



Who's got the Universal Code?



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April 2008

Who's got the Universal Code?

Who's got the Universal Code? examines attempts by multi-stakeholder initiatives and industry associations to develop and promote a "universal" code of conduct that would be applicable to one or more sectors in the globalized economy. We also compare and contrast key provisions on minimum labour standards in these competing "universal codes" and identify critical issues that are blocking agreement on a common code.

Codes Memo

The Maquila Solidarity Network's *Codes Memo* profiles trends in voluntary codes of conduct and government policy and explore critical issues and debates in the labour rights movement. *Codes Memos* are available in Spanish and English on the MSN website: www.maquilasolidarity.org. We welcome your comments and suggestions.



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“We believe that there should be one framework of social and environmental standards for all major global retailers. And there should be one third party auditing system for everyone. This will ensure improvement can occur across the board on a level playing field.” Lee Scott, CEO and President, Wal-Mart Stores, Inc.¹

Factory owners complain of audit fatigue and that different brand buyers are demanding compliance with different code of conduct standards.

Trade unions and NGOs criticize brands for adopting weak codes with imprecise standards as a mere PR exercise. Brand buyers complain that the high standards demanded by unions and NGOs are not achievable, at least over the short term.

One of the major weaknesses of voluntary codes of conduct has been the lack of consistency in code provisions and the lack of consensus among companies and stakeholders on the minimum labour standards that companies should be expected to meet.

In October 2003, a World Bank study estimated that there were 1,000 separate buyer codes of conduct for global supply chains with varying labour standards. According to the Bank, “the increasing number of codes, and the variety of standards they contain, is a source of inefficiencies and confusion that may limit their effectiveness.”²

As Wal-Mart CEO Lee Scott points out, “Many of our supplier factories have multiple customers, including multi-national corporations and local retailers. This often results in duplication of efforts without a real improvement in performance. And in some cases, it allows a competitor to have lower standards and, at times, lower costs.”³

Despite the fact that minimum international labour standards have been codified in the Conventions of the International Labour Organization (ILO), all of which have been negotiated through a tripartite process, the vast majority of voluntary codes of conduct that have been adopted by individual companies or industry associations fail to reflect those standards.

At the same time, a number of participants in the 2003 World Bank study pointed to “a strong and growing convergence [in standards] around core International Labour Organisation (ILO) conventions...” in the codes adopted by the most visible buyers.⁴

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Multi-Stakeholder Initiatives

Is convergence possible?

also actively involved in the drafting of the ETI and FWF codes and these organizations continue to participate as equal partners in the MSIs' governance bodies.

Meanwhile in the United States, participants in the Fair Labor Association (FLA) adopted their own code, which contained minimum standards that were generally weaker than those of the other MSI codes and the ILO Conventions and UN Declarations on which they are based, particularly on hours of work, wages and security of employment.¹⁰

Although US trade unions, NGOs and faith organizations participated in the drafting of the FLA Code, the unions and some of the NGOs and faith organizations abandoned the initiative shortly before its official launch.

According to the North American garment workers' union UNITE, now known as UNITE HERE!, the main issues that provoked the trade unions to walk out of the discussions were the lack of meaningful steps to address the living wage issue or the right of workers to organize in countries where that right is systemically denied, as well as company control over the FLA monitoring program.¹¹

The FLA has since made changes in its monitoring program to bring control over monitoring in-house and to disclose more information on audit findings and corrective action plans. However the living wage question, how to ensure the right to organize in countries where freedom of association is legally restricted, and an hours of work provision that is weaker than those of the other MSIs are still outstanding issues.

At least partially in response to the perceived weaknesses of the FLA Code and monitoring system, university students and other labour rights activists in the US created an alternative code monitoring initiative, the

The emergence of multi-stakeholder initiatives (MSIs)⁵ in the late 1990's helped to raise the bar on code standards, facilitating agreement among groups of high-profile companies, trade unions and labour rights NGOs on common sets of standards that are generally more consistent with those set out in ILO Conventions and UN Declarations.

One of the first attempts at developing a universal code applicable to all sectors was the SA8000 Standard developed by CEPAA, later renamed Social Accountability International (SAI). The SA8000 Standard is based on ILO Conventions and UN Declarations, and includes a living wage provision.⁶

According to Judy Gearhart of SAI, the CEPAA board agreed early on to peg SA8000 to ILO Conventions and the Universal Declaration of Human Rights. "The involvement of technical experts on the board such as Neil Kearney, General Secretary of the International Textile, Garment and Leather Workers' Federation (ITGLWF), and Dorianne Beyer, General Counsel, National Child Labor Committee, as well as extensive staff research and consultations with ILO materials and technical experts, helped strengthen the alignment of the SA8000 Standard to the relevant ILO Conventions." says Gearhart.⁷

Shortly thereafter, two other MSIs – the Ethical Trading Initiative (ETI)⁸ in the UK and the Fair Wear Foundation (FWF)⁹ in the Netherlands – adopted very similar codes, though these codes were for companies that sold products in their respective countries, and the FWF code was, at least initially, exclusively for Dutch companies in the garment sector.

Significantly, trade union organizations and non-governmental organizations were

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Worker Rights Consortium (WRC)¹² that included a Model Code of Conduct¹³ that is more consistent with ILO Conventions and UN Declarations and includes additional provisions on women's rights.

Ten years after the founding of the MSIs, inconsistencies remain between the various MSI codes.

In February 2003, hopes were raised that these differences could be overcome when the four MSIs and two labour rights organizations, the WRC and the Clean Clothes Campaign (CCC), agreed to work together through the Joint Initiative on Corporate Accountability and Workers' Rights (JO-IN) to seek common ground on code standards and attempt to define best practice on code implementation.¹⁴

JO-IN code sets the standard

After two and a half years of oftentimes difficult discussion and debate, in July 2005, the ETI, FLA, FWF, SAI, WRC, and CCC reached agreement on a draft common code of conduct to be tested in a JO-IN pilot project in Turkey.¹⁵

The agreement by the four MSIs and some of their member companies to adopt the draft JO-IN code for use in the Turkey pilot project raised hopes that other companies outside the MSIs would eventually buy onto a universal code of conduct that defined best practice in labour standards provisions.

When the Bangladesh Buyers' Group of the MFA Forum,¹⁶ which includes a broader representation of retailers and brands, also adopted the draft JO-IN Code as its common aspirational code for all the participating companies' garment supplier facilities in Bangladesh, it appeared that these hopes were being realized. However momentum was stalled by continuing differences on some code standards.

Post JO-IN: will the MSIs adopt the common code?

Although the JO-IN process was successful in achieving consensus on a best-practice code for the Turkey project, the participating MSIs and companies have not yet agreed to adopt the common code as their own.

According to FLA President and CEO Aurret van Heerden, all the MSIs, including the FLA, will be carrying out reviews of their codes of conduct that will be informed by the JO-IN experience, however differences remain not only on code standards, but also on implementation protocols.¹⁷

Judy Gerhardt of SAI confirms that her organization has already made changes in the SA8000 Standard to make it more consistent with those of the JO-IN code. "The SAI board has worked very hard to align the new SA8000 Standard as closely as possible to the JO-IN common code," says Gerhardt.¹⁸

According to Jantien Meijer of the Fair Wear Foundation (FWF), his organization is also planning to make changes in its code as part of the process of gaining consensus on a common code. "FWF intends to revise its Code of Labor Practices for the Garment Industry in 2008, in close cooperation with the organizations that were, until December 2007, working together in JO-IN," says Meijer.¹⁹

Living wage: the outstanding issue

The FLA appears to be the most resistant to adopting the draft common code in its present form, as long as it includes the current language on a living wage standard.

"The FLA has debated this [issue] at length a number of times in the last ten years and I would say that our concern is

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with the definition, measurement and monitoring of this [living wage] concept, particularly when you need to take it to scale," says van Heerden.²⁰

At the suggestion of the FLA, the MSIs involved in the JO-IN project will be meeting with ILO experts later this month in an attempt to move the discussion forward on a common code, and on the living wage issue.

"It is my strong feeling that codes should stick as closely to ILO terminology as possible since that increases the alignment with ILO standards and maximizes the potential for using ILO jurisprudence to interpret real-life situations," explains van Heerden.²¹ "We hope that the ILO will be able to advise us on ways of re-wording our code provisions in ways that increase that alignment."

Meijer of FWF is also hopeful that the result of those discussions will be a common code that is acceptable to the MSIs.²²

However, the continuing differences among the MSIs on the living wage issue, which are unlikely to be resolved by a strictly legalistic interpretation by ILO experts, could make it difficult for the MSIs to gain consensus on a common code, at least in the short term.

An unresolved question that needs to be addressed before consensus can be reached on the living wage issue is whether a living wage provision is enforceable in the short term or whether it is an aspirational standard that can only be achieved over time. And if the standard is aspirational, what can be done to ensure that compliance with that standard isn't put off until the indefinite future?

"I am personally opposed to a 'living wage level' arrived at through research, since it completely ignores the factors that collective bargaining takes into account such as the ability to pay based on prevailing business conditions," says the FLA's van Heerden.

Gearhart agrees that a living wage cannot be determined through purely quantitative research, but believes MSI codes should include a living wage standard. She emphasizes the importance of local consultations on wage issues with workers on site, trade unions and other stakeholders.

"A living wage standard is an essential element to conducting a comprehensive audit

"A living wage standard is an essential element ... it is difficult to assess whether overtime is voluntary unless you also assess the adequacy of wages..."

Judy Gearhart,
Social Accountability
International

of factory conditions." says Gearhart. "For example, it is difficult to assess whether overtime is voluntary unless you also assess the adequacy of wages as well as how wages are being set."²³

Van Heerden favours the wage ladder approach to improving wages over time that was explored in the JO-IN Turkey project (see page 11), which he claims

would provide "a more constructive basis for discussing remedial strategies than a simple non-compliance finding ever does."

In contrast, the WRC, which supports the inclusion of a living wage standard in a common code, is sceptical about the MSIs' ability or willingness to implement such a standard in the short or long term.

"I am not very keen on the idea of MSIs adopting a code that their member brands have no intention of even claiming to follow," says WRC Executive Director Scott Nova.²⁴ "Given the current posture of most of the relevant brands and retailers, it is therefore hard for me to see how a common code can be adopted by the MSIs, unless living wage is removed (which we could not support) or rendered meaningless because brands have no intention of paying it."

While the MSIs continue to seek consensus on a common code that would extend beyond the JO-IN Turkey project, industry associations are moving ahead with their own versions of a "universal code."

Industry takes the initiative

Unfortunately, as consensus on a common code was being hammered out among the MSIs and labour rights organizations, various industry associations, some of which also included members of the MFA Forum Bangladesh Buyers' Group, were moving ahead in developing competing "universal codes."

WRAP

Even before the JO-IN draft common code was adopted, in December 2004, a US-based industry-led initiative, the Worldwide Responsible Apparel Production (WRAP) Certification Program, had announced the launching of a "Universal Code of Ethical Conduct" (UCEC).²⁵

According to WRAP, the UCEC is a modified version of its WRAP Principles, which had been developed by the American Apparel Manufacturers' Association (AAMA),²⁶ specifically for the apparel sector, in order to "allow inclusion of all labor-intensive consumer products such as home furnishings, pottery, glassware, furniture, electronics, and even agricultural products."²⁷

Like the WRAP Principles, the UCEC sets the minimum age for workers at 14 rather than the ILO's minimum age of 15, requires no more than compliance with local and national laws on wages and benefits, and allows the normal workweek to extend to 72 hours in a six day period.

In August 2007, WRAP announced that it was changing its name to Worldwide Responsible Accredited Production to reflect its "increasing involvement with diverse industries..."²⁸

BSCI

Meanwhile in Europe, the Business Social Compliance Initiative (BSCI), an industry-controlled code initiative of major European retailers, released its revised supply chain

Code of Conduct. According to the BSCI, the aim of the new code was to "integrate additional ILO Conventions, to be more precise in some requirements."²⁹

The revised code was the result of dialogue between BSCI and Social Accountability International (SAI) that led to a partnership between the two initiatives in which BSCI promoted SAI certification of their members' supplier factories as a long-term objective.

As part of those discussions, BSCI agreed to improve its code of conduct to make it consistent with the SA8000 Standard, which, as mentioned above, is based on ILO Conventions and UN Declarations.

However, according to Neil Kearney of the ITGLWF, who resigned from the SAI Advisory Board as a result of the new partnership with BSCI, some of the provisions of the revised BSCI code are still imprecise and open to interpretation, particularly on the question of whether workers are entitled to wages that meet basic needs.³⁰

GSCP: the new code on the block

In February 2007, the BSCI/SAI alliance was put to the test when yet another retail initiative was launched by five of the world's largest European and US retailers – Carrefour, Metro, Migros, Tesco and Walmart.³¹ Under the auspices of food retailers' association, CIES: The Food Business Forum, the retail giants released a draft industry code of conduct for retail global supply chains.³²

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Although the new draft code is still being reviewed,³³ it is already being touted as yet another universal code.

According to CIES, the Global Social Compliance Programme Code (GSCP Code) “gathers together in a single framework the highest level of commonly accepted international standards for working conditions and fundamental labour rights.”³⁴

When Wal-Mart CEO Lee Scott advocated “one framework of social and environmental standards,” it was the code drafted by CIES that he had in mind. “The effort is now focused on social standards, and I believe it should be expanded to environmental standards as well,”³⁵ said Scott.

Scott then called on all major global retailers to join the CIES initiative, stating, “I stand ready to meet with the CEOs of our competitors and make socially and environmentally responsible sourcing a reality across the entire retailer industry.”

Flaws in the GSCP

While the GSCP draft code is certainly more consistent with ILO Conventions than the WRAP code, and therefore represents a step forward for retailer giants like Wal-Mart, it has been criticized for having inconsistent language on freedom of association, wages and other compensation, and working hours, as well as for the fact that the code applies only to supply chain workers and not to the retailers’ own employees.³⁶

In a June 8, 2007 letter to CIES, the Clean Clothes Campaign (CCC) criticized the GSCP for not involving stakeholders from the beginning rather than “approaching them after key decisions related to the programme have been made.”³⁷

The letter goes on to suggest that CIES members would be better off seeking membership in one or more of the existing multi-stakeholder initiatives and “given your wish

to develop a common code based on existing best practices, use the JO-IN draft code.”

According to the CCC’s Ineke Zeldenrust,³⁸ the GSCP is a “business-driven initiative that was designed from the start for all decisions to be made by its corporate members while unions and NGOs that chose to become involved would be marginalized to a purely advisory role.”³⁹ As a result, the GSCP will face major accountability problems not only with labour rights activists, but also with the broader public,” says Zeldenrust.

MSI and industry codes: similarities and differences

One of the positive things about the competing “universal codes” is that the language in the various code provisions is far more precise than was the case in early company codes of conduct. In most cases, the language is also more in line with that of the relevant ILO Conventions and UN Declarations, and in some cases those Conventions and Declarations are specifically referenced.

According to Dan Rees, Executive Director of the UK’s Ethical Trading Initiative (ETI), this convergence on ILO Conventions is the result of ten or more years of discussion and debate among NGOs, trade unions and companies, and more recently, dialogue among the MSIs and industry initiatives.⁴⁰

“There are still some differences in the views on which conventions or the interpretation of the standards, but the direction of travel is towards greater convergence,” says Rees.⁴¹

However, ten years after the launching of the MSIs, the fact that there continue to be a number of competing “universal codes” with very similar standards is hard to explain, and harder to justify. After more than ten years of discussion and debate, as well as practical experience in attempting to implement voluntary codes of conduct, why have we not yet achieved consensus on a universal code?

A universal code? Where the differences lie

While at first glance the differing language in the provisions in the competing universal codes may seem minor, there are important differences on key issues, particularly concerning freedom of association and the right to bargain collectively, wages, hours of work, and security of employment.

For a comparison of key provisions in multi-stakeholder codes and those of the major industry initiatives, see the charts beginning on page 14.

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Not surprisingly, the code provisions where most differences remain are those that could impact fundamental power relationships between workers and their employers, such as management's unilateral control over the workplace; labour flexibility, including the unrestricted right to subcontract labour; and wages, prices and profits.

Wages

The different language in the wage provisions of the four competing codes also reveals that there continues to be a vigorous debate on the question of whether workers are entitled to a living wage that meets basic needs.

While the WRAP Principles only require payment of the legal minimum wage, the other two industry codes go further in stating that total "compensation" must meet basic needs or that the employer should be "encouraged" to provide "adequate compensation" that covers "living expenses." What is included in "compensation" and "living expenses" is left ambiguous, however.

In contrast, the draft JO-IN Code is unambiguous in stating that "workers shall have the right to a living wage" and that "wages and benefits paid for a standard working week" shall "be sufficient to meet the basic needs of workers and their families and provide some discretionary income."

Freedom of Association

With the possible exception of the WRAP Principles, the industry association codes show some progress on the issue of freedom of association and collective bargaining.

However, while the industry association codes tend to limit these rights to what is proscribed by local labour law, the JO-IN Code goes further in asserting that the employer "shall adopt a positive approach towards activities of trade unions and an open attitude towards organizational activities of workers."⁴²

In contrast, the WRAP code includes an unusual provision that appears to give the employer the right to do anything permitted by local law to interfere with the workers' right to freely associate and bargain collectively.⁴³

Hours of Work

Hours of work provisions in the industry codes also leave considerable room for interpretation, though the WRAP Code is unambiguous in totally ignoring ILO Conventions by allowing for a 72 hour workweek.

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Child Labour: is it still an issue?

Even on the hot-button issue of child labour, the WRAP code breaks ranks with the others, and with the relevant ILO Conventions, in attempting to establish 14 as the minimum age in all countries, unless the law proscribes a higher minimum.

And, although the BSCI Code makes specific reference to ILO Conventions on child labour, it does not explicitly state the minimum age, thereby leaving this provision open to interpretation by suppliers and factory auditors.

Precarious employment

Totally missing from the WRAP and BSCI codes is any reference to the employment relationship, whereas both the JO-IN and GSCP codes prohibit the use of labour-only contracting, subcontracting, homeworking arrangements, apprenticeship schemes or excessive use of fixed-term employment contracts as a means of avoiding labour, social security or other legal obligations applicable to regular employees.

Code implementation

Beyond code provisions themselves, the most significant differences between the MSIs and the industry initiatives are the methods and mechanisms by which they attempt to implement their codes of conduct.

Even among the MSIs there continue to be important differences about a number of implementation issues, such as:

- who is best equipped to monitor and verify code compliance and how and by whom they should be paid;
- the role of local trade unions and NGOs in code implementation;
- levels of transparency concerning investigative findings;
- third-party complaint processes; and
- appropriate corrective action when alleged worker rights violations are verified.

Over the past decade, however, the MSIs have gone through a learning process that has called into question many earlier assumptions about how to effectively implement codes of conduct in global supply chains. Despite the many differences that

remain among the MSIs on the question of code implementation, they have come to very similar conclusions on key implementation issues that were further explored in the JO-IN Turkey project.

One important lesson has been that factory auditing alone does not lead to sustainable improvements in labour practices or working conditions at the factory level. As a result, all of the MSIs have begun to experiment with other ways to more effectively achieve and maintain compliance with their codes of conduct and local labour laws.⁴³

These include increased emphasis on:

- training of factory management personnel and workers;
- increased engagement with local trade unions and NGOs;
- increased attention to the practices of the buyers themselves and how they impact on the ability of suppliers to comply with wage and hours of work provisions; and
- an increased emphasis on joint company and multi-stakeholder action to attempt to address systemic problems in the industry.

While many companies that have chosen to work through industry initiatives rather than through MSIs have come to similar conclusions about the limitations of factory auditing, their reluctance to collaborate as equal partners with trade union organizations and labour rights NGOs in their governance structures has limited their ability to explore other options.

As a result, the industry initiatives continue to focus on the traditional methods of factory auditing, while emphasizing the benefits of sharing audit findings among buyers, but not with other stakeholders or the public, in order to minimize costly duplication of efforts.⁴⁵

Living wage: tackling a contentious issue

One of the most contentious issues that was explored in the JO-IN Turkey project was how to achieve compliance with a living wage provision.

Despite all the divisions among the participants, the JO-IN project made a significant contribution to the on-going living wage debate by putting aside the question of how best to measure a living wage and focusing instead on how to improve wages by stages to achieve a living wage over time.

The project experimented with a wage ladder approach that begins with an assessment of current wage levels and then focuses on “effective strategies for improving wage levels (e.g. increasing the prices paid, improving productivity, improving management systems, or applying cost-sharing schemes).”⁴⁶

The ladder charts progress on wages by steps from the legal minimum wage, to the prevailing industry wage, to negotiated wage, to the living wage standards of different MSIs, and up to a living wage as defined by Turkish trade unions.⁴⁷

According to Doug Miller, the ITGLWF representative at the December JO-IN International Advisory Panel meeting, his organization believes that the determination of a living wage should be carried out at national level, and for that reason has encouraged its affiliates to engage in such initiatives at the present time.⁴⁸

“A wage ladder as developed in the JO-IN project is a tool that can assist our unions to visualize the difference between the national/regional minimum wage, the prevailing industry wage based on sampling from key factories, and national definitions of a living wage determined by various stakeholder groups,” explains Miller. “This will not only assist the process of arriving at a national target living wage figure, but also be a very practical way of getting quite complex information across to the membership.”

Although the JO-IN Turkey project was only a small and very tentative step toward greater collaboration among the MSIs, it did show that these highly competitive organizations with very different approaches to code implementation are capable of working together on common problems and issues.

And while it is unlikely that the MSIs involved in the JO-IN Turkey project will all attempt to work together on a similar intensive project in another country in the near future, they have made a commitment to continue to collaborate on a more ad hoc basis on specific code implementation initiatives through the newly created JO-IN Forum.

The most immediate challenge facing the four MSIs and two labour rights organizations that participated in the JO-IN Turkey project is overcoming outstanding differences on the living wage issue that is still blocking the adoption of a common code.

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The emergence of multi-stakeholder and industry code of conduct initiatives for labour practices in global supply chains, as well as both competition and dialogue between and among these initiatives, has resulted in an upward harmonization of labour standards and greater consistency with international standards enshrined in ILO Conventions and UN Declarations.

At the same time, there continue to be significant inconsistencies in code provisions and language between the various competing initiatives, with the industry initiatives generally lagging behind the MSIs, which include trade unions and labour rights NGOs in their decision-making governance structures.

Not surprisingly, the key issues dividing the competing initiatives are those that challenge management control of the workplace, labour flexibility or changes that could impact on corporate profits. These include management attitudes toward trade unions and respect for freedom of association, whether workers are entitled to a living wage that meets basic needs, limits that should be placed on hours of work, and prohibitions on abuse of subcontracting and short-term employment contracts.

While agreement reached between four major multi-stakeholder initiatives and labour rights organizations on a common draft code of conduct could set the stage for broader agreement on a universal code, further progress is currently blocked by the reluctance of at least some of the MSIs to adopt the common code as their own, as well as the

insistence of three industry associations to promote competing “universal” codes with lower and/or more ambiguous standards.

Whether a common code should include a living wage standard and, if so, how such a standard could be effectively implemented is perhaps the key issue dividing the MSIs.

However, these differences should not be used as an excuse to avoid recognizing that workers are entitled to a wage that meets basic needs and that buyers purchasing practices are making it difficult for suppliers to pay a living wage.

Rather than focusing on how to define or calculate a living wage, companies and MSIs should build on the JO-IN experience and collaborate on concrete projects looking at how a living wage standard could be put into practice.

The wage ladder approach taken in the JO-IN Turkey project is one option that needs to be explored further. Another example is the ETI proposed pilot project in Bangladesh, in which ETI member companies would jointly explore how to implement a living wage standard in a low-wage country where wage increases would not significantly impact on prices.

As well, companies that are committed to the principle of a living wage, but fearful that incorporating such a standard in company or MSI codes would raise unrealistic expectations of immediate wage increases in all their supply factories should be encouraged to offer a preferential price to suppliers that pay wages that meet basic needs and/or that have negotiated wage improvements with democratic unions.

Not surprisingly, the key issues dividing the competing initiatives are those that challenge management control of the workplace, labour flexibility or changes could impact on corporate profits.

Is a Common Code on the agenda?

Although there has been considerable progress over the past ten years in moving from vague, arbitrary language in voluntary codes of conduct toward more precise standards based on internationally recognized norms, the jury is still out on whether consensus will be reached on a universal code in the near future.

More important than the differences on code language is the more fundamental question of how a universal code could be successfully implemented.

In this regard, the emergence of the GSCP code could represent a setback rather than an advance, since this new industry-controlled initiative involving the world's biggest and most powerful retailers is wedded to the traditional private sector social auditing model that has been largely discredited after more than ten years of practice.

In order for real advances to be made on wages, working conditions and worker rights both at the factory and industry-wide level, the industry-controlled initiatives of the retail giants will need to learn from the experiences of the MSIs rather than duplicating their mistakes.

To do so, however, the industry initiatives would have to overcome their long-standing distrust of trade unions and NGOs, both international and local, and get beyond their deep-seated bias in favour of self-regulation. In other words, they would have to transform themselves into MSIs and work with international and local stakeholders on the implementation of a common code.

However, for the MSI model to become more attractive to retailers and brands that are currently more comfortable in industry-only initiatives, the MSIs will need to demonstrate that they can build on the small advances they achieved through the JO-IN project rather than retreating into their respective bunkers.

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Comparison of Key Provisions in Industry Codes and JO-IN Code

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	BSCI	GSCP	JO-IN	WRAP
Child labour	<p>Forbids child labour as defined by ILO and UN Conventions, but minimum age not explicitly stated.</p> <p>No hazardous, unsafe or unhealthy work for young workers under 18.</p> <p>Support for schooling for child labourers until no longer a child.</p>	<p>Minimum age of 15, or 14 where ILO developing country exception allows.</p> <p>Support for schooling for child labourers until no longer a child.</p>	<p>Minimum age of 15.</p> <p>No hazardous conditions for young workers under 18.</p> <p>Support for schooling for child labourers until no longer a child.</p>	<p>Minimum age of 14.</p> <p>No exposure of young workers to hazardous work.</p> <p>Legal compliance re young workers.</p>
Freedom of association	<p>Right to form and join trade unions of choice and to bargain collectively.</p> <p>Worker representatives have access to their members in the workplace.</p> <p>Employer facilitates parallel means of free association and bargaining where rights restricted by law.</p>	<p>Right to join or form trade unions of choice and to bargain collectively.</p> <p>No employer interference with such lawful activities.</p> <p>No discrimination against worker representatives, access of worker representatives to workplace to carry out representative functions unless seriously disrupts company's normal activities.</p> <p>Employer facilitates, and does not hinder, lawful parallel means of free association and bargaining where rights restricted by law.</p>	<p>Right to form or join trade unions of their choice and to bargain collectively.</p> <p>Prohibits dismissal, discrimination, harassment, intimidation or retaliation for reason of union membership or participation in trade union activities.</p> <p>Company adopts positive approach towards activities of trade unions and an open attitude towards organizational activities of workers.</p> <p>Access of workers' representatives to all workplaces to carry out representative functions, and employer shall not, without justification, impede access.</p>	<p>Lawful rights to free association and collective bargaining and to join or not join the organization of choice without penalty or interference.</p> <p>Suppliers have the right to act within the boundaries of the law when workers exercise their rights to associate.</p>

	BSCI	GSCP	JO-IN	WRAP
Wages	<p>Legal minimum wage or industry standards.</p> <p>Where legal minimum wage or industry standards does not cover living expenses, employer encouraged to provide adequate compensation to meet these needs.</p> <p>Prohibits deductions from wages as a disciplinary measure.</p>	<p>Compensation meets basic needs and provides some discretionary income for workers and their families.</p> <p>Prohibits illegal or unauthorized deductions from wages or deductions as a disciplinary measure.</p>	<p>Wages and benefits for a standard workweek shall be sufficient to meet basic needs of workers and their families and provide some discretionary income.</p> <p>Prohibits deductions for disciplinary purposes and deductions not provided for by national law without the written permission of the worker.</p>	<p>Wages and benefits are in compliance with local and national laws.</p>
Hours of work	<p>48 hours per week, 1 day off in seven.</p> <p>Overtime is voluntary, paid at a premium rate, shall not exceed 12 hours per week.</p>	<p>48 hours per week, 1 day off in seven.</p> <p>Overtime is voluntary, paid at a premium rate, shall not exceed 12 hours per week.</p>	<p>48 hours per week, 1 day off in seven.</p> <p>Overtime is voluntary, shall not exceed 12 hours a week, and shall be paid at minimum 1½ the regular hourly compensation rate.</p>	<p>72 hours per week or 14 hours per day, except in extraordinary business circumstances, 1 day off in seven.</p> <p>Overtime should be voluntary.</p>
Employment relationship	<p>No Provisions.</p>	<p>Prohibits use of labour-only contracting, sub-contracting or home-working arrangements, apprenticeship schemes or fixed-term contracts of employment as a means of avoiding its obligations to personnel under applicable laws pertaining to labour and social security legislation and regulations.</p>	<p>Prohibits use of labour-only contracting, sub-contracting or home-working arrangements or through apprenticeship schemes or excessive use of fixed-term contracts of employment to avoid obligations to workers under labour or social security laws and regulations arising from the regular employment relationship.</p>	<p>No Provisions.</p>

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Comparison of key provisions in multi-stakeholder codes

	ETI	FLA	FWF	SAI	WRC
Child labour	<p>Minimum age of 15, unless minimum age law set at 14 in accordance with ILO developing country exceptions.</p> <p>No new recruitment of child labour.</p> <p>No night or hazardous work for children or youth under 18.</p> <p>Support for transition and quality education for child labourer until no longer a child.</p>	<p>Minimum age of 15, unless 14 established by national law or regulations.</p>	<p>Minimum age of 15.</p> <p>No work that is likely to harm the health, safety or morals of children 15-18.</p>	<p>Minimum age of 15, unless minimum age set at 14 in accordance with ILO developing country exceptions.</p> <p>Prohibits hazardous, unsafe or unhealthy work for youth under 18.</p> <p>Prohibits children and young workers being employed during school hours, or combined hours of transportation and work time exceeding 10 hours a day.</p> <p>Company shall remediate child labour by providing adequate support to remain in school until no longer a child.</p>	<p>Minimum age of 15, unless legal minimum 14 in accordance with ILO developing country exceptions.</p> <p>Licenses must take reasonable steps to minimize negative impacts in child labourers released from employment as a result of enforcement of the code.</p>
Wages	<p>Wages for standard workweek should always meet basic needs and provide some discretionary income.</p> <p>No deductions from wages as a disciplinary measure or deductions not provided for in national law, without expressed permission of worker.</p>	<p>Minimum wage or prevailing industry wage, whichever is greater, and legal benefits.</p>	<p>Wages and benefits for standard workweek meet basic needs of workers and their families and provide some discretionary income.</p> <p>No deductions from wages as disciplinary measure or if not provided for by national law.</p>	<p>Wages for standard workweek shall meet basic needs and provide some discretionary income.</p> <p>No deductions from wages for disciplinary purposes.</p>	<p>Wages for a standard workweek that meets the basic needs of an average family unit divided by the average number of wage earners.</p>

	ETI	FLA	FWF	SAI	WRC
Freedom of association	<p>Right to join or form unions of own choice and to bargain collectively.</p> <p>Employer adopts open attitude to activities and organizing activities of trade unions.</p> <p>No discrimination against union leaders, access to carry out representative functions in workplace.</p> <p>Employer facilitates and does not hinder parallel means to free association and collective bargaining where rights restricted by law.</p>	<p>Employers shall respect the right of employees to freedom of association and collective bargaining.</p>	<p>Right to join or form unions and bargain collectively shall be recognized.</p> <p>No discrimination against worker representative, access to workplaces to carry out representative functions.</p> <p>Employer facilitates parallel means to free association and collective bargaining where rights restricted by law.</p>	<p>Right to join or form unions of own choice and to bargain collectively.</p> <p>Employee representatives shall not be discriminated against and shall have access to their members in the workplace.</p> <p>Company facilitates parallel means to freedom of association and collective bargaining where rights restricted by law.</p>	<p>Right to freedom of association and collective bargaining, recognition of union of employees' choice.</p> <p>Prohibits harassment, intimidation or retaliation against employees for efforts to freely associate or bargain collectively.</p> <p>Prohibits cooperation with governmental agencies or other organizations that use the power of the state to prohibit workers from organizing a union of their choice.</p> <p>Union organizers allowed free access to employees.</p>
Hours of work	<p>48 hours per week, 1 day off in seven.</p> <p>Overtime is voluntary, compensated at premium rate, shall not exceed 12 hours per week.</p>	<p>Except in extraordinary circumstances, 48 hours plus 12 hours overtime.</p> <p>Where no legal limits, regular workweek plus 12 hours overtime.</p> <p>1 day off in seven.</p> <p>Legal premium overtime pay, or where no legal premium, equal to regular hourly rate.</p>	<p>48 hours per week, 1 day off in seven.</p> <p>Overtime is voluntary, compensated at premium rate, shall not exceed 12 hours per week.</p>	<p>48 hours per week, 1 day off in 7.</p> <p>Overtime is voluntary, compensated at premium rate, shall not exceed 12 hours per week.</p>	<p>48 hours per week, 1 day off in 7.</p> <p>Overtime is voluntary, compensated at a premium rate (at least 1 ½ hourly rate).</p>
Employment relationship	<p>Prohibits use of labour-only contracting, subcontracting or homeworking arrangements or through apprenticeship schemes or excessive use of fixed-term contracts of employment to avoid obligations to workers under labour or social security laws and regulations arising from the regular employment relationship.</p>	<p>No provisions.</p>	<p>Prohibits use of labour-only contracting or apprenticeship schemes to avoid obligations to workers under labour or social security laws and regulations arising from the regular employment relationship.</p>	<p>Prohibits use of labour-only contracting arrangements and false apprenticeship schemes to avoid obligations to workers under labour or social security laws and regulations. Requires that homeworkers receive a similar level of protection as directly employed personnel would be entitled to.</p>	<p>No provisions.</p>

Endnotes

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- 1 "The Company of the Future", Wal-Mart US Year Beginning Meeting, January 23, 2008.
- 2 The World Bank, "Strengthening Implementation of Corporate Social Responsibility in Global Supply Chains," October 2003, p. 17.
- 3 "The Company of the Future..."
- 4 Ibid, p. 18.
- 5 Multi-stakeholder initiatives (MSIs) differ from those created by industry associations in that trade unions and labour rights NGOs play an active role in the development of the MSI and its standards and monitoring and verification methods, as well as in its ongoing governance structures, rather than merely playing an advisory role.
- 6 For a copy of the SA8000 Standard, visit: www.saintl.org/index.cfm?fuseaction=Page.viewPage&pageID=710
- 7 E-mail exchange with Judy Gearhart, Program Director, SAI, November 21, 2007.
- 8 For a copy of the ETI Base Code, visit: www.ethical-trade.org/Z/lib/base/index.shtml
- 9 For a copy of the FWF Code of Labour Practices, visit: <http://en.fairwear.nl/?p=280>
- 10 For a copy of the FLA Workplace Code of Conduct, visit: www.fairlabor.org/conduct
- 11 "UNITE Statement on the Apparel Industry Partnership," Nov 5, 1998, on file at MSN.
- 12 The WRC describes itself as an "independent monitoring organization" rather than a multi-stakeholder initiative, because it deliberately excludes companies from its governance structures. It monitors compliance with its Model Code of Conduct for universities and other public institutions that have adopted ethical licensing and/or purchasing policies. The Clean Clothes Campaign is a European campaigning organization that has a model code of conduct, but does not act as a monitoring organization.
- 13 For a copy of the WRC Model Code of Conduct, visit: www.workersrights.org/coc.asp
- 14 For more information on JO-IN, visit: www.jo-in.org/pub/about.shtml
- 15 For a copy of the JO-IN Draft Common Code, go to: www.jo-in.org/pub/docs/Jo-In%20Draft%20Common%20Code%205.05.pdf
- 16 For more information on the Bangladesh Buyers' Group of the MFA Forum, go to: www.mfa-forum.net/bangladesh/index.html
- 17 E-mail exchange with Auret van Heerden, President and CEO, Fair Labor Association, February 18, 2008.
- 18 E-mail exchange with Judy Gearhart, Program Director, Social Accountability International, February 15, 2008.
- 19 E-mail exchange with Jantien Meijer, Fair Wear Foundation, February 14, 2008.
- 20 van Heerden, February 18, 2008.
- 21 Ibid.
- 22 Jantien Meijer, February 14, 2008.
- 23 Phone interview with Judy Gearhart, March 7, 2008.
- 24 E-mail exchange with Scott Nova, Executive Director, Worker Rights Consortium, February 19, 2008.
- 25 For more information on the UCEC, visit: www.wrapapparel.org/modules.php?name=Content&pa=showpage&pid=29
- 26 After merging with US footwear and fashion associations, the AAMA was renamed the American Apparel and Footwear Association.
- 27 Ibid.
- 28 http://wrapapparel.org/documents/WRAP_Press_Release_082907.pdf
- 29 For a copy of the revised BSCI Code, visit: www.bsci-eu.org/content.php?page=BsciDocuments
- 30 MSN, Codes Memo #21, February 2007, p. 19, www.maquilasolidarity.org/sites/maquilasolidarity.org/files/codesmemo21.pdf
- 31 For information on the GSCP, visit: www.ciesnet.com/2-wwedo/2.2-programmes/2.2.gscp.objectprincip.asp
- 32 GSCP Code on file at MSN.
- 33 In June 2007, the draft code was circulated for comments and suggestions for a six-month period. Based on the results of the consultation, an Expert Working Group was to submit a report to the Executive Board in March 2008. The Advisory Board will also be given an opportunity to submit its own recommendations.
- 34 CIES, "Notes on the Global Social Compliance Programme Code," p. 2, on file at MSN.
- 35 "The Company of the Future", Wal-Mart US Year Beginning Meeting, January 23, 2008.
- 36 Clean Clothes Campaign, Letter to CIES, June 8, 2007, www.cleanclothes.org/codes/07-06-11.htm
- 37 Ibid.

- 38 Phone interview with Ineke Zeledenrust, February 12, 2008.
- 39 To date, the GSCP Advisory Board includes the following NGO and labour representatives: Amir Dossal, United Nations Office For Partnership; Stephen Frost, CSR ASIA; Jan Furstenborg, UNI Commerce; and Olivier de Schutter, FIDH.
- 40 E-mail exchange with Dan Rees, November 20, 2007.
- 41 Ibid.
- 42 See JO-IN Code: www.jo-in.org/pub/docs/Jo-In%20Draft%20Common%20Code%205.05.pdf
- 43 Universal Code of Ethical Conduct, WRAP, September 2005, p. 9. www.wrapapparel.org/documents/UCEC_Handbook_2nd_Edition_September_2005.pdf. Included in the Freedom of Association and Collective Bargaining provision are the words, "Suppliers have the right to act within the boundaries of the law when workers exercise their rights to associate." Such language asserting the employer's rights to take all legal steps to oppose unionization is unusual in codes of conduct, which are intended to define the supplier's obligations beyond legal requirements.
- 44 See Codes Memo #21 for information on a number of studies on the effectiveness of code implementation systems and alternative approaches being explored. Go to: www.maquilasolidarity.org/en/node/518
- 45 The emphasis of the industry initiatives on eliminating duplication of efforts and sharing of resources is evident in the GSCP's stated objectives: <http://www.ciesnet.com/2-wwedo/2.2-programmes/2.2.gscp.objectprincip.asp>
- 46 Jo-In Interim Report, May 2007, p. 19, www.jo-in.org/english/belgeler.asp.
- 47 "Jo-In Explanatory Note on the Treatment of the Living Wage Common Code Element during the Jo-In Pilot Project in Turkey's Garment Industry – 2006-2007," E-mail exchange with Doug Miller, ITGLWF, February 13, 2008.

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