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2006 Year In Review: Heightened Global Competition Tests the Limits of CSR Initiatives

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Introduction

The year 2006 witnessed contradictory trends in the apparel and sportswear industries.

Over the past year, a number of leading apparel brands showed an increasing willingness to look beyond the current social auditing model and seek alternative means to better detect and address persistent worker rights abuses in their global supply chains.

Among companies and within the multi-stakeholder initiatives (MSIs), there was increased talk about “root cause analysis” and “partnering with suppliers” to achieve “sustainable compliance,” while reliance on third-party factory auditing to uncover and address persistent worker rights abuses was disparagingly referred to as “the policing model.”

An increasing number of major retailers and brand merchandisers also showed a greater willingness to collaborate with

their competitors, as well as with labour and nongovernmental organizations, on efforts to achieve remediation in shared factories and more sustainable improvements in working conditions in supply factories in specific countries or regions.

At the same time, the negative consequences of companies restructuring their global supply chains in the wake of the demise of the import quota system threatened to overwhelm these incremental advances on corporate social responsibility (CSR).

As evidence mounted that market-based CSR initiatives were reaching their limit of effectiveness, other regulatory approaches were once again up for discussion, either as alternatives to or to complement and reinforce inadequate voluntary approaches.

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Are Codes and Monitoring Making a Difference?

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Voluntary codes of conduct and how they are monitored and enforced was up for serious reevaluation throughout 2006. In late November, *BusinessWeek* magazine ran a cover story on code monitoring in China, exposing a broader audience to the weaknesses of the current social auditing model, which has plagued both individual retailers and brands and multi-stakeholder initiatives for the past decade.¹

In 2006, a number of studies were published, evaluating the effectiveness of code monitoring and verification programs, and examining alternative approaches. In most cases, these confirmed what many in the anti-sweatshop movement have been saying for a number of years about the lack of effectiveness of most factory monitoring programs and the weaknesses and lack of credibility of factory audits carried out by private sector social auditing firms.

ETI Study

In October 2006, the UK's Ethical Trading Initiative (ETI)² published the findings and recommendations of a three-year independent assessment of the implementation of the ETI Base Code by its 29 member companies. According to the ETI, the report is "the most comprehensive study to date on impacts of codes of labour practice."³

The report, entitled "The ETI code of labour practice: Do workers really

benefit?";⁴ reveals that while company efforts to implement the ETI Base Code have resulted in some improvements for workers, particularly on health and safety issues, they have been largely unsuccessful in dealing with worker rights issues such as freedom of association and discrimination.

The study also found that improvements in labour practices "can rarely be attributed to individual companies or the ETI Base Code alone..." and that where advances have been made there was "a critical mass of companies committed to codes of labour practice and working with other key players."

The study points to "downward pressure on prices and lead times" as a key negative factor in limiting the ability of suppliers to improve labour practices, and advocates "direct and stable relationships between buying companies and their suppliers..."

In order to achieve sustainable improvements in labour practices and working conditions, the report recommends that companies "integrate ethical sourcing into core business practices" and calls for "more effective regulation and enforcement of workers' rights by governments."

It also calls for increased collaboration between brands and retailers on code

Codes Memo

The Maquila Solidarity Network (MSN) publishes the *Codes Memo*, profiling recent developments and trends in voluntary codes of conduct and government policy, and *Discussion Papers*, exploring critical issues and debates in the labour rights movement, on a periodic basis. Both publications are available in Spanish and English on the MSN website: www.maquilasolidarity.org. We welcome your comments and suggestions.

¹ Roberts, Dester and Engardio, Pete, "Secrets, Lies, and Sweatshops," *BusinessWeek*, November 27, 2006, pp. 50-58, www.businessweek.com/magazine/content/06_48/b4011001.htm

² For information on the ETI, visit: www.ethicaltrade.org/

³ "A preliminary response by the Ethical Trading Initiative to IDS's study," 19 October 2006, www.ethicaltrade.org/Z/lib/2006/09/impact-response/index.shtml

⁴ For a copy of the IDS report, visit: www.ethicaltrade.org/Z/lib/2006/09/impact-report/index.shtml

implementation, such as joint audits of shared factories, and “a strategic approach to addressing embedded issues such as freedom of association, discrimination and regular employment.”

The report recommends that the ETI facilitate collaboration among its member companies, such as joint training of suppliers and workers; promote code harmonization among members and with other MSIs; and develop strategies to extend coverage of the ETI Base Code to include migrant and contract workers.

According to ETI Director Dan Rees, the report represents three years of work by the Institute of Development Studies (IDS) that also involved ETI member companies, unions and NGOs.⁵

“While ETI doesn’t necessarily agree with all the recommendations in the report,” says Rees, “many of those recommendations clearly reaffirm the direction in which we have been going for some time – increased collaboration, a greater emphasis on purchasing practices, and the need for capacity building with suppliers.”

On the latter point, Rees notes that the study shows that most suppliers don’t understand what ETI is about or what its expectations are of suppliers. For that reason, ETI is now working through its new offices in Hong Kong and India to facilitate greater collaboration among ETI member companies with their shared suppliers in order to raise their understanding of ETI and its objectives.

According to Rees, while ETI’s principles of code implementation haven’t changed, “we are trying to articulate more clearly our expectations of member companies concerning their implementation of the Base Code and the performance indicators for those companies to report back to the ETI on their progress.”

“The biggest challenge,” says Rees, “is how to build stronger alliances that will

⁵ Phone interview with Dan Rees, January 23, 2007.

drive change within the broader marketplace.”

Nike Study

The effectiveness of a leading brand’s code monitoring program was the subject of a study carried out by three MIT researchers, Richard Locke, Fei Qin and Alberto Brause.⁶ With access to audit findings from 800 Nike supply factories in 51 countries, researchers assessed whether and to what degree Nike’s factory monitoring program has led to improved working conditions.

Not surprisingly, the study found significant variations in factory performance both between factories and by geographic region, and that “factories located in the countries with better legal or regulatory environments on average do better on labor compliance.”

However, the study also produced some counterintuitive findings, including:

- Smaller factories performed better than larger factories;
- Locally owned factories did not perform any better than foreign-owned factories;
- While the number of factory visits by Nike personnel and the fact that a factory was viewed as a “strategic partner” were positively associated with audit scores, whether the factory visits were conducted by buying staff, quality control experts, or code compliance staff was not a factor; and
- The length of the relationship with Nike and the percentage of capacity dedicated to Nike were negatively related to audit scores.

On the latter finding, which seems to suggest that factories producing for multiple buyers might have fewer code

⁶ Locke, Richard, Qin, Fei, and Brause, Alberto, “Does Monitoring Improve Labor Standards? Lessons from Nike,” MIT Sloan Working Paper No. 4612-06, July 2006, 47 pp., <http://ssrn.com/abstract=916771>.

violations than factories producing exclusive or primarily for one buyer, the authors suggest that contrary to the conventional wisdom that suppliers are suffering from audit fatigue, multiple buyers with different monitoring programs “may be promoting improvements and learning within the factory.” The authors also speculate that buyers in shared factories “may also engage in informal cooperation with one another, thus presenting a united face to the suppliers, who in turn, respond to these common pressures.”

Examining how the same factories rated over time, the researchers found that while audit scores showed improvement, the company’s Compliance Rating program, which is a more subjective appraisal by Nike compliance staff of factory management’s attitudes on compliance issues, showed that ratings for almost 80% of its suppliers have either remained the same or worsened over time.”

The researchers attribute this discrepancy to two possible factors: 1) suppliers are learning how to perform well in audits by better preparation of documents or coaching of workers, and/or 2) Nike’s local compliance staff are not fooled by these superficial or deceptive practices.

According to Charlie Brown, Nike’s Senior Director, Compliance, an alternative explanation for the drop in ratings for some Nike suppliers is that auditing tools have changed over time and the knowledge base of auditors has improved, which could have resulted in better detection of workplace problems.⁷

The study concludes that “monitoring alone appears to produce only limited results.” However, “when monitoring efforts are combined with other interventions focused on tackling some of the root causes of poor working conditions

– by improving the ability of suppliers to better schedule their work and improve their quality and efficiency – working conditions appear to significantly improve.”

According to Brown, his company’s CSR team is embarking on a long-term project “to align factory human resources management practices with lean manufacturing concepts,” which the company believes will result in sustainable improvements in working conditions.⁸

The authors of the Nike report call for a “more systemic approach [that includes, but goes beyond factory monitoring], one that combines external (countervailing) pressure – be it from the state, or unions, or labor-rights NGOs, comprehensive and transparent monitoring systems, and a variety of ‘management systems’ interventions aimed at eliminating the root causes of poor working conditions.”

Report for John Ruggie

A report prepared by Roseann Casey for John Ruggie, the UN Special Representative on Business and Human Rights, came to very similar conclusions as those of the MIT study.

Based primarily on interviews with corporate, NGO, and university representatives on the boards of multi-stakeholder and industry code monitoring initiatives, “Meaningful Change: Raising the Bar in Supply Chain Workplace Standards”⁹ reveals considerable agreement among leaders of the various multi-stakeholder initiatives, if not the two industry initiatives studied, that while monitoring is “an essential and valuable tool,” monitoring alone has proven ineffective in achieving positive change for workers at the factory level.

⁷ E-mail exchange with Charlie Brown, January 25, 2007, on file at MSN. (Charlie Brown replaced Dusty Kidd as Nike’s VP of Compliance after Kidd retired in December 2006.)

⁸ Ibid.

⁹ Casey, Roseann, “Meaningful Change: Raising the Bar in Supply Chain Workplace Standards,” Harvard University Kennedy School of Government and Friderich Ebert Stiftung, June 2006, 61 pp., www.fes-geneva.org/reports/BangkokJuni2006/BackgroundStudy.pdf

The author notes, “As suggested in the interviews, there are ‘enormously more useful feedback systems’ [than monitoring] that are underutilized and undervalued in supply chain environments...”, including enhanced communication systems, empowered worker committees, and community based social auditing.

“[M]ost stakeholders concede that the past decade has very much been a time of learning and adapting, and that best practices are slowly emerging,” says the report. “Current expectations have moved beyond compliance and remediation to aspirations for sustainable change and continuous improvement in supply chain management...”

The author argues that “programs that engage greater local participation and expertise are more likely to highlight systemic conditions, trends, beliefs and practices that lead to meaningful change and continuous improvement.”

She notes that “despite differences regarding association and collective bargaining, there is general agreement [among company and MSI leaders interviewed] about the need for greater worker participation, and a move toward more community based monitoring methodology.”

Another area of agreement among the company and MSI leaders interviewed for the study is that “progress will only happen once a critical mass of participation is achieved.”

The report calls for increased efforts to harmonize and legitimize standards, to make stakeholders aware of the standards, and to “establish the business case for compliance and to promote and articulate incentives for participation across industries and countries.”

It notes, however, that “managers at the supply level do not understand the benefits and business case incentives for improved compliance” and that “in some cases, buying practices have not proven

that renewed contracts are a reward for compliance.”

The report concludes that “any change that, in the end, is not incentive based will be a temporary solution threatened by more compelling and competing business-case arguments.”

While acknowledging that most company, industry and MSI codes of conduct “include a stated commitment to continued engagement with factories – including remediation and capacity development,” the report notes that “the question of who bears the cost remains.”



Getting to the Root Causes?

Although there seems to be a growing consensus among leading brands that traditional code monitoring systems have reached the limit of their effectiveness, there is still insufficient evidence to indicate whether or to what degree individual companies are developing new systems to replace or complement their current factory monitoring programs.

ETAG Report Card

In December 2006, Canada’s Ethical Trading Action Group (ETAG) released its second Transparency Report Card.¹⁰ The Report Card, which was prepared by the Maquila Solidarity Network (MSN) for ETAG, reveals that few of the 30 retailers and brands surveyed that sell apparel products in the Canadian market report are making efforts to identify and address root causes of labour standards violations, and among those few, “there are

¹⁰ ETAG is a Canadian coalition of faith, labour, teacher and international development organizations promoting government policies, voluntary initiatives, and ethical purchasing policies to improve labour practices in the garment industry worldwide. MSN acts as the secretariat for ETAG. For a copy of the 2006 Transparency Report Card: “Revealing Clothing,” visit: www.maquilasolidarity.org

significant limitations in those reported efforts.”

Only 11 of the 30 companies surveyed discussed “sustainable compliance” in their public reports. Of those 11, nine identified collaboration with other buyers as a needed change, eight identified improving supply management systems and policies, and seven identified training for factory management.

However, fewer than half of those 11 identified training for workers, changes in purchasing practices, or changes to buyer production timelines as issues that needed to be addressed. And while four of the 11 companies mentioned purchase price as an issue, none suggested that this was an issue they intended to address in their own supply chain.

The Report Card also assessed whether companies are providing positive incentives to suppliers for improvements in labour standards compliance. Only seven of the 30 companies surveyed reported offering any positive incentives to suppliers for improvements in compliance.

Another key issue identified by the Report Card was the lack of involvement of workers in the labour standards compliance process. Only 12 of the 30 companies surveyed reported that worker interviews are part of their audit process, and none reported making audit findings available to the workers. Only one of those 12 companies reported facilitating ongoing labour rights training for factory workers.

With the exception of companies involved in multi-stakeholder initiatives with formal complaint processes, few of the companies surveyed reported having mechanisms in place for workers to register complaints, beyond 1-800 numbers.

“ETAG views worker participation in labour standards compliance as key to sustainable solutions; we believe companies need to provide formal mechanisms for workers to register complaints, and for independent

investigations, and corrective action in response to these complaints,” says the Report Card.

The ETAG Report Card found that none of the companies surveyed has entered into a framework agreement with a Global Union, which would indicate “that a company has an open attitude toward democratic trade union representation...” and would also provide “a mechanism for worker representatives through their Global Union to bring forward cases of worker rights violations and negotiate a resolution to the problem.”

The Report Card did, however, note that one company had taken a step forward toward a formal agreement with a Global Union in 2006. In November, Gap Inc. and the International Textile, Garment and Leather Workers’ Federation (ITGLWF), announced they had reached agreement on a “joint program of work” that will include ITGLWF briefings for Gap Inc. compliance staff on freedom of association, discussions at the national level about joint approaches to promoting freedom of association and collective bargaining, and a plan for further dialogue in various countries between unions, suppliers, and Gap buyers and compliance staff to deal with industrial relations in the Gap supply chain.¹¹

“With a few exceptions, most companies are not fully engaging workers in labour standards compliance efforts,” says the ETAG 2006 Report Card. “Our assessment found that, in general, workers are being left out of the labour standards compliance process.”

On a more positive note, the Report Card points out that in 2006 Reebok joined with Nike, Levi Strauss, Timberland and Puma in publicly disclosing the names and addresses of all factories in their global supply chains,¹² and that Mountain

¹¹ For information on the ITGLWF-Gap Inc. Work Programme, visit: www.itglwf.org/DisplayDocument.aspx?idarticle=15216&langue=2

¹² The Reebok factory list is available at: www.reebok.com/static/global/initiatives/rights/

Equipment Co-op announced its intention to do so by 2008.¹³

The Report Card concludes, “Some leading companies are shifting their approach to labour standard compliance by investigating root causes of persistent problems and trying to address them. However, there is still a general reluctance to examine whether the apparel industry business model of low prices and high mobility is a primary factor in encouraging lowering labour standards.”

LBL Report

In September 2006, ETAG’s counterpart in the UK, the Labour Behind the Label coalition, published a study on the labour standards compliance efforts of apparel companies selling products in the UK market. The findings and recommendations were very similar to those of ETAG’s Transparency Report Card.

Unlike the ETAG Report Card, which is based entirely on company’s own public reporting, LBL’s report, “Let’s Clean Up Fashion: The State of Pay Behind the UK High Street,”¹⁴ is based on companies’ responses to survey questions.

The report focuses on three issues: wages, freedom of association, and monitoring and verification. On the question of monitoring and verification, the LBL survey generated the following findings:

- For the majority of companies surveyed, best practice appears to mean an annual audit of each supplier, while some companies focus regular audits on “high risk” or “core” suppliers;

- Few companies responded as to whether or what proportion of their audits were unannounced;
- Some companies reported “placing a strong emphasis on worker interviews;”
- Several companies were skeptical of the ability of auditing to “diagnose problems and tackle root causes of noncompliance;”
- Multi-stakeholder oversight of audits “is confined at present to a few companies and a few pilot projects;”
- Only one company, Gap Inc., “has begun to examine how a more systemic involvement of trade unions in its approach to workers’ rights can be realized.”

The report concludes that while social audits can be valuable, “audits remain only one component in the toolbox of social compliance.” It advocates giving workers a voice in the process through “freedom of association within a mature system of industrial relations,” and calls on companies to go beyond traditional social auditing by doing the following:

- Put in place a system of regular, unannounced audits for all suppliers;
- Involve comprehensive worker interviews in these audits, as well as local trade unions and NGOs;
- Ensure that supplier managements implement the necessary corrective action when audits show up problems;
- Put in place grievance and complaint mechanisms so that workers can raise concerns at other times;
- Take a proactive approach to freedom of association, including setting up worker training by local trade unions and NGOs;
- Disclose their factory lists publicly or to global union federations, and negotiate access or neutrality agreements with trade unions;

¹³ “Making Our Route: 2005 Accountability Report,” Mountain Equipment Co-op, http://images.mec.ca/media/Images/pdf/MEC_Accountability_Report_v1_m56577569830609369.pdf

¹⁴ For a copy of the LBL report, visit: www.labourbehindthelabel.org/content/view/126/53/

- Work collaboratively with factory managements to raise standards, and create incentives for improved working conditions; and
- Address existing business practices or purchasing practices.



MSIs Making Changes

“Recognizing the limits of traditional monitoring to effect real and lasting change in working conditions, the FLA is moving toward a new monitoring methodology called ‘FLA 3.0’ that seeks to create sustainable compliance by working with local stakeholders to address the root causes of noncompliance.”¹⁵

“After five years of working to aid universities in their code enforcement efforts, I have to report to you that I do not believe broad and sustainable labor rights compliance in collegiate apparel production can be achieved without significant changes in licensees’ sourcing practices.” – Scott Nova, Executive Director, Worker Rights Consortium (WRC)¹⁶

Beyond the initial efforts of a few leading brands to identify and address root causes of persistent noncompliance with their codes of conduct in their global supply chains, there is little evidence to date to indicate that the vast majority of companies are taking steps in this direction. However, there are signs of movement among the various multi-stakeholder initiatives to begin to tackle these root causes.

¹⁵ Fair Labor Association 2006 Annual Public Report, September 2006, p 25, www.fairlabor.org/all/2006PublicReport.pdf.

¹⁶ WRC Executive Director Memo to Universities, 11 October 2005, www.workersrights.org/dsp.asp

FLA launches 3.0

In 2006, the Fair Labor Association (FLA)¹⁷ launched a new program called FLA 3.0. According to the FLA, the decision to develop the program “began with the conclusion that we have all reached – namely that monitoring is not an effective way of bringing about change at any level of the supply chain... , [because] monitoring, even well done, can only identify the compliance issues that need to be addressed. The real work takes place on either side of the monitoring event.”¹⁸

Reasons identified by the FLA for the failure of monitoring to bring about improvements at the workplace include:

- Lack of knowledge of the FLA Code by factory managers and workers;
- The fact that the same compliance issues keep reappearing year after year, indicating that remedial measures haven’t succeeded in eliminating the problems;
- The failure to date to root the compliance effort in the workings of the supplier facility; and
- Difficulties companies have faced in engaging local stakeholders in a meaningful way.

FLA 3.0 is being promoted as a more “integrated approach to sustainable compliance” that will focus on identifying and remediating “root causes of persistent and serious non-compliances...”, give local stakeholders a more “integral role in identifying priority compliance issues...”, provide remedial and capacity-building services, and assess progress made by suppliers over time.

Although the FLA has not yet provided much detail on how FLA 3.0 will work in practice, its development is a clear sign that all parties involved in the FLA agree

¹⁷ For information on the FLA, visit: www.fairlabor.org/

¹⁸ For information on FLA 3.0, visit: www.fairlabor.org/all/resources/projects/sustainable/FLA3.0_Summary.pdf

that its current monitoring and remediation program is failing to make improvements in working conditions and labour practices at the factory level.

The most concrete example of FLA 3.0 in practice is the FLA Soccer Project, which has focused on eight factories in China and 11 in Thailand producing soccer products for FLA member companies.¹⁹ The different stages in the factory assessment and remediation process in that pilot project include:

- A country-level assessment by the various stakeholders to identify the most important and common problems in the national industry;
- A self-assessment by the suppliers on how and why these problems exist in their own factories;
- Dialogue between the stakeholders on possible solutions;
- Training and capacity building by local service providers; and
- An independent assessment of whether the problems have been dealt with sufficiently to achieve sustainable compliance.

According to Pharis Harvey, an NGO representative to the FLA Board of Directors, FLA 3.0 is a more cooperative approach than the traditional policing model, one that recognizes that “systemic compliance problems cannot be resolved by the supplier alone without capacity building and support from the buyers.”²⁰ He claims that, to date, suppliers have welcomed this new approach.

Asked whether FLA 3.0 addresses buyer responsibility for systemic issues, such as purchasing practices that encourage hours of work violations and prevent payment of a living wage, Harvey replies that the process of identifying root causes allows suppliers to put issues like

purchasing practices on the table, and for buyers to point out inefficiencies in production practices.

While increased training and capacity building for suppliers and management personnel, as well as increased involvement of local stakeholders in training, capacity building, and identifying root causes of noncompliance, is an important advance over traditional auditing methods, the success of FLA 3.0 will ultimately depend on whether suppliers are convinced there is a business case for compliance.

To date, the FLA seems to view the benefits of increased productivity and the promise of improved worker-management relations as a sufficient business case to win supplier buy-in. However, as Roseann Casey’s study points out (see p.4), it is doubtful suppliers will be so easily convinced unless and until they see more tangible benefits, such as preferential prices and/or commitments to longer term business relationships.

While Harvey agrees that the success of FLA 3.0 will depend on whether suppliers buy into the new system, he believes that they will see concrete benefits to improving their production, human resources, and labour practices, just as buyers who invest in capacity building and training will be motivated to stay with suppliers.

WRC Launches DSP

In 2006, the Worker Rights Consortium (WRC)²¹ launched an even more radical experiment intended to challenge the root causes of worker rights violations and help unionized factories producing apparel and other products for the university market survive in the highly competitive post-quota environment.

The WRC’s Designated Suppliers Program (DSP)²² is a major departure from

¹⁹ Form more information on the FLA Soccer Project, visit: www.fairlabor.org/all/resources/projects/Soccer/index.html

²⁰ Phone interview with Pharis Harvey, January 17, 2007.

²¹ For information on the WRC, visit: www.workersrights.org/

²² For more information on the DSP, visit: www.workersrights.org/dsp.asp

the WRC's current complaint-based factory investigation and remediation program. Under its new program, which will be voluntary for WRC-affiliated universities, the WRC will certify factories producing university-licensed products as being in compliance with a series of requirements, including payment of a living wage, the licensee's payment of a price sufficient to pay a living wage, and the existence of a democratic, representative union or, at minimum, evidence of employer openness to union organizing and collective bargaining.

In an October 11, 2005 memo to WRC-affiliated universities, WRC Executive Director Scott Nova explained the rationale for the creation of the DSP in the following words:

[I]t has become increasingly clear that there are fundamental obstacles to labor rights compliance that current code enforcement strategies cannot overcome. As a result, the positive changes in working conditions that have been achieved have been far too limited in scope and have often proven impossible to sustain. These obstacles all have to do with sourcing practices in the apparel industry: the prices university licensees and other apparel brands pay the factories in their supply chains, the way licensees divide production among those factories, and the tenuous nature of licensee/supplier relationships. After five years of working to aid universities in their code enforcement efforts, I have to report to you that I do not believe broad and sustainable labor rights compliance in collegiate apparel production can be achieved without significant changes in licensees' sourcing practices.²³

As Nova explains in the memo, in essence the DSP is asking university licensees to "strike a bargain with a subset of their suppliers: stable orders at fair prices in exchange for a lasting,

²³ WRC Executive Director Memo to Universities, Ibid

enforceable commitment to high labor standards." According to Nova, "the great advantage of this approach is that it would make code compliance a winning proposition for factories, something which is not the case today."

Under the DSP, licensees of participating universities will be required to reduce the number of supply factories they use and only produce university-licensed products in those factories that are certified by the WRC as meeting its various requirements.

Whether those factories can survive producing exclusively, or almost exclusively, for the university market, whether a sufficient number of universities and their licensees will be willing to participate in the program to make it viable, and whether those universities will be willing to assume the additional costs necessary to ensure payment of a living wage is yet to be seen.

ETI Studies Purchasing Practices

Other approaches to addressing root causes of noncompliance are being investigated and tested out by the UK-based multi-stakeholder initiative the Ethical Trading Initiative (ETI). Since April 2005, an ETI working group has been studying the impacts of buyers' purchasing practices on labour practices of suppliers.²⁴

The working group includes companies (Asda, Debenhams, Gap Inc., Marks and Spencer, Pentland, Sainburys), labour organizations (GMB, ITGLWF, TGWU), and NGOs (CAFOD, Care UK, OXFAM, Traidcraft, Women Working Worldwide).

In June 2006, Women Working Worldwide (WWW), an NGO member of the ETI, completed a study on the impact of the purchasing practices of one ETI

²⁴ For more information on the ETI Purchasing Practices Project, visit: www.ethicaltrade.org/Z/actvts/exproj/purchprac/index.shtml

member company, Gap Inc.²⁵ Although the full report has not been released to the public, the company's website provides a summary of the key findings of the WWW study,²⁶ including the following:

- Unforeseen delays, such as use of an inefficient fabric mill or delays in approval of sample garments or in the completion of tests for product safety, may make it difficult for the supplier to complete orders on time;
- Changes made to production orders, such as last minute changes in the design of the garment, the desired quality of the fabric to be used, or how the product is to be packaged, can be difficult for factories to manage and complete the order;
- The use of "flow production"²⁷ can result in a factory having more production than it can handle in peak periods and not enough in low seasons, making it difficult for the factory to maintain stable working hours;
- Poor or inadequate production planning by factory management itself can also contribute to the above problems.

"Together, these inefficiencies can lead to quality problems, increased cost, and the use of illegal subcontracting or temporary workers to meet production demands..., [and/or] increased overtime and higher production targets for factory workers, which may correlate with higher incidents of underpayment or non-payment of overtime wages," says Gap Inc.'s summary of the report.

According to Dan Henkle, Senior Vice President of Social Responsibility at Gap

Inc., purchasing practices is an industry-wide issue that reflects the seasonal nature of the fashion industry.²⁸

"For instance, if a product must reach the store by the summer season, any delays in the pipeline, such as a late fabric order, can push the supplier to make up the lost time by increasing overtime or subcontracting work to other facilities," says Henkle. "Late changes made to an order by the buyer to keep the product 'on trend', such as changing the colour of the button from black to white, can have the same unintended impact."

According to Henkle, the WWW study also looked at the reasons suppliers often take on orders they don't have the capacity to do, or more orders than they can handle at a given time, which can also result in excessive overtime or subcontracting.

"Turning down orders is a difficult thing to do when you're competing with other suppliers for orders," says Henkle. "From the supplier's point of view, too many orders are better than too few."

Apparently the WWW study doesn't address the more fundamental question of whether current prices paid by major brands to their suppliers are sufficient to meet code obligations on wages and hour time premiums. However, according to Henkle, it does look at some of the inefficiencies that affect the cost of production and therefore the ability of suppliers to pay a living wage.

Henkle notes that one concrete result of the WWW study has been the development of a training plan for his company's Global Production Team, as well as for the buying staff of one of the Gap Inc. brands, to make those departments more aware of the implications of decisions they make on a day-to-day basis.

A second stage of WWW's research will be looking upstream at the internal

²⁵ Each of the companies participating in the ETI Purchasing Practices Working Group has been paired with a trade union or NGO participant. WWW is Gap's partner.

²⁶ For more information on the WWW study, visit: www.gapinc.com/public/documents/www_study.pdf

²⁷ Gap describes flow production as manufacture of an order in batches staggered over a period of time.

²⁸ Phone interview with Dan Henkle, January 22, 2007.

decision-making processes at the company level, says Henkle.

Like a number of other leading brands, Gap Inc. is also attempting to integrate its rating systems for suppliers so that its production placement decisions are based on both production performance and labour standards compliance.

According to ETI Director Dan Rees,²⁹ while the ETI Working Group has facilitated open discussion about issues of pricing and lead times, addressing link between the prices paid to suppliers and their ability to pay a living wage remains difficult, both as a competitiveness issue and a political issue.

Levi's Sparks Living Wage Debate

Buyer sensitivity about the living wage issue became apparent on December 7 when the ETI Board of Directors made the difficult decision to suspend Levi Strauss' membership in the ETI because Levi's had refused to adopt the living wage provision in the ETI Base Code.³⁰

The ETI's decision was made one day after Canada's Ethical Trading Action Group (ETAG) released its 2006 Transparency Report Card, in which Levi's scored first among 30 companies surveyed. (See p.5)

According to Rees,³¹ although Levi's knew when it joined the ETI in 1999 that the ETI Base Code includes a living wage provision, the company has recently made it clear that it does not believe its suppliers can implement the living wage provision or that Levi's should have a responsibility to ensure that workers making its products receive a living wage.

According to Rees, ETI member companies are not expected to immediately implement the living wage provision, since effective implementation

will require collaboration among a significant number of companies, as well as governments, trade unions, and civil society organizations. However, he argues that acceptance of the principle of a living wage is a necessary first step toward ensuring that workers' wages meet their basic needs.

Asked to comment on the findings of a Labour Behind the Label study (see above) showing that of 37 UK companies surveyed, only 16 accepted the principle of a living wage, and only four showed any evidence of putting the principle into practices, Rees states that while most companies are still focusing on ensuring that the minimum wage or prevailing industry wage is being paid, the fact that four leading brands are now doing market basket tests to determine whether wages meet workers' basic needs is an important step forward.

According to Michael Kobori, Vice-President, Global Code of Conduct, Levi Strauss & Co., his company has agreed to disagree with the ETI on whether supplier codes of conduct should be actionable or aspirational.³²

"Levi's monitors to our own code of conduct and we view that code as actionable rather than aspirational, says Kobori. "This has always been the case and will probably always be the case.

"We provide detailed information to our suppliers on what our company's expectations are, and those expectations have to be implementable," continues Kobori. "We went through the ETI appeals process and took the issue to the Board, not because we oppose the living wage, but because we wanted to emphasize code implementation rather than aspirational standards."

According to Kobori, Levi's believes that wages are only one factor that contributes to a decent standard of living for workers. "Access to education, health care, and training, conditions in the community,

²⁹ Phone interview with Dan Rees, January 23, 2007.

³⁰ "Suspension of Levi Strauss & Co. from ETI membership," ETI Secretariat, 20 December 2006, www.ethicaltrade.org/Z/lib/2006/12/levistrauss-press/index.shtml

³¹ Phone interview with Dan Rees, January 23, 2007.

³² Phone interview with Michael Kobori, January 25, 2007.

standards set by government – all these things contribute to a decent standard of living,” argues Kobori. “We work with suppliers to provide prevailing industry wages and benefits and encourage them to work with Levi Strauss Foundation grantees to support worker literacy, worker rights education, access to capital, advocacy... We also support the inclusion of labour rights provisions in trade agreements.”

Since the ETI’s decision to suspend Levi’s, ETAG has adjusted the company’s rating in the 2006 Transparency Report Card, which resulted in the company’s score decreasing from 78 to 69 and its rating dropping from first place to sixth place.³³

The change in the rating reflects the fact that Levi’s is no longer a member of a multi-stakeholder initiative, as defined by ETAG, and because, as a result, workers and other interested parties no longer have access to a formal third party complaint process.

On January 29, 2007, ETAG issued a media release explaining its decision to reduce Levi’s rating. In that release, MSN Coordinator Lynda Yanz stated, “It’s not good enough to say local markets in developing countries will set appropriate wage levels... not while brands and retailers demand ever-lower prices for their manufactured goods and move production to cheaper locales at a dizzying pace.”³⁴



Increased Collaboration

In addition to the recent attempts within the multi-stakeholder initiatives to go beyond traditional monitoring and

³³ See MSN website for revised assessment and score at www.maquilasolidarity.org

³⁴ January 29 media release and network update are available at www.maquilasolidarity.org

verification methods in order to tackle root causes of noncompliance, in 2006 there was also increased collaboration among companies and between companies, trade unions, NGOs, governments, and multi-lateral institutions, as well as MSIs.

These included a joint project of the MSIs seeking common ground on code standards and best practice in their implementation, collaboration among companies to lessen duplication in factory audits and lower audit costs, bilateral collaboration between MSIs and with industry initiatives, and a new multi-stakeholder initiative to address emerging issues associated with trade liberalization and industry restructuring.

JO-IN Turkey Project

Conceived in 2004, the Turkey Trial Project of the Joint Initiative on Corporate Accountability and Workers’ Rights (JO-IN)³⁵ finally moved into the factory assessment stage in November 2006.

The JO-IN Turkey project is a collaborative effort by the major multi-stakeholder initiatives involved in the apparel sector – FLA, ETI, Social Accountability International (SAI) and the Dutch Fair Wear Foundation (FWF), together with the Clean Clothes Campaign (CCC) and the WRC – to test out best practice in codes of conduct and their implementation in a specific country that could be applied elsewhere in the future.

The six US and European brands involved in the project, all of which are members of one or more of the four participating MSIs, are adidas (FLA), Gap Inc. (SAI & ETI), Marks & Spencer (ETI), Nike (FLA), Patagonia (FLA), and Puma (FLA).

Given the many differences in code standards and monitoring and verification methods among these competing companies, organizations and multi-stakeholder initiatives, it is not surprising

³⁵ For more information on the JO-IN Turkey Project, visit: www.jo-in.org/pub/turkey.shtml

that the preparatory stages of the project have taken more than two years to complete.

Added to these internal challenges were the complications of achieving buy-in and consensus among the various stakeholders in Turkey, including trade unions, suppliers, NGOs and the Turkish government, at a time when the survival of that country's garment industry is threatened by global competition in the post-quota environment.

In that regard, it is telling that while 15 local suppliers originally agreed to have their factories assessed, by the end of the process only six remained on board.³⁶

Even those suppliers that have agreed to participate have expressed their skepticism about some elements of the project, including how the living wage provision in the common code will be interpreted and applied, whether buyers' pricing policies will allow for payment of a living wage, and whether the buyers will make a long-term commitment to keep placing orders in the factories that take part in the project.

In response to supplier concerns about the living wage provision of the common code, the JO-IN Steering Committee has attempted to clarify the different perspectives of the four MSIs and the WRC and CCC on the living wage issue, and that the project will focus on "workplace and sourcing practices that can improve wages without endangering employment."³⁷

On the question of long-term commitments to suppliers that participate in the project, JO-IN reports that buyers were unwilling to guarantee future orders or that they would maintain the current

level of orders to the factory, but that most have communicated verbally to their suppliers that "it is not their expectation to cut orders to participating facilities in the near future."³⁸ The buyers did, however, commit to "maintain[ing] a relationship with suppliers throughout the project...."³⁹

According to JO-IN's International Project Manager, Mike Murphy, to date, all of the buyers have honoured their commitment to not interrupt their business relationship with the participating suppliers during the project.⁴⁰

Although the buyers have agreed that their pricing policies should be part of the multi-stakeholder discussions throughout the project, to date, they have made no commitment to increase prices to allow for payment of a living wage, or even to maintain prices at current levels.⁴¹

According to Murphy, pricing will likely be one of the issues discussed after the completion of the factory assessment phase of the project.

Despite the many issues and obstacles that had to be overcome to get the JO-IN Turkey project off the ground, there have been some important advances over the past two years, including:

- Agreement on a common code of conduct, factory assessment and worker interview methodologies, and a dispute resolution procedure;
- Establishment of a multi-stakeholder JO-IN Local Turkish Working Group to ensure shared ownership of the project with key Turkish stakeholders;
- Hiring and training of a local factory assessment team; and
- Holding of successful training seminars with the local stakeholders.

³⁶ "News: Update Information about the JO-IN Project in Turkey," December 2006, www.jo-in.org/joindec2006.htm. After five factories were assessed in November-December 2006, one additional factory was assessed in January 2007.
³⁷ "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," www.jo-in.org/pub/docs/Jo-In-%20Explanatory%20Note%20for%20Living%20Wages.pdf

³⁸ Report on Jo-In Training Seminar Held in Istanbul, Turkey, July 2006, www.jo-in.org/pub/docs/Jo-In%20MSI%20Training%20Seminar%20Report%202006.pdf
³⁹ Ibid.

⁴⁰ Phone interview with Mike Murphy, January 17, 2007.

⁴¹ Jo-In Participants Seminar, October 3, 2005, Istanbul, Turkey, www.jo-in.org/pub/docs/stakeholder.pdf

As the project moved into the factory assessment stage in November 2006, it faced yet another challenge – the prevalence of subcontracting in the Turkish garment industry. According to Murphy, because there can be a number of subcontractors operating within a given garment factory in Turkey, the assessment team has sometimes had to deal with a number of employers in the same workplace.

“This has made the process very complicated,” says Murphy.

According to Murphy, each factory assessment has been a three-day process that included off-site worker interviews, whenever possible prior to the factory visit, interviews with workers and management inside the facility, and an audit of factory records. By mid-January 2007, only one factory assessment was still in process, and it was expected to be completed by the end of the month.

After the assessments are completed, synthesis reports on the findings will be shared with all the stakeholders, though specific factories will not be linked to specific findings, and corrective action plans will be developed. It is not yet clear whether those reports will be available to the public.

According to Murphy, the suppliers that agreed to participate in the project have put their doubts and concerns aside for the duration of the assessment process, and the real test will come when they receive the findings and begin to discuss corrective action.

“The jury is still out on the remediation outcomes of the project,” says Murphy.

MFA Forum

Launched in 2004, the MFA (Multi-Fibre Arrangement) Forum⁴² is a multi-stakeholder initiative promoting joint action by retailers and brands, suppliers,

governments, labour organizations, NGOs, and international institutions to ameliorate the negative impacts of the end of the MFA import quota system and assist vulnerable national garment industries to become both competitive and socially responsible.

It is worth noting that three of the multi-stakeholder initiatives that are collaborating on the JO-IN Turkey project – Ethical Trading Initiative, Fair Labor Association, Social Accountability International – are also participating in the MFA Forum.

In March 2005, the MFA Forum published “A Collaborative Framework for Guiding Post-MFA Actions,”⁴³ a set of general principles on the responsibilities of retailers and brands, manufacturers, governments, unions, and NGOs to minimize the negative impacts on workers, communities and countries and ensure respect for workers’ rights in the post-quota transition period.

In 2006, the MFA Forum moved forward with two in-country projects in Bangladesh and Lesotho in which local and international stakeholders (industry, labour, NGO, government, and multi-lateral institutions) are attempting to work together to develop strategies and policies to make these two national garment industries both competitive and socially responsible.

The Forum is also currently examining possibilities for initiating similar in-country projects in Morocco and Romania, and in one or two countries in Central America. In addition, two regional projects have been initiated with the creation of working groups on the Americas and Sub-Saharan Africa.

In Bangladesh, early promise of success in gaining multi-stakeholder agreement on a program of action to improve labour standards compliance, productivity, and

⁴² For more information on the MFA Forum, visit: www.mfa-forum.net/

⁴³ A copy of the Collaborative Framework is available at: www.accountability21.net/uploadstore/cms/docs/Collaborative.pdf

competitiveness in the country's ready-made garment industry, faced a number of setbacks when the two industry associations, the Bangladesh Garment Manufacturers and Exporters' Association (BGMEA)⁴⁴ and the Bangladesh Knitwear Manufacturers and Exporters' Association (BKMEA),⁴⁵ attempted to backtrack on commitments made in a June 12, 2006 tripartite agreement.⁴⁶

That agreement had committed BGMEA and BKMEA member companies to abide by legal requirements on overtime pay, maternity leave, and freedom of association, to drop charges against workers who had participated in factory protests and provide them appointment letters and identity cards, and to join with trade union and government representatives in reviewing the minimum wage, which was one of the lowest in the world and had not been increased since 1994.

The tripartite agreement was further weakened when the Bangladeshi industry associations and trade unions clashed over demands for significant improvements in the country's minimum wage for garment workers. In September 2006, when the industry and trade union representatives on the reconstituted Minimum Wage Board failed to reach agreement on a new minimum wage, worker protests broke out. Confrontations between police and the protesting workers turned violent, factories were destroyed, and hundreds of workers and police were injured.⁴⁷

Despite these setbacks, the MFA Forum has continued to move forward with its plans to make the Bangladesh garment

industry both competitive and socially responsible.

One important advance has been the creation of a buyers group in which US and European brands and retailers that represent approximately 70-75% of the value of garment exports from Bangladesh have agreed to adopt the JO-IN code (see p.13) as a common aspirational code of conduct for Bangladesh and to work together on its implementation.

Companies participating in the Buyers Group include Asda, Carrefour, Cotton Group, Gap Inc., H&M, Inditex (Zara), Jones Apparel, Karstadt Quelle, Levi Strauss, Marks & Spencer, Nike, Tchibo, Tesco, Wal-Mart, and Walt Disney.

In September, the participants in the Buyers Group agreed to send a joint letter to all their Bangladeshi suppliers, informing them of the common code and their desire to work together with the suppliers to achieve compliance with the code over time. The buyers also agreed to collaborate on factory monitoring in shared factories.⁴⁸

Although divisions remain between the industry associations and trade unions and NGOs in Bangladesh, through the creation of a local multi-stakeholder Steering Committee, the MFA Forum has provided a platform for national dialogue and the development of common proposals.

And despite the violent conflicts that had accompanied the national debate on the minimum wage, the Steering Committee was able to hold a third meeting November 25, at which trade union and NGO representatives participated along with local buyer

⁴⁴ For more information on the BGMEA, visit: www.bgmea.com/

⁴⁵ For more information on the BKMEA, visit: www.bkmea.com/

⁴⁶ The tripartite agreement reached on June 12 set the stage for the signing on June 22 of a Memorandum of Understanding between the BGMEA, the BKMEA, and 16 Bangladeshi union organizations. MOU on file at MSN.

⁴⁷ For news reports on the worker protests, visit: www.bgw-info.net/news/news.php?page=list

⁴⁸ A decision to adopt a common code was made at the November 2005 meeting of the Buyers Group. The minutes from the September 2006 meeting, where the decision to send a joint letter was made, are not yet available on the MFA Forum website. For a copy of the minutes of the November 2005 meeting, visit: www.accountability21.net/mfa_forum/bangladesh/docs/mfaf_report_buyers_meeting_london_nov05.pdf

representatives, the industry associations, and the Ministry of Commerce.⁴⁹

The MFA Forum has also provided a platform for Bangladeshi manufacturers to challenge the multi-national buyers about their pricing policies. At the November meeting of the Steering Committee, the local stakeholders agreed to submit a proposal to the MFA Forum calling for uniform pricing practices by buyers for all global suppliers.

It is also worth noting that the decision of the Buyers Group to adopt a common code of conduct for Bangladesh and to collaborate on monitoring was in response to concerns raised by the BGEMA and BKMEA at the initial June 2005 MFA Forum conference in Dhaka.⁵⁰

While the MFA Forum has been relatively successful in bringing key stakeholders to the table – buyers, suppliers, governments, multi-lateral institutions, trade unions, NGOs, MSIs – to discuss and engage in joint action to promote responsible competitiveness strategies for national garment industries in vulnerable countries, it has been less successful to date in gaining specific commitments from companies to put the general principles of the Collaborative Framework into practice as they restructure their global supply chains. (See “Are there Rules for Restructuring,” p. 23)

In this regard, one of the major strengths of the MFA Forum – its lack of formal membership requirement that facilitates the participation of a wide range of companies – is also one of its greatest weaknesses. Brands and retailers that choose to participate in one or more of the Forum’s in-country projects are not currently required to make a commitment to the principles of the Collaborative Framework or to show any evidence that

they are acting in compliance with those principles.

It’s worth noting however that a working group of the MFA Forum is currently examining issues and best practice concerning buyers’ responsibilities when they exit factories or countries as they restructure their supply chains. It is too early to tell whether that discussion will result in more specific guidelines being adopted and/or more responsible behaviour by companies involved in the MFA Forum.

FLA and FWF

Two thousand and six also brought new experiments with bilateral collaboration between MSIs on efforts to harmonize their codes of conduct, benchmarks and implementation methods.

In November, the Dutch Fair Wear Foundation (FWF)⁵¹ announced that the Netherlands-based Mexx apparel brand, a wholly owned subsidiary of the US-based Liz Claiborne In. (LCI), had become a FWF member company. FWF also announced that it had signed a Memorandum of Understanding (MOU)⁵² with Mexx, Liz Claiborne, and the Fair Labor Association (FLA), of which Liz Claiborne is a member.

The MOU describes how the four parties will cooperate on the implementation of their codes of conduct and on trying to overcome the existing differences in the FLA and FWF codes. (The FWF code has higher standards on hours of work and wages.)

Under the agreement, the FWF will verify labour standards compliance in Mexx’s supply chain, though Mexx “will for the time being continue to subscribe to the LCI code.” In Asian factories that produce both Liz Claiborne and Mexx brand apparel, the FLA will carry out the audits.

⁴⁹ Minutes of the November 25 Steering Committee meeting will be available on the MFA Forum website: www.mfaforum.net

⁵⁰ The June 2005 conference report can be accessed at: www.accountability21.net/mfa_forum/bangladesh/docs/mfaf_bangladesh_action_report.pdf

⁵¹ The FWF media release can be found at: <http://en.fairwear.nl/tmp/Persbericht%20Mexx%20EN.pdf>

⁵² The MOU can be found at: <http://en.fairwear.nl/tmp/MoU%20Mexx-LCI-FLA-FWF%20with%20signatures.pdf>

When verifying compliance with hours of work and wage standards, FWF audit teams “will compare FWF and FLA benchmarks and procedures, and report about the implications of following one or the other.” Those reports will be fed into a new joint project of the FWF and FLA on wages and hours of work that is designed to “produce practical implementation benchmarks and procedures.”

According to the MOU, the joint project could also envisage collaboration between the two MSIs on activities regarding networks of local partner organizations in garment producing countries, audits and audit training, complaints procedures, reporting, and remediation.

The MOU states, “There is a need for harmonization and cooperation between initiatives world-wide in order to achieve better impact for workers in the supply chain and more effectiveness for companies implementing codes of conduct.”

According to Ineke Zeldenrust of the European Clean Clothes Campaign (CCC), the intention of the joint FWF-FLA project is not to work with the two codes on a permanent basis, but to do so only until the JO-IN process is completed and the two MSIs decide whether to adopt the JO-IN Code.⁵³

SAI and BSCI

In Codes Memo #19,⁵⁴ we described and assessed a European industry-controlled code monitoring program called the Business Social Compliance Initiative (BSCI).⁵⁵ The BSCI includes some of the largest and most important European retailers, such as Karstadt Quelle, Metro, and the Otto Group of Germany; Migros of Switzerland; Lindex and KappAhl of

Sweden; and Ahold and Vendex/KBB of the Netherlands.

Unlike the multi-stakeholder initiatives, the BSCI is a business-led initiative and does not include trade unions or labour rights NGOs in its governance bodies. However, the BSCI has developed an interesting relationship with one of the MSIs, Social Accountability International (SAI).⁵⁶

As described in Codes Memo #19, the BSCI uses SAI-accredited social auditing organizations to carry out factory audits, but does not certify factories as being in compliance with the SAI SA8000 Standard. Instead, the BSCI encourages member companies and suppliers of those companies to strive to reach compliance with the SAI Standard over the longer term. To date, auditors have been monitoring compliance with the BSCI code of conduct and doing a “gap analysis” for SA8000 certification.

Through the BSCI database, member companies share the results of factory audits on a confidential basis in order to avoid duplication, reduce costs and benchmark audit results. However, unlike the FLA, BSCI audit findings and corrective actions are not publicly available.

The fact that the names of the retailers associated with audits of particular factories are confidential would also seem to limit possibilities for collaboration among buyers on corrective action in shared factories.

In 2006, SAI made a controversial decision to formalize its relationship with BSCI. That decision resulted in the resignation from the SAI Advisory Committee of two long-term members, Neil Kearney, General Secretary of the International Textile, Garment and Leather Workers’ Federation (ITGLWF), and MSN Coordinator Lynda Yanz.

As part of the agreement between the two initiatives, BSCI agreed to bring its code of conduct in line with the SA8000

⁵³ Phone interview with Ineke Zeldenrust, CCC, January 16, 2007

⁵⁴ Codes Memo #19 can be found at: www.maquilasolidarity.org/resources/codes/pdf/codesmemo19.pdf

⁵⁵ For more information on the BSCI, visit: www.bsci-eu.org/content.php

⁵⁶ For more information on SAI, visit: www.sa-intl.org/

Standard.⁵⁷ The revised BSCI Code was adopted in November 2006, but wasn't released to the public until January 2007.⁵⁸

While the previous BSCI Code⁵⁹ was more closely aligned with recognized international standards than are most company and some MSI codes, its provision on freedom of association did not explicitly state that the employer must respect the right of all workers to form and join unions of their choice and to bargain collectively. Nor did the Code mention the right of workers to a living wage, or require remediation for children found working.

According to SAI Executive Director Alice Tepper Marlin, the revised BSCI Code "corresponds fully to the provisions of SA8000."⁶⁰ The BSCI has also reportedly committed to SAI oversight of BSCI audits, which "at minimum, will include a regular schedule of SAI surveillance of BSCI audits and implementation process."⁶¹

However, a closer look at the new BSCI code reveals that the while its wage provision "encourages" supplier companies to provide "adequate compensation" to "cover living expenses and provide some additional disposable income" (where the minimum wage or prevailing industry wage do not cover living expenses), it does not clearly recognize the right of workers to a living wage that meets the basic needs of themselves and their families. And while the revised Child Labour provision does require remediation for children found working, it does not explicitly state that the minimum working age is 15, or 14 in

countries that meet the ILO's least developed country exemption.

According to Kearney, "BSCI seems to be trying desperately to wriggle free of the full SA8000 commitments. Why else would they drop the reference to 'basic needs' of workers and their families and replace that with the very vague term 'living expenses'? Whose living expenses, one is immediately tempted to ask? If BSCI wants their Code to mirror the terms of SA8000 then why not just use the language contained in the SA8000 standard?"

"The BSCI Code seems designed to confuse and in confusing water down already broadly accepted code language. A slip of the pen or a deliberate ploy -- that is the question!"⁶²

Kearney also criticizes the BSCI for relying heavily on "so-called self assessment accompanied by check-list auditing, neither of which have proven adept at improving labour conditions in workplaces."⁶³

According to Ineke Zeldenrust of the CCC, a long-time critic of the BSCI, while greater collaboration among companies, industry initiatives, and MSIs is certainly welcome, "the new SAI-BSCI alliance appears to be more of a marriage of convenience than a collaborative effort to identify and promote best practice.

"The SAI-BSCI alliance fails to address the fundamental question currently being struggled with by other multi-stakeholder initiatives - the poor quality of audits being carried out by commercial social auditing organizations and the inherent weaknesses in the dominant social auditing model itself," says Zeldenrust.⁶⁴

⁵⁷ For a copy of the SA8000 Standard go to: www.sai-intl.org/index.cfm?fuseaction=document.showDocumentByID&nodelD=1&DocumentID=136

⁵⁸ For a copy of the revised BSCI Code, go to: www.bsceu.org/content.php?page=BsciDocuments

⁵⁹ "BSCI Code of Conduct," October 2004, on file at MSN.

⁶⁰ E-mail reply to interview questions, January 30, 2007.

⁶¹ "Accreditation Update: SAI to Provide Technical Assistance to BSCI, Accrediting Gap Analysis Auditing Services," SAI E-update, December 15, 2006, www.ethicalmarkets.com/social_accountability_internatio%20506.htm

Fair Factories Clearinghouse

Another initiative in which companies are collaborating on factory auditing is the

⁶² Email from Neil Kearney, February 8, 2007.

⁶³ Email from Neil Kearney, January 16, 2007.

⁶⁴ Phone interview with Zeldenrust. For the CCC's critique of the BSCI, visit: www.cleanclothes.org/news/newsletter21-05.htm

Fair Factories Clearinghouse (FFC),⁶⁵ an industry-controlled non-profit organization that allows retailers to share factory audit findings on a confidential basis through a global database of supply factories.

Created by Reebok International, which donated the software, the US National Retail Federation, the Retail Council of Canada, and World Monitors Inc., the FFC does not establish standards, nor assess or rate suppliers, but merely provides a tool for retailers to share audit reports and information on corrective action on a voluntary basis in order to avoid duplication in shared factories and minimize auditing costs.

Founding members of the FFC include Canada's Hudson's Bay Company and Mark's Work Wearhouse (also of Canada), as well as three US companies, Federated Department Stores, The Wet Seal, and Reebok. Other companies currently represented on the Board of Directors include L.L. Bean, Timberland, and VF Corporation.

Although the FFC "may periodically publish information regarding compliance trends," it does not share the information with the public, or with workers or other stakeholders. Nor will information provided to the public be attributable to any specific retailer, brand or factory.⁶⁶

However, according to the FFC, "brands and retailers may find shared factory assessments useful in making sourcing decisions, to the benefit of factories with reports of positive workplace conditions."⁶⁷

According to Diane Brisebois, President and CEO of the Retail Council of Canada (RCC), the FFC is particularly useful to companies starting out to develop their code monitoring programs and for smaller retailers lacking the resource to mount large monitoring programs.⁶⁸

"The FFC can increase the participation of retailers in CSR efforts because it provides economy of scale and is affordable for smaller companies," says Brisebois. "The RCC doesn't promote it as the only program to get involved in, but as one of the tools for working globally."

While sharing information on auditors' findings and progress on corrective action is a step forward for US and Canadian retailers, the anonymous nature of the reporting and the fact that it is not shared with workers, unions, NGOs or the public means that there is no ability for outside organizations to assess the quality of the audits, the accuracy of the findings, or corrective action taken.

As is the case with the BSCI database, the Fair Factories Clearinghouse does not address the concerns of a growing number of companies and MSI's, as well as trade unions and NGOs involved in the MSIs, that the commercial auditing model itself is fundamentally flawed.

It is also worth noting that while eliminating duplication of audits in shared factories will have definite advantages for retailers and suppliers, the Nike study profiled above suggests that multiple audits of shared factories by different buyers may actually be more beneficial for workers than audits by a single company.

Global Social Compliance Programme

In 2006, there was considerable speculation about Wal-Mart's participation in a parallel initiative to the JO-IN project that would bring together large retailers, and possibly manufacturers and/or industry associations, around an alternative code of conduct and monitoring system.

However, the first public confirmation of the rumours didn't surface until the beginning of 2007. On January 11, the UK *Financial Times* ran a story announcing that the four largest retailer chains in the world – Wal-Mart, Tesco (UK), Carrefour (France), and Metro (Germany) – were

⁶⁵ For more information on the Fair Factories Clearinghouse, visit: www.fairfactories.org/index.htm

⁶⁶ www.fairfactories.org/faqs.htm

⁶⁷ Ibid.

⁶⁸ Phone interview with Diane Brisebois, January 25, 2007.

joining with the largest Swiss retailer, Migros, in launching a new code initiative called the Global Social Compliance Programme (GSCP).⁶⁹

According to the article, the retail giants have developed a draft common code of conduct that is drawn from the companies' existing codes. The GSCP, says the article, "will also set out goals aimed at standardizing a range of competing monitoring initiatives."

The draft code and the GSCP's plans to standardize monitoring systems are expected to be released in February of this year.

GSCP is an initiative of CIES Food Business Forum (International Committee of Food Retail Chains). However, the new code will apply to all retail products.



The Crisis in Social Auditing

In 2005, the Clean Clothes Campaign (CCC) published a scathing critique of the booming private sector social auditing industry. "Looking for a Quick Fix: How weak social auditing is keeping workers in sweatshops"⁷⁰ argued that not only are commercial social auditors generally lacking in the skills, training and experience needed to assess worker rights issues, but that by relying on commercial auditing firms, "buyers have less and less connection with their suppliers and their employees..., [and] by cutting workers out of the process in this model, they risk turning back the clock on valuable progress that has been made elsewhere."

As we have seen above, by 2006 the CCC's critique was shared by a growing number of company leaders responsible

for code compliance, as well as by many of the multi-stakeholder initiatives.

For MSIs more wedded to the ISO accreditation and workplace certification model, such as SAI, the answer to weak social auditing has been to improve training for auditors, factory management, and workers and increased oversight of the audit process, as well as strengthening management systems at the factory level.

Other MSIs, such as the FLA, FWF and ETI, are now putting more emphasis on root cause analysis, increased involvement of local stakeholders in the monitoring process, and/or increased training of management personnel and, in fewer instances, workers.

At the November 16 Members' Meeting of the UK Ethical Trading Initiative (ETI), ITGLWF General Secretary Neil Kearney went so far as to call social auditors "the wart on the face of corporate social responsibility."⁷¹

As a short-term, partial solution to the current inadequacies of private sector social auditors, Kearney advocated making it obligatory for social auditors to be "professionally trained and regulated." He called on the MSIs to "combine efforts to develop detailed and common training programmes..." and called for the creation of a professional institute "along with guidelines for behaviour and performance."

Kearney also suggested, "Ideally, audit teams should be in-house and directly employed by the brand or retailer concerned..." rather than provided by commercial audit companies. This statement represents a major departure from the earlier emphasis of the trade union and anti-sweatshop movements on the importance of external verification.

Kearney was not alone in his criticism of the commercial social auditing industry. During their November Members'

⁶⁹ "Big retailers join forces in an effort to fight labour abuses," *Financial Times*, January 11, 2007, www.ft.com/

⁷⁰ For a copy of "Looking for a Quick Fix...", visit: www.cleanclothes.org/ftp/05-quick_fix.pdf

⁷¹ For a copy of Kearney's speech, visit:

www.itglwf.org/DisplayDocument.aspx?idarticle=15235&lang=ue=2

Meeting, several ETI members (20 UK- and US-based companies, seven NGOs and three trade union organizations) came together in a special session to discuss what could be done about the growing crisis in social auditing.

The report, released in late January 2007, reveals that a significant number of major retailers and brands are equally concerned about the “limited effectiveness of most ethical trade audits” and the “particularly questionable quality of the majority of audits conducted by third party commercial auditing companies.”⁷²

Critical problems identified at the meeting included:

- Unreliability of third party commercial auditing companies, and the limited skills, lack of training, and lack of professional regulation of commercial auditors;
- Multiple audits of the same supplier, and inconsistent corrective action plans;
- Failure to identify/report serious labour problems, particularly concerning discrimination and violations of freedom of association; and
- Prevalence of fraudulent practices, including double bookkeeping, coaching and bribing workers to give false information, and instances of auditors “encouraging and helping factories to keep false records.”

Reasons identified for the prevalence of audit fraud included purchasing practices that undermine ethical trade standards; reliance on pre-announced audits; and the “zero tolerance” approach of many US brands and retailers that, according to the report, has encouraged the growth of

double bookkeeping and other fraudulent practices.

While the ETI members recognized that social audits will likely continue to be needed, “there was a clear call for brands and retailers to bring the auditing function in-house.”

They called on individual companies to do the following:

- Encourage suppliers to be honest and open about non-compliance and adopt a zero tolerance policy for dishonesty;
- Do fewer and better quality audits, and share audit reports and corrective action plans among buyers using the same factories;
- Review the impact of purchasing practices on suppliers’ ability to meet ethical trade standards; and
- Build the capacity of suppliers, particularly their human resource management skills.

The ETI members made a number of recommendations for collaborative action among companies and MSIs, including the development of common standards and guidelines for auditing; a common training and certification program for auditors; a system for regulating auditor behaviour and performance; and networks of local auditors in sourcing countries. They also called on the ETI to redouble its efforts to achieve agreement on a common code of conduct for all companies and MSIs.

According to the ETI members’ meeting report, “[s]ome participants encouraged companies to work more closely with trade unions and relevant NGOs to build better industrial relations in their supply sites, as a more sustainable way of addressing entrenched labour problems.”

According to Kearney, over the longer term the current approach to social auditing “is simply not sustainable... , [and] needs to be replaced by a mature system of industrial relations based on

⁷² “Getting smarter at auditing: Tackling the growing crisis in ethical trade auditing,” report from ETI members’ meeting, 16 November 2006, forthcoming on the ETI website: www.ethicaltrade.org. On file at MSN.

social dialogue where representatives of management and workers become daily monitors of workplace situations dealing with problems as they emerge and usually anticipating such problems and heading them off.”⁷³

Whether and how mature industrial relations can develop and survive at the factory level in the highly competitive post-quota environment is a more challenging question.

A March 16, 2006 update from WRC Executive Director Scott Nova to the WRC Advisory Council and organizational partners⁷⁴ reports that worker organizing victories at seven of the 12 factories profiled in the update, in which the WRC had invested considerable time and resources to achieve remediation, were threatened by a significant decline in orders from brand buyers and/or supplier decisions to close the factories.

Nova also expressed serious concern about the future survival of most of the remaining factories where the WRC had been working on remediation.



Are there Rules for Restructuring?

In 2006, as the fallout from the end of quotas began to be felt on the ground, particularly in poor developing countries that had benefited from the quota system, issues surrounding brand exits from factories and countries, as well as their suppliers' decisions to close factories and shift production elsewhere, became a major preoccupation of trade unions and local and international labour rights organizations, including MSN. Factory exits and closures were becoming a major CSR issue.

⁷³ E-mail exchange with Neil Kearney, January 2007.

⁷⁴ Scott Nova, "Worker Rights Consortium Update," 16 March 2006 (on file at MSN).

Due to the lack of attention given to the potential negative impacts of the quota phase-out on developing countries and workers in those countries prior to the actual demise of the import quota system at the end of 2004, governments, national garment industries, trade unions, and labour rights NGOs were generally unprepared to challenge the rapidly approaching change in global trade rules or the restructuring plans of multi-national brands, retailers and manufacturers.

As a result, in 2005 and 2006, the focus of attention was on limiting the negative consequences of restructuring wherever possible, responding to closures on a factory-by-factory basis, and/or promoting "responsible competitiveness" as a survival strategy for vulnerable national garment industries.

The MFA Forum's Collaborative Framework,⁷⁵ which MSN helped to develop, identifies general principles for responsible behaviour in the post-quota transition period. It does not, however, address the more fundamental question of whether exiting a profitable factory and leaving workers and a community without viable alternatives, merely because bigger profits or market share can be achieved by producing elsewhere, can ever be considered responsible.

Nor does the Collaborative Framework include monitoring or enforcement mechanisms or concrete incentives or disincentives to motivate companies to act responsibly toward affected workers or to communities that provided incentives to attract foreign investment. However, it does represent a first step in an ongoing discussion between buyers, suppliers, governments, unions and NGOs about the responsibilities of the various stakeholders to workers, communities and countries during the post-quota transition period.

In 2006, we witnessed a number of examples of irresponsible behaviour in

⁷⁵ www.accountability21.net/uploadstore/cms/docs/Collaborative.pdf

factory closures, and, unfortunately, very few examples of companies meeting their responsibilities to negatively affected workers and communities.

Gina Form Bra – Thailand

Despite the determined efforts of factory workers and their union, backed by a major international campaign pressuring high-profile brands to stop the closure of the unionized Gina Form Bra factory in Bangkok, Thailand, in October 2006, the Hong Kong-based Clover Group closed the factory and shifted production to China.

Although the campaign, and the intervention of the brand buyers, did achieve better than usual severance pay for the laid-off workers, it was unsuccessful in protecting the workers' jobs or their union.

Three years earlier, a similar campaign had helped to resolve a long and bitter dispute between factory management and the union and achieve a signed collective agreement and constructive labour-management relations at the Gina factory.

However, when the Clover Group decided to consolidate production in fewer facilities in 2006, it was the unionized factory that was sacrificed, and the brand buyers were either unwilling or unable to stop it from happening.⁷⁶

Hermosa – El Salvador

Another contentious case, which began in 2004 and was still unresolved at the end of 2006, was the closure of the Hermosa factory in El Salvador. In the Hermosa case, the issue is whether international buyers have a responsibility to ensure that workers receive their legal severance pay, outstanding wages and overtime pay, health benefits, and alternative employment opportunities when one of

their suppliers fails to live up to its legal obligations to the workers.

Many of the buyers that had been sourcing from the Hermosa factory prior to its closure were willing to work together to try to convince the factory owner to fulfill his legal obligations to the workers and the Salvadoran government to enforce its laws and hold job fairs for the former Hermosa employees. However, they were reluctant to directly compensate the workers for monies owed, fearing it might set a precedent for similar cases in the future.

Eventually, some buyers did agree to contribute to a special "emergency fund" set up by the Fair Labor Association (FLA). However, by the end of 2006, the total of all contributions to the fund had only reached \$36,000, as compared to the \$825,000 owed to the workers.

According to the Worker Rights Consortium (WRC), this contribution represents only 4% of the monies owed to the 260 workers who lost their jobs as a result of the closure, and 20% of what was owed to a smaller group of 63 workers who had been involved in an organizing effort and had been actively pursuing remediation.⁷⁷ On December 29, a total of \$33,000 was distributed to 57 of those 63 workers.

According to FLA President and CEO Auret van Heerden, "The proceeds of the fund will provide workers with some financial support to meet basic needs such as food, housing, and medical care as we continue our efforts to get the company and the government to fulfill the legal, economic and human rights due these workers. Finding jobs for these workers remains a priority in order to provide them with sustainable support."⁷⁸

On January 3, 2007, the Clean Clothes Campaign (CCC) made the following

⁷⁶ For more information on the Gina case, visit: www.maquilasolidarity.org/alerts/Thailand-Gina%20Form-Oct%202006.htm

⁷⁷ January 4, 2007 WRC Update to affiliated universities, on file at MSN.

⁷⁸ www.fairlabor.org/all/news/HermosaPressRelease_12.22.06.pdf

statement concerning the creation of the fund and dispersal of monies:

“While happy that the organized workers have received some relief during the holiday season, we are disappointed that the fund the FLA established is not intended to reimburse workers what they are legally owed, but consciously framed as a humanitarian aid gesture. It does not acknowledge that brands share responsibility for the current situation, where workers who for years were making their clothes are owed large sums of money. We’re also very disappointed that the initial amount distributed (36.000 US\$) is so small compared to the amount legally owed to the workers.”⁷⁹

Hanesbrands – Mexico

In December 2006, US basics manufacturer Hanesbrands closed its factory in Monclova, Coahuila, Mexico, leaving 1,400 workers unemployed. Prior to the closure, MSN’s local partner in Coahuila, SEDEPAC, charged that the company had failed to provide the workers or the community with accurate information on the closure or to discuss what could be done to minimize the damage.⁸⁰

According to SEDEPAC, workers laid off prior to the closure did not receive their full legal severance pay. Other workers saw their salaries decrease in the last few months of employment due to a sudden increase in the production quotas, which resulted in a reduction in their severance pay.

In addition, workers were reportedly pressured to sign documents asserting that they had not suffered any work-related injuries or illnesses before receiving severance, which could result in deserving workers not receiving health benefits. Workers also reported that they had suffered serious, and some cases,

permanent, work-related health problems as a result of their years of work at Hanesbrands, but that the company was unwilling to provide them the documents to which they were entitled, to enable them to access legal health-related benefits from government social security.⁸¹

In response to negative media reports and pressure from SEDEPAC and MSN, Hanesbrands did provide legal severance to the workers still employed at the factory at the time of the closure and apparently stopped requiring workers to sign documents relinquishing their right to compensation for work-related illnesses and injuries, but it failed to respond to requests for information on its plans for its remaining factories in Mexico or to assist its former Monclova workers with retraining and job searches.⁸²

According to the local media, Hanesbrands is shifting production from Mexico to Central America where labour costs are cheaper.⁸³

Adidas-Reebok – Indonesia

Although recent closures of sports shoe factories in Indonesia cannot be attributed to the end of apparel import quotas, questions of brand responsibility remain the same for the sportswear industry.

In November 2006, both the Pt Spotek and Pt Dong Joe factories located in Tangerang, Indonesia (close to the capital Jakarta) closed, leaving a total of 10,500 workers without jobs.

A third factory, Pt Tong Yang, located in the Bekasi industrial area near Jakarta and employing over 9,000 workers is also set to close and, according to Oxfam Australia, production at the factory has reportedly halted. Pt Dong Joe and Pt Tong Yang had at least a 15-year relationship with Reebok, and then adidas when the two

⁷⁹ www.cleanclothes.org/urgent/07-01-03.htm

⁸⁰ MSN interview with SEDEPAC, October 26-27, 2006, Monclova, Coahuila (on file at MSN).

⁸¹ MSN interviews with former Hanesbrands workers, October 26-27, Monclova, Coahuila (on file).

⁸² Ibid.

⁸³ Rojas, Alberto, “Definitivo: Hanes sí cierra,” 2 Octubre 2006, *Zócalo*.

companies merged; Spotec was producing for the company over the past five years.

“We are concerned that the buying practices of adidas are likely to be one of the main reasons the factories had to close,” says Kelly Dent of Oxfam Australia.⁸⁴

She points to a statement attributed to the Chairman of the Indonesian Footwear Association in a November 2, 2006 article in the Indonesian newspaper KOMPAS,⁸⁵ claiming the price paid by Reebok for production of their sports shoes in Indonesia had not increased in five years.

According to William Anderson, adidas’ Head of Social and Environmental Affairs for the Asia Pacific Region,⁸⁶ the Chairman of the Footwear Association has since retracted his statement, claiming he was misquoted in the media.

“We do not make public pricing information (past or current), but what we can say is that Reebok had negotiated with factories prices that were in line with the market norms,” says Anderson.

According to Dent, while adidas alleges that all three suppliers have “huge and unsustainable debts due to gross financial mismanagement,” trade unions involved in the three factories charge that the debt is the result of upgrading of infrastructure that was carried out at the request of adidas.

“The adidas Group did not request that these factories upgrade their infrastructure,” counters Anderson. “Indeed we raised concerns with at least two of these factories where they had undertaken construction of new facilities when it was already evident that they had severe cash flow problems.

“In one factory we did see some expenditure on improvements in layout and lean manufacturing processes,”

⁸⁴ E-mail response to interview questions, January 25, 2007.

⁸⁵ The original article is available only in Indonesian, but an English language article that includes the same quotes can be found at: www.indonesiamatters.com/907/adidas-factories/

⁸⁶ E-mail response to interview questions, February 2, 2007

continues Anderson, “but this was to enable an injection of much needed orders from adidas; the resulting inflow of adidas orders were highly profitable for the supplier and rather than undermine the business, in fact supported it at a critical time.”

Dent charges adidas with failing to provide evidence of their allegations of mismanagement by their suppliers or that their buying practices did not contribute to the closure of PT Spotec and Dong Joe and the imminent closure of Pt Tong Yang.

“Adidas must be transparent about their buying practices toward these supplier factories and ensure that these practices do not undermine adidas own code, which includes supporting workers’ trade union rights,” says Dent.

According to Dent, Oxfam Australia is calling on adidas to work with all parties to seek solutions that would allow the PT Spotec and PT Dong Joe factories to re-open and to increase orders at PT Tong Yang to full capacity to allow that factory to continue operating.

“If that proves impossible, then adidas and factory management should ensure that these workers receive their full legal entitlements,” says Dent. “Adidas should also relocate the orders to other supplier factories in Indonesia, rather than to factories in other countries, and the company should take concrete action to ensure that those workers who have lost their jobs are offered jobs in other adidas and Reebok supplier factories in Indonesia.”

Anderson replies that the adidas Group is not the employer and has no direct legal obligation to the workers who have been made redundant.

“However, given the scale of these closures, and the hardship and insecurity being faced by the workers and their families, we have taken steps to help,” says Anderson.

As evidence of the humanitarian efforts his company has taken to assist the

workers, Williams points to his company's funding of medical coverage for the workers and their families, a request made to the Indonesian government to "institute emergency measures to help the workers," and approaches made to other adidas suppliers, asking them "to consider applicants from these closed factories wherever there are job openings."

Buyer Responsibilities

Although brand buyers often prefer to talk about their humanitarian efforts to assist workers displaced by factory closures rather than their responsibilities to those workers and their communities, it is worth noting that most of the demands made by trade unions and civil society organizations concerning the Gina Form Bra, Hermosa, Hanesbrands, and adidas-Reebok cases are consistent with the buyer responsibilities outlined in the MFA Forum Collaborative Framework,⁸⁷ including:

- Where feasible, maintain current country supply base and contain consolidation in-country;
- Monitor supplier adherence to payment of legally required social security/pension benefits;
- Prioritize employment opportunities for displaced workers in remaining garment and textile factories;
- Ensure that displaced workers received their full legal severance and other benefits;
- Seek to source from countries that support core labour standards;
- Source only from suppliers that provide decent work; and
- Align purchasing practices with labour standards compliance.

Win-win or Wishful Thinking?

Looking for a silver lining in the dark cloud hanging over the post-quota world, company compliance staff and some CSR and labour rights organizations, including MSN, have speculated that one positive outcome of global restructuring could be more stable and longer term business relationships with fewer suppliers who therefore have a vested interest in achieving and maintaining labour standards compliance.

According to Dan Henkle of Gap Inc.,⁸⁸ his company is planning to move more and more production to better facilities over time as it consolidates and restructures its supply chain. He claims that with the company's new integrated rating system, production placement decisions are already being made based on code of conduct compliance data.

Charlie Brown of Nike⁸⁹ also points to his company's efforts to integrate the work of their CSR teams and with that of the business and manufacturing teams, such as the company's balanced scorecard, which rates suppliers based on their performance on CSR metrics, as well as on quality, price and delivery.

According to Brown, the goal of the balanced scorecard is to "reward best performers with the best business opportunities as a Nike supplier."

Brown also sees the move to lean manufacturing, which Nike and other brands are currently promoting to their suppliers, as contributing to improved wages (through productivity bonuses), better working conditions, respect for freedom of association, and more stable business relationships with suppliers.

However, by the end of 2006, there was little publicly available evidence to indicate that brands, retailers or manufacturers were giving preference to factories with better working conditions and/or where

⁸⁷ See pages 6-7 of MFAF Collaborative Framework, www.accountability21.net/uploadstore/cms/docs/Collaborative.pdf

⁸⁸ Phone interview with Dan Henkle, January 22, 2007.

⁸⁹ E-mail exchange with Charlie Brown, January 25, 2007 (on file at MSN).

systems of mature industrial relations were already in place.

In the next few years, we will learn whether restructuring and consolidation, as well as the move to lean manufacturing, will benefit workers who are still employed, or whether this win-win scenario is just wishful thinking.



What Role for Government?

With the growing recognition of the inherent limitations of voluntary codes of conduct and corporate monitoring programs, as well as the fact that serious efforts to achieve and maintain compliance with credible standards are still limited to a relatively small sector of the apparel and related consumer products industries, the role of government is once again on the agenda.

In 2006, a number of researchers and NGO critics of corporate social auditing called for an increased role for government in setting standards and requiring companies to report on their efforts to comply with those standards. In many cases, they advocated hybrid systems in which voluntary and regulatory approaches are meant to complement and reinforce one another.

In her report for UN Special Representative on Business and Human Rights John Ruggie, Roseann Casey points to earlier studies, including two World Bank studies published in 2003, that questioned the effectiveness of voluntary initiatives and called for a more active role for government and trade unions.⁹⁰

⁹⁰ See *Strengthening Implementation of Corporate Social Responsibility in Global Supply Chains*, October 2003, and *Opportunities and Obstacles for Corporate Social Responsibility Reporting in Developing Countries*, Dara O'Rourke, December 19, 2003, both of which were prepared for the Corporate Social Responsibility Practice in the Investment Climate Department of the World Bank Group.

Casey's report highlights a number of possible roles governments in buyer and supplier countries could play to promote labour standards compliance, such as through trade institutions and agreements; increased regulatory pressure; use of foreign policy to strengthen civic institutions, NGOs and "overall regard for human rights;" incentives to companies (tax considerations, favoured access, protection from litigation); procurement policies; "public disclosure and information sharing to level the playing field and allow for greater scrutiny and transparency in compliance issues;" and government participation in market-based approaches, such as the Better Factories Cambodia program.⁹¹

Her proposals are very similar to those of the ETAG 2006 Report Card,⁹² which calls on the Canadian government to adopt the following policies and regulations:

- Factory disclosure regulations to create a level playing field with those companies that are already disclosing such information;
- Reporting regulations on companies' efforts and progress in achieving compliance with ILO Core Conventions in their global supply chains;
- Ethical procurement policies for federal government departments, agencies and other bodies; and
- Preference in the granting of loans, grants, overseas development insurance, and other benefits to companies that have credible codes of conduct and monitoring programs in place and that provide public reports on audit findings and corrective action taken.

In 2006, we also witnessed a number of multi-sector campaigns for government

⁹¹ "Meaningful Change...", pp. 29-30.

⁹² *Revealing Clothing...*, pp. 17-18.

policies and regulations to make companies more accountable on social and environmental practices, both to their shareholders and to society as a whole.

In the UK, the Corporate Responsibility (CORE) Coalition, which includes 130 international development, environmental, human rights, faith, fair trade, and trade union organizations, such as Amnesty International UK, ActionAid UK, Christian Aid, War on Want, Friends of the Earth, Traidcraft, and Labour Behind the Label, waged a highly successful campaign for mandatory social and environmental reporting.

According to CORE, over 100,000 UK voters contacted their MP in 2006 through e-mails, postcards, letters, and local lobbying, and 750,000 contacted the government directly.

At least partially as a result of the campaign, the UK Government “strengthened requirements on social and environmental reporting so that the 1,300 largest public companies quoted on the UK stock market must now report on environmental, employee, social and community issues and risks down company supply chains where they are necessary to understanding the company’s business.”⁹³

After extensive debate, the UK parliament approved the Company Law Reform Bill, which gained Royal Assent on November 8, 2006 and became known as the 2006 Companies Act.

Under the Act, listed companies must report to the public on their environmental and social impacts and on employees and supply chain issues. In addition, all directors of UK companies must consider the impacts of their business operations on the community and the environment.

While CORE is generally supportive of the changes, it has pledged to continue fighting for effective implementation of the

Act and for the right of communities negatively affected by corporate behaviour to seek redress.⁹⁴

According to Julian Oram, Deputy Head, Trade and Corporates at ActionAid UK, the CORE Coalition campaign was successful in making use of the rare opportunity of the government review of company law in order to recoup much of what was lost when the same government scrapped mandatory corporate reporting regulations under the Operating and Financial Review (OFR) in November 2005.⁹⁵

“The repeal of the OFR was a real blow,” says Oram. “The new Companies Act does require publicly listed companies to include information on relevant social, environmental and supply chain issues, but it does not include a statutory standard for corporate reporting or an external auditing requirement, which the OFR did.

“The lack of statutory standards makes it very difficult to benchmark companies’ performance or to review how the Act is working,” says Oram.

According to Oram, the government has agreed to review the question in two years and to introduce legal standards if companies’ social and environmental reporting is inadequate.

Another limitation of the Act is that it applies only to large publicly traded companies, and therefore does not require social and environmental reporting by small and medium size enterprises or even by some UK retail giants, such as Asda, which is a private company owned by Wal-Mart.

The Act did make limited progress in the area of directors’ duties, introducing a duty for directors to “have regard to” the impacts of their business operations on communities and the environment.

⁹³ Corporate Responsibility E News, November 2006, www.corporate-responsibility.org/C2B/PressOffice/display.asp?ID=75&Type=2

⁹⁴ “Companies Act a move forward to right corporate wrongs,” CORE media release, November 10, 2006, www.corporate-responsibility.org/C2B/PressOffice/display.asp?ID=74&Type=2
⁹⁵ Phone interview with Julian Oram, January 24, 2007.

However, campaigners had been pushing for a more proactive requirement for directors to “take steps to minimize” any negative impacts, as the current language clearly limits the possibility of holding companies legally accountable for their actions or lack of action.

One hopeful sign for Oram was a statement made in Parliament by Minister for Industry and Regions, Margaret Hodge, that the clause was “absolutely not about just ticking boxes,” and that she expects directors to exercise their duty to give proper consideration of social and environmental issues.⁹⁶

Hodge has also made public statements suggesting that further regulation could be introduced to tighten regulatory controls on company directors with respect to social and environmental issues.⁹⁷

According to Oram, the Act is weakest on access to justice for negatively affected communities. However, he believes the CORE Coalition campaign was highly successful in winning broad public support for the right to redress for communities negatively impacted by the actions of British companies, and in putting the issue of the right to redress on the table for a number of MPs, the House of Lords, and various government departments.

Meanwhile at the European level, on December 6, the European Coalition for Corporate Justice (ECCJ) publicly criticized the “CSR approach adopted by the European Commission,” labelling it “unpromising and misguided.” As an alternative to the Commission’s voluntary approach, ECCJ proposed the development of a legal framework “to ensure that corporations behave in a

socially and environmentally sustainable way.”⁹⁸

According to the December 6 ECCJ media release, civil society groups that are members of the coalition decided not to participate in a multi-stakeholder forum hosted by the European Commission in Brussels the following day, because the forum was only addressing voluntary measures.

At an ECCJ-sponsored December 6 counter-conference in Brussels entitled “Towards a regulatory approach to Corporate Social Responsibility,” European NGOs proposed the following as an alternative to the European Commission’s voluntary approach:

- Mandatory reporting on social and environmental issues;
- Creation of a duty of care for CEOs for the environmental and social impacts of their companies’ activities;
- Enforcement of mechanisms for redress for affected communities; and
- Use of public procurement to favour environmentally and socially responsible businesses.

ECCJ is a coalition of 16 European environmental, labour rights and corporate accountability organizations, including Friends of the Earth Europe, SOMO, IRENE, Hivos, CORE UK, Forum Citoyen pour la RSE, Manitese, Germanwatch, GARDE (Environmental Law Service), Observatorio de RSC.

In Canada, the focus of government policy discussion on corporate accountability in 2006 was on the resource extraction sector, as the federal government held a series of roundtable meetings on the issue in major Canadian cities. Civil society participation in those

96 Companies Bill [Lords], 17 October 2006, Column 789, www.publications.parliament.uk/pa/cm200506/cmhansrd/cm061017/debtext/61017-0005.htm

97 “Companies bill ‘first step’ of reforms,” Financial Times, 26 September 2006. www.ft.com/cms/s/68e40178-4cfb-11db-b03c-0000779e2340.html

⁹⁸ “Corporations Must be Truly Accountable: NGO demand for regulation is supported by a whole range of stakeholders,” ECCJ media release, 6 December 2006, www.corporatejustice.org/

meetings was coordinated by the Canadian Network on Corporate Accountability (CNCA), a coalition of 21 human rights, environmental, trade union, international development, and corporate accountability organizations.

Similar to the European counterparts, CNCA members were critical of the Canadian government's preference for voluntary approaches to corporate social responsibility. They called on the government to introduce mandatory corporate accountability regulations to do the following:

- Require Canadian companies operating internationally to meet defined corporate social responsibility, human rights and environmental standards, as a precondition for both financial and political assistance;
- Develop legislation to hold Canadian companies and their directors accountable in Canada when found complicit in human rights abuses and environmental destruction abroad;
- Develop robust Canadian-based monitoring, verification and compliance mechanisms to ensure that Canadian companies operating internationally meet these standards; and
- Promote the inclusion of human rights standards in World Bank policies and make private sector lending conditional on compliance with international human rights.⁹⁹

Although most companies in the apparel sector continue to promote voluntary non-governmental forms of regulation as preferable to regulation by national governments or multi-lateral institutions, there were a few instances in 2006 in which companies advocated in favour of public policies and government

⁹⁹ www.halifaxinitiative.org/index.php/CNCA_What

action that promoted greater respect for workers' rights.

In response to a request from MSN, on November 7, 2006, seven major US brands that source apparel from the Philippines sent a joint letter to Philippine president Gloria Macapagal-Arroyo, calling on her government to "take proactive measures for ensuring the physical safety and for protecting the rights of workers and labor rights promoters."¹⁰⁰

Signatories to the letter included American Eagle Outfitters, Gap Inc., Jones Apparel Group, Liz Claiborne Inc., Phillips-Van Heusen, Polo Ralph Lauren, and Wal-Mart.

The joint letter also urged the Philippine government to "support, and fully cooperate with, independent and impartial investigations into the killing of Bishop Alberto Ramento, chair of the Board of Directors of the Workers Assistance Center (WAC), and the shooting of Gerardo Cristobal, former union president and a member of the Solidarity of Cavite Workers (SCW)."

In October 2006, the US-based labour rights NGO Global Labor Strategies released a report condemning the American Chamber of Commerce in Shanghai, the US-China Business Council, and the European Union Chamber of Commerce in China for aggressively opposing modest reforms in China's national labour law that would give migrant workers more job security and strengthen their legal rights.¹⁰¹

According to the report, major US and European companies investing in and sourcing from China, acting through their business organizations, "were actively lobbying against" the Chinese government's Draft Labor Contract Law

¹⁰⁰ For a copy of the joint letter, go to: www.maquilasolidarity.org/alerts/Company%20joint%20letter.pdf

¹⁰¹ "Behind the Great Wall of China: US Corporations Opposing New Rights for Chinese Workers, Global Labor Strategies," Global Labor Strategies, October 2006, http://laborstrategies.blogs.com/global_labor_strategies/files/behind_the_great_wall_of_china.pdf

and “threatening that foreign corporations will withdraw from China if it is passed.”

On October 26, the ITGLWF announced that it had written to a number of US and European retailers and brands, including Wal-Mart, Carrefour, Tesco, Nike, the Walt Disney Co., adidas, Sara Lee, and DuPont, “asking them to distance themselves from the position of their industry associations and to publicly support China’s proposed new labour laws.”¹⁰²

On January 17, 2007, Nike sent a letter to the American Chamber of Commerce-China, offering to share its views on the proposed law and requesting that the Chamber consult with Nike before making submissions on the issue.¹⁰³

In a document attached to the letter, Nike expressed its support for a number, though not all, provisions in the proposed legislation, including:

- Consultation with employees regarding new and significant workplace regulations;
- Long-term employment contracts (but with some flexibility for seasonal short-term employment needs);
- Legal mechanisms for workers to seek back pay owed;
- Consultation with worker representatives concerning long-term layoffs, and priority in employment given to workers based on seniority;
- Collective bargaining agreements and having national law serve as the minimum standard for collective agreements; and
- Work agreements for employment agency workers.

Whether or not other retailers and brands contacted by the ITGLWF will clearly and publicly assert their support for the new labour legislation and/or call

¹⁰² For a copy of the ITGLWF media release, go to: www.itglwf.org/DisplayDocument.aspx?idarticle=15186&langue=2

¹⁰³ Letter on file at MSN.

upon the American Chamber of Commerce to withdraw its representation to the Chinese government, there clearly are differences of opinion within the US business community about the need for stronger legal protections for the Chinese workers who make their products.



Summing Up a Contradictory Year

Faced with mounting evidence that conditions were not significantly improving in their supply factories despite considerable investment in code monitoring programs, in 2006 leading international brands and multi-stakeholder initiatives (MSIs) of which they are members, were increasingly questioning the effectiveness of factory audits as the primary tool for ensuring labour standards compliance.

Among companies and within the MSIs, there was increased talk about “root cause analysis” and “partnering with suppliers” to achieve “sustainable compliance,” while reliance on third-party factory auditing to uncover and address persistent worker rights abuses was disparagingly referred to as “the policing model.”

New programs and pilot projects, such as the Fair Labor Association’s FLA 3.0 and the Worker Rights Consortium’s (WRC’s) Designated Suppliers Program, were launched in 2006 to test out alternative approaches to achieving sustainable compliance.

Meanwhile, an increasing number of major retailers and brand merchandisers showed a greater willingness to collaborate with their competitors, as well as with labour and nongovernmental organizations, on efforts to achieve remediation in shared factories, as well as more sustainable improvements in

working conditions in supply factories in specific countries or regions.

Interest in collaborative action extended to a number of lesser known brands, as well as to some major discount chains, such as Wal-Mart.

While there continued to be significant resistance on the part of many retailers and brands to accepting responsibility for the persistence of worker rights violations in their supply chains, some leading brands and MSIs, such as the UK's Ethical Trading Initiative (ETI), began to examine purchasing practices and other supply chain management issues in an effort to better understand how buyers' practices contribute to noncompliance at the factory level.

In 2006, the trend toward greater corporate transparency continued as more apparel and sportswear companies published frank and detailed CSR reports and/or publicly disclosed the names and addresses of their supply factories.

However, despite these incremental advances on CSR policies and programs, 2006 was a difficult and painful year for many workers in the global garment industry. It was a year of major restructuring of global supply chains, consolidation of production networks, and layoffs and factory closures as competition heightened among buyers, manufacturers and countries for market share, foreign investment and jobs in the new post-quota environment.

Increased competition in the post-quota transition period threatened to undermine many of the advances at the CSR policy level and to increase the downward pressure on wages, benefits and labour standards in producing countries, particularly in poor countries that had benefited from the quota system.

In 2006, the MFA Forum, a multi-stakeholder initiative launched in 2005 to identify and ameliorate the negative impacts of the end of quotas and to promote labour standards compliance as a

competitive advantage, moved ahead with two in-country projects – in Bangladesh and Lesotho – designed to link competitiveness strategies with a national tripartite commitment to complying with international labour standards.

However, these in-country projects are at the early developmental stage, and it is still too soon to tell how successful such market-based initiatives linked to government action will be in this highly competitive post-quota environment.

The unavoidable truth at the end of 2006 is that advances on corporate social responsibility at the international or company levels are not yet filtering down to the workers whose rights the various CSR initiatives were designed to protect. In fact, changes in global trade rules could end up nullifying many of the advances made to date through these voluntary CSR initiatives.

As market forces threaten to overwhelm market-based CSR initiatives, other regulatory approaches, including standards setting and corporate reporting regulations, as well as government participation in multi-stakeholder initiatives, were once again up for discussion, either as alternatives to or to complement and reinforce inadequate voluntary approaches.

Where Are We Headed?

Looking ahead to 2007, we can safely predict that the trend of increased collaboration among companies, as well as with labour and civil society organizations and between MSIs, will continue as they seek common ground on code standards and their implementation and explore new strategies to tackle the root causes of noncompliance that are currently blocking improvements in working conditions at the factory level.

At the same time, there will likely continue to be significant differences between the various MSIs and industry-controlled CSR initiatives over appropriate

code of conduct standards and the most effective means to achieve sustainable compliance with those standards.

Given the very different paths being taken by the FLA and WRC, as well as competition between them for university loyalty, we can anticipate that already strained relations between those two initiatives will likely become worse rather than better in 2007.

Meanwhile, the launching of a new industry-controlled code initiative, the Global Social Compliance Programme, led by the four largest retailers in the world, could signal that the critical mass necessary to make CSR pervasive in the industry has been reached, while at the same time exacerbating divisions between industry-controlled initiatives and the MSIs, thereby weakening the influence of the MSIs and their common code.

We can also anticipate that there will be increased discussion and debate in 2007 about the purchasing practices of retailers and brands and how they impact on the ability of suppliers to meet and maintain compliance with buyer codes of conduct, as well as their ability to pay a living wage by local standards.

To date, the discourse of companies and MSIs has been limited to supply chain management issues, as well as ways to upgrade their suppliers' production and HR practices and systems in order to make them more efficient and cost effective, the assumption being that more efficient and profitable factories will be able to provide decent wage and hours of work, without cutting into buyers' profits.

Even the leading brands have been unwilling to seriously address the more fundamental question of whether the prices they pay to their suppliers are sufficient to allow for payment of a living wage. As per-unit prices continue to fall in highly competitive post-quota environment, in 2007, we are likely to see a revival of campaigning by labour rights groups, focusing on the link between

prices and wages and the right of workers to receive wages that meet their basic needs.

According to ETI Director Dan Rees, a second wave of campaigning focusing on these two related issues is already taking place in the UK where multi-stakeholder dialogue in the retail sector is probably more advanced than in most other importing countries.¹⁰⁴ One concrete example of the revival of campaigning in the UK was the publication in December 2006 of a report by War on Want targeting three important UK discount retailers – Primark, Asda and Tesco – for poverty wages paid to workers producing their products in Bangladesh.¹⁰⁵

Equally important for trade unions, labour rights NGOs and buyer compliance staff in 2007 will be the continuing fall-out from the quota phase-out on workers and communities. We can therefore expect to see an increased focus on the highly contentious question of what responsibilities brands and retailers have to negatively affected workers and communities, particularly when factory owners and governments fail to carry out their responsibilities.

If the new approaches being taken by companies and MSIs to tackle root causes of persistent worker rights violations prove to be no more successful than the current social auditing model, we can also expect to see the emergence of new alliances of trade unions, labour rights and corporate accountability NGOs, and environmental, social investment, and human rights organizations pressing for statutory regulations that not only require corporate social and environmental reporting, but also provide mechanisms for negatively affected communities to seek redress for their grievances.

As we have seen in 2006, one positive outcome of increased collaboration

¹⁰⁴ Phone interview with Dan Rees, January 23, 2007.

¹⁰⁵ "Fashion Victims: The True Cost of Cheap Clothes at Primark, Asda and Tesco," December 2006, 16pp, www.waronwant.org/Fashion+Victims+13593.twl

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between the various stakeholders in the apparel and related consumer products sectors has been the return of governments and multi-lateral institutions to the table. In 2007, we can expect to see government and international institutions playing an increasing role in hybrid initiatives in which the distinction between voluntary and regulatory approaches begins to blur.

Leading brands that have made public commitments to labour standards and worker rights will also likely be under increasing pressure to support government policies and regulations that promote the consistent application of national labour law and the creation of a level playing field on issues like statutory standards and corporate reporting requirements.

As a result, we may see the emergence of non-traditional alliances – involving brand buyers, trade unions, and labour rights NGOs – on specific issues related to

government policy on social and environmental issues. In other instances, such as debates on the pricing issue, we could see alliances emerging between Southern suppliers and both Northern and Southern unions and NGOs pressuring brand buyers to provide increased prices linked to the payment of a living wage.

In this confusing and contradictory climate, in which heightened global competition in a borderless post-MFA world clashes with increased pressures to re-regulate the industry, it is still too early to tell whether worker rights will become firmly entrenched in corporate and/or government policy. Alternatively, there is a real possibility that market forces will overwhelm and reverse progress that is being made through a combination of market-based and state and multi-lateral regulatory experiments.