- D. The factory maintains official documentation for every worker that verifies the worker's date of birth. In those countries where official documents are not available to confirm exact date of birth, the factory confirms age using an appropriate and reliable assessment method (e.g. horoscope for India; not compulsory but recommended).

III. Discrimination (ILO conventions 100 and 111)

Factories shall employ workers on the basis of their ability to do the job, not on the basis of their personal characteristics or beliefs.

- A. The factory employs workers without regard to race, colour, gender, nationality, religion, political opinion, social origin, age, and maternity or marital status.
- B. The factory pays workers wages and provides benefits without regard to race, colour, gender, nationality, religion, age, maternity or marital status.

IV. Contracts, wages & hours

Factories shall set working hours, wages, and overtime pay in compliance with all applicable laws. Workers shall be paid at least the minimum legal wage or a wage that meets local industry standards, whichever is greater. While it is understood that overtime is often required in garment production, factories shall carry out operations

in ways that limit overtime to a level that ensures humane and productive working conditions. A contract based on local legislation has to be established between employee and employer.

A. Workers are paid at least the minimum legal wage or the local industry standard, whichever is greater. Minimum wage has to be sufficient to a decent living and to face minimal fundamental needs of employees.

B. The factory pays overtime and any incentive (or piece) rates that meet all legal requirements or the local industry standard, whichever is greater. Hourly wage rates for overtime must be higher than the rates for the regular work shift.

C. The factory does not require, on a regularly scheduled basis, a work week in excess of 48 hours without overtime and 60 hours with overtime.

D. Workers may refuse overtime without any threat of penalty, punishment, or dismissal.

E. Workers have at least one day off in seven.

F. The factory provides paid annual leave and holidays as required by law or which meet the local industry standard, whichever is greater.

G. For each pay period, the factory provides workers an understandable wage statement which includes days worked, wage or piece rate earned per day, hours of overtime at each specified rate, bonuses, allowances and legal or contractual deductions.

H. Aforementioned points have to be summed up in a contract. This paper has to be signed by employer and employee. If the worker is unable to understand the contract, the employer has to read it and explain its content to the worker. Depending the case, a neutral person shall attend the meeting also.

I. Salary deductions for disciplinary measures are prohibited.

V. Freedom of Association (ILO conventions 87 and 98)

Workers are free to join associations of their own choosing. Factories may not interfere with workers who wish to law-fully and peacefully associate, organize or bargain collectively. The decision whether or

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not to do so is to be made solely by the workers.

A. Workers are free to choose whether or not to lawfully organize and join associations.

B. The factory does not threaten, penalise, restrict, or interfere with workers' lawful efforts to join associations of their choosing.

VI. Employment is freely chosen (ILO conventions 29 and 105)

There shall be no use of forced, including bonded or prison, labour. Nor shall workers be required to lodge "deposits" or their identity papers with their employer.

Introductory Chapters

Chapter 3

Industry Codes of Conduct

Codes Of Conduct

Introduction

Industry codes of conduct are essentially documents containing guidelines and principles for the activities of a certain industry or group of businesses. Rather than providing an outline for the 'ethics' of a particular company, industry codes instead aim at creating industry-wide standards that each corporation involved should then theoretically follow. There are many examples of such Codes internationally, and three of them are reproduced and discussed below.

Charter of Korea Business Ethics

The following Code was drafted by the Federation of Korean Industries, a corporate lobbying group whose members include the largest companies in Korea. We can note the very general nature of such a Code, which reads more like a mission statement full of vague and lofty aims, even linked to such broader sentiments as patriotism in this case, rather than a document aimed at regulating a specific sphere of activity. Moreover, no mention is made of implementation or monitoring of the Code. The goal seems to be to make a statement rather than actually affect change, and this document's actual value in terms of having an effect on the activities of corporations is probably negligible at best. The full text follows:

Charter of Korea Business Ethics

Through hard work and creativity, we, the members of the private business community, hand-in-hand with the people of Korea, have raised our nation up out of the ashes of war and have built a country of wealth, prosperity and continued economic growth in a short four decades.

As we enter into the next century and as the world continues to be shaped into one market, we are faced with new challenges and changes. In this new era, the continued success and stability of our country will be

determined by her economic potential. We are entrusted with the task of chartering a course for Korea and her people that will lead us all into the 21st century.

We are devoted to expanding the wealth of our nation as well as to preparing for the day when we are no longer divided in two. It is our goal and mission to establish an advanced welfare state through sustained growth and progress, enabling us to pass down a peaceful and affluent society to the generations that follow.

Through the exercise of entrepreneurial spirit, vitality, and creativity, efficient management systems and technologies can be established. Corporate management can become a medium through which the interests of society are served above all else as well as a means of influencing economic and political culture.

With the understanding that a free market economy is the most advantageous system for the Korean people, we will do our utmost to maintain and strengthen our credibility. We shall keep in mind that developing and nurturing a corporate culture through which we can work harmoniously with other nations while fulfilling the needs of our own citizens is our primary goal.

With these principles in mind, we, the private business community, have resolved to combine our efforts to accomplish the following objectives:

We are determined to:

- 1. Fulfil our social duties and responsibilities as members of the global community. A major part of our mandate calls for the guarantee of a certain standard of living for ordinary citizens through job creation and the provision of quality goods and services. As producers of those goods and services, we resolve to uphold our obligations to society.*
- 2. Create fair profits through creativity and innovation. Acknowledging that business prosperity depends on the maintenance of sound economic values, we shall make it our supreme duty to preserve and reinforce such values, raising them to the highest international standards, and utilising them as a foundation for managerial innovation.*
- 3. Appropriately allocate funds for transparent, business administrator. We, our members, will fairly and transparently manager our corporations*

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and inform stockholders about facts and transactions about our corporations.

4. Dissociate ourselves from influential relations with political and government sectors. We esteem the individual right to pursue participation in government affairs, yet we prohibit political activity in the corporate sector. And desirable economic relations are achieved through formal political parties and official government channels.

5. Develop professional managers. We will develop responsible managers through the autonomic, educational and personal merits of the managers themselves and strive to strengthen the foundation for best practice methods in Korea to come in line with international standards.

6. Compete with each other in a fair manner. Recognizing that free and fair competition is the best way to maximize economic efficiency and benefits for all, we shall hold our competitors in high regard and work to establish a new order for fair business practices and competition.

7. Further develop a cooperative relationship between large and small business. With the recognition of the synergistic effect of partnership between large and small businesses and the significant mutual benefits to be derived therefrom, we are resolved to create an atmosphere of mutual progress based on mutual trust.

8. More fully address the rights and interests of the consumer. Realizing that businesses and consumers are living and working together for the common good, we shall strive for technological advancements and quality promotion with a view to providing the best quality of goods and services to the consumer. By abiding by the principle of genuine consumer satisfaction, we shall promote the rights and interests of the consumer.

9. Work for the benefit of all elements of business activities. We shall strive to ensure a higher standard of living for all internal stakeholders in the business process. This shall be achieved by establishing a mutually satisfactory relationship whereby everyone enjoys a share of the profits based on his or her accomplishments and efforts.

10. Cultivate environmentally-conscious management. Acknowledging that the natural environment is an invaluable legacy to be handed down to our offspring and that every member of humanity is entitled to a healthy

and pleasant life, we shall endeavour, through environmentally-conscious management, to prevent environmental contamination and to preserve our natural resources, such as clean air, water, and forests.

11. Contribute to community development. As members of the local communities, we shall work to uphold traditions and cultures to better our relationship with other community members, and to contribute to the improvement of employment opportunities and socio-economic conditions in our communities.

12. Observe local laws and hold in high esteem the culture and customs of other countries as that of a good corporate citizen. With the introduction of globalization, international companies are obligated to follow local economy standards and observe business ethics in the local economy as they would their own.

13. Observe this charter and pay strict attention towards its adoption and practice by our members. The Federation of Korean Industries (FKI) will independently handle the problems relating to business ethics through the "Committee for Business Ethics" and will undertake the settlement of business ethics. Also, we will take a firm attitude through the "Committee for Business Ethics" in the case of business ethics violations and move to reprimand members or corporations whose misconduct or bad influence reflects on society by contravening the charter

Apparel Industry Partnership Code of Ethics

The following Code of Conduct was created by the Apparel Industry Partnership (AIP) in the US, and is a very different document from the FKI Charter of Ethics, both in terms of its contents and the reason for its creation.

The AIP is a group organised by the US government in 1999, mainly consisting of some of the largest US corporations in the garment industry. This group was created as a response by the government to the growing consumer and student movements against the 'sweatshops' and labour rights violations of American corporations operating in Asia and Latin America. Their goal was to

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come up with an industry response to the claims of consumer and student campaigns that were beginning to have an effect on the corporations' images and demand for their goods, as well as to address the charges of violations as an institution rather than individually.

One of the first ways in which the AIP tried to do this was by creating an industry standard code of conduct, the text of which follows. The code is quite clearly based on existing corporate codes, adapted to apply to the apparel industry as a whole. The issues addressed in the Code are quite specific, and deal with many of the abuses highlighted by campaign groups, such as child labour, maximum work weeks, harassment and abuse, and forced labour. The Code also devotes much space to the issue of monitoring, including both internal and external audits to judge compliance.

Though the Code is indeed a response to consumer campaigns and states the industry's commitment to labour rights, the industry-heavy nature of the AIP, and more importantly the lack of involvement of workers, have meant that this Code has not been very credible in the eyes of activists and campaigners.

Apparel Industry Partnership Agreement

Workplace Code of Conduct

The Apparel Industry Partnership has addressed issues related to the eradication of sweatshops in the United States and abroad. On the basis of this examination, the Partnership has formulated the following set of standards defining decent and humane working conditions. The Partnership believes that consumers can have confidence that products that are manufactured in compliance with these standards are not produced under exploitative or inhumane conditions.

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 manufacture¹ 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.

Non-discrimination. 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 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

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contractors and, in the case of a retailer, its suppliers to comply with applicable local laws and with this Code in accordance with the attached Principles of Monitoring and to apply the higher standard in cases of differences or conflicts.

Principles of Monitoring

I. Obligations of Companies

A. Establish Clear Standards

Establish and articulate clear, written workplace standards.

Formally convey those standards to company factories as well as to contractors and suppliers.

Receive written certifications, on a regular basis, from company factories as well as contractors and suppliers that standards are being met, and that employees have been informed about the standards.

Obtain written agreement of company factories and contractors and suppliers to submit to periodic inspections and audits, including by independent external monitors, for compliance with the workplace standards.

B. Create An Informed Workplace

Ensure that all company factories as well as contractors and suppliers inform their employees about the workplace standards orally and through the posting of standards in a prominent place (in the local languages spoken by employees and managers) and undertake other efforts to educate employees about the standards on a regular basis.

C. Develop An Information Database

Develop a questionnaire to verify and quantify compliance with the workplace standards.

Require company factories and contractors and suppliers to complete and submit the questionnaire to the company on a regular basis.

D. Establish Programme to Train Company Monitors

Provide training on a regular basis to company monitors about the workplace standards and applicable local and international law, as well as about effective monitoring practices, so as to enable company monitors to be able to assess compliance with the standards.

E. Conduct Periodic Visits and Audits

Have trained company monitors conduct periodic announced and unannounced visits to an appropriate sampling of company factories and facilities of contractors and suppliers to assess compliance with the workplace standards.

Have company monitors conduct periodic audits of production records and practices and of wage, hour, payroll and other employee records and practices of company factories and contractors and suppliers.

F. Provide Employees With Opportunity to Report Non-compliance

Develop a secure communications channel, in a manner appropriate to the culture and situation, to enable company employees and employees of contractors and suppliers to report to the company on non-compliance with the workplace standards, with security that they will not be punished or prejudiced for doing so.

G. Establish Relationships with Labour, Human Rights, Religious, or Other Local Institutions

Consult regularly with human rights, labour, religious, or other leading local institutions that are likely to have the trust of workers and knowledge of local conditions and utilise, where companies deem necessary, such local institutions to facilitate communication with company employees and employees of contractors and suppliers in the reporting of non-compliance with the workplace standards.

Consult periodically with legally constituted unions representing employees at the worksite regarding the monitoring process and utilise, where companies deem appropriate, the input of such unions.

Assure that implementation of monitoring is consistent with applicable collective bargaining agreements.

H. Establish Means of Remediation

Work with company factories and contractors and suppliers to correct instances of non-compliance with the workplace standards promptly as they are discovered and to take steps to ensure that such instances do not recur. Condition future business with contractors and suppliers upon compliance with the standards.

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II. Obligations of Independent External Monitors

A. Establish Clear Evaluation Guidelines and Criteria

Establish clear, written criteria and guidelines for evaluation of company compliance with the workplace standards

B. Review Company Information Database

Conduct independent review of written data obtained by company to verify and quantify compliance with the workplace standards

C. Verify Creation of Informed Workplace

Verify that company employees and employees of contractors and suppliers have been informed about the workplace standards orally, through the posting of standards in a prominent place (in the local languages spoken by employees and managers) and through other educational efforts

D. Verify Establishment of Communications Channel

Verify that the company has established a secure communications channel to enable company employees and employees of contractors and suppliers to report to the company on non-compliance with the workplace standards, with security that they will not be punished or prejudiced for doing so

E. Be Given Independent Access to, and Conduct Independent Audit of, Employee Records

Be given independent access to all production records and practices and wage, hour, payroll and other employee records and practices of company factories and contractors and suppliers.

Conduct independent audit, on a confidential basis, of an appropriate sampling of production records and practices and wage, hour, payroll and other employee records and practices of company factories and contractors and suppliers.

F. Conduct Periodic Visits and Audits

Conduct periodic announced and unannounced visits, on a confidential basis, of an appropriate sampling of company factories and facilities of contractors and suppliers to survey compliance with the workplace standards.

G. Establish Relationships with Labour, Human Rights, Religious or Other Local Institutions

In those instances where independent external monitors themselves are not leading local human rights, labour rights, religious, or other similar institutions, consult regularly with human rights, labour, religious, or other leading local institutions that are likely to have the trust of workers and knowledge of local conditions.

Assure that implementation of monitoring is consistent with applicable collective bargaining agreements and performed in consultation with legally constituted unions representing employees at the worksite.

H. Conduct Confidential Employee Interviews

Conduct periodic confidential interviews, in a manner appropriate to the culture and situation, with a random sampling of company employees and employees of contractors and suppliers (in their local languages) to determine employee perspective on compliance with the workplace standards.

Utilise human rights, labour, religious, or other leading local institutions to facilitate communication with company employees and employees of contractors and suppliers, both in the conduct of employee interviews and in the reporting of non-compliance.

I. Implement Remediation

Work, where appropriate, with company factories and contractors and suppliers to correct instances of non-compliance with the workplace standards.

J. Complete Evaluation Report

Complete report evaluating company compliance with the workplace standards.

Hong Kong Toy Council Code of Practice

Asia has also seen examples of Codes of Conduct issued by industries in response to campaigns from consumers, labour advocates, or other pressure groups. A good example of such a Code is the one drafted by the Hong Kong Toys Council in 1997.

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In the early 1990s, a series of industrial disasters occurred in factories in Asia producing toys for multinationals, most prominently two major fires at facilities in Kader, Thailand and Zhili, China. These incidents led to the deaths of hundreds of workers, and prompted a major campaign on the part of a Hong Kong-based group, the Hong Kong Toy Coalition.

Though many of the actions were against specific corporations involved in the two fires, Chicco and Maisto, the Toy Coalition's campaign culminated in the drafting of a charter, which outlined certain principles for the safe production of toys, and made three basic demands for the toy industry as a whole. These included the demands that the industry improve working conditions at production facilities in China, begin a dialogue with the Hong Kong labour NGOs and advocates, and adopt an industry-wise code of conduct for their members. The final demand was made on the basis that several international toy industry organisations had already adopted such Codes of Conduct.

In response to the campaign, the Hong Kong Toys Council did indeed draft and adopt a Code of Conduct, in July 1997. The full text of the Code follows:

***Code of Practice adopted by
HONG KONG TOYS COUNCIL
for Toy Industry 1997***

Preamble

The Hong Kong Toys Council has long recognized that there should be a safe and healthful working environment for those employed in the manufacture of toys. Accordingly, members of the Council agree that they will exercise to the best of their ability to provide and maintain a safe working environment for employees working within their factory premises. Working conditions within these premises would also be closely monitored and reviewed by the management with the help of a safety management system to enhance employees' understanding of in-house safety rules and regulations, and their obligations under such.

To make clear to toy manufacturers with regard to their responsibility to prevent workplace accidents and promote safety at work, a Code of Practice

is drafted for the adoption of Council members. The Code is not a declaration but an indication of the determination of members of the Council to improve workplace safety standards.

The Code

- 1. Factory proprietors should ensure that there are adequate means of fire escapes and fire-fighting equipment in the factory. In order to facilitate speedy escape of persons from the workplace in case of fire, all routes of escape as doorways, passageways, and staircases should be maintained in good condition and free from obstruction. Adequate emergency evacuation training for employees must be given and regular fire-drills are strongly recommended.*
- 2. In the event that dangerous goods are stored and used within factory premises, proprietors must ensure that adequate means of health and safety precautions compatible with international standards are provided for their staff. Every container holding a dangerous substance should be labelled in such a way that the particulars of the substance can be read easily. To protect their staff from respiratory diseases, proprietors are required to install and maintain a good ventilation system within factory premises.*
- 3. Local industrial and fire safety regulations or equivalent standards set by international labour treaty are the minimum standards of reference to be observed and met by factory proprietors.*
- 4. Staff dormitory should not be located at any floor/floors of the factory building. To give workers a better living environment and avoid overcrowding, dormitories provided by factory proprietors should accommodate an appropriate number of residents compatible with the floor area of the dormitory.*
- 5. Employers must make ensure that no forced or underage workers are employed to produce toys, wholly or in part.*
- 6. The normal daily working hours should be in line with local labour regulations and at least one rest day must be provided each week. Subject to concurrence of both parties, workers may be requested to work overtime with due compensation. The maximum number of hours for workers who are engaged in part-time or temporary employment should be governed by applicable local legislation.*

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- 7. To control job hazards at an early stage, employers should constantly remind their employees to take a more proactive role in reporting these potential hazards to the management whenever they are identified.*
- 8. Employers should develop a safety training programme to equip their staff with the knowledge, skills, and attitudes to perform their duties in a safe manner.*
- 9. Workers should be permitted to establish their own union. They should also be guaranteed with collective bargaining power and be allowed to participate at safety committee meetings so that they could freely express their views regarding production safety.*
- 10. Workers should be compensated in accordance with all prevailing local labour legislation.*
- 11. Workers committee with wide representation, including employees, from all major aspects of the operation should be formed by the management. Regular meetings for this committee should be held so that employees' views can be properly reflected and instant remedial measures be taken by the management.*
- 12. To promote wider acceptance of the Code, it is recommended that manufacturers should make the same Code applicable to their contractors.*

This last example perhaps shows the value of industry Codes of Conduct as a campaign tool, and a means of creating a concrete demand with which labour activists and unions can pressure industry organisations.

However, the often very-general nature of such Codes raises questions as to their value in actually changing conditions in the workplace. In the case of the Hong Kong Toy Coalition for example, the drafting, adoption, and circulation of a Code of Conduct was an aim that ended up being achieved, through sustained pressure on the industry. However, when the issues of implementation and

monitoring of the Code were brought up, the group notes that the Toy Manufacturers' Association of Hong Kong "became defensive and refused to discuss the Code of Conduct." This suggests that while campaigners can use the Code of Conduct as a tangible goal with which to pressure corporations and industries, the latter may also see adoption of a Code as the 'easy way out', a way of showing publicly a commitment to labour rights without actually enacting a significant change.

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Codes in Context

Chapter 4

What Difference does 'Corporate Social Responsibility' Make to Improving Labour Standards in China?

by Monina Wong

Hong Kong Christian Industrial Committee

Introduction

The term 'Corporate Social Responsibility' (CSR) has replaced 'Codes of Conduct' as the buzzword that projects a company's commitment and vision. In a recent conference about CSR in the US, the Chair and CEO of the Hewlett Packard company, Carly Fiorina, said that as companies get more power, expectation of their responsibilities also accelerates. CSR is therefore "the right thing to do". It is also "the smart thing to do"¹. It is the business strategy. What she means is, before losing control with state regulation and civil society regulation, companies had better act first and act voluntarily.

CSR is a contradictory concept, a grey area between the public and the private, the mandatory and the voluntary. CSR is further complicated by diversities in implementation due to globalised sub-contracting of production and state de-regulation. This article focuses the labour aspect of CSR, and attempts to look at three questions related to the implementation of CSR in China. The term CSR used here refers to the CSR initiatives taken by transnational companies (TNCs) in the supply chains in China. These questions are:

- 1). Do CSR initiatives improve labour standards in China?
- 2). What are the problems associated with CSR initiatives in China? Are they just a public relations game?
- 3). Is CSR an option for a regulatory approach to controlling corporate power?

Let's take the first question: Have CSR initiatives led to improved labour standards in China?

The answer is ambiguous and largely depends on what industry and economic sector we are talking about. Around ten years ago, when a fire took place in a Hong Kong-owned toy factory in Shenzhen supplying to the Italian toy brand Chicco, the Chinese

Labour Law had not yet been promulgated. The old labour law was applied to state-owned enterprise (SOE) workers and not foreign invested enterprise (FIE) workers. Workers worked 16 hours a day in the FIEs, they were paid around 200-300 RMB a month, they had to pay down payments, some even had their IDs retained by the management, and nobody cared about safety and health. Therefore, the tragedy of workers being locked up in dormitories at night and 84 women workers being choked or burned to death took place in the fire of 1993. An international campaign demanding for a safety charter for the toy industry was started by trade unions and NGOs in Hong Kong, and was supported by their counterparts in the North.

The next 10 years were marked by continuous research and international campaigns on the Hong Kong toy industry, as well as on the international toy brands. Research that labour groups in Hong Kong² have done in the past 10 years shows a mixed picture of both consistent violations of labour standards as well as positive signs of improvements in the sub-contracting toy factories in China. Despite problems still associated with actual implementation, greater awareness of labour standards and the need to integrate them into business operations has been achieved in foreign invested toy enterprises, due to the pressure brought by the international campaigns on toy brands and suppliers.

Apart from the foreign invested enterprises and joint ventures, does CSR also have an impact on other economic sectors, especially China's expanding private sector?

Unlike the TNC suppliers that are forced to react to international labour standards as required by their buyers, the private sector, and the non-export-oriented sectors in China would have less incentive to comply with labour standards. The reasons are structural.

Reason one is that the supply of labour is over-abundant.

A Chinese minister who participated in the WTO negotiations once said, the supply of labour "is enough to keep China competitive in the international market for another 30 years." A large proportion of this labour force, in the hundreds of millions, is migrat-

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ing from rural areas, and even the government does not have an exact idea of their number³.

The migrant labour force forms the secondary labour market. Not only do they take up the 3D jobs – i.e. ‘dirty, demanding and dangerous’ jobs – they are also ready sources to replace workers in newly privatised SOEs, as cheaper and informal labour is preferred.

The problem is not only size, but also the fact that the labour market in China- especially the secondary labour market- unregulated. This is firstly due to the weak and “flexible” enforcement of the labour law by local governments. Secondly, another important form of private regulation of the labour market, freedom of association and collective bargaining rights, are either absent or weakly enforced in China. The unionising rate is still low, particularly in the private enterprises and foreign invested enterprises. The practice of having management (most often from the personnel department or the general manager) or candidates appointed by the upper level national union (i.e. the All China Confederation of Trade Unions which is the only legal trade union in China) “representing” employees in the union is common. There are reasonable doubts about how these unions can truly represent the interests of the workers and challenge the injustices brought by economic development.

Given the dual fact that the public (i.e. the State) and the private (i.e. via organised workers and unions) forms of labour regulation are problematic, enterprises therefore have less rather than more incentive to comply with national labour laws. All that is left is the “good will” and the “good conscience” of enterprises to “voluntarily” comply with labour standards. Such “good will” may be stronger in foreign invested enterprises or joint ventures that are supplying to the international market. More and more Western buyers are beginning to integrate labour rights compliance into their buying practices when sourcing products from China, due to international consumer and labour campaigns launched against Western buyers in their home countries. This being the major incentive for companies imposing “voluntary” labour regulations, it

is clear that it is also another form of business- the so-called CSR strategy.

Back to the question of structural regulation of the labour market - it should be seen that “voluntary” regulation, depending on the “good will” of enterprises or international consumer and labour campaigns staged outside China, is not sustainable, given the more fundamental failure of state and union regulation of the labour market in China. Enterprise level CSR initiatives are also not enough to tip the balance and replace the State and organised unions in achieving labour regulation. In this light, enterprises should realise that the sustainability of their CSR initiatives is linked to the sustainable regulation of the labour market to ensure that Chinese workers do not race themselves to the bottom. The key issue for corporate social responsibility is therefore to realise and respect the freedom of association and collective bargaining.

On to the second question: What are the problems with CSR initiatives in China? Are they just public relations ploys?

The CSR initiatives that are implemented in China are generally classified into three categories, in order to discuss the problems that are associated with each of them. The classification is very much based on the research experiences the writer has had in relation to the labour compliance practices of Western buyers, as well as the condition of workers in southern China. These experiences and observations were made in the labour-intensive industries that operate in China through international sub-contracting.

The first category is the “façade CSR” practice. This is illustrated in industries or companies that have not been “baptised” by international labour or consumer campaigns.

The example of computer manufacturing in mainland China is appropriate to this category. HKCIC has conducted research on the working conditions in the computer manufacturing industry in China from 2002-2003⁴. The research is based on interviews with more than 150 workers from a total of 23 foreign invested or joint-venture supplier factories, the majority of which are Taiwanese-

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owned. The factories supply assembled computers, monitors, keyboards, power connectors, mice, and other peripheral products to international brand names such as HP, Compaq, IBM, Dell, Sony, and Samsung, who have company codes of conduct and CSR programmes.

It was found that only two suppliers were in near full-compliance with the national labour law in China. The rest of the factories were no more than high-tech sweatshops, with workers receiving only 50% or less of the legal minimum wage, while earning their major income through production bonuses and under-rated overtime (OT) compensation. Working hours were as long as 14 hours a day in the peak season, and workers were exposed to chemical and metal poisoning, radiation hazards, cuts and injuries, as well as ergonomic problems such as vision deterioration.

It is indeed ironic to find that the high tech industry is also a sweatshop industry. It is even more ironic to contrast the conditions of sub-contracted workers of HP in China, one of the international computer companies covered in the research, with the picture painted in the same company's CSR report.

For example, HP's CSR report in 2003 highlights the paid-leave that HP's US staff enjoy for engaging in community works, in particular the community projects that staff carried out in a village in India, where they helped local people to find technological solutions to their power supply problem⁵. In the words of HP's Chair and CEO Carly Fiorina, a good global citizen "(A)t a minimum means upholding the highest possible standards of integrity and transparency."⁶ "In today's world, good citizenship also means leveraging our assets to raise skill levels, extend hope, and extinguish despair."⁷ "And it requires an insistence that we choose suppliers and vendors that maintain appropriate standards in these areas as well."⁸ Yet the workers that were interviewed in HP's supplier factories in China did not know about national labour law, let alone being aware of the buyers' codes of conduct and their humanistic commitment to CSR. While devoting many paragraphs about HP's community development programmes and environmental policy, the HP CSR report provides little description of the monitoring of labour and environmental conditions of the company's overseas suppliers.

The example of HP illustrates how un-monitored, un-regulated CSR initiatives end in selective company self-reporting, and not any real improvement beyond the company headquarters or indeed in the sub-contracted countries.

The second category of CSR can be called CPR – “Corporate Policeman Responsibility”, in which buyers monitor from the top down. This is found in industries that may have been or are liable to labour or consumer campaigns, such as the toy and apparel industry in China. These industries have low technology levels, are highly seasonal, and are sensitive to fluctuations in the global market. Competition is intensive, the worker turnover rate is high, and short-term behaviour both on the part of the supplier and the worker is the norm.

With regard to CSR on the part of the TNC buyers, code monitoring is the major, if not the only, tool for implementation. The level of labour rights compliance varies, with the core suppliers out-performing the others, as they have bigger incentives and profit margins encouraging them to live up to their buyers’ CSR labour standards.

However, this type of CSR very often makes the workplace a police state.

The past research of the HKCIC into the toy industry shows that factory management is often under the pressure of unstable order placing and harsh buying practices, such as shortened delivery lead-time and race-to-the-bottom pricing. And the cost of compliance is not shared between the buyers and the suppliers. Workers are also put under pressure, as they are coached and bullied by the management into not speaking about factory conditions to auditors or any outsiders.

Falsification and policing are two ends of the same vicious circle. In this category of CSR, the race-to-the-bottom sub-contracting carried out by TNC buyers actually negates whatever CSR initiatives they are undertaking.

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Because there is no sustainable relationship, both at the supply level and the factory employment level, there is no sustainable means of labour standard compliance.

This category of CSR is in some way monitored by civil society movements in the North and the South. Yet civil regulation through campaigns cannot replace monitoring on the part of the State and organised labour. The vicious circle drags on because of the absence of a level playing field, where inconsistent buying practices and CSR implementation can be regulated through organised collective bargaining at the supplier and buyer level.

The third type of CSR moves the spectrum towards local ownership and the bottom-up approach. It is the result of the demands of international campaigns for worker participation.

It is also the realisation on the part of the TNCs of the unsustainability of the top-down, policing approach in China. Revelations from the compliance officers of some sportswear TNCs confess their being locked up in “compliance work (that) is getting more and more difficult.” “Workers talk less and less during the factory audits,” they reveal. And the compliance officers largely relate that to the inconsistency between buying practices and CSR on the buyer side, as well as the unbalanced position between management and workers on the shop floor.

The key element for this category of CSR is, therefore, civil society engagement.

More and more Western buyers are reaching out to involve civil groups in China and Hong Kong as an alternative to directly addressing the sensitive question of freedom of association in China. Different types of CSR initiatives belonging to this category include workers’ education and training, for instance on safety and health, codes of conduct, social and job skills, and EQ management. Others include NGO monitoring of codes, establishing NGO-based worker complaint mechanisms, capacity-building on the supplier level, including industrial re-engineering projects (for example in reducing the number of working hours at the workplace), etc.

Some companies even venture to expand their CSR initiatives by leveraging on the suppliers and forming worker representative mechanisms, or even workers' unions, in the supplier factories.

There are a number of issues worth noting with this approach.

(a) Are these Human Resources Management (HRM) practices or industrial relations practices? A large number of these worker participation programmes are more HRM practices that work to avoid and pre-empt real workers' organising. Practices such as industrial engineering, which claims to improve working conditions on the shop floor, are more capacity-building programmes for the supplier factory rather than for the workers. There is a danger that these initiatives will end up being 'sexy' programmes for CSR reporting only.

(b). Selective engagement with local civil society. Because of the absence of credible independent unions in China, TNC buyers have the liberty to cherry-pick groups that "they can work with," while avoiding critical civil society groups and avoiding directly engaging with workers.

(c). CSR is often undermined by capital migration. The CSR practices of TNCs should therefore be assessed in an integrated and consistent way. And the CSR practices that TNCs have undertaken in China should not be isolated from their labour practices in other sourcing countries. The increasing shift in Nike's sourcing from Indonesia to China and Vietnam is a revealing example. While Nike is with one hand expanding worker-empowerment CSR programmes in China, the other hand is actually closing down factories in Indonesia where costs have gone up and workers are independently organised. The latest case being the closing down of the PT Doson factory in Indonesia in September 2002, a factory that has been supplying to Nike for the past 11 years; the closure left 7000 workers jobless⁹. Nike insists that it this was a business decision made by the Indonesian supplier. But the case illustrates exactly how, at critical moments, 'the corporate' always comes before 'the social'. Given the lack of

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regulation of footloose capital in developing countries, the danger of TNCs penalising workers' organising is real, and is taking effect. The bottom-up, worker-participation CSR approach taken up by TNCs should therefore prove itself to be an integrated and consistent policy that creates a real level playing field among all overseas suppliers by realising and respecting genuine freedom of association and collective bargaining.

Despite the above problems, given the structural limitations of labour regulation in China, as well as the low level of labour consciousness and worker organising in the country, a worker-participation CSR approach geared towards strengthening more balanced labour relations on the shop floor should be able to create more room for bottom-up improvements of labour standards in the long run.

The final question, then: Is CSR an option for regulating corporate power?

A dynamic combination of the voluntary and the regulatory approach is necessary in order to regulate corporate power through CSR. In order to avoid the privatisation of CSR, which will only result in selective reporting, selective responsibility and selective engagement, there are some key elements that should pillar the regulatory approach to TNC power:

(1). Regulation through independent workers' organising. The bottom-up CSR approach has the potential to prevent the privatisation of CSR by first forming multi-stakeholder platforms on the ground in China, and gradually moving that towards workers' organising. It is important that international initiatives support worker empowerment and the building of a critical and independent civil society in China, in order to prevent TNCs whitewashing the process through selective local engagement.

(2). Regulation through civil campaigns. 'Naming and shaming' is so far the only way to put pressure on footloose investment and the buying practices of TNCs. The effect of this is limited, as a proper regulatory platform does not exist. Yet, in the long run,

civil campaigns should be backed up by cross-border organising and collective bargaining under the same company.

(3). Regulation on the level of the State. This includes State implementation of the national labour law and the ILO Convention, as well as State regulation of investment liberalisation.



ENDNOTES

¹ 2003 Abridged Global Citizenship Report, HP

² Since 1995 a lot of researches have been published by the Asia Monitor Resources Center and the Hong Kong Christian Industrial Committee on the working conditions in the toy factories in southern China. These researches documented harsh labour conditions, violations of the Chinese labour law and company code of conduct as well as falsification practices used by factory management to “pass” factory level social audits.

³ It is estimated that there will be 180 million people moving from the rural to look for jobs in towns and cities within China in the coming 10 years. The reasons being anticipated unemployment and poverty in the rural area after China’s accession to the WTO and the dual economic structure of China. Source: China News Agency 18/2/2002.

⁴ The research done between 2002-2003 covers 23 suppliers operating in China manufacturing components as well as assembled computers to international brands such as HP-Compaq, IBM, Dell, Sony, Samsung, Apple etc. The full report will be published in 2004.

⁵ Refer to HP’s Global Citizenship Report 2003.

⁶ 2003 Abridged Global Citizenship Report 2003, HP, p3.

⁷ Ibid p3

⁸ ibid p3

⁹ Refer to campaign information posted in the Clean Clothes Campaign website and the Oxfam Community Aid Abroad Nike Watch Web site.

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Chapter 5

The Toy Campaign and Corporate Social Responsibility

by Apo Leong

Asia Monitor Resource Centre

Codes Of Conduct

'I still insist the Italian toy company should set up a Zhili fire victim compensation fund to undertake medical and rehabilitation expenses for us!'

- Xiao Ying, Zhili fire victim

'I want to help the society and want to let all workers know about their rights, the rights to safety, the rights to be taken care of by employers'

- Rassamee Soop-aim, Kader fire victim

Introduction

This paper is an introduction to the toy campaign that arose out of the Kader and Zhili fires in the early 1990s, and how it has progressed from 1993-2003, including its interactions with the corporate social responsibility movement in Hong Kong, China and the world. We can begin by broadly dividing the campaign into three major phases. The first phase deals mainly with immediate concerns, such as fighting for reasonable compensation, organising, and rehabilitation of the victims and toy workers. The second phase involves international and local campaign activities and their impacts on the consumers, toy industry, and workers. The third phase focuses on actual dialogue, engagement with the private sector and other stakeholders on joint initiatives in workers' education and labour rights monitoring.

The General Situation of Toy Workers in China

Before we can go on to the specifics of the campaign, some background information on toy workers and Special Economic Zones (SEZs) in China would be useful.

The first SEZ was established in Shekou, followed by Shenzhen, Guangdong province of China in 1980. Since then, SEZs, free trade zones and other development zones have increased by leaps and bounds all over China. Starting from the 1980s, Hong Kong

companies began relocating their production facilities in Guangdong as they claimed being confronted by high land rent and high labor cost. This was followed by Taiwanese, Japanese and Korean companies in late 80s.

Most of the assembly line workers are being recruited from poor inland provinces. Young people from peasant families, mostly women (from 17 or lower to 30) pay money to an agent in their home to find work in Guangdong. In order to control the movement of peasants to the cities, as well as labour mobility between provinces, the Chinese government has a residency system in place which does not grant permanent resident status to outsiders making these workers as migrant or guest workers and further marginalised. The migrant workers have to apply and pay for different kinds of fees in order to stay and work in these industrial zones.

It is a norm that factories set their own rules without prior consultation with workers or the local labour department. Many of them are in violation of existing labour laws or other regulations, such as health and safety regulations. The rules are very strict and comprehensive - going to toilet without permission, talking at work and so on are not allowed. And fine and punishment is prevailing for any minor violations.

Most of workers get income according to piece rate production or on basic/minimum wage. Because of flexibilisation of work and fluctuation of trade and business, workers in these zones are becoming more and more like seasonal workers. In peak seasons they work tremendous overtime hours and in low seasons, they may be laid off in mass without reasonable compensation.

The All China Federation of Trade Unions, a party controlled union for the whole country, has very little influence in the foreign investment or joint venture enterprises. Restrictions though may be, the number of wild cat strikes in protest against non-delivery of wages, and mass lay offs in state owned enterprises is growing. In most of the foreign owned enterprises and joint ventures, unionisation rate is rather low. The official figure claims around 1/3 enterprises are organised in Guangdong, but many of these unions are

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management controlled or not functioning as genuine trade unions but welfare/recreational clubs. Workers may form many informal groups to protect their rights, but open ones with independent and political objectives are subjected to severe crackdown by the government and management. Leaders are often jailed, dismissed, demoted, or even beaten up by security personnel.

Background to the Toy Campaign

Following the Kader fire tragedy, on 19 November 1993, a fire broke out at a Hong Kong owned toy factory, the Zhili plant in Shenzhen, China, while some 400 workers were working to manufacture Christmas toys for the Italian toy brand Chicco. The official figure was that 87 workers were killed and 47 were severely injured.

The Hong Kong Coalition for the Charter on the Safe Production of Toys (the Toy Coalition) was formed in 1994, in the immediate wake of these tragedies. Its objectives were quite clearly defined. The Coalition aimed to support the Zhili and Kader workers, to coordinate local and international campaigns, and to develop a regional network for the rights of toy workers. In turn, the Coalition made specific demands from the corporations involved, including compensation for victims, and institutionalisation of the regulation on labour practices of investment abroad (through adopting the Charter on the Safe Production of Toys- see below)..

Aside from Chicco and Kader, other companies targeted by the campaigns included Master Toy Co. Ltd/ Maisto for unlawful layoffs of workers, McDonalds for use of child labor, Mattel for unacceptable health and safety standards, and various Toy Industry Associations in Hong Kong, Europe, and the US.

The key members of the Coalition are Hong Kong-based groups, such as the Asia Monitor Resource Centre (AMRC) and the Hong Kong Christian Industrial Committee (HKCIC). The former took up the international liaison work and the latter was responsible for Hong Kong/China research and campaign activities.

Charter on the Safe Production of Toys

The Charter on the Safe Production of Toys was the basis upon which the Toy Coalition was formed, and the document can probably be classified as the first code of conduct initiated by southern NGOs. It was drawn up after the Kader toy factory fire in May, 1993. More than 60 local and regional groups have endorsed the Charter so far. Its contents include the following:

1. Factories must have adequate fire exits and fire prevention facilities.
2. Dormitories, warehouses and workshops must be located in separate buildings.
3. Adequate facilities for safe production must be provided to ensure a safe workplace for workers.
4. Manufacturers must implement international labor standards and local laws on industrial safety and fire prevention.
5. In case where the use of chemical substances is necessary, international safety regulations must be adopted, including ensuring a safe working environment, individual protection facilities, standard production facilities (i.e. air ventilation systems), and a safe process of disposal of the chemicals used. Furthermore, chemical containers should be clearly labelled to indicate the substance and its toxicity. In addition, workers should undergo regular physical examinations as well as safety and health education.
6. Overtime damages workers' health and violates their right to rest. The normal daily working hours must not be longer than eight hours, and at least one day of rest must be provided each week.
7. No child workers are used.
8. Dormitories must not be overcrowded and meal provided by factories must contain adequate nutritional value.
9. No physical harassment or any form of psychological oppression of workers tolerated.
10. There must be no restrictions on workers' efforts to organise trade unions. Workers must be allowed to enjoy the right to bargain collectively and trade unions must be allowed to have the right to investigate and to monitor the safety of the factories.
11. Manufacturer shall inform their workers of the national labor law provisions and local implementation regulations.

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Therefore we demand:

12. That the toy industry ratifies the Charter on the Safe Production of Toys.

13. That an independent monitoring system/ committee, composed of organisations which express workers' rights/ interest and professional bodies, is institutionalised to ensure the implementation of the Charter.

The Toy campaign from 1993-2002

Activities in Hong Kong and China

Several actions were taken in Hong Kong by the Toy Coalition in the ten years between 1993 and 2002. Since Hong Kong harbours offices of many of the corporations targeted, and is also a centre for major international events in the toy industry, protests were organised outside the headquarters of several companies, and also at the Hong Kong Toy Fairs in 1994, 1995 and 1996. The Hong Kong offices of Maisto, for example, were picketed to demand compensation for a group of unjustly terminated workers (see below), and protest actions also included the picketing of shops in Hong Kong's shopping malls. Chicco stores, in particular, were picketed by campaigners. The aim of these actions was to alert the local and international community to the abuses of Hong Kong enterprises in China. Following several of the protests, discussions with toy companies and associations were made.

An organised, joint campaign was launched against Kader, Maisto, Disney, and McDonald's toy companies. The Coalition published a booklet titled "Beware of Mickey," which was distributed to several Hong Kong schools and members of the public to publicise the poor working conditions in the production of Disney products. A boycott campaign was also organised against McDonalds to highlight the company's use of child labor in manufacturing toys. Further dialogues were also held between suppliers, brands, and NGOs. Later, McDonald suspended working relationship with the said factories.

As part of the campaign around the Zhili fire and its victims, the Toy Coalition also carried out some activities within

China. The Coalition organised, for example, a petition that was sent to the New China News Agency, which before 1997 was the sole official representative body of the Chinese government in Hong Kong. The purpose of this was to encourage the government to launch an investigation into the Zhili fire. In 1993, labour groups in Hong Kong also visited the Zhili victims in Shenzhen and in their home villages, to collect information and so that they could better understand the victims' demands. Based on the information gathered through these visits and through other research, the Coalition released the first report on conditions of toy workers in mainland China in 1995. A fund raising campaign for the Zhili victims was also carried out, and the issue was publicised through a photo exhibition in Hong Kong about the victims and the toy industry in general.

With the help of the support and solidarity they received, the Zhili victims were able to set up a Self Help Centre in their home village in China.

Campaigning on International Level

As part of its activities, the Toy Coalition also launched an international campaign to solicit support for the endorsement of the Charter, beginning in 1995. Importantly, the ICFTU publicly appealed for and supported the toy campaign. By 1997, the toy campaign had spread to more than 10 countries including the UK, US, Canada, Denmark, Belgium, Italy, France, Holland, Germany, Ireland, Thailand, South Korea, and Japan.

Networking with Southern NGOs

Various attempts were made to network with Southeast Asian NGOs and unions after the Kader and Zhili fires.

Campaigners carried out several activities to show solidarity with the Kader factory workers in Thailand. In June 1994, a delegation from Thailand came to Hong Kong to launch a one week campaign against the Kader company. In 1994 and 1995 there were follow up visits to the Thai victims. In 1995, groups from the UK visited Thailand to learn about the reality of toy workers. Most recently, in July 2003, victims groups met in Bangkok and HK to strengthen solidarity, and also to conduct some joint actions together.

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Many solidarity events were carried in support of workers who were laid off by the Master Toy company. The company produces toy cars under the brand Maisto, and was established in 1990 in Thailand. The case revolved around a decision made in 1995, when the owners created a new factory named Maisto Manufacturing in another province in order to get tax benefits for new foreign investment. At the end of the year 1998, the company asked the workers to transfer to the new factory with new workers' status, with their salary having been reduced, and the new factory not yet being ready for production. Workers refused to transfer and workers refusing the transfer were dismissed without any redundancy payment. The Toy Coalition protested in front of Master Toy's headquarters in Hong Kong.

Three country-specific toy researches covering China, Thailand, and Indonesia were also carried out by the Coalition. This was the first cross-country research on the working conditions of toy workers in Asia, including conditions among the sub-contractors of world famous toy brand names.

Networking with regard to Occupational Safety and Health

In May 1997, a regional meeting "Remembering Kader: Promoting Occupational health and safety, Workers' Rights and the Rights of Industrial Accident Victims in Asia" was held in Bangkok. The meeting agreed to form a regional network of victims groups and concerned labour groups on safety and health.

Networking with Northern NGOs and Trade Unions

Networking between the Toy Coalition and NGOs, trade unions, and consumer campaigns in northern countries also took place, and many positive results came out of this relationship. In 1995, for example, the ICFTU adopted a resolution to launch a toy campaign, which was a boost to the Coalition's activities. A north-south relationship of this kind also developed between the Coalition and the Italian union, CISL, which was important considering the Chicco company responsible for the Zhili fire was from Italy. The Coalition visited the fire site in Shenzhen together with CISL in 1996.

In 1996, Members of the Coalition travelled to Europe and North America to publicise the Zhili case and network with unions and NGOs for support. In the same year, UK groups started popular campaigns at home demanding that a safety code for toy workers be developed and implemented. In December 1996, Irish groups also started their own consumer campaigns, while 1997 saw the first press statement on problems in the Asian toy industry released by German NGOs, on the occasion of the international Toy Fair in Nuremberg.

In 2000, Disney was named by Canadian NGOs as the worst TNC in relation to labour protection, partly as a result of networking with the Toy Coalition. In 2000-2, the campaign network with northern NGOs was mobilised in several events such as the McDonald's campaign. As a result of this, demonstrations were staged in the UK, Germany, Ireland, Sweden, Denmark, Canada, the US, Belgium and France. In the US, actions were also taken by shareholders against Mattel, Disney and other companies, with participants demanding transparency and accountability from the companies.

The Toy Coalition organised an International Conference for Toy Workers' Health and Safety in 1996. NGOs and trade unions from all over the world participated. The delegation and the Coalition also protested outside the Hong Kong Toys Fair in this year. Six activists were arrested after the demonstration was dispersed by security guards. In July 2002, Hong Kong groups and Northern groups had a roundtable discussion evaluating the toy campaign, and engaging in strategic planning for the future.

Results

Several tangible results were achieved out of the overall toy campaign between 1993 and 2002.

Victims of the Kader fire, for example, finally received a settlement after joint actions taken in Hong Kong and in Thailand. The company paid additional moneys and allowances. Moreover, the Thai government enacted a law that required the formation of a safety committee in factories with more than 50 workers, and the Thai

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Cabinet agreed to designate May 10 as a National Safety Day. The ILO and ICFTU also designated an International OSH Remembrance Day to be marked on April 28.

In terms of the victims of the Zhili fire, the parent company Artsana/Chicco did commit 30 million lira (HK\$1.5 million) to be delivered to victims, but this amount was delayed and misappropriated for other purposes. Angry outcries followed, and street demonstrations were organised. Seven years after the fire, Artsana paid 10,227 RMB (US\$1,290) to each of the 120 victims, far less than what the victims actually needed for medical fees and rehabilitation.

For better or worse, several Code of Conduct style documents were also drafted as a result of the toy campaign. In January 1996, for example, the British Toys and Hobbies Association (BTHA) developed their own health and safety code. The International Council of Toy Industries (ICTI) also adopted its Code of Business Practices, and the Hong Kong Toys Council released a similar document. Three Italian unions even signed a code of conduct agreement with Artsana/Chicco, though this has been dismissed as a public relations plot by the corporation.

ICTI wants to establish one uniform social standard for the whole industry and revised its code and the code's checklist in June 2002. The Toy Industries of America (on 8th February 2002) and BTHA (from 2003 onwards) have made it obligatory for their membership to confirm with the ICTI-Code.

At the official level, the Zhili fire certainly shocked the Chinese government and contributed to the faster completion of the first labour law, something that had been under draft revisions since the 1950s. The drafting was finished in 1994, and the law was implemented in 1995. The Trade Union Law was revised again in October 2001 and the Prevention and Control of Occupational Diseases Law was created in 2001, after China's entry into the WTO. The last landmark legal document to be adopted was the Law on Work Safety passed in June 2002.

In terms of achievements at a more grassroots and campaign level, the relationships formed through the toy campaigns have solidified into regional and international networks. An important network to come out of this process is the Asian Network for the Rights of Occupational Accident Victims (ANROAV).

Implications for Corporate Social Responsibility

Corporate social responsibility and codes of conduct were considered no man's land around 10 years ago. Now these themes have become the talk of the town, and some union people have labelled them a 'tsunami' threatening the labour movement. Anyway, the Code of Conduct movement has kept many NGO, union, business, academic people rather busy and happy, and many individuals have made a fortune, too. For example, the Mattel company has spent a lot of money and time to pay for an in depth 'independent' monitoring exercise named MIMCO, which is being used as a shining example of success, while ignoring the demands from shareholders and other NGOs. Another bad example is the Code of Conduct/agreement made by Chicco company with Italian unions, which was never implemented fully for the benefit of toy workers and accident victims.

On the toy campaign, we also learn a lot as time goes by. The first phase was very confrontational either because the private sector refused to talk to us, or we could not find any common ground at all. Nevertheless, through international and local pressure, more money was paid out. In order to pacify international criticism, the toy industry began to launch new Codes of Conduct, and to run several top-down health and safety training programmes - however, all without any NGO involvement.

Through the intervention of northern NGOs, multi-stakeholder meetings were arranged and developed among southern and northern NGOs, multinational companies, suppliers, as well as some auditing companies. In some instances, governmental and parliamentary figures were also involved. Some new initiatives were formed such as the Global Alliance, SA8000 where the toy industry plays a significant role.

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In our discussions with the HK toy industry, we also found some problems with Codes of Conduct in the whole production chain. Low pricing and short delivery times make it impossible for the toy manufacturers to comply with Chinese Labour Law and brands' Codes of Conduct. The Code of Conduct has been used as a tool to shift the burden from TNCs to manufacturers, and ultimately to ordinary workers. For example, SA8000 directly imposes the burden on the individual suppliers or facilities, and is not concerned with the problems of the whole production chain. Workers complain that they need to do additional 'clean up' before the monitors arrive, or to behave, and to give proper answers to them.

For us, the most important breakthrough is in workers' involvement and training. Xiao Ying, for example, has set up a centre in China to offer assistance to other victims. Now, health and safety committees with workers' representation have been set up in some factories inside China. More and more companies have begun to realise this is beneficial to all parties concerned. But, there are still some problematic areas for further discussion:

1). How to resolve the conflict between the top management and the supervisory level? The latter always assumes more work and pressure. They keep complaining that they are sandwiched between demands from the workers and the top management or the auditors.

2). How to turn the thinking about compliance with standards to a proactive improvement or corrective action? Many local suppliers are at the mercy of the buyers.

3). How can trust and confidence be created between NGOs and businesses, instead of talks and accusations? If we really want to make corporate social responsibility into a living thing, this is an important question.

11 Nov 2003, in memory of the 10th anniversary of the Zhili fire. Edited from a case study presentation for the International Conference on "Industrial Relations and Corporate Social Responsibility under Globalisation," Renmin University of China 25-26 Nov 2002, Beijing.

Codes in Context

Chapter 6

Codes of Conduct:

More Than Ten Years On, More Pressure is Needed!

*by Junya Yimprasert
Thai Labour Campaign*

Codes Of Conduct

“Today, we are trying to do our best. We adjust and improve continuously by reducing costs, buying cheap and selling expensive, speed production with good quality, and emphasise sourcing companies and human resources. If we can do all of these things, we are a success. In the future, when there is no quota, we’ll have no problems.”

- *Chaiyapong Wetchamontien, Managing director of Liberty Group¹*

Introduction

After over ten years of codes of conduct, the greatest change in the garment industry has not been better living conditions for the estimated 100 million mostly women workers around the world, but a systematic change in the supply chain management, enabling major players in the industry greater opportunities to exercise power without responsibility. The relocation of industry through the ‘race to the bottom’ continues– companies continue to aim at making the highest profits and paying the lowest costs during each stage of the production process, no matter how they do it.

Restructuring of the Global Garment Industry

Big Fish, Small Fish

The relocation game of Transnational Corporations (TNCs) has pushed many governments in the producing countries to compete with each other and provide better incentive promotion programmes for the garment industry. This is often achieved through the creation of Free Trade Zones (FTZ) or Export Processing Zones (EPZ). In such areas, corporations often pay no tax, do not pay for the cost of infrastructure, and workers are usually not allowed to form unions. Cheap and flexible labour laws are also the hallmarks of EPZs around the world. The garment business is highly competitive. Power is mostly in the hands of the many TNCs who have tried to cut costs as much as possible, and change their production chains to be more effective

in achieving shorter production times, faster delivery, less risk, less overproduction or overstock, and cheaper overall production costs. Not surprisingly, the TNCs and manufacturers we have been talking with over many years all admit that the production prices for apparel have not increased. In fact, many manufacturers have claimed that the price of production has fallen over this time.

The current TNC production model has caused flexibility in the industry, and substantial pressure to produce on the workers in plants and at the subcontract level. Many stages of production employ vulnerable migrant workers in both the Northern countries like the US and the EU, and also in many other producing countries. In Thailand, for example, there are over one million workers working in the apparel industries, and an estimated one million Burmese migrant workers in the country (though not all of these are employed in the garment industry). However, in the small border town of Mae Sod alone, over 30,000 documented Burmese migrant workers are employed, and it is estimated that almost 60,000 undocumented migrant workers are employed. These are workers exploited in the last chain of production, often in facilities hidden in valleys, covered by high walls, and with no factory name visible to the public, increasing the risk of oppression by both employers and authorities.

Supply Chain management - The Increasing Role of Trade Agents

Many big garment brands have mostly stopped using their own production plants, and have reduced their operational staff to half or less than half over the past five years. The only remaining brand to use its own manufacturing plants, as far as I can remember, is Triumph. However, Triumph facilities in Thailand also produce goods for the US TNC Adidas. Another TNC, Reebok, had over 200 workers in its Thai offices in 1998, but in 2003, these offices were left with only 25 staff. The same is the case with other brands such as Nike, Adidas, and Gap. More and more of these brands' activities are handled by 'trade agents' - for example Haddad, Li & Fung, and Gold Miles Service, to name a few- who are beginning to be

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increasingly known and have seen an expansion of their services.

The activities of trade agents can be clearly illustrated by looking at Li & Fung, the largest garment agent in the world, as a model. In one interview, the CEO of Li & Fung stated: "If we receive an order from one retailer in Europe for ten thousand clothes, it is not easy for our office in Korea to outsource products in the country, nor easy for our office in Indonesia to outsource for local manufacturers. For this kind of customer, we might have to buy fibre from a Korean factory, then dye and weave in Taiwan; thus, we must select fibre and then send it to Taiwan. A Japanese company has the best zips and buttons, but these are manufactured in China. So we go to YKK, the big zip company in Japan, to order directly from factories in China. Then, we consider the quota system and labour situation, so we choose that the final production of the garment should be done in Thailand, and send all the materials to Thailand. Since our customers need on-time delivery, we divide orders among five Thai factories.... Within five weeks of receiving the order, 10,000 clothes reach shops in Europe. All the clothes are the same quality, and the material seems like it's from only one factory. This is a new type of value-added. It is a form of production in the world that we have never seen before. The tag says 'Made in Thailand,' but they're not Thai products."²

Supply Chain Structure in Thailand

The change in the production model, from direct production in the North to outsourcing in the South, has gained companies huge profit at the expense of workers, who are increasingly working in situations of higher flexibility, no job security, cheap pay, and huge pressure from the accelerating speed of production and heightening work pressure.

'Just in time' production has reduced the overstocking of products by TNCs through the use of IT technology. The previous lead-time of 90-120 days has been reduced to 45-90 days. This system enables TNCs not to have to stock their products in warehouses. In terms of manufacturing, factories have to prepare to produce repeated orders in shorter periods. This makes the 60 working hours per week

demand by TNCs impossible to control. Under this system of irregular orders and production periods, manufacturers reduce risks by keeping only necessary workers, and subcontract out the production to other plants (see Chart 1).

Where Next After China?

“Today our profit is ten percent. But I expect that in the future, profit will lessen to five percent. If we want more profit, we must increase our sales by extending our capacity.

We are expanding our factory to produce high quality products, because customers not only consider the price but also the stability and credibility of suppliers. If customers have to pay ten or twenty percent more for an order in Thailand with quality guaranteed and on-time delivery, they will be pleased to do so and not go to other manufacturers, since the ‘Just in Time’ system has much influence. In ordering raw materials, we use the Just in Time system too. Seventy percent of materials are foreign and thirty percent are domestic. Foreign materials mostly come from China, Taiwan, and Europe.”¹

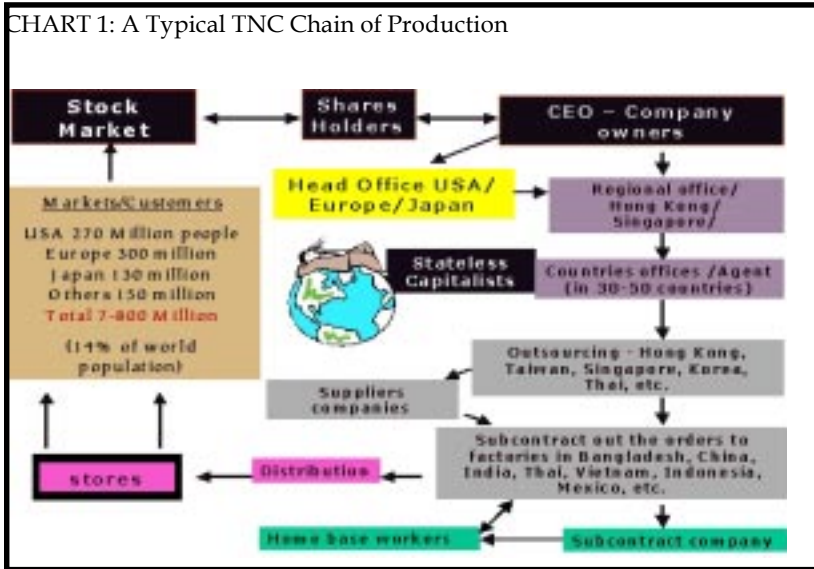
The important issues concerning liberalisation which are always raised regard higher competition and free relocation of capital to seek the lowest cost. But labour costs in Thailand are higher than China and Vietnam, which lessens Thailand’s competitiveness.

Whatever safeguards are put in place after 2005, the simple truth is that China, already the world’s largest textile manufacturing and exporting nation, will dominate the sourcing business from 2005.”²

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What has happened is that the industry has transformed to incorporate an even smaller scale of production, invisible from monitoring and investigations, hiding in the many small 2-3 story town houses all over Bangkok, near the border of Thailand and Burma, and in the Northeast region.

CHART 1: A Typical TNC Chain of Production



Corporate Labour Code of Conduct: PR tool of TNCs?

“While Nike forbids its subcontracted manufacturing factories anywhere in the world from using outsourced workers, Nike Australia has agreed to sign the Deed [of Co-operation] and share its labour compliance expertise, in the hope that other companies who manufacture clothing locally will follow its lead, and in so doing, help improve the textile industry in Australia.”

- Nike statement after signing an agreement with the Textile Clothing and Footwear Union of Australia (TCFUA)¹

Nike is the TNC that has been most heavily criticised for its exploitation during production, and for unsatisfactory monitoring of its codes of conducts since the early 1990s. There are a number of

organisations and consumer groups that monitor Nike's labour practices and its implementation of codes of conduct. For example, some well-known consumer groups including the Nike Watch Campaign, the Clean Clothes Campaign, Sweatshop Watch, Campaign for Labour Rights, Maquiladora Solidarity Network, and many others keep a close eye on the activities of Nike and other TNCs.

Because of heavy monitoring, criticism, and lawsuits by both consumer groups and trade unions, Nike was forced to make a contract with the Textile Clothing and Footwear Union of Australia (TCFUA), after many years of resisting and finally losing in court. Tony Woolgar, National Secretary of the TCFUA, said that "The union has worked closely with Nike over the past year in drafting the best possible Deed of Co-operation for Australian workers employed in the manufacture of sporting apparel."²

Seeing Nike being monitored closely by consumer and labour rights groups, many corporations have learned lessons about how bad it could be if they do not engage in legitimate monitoring of their compliance with codes of conduct. Thus, many models of so-called 'independent monitoring institutions' have been introduced. The Social Accountability International model (SA 8000), for example, became fully operational in late 1998³. Despite heavy criticism, SA 8000 has been a leading model of so-called "stakeholder" codes of conduct, not just at the international level but at the national level as well. The Thai government, for example, has introduced a model code of conduct implemented by the Ministry of Labour called the "Thai Labour Standard 8001."

The interest in code of conduct models from global institutions like the UN and WTO concerns us, as it seems that "volunteer" codes of conduct will be used to determine labour standards in world trade rules. The risk is that using the volunteer system will overrule the already-weak labour laws of many countries.

Internal Monitoring vs. Image Building

"Apparel producers face growing pressure from retailers, governments, consumers, shareholders, the media, and others to be held accountable for

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their global production practices. Labour standards and factory conditions in industries ranging from toys to sporting goods have become the subject of standard-setting and monitoring initiatives."

-Worldwide Responsible Apparel Production (WRAP)

The emergence and expansion of consumer groups and concern groups dealing with the trade and labour practices of TNCs has been increasing significantly for the past decade, particularly in the North.

The consumers' movement and the corporation are often like Tom and Jerry. Consumers are like 'Tom' and corporations are like 'Jerry,' trying to run away and hide their problems from the eyes of consumers as much as possible. In a sense, the TNCs are also like 'Tom' and the manufacturers also like 'Jerry'. Manufacturers produce with the fear of losing orders, but also don't trust that their customers will remain in business with them raise costs by truly implementing codes of conduct. They therefore have to hide every possible fault that TNCs could find in their plants.

From the Mae Sod factory to facilities in Bangkok, many companies' codes of conduct have been posted on the walls, sometimes in English, sometimes in Thai, and many times there are three or four codes from different TNCs. However, most workers still don't know what codes of conduct are about, and how they can be used as tools for their benefit. They only know that if they are questioned about safety and working hours, they have to lie.

Corporations are running away from consumers' pressure through different means - increased PR work, donations to charity work, and the organising of concerts from which profit do not go back to workers but to consumers, for example. However, these are not what the consumers and workers want. We want the TNCs to directly improve the living condition of workers who produce for them, not just any workers in any part of the world. We want the corporations to guarantee the security and decent working and living conditions of these workers and their families.

Currently, much more money is spent on PR, and many

companies' highest expenses are still for advertising and sponsoring famous sport teams or athletes. Nike, for example, is famous for signing a huge deal with individual athletes like the golf player Tiger Woods, who earns US\$100 million through a 5 year contract with the company – an amount equivalent to 72,000 years of non-stop work by a Thai worker.

While many corporations claim to be serious in implementing and monitoring codes of conduct, much of their effort focuses on covering-up and preventing news from being known by the media and consumer groups.

Manufacturers are also running away from monitors by not disclosing the details about subsidiaries or subcontracted plants. In some investigations, workers in these 'invisible' production facilities were found to be greater in number than those employed in known factories. Many manufacturers will have model- or front-plants that employ a few hundred workers that they use to show off to monitors. However, more and more production is carried out by subcontractors in their subsidiary factories, often located in remote villages in the northeast of Thailand, or in Mae Sod, the biggest industrial town on the Thai and Burma Border. The border areas are also invisible to the eyes of monitoring mechanisms. The industry knows very well about this situation, but pays little attention to it– as long as there is no news exposed about the reality, no one will do anything about the 'invisible' subcontracting of labour.

Corporations are also running away from consumers' pressure and demands by coming up with many new tactics to guarantee to customers that their products are 'ethically made.' However, the voice of the majority of workers producing the products is still inaudible to the public.

"The personnel will inform us in advance that customers will monitor the factory. They told us that Haddad, that Nike will monitor the factory, and that we have to be ready and have to lie to the customer.

He said that the customer will ask us, 'Do you work OT?' We have to say 'No!' The customer will ask 'Do pregnant workers work OT?' We have to

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say 'No'. But in reality pregnant workers work OT and on Sunday as well.

We work sometimes until 2 AM or till dawn, but we have to say that we work OT only till 8 p.m. Whatever we can lie about, they said that we have to lie. Also it is important that we have to wear cloth-masks and glasses. If we lie, we will get paid 400 Baht."

- Former woman worker of Bed and Bath garment factory, December 2002.

Numerous workers we interviewed gave similar stories about how factories have covered up violations of codes of conduct from a corporation's monitors, who are referred to as "customers". Under the monitoring system, workers said they were pressured, with the threat of losing their jobs, to co-operate with the company. Even though they knew very well that they were lying, they were informed by the management that if they told the truth, the "customers" would cut or cancel their orders. So, the workers were made to lie in order to "keep order in the factory".

A number of workers told us, in sadly amusing words, that they liked to use the toilet prior to the visit of "customers," because it was clean, and had colourful toilet paper, and liquid soap at these times. They said they had to use the facility quickly, since it was removed as soon as the "customers" walked out of the factory.

What we see here is how the whole supply chain has been adjusted to the codes of conduct – not through serious implementation, but by covering up abuses in the factory, to present the public with as positive an image as possible.

I am often asked by people "*what brand is different and better?*"

I reply: "it is sad to say that I haven't seen any brands that are better by their own choice, only in factories with unions have we seen some difference. The differences brought about by codes of conduct are that TNCs emphasise their energy on PR works – not in an effort to make real change."

I firmly made these points in many speeches that I gave in Europe. Why? Because given the nature of the industry, under outsourcing and subcontracting, the production of many of brands will be carried out by the same workers. The Bed and Bath workers, for example, produced for about 60-70 logos and many big brands during their final period of operations, including Levi's, Nike, Adidas, Umbro, Fila, Harley Davison, and many universities and sports teams in the US.

Monitoring of the codes of conduct of TNCs is still very much centred around internal monitoring done by large, certified companies such as PricewaterhouseCoopers, Ernst and Young, and ITS (Intertek Testing Services). These are among the many names that are becoming recognised as code certifying companies. These companies are also making profits out of codes of conduct by acting as monitoring firms, a sort of business which again turns workers' lives into business opportunities. These companies have been brought in to monitor the working conditions and living conditions of workers using a set of measurements. This sort of internal monitoring by global ISO-certified firms is still not trusted by consumer groups, since it is still very much quantity-oriented, and is also completely internal, with all the records being held by the companies employed to perform the monitoring. Most of the time, the results of such monitoring are more positive than the reports of consumer groups that have been directly in touch with workers in the same facilities.

There was heavy criticism of the qualifications of internal monitors, and the argument was also made that labour monitoring required different practices than production monitoring. In the late 1990s, many TNCS tried to avoid criticism by forming initiatives to make the monitoring mechanisms more transparent and neutral, and involve other stakeholders – e.g. NGOs, trade unions, academics, etc. Examples of such initiatives include the Ethical Trading Initiative and the Fairwear Foundation in Europe, and the Fair Labor Association, and Social Accountability International in the US.

Other initiatives enacted by various actors include the Global Compact, which was launched by the UN in July 2000. In the US, the

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activist group United Students Against Sweatshops helped to form the Workers Rights Consortium, a group that works with local partners to verify factory conditions, without the involvement of industry representatives in the monitoring or decision-making process. There are also initiatives created directly by the Apparel Employers' Association, including Worldwide Responsible Apparel Production (WRAP) (which provides the cheapest application fees for affiliation).

From Fire Extinguishers to Freedom of Association

The lives of 188 workers, mostly young women, were lost due to the extremely irresponsible actions of the owner of the Kader Company – a joint venture between Hong Kong and the richest business group in Thailand, the CP group. After a fire broke out in the manufacturing facility on 10 May 1993, the management, afraid that workers would run away and steal the dolls produced by the company, refused to unlock the exit doors, saying that the incident was just a minor fire.

This shocking tragedy was the worst industrial fire incident on record in the world. Unfortunately, it was not enough of a lesson for greedy employers, because six months later, more than 87 workers were killed and 47 severely hurt in similar circumstances at the Zhili toy factory in Shenzhen, China.

It was only then that the world started to realise how serious such incidents were, and started to suggest measures to prevent them. Many companies' codes of conduct have since focused on fire prevention, and have ordered their subcontractors to install fire extinguishers in their factories.

One of the monitors' tasks, therefore, has been to look at the fire extinguishers' maintenance records, and confirm that the equipment has been installed properly. But these demands are not just made to one giant garment corporation, but many TNCs, who often contract out to the same factories. As a result, in many factories there are fire extinguishers installed every few meters under different demands, depending on the different brand names produced by the factories. By law, Thai factories have to organise fire drills twice a year. However, in many instances during the initial stages of code of conduct monitoring in the late 1990s, fire drills were

started at times when monitors from different corporations went to the factories.

Freedom of Association – Contradictory Pictures

In the early 1990s, the biggest employment sector for women workers in Thailand was in large-scale garment factories, which employed around 800 to 4,000 workers. Many of these factories were unionised, and through collective bargaining, workers were often able to enjoy higher pay, better welfare, and benefits that were higher than the minimum required by law.

However, there are only a few large- and medium-scale manufacturing facilities in Thailand where workers can still practice the right to unionise: for example, Wah Thai, Triumph, Gina Form Bras, Power Run, and Thai Garment. There are only 32 unions with a total of just 25,000 members from over 5,000 factories in the textile, garment, and leather industries, which employ over one million workers in Thailand. Shockingly, unionised garment workers make up only 2.5% of the sector's workforce.

The number of unionised workers in Textile Garment Leather Workers Federation of Thailand has declined over 30% since the 1997 economic crisis. However, the industry continues to make as much profit as it made many years ago.

The picture is not much different to regional statistics for the unionised sector. It is estimated that only about 5% of workers in the region enjoy some amount of freedom of association and collective bargaining power.

Charity-Based Approach vs. Rights-Based Approach

At the beginning of the consumers' movement, the approach taken was generally charity-based. The Northern consumers' group, CAFOD, for example, advertised in the early stages of its consumer campaign publication that "for the Third World Workers – any job is better than no job." That caused me lot of frustration. When I saw

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that advertisement, I asked myself, “Who gave CAFOD the legitimacy to give such a statement on behalf of poor third world workers?”

Demands made by campaigners to TNCs during the initial period of codes of conduct therefore focused more on issues such as child labour, health and safety (e.g. fire prevention mechanisms), minimum wages, and forced labour. It has taken nearly 10 years of pressure for TNCs to make their initial codes of conduct to be more detailed, and to cover the crucial issues of freedom of association and trade union rights. This can be seen when we look at the differences between early and more recent codes of conduct.

It is clear to all the groups campaigning for TNCs to improve the working conditions in their factories that the rights to organising and collective bargaining are crucially needed, and must be promoted. Also, TNCs have to pressure their 100 or 1,000 manufacturers and subcontractors, as well as the national legal system, to guarantee that workers can practice their rights without threats and obstacles.

It is Workers’ Responsibility to Change Conditions

From villages to factories, there is a circle of loan and debt payment through the sharing and relocating of money.

Workers in the garment industry are mostly women, who, significantly, are nurturing the country’s well being as well. They starve themselves to provide food and better lives for their families – children, parents, and even brothers. Their families in villages often borrow money from various government loan programmes, but many women workers testify that they are the ones who have to repay the debts by borrowing money at 10-20% interest per month. This is often why they need their jobs, even if they pay as little as jobs in the garment industry do.

Women workers are mostly employed, management claims, because the work is more delicate and needs the gentle hand of women to be performed correctly. The reality is that the feminisation of the industry is attractive for employers, because women workers

are seen as more obedient, and more tolerant to suppression than men. Besides, many women do not argue back to the management because of fear. International investors take advantage of women's double responsibilities – productive and reproductive – and that the fact that women are not easy to organise, in order to increasingly exploit women.

When asked what their idea of happiness is, many women workers in Thailand refer to happiness as: duty, responsibility, and the survival of their children and families. Women workers with children often hope that they can raise their children to have better lives than their own. Women workers in modern industries, living and working under hardship, cannot think about their own selves. Not only can they not think of their own happiness as ordinary human beings, they cannot even think of the future beyond the next day!

However, when it comes to fighting for their rights, these women workers have fought harder and longer than any other workers. The courage of women garment workers is not to be underestimated.

The effort to pressure TNCs to live up to their responsibilities to workers producing for them has a high cost, in terms of resources, for almost every campaign group at the local and international level. Moreover, it takes a long time for each individual factory campaign to deliver positive results. So far, the famous successes are very limited, though we can name a few such as Kukdong, the Australian contract with Nike, Saipan, Jakalanka, and Bed and Bath. Every one of these successes has been won by an active, organised group of workers, with consumers' groups organising to support them. We can compare these cases with the thousands of factories worldwide that produce for big brands and have codes of conduct, but which have not shown any real improvements.

Therefore, we can see that after over ten years, the lives of workers have been better only when they have fought for it. The lesson learned from the Bed and Bath campaign is that it is the role of workers to implement codes of conduct as much as it is the duty of the

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legal channel to enforce them. From my experiences assisting workers in their struggles, I have seen that workers have to be able to stay in unity for at least three months in order for their struggle to succeed. Otherwise, many give up their fight. At the same time, workers have to integrate much of their effort into getting the world to hear about their issues. The Bed and Bath workers walked so many kilometres, submitted letters to everyone involved, and related their case to institutions both national and international. They sold flowers, labour, and made clothes to raise funds for their struggle. Three hundred Bed and Bath workers stopped the Labour Minister's car in order to get to talk to him. Workers also moved their sewing machines to the Ministry Of Labour compound and start priding clothes to earn income for their struggle. Seven women and men from Bed and Bath shaved their heads to protest against the inefficiency of Thai authorities in solving labour problems.

Conclusion

The best possible change that can be made is to have direct production, but that has been eroded through the growth of TNCs since the 1970s and 1980s. TNCs did not want to share profits with workers in the US and EU, and therefore closed down factories in their own countries, moving them to Latin America and Newly Developed Countries like Korea, Hong Kong, and Taiwan in the early 1970s. Since then, TNCs have moved production further south. At present, the countries at the bottom of the chain are China and Vietnam. Thus, this is the root cause of the problem: TNCs don't want to share profits with anyone, except their major shareholders. But we continue to tell them that they have to share.

The reality surrounding Codes of Conduct is that they have been around since the 1990s, and companies have been able to use them for increased PR and to cover up allegations of labour violations. At the same time, these companies have moved to the highly flexible, cost-saving system of 'just in time' production and subcontracting, making future monitoring of these codes near impossible. Meanwhile, globalisation of the garment industry, competition between corporations and governments for production,

and economic pressure due to the expiration of the Multi-Fibre Agreement have all turned out to have a much larger influence on production conditions than consumers' pressure.

It is obvious that TNCs are only going to move further away from direct production. The ultra-flexibility of the 'just in time' production system has meant that they do not have to make any regular orders to any particular factory, or indeed have any role in the production process. It is also clear to us, after over ten years of dealing with codes of conduct, that what is important, in order to improve the working and living conditions of the millions of workers in the garment industry, is to secure collective bargaining and trade union rights for them, and create a space for these workers to be officially involved in such processes without threats and fear.

Therefore, a key issue that consumer groups and worker advocates to look at when approaching codes of conduct is: can TNCs be forced to have a *stake* in this highly flexible production process through the use of codes of conduct?

A second key question is: how can codes of conduct be leveraged to facilitate workers organising to take control of working conditions in factories, subcontracting facilities, and homes?

Workers are currently not told to use the system, but to be afraid of the system. It takes much courage and unity for workers to actively participate in such campaigns in order to achieve their demands. I have experienced seeing both workers singing, dancing, and eating in the closing ceremony after achieving their demands, and also giving up their struggles with tears, carrying with them negative memories and lost hope in the system. Many union committees that give good cooperation to corporate monitors are facing legal suits from their employers, and have also been blamed by authorities for causing damage to the company image.

At present, workers who dare to voice their problems to monitors themselves pay the price, and there is no protection and guarantee from management and corporations that workers will not be victimised for practising the codes of conduct rules. The corpora-

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tions' monitoring systems must guarantee that workers are not going to be victimised for speaking up. If they are, a compensation package to pay those workers should be seriously considered.

The current situation in a producing country like Thailand is causing unions and workers in the whole export garment-producing industry to lose trust in codes of conduct and the monitoring system. They have seen many big and unionised factories close down and laying off union members without compensation. Later, these workers are seen working in subcontracted sweatshop companies producing for export, for much worse pay and in worse working conditions. They have seen many attempts at practicing their rights turn out to be a problem for their employment. They have experienced their labour leaders being abused, dismissed, sued, and beaten up for standing up to fight for their rights.

I strongly believe that with the nature of race to the bottom investment, we have a situation in which the main global garment corporations have so much power to enforce pressure on lower levels of the supply chain, without inputting any premising and money to make a real change. Codes of conduct for workers can therefore only be a threat, not a tool.

By considering the history of codes of conduct and the questions above, however, we could begin to effectively challenge this situation. We help workers in Thailand to gain back their dignity by showing to them that:

Employers = Human
Authorities = Human
Politicians = Human
Workers = Human
Human = Human

When workers are laid off and have no one responsible for them, they ask: "Workers follow the laws, why not Capitalists?"

At the end they announce the simple fact that “Dignity is not for sale.”

Endnotes

¹ Thai garment companies, from *Cut & Sew*, January 2003, p.44

² Supply Chain Management: Hong Kong Style, *Harvard Business Review*, Sept - Oct 1998

³ Media Statement, Nike Corporate Communications Manager TCFUA National President, source: <http://www.campaignforlaborrights.org/index/july03/3-7b.htm>

⁴ Nike Campaign, Melbourne, 25 June 2003

⁵ <http://www.cepaa.org/SA8000/SA8000.htm>

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Chapter 7

Demystifying Corporate

Codes of Conduct:

*Towards Critical Engagement With
TNCs*

by Chang Dae-oup

Asian TNC Network

Introduction

This article aims to explore the ways in which labour rights advocates can critically engage with transnational corporations (TNCs), particularly using labour codes of conducts. To do so, the article will firstly identify the contradictions inherent in using corporate codes of conduct as a method of enhancing working conditions in developing countries, by addressing and demystifying the core arguments about these codes. The contradiction will be presented as coming from the fact that the ideal of codes of conduct aim to enhance working conditions by utilising the market mechanism, while the movement of the market as a whole inherently cannot afford non-exploitative production. This means that full and sustainable implementation of codes according to the ideals of consumer movements actually contradicts with the very basic facts of capitalist competition and accumulation, from which the power of consumers comes. Therefore, the improvement of working condition on the basis of voluntary codes and consumer-centred campaigns is constrained exactly *within the extent that the market allows*, no matter how many concessions a few individual companies can make. However, at the same time, the very contradiction that it is based on the market and at the same time clashes with the movement of market makes it possible for workers to utilise corporate codes of conduct as a means to organise themselves in and against capital, under certain conditions. The conclusion of this paper will suggest conditions under which labour rights groups can engage with transnational corporations that are increasingly deploying corporate codes of conduct as the sole regulative measure to protect workers from extreme exploitation.

Social context of corporate codes of conduct

Labour codes of conduct are nothing new in themselves. From the very beginning of capitalist industrialisation, some sort of regulations

against capitalists abusing the workforce have emerged, in response to the physical and moral destruction of the workforce as well as increasing protests organised by workers during the early stages of capitalist development. However, it was not until the late 1980s that 'voluntary and self-regulatory' corporate codes of conduct appeared as one of the most important measures to regulate the labour practices of private business.

The changing forms of regulation of labour practices is correlated with the way in which conflicting relations between capital and labour are managed and manifested. During the heydays of the trade union movement, the idea of self-regulated labour practices was largely ridiculed among labour activists and unionists. Conflicts between capital and labour were managed primarily through negotiation between management and trade unions. In addition, the irreconcilable nature of labour-capital relations was diluted by the intervention of the state. On the basis of this paradigm, it was the enforcement of national labour law that prevented labour from being abused by corporations. The political and social power of national and industrial union federations, on the basis of their nation-wide mobilising power, played an important role in pushing the state to regulate individual capitalists. On the other hand, as many unions developed their partnership with the state and, to a certain extent, with capital, more and more trade unions were incorporated into nationwide bipartite or tripartite negotiation systems.

From the 70s, the increasingly transnational nature of corporate activity called for regulation beyond national boundaries. Yet, the cross-country regulation of labour practices also took the form of the 'concentration of national labour law to ensure global protection of labour' (Murray 1998, p. 50). In this context, regulation of the increasing activities of TNCs and their labour practices was set up in a way that international organisations encouraged national governments to voluntarily follow internationally recognised labour codes, such as the OECD's 'Guidelines for Multinational Enterprises' of 1976, or the ILO's 'Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy' of 1977.

However, this paradigm on the basis of national labour law

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and its enforcement by national governments began to be seriously weakened from the late 70s onwards. In response to repeated economic crises, the end of the post World War II boom, and the highly politicised labour movement, Western corporations abandoned accumulation strategies that relied primarily on national labour forces, and more and more went beyond national boundaries in search for better investment places. The increasingly transnational nature of capital investment and production, and accelerated deindustrialisation of developed countries, undermined the validity of the regulation of labour practices on the basis of national labour law and tripartite or bipartite negotiation between organised labour, capital and the government. For developing countries, increasing pressure from developed countries to open their financial and commodity markets to TNCs, together with the devastating efforts of national capital and the state to attract foreign capital, led to the increasing liberalisation of capital flow. This left to the developing countries practically no means of regulating of the labour practices of TNCs.

In the face of this whole scale restructuring initiated by capital, the traditional trade union movement appeared to be largely impotent to respond to increasing job-losses in the manufacturing sector and the subsequent reformulation of employment structure, experiencing a serious decline in their negotiating power with capital as well as the government. Indeed, growing exploitation in developing countries by transnational corporations was out of Western trade union movements' concern, leaving international solidarity, as it has always been, a secondary issue. While FDI increased faster than ever before, a large number of the working population in developing countries, from the 1980s onwards, was left with no legal and union protection. The consequence of this was a growth of global commodity or value chains (Jenkins 2002, p. 15), on the basis of the unity between liberalised capital from the West and deregulated labour practices in the South.

In the meantime, there was emerging social concern in the West about the 'sweatshops' in the South, where local workers produced most consumer goods under the control of transnational companies and their subcontractors. It was around this time that non-

governmental organisations – particularly consumer groups in the U.S. and later Western Europe, relying upon their consuming power as leverage to pressure big corporations to enhance labour conditions in their factories and suppliers – pioneered a new form of South-North solidarity through campaigning against transnational companies with bad labour practices and labour rights violations. Big consumer goods brand names, such as Levi -Strauss and Nike, were firstly targeted. In response to mobilised consumers requesting better labour practices in the developing world, and a possible threat to the profitability of their business, transnational corporations had to develop a new strategy to calm angry consumers. It was in this context that the discourse of so-called “corporate social responsibility” (CSR) began to be popular in the business world. As public concern about corporate social responsibility grew, hardcore anti-CSR arguments, such as those of Milton Friedman (Makower 1994), began to be seen as irrelevant. For companies with a global network of production of consumer goods, the sale of which was sensitive to consumer campaigns, it became more and more necessary to publicise their sincere dedication to CSR. Since then, corporate codes of conduct have been a buzzword particularly among NGOs seeking more effective strategies for labour rights in developing countries.

Recent developed labour codes of conduct are distinguished from the previous ones in both form and content. The latter were motivated by the trade union movement and the mediation of the state accepting a certain degree of collective intervention of workers in the relations between individual workers and capitalists, whereas the latter were pushed by consumer movements that succeeded in influencing consumption practices by publicising sweatshop issues. Another distinctive feature of these new codes of conduct is their *voluntary nature*. Out of more than 200 existing corporate codes of conduct, none has legal binding and enforcement. It is ironic that corporate codes, which were initiated to complement the lack of implementation of national labour law, refer to national labour law where the compliance of code is seen essential. Since they lack an enforcement mechanism, compliance with codes of conduct depends upon the power of consumer campaigns, which have the ability to undermine the profitability of a particular business. In this

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sense, consumer movements and corporate codes of conduct are inseparable from each other. In other words, they presuppose each other. Whether or not codes of conduct can enhance working conditions and wages is overwhelmingly up to the consumer movement. Therefore, it is important to understand the nature of the relations between codes of conduct and consumer movements.

The Profitability Trap

In the early development of the consumer movement, consumer groups challenged big corporations by organising effective media campaigns that led to consumer boycotts. The issue was centred on the obviously inhumane treatment of workers by TNCs operating in developing countries (in this sense, the consumer movement originated from the humanitarian movement, rather than the labour movement). On the basis of its absolute moral superiority, the consumer movement succeeded in forcing consumer goods retailers and producers at least to take into consideration the issues of CSR. In the 1990s, companies like Levi Strauss, Wal-Mart, Gap, and Nike began to approach CSR issues more aggressively by setting up internal codes of conduct. In US, the Clinton administration, in response to the anti-sweatshop movement, introduced 'The Clinton Model Business Principles' and the 'White House Apparel Partnership', urging companies to accept responsibility for labour conditions in the factories of their suppliers in developing countries.

As Western companies and governments responded to human right groups' calls for social responsibility more aggressively, a new social arrangement to resolve sweatshop problems was created on the basis of partnership between different 'stakeholders', such as humanitarian NGOs, governments and businesses. As a result, stakeholder organisations, which aim to promote the social responsibility of businesses by setting up their own labour codes of conduct, proliferated. Major organisations in this field, such as Fair Labor Association (US), Ethical Trading Initiatives (UK), and Social Accountability International (US), were established in the late 1990s. In the mean time, business organisations promoting CSR among themselves, such as Business for Social Responsibility (BSR), also came into the spotlight. In attracting businesses to this stakeholder

partnership and encouraging them to be involved in promoting CSR, more and more initiatives, though not all, have gradually moved their emphasis from 'responsibility' to 'profitability', by showing evidence of the positive relationship between profits and labour rights. In other words, *the profit-labour practice linkage* became a core argument, either explicitly or implicitly, support the necessity of enhancing labour conditions.

The profit-labour practice linkage is based on the idea that 'socially responsible business practices affect all the aspects of business operations and contribute significantly to corporate productivity and profitability' (BSR 2003, p. 1), by bringing to the corporations reduced operating costs, enhanced brand image and reputation, increased sales and customer loyalty, access to capital, and overall improved financial performance (BSR 2002, SAI 2003). The basic assumption of this idea is that consumers are more and more concerned about how products are made, and this influences to a great extent their choice of brand names. This tendency of the emphasis to move toward the affinity between profit and responsibility shows a certain degree of convergence between two traditionally opposing arguments about corporations' responsibility: business for the sake of society and business for the sake of profit. Indeed, this trend shows an increasing integration of CSR into the world of business. The theory of synergic relations between profit (usually long-term) and better social responsibility at a glance appears to be realisable. According to this scenario, under the constant pressure from consumers, individual corporations with good social responsibility could run a more profitable business. Since this causes competition between corporations in enhancing labour conditions and meeting other social requirements, there will be a general improvement of labour conditions. However, could this theory of 'humanitarian' capital work even when we consider the reality of market competition as a whole?

The imminent problem of this theory lies in that it ignores the fundamental mechanism of capitalist accumulation: capital accumulation is fundamentally based on the accumulation of unpaid, alienated labour. In other words, profit that capital takes is nothing other than accumulated unpaid labour. If we assume the amount of

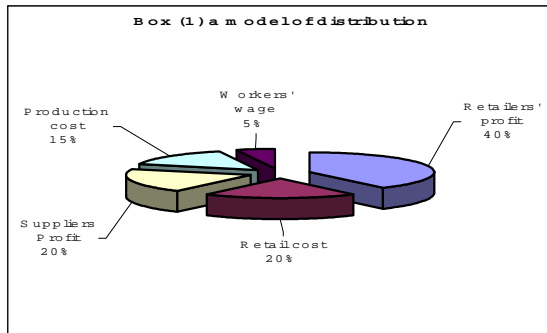
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production and price are fixed and the products are all sold in the market, the increased wages and investment in enhancing labour conditions directly result in decreasing profits. No matter how much the cost is, it certainly means that the money which goes into the pockets either of suppliers or of retailers and brand names decreases. Let's assume that, in spite of short-term profit loss, a company makes an effort to secure better labour conditions and wage for better profit realisation by attracting more consumer to its brand name. Of course, in theory though very rarely in reality, there are cases that individual corporation can make more profit and at the same time, secure better wages and working conditions. This is the case where an individual corporation can maximise the economy of scale, mass production, and sale of products with marginal profit per item. If an individual corporation can expand production scale or increase productivity *to the extent* that the aggregate profit can *complement* the amount of profit they have lost because of higher payment to workers, then the synergic relation between profit and better labour conditions would be proven to work. However, this necessarily means that the individual corporation can secure 1) an absolute domination over the market 2) and a large amount of accumulated capital that can be used for expansion of production, 3) exclusive accessibility to credit expansion, and 4) managerial capacity to increase productivity. How many individual blocks of capital can meet these conditions?

The problem is simply that not every company can do it. This is only applicable to companies who have an established market share and domination, and particularly a reserve of capital because it 'does' undermine short-term profit gain. Better distribution certainly reduces, as far as the price is fixed, the ability to enhance productivity by reducing the amount of money available for reinvestment. Therefore it is critical to small size and new firms. For retailers and global brand names, it is more affordable. This is the reason why many corporations, despite their rhetoric of responsible management, have been so reluctant to enhance working conditions and wages over the past two hundred years. This would be a very fundamental sacrifice for capital. Nevertheless, stakeholder initiatives are asking for capital to do this voluntarily with a reward that is unrealisable to most corporations in the market. The basis of stakeholders' unrealisable arguments about synergic relations between more ethical

labour practices and more profit lies in their understanding of the relations between capital and labour.

Almost all arguments made by consumer campaigns in fact tend to uncritically follow the principles of mainstream economics. In particular, they stick firmly to the cost theory of price, in which different sources of revenue, such as labour, capital, and land, get their shares according to their contribution in profit making. Box (1) shows a common figure used by ethical labour practice advocates. In this figure, the whole price appears to consist of portions that each participants in the production and sales of commodity gains according to their value adding activities. The problem that this figure points out is that suppliers and retailers earn too much in comparison to the workers. Therefore, they have to share the profit through re-distribution; i.e., giving the workers higher wages and investing a percentage of profits to enhance working conditions.



This paradigm focusing on just distribution, which at a glance looks worker-friendly, actually hides the fact that the profit as a whole is nothing but unpaid labour. It denies that the profit comes from labouring activity of the workers employed in the production process and falls back into the argument that profit is created in the process of circulation of capital by all participants. In this theory, there is no contradiction between labour and capital if profit, which appears to come from everyone's contribution, is distributed evenly among the actors of production. Increase in wage decreases the unpaid labour, therefore, profit. However, in this figure, it appears to

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be 'rise in labour cost', which does not necessarily threaten profit, because profit is not only from unpaid labour but also from other contributions. Therefore, the rise in labour cost is merely to be compensated by effective management that could reduce the cost of retailing and production and most of all enhance sales as a result of attracting more consumers. In sum, this profit-ethical labour practice linkage theory ignores the fact that profit comes from labour and creates a myth that profit can be free from exploitation.

We also have to consider particular businesses, for example shoes manufacturing, in relation to other industries. Let's assume that every shoe-making capital project attempts to increase wages, and be compensated by more production and more sales. Things would get worse then. The increased production of shoes would cause massive overproduction, which will lead finally to a deteriorating market price in general. As the rate of profit in the shoe industry goes below the average rate of profit of all industries, capital has to move toward another industrial sector. For instance, shoe makers could turn to auto-parts production. Well, one could say that we've got to follow the flow of capital to make sure capital trades ethically with labour. However, as well known, consumer campaigns can only pressure industries that produce goods purchased directly by a mass of the population. To remain in the industry, individual capital can respond to this problem of decreasing profits in other ways. Most of all, big companies can attribute the cost of high labour standards to its suppliers by forcing those suppliers to comply with their codes, yet not allowing an increase in supply price. Suppliers might try to be compensated for the money they spent on improving working conditions by squeezing their subcontractors. Consequently, we end up creating a vicious cycle down to the bottom of the supply chain. Having seen all these, the contemporary argument based on 'better labour conditions, more profit' is neither realisable nor logical. However, this *does not* mean that pushing forward the improvement of working conditions by setting up codes is a vain attempt. Instead, it means that as far as we attempt to promote labour rights and improve labour conditions on the basis of the logic of profitability, we will meet a dead end sooner or later. In order to take advantage of codes of conduct to enhance workers' living conditions, we have to overcome this profitability 'trap'. Indeed, profitability-driven CSR is

far from 'responsibility' and rather close to market-based incentives. What kind of 'responsibility' needs that much reward?

Non-Democratic Nature of the Stakeholder Approach

It is important to make it clear that there is fundamental antagonistic relation between labour and capital. By arguing better wage and working condition, we are asking capital to sacrifice to a great extent. Not once has this happened without workers' struggle and self-organisation. Here, we find another problem in the 'stakeholder' approach to the codes of conduct: undemocratic and non-participatory process through which a better working condition is supposedly achieved. As Klein argued, 'the most distinctive feature of corporate codes of conduct is that they are written 'for' the workers 'by' so-called other stakeholders, such as stockowners, management, NGOs and international organisations (Klein 1997). This undemocratic nature of the stakeholder approach to the labour codes of conduct is inherent in the concept of the *voluntary* code of conduct, which in fact means 'capital will take care of things and workers sit back and benefit from it'.

For the consumer movement, the undemocratic nature is one of the intrinsic problems to be overcome to create a new form of solidarity between workers in the South and 'consumers' in the North. The undemocratic nature of the stakeholder approach reflects changes in the way that social movement organisations in the West perceive an individual and the collective of individuals. Rather than understanding individuals as workers whose social reproduction is subjected to her/his relations to wage-labour, and collective workers as the working class, these organisations conceptualise individuals first of all as consumers and the working class as consumer group, whose 'moral' spending would contribute to bringing more justice to the market-based economy.

The understanding of the labouring population as 'consumers' rather than 'workers' does not reflect the fact that most industrial workers exist in the South and most consumer power is concentrated in the developed countries in the North. Rather, it is rooted in a critical change in the way in which they identify the

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fundamental problem of this society as well as choose a strategy to overcome it.¹ This indicates 1) the main problem of contemporary society no longer lies in production itself, i.e., the problem of poverty and inequality does not come from the fact that production is organised for profit but from the particular way through which profit is produced and realised in either particular industrial sectors or particular regions, such as Asia, Latin America and Africa 2) and therefore, if corporations produce in a moral way (in response to the consumer campaign) and, most importantly, distribute the wealth produced by the production more evenly without extra exploitation among the participants of the production, there will be no problem. This also accompanies arguments about the demise of the old-working class and makes the consumers into the most important subject for social change. Accordingly, it is no longer up to the working class to lead the movement against social problems. Rather, it is argued that the problem of injustice can be resolved by the mobilisation of consuming power, rather than by workers' self-organisation, which is an agenda from old 'industrial' society, the contradiction of which has been resolved with the emergence of actually abundant society.

The nature of stakeholder approach, at the centre of which lies the role of consumer, become clearer when many promises made by consumer-centred campaigning and monitoring groups to develop participatory and worker-centric model turn out to be mere rhetoric. The role of the workers in this monitoring, both in the North and South, has been marginal, confined within responses to others' initiatives. For example in monitoring, workers remained the mere 'interviewed' or complainants. As a result, participation from rank-and-file workers in the process of monitoring the compliance of labour codes, which has been all the time referred to as an essential element for the campaign and monitoring, found itself only in the role of 'but also'. In the meantime, in the North, many of the working class whose consuming power is determined predominantly by price have been isolated from any sort of solidarity action. It becomes clearer when more and more organisations prefer to cooperate with business and other so-called stakeholders rather than developing solidarity with workers at the workplace. In this sense, the consumer-centric nature of campaigns and monitoring as well as the slow development

of solidarity with workers in the developing countries is not a technical failure but an intrinsic problem of the approach, in which production and workers take secondary roles to distribution and consumers.

Conclusion

In spite of all the shortcomings, pursuing better living conditions of workers by means of labour codes of conduct is not ineffective in itself, as repeatedly emphasised in this article. The fact that the ideal of these codes contradicts the basic movement of markets tells us not only of their unrealisable nature but also their usefulness as a way of pushing capital to the limit.

However, codes of conduct will benefit workers only under certain conditions that could minimise the intrinsic problems identified above. Firstly, a code will function as a vehicle to the better living condition of workers if we push the content and implementation of codes of conduct beyond market concerns, such as profitability and efficiency. If we argue that consumers have to take non-market determinants into the consideration of purchase, it is necessary that we apply these non-market standards to corporations as 'responsibility', rather than as another marketing strategy for more profit. If we allow efficiency and profitability to be a yardstick of the introduction and implementation of codes of conduct, we will at best add one more cost factor. By doing so, we will see a new sort of competition in developing more effective and productive (and cheap) methods (agents, technology, human resource management, work ethic, effective education and others) to meet the code of conduct, so that companies can improve working conditions with the least possible increase in costs. This is already becoming a visible reality, with increasing competition between so-called 'inspecting agencies'.

The only way, from workers' point of view, that workers can benefit from codes of conduct is to separate –or to keep trying to separate– the CSR issue from the issue of profitability and efficiency. Going in the opposite direction will clearly show that implementation of codes by corporations is merely another aspect of subsuming labour to capital in the form of self-management of labour forces by

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capital.

This leads us to the second condition: we have to guarantee workers' participation in the monitoring process, and in writing and revising the codes. To do so, workers' participation and methods to encourage it should not be left as a follow up programme of consumer campaigns, but prepared as a premise in advance. Surely, this involves meeting another condition: we have to develop a more constant solidarity network between North and South, as well as between NGOs and unions. As far as we 'set up the scene' and wait and see what the impact on workers will be, the result will be minimal.

Without fulfilling the above conditions, corporate labour codes of conduct will end with the commodification of labour rights. If so, in addition to the commodification of other basic human needs such as clean water and environment, codes of conduct will bring about the final round of commodification of the human world.

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ENDNOTES

1 This critical change in understanding working individuals has been influenced heavily by those elements of the theories of post-industrial society that attracted many people, particularly those in the academia and NGOs in the US and European countries.