

MEMO: CODES UPDATE

NUMBER 12, November 2002

Why a “Codes Update” memo?

This periodic memo is sent in Spanish to groups in Latin America in an effort to share information on developments and resources circulating in English about codes of conduct and monitoring. We also share the English version of the memo with our network. Comments, criticisms and suggestions are always welcome.

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A. ARE APPAREL MANUFACTURERS GETTING A BAD WRAP?

While better known code monitoring initiatives struggle to win corporate members and/or redefine their monitoring, verification and reporting systems, the Worldwide Responsible Apparel Production Certification Program (WRAP) is marketing itself as “the only global, industry-endorsed, independent and fully operational factory-based certification program.”

As of December 2001, WRAP had certified over 115 factories in 15 countries as being in compliance with a set of minimum labour standards known as the WRAP Principles. In the Americas alone, 99 factories in 7 countries had received the WRAP “Good Factory Seal of Approval.” According to the current (October 2002) WRAP website, a total of 615 factories in 65 countries have registered to be certified. WRAP has not responded to MSN requests for more up-to-date information.

What Is WRAP?

WRAP is a factory monitoring and certification program created by the American Apparel and Footwear Association, formerly known as the American Apparel Manufacturers Association. Designed as an alternative to Fair Labor Association (FLA), which includes major brand merchandisers such as Nike, Reebok and Liz Claiborne, WRAP is the program of choice for the large US apparel manufacturers such as Sara Lee, Kellwood and VF Corporation that produce for the discount retail market.

WRAP endorsers include apparel industry and free trade zone associations in 13 countries, as well as the Guatemalan Non-traditional Agricultural Products Exporters Association and the US pro-free trade business lobby group Caribbean/Latin American Action (C/LAA). Representative of the governments of El Salvador, Nicaragua and the Dominican Republic have also expressed their support for the initiative.

At the same time, WRAP has little credibility among labour or non-governmental organizations. Terry Collingsworth of the US International Labor Rights Fund calls WRAP “an industry-dominated project [set up] to avoid outside, legitimate monitoring. In short, it’s a dodge, and is so regarded by everyone except industry.” Michael Posner of the US Lawyers

Committee for Human Rights has described WRAP as a “closed door” system because of its lack of transparency or independence.

As in SAI’s SA8000 factory certification system, WRAP accredits commercial social auditing firms to certify individual factories as being in compliance with the WRAP Principles. However, unlike the SA8000 Standard, which is strictly based on the Conventions of the International Labour Organization (ILO), the WRAP Principles require little more than compliance with local laws.

According to Neil Kearney, General Secretary of the International Textile, Garment and Leather Workers Federation (ITGLWF) and a member of the SAI Advisory Board and the Ethical Trading Initiative Governing Board, WRAP damages and does not uphold or enhance worker rights because its standards undercut ILO Conventions even on issues like child labour. Kearney notes that WRAP “does not provide for a living wage and sets no limits on working hours where these are not prescribed by law.”

Whose Principles?

As Kearney points out, most provisions of the WRAP Principles require little more than adherence to local law, and have little in common with language in ILO Conventions. Here are some examples:

- Wages – Payment of the local minimum wage and legally required allowances and benefits.
- Hours of work – Prohibits suppliers from exceeding legal limitations, and requires one day off in seven “except as required to meet urgent business needs.” (What constitutes an urgent business need is not explained.)
- Freedom of association – Respect for workers’ “lawful rights of free association and collective bargaining.” (An earlier version of this provision didn’t include the right to bargain collectively and included the “right” to not join any association. The latter phrase continues to appear in the WRAP *Self-Assessment and Monitoring Handbook*.)
- Environment – Comply with applicable environmental rules, regulations and standards, and “observe environmentally conscious practices....”

On hot-button issues for northern consumers, such as child labour, forced labour, and harassment and abuse, the WRAP principles do go further than local law in prohibiting those practices irrespective of legal requirements. However, the child labour provision sets 14 years as the minimum age, rather than the ILO’s minimum age of 15, with 14 reserved for countries that meet its developing country criteria.

The Discrimination provision is particularly problematic, adopting the preferred language of employers in defining the “ability to do the job” as the only criteria, and failing to specify common forms of discrimination, such as gender, race, sexual orientation, disability, national origin, age, marital status, etc. It is unclear whether gender-specific forms of discrimination so prevalent in free trade zones would fit the WRAP definition.

The WRAP Principles also include two unusual provisions that appear in few if any other labour rights codes, the first prohibiting illegal transshipment of apparel products, and the second requiring cooperation with “local, national and foreign customs and drug enforcement agencies to guard against illegal shipments of drugs.”

According to Kearney, these provisions promote increased security and management control over the workplace, virtually guaranteeing that workers will be even more reluctant to register complaints when their rights are violated.

Who's Involved in WRAP?

Given its origins, it isn't surprising that WRAP is dominated by major US apparel manufacturers. Corporate members of the WRAP "Independent Certification Board" of Directors include top executives of: Sara Lee (Hanes, Leggs Playtex, Sara Lee, Bali, etc.), VF (Vanity Fair) Corporation (Lee, Wrangler, Rustler, Riders, Britannia and Chic Jeans), Kellwood (which produces private labels for Wal-Mart), and Gerber Childrenswear.

While WRAP claims that the majority of its Board members are "non-apparel industry related individuals," the backgrounds and organizational and political affiliations of these "independent members" raise serious questions about the independence of the board.

In addition to these corporate leaders, the Board also includes:

- Board Chairman – Joaquin "Jack" Otero, former US Undersecretary of Labor under the Clinton administration, former member of the AFL-CIO Executive Council, and former leader of the Labor Committee for a Free Cuba. Otero has legitimate labour credentials, but his ties with right wing Cuban and pro-free trade business organizations puts him out of sync with the current AFL-CIO leadership. Otero's role in the negotiation of the NAFTA labour side agreement also damaged his credibility within the US labour movement.
- Vice-Chairman Charles C. Masten – former Inspector General of the US Department of Labor. According to the WRAP website, Masten "began his law enforcement career in 1973 as a Special Agent of the Federal Bureau of Investigation (FBI)."
- Secretary-Treasurer and Executive Director Lawrence M. Doherty – former officer with the American Institute for Free Labor Development (AIFLD) in Brazil, Venezuela and Barbados, son of former AIFLD Director William C. Doherty Jr. AIFLD has since been disbanded by the new leadership of the AFL-CIO because of its historical role in promoting the Cold War policies of various US administrations.
- Daniel Q. Kelley – representative of the International Youth Foundation on the Board, president of the Global Work-Ethic Fund, whose mission is to "strengthen the work-ethic in developing countries." William C. Doherty Jr. sits on the Fund's Board of Advisors.
- Donald J. Planty – former US Ambassador to Guatemala, former Executive Director of Caribbean/Latin American Action (C/LAA), which promotes "private sector-led economic development in the Caribbean Basin and throughout the hemisphere." C/LAA sees foreign investment as "the primary motor for economic development," and defines its core values as "Open Markets, Open Democracy, Open 'Rule of Law' and an Open Society."
- James Oldham – professor of law, Duke University, labour arbitrator.

The most well known member of the WRAP Board, former Vice-Chair Otto Reich, has since resigned after being appointed US Assistant Secretary of State for Western Hemisphere Affairs by President Bush. Reich was a controversial choice for this powerful position because of his past disinformation work as the head of the State Department's Office of Public Diplomacy, and his association with the Iran-Contra affair during the Reagan administration. Reich also co-authored the Helms-Burton Act.

How Does WRAP Work?

While WRAP is an initiative of large US apparel manufacturers, and key executive officers of those companies sit on its "Independent Certification Board," the actual responsibility for seeking WRAP factory certifications, hiring auditing firms and bearing the costs involved in achieving certification lie with the actual factory owners, who are in most cases southern suppliers of the northern manufacturers.

The following are the key steps in the factory certification process:

1. The factory owner applies to the WRAP board for certification, pays a US\$750 application fee, and receives the *Self-Assessment and Monitoring Handbook*.
2. After completing the self-assessment, the factory chooses, hires and schedules a visit by a WRAP-accredited “independent monitor” at a fee of approximately US\$1,500-\$3,000, plus 10% for follow-up visits.
3. Within 60 days of the factory visit, the monitor submits to the factory owner either a recommendation for certification or a corrective action plan. This information is also provided to the WRAP Independent Certification Board for review.
4. The Independent Certification Board reviews and assesses all reports and evidence (factory records) and grants a certification to the factory for a one-year period.
5. Once certified, the factory may or may not be subjected to an unannounced “follow-up evaluation,” based on a risk assessment. The Board decides and chooses the monitor.
6. When the one-year certification expires, the factory can apply to be recertified, paying another US\$750 application fee.

How Does Monitoring Work?

Although very little information is publicly available on WRAP’s “independent monitoring” program, its *Self-Assessment and Monitoring Handbook* for factory owners gives some indication of the criteria used by external monitors. The Handbook is available on the WRAP website: www.wrapapparel.org/manuals/hndbk_eng_2001.pdf

Significantly, the *Self-Assessment Handbook* give more detailed instructions on security measures required to prevent the illegal shipment of drugs with clothes exported from the factory than on how to ensure respect for freedom of association. As well, the handbook indicates that employers must respect the “right” of individual workers to not join any association or bargain collectively. On the issue of discrimination, the handbook appears to indicate that mandatory pregnancy testing is not acceptable.

While the handbook indicates that worker interviews are part of the external monitoring process, it does not provide information on the conditions under which worker interviews are to be carried out.

Who Does the Monitoring?

To date, WRAP has accredited 10 commercial auditing firms to carrying out “independent monitoring” in 49 countries. While monitors are accredited on a country-by-country basis, a few large commercial auditing firms have been accredited for the vast majority of countries. For instance, Intertek Testing Services is accredited for 47 countries, Cal Safety Compliance Corporation (CSCC) for 32, and Global Social Compliance LLC (formerly PricewaterhouseCoopers) for 15 countries.

Monitors also include a few locally-based firms, such as El Salvador-based Reduccion de Riesgos S.A. de C.V., which is accredited for El Salvador, the Dominican Republic, Guatemala, Honduras, and Nicaragua. Other WRAP-accredited local monitoring firms are Accordia USA for Honduras, Acorn CTS, LLC for Mexico and the US, Marsh Brockman & Shuh for Mexico, Marsh Risk Consulting for the US, and Global Standards (Toan Tin Consulting Co.) for Vietnam.

To date, no NGOs have been accredited as WRAP monitors.

What Information Is Available?

Not surprisingly, given the histories of many of its board members, WRAP is one of the most secretive among the various code monitoring initiatives.

Unlike SAI, which lists the names and addresses of certified factories on its website, WRAP does not provide any information to the public on which factories were certified or in what countries.

Unlike the FLA, which recently committed to providing information on the results of external monitoring, including the name of the member company using the facility, the external monitoring organization, the country and region, type of facility, the findings and the remediation plan, WRAP does not provide the public any information on the results of monitoring.

It appears that WRAP includes no provisions for workers or interested third parties to register complaints if they believe a factory has been improperly certified or if workers' rights are being violated. The only reference to complaints in the WRAP Self-Assessment Handbook is a sentence suggesting that mechanisms for documentation of labour practices could include an anonymous suggestion box, the posting of contact information for local agencies that oversee employment matters, or an employee telephone complaint line.

To Engage, or Not to Engage?

WRAP's "closed door" approach to factory monitoring and certification makes it difficult for southern labour or non-governmental organizations to know how or whether to engage with this corporate self-regulatory system. While WRAP has made considerable efforts to gain support of local manufacturers' associations and ministries of labour, it has so far done very little outreach to local labour, human rights or women's organizations.

WRAP has conducted training programs with management personnel and ministry of labour personnel, but there is no evidence that these training programs are designed to include workers or to inform workers of their rights.

Because WRAP is quickly increasing and expanding its presence in southern countries, and because it is winning the support of ministries of labour, governments and local manufacturers, local labour, women's and human rights groups cannot afford to ignore WRAP.

However, the most viable strategy for southern groups might be to raise awareness of the limitations and dangers of WRAP, as well as the lack of credibility WRAP has in the North, rather than to attempt to engage with this company-dominated system.

B. GAINS AND LOSSES AT THE FLA

In Codes Memo #10, we looked at some of the positive changes that have been recently made in the Fair Labor Association (FLA) external monitoring program. These changes include bringing monitoring in-house so that the Association, rather than companies, choose the auditing organization and the auditors are directly responsible to the Association. They also include commitments to more transparent public reporting, which should, if these commitments are fully implemented, provide the following information to the public on the results of external monitoring:

- name of the FLA member company whose supply factory is being audited;
- nature, size, and country/region of the facility;
- identity of the external monitoring organization;
- date and length of the external monitoring visit;

- summaries of areas of compliance and non-compliance with the Code; and
- summaries of remediation instituted and the status of the remediation.

One Step Forward...

Since these changes were announced, additional information has come to light on what appear to be trade-offs made by NGO members and staff of the FLA to achieve more independence in monitoring and greater transparency in reporting.

A key concession is a significant reduction in the percentage of supply factories that are subject to external monitoring on an annual basis. Previously, that figure was set at 30% of the facilities producing a particular brand during the Initial Implementation Period, and an average of 10% (between 5-15%) annually thereafter. The number of factories to be audited on an annual basis has now been lowered to 5%.

According to FLA Executive Director Auret van Heerden, the reduction in the number of facilities to be audited was necessary because of the loss of an AID grant from the US government. Van Heerden says the 5% figure applies to all countries and brands, but the FLA will use a risk assessment methodology to weight facilities for risk and then select facilities on a random sample basis for external monitoring.

Another apparent concession to member companies was the decision to quickly accredit additional external monitoring organizations, some of which have been criticized in the past for poor quality of their audits.

The newly accredited commercial auditing firms include SGS and Global Social Compliance (GSC) for China, and T-Group Solutions for India. Global Social Compliance (GSC) was formerly part of PricewaterhouseCoopers, which was the subject of a very critical insider report on its monitoring methods by MIT professor Dara O'Rourke. T-Group Solutions is a subsidiary of Triburg, an India-based company that sources garments in South Asia for two FLA member companies, Liz Claiborne and Phillips-Van Heusen.

According to van Heerden, while the FLA had previously rejected a number of applications from GSC, the firm has since addressed all the objections raised on those occasions. "It was inevitable that they would finally satisfy all of our requirements, which is why the Board has now provisionally accredited them for monitoring in China, pending the successful outcome of a trial audit."

O'Rourke is more skeptical about Global Social Compliance's ability to carry out quality audits in China or elsewhere. "If this is just PricewaterhouseCoopers auditing under a new brand name, then I am concerned there will still be problems with the rigor, depth, and transparency of the monitoring."

When asked whether Triburg's ownership of T-Group might create a conflict of interest for a company that also acts as a buying agent for FLA member companies, van Heerden said the FLA has addressed the issue with the company and they will not be doing any monitoring of brands for which Triburg acts as a buying agent.

In addition to these three new accreditations, the FLA has also extended the country accreditations for two current external monitors. Kenan Institute Asia (KIASIA), a US/Thai NGO, will now monitor factories in China, as well as in Thailand, and the Geneva-based Cotecna Inspections will add the Dominican Republic to its list of eight Latin American countries whose factories it is accredited to monitor.

How Independent and Transparent?

Despite these concessions, the FLA's commitment to greater transparency and independence must be seen as a step in the right direction. How these commitments get translated into practice is not yet clear however.

When asked how much influence member companies will have over the content of FLA public reports, van Heerden stated that companies could only challenge errors of fact. He added that in addition to factory audit reports, the Association has decided to publish a variety of interim reports on specific case studies and investigations. "There is a sense that the more transparency the better."

Asked whether companies continue to have some decision-making power over which accredited monitoring organizations will monitor their supply factories, van Heerden said each brand will be allowed one peremptory challenge a year, "but they have to exercise that before we start selecting facilities, not afterwards, so they cannot challenge our selection once we have made it."

More Bad News

Although there has been no official announcement from the FLA or Levi Strauss, MSN has confirmed rumours that Levi Strauss has decided to withdraw from the Association. According to Mo Rajan, Levi's director of worldwide government affairs and public policy, the company will not be renewing its FLA membership in 2003. Rajan says that Levi Strauss continues to value the work of the FLA, but has decided to move more quickly ahead with its own external monitoring program, using Verité and Environmental Resource Management as auditors.

At the same time, the FLA has succeeded in gaining a new corporate member, the Seattle-based apparel and shoe retailer, Nordstrom.

The FLA is a US-based multi-stakeholder code initiative that includes major apparel and sports shoe brand merchandisers, including Nike, Reebok, adidas-Salomon, Liz Claiborne, Phillips-Van Heusen, Polo Ralph Lauren, GEAR for Sports, and Patagonia, as well as over 175 universities. It emerged from the Apparel Industry Partnership (AIP), a Clinton Administration-initiated forum to address sweatshop abuses in the apparel industry.

C. WRC RELEASES FINAL REPORT ON NEW ERA

The Worker Rights Consortium (WRC) has released a positive report on improvements in labour practices and working conditions in the New Era Cap factory in Derby, New York.

The company produces baseball caps, and is a major supplier of US universities, many of which have adopted ethical licensing and purchasing policies. The WRC is a university-based multi-stakeholder initiative that investigates compliance with those policies.

In August 2001, the WRC had released a preliminary report documenting violations of freedom of association and US health and safety regulations. The report was based on an investigation carried out in response to a May 2001 complaint from seven New Era employees. The report was described as "preliminary" because the company had refused to cooperate with the investigation.

In March 2002, the company agreed to provide the WRC relevant company documents and to allow an investigative team access to the factory and to workers and management personnel. On June 3, a settlement was reached in an 11-month strike at the factory, and officials of the Communication Workers of America (CWA) requested that the WRC discontinue the investigation. The union had apparently agreed to make this request as part

of the Return to Work Agreement with the company. However, according to the report, the WRC was obligated to complete its investigation once it was underway.

The final report points to substantial improvements in relations between management and the union, and in the company's policies and practices on health and safety issues. It notes "a significantly higher degree of involvement of workers in addressing health and safety concerns," and management's "high level of responsiveness to workers' articulation of concerns and suggestions."

However, the report identifies ongoing ergonomics problems and worker concerns that the increased pace of production since their return to work is increasing the risk of accidents and health problems. The company has agreed to conduct a comprehensive assessment of ergonomics hazards.

In September, the Fair Labor Association accepted New Era's application to become an FLA member company. New Era also produces licensed caps for a number of FLA member universities, many of which are also WRC members. The WRC does not accept companies as members.

D. CONDITIONS IMPROVING IN CAMBODIA, SAYS ILO

On July 1, the International Labour Office (ILO) reported "encouraging signs of improvement" in working conditions in 30 garment factories employing 21,000 workers in Cambodia.

As part of an agreement between the US and Cambodian governments, which provides for increased market access for Cambodian garments exported to the United States in exchange for a commitment to enforce local law and international core labour standards, the ILO has been designated to monitor factory compliance with those standards.

According to the ILO report, there was no evidence of child labour, forced labour or discrimination, including sexual harassment, in the 30 factories monitored. It also pointed to improvements in the payment of wages and overtime work, though there continued to be problems in a number of factories. According to the report, "some progress has been made in guaranteeing workers' freedom to organize."

The Project Advisory Committee, which includes local government, company and union representatives, has called on retailers and brands sourcing from Cambodia to support the ongoing project and assume shared responsibility by assisting factories in improving working conditions.

Of the country's US\$1.1 billion in garment export in 2001, \$820 million were to the United States.

E. NEW RESOURCES

"Regulating Business Via Multi-Stakeholder Initiatives: A Preliminary Assessment," Peter Utting, *Development Dossier: Voluntary Approaches to Corporate Responsibility: Readings and a Resource Guide*, United Nations Non-Governmental Liaison Service, May 2002.

The article examines 14 multi-stakeholder initiatives, including the Clean Clothes Campaign, the Ethical Trading Initiative, the Fair Labor Association, SA8000 and the Worker Rights Consortium. It identifies the strengths and weaknesses of these kinds of initiatives and questions whether they are likely to advance corporate social responsibility.

While acknowledging, “multi-stakeholder initiatives represent an advance on codes of conduct unilaterally designed by corporations or industry associations,” Utting points to a number of problems and limitations with these initiatives, such as the limited number of companies participating, the limited capacity of NGOs involved, the danger of diverting attention from mandatory regulation, competition between initiatives, problems with the quality of monitoring and verification processes, credibility problems associated with certification of factories or brands, and the lack of involvement of local civil society groups and workers.

He concludes, “Until greater public concern and civil society activism puts pressure on political parties, governments, and multilateral organizations to support other regulatory approaches, it is unlikely that significant development in this area will be made.”

Available at:

[www.unsystem.org/ngls/documents/publications.en/develop.dossier/dd.07%20\(csr\)/5uttin g.htm](http://www.unsystem.org/ngls/documents/publications.en/develop.dossier/dd.07%20(csr)/5uttin g.htm)

Voluntary Labor Regulation: Information from Non-Governmental Labor Monitoring Systems, Dara O’Rourke, June 2002.

O’Rourke gives a brief history of codes of conduct and monitoring, with particular attention to the multi-stakeholder code initiatives – the FLA, SA8000, WRC, ETI, Fair Wear Foundation, as well as the industry-initiated WRAP certification program. (See above.)

He then looks at critical issues such as convergence on standards, information disclosure, independence of monitors, and the relationship between factory monitoring and union organizing.

He calls for ongoing evaluation of these new non-governmental regulatory systems based on the following criteria:

- Legitimacy – Are key stakeholders involved in all stages of standard setting, monitoring, and enforcement?
- Rigor – Do codes of conduct meet or exceed ILO Conventions and local laws; are standards measurable; and is monitoring technically competent?
- Accountability – Is monitoring independent and transparent?
- Complementarity – Do non-governmental regulatory systems support state regulation and processes to learn and improve standards and monitoring methods?

He concludes, “With increased transparency, improved technical capacities, and new mechanisms of accountability to workers and consumers, non-governmental monitoring could complement existing state regulatory systems.”

Available at: <http://web.mit.edu/dorourke/www/>

Internationally Binding Legislation and Litigation for the Enforcement of Labour Rights, IRENE and the Clean Clothes Campaign, June 2002

The report on a seminar sponsored by CCC and IRENE examines possible legal mechanisms to hold multi-national corporations accountable for labour rights practices outside their home countries. The seminar evaluated experiences in the US, UK and Europe with litigation against corporations for their own and supplier labour rights violations in other countries, discussed issues NGOs and unions need to consider before taking such

action, and looked at perspectives from southern countries on litigation strategies. Seminar participants also briefly looked at government regulatory options.

Available at: www.cleanclothes.org