



Too Weak for the Job

Corporate Codes of Conduct,
Non-Governmental Organizations and
the Regulation of International Labour
Standards

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ABSTRACT The shift of economic production from higher labour standard regimes in the global North to lower standard regimes in the South is undermining enforcement of global labour standards. Responding to criticisms from the 'anti-sweatshop' movement, consumers and governments, many transnational corporations (TNCs) have adopted codes of conduct to regulate labour standards in their supplier factories. Non-governmental organizations (NGOs) are increasingly used to monitor compliance with these codes. This article analyses the monitoring effectiveness of three kinds of such 'third party' NGOs. It concludes that major monitoring deficiencies reflect, first, significant organizational weaknesses of the NGOs and their dependence on TNCs for whom they monitor; second, powerful limits imposed on NGO effectiveness by corporate restructuring and market competitiveness; and third, inadequate pressures from anti-sweatshop movements, consumers and governments. These constraints suggest that this NGO-centred, 'soft law' policy approach is 'too weak for the job'.

KEYWORDS *anti-sweatshop movement, corporate codes of conduct, corporate social responsibility, global supply chains, international labour regulation, international labour standards, labour standards monitoring, non-governmental organizations*

From Public to Private Regulation

As economic production has moved from the global North to the South, it has shifted from state-centred regimes, where labour standards are largely regulated by legally obligatory 'hard law' (e.g. legal statutes) to regimes where such regulation is less effective, and

frequently absent. The consequent partial vacuum in statutory regulation is increasingly being filled by forms of non-binding, corporate-centred 'soft law' (Piciotto, 1999; Wells, forthcoming). A growing number of transnational corporations (TNCs) and non-governmental organizations (NGOs) are creating a 'private regime', defined by Cutler et al. (1999: 13) as 'an integrated complex of formal and informal institutions that is a source of governance for an economic issue area as a whole'. At the core of their efforts to substitute for key aspects of state-centred labour regulation, many TNCs and NGOs are promoting 'corporate social responsibility' (CSR), the integration of social objectives, including labour standards, into corporate economic goals. Many TNCs have attached monitoring and certification mechanisms to these objectives in a range of industries (e.g. mining, chemicals, forest products, oil, diamonds, coffee, tea, cocoa, bananas, apparel, sporting goods, and toys).

While the global policy focus of CSR is expanding to include corporate initiatives to reduce disease, corruption and violence, multilateral initiatives such as the UN Global Compact (Whitehouse, 2003) and OECD Guidelines for Multinational Enterprises, and multilateral initiatives to attach labour rights to trade agreements (Wells, 2006) and to global framework agreements (Miller, 2004), the most significant element of CSR is its focus on 'corporate codes of conduct' containing labour (and environmental) standards (Elliott and Freeman, 2003: 58–72; Jenkins, 2002).¹ These codes typically have two components: a list of labour standards (regarding child labour, forced labour, discrimination, health and safety, etc.) that TNCs commit to promote in their global production chains; and monitoring or 'social audit' mechanisms to measure employer compliance with code standards. Such codes are an important component of the broader phenomenon of private governance by firms and other private interests in law making, policy making and regulatory functions (Coleman and Perl, 1999; Cutler, 2003; Cutler et al., 1999; Piciotto, 1999; Porter, 1999). As Cutler et al. (1999: 370) observe, such 'governance can almost be completely provided by private firms, as in the regime for regulating the Internet, or by states relying very heavily on institutions constructed by firms, as in mineral markets or the standards regime [i.e. private institutional arrangements for the governance of communications and information technologies]'.²

In the case of labour codes of conduct, policy and governance are provided largely by TNCs and a growing body of NGOs, many of which are linked with TNCs. Indeed, such codes are central to an 'NGO-industrial complex' (Gereffi et al., 2001) performing labour standards monitoring functions in global production chains. This complex signifies multiple functional and organizational intersections between firms and NGOs, as the latter become more involved in 'commodified activities', leading to a 'blurring of the distinction between an important strand of "civil society" and "business"' (Utting, 2005a: 14). Non-profit monitoring organizations often operate like 'any other commercial firm' (Esbenshade, 2004: 142). While their rapid

growth and diversity militates against a universally accepted definition of NGOs, the term is usually applied to non-profit organizations. However, the blurring of corporate–civil society boundaries through integration between non-profit NGOs and for-profit firms suggests a continuum that includes “hybrid” organizations, with a strong market-orientation but also a public purpose’ (Stubbs, 2003: 322) rather than organizations on either side of a clear dividing line constructed around the ‘non-profit’ and ‘for-profit’ distinction. Hence, in this analysis the term NGO encompasses both for-profit and non-profit organizations.

The main issue analysed here is how effective this emerging set of NGOs is in helping to regulate labour standards through code monitoring. An adequate system to monitor standards is a necessary condition of effective enforcement. Since direct TNC monitoring generally lacks the legitimacy afforded by more arms-length relations between monitor and employer, external ‘third party’ monitoring by NGOs has become pivotal to this soft law regime. This article analyses the monitoring effectiveness of examples of three kinds of such third party NGOs:

1. for-profit, global accounting firms (such as PricewaterhouseCoopers and Ernst and Young) that provide monitoring services to TNCs;
2. non-profit, business-controlled international NGOs (such as Worldwide Responsible Apparel Production, Business Social Compliance Initiative and the Global Alliance for Workers and Communities) created by corporations to provide monitoring, training, research, and other services to member TNCs;
3. non-profit, multi-stakeholder NGOs (such as Social Accountability International, Fair Labour Association, Ethical Trading Initiative, Fair Wear Foundation and Worker Rights Consortium) created through negotiations among two or more types of stakeholders (e.g. TNCs, labour unions, faith organizations, consumer rights groups, educational institutions, human rights groups, student organizations) that are also represented in their governance structures. These NGOs provide monitoring, factory/brand/firm accreditation, and other services, and have a degree of autonomy from TNCs.

Analysis focuses on two sectors at the forefront of such labour regulation: the global garment and athletic footwear industries.

In contrast to analysts who stress NGO effectiveness in improving labour standards (e.g. Mamic, 2004; Pearson and Seyfang, 2001; Zadek, 2004), and to those who argue these codes can substitute for state-centred regulation (e.g. Ruggie, 2004), much of the evidence analysed in this article suggests that such NGOs have generally been ineffective in monitoring code standards and that there has been little progress in improving labour standards through such regulation. Contrary to the view that codes are a basis for ‘ratcheting up’

international labour standards (Fung et al., 2001a,b), the import of this article is that, except for a handful of contingent cases (Knight and Wells, 2007, forthcoming; Robertson and Plaiyoowong, 2004), empirical and logical support for this perspective is lacking (at least in these industries). This article explains the ineffectiveness of this soft policy regulation by focusing on the inadequate monitoring and enforcement capacities of these third party NGOs, the weak nature of transnational action network support for labour standards compliance, and the competitive pressures among firms and states that undermine labour standards compliance.

The inadequacy of this soft regulatory form is also rooted in the nature of global supply chains, especially labour intensive ones. To a significant degree, codes of conduct arise due to TNC global subcontracting to less developed countries (LDCs). The magnitude of this shift of production is reflected partly in dramatic increases in the *value* of LDC exports. For example, from 1985–2002 the value of exports from China and India increased 870%, and exports from low and middle income LDCs increased 260–80% (Gunter and Von der Hoeven, 2004: 10). This shift is also reflected in the changed *composition* of LDC exports: in 1975 about 10% of exports from LDCs were manufactured goods; by 1996 this proportion increased to about 75% (Milberg, 2004: 47). The US apparel industry is illustrative: from 1992–99, the value of apparel sold in the USA that was manufactured in the USA declined from 49% to 12% (Gereffi and Memedovic, 2003: 7).

Interstate competition for investment and trade reinforces these changes. As many LDCs shifted from import-substitution to export-oriented industrialization strategies, they stimulated exports via low-labour-standard ‘export processing zones’ (e.g. free trade zones, maquiladoras, bonded warehouses, free ports, special economic zones) employing an estimated 42m workers (ILO, 2003). More generally, ‘competition states’ (Cerny, 2000) contend for investment and trade through trade liberalization agreements, tax treaties, infrastructure provision, and other incentives, especially low labour standards. According to the UN Commission on Trade and Development, the worldwide number of changes in national laws and regulations designed to attract foreign direct investment (FDI) has tripled since the 1990s (United Nations Conference on Trade and Development [UNCTAD], 2004: 8).

These changes are also driven by corporate restructuring. In the global apparel and athletic footwear industries, retail firms have adopted ‘vertical retailing’ strategies built around offshore contracting of manufacture in ‘buyer driven’ global supply chains (Appelbaum et al., 1994; Korzeniewicz, 1994). ‘Triangle manufacturing’ is frequent: production was first outsourced by retailers to contract suppliers in first tier, newly industrializing countries (NICs) (e.g. South Korea, Taiwan). As trade union density and labour standards rose in these countries,² the second side of the triangle emerged: manufacturers in first tier NICs transferred orders to second tier NICs (e.g. Indonesia, Thailand) and to even lower labour standard countries in the

South. The triangle's third side is the shipment of goods to northern markets (Dicken and Hassler, 2000).

Finally, at the level of global policy, geographic diffusion of apparel production has been greatly shaped by the General Agreement on Tariffs and Trade's (GATT) Multi Fibre Arrangement and its World Trade Organization (WTO) sequel, the Agreement on Textiles and Clothing. In order to phase in trade liberalization, these agreements imposed quotas on each country's apparel and textile exports. These quotas (phased out by 2005) were crucial to globalizing garment production. LDC manufacturers became 'price takers' to large retailers in developed countries.³ Due to their control over the manufacturers,⁴ the manufacturers have 'basically no pricing power' in relation to major TNC clients (Fong, 2005: A11), large retailers retain considerable influence over labour standards in supplier factories while avoiding legal responsibilities for labour that inhere to factory ownership. By pressuring suppliers to reduce costs and tighten delivery schedules, retailers contribute directly to lower labour standards (Hong Kong Christian Industrial Committee, 2003; Oxfam, 2004; Ross, 2004: 133–9) in an industry where international labour standards violations are endemic (International Labour Organization, 2000).

It is in this context that labour codes have arisen, largely in response to popular criticism in the North over the failure to regulate labour standards. As early as 1976 the UN Commission on Transnational Corporations' call for a legally binding UN Code of Conduct on Transnational Corporations was ignored. To pre-empt this legally binding code, the OECD set up a voluntary code (Van der Pilj, 1993: 54). Revised in 2000, the code is legally unenforceable and largely ineffective (OECD Watch, 2005). In the 1990s, negotiations to revise the GATT failed to include a labour clause, and the International Labour Organisation (ILO) failed to create an international system for labelling garments based on the working conditions under which they were made (Haufler, 2001). Although some recent trade agreements include labour standards, these provisions are largely 'aspirational' and 'hortatory' (Wells, 2006). Absent effective international regulation, TNC accountability for labour standards rests primarily with national control systems that, according to the UN Centre on Transnational Corporations, are 'evadible, inefficient, incomplete, unenforceable, exploitable, or negotiable' (Cutler, 2003: 201). Hence the potential importance of the three kinds of third party NGOs analysed here.

Global Accounting Firms

Many TNCs use global accounting firms to monitor code compliance in their supply chains. Two global accounting firms, Ernst and Young (E&Y) and PricewaterhouseCoopers (PwC), have been particularly prominent in this role. Among the most well known TNCs that have used both firms

extensively for plant monitoring is Nike, the world's largest sportswear firm, with about 660,000 employees in approximately 900 factories, and annual revenues over US\$13bn. Pressured by public allegations of labour standards violations in the late 1990s, Nike asked E&Y to audit compliance with its code. One of E&Y's confidential audit reports was leaked, and for the first time a factory report became public. Based on plant inspections and worker interviews, an independent academic expert disclosed that monitors had missed numerous code violations (e.g. strikebreaking, physical and verbal abuse of workers, failure to abide by local pay and overtime laws) and ignored 'most accepted standards of labor and environmental auditing'. The audit presented 'a strong argument':

that accounting firms retained by manufacturers are not the appropriate organizations to be conducting audits of labor ... conditions. Accounting firms such as Ernst & Young simply do not have the training, independence, or the trust of workers, to perform comprehensive, unbiased audits of working conditions. (O'Rourke, 1997: 11)

Nike then hired PwC, but major monitoring flaws arose with PwC too. When PwC cooperated in an assessment of its monitoring, the assessment concluded that although the monitors detected minor problems they 'consistently overlooked larger, more important issues' (e.g. safety hazards, repression of freedom of association and collective bargaining, excessive and unpaid overtime, violation of minimum wage laws, etc.). Basic weaknesses in monitoring methods were again central. For example:

PwC auditors asked the managers to help select workers to be interviewed, had the managers collect the workers' personnel files, and then had them bring the workers into the [managers'] offices for the interviews. The managers knew who was being interviewed, for how long, and on what issues ... (O'Rourke, 2000: 4)

The assessment concluded that 'significant and seemingly systematic biases in PwC's methodologies call into question the company's very ability to conduct monitoring that is independent' (O'Rourke, 2000: 7). Recent evidence suggests that these biases continue. A former PwC monitor, with several years' experience auditing numerous Nike and other TNCs' supply factories in Asia, reported that it was standard procedure for monitors to inform plant managers that they would be visiting the plant. Normally monitors interviewed about 25 workers, many of whom were selected during plant tours with managers. The interviews took place in management offices. 'Although interviews were conducted one-by-one and confidentially, managers knew which workers were interviewed, so [they could] get information from the workers after the interviews.' This was 'an inadequate way to get information' about working conditions and labour rights. Monitors 'couldn't do much because our monitoring methodology was agreed [to] by our clients. [PwC] is not the only one doing monitoring in an inadequate way. This is a common fault of this kind of monitoring.'⁵

Further major inadequacies were revealed recently when Nike made selected PwC audits publicly available. Its 'full report' on a plant in Mexico, for example, failed to monitor health and safety and environmental standards, and to monitor any working conditions for the plant's outsourced production (Nike Incorporated, n.d.[a]). In their report on a Canadian plant, the monitors did not audit health and safety 'per the instruction of Nike' and did not fill in most of the report (Nike Incorporated, n.d.[b]). No report had information about freedom of association and collective bargaining rights. Monitors forewarned managers of their visits, and did not interview workers confidentially outside the workplace. Reports did not explain basic research methods, including sample size, interviewee selection criteria, and interview questions.

Evidence from plants supplying other TNCs indicates further flaws. For example, although the local union executive and other union members had recently been fired after applying to register a union at the plant (Verite, 1999), PwC deemed a Liz Claiborne factory in El Salvador to be code-compliant. A worker advocacy group criticized PwC monitoring, emphasizing the absence of confidential worker interviews (National Labor Committee, 1999). In another case, Wal-Mart reported that PwC 'failed to uncover many of the egregious conditions' at one of its plants (Roberts and Bernstein, 2000). At another Nike supplier plant, PwC reported management had 'established relations with employees that were flexible and transparent' and that 'workers felt they could air grievances in a fair and effective way' (Maquila Solidarity Network, 2001) – yet most of the workers were on strike over violations of local labour law and Nike's code. Hired by Nike to assess the situation, another monitor substantiated most of the workers' claims, including management's refusal to allow workers to join a union of their choice; violations of maternity and sick leave laws; verbal, physical and sexual harassment; summary firings; and violations of health and safety regulations (Alcalde 2001; Knight and Wells, 2007, forthcoming; Verite, 2001; Worker Rights Consortium [WRC], 2001).

Based on extensive personal monitoring experience in Asia, a PwC manager concluded that most such factory audits are insufficient to uncover labour violations (Ehrlich, 2000). A university-sponsored study of plants concluded such monitoring 'is currently insufficient to promote effective compliance' (Business for Social Responsibility Education Fund [BSREF], 2000: 2). For some, these monitoring weaknesses reflect PwC's inadequate links to local labour rights NGOs (Esbenshade, 2004: 137). In addition, these global accounting firms' monitoring credibility is undermined by their client relationship with TNCs. In Nike's case, PwC was paid directly by Nike for monitoring its plants, and is Nike's financial auditor. Countering criticism that PwC was not independent of it, Nike argued the US Securities and Exchange Commission [SEC] 'requires financial audits of publicly traded companies precisely because those auditors live or die by the independent judgments of

company financial statements'.⁶ A subsequent SEC investigation disclosed that most PwC partners violated rules barring them from investing in firms they audited, doing so thousands of times (Norris, 2000). After accounting scandals at other TNCs (e.g. Enron, WorldCom), Nike contracted its monitoring to other firms, including Global Social Compliance, a PwC offshoot. There is evidence that Global Social Compliance monitoring has been similarly flawed (O'Rourke, 2002).

A Business-Controlled International NGO

The Global Alliance for Workers and Communities (GA) is a second type of third party monitor: a business-controlled international NGO. The GA was created by TNCs, the World Bank, the philanthropic MacArthur Foundation, the International Youth Foundation (an international NGO providing educational services to TNCs) and universities with financial links to Nike, a founding TNC.⁷ TNCs controlled the board and provided most of the funding (Hughes, 2000; Nike, 2004).

According to the International Youth Foundation, Nike founded the GA to respond to 'critics of Nike who believe that it exploits its subcontractors' workers' (Waddell, 2001: 34). The GA's goal was to institutionalize cooperative labour-management relations leading to better working conditions and higher productivity. Core GA programmes centred on assessments of workers' needs and aspirations, management training programmes (e.g. supervisory skills), and CSR. They also centred on worker training programmes in areas such as first aid, nutrition, sanitation, reproductive health, HIV/AIDS prevention, and personal finance. The GA delivered these programmes to some 335,000 workers in 61 factories in Nike's and Gap's Asian supply chains. (Like Nike, Gap is a major apparel TNC: it has over US\$16bn in annual revenues; approximately 160,000 direct employees [mostly in retail stores] and over 2600 supplier factories.) Nike and Gap paid most programme costs. Factory owners also paid some costs.⁸

According to the GA, their worker surveys 'surface workplace concerns, including allegations of code violations' (GA, 2002: 7). The GA conducted 12,000 interviews and 13,000 questionnaires, which provided data for six public reports on worker needs in four countries. Interviewing workers in the plants, sometimes in groups, monitors disregarded confidentiality norms. While initial sampling methods were not adequate, there were significant improvements in later surveys, including stratified random sampling for age, gender, seniority, and other appropriate variables.

The surveys largely avoided direct assessment of code compliance: in place of a focus on collective labour standards, the surveys focused mainly on individualized issues (e.g. balanced diets, sexually transmitted diseases, and personal financial management). Most surveys contained no questions that focused on such labour standards as wage rates,⁹ hours of work, freedom of association or

collective bargaining.¹⁰ The TNC directed that union representatives not be interviewed 'to avoid confusion between the role of the GA versus [the TNC's] compliance staff' (GA, 2001: 13). In one plant, the Clean Clothes Campaign (CCC), a multi-stakeholder NGO, assessed the GA survey. The CCC concluded that the GA process was not designed to assess 'real problems faced by the workers at the factory level' or 'look into labour violations in factories' (Yimprasert, 2000).

However, a survey of Indonesian plants did include questions about labour standards and revealed areas of non-compliance with code standards. For example, many workers complained about supervisors' abuse, forced and unpaid overtime, illegally low wages, denial of rights to sick, menstrual and personal leaves, trading sex for jobs or favourable treatment, and other issues (GA, 2001: 13). Evidence of code violations also arose indirectly in GA surveys in India. The GA reported that workers 'appeared quite anemic and underweight' and were 'most likely suffering from anemia and undernourishment' (GA, 2003: 5, 15). Wages were often 'insufficient to meet the increasing costs of living', and the value of the minimum wage had 'declined markedly' (GA, 2003: 5). The GA noted that non-unionized workers in India were 'at the low end of the earning scale' and that the plants were not unionized (GA, 2003: 14). Many workers also complained of forced overtime, and a majority reported working unpaid overtime (GA, 2003: 6, 20, 25).

In key respects GA research methods suffered from deficiencies similar to those of the global accounting firms. In particular, TNC representatives, local managers and supervisors assisted the GA teams in conducting the surveys. According to a GA manager, the teams were 'an important vehicle to join management and workers together in a common cause'.¹¹ Critics argued they were used to create 'yellow company unions' by discussing issues 'acceptable to the companies and directing workers' attention away from starvation wages and excessive hours of work and onto less dangerous things such as the cleanliness of company dormitories'. Moreover, managers introduced the GA researchers to the workers and, because workers were required to provide their names, they did 'not dare give criticisms' (Yimprasert, 2000). Workers filled out questionnaires inside the plants. The GA argued this was beneficial in signalling to workers that factory management 'embraced the program' (GA, 2003: 9). The GA reported some workers were reluctant to answer questions because they 'felt the information might be used against them' (International Youth Foundation [IYF], 1999). The CCC report on the GA survey in Thailand found that the questionnaire guided workers' answers (Yimprasert, 2000). Since most questions were close-ended, most answers were restricted to those the GA provided.

Thus, despite methodological improvements, the GA surveys remained too flawed to provide effective monitoring. When surveys did disclose code violations, the GA hoped 'management [would take] this information seriously', but remediation was at the discretion of the TNCs and suppliers.¹²

Multi-Stakeholder NGOs

Multi-stakeholder NGOs are a third type of code-monitoring NGO. In contrast to global accounting firms, these NGOs are non-profit, and unlike business-controlled NGOs, they have a certain (albeit variable) degree of autonomy from TNCs. The most significant of these multi-stakeholder NGOs outside Europe is the Fair Labor Association (FLA), a coalition of NGOs (human rights, labour rights and consumer rights organizations), TNCs and universities, created under the auspices of US President Clinton to promote humane working conditions in the global apparel industry.

The political context for the FLA's founding in 1999 included a spate of publicity about resurgent sweatshops in the USA and mounting public discontent about growing imports of goods made in violation of international labour standards. Apparel industry owners feared Congress might conduct sweatshops hearings and the Clinton administration was concerned this could undermine its trade liberalization agenda. The FLA was a response. Twenty major TNCs with US\$30bn in annual sales and supply chains encompassing 3500 factories in 76 countries are affiliated members. Some 200 universities and 2000 licensee firms that manufacture or distribute products bearing these universities' logos are FLA members. With a few exceptions (e.g. a 60-hour work week, no 'living wage' provision,¹³ no overtime premiums unless legally required) the FLA code contains most major international labour standards. Criticisms of the FLA have centred less on its code than on how effectively the FLA monitors and implements the standards.

The first issue concerns FLA autonomy from its member TNCs. The FLA Board of Directors has six company, five NGO, and three university representatives (and three ex-officio representatives). TNCs do not dominate FLA governance to the same degree they would a business-controlled NGO, but they have considerable power. A 'supermajority' voting system requires two-thirds of the TNC representatives (and two-thirds of non-TNC representatives) to approve key decisions, including selection of the Board chair; appointment and removal of the Executive Director; accreditation criteria for monitors; basic monitoring procedures; proportion of plants monitored; membership termination of non-code-compliant firms; and replacement of code standards where their implementation is 'problematic' (e.g. freedom of association and collective bargaining). In effect, TNCs have a collective veto (as do non-TNC representatives) that protects their interests in crucial areas. Corporate influence in FLA governance also has a fiscal dimension: the FLA President acknowledges that the FLA's 'long term viability' depends on TNCs that provide two-thirds of FLA funding.¹⁴

TNC influence extends to the FLA monitors. Until recently, TNCs chose from a list of FLA-accredited monitors, paid them directly, and helped select the plants to monitor. Recently some control over monitoring shifted from TNCs to the FLA itself. While in some circumstances TNCs pay FLA monitors

directly, in most cases TNCs now pay into an FLA fund that disburses payments to monitors. This attenuates the influence of individual TNCs, but TNCs collectively provide most monitoring funds. The FLA does not bar its monitors from having other links to the firms whose plants they monitor,¹⁵ and several FLA monitoring agencies also sell their services directly to TNCs.

A second issue is the FLA monitoring process. FLA monitoring guidelines contain a mix of strengths and weaknesses: many are specific and clear; others are vague; and quite a few are merely aspirational. For example, the FLA requires monitors to consult with local NGOs that are knowledgeable about labour conditions and have workers' trust, but there is no requirement to comply with their recommendations. The FLA also advises monitors to interview workers in places that do not 'raise the possibility that the employer will subject the worker to retaliation' (FLA, n.d.: 8) but there is no specification about how to do this. Often the FLA provides reasonable suggestions, advising monitors, for example, to ask open-ended questions that 'do not provide any clues to workers of how they "should" respond' (FLA, n.d.: 11). However, because monitors are permitted to use their discretion in this and most other aspects of monitoring, and because such methodological information is not publicly disclosed, the practical impact of these guidelines is unknown. In some cases the guidelines' vagueness contradicts the credibility of the monitoring. For example, monitors decide 'what constitutes a representative sampling' of a factory. Other examples of such vagueness: employers are to meet 'applicable' health and safety laws and regulations; label and store chemicals and hazardous substances in accordance with 'applicable' laws; pay the 'prevailing' industry wage; make overtime work mandatory under 'extraordinary business circumstances'; ensure 'reasonable' meal and rest breaks; and avoid shifting production for the 'direct purpose' of retaliating against workers who form or attempt to form a union. In cases where firms violate the FLA code, clear criteria to govern the cancellation of FLA membership are also lacking.¹⁶

Annual reports include short summaries of FLA plant audits and 'tracking charts' of monitors' findings at some plants. These do not, however, provide information about remediation of code violations. Recently some member TNCs provided the names and addresses of first tier supplier plants, making it easier for independent assessment of monitors' findings. Nike was the first member TNC to disclose locations of plants supplying Nike-brand products. Nike admitted that after years of monitoring by Nike and third party NGOs, in over a quarter of 569 factories monitored in 2003–04 it was normal, for example, for workers to work over 60 hours a week (in violation of FLA and Nike codes), in China 93% of suppliers forced workers to work more than 60 hours a week without overtime compensation, and in China there was physical and verbal abuse in 25% of its plants (Nike, 2005). According to FLA findings, Nike is not alone: code violations in garment factories the FLA investigated rose on average over 20% per factory in 2003–04 (FLA, 2005d). While some of this increase may be attributable to

better monitoring, academic experts suggest FLA monitors significantly under-report violations in such key areas as freedom of association, discrimination, and work hours (Roner, 2006: 19).

As in the case of other multi-stakeholder NGOs (see later), monitoring effectiveness is constrained by the limited number of plants the FLA monitors: less than 5% of 'applicable facilities'.¹⁷ Among the excluded are most non-first-tier plants with short-term contracts.¹⁸ Based on monitoring this small subset of their global production chains, the FLA has accredited the workplace standards programmes of several TNCs to be in 'substantial compliance' with its code (FLA, 2004b, 2005a,b). Acknowledging their monitored factories (and those of other member firms) in China violated the FLA's freedom of association standard (FLA, 2004a: 198), the FLA has awarded this accreditation to firms such as Nike and Reebok.¹⁹ In Vietnam and most export processing zones, as well as China, where these firms contract much of their production, freedom of association is essentially illegal. Yet the FLA authorizes these accredited TNCs to use its 'service mark' for public relations, advertising and other purposes.

FLA guidelines also require plant managers to provide a 'secure communication channel' so workers can report violations to management 'with security that they shall not be punished or prejudiced [sic] for doing so' (FLA, n.d.: 44). Complaint mechanisms are unspecified, but may include suggestion boxes for which only the FLA firm would have a key.²⁰ Complaint mechanisms may also be developed by worker committees, but such committees are not required. Nor are they required to be independent. (In China, for example, Nike managers helped select and train workers for a 'grievance committee' [FLA, 2004a: 37].) The FLA allows submission of 'reliable, specific and verifiable evidence or information' concerning code violations to its Executive Director, who forwards it to the TNC. Mechanisms requiring workers to complain to managers presume workers trust the mechanisms' effectiveness. The FLA 'sometimes receives faxes' with complaints, but rarely.²¹ In 2002, the FLA received four third-party complaints (Ascoly and Zeldenrust, 2003: 4). The FLA investigated three complaints in 2004 and two in 2005 (FLA, 2004a, 2005d).

Thus, FLA monitoring exhibits major deficiencies: lack of autonomy of monitors from TNC and plant management; vague monitoring guidelines; poor monitoring methods; failure to publicly disclose information about monitoring procedures and results; failure to publicly disclose comprehensive lists of plant names and addresses; inadequate complaint mechanisms; lack of monitoring beyond first tier suppliers; and, inability to enforce freedom of association and collective bargaining rights in many cases.

Other multi-stakeholder NGO models address some of these deficiencies. The CCC, a European multi-stakeholder NGO, has a Fair Wear Foundation, which helps keep its code monitoring, complaints processes and remediation independent of corporate influence. Retailers, manufacturers, unions, and

NGOs are equally represented on the Foundation board, and elect an independent chair. The Foundation is financed by member organizations and monitoring payments from firms. The Foundation provides no compliance label. Foundation-accredited monitors and local NGOs monitor plants and help forward complaints to the Foundation, which guarantees anonymity of plaintiffs who request it (Fair Wear Foundation, 2004: 6). The Foundation investigates the complaint and issues a decision. If the Foundation decides management's response is inappropriate, the Foundation devises a corrective plan and is responsible for ensuring its implementation (Fair Wear Foundation, 2005: 2, 4).

Another multi-stakeholder NGO model addressing some of these monitoring deficiencies is the WRC. The WRC, with over 160 member universities, was created by a student NGO, United Students Against Sweatshops (USAS), with help from unions and labour-oriented NGOs. The WRC Board equally represents universities, the USAS, and labour rights experts. It has no corporate representation in its governance structure and is not reliant on corporate funds. Its code is stronger than the FLA's and includes a 'living wage', maximum 48-hour work week, and premium overtime wages. WRC monitoring is mainly complaint-based, is independent of TNCs, and does not certify TNCs' code compliance programmes. Eschewing commercial auditing firms, it normally uses independent local monitors whose reports are detailed, comprehensive, publicly available, and generally credible.

Structural Limits of NGO Regulation

From the perspective of labour standards compliance in global apparel supply chains as a whole, all these NGOs face formidable structural constraints, including limited monitoring capacity relative to the size and complexity of the chains. Numerical estimates of the world's apparel export factories range from 200,000²² to 300,000 (CCC, 2005: 59; Miller, 2004: 218; Utting, 2005b: 4), and up to a million if small workshops are included.²³ Relative to numbers of this magnitude, NGO monitoring capacity is picayune. For example, the FLA monitored 110 plants in 2003 (FLA, 2004a: 184); the WRC monitored 14 plants from 2000–04, and has since been investigating 12 plants (WRC, 2006). Termination of the Multi-Fiber Arrangement is concentrating apparel production in fewer locations (Gereffi et al., 2005: 92). Nevertheless, plant numbers remain enormous relative to NGO monitoring capacities.

Furthermore, demand far exceeds the supply of NGO monitors. 'NGOs are exhausted tracing the locations of tens of thousands of subcontractors all over the world' reports a labour rights researcher (Kwan, 2000). Lack of monitoring capacity, particularly regarding more complex issues, such as freedom of association, discrimination and harassment, is a pivotal weakness of all NGO monitoring models (CCC, 2005). There are similar capacity shortfalls

in NGO abilities to deal with worker complaints. A recent survey of NGOs, including the WRC, FLA, and Fair Wear Foundation, concluded none 'have the capacity to deal with substantial numbers of complaints' (Ascoly and Zeldenrust, 2003: 5).²⁴ From the perspective of the nature and power of the anti-sweatshop movement, there are further structural limits. Third party monitoring NGOs largely reflect a TNC response to anti-sweatshop mobilizations in parts of the global North. In large measure these mobilizations, in the USA and Canada in particular, have centred on post-secondary students. Given rapid turnover of student activists (due to graduation, etc.), student mobilizations are episodic and uneven by nature. Many have been sustained for only a year or two. For example, of the over 160 WRC university affiliates, it is estimated that only half a dozen sustain significant anti-sweatshop campaigns (Kauffman and Chedekel, 2004).

Monitoring capacities are further constrained by capital mobility, particularly where contracts are short term, supplier turnover 'churn rates' are high, and manufacturers have low 'sunk costs' (costs which are difficult to recover when manufacturers relocate).²⁵ These supply chain characteristics help account for numerous defeats of factory-level code campaigns where plants shut down or buyers shift contracts to other plants.²⁶ Thus, the WRC is now 'trying to protect the few factories where it has helped to improve working conditions', fearing these plants are 'especially vulnerable' to closure due to their higher labour standards (Kauffman and Chedekel, 2004). Consequently, and because '[r]eliably monitoring thousands of production facilities to measure compliance with university codes is logistically and financially impossible', the WRC is promoting a Designated Suppliers Program to focus limited monitoring capacity on certifying a few 'sweat free' factories to be rewarded with opportunities to supply WRC member universities (WRC, 2005).

Code regulation in buyer-driven supply chains is also contradicted by price pressures from corporate buyers that reflect, inter alia, increasing price competition from smaller manufacturers and retailers who do not comply with international labour standards.²⁷ Narrow profit margins pressure suppliers to transfer code compliance expenses to workers (Yimprasert and Candiland, 2000: 26). Related pressures stem from 'lean retailing': in the context of shorter fashion seasons and barcode systems, retailers control inventory fluctuations through just-in-time ordering of smaller lots from manufacturers. Shorter delivery times imply incentives for excessive overtime in supplier plants (Mamic, 2004: 325–8)²⁸ and for other forms of labour flexibility, such as a growing tendency to hire garment workers on short-term contracts (Oxfam, 2006: 61–2).

In light of such pressures, Nike's VP for CSR has questioned the usefulness of monitoring overtime 'if overtime is being caused way up the supply chain' (Jones, 2005). Recent ILO and World Bank reports conclude that increasing price, delivery and quality pressures are eroding the business rationale for corporate social responsibility in relation to labour standards (Jorgensen et al.,

2003; Mamic, 2004). Moreover, massive pools of excess labour throughout the South add to these pressures, as does trade liberalization. Although slowed down by temporary EU and US export limits, WTO elimination of apparel export quotas at the beginning of 2005 is promoting a shift of production to fewer countries, especially China. In this context, the WRC has warned that 'the best factories' with higher labour standards are most likely to face contract losses, sending a 'clear message' to many suppliers that there is 'nothing to be gained by code compliance' (Nova, 2004).

Overall, and notwithstanding evidence of improved code compliance among some first-tier suppliers, especially in respect to child labour, forced labour and health and safety (Boiral, 2003; CCC, 2005: 29), there is considerable evidence that code compliance remains weak and monitoring largely ineffective. A recent MIT analysis of data from over 900 Nike apparel supply factories in 51 countries concludes that monitoring 'has no significant impact on the working conditions of these factories' (Locke, 2005). Richard Appelbaum, a sociologist specializing in the garment industry, reports there is 'no evidence, even in the college apparel sector, that the [monitoring] effort has made a difference' (Kauffman and Chedekel, 2004). And a recent study of monitoring in about 40 factories in eight countries found that 'with few exceptions, workers do not see real improvements in their situation even when regular auditing takes place' (CCC, 2005: 81).

Finally, code monitoring is largely confined to suppliers who manufacture premium branded goods for retailers who want to defend their corporate reputations. Such suppliers constitute a tiny fraction of the world's apparel and footwear plants. Only some 100 TNCs work with labour rights NGOs to monitor their labour standards (Bernstein, 2005). Moreover, there seems to be a poor correlation between CSR initiatives and business performance (Vogel, 2005). While some higher-labour-standard apparel exporters may create niches selling to 'conscience consumers' in the North (ILO, 2006; Wells, 2006), this too is limited by competitors and the small size of such consumer markets. Although surveys report numerous consumers are concerned about labour standards and many may be willing to pay modest premiums for 'no sweat' goods (Kimeldorf et al., 2006), there are few indications of changes in buying behaviour by most consumers.

Thus, if there is to be more effective policy regime for promoting international labour rights on a larger scale in the global South in these industries, the weaknesses of third party monitoring NGOs that have been analysed here need to be addressed. Deeper structural limits to effective monitoring also need to be addressed. In contrast to the prevalent, more sanguine view of the efficacy of private labour standards monitoring, these internal organizational weaknesses and external structural limits suggest that the 'soft power' of the 'NGO-industrial complex' is too weak to regulate international labour standards effectively.

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NOTES

1. Another form of NGO-centred labour regulation is 'fair trade' labelling of traded commodities (e.g. coffee, chocolate) (Wells, 2004).
2. Other key factors shaping these production migrations include currency revaluations, trade quotas, and changes to infrastructure and production capacities.
3. The retail sectors include not only retail stores but also marketers (e.g. Liz Claiborne, Nike) and brand manufacturers (e.g. Phillips-Van Heusen). Through 'forward integration' (e.g. opening retail outlets, selling to other retailers) and concentration of capital, large global retailers also dominate the major northern consumer markets (Collins, 2003: 46–8; Gereffi and Memedovic, 2003: 6–7; Ross, 2004: Ch. 6).
4. Even Yue Yuen Inc., the largest athletic footwear manufacturer (17% of global market share) has 'basically no pricing power' in relation to major TNC clients (Fong, 2005: All).
5. Personal interview, 1 January 2005.
6. http://www.nikebiz.com/labor/pr_monit.sht (accessed 11 January 2000).
7. One has a 'multimillion dollar sponsorship deal' with Nike (Hsiao, 2000); the other sells co-logo'd Nike-university apparel.
8. Personal interview, GA manager, Guangzhou, China, 19 July 2004.
9. According to the Thailand report, pay exceeded the minimum wage (GA, 2000; IYF, 1999). However, the questionnaire excluded questions about wage rates. Independent analysis indicates total wages exceeded the minimum wage only because of excessive overtime at minimum wage rates (Yimprasert, 2000).
10. The Vietnam survey excluded questions about wage levels, overtime, freedom of association, collective bargaining, and health and safety (CESAIS, 1999, 2000). Some interviews included an open-ended question on work environment (GA, n.d.). The Indonesia questionnaire was similar, but included questions about pay and work environment (Center for Societal Development Studies, 2000).
11. Personal interview, GA manager, Guangzhou, China, 19 July 2004.
12. See note 11.
13. A living wage generally refers to a 'take home' wage earned in a legal maximum work week that is sufficient to provide basic needs (food, clothing, shelter, energy, potable water, health care, transportation, childcare and savings) for an average family unit, divided by the number of adult earners in the family.
14. Personal interview, FLA President, Toronto, 16 June 2003.
15. Annually, an FLA monitor may provide up to US\$100,000 in other services or receive up to 25% of its revenue from an FLA member firm (FLA, 2005c: 15).
16. In the only case where the FLA reviewed a TNC's membership, the TNC had closed a factory being investigated for violating union rights. The TNC retained its membership (Maquila Solidarity Network, 2005a).
17. These are plants with which the TNC contracts for over six months in a two year period, or for at least 10% of plant production (FLA, 2004a: 7).

18. Many, including the Director of Worldwide Responsible Apparel Production (American Apparel Manufacturers Association's programme to certify labour standards compliance), argue that most labour standards abuses occur in short-term contract facilities (Jeffcott and Yanz, 2000: 68).
19. About 30% of Nike plants and 40% of Reebok footwear plants are in China and Vietnam (FLA, 2004a: 102), where independent unions are illegal. The FLA acknowledged 'limited freedom of association in many [Reebok] facilities' (FLA, 2004a: 66) and found numerous code violations in Nike plants, including unaccounted overtime, forced pregnancy tests, illegal wage deductions and health and safety violations (FLA, 2005a).
20. Personal interview, FLA Administrator, Washington DC, 24 June 2002.
21. See note 20.
22. Michael Flanagan, CEO, Clothesource Ltd, probably the largest information source for buyers in the global apparel industry (Personal communication, 30 March 2005).
23. 'The reality is that a huge proportion of what gets exported can have some connection with the tiniest [work] places' (see note 22).
24. The FLA, WRC, Fair Wear Foundation and three other multi-stakeholder NGOs are trying to harmonize their codes (Joint Initiative on Corporate Accountability and Workers' Rights, 2004). Fair Wear Foundation teams have done internal audits in 36 plants (Letter to author from Sjeff Stoop, International Verification Coordinator, Fair Wear Foundation, 12 April 2005).
25. More stable contracting relations conducive to code compliance may arise if more suppliers become 'full package', providing higher value activities (e.g. design, etc.) to TNCs (Frenkel and Kim, 2004).
26. Often this capital mobility has been used to avoid independent unions (Armbruster-Sandoval, 2005; Maquila Solidarity Network, 2005b; Ross, 2004: Ch. 9).
27. Personal interview, FLA President, Toronto, 16 June 2003.
28. During the author's visit to five Nike contract factories in China in July 2004, managers at three factories reported they regularly exceeded overtime limits of the Nike code and China's national labour law. Research by third party monitoring NGO Verite in China found that of 142 footwear and apparel factories audited in 2002 and 2003, 93% exceeded legal overtime limits (Verite, 2004). A labour-oriented NGO found its entire sample of 12 apparel factories in China exceeded legal overtime limits (Hong Kong Christian Industrial Committee, 2001).

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RÉSUMÉ

Trop Faible pour le Travail: Les Codes de Conduite des entreprises, Les Organisations Non-Gouvernementales et le Règlement de Normes internationales du Travail

La transformation des modes de production économique, particulièrement pour les secteurs où la main-d'œuvre est important, allant du Nord globaliste jusqu'aux régimes standard dans le Sud, a créé un vide dans la mise en application des normes du travail. En réponse aux pressions exercées par le mouvement anti-exploitation, et les consommateurs et les gouvernements préoccupés par ce problème, nombreuses entreprises multinationales ("TNC") ont adopté des codes de conduite pour la main-d'oeuvre. Les entreprises de plusieurs secteurs industriels faisant parti de la chaîne d'approvisionnement de ces multinationales (TNC) sont de plus en plus contrôlées par des organisations non-gouvernementales (ONG) afin de vérifier leurs conformités par rapport à ses codes de conduites. Cet article analyse l'efficacité de trois exemples clés de contrôle exercé par les ONGs dans les secteurs des chaussures et du textile. Nous démontrons que ces mécanismes de contrôle ont des lacunes importantes qui s'explique par les trois faiblesses suivantes: premièrement, la structure organisationnelle des ONGs, trop dépendantes de la volonté des dirigeants des multinationales; deuxièmement, les limites imposées à l'efficacité des ONGs par la restructuration des entreprises et la nature compétitive de ces industries; troisièmement, les pressions trop faibles et épisodiques des

mouvements anti-exploitations et de pressions du marché des consommateurs. Ces faiblesses suggèrent que l'approche 'douce' du politique est 'trop faible pour le travail.'

RESUMEN

Demasiado Débil para el Trabajo: Los Códigos de Conducta Corporativos, las Organizaciones No-Gubernamentales y la Regulación de las Normas Internacionales del Trabajo

La transformación de la economía de producción, particularmente en los sectores de trabajo intensivo, desde los regímenes de trabajo estándar en el Norte globalizado hasta los regímenes escasamente estandarizados en el Sur ha creado un vacío cada vez mayor en la aplicación de normas internacionales de trabajo. En respuesta a las presiones ejercidas por el 'movimiento contra la explotación' (*anti-sweatshop movement*), y ante la preocupación de consumidores y gobiernos a propósito de este creciente vacío, algunas empresas multinacionales han adoptado códigos laborales de conducta. Las empresas de varios sectores que forman parte de la cadena de aprovisionamiento de las multinacionales están cada vez más controladas por organizaciones no-gubernamentales que verifican su conformidad con relación a los mencionados códigos. Este artículo analiza la efectividad de tres ejemplos clave del control ejercido por las organizaciones no-gubernamentales en los sectores del calzado y textiles. Demostraremos que esos mecanismos de control tienen lagunas importantes que pueden explicarse a partir de las tres debilidades siguientes: En primer lugar, la estructura organizativa de las organizaciones no-gubernamentales, demasiado dependiente de los dirigentes de las multinacionales, en segundo lugar, los límites impuestos a la efectividad de las organizaciones no-gubernamentales por la reestructuración de las empresas y por la naturaleza competitiva de estas industrias; en tercer lugar, las presiones demasiado débiles y esporádicas de los movimientos anti-explotación y del mercado de consumidores. Estas debilidades sugieren que el 'modelos suave' es 'demasiado débil para el trabajo'.

BIOGRAPHICAL NOTE

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