

Series on Management Systems and Corporate Citizenship

**Self-regulation in the workplace:
Codes of conduct, social labeling and socially
responsible investment**

by

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Preface

This working paper provides a comprehensive overview and analysis of a wide range of voluntary initiatives related to the world of work. As such it is a contribution to the ongoing global debate on the importance and impact of corporate social responsibility. The paper is an updated and more elaborate version of a paper submitted to the ILO's Governing Body in 1998 (full text version: www.ilo.org/english/standards/relm/gb/docs/gb273/sd1-1.htm). The current paper should be read in conjunction with the information available in ILO's database on business and social initiatives (see: <http://oracle02.ilo.org/vpi/welcome>).

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1. Introduction

Once the primary domain of large enterprises seeking to be good corporate citizens, social responsibility is becoming a more generally accepted principle. It applies to a growing variety of business partnerships involving multinational and local enterprises in industrialized and developing economies alike. The purpose of this paper is to provide information on recent trends in the area of voluntary initiatives.

The paper first examines the general context within which voluntary private initiatives are developing, the actors involved and the institutional context. The following sections discuss three major categories of voluntary private initiative: codes of conduct, social labelling and investment initiatives. The section on codes of conduct is based on a review of 258 codes collected from multinational enterprises, employers' organizations and trade unions, governments, NGOs and academic institutions. It looks at the labour issues covered by the codes, considers questions of implementation and monitoring, tries to extrapolate important sectoral trends and considers the relationship between codes and international labour standards. Next, social labelling programmes are examined, concentrating on their origins, characteristics, content, structure and effectiveness. The following section examines the area of investment and discusses socially responsible investment initiatives such as shareholder initiatives and investment screens. The final section concerns the ILO position on voluntary private initiatives.

This paper is based on a paper prepared in 1998 entitled "Overview of global developments and Office activities concerning codes of conduct, social labelling and other private sector initiatives addressing labour issues." This paper was prepared for the 273rd Session of the ILO's Governing Body Working Party on the Social Dimensions of the Liberalization of International Trade. In light of the fast pace at which voluntary initiatives develop and change, it was felt that an updated version of the original paper would be useful. Although much of the original text remains, the current paper includes an expanded set of codes of conduct and statistical work on their normative and operational provisions, an expanded collection and analysis of social labelling initiatives, with greater emphasis on the fair-trade movement, the social and labour provisions in social labelling programmes, and programme structure and operation. The general context section includes more information on public-private partnerships, international standardizing activities and the work of other UN agencies.

2. General context

This section presents a general context for understanding private sector initiatives, including the types of initiatives, their sources, and the identity, interaction, and strategies of the key actors and partnerships involved.

2.1. Types of voluntary initiatives

At the heart of any private sector initiative is a decision to communicate a message about the social behaviour of an enterprise. The message may target various recipients, including investors, employees, managers, consumers, business partners, local community members, and government entities, NGOs and media watchers.

This paper distinguishes between codes of conduct, social labelling programmes and investor initiatives. Given the difficulty of drawing precise boundaries between these three categories, some overlap is unavoidable and categorization is bound to be imperfect. Besides, initiatives aimed at enhancing social responsibility of enterprises may include other forms of action as well.

2.2. Origin and goals of voluntary initiatives

Voluntary initiatives generally spring from the concept of enterprise social responsibility, which has emerged in various forms in recent decades. In 1965, the Delhi Declaration, developed at an international seminar in India on “Social Responsibility of Business”, articulated a prototype of what has evolved as “stakeholder theory”. In the United States, theorists have emphasized the need for enterprises to consider the community as a stakeholder while, in Japan, enterprises have developed a sense of linkage to national values, community life and the environment.

Desire to add value to the enterprise is a key factor in the development of voluntary initiatives. The need to preserve or legitimize a reputable public image, including the reputation of brand names, has fostered such initiatives among enterprises which outsource consumer goods internationally and those with labour-intensive operations. Producers of capital goods and intermediary products, who do not independently respond to consumer demands, may be pressed by intermediary buyers to satisfy the demands of consumers. In addition, evidence that good corporate behaviour may enhance rather than diminish financial performance, has tended to reinforce moral incentives for enterprises to act as “good citizens”.

Voluntary initiatives may serve enterprise interests by displaying efforts to improve workplace conditions, thus helping to defend against potential, or actual, consumer boycotts as well as formal accusations of unacceptable or illegal business practices. Such initiatives may also obviate the need for government regulation by demonstrating that industry best practice satisfies the public interest. Indeed, in some cases, governments may encourage enterprise initiatives as a substitute for social regulation of trade or business. Developing countries may view such initiatives as a way to leverage limited public resources. In exporting countries, the initiatives may be welcomed as improving labour practices and a nation’s public image for trade and other purposes. Debate continues over whether other considerations, such as protectionist instincts, may contribute to efforts by governments of importing countries to encourage voluntary initiatives. There are also questions relating to the impact of such initiatives on international labour standards.

2.3. Private actors and partnerships

A wide range of actors is involved in voluntary initiatives at the global, regional, national and local levels. Traditional actors include the enterprise and its closest “stakeholders”¹: its employees (and their representative organizations), investors, consumers, and partners in contract or equity relationships. Activity on the part of enterprise associations, NGOs and other private groups has recently increased, along with new coalitions between these more recent stakeholders and traditional actors. Some cases feature government and intergovernmental partners in these coalitions.²

Initiatives led by enterprises or enterprise associations appear to be the most rapidly proliferating. They vary widely in membership, activities, and priorities. Efforts are being developed by individual enterprises, business associations, sectoral industry associations, and employers’ organizations. Large, well-established individual enterprises initiate social programmes on their own. Medium and small enterprises tend to form sectoral, national, cross-sector and/or cross-national coalitions. New associations, focused solely on social agendas, are emerging while some established enterprise associations provide their members with guidance on social issues as well as their traditional services.³

Trade unions are integrating enterprise social initiatives more and more into their methods of representation in an economic environment subject to increasing globalization and regionalization. Their aim is to enhance or supplement, rather than replace, consultations and collective bargaining processes. Trade unions are applying such strategic approaches within specific enterprises as well as in sectoral, cross-sectoral, and multi-sectoral enterprise groupings. Worker campaigns and media initiatives have taken up private sector initiatives to address specific concerns. Local and international unions have incorporated the tools of social initiatives into their policy-making, strategy-building, worker education, and outreach programmes. Participation of international trade secretariats has increased through an evolving type of international “solidarity negotiation,” the outcomes of which are increasingly referred to as framework agreements, with multinational enterprises (MNEs) and across commodity chains and sectors, with varying degrees of involvement by local unions in negotiation and implementation. Trade unions increasingly seek out coalitions with investors, NGOs and governments, reflecting the growing sense that trade unions need consumer, investor and other pressure to gain leverage in negotiations with multinational and smaller enterprises operating worldwide.

¹ For the purposes of this paper, the term “stakeholders” refers to “individuals and groups who may affect or be affected by the actions, decisions, policies, practices or goals of an enterprise”. A.B. Carroll: *Business and society: Ethics and stakeholder management* (Cincinnati, Ohio, South Western College Publishing, 1996), p. 74. Some theorists have characterized the relationships of various stakeholders to enterprise as “primary” (workers, investors, customers and business partners/suppliers) and “secondary” (all others); others refer to categories such as “core” (essential for enterprise survival), “strategic” (vital to organization), and “environmental” (all others). *idem.*, pp. 72-82. The activities of four categories of primary stakeholders are discussed in this paper: (1) employees (and their representative organizations); (2) owners or shareholders/investors (and their representative organizations); (3) customers or consumers; and (4) suppliers or any other business partners in contract or equity relationships with enterprise. Other stakeholders whose activities are relevant to private initiatives include non-governmental organizations, political and social groups, communities, governments, and intergovernmental organizations. For one description of “stakeholder theory”, see L. Preston, “Redefining the corporation: Stakeholder theory in international perspective”, Occasional Paper No. 78 (College Park, Maryland, University of Maryland, 1996).

² E.g. the Ethical Trading Initiative, see www.eti.org and the UN Global Compact, see www.unglobalcompact.org

³ Business for social responsibility (USA), European Business Network for Social Cohesion (Europe), ETHOS (Brazil), Canadian Business for Social Responsibility (Canada) are several examples of such organizations.

Non-governmental organizations and coalitions cover the range of collaborative and combative methods to encourage labour-related private initiatives. The collaborative methods include awards programmes or public recognition for best practices, “dialogue” with specific enterprises, and development of codes, labels, and other initiatives. NGOs may also use methods invoking external pressure, such as campaigns to expose poor labour practices, including boycotts or threats of boycotts. A well-known and long-standing debate persists on the efficacy of such methods. Some argue that boycotts hurt the workers they are intended to help. Others believe that, at times, negative publicity operates to complement the collaborative efforts of others in developing codes, labels, and other initiatives. NGOs also take legal action against particular enterprises, a tactic which appears to draw attention to labour practices but does not necessarily result in desired improvements or compensation for alleged harm.⁴ In 1998, the Clean Clothes Campaign (CCC), a European-based network of NGO coalitions seeking improved labour practices in apparel and sportswear supply chains, orchestrated a series of well-publicized cases against apparel and sportswear MNEs before a self-appointed “People’s Tribunal”. Adverse “judgements” were entered against all named enterprises after a review of lengthy factual “briefs” and testimonial “evidence” heard by private individuals acting as “judges”.

Professional consultants, auditors, and educational enterprises are seizing the opportunity to play a role in the trend toward socially responsible business. Few however have any experience or background in labour standards or labour relations. These enterprises, which sell their services, include associations focusing specifically on socially responsible business, traditional accounting firms expanding into social accounting services, specialized social accounting organizations, inspection and monitoring firms embracing social as well as technical standards, and universities. The various services they provide cover: specialized information resources, including surveys on enterprise practices and guides on best practices; training and education for employees in socially responsible practices and internal monitoring and reporting of labour practices; external services in social accounting and inspection; and accreditation of aspiring social accountants and inspectors.⁵ Such services are provided on self-defined bases, given the lack of standardization of criteria and methodology for accounting, inspection, and accreditation. Among educational efforts, one university offers a Master of Science course in “Responsibility and Business Practice”, others have special centres for social accounting research, and many provide a steady stream of opportunities to attend conferences and summer programmes on theory and practice of social responsibility in enterprise.

2.4. Public-private partnerships

The emergence of a social role for enterprise is reflected in the interplay between private sector initiatives and the role of the public sector in setting social policy and addressing social needs. The

⁴ UNOCAL, a US-based oil company, is facing allegations of forced labour in the construction of an oil pipeline in Myanmar in a lawsuit in the United States calling for civil damages. The sporting goods company, Adidas, has been sued in Hong Kong by Chinese dissidents who claim to have made Adidas soccer balls as prisoners in a Chinese labour camp, e.g. “Adidas said to use slave labour” in Washington Post, 19 Aug. 1998. The US-based multinational, NIKE Inc., is facing a lawsuit by private citizens in California alleging negligent misrepresentation, fraud and deceit, and unfair business practices, for adopting and not properly implementing a code of conduct.

⁵ E.g. Verite offers training and monitoring services to companies on labour issues in supply chains, see www.verite.org. the New Economic Foundation assists large multinationals with their social reports, carries out social audits for national companies, and helps to develop methods for social accounting and auditing, see www.nef.org. SGS Certification Services is an accredited auditor of the SA8000 standards, see <http://www.sgsgroup.com/sgsics.nsf/pages/sa8000.html>

new public-private partnerships are distinct from public sector initiatives which employ purely public tools.⁶

Voluntary enterprise partnerships with governments have existed for some decades, particularly in developed countries. One example are technical codes of practice addressing safety and health issues. Enterprise may sometimes make use of government-provided information resources, including guides on code development and government-sponsored conferences and best practices award or ranking programmes. In some cases, enterprises, workers, and/or NGOs operate in coalition, with government financing. Some cooperative arrangements in exporting countries are also facilitated by the governments of importing countries. In certain developing and transition economies, enterprise and government collaborate in inspection and other ways that leverage limited public resources.

Relations between voluntary initiatives and intergovernmental organizations appear to be increasing in number and scope. Such initiatives involve operational programmes and agreements to follow guidelines on enterprise social policies or technical standards affecting conditions of work, health and safety. Two sets of guidelines on enterprise social policies exist at the intergovernmental level: the ILO's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy ("Tripartite Declaration"), and the OECD Guidelines on Multinational Enterprises. The Tripartite Declaration, adopted in 1977, applies globally to governments, MNEs, employers and workers. Lists of ILO Conventions and Recommendations particularly relevant to enterprise operations are annexed to the Tripartite Declaration. The implementation of the Tripartite Declaration is reviewed through periodic surveys and a procedure permitting requests for interpretation in specific cases. The system as a whole offers an international framework for the development of voluntary labour-related commitments in codes of conduct and other social initiatives. The OECD Guidelines on Multinational Enterprises, last revised in 2000, apply only to enterprises operating in OECD countries. However, after the recent revision of the OECD guidelines, the OECD is encouraging the application of the guidelines in non-member economies. The guidelines are interpreted through a clarification procedure, under which the OECD seeks to interpret the guidelines in accordance with provisions and interpretations of the Tripartite Declaration. The revised OECD Guidelines and subsequent discussions in OECD member economies have shown a more prominent role being taken on by National Contact Points in the promotion of the guidelines and the settling of disputes. The outcome of several pending proposals for other social guidelines, including the UNCTAD Draft Code of Conduct on Transnational Corporations and the WTO Working Group on Trade and Investment, is unclear.

Private enterprise also engages in voluntary initiatives with intergovernmental organizations on matters involving technical standards relevant to working conditions.⁷ Within the WTO,

⁶ Public initiatives excluded from the scope of this study are, among others, policy decisions of the OECD, G-7, G-8, G-15 and other multilateral groupings, developments cornering social charters in the context of regional economic groups (e.g. MERCOSUR and SADC), laws providing preferential treatment and terms of trade (e.g. NAFTA, European Union and United States labour conditions on granting of Generalized Systems of Preferences), import restrictions (e.g. United States Tariff Act of 1930, as amended by, inter alia, P.L. 105-61, 10 Oct. 1997 (child labour import ban)), selective public procurement and preference laws, and unilateral or multilateral sanctions imposed as a matter of public policy.

⁷ Within the ILO, in the past several decades, more than 20 codes of practice have been adopted, addressing issues of occupational safety and health, offering guidance to employers' organizations and trade unions as well as governments. ILO codes of practice are developed through a tripartite process of negotiation and approval. Sectors of focus include mines, agriculture, forestry, construction and public works, shipbuilding and repairing, iron and steel, prevention of major industrial and maritime accidents, while specific risks addressed include ionizing radiation, noise and vibration, exposure to airborne harmful substances and safety in the use of chemicals at work.

non-governmental as well as governmental standardizing bodies may accept the commitments relating to international trade found in the Code of Good Practice annexed to the Agreement on Technical Barriers to Trade (TBT).⁸ Other international organizations are cooperating with the private sector on a variety of public-private partnerships and with voluntary initiatives.⁹ Intergovernmental organizations have sponsored a range of technical standards, some of which are implemented through voluntary industry practice and others through the monitoring of member governments.¹⁰ Of particular note is a framework for assessing the social performance of industries piloted by UNIDO with the textile, clothing, footwear and leather industry (TFC) in several developing countries.¹¹

2.5. International standardization activities and voluntary initiatives

Some voluntary commitments of enterprise are developed through the activities of international standardizing bodies, particularly the International Organization for Standardization (ISO), a private organization composed of national standards institutes or organizations from some 120 countries.¹²

⁸ Commitments include providing national treatment to products from any WTO member State, ensuring that no unnecessary obstacles to international trade are presented through voluntary standard-setting activities, and using relevant international standards where they exist. See Code of Good Practice for the Preparation, Adoption and Application of Standards, paras. D-F, Annex 3 to the Agreement on Technical Barriers to Trade, item 7 to the Agreement establishing the World Trade Organization. The TBT Agreement itself is binding on all WTO member States as a part of the WTO framework agreement. See also WTO document G/TBT/CS/2/Rev.4 and Addendum, 11 Feb. 1998 (reporting 92 standardizing bodies from 69 Members accepting Code of Good Practice since 1 Jan. 1995).

⁹ UNDP started a Global Sustainable Development Facility which was terminated after criticism from activists. The ILO is involved in the World Youth Forum, UNEP is involved in many industry cooperation programmes and was involved in the creation of the Global Reporting Initiative. The World Bank's Business Partners for Development programme is designed to "study, support and promote strategic examples of partnerships involving business, government and civil society working together, with the World Bank Group as an equal partner." Further information is available at <http://www.bpdweb.org/overview.htm> The UN Office for Project Services is also involved in public private partnerships, see <http://www.216.221.185.195/UNOPS/entry/partnerships.html>

¹⁰ For example, FAO Code of Conduct for Responsible Fisheries (1995), WHO International Code of Marketing of Breastmilk Substitutes, FAO International Code of Conduct on the Distribution and Use of Pesticides. However, according to a recent UNIDO report, "... for export-oriented firms, the dictates of large international buyers reflected in their own codes of ethics are more instrumental in bringing about improvements in social and environmental performance than guidelines recommended by international agencies such as the International Labour Organization, World Bank, World Health Organization, etc. "Responding to global standards", op. cit., p. 5.

¹¹ In an attempt to pioneer a "practical and feasible" method for use in developing countries, UNIDO has applied principles from ILO instruments, together with additional criteria, to create a UNIDO-defined "IDEAL" set of "social performance indicators" used to assess and compare ("benchmark") national legislation and enterprise practices. See Responding to global standards, op. cit., pp. 45-46, and Annex 3, pp. 45-57.

¹² Each member body represents the national body "most representative of standardization in its country". The member body is to serve as the liaison between interested parties in their country and the process of developing and adopting standardization in ISO's many technical committees, subcommittees, and working groups. See Internet www.iso.ch Approximately 70 per cent of member bodies are government agencies or public organizations; some are private organizations, in many cases, subject to some public regulation. ISO, ISO memento (Geneva, International Organization for Standardization, 1991), p. 3. ISO processes have been analysed as dominated by the participation of MNEs and developed government member bodies. See, e.g. N.

ISO has developed more than 11,000 international uniform standards to facilitate international exchange of goods and services, primarily in technical fields. In recent years, ISO has developed two series of generic standards applicable to a wide range of industries and services: in 1989, a quality assurance systems management (ISO 9000) series, and, in 1996, an environmental systems management (ISO 14000) series.¹³ Enterprises worldwide have sought third-party certification of conformity with the two systems management standards, but some enterprises in developing countries have reported limitations in access to recognized certification services. ISO itself does not verify that its standards are being implemented properly by users. Rather, ISO national members, or independent (“third party”) certification bodies registered with the national standards organizations, inspect and issue certificates of “conformity assessment” with particular standards. Despite the fact that ISO does not certify or police its standards, ISO does influence conformity through guidance documents and training activities. Its published guidelines address procedures for selection and accreditation of certifying bodies, establishment of criteria for certification, and acceptable methods for enterprises to use in publicizing conformity with ISO standards.

Although no ISO standards directly address the social or labour field, the ISO model is relevant, in certain respects, to the development of codes and social labels addressing labour practices. Under ISO’s methods of operation, actors other than governments participate in developing standards, conducting or financing assessment of compliance, and providing technical assistance, particularly to standardizing bodies in developing countries. Recent work to develop international standards on eco-labelling, primarily in response to the calls for expansion of environmental labelling schemes adopted at the 1992 UN Conference on Environment and Development (UNCED).¹⁴ In 1997, ISO decided not to launch the development of a management system standard for occupational health and safety,¹⁵ an area in which the ILO is active. However, without ISO involvement, some non-governmental entities have sought to adapt ISO-style operations to social standards for enterprise. For instance, Social Accountability International,¹⁶ has launched a generic management system standard for enterprise, with a third-party certification process, called “Social Accountability 8000” (SA8000). The standard is based in part on ILO Conventions and Recommendations. It is inspired by

Roht-Arriaza: “Shifting the point of regulation: The International Organization for Standardization and global lawmaking on trade and the environment”, in 22 *Ecology Law Quarterly* 479 (1995). An estimated 600 regional, national and local standardizing bodies operate in specific technical fields.

¹³ The ISO 9000 quality control standards contain guidelines for an enterprise to use both in its own operations and in specifying contract requirements for suppliers and subcontractors. The ISO 14000 series addresses environmental systems management but, in a result required by the consensus method in which ISO works, does not contain substantive targets, such as specific emissions standards. Some commentators have argued that ISO 14000 demonstrates a limitation of voluntary standard-setting processes: the consensus required results in acceptance of a “least common denominator” rather than more stringent targets set in mandatory regulations. See generally R.E. Cheit: *Setting safety standards: Regulation in the public and private sectors* (1990).

¹⁴ See Agenda 21, Ch. 4(B)(c), 14 June 1992, reprinted in United Nations, *Report of the United Nations Conference on Environment and Development* (1993). Agenda 21, a legally non-binding document, was signed by 156 countries at UNCED.

¹⁵ Considerations leading to the negative decision included fear of a “certification circus” if another generic management standard were added to ISO 9000 and 14000. *ISO 9000 NEWS* 5/1998, p. 11.

¹⁶ Formerly the Council on Economic Priorities Accreditation Agency.

the ISO model and informed by pilots around the world.¹⁷ A Swiss NGO, Bread for All, has suggested an ISO 21000 series for social management, a proposal which has not been endorsed by ISO.¹⁸

The Iseal Alliance¹⁹ was formed with four common objectives: “to gain recognition as international accreditation organizations complying with ISO61 guidance; to improve the quality of ... Systems including information exchange and peer review; to defend the interests of international accreditation organizations; and to exchange information regarding the above objectives”.²⁰ This alliance includes all of the major international systems currently in place and has the potential to benefit producers of all sizes in both developed and developing countries. The standards, certification programmes and accreditation systems being implemented by these organizations are all global in nature and address the worldwide concern for social and environmental issues in trade and development. The organization was also set up because the International Accreditation Forum (IAF) excludes international accreditation bodies from membership. The organization is seeking “other chambre recognition in the IAF, but not spending much time on this.”²¹ Working on accreditation standards harmonization and standards harmonization but giving preference to the former.²²

¹⁷ Unlike the ISO accreditation system which engages multiple national accreditation bodies, SA8000 certification is offered only through an accreditation agency set up by SAI and working with private inspection enterprises which it accredits auditors. See “SA8000: Management system standard for social accountability”, ISO 9000 NEWS 5/1998, p. 13. The accredited agencies themselves are not necessarily certified as in compliance with SA8000. SA8000 is discussed further in Chapter ... of this paper.

¹⁸ M. Egger: “ISO 21000 ”– Private Normen für die soziale Verantwortung der Unternehmen? Ein Diskussionsbeitrag (Brot für alle Schweiz, Bern, 1996).

¹⁹ Marine Stewardship Council (MSC), Forest Stewardship Council (FSC), International Federation of Organic Agriculture Movements (IFOAM), International Organic Accreditation System (IOAS), Social Accountability International (SAI), Fair Labelling Organizations International (FLO), Conservation Agriculture Network (CAN) are all members of ISEAL and have signed on to the ISEAL “Agreement in Principle” of September 1999.

²⁰ ISEAL Alliance: “Agreement in Principle” (September 1999), see www.isealalliance.org/Agp.htm

²¹ ISEAL Alliance: “Summary of Accreditation Meeting – December 1999” Brussels, Belgium. See www.isealalliance.org/Brussels.htm

²² ISEAL Alliance: “Summary of ISEAL Meeting – April 2000”, London, England. See www.isealalliance.org/London.htm

3. Codes of conduct

For the purposes of this paper, the term “code of conduct” refers to a written policy, or statement of principles, intended to serve as the basis for a commitment to particular enterprise conduct.²³ By their very nature, voluntary codes contain commitments often made in response to market incentives with no legal or regulatory compulsion. However, as public statements, codes usually are considered to have legal implications under laws generally regulating enterprise representations, advertising and, in cases of joint enterprise action, anti-competition.

The International Organization of Employers (IOE) estimates that 80 per cent of codes of conduct fall into the category of general business ethics with no implementation methods. This paper focuses only on codes of conduct that address labour practices, including forced or child labour, employment discrimination, freedom of association and collective bargaining, wage levels, occupational health and safety, and other workplace-related issues. The analysis is based on a review of 258 codes of conduct which address labour practices. The codes analysed have been created by enterprises, enterprise associations, trade unions, NGOs, universities and by various combinations of those actors. The codes are representative of a number of different sectors. Although some codes are meant to apply to a single workplace, many of the codes reviewed were adopted with the intention of being applied internationally. Indeed, some of the codes are used as “sourcing guidelines” to specify requirements for the workplace conduct of business partners with which the enterprise is engaged. In such cases, the code of, for example, an international buyer or retailer is applied to workers in supply (or “value”) chains who are not necessarily employed directly by the enterprise adopting the code.

3.1. The development of codes with labour provisions

Codes of conduct that address labour practices have become a key element in the debate over improving the conditions of workers worldwide. Modern codes of conduct originated with model codes on advertising and marketing practices developed by the International Chamber of Commerce in the late 1930s. During the 1960s and 1970s, labour provisions in enterprise codes of conduct were primarily directed at internal management practices.²⁴ The first major third-party “subscription” codes were developed in the United States.²⁵

The late 1980s and 1990s have seen a rapid proliferation of codes of conduct. The application of traditional codes to headquarters only or, at most, to wholly owned foreign subsidiaries, has expanded. As public pressure for enterprise accountability increases, enterprises feel more vulnerable to the labour practices of their business partners in the commodity or service chain. The “self-applied” model has been replaced by the development or application of codes in a growing variety of business

²³ Employers’ handbook on child labour; a guide for taking action, IOE, p. 49. Documents such as guides, handbooks, manuals or auditing checklists may exist to guide the implementation of the code in practice, but in many cases, there are no instructions as to how to implement or enforce code provisions which may be quite general in nature. Manuals or handbooks that exist without codes are beyond the scope of this paper.

²⁴ See, e.g. Statement of the United States Council for International Business: Codes of conduct: Old solutions to old problems (1997).

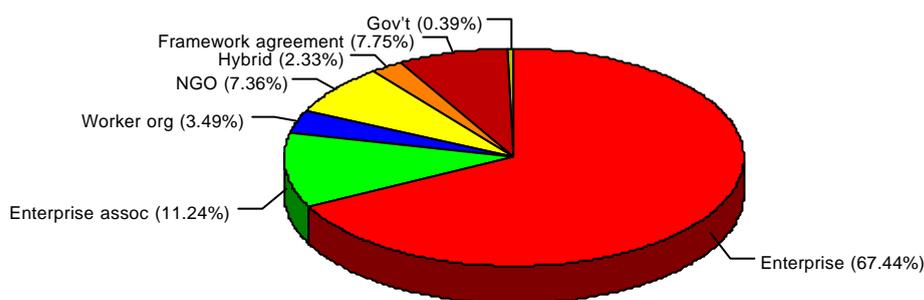
²⁵ Subscription codes, discussed below, provide an external, or third-party, basis of commitment and/or monitoring for enterprises which choose to endorse them. The Sullivan Principles (1977) aimed to influence United States companies doing business in South Africa, and the MacBride Principles (1984) sought to influence United States firms operating in Northern Ireland.

partnerships involving more than a single enterprise. Codes now apply to joint ventures, licensees, and other contractual relationships.

Another striking feature is the prominent role that such codes now play in internal enterprise decision-making. As noted by one commentator, “previously, the codes were domiciled in the corporate affairs and shareholder relation departments, and were not distributed widely to suppliers. Within the past year, however, the issues have now become compelling enough for United States companies that they assign higher-level managers with direct functional responsibility for sourcing and supplier relationship ... Discussions over implementable codes of conduct are now being held outside and within corporate boardrooms ...”.²⁶ In part, media interest and the resulting reactions of shareholders, consumers and other stakeholders have prompted this enterprise response.

Distribution of codes by actor

Proportion out of 258 codes



3.2. General trends

3.2.1. Methodological limitations

There is no precise information on the extent to which enterprises around the world have adopted codes of conduct with labour-related provisions in their operations – domestic or foreign. Available information focuses on the significant number of large enterprises and various types of enterprise associations that have done so across the commodity or service chain of international operations. Information on domestic operations mostly appears to be limited to enterprises in developed economies. Thus, most surveys of codes available are specific to particular enterprises in developed economies, to only a few labour issues, or both. Although case-study approaches by sector or issue exist, for this paper an attempt was made to undertake a broader analysis, thus partially filling a gap in available data. As will be discussed below, however, available methodology for examining codes of conduct inevitably makes comprehensive coverage difficult.

²⁶ H. White: "Global outsourcing and corporate accountability", in *Accountability Quarterly* 4, Summer 1997.

3.2.2. Industry-specific trends

Codes of conduct with labour-related provisions are known to exist in nearly all 22 ILO sectors of activity. Sectoral participation in codes, however, varies widely. Sectors that deal directly in consumer products, including textiles, clothing, leather and footwear (TCF), commerce (retailers and home manufacturers of consumer products), food and beverage, and the chemical and toy industries, appear more conducive to code development. The chemical and forestry industries have proportionately high representation, focusing largely on health, safety and environment operations. Emerging sectors include hotel, financial services, telecommunications, high technology, agriculture, and oil and gas industries. Of the 258 codes examined for this paper, the most highly represented sector was the textiles, clothing and footwear sector, with 62 codes. Next highest in frequency were codes aimed at the chemical industry with 42 codes, followed by the commerce, metals and food and drink industries, each with 26 codes. Fifteen codes addressed conditions in each of the minerals and forestry/construction industries, and 13 dealt with the services industry. Finally, nine codes were aimed at the financial profession, and 24 applied across sectors. As will be seen below, significant differences can be observed between sectors with respect to the specific labour standards and aspects of the employment relationship emphasized.

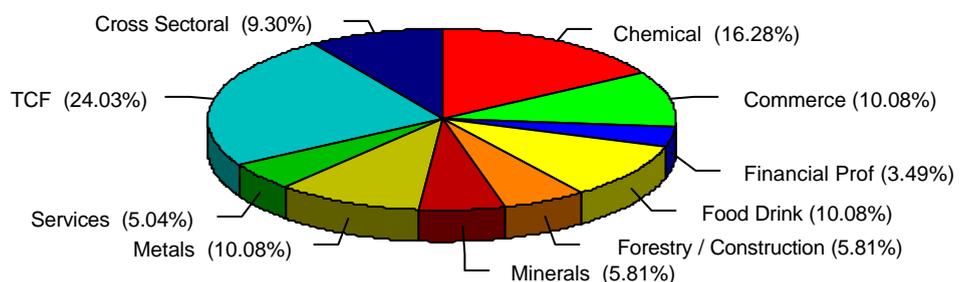
3.2.3. Two types of codes: model and operational

Two general types of codes exist. Operational codes apply directly as commitments to specific conduct within enterprises or their partners, or through subscription systems sponsored by third parties (typically enterprise associations or coalitions of enterprise, trade unions, and/or NGOs) to which enterprises commit themselves, either on their own behalf and/or for their business partners. “Subscription codes” may involve monitoring and/or reporting systems to be performed by subscribers or by the external code sponsors themselves. Model codes are issued by enterprise associations, trade unions, NGOs, and/or governments for others to use as a basis in developing their own codes. Although model codes do not operate directly within enterprise or through enterprise subscriptions, model codes may be reflected, in whole or in part, in codes adopted by enterprises.

Most of the codes which have propelled the topic into the spotlight are operational codes in large retailing and manufacturing operations engaged in international trade. As well as large retailers and manufacturers, a number of industry associations of export suppliers or import retailers have issued codes of conduct. These codes are frequently for use by small and medium-sized enterprises whose resources may be insufficient to develop their own codes of conduct. A small but increasing number of known codes are the result of collaboration of enterprises with trade unions, NGOs, governments, or a combination of these partners. Of the 258 codes reviewed for this paper, 225 (87 per cent) were operational codes and 33 (13 per cent) were model codes. Of the operational codes, 177 codes were created by enterprises (68 per cent). However, a notable 25 operational codes were created by some combination of actors. The 33 model codes were relatively equally divided between employers’

Sectoral distribution of codes

Proportion out of 258 codes



organizations (11 codes), trade unions (9 codes), and NGOs (11 codes). Only one model code was created through the cooperation of several actors.

3.2.4. The relevance of the commodity chain

In increasingly globalized relationships, the structure and operation of supply chains play a defining role in the development and implementation of codes.²⁷ Some codes develop by virtue of common ownership (“equity”) between enterprises in the chain (e.g. tea plantations and packaging). Other codes are applied as conditions to contractual arrangements, which may represent long-term relationships, or fragmented, highly opportunistic outsourcing arrangements. The closer and more long-lasting the relationship between retailer and supplier, the easier the application of the code appears to be. The longer the chain of production and more complex the levels of contractors, subcontractors and buying agents, the more challenging the situation is. Manufacturers with wholly owned facilities abroad or ongoing relationships with contractors have built-in arrangements for code implementation, while retailers removed from suppliers must use bargaining power to require compliance with code standards. Retailers who contract out the manufacture of private-label merchandise can directly influence their contractors. Trade unions have developed strategies for negotiations on codes that apply across commodity chains, based on solidarity campaigns among trade unions in production, packaging, distribution and/or retail.²⁸ The chain-wide model depends for effectiveness in part on the structure of the supply chain – the more cohesive, the more likely it is an initiative can be adopted and implemented. A significant problem, for which insufficient evidence has been collected, concerns the costs associated with the monitoring of codes, particularly for producers subject to varying requirements of different buyers and retailers. In many instances, the added costs of code systems are reflected in a retail mark-up. Nonetheless, if the cost is significant, the point at which it is met in the first instance could distort the competitive position of enterprises.

3.3. Operational codes

Operational codes are developed by enterprises, enterprise associations, trade unions, NGOs or, in some cases, a combination of one or more of those entities.

Enterprise codes

Available information suggests that the world’s largest multinational enterprises, and in particular US-based multinational enterprises in the TCF and related commerce sectors (e.g. manufacturers and retailers including department stores, mass merchandisers, speciality stores and mail-order clothing companies), have led the trend toward the usage of codes as a means of responsible sourcing. Japanese and South Korean MNEs of comparable size, for which little

²⁷ See, e.g. G. van Liemt: The social policy implications of codes of conduct, with particular reference to the relations between companies adopting such codes and their supplier and subcontractors, presented at Global Production and Local Jobs: New Perspectives on Enterprise Networks, Employment and Local Development Policy, Geneva, 9-10 Mar. 1998.

²⁸ For example, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers Associations (IUF) brought tea producer and distributor affiliates together in 1997 to spur enterprise initiatives in the tea industry. In addition, multisector coalitions involving codes of conduct are emerging in efforts against child labour developed through a coalition of workers in the surgical instruments industry in Pakistan and public sector health care workers in developed countries.

information is available relating to single-enterprise conduct, appear to operate with creeds or philosophies of a very general nature directing, for example, enterprise respect for employees.

Enterprise association codes

Enterprise association codes may be developed by business associations, industry groups or employers' organizations. In contrast to single enterprise codes, these codes reflect a negotiated consensus among association members. Available information suggests that, with a few exceptions, business associations, while becoming more aware and active on issues of social responsibility, in general do not adopt codes as tools to address labour concerns. This trend may be the result of a lack of consensus among widely differing business sectors represented in the membership of such associations. In contrast, industry associations, both sectoral and multisectoral, have developed a notable number of initiatives relating to codes but few contain references to international labour standards. At the global level, associations in the toy, tea, sporting goods and chemical industries, among others, have developed codes with labour provisions. Examples include the Athletic Footwear Association, Tea Sourcing Partnership, Responsible Care (chemical industry), International Council of Toy Industries and World Federation of the Sporting Goods Industry. Some of these have been criticized for inadequate provisions for implementation, and insufficient incentives to encourage retailers to invest in, and work with, suppliers. European regional initiatives in industry associations appear distinctively characterized by collaboration with trade unions. This feature may be attributed in part to the effect of pre-existing regulations which nurtured a culture of consultations among labour and management, thus assisting a predisposition to extend discussions and ultimately arrive at code agreements.²⁹ Industry associations at the national level, particularly those comprised of small and medium-sized enterprise members, appear to adopt codes in part to facilitate a common public image, avoid unnecessary costs, and prevent adverse competitive effects. This trend can be noted at both ends of the supply chain and in developing as well as developed economies.

Employers' organizations appear to be most active in Latin America, where some have sponsored code-like structures in which individual companies may voluntarily participate. A Brazilian employers' organization helped to sponsor the Abrinq Foundation, which has had considerable success in using a certification system in the fight against child labour. Similarly, employers' organizations in Colombia and Guatemala have instituted policies on child labour, each with a follow-up system for signing up company members or recognizing individual adoption of codes.

Combinations of actors

Two types of jointly developed codes may be distinguished. *Framework agreements* are negotiated between national or international trade unions and enterprises or enterprise associations. These agreements may apply to the international supply chain and set the framework in which future workplace-specific decisions take place. *Multi-stakeholder codes* are the result of cooperation between NGOs (sometimes joined by trade unions) and enterprises or enterprise associations.

²⁹ See, e.g. EU Council Directive No. 94/45/EC, 22 Sep. 1994 (Official Journal of the EC, 30/09/94, No. L 254, pp. 64-72), amended by EU Council Directive No. 97/74 of 15 Dec. 1997 (Official Journal of the EC, 16/01/98, No. L 10, pp. 22-23), implementing 1989 European Community Charter of Fundamental Social Rights of Workers, which mandated multinationals operating in Europe to establish works councils for information and consultation with workers on selected issues in enterprise operations.

Framework agreements

Increasingly, trade unions, enterprises and enterprise associations negotiate and implement framework agreements containing labour provisions.³⁰ In general, codes that have developed with worker participation incorporate international labour standards in a more consistent pattern than do other types of codes reviewed. Most such codes also appear to utilize some type of external monitoring and certification system and many use the subscription method. Framework agreements appear to have advanced the farthest, in terms of implementation, within the European Union. A notable example of collaboration between a trade union and a multinational enterprise, the Danone group, is discussed below. Non-European framework agreements present widely disparate results, including agreements focused on a single issue (usually child labour) and agreements containing a full set of core labour standards.

Negotiations between international trade secretariats (presumably in consultation with local trade unions) and multinational enterprise headquarters management represent a relatively new phenomenon. Evidence on what effect, if any, framework agreements have on local collective bargaining agreements is as yet unavailable. In any event, it would appear that coordination between international trade union secretariats and local workers could serve to provide greater participation by those directly employed in the situations covered by a code of conduct than is the case in codes developed solely by enterprises and/or NGOs without worker involvement.³¹ International framework agreements are presumably subject to general contract law obligations. However, it is not certain that, in contrast to collective bargaining agreements, these obligations could be made effective by national legal systems in each country of the multinational enterprise's operations. One innovative approach has been to commit the enterprise, within the framework agreement, to incorporate the agreement into its existing local-level collective bargaining agreements. This type of approach has developed in Europe in the context of the EURATEX/ETUF-TCL agreement and in part reflects the particular national law and practice concerned relating to collective bargaining relationships. The strategy of transposition to the national level of collective bargaining agreements brings with it, not only legal benefits, but also existing implementation systems and relationships, and a

method for achieving uniformity of standards among enterprise operations in various countries and circumstances.

Multi-stakeholder codes

Multi-stakeholder codes involving enterprises, trade unions and NGOs are increasing and often focus on labour practices. While multi-stakeholder codes, although initiated by NGOs in many cases, appear to be growing, codes proposed exclusively by NGOs appear to be decreasing. Most multi-stakeholder codes operate through the subscription method. Experience to date suggests that the participation of NGOs in codes of conduct involving labour practices has shifted the traditional balance between worker and employer at the negotiating table. Negotiations tend to be more piecemeal, with public demands contributing to determining which sectors, which issues and which

³⁰ International trade union secretariats involved in developing codes report that they are devoting considerable financial and human resources to communication with workers at local levels. Such communication may demonstrate, in contrast to prevailing situations where codes are developed without trade union involvement, that the development of codes between international trade union secretariats and multinationals has tended to enhance local workers' awareness of the negotiations and content of codes that cover their industry or workplace.

³¹ E.g. United States Apparel Industry Partnership (which consists mainly of US-based multinational enterprises in the TCF sector and US-based NGOs). See also discussion of SA8000 below.

safeguards will be the principal subjects. In recent times, trade unions have increasingly been accepted by enterprise management and NGOs as important contributors to the initiatives. Although in several high profile initiatives, trade unions were outnumbered in comparison with enterprise and NGO counterparts, recent trends show otherwise.³² For example, the UK-based Ethical Trading Initiative has equal representation of enterprises, trade unions and NGOs. Within the enterprise sector, however, small and medium-sized enterprise representation in the formulation and oversight of multi-stakeholder codes appears quite limited.³³

The content and implementation of multi-stakeholder codes largely depend upon the identity of the various code partners and the leadership they provide. The partners in the hybrid system significantly affect start-up influence and range: where large enterprises dominate, the potential for broad influence exists but may be diluted in part by the divergent interests among the members.³⁴ Several efforts with more balanced roles among the partners report difficulty in achieving consensus on difficult issues. The Ethical Trading Initiative in the United Kingdom has met with problems over such issues as freedom of association and child labour but recently adopted a base code for its member companies to adopt or incorporate into their own codes, referencing ILO standards on those and other issues. The United States Apparel Industry Partnership encountered public tensions over the living wage issue and is now facing obstacles on agreeing to a system for independent, external monitoring and verification.

Multi-stakeholder systems generally follow one of two approaches. Many create private regulatory regimes or accreditation/certification systems.³⁵ The second approach, which overlaps with the accreditation/certification systems, consists of learning models. The Ethical Trading Initiative has been very active in developing multi-stakeholder learning projects on monitoring and implementation of codes of conduct. Likewise when the SA8000 standard was launched it was first tested with companies. The Swiss, Dutch and French sections of the Clean Clothes Campaign are involved in monitoring pilot projects with a number of companies.

Sensitive to public and media attention, hybrid code partners tend to concentrate on labour practices in particular sectors and countries. Areas of particular interest include TCF (Clean Clothes Campaign, Apparel Industry Code), forestry (Forest Stewardship Council, discussed further in Chapter 4 below) and food and agriculture (Fairtrade Organizations, Draft Banana Charter). A few recently developed systems are multisectoral in nature. The SA8000 system aims at a generic certification of any enterprise. The Ethical Trading Initiative focuses on implementation of code requirements.

³² The Board which runs the SA8000 initiative of Social Accountability International (SAI) contains one smaller company, Eileen Fisher, out of 16 enterprises in total, and some of the initiatives have small and medium-sized enterprise subscribers represented through industry associations (e.g. Clean Clothes Campaign, Draft Banana Charter).

³³ The comparatively longer track record of Project Equality, an initiative begun in the United States for review and disclosure of equal employment opportunity and treatment, incorporates religious organizations and corporations as sponsors and reportedly exerts influence by publishing an annual Buyer's Guide accrediting over 1,500 employers of those inspected.

³⁴ The Fair Labour Association/Apparel Industry Partnership, SA8000 and Social Accountability International, the Clean Clothes Campaign Code of Practice and the AAMA WRAP Programme.

³⁵ Examples include the ICC Business Charter for Sustainable Development, and the Caux Round Table Principles for Business, developed in 1994 by the US-based Minnesota Center for Corporate Responsibility.

Governments and intergovernmental organizations tend to play supportive roles in selected hybrid code systems, serving as catalysts, facilitators, endorsers and even financial supporters. The Ethical Trading Initiative receives its core funding from the Government of the United Kingdom, which also sends a representative to observe the board meetings. The Apparel Industry Partnership was developed with the encouragement of the Government of the United States. The code prepared by the Federation of International Football Associations (FIFA), with international trade union secretariat assistance, led to an agreement to run cooperative projects to eliminate child labour from particular industries in South Asian countries, where the ILO and UNICEF cooperate with industry groups, workers, governments and NGOs (see Chapter VI below). In Brazil, the ILO and UNICEF have cooperated with the Abrinq Foundation in its child labour social labelling programme, and a state government in Brazil works with enterprises and UNICEF to collaborate in the provision of schooling and the elimination of child labour from rural activities.

3.4. Model codes

Model codes, which continue to be issued by enterprise associations, trade unions, NGOs and hybrid coalitions, serve as a conceptual basis for the development of codes within enterprises or simply as a general influence on enterprises. Behind the emergence of some of these codes is a strategy to promote the use of consistent language in codes of conduct and benchmarks for evaluation and comparison of unilaterally adopted codes. Available evidence is inconclusive as to their effects however. Model codes issued by enterprise associations tend to be ethically oriented, some with general references to labour practices.³⁶ Model codes developed by trade unions appear to aim both at guiding trade unions in the negotiation of codes in particular sectors, and at serving as general guidance for all industries.³⁷ With a few known exceptions, NGO model codes tend to take on a “benchmark” quality, providing a set of principles, minimum standards, or guidelines to be followed in the process of adoption, and the actual content of codes of conduct by enterprise.³⁸ In the public sector, the Government of the United States has proposed its own Model Business Principles for United States companies doing business abroad.³⁹ As mentioned earlier, the Government of the United

³⁶ See International Code of Conduct for the Production of Cut Flowers adopted in Aug. 1998 by the IUF and several local trade unions and NGOs. The ICFTU Basic Code seeks to help develop the codes of individual companies or their subcontractors, as well as industry associations and employers’ organizations. In a similar initiative led by Hyundai and Daewoo trade unions in the Republic of Korea with the Korean-based NGO, People’s Solidarity for Participatory Democracy, the partners developed their own charter as a means to monitor the performance of Korean enterprises operating overseas in response to the 1996 Declaration on codes of conduct for those enterprises issued by the Korean Council of Economic Organizations.

³⁷ See, e.g. Business for Social Responsibility Matrix of Company Codes of Conduct, Oxfam Clothes Code Campaign Minimum Standards and Principles, Interfaith Center on Corporate Responsibility 1995 Principles for Global Corporate Responsibility and Amnesty International Human Rights Principles for Companies. The latter refers widely to international labour standards and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.

³⁸ The principles, which are quite broad and do not refer to ILO standards, are supported by the Government’s Best Global Business Practices Program, which provides information resources, conferences and awards relating to socially responsible labour practices in enterprise.

³⁹ For example, Council on Economic Priorities, SCREEN, *op. cit.*, reported that, of 38 per cent responding, 99 per cent had sourcing guidelines addressing basic workers’ rights; United States Department of Labour survey, *op. cit.*, reported that of 42 responding, 36 had child labour policies with half or less with other labour rights standards; C. Forcese, *op. cit.*, survey of Canadian codes reported that, of 43 responding, 49 per cent had international codes of conduct with labour provisions in 46 per cent of those.

Kingdom plays an important role in the development of the Ethical Trading Initiative, including financing and observation on the Board. Other governments have opted for the development of guides or guidelines relating to codes of conduct. The Canadian Government's Voluntary Codes Guide, along with various other information resources, includes an "Eight-step model for developing codes" reportedly prepared "by a multi-stakeholder working group". The Australian Government has published a Guide to Fair Trading Codes of Conduct (1995), and New Zealand has Guidelines on Developing a Code of Practice (1993).

3.5. Content

A comparison of codes reflects discrepancies in the various labour issues selected for attention, the sources of reference used to define proper practices, and in the actual level of practices targeted through codes of conduct. The issues covered in this paper mainly comprise fundamental labour rights (freedom of association/collective bargaining, non-discrimination, absence of forced labour and child labour), wage levels and occupational health and safety. Also included are other benefits such as social security, job security, working hours and training as well as involvement in community issues.

An analysis of the 258 available codes demonstrated that significant hurdles in evaluating the labour content of codes of conduct exist at the present stage of research, making it extremely difficult to give reliable indications of trends. Survey methods of data collection have generally failed to obtain high rates of responses from companies, leading to uncertainty as to the degree to which codes addressing labour practices are used by enterprises. The limited information available suggests that, of companies responding to surveys, a majority that have international sourcing guidelines or codes of conduct also address labour practices.⁴⁰

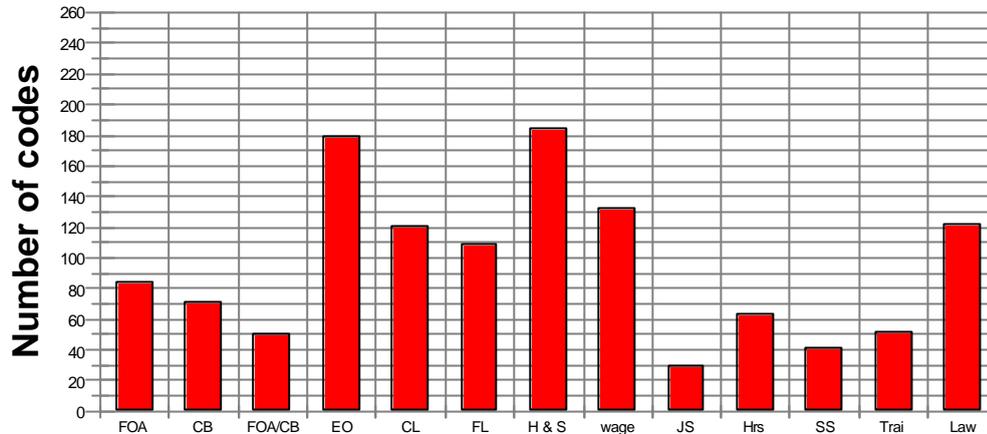
3.5.1. Choice of issues

The labour issues included in codes of conduct often appear to reflect the nature of publicized labour problems in the various industry and service sectors. As discussed below, codes reviewed in the TCF sector, for example, tended to concentrate on child and forced labour. While 72 per cent of codes reviewed mentioned health and safety, special attention to that issue was apparent in the efforts of enterprises in the chemical, transport, TCF and toy manufacturing, mining, commerce and postal sectors. Seventy per cent of the codes reviewed, representative of most sectors of code activity, addressed the issue of employment discrimination. In contrast, relatively few codes (33 per cent) addressed one or both of freedom of association and collective bargaining. A review of references to international labour standards yields similar conclusions.⁴¹

⁴⁰ Dominant references appeared to reflect concern as to particular problems in the following industries: basic metal production (Convention Nos. 100 and 111), chemicals (Conventions Nos. 111 and 138), construction (Convention No. 138), forestry (Convention No. 111 with notable worker/enterprise codes including Conventions Nos. 87 and 98 as well as Conventions Nos. 29 and 105), mechanical and electrical engineering (Convention No. 111), oil and gas production (Convention No. 111 and hybrid codes indicating Convention No. 169), textile, clothing, leather and footwear (Convention Nos. 111, 138 with worker/enterprise and hybrid codes indicating all core labour standards) and transport equipment (Convention No. 111). Service sectors reflected the following concerns: commerce (Convention No. 111 primarily), financial services (Convention No. 111), postal and other communication services (Convention No. 111 primarily), utilities (a worker/enterprise code had all core labour Conventions) and hotels, tourism and catering (only a worker/enterprise code, with references to Conventions Nos. 87 and 98).

⁴¹ In one example using existing standards to create a self-defined standard, a UNIDO study developed a UNIDO IDEAL standard by incorporating both ILO norms and SA8000 standards, but found that the ILO and SA8000

Code references to labour standards



Insufficient data exist to determine the actual impact of codes on labour practices. Nonetheless, the selective approach by which most codes address labour problems appears to promote uneven implementation of fundamental labour rights, both within a single enterprise and across the world’s labour force. Given the interdependence of fundamental labour rights, a piecemeal treatment could make it difficult to sustain progress in one selected area while leaving others behind. For example, without freedom of association and collective bargaining to promote a balance in employer-employee relations, it is difficult to achieve non-discrimination and the effective abolition of child labour. Likewise, respect for hours of work and social benefits contributes to health and safety in the workplace.

3.5.2. Sources of reference for defining the level of labour practices to achieve

A wide diversity, and at times divergence, exists among the methods used to determine the level of labour practices to achieve. Among the codes reviewed, code drafters tended either to create their own definitions of labour practice targets (“self-definition”) and/or refer to one or more of the following sources: national law, international labour standards and industry practice. Self-definition appeared to be the leading method of establishing labour practice goals, particularly among enterprise-drafted codes. The definitions varied widely in similarity to or divergence from international labour standards on the given issues. Self-defined standards appeared most frequently, to set goals implicating level of wages, health and safety, and certain fundamental labour rights. Code provisions which only used portions of ILO instruments in many cases changed the meaning or intentions of the instrument and qualified as self-definitions.⁴²

systems fell somewhat short of the UNIDO-developed IDEAL social performance indicators for occupational safety/health conditions, non-discrimination practices (which included ILO Conventions Nos. 87 and 98), communication/work environment, working hours, wages and training/education/awareness. Responding to global standards, op. cit., p.37 (Table 2).

⁴² In a particularly marked reference, an appendix to the Ethical Trading Initiative’s Base Code states that the “tripartite structure of the ILO ... together with the technical expertise of this Organization in all matters relating to the world of work, make the ILO the authoritative and legitimate source of international labour standards”.

General provisions guaranteeing respect for *national law* appeared in 45 per cent of the codes, and were contained in codes pertaining to all industries reviewed. Enterprises and enterprise associations were more likely to include such a general statement regarding compliance with national law (53 and 66 per cent of codes respectively), with NGOs and trade unions referring to law much less frequently (28 and 0 per cent). A few codes mentioned national law as a minimum standard only, and some specified that the higher of national law and industry standards was to be the prevailing standard. Of all issues addressed, the area where proportionately most frequent reference was made to national law was level of wages – an area lacking an international standard. In contrast, references to industry standards, by matching or exceeding them, appeared to play a lesser role than national law or international standards in code provisions. The nature of code initiatives as tools for enterprise leadership may help explain this phenomenon.

3.5.3. International labour standards

Few of the codes reviewed bore any reference to international labour standards, either generally or specifically mentioning the principles of an ILO Convention or Recommendation.⁴³ References to ILO standards occurred proportionately more often in framework agreements (enterprise/worker), hybrid codes and codes developed by NGOs or trade unions, than in codes developed by enterprise associations, or enterprises alone. References to multiple fundamental international labour standards were most frequent among framework agreements, hybrid codes and model codes, and appeared rarely in codes generated by single enterprises.⁴⁴ Many enterprise codes considered to be pioneers in social responsibility had no references to international labour standards or ILO instruments.⁴⁵ The Tripartite Declaration on Multinational Enterprises and Social Policy was referred to in five codes. Of these, three were NGO-generated codes that applied across sectors, and two were developed by trade unions, one applicable across sectors and one aimed at the services industry. The 1998 ILO Declaration on Fundamental Principles and Rights at Work has already been incorporated as a reference point in one code (the Ethical Trading Initiative's Basic Code) and was referred to in one model code developed by an international trade union code in the forestry and construction sector.⁴⁶

3.5.4. Freedom from discrimination

⁴³ One enterprise in the TCF sector presented a rare exception: "Any workers producing products manufactured for and sold by KappAhl must be provided with fair wages and decent working conditions and the international labour standards according to ILO Conventions Nos. 29, 87, 98, 100, 105, 111 and 138 must be observed." Code of conduct: Labour relations of KappAhl (in pertinent part)

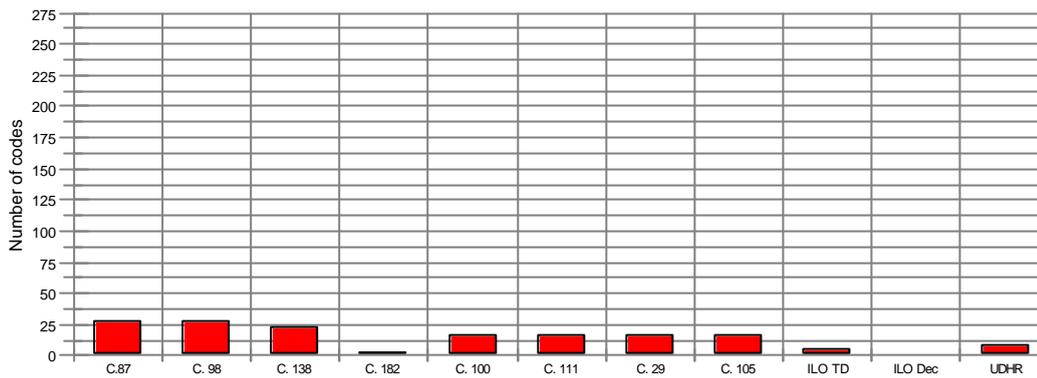
⁴⁴ Among those were Liz Claiborne and Levi-Strauss. Reebok's code had only a general reference to international human rights standards.

⁴⁵ See "Model Code of Labour Conduct for the Construction Industry", developed by the IFBWW.

⁴⁶ The four with ILO Convention references were KappAhl and three hybrid codes (Clean Clothes Campaign, Fairtrade Charter for Garments and SA8000). Five of the six with national law references were corporations registered in the United States; the sixth was a model code. The primary United States law referenced, the Fair Labor Standards Act, has been determined by United States courts to have no extraterritorial effect.

Among the labour practices in the codes of conduct reviewed, the issue of freedom from discrimination in employment appeared in 70 per cent of all codes, representing the second most frequently raised labour issue across all sectors of code activity (after health and safety). The majority of these references were self-definitions. Only 17 codes actually referred to the ILO's Discrimination (Employment and Occupation) Convention, 1958 (No. 111), while some codes mentioned a particular national law on discrimination. Many of the codes treated freedom from discrimination in general allusions to respect and dignity of workers, or direct references to eliminating discrimination.⁴⁷ Others enumerated grounds of discrimination,⁴⁸ but few reiterated all the grounds of discrimination found in

References to international instruments



Convention No. 111⁴⁹ Some of the codes which mentioned freedom from discrimination went further to promote equal opportunity for advancement.⁵⁰ Specific mention of equal pay for work of equal value appeared only occasionally. However, in the context of referring to discrimination more generally, most codes mentioning Convention No. 111 also made reference to Convention No. 100

⁴⁷ “Everyone is entitled to be treated with respect as a person, regardless of role or individual differences”. WMC Mining Company – Code of conduct.

⁴⁸ “Employees must not be discriminated against because of personal characteristics or beliefs.” Jones Apparel Group – Business partner standards; “[p]erceptions of equality naturally vary between different cultures and it is not the business of a company to smooth out the differences. However, within SKF, in all the locations where we are active, we strive to maintain equality – between the sexes, between different generations, different nationalities, races and creeds. We view equality not only as an ethical principle but also as an efficient working rule. It promotes a good team spirit” SKF – Our views on ethics and morals.

⁴⁹ Convention No. 111 provides that “for the purpose of this Convention the term ‘discrimination’ includes ... any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation ...”, Convention No. 111, Art. 1(1)(a) and chapeau.

⁵⁰ The codes included those of the enterprise KappAhl as well as those drafted by the Clean Clothes Campaign, SA8000 and the International Code of Conduct for the Production of Cut Flowers proposed by IUF, several local trade unions and a few NGOs.

concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, with the later Convention appearing in 16 codes.⁵¹

3.5.5. Child labour

Forty-seven per cent of the codes highlighted the issue of child labour. Sectors which concentrated on child labour included TCF and toys (89 per cent), commerce (88 per cent), food and drink (42 per cent) and forestry and construction (40 per cent). Although these sectors were most likely to include provisions prohibiting child labour, several child labour prohibitions also existed in codes in the basic metal production (three codes), services (four codes) and chemical sectors (three codes). Sixty-three per cent of the codes that applied across sectors referred to child labour. The majority of these references were formulated as self-definitions. Two characteristics marked self-defined prohibitions: a lack of precise definition,⁵² or a self-determined age, usually 14 or 15 years.⁵³ A proportionately higher number of the code references on child labour (nearly one-third) referred to national laws than in treatment of other labour issues. Some enterprises imposed their own standard or national law, whichever was higher.⁵⁴ Others deferred to national law when a conflict arose between their self-defined age or an age set by the international standard.⁵⁵ Still others set their own age standard if no national law addressed the question of child labour. Only 9 per cent of all codes referred to Convention No. 138 in defining a minimum age standard; in number, these were roughly split between enterprise-generated codes, enterprise/worker codes and hybrid codes. However, codes developed by enterprises alone had proportionately fewer references to the Convention, with only four codes, representing 2 per cent. Very few codes referred to Convention No. 182 as most were created prior to the creation of this Convention.

3.5.6. Forced labour

Forty-two per cent of the codes prohibited forced labour, with the overwhelming focus of those references in the TCF and toy sector (79 per cent of TCF and toy codes) and commerce sectors (73 per cent of commerce codes). Four out of five of these codes incorporated a self-definition, primarily by

⁵¹ “We believe that children should not be unlawfully employed as labourers ... We believe that if children work, it should not interfere with mandated education.” Starbucks – Statement of beliefs (Framework for a code of conduct).

⁵² “We believe that children should not be unlawfully employed as labourers ... We believe that if children work, it should not interfere with mandated education.” Starbucks – Statement of beliefs (Framework for a code of conduct).

⁵³ One enterprise specified the age of 14, except for a lower age for light work if permitted by law, in one of its codes but, in another, permitted children over 12 “to be employed part time if still in education”. Compare Body Shop Declaration of Compliance with Code of Practice with Body Shop – Trading Charter and Statement of Human Rights Principles. The ages of 14 and 15 roughly mirror the provisions of Convention No. 138, though not necessarily with attention paid to the conditions and safeguards contained therein.

⁵⁴ “Sara Lee will not knowingly use suppliers who employ workers in violation of the local mandatory school age, or under the legal employment age in each country. In no case will Sara Lee procure goods or services from firms employing workers under age 15.” Sara Lee Corporation -- Supplier selection guidelines.

⁵⁵ “Child labour must not occur. Only workers aged 15 and over, or over the age of compulsory education if higher, may be employed (ILO Convention No. 138). Exceptions to this rule may only be made if national legislation provides otherwise.” Agreement between IKEA and the IFBWW.

prohibiting “forced labour” without defining it further.⁵⁶ Most were limited to prohibiting forced labour in goods; services were added exceptionally.⁵⁷ Many added prison labour, either as a qualifying or additional component,⁵⁸ and some focused on corporal or mental abuse as well.⁵⁹ *None appeared to refer to national laws on forced labour.* Most of those which referred to ILO standards cited either Convention No. 29 or Convention No. 105, each of which was referred to in 17 codes; one code alluded generally to the rules and guidelines of the ILO on the subject.⁶⁰

3.5.7. Freedom of association and collective bargaining

Thirty-three per cent of the codes contained references to freedom of association and/or collective bargaining. Although the relatively low number of references is remarkable, given the degree of unanimity on its essential nature between employers’ and workers’ representatives in the ILO, the proportion of codes with such references does appear to have increased slightly in recent years.⁶¹ The references occurred most frequently in the TCF (47 per cent), food and drink (50 per cent) and forestry and construction industries (47 per cent). References occurred to a lesser extent in the services (31 per cent), basic metal production (12 per cent), mining (20 per cent), chemical (10 per cent) and commerce sectors (8 per cent). Seventy-nine of the codes applying across sectors referred to one or both of freedom of association and/or collective bargaining. This higher proportion can presumably be linked to the greater likelihood of NGO and trade union involvement in the development of codes that apply across sectors.

Many of the references to freedom of association and collective bargaining, primarily those in single-enterprise codes, created self-defined targets. The self-definitions, which varied widely, included statements affirming freedom of association and collective bargaining,⁶² others alluded

⁵⁶ Member companies, and their contractors, are expected to agree that “no forced or prison labour is employed, that workers are free to leave once their shift ends ...”, International Council of Toy Industries Code of Business Practices; vendors of K-Mart “must ensure that [no] merchandise is made in whole or in part using any ... forced or prison labour.” K-Mart – Corporation Vendor Agreement.

⁵⁷ “Sara Lee will not knowingly use suppliers of either raw materials or finished products that have been produced by prison labour or forced labour, or services provided by such labour.” Sara Lee Corporation – Supplier selection guidelines.

⁵⁸ “Columbia Sportswear will not enter into a partnership with any suppliers or contractors who use any form of forced labour – prison or otherwise.” Columbia Sports Wear – Company standards and business practice guidelines.

⁵⁹ “We will not do business with firms that use forced prison labour or with companies whose contractors use such labour. We will also not purchase raw materials from companies that use forced prison labour. Furthermore, we will not transact business with organizations that use corporal punishment or any form of coercion.” L.L. Bean Inc. – Code of conduct.

⁶⁰ “We will avoid sourcing from manufacturers where labour (e.g. child labour) is deemed to be exploited contrary to the rules and guidelines of the [ILO].” Empire Stores Group-Redoute Group – Aims and ethics. In one code, a verbatim incorporation of excerpts of the definition of forced labour under Convention No. 29 failed to include the essential exceptions of Article 2 of that Convention. See SA8000.

⁶¹ The 1998 version of this paper reported that only 15 per cent of the codes contained references to freedom of association and/or collective bargaining.

⁶² An industry association code read: “Members shall only do business with partners whose workers are in all cases ... allowed the right of free association and not exploited in any way.” Athletic Footwear Association – Statement of guidelines on practices of business partners.

generally to respect between labour and management,⁶³ still others supported the elimination of trade union activities,⁶⁴ and some proposed a combination of approaches.⁶⁵ Twenty-eight, or exactly one-third of those codes which mentioned the issue referred to one or both of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). Four codes also referred to the Workers' Representatives Convention, 1971 (No. 135). With the exception of the enterprise noted above (KappAhl), and one employers' organization,⁶⁶ these references appeared only in codes developed with the participation of trade unions and/or NGOs.⁶⁷ Less than half of the code provisions referred to national law, sometimes using it to qualify, or limit, respect for freedom of association and collective bargaining.⁶⁸ One hybrid code, SA8000, opted for an internationalized approach except in situations where national law restricted freedom of association and collective bargaining.⁶⁹

⁶³ The company aims to "... foster a corporate culture that enhances individual creativity and teamwork value, while honouring mutual trust and respect between labour and management", Toyota Motor Corporation Guiding Principles (1997 revision).

⁶⁴ One company code, reported to be on every employee's desk, stated that enterprise policy sought "[t]o operate the business in such a way that employees don't feel a need for representation by unions or other third parties. Where employees have elected in favour of – or are required by law to have some form of – union representation, Caterpillar will endeavour to build a sound company-union relationship", Caterpillar – Code of worldwide business conduct and operating principles. Another, less union-friendly enterprise code read: "The company believes in a union-free environment except where laws and cultures require [SKP] to do otherwise ... believes that employees themselves are best able to voice their concerns directly to management." Sara Lee Knit Products – International operating principles.

⁶⁵ Another code read: "Employees shall be encouraged by lawful expression of management opinion to continue an existing no-union status, but where employees have chosen to be represented by a union, management shall deal with the union in good faith" (followed by explanation of good faith dealings) DuPont – Labour relations policies and principles.

⁶⁶ See the UK Banana Industry's Code of Best Practice.

⁶⁷ These included hybrid codes between enterprise/trade union(s), a few model codes and one enterprise-generated code. In what may be the earliest enterprise/worker code, the BSN group, now Danone, in the food and drink industry, formulated a Common Viewpoint with the IUF in 1988, followed by a series of implementation agreements. Among other matters, the 1988 document declared the agreement of the two parties to promote the "implementation of trade union rights as defined in ILO Conventions Nos. 87, 98 and 135", Common Viewpoint IUF/BSN, 23 Aug. 1988. In 1994, the parties further agreed to specific means of promotion of trade union rights, including "efforts to provide economic and social education and information to the entire workforce as well as their representatives", and defined "workers' representatives" by quoting Article 3 of ILO Convention No. 135. IUF/BSN Joint Declaration on Trade Union Rights, 25 May 1994.

⁶⁸ For example, the company "respects its employees' rights to legally organize and bargain collectively", ALCAN Aluminum Ltd. – Code of conduct and "All workers should be free to join associations of their own choosing, and they should have the right to bargain collectively. We don't accept any disciplinary actions from the factory against workers who choose peacefully and lawfully to organize or join an association." Hennes & Mauritz – Code of conduct.

⁶⁹ The code was created by Social Accountability International, through an advisory board comprised of enterprises, NGOs and workers' representatives. It states a dual obligation of the company to "comply with national and other applicable law" and to "respect the principles of the following instruments: ILO Conventions [29, 105, 87, 98, 100, 111, 135, 138, 155, 159, 177] ... Universal Declaration of Human Rights [, and] ... Convention on the Rights of the Child". In its section on freedom of association and collective bargaining, the "company shall respect the right of all personnel to form and join trade unions of their choice and to bargain

3.5.8. Wage levels

Fifty-one per cent of the codes formulated commitments relating to wage levels. The references mentioned national laws, industry standards, or chose to self-define an appropriate formula. Among all three types, the TCF (84 per cent) and services sectors (77 per cent) led in frequency of reference to wages, although other sectors demonstrated notable activity, including commerce (46 per cent), forestry and construction (53 per cent), food and drink (42 per cent) and chemical (21 per cent). References to national law occurred at a slightly higher rate than self-defined references. Those which referred to national law in many cases also referred to matching or, less often, to exceeding an industry standard.⁷⁰ Self-defined standards for wage levels often invoked the principle of “fairness” in setting a general standard.⁷¹ A theme which emerged from some references required a wage sufficient to meet the “basic needs” of life.⁷² Some qualified the formula with local practices and conditions while others maintained an absolute “living wage”.⁷³ Some codes opted to default from self-definition to national law, or vice versa. Although no explicit reference to an international labour standard on wage levels appeared, references to wages addressing basic needs would be consistent with the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, which advised MNEs operating in developing countries to provide wages, benefits and conditions of work “at least adequate to satisfy basic needs of workers and their families”.⁷⁴ Some code references sought to ensure full and immediate payment of wages which, under ILO jurisprudence, could be relevant to preventing conditions contributing to forced labour.⁷⁵

collectively; ... [and] in those situations in which the right to freedom of association and collective bargaining are restricted under law, facilitate parallel means of independent and free association and bargaining for all such personnel ...”, SA8000, sections II and IV, 4 (in pertinent part).

⁷⁰ Some sought to meet both national law and match the industry standard. Others aimed to pay national law levels or prevailing local wages, whichever was higher. Still others resorted to industry standards if national law on wages did not exist.

⁷¹ “Compensation must be fair and adequate ...” Johnson and Johnson Our Credo. “Fair pay for all, at rates which are reasonable within the local economy”, Tesco – Towards a better world. “KEOs should make efforts to ... improve their workers’ wages ...”, Korean Employers’ Federation – Declaration of principles concerning human resource management for Korean enterprises operating overseas (KEOs).

⁷² “We believe that wage and benefit levels should address the basic needs of workers.” Starbucks – Statement of beliefs (Framework for a code of conduct).

⁷³ Wages should “address basic needs of workers and their families so far as possible and appropriate in light of national practices and conditions”, Dayton Hudson Corporation – Standards of vendor engagement. The “water companies acknowledge the right of their workers to receive a just and fair wage which will enable workers to provide a decent home and living standard for themselves and their families and which will enable them to contribute to the economic well-being of their communities”, Public Service International – PSI Water Code.

⁷⁴ Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, para. 34.

⁷⁵ Such references would also be consistent with Convention No. 95 (Protection of Wages Convention). Similarly, code references directing respect for national laws on minimum wage could be consonant with Convention No. 131 (Minimum Wage Fixing) and related instruments in ratifying countries to the extent that their procedural safeguards for the fixing of minimum wages were respected.

3.5.9. Health and safety

Seventy-two per cent of all codes contained provisions on occupational safety and health, the labour issue to which reference was most frequently made. The most active sector with regards to health and safety provisions was the forestry and construction sector, with 100 per cent in that sector including such a reference. Other very active sectors were the mining industry (93 per cent), the TCF sector (77 per cent), basic metal production (77 per cent), the services sector (77 per cent), the chemical industry (57 per cent), the food and drink sector (73 per cent) and the financial and professional sector (44 per cent). Of codes that were meant to apply across sectors, 71 per cent included provisions addressing health and safety.

Nearly 70 per cent of health and safety references contained some sort of self-defining standard, alone or in coordination with national law. Self-definitions included general descriptions of the goal,⁷⁶ specific performance requirements for achieving the goal,⁷⁷ and/or management systems approaches.⁷⁸ Less than one-third of the references mentioned national law; some sought to maintain both national law and self-defined standards;⁷⁹ others looked to self-defined standards where no adequate national health and safety law existed.⁸⁰ Very few references to the relevant international labour standards appeared in codes of conduct; these were all found in hybrid codes, such as SA8000.⁸¹

Analysis of the available codes of conduct was undertaken primarily with core labour standards in mind. That is, particular attention was paid to forced and child labour, employment discrimination, freedom of association and collective bargaining, wages, and occupational health and safety. However, it is also possible to observe certain trends with regard to frequency of reference to other workplace-related issues. Some of these issues are benefits and social security, job security, hours, training and involvement in community goals.

⁷⁶ For example, “good and safe conditions of work”, Shell Oil – Statement of general business principles, or “maintain a safe and healthy workplace”, UNOCAL – Statement of principles: Code of conduct for doing business internationally.

⁷⁷ “In one code, contractors are required to provide adequate and well-identified emergency exits and training for employees for emergency evacuation, healthful and safe facilities and conditions, well-ventilated and well-lit facilities, adequate medical assistance in case of emergencies, education and training for designated employees in first aid and health.” See International Council of Toy Industries – Code of business practices.

⁷⁸ Chemical company members of Responsible Care, for example, tend to define operational aspects of health and safety policy in codes or in separate health and safety standards accompanying general company codes. For example, “[s]afety ... requires an ongoing commitment to continuous improvement of risk-minimizing measures”, Degussa – Guiding principles for safety and environmental responsibility.

⁷⁹ “Each business shall support this policy by maintaining compliance with applicable governmental laws and regulations, as well as the company policies and requirements which are set out in the environmental, health and safety policy, codes of practice and health and safety guidance.” Bristol-Myers Squibb Company – Standards of business conduct.

⁸⁰ “The company’s policy is to comply with all applicable health, safety and environmental laws and regulations of the countries in which we operate. Where there are none or those that do exist are inadequate, the company will abide by its own standards.” Courtauld’s – United States Code of conduct.

⁸¹ The codes primarily referred to Convention No. 155, although one IUF-NGO sponsored code mentioned Conventions Nos. 170 and 110, International code of conduct for the production of cut flowers.

3.5.10. Benefits and social security

Sixteen per cent of all codes referred to benefits, and/or social security, with the TCF and food and drink sectors leading the way (21 per cent and 23 per cent, respectively). Of those that did, the wording and content of the provisions varied widely. Representing the most expansive end of the spectrum, several codes referred specifically to social security provisions. For instance, one code developed by a trade union and applicable to the TCF sector, states: “Suppliers shall ensure that workers are included in all appropriate state or private security provisions, especially invalidity benefit, injury benefit, sickness benefit, old-age benefit/pension, maternity benefit and unemployment benefit.”⁸² With regard to benefits, one enterprise-generated TCF code states: “In developing countries, we recommend our suppliers to provide the workers with at least one free meal daily.”⁸³ However, the majority of codes referring to benefits and social security mentioned ‘benefits’ as part of a more general provision dealing with ‘wages and benefits’. At their weakest, these provisions stated simply that all wages and benefits must be provided in accordance with applicable law.

3.5.11. Job security

Only 12 per cent of all codes referred to job security. The sectors in which codes with job security provisions were most likely to be found were the services (23 per cent) and food and drink sector (27 per cent). Among codes applying across sectors, 25 per cent contained provisions on job security. Job security provisions were far more likely to be observed in codes developed with worker involvement. In particular, 56 per cent of codes developed by workers’ trade unions, 44 per cent of NGO codes, 50 per cent of hybrid codes mentioned job security. In contrast, only 5 per cent of codes originating from enterprises included such a provision. Those codes that referred to job security tended to stipulate that efforts should be made to avoid excessive use of short-term contracts,⁸⁴ and less frequently, that employers must not illegitimately rely on apprenticeship models to avoid providing workers with proper work contracts.⁸⁵

3.5.12. Hours

Of the 258 codes reviewed, 25 per cent mentioned hours of work. Reference to hours was most likely to be found in the TCF sector in which 60 per cent of codes contained such provisions. However, several provisions were also found in codes pertaining to other sectors. In particular, hours were mentioned in codes from the commerce sector (31 per cent), the food and drink sector (19 per cent) and the forestry and construction sector (20 per cent). Sectors in which codes with hours provisions were least likely to be found were the financial and professional, and mining industries, in which no such provisions were observed. Codes developed by trade unions, NGOs, or as hybrid codes were twice as likely to make reference to hours of work, than were codes developed by enterprise associations or enterprises alone.

⁸² See the GME Fair Trade Code of Conduct. See also, Oxfam’s Code of Conduct for a similar provision.

⁸³ See the H & M Code of Conduct.

⁸⁴ See, for example, the KappAhl Code of Conduct Labour Conditions and the GMB Fair Trade Code of Conduct, referred to earlier. The latter code also provides that “[a]ll provisions of this code should apply equally to part-time, short-term, and casual workers and to homeworkers”.

⁸⁵ See, for example, Oxfam’s Code of Conduct.

3.5.13. Training

One means of improving productivity of the workforce, as well as of allowing workers to maintain marketable skills, is for the enterprises to commit to continuous training of workers. Such a commitment to training was sometimes included in the codes reviewed. In particular, of the 258 codes, 20 per cent made reference to training. Training provisions were most frequent in codes intended for the mining industry. Indeed, 60 per cent of the mining codes made reference to training. Other codes most likely to contain provisions, were those intended for the forestry and construction (33 per cent) and food and drink sectors (27 per cent). Additionally, 33 per cent of cross-sectoral codes, contained training provisions. While some provisions simply mentioned ongoing training without elaboration as to the rationale, others were explicit about the need for training as a means to enable employees to develop their skills. For example, one code developed by an enterprise in the mining sector, included a commitment to: “Train and develop national employees so they have full access to opportunities for professional advancement and positions at higher levels in the organization.”⁸⁶

3.5.13. Involvement in community goals

For the purpose of the analysis undertaken for this paper, a code was deemed to refer to community only if it mentioned community goals that were social and not merely relating to minimizing the impact of business activities on the environment. Twenty-seven per cent of codes made reference to community involvement, with all sectors and all types of codes represented. Codes developed by trade unions and NGOs were slightly more likely to include reference to community (44 per cent in each case) than were codes developed by enterprise associations (28 per cent), or enterprises alone (27 per cent). The community provisions observed varied widely in content. Many codes created by enterprises simply encouraged employees to be helpful and active members of their communities, without committing the enterprise itself.⁸⁷ Those which mentioned enterprise commitment frequently contained general statements about benefiting communities, without any explanation of what types of activities would be carried out to this end. For example, the code of conduct created by one enterprise in the minerals sector, affirmed the enterprise commitment to “contribute – and not just economically – to local communities so that our presence enhances peoples’ lives in long-lasting, meaningful ways.”⁸⁸ A handful of exceptions to this rule regarding generality were observed. For instance, the ‘Framework for Action’ developed by one coffee retailer described involvement in rural water quality improvement programmes as well as donations to a certain development organization.⁸⁹ However, this type of provision regarding extensive community involvement was rarely observed within the codes examined.

3.5.14. Overall considerations

The above review of the selection of labour issues and sources of reference suggests that labour practices are largely covered by ad hoc negotiations between the various parties interested in drawing up codes. The content of hybrid codes, and differences in emphasis among sectors, reflect the unequal

⁸⁶ See the UNOCAL “Statement of Principles: Code of Conduct for Doing Business Internationally.”

⁸⁷ See, for example, the Allied Domecq Code of Business Conduct which states “Employees are encouraged to be active members of the community and to take up offices helpful to the community”.

⁸⁸ Ibid.

⁸⁹ See, Starbucks Framework for Action (1998-99).

access to information among interested parties, and the compromises arrived at in negotiating such codes. In one example, the Clean Clothes Campaign found itself committed to the narrower Fair Trade Charter for Garments, agreed to among social partners in the Netherlands, when it attempted to promote the broader, more recent Code of Labour Practices for the Apparel Industry. Ultimately, the lack of a firm basis can lead to the selection of only certain labour standards, or even of only portions of a particular international labour standard, and thus jeopardize the traditional collective-bargaining processes. This could also make it difficult, if not impossible, for smaller producers and other enterprise partners to satisfy the demands of code proponents, often key business partners. The cost in attempting to comply, and the damage to credibility if the attempt is unsuccessful, could be detrimental to fair competition and productivity. Consumers and investors, faced with divergent claims and no way to assess or compare the commitments of enterprises, may in turn withdraw support, affecting economies of scale and enterprise development.

3.6. Implementation of codes

Often, codes launched with much publicity are unknown, unavailable or untranslated at production facilities in developing countries and, even where available, workers may have no way of reading the code or reporting non-compliance without disciplinary treatment or dismissal.⁹⁰ A United States study found that few workers were aware of existing codes and that formal training about codes was not common among suppliers overseas. It was, however, more likely to occur where a supplier produced largely for the company with the code.⁹¹ With such discoveries and the advent of environmental accounting, among other developments, the implementation of codes of conduct has become the subject of debate and experiments in the 1990s.⁹² Approaches as divergent as the type of codes, identity of actors, and nature of industries mark the terminology and procedures currently in use.⁹³ Experience suggests that the current lack of standardized principles and procedures hinders good quality in implementation of codes, and prevents the reporting of comparable data to help measure progress in the enterprise and within or across industry sectors. The lack of standardization also contributes to suspicions of third parties about internal monitoring processes and exploitation of labour conditions due to cultural relativity in enterprise practices.

Attempts to set principles and procedures for the implementation of labour-related codes have multiplied as rapidly as the adoption of codes themselves. Principles for code implementation are found within codes, in appendices and guidance documents published for use with specific codes⁹⁴ and

⁹⁰ See, e.g. G. van Liemt, *op. cit.*

⁹¹ United States Department of Labor, *Codes of conduct, op. cit.* Knowledge among host governments of codes applying to suppliers operating in their countries was found to be mixed.

⁹² For the historical development of practices in auditing the social impact of enterprise operations, see S. Zadek, P. Pruzan and R. Evans: *Building corporate accountability: Emerging practices in social and ethical accounting, auditing and reporting* (Earthscan, 1997).

⁹³ For the purposes of this paper, the term “social accounting” refers to internal monitoring, evaluating and reporting of enterprise performance against specific benchmarks; the term “social auditing” refers to external verification of the accuracy or completeness of the internal process; and the term “social inspection” refers to external independent monitoring, evaluating and reporting enterprise performance. “Accreditation” refers to the process of determining the qualification of inspectors or monitors, and “certification” refers to determining compliance of an enterprise with specific standards.

⁹⁴ For example, International Council of Toy Industries, which added three appendices to its 1996 Code of business practices when it revised its system in 1997, including methodology for evaluating compliance, a

in general principles proposed by coalitions which have adopted codes or offered for code users in general.⁹⁵ One attempt specifically aimed at the perceived needs of enterprises in developing countries has recently been piloted.⁹⁶ Common to most of these efforts are emphases on the need for participation of all interested parties, comparability of reporting data, periodic evaluation and revision of methods, transparency including disclosure of reports, and the need for external auditing to verify and validate processes used.

Guidance for procedures to implement codes appears to be set generally by reference to unspecified “best practices” in the industry, or by definitions created or negotiated by the code sponsors. Exceptionally, direct references to the ILO appear which, when used, tend to hold considerable weight in the implementation of a code. The most recent code of the Clean Clothes Campaign, for example, refers to international labour standards and ILO jurisprudence in interpretation of code provisions or disputes as to whether a practice actually violates the code. Other provisions refer generally to ILO expertise in labour standards and labour inspection methods and, as in the case of SA8000, refer code users to ILO field offices for information and assistance. References to national law in implementation of codes are rare.⁹⁷

The analysis undertaken for this paper included an examination of the various types of implementation and monitoring provisions contained in the codes. Generally, the data reinforces the concern that few codes are accompanied by meaningful systems for implementation. It is important to note, however, that as principles for code implementation are sometimes contained within accompanying documentation (which may not always be distributed with the code itself), the numbers of implementation provisions observed may not be representative of the true levels of commitment to implementation and monitoring. Where knowledge of such accompanying documentation existed, efforts were made to obtain it. However, some of this material was inevitably unavailable. Thus, although data is provided on the basis of the available information, caution should be exercised in making generalizations on the basis of this data.

Main provisions addressing implementation and monitoring

Monitoring provision	Code type						
	Total	Ent.	Emp.	Wk.	NGO	MSC	FA

detailed audit checklist, and a corrective action plan; Social Accountability International, Guidance document for SA8000.

⁹⁵ For example, the Canadian Government-issued Twelve Principles for the effective implementation of codes discussed in C. Forcese, No. I, op. cit., note 35: Business for social responsibility, eight principles of quality of the Institute for Social and Ethical Accountability.

⁹⁶ See the Framework for assessing social performance in industry, in Responding to global standards, op. cit., table 2.

⁹⁷ In the implementation of its “Vendor and subcontractor code”, the British Toy and Hobby Association has taken a position against carrying out on-site inspections in other countries which it views as essentially the task of governments.

Internationalization	General statement	25	18	7	0	0	0	0
	Posting/distribution	24	9	0	1	4	3	7
	Translation	9	2	0	0	3	2	2
	Contact person/No.	26	26	0	0	0	0	0
	Promotional activities	13	6	2	1	0	0	4
	Education and training	22	13	2	0	5	1	1
	Responsible party	42	35	4	0	1	1	1
	Signature required	38	30	4	0	0	0	4
Monitoring	General statement	43	25	6	3	1	2	6
	Internal	44	29	5	1	5	1	3
	External	35	12	3	1	9	3	7
	Provision of documentation	9	5	0	0	1	1	2
	Worker involvement	19	1	0	1	5	5	7
Remedial process	Reporting requirement	18	8	4	1	2	2	1
	Complaints procedure	33	31	0	0	0	2	0
	Corrective action	31	19	0	1	4	2	5
	Penalties	41	35	1	0	3	0	2

Note: Ent.–Enterprises; Emp.–Employers’ organizations; Wk–Workers’ organizations; NGO–Non-governmental organizations

MSC–Multi-stakeholders; FA–Framework agreements

3.7. Internal systems for implementation and monitoring

In practice, implementation of codes involves, in the first instance, *internal management systems*. Without such a system to ensure that the structure and resources are in place to implement the code, codes of conduct are unlikely to be a meaningful tool for maintaining or improving labour conditions. Although mention of compliance and enforcement procedures is common, “very few ... codes emphasize or discuss in detail internal oversight and personal integrity.”⁹⁸ Evidence suggests that companies with well-functioning quality assurance management systems (including compliance with the ISO 9000 series) also tend to have effective systems of implementation for labour-related codes provisions. Other standard systems of relevance may include financial accounting, environmental accounting and health, safety and environment management;⁹⁹ ILO-recommended occupational health and safety management systems¹⁰⁰ and environmental management standards of the ISO 14000 series. These various management systems have basic steps in common, including setting a clear and detailed enterprise policy, allocating managerial resources for effective dissemination of the policy (including translation), developing and implementing tools for monitoring, reporting and taking corrective action,

⁹⁸ M. Lefebvre and J. Singh: “The content and focus of Canadian corporate codes of ethics” in *Journal of Business Ethics* (1992), Vol. 11, p. 807 (almost 70 per cent of Canadian codes in study exhibited this tendency).

⁹⁹ For example, chemical industry codes of practice and Responsible Care, Coatings Care and Responsible Distribution.

¹⁰⁰ See, e.g. *Successful health and safety management* (ILO Health and Safety Series booklet, 1997).

including training programmes. However, many enterprises lack these elements which are essential to effective code implementation. Further, reports suggest that code implementation systems often lack sufficient human resources, adequate participation by workers and transparency in application.¹⁰¹ The data obtained from the codes examined addressed some of these issues.

As indicated above, some enterprises have been criticized for not taking measures to ensure that workers have knowledge of codes and can safely report incidences of non-compliance without fear of repercussions. Of the 258 codes examined, only 20 codes (8 per cent) included some statement regarding commitment to communicating the code. Even without such a general statement, however, several codes went on to provide for concrete means of communication. Ten per cent specified that the code would be either distributed to all employees or posted in a visible place. Four per cent provided for translation of the code into local languages. Ten per cent of codes provided the name and/or telephone number of a person who could be contacted with questions or concerns. One common means of addressing employee concerns and questions was to provide a toll-free 'hotline' telephone number, which could be called with assurances of anonymity. Finally, one observed means of attempting to ensure adequate communication of the code was to require that all employees sign and return a portion of the code. In the case of codes applying to the supply chain, some codes required a signature from the supplier, indicating that it was familiar with the code and was undertaking to comply with its provisions. Such a signature requirement appeared in 15 per cent of codes.

3.7.1. Implementation and monitoring

As indicated above, an important feature of any system of code implementation is the allocation of sufficient resources and personnel. However, of the 258 codes examined, only 15 per cent made reference to a specific person or department responsible for overseeing implementation of the code. Regarding monitoring, 17 per cent made general reference to the need to implement and/or monitor the code, without proposing concrete steps to achieve this result. Another 17 per cent specified that provision would be made for some type of internal monitoring. The level of detail characterizing these provisions varied widely. While some codes provided for detailed means of implementing the code, monitoring compliance and providing for remedial processes in the case of non-compliance, others suggested more generally that a party internal to the enterprise would engage in regular monitoring, without providing greater detail regarding procedural means. As will be seen below, 12 per cent also made provision for some type of external monitoring.

3.7.2. Remedial processes

In addition to regular monitoring, some codes provided for remedial processes to be used in the case of non-compliance with the code. To this end, 13 per cent provided some channel through which workers could report violations. In some of these, the provision indicated that such reporting was a duty required of employees as part of their loyalty to the company. Some, however, took pains to indicate that reporting violations was a useful part of their monitoring procedures, and reinforced that the reporting employee's identity would remain confidential. A total of 16 per cent indicated that there would be penalties upon a finding of non-compliance. In the overwhelming number of these cases, the penalty was potential termination of employment, in the case of employee violation, or termination of the contract, in the case of violation by a supplier. However, 12 per cent indicated that some type of

¹⁰¹ One emerging trend among multinational enterprises seeks to allocate responsibility within enterprise for social management through the establishment of a focal point as both a public signal and management mechanism.

corrective action would first be considered, with some going so far as to reinforce that the process was not meant to be adversarial.

3.8. External systems for implementation and monitoring

External monitoring or inspection may refer to various types of third-party assessment. Some of this monitoring is conducted with information and methods controlled by the enterprise under study. Of the codes examined, 6 per cent indicated that the enterprise would be required to provide documentation that would either serve as the basis for or supplement external monitoring. External monitoring operating without such constraints is considered independent of enterprise control. The assessment of independence depends on the circumstances as well as the actors involved. In an attempt to provide more meaningful evaluations, some codes provide for worker involvement in monitoring procedures. However, of the codes examined for this paper, only 5 per cent indicated that workers would be involved in monitoring. Of these, only one code was developed by an enterprise,¹⁰² while 13 were developed by trade unions, NGOs, or as framework agreements.

Another approach to external monitoring involves the use of industry associations and employers' organizations as third-party monitors. Still another approach, that of retaining a professional inspection or auditing firm, is becoming more common as such firms adopt social portfolios to enhance other services offered. The firm retained commonly already provides the company with other inspection or auditing services. Some evidence indicates that traditional financial accounting firms may not be entirely independent due to inexperience in the detection of workplace violations and pre-existing contractual relationships with enterprise management. In another approach to external monitoring, enterprises are entering into agreements with NGO-led coalitions to monitor and produce reports.¹⁰³ The financing of such initiatives is unclear and trade unions are noticeably absent from many of these arrangements. Another development, too recent to judge, has trade unions and enterprises setting up joint structures for monitoring and even certification.¹⁰⁴ In a further approach to external monitoring, industry or employers' organizations sponsor an accreditation structure to be used by member enterprises at lower cost and potentially greater visibility due to the common membership front.¹⁰⁵ Third-party models with NGOs and trade unions pursue accreditation systems with certification fees.¹⁰⁶

Given the variable approaches to external monitoring and the obstacles present in determining whether a monitoring body is "independent", any statistic regarding internal versus external monitoring will necessarily be based on certain assumptions. For the purpose of analysing the codes available, a monitoring system was deemed to be "external" when it was carried out by any party other than an enterprise employee or agent. However, in the case of codes applying to suppliers, where monitoring was carried out by the purchasing company, this was deemed to be "internal" monitoring. Despite this expansive definition, of the 258 codes examined, only 12 per cent provided for external

¹⁰² See the "Code of Conduct Labour Conditions" developed by the company KappAhl.

¹⁰³ Companies which have produced monitoring reports in cooperation with NGOs include Levi Strauss, Reebok and Liz Claiborne.

¹⁰⁴ For example, PSI International Water Industry Council under the PSI Water Code; Australian Homeworkers Code Councils under the Homeworkers Code of Practice which operates in the domestic TCF sector in Australia.

¹⁰⁵ For example see AAMA, WRAP Program.

¹⁰⁶ For example see Social Accountability International, SA8000 system.

monitoring. External monitoring provisions were more likely to appear in codes developed by NGOs (50 per cent) or as multi-stakeholder codes (50 per cent) or framework agreements (35 per cent), than those created by enterprises (70 per cent), enterprise associations (10 per cent) or trade unions (11 per cent).

The two processes, internal and external, can be considered mutually complementary. Internal monitoring appears to be a necessary aspect of rooting a code in enterprise culture; external monitoring and inspection provides a useful litmus test of that culture. For both, a key question involves standardization of criteria and procedures to be used to assess the situation in the workplace under the code standards. A variety of audit checklists, vendor questionnaires and worksheets have been published by code sponsors to suggest quantitative and qualitative means of measuring a diverse range of issues, from adequate ventilation and sexual harassment to determination of a worker's age, or freedom to assemble and associate with other workers.¹⁰⁷ In addition, a lack of sufficient safeguards governing procedures for collection of information marks a number of initiatives in both internal and external monitoring; this insufficiency merely aggravates what are in many cases the already questionable indicators of measurement.

The content of labour provisions in codes naturally affects the type of criteria, and even procedures, used for internal monitoring or external inspection. Recognizing this, some independent inspection companies have approached the ILO, requesting its assistance in using international labour standards to establish basic criteria for inspection, and seeking its views on codes of conduct regarding inspection. More such requests are likely to be forthcoming as experimentation in social accounting and inspection will make it necessary to address "the fragmentation of standards and metrics in this field [in order] to obtain company capacity to manage and to report to stakeholders."¹⁰⁸ An increasing number of observers predict the trend towards external monitoring and reporting will become established practice in the future.

¹⁰⁷ See, e.g. Sullivan Principles: "Statement of principles questionnaire", and International Council of Toy Industries Appendices I and II to Code (Audit checklist and methodology for evaluating compliance). One study reported that, among companies reviewed, only 27 per cent had a standard list of questions for auditing purposes and only 24 per cent conducted training programmes to familiarize their workers with the auditing guidelines. CEP SCREEN, op. cit.

¹⁰⁸ Elkington: Profits and principles (Shell Oil, 1998), Head of Sustainability NGO joining with Shell in applied research project.

4. Social labelling

The term “social labelling” has come to connote a means of communicating information, through a physical label,¹⁰⁹ about the social conditions surrounding the production of a product or rendering of a service.¹¹⁰ Social labels may be affixed to products or their packaging or displayed on shelving or shop windows at the retail site. Some labels are assigned to enterprises, usually producers or manufacturers. They are aimed at consumers and/or potential business partners. Social labelling programmes are considered to be voluntary responses to market incentives (including the demands of business partners) rather than to public law or regulation.

This chapter reviews social labelling programmes which address specific labour practices, including their origins, structure and operation, potential impact, and relationship to issues within the ILO mandate.¹¹¹ General trends are described below.¹¹² A company’s or programme’s inclusion in this section does not constitute endorsement by the ILO of any product, service, company or programme.

4.1. Origins and main characteristics

Developments in civil society, including campaigns and public demands, create the perceived market for social labels and represent a key influence in the development of social labelling programmes. Labels which operate independently of any one enterprise (independent labels) have been developed and administered by NGOs, trade unions (union labels), industry and other enterprise associations, or multi-stakeholder partnerships. Single enterprises engaged in production, export or retail sales,¹¹³ or enterprise/government partnerships, have developed independent social labels. Social labelling programmes run by NGOs or multi-stakeholder partnerships tend to be dominated by organizations in developed countries, particularly in the initial phases. Those led by enterprise associations or public-private partnerships have included coalitions in developing countries, such as Abrinq in Brazil and Kaleen in India.

¹⁰⁹ The labels show symbols such as logos, trade marks and, in some cases, text, which seek to differentiate the product or enterprise. If the label has no text, the meaning of the label usually must be acquired elsewhere.

¹¹⁰ Social conditions refer to the impact of the processes of production or service on people involved, including workers, local communities, suppliers or subcontractors.

¹¹¹ Where relevant, this chapter refers to the experience of union labels (which have existed in various forms since the early 1900s), labels with claims relating to animal testing, and environmental labels, which have evolved in the last 20 years. For more information on environmental labelling, see A. Appleton: *Environmental labelling programmes: International trade law implications* (Kluwer, 1998) and E. Staffin, “Trade barrier or trade boon? A critical evaluation of environmental labelling and its role in the ‘greening’ of world trade”, in *Columbia Journal of Environmental Law*, Vol. 21, p. 205 (1996).

¹¹² Data on many relevant details were unavailable for all programmes reviewed such as copyright protection of the label at national or international levels, and penalties for non-compliance.

¹¹³ See discussion of other individual company labels, in United States Department of Labour: *By the sweat and toil of children*, op. cit., pp. 109-114 (e.g. Dunkin Donuts, K&Mart, Spalding Sports Worldwide, American Challenge, American Soccer Company).

Complex market relationships exist among social labels, codes of conduct, company names, licensing agreements and other private voluntary initiatives. In some cases, small and medium-sized enterprises, or enterprises in industries with little brand loyalty, have shared the costs and higher visibility of a common independent social label, usually administered by an enterprise association or hybrid partnership on the basis of a commonly accepted code of conduct. In such situations, the label may be affixed to the product as, for example, with Rugmark, or may consist of a trade name used by certified companies, as, for example, Responsible Care. On the other hand, an enterprise which has a good reputation established on the basis of a well-known code of conduct may find that its company name acquires, over time, the status of a brand name label (e.g. Gap).¹¹⁴ In some cases, retailers or private label manufacturers license the use of their logos or trade names to contractors which meet preset standards, often found in the code of conduct developed by the retailer or manufacturer. In such cases, the logo or trade name operates as a means of reporting code compliance to buyers and vendors along the production chain as well as to the general public and consumers. Recent licensing examples include procurement policies of US-based Duke University and Notre Dame University,¹¹⁵ FIFA soccer balls used in the World Cup and athletic equipment procured for the Sydney Olympics. Some programmes which start as multi-stakeholder subscription codes may eventually adopt a certification label such as SA8000.¹¹⁶ It is also clear that it is somewhat difficult to separate codes and social labels due to the fact that all social labels use some sort of code as the basis for the standards it certifies are being observed.

Social labels influence labour practices in a selective manner. Rooted in concerns of consumers, media and civil society campaigns, many social labelling programmes target consumers in developed countries and producers in developing countries. The programmes appear primarily in export markets involving retail trade,¹¹⁷ and market “niche” products, affluent consumers and eye-catching circumstances. Products vary in adaptability to social labelling depending on the price sensitivity of the sector, the role of brand recognition, and concern of consumers for social issues in the supply chain involved. Some labels apply only to highly specific sectors such as hand-knotted rugs, soccer balls or cut flowers. More general labels cover various products in the clothing industry or selected agricultural products. Labels may be more likely to develop with products bought and consumed

¹¹⁴ An enterprise with a “brand label” is not likely to see the utility of an independent social label shared by other enterprises. “Our best social label is our brand label” reported Alan Christie of Levi-Strauss to the EU-US Symposium on Labour Standards in Brussels in February 1998. Where brands are trusted, use of a label may undermine consumer confidence or require changes in established business practices. However, independent and brand labels may appear on the same product, as with the fair-trade labelled products sold under the brand names Cafédirect and Max Havelaar.

¹¹⁵ In both cases, the codes of conduct which apply to licensees that manufacture products bearing University trademarks include measures for the rehabilitation of child workers independent monitoring of factories and the publication of results of factory monitoring, as well as the option to terminate contracts where such conditions are not met.

¹¹⁶ SAI: “Conditions for use of the SAI’s SA8000 Accreditation Mark and Accredited Certification Body’s Certification Mark”. While the SA8000 standard would meet the definition of a label, it has not been included in the analysis of labels since this analysis was undertaken before researchers were able to obtain a copy of the “Conditions for use of the SAI’s SA8000 Accreditation Mark and Accredited Certification Body’s Certification Mark”.

¹¹⁷ Notable exceptions include Abrinq Foundation programmes for domestic market sectors in Brazil, and the Australian Homeworkers Code of Practice in that country’s mixed textile sector, and union labels in the United States.

publicly or associated with social identity (such as clothing, footwear, food and luxury goods) or discrete production processes (such as tea).¹¹⁸

In general, social labelling programmes do not operate on a self-sustaining basis. Costs normally include start-up and administration expenses, such as the physical production of the label, establishment of the verification structure, and consumer outreach and promotional publicity. Once in operation, a small percentage of profits may be channelled back into local improvements in the workplace, the region of production or, in the case of some child labour-oriented programmes, educational and rehabilitation programmes for former child workers. In many cases, programmes are subsidized by licensing fees imposed on users of the label (producers or distributors). In addition, programme costs may be borne by fees assessed based on such factors as value of labelled products exported or earnings gained from their export. Importers may also pay levies on labelled products. In such cases, the cost may be passed on to the consumer or, particularly with programmes run by individual enterprises such as Reebok, absorbed in some other internal way. Some programmes, such as the fair-trade labelling programmes, are specifically designed for consumers to pay a premium (mark-up) that ultimately shifts to the consumer some of the extra costs of labelling. Grants and in-kind contributions by way of monitoring or other resources often help to finance new programmes. These contributions come from governments of both exporting and importing countries, and from NGOs, intergovernmental organizations and, in a possible new trend, workers and employers themselves.¹¹⁹

4.2. Structure and operation

4.2.1. Content

As with codes of conduct, social labels may be single issue (child labour, freedom of association) or multiple issue, including labour issues,¹²⁰ community development and relations, and other issues such as fair trade or forest conservation. The issue most frequently targeted among the programmes reviewed was *child labour*. Community and social benefits were the second most frequent issues addressed.¹²¹

The issues covered by social labelling programmes depend on the sector of activity addressed by the label. All labels reviewed in the TCF sector addressed child labour. Wages and fair price issues were the focus of agricultural labels, while community and social benefits were common provisions in forestry labelling programmes. Some of the issues most frequently covered in the general review of codes of conduct discussed in the previous chapter, such as health and safety, appeared less often in

¹¹⁸ S. Zadek et al., *Social labels: Civil action through the market* (New Economics Foundation for the European Commission, 1998).

¹¹⁹ For more information, see “Sources of financing” columns in the appendix.

¹²⁰ Notably, STEP, a joint initiative in social labelling established by an industry group with five NGOs in Switzerland, covers nearly all fundamental labour issues as well as wage levels and occupational health and safety. See appendix.

¹²¹ Which includes founding of social programmes in the field of health care, gender promotion, education, not only for the children or the workers but for their families and the local people (forest-dependent people for example). The Care&Fair foundation builds health-care centres and hospital for the families working in carpet manufacturing (www.care-fair.com), development and health (www.step-foundation.ch), and other services (<http://fscoax.org/html/1-2.htm>).

social labelling programmes.¹²² Like codes, roughly one-third of the labelling programmes included some reference to international labour standards.

Some labelling programmes originally aimed at non-labour issues have added labour issues to their agendas as trade unions become more involved in the programmes. This is the case with the Forest Stewardship Council (FSC), which began as an effort to address technical aspects of forest management, but has added principles on freedom of association and occupational health and safety; at the national level, its affiliates, with trade union participation, adopt more specific labour criteria to fit local issues. In contrast, the labour issues addressed by the Flower Label Programme, developed by the German BGI (Flowers Wholesales and Importers) to ensure environmentally and socially correct production of imported flowers, were influenced at the start by trade union involvement. The participation of trade unions in the implementation of labelling programmes may include an opportunity to provide information to monitors (Abrinq), comment on certifiers' report (FSC), or representation as observers (Fairtrade Labelling Organization – FLO).

The concern for labour issues within social labels can develop in at least two ways. Either from the very beginning of the label, as with those in the TCF sector where the improvement of working conditions and the elimination of child labour were issues at the heart of the very creation of social labels or as a result of convergence towards labour standards, for example the FSC process. Initiated mainly under the pressure, social and labour issues were not a priority in the beginning. Adoption of the concept of the sustainable forest management, which includes economic, environmental and social concerns,¹²³ raised renewed interests on the share of forest benefits with communities and workers. Criteria on these social aspects were therefore included in the forestry labelling programmes.

4.3. Approach

4.3.1. Approach to standards

The process and the approach followed by the labelling programmes to establish social criteria they consider relevant differ depending on the programmes. As a result, these social criteria vary in level of specificity. For example, Rugmark and Kaleen labels guarantee that carpets bearing their labels have not been produced with child labour. In contrast STEP and Care&Fair, which are retailer labels, seek to promote progressive elimination of abusive child labour, but do not signify 100 per cent guaranteed made without child labour.¹²⁴

Labelling programmes in the agriculture sector¹²⁵ are normally based on the fair-trade concept,¹²⁶ which is not the case in other sectors. The criteria to obtain the label are not necessarily direct

¹²² See Appendix 2.

¹²³ Concept presented during the United Nations Conference on Environment and Development (UNCED) held in Rio in 1992, and especially in “The Non-Legally Binding Authoritative Statement of Principles for Global Consensus on the Management, Conservation and Sustainable Development of all Type of Forests”.

¹²⁴ Because STEP and Care&Fair do not believe such a guarantee can reasonably be given for the carpet production which takes place in small, often remote villages dispersed over a large geographic area, at least in India.

¹²⁵ The main labelling programmes in the agriculture sector are: Max Havelaar (Belgium, Denmark, France, Netherlands, Norway, Switzerland); Fairtrade (Great Britain, Ireland); TransFair (Austria, Canada, Germany, Italy, Luxembourg, USA); Rättvisemärkt (Sweden), and Reilun Kaupan Edistämisyhdistys (Finland). All those

requirements, for example working conditions criteria are always direct requirements to obtain the fair-trade labels because it applies to producers that are not structurally dependent on hired labour, managing their farm mainly with their own and their family's labour force.¹²⁷ However, the Fairtrade Labelling Organization (FLO), which labels seven different products,¹²⁸ began to collaborate to a limited extent with trade unions as they expand the products they label, for example from smallholder to plantation especially for tea, orange juice and bananas¹²⁹ and, on the distribution side, from alternative trade shops to mainstream retailers.¹³⁰ As a result, the FLO criteria can differ from one product to another, or even for the same product, depending on the structure of the producer organizations. For cooperatives of disadvantaged farmers, working conditions criteria are not requirements but objectives, whereas for the organizations structurally dependent on hired labour, those criteria are strict requirements.

Forestry sector labels are often accompanied by principles and indicators to define clearly the standards and facilitate their assessment. The Tropendos Foundation has done a comprehensive study on the hierarchical framework¹³¹ for the formulation of sustainable forest management standards in which principles, criteria and indicators are defined.¹³² However, in the forest labelling programmes themselves, definitions of principles, criteria and indicators are formulated in a general way. They often provide insufficient information to understand fully their meaning in the context of sustainable

labelling programmes are members of Fairtrade Labelling Organizations International (FLO) and they follow the same social criteria. This is the reason why only FLO is presented here (www.fairtrade.net).

¹²⁶ Fairtrade is supposed to provide an alternative economic and trade model by guaranteeing a direct trade relationship to the disadvantaged small-scale producers, a minimum price for their production that covers the cost of production and a premium for development purposes, a financial advance if necessary and long-term trade relationships.

¹²⁷ However, according to the Fairtrade criteria, these producer organizations have to be independent and democratically controlled by their members.

¹²⁸ Coffee, tea, cocoa, honey, sugar, orange juice and bananas.

¹²⁹ See the FLO website concerning these products, www.fairtrade.net/tea.html, www.fairtrade.net/orange_juice.html, www.fairtrade.net/banana.html

¹³⁰ Trade unions associated with tea and banana plantations or in the distribution, packaging or retail sides see fair-trade labelling as a way to strengthen the position of workers in the agricultural sector.

¹³¹ A hierarchical framework describes hierarchical levels of parameters (principles, criteria and indicators) to facilitate the formulation of a set of parameters in a consistent and coherent way. It describes the function of each level as well as the common characteristics of the parameters appearing on a particular level.

¹³² According to this study: "A principle is a fundamental law or rule, serving as a basis for reasoning and action. Principles have the character of an objective or attitude concerning the function of the forest ecosystem or concerning a relevant aspect of the social system that interacts with the ecosystem. Principles are explicit elements of a goal, e.g. sustainable forest management or well-managed forest." "A criterion is a state or aspect of the dynamic process of the forest ecosystem, or a state of the interacting social system, which should be in place as a result of adherence to a principle. The way criteria are formulated should give rise to a verdict on the degree of compliance in an actual situation." "An indicator is a quantitative or qualitative parameter which can be assessed in relation to a criterion. It describes in an objectively verifiable and unambiguous way features of the ecosystem or the related social system, or it describes elements of prevailing policy and management conditions and human driven processes indicative of the state of the eco-and social system See, Erik M. Lammerts van Bueren, Esther M. Blom, Hierarchical Framework for the Formulation of Sustainable Forest Management Standards, 1997, Tropendos Foundation.

forest management and they tend not to give enough guidance for a proper formulation of these parameters. As a consequence the requirements of sustainable forest management as imposed by one standard are difficult to compare with the requirements of another standard. Inconsistency and a lack of coherence may result in insufficient coverage of various aspects of sustainable management, possible overlap and redundancy of parameters and inadequate transparency. As a result a sense of confusion can be observed in the practical application of principles, criteria and indicators and in the international debate on this issue. This last point is also true for the labelling programmes in other sectors of activity.

4.3.2. Applicability

The review of social labelling programmes found that the obligations of the label apply to different trade actors depending on the label. In all cases, producers have to respect some of the label's criteria. For example, the non-use of child labour, respect for the democratic decision-making system of the fair-trade system, and the implementation of sustainable forest management practices. However, obligations are also extended to importers, exporters or retailers involved in the labelling process. This can involve the payment of fees to fund monitoring systems or social programmes. For example, in the fair-trade system, importers have to pay a "fair price" to producers for their products, a premium for development projects and a financial advance if necessary. The requirements in some social labelling programmes which involve producers, importers, exporters or retailers appear to be a mechanism to expand responsibility for improving working conditions beyond merely producers in developing countries and place responsibilities on retailers, importers and exporters for improving these conditions indirectly.

4.3.3. Licensing

Licensing is the process of registering the producers who commit to respect the label's criteria, and establishing a list of these producers. This registration is done in several ways. It can be done directly after inspection of producers, by local labelling organization representatives (Rugmark and Step) or through the licensing of the exporters (Kaleen) or importers and retailers (Care&Fair) who commit themselves to enforce the criteria on the production sites of their suppliers. In this case, the licensing process and the attribution of the label is based on good faith and the code of conduct containing the criteria to respect has to be included in all purchasing contracts with suppliers. Then, the trade actors have to provide the labelling programmes with complete and updated lists of their suppliers. Licensing is also done through certifications as in the forestry sector. These certifications involve a private auditing company accredited by the labelling organization¹³³ which certify enterprise performance against a standard, in effect granting them the licence to utilize the organization label.

4.3.4. Monitoring

Of the labelling programmes reviewed, several different monitoring structures were evident. One label utilized a self-monitoring system where the carpet importers or retailers simply signed up to a code of conduct and agreed to make the code an obligation in contracts with producers and exporters. Other labelling programmes combined self-monitoring systems with inspections from the labelling

¹³³ See for example the following organizations: the Forest Stewardship Council (FSC) label (<http://fscoax.org>) the Pan-European Forestry Certification (www.pefc.org), the Lembaga Ekolable Indonesia initiatives (www.lei.or.id/htme) and the Finnish Forest Certification System (www.smy.fi/certification).

organization (Kaleen).¹³⁴ Some labelling programmes include regular ongoing inspections and unannounced inspections (Rugmark, FLO, FSC). The STEP system utilizes many of these approaches in different countries: a private agency in India conducts monitoring, in Nepal internal monitoring occurs and is led by a STEP representative. In Egypt, Iran, Morocco and Turkey, the only control is performed by importers themselves in the selection of their suppliers.

4.3.5. Impact

Research and understanding of the effects of social labelling is visibly impeded by the lack of standardized principles and criteria from which to report data and compare programmes. General studies on social labelling are limited in number, scope and methodology, due in part to limited years of experience with social labels.¹³⁵ In contrast, research on the effects of eco-labelling, in operation for more than 20 years, spans private and public organizations.¹³⁶ Despite the head start, environmental labelling research has been criticized as “anecdotal”.¹³⁷ Without assessing their exact relevance to social labelling, selected experiences of eco-labelling which may shed light on future analysis of social labelling programmes are included in this section.

Experience to date suggests that social labelling programmes bring direct and indirect effects, both helpful and adverse.¹³⁸ On the helpful side, labelling programmes may improve working conditions and raise funds for educational and rehabilitation programmes for former child workers. They may also build consensus among industry groups, NGOs, international organizations and governments about labour practices to be addressed. Responses may take the form of more

¹³⁴ Ten per cent of a producer's looms are inspected by the Academy of Management Studies (AMS) in the Kaleen Labelling Programme.

¹³⁵ See J. Hilowitz: Labelling child labour products: A preliminary study (ILO, Geneva, 1997); D. Haas: Mit Sozialklauseln gegen Kinderarbeit? Das Beispiel der indischen Teppichproduktion (Berliner Studien zur Internationalen Politik; 4; 1998); S. Zadek et al.: Social labels: Civil action through the market (New Economics Foundation for the European Commission, forthcoming, 1998) (literature review, survey questionnaire, dialogue-based research); United States Department of Labour: By the sweat and toil of children, Vol. IV: Consumer labels and child labour (1997) (non-random survey research, site visits to eight countries, public hearings and hundreds of contacts); Open trading (New Economics Foundation and Catholic Institute for International Relations (1997); M.A. Dickson: Socially responsible consumer behaviour in the apparel marketing system: Preliminary findings from a survey (Ohio State University, Dept. of Consumer and Textile Sciences, 1996); Garment workers study (Marymount University, Center for Ethical Concerns, 1996).

¹³⁶ In the intergovernmental organization sphere alone, research and programmes on the effects of eco-labels on trade, and guidelines on eco-labelling systems, have been addressed by Codex Alimentarius Commission (labelling organically produced foods), International Trade Centre (eco-labelling implications for developing countries' production of textiles and clothing), the OECD, UNCTAD and UNEP (UNEP Expert Group Meetings on Eco-labelling and Environmental Standards with call for international disciplines to govern eco-labelling to ensure no unnecessary obstacles to international trade), UNIDO (development of technical cooperation programmes to provide assistance to developing countries in standardization and necessary adjustments to meet internationally agreed requirements; surveys of eco-labelling effect on market access of developing countries, and views on solutions possible through harmonization of standards). See World Trade Organization, Committee on Trade and Environment: Eco-labelling: Overview of current work in various international fora, Note by the secretariat, doc. WT/CTE/W/45 (1997).

¹³⁷ A. Appleton: Environmental labelling programmes.

¹³⁸ To date, empirical data are insufficient to determine the effects of labelling programmes. The effects discussed in this paragraph are drawn from largely anecdotal evidence discussed in the studies cited earlier.

conscientious compliance or enforcement of labour laws or enterprise adoption of codes of conduct to forestall use of the label. Social labelling programmes may also bring adverse effects, including financial difficulty among participating enterprises and consequent loss of jobs. Higher prices of labelled products may result in lower penetration of the market. Some child labour labelling programmes have been criticized for driving child workers into less formal sectors where the elimination of exploitation is more difficult. Legal risks also exist, including issues of inconsistency with national anti-competition or truth in advertising laws and international trade law.

Debate on how to determine the effects of social labelling has just begun. Some elements for analysis include market share of the label, consumer recognition, percentage take-up of participating companies, number of beneficiaries involved and magnitude of change involved in beneficiaries' income and consumer spending.¹³⁹ Others attempt to capture patterns relevant to actual shifts in the mainstream, non-participating market or in public policy. The latter approach is reflected in the proposition that, once labelled products reach 10 per cent or more of market share, the reflected attitude of consumer groups becomes important to major producers and retailers, which then react with alternative initiatives such as codes of conduct. Economic theory, unsupported by empirical data, has been used to propose, in the eco-labelling context, that negative effects could arise when successful labelling schemes drive down the price of unlabelled goods resulting in increased demand for those goods.¹⁴⁰ Opponents argue that the increased sale of labelled goods would result in increased economies of scale in production and consequently lower prices, which could be expected to result in turn in diminished sales, reduced economies of scale and higher prices for unlabelled products,¹⁴¹ and that awareness-raising may result itself in increased demand for labelled goods.

4.3.6. Final considerations

What appears evident is that the market alone, without a coherent international framework, has been ineffective to date in developing uniform and generally accepted standards that could help promote benefits and prevent the risks of labelling efforts. In the context of eco-labelling, the International Organization for Standardization (ISO), discussed earlier, is developing standards for eco-labelling criteria, symbols and verification processes.¹⁴² This effort, promoted by UNCED's Agenda 21, seeks to arrive at guidelines for standardizing labour criteria, label development and verification systems. Proponents of such standards argue that they could help prevent confusion among consumers arising from the conflicting diversity of criteria used, lack of clarity of meaning among various labels, risk of lost credibility with unverifiable claims, and possibility of illegality under national or international regulation.

¹³⁹ Zadek et al., above, figure 6, at 31.

¹⁴⁰ A. Mattoo and H. Singh: "Eco-labelling: Policy considerations", in *KYKLOS*, Vol. 47 (1994).

¹⁴¹ A. Appleton, footnote 111 above.

¹⁴² ISO Technical Committee 207 on Environmental Management classifies three categories of eco-labels depending on programme participants and design. The Organization is developing five standards: ISO 14020-14024 on basic principles (ISO 14020); self-declaration claims (14021-14023 covering terms and definitions, labelling symbols, and testing and verification methodologies); and 14024 on principles and procedures for certain third-party labelling systems (Type 1). ISO 14040-14043 address principles and guidelines for assessing environmental impact throughout the whole of a product's life from raw materials acquisition to production, use and disposal.

Social labelling programmes share some of the potential benefits and drawbacks applicable to codes of conduct generally. On the positive side, labelling programmes appear to stimulate social concern among enterprise and consumers and provide a market-based financial (rather than regulatory) incentive to improve labour conditions. However, this benefit applies selectively, both to the labour issues involved in the criteria and to the specific sectors of enterprise concerned. On the negative side, labelling programmes tend to lack transparency and methods for independent verification of the claims behind the labels,¹⁴³ promote outside intervention in national standard setting, and discriminate against producers in developing countries who face undue costs or other constraints in the process of certification of conformity assessment.

As with other private initiatives, social labelling programmes may prove more effective and more equitable when combined with other programmes to form a comprehensive, transparent and reliable social policy. In addition, international trade rules, and in particular the code of Good Practice of the Technical Barriers to Trade (TBT) Agreement of the World Trade Organization, offer guidelines on how voluntary standards can be developed and implemented in ways that prevent unjustifiable non-tariff barriers.¹⁴⁴ The code, discussed earlier, encourages transparency and cooperation in the development of standards at local, central and regional levels and, in the long run, equivalence, mutual recognition and harmonization of public or private standards on “as wide a basis as possible” by reference to international standards. ILO standards, such as those on working conditions and environment, occupational safety and health, equality of treatment between men and women, non-discrimination, rights of tribal and indigenous peoples and employment appear relevant to the interpretation of the TBT Agreement and its annexes.¹⁴⁵

5. Investor initiatives

Investor initiatives concerning labour practices are part of the socially responsible investment movement. Although there is no single accepted definition of socially responsible investment, the term generally indicates investment-related decisions that seek social change while maintaining economic returns. The desired targets of social change, however, vary considerably and appear to be based on highly subjective judgements.

This section reviews two socially responsible investment approaches: the screening of investment funds and shareholder initiatives. Investment fund screening concerns the inclusion (investment) in or exclusion (divestment) of publicly traded corporate securities from investment portfolios based on the social performance of the company.¹⁴⁶ Shareholder initiatives involve the exercise of rights based on

¹⁴³ As the executive of a leading enterprise engaged in social labelling remarked in a research interview for this paper, “Most of these [child labour-free] claims are disingenuous ... I hope somebody, whether it’s the ILO or somebody, holds people’s feet to the fire ...”.

¹⁴⁴ Whether voluntary social labelling schemes constitute “standards” covered by the Code of Good Practice is beyond the scope of this paper. The Code of Good Practice has not been determined to apply to product labelling that references processes and production methods which do not have an impact on the final product (“unincorporated PPMs”).

¹⁴⁵ See, for example, Annex I to the TBT Agreement, article 4 (international body or system is considered to be a “body whose membership is open to the relevant bodies of at least all members”) and ISO/IEC, Directory of International Standardizing Bodies, Seventh Ed., 1995 (listing ILO and the specified standards).

¹⁴⁶ “Community investing”, in which investment programmes select community-based financial institutions to support community development initiatives, is beyond the scope of this paper. See Social Investment Forum: 1997 Report on Responsible Investing Trends in the United States, 1997, Section I.

an established share ownership as a means of influencing company behaviour. Formal shareholder action includes submitting and voting shareholder resolutions¹⁴⁷ and asking questions at company annual meetings. Informal action involves attempts to reach agreements with management through dialogue and negotiation. A growing “spirit of compromise” has been observed recently, together with a desire to avoid embarrassing publicity and the high costs of management time in dealing with resolutions.¹⁴⁸ The two approaches differ in timing and orientation. Fund screening occurs at the time of purchase or sale of company stocks and may involve withdrawal of money from a company deemed socially irresponsible. In contrast, shareholder initiatives occur after purchase and seek to influence corporate policy decisions by maintaining a relationship rather than pursuing a “boycott” approach.

5.1. Screening of investment funds

Available evidence suggests that socially responsible investment is growing but its impact on labour practices remains inconclusive. After starting in the United States,¹⁴⁹ socially responsible investment funds were set up in the United Kingdom and France in the early 1980s¹⁵⁰ and spread in the late 1980s to Australia, Austria, Germany, Japan, Switzerland and other countries.¹⁵¹ Socially responsible investment is still growing in the United States, led by screened mutual funds.¹⁵² Much of the available research information derives from that country’s experiences. Investors that use social screens tend to be public retirement and pension funds, colleges and universities, religious groups and social investment funds including mutual funds. In some countries, legal rules regarding the fiduciary duties of institutional investors, particularly pension funds, have restricted their consideration of any factors other than financial performance when considering investments.¹⁵³ Although controversy

¹⁴⁷ Shareholder resolutions are formal, mostly non-binding, requests or recommendations to management which, under the regulations governing shareholder rights, are placed on the proxy ballot and voted by all shareholders, along with other business matters submitted by management.

¹⁴⁸ V.A. Zondorak: “A new face in corporate environmental responsibility: The Valdez Principles”, in *Environmental Affairs*, Vol. 18:423, pp. 457-500, footnote 109 at p. 477.

¹⁴⁹ Socially responsible investment has long historical roots in the United States, dating back to the late 1700s when religious investors decided not to invest in companies engaged in alcohol, gambling and tobacco. In the 1970s and 1980s, socially responsible investment re-emerged in the United States as a means to put economic pressure on the South African government to end apartheid.

¹⁵⁰ See N. Smith: *Ethical investment: A four-stage model and some empirical research* (<http://www.avnet.co.uk/nicksmith/ethical/investment/Default.htm>), A final year project for BUS3800 at Middlesex University, 1996, section “The history of ethical investment”. See also ADME: “Investissement socialement responsable”, <http://www.globenet.org/adome/invest.html>.

¹⁵¹ See J. Conrads: *Geldanlage mit sozialer Verantwortung* (Wiesbaden, Gabler Verlag, 1994) <http://www.vpage.de/shop/green-money/buche.html>. See also the Webpage “Global Social and Ethical Investing, Consuming and Business” on the Good Money, Inc. Website: http://www.goodmoney.com/girfrgn_index.htm

¹⁵² Socially responsible investing tops the \$2 trillion mark in the United States, more than \$2 trillion in assets are involved in socially and environmentally responsible investing in the United States. Such investments grew from \$1.185 trillion in 1997 to \$2.16 trillion in 1999. See <http://www.socialinvest.org/areas/research/trends/1999-Trends.htm>

¹⁵³ See, e.g. *Cowan v. Scargill* (1985), 1 Ch. 270 (Cowan) at p. 287 (United Kingdom); M. O’Brien Hylton: “Socially responsible investing: Doing good versus doing well in an inefficient market”, p. 42, in *American*

persists over the financial gains of socially responsible investment portfolios, a growing number of authors tend to review them positively.¹⁵⁴

Labour criteria used in screening appear to be unspecific and no standardization is apparent among screens. About one-quarter of American socially screened mutual funds use labour-related criteria such as no sweatshop labour, advancement of women and diversity in the workplace and other issues of concern to unions.¹⁵⁵ An examination of the labour criteria of 62 US-based funds¹⁵⁶ revealed that “labour relations”¹⁵⁷ criteria were used in 43.5 per cent of the funds’ screens and that topics falling broadly into the category of equal opportunity and non-discrimination were part of 70.9 per cent of the screens.¹⁵⁸

The criteria may serve as bases for exclusion or inclusion. Investors often base their decisions on information gained from research institutions¹⁵⁹ and provided by the company itself, usually as a reply to “screening questionnaires”. In deciding how stringently to apply the criteria, fund managers usually compromise between a strict application of the criteria that would exclude any enterprise with problems and traditional investment criteria.

In a related initiative the Government of the United Kingdom passed a regulation which “requires pension fund trustees to disclose their policies on socially responsible investment, including shareholder activism.”¹⁶⁰ Though the regulation does not make social criteria mandatory for pension

University Law Review (1992), pp. 2, 37-45; A. Leigh: “‘Caveat investor’: The ethical investment of superannuation in Australia”, p. 25, in Australian Business Law Review (Oct. 1997), 341 (Australia).

¹⁵⁴ See M. O’Brien Hylton, *op. cit.* See also N. Dunnan: “Doing well by doing good: Investment funds satisfy goals and social concerns” in ABA Journal (Aug. 1996), p. 96; and J.K. Glassman: “Ethical stocks don’t have to be downers”, in The Washington Post (23 Apr. 1995), p. H01.

¹⁵⁵ Other selection criteria range from tobacco, alcohol and gambling to environment and animal welfare. See Social Investment Forum, *op. cit.*, section II; and Co-op America: Socially responsible mutual fund screens – <http://www.coopamerica.org/mfsc.htm>

¹⁵⁶ The funds in the sample are members of the social investment forum, a non-profit membership organization promoting the concept, practice and growth of socially responsible investing.

¹⁵⁷ The term “labour relations” appears to encompass a wide variety of issues including discrimination, trade union relations, corporate labour policies, wages and other issues. It also includes references to non-investment in the Mexican maquiladoras, the AFL-CIO Boycott list. These are usually defined very broadly and the metrics involved in measurement are generally unspecified. The Social Awareness fund of Freineds Ivor Funds for example “favours companies that provide excellent workplaces and strong benefits to increase employee loyalty. The Domini Social Equity Fund “seeks positive labour relations policies.” See <http://www.socialinvest.org/areas/sriguide/mfsc.htm>

¹⁵⁸ Calculation based on data at <http://www.socialinvest.org/areas/sriguide/mfsc.htm>

¹⁵⁹ These include in the United States: Kinder, Lydenberg, Domini (KLD), best known for its Domini 400 Social Index (DSI), a socially screened, capitalization-weighted index of 400 common stocks modelled after the S & P 500 stock index; and the Social Investment Forum; in the United Kingdom: the Ethical Investment Research and Information Service (EIRIS) <http://www.eiris.u-net.com/> and the United Kingdom Social Investment Forum.

¹⁶⁰ “New British law Encourages Socially Responsible Pension Funds” see <http://www.srinews.com/article.cgi?sfArticleId=309>

funds, it is likely to stimulate further discussion on the role of the public sector in socially responsible investment.

Insufficient evidence and the lack of standardization of criteria make it impossible to determine a measurable impact of fund screening on labour practices. Nevertheless, it appears clear that the criteria used by various investment funds tend to differ, thus impeding the ability to send a clear message to enterprises. Indeed, in some cases, the act of divestment could amount to nothing more than a silent withdrawal of money.¹⁶¹ In addition, as some advocates of these initiatives acknowledge, a combination of instruments may be necessary for screened funds to have an effect. In most cases, screened funds do not own enough shares in single companies to hit them hard by damaging their share prices but they may make a difference combined with campaigns and other social strategies. For example, the impact of divestment from apartheid South Africa in the 1980s was enhanced by the fact that the initiative used widely recognized labour principles (Sullivan Principles) and occurred in the context of a coherent, highly publicized campaign.

5.2. Shareholder initiatives

Like fund screening, shareholder initiatives focusing on labour practices appear to be growing in number. Similar limitations in available data and lack of standardization or specification of criteria make it difficult to assess their exact impact beyond anecdotal evidence. Since the 1970s, shareholders, mainly in American companies, have regularly acted on labour-related concerns, through formal actions such as filing shareholder resolutions and submitting questions at annual shareholder meetings and through informal communications with or to management, other shareholders and/or the press and the public, including “shadow annual reports” and disruptive action. Formal shareholder activism reached a record level in 1996 in the United States, but also appears in Japan – with an overwhelming proportion of environmental and only few labour-related proposals – and Germany, distantly followed by other European countries and Canada.¹⁶²

The geographic trends reflect various cultural and economic factors, including civil society involvement in share ownership, level of development of publicly held corporations, and legal restrictions on grounds for shareholder activism. In the United States, publicly held corporations are owned by a great diversity of shareholders, including church investors. In contrast, controlling shareholders in Canada¹⁶³ and Europe, such as governments and banks, may have competing interests

¹⁶¹ Exceptionally, some large socially screened funds also engage in shareholder activism, opening dialogue with companies in which they invest on labour-related and other issues and sponsoring shareholder proposals on these issues while retaining the divestment option as a last resort, e.g. the Calvert Group, Ltd. and Franklin Research & Development Corporation. See for the former Calvert Group Ltd.: Understanding the shareholder resolution and proxy voting process – <http://www.calvertgroup.com/sr/proxy/proxy.htm>

¹⁶² Number of shareholder-sponsored resolutions in United States: more than 650; Japan: 54; Germany: 39; United Kingdom: 4 (13 in 1995); Sweden: 5; Canada: 3; Denmark: 2; France, Switzerland, Ireland, Norway: 1, respectively. (See IRRC: “Shareholder action advances worldwide: Investors placed a broader range of topics on more non-US ballots in the 1996 global proxy voting season”, press release, 29 July 1996, <http://www.irrc.org/whats-new/shareholder.html> and “IRRC finds shareholder activism at record levels around the world”, IRRC 1996 press release, <http://www.halcyon.com/erics/irrc96.htm>

¹⁶³ C. Forcese: Putting conscience into commerce: Strategies for making human rights business as usual (Quebec, International Centre for Human Rights and Democratic Development, 1997), p. 65.

given their roles as pension funds and lenders.¹⁶⁴ In Japan and Germany, the system of cross-holdings, in which big companies own shares in each other to protect managers from outside challenges, affects shareholder interests.¹⁶⁵ As with investment screening, laws disallowing shareholder action on grounds considered not strictly financial present impediments to shareholder activism in Canada.

Enterprises affected by labour-related shareholder proposals correspond in many respects with those most visible in private initiatives generally and are likely to be involved in outsourcing production internationally. In the United States, the two most active industry sectors appear to be oil and gas production and textiles, clothing, leather and footwear, including toy manufacturers.¹⁶⁶ In the service category, commerce appears dominant. In Germany, activity in the chemical industry, particularly enterprises engaged in foreign direct investment, appears dominant.¹⁶⁷

Coalitions among different types of institutional investors have emerged as the predominant partnership employed by many successful shareholder actions. The most important sponsors of labour-related resolutions are institutional investors, including insurance companies, pension funds, church funds, union funds, local authority funds and also fund managers who manage investments for other people. Public employees' pension funds and church investors are particularly active generally, although evidence is inconclusive on specifically labour-related resolutions. Notably, labour shareholders as a group, such as trade unions and union pension funds, only occasionally sponsor labour-related shareholder proposals, although they do support such resolutions when submitted by others.¹⁶⁸ Shareholders appear influenced to take action by media coverage, boycotts against the shareholders' company, support by public officials for private initiatives, and reports of research organizations, universities, and NGOs. ILO findings of "violation[s] of internationally accepted labour standards" have been noted in proposed resolutions.¹⁶⁹

¹⁶⁴ See J. Tagliabue: "Compliments of US investors; New activism shakes Europe's markets", in *New York Times*, 25 Apr. 1998; J.-A. Schneider: "Le droit de l'actionnaire de proposer une résolution au vote de l'Assemblée générale", to be published in *Aktuelle juristische Praxis AJP/Pratique juridique actuelle PJA*, section A, para. 4 and section D, para. 16.

¹⁶⁵ See J.C. Wilcox: "Can 'relational investing' really work?", <http://www.georgeson.com/greport/364/relinv.html>, reprinted from *The New York Law Journal*, 1993, and John Tagliabue, loc. cit.

¹⁶⁶ Those two sectors both respectively account for one-fifth of the targeted enterprises. The first includes companies such as Texaco, Unocal, Chevron, Mobil, Exxon and ARCO, the second NIKE, Disney, Philips-Van Heusen, Mattel, etc. (see *ibid.*).

¹⁶⁷ For example BASF, Bayer, Hoechst, Merck and Schering (see Dachverband der Kritischen Aktionärinnen und Aktionäre: Kritische Aktionärinnen und Aktionäre bei ...http://ourworld.compuserve.com/homepages/Critical_Shareholders/kasbei.htm

¹⁶⁸ See M.A. O'Connor, loc. cit., p. 1347. Exceptionally, the Union of Needletrades, Industrial and Textile Employees (UNITE) has simultaneously waged publicity and shareholder campaigns, working with labour rights activists, involving companies such as Gap, Disney, NIKE, Wal-Mart, Philips-Van Heusen and Guess. (See P. Varley (ed.): *The sweatshop quandary: Corporate responsibility on the global frontier* (Washington, DC, IRRC, 1998), p. 18.).

¹⁶⁹ Resolutions filed with Mobil (1998) and Chevron (1997 and 1998) requesting guidelines for country selection and reports on the company's business in Nigeria, in ICCR: *The proxy resolution book* (1997), p. 75 (1998), pp. 74, 75.

Although shareholder resolutions address a wide range of issues, the number that directly address international labour issues is relatively small.¹⁷⁰ The impact of those resolutions is most visible when the effort results in an agreed plan of action with management leading to the withdrawal of the resolution.¹⁷¹ Even a modest vote in favour of a resolution, however, can aid proponents in their discussions with management since it demonstrates that a significant number of shareholders support the spirit of the resolution. Measurable progress may take several years since proponents often put a resolution to vote several times if they are able to obtain a certain share of the vote legally required.

In proposed resolutions, concerned shareholders usually request management to take some voluntary initiative involving labour practices within the enterprise. In some instances, shareholders have asked the enterprise to develop a code of conduct, adopt a third-party code such as the Sullivan Principles and even amend the articles of incorporation to include international labour standards as binding provisions. Shareholders have also asked for the enterprise to increase activity under a code of conduct, or to monitor and report on contractors' compliance with the enterprise's code of conduct and have even accepted an active role in the monitoring process. In other efforts, shareholders have requested enterprises to restate the formal company policy in response to various labour concerns. Companies that have a code of conduct have simply referred to the code and, in some cases, described their monitoring practice, when requested. Others have interpreted company policies to meet the concerns expressed. Frequently, shareholders ask enterprise to prepare a report on the enterprise's practice regarding its own labour practices abroad or its supplier standards. Recent resolutions requesting reports tend to give so many details and directives to management that it appears the end goal is not only to be informed on enterprise practice but also to influence the enterprise to adopt solutions to already identified labour problems. Notably, as a means of circumventing a legal rule excluding shareholder proposals concerning the "ordinary business" of the company, American shareholders have developed proposals to link executive compensation to social performance of the company.

It is difficult to measure the impact of labour-related objectives in shareholder proposals due to the different external and internal environments of the enterprises concerned, and the lack of standardization of goals and verification methods to measure progress toward those goals. Under such circumstances, enterprises face unpredictable parameters in designing and implementing private initiatives to address labour practices and in reporting to, and negotiating with, concerned shareholders. In a similar fashion, shareholders have no accurate ways to assess enterprise improvements on issues of concern. Furthermore, most such initiatives do not involve the participation of the workers who could be affected by the initiative, except in unusual situations in which trade unions are acting as concerned shareholders for the very enterprise in which they are employed.

¹⁷⁰ In the United States, among the more than 650 shareholder resolutions the Investor Responsibility Research Centre (IRRC) has recorded in 1996, only 50 were linked to international labour issues. (See P. Varley (ed.): *The sweatshop quandary: Corporate responsibility on the global frontier* (Washington, DC, IRRC, 1998), see list of resolutions at pp. 27-29.).

¹⁷¹ Agreements to withdraw proposed resolutions occur in about one-third of the resolutions in the United States. In other situations, management finds legal grounds for omitting the proposal from the proxy ballot, or the proposal is voted. Partly because of the nature of shareholder proxy voting, resolutions never come close to achieving a majority vote. Proposals dealing with social matters rarely receive more than 15 per cent of shares voted and frequently less than 10 per cent. (See P. Varley (ed.), *op. cit.*, p. 18. Exceptionally, in 1996, a resolution filed with the retailer and private label manufacturer J.C. Penney requesting a report on labour standards for overseas suppliers obtained the support of the management, and then received 87 per cent of the votes (see *ibid.*, table at p. 28)).

Appendix 1

Social labelling programmes

Programme	Started	Sector	Product	Market sector		Primary countries of operation		Leaders				
				Export	Domestic	Producers	Buyers	W	E	G	IGO	NGO
Care & Fair	1994	Textiles	Hand-knotted carpets	X		India, Nepal, Pakistan	Germany, UK, Netherlands, Luxembourg, France, Italy, USA		X			
Kaleen	1995			X		India	Germany, Nordic countries		X	X		
Rugmark 172	1994			X		India, Nepal, Pakistan	Germany, USA, other W. European countries, Canada				X*	X
STEP 2	1995			X		India, Nepal, Pakistan, Morocco, Egypt	Switzerland		X			X
Double Income Project	1995		Textiles, handicrafts, jewellery			Kenya, India, LA, esp. Peru	Switzerland		X			
Pro-Child	1995		Footwear		X	Brazil	Brazil		X			
Abrinq	1995	Diverse	Footwear and other 3	X	X	Brazil	Brazil, other LA		X			X
Baden	1997	Textiles&leather	Sporting balls	X		China	Primarily NA and W. Europe, some in LA, Pacific Rim		X			
Reebok	1996		Soccer balls	X		Pakistan	USA, Europe, LA		X			
Fairtrade Labelling Org. International 4	1988	Agriculture	Agricultural products	X		About 20 in Africa, LA & Asia	W. Europe, USA, Canada, Japan					X
Flower Label Programme	1997		Cut flowers	X		Ecuador, Israel, Kenya, Zambia, Zimbabwe	Germany, Austria, Sweden, Switzerland	X				X
Forest Stewardship Council (FSC)	1996	Forestry	Forestry products, including timber	X	X	About 33 countries in the 5 continents *	Australia, Japan, W. Europe, NA	X	X			X 5
Pan-European Forest Certification System	1998	Forestry	Forestry products, including timber	X	X	European countries	European countries		X	X		
Finnish Forest Certification System	1999	Forestry	Forestry products, including timber	X	X	Finland	European countries		X			X***
Lembaga Ekolabel Indonesia	1994**	Forestry	Forestry products, including timber	X	X	Indonesia			X	X		

1. RUGMARK International is expected to maintain uniform standards across the RUGMARK system; RUGMARK Foundations in Germany and the USA manage and protect the trademark system and promote the labelled carpets in the importer countries; RUGMARK Foundations in India and Nepal are autonomously responsible for implementing the RUGMARK criteria locally.

* Start-up funds for Rugmark International and especially for Rugmark in India, Nepal and Pakistan have been provided by the German Government Development Agency (GTZ) and by UNICEF, which is among the executing agencies.

2. STEP (Stiftung für Gerechte Bedingungen in Teppich-Herstellung und Handel -- Foundation for fair conditions in carpet production and carpet trade) is a joint initiative of a Swiss industry association and five Swiss NGOs.

3. The Abrinq Foundation for Children's Rights created the Child-Friendly Company Programme, which includes a labelling component. The Foundation is an NGO established by members of Brazil's Association of Toy Manufacturers. It also covers toys, agricultural products, chemicals, transport equipment, financial and other (restaurant, parking) services and utilities.

4. FLO International is an umbrella organization comprising the independent labels Max Havelaar, TransFair and Fairtrade Mark. FLO agricultural products include coffee, tea, honey, sugar, cocoa, bananas, and orange juice. FLO products are largely exported through alternative trade structures, but aim to reach a broader market through exports through mainstream retail channels.

* Belgium, Belize, Bolivia, Brazil, Canada, Costa Rica, Croatia, Czech Republic, Denmark, France, Germany, Guatemala, Honduras, Indonesia, Italy, Japan, Malaysia, Mexico, Namibia, Netherlands, New Zealand, Panama, Papua New Guinea, Poland, Russia, Solomon Islands, South Africa, Sri Lanka, Sweden, Switzerland, United Kingdom, United States of America, Zimbabwe (Forests Certified by FSC, <http://fsc.org/html> consulted on August 2000)

5. Indigenous peoples also have an equal voice as stakeholders in FSC International.

*** The process of developing standards for the Finnish System started in 1996 with NGOs, but a number of Finnish environmental NGOs withdrew from the development process and refused to endorse the draft standards that had been developed with them at the beginning.

** But the LEI system was substantially revised in 1998 with modified standards and a redesigned process.

Appendix 2

Content of the labelling programme

Programme	Nature of labour issue											Requirements refer to ILO and/or international labour standards
	Child labour		Foced labour	Freedom from discrimination	Freedom of association	Right to collective bargaining	Wage levels	Social benefits	Working hours	OSH	Job security and training	
	Remove children from workplace	Fund education or related social measures										
Care & Fair	X	X	X				X	X		X ¹		
Kaleen	X	X										
RUGMARK	X	X					X					
STEP	X(gradual)	X	X		X	X	X	X?	X	X		X
Double Income Project	X	X					X					
Pro-Child	X ²	X										
Abrinq	X	X										
Baden	X		X ³									
Reebok	X	X										
Fairtrade Labelling Organisations Int'l ⁴	X		X	X	X	X	X	X	X	X		
Flower Label Programme	X			X	X ⁵	X	X	X	X	X	X	X
Forest Stewardship Council ⁶			X	X	X	X	X	(X)		X	X	X
Pan-European Forest Certification							(X)	(X)			X	
Finnish Forest Certification System			(X)	(X)	(X)	(X)		(X)		(X)	X	
Lembaga Ekolabel Indonesia							(X)	(X)		X	X	

1. The Care&Fair Statement of Demands contains a principle for provision of basic medical care for workers and their families.

2. In both programmes child labour is defined in accordance with Brazilian law, which prohibits employment of children under age 14.

3. The Baden label states: "No child or *slave* labor used to make this ball" (emphasis supplied).

4. The labour issues in this table apply only to FLOs working at the plantation level with tea (six countries) and bananas (three countries). Wage levels, working conditions and health and safety standards (OSH) are set with reference to national legal standards or, if none, standard regional conditions.

5. Freedom of association among workers is respected where unions are legally recognized in the country ("[w]enn politische Organisationen (Gewerkschaften) im Land gesetzlich zugelassen sind").

6. In some cases, FSC affiliates at the national level have interpreted the international labour requirements for application at the national level. Thus, the treatment of freedom of association is different at the national level in Bolivia, Germany, New Zealand and the United Kingdom.

Appendix 3

Structure and operation of labelling programmes

Programme	Sources of financing				Primary implementation methods				Object of label or certification			Manner of publicity	
	Flat fees for licence or membership (buyer or manufacturer)	Proportional fees for the use of label		Grant /assistance from G, IGOs, NGOs, W, E	Self-monitoring (enterprise, contractual partners or individual entrepreneurs)	Input by workers	Third party monitoring		Product or service	Comp.	Other	Typically attached to individual item	Display or promotional activity by company
		Upon export	Upon import or sale				G	NGOs / prof. auditors					
Care & Fair	X ¹	²	X		X					X			X
Kaleen		X		G	X		X	X	X			X	
RUGMARK	X	X	X	G, NGO, IGO				X	X			X	
STEP	X ³		X	G, NGO	X ⁴			X		X			X
Double Income Project		X	X	initial small G grant					X			X	
Pro-Child	X			E, G, IGO	X ⁵			X	X			X	
Abrinq				E, IGO, NGO	X ⁶					X			X
Baden					X				X			X	X
Reebok								X	X			X	
Fairtrade Labelling Organisations Int'l.			X	G, IGO, NGO		X		X	X			X	
Flower Label Programme	X	X						X	X	X		X	X
Forest Stewardship Council (FSC)	X	X		NGO, G, IGO		X		X ⁷	X	X	X ⁸	X	X
Pan-European Forest Certification System	X							X	X	X	X	X	X

Finnish Forest Certification System	X							X	X	X	X	X	X
Lembaga Ekolabel Indonesia	X							X	X	X	X	X	X

1. Care&Fair members (importers and retailers) pay an annual fee of 250 German marks to the Association.
2. The Care and Fair programmes in India, Nepal and Pakistan are funded through a separate fee of 0.25% of export value levied on exporters and manufacturers.(US Department study, but information not find in the other C&F documents)
- * The third party monitoring, and inspections concern 10-11% of the registered looms, so it is also a self-monitoring system through which it is the responsibility of each member to ensure no illegal child labour is employed on their premises.
3. Manufacturing licensees are expected to donate to the project an amount equal to the wages given their workers. See footnote 2 in previous table.
4. Self monitoring by the importers in the producing country (Egypt, Morocco, and Iran) where there is still no STEP monitoring structure.
5. The Pro-Child Institute may make unannounced visits to production sites, but primarily relies on self-monitoring processes that include complaints of child labour made by labour inspectors and unions, and also by visiting business partners.
6. Although no formal third party monitoring takes place in the Abrinq scheme, the decision to grant a one-year licence to applicant enterprises is taken in consultation with public officials, trade unions, employers' associations and other NGOs. Abrinq subsequently carries out investigations in the event complaints of child labour are received informally from similar sources.
7. The independent national certification bodies are accredited by the Forest Stewardship Council.
8. The FSC provides (1) certification of forest management which applies to forests (currently in 25 countries) and is issued to companies, indigenous peoples and other forest managers, and (2) certification of chain of custody, which applies to the market chain, from certified forest through processing to retail, and is issued to a company for use on products or in advertising.

Appendix 4

Contents of labelling programmes in the textile sector

PROGRAMME	Nature of labour issue											Requirements refer to ILO and/or International labour standards
	Child labour		Forced labour	Freedom from discrimination	Freedom of association	Right to collective bargaining	Wages level	Community and social benefits	Working hours	OHS	Job security and training	
	Remove children from workplace	Fund educational or related social measures										
Care&Fair	X	X	X				X	X ¹		X ²		
Kaleen	X	X										
Rugmark	X	X					X					
STEP	X (gradual)	X	X		X	X	X	X ³	X	X		X
Double Income Project	X	X					X					
Pro-Child	X ⁴	X										
Abrinq	X	X										
Baden	X		X ⁵									
Reebok	X	X										

¹ Health-care centres and hospital for the families working in carpet manufacturing.

² The STEP projects concern the fields of education, promotion of women, community development, health.

³ In this and the following programme, child labour is defined in accordance with Brazilian law, which prohibits employment of children under age 14.

⁴ The Baden label states: ANo child or slave labour used to make this ball@(emphasis supplied).

⁵ The Baden label states: ANo child or slave labour used to make this ball@(emphasis supplied).

Appendix 5

Content of labelling programme in agriculture sector

Programme per product: Fair-trade Labelling Organization (FLO)	Nature of labour issue										Requirements refer to ILO and/or International labour standards
	Child Labour	Forced labour	Freedom from discrimination	Freedom of association	Right to collective bargaining	Wage level	Community and social benefits	Working hours	OHS	Job security and training	
General requirements	X	X		X	X	X	X ⁶		X	X ⁷	
Coffee			X	X ⁸		X ⁹	X			X ¹⁰	
Tea	X	X	X	X	X	X	X		X ¹¹	X	
Cocoa ¹²			X	X		X	X			X	

⁶ ASocial premium for development purposes @

⁷ AContracts that allow long term production planning and sustainable production practices@

⁸ The FLO producer-members of coffee are small-scale producers and they have to be independent and democratically controlled by its members.

⁹ This aspect is ensured by a guaranteed minimum price for the production.

¹⁰ Relationships between producers and roasters/buyers are based on long-term contracts

¹¹ AWhere there are no minimum standards for working conditions, the supply-source has to assure [...] at least basic needs such as sanitation and health facilities [...]@

¹² The cocoa, honey and sugar criteria and conditions are the same as for coffee, the footnotes 1.2.3. are then valid here.

Honey			X	X		X	X			X	
Cane sugar			X	X		X	X			X	
Orange juice	X	X	X	X	X	X	X		X	X	X ¹³
Banana	X	X	X	X	X	X	X		X	X	X

¹³ For the Orange juice and Banana ILO Conventions 87, 98, 100, 111, 29, 105, 138 and 110 are mentioned in details.

Appendix 6

Content of labelling programme in forestry sector

PROGRAMME	Nature of labour issue											Requirements refer to ILO and/or International labour standards
	Child labour	Forced labour	Freedom from discrimination	Freedom of association	Right to collective bargaining	Wage levels	Community and social benefits		Working hours	OHS	Job security and training	
							Employment and training opportunities for local people	Respect of traditional land use rights and cultural values				
Forest Stewardship Council	X	X	X	X	X		X	X		X	X	X ¹⁴
Pan-European Forest Certification							X	X			X	
Finnish Forest Certification System					X			X			X	
Lembaga Ekolabel Indonesia							X	X		X	X	

¹⁴ FSC Principle 1.3: @In signatory countries, the provisions of all the binding international agreements such as ILO conventions [...] shall be respected@.

