

UI CENTER FOR HUMAN RIGHTS

A Global Workplace
Research Initiative



**Promoting International Worker Rights
Through Private Voluntary Initiatives:
*Public Relations or Public Policy?***

BY ELLIOT J. SCHRAGE

A Report to the U.S. Department of State
on behalf of
The University of Iowa Center for Human Rights

www.uichr.org

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Editor's Foreword

This report is the consequence of a grant proposal submitted by The University of Iowa Center for Human Rights (UICHR)¹ to the U.S. Department of State in September 2001.² Entitled "Safeguarding the Global Workplace: A Proposal for University-based Research on Codes of Conduct against Global Sweatshop Labor," it was subsequently funded by the Department of State to facilitate in-depth research and corresponding U.S. foreign policy recommendations relative to the impact of voluntary codes of corporate conduct on the elimination of sweatshop labor and related conditions at work sites worldwide that produce for the U.S. market.

In fulfillment of this task, the UICHR was fortunate to be able to commission Elliot J. Schrage as principal researcher and author for the project. Uniquely positioned at the intersection of economic globalization and human rights, Mr. Schrage, a lawyer and policy analyst, has a breadth of experience in the academic/policy world, the private business sector, and with non-government organizations that made him especially qualified to take on this assignment.³

It is in fact in no small measure due to Mr. Schrage's expertise that, early in his research, it quickly became clear that codes of conduct are but one among many private efforts that aim to eliminate sweatshop conditions and otherwise promote international worker rights and that commonly they are dependent on these related efforts to succeed. Indeed, one of the routine criticisms of the codes is that companies fail to take steps to operationalize them "on the ground." Far more important than the words of a code may be, for example, the steps taken by companies to incorporate worker rights considerations into their supply chain practices. Such steps may include education programs (covering company personnel, management at supply chain partners, and workers at those facilities), monitoring programs (to determine whether supply chain partners comply with code provisions), incentive programs (to reward partners that comply with a code and punish those that do not) and remediation programs (to assist supply chain partners that have the desire but not the capacity to achieve compliance).

¹ See <http://www.uichr.org>. See also "About The University of Iowa Center for Human Rights," *infra* at 213..

² U.S. Department of State (DOS) Grant No. S-LMAQM-01-H-0200 to The University of Iowa Center for Human Rights (Sept. 28, 2001).

³ For biographical information concerning Elliot Schrage, see "About the Author," *infra* at 211.

Additionally, Schrage's research further revealed that, for many industries, individual corporate codes of conduct have been complemented or supplanted by broader initiatives that include more than a single company. In many cases, they include major companies in a given industry and, in some cases, the participation often of individuals and organizations outside the companies involved.

Consequently, a narrow focus on codes of conduct as originally conceived appeared unhelpful and limiting. What distinguishes corporate initiatives to eliminate sweatshop labor conditions and otherwise promote improvements in international worker rights is not that they embrace codes of conduct. Rather, it is that they are not restricted to such codes and that they are private and voluntary, neither regulated nor required by governments in sourcing countries or in consumer markets. The question this report addresses, therefore, is whether private voluntary initiatives (PVI), including but not restricted to codes of conduct, are effective, and how U.S. foreign policy should treat them.

To this end, the following four case studies were identified: soccer ball production in Pakistan (Case Study 1), coffee production in Central America (Case Study 2), toy production in China (Case Study 3), and cocoa production in Côte d'Ivoire (Case Study 4). These case studies, it was agreed, would ensure meaningful diversity of industrial sector and world region.

It also was agreed that field research would be undertaken in connection with each of the case studies. Unfortunately, however, world events intervened to prevent such research to the degree desired and planned. Terroristic dangers in Pakistan, civil war in Côte d'Ivoire, and SARS in China simply made field research in these countries impossible within the time constraints set for completing this report.

On the other hand, earlier travel to Pakistan by Mr. Schrage relative to the production of soccer balls in that country as well as invaluable personal contacts derived from his travel helped greatly to mitigate the shortfall in field research vis-à-vis Case Study 1. Additionally, with the able assistance of Anthony Ewing, a Lecturer in Law at Columbia University Law School well versed on development and human rights issues in Central America,⁴ Mr. Schrage was able to penetrate coffee production practices in Costa Rica and Guatemala, the subject of Case Study 2. Finally, in respect of all of the case studies, contact was made with individuals and organizations working in, and with intimate knowledge about, not only each of the countries involved but, as well, the industrial sectors under investigation.

⁴ Anthony Ewing holds a B.A. degree from Yale University and a J.D. degree from Columbia University Law School, where he was Editor-in-Chief of the Columbia Human Rights Law Review. He has worked for the International League for Human Rights, the Inter-American Court of Human Rights, and an international development organization in Central America.

Thus, while the instant case studies perhaps lack the color that can be derived from extensive field research, they do present, I believe, an accurate picture of PVIs (including codes of conduct), their achievements, and their challenges, at least in respect of the case studies presented here—and probably beyond as well. They also appear to capture accurately if not exhaustively the range of views of participants and observers of those PVIs. However, we recognize that the case studies and the conclusions drawn from them may not reflect in all respects the views of all persons associated with the UICHR or The University of Iowa. It is always a challenge in studies of this kind to perceive the world accurately from both the bottom up and the top down. Accordingly, we have provided in the Appendix, in keeping with the UICHR's commitment to inclusivity of diverse viewpoints, an opportunity for colleagues associated with the UICHR to comment upon them. Two such colleagues volunteered, and I am grateful to each for their interest and dedication.

It is, then, with pleasure and satisfaction that The University of Iowa Center for Human Rights submits this report to the U.S. Department of State. We are grateful for its support (especially from the Office of International Labor and the Office for the Promotion of Human Rights and Democracy) and for the knowledge that it will disseminate the report widely.

It is with large appreciation, too, that we thank Elliot Schrage for his prodigious effort on our behalf. I salute him for it and commend him especially for his acute insights and meticulous commitment to high standards.

I thank as well our research assistants—Amy Crowe, Maureen De Armond, Jessica Taylor, and Vassiliki Tsitsopoulou—for truly generous help in proofing and cite-checking that made my editorial duties immeasurably easier. I also thank my Deputy Director Chivy Sok, our UICHR secretary Patricia Pollock, and the UI's International Programs for their sundry assistance in time of urgent need, always given with grace and good humor.

This report will be posted on the website of The University of Iowa Center for Human Rights (www.uichr.org) and available for downloading in PDF format therefrom without charge. We hope it will prove instructive and helpful to all.

Burns H. Weston
Bessie Dutton Murray Distinguished Professor of Law Emeritus and Director,
The University of Iowa Center for Human Rights
December 15, 2003

Author's Acknowledgements

This report is the result of tremendous effort on the part of a number of individuals. The staff and research support provided by The University of Iowa Center for Human Rights were tireless in helping with the research, editing, and other tasks essential to the report's preparation and publication. I am particularly grateful to Chivy Sok and Patricia Pollock, Deputy Director and Secretary of The University of Iowa Center for Human Rights, respectively; to Dr. Vassiliki Tsitsopoulou, Adjunct Visiting Assistant Professor in The University of Iowa Department of French and Italian; and to Amy Crowe, Maureen De Armond, and Jessica Taylor, each a student at The University of Iowa College of Law.

Two individuals merit special recognition and thanks.

Anthony Ewing has long been my intellectual partner and collaborator at the intersection of business and human rights. From our teaching together at Columbia University's business and law schools and other projects, his questions and challenges routinely improve the caliber of my thinking and my work, and his association with this project is no exception. Anthony's fieldwork in Central America was essential to the study of the coffee sector (Case Study 2), but his insights and perspective have been similarly important to the research and drafting of the other cases as well.

Though my relationship with Burns Weston began with my work on this project, I had long been familiar with his reputation as a founding father of scholarship surrounding international human rights law. Without his vision and leadership, The University of Iowa Center for Human Rights would not have become a leading forum for inquiry and debate on the intersection of labor rights, human rights, and economic globalization. In particular, this report benefitted from his passionate commitment to high standards and attention to detail. Of course, any errors or omissions that remain are the responsibility of the author, but readers should know that these are surely far fewer as a result of Professor Weston's keen insight and sharp editorial eye.

Elliot J. Schrage
San Francisco
December 15, 2003

Executive Summary

This report was commissioned by The University of Iowa Center for Human Rights (UICHR),¹ made possible by a grant from the U.S. Department of State (DOS).² It was commissioned for two purposes:

First, the DOS sought an assessment of the impact that the growing practice of voluntary codes of corporate conduct is having on the elimination of sweatshop labor conditions in work sites worldwide that produce for the U.S. market. Over the past fifteen years, there has been a veritable explosion of such “soft law” private voluntary initiatives (“PVI”) in manufacturing industries (including apparel, toys, footwear, and sporting goods) and agricultural production (including cocoa, coffee and bananas). In each case, global companies have developed, either individually or collectively, programs that, invariably involving voluntary codes of corporate conduct, claim to promote respect for international labor standards in their global supply chains. This practice has by now been well documented. Far less apparent, however, is the impact that these initiatives have on the workers and communities whose rights they are designed to protect. The research for this report examined this issue by examining company and collective initiatives in a variety of industries and in different geographic settings.

Second, the DOS sought recommendations on how U.S. policy should respond to this emerging trend. Should it ignore these initiatives and allow them to develop on their own? Should it discourage them as an inappropriate intrusion on the national sovereignty of countries that are U.S. trading partners or as unwarranted interference with U.S. bilateral relations? Alternatively, if PVIs advance U.S. foreign policy objectives, how should they be integrated into traditional bilateral and multilateral diplomacy?

This report examines the role of PVIs (including voluntary codes of corporate conduct) in promoting labor standards in four different industries across four different geographic regions. The case studies include the production of sporting goods (soccer balls) in South Asia (Pakistan), coffee in Central America (Costa Rica, Guatemala), cocoa in Africa (Côte d’Ivoire), and toys in Asia (China) The case

¹ See <http://www.uichr.org>.

² U.S. Department of State (DOS) Grant No. S-LMAQM-01-H-0200 to The University of Iowa Center for Human Rights, dated Sept. 28, 2001 and entitled “Safeguarding the Global Workplace: A Proposal for University-Based Research on Codes of Conduct against Global Sweatshop Labor” (GSLRI-Phase I).

studies also examine PVIs at various stages of development and implementation, from initiatives that are well established (as in Pakistan) to those that have been just recently launched (as in Central America and Asia), to those that remain in formation (as in China). Each begins with an examination of the industry and its structure. Particular emphasis is placed on understanding the nature of supply chain practices and the degree of visibility and influence that multinational customers have over local industry practices. It then reviews alleged worker rights violations that surfaced in the industry's global supply chain and describes how companies responded to them, either by creating a new PVI or revising existing initiatives. Finally, each case analysis evaluates the PVIs' impact on labor conditions and identifies lessons learned.

The analysis undertaken by this report yields several conclusions.

First, PVIs have the potential to generate direct improvements in the conditions of workers and communities in the global supply chains of major industries. The most effective programs clearly generate meaningful improvements for some workers or communities, though they may be extremely difficult to measure. In contrast, poorly designed programs may force tradeoffs between labor standards and other aspects of social, economic, or cultural development.

Further, PVIs generate indirect benefits that advance important U.S. foreign policy objectives. They demonstrate the importance of the rule of law and promote respect for labor standards and labor rights by workers, factory managers, and local government officials. They strengthen civil society by reaching out to local partners, including nongovernmental organizations, universities, and private companies dedicated to social monitoring. And, by providing a forum for the resolution of disputes, they create a climate for political activity without violence.

The analysis also identifies key predictors for the relative success of PVIs. Some are not surprising. For example, improvements in workplace conditions or business practices that do not require significant increases in production costs (or that might, in fact, yield productivity gains) are most likely to be effectively implemented through a PVI. Industrial structure plays a less recognized but similarly pivotal role in predicting the effectiveness of PVIs. The analysis reveals that industries with narrow and stable (i.e., more integrated) supply chains are most likely to achieve improvements in labor conditions from PVIs. Similarly, the existence of a strong and committed industry leader (or group of leadership companies) is a critical factor in the development and success of industry initiatives. Highly competitive industries, with no industry leader or with an industry leader that has chosen not to participate, are likely to achieve relatively small improvements from PVIs.

Finally, the analysis suggests that the effectiveness of PVIs could be significantly enhanced by greater involvement on the part of the U.S. government. In the future, support for PVIs should not be the exclusive—or even primary—domain of the U.S. Department of Labor or USAID. Other parts of the Executive Branch, including the U.S.

Trade Representative (USTR), must also play a more prominent role in this regard, helping to develop and implement a coherent policy toward PVIs.

A more effective policy should focus on PVIs in four distinctive ways.

First, the U.S. government should help to “set the stage” for PVIs by promoting independent research on labor violations in the global supply chains of specific industries. Also, it should support research to determine the consequences of improved respect for international legal standards on industry competitiveness.

Second, it should articulate requirements for government support of PVIs. The United States should use its prestige and credibility to serve as an honest broker to endorse or “qualify” serious PVIs that address labor standards violations. One category of requirements must focus on the minimum acceptable labor standards a PVI seeks to achieve. A second category should include standards for openness and transparency of PVI operations and achievements. A third category should cover participation by interested stakeholders in PVI design, oversight, and evaluation.

Third, the U.S. should facilitate the establishment of “qualified” PVIs by helping the private sector build bridges to potential partners in their sourcing and customer markets. Through its funding of development activities in emerging markets and its reporting on labor conditions around the world, the U.S. government has relationships with local organizations and government officials in key sourcing markets that could prove invaluable for private sector organizations looking for partners to implement PVIs in key sourcing markets. Similarly, U.S. policymakers can link non-governmental organizations, academic institutions, and others to private companies and trade associations interested in building their capacity to develop, implement, and oversee PVIs.

Finally, the U.S. should develop new and innovative mechanisms to provide incentives for companies to join PVIs. U.S. government support for PVIs should not come exclusively, or even primarily, in the form of financial assistance. While financial support can be critical to the development of a PVI, other forms of U.S. support might have even greater impact. These include policies that

- encourage—or require—federal government procurement of products produced by companies that participate in qualified PVIs;
- provide favored access on trade missions or related government sponsored programs for companies that participate in qualified PVIs;
- persuade international financial institutions (IFIs) to require private sector participants in IFI funded projects to participate in qualified PVIs as a condition of financing; and

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- create for companies that successfully participate in “qualified” PVIs a “safe harbor” from lawsuits challenging the labor practices in their global supply chains.

PVIs offer U.S. policymakers a compelling vehicle to assist in the development of a global jurisprudence to promote improvements in workplace conditions and respect for worker rights. With the appropriate level of government support and encouragement, the private sector can become a powerful force for the protection and advancement of international labor standards.

INTRODUCTION

The past ten years have witnessed an explosion of “codes of conduct” to guide the behavior of private companies in the global economy. Companies and business groups, activists and religious leaders, policymakers and bureaucrats, and a broad array of civil society institutions—all have at some point participated in defining, publicizing, and implementing these voluntary, theoretically non-binding standards for a wide range of business practices.

A large and impressive body of research literature has accompanied this growth,¹ much of it supported by the U.S. government.² The instant report, commissioned by the U.S. Department of State via The University of Iowa Center for Human

¹ See, e.g., JUDITH RICHTER, HOLDING CORPORATIONS ACCOUNTABLE: CORPORATE CONDUCT, INTERNATIONAL CODES AND CITIZEN ACTION (2001); CHARLES SABEL ET AL., RATCHETING LABOR STANDARDS: REGULATION FOR CONTINUOUS IMPROVEMENT IN THE GLOBAL WORKPLACE (The World Bank, Social Protection Discussion Paper No. 11, 2000); Janelle Diller, *A Social Conscience in the Global Marketplace? Labour Dimensions of Codes of Conduct, Social Labeling and Investor Initiatives*, 138 INT’L LAB. REV. 99 (1999); Ans Kolk & Rob van Tulder, *The Effectiveness of Self-Regulation: Corporate Codes of Conduct and Child Labour*, 20 EUR. MGMT. J. 260 (2002); Ans Kolk et al., *International Codes of Conduct and Corporate Social Responsibility: Can Transnational Corporations Regulate Themselves?*, 8 TRANSNAT’L CORP. 143 (1999); Rob van Tulder & Ans Kolk, *Multinationality and Corporate Ethics: Codes of Conduct in the Sporting Goods Industry*, 32 J. INT’L BUS. STUD. 267 (2001).

² See, e.g., INTERNATIONAL LABOR AFFAIRS BUREAU, THE APPAREL INDUSTRY AND CODES OF CONDUCT: A SOLUTION TO THE INTERNATIONAL CHILD LABOR PROBLEM? (U.S. Dep’t of Labor, 1997), available at <http://www.dol.gov/ilab/media/reports/iclp/apparel/overview.htm> (last visited Nov. 9, 2003); Int’l Lab. Aff. Bureau, *By the Sweat and Toil of Children*, in U.S. DEP’T OF LABOR, IV CONSUMER LABELS AND CHILD LABOR (1997), available at <http://www.dol.gov/ilabmedia/reports/iclp/sweat4/overview.htm> (last visited Nov. 9, 2003); “Contemporary Strategies and Lessons Learned in Mitigating Abusive Labor Conditions” (2003) (unpublished manuscript prepared by USAID, on file with the author). See also IVANKA MAMIC, BUSINESS AND CODE OF CONDUCT IMPLEMENTATION (Int’l Lab. Off., Management and Corporate Citizenship Programme, 2002). Established in 1919, the ILO comprises worker, industry, and government representatives from 177 states. Unique among international organizations because of this tripartite representation, the ILO has produced multilateral declarations and binding conventions on issues ranging from occupational health and safety to worker rights.

Rights,³ seeks to build on these previous efforts in three respects. First, it places the discussion of codes of corporate conduct in a broader historical context. Second, it assesses the impact of these initiatives by examining the impact of such codes on labor conditions in four industries in four different geographic markets. Finally, it recommends how U.S. policy and policy-makers should respond to the code of corporate conduct phenomenon.

A. Codes of Conduct in Historical Context

Though much of the current literature would suggest otherwise, codes of conduct, including those that cover labor practices in foreign markets, are not a recent phenomenon.⁴ More than twenty-five years ago, Reverend Leon Sullivan introduced a set of business principles to guide corporate conduct in relation to apartheid South Africa. The “Sullivan Principles,” as that code came to be known, specified labor practices for the workers employed by U.S. companies and their affiliates.⁵ Almost twenty years ago, the “MacBride Principles,” named after Nobel Prize-winning human rights activist Sean MacBride, addressed concerns of anti-Catholic discrimination in employment by U.S. companies and their affiliates in Northern Ireland.⁶

These older codes have much in common with today’s initiatives. Private, nongovernmental initiatives, they were designed to influence the behavior of multinational companies—to persuade private corporations to change their business practices voluntarily to achieve a greater social good, regardless of the economic

³ U.S. Department of State (DOS) Grant No. S-LMAQM-01-H-0200 to The University of Iowa Center for Human Rights (UICHR), dated September 28, 2001 and entitled “Safeguarding the Global Workplace: A Proposal for University-Based Research on Codes of Conduct against Global Sweatshop Labor” (GSLRI-Phase I). For information concerning the UICHR, see <http://www.uichr.org>.

⁴ For a lengthy taxonomy of corporate codes of conduct (their history, contents, participants, etc.), see <http://www.itcilo.it/english/actrav/telearn/global/ilo/code/main.htm> (last visited Nov. 9, 2003). See also Ritchie P. Lowry, *Transnational Corporations and Corporate Codes of Conduct*, at <http://www.goodmoney.com/codeshist.htm> (last visited Nov. 9, 2003). A version of this article originally appeared in the Web Page Edition of *The Social Report*, Spring 1997 (Vol. XIII, No. 6) published by The Program in Social Economy & Social Justice: Studies in Race, Class & Gender, Graduate Studies, Department of Sociology, Boston College at http://www.bc.edu/bc_org/avp/cas/soc/socrep.htm (last visited Nov. 9, 2003). See also INTERNATIONAL LABOR AFFAIRS BUREAU, *supra* note 2.

⁵ See *Global Sullivan Principles of Social Responsibility*, at <http://globalsullivanprinciples.org/principles.htm> (last visited Nov. 9, 2003). Launched by Reverend Sullivan in 1977, these principles were expanded and relaunched in 1999 as the Global Sullivan Principles for Corporate Social Responsibility.

⁶ See *McBride Principles for Global Corporate Responsibility*, at http://www.iccr.org/products/proxy_book02/gca/macbride.htm (last visited Nov. 9, 2003).

costs to the enterprise. They articulated standards and practices that were not clearly required by law or enforceable by governments.

At the same time, these older initiatives differ from today's codes in important respects. Earlier efforts generally focused on specific geographic markets rather than on global business practices. They described how private corporations could "constructively engage" with repressive regimes to minimize the risk that their economic power would perpetuate abuse and simultaneously increase the possibility that their presence might promote greater respect for human rights. Finally, earlier codes usually covered practices of multinational corporations or companies owned or controlled by multinationals. These initiatives did not, as a rule, extend to independent business partners or suppliers.⁷

Perhaps most remarkable, however, is the extent to which, over the past quarter century, codes of conduct have evolved from an exceptional response to extraordinary circumstances to become standard operating procedure in global business operations. Today, the private business sector is viewed often as the source or cause of human rights abuse or as an international actor with the capacity to promote human rights. In response, codes have been developed to minimize or avoid human rights abuse.

The experience of Reebok International, Ltd. offers an illustrative example. Since 1988, when it first promoted Amnesty International's "Human Rights Now" Concert Tour and established the Reebok Human Rights Award to honor young human rights activists, the company has linked itself with the international human rights movement. In 1992, Reebok executives were stunned when a representative of the Reebok Human Rights Award winner roundly criticized the company at the awards ceremony for its alleged complicity with the repressive labor practices of Indonesia's government. Reebok has since become a recognized leader in promoting respect for labor rights and human rights in its global supply chains.

Since 1992, there has been an explosion of codes of conduct by multinational corporations to address labor conditions in their global supply chains. Dozens of codes of conduct are now in existence.⁸ Modern codes attempt to restrain corporate behavior in the face of weak, oppressive, or corrupt governments. They seek to define appropriate business practices including, but by no means limited to, labor and environmental practices.

B. Three Converging Trends

The aforementioned transformation reflects the convergence of three geopolitical trends. Each a constituent of the phenomenon called "globalization," they

⁷ *But see* The International Code of Marketing of Breastmilk Substitutes, World Health Assembly, 24th Assembly, WHA Res. 22, U.N. Doc. A34/Vr/15 (1981).

⁸ For a brief listing, see <http://www.business-humanrights.org/codes> (last visited Nov. 9, 2003).

are: the globalization of international human rights standards, the globalization of trade and investment, and the globalization of communication.⁹

1. The globalization of international human rights standards

The globalization of international human rights standards has led to significant declines in national political sovereignty. As a result of the successes of the international human rights movement, the question of how a government treats its citizens—or permits its citizens to be treated by others—now regularly occupies international interest and attention. A community of advocates—religious leaders, lawyers, trade unionists, political activists—has grown to challenge repressive practices and abuse. Governments can no longer hide behind the claim that human rights conditions in a country, including conditions in a country’s farms and factories, are purely domestic concerns. Global outrage over apartheid in South Africa and over discrimination in Northern Ireland presaged today’s concerns about forced labor in Myanmar or child labor on the Indian subcontinent.

Thus, over the past twenty years in particular, the human rights movement has increased its scrutiny of private actors and their responsibility under international law. In particular, there is growing recognition that private corporations have duties under international law, though the extent of these duties—and the mechanisms to enforce them—are not yet clearly defined.¹⁰

2. The globalization of international trade and investment

The globalization of international trade and investment has resulted in reductions in national economic sovereignty. Over the past twenty-five years, an elaborate “global financial architecture” has evolved to promote greater economic integration between countries and reduce national restrictions on trade and investment. Similarly, international aid flows have not kept pace with private commerce. As a result, the private sector now has often substantially greater economic influence over the economic performance of emerging markets than do national governments or inter-governmental organizations.

⁹ The following discussion develops ideas initially presented in Elliot Schrage & Anthony Ewing, *Engaging the Private Sector*, 14 FORUM FOR APPLIED RES. & PUB. POL’Y 44 (1999).

¹⁰ See generally Jordan J. Paust, *Human Rights Responsibilities of Private Corporations*, 35 VAND. J. TRANSNAT’L L. 801, 802-10 (2002); Steven R. Ratner, *Corporations and Human Rights: A Theory of Legal Responsibility*, 111 YALE L.J. 443 (2001). For discussion of efforts to enforce international human rights standards against multinational corporations in U.S. courts, see, e.g., Elliot Schrage, *Emerging Threat: Human Rights Claims*, 8 HARV. BUS. REV., No. 8, at 16 (2003); Elliot Schrage, *Guest Column: Why CSR is a Corporate Governance Challenge*, 4 ETHICAL PERFORMANCE, No. 5, at 6 (2002); Elliot Schrage, *A Long Way to Find Justice: What Are Burmese Villagers Doing in a California Court?*, WASH. POST, July 14, 2002, at B2; Gary Clyde Hufbauer & Nicholas K. Mitrokostas, *Awakening Monster: The Alien Tort Statute of 1789*, in POLICY ANALYSIS IN INTERNATIONAL ECONOMICS 70 (Inst. Int’l Econ., 2003).

The growing importance of private economic relations has propelled a raging public debate about the benefits of globalization: does greater economic integration fuel a “race to the bottom” where companies force developing nations to lower social standards to attract trade and investment? Or does it encourage a “race to the top” where trade and investment are correlated with greater respect for social standards as companies seek out the most productive workforce and the most stable business and political climates? Advocates for each position are able to marshal impressive evidence to support their views.¹¹

Whether, in the aggregate, globalization promotes improvements in social standards, on a microeconomic level the phenomenon has created profound economic dislocations and exploitation. Particularly is this true in industries that rely on unskilled labor. In contrast to earlier examples in South Africa and Northern Ireland, the private business sector is thus identified as the cause of these abuses, not merely as a passive participant. The litany of labor rights violations in global supply chains is long and well documented. They include clear violations of ILO conventions, including but not limited to: Convention No. 29 (forced or compulsory labor),¹² Convention No. 98 (the right to organize and bargain collectively),¹³ Convention No.

¹¹ For examples of the literature claiming that globalization is a race to the bottom, see, e.g., ALAN TONELSON, *THE RACE TO THE BOTTOM: WHY A WORLDWIDE WORKER SURPLUS AND UNCONTROLLED FREE TRADE ARE SINKING AMERICAN LIVING STANDARDS* (2000); LORI WALLACH & MICHELLE SFORZA, *WHOSE TRADE ORGANIZATION? CORPORATE GLOBALIZATION AND THE EROSION OF DEMOCRACY* (1999). For the counter argument that globalization is a race to the top, see, e.g., THOMAS LARSSON, *THE RACE TO THE TOP: THE REAL STORY OF GLOBALIZATION* (2001); ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT *TRADE, EMPLOYMENT, AND LABOUR STANDARDS: A STUDY OF CORE WORKERS' RIGHTS AND INTERNATIONAL TRADE* (Paris, 1996); ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT *FOREIGN DIRECT INVESTMENT AND THE ENVIRONMENT* (Paris, 1999); DAVID VOGEL, *TRADING UP: CONSUMER AND ENVIRONMENTAL REGULATION IN A GLOBAL ECONOMY* (1995); FAIR TRADE AND HARMONIZATION: PREREQUISITES FOR FREE TRADE? (Jagdish Bhagwati & Robert Hudec eds., 1996); FREEDOM TO TRADE: REFUTING THE NEW PROTECTIONISM (Edward Hudgins ed., 1997). A more nuanced approach is taken by: Daniel P. Gitterman, *A Race to the Bottom, a Race to the Top or the March to a Minimum Floor?*, in 1 *ECONOMIC INTEGRATION AND LABOR STANDARDS IN COMPARATIVE PERSPECTIVE IN DYNAMICS OF REGULATORY CHANGE: HOW GLOBALIZATION AFFECTS NATIONAL REGULATORY POLICIES* (David Vogel & Robert Kagan eds., 2002), available at <http://repositories.cdlib.org/uciaspubs/editedvolumes/1/10> (last visited Nov. 9, 2003) and DANI RODRIK, *HAS GLOBALIZATION GONE TOO FAR?* (1997).

¹² June 28, 1930, 39 U.N.T.S. 55 [hereinafter “ILO C29”], reprinted in 3 *INTERNATIONAL LAW AND WORLD ORDER: BASIC DOCUMENTS III.H.2* (Burns H. Weston & Jonathan C. Carlson eds., 5 vols., 1994-) [hereinafter “3 WESTON & CARLSON”].

¹³ June 1, 1949, 96 U.N.T.S. 257 [hereinafter “ILO C98”], reprinted in 3 *WESTON & CARLSON*, *supra* note 12, at III.O.2.

100 (equal remuneration),¹⁴ Convention No. 105 (forced labor),¹⁵ Convention No. 111 (discrimination),¹⁶ Convention No. 138 (minimum age of employment),¹⁷ and Convention No. 182 (worst forms of child labor).¹⁸ In addition, critics have highlighted excessive work hours, forced overtime, worker harassment and abuse, failure to provide time off, and unsafe as well as unhealthy workplace environments as conditions exacerbated by the globalization of production.

3. The globalization of communication

The globalization of communication has fueled a decline in “informational sovereignty.” If governments—or businesses—ever could control the information others receive about the consequences of their policies and practices, such control has all but evaporated. Revolutionary improvements in the speed and quality of communication have transformed human rights reporting, improving its speed and impact. Similar reductions in the cost of communication have expanded the number of human rights monitors and the scope of their reporting.

As a result, dramatic images of abuse or exploitation now cross national borders with the touch of a button. Just as information technology has permitted the globalization of production, so also has it opened the window for scrutiny of the social environment in which production takes place. Business practices have emerged as a particular source of scrutiny, not simply in human rights “hot spots” such as previously apartheid South Africa or Northern Ireland, but in every corner of the globe.

C. Pressures for Corporate Accountability

The convergence of these trends has fueled attempts to restrict business practices in the global economy, presenting a powerful challenge to business leaders and policymakers. They have resulted in three forms of pressure to change business conduct: regulatory, market-based, and judicial/litigative.

1. Regulatory Pressures

Regulatory pressures represent the historic form of government intervention. In its bilateral relations with other countries, the United States has a long tradition of seeking to promote improvements in human rights conditions by regulatory means, particularly in respect of basic labor standards. Perhaps the best known restrictions are contained in 19 U.S.C. 1307, which prohibits the importation of goods produced

¹⁴ June 29, 1951, 165 U.N.T.S. 303, *reprinted in id.* at III.O.3.

¹⁵ June 25, 1957, 320 U.N.T.S. 291, *reprinted in id.* at III.H.4.

¹⁶ June 25, 1958, 362 U.N.T.S. 31, *reprinted in id.* at III.O.4.

¹⁷ June 26, 1973, 1015 U.N.T.S. 297 [hereinafter “ILO C138”], *reprinted in id.* at III.O.5.

¹⁸ June 17, 1999, *reprinted in* 38 I.L.M. 1207 (1999) and 3 WESTON & CARLSON, *supra* note 12, at III.D.4. Convention No. 182 is hereinafter cited as “ILO C182.”

using prison, forced adult, or forced child labor and, to this end, authorizes the U.S. Customs Service to bar such products from entry into the U.S. market. Other human rights or labor rights provisions are contained in the Generalized System of Preferences (GSP), the Overseas Private Investment Corporation (OPIC),¹⁹ the Export-Import Bank, and the Commodity Credit Corporation (CCC).²⁰ However, due to the rise of globalization and the establishment of global rules of trade and investment, the ability of the U.S. government to apply regulatory tools to influence foreign governments has been severely curtailed. With reductions of barriers to trade and investment, the GSP has become a less effective tool for promoting labor standards.

2. Market-based Pressures

Market-based pressures aim to harness economic forces that can push companies to address human rights issues in their global operations. They seek to reward or punish corporate conduct by influencing decisions of private (in some cases public) actors to purchase a company's products, to invest in its equity or debt, or to accept an offer of employment. The information revolution has made communication easier and fueled the rise of market pressures to promote labor standards in the global economy. Boycotts and other consumer actions against consumer products companies in the apparel, footwear, and toy industries are the best known illustrations. The growing movement by universities and local governments to impose labor standards criteria in their procurement policies, particularly for products that are produced using low wage labor from outside the U.S., also has influenced business practices in these industries. Similarly, a growing segment of socially conscious investors examine the supply chain practices of multinational corporations and exclude those companies whose practices are deemed unacceptable.

¹⁹ 22 U.S.C. § 2191 (1986). See Sarah H. Cleveland, *Why International Labor Standards?*, in *INTERNATIONAL LABOR STANDARDS: GLOBALIZATION, TRADE, AND PUBLIC POLICY* 133 (2003). See also Lorne W. Craner (Assistant Secretary of State for the Bureau of Democracy, Human Rights, and Labor), *Privatizing Human Rights: the Roles of Government, Civil Society and Corporations*, Remarks to the Business for Social Responsibility Conference, Seattle, Washington (Nov. 8, 2001), at <http://www.state.gov/g/drl/rls/rm/2001/6684.htm> (asserting that “the U.S. Overseas Private Investment Corporation (OPIC) will only support projects in countries that are taking steps to meet internationally recognized core labor standards.”)

²⁰ 7 U.S.C. § 1733(j)(1) (1999) (stating that “[t]he Secretary or the Administrator, as appropriate, shall not enter into any agreement under this chapter to provide agricultural commodities, or to finance the sale of agricultural commodities, to the government of any country determined by the President to engage in a consistent pattern of gross violations of internationally recognized human rights, including (A) the torture or cruel, inhuman, or degrading treatment or punishment of individuals; (B) the prolonged detention of individuals without charges; (C) the responsibility for causing the disappearance of individuals through the abduction and clandestine detention of such individuals; or (D) other flagrant denials of the right to life, liberty, and the security of persons.”).

Increasingly, the widespread publicity of labor exploitation in global supply chains has had an impact on the recruitment and retention of employees. To be sure, the effect is muted during difficult economic times; but there is no doubt that companies genuinely worry about attracting and retaining the best employees when their corporate reputations have been stained by allegations of irresponsible business conduct.²¹

3. Judicial/Litigative Pressures

Judicial (or litigative) pressures have emerged more recently as a powerful force to push companies to change their business practices. Private plaintiffs have challenged global labor practices of major multinational corporations based on the labor practices of their suppliers or business partners. The cases have advanced several novel legal theories:

In *Kasky v. Nike*,²² the plaintiff argued that Nike's claims about the labor conditions in its global supply chain were false and misleading, therefore constituting a violation of California state law prohibiting unfair business practices. Customers, the plaintiff declared, were induced to purchase Nike products believing that they were manufacturing under labor conditions that respected international worker rights, or at least Nike's code of conduct. For its part, Nike claimed it that was simply participating in the political debate over globalization and that its statements about its supply chain were protected political speech under the First Amendment.²³ The Supreme Court, however, refused to rule on the nature of the speech in question, ordering the case returned to the California state courts on procedural grounds. In so doing, it left unresolved whether companies could be found liable for claims about the "social responsibility" of their supply chain practices and, more generally, about the legal risks of corporate efforts at transparency in the global economy.²⁴

Other cases seek to apply the Alien Tort Claims Statute (ATCS), a 1789 law that permits aliens to bring claims in U.S. courts for violations of the "law of

²¹ See *Living with the Enemy*, THE ECONOMIST, Aug. 9, 2003, at 49.

²² 537 U.S. 1099 (2003).

²³ See Elliot J. Schrage, *A New Model for Social Auditing*, FINANCIAL TIMES, May 27, 2002, at 10.

²⁴ Nike subsequently settled the case without admitting or denying liability. See Amy Yee, *Nike Settles Lawsuit on Workplace Conditions*, FINANCIAL TIMES, Sept. 13, 2003, at 5.

nations.”²⁵ In *Doe v. Unocal*,²⁶ using this statute, plaintiffs have sued Unocal, claiming that it was complicit in forced labor conscription by the military forces of Myanmar (Burma) in the construction of a natural gas pipeline. Similarly, in *Doe v. Gap, Inc., et al.*,²⁷ more than twenty apparel retailers settled a lawsuit that had alleged, among other claims, that the retailers were complicit with local apparel manufacturers and Chinese government employment brokers to conscript Chinese “guest” workers into conditions of forced labor in the Commonwealth of the Northern Marianas. And, in *Sinaltrainal v. Coca-Cola Co., et al.*,²⁸ workers in Colombia sued Coca-Cola and its Colombian bottler, claiming that the companies were complicit in the murder of trade union activists by paramilitary death squads. U.S. courts are split in their willingness to accept cases under the ATCS, and it seems likely that the Supreme Court or action by Congress will be required to settle the matter.

D. The Foreign Policy Challenge Presented by Codes of Conduct

Codes of conduct—and the private voluntary initiatives (PVI) designed to implement them—appear to offer the private business sector an appealing mechanism to address each of the converging pressures described above. They present a “softer” law alternative to regulatory pressures and, in the process, permit companies to tailor their standards and compliance programs to the labor conditions of greatest concerns in their industries. They serve as market “signals”—to investors, customers, and employees—of a company’s commitment to promote respect for labor standards in global supply chains. And, if implemented in a rigorous manner, they mitigate legal risk by providing companies the opportunity to identify labor problems in their supply chains early in a sourcing relationship. Even if violations are subsequently uncovered, these programs can demonstrate that a company has made good faith efforts to avoid doing business with suppliers that violate labor rights.

At the same time, the explosion of PVI presents challenges to U.S. policy and policymakers. PVI often set and seek to enforce standards that may not be appropriate for local circumstances. PVI may lead to the development of parallel systems of labor law enforcement, effectively discouraging the development of local institutions capable of administering local standards. Moreover, well publicized failures of PVI may fuel a continued backlash against globalization, accentuating

²⁵ For a discussion of the Alien Tort Claims Act and its impact on corporate practices, see references in note 10, *supra*.

²⁶ *John Doe I, et al. v. Unocal Corporation, et al.*, ___ F. 3d ___, 2002 WESTLAW [hereinafter “WL”] 31063976 , RICO Bus. Disp. Guide 10,336, 2 Cal. Daily Op. Serv. 9585, 2002 Daily Journal D.A.R. 10,794 , 9th Cir. (Cal.), Sept. 18, 2002.

²⁷ *Doe I, et al., on behalf of themselves and all others similarly situated v. The Gap, Inc., et al.*, 2001 WL 1842389, D.N. Mar. I., Nov. 26, 2001 [not reported in F. Supp. 2d].

²⁸ *Sinaltrainal v. Coca-Cola Co. et al.*, and *Galvis v Coca-Cola Co.*, each at 256 F. Supp. 2d 1345 (S.D. Fla., 2003).

fears that economic integration serves to create competitive advantage based more on exploitation (of workers, communities, and governments) than on building productivity.

How should the United States respond to these initiatives? Should it ignore them and allow them to develop on their own? This might be an appropriate response if the evidence suggested that their impact on workers' rights was negligible or non-existent, or if the evidence was not clear.

Alternatively, should the U.S. discourage such initiatives, as an intrusion on national sovereignty in the countries that are U.S. trading partners or as an intrusion on U.S. bilateral relations? This might be an appropriate conclusion, if the evidence suggests that such initiatives jeopardize other important U.S. policy interests or, perhaps, if PVIs place U.S. companies at a competitive disadvantage relative to their industry peers.

Finally, if ignoring or discouraging PVIs seems inappropriate, the question remains whether—and to what extent—U.S. policy should promote them? More specifically, if PVIs advance U.S. foreign policy objectives, how should they be integrated into traditional bilateral and multilateral diplomacy?

This report examines the effectiveness of PVIs in promoting labor standards in four different industries across four geographic regions. Each begins with an examination of the industry and its structure, with particular emphasis placed on understanding the nature of supply chain practices and the degree of visibility and influence multinational customers have over local industry practices. It then reviews the alleged labor rights violations that surfaced in the industry's global supply chain and describes how companies responded—either by creating a new PVI or revising existing initiatives. Finally, each case evaluates the impact of PVIs on labor conditions and identifies lessons learned. They are presented in the order of their development and implementation, beginning with initiatives that are well established (as in Pakistan) to those that have been only recently launched (as in Central America and Asia) to those that remain in formation (as in China).

Case Study 1 describes how the Project to Eliminate Child Labor in Soccer Ball Production in Pakistan was established, evaluates its success to date, and identifies lessons learned. A partnership of more than fifty international sporting goods brands (including Adidas, Nike, and Reebok), thirty Pakistani manufacturers, the ILO, UNICEF, and Save the Children (UK), the project was launched in 1997 in recognition of the benefits of linking individual corporate efforts to assure that child labor was excluded from the supply chain for soccer ball production and distribution. The project aims to remove children from the soccer ball production process while protecting the welfare of child stitchers and their families.

Case Study 2 describes the PVI established by Starbucks and its impact on labor standards in coffee cultivation in Central America, particularly Guatemala. Starbucks became the first specialty coffee brand in the United States to adopt a code of conduct for its suppliers in 1995. In 2001, the company launched a “Preferred Supplier Program” that employs price incentives and grades suppliers on “sustainability criteria” that include conformity to international labor standards.

Case Study 3 describes a PVI created by the global chocolate industry to eliminate the worst forms of child labor in cocoa production, particularly in Côte d’Ivoire. In September 2001, the Chocolate Manufacturers Association and the World Cocoa Foundation signed a Protocol²⁹ committing themselves and their members to promote compliance in cocoa production with ILO Convention 182.³⁰ The Cocoa Industry Protocol provides for “the development of a credible, mutually acceptable system of industry-wide global standards, along with independent monitoring and reporting, to identify and eliminate any use of the worst forms of child labor in the growing and processing of cocoa beans.”³¹

Case Study 4 describes efforts of the global toy industry to promote convergence among efforts by toy brands and retailers to promote respect for basic labor standards in global toy production. The PVI targets toy production in China, since that country’s 2,500 manufacturing facilities, which employ more than 3 million workers, are the source of 72% of toy imports to the United States.

The final section brings together the lessons of the case studies to examine the effectiveness of PVIs as a policy tool to promote respect for labor standards and to suggest how they might be better integrated into United States foreign policy. It identifies key predictors of successful PVIs and recommends how U.S. policy can leverage its support for PVIs to advance our human rights and other foreign policy objectives. It suggests that while PVIs are not the sole solution to labor rights violations in the global economy, they offer useful models to improve enforcement of local standards, reinforced by support from the international community.

²⁹ Protocol for the Growing and Processing of Cocoa Beans and their Derivative Products in a Manner That Complies with ILO Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, Sept. 19, 2001 [hereinafter “Cocoa Industry Protocol” or “CIP”], at <http://www.chocolateandcocoa.org/images/protocol.pdf> (last visited Nov. 9, 2003).

³⁰ ILO 182, *supra* note 18.

³¹ ILO 28 Press Release, ILO, *Agreement to End Child Labour on Cocoa Farms* (Oct. 1, 2001), at <http://www.ilo.org/public/english/bureau/inf/pr/2001/32.htm> (last visited Nov. 9, 2003).

CASE STUDY 1

ADDRESSING CHILD LABOR IN PAKISTAN'S SOCCER BALL PRODUCTION

A. Introduction

In the mid-1990s, reports of Pakistani children making soccer balls for global markets captured the attention of the international community. A series of Western media accounts and advocacy campaigns by labor activists portrayed thousands of children as young as six years of age stitching soccer balls under slave-like conditions for brands such as Adidas, Nike, and Reebok. Each of the companies involved had adopted codes of conduct or corporate policies that prohibited child labor, yet all were surprised by the allegations and unprepared to address them individually.

Led by these companies and prompted by growing pressure that threatened key commercial relationships, the sporting goods industry acted collectively to develop a voluntary program to address child labor in soccer ball production. Survey research by the industry assessing the extent and nature of child labor in soccer ball production in Pakistan refuted allegations of debt bondage, wage discrimination and other forms of exploitation associated with child labor. It confirmed, however, a significant number of children under fourteen stitching balls in the predominantly home-based soccer ball assembly process. In response, companies moved quickly to reorganize their supply chain to eliminate child workers.

In 1997, the sporting goods industry launched the Project to Eliminate Child Labour in the Soccer Ball Industry in Pakistan, a collaborative effort of multinational sporting goods brands, local soccer ball manufacturers, the International Labor Organization (ILO), nongovernmental organizations, and governments. The Project aims to remove Pakistani children from soccer ball production while protecting the welfare of child stitchers and their families. The experience of the international sporting goods industry relative to the Project provides a realistic perspective on the responsibilities of multinational companies operating in developing markets, the definition and enforcement of international labor standards, and the challenges, potential impact, and limitations of private regulatory initiatives.

B. The Soccer Ball Industry

1. History of Production in Pakistan

For more than a century, from the time wooden furniture craftsmen from local tribes began making sporting equipment for British soldiers garrisoned in the Lahore

region of India in the 1880s,¹ workers in the Sialkot region of Pakistan's Northeastern Punjab have produced sporting goods for global markets.² From wooden tennis rackets and hockey sticks, Sialkot sporting goods manufacturers expanded their product lines to include rugby and soccer balls, cricket bats and balls, badminton and squash rackets, and boxing and skiing gloves. Today, the sporting goods industry in Sialkot comprises 1.5% of Pakistan's exports.³ In 2000-2001, sporting goods exports from Sialkot totaled \$130 million or 20% of the region's total exports.⁴ Other products manufactured in Sialkot for export include plastic slippers, musical instruments, surgical instruments, and work gloves. The Sialkot sporting goods industry is unique, even within the Punjab province of Pakistan in that most production is intended for export to competitive global markets.

The first Sialkot-manufactured soccer balls (i.e., footballs) to be approved for match play by the *Fédération Internationale de Football Association* (International Federation of Football Associations or "FIFA") were produced in 1967.⁵ By 1997, as much as 75% of the 30 to 40 million soccer balls sold worldwide were being manufactured in and around Sialkot.⁶ Pakistan also accounted for two-thirds to three-fourths of soccer ball imports to the United States.⁷

The hand-stitched "premium" soccer balls produced in Pakistan are considered to be of high quality. They are used by professional leagues worldwide and in prestige tournaments such as the quadrennial World Cup tournament. Premium soccer balls sell for \$20 to \$90 in the United States.

¹ See ANITA WEISS, *CULTURE, CLASS AND DEVELOPMENT IN PAKISTAN: THE EMERGENCE OF AN INDUSTRIAL BOURGEOISIE IN PUNJAB* 120 (1991). British India was partitioned into the independent states of Pakistan and India in 1947.

² The Sialkot District of Punjab Province in Pakistan comprises approximately 1,400 villages and 2.6 million people.

³ Pakistan's exports totaled \$8.8 billion in 2001. U.S. CENTRAL INTELLIGENCE AGENCY, *THE WORLD FACTBOOK 2002: PAKISTAN*, available at <http://www.cia.gov/cia/publications/factbook/geos/pk.html> (last visited Nov. 9, 2003) [hereinafter "CIA FACTBOOK"].

⁴ *Sialkot Chamber of Commerce and Industry, Summary of the Report by the Fact Finding Mission Constituted by the Sialkot Chamber of Commerce and Industry* (July 2002), available at <http://www.globalmarch.org/world-cup-campaign/press-center/s.php3> (last visited Nov. 9, 2003).

⁵ WEISS, *supra* note 1, at 127.

⁶ Telephone Interview with Thomas Cove, Vice President of Government Affairs, SGMA International (Jan. 6, 2003) [hereinafter "Cove Interview"]. China, India, and Indonesia also produce soccer balls.

⁷ *Id.*

The market for soccer balls can be cyclical, with demand increasing in response to the World Cup. Depending on the venue, demand for soccer balls in a World Cup year can increase as much as 150%.⁸ Retail sales of soccer balls manufactured in Pakistan were estimated to total \$1 billion in 1996.⁹

Many Sialkot manufacturers also produce a range of less expensive soccer balls for export. These balls may be smaller than regulation soccer balls or made with less expensive materials. “Promotional” balls are sold not for use in soccer matches but for distribution as toys or souvenirs. The highest quality balls have traditionally been stitched by hand, although stitching machines introduced in China have begun to produce balls approaching match or premium quality.

2. Structure of the Global Industry

The soccer ball supply chain typically includes at least four levels of production: brands, manufacturers, contractors, and stitchers.

a. Brands

Brands are the international sporting goods companies that market and sell soccer balls worldwide, either directly to consumers or, more generally, wholesale to sporting goods retailers. The international brands that contract for (or “source”) soccer balls produced in Pakistan include United States companies Nike and Reebok, Germany’s

⁸ Stated the ILO in 1997, “in 1995-96, football exports brought in nearly 1.3 billion Rupees (Rs.) . . . [I]n 1993-94, when demand was boosted because of the 1994 World Cup tournament in the United States, around 35 million balls were exported, to a value of nearly Rs. 3.2 billion. Football production is now rising again in advance of the 1998 competition.” *The Sialkot Story: Making Villages “Child Labour Free,”* ILO, WORLD OF WORK n.19 (1997). See also SAVE THE CHILDREN, STITCHING FOOTBALLS: VOICES OF CHILDREN 14 (1997) [hereinafter “SAVE THE CHILDREN 1997”]. As with most consumer goods, pressure from retailers seeking to hold as little inventory as possible has reduced the average lead time between order and delivery in the sporting goods industry from as much as two years prior to the 1990 World Cup to only six to nine months currently. Jane Macartney, *Their Goal—Six Million Balls*, THE AGE (Australia), Mar. 2, 1994, available at 1994 WESTLAW [hereinafter “WL”] 14868224; Cove Interview, *supra* note 6.

⁹ Press Release, Sporting Goods Manufacturers Association, *Sporting Goods Industry Partners with Children’s and Human Rights Groups to End Child Labor in Pakistan’s Soccer Ball Industry* (Feb. 14, 1997), at <http://www.sgma.com/press/1997/press988378767-22438.html> (last visited Nov. 9, 2003). Soccer’s popularity worldwide is unrivaled. Even in the United States, soccer is the only team sport to experience participation growth between 1990 and 2000. See Press Release, SGMA International, *Soccer: An Established Team Sport on the Rise* (Mar. 1, 2002), at <http://www.sgma.com/press/2002/press1013785151-2409.html> (last visited Nov. 9, 2003).

Adidas, Japan's Mizuno, and England's Pentland Group and Umbro.¹⁰ Under a multi-tiered production model, the international brands make no capital investment in materials or manufacturing equipment. Instead, they devote their resources to sales and marketing of the finished product and make their profit on the margin of wholesale or retail sales over the contracted cost of the balls plus related sales, marketing, and other expenses. No major brand sells soccer balls only. Typically they are part of branded product lines that include athletic apparel and footwear, which account for the bulk of sporting goods company sales.

b. Manufacturers

Brands place orders with soccer ball manufacturers, which tend to be large companies with relatively capital-intensive operations. Located primarily in Sialkot city,¹¹ the manufacturers own the facilities where the soccer ball components are produced and where the balls are finished, combining machine work and work by hand with an emphasis on quality control for match balls. Manufacturers purchase the raw materials and distribute the soccer ball components¹² to stitching contractors who, for an agreed price per ball, return stitched balls to the manufacturers for shipment to the global brands. Pakistani manufacturers invest in the materials and equipment and earn a return based on their ability to secure contracts for export and to manage the costs of production. Most manufacturers hold contracts with multiple brands. Many have stimulated innovations in the soccer ball manufacturing process, introducing labor-saving technology and lowering costs through the use of different materials such as artificial leather.

c. Stitching Contractors

Stitching contractors serve as the middlemen between the manufacturers and the large pool of workers who stitch soccer balls by hand. The largest contractors employ as many as 300 stitchers. Contractors profit on the difference between the rate per ball paid by the manufacturers and the cost of transporting the panels to stitchers and, later, the stitched balls back to the manufacturer. They profit also on the piece rate they pay to stitchers.

¹⁰ Nike is the world's largest sporting goods company (\$9.9 billion in annual sales in 2002), followed by Adidas-Solomon (\$5.4 billion in 2001), Reebok (\$3 billion in 2001), Russell (\$1.2 billion in 2001) and Mizuno (\$1 billion in 2002). See Hoovers Online, at <http://www.hoovers.com> (last visited Nov. 9, 2003). See also Market Guide, at <http://biz.yahoo.com/p/n/nke.html> (last visited Nov. 9, 2003).

¹¹ *Executive Summary*, in RAASTA DEVELOPMENT CONSULTANTS, AN ASSESSMENT OF THE WORKING CHILD IN THE SOCCER BALL INDUSTRY, SIALKOT VII (June 1996) (on file with the author) [hereinafter "RAASTA REPORT"].

¹² Soccer balls are made by gluing a rubber bladder into an outer shell of thirty-two leather or polyurethane panels. Dye-cutting and hole-punching machines stamp and cut the leather into panels ready for stitching. The fabricated panels are glued to a bladder then stitched together with nylon thread. After stitching, the soccer ball can be inflated, rounded, inspected, and packaged.

d. Stitchers

At the end of the supply chain are the stitchers. An estimated 30,000 people work stitching soccer balls in the Sialkot region.¹³ Their earnings depend entirely on the number of balls they stitch and the piece rate they obtain from a contractor. Unlike the rate per ball paid by the manufacturers to the contractors, the rates paid to stitchers are not fixed by contracts.

B. Labor Violations and Soccer Ball Production

1. Child Labor - Background

Child labor is widespread in developing countries and common in Pakistan. At least 211 million children aged five to fourteen are estimated to be “economically active” worldwide.¹⁴ One hundred eighty-six million are engaged in child labor prohibited by international agreements.¹⁵ Another 59 million, aged fifteen to seventeen, are engaged in hazardous and unconditionally prohibited work.¹⁶ More than half of working children under age eighteen live in South and Southeast Asia,¹⁷ and in 1996 the ILO estimated that at least 3.3 million children below age fourteen worked in Pakistan.¹⁸

The vast majority of child laborers worldwide work in informal economic sectors such as domestic service, family-based agriculture,¹⁹ prostitution, restaurants, small-scale

¹³ RAASTA REPORT, *supra* note 11, at 4.

¹⁴ See INTERNATIONAL LABOUR OFFICE, A FUTURE WITHOUT CHILD LABOUR 15, n.23 (May 2002) [hereinafter “ILO 2002”], available at <http://www.ilo.org/public/english/standards/decl/publ/reports/report3.htm> (last visited Nov. 9, 2003) (noting that, relative to the year 2000, “[e]conomic activity” is a broad concept that encompasses most productive activities undertaken by children To be counted as economically active, a child must have worked for at least one hour on any day during a seven-day reference period.”).

¹⁵ *Id.* at 16.

¹⁶ *Id.*

¹⁷ U.S. DEPARTMENT OF LABOR, BY THE SWEAT AND TOIL OF CHILDREN: THE USE OF CHILD LABOR IN AMERICAN IMPORTS 2-6 (July 15, 1994) [hereinafter “DOL 1994”].

¹⁸ ILO, SUMMARY RESULTS OF CHILD LABOUR SURVEY IN PAKISTAN (Oct. 9, 1996). Many observers make higher estimates of as many as 20 million child laborers in Pakistan. See U.S. DEPARTMENT OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2001: PAKISTAN (Mar. 2002), available at <http://www.state.gov/g/drl/rls/hrrpt/2001/sa/8237.htm> (last visited Nov. 9, 2003) [hereinafter “DOS 2001”].

¹⁹ The ILO estimates that 70% of child labor occurs in the agricultural sector. ILO 2002, *supra* note 14, at xi.

manufacturing, and street vending.²⁰ Relatively few work directly in export industries.²¹ A number of export industries, however, have been found to employ children. They include apparel, carpet, shoe, and furniture manufacturing plus small-scale mining, gem polishing, food processing, and leather tanning. A much larger number of children work indirectly for the export sector through their work in agriculture. Child laborers are most likely to be found in small-scale enterprises and in neighborhood and home settings beyond the reach of government regulation or enforcement. Less than 9% of child laborers work in the manufacturing sector, and most of them produce goods for the domestic market.²² Subcontracting arrangements often pay manufacturing workers by the piece for items that can be produced at home or in small workshops. Children involved in these industries may work for wages paid directly to their parents.

The principal reason children work is poverty.²³ Children in the developing world work mostly to survive. They perform unpaid work in family agriculture to provide food for themselves and their family, household chores that allow other family members to work, or paid work to increase family income. The absence of educational alternatives, the desire to learn a skill, family and societal attitudes, and discrimination and inequality are additional factors that cause children to work and that contribute to the persistence of child labor.²⁴ Also, demand for child labor is created and perpetuated by employers who desire to lower costs through low wages and a compliant work force.²⁵ Children can be paid less than adults and are less able to resist abuse. In some sectors, such as the hand-knotted carpet industry, children are employed because employers believe children are more skilled than adult workers.

The ILO estimates that 171 million children aged five to seventeen are engaged in hazardous work and that more than eight million suffer the unconditional worst forms

²⁰ *Id.* at 22.

²¹ *Id.* at xi; DOL 1994, *supra* note 17, at 2.

²² ILO 2002, *supra* note 14, at xi.

²³ *See, e.g., id.* at 46-47; ILO Convention (No.182) Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, June 17, 1999, prml., ¶5 (“Recognizing that child labour is to a great extent caused by poverty and that the long-term solution lies in sustained economic growth leading to social progress, in particular poverty alleviation and universal education.”) [hereinafter “ILO C182”], reprinted in 38 I.L.M. 1207 (1999) and 3 INTERNATIONAL LAW AND WORLD ORDER: BASIC DOCUMENTS III.D.4 (Burns H. Weston & Jonathan C. Carlson eds., 5 vols., 1994-) [hereinafter “3 WESTON & CARLSON”]. *See also* DOL 1994, *supra* note 17, at 21-22.

²⁴ *See, e.g.,* ILO 2002, *supra* note 14, at 46-48.

²⁵ DOL 1994, *supra* note 17, at 20-21. *See also* ILO 2002, *supra* note 14, at 48.

of child labor.²⁶ The most prevalent of the worst forms of child labor is bonded labor, a form of forced labor²⁷ under which the child works to pay off a financial debt.²⁸ Bonded laborers may work for years without compensation and frequently are subject to exploitation and abuse. Debt bondage typically occurs in informal, unregulated sectors and draws its victims from landless households. Bonded child labor has been found in South Asia in agriculture, child trafficking for domestic service, and in the carpet weaving and brick making industries.²⁹

The United States government, the ILO, and others have identified child labor as a common practice in Pakistan.³⁰ Two-thirds of economically active Pakistani children work in subsistence and commercial agriculture, or in the forestry, hunting, and fishing industries. Child labor in Pakistan is common also in the informal sector (including domestic work, family businesses, and street vending) and in the brick kiln, carpet, leather, and surgical instruments industries. Seventy percent of working

²⁶ ILO 2002, *supra* note 14, at x. One hundred thirty-two states, including the United States and Pakistan, have ratified ILO C182, *supra* note 23, which considers the worst forms of child labor to comprise, per Article 3: “(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”

²⁷ Forced labor is “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.” ILO Convention (No. 29) Concerning Forced or Compulsory Labor, June 28, 1930, art. 2, 39 U.N.T.S. 55 [hereinafter “ILO C29”], *reprinted in* 3 WESTON & CARLSON, *supra* note 23, at III.H.2. Pakistan has ratified the Convention; the United States has not.

²⁸ *See, e.g.*, U.S. DEPARTMENT OF LABOR, BY THE SWEAT AND TOIL OF CHILDREN: CHILD LABOR IN AGRICULTURAL IMPORTS (1995) [hereinafter “DOL 1995”].

²⁹ ILO 2002, *supra* note 14, at 31-32.

³⁰ *See, e.g.*, DOS 2001, *supra* note 18, at 2483; ILO 2002, *supra* note 14, at 28, 36, 90, 105, 111-12; ILO, *supra* note 18, at 28; UNICEF, CHILD LABOR IN THE CARPET WEAVING INDUSTRY IN PUNJAB (1992); GOVERNMENT OF PAKISTAN AND UNICEF, DISCOVER THE WORKING CHILD: THE SITUATION OF CHILD LABOR IN PAKISTAN 1990 (1991); SEBCON Ltd., Child Work and Family Life in Karachi (submitted to ILO, Bangkok - date unknown) (on file with the author).

children in Pakistan perform work as unpaid family helpers.³¹ An estimated 60% of Pakistani child labor occurs in Punjab Province.³²

The worst forms of child labor are present in modern Pakistan. Debt bondage in Pakistan persists despite its legal abolition in 1992.³³ The continuing illegal practice of bonded labor is widespread and common in the brick kiln, carpet, fishing, and glass industries, and among agricultural and construction workers in rural areas as well, particularly in Sindh Province and the tribal areas of Pakistan.³⁴ One 1998 study by a trade federation reported more than 200,000 families working in debt slavery in the brick kiln industry alone.³⁵ In the carpet industry, which is concentrated in the Punjab and Sindh provinces, a debt bondage system known as the *peshgi* system advances loans and materials to poor families who offer labor as collateral.³⁶ Pakistani children are employed also as prostitutes.³⁷

One third of Pakistan's 147 million people live in absolute poverty.³⁸ Per capita annual income is approximately \$475 (30,000 Pakistani Rupees or PKRs). Over 40% of the population is under age sixteen and life expectancy is sixty-two years. Almost half of Pakistan's 40 million workers are employed in agriculture. Apparel, cotton, leather products, rice, and textiles are Pakistan's principal exports, with exports representing approximately 3% of Pakistan's GDP. In December 2001, the International Monetary Fund (IMF) approved a \$1.3 billion, three-year Poverty Reduction and Growth Facility program to help the government to complete its

³¹ See ILO, *supra* note 18, at 28.

³² *Id.*

³³ Human rights groups allege that private jails housing some 4,500 bonded laborers exist in the tribal and feudal regions of Pakistan. In March 2000, a Pakistani court ordered the release of twenty-four brick kiln workers, including ten women and children, who were kept in chains, were not compensated for their work, and were beaten frequently. DOS 2001, *supra* note 18, at 2498.

³⁴ *Id.*; DOL 1995, *supra* note 28, at 130.

³⁵ DOS 2001, *supra* note 18, at , at 2529.

³⁶ Often the debt can never be repaid due to high interest rates, fraudulent accounting, and low wages. GOVERNMENT OF PAKISTAN AND UNICEF, *supra* note 30. "The government of Pakistan disputes that *peshgi* workers are 'bonded' or 'forced' laborers and argues that they are 'contract laborers' who negotiate a salary advance in a free and open market." DOS 2001, *supra* note 18, at 2529.

³⁷ In Pakistan, boys form a majority of the 14 to 17 year-old children who suffer commercial sexual exploitation. ILO 2002, *supra* note 14, at 36.

³⁸ DOS 2001, *supra* note 18, at 2486.

economic reform program, which includes increased funding for health, education, and rural job creation programs.³⁹

Finally, the Pakistani public education system suffers from insufficient funding, corrupt and inefficient administration, low enrollments, and a lack of facilities, materials, and qualified teachers. Education is not compulsory under Pakistani law and “neither the federal nor provincial governments provide sufficient resources to assure universal education.”⁴⁰ Studies report that only 65% to 70% of Pakistani children under age twelve are enrolled in school and that of those children who go to school only 33% of children in fifth grade can read with comprehension.⁴¹ Most girls do not receive any formal schooling. The literacy rate for Pakistani adults is 45.7%, and the female literacy rate is half that of males.⁴²

2. Allegations against the Soccer Ball Industry

One of the first reports to appear in the West about children working in the soccer ball industry was a 1990 article in *The New York Times* that mentioned Pakistani boys stitching soccer balls.⁴³ Although the article did not give the ages of the child stitchers, it described piecework stitching taking place “in homes, shops and courtyards all over Sialkot” for more than twenty manufacturers.⁴⁴ The focus of the article was Sialkot’s unique position in the sporting goods industry, not labor conditions. Adidas was mentioned, but the story triggered no public reaction from consumers, activists, or the international community.

Five years later, after the United States had hosted the 1994 World Cup Finals, another story on soccer ball production aired in the United States. This time child labor was the focus and the light shed on labor practices in the sporting goods industry would eventually capture the attention of a whole range of actors, from government regulators, international organizations, and labor activists to North American and European consumers, the CEOs of multinational sporting goods companies, and Pakistani manufacturers.

³⁹ The IMF program was the result of an 18-month consultative process between the government, nongovernmental organizations (NGOs), civic groups, the public, and international donors. *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Female literacy is only 30.6%. CIA FACTBOOK, *supra* note 3, at 396.

⁴³ Barbara Crossette, *Soccer Balls Sustain Pakistan Town*, N.Y. TIMES, Oct. 8, 1990, at D4.

⁴⁴ *Id.*

On April 5, 1995, the U.S.-based CBS television news magazine *Eye to Eye with Connie Chung* aired a segment on child labor in the soccer ball industry reported by Roberta Baskin.⁴⁵ Baskin had found Pakistani children sewing soccer balls in Sialkot workshops. The youngest stitcher was a six year-old boy. The report cited estimates that up to 25,000 children worked as stitchers in Sialkot for about two dollars per day, less than the Pakistani minimum wage. According to the report, children sometimes were paid less than adults and the child stitchers did not attend school. Baskin had interviewed the owner of Sublime Sports, one of the largest Sialkot soccer ball manufacturers, which made balls for Adidas and Reebok. On camera, the manufacturer acknowledged that despite the official prohibition of child labor, contractors were known to employ child stitchers. Baskin showed the footage to an Adidas America executive who expressed surprise and concern and pledged to “take a look at it.”⁴⁶

The *Eye to Eye* segment also profiled twelve year-old labor activist Iqbal Masih, a freed Pakistani bonded laborer who had been sold to a carpet manufacturer at the age of four. Iqbal escaped servitude by making carpets, spoke out against bonded labor in Pakistan, and received a Reebok Human Rights Award in 1994 for his human rights activism. Responding to the story, Reebok said it was “taking immediate action to cease business with the Sublime factory pending its own investigation.”⁴⁷ The *Eye to Eye* broadcast coincided with the introduction by U.S. Senator Tom Harkin (Dem., IA) of a bill to ban imports of goods produced with child labor.⁴⁸

A subsequent investigation of the Sialkot sporting goods industry by the independent Human Rights Commission of Pakistan (HRCP) found that “child labour in the manufacture of soccer balls and related sports items . . . not only exists, it is clearly visible, despite apparent efforts to conceal it.”⁴⁹ The HRCP found no children under eighteen working in any of the factories where soccer ball materials were cut and the stitched balls finished. However, it did find children stitching in small workshops, sheds, and homes. The HRCP estimated that 20%-25% of soccer ball stitching was being performed by children under eighteen, but made no estimate of the

⁴⁵ *Eye to Eye with Connie Chung: Children at Work; Pakistani Child Labor Prominent in Manufacture of Goods for U.S. Sports Companies and U.N.I.C.E.F.* (CBS television broadcast, Apr. 6, 1995).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ See Child Labor Deterrence Act of 1995, S. 706, 104th Cong. (1995), available at http://frwebgate.access.gpo.gov/cgi-bin/useftp.cgi?IPaddress=162.140.64.45&filename=s706is.txt&directory=/disk3/wais/data/104_cong_bills (last visited Nov. 9, 2003).

⁴⁹ HUMAN RIGHTS COMMISSION OF PAKISTAN, CHILD LABOR IN PAKISTAN: SIALKOT, KASUR 10 (Lahore, 1995) [hereinafter “HRCP 1995”].

total number because the work was mostly carried out in homes in widely scattered villages.⁵⁰ Children stitching in workshops worked eight to ten hours per day and were able to stitch three or four balls a day for between 15 and 30 PKRs a piece, while those stitching at home tended to work fewer hours. Few of the children stitching in workshops had attended school, but many child stitchers working at home worked part-time after school hours. Working conditions in workshops included low light and circumstances resulting in poor posture. Children stitching at home enjoyed generally better conditions, but “no apparently adverse physical effects were observed in the case of children stitching footballs.”⁵¹

HRCP found no evidence of bonded labor in the production of soccer balls. Workers may receive small loans from the “middlemen” who distributed the piecework, but the advances functioned as a form of credit and were not so large as to prevent repayment. All the children interviewed by HRCP said they worked because of economic necessity. HRCP noted that nearly eighty percent of the child stitchers were from families with more than five children and that in a majority of cases the mother did not work and the father had died, did not work, or worked irregularly. Finally, HRCP pointed out that there were very few women workers at the factories. At one large manufacturing facility that produced soccer balls for export, only six of eleven hundred workers were women.

C. Response of the Sporting Goods Industry

The child labor accusations created problems for companies at every level of the global soccer ball supply chain.

Initially, Pakistani stitching contractors, manufacturers, and government officials denied the accusations of child labor in the production of soccer balls.⁵² Pakistani officials leveled charges that the United States was using child labor claims as propaganda to weaken Pakistan’s position in trade negotiations.⁵³ Pakistani soccer

⁵⁰ *Id.* at 11.

⁵¹ *Id.* at 16. In contrast, after surveying the surgical instruments industry in Sialkot, HRCP found nearly 40% of some processes carried out by children as young as ten, and that most work took place in factories and workshops under unsafe and unhealthy conditions. *Id.* at 13-14.

⁵² See, e.g., HRCP 1995, *supra* note 49, at 6-9; Amir Mir, *Pakistan-Labor: Threat of FIFA Ban Jolts Football Industry*, INTER PRESS SERVICE, Oct. 11, 1996, available at 1996 WL 13588427.

⁵³ U.S. labor organizations had filed petitions citing child labor violations (among other violations of workers rights) in an effort to deny Pakistan preferential tariff treatment for exports to the United States under the GSP program. In 1996, the United States revoked GSP trade benefits for certain Pakistani goods, such as surgical instruments and hand-loomed carpets. DOS 2001, *supra* note 18, at 2528.

ball manufacturers reported order cancellations totaling more than \$3 million.⁵⁴ Some manufacturers argued that children would be physically incapable of stitching the premium export balls produced in Sialkot. The HRCP report had concluded, however, that children were physically capable of stitching the higher quality balls and that most adult stitchers interviewed had started working around the ages of six or seven.⁵⁵ HRCP also found no evidence that children were employed in order to pay lower wages.⁵⁶ Pakistani manufacturers claimed they did not employ anyone below age seventeen. When pressed, some manufacturers admitted that children as young as fifteen may be stitching in their homes and cited poor educational facilities and a desire to pass on traditional vocational skills as justifications for any child labor in the sector.⁵⁷

The *Eye to Eye* segment focused the international sporting goods industry on the child labor issue and on each company's potential exposure to damaging publicity. The allegations presented a particular challenge to the leading companies in the sporting goods industry. All of them had publicly announced codes of conduct or policies that prohibited child labor among their contractors. None, however, recognized the risk that their suppliers utilized supply chains that relied on underage workers. Moreover, none had programs in place to monitor the labor practices of the contractors of their contractors and none had any real sense of the size or scope of the risk.

The largest U.S. brands had codes that addressed child labor. For example, child stitchers under fourteen would violate Reebok's "Human Rights Production Standards," which address child labor directly:

Reebok will not work with business partners that use child labor. The term "child" generally refers to a person who is younger than 15 (or 14 where the law of the country of manufacture allows) or younger than the age for completing compulsory education in the country of manufacture where such age is higher than 15. Standards.⁵⁸

⁵⁴ HRCP 1995, *supra* note 49, at 6.

⁵⁵ *Id.* at 10-11.

⁵⁶ *Id.* at 12-13.

⁵⁷ *Id.* at 6-9.

⁵⁸ See <http://www.reebok.com/x/us/humanRights/business> (last visited Nov. 9, 2003). Reebok adopted its Human Rights Production Standards in 1992.

Nike had adopted also a Code of Conduct for its business partners that prohibited forced labor and child labor.⁵⁹

Irrespective of the degree of legal risk or inconsistency with corporate policy, the sporting goods industry could not afford to be associated with any form of child labor, prohibited or not. Public exposure had created the perception among activists, consumers, and regulators in the U.S. and Europe that the industry had failed to identify and eliminate child labor in its supply chain. The brands realized that the apparent legality of child work in soccer ball assembly under local law would not shield soccer ball importers from their critics. The juxtaposition of American and European children playing soccer while Pakistani children worked to make their soccer balls was guaranteed to generate media attention. Consumers had begun to question the origin of the soccer balls they purchased.

Moreover, competitors in the sporting goods industry immediately recognized that the problem threatened to be greater than any single company could manage. The publicity threatened not only individual brands, but the viability of Pakistan as a supplier of soccer balls as well. Addressing the problem might mean not simply improving the practices of individual manufacturers, but potentially changing the practices of the entire sourcing market. Given the sharp public attacks on the leading companies, even investigating the allegations required a far better understanding of Pakistani manufacturer supply chain practices and greater credibility than any single company could manage.

The result was a parallel process. Companies facing the greatest criticism felt the greatest pressure to respond and developed their own programs to target their exposure to the problems identified. At the same time, they helped lead a collaborative industry initiative that defined the problem and established an umbrella program that set minimum standards for addressing the issues. The collaborative process was coordinated by the Soccer Industry Council of America (SICA),⁶⁰ which formed a Child Labor Project Task Force to coordinate ways the industry could address child labor collectively.⁶¹ The Task Force included a representative from each of the leading global soccer brands (Adidas, Mitre, Nike, Reebok, Umbro) as well as companies that produced for key U.S. markets (Franklin). The World Federation of the Sporting Goods Industry (WFSGI) established a Committee on Ethics and Fair Trade (CEFT), chaired by U.S. Sporting Goods Manufacturers Association (SGMA)

⁵⁹ See Nike Code of Conduct (1992), available at <http://www.nike.com/nikebiz/nikebiz.jhtml?page=25&cat=compliance&subcat=code> (last visited Nov. 9, 2003).

⁶⁰ SICA, a committee of the Sporting Goods Manufacturers Association, represents every major company that markets and distributes soccer balls in the United States.

⁶¹ The SICA Task Force was formally approved at the trade association's July 1995 board meeting in Chicago and comprised representatives of Adidas America, Reebok International, and Umbro USA.

president John Riddle, to focus the industry worldwide on “the ethical and human rights issues that impact the industry’s supply chains, propose approaches to dealing with common issues and to move toward developing a Code of Practice for the industry.”⁶²

In September 1995, SICA requested from experts a proposal to benchmark existing child labor monitoring and certification programs, survey soccer ball industry stakeholders, conduct an educational needs assessment of child stitchers, and recommend a program to prevent the use of child labor in soccer ball manufacturing.⁶³ By November 1995, SICA had retained a U.S.-based human rights lawyer and management consultant to advise the project. It also hired Raasta Development Consultants (Raasta), an independent Karachi-based research and technical assistance organization (with expertise in women’s, community, and rural development), to serve as the Pakistani partner for the project.⁶⁴

1. Information Gathering

SICA’s first task was to make a factual assessment of conditions on the ground in Sialkot and the surrounding villages. Although the brands were subject to accusations of employing child labor because of their sourcing arrangements with the Pakistani manufacturers, they maintained no personnel in Pakistan and had no contact with the contractors responsible for employing soccer ball stitchers. Though the accusations of child labor were firmly denied by both manufacturers and contractors, the brands had no way to evaluate the accusations independently.

Raasta was asked to perform a research study in the field on the role of child workers in the manufacture and assembly of soccer balls. Raasta conducted a comprehensive survey designed to determine “(1) the prevalence of child labor in the soccer ball industry; (2) the structure of the soccer ball industry; (3) the working conditions of children employed in village stitching centers; (4) the socio-economic conditions of the families of children working in the stitching centers; (5) the educational opportunities available for children employed in the soccer ball industry; and (6) the advantages and disadvantages of child labor to the soccer ball industry.”⁶⁵

In December 1995, after developing and testing an assessment tool, Raasta researchers interviewed 256 families and 360 children aged five to seventeen from

⁶² Speech by Andre Gorgemans, Secretary General, WFSGI, WFSGI Meeting 2001 (on file with the author). The CEFT was formed in August 1995.

⁶³ SICA, CHILD LABOR PROJECT: REQUEST FOR PROPOSAL, Sept. 6, 1995 (on file with the author).

⁶⁴ Press Release, SICA, *SICA Retains Consultants to Assist in Child Labor Inquiry* (Nov. 1, 1995) (on file with the author).

⁶⁵ RAASTA REPORT, *supra* note 11, at vi.

eighty-four representative villages surrounding Sialkot.⁶⁶ The field survey found that while the “vast majority of children who work stitching soccer balls are at least fourteen years old,” children under age fourteen constitute a significant portion of the workers who assemble soccer balls in Pakistan, with far more children ten to fourteen years old working than children under the age of ten.⁶⁷ Raasta determined that approximately eighteen percent, or 2,750 of an estimated 15,000 child stitchers under eighteen were between the ages of five and fourteen.⁶⁸ Child stitchers worked an average of three to six hours per day, six days a week. Child stitchers reported flexible sitting arrangements, the ability to take breaks, and the availability of drinking water while working. While twenty percent of the children interviewed were girls, most women seen stitching soccer balls were older than eighteen.

Raasta found that child stitchers were paid approximately \$.75 per ball (20-22 PKRs), the same amount paid to adults. Children were able to stitch an average of 2.5 balls per day, while adults averaged 3.5 balls per day. Child stitchers worked stitching premium, as well as promotional balls. Raasta concluded that the income earned by child stitchers represented an important contribution to family income. Family size averaged seven to eight members and total family income was approximately \$108 (6,000 PKRs). An average of 2.75 family members stitched soccer balls in each family. It was impossible to determine, however, whether the earnings of child stitchers supplemented or replaced adult contributions to family income.

Most of the child stitchers interviewed were not enrolled in school, though most had attended at some point. Almost twice as many girls than boys had no formal education whatsoever. Families and children cited the poor quality or absence of educational facilities as reasons other than economic necessity for not sending children to school.

Raasta also interviewed a number of contractors, manufacturers, and representatives of community-based organizations in Sialkot. Raasta found that most contractors distribute soccer pieces and own stitching centers in the villages where stitchers would collect the pieces and return the stitched balls. Stitching rates per

⁶⁶ The official ban on child labor and recent public scrutiny of Pakistani manufacturers and subcontractors presented certain obstacles to the field research. For example, Raasta consultants conducting surveys on the ground asked that they not be identified with any foreign interests until after the field survey had been completed. It was impossible to obtain a truly random sample of stitchers, but Raasta believed the findings “represent an accurate overall picture of the situation of child stitchers in the soccer ball industry.” *Id.* at vi.

⁶⁷ *Id.*

⁶⁸ Based on its survey work, Raasta estimated that 11,000 families were participating in soccer ball stitching with an average of 1.38 children stitching per family, or 15,000 child stitchers younger than eighteen. RAASTA REPORT, *supra* note 11, at 58.

soccer ball were 20-25 PKRs, with promotional balls fetching 8-10 PKRs less. Stitchers were paid weekly and contractors earned approximately 5-10 PKRs per ball from the manufacturers. Eighty percent of contractors were connected directly to a particular manufacturer. Adult stitchers working in manufacturing facilities were paid 20-40 PKRs per ball.⁶⁹

The industry-sponsored Raasta survey confirmed the findings of the independent Human Rights Commission of Pakistan and highlighted some issues of contention in cases where the situation on the ground differed from some of the initial reports. The number of children under eighteen stitching soccer balls was closer to 15,000 than the 25,000 reported by *Eye to Eye*, and more than 80% were fifteen or older. Many children worked at home and some attended school. Contrary to the allegations of the *Eye to Eye* story, child stitchers were not bonded laborers and their working conditions were not necessarily hazardous. Child stitchers were paid the same piece rate as adults.

The discrepancies between the findings of the industry-sponsored survey versus those of the independent Human Rights Commission survey demonstrate the difficulty of obtaining widely accepted baseline information on the extent of child labor in the soccer ball industry. It is illustrated, too, by a simultaneous ILO study that estimated more than 7,000 Pakistani children between the ages of five and fourteen stitching balls on a regular, full-time basis, some children working as long as ten to eleven hours a day.⁷⁰

In any event, having gathered reasonably reliable information about conditions on the ground in Sialkot, the sporting goods industry sought to define the appropriate standards for working conditions in the Sialkot soccer ball industry and to determine how it should respond to them.

2. Determining Legal Standards

The threshold question was whether the children stitching soccer balls were performing permissible work or prohibited child labor. The conditions under which most children stitched soccer balls appeared to comply with Pakistani law, but violated international legal standards.

a. Child Labor or Child Work?

Under Pakistan's Constitution, children younger than fourteen are prohibited from working in "any factory, mine or any other hazardous employment."⁷¹ Neither

⁶⁹ *Id.* at viii.

⁷⁰ ILO, CHILD LABOR IN THE FOOTBALL MANUFACTURING INDUSTRY (1996) (concluding also that children worked part-time outside of school hours).

⁷¹ CONST. OF PAKISTAN, Part II, Ch. 1 (11) (3), available at <http://www.pakistani.org/pakistan/constitution> (last visited Nov. 9, 2003). General Pervez Musharraf suspended the
(continued...)

the HRCP nor Raasta found children working under abusive or hazardous conditions. In fact, it was generally acknowledged that children who worked stitching soccer balls faced less hazardous conditions and less risk of exploitation than children engaged in many other occupations in Pakistan.

Pakistan's 1991 Employment of Children Act limits the employment of children under fourteen in selected occupations, but exempts "family labor." When performed in the home or under the supervision of a parent, therefore, soccer ball stitching, even by children under fourteen, is not subject to the Act. When performed in workshops or outside parental supervision, the Act prohibits child stitchers under fourteen from working for more than three hours without a break (of at least one hour) or for more than seven hours per day. Children also may not work between the hours of 7:00 p.m. and 8:00 a.m. Stitching contractors may have been violating these provisions of Pakistani law because, though unclear, the children under fourteen stitching in workshops may not have received the required breaks during the course of their working day and because the time limits for work may not have been well known or respected. It was clear, however, that the Government of Pakistan had made little effort to monitor compliance with the law by soccer ball manufacturers or their contractors.⁷² There was no federal Pakistani law that required children to attend school.⁷³

Thus, aside from possible minimum wage and hours of work violations for stitchers under fourteen, the use of children to stitch soccer balls was legal under local law. The industry therefore looked next to international legal standards for guidance.

ILO Convention 138 Concerning Minimum Age for Admission to Employment,⁷⁴ ratified by Pakistan, calls on states to "pursue a national policy designed to ensure the

⁷¹ (...continued)

Constitution after he overthrew the elected civilian government of Prime Minister Mian Mawaz Sharif in October 1999.

⁷² Worker rights, generally, continue to be significantly restricted by the Government of Pakistan and by Pakistani employers. *See, e.g.*, U.S. DEPARTMENT OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1994: PAKISTAN 1257 (Feb. 1995), available at http://dosfan.lib.uic.edu/ERC/democracy/1994_hrp_report/94hrp_report_sasia/Pakistan.html [hereinafter "DOS 1994"]; U.S. DEPARTMENT OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1995: PAKISTAN 1349 (Mar. 1996), available at http://dosfan.lib.uic.edu/ERC/democracy/1995_hrp_report/95hrp_report_sasia/Pakistan.html [hereinafter "DOS 1995"]; DOS 2001, *supra* note 18, at 2531.

⁷³ DOS 1995, *supra* note 72. The Punjab provincial government had passed but not implemented a law making primary education compulsory. *Id.* at 1351.

⁷⁴ ILO Convention (No. 138) Concerning Minimum Age for Admission to Employment, June 26, 1973, 1015 U.N.T.S. 297 [hereinafter "ILO C138"], reprinted in 3 WESTON & CARLSON, *supra* note 23, at III.O.5.

effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.”⁷⁵ The Convention sets the minimum age for employment or work as the age of completion of compulsory schooling or fifteen years, whichever is lower, though there are a number of exceptions available to state signatories.⁷⁶ For any type of employment or work that is “likely to jeopardize the health, safety or morals of young persons” the minimum age is eighteen years.⁷⁷ National legislation defines the types of work subject to the higher standard, and the minimum age can be sixteen under certain conditions. Also, states are permitted to eliminate entire categories of employment from the scope of the Convention, including “family and small-scale holdings producing for local consumption and not regularly employing hired workers.”⁷⁸ “Light work” is permitted for children as young as twelve who have not completed compulsory schooling.⁷⁹ For countries with developing economies and educational systems, the minimum employment age can be set at fourteen years.

Absent any evidence that stitching soccer balls is likely to jeopardize the “health, safety, or morals” of stitchers, and with no compulsory education age in Pakistan, the lowest minimum employment age permissible under the ILO standard would be fourteen. Stitching performed by children younger than fourteen outside the home would violate this internationally recognized standard. When performed in the home or under the supervision of a parent, the stitching may constitute permissible family work for children of any age, or light work for children as young as twelve.

b. The Worst Forms of Child Labor

In 1996, two feature articles in U.S. magazines reported Pakistani children working under abusive conditions to produce soccer balls for the U.S. market.⁸⁰ The first-hand accounts portrayed brutal sweatshop conditions at an unidentified sporting goods factory in Sialkot where dozens of children aged five to ten worked eighty hours a week for \$.60 to \$1.20 per day under threat of physical abuse carried out in the factory “punishment room;”⁸¹ children stitching Adidas and Nike soccer balls in sheds and homes in rural Pakistani villages; and the use of bonded child laborers to

⁷⁵ *Id.*, art. 1.

⁷⁶ *Id.*, art. 2.

⁷⁷ *Id.*, art. 3.

⁷⁸ *Id.*, art. 5, ¶ 3.

⁷⁹ *Id.*, art. 7.

⁸⁰ Jonathan Silvers, *Child Labor in Pakistan*, ATLANTIC MONTHLY, Feb. 1996, at 79-92; Sydney Schanberg, *Six Cents an Hour*, LIFE MAG., June 1996, at 38.

⁸¹ Silvers, *supra* note 80, at 79-82.

stitch soccer balls.⁸² The articles also recounted threats and physical attacks against foreigners investigating allegations of child labor. Both articles also noted child labor in Sialkot in the production of bricks, surgical instruments, carpets, and sporting goods other than soccer balls such as badminton shuttlecocks.

If true, these working conditions for child stitchers may be said to have violated both Pakistani and international law.⁸³ Pakistan had outlawed bonded labor in the Bonded Labor System (Abolition) Act of 1992.⁸⁴ It was impossible to verify or completely refute the charges of bonded labor in the soccer ball industry. However, the Raasta and HRCP studies⁸⁵ had found no evidence of bonded labor or the abusive conditions described by the media. It is not uncommon in Pakistan for employees to receive advances from their employers and soccer ball stitchers occasionally receive advances totaling several months' income from the contractors who provide them with work. While that finding demonstrated that stitchers were indeed indebted to contractors, and therefore may find it difficult to switch to another employer, it was impossible to determine whether this bonds them to the contractor. No evidence was found of the four practical manifestations of bonded status—namely, that (1) debts incurred by stitchers cannot be repaid, (2) the debts earn interest, (3) the debts are passed down from parent to child, or (4) control over children is delivered by parents to contractors until the debt is paid.⁸⁶

3. Defining Corporate Responsibility

Continuing allegations of widespread child labor in the soccer ball industry placed the international sporting goods companies under intense public scrutiny. In the 1990s, apparel and footwear companies sourcing products in developing countries were at the center of the globalization debate in North America and Europe. Reports on the exploitation of foreign labor had captured the attention of activists, consumers and policymakers. There were stories of enslaved immigrant laborers making clothes

⁸² Schanberg, *supra* note 80, at 38.

⁸³ See, e.g., CONST. OF PAKISTAN, *supra* note 71 and accompanying text; ILO C182, *supra* note 23; U.N. Convention on the Rights of the Child, Nov. 2, 1989, 1577 U.N.T.S. 3 [hereinafter "CRC"], *reprinted in* 28 I.L.M. 1448 (1989) and 3 WESTON & CARLSON, *supra* note 23, at III.D.3. Pakistan has ratified the CRC, Article 32 of which affirms the right of the child to be protected from economic exploitation. The United States has ratified ILO C182, but not the CRC. Only Somalia in addition to the United States among the signatories to the CRC has yet to ratify the CRC.

⁸⁴ The Act cancelled all existing bonded debts, forbade lawsuits for the recovery of existing debts, and made bonded labor by children punishable by up to five years in prison and up to \$900 (50,000 PKRs) in fines. DOS 2001, *supra* note 18, at 2529.

⁸⁵ *Supra* notes 11 and 49.

⁸⁶ RAASTA REPORT, *supra* note 11, at viii-ix.

in a California sweatshop⁸⁷ and impoverished workers suffering poor treatment and low wages in Asian factories making Nike sneakers⁸⁸ and Central American factories producing Eddie Bauer, Gap, and Kathy Lee apparel⁸⁹ had captured the attention of activists, consumers and policymakers.

Apparel and footwear companies also sold soccer balls. Nike, in particular, which had placed its first order for soccer balls with a Pakistani manufacturer in 1995, had been the target of withering criticism about its labor practices since March 1996.⁹⁰ Massachusetts-based Reebok, which had built a reputation as a corporate leader on human rights issues,⁹¹ received as many as 176 calls a week from concerned customers following the first reports of children stitching Reebok soccer balls.⁹² The

⁸⁷ See, e.g., Kenneth B. Noble, *Thai Workers are Set Free in California*, N.Y. TIMES, Aug. 4, 1995, at A1.

⁸⁸ See, e.g., Edward A. Gargan, *An Indonesian Asset Is Also a Liability*, N.Y. TIMES, Mar. 16, 1996, at 35.

⁸⁹ See, e.g., Bob Herbert, *Children of the Dark Ages*, N.Y. TIMES, July 21, 1995, at A25 (describing labor conditions and rights violations at the Mandarin apparel factory in El Salvador); Joyce Barrett, *Human Rights Group Hits Kathie Lee Collection*, WOMEN'S WEAR DAILY, Apr. 30, 1996, at 3.

⁹⁰ See, e.g., Gargan, *supra* note 92, at 35; Bob Herbert, *Nike's Pyramid Scheme*, N.Y. TIMES, June 10, 1996, at A17; Bob Herbert, *Trampled Dreams*, N.Y. TIMES, July 12, 1996, at A27. See also *Kasky v. Nike, Inc.*, 27 Cal. 4th 939, No. S087859 (Cal. May 2, 2002) at 6: "Beginning at least in October 1996 with a report on the television news program *48 Hours*, and continuing at least through November and December of 1997 with the publication of articles in the *Financial Times*, the *New York Times*, the *San Francisco Chronicle*, the *Buffalo News*, the *Oregonian*, the *Kansas City Star*, and the *Sporting News*, various persons and organizations alleged that in the factories where Nike products are made workers were paid less than the applicable local minimum wage; required to work overtime; allowed and encouraged to work more overtime hours than applicable local law allowed; subjected to physical, verbal, and sexual abuse; and exposed to toxic chemicals, noise, heat, and dust without adequate safety equipment, in violation of applicable local occupational health and safety regulations."

⁹¹ Reebok describes its worldwide commitment to human rights as a "hallmark" of its corporate culture and affirms its belief "that the incorporation of internationally recognized human rights standards into our business practice improves worker morale and results in an higher quality working environment and higher quality products." *A Guide to the Implementation of the Reebok Human Rights Production Standards*, available at http://www.reebok.com/x/us/humanRights/pdf/ReeboHR_Guide.pdf (last visited Nov. 9, 2003).

⁹² Steff Gelston, *Reebok Takes Sweatshop Stand*, BOSTON HERALD, Nov. 20, 1996, at 37.

case of Reebok Award winner Iqbal Masih received widespread coverage after he was murdered in Pakistan in April 1995.⁹³

One can argue that child labor in the Pakistani supply chain was not the responsibility of the international brands. Legally, brands were insulated from liability by the multi-tiered supply chain. Even if the use of child stitchers violated Pakistani law, those directly responsible were the stitching contractors.

The question of the sporting goods industry's legal liability under international law is much less clear. Historically, responsibility for ensuring the rights contained in international conventions has resided with states and not private actors. Thus, the failure of the Government of Pakistan to enforce international labor standards might not give rise to liability of the sporting goods industry. This traditional view has given way to a broader understanding of the legal responsibilities of private actors under international law, however, with the result that there is a growing recognition that private actors, including corporations, have legal responsibilities under international law.⁹⁴ Of course, how such responsibilities are to be enforced is another question.

For the well-known brands at the center of the child labor allegations, liability was not the critical determinant for action. Concern over child labor, including the possibility that companies were complicit with violations of international law, translated into direct threats to corporate reputation and sales. Following SICA's information-gathering and its own investigation of conditions on the ground in Sialkot, Reebok, in June 1996, announced that it had decided to source all its soccer balls from a single manufacturing facility where all production would take place, including all soccer ball stitching. The manufacturer, Moltex Sporting Goods, would build a new factory to produce balls for Reebok. According to Reebok's Director of Human Rights Programs, Doug Cahn, "It is impossible to guarantee that no children are being used . . . unless the work is being done inside a factory."⁹⁵ In response to the *Life Magazine* expose, a Nike spokesperson acknowledged that "It's likely that children under the age of fourteen . . . are making Nike

⁹³ See, e.g., Kathy Gannon, *At Age 12, A Prominent Activist Is Gunned Down*, ASSOCIATED PRESS, Apr. 18, 1995, LEXIS, AP News—Archive file. The circumstances of Masih's death were a matter of considerable dispute. Some reports claimed that he was murdered because of his political activism. Others suggested that the murder had no political motivation. See http://pangaea.org/street_children/asia/lahore.htm (last visited Nov. 12, 2003). A local villager reportedly confessed to the shooting initially but subsequently denied it and was acquitted at trial. According to Amnesty International, a judicial inquiry set up in mid-1995 produced an unpublished report recommending that the killing be re-investigated by senior police officers. This has not yet taken place. See <http://web.amnesty.org/library/Index/engASA330181997?OpenDocument&ofCOUNTRIES%5C PAKISTAN> (last visited Nov. 9, 2003).

⁹⁴ See note 10 in Introduction, *supra*.

⁹⁵ Dean Lunt, *Reebok Takes Steps Against Child Labor*, PATRIOT-LEDGER (Quincy, MA), June 13, 1996, at 29.

soccer balls.”⁹⁶ Nike announced it had reached an agreement with its sole Pakistani manufacturer, Saga Sports, that stitching would occur only in centralized stitching centers.⁹⁷ Both companies also launched educational programs for soccer ball workers.

Pressure on the rest of the sporting goods industry increased later that month when the International Labor Rights Fund (ILRF), a Washington, DC-based nongovernmental organization, launched the “Foul Ball Campaign.” At a press conference featuring U.S. Labor Secretary Robert Reich, Senator Tom Harkin, and Representatives Christopher Smith, Barney Frank, George Miller, and Joseph Kennedy, ILRF called on FIFA, the U.S Soccer Federation, and SICA members, respectively, to sanction, use, and import only soccer balls whose manufacturers have been regularly inspected under UNICEF procedures.⁹⁸ The campaign also sought to mobilize U.S. municipalities, school, universities, youth soccer leagues, and soccer players to ban the use of balls made with child labor.⁹⁹ ILRF reported that thousands of children were stitching full time and that some of these children were working in debt bondage. Congressman Kennedy called upon FIFA to certify and label balls free of child labor and to abstain from using Adidas balls stitched in Pakistan at the Olympic Games.¹⁰⁰ Nike and Reebok representatives endorsed the campaign.

The Foul Ball Campaign placed sporting goods companies at the center of the globalization debate and generated increasing media coverage linking their brands to child labor and abuse.¹⁰¹ The issue threatened to damage corporate reputation, diminish brand equity, and reduce sales. A consensus that the worldwide sporting goods industry must act to eliminate child labor from the supply chain thus built throughout 1996. The number of industry leaders who recognized the need for an industry-wide collective response reached a critical mass in September 1996 with the announcement of a FIFA Code of Labour Practice.

⁹⁶ Jeff Manning, *Child Labor Stalks Nike*, OREGONIAN, June 7, 1996, at C1, available at 1996 WL 4147138.

⁹⁷ Nike CEO Phil Knight addressed the soccer ball issue in his 1996 letter to shareholders acknowledging that Nike’s own inspectors had found problems with the cottage nature of the industry. Letter to Shareholders, Nike Annual Report 2 (1996) (on file with the author).

⁹⁸ Agenda, Foul Ball News Conference, June 28, 1996 (on file with the author).

⁹⁹ ILRF, *Ten Steps to Stop Kids Making Our Soccer Balls*, flyer (on file with the author). See also Peter S. Canellos, *Soccer League to Join Boycott*, BOSTON GLOBE, July 16, 1996, at B4.

¹⁰⁰ Press Release, Office of Congressman Joe Kennedy, *Kennedy Calls for End to Child Labor in Soccer Ball Industry* (June 28, 1996) (on file with the author).

¹⁰¹ See, e.g., Les Blumenthal, *Soccer-Ball Industry Kicks Third World Kids While They’re Down*, NEWS TRIBUNE (Tacoma, WA), July 7, 1996, at G5; Donica Croot, *Coalition’s Goal is to End Use of Child Labor to Make Soccer Balls*, LOS ANGELES TIMES, June 29, 1996, at D1; Manning, *supra* note 96, at D1.

Following allegations by British and European trade unions during the 1996 European Football Championship that children were making balls bearing the FIFA logo, FIFA announced that it would actively support cooperative efforts to eradicate child labor in soccer ball production.¹⁰² In September 1996, FIFA and three international trade unions agreed to a Code of Labour Practice for the production of footballs bearing the FIFA logo.¹⁰³ The FIFA Code requires all FIFA licensees to ensure that they and all contractors or subcontractors involved in the production of FIFA-licensed goods observe international labor standards, including the minimum age provisions of ILO C138 prohibiting the employment of workers younger than fifteen. FIFA licensees, their contractors, and subcontractors agreed to provide FIFA with information concerning their operations and to permit FIFA-approved inspectors to monitor compliance with the Code. Violating the Code can result in FIFA withdrawing its license. However, while FIFA and its trade union partners agreed on the need for effective independent monitoring and discussed alternative education and training for children removed from work, the Code established no monitoring or educational programs.

U.S. Labor Secretary Robert Reich publicly urged U.S. brands to support the FIFA standard and praised Nike and Reebok for taking measures to stop child labor.¹⁰⁴ Policymakers in the United States had proposed regulations to prohibit the import of goods made by children.¹⁰⁵ In 1996, the United States revoked Generalized System of Preferences (GSP) trade benefits for specific Pakistani goods due to the government's failure to make progress on various worker rights, including child labor.

¹⁰² Press Release, FIFA, *FIFA to Help Combat Child Labour in Pakistan* (June 3, 1996) (on file with the author).

¹⁰³ Press Release, FIFA, *Labour Codes for Footballs* (Sept. 3, 1996) (on file with the author). See also Shada Islam, *Unions Link Up with FIFA to Boot Out Child Labor*, INTER PRESS SERVICE, Sept. 5, 1996, available at 1996 WL 11625220. The trade unions were the International Confederation of Free Trade Unions, the International Textile, Garment and Leather Workers Federation, and the International Federation of Commercial, Clerical, Professional and Technical Employees. In 2001, 1.6 million of the approximately 40 million soccer balls sold worldwide carried either the "FIFA Inspected" or the higher "FIFA Approved" hallmark. FIFA, *FIFA and Child Labour*, available at <http://www.fifa2.com> (last visited Nov. 12, 2003).

¹⁰⁴ Tim Shorrock, *Reich Keeps the Ball Rolling on Child Labor Crackdown*, JOURNAL OF COMMERCE, Sept. 10, 1996, at A5.

¹⁰⁵ In November 1997, the Child Labour Deterrence Act and the Child Labour Free Consumer Information Act. The U.S. legislation, titled "Child Labor Deterrence Act of 1997," was introduced as Senate Bill 332 on Feb. 13, 1997. See http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=105_cong_bills&docid=f:s332is.txt (last visited Nov. 12, 2003). See also *supra* note 48 and accompanying text.

The affected goods included leather sporting goods other than soccer balls as well as surgical instruments and hand-loomed carpets.¹⁰⁶

SICA member companies faced a public relations issue that was damaging their corporate reputations among consumers. With the involvement of FIFA and the U.S. government, the child labor allegations became a commercial and licensing issue that threatened key business relationships. Pressure on the sporting goods brands to address the child labor issue would only increase during the build-up to the 1998 World Cup in France.

The sporting goods industry concluded that internationally accepted standards should govern the minimum age and working conditions for children making soccer balls, and that the industry must work collectively to ensure that those standards were met. No children under fourteen should be stitching soccer balls.

4. The Sialkot Project

What would a credible and cost-effective program to eliminate child labor look like? How could the industry ensure that their actions would not worsen conditions for Sialkot children or their families?

a. Establishing the Partnership

The industry adopted Nike's and Reebok's decision to eliminate home-based work in order to monitor the age of workers. In June 1996, in testimony before the U.S. Department of Labor, SICA had pledged it would take decisive action to ensure the elimination of child labor in the soccer ball industry. Specifically, the U.S. soccer industry committed: (1) to eliminate the subcontracting of stitching, (2) to work with the Pakistani government and internationally respected NGOs in Pakistan to promote educational opportunities for children and ensure that children would not move into more hazardous forms of employment, and (3) to explore the development of a monitoring program.¹⁰⁷

WFSGI and SICA conducted a joint mission to Pakistan in November 1996 to build support among manufacturers around the outline of a program to address child labor. The program would (1) be voluntary, (2) establish a clear timetable to eliminate child labor from the production of soccer balls, (3) include an internationally credible independent monitor making regular reports, (4) place the cost burden of monitoring on local manufacturers, and (5) seek non-industry partners to design and implement a social protection component.

¹⁰⁶ DOS 2001, *supra* note 18, at 2528.

¹⁰⁷ Testimony of Thomas J. Cove, Vice President, SGMA, U.S. Dept. of Labor Intl. Child Labor Study (Feb. 13, 1998), at 3 (on file with the author) [hereinafter "Cove Testimony"].

Later that month, representatives of the sporting goods industry met in London with governments, sports governing bodies, international agencies, and nongovernmental organizations to discuss the project.¹⁰⁸ NGO critics questioned the limited scope of a program aimed solely at the production of soccer balls by child labor, but no other worker rights. NGOs also argued that the worst thing the industry could do would be to simply remove child stitchers without providing additional support, since the children might end up in more hazardous and exploitative forms of employment. For example, following a Sialkot visit with a representative of one of the international brands in July 1996, Save the Children UK advocated an industry-NGO partnership and cautioned against “hurried solutions which could push children into more hazardous and exploitative forms of work.”¹⁰⁹

After the multi-stakeholder meetings, representatives of the major sporting goods brands and Pakistani manufacturers announced the development of a voluntary “removal and verification program” that would, within six months, register stitchers and, within eighteen months, remove stitchers younger than fourteen years of age from the soccer ball production process.¹¹⁰ The sporting goods industry also announced discussions with UNICEF, the ILO and Save the Children UK as potential partners.

These partners would negotiate the key elements of a comprehensive program over the next three months. To be perceived as credible, any successful initiative would require the participation of local industry and internationally recognized institutions independent of the soccer industry. The international brands were well positioned to bring together the necessary participants for a comprehensive program.

The active involvement of SICA, WFSGI, and their member companies was critical in facilitating the cooperation of the Pakistani soccer ball manufacturers. The Sialkot Chamber of Commerce and Industry (SCCI) created a Steering Committee on Child Labor to coordinate the manufacturers’ participation. Manufacturers were now nearly unanimous in stating that child labor was neither appropriate nor necessary for the manufacturer or assembly of soccer balls. A small but growing number of manufacturers were sensitive to the concerns of their international customers that any program must go beyond the removal of child stitchers to address both the symptoms of child labor in soccer ball assembly and its root causes.

¹⁰⁸ The author was among those who participated in the meeting.

¹⁰⁹ David Husselbee, *Working Together for Children: NGOs as Development Partners to the Corporate Sector: A Case Study on Child Football Stitchers in Pakistan 2* (undated) (on file with the author).

¹¹⁰ Press Release, WFSGI, *Sporting Goods Industry to Develop Global Code of Conduct and Programme to End Child Labour* (Nov. 22, 1996) (on file with the author).

The Government of Pakistan would have been a logical partner to develop such a program. Labor law enforcement and the basic education of Pakistani children is ultimately the responsibility of the government. The Pakistani government, however, appeared overwhelmed by other, more pressing, social demands than those associated with children in the soccer ball industry. While the government would likely be a cooperative partner to any industry-led initiative, it was unreasonable to expect it to be a catalyst for change.

Nevertheless, the industry recognized that it could not develop or implement a comprehensive program alone. SICA and WFSGI sought help from well-respected organizations outside the industry with expertise in labor standards, workplace monitoring, children, education, and development. UNICEF, the ILO, and Save the Children UK, together with SCCI (hereinafter “the Partners”), formed the partnership that would design and launch the Sialkot Project.

b. Eliminating Child Labor

The Partners set out to design a voluntary program that would assure all stakeholders that children were being removed from the production of soccer balls. The program had to be realistic and cost-effective, while sufficiently transparent and independent to be credible with industry critics.

There was no quick or straightforward solution that would eliminate the participation of children in the soccer ball industry or change the conditions under which many Sialkot families accepted child labor. Any meaningful industry response to their critics would have to recognize the important contribution that child stitching makes to family incomes and avoid placing children and their families in worse economic conditions. The partners concluded that any program should (1) discourage manufacturers from subcontracting soccer ball stitching; and (2) supplement government efforts to provide educational opportunities and persuade families that their interest are best advanced by sending their children to school rather than to work.

Pakistani manufacturers had increased the likelihood that children could work stitching soccer balls by contracting stitching to small, unregulated contractors who operated beyond their direct supervision. The contracting of soccer ball assembly is a relatively recent phenomenon, a consequence of the tremendous increase in the worldwide demand for soccer balls over the past fifteen years.¹¹¹ It also reflects

¹¹¹ The subcontracting of soccer ball assembly is part of the larger subcontracting trend in global manufacturing. A recent study of the labor markets in India, Indonesia, Pakistan, the Philippines, and Thailand found the growing use of subcontracting in order to reduce labor costs. ILO 2002, *supra* note 15, *citing* S. MEHROTRA & M. BIGGERI, THE SUBTERRANEAN CHILD LABOUR FORCE: A COMPARATIVE ANALYSIS OF SUBCONTRACTED HOME-BASED MANUFACTURING IN FIVE ASIAN COUNTRIES (UNICEF Innocenti Research Centre, 2002).

manufacturers' concerns over the taxes associated with employing stitchers directly and their fears over the possibility of labor unrest among stitchers.¹¹²

The industry practice of subcontracting stitching presented a problem for the design of a monitoring scheme. With so much stitching by children taking place at home in widely dispersed villages, how could the partners reliably monitor the ages of stitchers? The two largest U.S. sporting goods brands, Nike and Reebok, had already acted individually to eliminate subcontracting. The Partners concluded that to know who was actually stitching the soccer balls and to remove stitchers under the age of fourteen stitching could not be allowed to take place at home. Furthermore, participants in the program would be required to register all stitching locations so that they could be open to unannounced inspection. All stitchers would have to be registered with documentation verifying they were over fourteen years old. Furthermore, each participating manufacturer would be required to register formally all the contractors they used to oversee stitching on their behalf.

Child labor could not be eliminated immediately. The program would be implemented progressively. To participate in the program, manufacturers would be required to eliminate stitching by children fewer than fourteen over a period of eighteen months. A monitoring body would compile manufacturers' submissions of stitching contractors and locations, develop monitoring procedures, conduct monitoring visits, and report any violations to the program.

The Partners agreed that they needed an independent, outside monitor. SICA issued an RFP (request for proposals) for organizations able to monitor child labor in Sialkot on the ground, and reviewed a range of possible monitors, including international security, quality testing, and accounting firms. While the industry favored a private entity, the partners ultimately turned to the ILO to perform the monitoring. Industry representatives were initially concerned by the ILO's institutional links with organized labor. The Pakistani manufacturers, however, were uncomfortable with some of the government ties of the private monitoring firms.

While the sporting goods industry made no commitment to keep sourcing soccer balls from Pakistan, the international brands did agree to sign a pledge to purchase soccer balls produced in Pakistan only from manufacturers that participate in the program. Accordingly, the Partners discussed labeling the soccer balls made by participating manufacturers as "child labor free" or with some acknowledgment of the program. However, the international brands were unable to agree on the merits or content of a collective labeling approach. Some argued that their brand alone

¹¹² In the 1970s, partly as a response to increasing labor unrest and workplace regulation of manufacturing facilities, factory owners in Sialkot began to distribute balls for stitching to stitchers who worked in their homes. WEISS, *supra* note 1, at 133. Weiss also identifies Sialkot's inadequate transportation system as a cause of the increase in "cottageing out" work. *Id.* at 136.

should be sufficient to assure consumers that their products were made without child labor. The brands also raised the issues of counterfeit labels, potential consumer confusion, and the enforceability of any labeling guarantees. Any product labeling was left to the discretion of the individual brands. In November 1996, Reebok announced that, beginning the following spring, all Reebok soccer balls would bear the label: “Guarantee: Manufactured without child labor.”¹¹³

c. Social Protection

SCCI, UNICEF, the ILO, and Save the Children UK, (a/k/a “the Partners”) were well aware that simply eliminating children from the soccer ball industry would not improve conditions for the children or for their families automatically. Poverty was the root cause of child labor in Sialkot, and economic necessity drove child stitchers to seek other ways to replace lost family income. The Partners sought to avoid the situation that had occurred in Bangladesh in 1993, when two thirds of the estimated 60 thousand children working in clothing factories in Bangladesh had been fired when local manufacturers feared an impending U.S. ban on imports made with child labor. Child workers fired from the garment industry ended up in other, more hazardous occupations, such as prostitution.¹¹⁴

The Partners agreed that a social protection program should be implemented simultaneously with the prevention and monitoring program offering viable alternatives to the estimated 2,750 Sialkot child-stitchers under fourteen. Acknowledging that they had neither the expertise nor the technical capacity to design a program that addressed the social needs of the child stitchers, however, they turned to outside partners to develop this aspect of the program. Such a partnership was not unprecedented. The Bangladesh garment industry subsequently had worked with the ILO and UNICEF to eliminate child labor gradually while developing educational options and income support for the displaced child workers.¹¹⁵

In collaboration with UNICEF and Save the Children, the Partners designed a Social Protection Program to complement the Monitoring Program. Participating manufacturers would commit to integrate their monitoring efforts with the social protection initiatives. The Social Protection Program would target the children removed from work by offering rehabilitation, traditional education, and in-kind assistance. The Social Protection Program would also seek to provide families of child stitchers with alternative means to replace lost income, through micro-credit loans or by employing adult family members, and attempt to change individual, family and community attitudes about the desirability of child labor.

¹¹³ Press Release, Reebok International, *Reebok International to Label Soccer Balls with “Made Without Child Labor” Guarantee* (Nov. 19, 1996) (on file with the author).

¹¹⁴ See S.L. Bachman, *The Political Economy of Child Labor and Its Impacts on International Business*, BUSINESS ECONOMICS, July 2000, at 33-34.

¹¹⁵ See, e.g., ILO 2002, *supra* note 14, at 89.

d. Governance

On February 14, 1997, at the SGMA “Super Show” in Atlanta, the Partners signed an agreement establishing the “Project to Eliminate Child Labour in the Soccer Ball Industry in Pakistan” (the Project).¹¹⁶ “Child Labour” was defined in the agreement as existing “whenever children under age 14 are working in conditions that interfere with schooling, or that are hazardous or otherwise injurious to their physical, mental, social, or moral well-being.”¹¹⁷ The Project’s goals were threefold: (1) to assist manufacturers seeking to prevent child labor in the manufacture or assembly of soccer balls in Sialkot; (2) to identify and remove children from child labor and provide them with educational and other opportunities; and (3) to facilitate changes in community and family attitudes to child labor, including in the soccer industry. The Partners acknowledged that the Project’s success would depend on integrating these elements and gaining the support of other institutions, including the Government of Pakistan. A secondary goal of the Project was the elimination of child labor in other local industries.

SCCI, ILO, and UNICEF signed the Atlanta Agreement as the three official partners.¹¹⁸ WFSGI and SGMA, while instrumental in designing and establishing the Project, had no formal role in its operation. A representative of each partner organization would form a Project Coordination Committee to oversee and implement the project. Save the Children UK was also invited to designate a representative to the Committee. The Committee, operating by consensus, would approve the Terms of Reference for the Prevention and Monitoring Program and select an “internationally credible” Independent Monitoring Body. Implementation partners included Pakistan Bait-ul-Mal (PBM), a welfare fund administered by the Prime Minister of Pakistan, and the Bunyad Literacy Community Council (BLCC), which was charged with setting up rehabilitation centers for child workers.

According to SGMA, the Agreement marked “the first time that multinational corporations and their local suppliers in any global industry have joined with human rights advocates to address the problem of child labor.”¹¹⁹ More than fifty brands,

¹¹⁶ Press Release, WFSGI, SGMA/SICA, *Sporting Goods Industry Partners with Children’s and Human Rights Groups to End Child Labor in Pakistan’s Soccer Ball Industry* (Feb. 14, 1997), at <http://www.sgma.com/press/1997/press988378767-22438.html> (last visited Nov. 9, 2003); Partners’ Agreement to Eliminate Child Labour in the Soccer Ball Industry in Pakistan (Feb. 14, 1997) (on file with the author) [hereinafter “Atlanta Partner’s Agreement”]. See, e.g. Steven Greenhouse, *Sporting Goods Concerns Agree to Combat Sale of Soccer Balls Made by Children*, N.Y. TIMES, Feb. 14, 1997, at A12.

¹¹⁷ Atlanta Partners’ Agreement, *supra* note 116.

¹¹⁸ Specific partner roles were defined in the Partners Operational Framework, U.N. Mission to Sialkot (Apr. 1997) (on file with the author).

¹¹⁹ Press Release, SGMA, *supra* note 116.

including all the major soccer brands, signed the pledge.¹²⁰ In an effort to reach out to U.S. consumers, SGMA established a toll-free number in the U.S. where anyone could listen to a recording of the current list of participating brands. The ILO claimed that the “soccer industry project could well serve as a model for other industries and regions.”¹²¹ FIFA and the U.S. Youth Soccer Association also endorsed the Project.

e. Funding

Resource commitments for the program totaled more than \$4.7 million. The Pakistani manufacturers contributed \$360,000 to finance the Prevention and Monitoring Program. The U.S. Department of Labor pledged \$500,000, UNICEF \$200,000, and SICA \$100,000. The United Kingdom, Pakistan, FIFA, the Pakistani Labor Federation and the National Rural Support Programme also pledged financial support.

All costs associated with the Prevention and Monitoring Program, including constructing new stitching facilities and establishing internal monitoring departments would be borne by the participating manufacturers. The manufacturers would also contribute to a fund that would finance the independent monitoring.

D. Results of the Sialkot Project

The Sialkot Project was launched two years after the first media reports of children stitching soccer balls. In a relatively short period, the sporting goods industry had gathered information, assembled international partners, and launched a credible program to eliminate child labor while protecting children removed from work. The initiative put the industry in a position to respond to criticism and may have averted an international boycott of Pakistani-made soccer balls; it demonstrated the industry’s concern about the conditions under which its products are made and its willingness to work with independent experts to combat child labor responsibly.¹²²

The Project has achieved its first objective, which was to assist manufacturers seeking to prevent child labor in the manufacture or assembly of soccer ball in Sialkot. The Project has not proved as successful, however, in providing children removed from child labor with educational and other opportunities, changing community and family attitudes toward child labor, or eliminating child labor in other local industries.

1. Monitoring

The number of Sialkot children under fourteen stitching soccer balls has fallen significantly overall and for those brands that participate in the Project there is a monitoring system in place that has substantially eliminated underage stitchers from

¹²⁰ Adidas, Brine, Mitre, Nike, Reebok, Umbro, and fifty others.

¹²¹ Press Release, SGMA, *supra* note 116.

¹²² *See, e.g.*, Warrick Presentation by Bahar Ali Kazmi, Doctoral Research Fellow, Warwick Business School (UK), *Case Study of the Sialkot Football Industry* (Nov. 7, 2002) (on file with author).

registered stitching centers. Participating brands can say with greater—though never absolute—confidence that they have taken steps to ensure that their soccer balls are produced without child labor. “We’re not saying you’ll never find another child producing soccer balls,” says Thomas Cove, SGMA’s Vice President of Government Affairs.¹²³ “The program is to ensure that children won’t be used in the way they were before.”¹²⁴ Nevertheless, as noted below, children under fourteen still can be found stitching soccer balls in Sialkot. Home-based work persists because the voluntary Project does not cover one hundred percent of Sialkot’s soccer ball production. Children may stitch balls for contractors who supply the smaller manufacturers, or manufacturers of cheaper “promotional” balls, that do not participate in the Project.

The Project Coordinating Committee established an Independent Monitoring Association for Child Labor (IMAC). During a May 1997 visit to Bangladesh, SCCI brand and manufacturer representatives met with the ILO team monitoring the garment industry there and chose the ILO as the Project monitor.¹²⁵ During the first six months (October 1997–March 1998), manufacturers would be required to shift 25% of their total production to registered stitching centers, 50% after twelve months, and 100% after eighteen months (by March 1999). Monitoring teams began visiting stitching centers in November 1997.¹²⁶

For the monitoring program, a key criterion for success was the voluntary participation of a large majority of the manufacturers. A year after the Atlanta agreement, thirty-one manufacturers, representing almost 80% of soccer ball exports had registered with the ILO.¹²⁷ The ILO confirmed in 1998 that “child labour in the industry in Sialkot is now clearly declining.”¹²⁸ Stitching operations were being transferred from small workshops and homes to larger stitching centers. Independent monitoring of stitching centers had begun. By the end of 1999, ILO-IPEC monitors had carried out 1,352 monitoring visits to stitching centers registered by sixty-one participating manufacturers. Export figures for participating manufacturers were close to the average production figures calculated by the ILO based on monitoring data. By 2000, sixty-six manufacturers representing ninety percent of Sialkot’s soccer

¹²³ Maggie Jackson, *Work Begins to Ensure Pakistani Children Won't Make Soccer Balls*, ASSOCIATED PRESS, Nov. 12, 1997, available at 1997 WL 2561731.

¹²⁴ *Id.*

¹²⁵ Husselbee, *supra* note 109, at 4.

¹²⁶ Jackson, *supra* note 123.

¹²⁷ *International Project to Eliminate Child Labour from the Soccer Ball Industry in Sialkot-Pakistan*, STATUS AFTER ONE YEAR 6 (Feb. 1998) (on file with the author).

¹²⁸ Kari Tapiola (Deputy Director-General, ILO), Remarks on the Soccer Industry Effort to Combat Child Labor, Paris, Feb. 7, 1998 (unpaginated) (on file with the author).

ball exports were participating in the ILO monitoring.¹²⁹ Today, the ILO reports ninety-seven manufacturers participating, using more than 1900 registered stitching centers, representing 95% of all soccer balls produced in Pakistan.¹³⁰ ILO-IPEC is also monitoring 142 centers in the districts surrounding Sialkot, and 105 villages under its area-based monitoring program.

The ILO provided assistance to participating manufacturers to develop internal monitoring systems. Each manufacturer was required to identify and locate all stitching centers that assemble its soccer balls (either directly or indirectly), maintain a register of all stitchers on-site at the center, and provide this information to the ILO. ILO monitors make daily unannounced visits to registered stitching centers generated randomly by computer to confirm that no children are stitching and verify that the manufacturer's records are accurate.¹³¹ Information from the monitoring visits is compared with the manufacturer's export production data to ensure that the numbers of balls produced at registered stitching centers and the number exported by the manufacturer match. During the first nine months of active monitoring, the seven ILO-selected and trained external monitoring teams had found 101 under-age children stitching soccer balls.¹³²

Initially, the children were dismissed immediately and the monitors informed the manufacturer. The ILO then changed its procedures to allow any children found stitching to continue working in the same center until the child was ready to participate in the social protection program. After eighteen months of monitoring, the ILO monitors were finding no children at the registered stitching centers.¹³³ Surveys conducted in Sialkot villages in 1999 found that the number of child stitchers had decreased significantly in villages where the Project was active.¹³⁴

¹²⁹ SIALKOT CHAMBER OF COMMERCE AND INDUSTRY, SIALKOT PROJECT REPORT (Dec. 2001), at <http://www.globalmarch.org/world-cup-campaign/press-center/sialkot.php3> (last visited Nov. 9, 2003).

¹³⁰ SIALKOT CHAMBER OF COMMERCE AND INDUSTRY, SUMMARY OF THE REPORT BY THE FACT FINDING MISSION (undated) (on file with the author). See also ILO 2002, *supra* note 14, at 112.

¹³¹ Memorandum, ILO-IPEC Soccer Ball Project, Sialkot, Dec. 2, 1998 (unpaginated) (on file with the author).

¹³² Tapiola, *supra* note 128.

¹³³ Samuel Poos, *The Football Industry: From Child Labour to Workers' Rights* (Nov. 1999), at http://www.cleanclothes.org/publications/child_labour.htm (last visited Nov. 9, 2003). See also SIALKOT CHAMBER OF COMMERCE AND INDUSTRY, *supra* note 130.

¹³⁴ SAVE THE CHILDREN, SOCIAL MONITORING REPORT (July–Dec. 1999), at 15 (on file with the author).

The elimination of home-based work and the creation of official stitching centers had the greatest impact on stitchers and contractors. Stitchers could now work only at organized stitching centers. Contractors incurred the additional costs of establishing the stitching centers and faced the possibility of being squeezed out of the supply chain by the manufacturers themselves if a manufacturer decided to bring all stitching in-house. For manufacturers, the changes to the production process decreased the supply of stitchers and increased labor costs. The administrative costs associated with participation in the Project were borne by the manufacturers also.¹³⁵ The benefits to the manufacturers, beyond the ability to retain the international brands as their customers, included improved oversight of the stitching process.

Accusations of child labor in the soccer ball industry persist, however.¹³⁶ A 1998 ILRF investigation reported children still working in stitching centers, criticized the ILO monitoring system as ineffective, and relayed reports of some displaced child stitchers now producing surgical instruments.¹³⁷ The ILRF cited unregulated soccer ball production in nearby districts, the continued use of children by participating employers, the failure of inspectors to remove identified child workers from the industry, and no clear role for local activists. In 2000, FIFA acknowledged the difficulties in ensuring that its branded balls were only sourced from official FIFA licensees.

In May 2002, researchers for the Global March Against Child Labor,¹³⁸ a Delhi-based NGO, reported that they had found more than fifty children in the Sialkot region working from home or in local stitching centers producing promotional balls bearing the FIFA World Cup logo and the names of sponsors including Adidas, Coca Cola, and *The Economist* magazine.¹³⁹ Phillippe Roy, the lead investigator, stated: "I am sure companies like *The Economist* are not using child labor on purpose, but a lack of monitoring ensures that the practice continues. The balls go through about eight middlemen, so it is unclear at which stage children are employed, as there is no

¹³⁵ Monitoring has increased unit costs 6% to 12%, depending on ball quality. Bahar Ali, *Case Study: The Football Industry Project, Sialkot, Pakistan*, paper presented at the University of Warwick (UK) Nov. 7, 2002 (on file with the author).

¹³⁶ See, e.g., Martin Regg Cohn, *Child Labour Fight Reaches World Cup*, TORONTO STAR, May 31, 2002, at A20.

¹³⁷ INTERNATIONAL LABOR RIGHTS FUND, CHILD LABOR IN THE SOCCER BALL INDUSTRY: A REPORT ON CONTINUED USE OF CHILD LABOR IN THE SOCCER BALL INDUSTRY IN PAKISTAN (Foulball Campaign, Feb. 1999), at <http://www.laborrights.org> (last visited Nov. 9, 2003).

¹³⁸ Global March launched a World Cup Campaign in 2001.

¹³⁹ David Rowan, *Child Labour Used to Make "World Cup" Balls*, FINANCIAL TIMES, May 22, 2002, at 42.

effective monitoring.”¹⁴⁰ The researchers reported that ball panels were being sent by train approximately 250 kilometers to the Sangla Hill region of Pakistan where the pieces were distributed to village households for stitching and completed balls were sent by train back to manufacturers in Sialkot.

The Global March report also alleged that after the establishment of the Project many families stopped stitching soccer balls and began making surgical instruments.¹⁴¹ A subsequent fact-finding mission by SCCI together with members of the Global Watch research team determined that the balls being stitched outside of Sialkot were counterfeit promotional balls made for manufacturers who did not participate in the program. SCCI also found that stitching in these areas pre-dated the establishment of the Project.¹⁴² A key issue for the credibility of the monitoring program is whether participating manufacturers still tolerate home-based work outside of the Sialkot region.

The Sialkot Project is currently contemplating ways to make its monitoring self-sustaining. The Project may establish a foundation, with initial funding from the industry, to sustain an independent monitoring organization as the ILO’s role as monitor is phased out.

2. Social Protection

Save the Children UK (SCF) conducted its own survey of child labor in Sialkot as part of its efforts to advance the social protection program. Its findings confirmed earlier research.¹⁴³ The vast majority of child stitchers work because they are poor. While soccer ball stitching is poorly paid, it is less hazardous than other work in the region, children and adults are paid equally for equal work, and there is no evidence of bonded labor in the soccer ball industry. SCF also found that stitching soccer balls does not necessarily prevent children from attending school. Seventy-two percent of the child stitchers they interviewed did not attend school because their families could not afford to send them. SCF estimated that preventing children from earning income by stitching soccer balls could reduce family income by around 23%. Thus SCF reaffirmed its recommendations for the social protection program. The program should aim to protect family incomes, improve education, and build the commitment and capacity of all the partners involved. It also should be implemented over time and be monitored for its social impact. Accordingly, the social protection

¹⁴⁰ *Id.*

¹⁴¹ Global March, *Executive Summary, REPORT ON THE FOOTBALL STITCHING INDUSTRY IN THE SIALKOT DISTRICT OF PAKISTAN* (2002) (on file with the author).

¹⁴² SIALKOT CHAMBER OF COMMERCE AND INDUSTRY, *supra* note 130.

¹⁴³ SAVE THE CHILDREN, *STITCHING FOOTBALLS: VOICES OF CHILDREN 6-7* (1997) [hereinafter “SAVE THE CHILDREN 1997”]. *See also* Michael Scott and Faiz Shah, *Visit Report to Football Export Industry in Sialkot*, July 13-14, 1996, Save the Children (UK) (on file with the author).

program was re-organized into four components: income generation, education, women stitchers, and social monitoring.

a. Income Generation

Supplementing vocational and skills training programs (including a course in the region for women to learn commercial tailoring), the National Rural Support Programme launched credit and savings programs to provide credit for stitching families.¹⁴⁴ A line of credit totaling \$2 million and overseen by Save the Children was to be made available as a source of seed capital for families previously dependent on income from child labor.

b. Education

Strategies to improve educational opportunities for child stitchers include strengthening local School Management Committees, improving school infrastructure, and training teachers. A local NGO, Sudhaar, led the educational efforts in villages with the largest concentrations of soccer ball stitching families. In the first year, the Social Protection Program established nineteen new education centers. In November 1998, the ILO reported that the Project had set up 154 informal education centers in the ninety-five villages with the highest concentration of stitching activity and was providing educational opportunities for approximately 5,400 children.¹⁴⁵ Save the Children reported increased enrolments among both boys and girls where School Management Committees had been organized.¹⁴⁶ While one NGO reported no functioning schools or rehabilitation centers in the villages it surveyed in 1999,¹⁴⁷ the Project reported in 2000 that 6,000 children were attending schools sponsored by the social protection partners.

c. Women Stitchers

Within a year of the program launch, the social protection partners determined that women had been obtaining less or no work stitching soccer balls since the Project's inception.¹⁴⁸ Women in Sialkot, for cultural and religious reasons, are normally prohibited from working outside the home in the company of unrelated men. The cottage industry of soccer ball stitching provided women, as well as children, the opportunity to earn income inside the home. The establishment of village stitching

¹⁴⁴ SAVE THE CHILDREN, SOCIAL MONITORING REPORT (July–Dec. 1999), *supra* note 134, at 6-7; SAVE THE CHILDREN, SOCIAL MONITORING REPORT (Apr.-June 1999) (on file with the author).

¹⁴⁵ Memorandum, *supra* note 131.

¹⁴⁶ For the year May 1998 through May 1999, girl school enrollment increased by 10% and boy school enrollment increased by 14%. SAVE THE CHILDREN, SOCIAL MONITORING REPORT, (Apr.-June 1999), *supra* note 144.

¹⁴⁷ INTERNATIONAL LABOR RIGHTS FUND, *supra* note 137.

¹⁴⁸ SAVE THE CHILDREN, SOCIAL MONITORING REPORT (Oct.-Dec. 1998) (on file with the author).

centers outside the home eliminated not only underage children from the production of soccer balls but also a source of income for female stitchers. The Project responded by setting up female-only stitching centers. Eighty new village-based stitching centers for women were established in the first eighteen months.¹⁴⁹ To monitor ongoing home-based stitching, the ILO hired female monitors to visit women's stitching centers.

d. Social Monitoring

One year after the 1997 Atlanta Partner's Agreement, the social protection program had compiled a database of child workers from 173 villages and identified about 3,000 children, half of whom had worked full-time stitching soccer balls.¹⁵⁰ The children were involved with ninety Village Education and Action Centers.

Most families had lost income according to a survey conducted in Sialkot villages in 1999.¹⁵¹ Among families that had worked stitching soccer balls, there was a perceived decline in household dependency on stitching and less home-based stitching, but also less income (particularly part-time income). More children were enrolled in non-formal schools, but most children were involved in other occupations. In villages where the Project was not active, home-based stitching was still available, but there were reports of contractors failing to pay home stitchers.

3. Unintended Consequences

The Sialkot Project produced a number of significant unintended consequences.

a. The Project, as Originally Designed and Launched, Eliminated a Source of Income for Women

Perhaps the most striking unanticipated consequence was the impact of the Project on women. In a country where only seven women participate in the labor force for every one hundred men,¹⁵² this result was particularly undesirable to advocates of woman's rights. In very real terms, the protection of children was being achieved at the expense of income opportunities for women. The problem became apparent during the Project's first year of operation and was brought to the partners' attention by the organizations implementing the Social Protection elements of the

¹⁴⁹ Memorandum, *supra* note 131. The Project partners agreed to designate a home location with at least three registered stitchers as a "stitching unit."

¹⁵⁰ But less than the 7,000 estimated. See Tapiola, *supra* note 128. Using a social monitoring tool developed by Save the Children, the Social Protection Program had conducted 2,595 interviews by June 1998. The stated target of the Social Protection Program was to reach 7,469 total stitcher households comprising 11,652 adult stitchers and 3,421 child stitchers.

¹⁵¹ DOS 2001, *supra* note 18, at 2531.

¹⁵² Martha Nichols, *Third-World Families at Work: Child Labor or Child Care*, 71 HARV. BUS. REV. No. 1, at 12-23 (Jan.-Feb. 1993).

Project. In response, the Project has established female-only stitching centers and targeted women for training and income protection.

b. Family Income for Families with Members Stitching Soccer Balls Declined

Sialkot families whose children ceased soccer ball stitching suffered a 20% drop in income. While the adult stitchers working in registered stitching centers experienced better working conditions and wages, families with a number of child and/or female stitchers have suffered significant drops in income. The wages of stitchers who continue to work at home for nonparticipating manufacturers have fallen. Part of the income decline is attributable to an overall decline in demand for soccer balls, but it is a consequence also of the Project and production shifting to other markets.

c. Child Stitchers Entered Other Occupations

While reports of displaced child stitchers ending up in more hazardous industries, such as surgical instruments and brick kilns,¹⁵³ have been difficult to refute or confirm, they cannot be discounted. Programs to address child labor in other Pakistani sectors have been launched by the ILO, but the fact remains that soccer ball stitching may be one of the least hazardous occupations for children who work in Pakistan.

d. The Project Resulted in the Further Segregation of Soccer Ball Manufacturers in Sialkot

While the risk of losing international customers clearly induces many Pakistani soccer ball exporters to participate in the Project, the Project failed to attract the participation of manufacturers producing soccer balls for the domestic market or for the promotional ball market. For participating manufacturers, the production cost per ball has risen from 25 to 40 PKRs per ball.¹⁵⁴ Large and medium sized manufacturers benefitted at the expense of their smaller competitors.¹⁵⁵ As a result, soccer balls sold in U.S. sporting goods stores are likely to have been manufactured by Project participants, but a soccer ball distributed by a restaurant chain may not be.

¹⁵³ INTERNATIONAL LABOR RIGHTS FUND, *supra* note 137; Poos, *supra* note 132.

¹⁵⁴ *Pakistan's Soccer-ball Industry After the Children Went to School*, THE ECONOMIST, Apr. 8, 2000, at 72-73.

¹⁵⁵ Saga Sports, for example, Nike's exclusive soccer ball supplier and a participant in the Project, has used the Project to distinguish itself among Sialkot exporters. Saga has built modern community-based stitching facilities in ten villages, reportedly creating 6000 jobs, 400 to 500 of which are held by women. See DOS 2001, *supra* note 18, at 2531. The Saga facilities contain dining areas, childcare centers, recreation areas and medical clinics. Meals, childcare, medical services and use of the facilities are free for workers and their families. In 2000, Saga became the first industry in Sialkot to allow its workers to unionize.

e. Sialkot Soccer Ball Manufacturers Have Become Less Competitive in Global Markets as Soccer Ball Production Has Shifted Elsewhere

Overall, soccer ball demand has fallen since the Project was launched.¹⁵⁶ Pakistani trade levels overall, already in decline due to the global economic downturn, worsened following September 2001 and the ensuing U.S war on terrorism in Afghanistan and elsewhere.

Since the launch of the Project, other countries, most importantly China, have challenged Pakistan's position as the leading producer of soccer balls.¹⁵⁷ In 1996-97, Pakistan's share of the world soccer ball market was almost 75% and no other country's market share was in double-digits. In the past five years, China has captured almost 40% of the market.¹⁵⁸ Manufacturers in China have introduced machine-made balls of sufficient quality to compete with the hand-stitched balls made in Pakistan. Lower production costs in China have attracted international brands sourcing both professional and promotional balls. Lingering bad perceptions of Pakistan due to child labor and the increased costs of sourcing balls from Sialkot manufacturers participating in the Project cannot be dismissed as factors contributing to the shift. One global soccer brand, Baden, shifted production from Pakistan due to the reputational exposure and potential for increased costs.¹⁵⁹ Other contributing factors include industry diversification to avoid over-reliance on one supplier market and the relative ease and lower risks of doing business in China as compared to Pakistan.¹⁶⁰

A change of sourcing market, however, does not ensure that violations of worker rights will cease. Each sourcing market comes with its own labor standards issues. In June 1998, the press reported accusations that Chinese prisoners had made soccer balls used in the World Cup. An exiled dissident who served three years in a Shanghai labor camp said he was forced to "work at least 15 hours a day" making Adidas and other branded soccer balls, some of which were marked "France '98 FIFA

¹⁵⁶ U.S. soccer ball imports peaked in 1994-96, the period coinciding with the United States hosting the World Cup. Cove Interview, *supra* note 6.

¹⁵⁷ Between 1996 and 1998, Pakistan's market share of the global soccer ball market fell from 65% to 45%. *Pakistan's Soccer-ball Industry After the Children Went to School*, *supra* note 154. In 2001, Pakistan's share of U.S. soccer ball imports had fallen to between 45% and 50%. Cove Interview, *supra* note 6.

¹⁵⁸ Cove Interview, *supra* note 6.

¹⁵⁹ *Id.* See also Poos, *supra* note 133.

¹⁶⁰ In 2001, following the attacks on September 11, Pakistan suffered a significant decline in international trade, as global customers fearful of the new climate of terrorism pulled back from doing business in that country. These concerns undoubtedly contributed to further decline in Pakistan's share of the soccer ball market.

World Cup, Official Championship Ball.”¹⁶¹ The balls were produced allegedly by prisoners at the First Shanghai Labor Education Camp, and then distributed through the Sheyang County Jiangsu Province Manufacturer, which was connected to the Shanghai Ball Manufacturing Co., a subcontractor to a company with an order from Adidas. Adidas argued that the balls in question must have been counterfeit since Adidas did not work with the Shanghai Ball Manufacturing Co. and because its World Cup match balls had been produced in Morocco with no special logo. Subsequently a Chinese official at a factory attached to a labor camp identified Shanghai Union Ball Enterprise Corp. (a subcontractor making Adidas-branded soccer balls) as a business partner.¹⁶² The accusations prompted Adidas to investigate the subcontracting arrangements of its own subcontractors in China and resulted in Adidas canceling all orders for soccer balls made in China.

E. Lessons from the Soccer Ball Industry

The Sialkot Project has been lauded as a groundbreaking public-private partnership to address a critical business and human rights issue.¹⁶³ But was the Project successful? One can argue that despite having the best prospects for success of any voluntary private initiative at the time, the promise of the Project has not been fully realized. Child labor, as defined by the international community, was significantly reduced in one industry and one location. The success of the Project in improving living standards or working conditions for the affected children and families however, has been mixed. It is not clear that the Project has been cost-effective, sustainable, or replicable. The Project’s demonstration effect has failed to reduce child labor in other industries. And, even for the industry participants, allegations of child labor in their supply chains have persisted and the production of soccer balls has shifted to other sourcing markets with their own problematic labor conditions. The following lessons drawn from the Project explain why.

¹⁶¹ Smith, Craig S. & A. Craig Copetas, *Adidas Accused Of Using Chinese Slave Labor*, L.A. TIMES, Aug. 19, 1998, at D4. See also *For Adidas, China Could Prove Trouble*, WALL ST. J., June 26, 1998, at A13; Marcus Tanner, *Dissident Sues Adidas Over Forced Labour Claim*, THE INDEPENDENT (London), July 4, 1998, at 13; *Ex-Prisoner Sues Adidas Over Forced Labor*, WASH. POST, June 14, 1998, at D2; Maggie Farley, *Did Chinese Prisoners Make Cup Balls?*, L.A. TIMES, June 13, 1998, at C8.

¹⁶² Farley, *supra* note 161; A. Craig Copetas & Craig S. Smith, *Adidas Concedes That Some Soccer Balls Likely Were Made by Chinese Prisoners*, WALL ST. J., July 1, 1998, at A14; Tanner, *supra* note 161.

¹⁶³ The U.S.-based Council on Economic Priorities recognized the Soccer Ball Project as a “Pioneer in Global Ethics” in 1997. WFSGI, *Sports Industry’s Child Labor Initiative Wins Prestigious Award*, SPORTSHOP/NEWS BULLETIN 1 (Aug. 1997), at 1.

1. The international sporting goods companies that chose to source soccer balls in Pakistan should have anticipated the child labor problem

The fact that child labor in all its forms is common in Pakistan was well known and easy to discover when each sporting goods brand began doing business with Pakistani manufacturers. The export industries of Punjab Province had long been associated with child labor. The soccer ball production process was characterized by numerous factors that are red flags for child labor. Soccer ball production is a low wage and labor-intensive industry relying on home-based piecework completed in remote villages. The workers are drawn from impoverished communities with poor schools and no government enforcement of education or labor laws. If any of the major brands sourcing soccer balls in Pakistan had conducted even the most cursory audit of the supply chain for their soccer balls in Sialkot prior to 1995, they would have discovered children stitching soccer balls.

Why didn't the sporting good brands act with "due diligence" or ask the right questions earlier? One reason is that few constituencies expected companies to exercise that level of responsibility over their supply chain at the time. Widespread concern in developed countries over the conditions abroad under which consumer products are made was a development of the early 1990s. Before then, relatively few companies had acknowledged any responsibility for the practices of their suppliers and subcontractors. When the first allegations of child labor in the production of soccer balls appeared in 1995, only Reebok and Nike among the international brands sourcing balls in Pakistan, had widely publicized company codes of conduct that set labor standards for their suppliers.

Additionally, the child labor that existed in the soccer ball industry was widely accepted and legal in Pakistan. A fundamental dilemma facing companies operating in foreign markets is how to respond when local standards fall below those applicable in the company's home market, contravene international standards, or simply betray the expectations of their customers, employees, investors, or other stakeholders. One option is to comply with local law and nothing more. In this case, it was not until child labor became a public issue that the companies looked beyond the assurances of their business partners and examined, in turn, Pakistani law, the actual conditions on the ground, and ultimately international legal standards to guide their response. Those companies that had already incorporated international legal standards into corporate codes of conduct were able to decide quickly that the appropriate child labor standards for the soccer ball industry in Pakistan were the internationally accepted standards and therefore played a leadership role mobilizing a collective industry response.

Another reason companies may not have asked the child labor question is because they knew the answer but chose to ignore it. Before bad publicity threatened sales, there was little competitive incentive for any individual brand to take on the child labor issue. Eliminating child labor in one's own supply chain, without enlisting the participation of the other brands, would have required investing in monitoring or

consolidating sourcing with an exclusive manufacturing facility. Most brands did not have the leverage, alone, to secure fundamental changes in the nature of the production process. And most brands did not have the incentive to act alone. Only the largest sporting goods brands with high value brand names and large marketing budgets took steps on their own.

The companies' failure to ask the right questions earlier allowed child labor to become a key feature of the soccer ball supply chain. It is unclear whether children had always comprised a significant portion of soccer ball stitchers. Growing soccer ball orders in the early 1990s prompted manufacturers to broaden their network of contractors and led contractors, in turn, to allow stitching to take place in stitchers' homes.¹⁶⁴ At the time that they were increasing their Sialkot soccer ball orders, the international brands could have sought information from manufacturers about the production process in Sialkot.

In any event, with each successive industry that is publicly criticized or applauded for its labor standards in foreign markets, the ability of the next company or industry to credibly maintain that it was unaware of the true conditions in its supply chain now decreases. A company that begins sourcing in Pakistan today cannot now avoid the child labor issue.

2. There is a high threshold for collective action by the private sector on labor issues

The pressure on companies to act was not felt equally. The companies that acted first and led the collective efforts were the brands with the most to lose from negative publicity, namely Nike and Reebok. The brands with the most to lose were not the brands with the greatest leverage or market share in the soccer ball industry. Companies with much larger shares of the soccer ball market, such as Germany's Adidas, Japan's Mizuno, and the U.S.-based Brine¹⁶⁵ felt less pressure to act.

The brands with less public exposure also felt less need to develop a comprehensive long-term Project. If not for the advocacy and leverage of the large brands within the industry, the Project might not have included a social protection component, for example. Indeed, the Project itself might not have been launched. Some activists argue that the Project was launched in an attempt to avoid the more

¹⁶⁴ The sporting goods industry in Sialkot had been home-based since its inception in the 1880s, and historically featuring Muslim village craftsman producing items for Sikh and Hindu factory owners who exported the finished products. Child labor had also been present in the factories for almost a hundred years. WEISS, *supra* note 1, at 129-46.

¹⁶⁵ A privately held company, Brine supplies soccer balls to the NCAA and youth soccer leagues.

comprehensive standards of the FIFA code and point to the fact that it never has been implemented or subjected to monitoring.¹⁶⁶

In August 1997, the WFSGI agreed to a Model Code for Ethical Business Practice which was criticized as too weak.¹⁶⁷ The FIFA and the brands signed an agreement in 1998 prohibiting the use of child labor in its licensed products. The WFSGI approved a second Code of Conduct in August 2000, adherence to which FIFA made a requirement for all FIFA licensees making goods for the 2002 World Cup.¹⁶⁸ In 2003, the European Parliament considered a proposed resolution calling on sporting goods companies to implement their agreement with the FIFA and disclose all their production sites, and also urging the ILO to develop a system to monitor labor standards in the sporting goods industry worldwide.¹⁶⁹ World Cup 2006 in Germany will provide another opportunity to revisit labor standards in the soccer ball industry.

Pressure to support the Project over time is, similarly, felt differently by brands depending on their public exposure. Once the Project was up and running and the initial wave of negative publicity subsided, brands outside the critical spotlight had less incentive than the most prominent brands to continue to devote resources to the Project.

3. To effectively address questions about labor standards, a company must understand its supply chain, including complex relationships among subcontractors, and how production actually functions in a particular labor market

A company cannot credibly claim to produce a product under minimum labor standards if it does not know who is making the product or how and where it is produced. Inserting protective language in contracts with suppliers is not enough. Understanding and observing the production process of a direct supplier may not even be enough if the supplier employs subcontractors.

¹⁶⁶ See, e.g., INTERNATIONAL LABOR RIGHTS FUND, *supra* note 137. In fact, FIFA subsequently announced that it would rely exclusively on machine-made soccer balls starting with the 2006 World Cup.

¹⁶⁷ The international trade union organisations questioned “whether any trade association such as the WFSGI, which could not compel its members to adopt any code, was an appropriate organization” to even formulate a code. See http://www.itcilo.it/actrav/english/calendar/2002/A3-5560/technical_files/08_ICFTU/Code%20of%20Conduct/International%20TU%20movement%20and%20new%20codes.htm (last visited Nov. 9, 2003).

¹⁶⁸ FIFA, FIFA AND CHILD LABOUR, Sept. 24, 2002, at <http://www.fifa.com/en/solidarity/childlabour.html> (last visited Nov. 9, 2003).

¹⁶⁹ EUR. PARL., Joint Motion for a Resolution (RC\471894EN.doc) (June 12, 2002).

4. Obtaining reliable and credible information on local conditions is the critical first step for any collaborative initiative

Given the disparate accounts of child labor in the soccer ball industry, it was critical for the Project Partners to conduct research on the ground in Sialkot to gain a reliable benchmark of the nature and extent of the problem.

5. Private regulatory initiatives require strong leadership to succeed

The Project came about thanks to the active participation and encouragement of many individuals from both inside and outside the soccer ball industry. The Project faced many obstacles, not the least of which were securing the support and collaboration of the manufacturers and contractors, overcoming the competitive instincts of the brands,¹⁷⁰ reaching out to international organizations with expertise on the issue of child labor, and securing government support.

The ability to involve the Pakistani manufacturers very early in the development and implementation of the program also was critical to its success. Once the partnership was established, strong leadership from within each partnering organization helped to establish trust and build bridges among the participants.¹⁷¹ “[T]he most committed manufacturers have been those who receive most encouragement on social responsibility from the international brands whom they supply.”¹⁷²

6. The nature of the industry influences the effectiveness of any program

The geographic concentration of the soccer ball supply chain made the Project possible. There are thousands of people involved in the production of soccer balls in Sialkot, but it is a labor market with characteristics similar among all stitchers, contractors, and manufacturers. All production is funneled to a relatively small group of manufacturers. The number of international brands selling soccer balls is also small (compared to apparel brands, for example). And the trade associations SICA, SGMA, and WFSGI served as an existing forum to convene and mobilize all the international players.

Few sourcing markets for consumer goods are so concentrated. The Project partners had to deal only with one labor market, one district in one country, one set of influential actors, and one national government. Other industry attempts to set

¹⁷⁰ Reebok’s decision to label its own soccer balls child labor-free underscored the inherently competitive nature of the sporting goods industry.

¹⁷¹ “Participants of both the Project Coordinating Committee and the Sialkot Implementation Team have come to know and appreciate each other, on a professional as well as a personal level, and to join hands in achieving set goals.” Reuben Dudley, ILO, Islamabad, quoted in *International Project to Eliminate Child Labour from the Soccer Ball Industry in Sialkot-Pakistan*, *supra* note 127, at 4.

¹⁷² Husselbee, *supra* note 109, at 6.

standards for the production of toys, hand-woven carpets, or agricultural products like coffee or cocoa, must take into account multiple sourcing markets and many more relevant actors.

A comprehensive program like the soccer ball Project, therefore, is not easy to replicate.¹⁷³ Sialkot's position as the principal source of hand-stitched soccer balls made it easier for the international brands to commit to stay and address the issue rather than simply shift production to another market. Had there been more options for sourcing soccer balls in 1995, the industry's efforts to mobilize the entire industry around a program in Sialkot would have been much more difficult. It is noteworthy that since the Pakistan experience, global sporting goods brands have taken steps to diversify their sourcing options.

Could an effort like the Sialkot Project be launched again today? Yes, but only if driven by the manufacturers themselves, as in Jalandhar, India, a sourcing market that has gained market share at Sialkot's expense and where NGOs reported widespread child employment in soccer ball stitching. Studies found approximately 10,000 children involved in soccer ball assembly, 1,400 of them full time.¹⁷⁴ Following a CEFT initiative in 1998, a similar project was established in 1999 to address child labor in the soccer ball industry in India. Local manufacturers established the Sporting Goods Foundation of India to manage the project, which uses a private auditing firm, SGS India, to monitor stitching workplaces.¹⁷⁵

7. The narrow focus of the soccer ball initiative—eliminating child labor—contributed to the program's success, and underscores its limitations.

The existence of clear international legal standards prohibiting child labor allowed the multiple actors to come to agreement that a problem existed. But the Project does not address wages, working hours, freedom of association, or gender discrimination. While many of the soccer brands participating in the Project now have their own codes of conduct and monitoring regimes aimed at maintaining minimum standards in these areas, the narrow goal of the Project is to eliminate child labor. Project monitors inspect only age documentation of workers at registered stitching centers; they do not investigate the payment practices of contractors or collect worker grievances.

¹⁷³ See, e.g., *id.* at 2.

¹⁷⁴ Lesley Roberts, *Beyond Codes: Lessons from the Pentland Experience*, in *CORPORATE RESPONSIBILITY AND LABOUR RIGHTS* 79, 87-88 (Rhys Jenkins, Ruth Pearson & Gill Seyfang eds., 2002).

¹⁷⁵ SPORTS GOODS FOUNDATION OF INDIA, *PROGRESS REPORT ON THE PREVENTION AND REHABILITATION OF CHILD LABOR*, at http://www.sgfi.org/progress_frames.htm (last visited Nov. 9, 2003).

Is child labor a more important standard for the constituencies that matter to multinational brands? Pressure for the sporting goods companies to address wage levels, for example, did not rise to the same level as child labor. Many worker rights advocates argue that ensuring freedom of association and the right to organize and bargain collectively is the most effective means for workers to combat abuses and assert their own rights.¹⁷⁶ Unfortunately, this argument has failed to generate significant consumer support, certainly not to the same extent as concerns over child labor.

8. Process standards that seek compliance over time are more realistic than programs that hold actors strictly liable for immediate compliance

One hundred percent compliance is an unrealistic standard that cannot be guaranteed by any standard-setting and monitoring program of this kind. On any given day, there may be a child stitching a soccer ball in Sialkot, Pakistan. But as long as the program remains operational, the chance of detecting child labor employed by program participants has increased dramatically. As a process standard, as opposed to an outcome standard, the program has been a success.

9. The “spillover” impact of the voluntary private regulatory initiative onto other regions or industries has been slow and limited, with little impact on the societal conditions that foster child labor

A secondary goal of the Sialkot Project was to eliminate child labor in other local industries. In particular, it was hoped that the momentum of the Project would fuel action by the surgical instruments industry, the region’s second largest source of exports. ILO and other sources have identified child labor as a major concern in this sector, citing the significant health and safety risks associated with young children working to polish and sharpen small items with rudimentary grinding equipment. “According to the ILO and the Punjab Labor Welfare Department, about 7,500 children under age 14 help make surgical instruments in Sialkot, accounting for 15 percent of the town’s 50,000 workers in that industry. Almost all the children toil in small workshops that perform specific tasks, such as filing and grinding, under subcontracts.”¹⁷⁷

Three years after the Atlanta Agreement began the process of removing children from soccer ball production and after a public pressure campaign, the surgical industry agreed to take steps to improve labor conditions in local manufacturing. In January 2000, the Sialkot Surgical Instruments Manufacturers Association (SIMA)

¹⁷⁶ See, e.g., Poos *supra* note 133; ILO 2002, *supra* note 14, at 112.

¹⁷⁷ Global March Against Child Labour, *Child Labour in Pakistan: Pakistani Youth Become Focus of a Campaign Against Child Labor; Hazardous Conditions Cited in Shops Making Surgical Tools*, available at <http://www.globalmarch.org/cl-around-the-world/pakistan-youth-focus.php3> (last visited Nov. 9, 2003).

pledged to establish a monitoring system in cooperation with the ILO.¹⁷⁸ Eighteen months later an agreement was reached between the ILO and SIMA patterned after the Sialkot Agreement.¹⁷⁹ While it is too early to investigate the results of this initiative, the fact that it took more than four years simply to launch another program in the same region of Pakistan suggests the difficulty of proliferating private initiatives.

10. Absent government regulation, voluntary corporate initiatives are a second-best option of limited reach

Governmental adoption and enforcement of international legal standards would be the most effective means to ensure corporate compliance with such standards at every level of the supply chain. Indeed, “[n]ational governments are . . . the essential players in the abolition of child labour.”¹⁸⁰

11. Governments must play a role

Voluntary programs, like the soccer ball initiative, are less likely to succeed without official government support. In this case, ultimate responsibility for enforcing Pakistani laws, educating Pakistani children, and improving conditions for Pakistan’s poor rests with the government of Pakistan. The U.S. government, too, could have played a more active role.¹⁸¹

12. Partnerships with expert organizations are essential for private regulatory initiatives to succeed

The Sialkot Project “illustrates well the complexity of . . . integrated approaches to removing children from an entire sector The overriding lesson is that monitoring and enforcement alone will not solve the problem”¹⁸² The Sialkot Project could not have succeeded without the expertise of the “ILO in industrial

¹⁷⁸ Press Release, Public Services International (PSI), *Use of Child Labour Surgical Instrument Workshops to be Eliminated, Say Manufacturers in Pakistan* (Jan. 27, 2000), at http://www.icn.ch/PR2_00.htm (last visited Nov. 9, 2003). PSI is the International Trade Union Federation which represents public sector trade unions in 145 countries around the world. The affiliated unions, 561 in number, cover some 20 million public sector members. PSI is an autonomous body which works in association with Federations covering other sectors of the workforce and with the International Confederation of Free Trade Unions (ICFTU). PSI is an officially recognized non-government organization for the public sector within the ILO.

¹⁷⁹ Agreement between the International Labour Organization and the Surgical Instrument Manufacturers Association of Pakistan, Aug. 17, 2001, *available at* <http://www.simap.org.pk/download/agreement-2.pdf> (last visited Nov. 9, 2003).

¹⁸⁰ ILO 2002, *supra* note 14, at xii.

¹⁸¹ *See infra* Appraisal and Recommendations, at 173.

¹⁸² *Id.* at 111.

monitoring, UNICEF in education, SCF in social and children's issues, and industry in communications and planning."¹⁸³

It is, thus, in the interest of business to seek the participation of other actors. Once a credible monitoring program had been established, the Partners were able to secure additional money for social protection. The U.S. government would only fund the program if the ILO served as monitor; and while the global industry was willing to contribute to the costs of establishing the Project, but generally it was unwilling, aside from sourcing soccer balls in Sialkot, to assume responsibility for sustaining the Project for the long term.

In assessing the lessons of the past decade, the ILO has now determined the necessary steps for addressing the problem of child-labor in developing country supply chains. According to the ILO,¹⁸⁴ "thorough research and consulting with a wide range of stakeholders, including children," is needed along with "an integrated approach that combines prevention with rescue and rehabilitation." This means that "viable economic alternatives for families" must be put "in place before children are withdrawn from labour." Finally, to combat child labor successfully, all PVI programs must be locally owned and education must play a "central role."

13. Beware that unintended consequences can jeopardize the success of well-intentioned initiatives

The benefits of a standards initiative linked to a particular labor market are lost if production shifts elsewhere. "Shutting children out of the developing world's export sector as a way of protecting them is justifiable only if they can go on to better working conditions for the same or comparable pay or if they can go to a school arranged so that it does not interfere with work they must do for survival."¹⁸⁵ Therefore, private initiatives must be sufficiently flexible to adjust or correct unintended consequences as they are identified.

14. Pressure on companies, particularly well-known international brands, to adhere to international legal standards is increasing

"The mere accusation that a company is using child labour in its operations, either directly or indirectly, can lead to an immediate blow to its reputation and the threat of consumer boycotts."¹⁸⁶ Thus, "[u]nless business responses alleviate the worst forms of child labor, the legitimacy of continued trade and financial liberalization

¹⁸³ Husselbee, *supra* note 112, at 7.

¹⁸⁴ ILO 2002, *supra* note 14, at xiii.

¹⁸⁵ Bachman, *supra* note 114, at 38.

¹⁸⁶ INTERNATIONAL ORGANIZATION OF EMPLOYERS, EMPLOYERS HANDBOOK ON CHILD LABOUR: A GUIDE FOR TAKING ACTION (rev. ed., 2001), at http://www.ioe-emp.org/ioe_emp/pdf/childlabour1.pdf (last visited Nov. 12, 2003).

will continue to be undermined by perceptions that liberalization disproportionately hurts children.¹⁸⁷

In this case, key pressure points were the high-profile U.S. brands, the public campaign backed by the threat of U.S. government action, and the prospect of mandatory requirements imposed by the international sports governing body FIFA. For the most visible international brands, the Sialkot Project came too late to repair the reputational damage the industry had suffered from the original accusations.¹⁸⁸

¹⁸⁷ Bachman, *supra* note 114, at 30.

¹⁸⁸ Nike acknowledges that the label of a “child labor company” has stuck. See NIKE CORPORATE SOCIAL RESPONSIBILITY REPORT 31 (2001), at <http://www.nike.com/nikebiz/gc/r/pdf/laborpractices.pdf> (last visited Nov. 9, 2003).

CASE STUDY 2

ADDRESSING LABOR CONDITIONS IN CENTRAL AMERICAN COFFEE PRODUCTION

A. Introduction

The coffee trade has been a global industry for centuries, but only recently have living standards for coffee farmers and the conditions under which coffee is produced become a matter of international concern. The main issue facing the coffee industry is the human impact of low prices on individual coffee growers, coffee workers, their families, and communities. The labor standards at issue in coffee production include child labor, restrictions on freedom of association, inadequate wages, and unacceptable working conditions.

The development of private voluntary initiatives (PVIs) in the coffee industry and in the agricultural sector generally has lagged behind PVIs in other industries with global supply chains. For commodity agricultural products, it is difficult to exert sufficient pressure or create incentives within any part of the supply chain to address workers rights. In the case of coffee, the diffusion and complexity of the supply chain, the absence of direct relationships between most producers and consumers, commodity price volatility, and the seasonal spike demand for labor during the harvest are obstacles to effective labor standard setting. Added to which, more than 70% of coffee is grown on small family-owned farms. Until recently, the major coffee brands—Kraft, Nestlé, Proctor & Gamble, and Sara Lee—did not publicly acknowledge any responsibility for the conditions under which coffee is grown around the world.

PVIs in the coffee sector originated in the specialty coffee market and generally bypassed the major coffee brands. Market-based efforts like Fair Trade Certified™ coffee have helped to improve living standards for a small number of coffee growers, but the impact of these efforts is limited by consumer demand. Moreover, the connection between the price of coffee and labor standards on coffee farms is indirect at best. Except possibly in relation to child labor, initiatives that seek to improve the price received by coffee farmers have had little direct impact on labor standards generally. It is unclear whether efforts to support coffee prices have any measurable impact on labor conditions for coffee workers, particularly those on large plantations.

The Starbucks Preferred Supplier Pilot Program (SPSPP) is the first attempt by a significant coffee brand to implement labor standards for coffee workers. The

Program includes environmental, economic and social criteria—wages and benefits, health and safety, living conditions, and freedom of association—against which coffee suppliers are evaluated and independently monitored. Starbucks offers incentives to suppliers to meet or exceed these criteria as part of its efforts to identify a core base of long-term suppliers who share Starbucks values and priorities and build stronger relations with them.

It is too early to tell whether the SPSPP will encourage new suppliers to sell to Starbucks or encourage applying suppliers to improve substantially their environmental performance, economic transparency, or labor standards in order to meet SPSPP requirements. The SPSPP has been criticized for the absence of specific indicators and the small relative weight of social conditions in the program, an important omission being the lack of any specific criteria relating to the minimum age of workers or the worst forms of child labor. It also is unclear what evidence independent monitors use to verify compliance with minimum wage laws and whether monitors treat permanent coffee workers and seasonal coffee workers differently in the verification process.

Starbucks' efforts to improve working conditions and ensure sustainable supplies of specialty arabica coffee are one attempt to link labor standards and quality improvements. Starbucks, however, purchases only one percent of the global coffee supply and exclusively high quality arabica coffee.¹

Declining coffee quality has the potential to motivate collective action by the coffee industry. Voluntary initiatives by the major coffee brands that rely primarily on cheaper robusta and arabica coffee could have the greatest impact on labor standards for the largest number of coffee farmers and workers, but such major brand initiatives are unlikely to occur without government intervention. Absent strict government regulation, the challenge for those who seek to improve labor standards in the coffee sector is to create stronger incentives for coffee roasters to develop and implement standards regimes for their suppliers.

B. The Global Coffee Industry

1. A Brief History of Coffee

Coffee plants are indigenous to tropical Africa and certain islands in the Indian Ocean and for five hundred years have generated an international trade that has symbolized the forces of “globalization” at any particular moment in history. Coffee cultivation and trade began on the Arabian Peninsula in the fifteenth century, reaching Europe in the 1600s. By the late seventeenth century, the Dutch had successfully cultivated coffee in a foreign colony—present-day Indonesia. By the end of the eighteenth century, coffee cultivation had spread throughout the Americas and around

¹ See *infra* the two concluding paragraphs of this subsection for a brief explanation of arabica and ostensibly inferior robusta coffee.

the world, and coffee had become one of the world's most profitable agricultural commodities.²

Coffee is grown in tropical climates between latitudes twenty-five degrees north and thirty degrees south. Coffee plants, ranging in size from shrubs to large trees, require rich soil, rainfall, and sunshine. Coffee plants produce a cherry-like fruit, the seeds of which are coffee beans. After harvest, coffee "cherries" are processed into "green coffee."

There are two principal coffee varieties grown commercially. Arabica, constituting approximately 70% of global production, is considered the highest quality coffee, and is the cornerstone of specialty coffee sales around the world. Grown at higher altitudes, arabica is predominantly handpicked and generally commands higher prices. Strictly hard bean arabica coffee, grown at the highest altitudes, fetches the highest price of all coffee varieties. Generally arabica coffee is processed using the wet method, which uses pulping, fermentation, and washing machines to remove the outer layers of the coffee cherries. The coffee beans are then dried, stored, and hulled immediately prior to export.

Robusta coffee is regarded generally as lower quality coffee and a majority of its global production is found in Brazil and Vietnam, the two largest coffee export markets. Generally it is processed using the dry method, by which the cherries are sun dried, then milled to remove the outer layers of the dried cherry.

2. The Global Coffee Supply Chain

One hundred million people make their living in the coffee industry worldwide. Coffee is grown in more than sixty countries and global coffee sales total more than \$50 billion annually.³

Annual green coffee production is over 110 million bags.⁴ The largest coffee producer, Brazil, produces 30% of the coffee sold on global markets.⁵ Vietnam,

² See generally NATIONAL COFFEE ASSOCIATION OF U.S.A. INC., THE HISTORY OF COFFEE, at <http://www.ncausa.org/public/pages/index.cfm?pageid=68> (last visited Nov. 10, 2003). Today, coffee is the world's second most valuable traded commodity after oil.

³ See generally GREGORY DICUM & LINA LUTTINGER, COFFEE BOOK: ANATOMY OF AN INDUSTRY (2000).

⁴ One bag = 132.276 pounds. See International Coffee Organization, at <http://www.ico.org> (last visited Nov. 10, 2003) [hereinafter ICO]. The ICO is an intergovernmental body whose members are coffee exporting and importing countries.

⁵ ICO, COFFEE MARKET REPORT 5, Table 3 (Dec. 2002), at <http://www.ico.org/ed/edmark.htm> (last visited Nov. 10, 2003).

Colombia, and Indonesia follow Brazil in total exports.⁶ Latin American countries account for approximately 60% of world coffee production (and an even greater share of global arabica production); Asian countries 25%; and African countries 15%.⁷

From plant to cup, coffee production requires many steps. For the purposes of this case study, the key elements of the coffee supply chain are: (a) small farms, (b) large plantations, (c) processors/exporters, (d) traders, (e) roasters, (f) major brands, and (g) specialty brands. These categories frequently overlap due to the number of actors and the complexity of the coffee supply chain.

Industry structure in coffee producing countries varies, largely depending on land ownership. Large plantations are common in Brazil and India, while small farms are more common in Colombia, Costa Rica, Indonesia, Mexico, and Vietnam. Countries such as Guatemala and Kenya have both.⁸

Seventy percent of global coffee production is grown on farms that have fewer than twenty-five acres.⁹ Most are family-owned—an estimated 20 million households worldwide grow coffee—and for small farm owners, coffee growing and harvesting is a labor-intensive process with substantial fixed costs.¹⁰ Coffee plants mature in three to four years and produce one harvest per year thereafter. Coffee harvesting requires extra labor to harvest the ripe cherries in a short period of time. The seasonal nature of the coffee crop means that the permanent year-round coffee workforce in producing countries is small compared to the number of temporary workers employed during the harvest season.

Large coffee plantations usually process and export their own harvests. Coffee processing requires an investment in machinery. Coffee processors may export green coffee, or they may sell it to specialized exporters that sell green coffee on the global market. Small farm coffee growers, on the other hand, typically do not process the coffee they harvest. They sell their harvested coffee cherries to processors, their agents, or to middlemen. These intermediaries set the prices small coffee growers

⁶ These countries account for, respectively, 14%, 12%, and 7% of world coffee production. *Id.*

⁷ *Id.*

⁸ See, e.g., NATIONAL COFFEE ASSOCIATION OF U.S.A. INC., COFFEE FROM AROUND THE WORLD, at <http://www.ncausa.org/public/pages/index.cfm?pageid=75> (last visited Nov. 10, 2003); JEFFREY M. PAIGE, COFFEE AND POWER 62-63 (1997).

⁹ OXFAM, MUGGED: POVERTY IN YOUR COFFEE CUP 7 (2002) [hereinafter “OXFAM-MUGGED”], available at <http://www.oxfamamerica.org/campaigncoffee/art3395.html> (last visited Nov. 10, 2003).

¹⁰ The industry rule of thumb is that a coffee tree only produces about a pound of coffee annually.

receive for their harvest. Without the capacity to transport unprocessed coffee cherries, knowledge of prevailing prices on the open market, or many competing buyers, small farm growers have only a limited ability to negotiate on price.

The United States, Germany, France, and Japan consume half of all coffee exports, with the United States consuming one-fifth of all coffee produced each year.¹¹ Most coffee sold in the United States is grown in Brazil, Colombia, Guatemala, Mexico, and Vietnam.¹²

Specialized international agricultural trading companies can purchase large quantities of coffee from exporters, processors, and large plantation owners in producing countries. The five largest coffee trading companies purchase 46% of all exported coffee.¹³ The traders take delivery of the coffee in the importing country, process it, hold inventory, and sell green coffee to roasters.

Roasters (the companies that roast the green coffee and prepare whole bean or ground coffee for sale) have the highest gross profit margin in the coffee supply chain. The major coffee brands that distribute coffee through food stores and supermarkets roast their own coffee. Microroasters, roasters that roast up to five hundred bags of coffee per year, sell to specialty coffee brands and retailers. There are approximately 1,200 roasters in the United States. Most of the coffee sold by major brands is a mixture of arabica and robusta coffees grown on multiple farms, in different countries, and frequently from more than one continent. There is no way for coffee consumers to know the exact origin of most major brand coffee.

The five multinational companies that own the largest global coffee brands—Nestlé (Nescafé), Kraft (Maxwell House), Sara Lee (Hills Bros.), Procter & Gamble (Folgers), and Tchibo (a German brand and retailer)—purchase almost half of the world's coffee beans each year.¹⁴ The four largest of these companies are

¹¹ The United States imported 2.64 billion pounds of coffee in 1998 (26% of world exports). ICO, COFFEE MARKET REPORT *supra* note 5.

¹² The United States imports coffee also from Ecuador, El Salvador, Costa Rica, Ethiopia, Honduras, India, Indonesia, Kenya, Nicaragua, Papua New Guinea, Peru, Romania, Thailand, Tunisia, Uganda, and Venezuela.

¹³ Aron, Cargill, Esteve, Neumann, and Volcafe are the five largest coffee traders. David C. Zehner, *An Economic Assessment of "Fair Trade" in Coffee*, CHAZEN WEB J. INT'L BUS. 12 (Fall 2002), at <http://www.gsb.columbia.edu/chazenjournal> (last visited Nov. 13, 2003) and http://www1.gsb.columbia.edu/journals/files/chazen/Fair_Trade_Coffee.pdf (last visited Nov. 13, 2003).

¹⁴ In 2000, Kraft and Nestlé each accounted for 13% of green coffee volume, Sara Lee accounted for 10%, and Procter & Gamble and Tchibo each accounted for 4%. OXFAM-MUGGED, *supra* note 9, at 2. See also Global Exchange, *Coffee in the Global Economy*, at (continued...)

publicly held corporations based in Switzerland (Nestlé) and the United States (Kraft, Proctor & Gamble, and Sara Lee) with total annual revenues ranging from \$18 billion to \$64 billion.¹⁵

Specialty coffee brands, companies that sell higher quality arabica coffees frequently identified by geographic origin,¹⁶ purchase roughly 8% of annual coffee production.¹⁷ Specialty coffee accounts for 40% of the value of U.S. coffee sales.¹⁸ Starbucks, the largest specialty coffee company in the United States, is both a coffee roaster and retailer, selling its own roasted coffee in its own cafes, in licensed cafes, and directly to businesses and consumers as well as through traditional food retailers.¹⁹

The International Coffee Organization (ICO),²⁰ based in London, characterizes the current coffee market as a “combination of abundant supply and stagnant consumption.”²¹ The coffee supply is growing more than 2% annually, while overall coffee demand is growing each year at a rate of between 1% and 1-1/2%. The supply of coffee has grown due to major new producers entering the market, such as Vietnam, and traditional producers employing new technology and techniques to increase yields, as in Brazil. The ability and willingness of coffee roasters to use

¹⁴ (...continued)

<http://www.globalexchange.org/campaigns/fairtrade/coffee/coffeeFAQ.html> (last visited Nov. 10, 2003).

¹⁵ Gross revenues for 2002 are Nestlé (\$64 billion), Proctor & Gamble (\$40 billion), Kraft (\$30 billion), and Sara Lee (\$18 billion). HOOVER’S ONLINE, at <http://www.hoovers.com> (last visited Nov. 10, 2003) [hereinafter “HOOVER’S ONLINE”]. Note: the companies do not report publicly on revenues attributable to coffee sales alone.

¹⁶ See generally Specialty Coffee Association of America, at <http://www.scaa.org> (last visited Nov. 10, 2003) [hereinafter “SCAA”]. Formed in 1982, the SCAA comprises almost 2,500 company members predominantly located in the Americas and “works to improve the industry on a global level and from a ‘seed to cup’ perspective, ensuring specialty coffees are available long into the 21st century.” *Id.*

¹⁷ SCAA, MARKET REPORT: WORLD PRODUCTION 2002-2003, at http://www.scaa.org/index.cfm?f=sc&c=world_production_report_02-03.cfm (last visited Nov. 13, 2003).

¹⁸ Stefano Ponte, *Specialty Coffee: The Challenge of Quality and Sustainability* (Nov. 2002), at http://www.scaa.org/index.cfm?f=ar&article_id=ponte.html (unpaginated) (last visited Nov. 13, 2003).

¹⁹ See generally Starbucks Co, at <http://www.starbucks.com> (last visited Nov. 10, 2003). Starbucks’ revenues totaled \$3.3 billion in 2002. HOOVER’S ONLINE, *supra* note 15.

²⁰ *Supra* note 4.

²¹ ICO, COFFEE MARKET REPORT *supra* note 5.

greater quantities of lower quality robusta coffee has also served to drag down prices for all coffee, including high-end arabica beans. The Big Four (Kraft, Nestlé, Proctor & Gamble, and Sara Lee) have increased the percentage of robusta in their blends, employing steam-cleaning technology and other flavorings to eliminate and disguise robusta's harsh flavor.²² Most robusta is produced in Vietnam and Brazil. Arabica coffee accounts for two-thirds of global production.²³ Though its quality will deteriorate, coffee can be stored for long periods and an overstock of coffee supplies in consuming countries contributes to the current oversupply. Nevertheless, the oversupply persists despite the efforts of some countries to reduce production and destroy low quality stocks,²⁴ and coffee prices, true to the law of supply and demand, have fallen.

Global coffee prices are set on the London and New York coffee exchanges, which operate both cash and futures markets for green coffee. The price of coffee is determined by its variety, delivery date, quality, and country of origin.²⁵ Events that can affect the global coffee supply, such as the weather in Brazil, are the primary factors that trigger fluctuations in the "C" market price for coffee.

The price of coffee in international markets is determined by global supply and demand. Like other commodities, the market price for coffee is subject to wide fluctuations caused by market imbalances. International cooperation by coffee exporting and consuming countries to support stable coffee prices through an international coffee agreement that set production quotas by country achieved limited success, but ended in 1989 when the United States pulled out of the International Coffee Organization. Since then, global coffee production has increased 15%, creating an oversupply of coffee worldwide and driving down prices. International coffee prices fell more than 50% over three years to below \$.50 per pound in 2001,

²² Nicholas Stein, *Crisis in a Coffee Cup*, FORTUNE, Dec. 9, 2002, at 204. See also Katy McLaughlin, *Coffee That's Good to the Last Twig*, WALL ST. J., Nov. 19, 2002, at D1.

²³ ICO, COFFEE MARKET REPORT, *supra* note 5 (claiming that "[t]here has been a constant rise in the share of arabicas in world production"). *But cf.* OXFAM-MUGGED, *supra* note 9, at 29 (stating that, as a proportion of world coffee production, arabica supplies have fallen over the past five years).

²⁴ A Coffee Retention Plan by the Association of Coffee Producing Countries was abandoned in October 2001. Zehner, *supra* note 13, at 1. The ICO launched a Coffee Quality-Improvement Programme in 2002 to stop the export of coffee that falls below minimum quality standards. See ICO Resolution No. 407, at ICO website, *supra* note 4.

²⁵ See generally COFFEE RESEARCH INSTITUTE, COFFEE RESEARCH INSTITUTE NEW YORK COFFEE EXCHANGE OVERVIEW, at <http://www.coffeeresearch.org> (last visited Nov. 10, 2003). The London market sets the price for robusta coffee; the New York market sets the price for arabica.

the lowest price in thirty years.²⁶ The price per pound remained low throughout most of 2002 but showed some improvement late in the year, reaching \$.56 in January 2003.²⁷ Adjusted for inflation, “real” prices for coffee beans are only 25% of 1960 levels.

3. The Human Impact of Low Coffee Prices

The main issue facing the coffee industry is the human impact of low prices on individual coffee growers, coffee workers, their families, and their communities. According to the ICO, “[the] unprecedented low prices have ruined many small producers and further fueled the economic difficulties of many coffee export-dependent countries.”²⁸ Most coffee exporting nations are poor and developing countries, and coffee exports can be a major source of national income. Certain African coffee producers are particularly dependent on earnings from coffee exports. In Burundi, Ethiopia, Rwanda, and Uganda, for example, coffee accounts for between 50% and 80% of total export earnings.²⁹ More than 7% of the Guatemalan population is dependent on coffee for its livelihood. In Brazil, the coffee sector employs 300,000 farmers and 3 million workers.³⁰

Rural coffee growing areas are among the poorest regions in coffee-producing countries. Small farm coffee growers overwhelmingly are poor subsistence farmers who rely on the cash from their coffee crop to purchase food, clothing, and other basic needs. Poor coffee growers often pledge future coffee crops in exchange for small loans prior to harvest.

Coffee workers on both large plantations and small farms are among the poorest and most vulnerable people in the coffee industry. Most coffee workers are seasonal employees. Coffee harvests require a large number of temporary coffee pickers, who typically are paid a set price by weight or quantity for the amount of coffee cherries they pick. Migrant coffee workers tend to be local workers from

²⁶ ICO, *supra* note 4; Celine Charveriat, *Bitter Coffee: How the Poor are Paying for the Slump in Coffee Prices* (OXFAM, May 2001), available at http://www.oxfam.org.uk/what_we_do/issues/trade/downloads/bitter_coffee.pdf (last visited Nov. 13, 2003) [hereinafter “OXFAM-Bitter Coffee”]. Prices are the ICO composite indicator price for all varieties of coffee.

²⁷ ICO, COFFEE MARKET REPORT, *supra* note 5.

²⁸ *Id.*

²⁹ OXFAM-Bitter Coffee, *supra* note 26, at 13 (figures are for 1998). Among Latin American producers, coffee accounts for the highest percentages of exports in Honduras (24% in 2000) and Guatemala (21% in 1998).

³⁰ OXFAM-MUGGED, *supra* note 9, at 8.

within the same country that travel to coffee-producing regions during the annual harvest.³¹

Low coffee prices have devastated the incomes of coffee growers and workers. The price small farm coffee growers receive from processors or middlemen can be half the market price per pound and less than the cost of coffee production. In Vietnam, for example, the nongovernmental development organization Oxfam estimates that coffee farmers growing robusta coffee receive as little as 60% of their production costs.³² Even some arabica growers worldwide, who receive a higher price per pound than robusta growers, have received prices below cost during the past few years.

Due to the coffee crisis, plantation owners in some regions of Guatemala have allowed their arabica coffee fields to lay fallow rather than incur the costs of harvesting the coffee.³³ Guatemalan banks have also repossessed large coffee farms. Small farm owners worldwide have lost their land and have been forced to become temporary coffee workers or pursue other sources of income to survive.³⁴ According to Oxfam: “Families dependent on the money generated by coffee are pulling their children, especially girls, out of school. They can no longer afford basic medicines and are cutting back on food.”³⁵

Coffee workers face unemployment. Approximately 200,000 permanent coffee workers in Central America have lost their jobs due to the current coffee crisis.³⁶ In the past two years, as many as 250,000 coffee jobs have been eliminated in Guatemala.³⁷ Large coffee plantations have reduced the number of permanent workers and hired more temporary workers. In Brazil, laid off permanent workers

³¹ *The Plight of Coffee's Children*, TEA & COFFEE TRADE J., Jan. 20, 2002, available at <http://teaandcoffee.net/0102/special.htm> (unpaginated) (last visited Nov. 10, 2003) [hereinafter “TEA & COFFEE”].

³² OXFAM-MUGGED, *supra* note 9, at 9.

³³ Interview with Esther Eskenazy, Asociacion Nacional del Café, Guatemala City, Guatemala, May 19, 2003 [hereinafter “Eskenazy Interview”].

³⁴ In Bolivia, Colombia, and Peru, small farmers have abandoned coffee for cocoa production.

³⁵ OXFAM-MUGGED, *supra* note 9, at 6.

³⁶ Panos Varangis & Bryan Lewin, *The Coffee Crisis in Perspective*, World Bank (Mar. 9, 2002), cited in OXFAM-MUGGED, *supra* note 9, at 52, n.17.

³⁷ Eskenazy Interview, *supra* note 33.

and small farmers expelled from their land have become migrant and temporary coffee workers.³⁸

Small-farm coffee growers and coffee workers in producing countries, already poor, are suffering the most in the current coffee crisis. The resulting social upheaval threatens millions of people with hunger, dislocation, sickness, and extreme poverty.

In sum, “[t]he world coffee market is experiencing a paradox The commercial market, plagued by sluggish growth of consumption, is awash in low quality coffee At the same time, the specialty coffee industry is in dire shortage of high quality coffee. In other words, there is a ‘coffee crisis’ in producing countries due to low international prices, which is affecting the livelihoods of millions of farming households, while specialty roasters scramble to find good quality coffee at any price.”³⁹

C. Allegations of Worker rights Violations in the Coffee Industry

Partly as a result of the decline in coffee prices considered in the preceding section, the eroding living standards for coffee farmers and the conditions under which coffee is produced have become, as noted at the outset of this chapter, a matter of public concern among coffee consumers in recent years. And they have become a matter of concern among human rights advocates as well. According to the United Nations, extreme poverty—the “total lack of resources and means of social integration”—constitutes a violation of all human rights.⁴⁰ Thus, the same trends that pressured transnational apparel, footwear, and other consumer product companies to accept responsibility for labor conditions in their supply chains have prompted activists to place a spotlight on labor conditions in the agricultural sector.⁴¹ The human right issues in coffee production include child labor, inadequate wages,

³⁸ TEA & COFFEE, *supra* note 31.

³⁹ Ponte, *supra* note 18.

⁴⁰ U.N. COMMISSION ON HUMAN RIGHTS, HUMAN RIGHTS AND EXTREME POVERTY, U.N. Doc. E/CN.4/2000/52, ¶ 12 (Feb. 25, 2000). Everyone’s right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care, is declared in Article 25 of the Universal Declaration of Human Rights, Dec. 10, 1948, G.A. Res. 217A, U.N. GAOR, 3d Sess., pt. I, Resolutions, at 71, U.N. Doc. A/810 (1948) [hereinafter “UDHR”], *reprinted in* 3 INTERNATIONAL LAW AND WORLD ORDER: BASIC DOCUMENTS III.A.1 (Burns H. Weston & Jonathan C. Carlson eds., 5 vols., 1994-) [hereinafter “3 WESTON & CARLSON ”]; also in Article 11 of the International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3, *reprinted in* 3 WESTON & CARLSON III.A.2 [hereinafter “ICESCR ”].

⁴¹ *See, e.g.*, Debora L. Spar, *The Spotlight and the Bottom Line: How Multinationals Export Human Rights*, FOREIGN AFF., Mar.-Apr. 1998, at 7; Elliot Schrage & Anthony Ewing, *Engaging the Private Sector*, 14 FOR. FOR APPLIED RES. AND PUB. POL’Y No. 1, at 44 (1999).

unacceptable working conditions, environmental degradation, and restrictions on freedom of association.

1. Child Labor

Child labor is common in the agricultural sector and widespread in many countries where coffee is grown.⁴² By some estimates, 7% to 12% of workers on commercial plantations growing products for export are children.⁴³ The crops children help to harvest include cocoa, coffee, coconuts, cotton, fruit and vegetables, jasmine, palm oil, rubber, sisal, sugar cane, tea, tobacco, and vanilla.

Working children are common on coffee farms both large and small.⁴⁴ While most coffee producing countries have adopted international legal standards for the minimum age of workers and laws prohibiting the worst forms of child labor, the enforcement of child labor provisions is often weak or nonexistent. Thirty percent of coffee pickers in Kenya are under fifteen.⁴⁵ In Guatemala, where an estimated 34% of all children aged seven to fourteen work, children below the legal minimum age of fourteen are regularly employed in family agriculture and coffee harvesting.⁴⁶ A large Guatemalan indigenous population of migrant workers—entire families including children—participate in the coffee harvest.⁴⁷ In one survey of 260 children under eighteen harvesting coffee in Guatemala, 148 were fourteen or younger and 31%

⁴² The ILO estimates that 70% of child labor occurs in the agricultural sector. INTERNATIONAL LABOUR OFFICE, A FUTURE WITHOUT CHILD LABOUR, at xi (May 2002) [hereinafter “ILO 2002 ”]. See also 2 U.S. DEPARTMENT OF LABOR, BY THE SWEAT AND TOIL OF CHILDREN: THE USE OF CHILD LABOR IN U.S. AGRICULTURAL IMPORTS AND FORCED AND BONDED LABOR 2, 62-66 (1995); TEA & COFFEE, *supra* note 31. U.S. DEP’T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2002: GUATEMALA (Mar. 2003), available at [http://www.state.gov/g/drl/rls/hrrpt/2002/18333 .htm](http://www.state.gov/g/drl/rls/hrrpt/2002/18333.htm) (last visited Nov. 10, 2003) [hereinafter “DOS 2002 ”].

⁴³ TEA & COFFEE, *supra* note 31.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ DOS 2002, *supra* note 42, at 2620.

⁴⁷ See, e.g., Walter Alarcon Glasinovich, *Child Labor and Education in Latin America*, in INTER-AMERICAN INSTITUTE OF HUMAN RIGHTS AND WORLD BANK, PROMOTING STATE PROTECTION OF THE RIGHTS OF THE CHILD 9, 14 (May 2001).

reported they had begun picking coffee three to five years earlier.⁴⁸ Forty-two percent were permanent workers.⁴⁹

The main reason most children work, especially during the economic crisis precipitated by low coffee prices, is to add to family income. Low coffee prices have forced small farm coffee growers and coffee workers to pull their children out of school and have increased the number of children working in the coffee fields.⁵⁰ Widespread child labor in coffee production is particularly acute in the least developed countries such as Guatemala where 83% of the population lives in poverty and 60% live in extreme poverty.⁵¹ The U.S. Department of State reports that the coffee crisis has contributed to chronic child malnutrition and a countrywide hunger crisis in Guatemala.⁵²

Children perform many different tasks in coffee production, participating in coffee planting, pesticide and fertilizer application, farm maintenance, coffee storage, and coffee processing. Most children working in the coffee supply chain, however, participate in the coffee harvest.

Children may work on farms owned by their own families, or they may work alongside family members picking coffee on small farms and large plantations. Many children pick coffee part-time during annual coffee harvest seasons. In Central America, for example, the school year in Costa Rica and Guatemala is scheduled so that school vacations coincide with the peak coffee harvest.⁵³ Many young children

⁴⁸ COMISIÓN PARA LA VERIFICACIÓN DE CÓDIGOS DE CONDUCTA (COVERCO), MUJERES Y NINAS: LAS VIDAS PRECARIAS DETRAS DE LOS GRANOS DE CAFÉ (Mar. 2003), at <http://www.coverco.org/esp/media/mujeres-y-ninos-las-vid.pdf> (unpaginated) (last visited Nov. 10, 2003) [hereinafter "COVERCO 2003"].

⁴⁹ *Id.*

⁵⁰ See, e.g., TEA & COFFEE, *supra* note 31 (explaining "[t]he . . . link between low price, poverty and child labor is inextricable"); *Working to Help Coffee's Children*, TEA & COFFEE TRADE J., Feb. 20, 2002, at <http://www.teaandcoffee.net/0202/special.htm> (last visited Nov. 10, 2003); Alberto Barrera, *Education Suffers as Youngsters Harvest Coffee*, SOUTH FLORIDA SUN-SENTINEL, June 29, 2002, at 22A, available at 2002 WESTLAW [hereinafter "WL"] 22124375.

⁵¹ DOS 2002, *supra* note 42, at 2592-93. The poverty rate among Guatemala's indigenous population is ninety percent.

⁵² *Id.*

⁵³ In Costa Rica there is a long tradition of families, even urban families, harvesting coffee together during the annual school vacation in December and January. This practice was particularly common when the rural workforce was insufficient to bring the coffee harvest in on time. Today, when a significant percentage of coffee pickers are immigrant workers
(continued...)

accompany their parents during the coffee harvest because there are no alternatives for childcare. These children may be present in the coffee fields during the coffee harvest, but may not perform any work. Most children, however, do participate in the harvesting coffee cherries in some way—picking cherries, reaching the highest branches, loading or carrying baskets and bags of ripe coffee cherries. Children who pick coffee typically contribute to their parents’ coffee harvesting totals and are not paid directly.

The work of children in the coffee supply chain does not always constitute prohibited child labor. International legal standards prohibit labor by children younger than fourteen or the age of completion of compulsory education, whichever is lower, or by any child under eighteen if the work is by its nature harmful to the “health, safety or morals of children.”⁵⁴ There are exceptions under international law for work on family and small-scale holdings, and for “light work” by children as young as twelve. In Guatemala, children aged twelve to fourteen are allowed to work with the written permission of the Ministry of Labor, and children aged sixteen to eighteen are allowed to work full-time with permission.⁵⁵

Key indicators of prohibited child labor during the coffee harvest are: (a) coffee picking that interferes with primary education; or (b) working conditions that present safety and health risks for children, such as long hours, separation from family members, travel over long distances, dangerous tasks, and exposure to dangerous substances. Particularly vulnerable are migrant child laborers, who may enjoy no formal legal protections, may not keep their own pay, and may not have access to schools. In Brazil, migrant and temporary workers make up a large percentage of Brazil’s child workers.⁵⁶

Schools are remote and inaccessible in most coffee producing areas.⁵⁷ Primary education may not be free or compulsory under national law. On large coffee

⁵³ (...continued)

from neighboring Nicaragua and Panama, it is less common for the average Costa Rican to have experienced the coffee harvest first-hand. Interviews with staff of Instituto del Café de Costa Rica, Heredia, Costa Rica, April 2003.

⁵⁴ ILO Convention (No. 138) Concerning Minimum Age for Admission to Employment, June 26, 1973, art. 3, 1015 U.N.T.S. 297 [hereinafter “ILO C138”], reprinted in 3 WESTON & CARLSON, *supra* note 40, at III.O.5; ILO Convention (No.182) Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, June 17, 1999, art. Art. 3(d), reprinted in 38 I.L.M. 1207 (1999) and 3 WESTON & CARLSON, *supra* note 40, at III.D.4.

⁵⁵ DOS 2002, *supra* note 42, at 2620.

⁵⁶ TEA & COFFEE, *supra* note 31.

⁵⁷ *Id.*

plantations, children of permanent workers may have access to some schooling, but education facilities are generally insufficient to enable all children to attend school regularly and complete their primary education.⁵⁸ In Guatemala, the Constitution provides for compulsory education for all children up to the sixth grade, but less than half the population actually receives a primary education and only three of ten students who begin primary school complete it.⁵⁹ Education rates are even lower among rural and indigenous children.

Child coffee pickers face many safety and health risks:

Coffee picking is exhausting work, and for a child's developing physiology the impact can be damaging. Long hours, hot temperatures, overexposure to sun and snakebites are a constant threat to the well being of coffee's children. Regular exposure to dangerous chemical fertilizers and pesticides (protective gear is uncommon) that have been banned in the U.S. are still used frequently in coffee production and pose another threat to children. Children are often malnourished and get sick easily, particularly those in the migrant work force.⁶⁰

In one survey, 72% of Guatemalan child coffee workers reported working more than twelve hours daily during the coffee harvest.⁶¹

The worst forms of child labor exist in the coffee supply chain. In 2001, reports of child slave labor on cocoa plantations in Côte d'Ivoire, led to accusations of slave labor on coffee farms in that country.⁶² The U.S. Department of State confirms the trafficking of children into Côte d'Ivoire and reports estimates that "thousands of Malian children work on Ivoirian cocoa and coffee plantations."⁶³

⁵⁸ *Id.*; COVERCO 2003, *supra* note 48.

⁵⁹ DOS 2002, *supra* note 42, at 2612.

⁶⁰ TEA & COFFEE, *supra* note 31.

⁶¹ COVERCO 2003, *supra* note 48.

⁶² *America's Coffee Tainted by Slavery in Ivory Coast*, KNIGHT RIDDER, June 25, 2001, LEXIS- Knight Ridder/Tribune Business News file. For details concerning child labor on Ivoirian cocoa and coffee plantations, see *infra* CASE STUDY 3, at 101.

⁶³ 1 U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2001: CÔTÉ D'IVOIRE (Apr. 2002), available at <http://www.state.gov/g/drl/rls/hrrpt/2001/af/8355.htm> (last visited Aug. 15, 2003). Specialty coffee brands were quick to assert that "little if any" high quality arabica coffee is sourced from the Côte d'Ivoire. TEA & COFFEE., *supra* note 31. About 5% of robusta coffee imported by the United States comes from the Côte d'Ivoire. *Id.*

Also, the coffee crisis has forced some children of coffee workers into other exploitative forms of child labor, such as child prostitution⁶⁴

2. Inadequate Wages and Benefits

For coffee workers with jobs, wages are often below legal minimums and insufficient to meet their basic needs.

Minimum wages for permanent coffee workers may be regulated by law, but minimum wage laws are frequently not enforced. According to the U.S. Department of State, the deepening coffee crisis has increased already widespread noncompliance with Guatemalan minimum wage laws.⁶⁵ In one survey of coffee workers in Guatemala, more than half reported nonpayment of legally mandated overtime and employee benefits, and almost half reported receiving less than the minimum wage, in violation of Guatemalan labor laws.⁶⁶ Following recent increases in the Guatemalan minimum wage, many plantation owners increased the work quotas required to receive the minimum wage, effectively reducing worker pay.⁶⁷ Some industry critics assert that most Guatemalan coffee producers pay coffee workers less than half the legal minimum.⁶⁸ “In the Guatemalan coffee sector, the minimum wage has become the maximum salary.”⁶⁹

While permanent coffee workers may be covered by national minimum wage laws and qualify for legally-mandate benefits, seasonal workers are typically paid on a cash basis without contracts or employment records.⁷⁰ Seasonal coffee workers’ earnings typically depend on the amount of coffee they are able to pick. In Kenya, seasonal coffee workers are

⁶⁴ TEA & COFFEE, *supra* note 31.

⁶⁵ DOS 2002, *supra* note 42, at 2621.

⁶⁶ COVERCO, Coffee Workers in Guatemala: A Survey of Working and Living Conditions on Coffee Farms (Feb. 2000), at <http://www.usleap.org/Coffee/sbcovercorpt/sbcovercorpt.html> (last visited Nov. 10, 2003). See also COVERCO 2003, *supra* note 48.

⁶⁷ Worker Interviews, Colomba, Guatemala, May 2003 (on file with the author) [hereinafter “Worker Interviews (Colomba)”].

⁶⁸ Interview with Miguel Angel Sandoval, Advisor, Centro de Acción Legal en Derechos Humanos (CALDH)-Legal Action Center for Human Rights, Guatemala City, Guatemala, May 20, 2003 (on file with the author).

⁶⁹ Interview with Miguel Angel Lucas, General Secretary, Central de Trabajadores del Campo y la Ciudad, Guatemala City, Guatemala, May 20, 2003 (on file with the author).

⁷⁰ In Costa Rica, however, the government fixes the price coffee farms must pay per basket of harvested coffee cherries.

paid as little as one fourth of the legal minimum wage.⁷¹ In Guatemala, coffee pickers are paid the equivalent of a piece rate. According to NGO reports, Guatemalan coffee pickers must pick a 100-pound quota to earn the legally required minimum of \$4 per day, and frequently are subject to forced overtime without compensation.⁷²

Labor activists argue that legally mandated minimum wages in many countries do not constitute “living wages,” generally considered to be wages sufficient to meet the basic needs of the average worker’s family. The nongovernmental advocacy organization Global Exchange calculated the costs of a basic food basket for a family of five in Guatemala using statistics published by the Guatemalan government. The average income reported by Guatemalan coffee workers was \$127 per month, whereas the basic food basket cost \$171 per month. A basket that included education, healthcare, clothing, and transportation cost \$313. Indeed, the U.S. Department of State reports that the Guatemalan minimum wage is “not sufficient to provide a decent standard of living for a worker and family.”⁷³ There is no widely accepted definition of a living wage, and no international standard requiring employers to pay a living wage,⁷⁴ but international legal standards establish the right of workers to an adequate standard of living.⁷⁵

3. Discriminatory and Other Inadequate Working Conditions

Discrimination against women is an issue in coffee production worldwide. Women are commonly paid less than men for the same work.⁷⁶ One organization estimates that women in the Honduran coffee industry are paid 30% less than men.⁷⁷ Guatemalan women may be paid 50% less than men for permanent work on coffee

⁷¹ TEA & COFFEE, *supra* note 31.

⁷² Global Exchange, *supra* note 14.

⁷³ DOS 2002, *supra* note 42, at 2621-22.

⁷⁴ See, e.g., Terry Collingsworth, *The Key Human Rights Challenge: Developing Enforcement Mechanisms*, 15 HARV. HUM. RTS. J. 183, 202 (2002).

⁷⁵ UDHR, *supra* note 40, at art. 23, 3 (“Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.”) and art. 25 (“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family . . .”). The International Covenant on Economic, Social and Cultural Rights calls upon states to take appropriate steps to ensure the realization of the rights to just and favorable conditions of work and an adequate standard of living. ICESCR, *supra* note 40, at arts. 7, 11. The United States has signed but not ratified the ICESCR.

⁷⁶ Worker Interviews (Colomba), *supra* note 67. See also COVERCO 2000, *supra* note 66; COVERCO 2003, *supra* note 48, at 4.

⁷⁷ TEA & COFFEE, *supra* note 31.

farms, and many women perform some of the most hazardous tasks, such as fertilizer application.⁷⁸ One survey of 544 female coffee workers in one region of Guatemala found that 61% worked twelve hours or more each day in violation of the eight hours permitted in the Guatemalan labor code.⁷⁹ Women who pick coffee may not be paid directly; the coffee cherries women harvest may be accounted for and paid to their male relatives.⁸⁰

Coffee workers have been reported also to suffer unsafe and unhealthy working conditions, and inadequate housing.⁸¹

4. Environmental Degradation

Environmental concerns associated with coffee production indirectly affect the conditions of workers and coffee growing communities and in so doing infringe upon their right to a clean and healthy environment.⁸² These include deforestation, pesticide and herbicide pollution, and water contamination by coffee processing by-products and the extinction of songbirds through habitat destruction. The replacement of traditional shade grown coffee farming with industrial open sun coffee farms to increase coffee yields is a major concern of environmental groups such as the Rainforest Alliance, the Audubon Society and the Smithsonian Migratory Bird Center. Sustainable coffee farming, on the other hand, minimizes the environmental and human impact of coffee production through ecosystem, wildlife, water, and soil

⁷⁸ Interview with Father Bernardo Castro, Colomba, Guatemala, May 22, 2003 (on file with the author).

⁷⁹ COVERCO 2003, *supra* note 48.

⁸⁰ Worker Interviews (Colomba), *supra* note 67.

⁸¹ See, e.g., COVERCO 2000, *supra* note 66, citing anecdotal evidence of “problems with . . . legally-mandated health and safety programs, educational services and hygienic living conditions on Guatemalan coffee farms.”

⁸² See Rio Declaration on Environment and Development, June 13, 1992, U.N. Doc. A/CONF.151/26 (vol. 1) (1992), *reprinted in* 5 INTERNATIONAL LAW AND WORLD ORDER: BASIC DOCUMENTS V.B.16 (Burns H. Weston & Jonathan C. Carlson eds., 5 vols., 1994-) [hereinafter “5 WESTON & CARLSON ”]. See also Stockholm Declaration of the United Nations Conference on the Human Environment, June 16, 1972, U.N. Doc A/CONF.48/14 at 2.65 and Corr. 1 (1972), *reprinted in* 5 WESTON & CARLSON V.B.3; World Charter for Nature, Oct. 28, 1982, G.A. Res. 37/7 (Annex), I.N. GAOR, 37th Sess., Supp. No. 51, at 17, U.N. Doc. A/37/51, *reprinted in* 5 WESTON & CARLSON V.B.11. These instruments, alone and together, are today widely accepted as part of customary international law.

conservation, integrated crop and waste management, and the fair treatment of workers and communities.⁸³

5. Freedom of Association

Workers on small coffee farms and large coffee plantations, like most agricultural workers worldwide, form an unorganized workforce with little say over their terms of employment or working conditions. Agricultural workers have not succeeded at exercising their right of association, their right to organize, or their right to bargain collectively.⁸⁴ Coffee workers who seek to organize may be fired, suffer intimidation, or become the target of threats and violence, particularly in coffee producing countries with a history of violent anti-union activity. Guatemala has a long history of forced labor on large coffee plantations.⁸⁵

Fundamental worker rights are violated frequently in Guatemala. While the Constitution and Labor Code provides for freedom of association and the right to form and join trade unions, “in practice the Government does not enforce effectively labor laws to protect workers who exercise their rights. . . . Retaliation, including firing,

⁸³ See, e.g., SUSTAINABLE AGRICULTURE NETWORK, SUSTAINABLE AGRICULTURAL NETWORK GENERIC COFFEE STANDARDS, Jan. 14, 2002, at <http://www.rainforest-alliance.org/programs/cap/socios/coffee.pdf> (last visited Oct. 21, 2003) [hereinafter “SUSTAINABLE AGRICULTURAL NETWORK”]. Sustainable agriculture seeks to ensure long-term access to agricultural raw materials. INTERNATIONAL BUSINESS LEADERS FORUM, FOOD FOR THOUGHT 7 (2002) [hereinafter “FOOD FOR THOUGHT ”].

⁸⁴ Freedom of association is a fundamental right under international law. UDHR, *supra* note 40, at arts. 20, 23, ¶ 4; International Covenant on Civil and Political Rights, Dec. 16, 1966, art. 8; 999 U.N.T.S. 171, *reprinted in* 3 WESTON & CARLSON, *supra* note 40, at I.A.3) [hereinafter “ICCPR”]. It is also a core labor right under U.S. law. U.S Trade Act of 1974, § 502(a). The rights of workers to organize, to bargain collectively, and to adequate protection from acts of anti-union discrimination are codified in the core labor conventions of the ILO, to wit: ILO Convention (No. 97) Concerning Freedom of Association and Protection of the Right to Organize, July 9, 1948, 68 U.N.T.S. 17, *reprinted in* 3 WESTON & CARLSON, *supra* note 40, at III.O.1; ILO Convention (No. 98) Concerning the Application of the Principles of the Right to Organize and Collective Bargaining Convention, July 1, 1949, 96 U.N.T.S. 257, *reprinted in* 3 WESTON & CARLSON, *supra* note 40, at III.O.2.

⁸⁵ Compulsory or forced labor per ILO Convention (No. 29) Concerning Forced or Compulsory Labor, June 28, 1930, art. 2, 39 U.N.T.S. 55 [hereinafter “ILO C29 ”], *reprinted in* 3 WESTON & CARLSON, *supra* note 38, at III.H.2, “which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily” is universally condemned and prohibited under international law. In Guatemala in the past, large coffee plantations relied on landless peasants, mostly indigenous Guatemalans working in debt servitude, but allegations of debt peonage persist today. See, e.g., COVERCO 2000, *supra* note 66; Christena Colclough, *Labor Abuses Continue Despite Threat to U.S. Trade Ties*, ASSOCIATED PRESS, Sept. 7, 1994, at LEXIS-Associated Press Worldstream; Paige, *supra* note 8, at 69: “Since its origins in the late nineteenth century, the Guatemalan coffee production system has been dominated by various forms of forced labor .”

intimidation, and sometimes violence, by employers and others against workers who try to exercise internationally recognized worker rights is common and usually goes unsanctioned.⁸⁶ Coffee workers in Guatemala report the routine use of blacklists by plantation owners to deny work to individuals believed to be union organizers.⁸⁷

D. Response of the Global Coffee Industry

The development of PVIs to address labor standards in the coffee industry, and in the agricultural sector generally, as noted at the outset of this chapter and for all the reasons there mentioned,⁸⁸ has lagged behind PVIs in other industries with global supply chains. Efforts by individual brands to date have had little measurable impact on labor standards. National regulation and enforcement of local laws consistent with international labor standards remain the most effective tools to eliminate child labor, ensure freedom of association, and enforce acceptable working conditions.

After activists targeted Starbucks in an organized public advocacy campaign, the company became the highest profile specialty brand to commit to offering Fair Trade Certified™ coffee for sale. When the current coffee crisis began in 1997, no major coffee brand had adopted or endorsed a code of conduct for coffee production. In 2001, Starbucks launched a Preferred Supplier Pilot Program that employs price incentives and grades suppliers on sustainability criteria that include conformity to labor standards.

Pressure on the coffee industry to address labor conditions has not been well organized or widespread. For commodity agricultural products, it is difficult to exert sufficient pressure or create incentives on any part of the supply chain to address workers rights. Market-based efforts to set minimum prices for coffee beans have improved conditions for a small percentage of small farm coffee growers.

All coffee roasters have an incentive to limit their exposure to accusations of human rights violations in their supply chain. While the number of intermediaries between the brands and any violations in the coffee fields generally has protected the companies from any legal responsibility, child labor, forced labor, or corporal punishment employed by a company's suppliers can permanently damage a company's reputation and reduce brand equity. Wages below local minimums or that fail to meet workers' basic needs increasingly also register with consumers who favor socially responsible companies.

The overwhelming issue is the price of coffee. Reducing the coffee supply, or paying higher prices, is the most effective way to improve the standard of living for small farm coffee growers and coffee workers. Concerted efforts by industry and governments have failed to support higher prices for coffee. Indeed, international efforts to increase coffee cultivation, as in the case of Vietnam, have contributed to excess coffee supply.

⁸⁶ DOS 2002, *supra* note 42, at 2616.

⁸⁷ Worker Interviews (Colomba), *supra* note 67.

⁸⁸ *See supra* Section A, ¶ 2.

Efforts to reduce supply are viewed by some governments as undesirable restraints on free trade.

For the major brands, absent consumer pressure, there is little incentive to support market interventions that will raise the cost of green coffee, especially robusta coffee. For specialty brands that compete on quality, there is greater incentive to adopt voluntary measures, including price and labor standards initiatives that will ensure the availability of higher quality arabica coffee.

1. Fair Trade Certified™ Coffee

The proponents of Fair Trade Certified™ coffee, who focus on leveraging the purchasing power of coffee consumers, aim to strengthen the economic position of marginalized producers in global supply chains by purchasing products at stable prices directly from the producers.⁸⁹ While it does not directly address labor standards—indeed, in theory, Fair Trade Certified™ coffee growers do not depend on hired labor—the Fair Trade Certified™ program was developed to improve working conditions in small coffee farms.

Fair Trade Certified™ provides small farm coffee growers a minimum fixed price for their crop and certifies to consumers that the coffee they purchase was produced for a fair price, by a democratically organized farmer cooperative, and in an environmentally conscious manner.⁹⁰ Coffee roasters can apply to use a Fair Trade Certified™ coffee label if they purchase coffee directly from the farmers at the fixed Fair Trade Certified™ price under contracts of at least one year and if they agree to provide coffee farmers with access to credit. Current prices for Fair Trade Certified™ coffee are fixed at a floor of \$1.26 per pound, with a \$.05 premium per pound above the prevailing market price if the prevailing market price is above \$1.26.⁹¹ Since 1997, the Fair Trade Certified™ minimum price has been greater than the prevailing market price, at some times by as much as \$1.06 per pound.

The Fair Trade Labeling Organizations International (FLO), a consortium of seventeen national “fair trade” initiatives in Europe, North America, and Japan,

⁸⁹ FOOD FOR THOUGHT, *supra* note 83, at 8. See also FAIRTRADE LABELING ORGANIZATIONS INTERNATIONAL, FAIRTRADE STANDARDS FOR COFFEE 2, 10 (Jan. 2003), available at <http://www.fairtrade.net/pdf/sp/english/coffee%20.pdf> (last visited Nov. 10, 2003) [hereinafter “FAIRTRADE STANDARDS”].

⁹⁰ Eighty-five percent of Fair Trade Certified™ coffee is also organic and shade grown. Organic coffee is certified according to the California Organic Foods Act in accordance with the standards of the International Federation of Organic Agricultural Movements. Shade-grown coffee is certified by several groups under differing criteria, including the Rainforest Alliance (<http://www.ra.org>), the Seattle Audubon Society (<http://www.seattleaudubon.org>), and the Smithsonian Institute (<http://www.si.edu>).

⁹¹ Certified organic Fair Trade Certified™ coffee is guaranteed a minimum price of \$1.41 per pound, or a \$.15 per pound premium over market prices.

inspects, audits, and certifies farmer cooperatives on an annual basis.⁹² In theory, to supply Fair Trade Certified™ coffee, a coffee grower must be a small farmer and member of a democratically organized farmer cooperative in which small farmers constitute a majority of the co-op's members. FLO standards require coffee producer organizations to adhere to national law, prohibit discrimination within cooperatives, and prohibit any forced or child labor in accordance with ILO standards. The FLO also calls on producer organizations to meet the requirements of ILO Conventions "as far as possible" and "to take steps to improve working conditions and to ensure that . . . workers share the benefits of Fair Trade."⁹³ With the exception of the standard prohibiting child or forced labor, the FLO standards for coffee production do not include labor standards. FLO standards for freedom of association and collective bargaining, conditions of employment, and occupational health and safety apply only to producer organizations in which a significant number of workers are employed. The costs of monitoring and certifying Fair Trade Certified™ coffee are borne by the coffee brands.⁹⁴

Roasters in the Netherlands imported the first Fair Trade Certified™ coffee from Guatemalan cooperatives in 1973. Today, two hundred coffee cooperatives representing 675,000 farmers, more than twenty traders and approximately 350 coffee companies sell Fair Trade Certified™ coffee under the FLO label. By 1999, Fair Trade Certified™ coffee accounted for \$250 million in sales in Europe per year. In North America, 4.7 million pounds were sold for \$64.4 million in sales.⁹⁵ In 1986, Equal Exchange began importing Fair Trade Certified™ coffee in the United States. TransFair USA, the U.S. member of the FLO, has certified 23 million pounds of Fair Trade Certified™ coffee for sale in the United States since 1999. TransFair USA argues that Fair Trade Certified™ coffee has generated more than \$18 million in additional income for family farmers.⁹⁶ Fair Trade Certified™ coffee sales in the United States totaled approximately \$58 million in 2000, or three quarters of one percent of the \$7.8 billion U.S. specialty coffee market.⁹⁷

⁹² OXFAM-MUGGED, *supra* note 9, at 40.

⁹³ FAIRTRADE STANDARDS, *supra* note 88, at 2.

⁹⁴ In the United States, brands pay a licensing fee of ten cents per pound to TransFair USA.

⁹⁵ Ponte, *supra* note 18. Not all of this coffee was sold as FairTrade coffee at retail. Some was sold to roasters who incorporated it into blends that could not use the FairTrade label.

⁹⁶ Paul Rice, *Fair Trade: A More Accurate Assessment*, CHAZEN WEB J. INT'L BUS. (Mar. 2003), at <http://www.gsb.columbia.edu/chazenjournal> (last visited Nov. 13, 2003).

⁹⁷ Zehner, *supra* note 13, at 3.

Fair Trade Certified™ coffee benefits a relatively small number of coffee growers and has had but limited impact on labor conditions in coffee production. Less than half of the total production volume of FLO certified coffee growers is sold as Fair Trade Certified™ coffee.⁹⁸ For some participating cooperatives, weak consumer demand and the addition of new cooperatives to the FLO register of certified producers has limited the amount of coffee they are able to sell at Fair Trade Certified™ prices.⁹⁹ Furthermore, by definition, cooperatives producing Fair Trade Certified™ coffee do not rely on significant hired labor, and as a consequence FLO monitors do not explicitly monitor labor conditions even though small producers may have the same labor issues as large coffee farms that rely on hired labor.¹⁰⁰ The proponents of Fair Trade Certified™ coffee do not address working conditions on large coffee plantations.¹⁰¹ However, by increasing the incomes of coffee growers, Fair Trade Certified™ coffee may reduce instances of child labor.

2. The Starbucks Experience

The growth of specialty coffee retailing, most visible in the United States in the form of Starbucks, was the catalyst for the development of the first voluntary standards in the industry.¹⁰² In fifteen years, Starbucks has grown from a chain of seventeen Seattle coffee shops to more than 8,000 outlets in more than thirty countries.¹⁰³ Starbucks is the largest specialty coffee¹⁰⁴ brand in the United States and the tenth largest coffee seller worldwide. Along the way, Starbucks has become a corporate symbol of United States-led globalization.

⁹⁸ In 2000, 29.1 million pounds of Fair Trade Certified™ coffee was sold globally out of an estimated Fair Trade Certified™ production capacity of 165 million pounds. Ponte, *supra* note 18.

⁹⁹ Interview with Carlos Jones, Executive Director, Consortium of Coffee Cooperatives of Guanacaste & Montes de Oro (COOCAFE), San Jose, Costa Rica, Apr. 23, 2003 (on file with the author).

¹⁰⁰ Some Fair Trade Certified™ cooperatives do attempt to verify that member producers pay all hired labor the legal minimum wage. Interview with Jeronimo Bollen, Manos Campesinos, Quetzaltenango, Guatemala, May 21, 2003 (on file with the author).

¹⁰¹ For tea and bananas, crops mostly grown on large plantations, the FLO has developed criteria that address wages, living and working conditions, and the right to organize for farm workers.

¹⁰² Green Mountain Coffee Roasters launched a “Stewardship Program” in 1992. Thanksgiving Coffee Company developed a rating system for growers based on social and environmental criteria in 1995. Ponte, *supra* note 18.

¹⁰³ See, e.g., *Planet Starbucks*, BUS. WK., Sept. 9, 2002, at 100.

¹⁰⁴ Starbucks purchases only arabica varieties of coffee with specific flavor characteristics and defect-free beans.

In December 1994, a coalition of U.S. activist organizations¹⁰⁵ launched a public campaign to make Starbucks the first international brand to take responsibility for labor conditions in an agricultural supply chain. The coalition called on Starbucks to take measures to improve labor conditions for coffee workers in Guatemala, urging the company to establish a code of conduct for its suppliers, set up a system to monitor coffee plantations, and stop doing business with suppliers that failed to meet minimum labor standards.¹⁰⁶

After a nationwide leafleting campaign, Starbucks CEO Howard Schultz announced at the company's February 1995 annual shareholder meeting that Starbucks would study the creation of a code of conduct for suppliers. In its public comments, Starbucks initially resisted the code of conduct approach, arguing that a code for suppliers would constitute "meddling in other countries" and be difficult to implement.¹⁰⁷ Starbucks noted that it represents only five percent of the Guatemalan coffee market and sources from some 33,000 different Guatemalan coffee farms.

a. Framework for a Code of Conduct

In October 1995, as a "first step in a long journey," Starbucks laid out a Framework for a Code of Conduct ("Code Framework") to "attempt to influence the quality of life for those involved in coffee production"¹⁰⁸ The Code Framework outlined the principles that would form the basis for the company's actions. These included respect for human rights and the principles that: (1) wages and benefits should "address the basic needs of workers and their families;" (2) work by children should not "interfere with mandated education;" and (3) people have the right to associate freely and to "work because they want or need to, but not because they are forced to do so." The Code Framework was non-binding and contained no provisions for dropping noncompliant suppliers. According to Starbucks, it was too soon to commit to an enforcement mechanism without sufficient information to set benchmarks for wages and benefits.

Starbucks asserted that "selecting and marketing high value coffee *in itself* can contribute to the economies of coffee-producing countries so that countries may

¹⁰⁵ The coalition included the U.S./Guatemala Labor Education Project and the Coalition for Justice for Coffee Workers, comprising religious, human rights and Central American solidarity groups.

¹⁰⁶ See, e.g., Mike Zielinski, *Trouble Brewing at Starbucks Coffee*, THE PROGRESSIVE, Mar. 1, 1995, at 12.

¹⁰⁷ Bruce Ramsey, *Starbucks Criticized on Coffee-Worker Promise*, SEATTLE POST-INTELLIGENCER, Mar. 6, 1997, at B1.

¹⁰⁸ STARBUCKS, FRAMEWORK FOR A CODE OF CONDUCT (1995) (on file with the author). See also G. Pascal Zachary, *Starbucks Asks Foreign Suppliers to Improve Working Conditions*, WALL ST. J., Oct. 23, 1995, at B4; Imbert Matthee, *Starbucks Fashions Code of Conduct for Growers*, SEATTLE POST-INTELLIGENCER, Oct. 24, 1995, at B5.

improve their own quality of life.” In its Code Framework, Starbucks committed to “actively work with [its] partners, vendors, importers and distributors of coffee, other coffee companies and nonprofit organizations to improve the quality of life for those employed in growing, harvesting and processing coffee.”

The Starbucks’ Code was the first ever by a large U.S. importer of an agricultural commodity. According to Robert Dunn, president of the trade group Business for Social Responsibility: “[the Starbucks Code] is going to be a benchmark for a lot of importers of agricultural commodities. Starbucks has drawn a roadmap that will make it easier for other companies to assess whether what they currently do is adequate.”¹⁰⁹

Having assumed a leadership position among international brands sourcing agricultural products, Starbucks faced steady pressure to elaborate on its Code Framework and to develop an effective monitoring regime to enforce minimum labor standards in the Guatemalan coffee industry. Labor activists sought to use Starbucks’ brand leadership as a catalyst for change in the coffee industry worldwide. As stated by the Executive Director of the U.S./Guatemala Labor Education Project: “Certainly Starbucks by itself cannot end the exploitation of coffee workers. But if Starbucks takes the steps it has promised and its lead is joined by other U.S. coffee companies, then Starbucks’ code will indeed make a difference in the lives of coffee workers in Guatemala and elsewhere, justifying the positive press and awards Starbucks has received.”¹¹⁰

By 1997, the activist coalition, which had suspended the public campaign against Starbucks, charged that Starbucks had failed to take concrete steps to implement its code. Critics called on Starbucks to use its influence with medium-sized and large plantations in Guatemala to enforce minimum labor standards.¹¹¹

In April 1998, Starbucks released a “Framework for Action” (“Action Framework”) in four strategic areas: (1) community development, (2) small producers, (3) workers on large farms, and (4) industry advocacy.¹¹² The goal of

¹⁰⁹ Zachary, *supra* note 107.

¹¹⁰ Stephen Coats, *Letter to the Editor: Corporate Codes of Conduct a Start*, CHI. TRIB., July 3, 1996, at 26.

¹¹¹ Ramsey, *supra* note 106; William DiBenedetto, *Labor, Churches Roast Starbucks*, J. COM., Mar. 7, 1997, at 1A.

¹¹² In its community development activities, Starbucks would seek to “improve the basic levels of health, social and educational services in the communities where coffee workers live.” Starbucks, *1998-99 Framework for Action for Improving the Lives of People Who Grow, Harvest and Process Coffee* (on file with the author). Examples of Starbucks community development initiatives included providing books and supplies to rural schools in Costa Rica
(continued...)

Starbucks's activities on small producers was to improve family incomes "by providing better access to processing facilities and markets, and technical assistance to improve quality and productivity."¹¹³ On large plantations in Guatemala, seeking to "promote adherence to fair and equitable labor standards for people who grow, harvest and process coffee," Starbucks launched programs to improve educational, health, or social services available to coffee workers. Finally, the Action Framework committed Starbucks to an advocacy role in the coffee industry, "encourag[ing] coffee companies, suppliers, brokers and importers to recognize the plight of coffee workers and cooperate in industry-wide efforts to improve the lives of people who grow, harvest and process coffee in origin countries."

Progress on the last two areas came slowly. Commentators asserted that Starbucks faced opposition from Guatemalan plantation owners and argued that the company never attempted to promote support for minimum standards among major coffee brand competitors.¹¹⁴

b. Fair Trade Certified™ Coffee

In 1999, Global Exchange launched a campaign calling on Starbucks to offer Fair Trade Certified™ coffee in all its stores. Following a February 2000 television exposé of labor conditions on Guatemalan coffee plantations and activism at the company's annual meeting in Seattle, Starbucks announced a one-time shipment of 75,000 pounds of Fair Trade Certified™ coffee. In April 2000, three days before planned demonstrations by Global Exchange at thirty Starbucks cafes in the United States, Starbucks announced, an agreement with TransFair USA to sell Fair Trade Certified™ coffee beginning in October 2000.¹¹⁵ Starbucks pledged to promote Fair Trade Certified™ coffee beans and offer them in 2,000 outlets for at least one year.

¹¹² (...continued)

and Colombia; commissioning a study on working conditions on coffee farms in several regions in Guatemala; a social investment program with five farms in Guatemala and Starbucks' partnership with CARE to strengthen community organizations and promote economic development.

¹¹³ In February 1997, Starbucks announced a grant to Appropriate Technology International to provide technical assistance to small farm coffee growers. Appropriate Technology International is a private nonprofit organization created by the U.S. Congress to help small farmers and companies expand their overseas markets. See Starbucks, *1997 Action Plan on Implementing the Starbucks Code of Conduct* (on file with the author). See also US/Guatemala Labor Education Project, *Analysis of Starbucks 1996 Progress and 1997 Action Plan on Implementing the Starbucks Code of Conduct* (for release Mar. 5, 1997), at <http://www.usleap.org/Coffee/SBCampaign/SBanalysis97.html> (last visited Nov. 10, 2003).

¹¹⁴ See, e.g., Mark D. Fever, *A Hill of Beans?*, SEATTLE WKLY., Apr. 1, 1999, at 7.

¹¹⁵ See, e.g. Margot Hornblower, *The Politics of Coffee: Wake Up and Smell the Protest*, TIME, Apr. 17, 2000, available at 2000 WL 17632980; Deborah Jones, *Justice and Java*, NACLA REPORT ON THE AMERICAS, Sept. 1, 2000, at 11.

Since then, the amount of Fair Trade Certified™ coffee purchased by Starbucks has grown slowly but steadily. Starbucks reported that demand for Fair Trade Certified™ coffee from its university market tripled in 2001.¹¹⁶ Starbucks also agreed to brew Fair Trade Certified™ coffee in Starbucks cafes as its “Coffee of the Day” once a month beginning in Spring 2002. In 2002, Starbucks purchased 1.1 million pounds of Fair Trade Certified™ coffee and began to offer it in markets outside the United States.¹¹⁷ Starbucks’ “Commitment to Origins” coffees include organic, shade-grown, and Fair Trade Certified™ coffees.¹¹⁸

c. Preferred Supplier Pilot Program

In 2001, Starbucks launched a pilot Preferred Supplier Pilot Program (SPSPP) that employs price incentives and grades suppliers on sustainability criteria that include the social conditions of coffee production.¹¹⁹ To participate in the SPSPP, a supplier must first meet minimum coffee quality requirements and supply “reliable third-party documentation” of compliance with Starbucks guidelines. Suppliers must document sustainability measures in an application verified by an independent third party and subject to audit.

Under the Program, coffee suppliers are graded in three areas: (1) environmental impacts, (2) social conditions, and (3) economic issues. Out of a maximum one hundred points, suppliers can earn fifty for meeting environmental

¹¹⁶ STARBUCKS CORPORATE SOCIAL RESPONSIBILITY REPORT, FISCAL YEAR 2001, at 7 (2002), available at http://www.starbucks.com/aboutus/CSR_FY01_AR.pdf (last visited Nov. 10, 2003).

¹¹⁷ STARBUCKS CORPORATE SOCIAL RESPONSIBILITY REPORT, FISCAL YEAR 2002, at 8 (2003), available at http://www.starbucks.com/aboutus/CSR_FY02_AR.pdf (last visited Nov. 10, 2003). [hereinafter “STARBUCKS 2002 ”].

¹¹⁸ Starbucks purchases certified shade grown coffee from Mexico through Conservation International’s Conservation Coffee Program. *Id.*

¹¹⁹ STARBUCKS, GREEN COFFEE PURCHASING PILOT PROGRAM FOR PREFERRED SUPPLIERS (Nov. 12, 2001), at <http://www.celb.org/pressreleases/PreferredSupplier.pdf> (last visited Nov. 10, 2003) [hereinafter “STARBUCKS GUIDELINES ”]. The Starbucks Program was developed in partnership with Conservation International’s Center for Environmental Leadership in Business.

criteria,¹²⁰ thirty for meeting social criteria,¹²¹ and twenty for meeting economic criteria.¹²² The Starbucks Program calls on coffee farms to “ensure protection from workplace hazards and conform to local laws, as well as to applicable international conventions related to employee wages and benefits, occupational health and safety, and labor and human rights.”¹²³ Wages and benefits should “meet or exceed” minimums under local law, and workers’ rights to organize and negotiate freely are “guaranteed in accordance with local laws and international obligations.”¹²⁴ Suppliers receive “Preferred Supplier” status based on their point totals. Coffee offered by Preferred Suppliers would be given purchase priority over all other coffee offers received during that particular Starbucks purchasing cycle.

The SPSPP was introduced as a pilot program for the 2002 and 2003 crop years. During the pilot, suppliers with higher sustainability ratings are given preference over other suppliers, and suppliers engaged in the Program will receive a price premium based on points earned. For each ten points earned by a supplier, Starbucks pays that supplier an extra penny per pound of coffee purchased up to a maximum of ten cents extra per pound if all the criteria in the Program are satisfied. Starbucks reported that fifty suppliers had applied to participate by the end of 2002.¹²⁵

The financial incentive program is intended to facilitate the transition to a sustainable coffee production system, after which all the sustainability factors will be fully incorporated into the cost of coffee production. Starbucks acknowledged the importance of sustainable coffee production as “an economically viable model that addresses the social and environmental needs of all the participants in the coffee supply chain from producer to consumer” and recognized that “the coffee industry must undergo internal change to ensure a solid future.”¹²⁶

¹²⁰ Environmental impact grading categories (five points each) are: soil management, water reduction, clean water, water buffer zone, forest and biodiversity conservation, use of shade, energy use, pest management, accepted agrochemical and waste management. *Id.* at 4.

¹²¹ Social conditions grading categories (ten points each) are: wages and benefits, health and safety, and living conditions. *Id.* at 5.

¹²² Economic issue grading (twenty points) covers pricing transparency from supplier to farm level. *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ STARBUCKS 2002, *supra* note 117, at 6.

¹²⁶ STARBUCKS GUIDELINES, *supra* note 119, at 1.

Starbucks is consulting with growers, vendors, and other stakeholders to develop detailed criteria for independent verification of the SPSPP. According to Starbucks, the verification system is intended to be affordable, flexible, and accessible.¹²⁷ Third parties envisioned as independent monitors include qualified private sector, non-profit, and government entities. Independent monitors are selected and paid by individual suppliers. Starbucks consistently emphasizes that its program is not a new certification or labeling program, but, rather, a basis for the company to foster long-term relationships with its suppliers to encourage improved environmental and social performance. The SPSPP is not intended to substitute for existing certification programs. The Rain Forest Alliance, for example, offers to verify compliance with the Starbucks Preferred Supplier Pilot Program for coffee producers that have already been certified to its own sustainable coffee standards.

As of June 2003, Starbucks had received more than 150 applications for the Program from suppliers in fourteen different countries, though most of the applicants are from Central America.¹²⁸ Thirty-one producers, supplying 8.5 million pounds of green coffee, have received conditionally approved Preferred Supplier status. In Guatemala, for example, the highest score and corresponding premium awarded in Guatemala is eighty points on the 100-point scale.¹²⁹ The average premium awarded to a Preferred Supplier is between seven and eight cents per pound of green coffee. With an average score of eighty points on the 100-point scale, Starbucks has committed to pay the conditionally-approved Preferred coffee suppliers around \$680,000 in premiums for their 2002/2003 harvest.

All of the Guatemalan Preferred Suppliers are large plantations (at least ninety hectares of coffee production) that were already supplying Starbucks. These coffee farms meet Starbucks' coffee quality requirements, are receiving the highest prices for the highest quality coffee, and were substantially in compliance with Preferred Supplier Pilot Program requirements before they chose to participate. The Preferred Suppliers include coffee farms with state-of-the-art facilities and exemplary programs for workers. One Preferred Supplier plantation provides childcare for workers, employs a full time nurse, and has provided access to primary education for community children since the 1930s. Another Starbucks Preferred Supplier has built a health clinic staffed by a part-time physician for the care of its workers, and also the care of workers on farms from which the Supplier purchases coffee for export. To the extent pilot Preferred Suppliers had to make changes to meet the SPSPP requirements, the changes typically involved environmental issues such as improving water management.

¹²⁷ *Id.* at 7.

¹²⁸ Telephone interview with Peter Torrebiarte, Starbucks, July 2, 2003 (on file with the author).

¹²⁹ Interview with Noe Rivera, General Manager, Mayacert, Guatemala City, Guatemala, May 19, 2003 (on file with the author).

It remains to be seen whether the SPSPP will encourage new suppliers to sell to Starbucks or encourage applying suppliers to substantially improve their environmental performance, economic transparency, or labor standards in order to meet Program requirements.

3. Responses of Other Major Coffee Brands

Until recently, the major coffee brands did not publicly acknowledge any responsibility for the conditions under which coffee is grown around the world. The top four coffee roasters—Kraft, Nestlé, Proctor & Gamble, and Sara Lee—are multinational consumer products companies that sell hundreds of branded products to millions of customers and buy raw materials and manufactured products from thousands of suppliers around the world. Influenced by the corporate responsibility movement of the 1990s, these companies have established corporate codes of conduct for their own operations and, in some cases, for the conduct of business partners and suppliers. The corporate codes of the major brands contain clear standards on the most widely accepted international labor standards, i.e., child and forced labor, but vary in the degree to which they address freedom of association and acceptable working conditions. No major brand code of conduct contains a standard on wages that requires more than compliance with local minimum wage laws; and no major brand has established an independent monitoring regime to enforce labor standards among their coffee suppliers.

a. Nestlé

Nestlé was an early target of criticism for its business practices in developing countries. In 1981, Nestlé's marketing of infant formula as an alternative to breastfeeding in developing countries led to the adoption of the World Health Organization Code of Marketing of Breast-Milk Substitutes.¹³⁰ Perhaps because of its experience at the center of a public debate on the responsibilities of business in global markets, Nestlé's corporate code of conduct places greater emphasis on international legal standards than the codes of any of its major brand competitors in the coffee industry.

Nestlé's Corporate Business Principles were first published in 1998. Since then, Nestlé has pledged its support for the United Nations Global Compact¹³¹ and incorporated the Global Compact's nine principles into its corporate code.¹³² Nestlé's code calls for company compliance with the ILO Conventions on a Minimum Employment Age and the Worst Forms of Child Labor, and calls on "business partners

¹³⁰ WORLD HEALTH ORGANIZATION (WHO), INFANT FORMULA AND RELATED TRADE ISSUES IN THE CONTEXT OF THE INTERNATIONAL CODE OF MARKETING OF BREAST MILK SUBSTITUTES, at http://www.who.int/vut/documents/infant_formula_trade_issues_end.pdf (last visited Nov. 10, 2003).

¹³¹ NESTLÉ CORPORATE BUSINESS PRINCIPLES 9 (2d ed., Mar. 2002), available at <http://www.nestle.com/pdf/english/CorporateBusinessPrinciples.pdf> (last visited Nov. 10, 2003).

¹³² *Id.* at 6.

and industry suppliers to apply the same standards.” Nestlé asserts that their key contractual suppliers are audited and, if found to be non-compliant, asked by Nestlé to initiate corrective action. Nestlé also pledges in its code to engage in dialogue with nongovernmental organizations with a record of “constructive engagement and principled behaviour.”

For suppliers of agricultural raw materials, Nestlé’s code expresses support for sustainable practices and “mechanisms that contribute to a more regular income for farmers.”

b. Sara Lee

In September 1997, Sara Lee introduced its Global Business Standards and Supplier Selection Guidelines.¹³³ The Global Business Standards express Sara Lee’s support of “fundamental human rights for all people.” They declare the company’s commitment to “the right of employees to exercise their lawful right of free association,” to “the fair treatment and compensation of employees,” and to a safe and healthy work environment. They also state that the company will not employ children or forced labor or allow physical punishment or abuse. Further, they assert an “obligation to monitor the quality of our supply chain to ensure that the products we sell meet all government safety and quality standards, as well as our own.”

Sara Lee’s Supplier Selection Guidelines seek to use the company’s purchasing power to influence its suppliers, contractors, and joint venture partners to “embrace high standards of ethical behavior, comply with all applicable laws and regulations, treat their employees fairly, and with dignity and respect, so as to improve their quality of life, and be socially responsible citizens in the countries and communities in which they operate.”¹³⁴ According to the guidelines, Sara Lee takes into account ethical standards, compliance with legal and environmental requirements, and employment practices when selecting its suppliers, including its raw material suppliers. The company “will not knowingly use” suppliers that violate the law, employ non-family workers under fifteen, use forced labor, or employ any type of corporal punishment or other form of coercion. It “favors” suppliers that recognize and respect lawful rights of free association and contribute to the education of employees. And, finally, it “believes in doing business with” suppliers that do not discriminate, pursue practices that conform to applicable environmental standards, and demonstrate concern for and a commitment to health and safety. Sara Lee states that it will exercise due diligence to determine whether its existing and prospective suppliers comply with these standards and to ensure that the company monitors compliance internally.

Sara Lee’s standards do not address adequate wages for small growers. Sara Lee has stated that it will not promote Fair Trade Certified™ coffee because the

¹³³ SARA LEE CORP., GLOBAL BUSINESS STANDARDS, at <http://www.saralee.com> (last visited Nov. 10, 2003).

¹³⁴ SARA LEE CORP., SUPPLIER SELECTION GUIDELINES, at http://www.saralee.com/corporate_overview/supplier_selection.html (last visited Nov. 10, 2003).

approach taken by the fair trade certification program creates artificial price incentives.

c. Proctor & Gamble

According to Proctor & Gamble (P&G) code of conduct,¹³⁵ it is the company's intention to be a "good corporate citizen" and to commit its own employees to meet or exceed all laws and regulations. The company also pledges to discontinue business relationships with suppliers or contractors that demonstrate or tolerate a "pattern of violation" with respect to child¹³⁶ and forced labor or "unacceptable worker treatment." P&G declares its commitment to universal human rights and "seeks to work with business partners who promote" equal opportunity, a safe and healthy workplace, and working with communities to improve educational, cultural, economic and social well-being.

P&G expects vendors to comply with all applicable laws and avers that the company will "place substantial value upon incumbent and potential vendors who consistently respect basic human rights" in its business award decisions.¹³⁷ P&G also expects vendors to comply with minimum wage, overtime, and maximum hours laws; provide a safe work environment; prevent accidents and injury; and minimize exposure to health risks.

On September 14, 2003, P&G announced that it would sell Fair Trade Certified™ coffee through their "Millstone" line of coffees. The company estimated that it would purchase 2-3 million pounds annually, which would represent a sizeable increase in Fair Trade Certified™ coffee sales in the United States.¹³⁸

d. Kraft

Kraft Foods Inc., based in Northfield, Illinois, became a publicly traded company in 2001 when 16% of its shares were sold to the public by the tobacco conglomerate Philip Morris.¹³⁹

¹³⁵ PROCTOR & GAMBLE, VALUES AND CODE OF CONDUCT (Dec. 2000), at http://www.pg.com/about_pg/corporate/corp_citizenship_main.jhtml (last visited Nov. 10, 2003).

¹³⁶ Below fifteen or in accordance with ILO standards.

¹³⁷ PROCTOR & GAMBLE, SUSTAINABILITY GUIDELINES FOR VENDOR RELATIONS (Dec. 2000), at http://www.pg.com/content/pdf/01_about_pg/01_about_pg_homepage/about_pg_toolbar/download_report/guidelines_for_vendor_relations.pdf (last visited Nov. 10, 2003).

¹³⁸ Bruce Horovitz, *P&G to Give Boost to Small Coffee Growers*, USA TODAY, Sept. 15, 2003, at http://www.usatoday.com/money/industries/food/2003-09-15-fairtrade_x.htm (last visited Nov. 10, 2003). Compare this to the 1.1 million pounds of Fair Trade Certified™ coffee that Starbucks purchases in 2002. See *supra* text accompanying note 116.

¹³⁹ Phillip Morris changed its name to Altria Group, Inc. in 2003.

In 2002, Kraft's parent company, the Altria Group (formerly Philip Morris), adopted a child and forced labor policy that sets the minimum employment age for all Kraft Food employees at fifteen and prohibits the use of forced labor in all operations. Altria's policy affirms that the company does not "engage in or condone the unlawful employment or exploitation of children in the workplace" or "the use of forced labor." The policy commits Altria companies to work with their direct suppliers to gain their compliance with international legal standards on child and forced labor and to "work with others to address the complex issues of the inappropriate or illegal use of children or forced labor in agricultural sectors where they are major purchasers."¹⁴⁰

To implement these commitments, Altria companies "will commit resources, institute appropriate management systems, accountabilities, monitoring processes and regular reviews to ensure progress against [their] objectives and to establish mechanisms for problem identification and remediation where appropriate."

On the "fair trade" coffee debate, Kraft "fundamentally oppose[s] any scheme that intervenes on price" and views its role as increasing consumption rather than managing supply.

E. Evaluating the Coffee Industry's Responses

Evaluating the coffee industry's actions requires distinguishing improvements in living standards from improvements in labor conditions. Efforts such as Fair Trade Certified™ coffee have improved living standards for a small number of coffee growers. The impact of these efforts is limited by consumer demand for Fair Trade Certified™ coffee—consumers may be unwilling to pay a premium for coffee produced under "socially desirable" conditions, may be skeptical about the integrity of the Fair Trade Certified™ coffee certification to assure that social standards have been met, or may simply reject Fair Trade Certified™ coffee as a product of inferior taste or quality.

Moreover, the connection between the price of coffee and labor standards on coffee farms is less direct. Initiatives that seek to improve the price received by coffee farmers have had little direct impact on labor standards generally, with the possible exception of child labor. It is unclear whether efforts to support coffee prices have any measurable impact on labor conditions for coffee workers, particularly those on large plantations. The social criteria contained in the Starbucks Preferred Supplier Pilot Program (i.e., wages and benefits, health and safety, living conditions, and freedom of association) are the first attempt by a major coffee brand to implement labor standards for coffee workers.

1. Improvements in Living Standards

Fair Trade Certified™ coffee and the growing demand for specialty coffee have had a limited impact on the standard of living of small farm coffee growers. The

¹⁴⁰ ALTRIA GROUP, INC., EMPLOYMENT POLICIES AND PRACTICES, at http://www.altria.com/responsibility/04_03_EmploymentPoliciesAndPractices.asp (last visited Nov. 10, 2003).

proponents of Fair Trade Certified™ coffee may have increased incomes for the farmers that participate, but this represents only a tiny percentage of total coffee production. Specialty coffee cultivation brings higher prices per pound, but most income in the coffee supply chain is earned in consuming countries.¹⁴¹ The current crisis has kept arabica prices down, as well as prices for lower quality robusta coffee.

The certification model for Fair Trade Certified™ coffee has succeeded among a narrow segment of consumers. Demand for Fair Trade Certified™ coffee is growing; however, it does not yet support the extension of Fair Trade Certified™ certification to large plantations. Fair Trade Certified™ coffee accounts for up to 5% of the retail coffee sales in some European countries, but has captured less than 1% of specialty coffee sales in the United States.¹⁴² If large coffee plantations were to adopt Fair Trade Certified™ standards, their coffee production would swamp the current Fair Trade Certified™ market. There also is some debate about the relative quality of coffee sold as Fair Trade Certified™ coffee¹⁴³ and the economic viability of Fair Trade Certified™ approaches as a long-term solution.

Individual brands have taken steps to eliminate some of the intermediaries between themselves and coffee growers. Starbucks has increased the amount of green coffee it purchases at negotiated “outright” prices (from 12% in 2001 to 74% in 2002), under long-term contracts (36% in 2002), and directly from farms and co-operatives (32% in 2002).¹⁴⁴ The Starbucks Preferred Supplier Pilot Program measures economic transparency to ensure that any premium paid by Starbucks for minimum standards is actually passed on to the producer that implemented the standards.

¹⁴¹ Zehner, *supra* note 13, at 5.

¹⁴² *Id.* at 3-4. *But cf.* Rice, *supra* note 96, at 3 (stating that Fair Trade Certified™ coffee has captured almost 3% of the specialty coffee market in the United States). In 1999, TransFair USA said it hoped to gain 5% of the U.S. coffee market, and a larger percentage of the specialty coffee market. Jim Carlton, *A Global Effort for Poor Coffee Farmers*, WALL ST. J., Nov. 23, 1999, at A2. Fair Trade Certified™ coffee has attracted some high profile support in addition to Starbucks. In 2001, for example, both the supermarket chain Safeway and the U.S. House of Representatives cafeteria began to offer Fair Trade Certified™ coffee. Total certified organic, shade-grown, and Fair Trade Certified™ coffee sales in North America are only 1% of the North American coffee market and two percent of the specialty coffee market. Ponte, *supra* note 18.

¹⁴³ *See, e.g.*, Zehner, *supra* note 13, at 11, n.11.

¹⁴⁴ STARBUCKS 2002, *supra* note 117, at 6. Green Mountain also has a “farm-direct” purchasing program and 16% of its coffee is Fair Trade Certified™. The Italian roaster Illy began to pay premiums for high quality coffee directly to growers in 1991. Stein, *supra* note 22, at 204.

Specialty coffee producers, however, are the coffee producers least affected by low prices. In Guatemala, producers who sell high quality arabica coffee to Starbucks already received relatively high prices even prior to any premium from the Preferred Supplier Pilot Program and, as a result, have been insulated from the economic crisis felt most intensely by Guatemalan suppliers of lower quality coffee. Starbucks purchases only 1% of the global coffee supply and exclusively high quality arabica coffee.

To be sure, specialty coffee plays an important role in the export earnings of several Latin American coffee sourcing markets, and these earnings are valuable to those societies.¹⁴⁵ However, improving earnings for the vast majority of coffee producers who sell their coffee to the major coffee brands would have the greatest positive impact upon living standards for coffee farmers and coffee workers. Since 1989, Sara Lee has pursued a Small Farmers Policy under which the company purchases a minimum of 10% of coffee purchases directly from small farm growers and cooperatives, depending on the availability of “required coffee qualities and related prices.”¹⁴⁶ Nestlé purchases 13% of its coffee directly from farms. The amount of coffee purchased by brands directly from farmers, however, is a very small percentage of overall production, and no robusta coffee is purchased directly.

A much broader effort to reduce the global coffee supply is required to have a significant impact on the standard of living for most coffee farmers, such as adherence by all major producing and consuming countries to the ICO Quality Improvement Scheme¹⁴⁷ or the International Coffee Agreement 2001.¹⁴⁸ Oxfam, for example, calls for a Coffee Rescue Plan that includes paying farmers higher prices, reducing coffee stocks through quality standards and the destruction of low quality coffee stock, the creation of a fund to help poor farmers shift to alternative livelihoods, and all roasters committing to make “fair trade” coffee two percent of their total purchases by volume.

¹⁴⁵ USAID Fact Sheet, *USAID's Response to the Global Coffee Crisis* (Feb. 24, 2003), at http://www.usaid.gov/press/factsheets/2003/fs030304_1.html (last visited Nov. 10, 2003).

¹⁴⁶ Letter from Sara Lee to Oxfam (June 19, 2002), *cited in* OXFAM-MUGGED, *supra* note 9. The letter is excerpted in an unpaginated chart appended to the report. *See also* ICO, Coffee Quality Improvement Plan (Nov. 2001), at <http://www.ico.org> (last visited Nov. 10, 2003).

¹⁴⁷ ICO, COFFEE QUALITY IMPROVEMENT PROGRAM, at <http://www.ico.org/frameset/activset.htm> (last visited Nov. 10, 2003).

¹⁴⁸ International Coffee Agreement 2001, Sept. 2000, Int'l Coffee Council Res. 393, U.N. Reg. No. 37769 (provisional), O.J. (L326) 23-39 (2001), *available at* <http://www.ico.org/frameset/icaset.htm> (last visited Nov. 10, 2003).

2. Improvements in Labor Standards

a. Fair Trade Certified™ Coffee

The connection between the price of coffee and labor standards on coffee farms is indirect at best. Nevertheless, because most coffee is grown on small family farms, initiatives that improve farmer incomes can significantly reduce child labor and thus improve compliance with one of the most widely accepted international labor standards. By fixing the price paid for green coffee, for example, the Fair Trade Certified™ coffee program reduces the pressure on small farm coffee growers to keep their children out of school.

For many small farmers, however, the principal reason for using family child labor is to avoid hiring any paid labor at all. Also, it is unclear whether higher coffee prices generally would affect children working on large plantations, since higher prices do not mean higher wages for coffee workers. In the words of one commentator, “[t]he child labor issue in agriculture is not likely to disappear any time soon. Children are going to work in coffee as long as poverty exists in their communities.”¹⁴⁹

The certification program for Fair Trade Certified™ coffee is aimed at small farm coffee growers not dependent on hired labor. Beyond establishing a fixed price, the program explicitly prohibits only forced or child labor. Growers of Fair Trade Certified™ coffee are not monitored for freedom of association or working conditions. The large plantations where violations of these standards occur in greater numbers do not supply Fair Trade Certified™ coffee.

b. Starbucks’ Preferred Supplier Pilot Program

Starbucks’ Preferred Supplier Pilot Program is the first attempt by a major coffee brand to implement labor standards for coffee workers. It remains to be seen whether the Starbucks initiative will have an impact on the ground and whether it will prove to be commercially viable.

The Starbucks Preferred Supplier Pilot Program has been criticized for the absence of specific indicators and the small relative weight of social conditions in the Program. Starbucks is in the process of developing specific criteria and evidence of compliance for the social elements of its Program, currently wages and benefits, health and safety, and living conditions. The language in the Program requirements is quite broad and calls for suppliers to “conform to applicable international conventions related to employee wages and benefits, occupational health and safety, and labor and human rights”; however, during the pilot phase it has been up to the independent monitors evaluating supplier Program applications to define the specific criteria, the scope of monitoring, and apportion points under the Program elements.¹⁵⁰

¹⁴⁹ TEA & COFFEE, *supra* note 31.

¹⁵⁰ STARBUCKS GUIDELINES, *supra* note 119, at 5

In the applications and verifications performed to date in Guatemala, for example, suppliers have been graded under social conditions (thirty points) for:

- compliance with national labor laws on wages and benefits, hours of work, freedom of association, and the absence of ethnic or gender discrimination (ten points);
- the availability of medical facilities and procedures for treating worker injuries and workplace accidents (ten points); and
- worker access to adequate housing, education and training, and social and recreation facilities (ten points).

Given the labor conditions in Guatemala generally, and the Guatemalan coffee sector specifically, the fact that no criteria relating to the minimum age of workers or the worst forms of child labor have been set at all is a serious omission. Also, since there are no mechanisms for coffee workers to negotiate wages collectively, Starbucks is encouraging its Guatemalan suppliers to establish solidarity organizations for permanent employees. However, because of labor-management relations in Guatemala, this criterion may be an insufficient indicator of freedom of association.

It also is unclear what evidence independent monitors use to verify compliance with minimum wage laws and whether monitors treat permanent coffee workers and seasonal coffee workers differently in the verification process. Do monitors simply review government or supplier-provided documents, for example, or do they conduct worker interviews, including during the coffee harvest, to verify minimum wage compliance?

The Preferred Supplier Pilot Program is intended to promote not only minimum standards for environmental performance, economic transparency, and social conditions (including labor standards), but also to be a cost effective tool to strengthen Starbucks' supply chain relationships. Starbucks faces a number of challenges in this regard.

The coffee producers who have received Preferred Supplier Status so far are large suppliers with an existing Starbucks relationship. In Guatemala, Starbucks purchases only around 10% of coffee production. Among participating Preferred Suppliers, the Program has created incentives to progressively improve standards. Suppliers consider the economic incentive and the direct relationship with Starbucks to be the key benefits of participation.¹⁵¹ Is the premium Starbucks pays sufficient incentive to attract new suppliers and to cover the costs of compliance?

¹⁵¹ Interviews with Guatemalan coffee producers, Guatemala City, Guatemala, May 20, 2003 (on file with the author).

It is not yet clear that the Program will attract small farm participants. A first obstacle for small farm coffee producers is being able to meet consistently the Starbucks coffee quality standards that are a prerequisite for participation in the Program. For this reason, many Fair Trade Certified™ cooperatives do not meet specialty coffee quality standards. This is an inherent limitation of any program that ultimately must satisfy the quality demands of first world markets.

A second obstacle is Program compliance. Generally, it is much easier for large producers that control their own production and processing to meet the guidelines and demonstrate compliance. When small producers sell their beans to a larger mill or exporter, it becomes exponentially more difficult to trace those beans through the coffee supply chain to Starbucks. Will the Starbucks premium actually reach the Preferred Supplier that harvested the coffee? Although Starbucks has increased the amount of coffee it purchases directly from farmers, it is commercially impractical for Starbucks to purchase all of its coffee directly from thousands of producers. Starbucks faces the same challenge, in reverse, in verifying that exporters and mills meet Program criteria when they purchase coffee from hundreds of different coffee farms. The smallest family farmers may lack also the basic forms of documentation, such as property deeds and production records, needed to demonstrate compliance.

c. Other Corporate PVIs

The corporate codes of the major coffee brands contain clear standards prohibiting child and forced labor, but vary in the degree to which they address freedom of association and acceptable working conditions. No major coffee brand has established an independent monitoring regime to enforce labor standards among their suppliers. “While the use of independently verified codes of conduct can play an important part in raising social and environmental standards among agricultural producers,” it has been pointed out, “they may not be the most effective mechanisms in value chains where formal, organized Labour is not the norm.”¹⁵²

Developing independent monitoring regimes for agricultural products is a key issue for the corporate responsibility movement. Direct trade relationships with large plantations could provide greater opportunities to verify labor conditions in the coffee sector. Oxfam urges investors to encourage coffee roasters to adopt supply-chain management schemes and pricing policies that pay above the cost of production and protect the labor rights of coffee workers.¹⁵³

The 2001 version of the International Coffee Agreement calls on member states to “give due consideration” to sustainable development objectives and to “give consideration to improving the standard of living and working conditions” of coffee

¹⁵² FOOD FOR THOUGHT, *supra* note 83, at 8.

¹⁵³ OXFAM-MUGGED, *supra* note 9, at 51.

workers according to “internationally recognized principles.”¹⁵⁴ The weak language is a far cry from an enforceable standard, but it is nonetheless an important acknowledgment that working conditions are a legitimate issue of concern for the coffee industry. The next step would be the adoption of strict labor and environmental standards within the International Coffee Agreement. The challenge for those who seek to improve labor standards in the coffee sector, absent strict government regulation, is to create stronger incentives for coffee roasters to develop and implement standards regimes for their suppliers.

d. NGO-based PVIs

A number of nongovernmental organizations have developed labor standards for coffee suppliers. The Rainforest Alliance has put forward the Sustainable Agricultural Network Generic Coffee Standards, which include provisions addressing contract labor, the freedom to organize, health and safety, housing and basic services.¹⁵⁵ ECO-OK has certified twenty-five coffee producers in Latin America. The Utz Kapeh Foundation has developed a code of conduct for growing sustainable coffee that addresses worker health, safety, and welfare, including compliance with ILO conventions, and in this connection approved nine farms and two cooperatives in Latin America.¹⁵⁶ While the substantive standards in these programs are fairly similar, the initiatives have limited reach. One reason is the absence of financial or market incentives for participation; there is no guarantee that certification will result in coffee sales.

e. Partnerships

Absent government regulation, collaboration within the coffee industry, and between the industry and other stakeholders, could have the greatest impact on labor standards.

The major coffee brands represent substantial leverage within the industry. They can promote government policies that stabilize coffee prices, enforce internationally-recognized labor standards, or lead collaborative voluntary standard setting efforts aimed at coffee suppliers. “Coordinated efforts on the part of major corporations, significant buyers and/or industry associations can send a strong signal to producing country governments and industry, and international agencies to encourage them to take action on critical issues.”¹⁵⁷

¹⁵⁴ International Coffee Agreement 2001, *supra* note 148, at arts. 39, 40.

¹⁵⁵ SUSTAINABLE AGRICULTURE NETWORK, *supra* note 83.

¹⁵⁶ See Utz Kapeh Foundation, at <http://www.utzkapeh.org> (last visited Nov. 10, 2003).

¹⁵⁷ TEA & COFFEE, *supra* note 31 (citing the 1991 Folgers boycott that led to Folgers, Maxwell House, and Nestlé making strong public statements in El Salvador in support of peace negotiations).

Some efforts led by international organizations aim to enforce specific international labor standards in the coffee industry. The U.S. Department of Labor is funding an ILO program aimed at eliminating child labor in the coffee industry in six Latin American countries, including Guatemala.¹⁵⁸

In addition to the Fair Trade Certified™ program, creative market-based efforts to connect farmers to the global economy can improve living conditions for coffee farmers. The World Bank, for example, is working to develop a futures market for small farm growers.¹⁵⁹

Coffee quality has the potential to motivate collective action by the coffee industry. The Specialty Coffee Association of America (SCAA) is developing technical standards and a certification system for “SCAA” quality coffee.¹⁶⁰ The lessons learned through quality certification should be applied to the certification of labor standards in the coffee supply chain. Major and specialty coffee brands have launched initiatives to improve coffee quality.¹⁶¹ Quality initiatives also may segregate the industry into brands willing to invest in quality coffee (along with labor standards), and brands that profit from low prices for low quality coffee.

Critics argue that Starbucks’ initiatives are more cosmetic than substantive and that the company has failed to lead the industry to improve standards.¹⁶² Others, however, point out that “[w]hile Starbucks continues to move slowly on implementation, it correctly argues that it is doing more than the other major coffee

¹⁵⁸ This program is supported by the National Coffee Association. *Id.*

¹⁵⁹ See, e.g., Press Release, The World Bank Group, *Rural Poor Can Benefit From International Price Insurance* (Oct. 4, 2002), at <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK%3A20070625~menuPK%3A34466~pagePK%3A34370~piPK%3A34424~theSitePK%3A4607,00.html> (last visited Nov. 10, 2003).

¹⁶⁰ Ponte, *supra* note 18.

¹⁶¹ In 2002, Proctor & Gamble announced a \$1.5 million dollar grant to an international nonprofit organization to improve coffee quality and explore alternatives to coffee production. Press Release, Proctor & Gamble, *Proctor & Gamble to Provide \$1.5 Million to Technoserve to Help Small-Scale Coffee Growers in Latin America* (Jan. 23, 2002). Nestlé provides agricultural assistance to farmers in order to “ensure ongoing supply” of agricultural raw materials. NESTLÉ CORPORATE BUSINESS PRINCIPLES, *supra* note 130, at 20. Starbucks and the Ford Foundation are funding Oxfam America to work with the members of a large Fair Trade Certified™ coffee cooperative in Oaxaca Mexico to improve their “post-harvest quality control techniques” in an effort to increase the supply of high quality Fair Trade Certified™ coffee. STARBUCKS CORPORATE SOCIAL RESPONSIBILITY REPORT (2002), *supra* note 116, at 8.

¹⁶² Interview with Homero Fuentes, COVERCO, Guatemala City, Guatemala, May 19, 2003 (on file with the author).

companies.”¹⁶³ Starbucks’ efforts to improve conditions and ensure sustainable supplies of specialty arabica coffee are one attempt to link labor standards and quality improvements. There is concern over the future availability of coffee at all quality levels. As stated in Starbucks’ 2001 Corporate Social Responsibility Report, “[b]ecause of Starbucks’ exceptionally high standards for quality coffee, one of our most critical needs is to secure a long-term supply of unroasted green coffee from the farmers we know and trust. The sustainability of their farms is intrinsically linked to our success.”¹⁶⁴ Voluntary initiatives to improve coffee quality that include standards for labor conditions, such as Starbucks’ Preferred Supplier Pilot Program, are an opportunity to create a “race to the top,” at least among specialty arabica growers worldwide.

F. Lessons from the Coffee Industry Experience

1. Coffee prices have a direct impact on the standard of living for small farm coffee growers, but a limited impact on labor conditions

As previously noted, coffee is grown mostly on small family farms. Accordingly, the income that most coffee farmers and their families derive from growing coffee dictates their standard of living. The cash they receive from their crop is the money they have to meet basic needs. Family income will also determine whether the farmer’s children can afford to attend school or whether they must work to contribute to family income.

Market-based efforts like Fair Trade Certified™ coffee have helped to improve living standards for a small number of coffee growers, but the impact of these efforts is limited by consumer demand. Initiatives that seek to improve the price received by coffee farmers have had little direct impact on labor standards generally (with the possible exception of child labor), so it is unclear whether efforts to support coffee prices have any measurable impact on labor conditions for coffee workers, particularly those on large plantations. Although poor wages, prohibited child labor, restrictions on workers’ freedom of association, and exploitative working conditions have existed on large coffee plantations around the world in periods of both high and low coffee prices, the current coffee crisis exacerbates the absence of enforceable standards. Furthermore, “industry consolidation where there are a few big players involved allows more aggressive downward price pressures, and resulting cost-cutting measures in production including labor. Minimizing labor costs dramatically encourages more exploitative labor practices.”¹⁶⁵ In coffee regions suffering high unemployment and social upheaval, coffee workers are desperate for any income, and in a weak position to organize for higher wages or improved working conditions.

¹⁶³ US/LEAP Newsletter (Dec. 2002), at <http://www.usleap.org> (last visited Nov. 10, 2003).

¹⁶⁴ STARBUCKS 2002, *supra* note 117, at 4.

¹⁶⁵ TEA & COFFEE, *supra* note 31.

2. PVIs to enforce standards in commodity supply chains face greater obstacles than similar initiatives for manufactured products

Codes of conduct for suppliers that, with proper implementation, monitoring, and enforcement, can establish minimum labor standards for workers in the manufacturing sector are even more difficult to implement effectively in the agricultural sector.

Until recently, however, the major coffee brands—Kraft, Nestlé, Proctor & Gamble, and Sara Lee—did not publicly acknowledge any responsibility for the conditions under which coffee is grown around the world. Furthermore, with more than 70% of coffee grown on small family-owned farms, the diffusion and complexity of the coffee supply chain, the absence of direct relationships between most producers and consumers, the commodity price volatility of coffee, and the seasonal labor demand spike during the coffee harvest are obstacles to effective standard-setting. Labor certification and monitoring is unknown in most agricultural supply chains.

Starbucks' efforts to improve conditions and ensure sustainable supplies of specialty arabica coffee are one attempt to overcome these obstacles by linking labor standards and quality improvements. Ideally, voluntary labor standards should also promote market rationalization, alleviating the coffee oversupply.

But efforts by individual brands to date have had little measurable impact on labor standards. National regulation and enforcement of local laws consistent with international labor standards remain the most effective tools to eliminate child labor, ensure freedom of association, and enforce acceptable working conditions.

3. Consumer demand for higher standards is limited

Fair Trade Certified™ coffee benefits a relatively small number of coffee growers and has had a limited impact on labor conditions in coffee production. While demand for Fair Trade Certified™ coffee is growing, it is unlikely to reach a volume that can account for a substantial percentage of worldwide coffee production.

4. Leadership from the major coffee brands has the potential to define and enforce international legal standards

The market dominance of only five large multinational companies in the coffee industry is an opportunity for collaborative action. The major coffee brands represent substantial leverage within the industry, leverage that could be used to promote government policies which stabilize coffee prices and enforce internationally-recognized labor standards or to lead collaborative voluntary standard setting efforts aimed at coffee suppliers. Nestlé, for example, supports the ICO Quality Improvement Scheme.¹⁶⁶ Major coffee brands are in a position to exert greater

¹⁶⁶ ICO, Coffee Quality Improvement Program, *supra* note 147. Because Nestlé's product is instant coffee, the company's fixed investment in expensive processing plants and manufacturing technology are relatively more important for the company's bottom line than
(continued...)

leverage over large plantations and to ask processors/exporters and traders with whom they deal directly to guarantee minimum standards in coffee production. While all major brands claim they never buy coffee below the minimum quality standard envisioned by the ICO, three of the “Big Four” brands actively lobby through the United States National Coffee Association against U.S. participation in the ICO and its quality initiative. Voluntary initiatives that set standards for robusta suppliers are the least likely to succeed while prices for coffee remain historically low.

5. Governments must play a role

Consumer pressure is insufficient to improve living standards for coffee farmers or labor standards for coffee workers. The market-based incentives for coffee roasters to take responsibility for labor conditions are weak, and the ability of individual companies to enforce standards through existing industry structures is limited. Prohibitions of child and forced labor are exceptions where the potential reputational risk to major brands is an incentive to insist on standards and enforcement throughout the supply chain.

Even on the issue of child labor, cultural views of the nature of child labor during the coffee harvest have not created equal pressure on coffee producing governments—or among coffee producing families—to exclude children from the coffee supply chain entirely. Unlike the worst forms of child labor in some industries, a direct link between poverty and child labor does not always exist in coffee producing countries.

Attempts to enforce minimum labor standards for the production of coffee illustrate, more than anything else, the need for government action to enforce labor standards. The most effective enforcement occurs when coffee producing countries enforcing their own labor laws. Efforts to build local enforcement capacity may be the most efficient way to improve labor standards for coffee workers. Government enforcement eliminates the market segregation that accompanies private voluntary efforts to promote labor standards.

Coffee consuming countries could include labor standards among the terms of bilateral and multilateral trade agreements. The United States Agency for International Development is working with Latin American coffee growers to address the coffee crisis. The United States could help ameliorate the coffee oversupply by incorporating the ICO quality standards in its own import regulations. Current FDA rules allow up to 495 defects per cup of coffee, for example, as opposed to the ICO’s standards of eighty-six defects for arabica and 150 defects for robusta.¹⁶⁷

¹⁶⁶ (...continued)
the cost of green coffee.

¹⁶⁷ Peter Fritsch, *An Oversupply of Coffee Beans Deepens Latin American Woes*, WALL ST. J., July 8, 2001, at A1.

6. Specialty retail brands are the most effective leverage point to push for PVIs in the coffee industry

After activists targeted Starbucks in an organized public advocacy campaign, the company became the first specialty coffee brand in the United States to adopt a code of conduct for its suppliers in 1995, and in 2000, the highest profile specialty brand to commit to offering Fair Trade Certified™ coffee for sale. When the current coffee crisis began in 1997, no major coffee brand had adopted or endorsed a code of conduct for coffee production. In 2001, Starbucks launched a Preferred Supplier Pilot Program that employs price incentives and grades suppliers on sustainability criteria that include conformity to international labor standards.

Global Exchange points to its campaign urging Starbucks to offer Fair Trade Certified™ coffee as a victory for corporate accountability: “Starbucks’ quick capitulation in the face of nationwide protests illustrates that grassroots organizing and education can indeed bring about major results.”¹⁶⁸ The public “shaming” campaign that may effectively highlight violations of the most widely accepted international labor standards in the coffee industry, however, may not be the best means to grow the market for “fair trade” products that intervene on price to improve the standard of living for small farmers. According to TransFair USA,

[p]ublic awareness and consumer demand for Fair Trade Certified coffee are essential to the growth of the market. Activist pressure campaigns, however, are not an effective strategy for either building consumer demand or industry support for Fair Trade. TransFair USA strongly opposes pressure campaigns waged by activist groups that attempt to discredit the very companies that consumers should be supporting for their efforts to ensure a fair return to coffee farmers. Partnership, rather than pressure, is a far more powerful and sustainable model for engaging industry and helping farmers. We view the present activist campaign against Starbucks as particularly misguided and unfair because it ignores the company’s many important contributions to coffee farmers through Fair Trade and other programs.¹⁶⁹

Beyond offering Fair Trade Certified™ coffee, specialty coffee brands have been the brands most likely to feel pressure from stakeholders to set standards for the suppliers. The specialty coffee market in North America, which has convinced consumers to pay a premium for quality coffee, is the fastest growing segment of the global coffee market.¹⁷⁰

¹⁶⁸ Global Exchange, *FAQ about Fair Trade Coffee*, at <http://www.globalexchange.org/campaigns/fairtrade/coffee/coffeeFAQ.html> (last visited Nov. 10, 2003).

¹⁶⁹ TransFair USA, *Position Statement on Anti-Starbucks Activism* (Mar. 24, 2003), at <http://www.transfairusa.org> (last visited Nov. 10, 2003).

¹⁷⁰ Ponte, *supra* note 18.

Pressure on major brands to voluntarily enforce labor standards is the greatest for the most widely accepted labor standards – namely, prohibitions of child and forced labor. “For consumers, the slightest insinuation [of] any child labor, slave or not, taints specialty coffee”¹⁷¹

7. PVIs are likely to further segregate the coffee supply chain

All of Starbucks’ Guatemalan Preferred Suppliers are large plantations (at least 90 hectares of coffee production) that were supplying Starbucks before the SPSPP was launched. These coffee farms meet Starbucks’ coffee quality requirements, are receiving the highest prices for the highest quality coffee, and were substantially in compliance with SPSPP requirements before they chose to participate. It remains to be seen whether the SPSPP will encourage new suppliers to sell to Starbucks or encourage applying suppliers to improve substantially their environmental performance, economic transparency, or labor standards in order to meet Program requirements.

Large plantations and vertically integrated producers typically are in a better position to comply with the technical requirements of both quality and labor standards initiatives. Arabica producers for the specialty coffee market have an incentive to participate; robusta producers worldwide do not. Even within producing countries, coffee producers are segregated. Only 53% of Guatemalan coffee is sold to specialty coffee brands, and only 10% of that coffee is purchased by Starbucks.

¹⁷¹ TEA & COFFEE, *supra* note 31.

CASE STUDY 3

ADDRESSING LABOR CONDITIONS IN CHINA TOY PRODUCTION

A. Introduction

The events of June 1989 in Tiananmen Square of the People's Republic of China (China) prompted some of the very first private voluntary initiatives to establish human rights standards for business operations. Companies in industries that had never been publicly associated with human rights violations found themselves having to define and defend their relationship with a government that was showing little but disdain for civil and political liberty. The intense scrutiny of human rights conditions in China that followed in the wake of Tiananmen Square forced them to review their Chinese operations and to reevaluate the importance of China both as a sourcing market and as a potential consumer market.

Central to this reassessment were human rights issues that arose out of the labor conditions under which the products of companies operating in China were made; and while a greater openness in Chinese society has led to some improvements over time, these issues have not disappeared. Despite labor laws that provide for most worker rights in accordance with widely accepted international legal standards, violations of such rights in China are endemic. Chinese law prohibits forced and bonded labor, but forced labor occurs regularly in prisons and reeducation-through-labor institutions. Workers routinely work more than the maximum number of hours permitted by law. They are regularly exposed to dangerous workplace conditions due to dangerous chemicals, inadequate safety precautions, or the inappropriate layout and design of facilities. They frequently receive pay less than the minimum wage required by law or find that employers have illegally withheld money from their pay. And, because China does not recognize or permit the right of free association, they typically are denied the right to form trade unions or engage in collective bargaining. Worker abuse and harassment are commonplace, not least because workers in export factories often are young women who have traveled from other regions to find work. Migrant workers also face special pressures, since employers may retain their identity documents. Effective mechanisms for the enforcement of worker rights in China do not currently exist.

China is by far the largest toy exporter to the United States, exporting \$14 billion worth of toys in 2002 or 70% of U.S. toy imports. All the major brands and retailers that manufacture or purchase toys in China have adopted, formally and informally, codes of conduct that require their suppliers to meet minimum labor

standards. The global toy industry has adopted an industry-wide Code of Business Practices¹ and a worldwide factory inspection initiative² aimed at eliminating code duplication, building industry credibility, and enforcing minimum labor standards in toy factories worldwide.

The efforts of some individual toy brands to implement minimum labor standards for their Chinese suppliers have led to concrete improvements in some factories. Mattel's auditing program to implement its Global Manufacturing Principles has demonstrated incremental improvements in its wholly owned factories or factories where Mattel controls all of the factory's production. The Toy Industry Initiative³ has the potential to promote higher minimum labor standards in Chinese toy factories. The Toy Industry Code,⁴ for example, attempts to address one of the main obstacles for the enforcement of worker rights in China, namely, the prohibition of free association. The employee representation requirement in the Code is a creative attempt to fashion a minimum association standard in China, building on similar efforts developed by Social Accountability 8000 (SA 8000) and Mattel. Private industry initiatives, however, are not a substitute for the effective enforcement of labor and political rights under Chinese law by Chinese authorities.

B. Business and Human Rights in China

Since June 4, 1989, when the People's Liberation Army crushed the nonviolent pro-democracy movement on Tiananmen Square in Beijing, human rights in China have played an important role in U.S.-Chinese relations.

1. Background

Following the Tiananmen Square suppression, various sanctions aimed at the Chinese government were pursued or proposed in the United States. The United States blocked consideration of any new World Bank loans for China until China lifted martial law in January 1990. Trade sanctions were one option for U.S. policymakers seeking to punish China for its actions. The President's annual determination as to whether China should maintain its Most Favored Nation (MFN) status under U.S.

¹ INTERNATIONAL COUNCIL OF TOY INDUSTRIES, CODE OF BUSINESS PRACTICES (2001), at <http://www.toy-icti.org/publications/bizpractice.htm> (last visited Nov. 11, 2003) [hereinafter "ICTI CODE"].

² Press Release, International Council of Toy Industries, *Toy Factory Auditing Process Launched Worldwide* (June 12, 2002), at <http://www.toy-icti.org/newsinfo/061202actions.htm> (last visited Nov. 11, 2003) [hereinafter "ICTI Toy Factory Auditing Process"].

³ Press Release, International Council of Toy Industries, *Implementation of a Worldwide Initiative for an Independent, Ethical Manufacturing Auditing Process* (Dec. 18, 2002), at <http://www.toy-icti.org/newsinfo/121802audit.htm> (last visited Nov. 11, 2003) [hereinafter "ICTI Worldwide Ethical Initiative"].

⁴ ICTI CODE, *supra* note 1.

trade law became an opportunity for intense public debate over appropriate U.S. policy toward China. Between 1990 and 1992, President Bush vetoed twelve Congressional attempts to withdraw or condition China's MFN status.

At the same time, the responsibilities of U.S. companies operating in China became the focus of debate on how appropriately to promote human rights in that country—that is, whether through punitive sanctions or “constructive engagement.”⁵ As a consequence, they were forced to review their operations and to reevaluate China's importance to them both as a sourcing market and as a potential consumer market. Many critics of China's human rights record called for U.S. companies to leave China altogether. For others, the presence of foreign companies in China was seen as an opportunity to use the private sector as a means to foster greater respect for human rights.

In 1991, legislation proposing a code of conduct for U.S. businesses operating in China was introduced in Congress. The strategic importance of China and the size of its economy argued against severing U.S.-Chinese relationships in the name of human rights. Punitive measures quickly gave way to government and corporate policies of engagement. The United States permanently de-linked MFN and human rights conditions in 1994 and supported China's admission to the World Trade Organization in 2001. Current efforts to promote human rights in China emphasize the development of the rule of law as a check on state power that benefits both Chinese citizens and foreign investors.

Since liberalizing its economy in the 1970s, China has enjoyed steady economic growth. Real GDP growth averaged almost 8% between 1997 and 2002, but today a number of factors—increasing rural poverty, unemployment, and government debt—threaten to slow growth in the immediate future. The United States is China's largest export market and second largest trading partner behind Japan, and since 1989 U.S. trade with China has grown in magnitude. Between 1993 and 2002, U.S.-China trade has grown from \$42 billion to more than \$141 billion.⁶ During the same period, however, the U.S. share of China's total trade has remained flat, around 20%. Also, as a percentage of all foreign direct investment in China, U.S. direct investment in China—\$4 billion in 1989, \$8 billion in 2002—declined from 12% to 10%.

⁵ See, e.g., John Kamm, *The Business of Human Rights*, WASH. POST, Feb. 25, 1992, at D1. See also TIMOTHY A. GELATT & DIANE ORENTLICHER, GETTING DOWN TO BUSINESS: THE HUMAN RIGHTS RESPONSIBILITIES OF CHINA'S INVESTORS AND TRADE PARTNERS (Int'l League for Hum. Rts., 1992).

⁶ THE UNITED STATES-CHINA BUSINESS COUNCIL, CHINA'S TRADE PERFORMANCE, Table 7, at <http://www.uschina.org/statistics/2003tradeperformance.html> (last visited Nov. 11, 2003).

2. Impact on the Toy Industry

The United States purchases more than 37% of all toys sold worldwide.⁷ In 2002, United States consumers spent more than \$20 billion dollars on toys.⁸

Toys were China's fourth largest export commodity in 2002, and its share of U.S. toy imports has grown dramatically over the past two decades. China produced no toys for the United States market prior to receiving MFN status in 1979. Once the market opened, however, the trade expanded rapidly, totaling \$1.3 billion by 1989. In 1995, United States MFN tariff rates for toys were eliminated altogether under the General Agreement on Tariffs and Trade (GATT). Today, China is by far the largest toy exporter to the United States, exporting \$14 billion worth of toys in 2002 or 70% of U.S. toy imports.⁹

Toy manufacture is labor-intensive and low-skilled work. The toy supply chain comprises: (a) Chinese factories; (b) international brands that design, manufacture and/or license toys; and (c) toy retailers.

Southern China's Pearl River Delta is the world's largest toy manufacturing region. Guangdong province, which includes the cities of Guangzhou, Dongguan, Shenzhen, and Songgang, contains a number of Special Economic Zones to attract foreign investment. As many as 7,000 Chinese factories are involved in toy production, either through direct relationships with international brands or through subcontracting arrangements with other Chinese factories. The United States Toy Industry Association (TIA) estimates that more than 2,500 Chinese factories, employing more than three million workers, depend on access to the United States toy market.¹⁰

Factory workers in Guangdong are overwhelmingly women between the ages of eighteen and thirty. Many are migrant workers from rural areas. Factory management

⁷ In 2000, U.S. toy sales, excluding video games, totaled \$20.4 billion dollars. Toy Industry Association, Inc., *2002 vs 2001 State of the Industry*, at <http://www.toy-tia.org/industry/statistics/soi03.html> (last visited Nov. 11, 2003) [hereinafter "State of the Industry"]. Worldwide toy sales, excluding video games, totaled \$54.7 billion in 2000. INTERNATIONAL COUNCIL OF TOY INDUSTRIES, *TOY FACTS AND FIGURES* (2001), at <http://www.toy-icti.org> (last visited Nov. 11, 2003). Average annual toy expenditure per child in North America is \$328. The worldwide average is \$32. *Id.*

⁸ *State of the Industry*, *supra* note 7.

⁹ THE UNITED STATES-CHINA BUSINESS COUNCIL, *CHINA'S TRADE PERFORMANCE*, *supra* note 6, at Table 9. In 2000, U.S. toy imports totaled \$15.1 billion, of which \$10.7 billion represented toys produced in China. Toy Industry Association, Inc., *Toy Industry Fact Book*, at <http://www.toy-tia.org/industry/publications/fbcurrent/review.htm> (last visited Nov. 11, 2003).

¹⁰ Letter from Tom Conley, President, Toy Industry Association, Inc. to U.S. Dept. of State, Apr. 18, 2003 (on file with the author).

and ownership typically may be from China, Hong Kong, Taiwan, Korea, or elsewhere in Asia. Toy production occurs year-round but intensifies in the months leading up to the November and December holiday season. Retailers try to hold as little inventory as possible and factory orders in the toy industry are typically subject to modification or cancellation prior to shipment.

The largest brands that manufacture or license toys are Mattel, Inc., Hasbro, Inc., and The Walt Disney Company.¹¹ Most of the toys sold in the United States are sold through general merchandise retailers (37%) or toy store chains (24%).¹² Wal-Mart Stores, Inc., Toys “R” Us, Inc., Target Corporation, and Kmart Corporation sell 50% of all toys sold in the United States.¹³ McDonald’s Corporation, the world’s largest fast-food chain, is also one of the country’s largest toy retailers through its Happy Meals and other promotional activities.¹⁴

C. Human Rights Challenges Facing the Toy Industry in China

Human rights conditions in China consistently fall short of widely accepted international legal standards.¹⁵

1. Political Rights

The principal human rights issues in China that were of international concern after Tiananmen Square were the repressive tactics employed by the Chinese government against its own citizens. Chinese army troops had attacked and killed

¹¹ Gross revenues for 2002 were as follows: Mattel, Inc., \$5 billion; Hasbro, Inc., \$3 billion; The Walt Disney Company, \$25 billion. See HOOVER’S ONLINE, at <http://www.hoovers.com> (last visited Nov. 11, 2003) [hereinafter “HOOVER’S ONLINE”]. The Walt Disney Company does not report publicly on revenues attributable to toy licensing and sales alone.

¹² INTERNATIONAL COUNCIL OF TOY INDUSTRIES, TOY FACTS AND FIGURES, *supra* note 7.

¹³ Gross revenues for 2002 were: Wal-Mart Stores, Inc., \$245 billion; Toys “R” Us, Inc., \$11 billion; Target Corporation, \$44 billion; Kmart Corporation, \$31 billion. See HOOVER’S ONLINE, *supra* note 11. Respective toy market shares in the United States are: Wal-Mart Stores, 19%; Toys “R” Us, 17%; K-Mart, 7%; and Target, 7%. Press Release, NPD Group, Inc., *NPD Reports Top Ten Traditional Toy Retailers* (Apr. 3, 2001), at http://www.npd.com/press/releases/press_010403.htm (last visited Nov. 11, 2003).

¹⁴ McDonald’s gross revenues for 2002 were \$15 billion. See HOOVER’S ONLINE, *supra* note 11.

¹⁵ See, e.g., 1 U.S. DEP’T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2002: CHINA (Mar. 31, 2003), at 751, available at <http://www.state.gov/g/drl/rls/hrrpt/2002/18239.htm> (last visited Nov. 11, 2003) [hereinafter “DOS 2002”]; HUMAN RIGHTS WATCH, WORLD REPORT 2003: CHINA AND TIBET, at <http://hrw.org/wr2k3/asia4.html> (last visited Nov. 11, 2003).

unarmed demonstrators exercising their lawful rights of freedom of assembly and expression. Following the violent suppression of the democracy movement, the Chinese government imposed martial law and subjected thousands of people to arbitrary detention and arrest. Many were convicted and sentenced to prison in judicial proceedings that violated international legal standards of due process. The crackdown against any form of dissent resulted in thousands of political prisoners, many of them maltreated and tortured while in government custody.

The Chinese government continues to place severe restrictions on freedom of expression, religion, and association. According to the U.S. Department of State: “[China] is an authoritarian state in which the Chinese Communist Party is the paramount source of power. . . . Citizens lack both the freedom to peacefully express opposition to the party-led political system and the right to change their national leaders or form of government.”¹⁶ The Department of State continues:

Authorities [are] quick to suppress religious, political, and social groups, as well as individuals, that they perceive to be a threat to government power or to national stability. Citizens who [seek] to express openly dissenting political and religious views continue to face repression. . . . Abuses include instances of extrajudicial killings, torture and mistreatment of prisoners, forced confessions, arbitrary arrest and detention, lengthy incommunicado detention, and denial of due process.¹⁷

In 2002, as many as 2,000 people remained in prison for their participation in the 1989 Tiananmen Square demonstrations.¹⁸

2. Worker rights

With the exception of freedom of association, Chinese labor law is consistent with widely accepted international legal standards. Chinese law provides for equal pay for equal work; delegates responsibility to provincial authorities for setting minimum wage standards; guarantees one day off per week; limits hours of work to forty hours per week and overtime to thirty-six hours per month; and prohibits the employment of children under sixteen.¹⁹ China is a member of the International Labor Organization (ILO), but has ratified only ILO Convention No. 100 (equal

¹⁶ DOS 2002, *supra* note 15, at 749.

¹⁷ *Id.* at 750.

¹⁸ *Id.* at 751.

¹⁹ Labour Act of July 5, 1994 (China), *China Daily* 2, July 6, 1994, § 12 (non-discrimination), § 36 (working hours), § 41 (overtime), § 46 (equal pay), § 48 (minimum wages), § 58 (child labor), English translation available at <http://www.qis.net/chinalaw/law/tran1.htm> (last visited Nov. 11, 2003).

remuneration),²⁰ ILO Convention No. 138 (minimum age of employment),²¹ and ILO Convention No. 182 (worst forms of child labor).²² Despite these legal commitments, however, violations of worker rights are endemic in China. Currently, effective mechanisms for enforcement of worker rights do not exist.

a. Wages

There is no national minimum wage in China. China's minimum wage is set by provincial authorities and varies by municipality. The minimum wage for factory workers averages around thirty cents per hour and fifty-five dollars per month.

Workers frequently receive pay that is less than the minimums required by law or find that employers have illegally withheld money from their pay through arbitrary deductions, fines, and penalties.²³ An investigation of one factory in Dongguan, whose customers include Disney, Hasbro, Mattel, and McDonald's, reported that the average salary of its 15,000 workers per hour after deductions was thirteen cents.²⁴ In a 2000 survey of workers at nineteen toy factories in Guangdong province, the U.S.-based National Labor Committee (NLC) reported that not a single worker interviewed was receiving the legal minimum wage. Wages averaged between fourteen and nineteen cents an hour.²⁵ Employers may require workers to pay a deposit upon recruitment, through retention of initial wages, or both. In one factory, living

²⁰ ILO Convention (No. 100) Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, June 29, 1951, 165 U.N.T.S. 303 [hereinafter "ILO C100"], *reprinted in* 3 INTERNATIONAL LAW AND WORLD ORDER: BASIC DOCUMENTS III.O.3 (Burns H. Weston & Jonathan C. Carlson eds., 5 vols., 1994-) [hereinafter "3 WESTON & CARLSON"].

²¹ ILO Convention (No. 138) Concerning Minimum Age for Admission to Employment, June 26, 1973, 1015 U.N.T.S. 297 [hereinafter "ILO C138"], *reprinted in* 3 WESTON & CARLSON, *supra* note 20, at III.O.5.

²² ILO Convention (No.182) Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, June 17, 1999, [hereinafter "ILO C182"], *reprinted in* 38 I.L.M. 1207 (1999) and 3 WESTON & CARLSON, *supra* note 20, at III.D.4.

²³ *See, e.g.*, CHINA LABOR WATCH, MCDONALD'S AND DISNEY MADE IN CHINA: REPORT ON MERTON COMPANY LIMITED (Nov. 2001), at <http://www.chinalaborwatch.org> (last visited Nov. 11, 2003) [hereinafter "MADE IN CHINA"].

²⁴ *Id.*

²⁵ THE NATIONAL LABOR COMMITTEE, TOYS OF MISERY 6 (Jan. 2002) [hereinafter "NLC 2002"] (on file with the author).

expenses, water and electricity bills, and “miscellaneous fees” were deducted from monthly wages.²⁶

b. Hours of Work

Chinese factory workers routinely work more than the maximum number of hours permitted by law. China’s Labor Law mandates a forty-hour standard workweek, excluding overtime, and one day of rest per week.²⁷ Overtime is limited to three hours per day and thirty-six hours per month.²⁸ These standards are “regularly violated,” however, and “particularly ignored in enterprises that can rely on a vast supply of low-skilled migrant labor.”²⁹ One factory reportedly paid no overtime wages and made workers work 120 consecutive days before granting one day off.³⁰ Keeping “double books”—one set for inspection by auditors—is not uncommon among Chinese factories.³¹ The NLC survey of toy factories reported routine ninety-hour work weeks during the five to six month busy season, as well as falsified time cards and wage records.³² There has been at least one report of a worker death in a toy factory related to excessive working hours and poor conditions.³³

c. Freedom of Association

The right of free association is not recognized or permitted in China. The All-China Federation of Trade Unions (ACFTU), the government controlled union, is the only workers’ organization permitted under Chinese law. Independent unions are illegal. Amendments to the Trade Union Law passed in October 2001³⁴ provide legal protection for union organizing activity in the private sector, but did not change the

²⁶ MADE IN CHINA, *supra* note 23.

²⁷ DOS 2002, *supra* note 15, at 787.

²⁸ *Id.*

²⁹ *Id.* See also MATTEL INDEPENDENT MONITORING COUNCIL FOR GLOBAL MARKETING PRINCIPLES, AUDIT REPORT FOR MATTEL DIECAST CHINA (Aug. 21, 2000), at http://www.mattel.com/about_us/Corp_Responsibility/cr_mimco.asp (last visited Nov. 11, 2003) [hereinafter “MIMCO 2000”].

³⁰ MADE IN CHINA, *supra* note 23.

³¹ See, e.g., *id.*

³² NLC 2002, *supra* note 25, at 6-7. See also Phillip P. Pan, *Worked Till They Drop; Few Protections for China’s New Laborers*, WASH. POST, May 13, 2002, at A01, available at LEXIS (recounting one toy factory in Songgang where workers worked overtime until 2 a.m. or 3 a.m. every day for two months during the peak season).

³³ Pan, *supra* note 32.

³⁴ DOS 2002, *supra* note 15, at 784.

exclusive legal status of the ACFTU. In practice, according to the U.S. Department of State, “genuine collective bargaining does not occur”³⁵ because “[i]n the private sector, where official unions [are] few and alternative union organizations [are] unavailable, workers face substantial obstacles to bargaining collectively with management.”³⁶ Writes one observer: “One of the main reasons [toy manufacturers] are moving to China is the increase in workers’ activism in countries like Indonesia. Foreign companies know that in China the government does not allow workers to organize and bargain collectively—that is why they like to come here.”³⁷ Striking toy factory workers have been fired and arrested.³⁸ Labor activists are frequently detained and have been sentenced to prison by Chinese authorities.³⁹

d. Worker Health and Safety

China has no national occupational health and safety law, and the enforcement of related regulations is haphazard and inadequate. Workers are regularly exposed to dangerous workplace conditions, from dangerous chemicals inadequate safety precautions, or inappropriate layout and design of facilities.⁴⁰ Yet, according to the National Labor Committee (NLC), “[t]here is no excuse for young workers in China to be handling the toxic chemicals currently used in toy making, with no health and safety education, training or protections.”⁴¹

The circumstances of a 1993 Zhili toy factory fire in Shenzhen that killed eighty-seven workers at a Hong Kong-owned factory making toys for the Italian brand Chicco are not uncommon. The factory had no fire alarms, sprinklers, or fire escapes, and the factory doors had been locked to prevent workers from leaving.

³⁵ *Id.* at 785.

³⁶ *Id.*

³⁷ Antoaneta Bezlova, *Santa’s Toys Come From Not-So-Jolly Sweatshops*, INTER PRESS SERVICE, Dec. 23, 2002 (quoting May Wong, Asia Monitor Resource Center), at LEXIS-News Wires.

³⁸ *See, e.g.*, MADE IN CHINA, *supra* note 23.

³⁹ *See, e.g.*, Press Release, Human Rights Watch, *China: Harsh Sentences for Labor Activists* (May 10, 2003), at <http://www.hrw.org/press/2003/05/china051003.htm> (last visited Nov. 11, 2003).

⁴⁰ *See, e.g.*, Joseph Kahn, *China’s Workers Risk Limbs in Export Drive*, N.Y. TIMES, Apr. 7, 2003, at A3.

⁴¹ NLC 2002, *supra* note 25, at 4.

Also, while Chinese factories typically house and feed their workers in factory-owned facilities, living conditions and meals may be inadequate or unsafe.⁴²

What is more, worker abuse and harassment is commonplace in Chinese factories, particularly since workers in export factories are often young women who have traveled from afar to find work. The NLC reported the factory practice of firing ill or pregnant workers.⁴³ Additionally, migrant workers face special pressures, since employers may retain their identity documents. Under China's residential permit system, migrants may not reside permanently in the large cities where they work.

e. Forced or Prison Labor

Chinese law prohibits forced and bonded labor, but forced labor occurs regularly in prisons and in reeducation-through-labor institutions.⁴⁴ In some cases, prisoners are contracted to non-prison enterprises. International brands have been accused of purchasing Chinese goods for export made by forced labor.⁴⁵ U.S. law prohibits the import of prison-made goods.⁴⁶

D. Response of the Toy Industry to the Worker rights Allegations

Tiananmen Square prompted some of the very first private voluntary initiatives to set human rights standards for business operations. Companies in industries that had never been publicly associated with human rights violations found themselves having publicly to define and defend their relationship with the Chinese government.⁴⁷ Moreover, to varying degrees, all companies operating in China—and particularly those that rely on low wage labor—were forced to confront questions over the working conditions under which their own products are made.

⁴² MADE IN CHINA, *supra* note 23.

⁴³ NLC 2002, *supra* note 25, at 7.

⁴⁴ DOS 2002, *supra* note 15, at 786. *See also* HONGDA HARRY WU, LAOGAI: THE CHINESE GULAG 1-6, 54-60, 72-77, 81-87, 95-104, 108-18 (Ted Slingerland trans., 1992).

⁴⁵ *See* Larry Siddons, *Soccer Body Pledges: No Sweatshops*, ASSOCIATED PRESS ONLINE June 11, 1998 at LEXIS WIRE REPORTS. *See also*, *Adidas Halts Chinese Soccer Ball Production Over Labor Camp Tie*, ASSOCIATED PRESS WORLDSTREAM, July 1, 1998, LEXIS WIRE REPORTS.

⁴⁶ Tariff Act of 1930, § 307, 19 U.S.C. § 1307.

⁴⁷ The private sector was not entirely unfamiliar with the impact of government human rights violations on foreign investors. The Sullivan Principles of Social Responsibility for businesses operating in apartheid South Africa had been launched by Reverend Leon Sullivan in 1977 and relaunched in 1999 as the Global Sullivan Principles for Corporate Social Responsibility. *See Global Sullivan Principles of Social Responsibility*, at <http://global.sullivanprinciples.org/principles.htm> (last visited Nov. 11, 2003).

In response to scrutiny, foreign companies began to develop codes of conduct for their own operations in China and for the conduct of their Chinese suppliers. In November 1990, for example, Reebok developed principles for its Chinese suppliers which asserted that the company “deplores the use of force against the expression of human rights” and encourages “free association and assembly among its employees.”⁴⁸ In March 1992, Sears, Roebuck & Co. adopted a formal policy that required all contracts with Chinese suppliers to state that no goods have been manufactured by “convict or forced labor.” Levi Strauss & Co. established its “Business Partner Terms of Engagement” and “Guidelines for Country Selection,” which contained explicit human rights criteria.⁴⁹

In 1993, based on the company’s determination that “pervasive human rights violations” existed in China, Levi Strauss announced that it would cease operating in China.⁵⁰ Also, while no other major U.S. brand followed Levi Strauss’s disengagement example, some foreign companies refused to cooperate with government authorities seeking information concerning specific employees. In addition, a few businesses lobbied the Chinese government for the release of specific political prisoners and some companies sought also to limit government-imposed political meetings on factory premises.

1. Major Toy Brands and Retailers

The toy industry did not play a leadership role in addressing the nexus between business and human rights following Tiananmen Square. In 1991, however, a coalition of U.S.-based nongovernmental organizations launched a boycott of toys made in China to protest human rights violations by the Chinese government. The “Toycott” included demonstrations outside Toys “R” Us stores in November and December 1991. Individual toy brands and retailers initially adopted policies and codes of conduct that addressed child, forced, and prison labor. Subsequent company codes required suppliers to comply with local law on wage, hour, health, and safety requirements.

⁴⁸ Franklin Insight, Inc., *How Can Corporations Influence Specific Human Rights Issues* (1992) (on file with the author). Reebok later codified a Code of Conduct. See REEBOK, GUIDE TO THE IMPLEMENTATION OF THE REEBOK HUMAN RIGHTS PRODUCTION STANDARDS 13 (2003), available at http://www.reebok.com/x/us/humanrights/pdf/Reebok_HR_Guide.pdf (last visited Nov. 11, 2003).

⁴⁹ These documents have been replaced by Levi Strauss’ Global Sourcing and Operating Guidelines. See LEVI STRAUSS & CO., GLOBAL SOURCING AND OPERATING GUIDELINES (2001), available at <http://www.levistrauss.com/responsibility/conduct> (last visited Nov. 11, 2003).

⁵⁰ Mark Landler, *Reversing Course, Levis Strauss Will Expand Its Output in China*, N.Y. TIMES, Apr. 9, 1998, at D1 (recounting how Levi Strauss never fully withdrew from China, and, in 1998, reversed its policy against sourcing from China).

But few of the individual company codes set meaningful minimum standards for the critical worker rights issues in China: freedom of association and hours of work. Most company codes that address freedom of association condition worker rights by referring to “lawful” rights or “legally sanctioned” organizations. For Chinese workers, who by law are denied free association or independent unions, such code language amounts to the acceptance of local law that violates widely accepted international legal standards. Only one company, Toys “R” Us, has addressed directly the illegality of free association in China, through its endorsement of the SA 8000 code. Similarly, while all company codes prohibit forced overtime, almost all codes contain exceptions that suspend maximum work hour limits for undefined “extraordinary business circumstances.”

Toy brands did not begin to audit and monitor code implementation until the late 1990s. Mattel, for example, launched an independent audit and monitoring system for its code in 1997.

a. Mattel, Inc.

Mattel, Inc. is the largest global toy company with brands that include Barbie dolls, Hot Wheels cars, and Fisher-Price toys. It also holds the licenses to produce and sell Disney, Harry Potter, and Sesame Street toys, among others.

Mattel has also shown the most initiative among toy brands in developing its own standards, in establishing an independent monitoring regime, and in making its factory audit results public. In 1991, a Mattel joint venture with the Chinese government employed between five and six thousand workers in Southern China. In 1995, Mattel adopted standards on worker safety for its subcontractors. And in 1997, the company announced a code of conduct for production facilities and an independent audit and monitoring system for its owned and contracted manufacturing facilities.⁵¹

The original version of Mattel’s Global Manufacturing Principles (GMP) required its manufacturers to “recognize all employees’ rights to choose (or not) to affiliate with legally sanctioned organizations or associations without unlawful interference.”⁵² The current version states that “each employee has the right to associate, or not to associate, with any legally sanctioned organization,” and calls on management to create “formal channels” to encourage communications with workers on issues that impact working and living conditions.⁵³ Mattel’s current code states only that overtime work must be voluntary. Wage deductions must comply with local

⁵¹ Press Release, Mattel, Inc., *Mattel, Inc. Launches Global Code of Conduct Intended to Improve Workplace, Workers’ Standard of Living* (Nov. 20, 1997) (on file with the author).

⁵² *Id.*

⁵³ MATTEL, INC., GLOBAL MANUFACTURING PRINCIPLES (2001), available at http://www.mattel.com/about_us/Corp_Responsibility/cr_global.asp (last visited Nov. 11, 2003).

laws and deductions for living expenses must be “reasonable, affordable and if employees choose to live and eat outside of the company facilities they will not be charged.” The current GMP also prohibits anyone under the age of sixteen—the minimum working age under Chinese law—from producing products for Mattel. As Mattel’s then CEO, Jill E. Barad, stated “Mattel creates products for children around the world—not jobs.”⁵⁴

In countries where local laws are not well defined, Mattel has developed country-specific standards. In China, all factories supplying Mattel must provide full access for on-site inspections on a regular basis. Thus, at the same time that Mattel announced its code of conduct, it was able to report that audits of all of its owned and primary contractor manufacturing facilities verified no child or forced labor and that it had terminated its relationship with two contractor facilities in China “for failure to meet company-mandated safety procedures.”⁵⁵

In 1998, Mattel developed detailed audit tools with quantifiable, objective, and “outcome-oriented” standards that, at a minimum, comply with local law. An independent panel of experts, the Mattel Independent Monitoring Council (MIMCO) conducts Mattel factory audits and publishes its audit results.⁵⁶ MIMCO hired the accounting firm Price Waterhouse Coopers to audit factory payroll and Verite, a nonprofit labor standards monitoring organization, to conduct worker interviews. In 1999, MIMCO published its first audit results of Mattel-owned plants and factories where Mattel controls 100% of production.⁵⁷

The first MIMCO report included audits of two factories in Guangdong province producing exclusively Barbie Dolls for Mattel with a total of 11,000 workers.⁵⁸ MIMCO identified a number of areas where the factories needed to improve, including complicated payroll accounting and confusing employee pay stubs, excessive initial financial burdens on recruited workers, denial of maternity leave, poor air quality, limited worker access to management, and worker ignorance of Mattel’s Principles. Overall, however, MIMCO found that the factories “are in compliance with [code] provisions”

⁵⁴ *Id.*

⁵⁵ Press Release, Mattel, Inc., *supra* note 51 (quoting the former CEO).

⁵⁶ MIMCO comprises three individuals: Dr. S. Prakash Sethi, Professor, Baruch College, City University of New York; Dr. Paul F. McCleary, President, For Children; and Dr. Murray L. Weidenbaum, Professor, Washington University.

⁵⁷ MATTEL INDEPENDENT MONITORING COUNCIL FOR GLOBAL MANUFACTURING PRINCIPLES, INITIAL AUDIT REPORT: CHINA (1999), at http://www.mattel.com/about_us/Corp_Responsibility/cr_mimco.asp (last visited Nov. 14, 2003) [hereinafter “MIMCO 1999”].

⁵⁸ *Id.* at 14.

and “in many cases have exceeded both the country laws and current [code] standards.”⁵⁹

After a follow-up audit at the same two Chinese factories, MIMCO reported factory improvements in most of the areas cited in the first audit.⁶⁰ For example, the factories had adopted new payroll accounting and improved their ventilation systems. However, while one factory had modified its policy on maternity leave, MIMCO found that it still violated Mattel’s Principles and that therefore its policy would have to be modified further. Also, once the payroll accounting at the factories became decipherable, MIMCO determined that workers were working overtime in excess of the maximums permitted under Chinese law. In addition, it found that most factories in the region also were working in excess of legal limits. MIMCO required the two Mattel supplying factories to obtain dispensation from the local labor bureau for sixty hour work weeks, but it acknowledged in its report that “this dispensation does not conform to the letter of the law.”⁶¹ “To its credit,” concluded representatives of the Asia Monitor Resource Center, “Mattel has sought to publicize its monitoring. However, . . . there is still a way to go for us to be convinced that workers’ interests are taken seriously in the process. . . . “[F]ormal interviews conducted with workers in factories are problematic [W]orkers in Chinese factories have no reason to believe that such information would not be used against them in some way”⁶²

Mattel has planned three phases of factory audits. Subsequent phases would include a statistical sample of factories where Mattel buys 70% or more of production and then “second-tier” factories where Mattel buys at least 40% of the factory’s output.

To be sure, monitoring by MIMCO has been a subject of considerable controversy within the NGO community. Because the process is funded by the company, its integrity and independence has been challenged.⁶³ More fundamentally, NGO critics question whether workers can ever truly “have a voice in the formulation,

⁵⁹ *Id.* at 7.

⁶⁰ MIMCO, FOLLOW-UP AUDIT REPORT (Nov. 1, 2000) (on file with the author).

⁶¹ *Id.* at 4.

⁶² May Wong & Stephen Frost, *Monitoring Mattel: Codes of Conduct, Workers and Toys in Southern China*, ASIA LABOUR UPDATE (Dec. 2000), at <http://www.amrc.org.hk/Arch/3701.html> (last visited Nov. 11, 2003).

⁶³ China Labor Bulletin, “Independent Monitoring vs Workers’ Representation on Labour Practices,” at http://www.china-labour.org.hk/iso/article.adp?article_id=1627&article_id=1627 (last visited Nov. 11, 2003).

implementation, or monitoring of Mattel's code of conduct.”⁶⁴ They express concern that as one critic put it, “[i]f they fail to work with labour unions in their own countries, on what grounds can they claim credentials in their drive towards partnership with trade unions in other countries?”⁶⁵ Nevertheless, even Mattel’s harshest critics acknowledge that the MIMCO process reflected the public recognition by a toy company of worker rights problems in its supply chain. According to the National Labor Committee for Worker and Human Rights, “[a]t least Mattel had the guts to make this one monitoring report public. That’s more than can be said for any of the other companies.”⁶⁶

b. Hasbro, Inc.

Hasbro, Inc., the second largest toy brand, makes Playskool toys and Milton Bradley and Parker Brothers games, among other brands. Its Global Business Ethics Principles require all suppliers and business partners to comply with local law,⁶⁷ and Hasbro reserves the right to conduct its own on-site audits of its business partners and suppliers.⁶⁸

Hasbro’s code addresses freedom of association only in terms of employee rights “to affiliate with legally sanctioned organizations without unlawful interference.” Also, it permits any amount of overtime as long as it is paid. As stated in its code, “[o]vertime work in necessary business circumstances shall be conducted in such a way as to adequately compensate workers for all work performed beyond the normal working hour standard.”⁶⁹ The term “necessary business circumstances” is not defined, however.

c. Wal-Mart Stores, Inc.

Wal-Mart Stores, Inc. is the world’s largest retailer and the largest public company in the United States. It also is the largest toy retailer in the world.

In 1992, Wal-Mart began requiring its suppliers to sign a code of conduct setting basic labor standards. In response to a shareholder resolution on prison labor

⁶⁴ Wong & Frost, *supra* note 62.

⁶⁵ China Labor Bulletin, *supra* note 63.

⁶⁶ National Labor Committee for Worker and Human Rights, “Toy Companies Respond to Concerned Inquiries with Dismissive Form Letters,” at <http://www.nlcnet.org/campaigns/china/> (last visited Nov. 11, 2003).

⁶⁷ HASBRO, INC., HASBRO GLOBAL BUSINESS ETHICS PRINCIPLES, at http://www.hasbro.com/pl/page.corporate_social/sec.ethics/dn/default.cfm (last visited Nov. 11, 2003).

⁶⁸ *Id.*

⁶⁹ *Id.*

in China sponsored by the AFL-CIO, Wal-Mart pointed to its policy “not to order or accept any goods, articles, or merchandise produced by forced Chinese labor.”⁷⁰

Wal-Mart’s “Standards for Vendor Partners” require its suppliers to comply with local law; pay the minimum wage or a wage consistent with prevailing local standards, whichever is higher; and provide safe and healthy working conditions, including adequate medical facilities, comfortable workstations, and adequate living quarters where necessary.⁷¹ Wal-Mart says that it will not use suppliers that utilize forced or prison labor or child labor younger than fifteen or the compulsory school age, if higher. The company also rejects suppliers that require employees to work “on a regularly scheduled basis” more than allowed under local law “without proper compensation as required by law.”⁷² The Wal-Mart Code is notable for the absence of any standard relating to freedom of association or collective bargaining.

Wal-Mart regularly audits its suppliers through on-site visits, accounting audits, and personal interviews. It also requires new factories to be certified consistent with its work site standards. According to the company, 120 factories were denied certification in 2001 for failure to meet Wal-Mart’s supplier standards.

d. Toys “R” Us, Inc.

Toys “R” Us, Inc. is the second largest toy retailer after Wal-Mart. In response to the 1991 “Toycott” campaign, it informed its suppliers that it would not accept products of child or prison labor, sent inspectors to its suppliers in Guangdong province, and began to include in its supplier contracts a clause prohibiting child or prison labor.

In 1999, Toys “R” Us became a signatory to the factory-based certification program known as SA 8000.⁷³ Involving a multi-stakeholder code of conduct for manufacturers developed by industry, labor, and other nongovernmental organizations, SA 8000 is not industry specific. Currently certified SA 8000 factories produce apparel, food, and other consumer goods in addition to toys.

The SA 8000 standards make explicit reference to core ILO conventions and contain substantially the same minimum standards as most corporate codes of

⁷⁰ See Franklin Insight, *supra* note 48.

⁷¹ Wal-Mart Stores, Inc., Standards for Suppliers ii-iii, Sept. 30, 2003, at <http://www.walmartstores.com/Files/SupplierStandardsdoc.pdf> (last visited Nov. 11, 2003).

⁷² *Id.*

⁷³ Social Accountability International, at <http://www.cepaa.org/SA8000/SA8000.htm> (last visited Nov. 11, 2003).

conduct.⁷⁴ In three key areas relevant for factory production in China, however, the SA 8000 requirements are much stricter than the toy industry corporate codes: SA 8000 certified factories must (1) “facilitate parallel means of independent and free association and bargaining” when rights of free association are restricted under law; (2) set a maximum of forty-eight working hours per week and twelve hours of overtime, with no exceptions for “extraordinary business needs” or the like; and (3) pay wages that “meet basic needs” and “provide discretionary income.”

To become SA 8000 certified, an accredited SA 8000 certification body must audit a factory. Factories bear the full cost of certification. SA 8000 audit reports are confidential. Only factories that receive SA 8000 certification are publicly disclosed.

Brands that are signatories to the SA 8000 program are free to define the scope of their participation. Toys “R” Us has committed itself to favor SA 8000 factories, but as of September 2003, only thirteen toy factories in China had been SA 8000 certified.⁷⁵

e. The Walt Disney Company

The Walt Disney Company, an international media and entertainment company, licenses and sells toys. Mattel currently holds the worldwide toy production rights for all of Disney’s television and film properties.

Disney’s Code of Conduct for Manufacturers calls on suppliers to “respect the rights of employees to associate, organize and bargain collectively in a lawful and peaceful manner, without penalty or interference” and contains an exception in its working hours provision for “extraordinary business circumstances.”⁷⁶

Disney’s International Labor Standards program conducts unannounced factory audits that include “private interviews with employees.”⁷⁷ Disney suppliers may use subcontractors only with Disney’s express written consent.⁷⁸

f. McDonald’s Corporation

McDonald’s Corporation has sold hundreds of millions of toys since the introduction of its Happy Meal for children in 1977. In 1997, it distributed a Code of Conduct to its suppliers.

⁷⁴ *Id.*

⁷⁵ Social Accountability International, “SA8000 Certified Facilities,” at <http://www.cepaa.org/Accreditation/CertifiedFacilities.htm> (last visited Nov. 11, 2003).

⁷⁶ THE WALT DISNEY COMPANY, CODE OF CONDUCT FOR MANUFACTURERS, at <http://disney.go.com/corporate/compliance/pdf/english.pdf> (last visited Nov. 11, 2003).

⁷⁷ *Id.*

⁷⁸ *Id.*

The McDonald's Code prohibits child, prison, or forced labor, and limits hours of work to local legal limits or sixty hours per week including overtime "except in extraordinary business circumstances."⁷⁹ It does not, however, address freedom of association.

Beginning in 1998, McDonald's, working with its toy sourcing agencies and the auditing firm of Pricewaterhouse Coopers, developed a monitoring and compliance program for its Chinese toy suppliers.⁸⁰ In 1999, Société Générale de Surveillance (SGS) was selected to audit toy production for McDonald's in China. During the first year of the program, SGS conducted audits of over 150 factories in China producing toys for McDonald's, including all of the company's major contractors. According to McDonald's, "these audits uncovered no 'bright line issue violations'—practices such as unlawful child labor, forced labor, or blatantly dangerous working conditions—that would justify immediate termination under our monitoring and compliance protocols."⁸¹ Corrective Action Plans implemented as a result of McDonald's audits addressed worker benefits, health and safety, hiring practices, and payroll deductions, among others. In 2000, the McDonald's internal monitoring program was modified to include a numeric compliance measurement scale, unannounced audits, and improved worker interview methods both on- and off-site.

In August 2000, media reports alleged child labor and unhealthy living conditions at a Chinese facility producing Happy Meal toys for McDonald's.⁸² A McDonald's audit had found evidence neither of child labor nor of unhealthy living conditions. A new audit conducted in response to the allegations did not find any evidence to support the allegations, but did uncover, according to McDonald's, serious record keeping irregularities. McDonald's subsequently terminated its relationship with the supplier.

2. The ICTI Code and Auditing Initiative

The toy industry did not pursue any collective standard-setting initiatives until 1997, largely because reformist pressures had not built sufficiently before then. The

⁷⁹ MCDONALD'S CORPORATION, CODE OF CONDUCT FOR SUPPLIERS (1997), at <http://www.mcdonalds.com/corporate/social/marketplace/supplier/code/> (last visited Nov. 11, 2003).

⁸⁰ MCDONALD'S CORPORATION, SOCIAL RESPONSIBILITY REPORT 37 (April 2002), available at <http://www.mcdonalds.com/corporate/social/report/media/socialresponsibility.pdf> (last visited Nov. 11, 2003).

⁸¹ *Id.* at 39.

⁸² Martin Wong, *Children Toil in Sweatshop*, SOUTH CHINA MORNING POST, Aug. 27, 2000, at 1.

United States toy industry did lobby actively and successfully, however, against conditioning or withdrawing China's MFN status.⁸³

In 1997, the International Council of Toy Industries (ICTI) approved a Code of Business Practices that prohibits "underage, forced or prison" labor; calls for compliance with local legal standards for working hours per week, wages and overtime pay; sets a minimum employment age of fourteen for toy production; and addresses health and safety issues.⁸⁴ The Code applies to ICTI's member companies and their suppliers. Adherence to the Code is evaluated by ICTI members themselves, who sign an annual statement of compliance and who are required to include Code compliance in the terms of their supplier contracts.

ICTI revised its Code in 2001 to include: (a) the requirement that "all workers are entitled to freely exercise their rights of employee representation as provided by local law"; (b) a qualification of prohibited "prison labor" to mean "the exportation of prison-made goods to countries that prohibit or restrict the importation of such goods"; and (c) references to the Minimum Age and Worst Forms of Child Labor conventions⁸⁵ of the ILO.⁸⁶

The following year, in 2002, ICTI members agreed to launch a "worldwide auditing process" to implement and monitor compliance with the Code.⁸⁷ The auditing process was developed by the Toy Industry Association of America and the Toy Industries of Europe. The intent of the auditing process is "to create a single, efficient and coherent system for factories that will have the endorsement of the

⁸³ See, e.g., George White, *What if China Can't Play?*, L. A. TIMES, June 10, 1991, at D1. See also FDCH Political Transcripts, Testimony of Harry Pearce, Vice Chairman, Tyco Toys, Senate Finance Committee Hearing on Impact of Reversing MFN Trading status for China, June 6, 1996, LEXIS; FDCH Congressional Testimony, Statement of David Miller, President, Toy Manufacturers of America, Inc., Committee on Ways and Means, House of Representatives, June 11, 1996, LEXIS.

⁸⁴ ICTI CODE, *supra* note 1. ICTI is an association of toy associations from twenty countries. ICTI's member organizations represent 95% of the global toy industry.

⁸⁵ For ILO Convention 138 (minimum age of employment), see ILO C138, *supra* note 21. For ILO Convention 182 (worst forms of child labor), see ILO C182, *supra* note 22.

⁸⁶ ICTI CODE, *supra* note 1. The revision also added the following sentence: "Many countries recognize that prison labor is essential to the rehabilitation process." *Id.*

⁸⁷ ICTI Toy Factory Auditing Process, *supra* note 2.

world's retailers and consumers, ensuring that there is uniformity of standards and auditing practices, as well as total transparency.”⁸⁸

ICTI approved detailed guidelines for auditing the ICTI Code based on a Methodology for Evaluating Compliance, an Audit Checklist, a Guidance Document, and a Corrective Action Plan.⁸⁹ Audit procedures for the Code include legal research, unannounced site visits, document and financial record reviews, and worker interviews. The ICTI Code Guidance Document, moreover, requires new, expanded forms of employee representation.⁹⁰ It provides:

Employees should have the ability to approach management on issues of concern without fear of retribution. Various ways in which employees could approach management include trade unions, employee committees (grievance, safety, etc.), or employee selected representatives, regular meetings, etc.

* * *

There should be representative(s) of the employees, who are freely selected and participate voluntarily and communicate with management on related issues. Employee representations should be representative of the plant population including workers.

ICTI accredits specific audit firms to evaluate compliance with the Code of Business Practices. Factories apply to participate and bear the cost of an application fee, the audit, and an annual registration fee. After the initial audit, the audit firm either requests a corrective action plan from the factory or notifies ICTI that the factory complies with the ICTI Code. Factories then receive a Confirmation Seal Document. Approved factories are subject to annual review audits and approximately ten percent of approved factories will undergo a random quality control audit by a different audit firm.

⁸⁸ ICTI Worldwide Ethical Initiative, *supra* note 3.

⁸⁹ Each of these instruments is available as an appendix to the Code of Business Practices of the International Council of Toy Industries, see ICTI CODE, *supra* note 1. These instruments are individually and more directly online, available at http://www.toy-icti.org/publications/bizpractice_appendix1.htm (Methodology for Evaluating Compliance), http://www.toy-icti.org/publications/bizpractice_appendix2.htm (Audit Checklist), http://www.toy-icti.org/publications/bizpractice_appendix2g.htm (Guidance Document), and http://www.toy-icti.org/publications/bizpractice_appendix3.htm (Corrective Action Plan) (all last visited Nov. 11, 2003).

⁹⁰ ICTI, CODE OF BUSINESS PRACTICES, *Guidance Document*, *supra* note 89, at App. B, §§ 8.1, 8.2.

ICTI has established an Outside Advisory Committee based in Hong Kong to manage the auditing process and to conduct factory safety and labor practices trainings.⁹¹ The industry has collaborated with Chinese government agencies to train auditors for the ICTI program. More than 2,000 factories are to be audited within two years. Audit results will be disclosed to the factory, to ICTI, and to any customer or brand that requested the audit.

E. Evaluating the Toy Industry's Response

The efforts of some individual toy brands to implement minimum labor standards for their Chinese suppliers have led to concrete improvements in some factories. Mattel's auditing program to implement its Global Manufacturing Principles has demonstrated incremental improvements in its wholly owned factories or factories where Mattel controls all of the factory's production.

The Toy Industry Initiative has the potential to promote higher minimum labor standards in Chinese toy factories. The Toy Industry Code, for example, attempts to address one of the main obstacles to the enforcement of worker rights in China: the prohibition of free association. The employee representation requirement in the Code is a creative attempt to fashion a minimum association standard in China. It builds on similar efforts developed by SA 8000 and Mattel's Global Manufacturing Principles. At least one toy brand that did not address the contradictions of "lawful" freedom of association in China in its own code, Hasbro, has adopted the ICTI Audit Checklist and Guidance Document as the standard for auditing its own suppliers, a development that bodes well for ICTI's aspirations.⁹²

In 2002, the National Labor Committee targeted Disney, Hasbro, Mattel, McDonalds, Toys "R" Us, and Wal-Mart, calling on them to release the names of the factories where the toys they sell are produced and to "guarantee that China's labor laws—including wage, hour, overtime compensation, and health and safety laws—are strictly adhered to."⁹³ Ongoing reports of "double books," special factory preparations for customer visits, and factory management instructing workers on appropriate answers for auditor questions demonstrate the importance of comprehensive and credible independent monitoring programs to verify code compliance.

⁹¹ Nick Mathiason, *Toy Industry to Play Fair*, THE OBSERVER (UK), Dec. 15, 2002, at 1.

⁹² States ICTI's President, David Hawtin: "We hope that, by our example, other industry sectors will be encouraged to speed up the process of implementing and independent auditing initiative to ensure and promote best practices in conditions of employment as broadly as possible." ICTI Worldwide Ethical Initiative, *supra* note 3.

⁹³ NLC 2002, *supra* note 25, at 4.

Private industry initiatives are not a substitute for the effective enforcement of labor and political rights under Chinese law by Chinese authorities. The conditional language in the Toy Industry Code on prison labor, for example, attempts to finesse the disturbing fact well understood since Tiananmen, to wit, that the Chinese government persecutes individuals who express dissenting political, religious, or social opinions. The extensive prison labor system in China and the widespread use of subcontractors by Chinese factories means that not only forced labor, but forced labor of political prisoners can find its way into the Chinese supply chain.

F. Lessons from the Toy Industry's Experience

In contrast to the two previous case studies, it is too early to evaluate the impact of the PVI of the ICTI on labor standards in the global toy industry. In its current incarnation, the program is slightly more than a year old, the initiative has not yet developed a sustainable organizational structure for administration or oversight, and it has not yet finalized any policies regarding transparency or public reporting. No factories have yet been formally certified. And it has not gained clear support from critical stakeholders in the supply chain process.

At the same time, the toy industry has clearly sought to benefit from the experience of PVIs with similar objectives, such the sporting goods industry's PVI in Pakistan and Starbucks' initiative in Central America. The challenges faced by the toy industry and its constituent companies offer additional, valuable lessons in the establishment of PVIs to promote greater respect for labor standards. They highlight the structural challenges facing initiatives by industries operating in China and the opportunities of timely, strategic intervention by the U.S. government.

1. The emotional connection between toy consumers and ethical sourcing generated powerful momentum for an industry PVI

Without question, the experience of the toy industry reveals the important role that consumers can play in serving as a catalyst for action by the private sector. While such a role is necessarily limited to products and industries that have a direct relationship with consumers, its impact should not be underestimated.

The power of public concern is particularly pronounced in the toy industry. Industry executives are profoundly aware of the strong emotional connection between children and the toys they play with, and tremendously protective of the reputation that toy brands have with the adults who purchase those toys. Industry leaders frequently speak of the "special" relationship their companies have with parents and children and of the social responsibilities this relationship imposes on corporate practices. They are well aware that the failure to satisfy these responsibilities risks greater intervention by government authorities.

2. Geographic concentration of supply chain facilitated the ICTI PVI

Like the soccer ball project in Pakistan, the geographic concentration of the global toy supply chain made the ICTI PVI feasible. As indicated earlier, more than 70% of all toys imported into the United States are manufactured in China and this

percentage is expected to increase over time. ICTI made the logical strategic decision to launch its program in China, though it has publicly declared that the initiative seeks to cover all toy sourcing markets. Even if the program never reaches other sourcing markets, implementing it effectively in China will achieve significant improvements in labor standards in toy production.

To be sure, China is a huge sourcing market, with distinct differences in sourcing patterns and labor sub-markets. But the benefits of launching a program in one language, with one set of national labor standards are tremendous. By focusing on a single market, the ICTI PVI has limited the challenges it faces in identifying qualified monitors, training them to local conditions and local standards, and building bridges to government authorities.

3. There is a high threshold for collective action by the private sector on labor issues

Despite industry-wide recognition that consumer concern over labor standards in toy manufacturing jeopardized the fragile relationship between the toy companies and their consumers, the pressure on companies to act was not felt equally. As in the earlier case studies, the companies that acted first and currently are driving the collective efforts were the brands with the most to lose from negative publicity, namely Mattel and Hasbro, the two largest producers of toys in the U.S. and global markets.

At the same time, toy brands with less public exposure also felt less need to develop a comprehensive initiative. These companies, so far, have felt little pressure to act with initiative and have instead adopted a “wait and see” attitude before deciding whether to join the ICTI PVI. Indeed, for these brands, generalized consumer pressure is likely to prove insufficient to drive participation. Other sources of pressure—or incentives—will be necessary to achieve their support.

4. Defining the toy industry is a challenge to the creation of an effective industry PVI

Developing agreement around the definition of the “toy industry” for the purposes of addressing labor standards was a critical challenge in framing the ICTI PVI. For example, the ICTI membership consists of toy manufacturers and toy brands and this group has proven to be responsive to many of the other social issues the industry has confronted in the past, such as marketing to children or product safety.

However, in designing the ICTI initiative, industry leaders quickly realized that such a definition of the industry risked missing key players and distribution channels. First, several companies that are engaged in producing, marketing, or distributing toys are not part of the traditional toy industry trade association apparatus.

The vast majority of toys are sold in retail outlets by companies who are not members of national toy associations, or ICTI. Wal-mart, Target, Toys R Us, McDonalds, and their European or Asian counterparts are not members of ICTI or its

affiliates. Though they are the primary channels for the sale of toys, they do not naturally view themselves as operating primarily in the toy industry. Nevertheless, their influence on the policies and practices of other companies is direct and profound. The organizers of the ICTI program realized that without the involvement of the retailer who sold toys to consumers, the program was unlikely to achieve widespread support among small toy brands or the toy suppliers who manufacture products for them.

Similarly, a growing portion of the toy industry is connected to the broader entertainment industry and dominated by companies that license their characters, logos and other intellectual property for sale as toys. For example, the Walt Disney Company is not a member of ICTI or its affiliates since its revenues from toy sales come far more from royalties on product licenses than from product manufacture. Indeed, very few companies that issue licenses for toy production are members of national toy associations, even though licensed products represent almost half of all toy sales. ICTI recognized that the support of the licensor community was critical to the acceptance of the ICTI program, and has actively solicited their involvement in the development of the program. Clearly, toy licensors have an interest in the integrity of their licenses. Many of them already impose ethical sourcing requirements as a condition of the licensing agreement. Some, such as the Walt Disney Company, also have developed elaborate programs to monitor compliance with these requirements. ICTI recognized that these licensors were an important part of the toy industry, and a critical ingredient to a successful industry initiative.

5. Successful PVIs require the support of all elements of the supply chain

While other initiatives have united brands and manufacturers around common programs, the ICTI PVI recognized the critical role that retailers must play in the success of the initiative. A program that seeks to enlist only some elements of the supply chain—without engaging others—will prove unsustainable in the marketplace.

Retailer support is critical for two reasons. First, retailer support will create greater efficiencies among efforts to promote labor standards. Toy manufacturers routinely complain that virtually every brand (customer) and retailer (customer's customer) maintains its own distinct set of ethical sourcing standards and monitoring mechanisms. When the standards do not conflict, such duplication of effort is costly and wasteful. When they do, it can be paralyzing for a supply chain.

Perhaps more importantly, retailer support ensures the participation of toy brands that might not otherwise participate in the ICTI initiative. If retailers indicate that they expect their suppliers to participate in the ICTI program (the goal of the program's developers), then toy brands will have no choice but to join the initiative, if they wish to maximize the distribution channels for their products.

6. The existence of corporate programs can be an obstacle to collective industry action

The toy industry clearly benefited from the experience of other industries as it began its PVI. The issue of labor standards in global supply chains was well recognized as an issue of consumer and social concern by the time the ICTI program was launched. Moreover, many companies, including the most prominent industry leaders, had made public commitments to ethical sourcing and, as with Mattel, had developed their own codes of conduct and compliance programs.

The greater sophistication of the industry was a mixed blessing in establishing an industry PVI, however. Certainly, companies were well aware of the range of worker rights violations in the manufacturing community and the challenges of promoting improvements in a diverse and changing universe of suppliers. Moreover, most recognized the benefits of collective action. At the same time, this greater sophistication came with a price. Companies that had made major investments in developing their own ethical sourcing programs were reluctant to abandon them or reduce their reliance on them. Executives responsible for overseeing social compliance in their company's global supply chains were unwilling to delegate this responsibility to another organization and thus diminish their authority.

Most of these objections were not standards related. Most individual codes of conduct in the toy industry and most ethical sourcing programs imposed similar substantive requirements on manufacturers. The differences between the programs were centered on: (i) who performed the assessments, (ii) how rigorously standards were applied, and (iii) the process by which companies permitted manufacturers to maintain commercial relationships while remediating violations identified during factory inspections.

7. Private regulatory initiatives require strong leadership to succeed

The ICTI initiative is a direct consequence of the active engagement of representatives of key toy brands and suppliers. Without the initial support of Hasbro and Mattel, the industry would not have reached a critical mass even to launch a PVI. As it has become clear that the success of the initiative requires greater engagement from product licensors and toy retailers, the challenge facing the ICTI initiative is whether these other groups will offer the necessary leadership and support.

8. Governments must play a role for PVIs to be most effective in China

As powerful as customer pressure may be to bring change to supply chain practices in the global toy industry, market forces will be insufficient to address all of the worker rights issues identified as problems in China. The effectiveness of these efforts will be greatly enhanced by the active support of the governments of China, the United States, or both.

Addressing certain worker rights violations threatens the economic competitiveness of toy suppliers and their customers. As the industry and its critics have recognized, toy manufacturers face pervasive non-compliance on several

fundamental issues. Many toy factories in China fail to pay legally required compensation to workers. In the absence of effective law enforcement by Chinese government authorities, it is unclear whether the market pressure by toy brands and retailers will be sufficient to overcome the economic benefits violators realize by such practices. The result might be similar to the situation in Pakistan or Central America, where the industry risks becoming bifurcated between those who seek to comply and those who do not. While workers in the former category are thus likely to benefit from the PVI, those in the latter will not.

In other situations, Chinese government policies appear to undermine implementation of an effective PVI. For example, restrictions on working hours are regularly violated in toy production facilities, often with the explicit support of Chinese government authorities, who issue “temporary” waivers of hour restrictions or fail to enforce existing regulations. Historically, such policies by Chinese government authorities may have been designed to enhance the economic competitiveness of local industries, or to address the needs of migrant workers who seek to maximize their earnings during their time away from home. Regardless of the reason, the failure of government enforcement creates obstacles to the effective implementation of the PVI.

Chinese government law presents an even greater challenge. The national prohibition on the creation of independent trade unions to represent workers and bargain collectively on their behalf runs directly counter to the spirit (and often the letter) of corporate codes of conduct. The ICTI Code avoids this controversy by requiring factories only to comply with local laws governing freedom of association and collective bargaining. It does little, therefore, to advance this fundamental human right. This is an area that cries out for closer coordination, or integration with government action, particularly bilateral (U.S.-China) or multilateral efforts.

Finally, government intervention can fuel the effectiveness of the PVI by promoting greater convergence of corporate programs toward a common industry PVI. As indicated earlier, the duplication and inefficiencies of multiple company programs can be virtually eliminated by harmonization around a common set of standards and compliance program. Both the Chinese and U.S. governments can facilitate this convergence by creating incentives for industry participants to come together. These incentives can take the form of financial assistance to the harmonization process or be less direct by providing customs or other benefits to supply chains that participate in the industry PVI.

CASE STUDY 4

ADDRESSING CHILD LABOR IN CÔTE D'IVOIRE

COCOA PRODUCTION

A. Introduction

Reports of child trafficking and forced child labor on the cocoa farms of Côte d'Ivoire, together with strong international pressure and the threat of regulatory action, mobilized the international cocoa industry to design, in 2001, a comprehensive voluntary initiative, with governments, intergovernmental organizations, and other representatives of civil society participating, to eliminate the worst forms of child labor from cocoa production. Generally the cocoa industry was unprepared to respond to questions concerning labor standards in its supply chain and underestimated the broad business impact of allegations of the worst forms of child labor. Over a relatively short period, however, it moved from a refusal to acknowledge serious labor problems in the global cocoa supply chain, to acknowledgment, to a public commitment to act to address the problems, as most conspicuously demonstrated by the Cocoa Industry Protocol (CIP)¹ and the International Cocoa Initiative (ICI).² The CIP emphasized the responsibility of local government to address violations and to improve labor standards. The objectives of the ICI and the labor standards at issue were defined by referencing widely accepted international legal standards codified in ILO Convention (No. 182) Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor.³

¹ Protocol for the Growing and Processing of Cocoa Beans and their Derivative Products in a Manner that Complies with ILO Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, Sept. 19, 2001 [hereinafter "Cocoa Industry Protocol" or "CIP"], at <http://www.chocolateandcocoa.org/images/protocol.pdf> (last visited Nov. 12, 2003).

² An international foundation envisioned in the CIP and established in July 2002 in Geneva, Switzerland as The International Cocoa Initiative—Working Towards Responsible Labor Standards for Cocoa Growing. Press Release, World Cocoa Foundation, *Global Chocolate, Cocoa Industry and Stakeholders Establish Foundation, International Cocoa Initiative—Working Towards Responsible Labor Standards for Cocoa Growing* (July 1, 2002), at http://www.chocolateandcocoa.org/News/Press_release_070102.htm (last visited Nov. 12, 2003).

³ ILO Convention (No.182) Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, June 17, 1999 [hereinafter "ILO C182"], (continued...)

The cocoa industry drew on the experience of other industries facing accusations of questionable labor practices in their global supply chains. The CIP and the ICI incorporate many of the lessons learned from earlier private initiatives to promote worker-friendly labor standards. Once the cocoa industry decided to acknowledge the issue and respond to it, industry participants sought the participation of multiple stakeholders from both inside and outside the industry to distribute responsibilities, costs, and risks and to gain access to a wide range of expertise.

ICI participants devoted resources first to gather accurate information from the field on the nature and dimension of the violations. Their survey found that forced child labor in the Côte d'Ivoire cocoa sector affects tens of thousands of child workers, that salaried child workers and child workers with no family ties to the farmer are the most vulnerable to the worst forms of child labor, and that the family child workers on cocoa farms are working also in conditions detrimental to their health and welfare. In addition, the ICI participants set a clear timetable for each element of their program.

The violence and uncertain political situation in West Africa prevents easy measurement of the impact of the ICI. Child trafficking and forced labor continue in the cocoa producing regions of West (and Central) Africa. The U.S. Department of State reports the ongoing trafficking of children into Côte d'Ivoire and estimates more than 100,000 child laborers working in hazardous conditions on cocoa farms, 70% of whom work on family farms or with their parents but some of whom are forced or indentured workers.⁴ However, civil unrest in the Côte d'Ivoire—which, not surprisingly, has disrupted cocoa production—has delayed the launch in that country of the pilot programs envisioned in the CIP. Even though increased international awareness of child trafficking, forced labor, and prohibited child labor in cocoa production has accelerated local government initiatives to combat these abuses in West Africa, neither independent monitoring nor public reporting on labor practices on West African cocoa farms was in place by May 2002 as originally envisioned in the CIP.

For the time being, the CIP and the ICI have averted regulatory action by cocoa importing countries, although they have been criticized for addressing only the worst forms of child labor and not the larger overall issue of wages for cocoa farmers and workers. All of the major cocoa brands and processors, individually and through the Chocolate Manufacturers Association (CMA) and other trade associations, have

³ (...continued)

reprinted in 38 I.L.M. 1207 (1999) and 3 INTERNATIONAL LAW AND WORLD ORDER: BASIC DOCUMENTS III.D.4 (Burns H. Weston & Jonathan C. Carlson eds., 5 vols., 1994-) [hereinafter "3 WESTON & CARLSON"].

⁴ 1 U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2002: CÔTE D'IVOIRE 185 (July 2003), available at <http://www.state.gov/g/drl/rls/hrrpt/2002/18179.htm> (last visited Nov. 12, 2003) [hereinafter "DOS 2002"].

supported them. On the other hand, even though child trafficking and forced labor in the agricultural sector of West Africa had been a subject of concern among international development organizations and within the region since at least 1995, no cocoa industry brand or processor had publicly identified or taken measures to address abusive labor conditions in cocoa production before they generated media attention in Europe in 2000 and in the United States the year after.

B. The Global Cocoa Industry

1. History of Cocoa Cultivation

Cocoa beans are the seeds contained in the fruit of the cacao tree. Indigenous to Central America and northern South America, cacao trees were a source of food for the ancient peoples of Mesoamerica who made a drink from cocoa beans as early as 400 BC.⁵ Spanish explorer Hernando Cortés was offered a cocoa bean drink by the Aztecs, and he returned to Spain with cocoa beans and the Aztec chocolate⁶ recipe in 1528. The European powers began to cultivate cacao in their American colonies in the late seventeenth century. Cacao production spread to central and western Africa and parts of tropical Asia over the course of the nineteenth century. Consumed principally as a drink, chocolate was not sold in solid form until the first half of the nineteenth century, when a method of extracting the fat from the cocoa beans to create cocoa butter and cocoa powder was developed. The English companies Fry and Cadbury Brothers sold the first “eating chocolate” in Europe in the late 1840s. In 1875, Henri Nestlé and a partner created the first milk chocolate in Switzerland.

Chocolate as we know it today is made by grinding and refining roasted cocoa beans to produce cocoa liquor, which is then combined with sugar (and sometimes milk) to produce liquid chocolate, or pressed into cocoa powder and cocoa butter to make solid chocolate.⁷

2. Structure of the Cocoa Supply Chain

Seventy percent of the 3 million metric tons of cocoa consumed worldwide each year is grown in West Africa. Côte d'Ivoire is the world's leading cocoa producer, supplying more than 40% of the cocoa on the global market of Côte

⁵ See generally International Cocoa Organization, at <http://www.icco.org> (last visited Nov. 12, 2003) [hereinafter “ICO”].

⁶ From the Nahuatl, *chocolatl*—any food made from cacao seeds. THE SHORTER OXFORD ENGLISH DICTIONARY 399 (5th ed. 2002).

⁷ ICO, *supra* note 5.

D'Ivoire.⁸ Brazil, Cameroon, Ghana, Ecuador, Indonesia, Malaysia, and Nigeria are also leading cocoa producers.

In 2001, Côte d'Ivoire exported 1.4 million tons of cocoa beans. Cocoa production employs more than seven million people on 450,000 Ivorian cocoa farms, and cocoa exports account for approximately one third of the country's export earnings. Average per capita GDP for Côte d'Ivoire's sixteen million people is \$1650.⁹ As much as a third of the Ivorian population are first or second generation migrants from the neighboring countries of Burkina Faso, Ghana, Guinea, Liberia, and Mali. UNICEF estimates that each job held by a migrant in Côte d'Ivoire contributes to the economic well-being of twenty members of extended families in the region.¹⁰ Côte d'Ivoire and its neighbors rank among the world's least developed countries, and have the highest fertility rates in the world.¹¹

Most cocoa is grown on small family farms of less than six hectares.¹² Cocoa bean production is labor intensive and overwhelmingly a family enterprise. In Côte d'Ivoire, for example, the average farm has five workers, and 4.5 are family members.¹³

⁸ A coup attempt in September 2002 triggered a civil war between the Ivorian government in the south of Côte D'Ivoire and rebel forces in the north. The conflict disrupted cocoa production for the 2002-03-harvest season. DOS 2002, *supra* note 4, at 161. The violent conflict has displaced more than one million people within Côte D'Ivoire and caused more than 150,000 immigrants to flee to neighboring countries. Donor Alert, UNICEF, Côte D'Ivoire Sub-Regional Crisis (Jan. 24, 2003), at http://www.unicef.org/Emergencies_Cote_Divoire_Donor_Update_240103.pdf (last visited Nov. 12, 2003). See also Alan Cowell, *War Inflates Cocoa Prices but Leaves Africans Poor*, N.Y. TIMES, Oct. 31, 2002, at C1; Sudarsan Raghavan, *War, Uncertainty Reign in Once-Stable Ivory Coast*, KNIGHT RIDDER/TRIBUNE BUSINESS NEWS (Jan. 31, 2003), LEXIS; Sudarsan Raghavan, *Ivory Coast Languishes in Chaos*, KNIGHT RIDDER/TRIBUNE BUSINESS NEWS (Jan. 30, 2003), LEXIS.

⁹ UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP), HUMAN DEVELOPMENT REPORT 152 (2002), available at <http://www.undp.org/hdr2002/complete.pdf> (last visited Nov. 12, 2003) [hereinafter "UNDP 2002"].

¹⁰ Donor Alert, UNICEF, *supra* note 8.

¹¹ Côte D'Ivoire ranks 156 out of 173 countries on the UNDP's Human Development Index. Of its neighbors, only Ghana (129) ranks higher. UNDP 2002, *supra* note 9, at 41. Côte D'Ivoire experienced relatively strong economic growth in the late 1990s. Ivorian families average almost six children. *Id.*

¹² One hectare = 2.471 acres.

¹³ INTERNATIONAL INSTITUTE OF TROPICAL AGRICULTURE, CHILD LABOR IN THE COCOA SECTOR OF WEST AFRICA: A SYNTHESIS OF FINDINGS IN CAMEROON, CÔTE D'IVOIRE, (continued...)

Cacao trees take three to five years to yield a crop and produce one harvest per year. Year-round maintenance work includes clearing underbrush and applying pesticides and fungicides. Cocoa bean harvesting entails cutting the pods from the trees, slicing them open, scooping out the beans, covering them in baskets or on mats to ferment, then drying the beans in the sun. There are around forty cocoa beans in one cacao pod, and about four hundred cocoa beans are used to make a pound of chocolate. Credit constraints limit the ability of farmers to invest in labor saving technology. Cocoa bean yields are a function of disease control (black pod disease) and favorable weather.

The cocoa supply chain, like other agricultural commodities, includes many intermediaries between the farmer and consumer. There is even less traceability in the cocoa supply chain than in the coffee supply chain because bean quality is not as important to the major chocolate brands as it is to specialty coffee brands and because there is little incentive for cocoa brands or even processors to know the exact source of one's cocoa beans. Key actors in cocoa production include local exporters, international traders, and the major international cocoa brands. The U.S.-based agricultural trading companies Archer Daniels Midland (ADM) and Cargill (the largest privately held company in the United States), California's Guittard Chocolate Company, Chicago-based Blommer Chocolate Co. (the largest cocoa processor in North America), and the Swiss multinationals Barry Callebaut AG and Nestlé are the largest chocolate processing companies.¹⁴ ADM, Cargill, and Nestlé own processing plants in Côte d'Ivoire where, as licensed exporters, they are permitted to purchase cocoa beans directly from cocoa farmers.¹⁵ Exporters typically contract with middlemen who pay cash to farmers for their cocoa harvest.

The global market price for cocoa beans is determined on the future markets of the London Cocoa Terminal Market and the New York Cocoa Exchange. At the end of 2000, the average price per pound of cocoa beans hit a historic low of thirty-

¹³ (...continued)

GHANA, AND NIGERIA 20 (August 2002), available at <http://www.iita.org/news/cocoa.pdf> (last visited Nov. 12, 2003) [hereinafter "IITA"].

¹⁴ The 2002 gross revenue figures for these companies are: Nestlé (\$64 billion), Cargill (\$51 billion), ADM (\$23 billion), Barry Callebaut AG (\$8 billion-unconfirmed). Company financial statements available at LEXIS Company Profiles, at <http://web.lexis-nexis.com/universe> (last visited Nov. 12, 2003). The financial statements for Blommer Chocolate Co. and Guittard Chocolate are not publicly available. The diversified companies do not report publicly on revenues attributable to cocoa sales alone.

¹⁵ See, e.g., Press Release, Cargill, *Cargill Opens Cocoa Handling Facility in San-Pedro, Ivory Coast* (Oct. 25, 1999), at <http://www.cargill.com/today/releases/10251999.htm> (last visited Nov. 12, 2003).

six cents the lowest price since 1973 and 80% drop from peak cocoa prices in 1977.¹⁶ Prices have risen steadily since that time, reaching ninety cents per pound in March 2003.¹⁷

North America and Western Europe purchase two-thirds of global cocoa production. Nestlé, the U.S. companies Mars, Inc., Hershey Foods, and World's Finest Chocolate, Inc., and Britain's Cadbury Schweppes are the leading chocolate producers.¹⁸ Mars, Inc. and Hershey Foods control two-thirds of the \$13 billion U.S. chocolate market.¹⁹

C. Worker rights Allegations Against the Cocoa Industry

Reports of slave labor on cocoa farms in West Africa surfaced as early as 1998.²⁰ International development and child welfare organizations had been working to address and eliminate child slavery in West Africa for a number of years. In September 1998, an Ivorian newspaper reported the widespread practice of importing and indenturing Malian boys for fieldwork on Ivorian plantations under abusive conditions.²¹ The governments of Côte d'Ivoire and Mali confirmed these reports in a joint February 2000 press conference with UNICEF.²² UNICEF estimated ten to

¹⁶ INTERNATIONAL COCOA ORGANIZATION, ICCO MONTHLY AND ANNUAL AVERAGES OF DAILY PRICES OF COCOA BANS, 1971-2003, at <http://www.icco.org> (last visited Nov. 12, 2003).

¹⁷ *Id.*

¹⁸ The most recent gross revenue figures are as follows: Nestlé (\$64 billion), Mars, Inc. (\$17 billion), Hershey Foods (\$4 billion), Cadbury Schweppes (\$8.5 million), and World's Finest Chocolate, Inc. (\$191 million). LEXIS Company Profiles, *supra* note 14. The diversified companies do not report publicly on revenues attributable to cocoa sales alone.

¹⁹ In 2000, the United States consumed 3.3 billion pounds of chocolate. GLOBAL EXCHANGE, BACKGROUND ON M&M/MARS FAIR TRADE CAMPAIGN, at <http://www.globalexchange.org> (last visited Nov. 12, 2003).

²⁰ See, e.g., Sumana Chatterjee, *Chocolate Makers to Act on Slavery*, THE PHILADELPHIA INQUIRER, June 28, 2001, at A06; Sumana Chatterjee, *Chocolate Manufacturers Intensifying Efforts to Curb Child Slavery in Africa*, KNIGHT RIDDER/TRIBUNE BUS. NEWS, June 28, 2001, LEXIS.

²¹ 1 U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1998: CÔTE D'IVOIRE 119 (Feb. 26, 1999), available at http://www.state.gov/www/global/human_rights/1998_hrp_report/98hrp_report_toc.html (last visited Nov. 12, 2003) [hereinafter "DOS 1998"].

²² 1 U.S. DEP'T. OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2000: CÔTE D'IVOIRE 192 (Feb. 23, 2001) at <http://www.state.gov/g/drl/rls/hrrpt/2000/af/773.htm> (last visited Nov. 12, 2003) [hereinafter "DOS 2000"].

fifteen thousand Malian children working on Ivorian plantations, including cocoa farms. The child workers, many of whom were under twelve years of age, were sold into indentured servitude for \$140 and worked twelve-hour days for \$135 to \$189 per year.²³

In September 2000, a British television documentary reported that hundreds of thousands of children in Burkina Faso, Mali, and Togo were being purchased from their parents and sold as slaves to cocoa farmers in neighboring Côte d'Ivoire.²⁴ The documentary included claims that slavery existed on as many as 90% of Ivorian cocoa farms. According to subsequent media accounts, children as young as six years old were forced to work eighty to one hundred hour weeks without pay, suffered from malnutrition, and were subject to beatings and other abuse.²⁵ Parents reportedly received around fifty dollars per child from child traffickers who promised that the children would be paid for plantation work. The children were then sold as slaves.

The media attention prompted Ivorian government officials, in meetings with the United Kingdom Foreign Office, to blame the international cocoa industry for keeping prices too low to ensure an adequate standard of living for Ivorian cocoa farmers.²⁶ The United Kingdom called for West African states to sign a treaty establishing a legal framework for combating slavery and forced labor, and the Foreign Office created a task force of governments, industry, and NGOs to address forced labor in the cocoa industry.²⁷ The following month, in June 2001, Knight Ridder Newspapers in the United States profiled cocoa farm slaves between the ages of twelve and sixteen, and reported on one Côte d'Ivoire farmer who had been

²³ *Id.* at 193.

²⁴ Brian Woods & Kate Blewett, *Every Time We Eat a Bar of Chocolate, We Condone Slavery*, INDEPENDENT ON SUNDAY (UK), Apr. 22, 2001, at 26, citing the authors' September 2000 Channel 4 (UK) documentary, *Slavery: A Global Investigation*. See also Liz Blunt, *The Bitter Taste of Slavery*, BBC (Sept. 28, 2000), at <http://news.bbc.co.uk/1/hi/world/africa/946952.stm> (last visited Nov. 12, 2003).

²⁵ Joan Baxter, *Mali's Children in Slavery*, BBC (Sept. 29, 2000), at <http://news.bbc.co.uk/1/hi/world/africa/948135.stm> (last visited Nov. 12, 2003); Humphrey Hawksley, *Mali's Children in Chocolate Slavery*, BBC (Apr. 12, 2001), at <http://news.bbc.co.uk/1/hi/world/africa/1272522.stm> (last visited Nov. 12, 2003).

²⁶ Humphrey Hawksley, *Ivory Coast Accuses Chocolate Companies*, BBC (May 4, 2001), at <http://news.bbc.co.uk/1/hi/world/africa/1311982.stm> (last visited Aug. 20, 2003).

²⁷ *UK Joins Fight against Chocolate Slavery*, BBC, (May 4, 2001), at <http://news.bbc.co.uk/1/hi/uk/1312854.stm> (last visited Nov. 12, 2003).

prosecuted in Côte d'Ivoire for mistreating nineteen boys from Mali and holding them in abysmal conditions.²⁸

The reports of child slave labor on cocoa plantations exposed multiple human rights violations under widely accepted international legal standards, including such principal violations as prohibited child labor, forced child labor, and trafficking in persons. In its 2000 report on human rights practices in Côte d'Ivoire, the U.S. Department of State observed that "children regularly are trafficked into the country from neighboring countries and sold into forced labor."²⁹

1. Prohibited Child Labor

Child labor is common in the agricultural sector and widespread in countries where cocoa is grown.³⁰ The ILO estimates 378,000 working children in Côte d'Ivoire.³¹

Under Ivorian law, children over age fourteen are allowed to work as long as the work is not dangerous and the children have parental consent. The legal minimum

²⁸ *Much of America's Sweets Made Possible Through Slave Labor on Ivory Coast*, KNIGHT RIDDER/TRIBUNE BUS. NEWS, June 25, 2001, LEXIS, available at <http://www.globalexchange.org/campaigns/fairtrade/cocoa/knightRidder062501e.html> (last visited Nov. 12, 2003).

²⁹ DOS 2000, *supra* note 22, at 192.

³⁰ The ILO estimates that 70% of child labor occurs in the agricultural sector. INTERNATIONAL LABOUR OFFICE, A FUTURE WITHOUT CHILD LABOUR, at xi (May 2002), available at <http://www.ilo.org/public/english/standards/decl/publ/reports/report3.htm> (last visited Nov. 12, 2003) [hereinafter "ILO 2002"]. See also SAVE THE CHILDREN CANADA, CHILDREN STILL IN THE CHOCOLATE TRADE: THE BUYING, SELLING AND TOILING OF WEST AFRICAN CHILD WORKERS IN THE MULTIBILLION DOLLAR INDUSTRY, at v (Apr. 7, 2003). See also U.S. DEP'T OF LABOR, 2 BY THE SWEAT AND TOIL OF CHILDREN: THE USE OF CHILD LABOR IN U.S. AGRICULTURAL IMPORTS & FORCED AND BONDED CHILD LABOR 2 (1995), available at <http://www.dol.gov/ILAB/media/reports/iclp/sweat2/main.htm> (last visited Nov. 12, 2003). By some estimates, 7% to 12% of workers on commercial plantations growing products for export are children. The crops children help to harvest include cocoa, coconuts, coffee, cotton, fruit and vegetables, jasmine, palm oil, rubber, sisal, sugar cane, tea, tobacco, and vanilla. *The Plight of Coffee's Children*, TEA & COFFEE TRADE J., Jan. 20, 2002, at <http://www.teaandcoffee.net/0102/special.htm> (last visited Nov. 12, 2003).

³¹ INTERNATIONAL LABOUR OFFICE, COMBATING TRAFFICKING IN CHILDREN FOR LABOUR EXPLOITATION IN WEST AND CENTRAL AFRICA (International Programme on the Elimination of Child Labour, 2001), available at <http://www.ilo.org/public/english/standards/ipecc/publ/field/africa/central.pdf> (last visited Nov. 12, 2003) [hereinafter "ILO 2001"]. See also DOS 1998, *supra* note 21.

age for agricultural work is twelve. Labor law limits the hours of workers under eighteen. In practice, children often work on family farms and in the informal economy.³²

Widely accepted international labor standards prohibit any form of work by children younger than fourteen, or younger than twelve if the activity is “light work.”³³ Developing countries may permit the employment of children in “family and small-scale holdings producing for local consumption and not regularly employing hired workers.”³⁴

Permanent workers younger than twelve on cocoa farms violate legal international standards. Family children who perform more than “light work” or whose work interferes with compulsory education also classify as prohibited child labor under ILO standards. Since cocoa is produced predominantly for export, no exception to the minimum age standards is permitted due to the family or small-scale nature of cocoa farms. When allegations of child labor on cocoa farms were first made, Côte d'Ivoire was not a party to the ILO Convention on Minimum Age³⁵ and Ivorian minimum age laws did not conform to international legal standards.

Primary education in Côte d'Ivoire is compulsory but unenforced, particularly in rural areas.³⁶ Primary education is free but usually ends at age thirteen.³⁷ More than half of adults in Côte d'Ivoire are illiterate.

³² DOS 1998, *supra* note 21, at 120, available at http://www.state.gov/www/global/human_rights/1998_hrp_report/cotedivo.html (last visited Nov. 12, 2003).

³³ Article 2 of ILO Convention (No. 138) Concerning Minimum Age for Admission to Employment, 1015 U.N.T.S. 297 [hereinafter “ILO C138”], reprinted in 3 WESTON & CARLSON, *supra* note 3, at III.O.5, sets the minimum age for employment or work as the age of completion of compulsory schooling or fifteen years, whichever is lower, though there are a number of exceptions available to state signatories. For countries with developing economies and educational systems, the minimum employment age can be set at fourteen years. ILO C138, art. 5, ¶ 3.

³⁴ ILO C138, *supra* note 33, art. 5, ¶ 3. States are permitted to eliminate entire categories of employment from the scope of the Convention, including “family and small-scale holdings producing for local consumption and not regularly employing hired workers.” Also, “light work” is permitted for children as young as twelve who have not completed compulsory schooling. *Id.* art. 7.

³⁵ ILO C138, *supra* note 33.

³⁶ DOS 1998, *supra* note 21, at 120.

³⁷ DOS 2000, *supra* note 22, at 187.

2. Forced Child Labor

Côte d'Ivoire is a party to the ILO Forced Labor Convention³⁸ and forced labor is prohibited under Ivorian law. Forced labor is "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."³⁹ The employment of cocoa workers without their consent or when the workers are unable to leave the farms voluntarily, constitutes forced labor. Child workers are at particular risk of forced labor.

In 1999, one hundred thirty-two countries adopted ILO Convention on the Worst Forms of Child Labor⁴⁰ which calls upon states to "take immediate and effective measures to prohibit and eliminate all forms of slavery . . . and forced or compulsory labor," as well as "work which is likely to harm the health, safety or morals of children, determined by national laws or regulations."⁴¹ The nature of the work performed on cocoa farms by anyone under the age of eighteen may qualify as prohibited child labor under this Convention.⁴² Growing cocoa involves long hot hours in the sun performing physically demanding work. Workers often use primitive tools, travel great distances, and are exposed to pesticides and chemical fertilizers, poisonous and disease-carrying insects and reptiles.⁴³ The U.S. Department of State estimates 109,000 child laborers working in hazardous conditions on cocoa farms, some of whom are forced or indentured workers, but the majority of whom (70%) work on family farms or with their parents.⁴⁴

3. Trafficking in Persons

A key allegation in the accounts from West Africa was that children were not only forced to work and mistreated on cocoa farms, but that they were trafficked by cocoa farmers and their agents.

³⁸ ILO Convention (No. 29) Concerning Forced or Compulsory Labor, June 28, 1930, 39 U.N.T.S. 55 [hereinafter "ILO C29"], *reprinted in* 3 WESTON & CARLSON, *supra* note 3, at III.H.2 (the United States has not the Convention).

³⁹ *Id.* art. 2.

⁴⁰ ILO C182, *supra* note 3.

⁴¹ *Id.* art 3.

⁴² *Id.* Article 2 of ILO C182 provides that "the term 'child' shall apply to all persons under the age of 18." For any type of employment or work that is "likely to jeopardize the health, safety or morals of young persons" the minimum age is eighteen years also. ILO C138, *supra* note 33, at art. 2. National legislation defines the types of work subject to this standard, and the minimum age can be sixteen under certain conditions.

⁴³ SAVE THE CHILDREN CANADA, *supra* note 30, at 19-22. *See also* U.S. DEP'T OF LABOR, *supra* note 30, at 36.

⁴⁴ DOS 2002, *supra* note 4, at 185.

The trafficking of children for domestic work, prostitution, and industrial and agricultural labor is a worldwide phenomenon that has received growing attention in recent years. The U.S. Department of State characterizes human trafficking as “one of the greatest human rights challenges of our time” and estimates between eight hundred and nine hundred thousand people annually are trafficked across international borders worldwide.⁴⁵ UNICEF estimates that hundreds of thousands of children are sold as slaves each year.⁴⁶ Trafficking is not solely a child labor issue; “trafficking violates the rights of children long before their actual labor begins.”⁴⁷

As defined in international instruments, trafficking in persons is

the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation.⁴⁸

Importantly, prohibited trafficking does not require the crossing of an international border and the consent of the victim is irrelevant if the act involves a child for the purpose of exploitation.

UNICEF estimates that 200,000 children are trafficked through West and Central Africa each year.⁴⁹ The most common forms of trafficking in the region are

⁴⁵ U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 5 (June 11, 2003), available at <http://www.state.gov/documents/organization/21555.pdf> (last visited Nov. 12, 2003) [hereinafter “DOS TRAFFICKING REPORT”].

⁴⁶ UNICEF-INNOCENTI INSIGHT, CHILD TRAFFICKING IN WEST AFRICA: POLICY RESPONSES, at vii (April 2002), available at <http://www.unicef-icdc.org/publications/pdf/insight7.pdf> (last visited Nov. 12, 2003) [hereinafter “UNICEF-INNOCENTI INSIGHT”].

⁴⁷ *Id.* at 7.

⁴⁸ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (also known as the Palermo Protocol), Nov. 15, 2000, G.A. Res. 55/25 (Annex II), U.N. GAOR, 55th Sess., Supp. No. 49, at 43, U.N. Doc. A/RES/55/383 (2000), reprinted in 40 I.L.M. 335 and 3 WESTON & CARLSON, *supra* note 3, at III.C.19. See also Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, May 25, 2000, G.A. Res. 54/263 (Annex II), U.N. GAOR, 54th Sess., Supp. No. 49, at 54, U.N. Doc. A/RES/54/263, reprinted in 3 WESTON & CARLSON, *supra* note 3, at III.D.6. Côte d'Ivoire is not a party to either of these protocols.

⁴⁹ See HUMAN RIGHTS WATCH, BORDERLINE SLAVERY: CHILD TRAFFICKING IN TOGO 8 (Apr. 2003), available at <http://www.hrw.org/reports/2003/togo0403/togo0403.pdf> (continued...)

the voluntary placement of children by parents with a third party for a set price or for a set period of time during which the intermediary collects the wages paid by the employer.⁵⁰ The abduction of children also occurs, but to a lesser extent. Bonded labor, or the exchange of child labor as repayment of a debt, is not prevalent in West Africa. The main causes of child trafficking in the region are poverty, poor education, and weak or nonexistent punishment for traffickers.⁵¹ African traditions of migration and the placement of children with family members also facilitate child trafficking.⁵² “Child trafficking in the region stems from unequal development and rides on the back of migratory practices that have existed for centuries. It is closely related to and reflects many of the economic and social difficulties in West and Central Africa.”⁵³ Migrant labor in Côte d’Ivoire historically comes from Burkina Faso and Mali, two of the poorest countries in the world.

The trafficking of Malian children to Côte d’Ivoire was identified by nongovernmental organizations in 1995.⁵⁴ Côte d’Ivoire is a trafficking destination for children from Mali and also Benin, Burkina Faso, Ghana, Mauritania, and Togo.⁵⁵ The U.S. Department of State estimates that thousands of Malian children work in Ivorian cocoa and coffee plantations.⁵⁶ The ILO found that more than six hundred Malian children were trafficked to Côte d’Ivoire.⁵⁷

⁴⁹ (...continued)
(last visited Nov. 12, 2003).

⁵⁰ ILO 2001, *supra* note 31, at 2-3.

⁵¹ *Id.* at x.

⁵² *Id.* at vii.

⁵³ UNICEF-INNOCENTI INSIGHT, *supra* note 46, at 6.

⁵⁴ *Id.* at 5.

⁵⁵ ILO 2001, *supra* note 31, at 9. *See also* 1 U.S. DEP’T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1999: CÔTE D’IVOIRE 155 (Apr. 2000), *available at* <http://www.state.gov/g/drl/rls/hrrpt/1999/242.htm> (Feb. 23, 2000) (last visited Nov. 12, 2003) [hereinafter “DOS 1999”]; DOS 2000, *supra* note 22, at 192-93; 1 U.S. DEP’T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2001: CÔTE D’IVOIRE 209-11 (Apr. 2002), *available at* <http://www.state.gov/g/drl/rls/hrrpt/2001/af/8355.htm> (last visited Nov. 12, 2003) [hereinafter “DOS 2001”]; DOS 2002, *supra* note 4, at 186-89.

⁵⁶ ILO 2001, *supra* note 31, at 9; DOS 2001, *supra* note 55, at 209.

⁵⁷ ILO 2001, *supra* note 31, at 9.

Formal governmental efforts to address child trafficking in the region began in 2000 with the Libreville Common Platform for Action.⁵⁸ Côte d'Ivoire drafted a National Plan to Fight against Child Trafficking in April 2000.⁵⁹ In September 2000, it signed with Mali the first bilateral agreement in the region to establish formal procedures for cooperation against child trafficking.⁶⁰ The Cooperation Agreement recognizes the definition of "children" adopted by the 1989 Convention on the Rights of the Child⁶¹ (i.e., all persons under the age of eighteen) and adopted also a broad definition of child trafficking, including "any act causing the displacement of a child inside or outside a country."⁶² The Agreement allows Côte d'Ivoire to repatriate Malian children found working in Côte d'Ivoire. Côte d'Ivoire had begun talks on similar agreements with Burkina Faso and Togo prior to the 2002 rebellion.⁶³ In July 2001, it created a national committee to address child trafficking.⁶⁴

The government of Côte d'Ivoire has repatriated trafficked child laborers from Burkina Faso and Mali. Between 1998 and 2002, more than eight hundred Malian children working on Ivorian plantations were repatriated by Côte d'Ivoire.⁶⁵ Many of these children had been working on small farms.

⁵⁸ UNICEF-INNOCENTI INSIGHT, *supra* note 46, at 8-9. Common Platform for Action of the Sub-Regional Consultation on the Development of Strategies to fight Child Trafficking for exploitation labour purposes in West and Central Africa, February 22-24, 2000 (signed in Libreville, Gabon), at <http://www.unicri.it/2000%20Libreville.pdf> (last visited Nov. 12, 2003).

⁵⁹ UNICEF-INNOCENTI INSIGHT, *supra* note 46, at 11.

⁶⁰ Cooperation Agreement between the Republic of Côte d'Ivoire and the Republic of Mali on Combating Trans-border Trafficking of Children, Sept. 1, 2000, referenced and explained in UNICEF-INNOCENTI INSIGHT, *supra* note 46, at 11. Also referenced in U.N. ECOSOC, Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, Working Group on Contemporary Forms of Slavery, 27th Sess., May 27-31, 2002, E/CN.4/Sub.2/AC.2/2002/4 (May 17, 2002), at 6.

⁶¹ Convention on the Rights of the Child, Nov. 2, 1989, 1577 U.N.T.S. 3, *reprinted in* 28 I.L.M. 1448 (1989) and 3 WESTON & CARLSON, *supra* note 3, at III.D.3 [hereinafter "CRC"].

⁶² UNICEF-INNOCENTI INSIGHT, *supra* note 46, at 11. Côte d'Ivoire has ratified the CRC, *supra* note 60.

⁶³ DOS 2002, *supra* note 4, at 187.

⁶⁴ DOS 2001, *supra* note 55, at 211.

⁶⁵ DOS 1999, *supra* note 55, at 155; DOS 2000, *supra* note 22, at 192; DOS 2001, *supra* note 55, at 209; DOS 2002, *supra* note 4, at 155.

Ivorian law does not prohibit trafficking in persons, but the government prosecutes trafficking under existing laws against forced labor and the kidnaping of children.⁶⁶ In September 2001, a local Ivorian court in the southern cocoa region convicted a Togo citizen of child trafficking, sentenced him to three years imprisonment, and ordered him to leave the country for five years after his release. The defendant had trafficked three ten years-old children to work on Ivorian farms.⁶⁷ At least nine traffickers were arrested and one hundred children rescued in 2002; however, all anti-trafficking law enforcement efforts in Cote d'Ivoire have ceased since the civil unrest that began in September 2002.⁶⁸

D. Response of the Global Cocoa Industry

According to the National Resources Institute, "the infrastructure for managing corporate social responsibility is, for the most part, absent in the cocoa chain."⁶⁹ The development of this infrastructure proceeded through the following several steps.

1. Denial

Even though child trafficking and forced labor in the agricultural sector of West Africa had been a subject of concern among international development organizations and within the region since at least 1995, no cocoa industry brand or processor had publicly identified or taken measures to address the labor issues in cocoa production before abusive labor conditions generated media attention in Europe in 2000 and in the United States the following year. However, over a relatively short period, as noted above, the international cocoa industry moved from refusing to acknowledge serious labor problems in the global cocoa supply chain to acknowledging a public commitment to act to address the problems.

Initially, the major European and American cocoa brands denied responsibility for conditions in the cocoa fields, arguing that they had been unaware of the problems or that the cocoa supply chain was too complex to guarantee working practices on every farm.⁷⁰ Stated John Newman, Director of the British Biscuit, Cake, Confectionary,

⁶⁶ DOS 2001, *supra* note 55, at 209.

⁶⁷ *Id.* at 210-11.

⁶⁸ DOS 2002, *supra* note 4, at 187; DOS TRAFFICKING REPORT, *supra* note 45, at 51.

⁶⁹ *Chocolate: Fair Trade Traceability*, THE GROCER (UK), June 9, 2001, at 38 [hereinafter "Traceability"].

⁷⁰ Hawksley, *supra* note 25; *UK Joins Fight against Chocolate Slavery*, *supra* note 27 (quoting a spokesman for the British Chocolate and Confectionary Alliance). See also *Traceability*, *supra* note 68, at 38; KNIGHT RIDDER/TRIBUNE BUS. NEWS, *supra* note 28; Sumana Chatterjee, *Chocolate Companies Air Their Comments on Slavery in Ivory Coast*, (continued...)

and Chocolate Alliance (BCCCA) in 2001, “[w]e have been visiting the Ivory Coast for decades and working closely with many cocoa farmers. In all that time we have simply not come across such practices. We are confident that, while illegal practices may exist, this is on a very limited scale indeed and confined to certain areas.”⁷¹ Similarly, Robert M. Reese, Senior Vice President of Hershey Foods argued that “[no] one, repeat no one, had ever heard of this. Your instinct is that Hershey should have known. But the fact is we didn’t know.”⁷²

When confronted with the allegations, no company was able to guarantee that its cocoa supply chain was child labor free since most companies sourced at least some cocoa from Côte d'Ivoire.⁷³ In April 2001, the BCCCA issued a report acknowledging that some slavery might exist on Ivorian cocoa farms. Later that month, the United States’ Chocolate Manufacturers Association (CMA) acknowledged that a problem might exist and strongly condemned “these practices wherever they may occur.”⁷⁴

2. Responding to the Threat of Regulation

Ultimately, all of the major cocoa brands and processors, individually and through the CMA and other trade associations, have supported the CIP and ICI.⁷⁵ The chief executives of Archer Daniels Midland Company, Barry Callebaut AG, Blommer Chocolate Company, Confections USA, Guittard Chocolate Company, Hershey Food Corporation, M&M/Mars, Inc., Nestlé Chocolate, and World’s Finest Chocolate, Inc., signed a public expression of support for the Protocol. Some brands have responded more forcefully or publicly than others, and some companies were better prepared to address supply chain labor issues when allegations of labor abuses in the cocoa supply chain first emerged.⁷⁶ Generally, the cocoa industry was

⁷⁰ (...continued)

KNIGHT RIDDER/TRIBUNE BUS. NEWS, June 25, 2001, LEXIS. *See also* Sumana Chatterjee, *Chocolate Industry Prepares to Fight “Slave-Free” Labels*, KNIGHT RIDDER/TRIBUNE BUS. NEWS, Aug. 1, 2001, LEXIS.

⁷¹ *Traceability*, *supra* note 68, at 38.

⁷² Bob Fernandez, *Hershey “Shocked” by Report*, THE TIMES UNION (ALBANY, NY), June 24, 2001, at A7.

⁷³ *Chocolate Companies Air Their Comments on Slavery in Ivory Coast*, KNIGHT RIDDER/TRIBUNE BUS. NEWS, June 25, 2001, LEXIS.

⁷⁴ KNIGHT RIDDER/TRIBUNE BUS. NEWS, *supra* note 28.

⁷⁵ CIP, *supra* note 1.

⁷⁶ Cadbury Schweppes, for example, enacted a Human Rights and Ethical Trading Policy in 2000 and currently devotes substantial space on its website to information and updates on (continued...)

unprepared to respond to questions concerning labor standards in its supply chain and underestimated the broad business impact of allegations of the worst forms of child labor.

One reason for the industry's quick turnaround was a credible threat of regulatory action. U.S. trade law forbids the import of products made with slave labor⁷⁷ and an executive order (issued by President Clinton) prohibits federal agencies from purchasing goods made with forced child labor.⁷⁸ Following the slavery allegations, the U.S. government formally considered adding cocoa products to the prohibited list of goods. This move would have been a significant blow to the United States cocoa industry, given the purchasing power of the United States government. The United States Department of Defense, for example, alone purchases \$1.6 million worth of Mars, Inc.'s M&Ms chocolate candy annually.⁷⁹

In June 2001, U.S. Representative Eliot Engel proposed legislation to create a "no child slave labor" labeling requirement for cocoa products.⁸⁰ "Just like we

⁷⁶ (...continued)

the progress of the International Cocoa Initiative. See Cadbury Schweppes, *Our Human Rights and Ethical Trading Policy*, at <http://www.cadburyschweppes.com/EN/EnvironmentSociety/EthicalTrading/Commitments> (last visited Nov. 12, 2003). See also Cadbury Schweppes, *Cocoa Working Practices: Cadbury Schweppes and the Global Cocoa Alliance*, at <http://www.cadburyschweppes.com/EN/EnvironmentSociety/EthicalTrading/CocoaWorkingPractices> (last visited Nov. 12, 2003). Blommer Chocolate simply states that the company "is committed to operating in an ethical, responsible, and safe manner." See <http://www.blommer.com> (last visited Nov. 12, 2003).

⁷⁷ Trade Act of 1930, § 307, 19 U.S.C. § 1307 (1997) (prohibiting United States imports of products created with "forced or indentured child labor") [hereinafter "Trade Act of 1930"].

⁷⁸ Exec. Order No. 13126, 64 Fed. Reg. 32,383 (June 12, 1999). Chocolate and cocoa products are excluded from the list of applicable goods.

⁷⁹ Sumana Chatterjee, *Chocolate Makers Escalate Efforts to Combat Child Slavery in Ivory Coast*, KNIGHT RIDDER/TRIBUNE BUS. NEWS, June 28, 2001, LEXIS. See also *supra* note 20.

⁸⁰ The House passed the bill (HR Amend. 2330) by a vote of 291-115. The amendment and the June 28, 2001 vote is referenced in Sumana Chatterjee, *Chocolate Industry Accepts Responsibility for Child Labor Practices*, KNIGHT RIDDER/TRIBUNE NEWS SERVICE, Oct. 1, 2001, LEXIS [hereinafter "Chatterjee 2001"]; Hon. Eliot L. Engel (D-NY), *In Recognition of the Efforts to Eliminate the Worst Forms of Child Labor in West Africa—Extension of Remarks*, 148 Cong. Rec. E1205 (July 8, 2002), available at <http://frwebgate3.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=85029424054+17+0+0&WAIAction=retrieve> (last visited Nov. 14, 2003). See also Hon. Tom Harkin (D-IA), *Ending the Worst Forms of Child Labor and Forced Labor in the Cocoa and Chocolate Industry Worldwide*, 148 Cong. Rec.

(continued...)

cannot accept slave labor in factories in Asia,” he argued, “we must not accept products being sold in this country that are made by enslaved child labor.”⁸¹

Before the U.S. Senate voted on labeling legislation, the industry announced an initiative “to address the workers’ rights issues recently identified by the government of the Ivory Coast” (in collaboration with USAID, local governments, and human rights organizations).⁸² Stated the Chocolate Manufacturers Association:

As an industry, we strongly condemn abusive labor practices, and our goal is to be part of the worldwide effort to solve this problem. If one child is affected, that is one child too many. . . . Given the importance of cocoa farming to the well-being of the people of the Ivory Coast and throughout the region, we believe it is critical to continue to support the vast majority of family farms there by doing everything possible to improve labor conditions.”⁸³

The CMA (and the National Confectioners Association) opposed the proposed labeling schemes, however. According to the CMA, “[a] ‘slave free’ label would hurt the people it is intended to help because it could lead to a boycott of Ivorian cocoa.”⁸⁴

The global chocolate and cocoa industry resolved to encourage governments to “investigate and eradicate any criminal child labor activity.”⁸⁵ The major cocoa brands committed to funding a survey on the ground in West Africa to determine the full extent of forced child labor and trafficking in cocoa production. Meanwhile, some independent accounts contradicted the prevalence of forced labor portrayed in the initial media reports. A July 2001 investigation by *The New York Times*, for example,

⁸⁰ (...continued)
S224 (Jan. 29, 2002), available at <http://frwebgate3.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=85029424054+22+0+0&WAISaction=retrieve> (last visited Nov. 14, 2003).

⁸¹ Jim Lobe, *Congress Acts on Child Slave Labor in Cocoa Industry*, INTER PRESS SERVICE, July 5, 2001, LEXIS.

⁸² Press Release, CMA, *Chocolate Manufacturers Association Launches Initiative to Address West African Labor Issues* (June 22, 2001), available at <http://www.radicalthought.org/A55868/cocoa.nsf/0/e2ce2e5ded349a5085256a71004d3f0a?OpenDocument> (last visited Nov. 12, 2003).

⁸³ *Id.*

⁸⁴ *CMA Lobbies Against “Slave Free” Label Proposal*, CANDY INDUSTRY, Aug. 1, 2001, at 13.

⁸⁵ International Cocoa Council Resolution on Agricultural Working Practices, July 10, 2001, at <http://www.icco.org/press/010620resolution.htm> (last visited Nov. 12, 2003)

estimated that smuggled children do not make up a significant share of the cocoa work force in Côte d'Ivoire.⁸⁶

The media coverage, the mobilization of major cocoa brands, and the proposed government measures in the United States and Europe prompted a response from the Ivorian government. On June 18, 2001, it acknowledged the prevalence of "indentured child labor" on a handful of cocoa farms and announced the discovery of clandestine child trafficking originating in neighboring countries. The government blamed the practice on immigrant cocoa farmers from those countries.⁸⁷

3. The Cocoa Initiative

On September 19, 2001, the Chocolate Manufacturers Association and the World Cocoa Foundation signed a Protocol⁸⁸ committing themselves and their members to a series of steps to eliminate the worst forms of child labor in cocoa production in compliance with ILO Convention 182.⁸⁹ The Cocoa Industry Protocol (CIP) provides for "the development of a credible, mutually acceptable system of industry-wide global standards, along with independent monitoring and reporting, to identify and eliminate any use of the worst forms of child labor in the growing and processing of cocoa beans."⁹⁰ Serving as witnesses to the CIP were the U.S. Congressional sponsors of proposed cocoa labeling legislation, the Côte d'Ivoire ambassador to the United States, and representatives of the ILO and nongovernmental organizations.⁹¹ Eight chief executives of major chocolate brands and cocoa

⁸⁶ Norimitsu Onishi, *The Bondage of Poverty That Produces Chocolate*, N.Y. TIMES, July 29, 2001, at 1.

⁸⁷ Lobe, *supra* note 80.

⁸⁸ CIP, *supra* note 1

⁸⁹ ILO C182, *supra* note 3. The Protocol incorporated by reference ILO C182 in its entirety.

⁹⁰ Press Release, ILO, *Agreement to End Child Labor on Cocoa Farms* (Oct. 1, 2001), at <http://www.ilo.org/public/english/bureau/inf/pr/2001/32.htm> (last visited Nov. 12, 2003).

⁹¹ CIP, *supra* note 1. *See also* Press Release, *supra* note 90. Witnessing organizations included the Child Labor Coalition; the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF); Free the Slaves; and the National Consumers League. The congressional sponsors were Sen. Tom Harkin (D-IA), Sen. Herbert Kohl (D-WI), and Congressman Eliot Engel (D-NY).

processors expressed their “personal support” for the CIP,⁹² and the International Cocoa Organization and two European trade associations endorsed the CIP.⁹³

The CIP called for: (a) a survey of the affected areas; (b) an advisory council to oversee the survey; (c) a consultative group comprising industry, nongovernmental organizations, government agencies, and labor groups; (d) a pilot program; (e) a monitoring group; (f) an international foundation; and (g) public certification that cocoa used in chocolate or related products has been grown and processed without forced child labor. Under the timetable established in the CIP, independent monitoring and public reporting would be in place by May 2002, followed by industry-wide voluntary standards of public certification by July 1, 2005.

In an important turnaround from initial industry responses, the cocoa industry accepted responsibility for labor conditions in the cocoa supply chain. Stated Larry Graham, President of the CMA, “[w]e need to be permanently concerned with where cocoa comes from, the impact of cocoa on the environment and how the workers are treated. That’s where the industry has changed, permanently and forever.”⁹⁴ And declared Kevin Bales, Executive Director of Free the Slaves, “[t]his protocol is a breakthrough in the global fight against slavery. The partnership between industry, governments, NGOs, and other stakeholders is unique and will stand as a model for other products and countries.”⁹⁵

Two months after the CIP, the industry, governmental, and nongovernmental participants issued a Joint Statement that created a Broad Consultative Group (BCG) to work collaboratively with the ILO to implement the Protocol.⁹⁶ The Joint Statement emphasized the importance of eliminating all forced labor, in addition to the worst forms of child labor, affirmed that child labor in the cocoa industry is the result of “poverty and a complex set of social and economic conditions,” and called

⁹² The chief executives of Guittard Chocolate Company, M&M/Mars, Inc., World’s Finest Chocolate, Inc., Archer Daniels Midland Company, Nestlé Chocolate and Confections USA, Blommer Chocolate Company, Hershey Food Corporation and Barry Callebaut AG signed an expression of support for the Protocol (listed here in the order of their signatures to the Protocol).

⁹³ Association of the Chocolate, Biscuits and Confectionery Industries of the European Union (COABISCO) and the European Cocoa Association (ECA).

⁹⁴ See Chatterjee 2001, *supra* note 80 (quoting CMA President Larry Graham).

⁹⁵ CMA, at <http://www.candyusa.org> (last visited Nov. 12, 2003).

⁹⁶ Joint Statement, Nov. 30, 2001, at http://www.candyusa.org/images/joint_statement.pdf (last visited Nov. 12, 2003).

for effective solutions that include improving overall labor standards and access to education.⁹⁷

The principal critique of the CIP was its narrow scope. The International Labor Rights Fund (ILRF), for example, faulted the CIP for failing to specify international minimum age or other core labor standards and for failing to ensure a fair price for farmers. ILRF also criticized the voluntary nature of the CIP, calling for a “system of mandatory reporting, monitoring, and certification through national and international law.”⁹⁸

In March 2002, U.S. chocolate industry representatives met in Côte d'Ivoire with government officials to build support for the CIP initiatives. In May 2002, the CMA signed a Memorandum of Cooperation with the members of the Broad Consultative Group to formalize the BCG structure.⁹⁹ The BCG comprises an Issues Forum, an Action Forum, and a Donor Advisory Council. Members nominate a BCG coordination team with equal industry and non-industry representation to carry out the BCG functions: (a) identify and evaluate issues through research and information exchange, and (b) recommend actions to address the worst forms of child labor and forced labor.

The international foundation envisioned in the CIP was established in July 2002 in Geneva, Switzerland as The International Cocoa Initiative—Working Towards Responsible Labor Standards for Cocoa Growing. The foundation is entrusted with: (a) supporting field projects; (b) acting as a clearinghouse for best practices; (c) conducting a joint research program; and (d) developing a means of monitoring and public reporting.

4. Information Gathering

After the cocoa industry mobilized to address the labor conditions in West Africa, the first task undertaken was a survey of conditions in the field. With the collaboration and financial support of the cocoa industry, an existing planned project by the International Institute for Tropical Agriculture (IITA), funded by the United States Agency for International Development and designed to teach West African cocoa farmers marketing and environment-friendly farming techniques, was redesigned to survey labor conditions on cocoa farms in West Africa. As part of the project, in February and March 2002, IITA surveyed cocoa farmers and workers from

⁹⁷ *Id.* See also Press Release, Child Labor Coalition, *Statement of Child Labor Coalition Regarding Child Labor in Cocoa Fields* (Dec. 3, 2001), available at <http://www.stopchildlabor.org/pressroom/childpr1201.html> (last visited Nov. 12, 2003).

⁹⁸ ILRF, *Statement on Industry Protocol Regarding Use of Child Labor in West African Cocoa Farms*, May 1, 2002 (on file with the author).

⁹⁹ Memorandum of Cooperation, May 1, 2002 (on file with the author).

1500 farm households in 250 Côte d'Ivoire villages.¹⁰⁰ In addition, IITA conducted community surveys in fifteen Côte d'Ivoire villages to collect qualitative information on child labor.¹⁰¹

The IITA surveys found three types of children under eighteen working on Côte d'Ivoire cocoa plantations: (a) family members; (b) permanent salaried workers; and (c) temporary workers with no family tie to the household. They also found that trafficking of children to Côte d'Ivoire had declined but not disappeared, and identified salaried child workers and child workers without family ties to the farming household as groups vulnerable to the worst forms of child labor. IITA focused also on hazardous work likely to threaten the health and safety of children.

IITA estimates that 625,000 children under eighteen work on cocoa farms in Côte d'Ivoire.¹⁰² The vast majority of these children (97%) are the farmer's family members. IITA estimates that family children account for 25% of all labor in cocoa producing households and that one third of Ivorian cocoa farms employ only family labor. IITA estimates that 20,600 child workers on Ivorian cocoa farms have no family relationship to the farmer.

According to IITA, the recruitment and employment of children from outside the family as permanent salaried workers is relatively uncommon.¹⁰³ Of the permanent salaried workers under eighteen surveyed, 59% were employed by Ivorian farmers and 41% by immigrant farmers. Farmers who employed children as permanent salaried workers had significantly larger farms and households than those who did not employ children. All the salaried child workers came from outside the Côte d'Ivoire cocoa-producing region: 59% from Burkina Faso, the remainder from other regions of Côte d'Ivoire. Eighty-eight percent had never attended school. Forty-one percent had been recruited by an intermediary—generally, an individual known personally by the worker. Almost 60% of the child workers encountered the intermediary within Côte d'Ivoire. None of those surveyed reported their parents being paid for them or their being taken against their will; all reported being informed in advance of the work to be done on cocoa farms and having agreed to leave home for the promise of a

¹⁰⁰ IITA interviewed 1500 producers, but only 64 salaried workers (37 adults and 17 children). INTERNATIONAL INSTITUTE OF TROPICAL AGRICULTURE, CHILD LABOR IN THE COCOA SECTOR OF WEST AFRICA: A SYNTHESIS OF FINDINGS IN CAMEROON, CÔTE D'IVOIRE, GHANA, AND NIGERIA (Aug. 2002) available at <http://www.iita.org/news/cocoa.pdf> (last visited Nov. 12, 2003) [hereinafter "IITA"].

¹⁰¹ IITA interviewed 22 producers, 12 adult and 27 child workers as part of the community surveys.

¹⁰² IITA, *supra* note 100, at 16.

¹⁰³ In Côte d'Ivoire, IITA estimated 5,120 salaried child workers, or 8% of the estimated 66,720 salaried workers.

better life. While more than 80% of the child workers reported being “satisfied” or “somewhat satisfied” with their current situation, one third stated they were not free to leave their place of employment. Côte d'Ivoire salaried child workers reported being paid less than adults while working the same number of hours — approximately six hours per day, six days a week.¹⁰⁴ Farmers generally provided lodging and meals for salaried child workers.

The IITA surveys encountered a number of unsalaried children with no family tie to the household working in some capacity on cocoa farms.¹⁰⁵ IITA estimates twice as many of these child workers on cocoa farms than salaried child workers. Seventy-six percent of these children had migrated to their current residence, either from elsewhere in Cote d'Ivoire (57%) or from another country (19%). Most farmers employing these children (89%) were Ivorians.

The work children perform on cocoa farms includes pesticide application, clearing underbrush with a machete, carrying heavy loads, and using a machete to open the cocoa pods. IITA estimates that more than 140,000 children in Côte d'Ivoire apply pesticides in the cocoa fields, half of them age fourteen or younger.¹⁰⁶ According to IITA, almost 60,000 children under fifteen are engaged in all cocoa-related tasks.

Of the children on cocoa farms with no family ties, 36% were enrolled in school as opposed to 51% of working family children. Children in cocoa-producing households have less access to education than non-working children overall.

According to IITA, the rapid decline of the price of cocoa created additional pressure on farmers to reduce costs. In West Africa, estimated average annual cocoa earnings per farmer are between \$30 and \$108.¹⁰⁷ Child workers between fifteen and eighteen years old earn about \$165 per year for plantation work in Côte d'Ivoire, according to one estimate.¹⁰⁸ With the decline of cocoa prices, farmers hired fewer workers, relying more heavily on family labor. Farmers have also invested less in their children's education.

Absolute poverty drives the supply of child slaves. According to the IITA:

¹⁰⁴ IITA, *supra* note 100, at 14.

¹⁰⁵ IITA estimates 12,000 children under eighteen assisting cocoa production on 9,000 Côte d'Ivoire farms.

¹⁰⁶ IITA, *supra* note 100, at 15.

¹⁰⁷ Estimates are for crop year 2000/01. IITA, *supra* note 100, at 21.

¹⁰⁸ Onishi, *supra* note 86, at 1.

The picture that emerges is of a sector with stagnant technology, low yields, and an increasing demand for unskilled workers trapped in a circle of poverty. Salaried child workers were most clearly trapped in a vicious circle. The majority of these children had never been to school and were earning subsistence wages, forced into this labor by economic circumstances. Most of these children are from the drier savanna areas of West Africa, where family livelihoods are inherently uncertain and households are forced into risk-reducing livelihood strategies, including sending adolescents to cocoa plantations to work.¹⁰⁹

CMA viewed the IITA study findings as confirmation of “the need to address the safety of children on cocoa farms and the economic well-being of cocoa farming families.”¹¹⁰

The IITA findings indicate that: (a) forced child labor in the Côte d'Ivoire cocoa sector affects tens of thousands of child workers; (b) many child workers perform the work voluntarily; (c) child trafficking is just as likely to occur within Côte d'Ivoire as from neighboring countries; and (d) child labor is employed mostly by Ivorians as opposed to immigrant farmers. Salaried child workers and child workers with no family tie to the farmer are the most vulnerable to the worst forms of child labor, but the family child workers on cocoa farms are also working in conditions detrimental to their health and welfare. The fact that 60,000 children under fourteen are performing all the tasks of cocoa production, independent of child trafficking and forced labor, is an issue that falls squarely within the mandate of the CIP.

E. Evaluating the Cocoa Industry Protocol

An analysis of the ICI requires more than examining its impact simply on the worst forms of child labor, which is the target of the initiative. It also requires assessing its impact on other initiatives that address social standards in the cocoa industry and on the business practices of individual companies in the industry as well.

1. The Worst Forms of Child Labor

Child trafficking and forced labor continue in the cocoa producing regions of West and Central Africa. The U.S. Department of State reports the ongoing trafficking of children into Côte d'Ivoire and estimates that 109,000 child laborers work in hazardous conditions on cocoa farms. Some of these children are forced or indentured workers, but seventy percent work on family farms or with their parents.¹¹¹

¹⁰⁹ IITA, *supra* note 100, at 22.

¹¹⁰ Press Release, CMA, *Global Chocolate, Cocoa Industry Responding to Challenges Outlined in Labour Practices Survey* (July 26, 2002), available at http://www.candyusa.org/Press/labour/cl_survey%20release.shtml (last visited Nov. 12, 2003).

¹¹¹ DOS 2002, *supra* note 4, at 187.

Increased international awareness of child trafficking, forced labor, and prohibited child labor in cocoa production has accelerated local government initiatives to combat these abuses in West Africa. In December 2001, the Economic Community of West African States (ECOWAS) adopted a Declaration and Plan of Action against Trafficking in Persons calling on member states to criminalize trafficking, protect and support victims, increase cooperation among border control agencies, establish national task forces, and ratify the principal international instruments on trafficking.¹¹² Côte d'Ivoire ratified both the ILO Minimum Age Convention¹¹³ and the ILO Convention on the Worst Forms of Child Labor¹¹⁴ on February 7, 2003. It is too early to measure the impact of the ICI. Civil unrest in Côte d'Ivoire has disrupted cocoa production and delayed indefinitely the launch in that country of the pilot programs envisioned in the CIP, although the cocoa industry reports some progress on programs to address labor issues in areas of relative stability.¹¹⁵ Neither independent monitoring nor public reporting on labor practices on West African cocoa farms were in place by May 2002, as originally envisioned in the CIP. In November 2002, the global cocoa industry announced a collaborative regional program to promote responsible labor practices on cocoa farms in Côte d'Ivoire, Cameroon, Ghana, and Nigeria.¹¹⁶ Pilot programs designed and managed by the ILO will address abusive child labor and forced labor through social protection, capacity building, child labor monitoring, knowledge dissemination and awareness raising. A parallel set of pilot programs managed through the Sustainable Tree Crops Program will seek to improve living standards for rural cocoa farming families.

Industry critics, while supporting the CIP as an important first step, argue that the initiative fails to address the underlying causes of child labor and exploitative working conditions. Global Exchange, for example, views the CIP as a "positive step" but argues that the industry initiatives "leave poverty untouched and make continued slavery a possibility because they don't insure fair wages for adult

¹¹² ECOWAS, Declaration on the Fight Against Trafficking in Persons (Dec. 12, 2001), UNICEF-INNOCENTI INSIGHT, *supra* note 46, at 3-4.

¹¹³ ILO C138, *supra* note 33.

¹¹⁴ ILO C182, *supra* note 3.

¹¹⁵ CMA, *Progress Report*, at <http://www.candyusa.org> (last visited Nov. 12, 2003).

¹¹⁶ Press Release, CMA, *Global Chocolate, Cocoa Industry, Partners Meet in Ghana to Launch Region-Wide Program to Promote Responsible Cocoa Labour Practices* (Nov. 21, 2002), at http://www.candyusa.org/Press/labour/labor_release_11_21.shtml (last visited Nov. 12, 2003).

workers.”¹¹⁷ There is no minimum wage under Ivorian law for informal or agricultural workers, who make up most of the Ivorian labor force.¹¹⁸

The CIP has not eliminated entirely the prospect of regulatory action. In May 2002, the International Labor Rights Fund (ILRF) petitioned the U.S. Customs Service to ban Côte d'Ivoire cocoa imports under United States trade law.¹¹⁹ ILRF argues that all cocoa from Côte d'Ivoire is suspect because “the problem of trafficked, or forced, labor is so endemic . . . that it is virtually certain that any given shipment contains product harvested under forced labor conditions.”¹²⁰ ILRF’s own investigation verified the continuing practice of trafficked child labor supplied by labor brokers to cocoa farmers during the cocoa harvest season. Working and payment agreements are generally made between the farm owner and the labor broker, and the children are not allowed to leave the farm until after the cocoa harvest. According to ILRF: “Child slaves are used on cocoa plantations all over [Cote d'Ivoire] without any observable programs to stop the practice. . . . Whatever the chocolate manufacturers claim to be doing about this, we cannot leave a problem as serious as child slavery to voluntary private efforts, particularly when there is a federal law on the books to combat it.”¹²¹

2. Impact on Fair Trade Certified Cocoa

The Fair Trade Certified™ program established to improve the standard of living for coffee farmers has been expanded to cocoa production.¹²² Fair Trade Certified™ cocoa is grown by eight cocoa cooperatives in Belize, Bolivia, Cameroon,

¹¹⁷ GLOBAL EXCHANGE, *supra* note 19.

¹¹⁸ DOS 2002, *supra* note 4, at 186.

¹¹⁹ Trade Act of 1930, *supra* note 77 (prohibiting United States imports of products created with “forced or indentured child labor”). Letter from Terry Collingsworth, ILRF Executive Director, to Robert C. Bonner, Commissioner of Customs, U.S. Customs Service (May 30, 2002) [hereinafter “Collingsworth-Bonner”], at <http://www.laborrights.org/projects/Chillan/cocoapetition.pdf> (last visited Nov. 12, 2003). *See also* Elizabeth Price, *Labor Group Demands US Ban on Imported Ivory Coast Cocoa*, DOW JONES, May 31, 2002, at <http://www.globalexchange.org/campaigns/fairtrade/cocoa/113.html> (last visited Nov. 12, 2003).

¹²⁰ Collingsworth-Bonner, *supra* note 119.

¹²¹ Price, *supra* note 119.

¹²² For the Fair Trade Certified™ program established in the coffee industry, see Case Study 2, *supra* at 61.

Costa Rica, Dominican Republic, Ecuador, Ghana, and Mexico.¹²³ There is no registered fair trade cocoa cooperative in Côte d'Ivoire. In 2001, of the eighty-nine million pounds of cocoa beans produced by registered fair trade farmers, only three million pounds received the fixed price of eighty cents per pound and were sold through Fair Trade Certified™ channels. The United Kingdom accounts for 35% of all Fair Trade Certified™ cocoa sales. Fair Trade Certified™ cocoa was sold in the United States for the first time in 2002.

The Fair Trade Labeling Organizations International (FLO), a consortium of seventeen national fair trade initiatives in Europe, Japan, and North America, inspects, audits, and certifies cocoa farmer cooperatives on an annual basis. To supply Fair Trade Certified™ cocoa, a cocoa grower must be a small farmer not dependent on hired labor and a member of a democratically organized farmer cooperative in which small farmers constitute a majority of the co-op's members. FLO standards require cocoa producer organizations to adhere to national law, prohibit discrimination within cooperatives, and prohibit any forced or child labor in accordance with ILO legal standards. The FLO also calls on producer organizations to meet the requirements of ILO Conventions "as far as possible" and "to take steps to improve working conditions and to ensure that . . . workers share the benefits of Fair Trade."¹²⁴ With the exception of the standard prohibiting child or forced labor, the FLO standards for cocoa production do not include labor standards. FLO standards for freedom of association and collective bargaining, conditions of employment, and occupational health and safety apply only to producer organizations in which a significant number of workers are employed.

In 2002, Global Exchange launched a campaign for Mars, Inc. to purchase at least five percent 5% of its cocoa from Fair Trade Certified™ cocoa farmers.¹²⁵

3. Impact on the Cocoa Industry

Reports of forced child labor and trafficking in the cocoa industry, strong international pressure, and the threat of regulatory action mobilized the international cocoa industry to design and launch a comprehensive voluntary initiative in collaboration with governments, intergovernmental organizations, and other representatives of civil society.

¹²³ TransFair USA, *Fair Trade Cocoa: FAQ*, at <http://www.transfairusa.org> (last visited Nov. 12, 2003).

¹²⁴ FAIRTRADE LABELING ORGANIZATIONS INTERNATIONAL, FAIRTRADE STANDARDS FOR COCOA 5 (Jan. 2003), available at <http://www.fairtrade.net/pdf/sp/english/cocoa.pdf> (last visited Nov. 12, 2003).

¹²⁵ Press Release, Global Exchange, *Over 200 Religious, Labor and Human Rights Groups Call on M&M/Mars to Offer Fair Trade Chocolate* (June 17, 2002) (on file with the author).

The CIP and the ICI incorporate many of the lessons learned from earlier private initiatives to address labor standards. Once the cocoa industry made the decision to acknowledge the issue and respond, industry participants sought the participation of multiple stakeholders from both inside and outside the industry in order to distribute responsibilities, costs, and risks and to gain access to a wide range of expertise. The objectives of the ICI and the labor standards at issue were defined by explicitly referencing widely accepted international legal standards codified in the ILO Convention on the Worst Forms of Child Labor.¹²⁶ ICI participants devoted resources first to gathering accurate information from the field on the nature and dimension of the violations. The CIP also emphasizes the role of the local government to address the violations and to improve labor standards. Finally, the Initiative participants set a clear timetable for each element of the program.

For the time being, the CIP and the ICI have averted regulatory action by cocoa importing countries. They have led to changed practices—or at least the articulation of greater responsibility—by several important participants in the global supply chain for chocolate.

a. Nestlé

Nestlé actively supports the CIP and the ICI. Nestlé's well-developed corporate social responsibility policies were already in place when allegations of labor abuses in the cocoa supply chain first emerged. Nestlé's Corporate Business Principles call for company compliance with the ILO Conventions on a Minimum Employment Age¹²⁷ and the Worst Forms of Child Labor,¹²⁸ and calls on "business partners and industry suppliers to apply the same standards."¹²⁹ Nestlé asserts that key contractual suppliers are audited, and non-compliance results in a demand from Nestlé that the supplier initiate corrective action. Nestlé also pledges in its code to engage in dialogue with nongovernmental organizations with a record of "constructive engagement and principled behaviour."

b. Hershey Food Corporation

Hershey Food Corporation expressed shock and "deep concern" in response to the June 2001 allegations of slave labor on West African cocoa farms.¹³⁰ A publicly traded United States company with enormous consumer brand value, Hershey was the

¹²⁶ ILO C182, *supra* note 3.

¹²⁷ ILO C138, *supra* note 33.

¹²⁸ ILO C182, *supra* note 3.

¹²⁹ NESTLÉ CORPORATE BUSINESS PRINCIPLES (2d ed., Mar. 2002), *available at* <http://www.nestle.com/pdf/english/CorporateBusinessPrinciples.pdf> (last visited Nov. 12, 2003).

¹³⁰ Fernandez, *supra* note 71, at A15.

major cocoa brand most vulnerable to revelations of exploitative labor conditions in its supply chain and least prepared to respond.¹³¹

c. Mars, Inc.

Mars, Inc., a privately held company, “strongly condemns” child trafficking and abusive labor practices in the growing of cocoa and has been an active participant in the CIP and the ICI.¹³² Like all of the major cocoa brands and processors, Mars argues that efforts to promote labor standards in cocoa production must not cause “unintended damage to the West African economy or to the livelihoods of responsible cocoa farmers.”

d. Cadbury Schweppes

Britain’s leading chocolate producer, Cadbury Schweppes, has been an active participant in the global cocoa industry’s West African initiatives. Cadbury, which buys most of its cocoa from Ghana, supports the goals of the CIP to ensure that all cocoa is grown without any abusive child labor or forced labor practices by July 2005. It also emphasizes that a “universal solution to address abusive working practices must not harm those families who are committing no wrong and depend on cocoa for their livelihood.”¹³³ Cadbury rejects the Fair Trade approach in favor of unregulated efforts to boost the economic livelihood of cocoa farmers and workers. Cadbury’s Human Rights and Ethical Trading Policy precludes the use of forced labor and ensures that children are employed “only under circumstances that protect them from physical risks and do not disrupt their education.”¹³⁴

¹³¹ Hershey adopted a code of conduct based on the Global Sullivan Principles in 2000. See <http://www.hersheysannualreport.com/2000/social.shtm> (last visited Nov. 12, 2003). The Sullivan Principles of Social Responsibility for businesses operating in apartheid South Africa were promulgated by Reverend Leon Sullivan in 1977 and relaunched in 1999 as the Global Sullivan Principles for Corporate Social Responsibility. See *Global Sullivan Principles of Social Responsibility*, at <http://globalsullivanprinciples.org/principles.htm> (last visited Nov. 12, 2003).

¹³² See Mars, Inc., *Mars Policy on Child Trafficking*, at http://www.mars.com/Policies/Mars_Policy_on_Child_Trafficking.asp (last visited Nov. 12, 2003).

¹³³ CADBURY SCHWEPES, CADBURY SCHWEPES AND THE GLOBAL COCOA ALLIANCE, at <http://www.cadburyschweppes.com/EN/EnvironmentSociety/EthicalTrading/CocoaWorkingPractices/> (last visited Nov. 12, 2003).

¹³⁴ CADBURY SCHWEPES, HUMAN RIGHTS AND ETHICAL TRADING POLICY (2000), at <http://www.cadburyschweppes.com/EN/EnvironmentSociety/EthicalTrading/Commitments/> (last visited Nov. 12, 2003); http://www.cadburyschweppes.com/cgi-bin/MsmGo.exe?grab_id=15&page_id=4591616&query=supplier+code&hiword=CODEC+CODED+CODES+SUPPLIED+SUPPLIERS+SUPPLIES+SUPPLY+code+supplier+ (last visited Nov. 12, 2003).

e. Barry Callebaut AG

Barry Callebaut AG condemns slavery and abusive child labor practices and supports the industry initiatives. The company states that “within our Group no slavery practices have been reported or will be tolerated and that [they] apply working standards that are in line with or above local standards.”¹³⁵ Barry Callebaut acknowledges, however, the difficulty of tracing farming practices:

In Ivory Coast, some 700,000 cocoa plantations across the country produce more than one million tons of cocoa beans. This is an average of 1.5 tons per farm every year. These small shipments are subsequently transported, stored and finally processed in large quantities. The cocoa bean supply chain encompasses vast numbers of people and organizations of many different sizes and varying aims.¹³⁶

The complexity of the cocoa supply chain in relation to slavery, child labor, and other dubious practices is thus highlighted.

f. Cargill

Cargill, which owns a processing facility in Côte d'Ivoire, did not put its name to the CIP even though it has participated in the International Cocoa Initiative. The company explains:

The real problem underlying the reports of child labor abuses is rural poverty. . . . Unfortunately, there is no overnight solution to rural poverty in the Ivory Coast, western Africa or elsewhere. Ultimately, one of the most effective ways to help the people of the Ivory Coast is by providing them with employment, regular wages and education. . . . Cargill is providing just such opportunities in the Ivory Coast. Cargill has built a state-of-the-art cocoa processing facility that adds value in country and provides direct and indirect employment for people of the Ivory Coast. Our employees work with local farmers to advise them about farming methods to improve their crops and their efficiency and to promote sustainable cocoa production. We have provided financial assistance to help farmers purchase fertilizer and other supplies. Where possible, Cargill purchases cocoa from farmer co-operatives to maximize the financial benefit to farmers by paying promptly, at market price and in cash.¹³⁷

¹³⁵ See Barry Callebaut website, at <http://www.barry-callebaut.com/Main/Frameset.asp?reference=01%2D01&lang=en&sess=253845598> (last visited Nov. 12, 2003).

¹³⁶ *Id.*

¹³⁷ See Cargill website, at http://www.cargill.com/today/01_cocoa_pos.htm (last visited Nov. 12, 2003).

In its statements concerning labor conditions in cocoa production, in other words, Cargill emphasizes the problem of rural poverty.

g. Archer Daniels Midland Company

Since signing the CIP, ADM has not publicly addressed labor issues in the cocoa supply chain.

F. Lessons from the Cocoa Industry's Experience

As with the previous case study, it is difficult to evaluate the effectiveness of the Cocoa Initiative. The Initiative began only with the signing of the Protocol in September 2001. Even by its own terms, the signatories never contemplated that a comprehensive program would be up and running before 2005.

Moreover, what limited progress was contemplated has been delayed by the political turbulence in the region. Within a year of the signing of the Protocol, the political situation in Côte d'Ivoire began to deteriorate, leading to the outbreak of civil war in September 2002. The war killed more than 3,000 people, displaced about one million, and disrupted both the cocoa industry and the world cocoa market.¹³⁸ Not surprisingly, these developments presented major obstacles to progress on the initiative.

Nevertheless, it is not too early to evaluate the process by which the Initiative has developed and to draw lessons from the experience.

1. PVIs to enforce standards in commodity supply chains face greater obstacles than similar initiatives for manufactured products

The experience of the cocoa sector in Africa parallels the experience of the coffee sector in Central America. Codes of conduct for suppliers who, with proper implementation, monitoring, and enforcement, can establish minimum labor standards for workers in the manufacturing sector are even more difficult to implement effectively in the agricultural sector. The diffusion and complexity of the cocoa supply chain, the absence of direct relationships between producers and consumers, the commodity price volatility of cocoa, and the spike in demand for seasonal labor at harvest time are obstacles to effective standard-setting. Labor certification and monitoring is unknown in most agricultural supply chains.

Efforts by the cocoa industry to improve conditions by linking labor standards and quality improvements are one attempt to overcome these obstacles. Ideally, voluntary labor standards should also promote market rationalization, alleviating the fluctuations in cocoa production.

But efforts by individual companies to date have had little measurable impact on labor standards. National regulation and enforcement of local laws in a manner

¹³⁸ See, e.g., DOS 2002, *supra* note 4, at 186.

that is consistent with international labor standards remain the most effective tools to eliminate child labor, ensure freedom of association, and enforce acceptable working conditions.

2. Geographic concentration of supply chain facilitated the cocoa PVI

Like the soccer ball project in Pakistan and the toy PVI in China, the geographic concentration of the global cocoa supply chain made launching the Cocoa PVI feasible. Côte d'Ivoire produces approximately 40% of the world's trade in cocoa, and was quickly identified as the primary sourcing market at risk for forced child labor. The global cocoa industry made the logical strategic decision to launch its program in that country, though it has publicly declared that the initiative seeks to cover all cocoa sourcing markets. Even if the program never reaches other sourcing markets, implementing it effectively in Côte d'Ivoire and its neighbors will achieve significant improvements in labor standards in cocoa production.

To be sure, the obstacles facing the industry in Côte d'Ivoire are substantial. But the benefits of launching a program in one sourcing market, focusing primarily on one specific issue and with one set of national labor standards, are tremendous. These cocoa PVIs have limited the challenges it faces in identifying qualified monitors, training them to local conditions and local standards, and building bridges to qualified partners.

3. Consumer demand for higher standards is limited

Though public scrutiny was the spark for industry action, the experience of the Cocoa Initiative suggests that industry responded much more to the threat of government intervention than it did to market pressure. Indeed, efforts to create consumer demand for "fair trade" chocolate has achieved even less market success than parallel efforts in the coffee industry. Furthermore, what benefits have accrued have gone to a relatively small number of cocoa farmers and consequently has had only limited impact on labor conditions in cocoa production. While demand for "fair trade" production of cocoa, like "fair trade" coffee, is growing, it is unlikely any time soon to reach the point where it will account for a substantial percentage of worldwide cocoa production.

4. Chocolate brands are the most effective leverage point to push for PVIs in the cocoa industry

This lesson may seem somewhat paradoxical in light of the preceding conclusion: if market forces can play only a limited role in raising labor standards in the cocoa supply chain, why should the role of major chocolate brands be so valuable in realizing improvements? The answer reveals the important role the brands play in the cocoa supply chain. First, even if the direct impact of consumer pressure on sales and profits is limited, the multinational corporations engaged in cocoa trade appear to value their public reputations (and the premium such positive reputations often bring in the capital markets). Moreover, even if the threat from consumer action may be limited, the challenge presented by government intervention was, in this case,

perceived as serious. Consequently, the brands had an incentive to address the issue even if its direct impact on their sales appeared small.

Perhaps most importantly, the case demonstrates that chocolate brands, like the coffee brands, capture most of the value created in the agricultural supply chain. Any action that threatens that supply chain imposes the greatest relative burden on the brands, not the relatively anonymous suppliers. Consequently, the relative risk of the brands may be the greatest of any segment of the chocolate supply chain. Influencing the assessment of those risks may be the most effective mechanism to alter supply chain practices.

5. Leadership from the major chocolate brands has the potential to define and enforce international legal standards

Multinational companies involved in the cocoa trade are even less prepared for action than their coffee counterparts. While many of the companies in cocoa trade are involved in the coffee sector (Kraft, Nestlé, Proctor & Gamble, and Sara Lee), the cocoa industry did not include an industry leader that had significant experience working closely with supply chain partners on labor issues in agriculture. No company has yet emerged publicly as the leader of the Cocoa Initiative, driving the industry to implement its commitments.

Nevertheless, the fact that a few large companies dominate the global cocoa trade created a natural opportunity for collaborative action. The major chocolate brands represent substantial leverage within the industry, leverage that could be used to promote government policies that stabilize cocoa prices and enforce internationally-recognized labor standards or to lead collaborative voluntary standard-setting efforts aimed at cocoa suppliers.

6. Partnerships with expert organizations are essential for private regulatory initiatives to succeed

The Cocoa Initiative also demonstrates the need for effective partnerships between the private sector and civil society organizations to achieve sustainable change in business practices in developing countries. Just as the Sialkot Project could not have succeeded without the expertise of the ILO, UNICEF, and SCF the Cocoa Initiative has relied on AID, Free the Children, and other organizations as partners, collaborators and resources.

These partnerships serve several purposes. First, they reinforce the credibility of the initiative. The involvement not only of AID, but also of independent NGOs in the design and oversight of the Protocol, has helped the cocoa industry overcome skepticism about the seriousness of its efforts. It also has brought financial support to the Initiative from the U.S. government that otherwise might not have been present. Finally, the network of NGO partners has helped the Initiative identify resources to perform field research and training that otherwise it might not have been

able to locate. Indeed, NGO involvement undoubtedly helped persuade skeptical groups to participate.

7. Strategic government intervention can enhance the effectiveness of a PVI

The experience of the Cocoa Initiative demonstrates the pivotal role government can play in promoting PVIs to address labor standards. U.S. government engagement was critical to the launch of the PVI. Continued government interest and support has been essential to its progress. Greater involvement by governments in cocoa producing countries would also improve the capacity of the private sector to assure respect for worker rights.

Consumer pressure was insufficient to spark industry collaboration to address child labor in the cocoa supply chain. “Fair trade” chocolate has been in Europe for many years, but the market for such products proved insufficient to motivate the industry to examine its global sourcing practices in order to attract greater consumer interest. Nor did publicity about the practices directly result in industry action.

Unquestionably, the critical development that transformed industry concern into collaborative action was the introduction of legislation in the U.S. Congress to require chocolate to bear labels based on the existence of child labor in cocoa sourcing markets.¹³⁹ The industry was galvanized into reaching agreement with its critics and to identifying other partners only when faced with the prospect of government intervention.

At the same time, the continued support of the U.S. government has proven invaluable in maintaining the Initiative. AID was critical in identifying a research organization to investigate the scope of child labor, including forced labor, in cocoa production in Côte d'Ivoire and in funding the research. AID's role also helped legitimate the findings of the research, which offered ammunition to both the industry and its critics.

More broadly, the challenge facing private attempts to enforce minimum labor standards in the cultivation of cocoa illustrate the need for government action. The most effects can be achieved by cocoa producing countries enforcing their own labor laws. Efforts to build local enforcement capacity may be the most efficient way to improve labor standards for coffee workers. Moreover, government enforcement eliminates the market segregation that accompanies private voluntary efforts to promote labor standards.

¹³⁹ See note 80, *supra*.

APPRAISAL AND RECOMMENDATIONS

Codes of conduct and other private voluntary initiative (PVI) will never eliminate violations of international worker rights in the global economy. Corporate altruism is clearly insufficient to achieve wide ranging or costly improvements in labor conditions. Market forces are similarly inadequate. Standards are insufficiently developed, market information is neither clear nor complete, and market participants appear not to make choices that consistently advance respect for worker rights.

As global economic integration proceeds, stronger mechanisms must be developed to address the social fallout of ever-greater flows of trade and investment. Over time, the attention that national governments and the international community devote to addressing this fallout, including threats to worker rights, will only increase. Ensuring that pervasive violations of labor standards do not become a source of competitive advantage in global markets will be both challenging and contentious. The line between protecting workers from exploitation and protecting markets from competition will not be easy to draw.

At the same time, PVIs offer a compelling vehicle to assist in the development of a global jurisprudence on labor standards. As experiments, they reveal what works and what does not—the limits to constructive collaboration between industry competitors and the point at which government intervention becomes critical. They sensitize the private sector to its human rights obligations and propose a division of responsibilities between private actors and governments. They highlight the policy tradeoffs that are inherent in having economic actors address social problems. They reveal a potential “glide path” to the development of bilateral or multilateral mechanisms to protect workers from the failures of national law enforcement or the excesses of globalization. And, at the same time, they can contribute to the broader objectives of U.S. foreign policy, particularly human rights policy, and to policies specifically supporting global economic integration.

U.S. policy should do more to integrate PVIs into an effective human rights policy regarding globalization. The United States should help lay the foundation for PVIs, by defining the essential elements of effective programs and bringing potential partners together. It should serve as an honest broker, facilitating credible evaluations of the performance and effectiveness of PVIs and offering lessons for future initiatives. It should create incentives for companies and industries to develop and participate in such programs. Finally, it should help construct the business case for participating in them. It can integrate PVIs in its globalization policies—from bilateral trade and investment agreements to international economic policies.

A. Evaluating the Effectiveness of PVIs

Evaluating the effectiveness of PVIs is not a straightforward exercise. Certainly, one measure consists of changes in the labor practices of global supply chains and improvement in workplace conditions. But focusing only on the direct benefits of a PVI fails to capture the full range of its impact on the global economy.

A second set of measures would examine a PVI's impact on emerging markets. To what extent does the development and implementation of PVIs promote civil society and respect for the rule of law? PVIs that engage local businesses, NGOs, and government officials to address labor violations and their root causes might be considered effective even if the improvements for the individual workers targeted are small.

A third set of measures would evaluate the changes a PVI brings to global corporations. The "ripple effects" of a small program on a global corporation might lead to significant changes in sourcing practices, including deeper examination of supply chains, greater scrutiny of potential suppliers, and improved training for supply chain managers. At the very least, sensitizing global corporations to emerging responsibilities under international law is an investment in the possibility of changes in policies and practices.

A final set of measures would evaluate the impact a PVI has on the perception of U.S. commitment to integrate respect for human rights into the emerging global economy. Effective PVIs will be recognized as an element of U.S. policy, not as a substitute for government action. This is a particular challenge in the current political environment, since PVIs are presently viewed with some suspicion by trade unions and other labor and human rights advocates in the United States and Europe. In this view, the business community considers a PVI "effective" if it quells a public relations crisis and forestalls government regulatory intervention. PVIs thus reinforce public cynicism about the influence of the business community on U.S. foreign policy. From a political perspective, how successfully such cynicism can be overcome will dictate the effectiveness of PVIs.

By almost any of these criteria of evaluation, each of the initiatives examined in this report helped to advance previously articulated U.S. human rights policy objectives. In the narrowest sense, each of them certainly contributed, to some extent, to improvements in workplace conditions and elevating workplace standards. The codes of conduct and PVIs that accompanied them may have provided some public relations benefit to the organizers and participants, but they also realized positive results on the ground.

To be sure, it is extraordinarily difficult, if not impossible to measure these improvements. Research did not permit quantification with any confidence of, for example, precisely how many child workers in Pakistan were removed from stitching soccer balls or how many Chinese toy workers received legally required minimum wages as a result of the private initiatives pursued by major toy retailers and brands.

These measurement challenges are even greater when attempting to assess the impact of PVIs on labor conditions in the agricultural sector. The vast numbers of farms producing coffee and cocoa make it extremely difficult to know with any degree of certainty the extent to which the PVIs in those industries have changed labor standards.

In each of the cases examined, data on the scope of labor violations before the creation of the PVI was either unavailable or subject to considerable dispute. The reports of critics are generally anecdotal and incomplete. Research performed by industry, no matter how well intentioned, is routinely challenged for its inherent conflicts of interest. Even credible third party research is subject to dispute, since it generally begins long after media reports of violations have raised public interest and sensitized local business and government officials to the dangers of greater scrutiny. As a result, the problems may have been pushed further underground by the time researchers arrive. Without accurate baseline data, measuring changes becomes extremely difficult.

1. Direct and Indirect Benefits

a. Direct Benefits

The time, resources, and effort that are associated with PVIs clearly achieve some improvements on labor standards in the supply chains of the industries examined. In Pakistan, approximately \$5 million were concentrated on improving conditions for children in the Sialkot District. Starbucks' promise to guarantee premium payments to coffee growers who meet the sustainability criteria set forth in its Preferred Supplier Program has undoubtedly benefited farm owners and workers alike. The toy industry program in China is expected to command significant resources from brands, retailers, and manufacturers in China and other toy sourcing markets. And, between AID, ILO and the chocolate industry, over \$6 million will be devoted to addressing forced child labor and child trafficking problems in the cocoa industry.

In each of the countries and industries examined, industry's sharpest critics have acknowledged—even if only grudgingly—that the PVIs had or would realize some improvements in labor practices. Once a PVI was announced, the debate shifted to the extent of the improvements, i.e., their adequacy or comprehensiveness. Critics of the Sialkot project argued that child labor was not eliminated. Starbucks' critics complain that the premium the company will pay is insufficient. Labor activists complain that PVIs can never adequately protect toy workers in China so long as that country does not respect the right of workers to organize and bargain collectively. Cocoa campaigners complain that the research on child slaves undercounted the true figure. In other words, there no longer was any debate over the direction of change.

b. Indirect Benefits

In fact, the potential benefits of the PVIs examined extend far beyond specific improvements in labor conditions in particular workplaces or respect for worker rights

in specific industries. If implemented seriously and effectively, they have the potential to advance numerous other U.S. foreign policy objectives, particularly those relating to the advancement and promotion of human rights.

First, they force participants, particularly multinational corporations, to better understand their global supply chains and sourcing practices. In each of the cases examined, the attention paid to alleged labor violations forced companies to examine the impact of their global sourcing operations and their relationships with local suppliers on conditions in factories and on farms.

Second, PVIs advance the notion that corporations have responsibilities above and beyond the historic conceptions of private actors under international law. They demonstrate that international law applies to private corporations, just as it applies to other non-state actors.

Third, they can support the development of strong institutions of civil society. By including partnerships between the private sector and nongovernmental organizations, PVIs can strengthen both communities. They can improve management practices; requiring local producers to understand their obligations under local and international law, they can promote the diffusion of best practices from well-developed sourcing markets into emerging markets. Also, they can provide opportunities for local nongovernmental organizations to work in partnership with the private sector, opening lines of communication that can extend to other issues of common concern.

Fourth, PVIs serve as experiments to test the limits of what voluntary action can achieve.

Fifth, they serve as experiments to test the meaning of international legal standards and their application to the private sector.

Sixth, PVIs can enhance the ability of national governments to enforce respect for their own laws, as well as international legal standards.

Of course, there is no assurance that any PVI will realize these benefits. Indeed, the risk is great that, without thoughtful design and implementation, many of the greatest opportunities will be missed, either from ignorance, poor design, or shortsightedness.

The real question is not whether PVIs generate any improvements in workplace conditions. The real question is whether or not they are cost effective or efficient.

2. Predictors of Effectiveness

a. Labor Violations and Economic Competitiveness

The interplay of labor violations and business competitiveness is a critical predictor of the success of PVIs. Improvements in workplace conditions or business

practices that do not require significant increases in production costs (or that might, in fact, yield productivity gains) are most likely to be effectively implemented through a PVI.

The analysis reveals that worker rights violations result from a number of distinct sources. The classic argument is that these violations are simply motivated by greed and self-interest. Local managers believe that they can gain a competitive advantage in the marketplace or capture a greater profit for their enterprises if they violate domestic and international legal requirements and standards. Similarly, global corporations seeking the lowest production cost will deliberately seek out markets and business partners that achieve these results by exploiting workers.

While self-interest is obviously a driving force in economic activity, the research suggests that this line of causation is too simplistic. All worker rights violations do not provide economic benefits to local managers or their international customers. Other factors are clearly at work.

In many cases, the violations result from ignorance—ignorance of standards and of best practice. Local business managers and their international customers as well may not understand the business practices of their supply chain partners or realize that they violate international legal standards—or even local law since such laws are rarely enforced. Though some Pakistani exporters of soccer balls claimed that they were not aware that children were stitching soccer balls, many more argued that this practice did not violate local law or international legal standards. Certainly, their international customers were less likely to be aware of the practice, even though perhaps they should have been.

In other cases, the violations result from incompetence. In these situations, management may be aware that their practices violate local or international legal standards, but do not have the expertise or sophistication to know how to comply with them. In the apparel industry, for example, manufacturers may not have payroll systems that ensure that piece-rate workers receive the minimum wages required by law.

Certainly, there are no bright line divisions between these categories. Ignorance can be willful, which was the allegation against Pakistani soccer ball manufacturers and their international customers. Indeed, that is the charge frequently leveled when violations are discovered in the supply chains of multinational corporations. Still, the failure to build competence to prevent worker rights violations may result from simple ignorance or negligence.

The distinctions do, however, suggest the direction for predictions of the effectiveness of PVIs. PVIs are most likely to succeed when they seek to address violations of worker rights in supply chains that result from ignorance or incompetence. They are less likely to succeed when they seek to correct violations that will impose significant or even imagined new costs or competitive disadvantages on the supply chain.

One immediate implication is that programs with a narrow focus are more likely to succeed than those that seek to address a broad range of worker rights violations. Standards are much easier to set when a program's focus is narrow, and support is easier to generate when the goals of an initiative are clear and well-defined.¹ Also, determining the underlying causes of the violations will be more straightforward in such a setting, as will evaluating whether correcting the violation will threaten economic competitiveness of the enterprise.

It is no accident that the most effective PVIs have targeted allegations of child labor in supply chains, in both manufactured and agricultural products. Certainly

¹ The labor movement has argued forcefully against narrowing the focus of PVIs, claiming with some justification that programs will address the most visible or publicized worker rights violations and ignore more fundamental problems that are at least as important but less well understood. For example, the labor movement withdrew from the Apparel Industry Partnership (AIP) when it did not include a provision calling on global apparel brands to ensure that workers in their supply chains were paid a living wage. *See, e.g.,* Steven Greenhouse, *Plan to Curtail Sweatshops Rejected by Union*, N.Y. Times, Nov. 5, 1998, at A20 (stating that “[t]he union's biggest criticism is the accord's failure to require that companies pay a living wage”); UNITE Statement on the White House Apparel Industry Partnership, at http://www.sweatshopwatch.org/swatch/headlines/1998/aip_nov98.html#UNITE (last visited Nov. 12, 2003) (stating that “UNITE cannot continue to participate in the Apparel Industry Partnership on the basis of the agreement recently reached by some company and NGO members of the Partnership. [The agreement] takes no meaningful step toward a living wage”). The unions then challenged the legitimacy of the PVI claiming that it was controlled by the corporations involved. *See e.g.,* National Labor Committee, at <http://www.nlenet.org/campaigns/archive/LIZ/DoallFeb2000.shtml> (last visited Nov. 12, 2003) (“The Fair Labor Association (FLA) is a White House-backed factory monitoring initiative that has been widely criticized for the degree of corporate control . . .”).

The analysis presented here recognizes the limitation of PVIs identified by the trade union movement, but reaches a different strategic conclusion. The best should not be the enemy of the good and the inability of PVIs to correct all labor violations should not discourage them from correcting some. It is worth noting that the Apparel Industry Partnership, which was launched in a White House Rose Garden ceremony in 1996 to address numerous worker rights violations in apparel supply chains, took more than four years to begin a pilot project of monitoring standards acceptable to participants and three more years before it issued its first “annual report” on June 4, 2003. Regarding the launch date for the Partnership, see <http://www.itcilo.it/english/actrav/telearn/global/ilo/guide/apparell.htm> (last visited Oct. 21, 2003). For information on the start of monitoring, see <http://216.239.53.104/search?q=cache:AtR9H6M2oKsJ:www.fairlabor.org/docs/licensee-intro.pdf+%22fair+labor+association%22+created&hl=en&ie=UTF-8> (last visited Nov. 12, 2003). For the first public report, see <http://www.fairlabor.org/all/news/> (last visited Nov. 12, 2003). The Pakistan and Côte d’Ivoire programs, in contrast, each took less than a year to get off the ground. Moreover, the experience of the Pakistan project and a similar program in Bangladesh to address child labor in the garment export industry indicates that once a PVI has been established to address a narrow set of worker rights violations, participants may seek to build on the success by seeking to expand the program’s scope.

these allegations generate the greatest public interest and media attention, and the experiences of the soccer ball and chocolate industries are illustrative. The potential damage to brand equity and corporate reputation from child labor creates a powerful incentive for companies to address these allegations.

At the same time, the analysis reveals that child labor offers very little economic benefit to multinational corporations or their global supply chains. With rare exceptions, the supply of unskilled labor is more than adequate to meet the private sector's demands in each of the industries and regions examined. Indeed, in the case of the soccer ball industry, there was no clear benefit at all, since payments were made on the basis of the satisfactory stitching of soccer balls, not on the age of the stitcher. In none of the industries examined did the economic benefits of child work (or child labor) come close to the potential risks. Similarly, the economic benefits of child labor in coffee production appear so small as to give local farmers, much less their international customers, little incentive to seek out children to perform this work.

Non-compliance with basic health and safety standards may also offer little economic benefit to global supply chains. Respect for these legal standards may simply require modest changes in management practice rather than any significant economic investment or increased operating costs. As the examination of the toy study reveals, and the experience of PVIs in the apparel and footwear industries confirms, many basic health and safety standards are fairly easy to achieve at little or no cost. These include worker safety training, provision of potable water, clean bathrooms, proper storage of chemicals, improved access to emergency exits, and evacuation training

At the other extreme, where violations of worker rights are perceived as generating production benefits—by reducing costs or increasing the speed or reliability of product delivery, for example—PVIs are less likely to succeed. At the time of the soccer ball controversy, the international labor movement persuaded FIFA to endorse a code of conduct for the production of soccer balls that included many issues beyond that of the child labor that had been the focus of public outcry. Local manufacturers (and their international customers) perceived that many of the other labor provisions contained in the code presented real challenges to the cost structure of soccer ball production. These included provisions calling for compliance with international legal standards for freedom of association and collective bargaining. Perhaps not surprisingly, the final program covered none of these significant worker rights issues.

The toy industry initiative offers similar examples. An examination of the protocols used to monitor factory compliance reveals considerable attention paid to standards for the protection of worker health and safety.

Between these two extremes, the connection between business competitiveness and worker rights violations is, however, not nearly so clear or direct as worker rights

activists or business executives would sometimes have it. It may seem obvious, for example, that management's refusal to pay overtime wages would reduce the costs of production in labor-intensive industries. However, a growing body of anecdotal evidence suggests that such a policy might be shortsighted. Over the longer term, the consequences might include lower morale, greater absenteeism and employee turnover, as well as a greater likelihood of labor unrest and collective action, all of which might damage the long-run competitiveness of a business enterprise.

The same is true for numerous other worker rights violations that have been identified in global supply chains, such as discrimination, excessive overtime, harassment and abuse of employees, failure to respect legal wage minimums or benefit requirements. In each of these areas, anecdotal evidence suggests that the belief that such violations achieve some economic benefit for the enterprise is misplaced.

To date, this anecdotal evidence has not been accompanied by rigorous academic or business research. It remains somewhat speculative and, if current practice is any guide, generally unpersuasive to business owners and managers. Additional research to assess both the relationship between worker rights violations and economic cost or benefit in particular industries and sourcing markets would identify those violations that can be addressed without placing businesses that participate in PVIs at a disadvantage compared to their competitors who do not.

Research should seek also to establish how addressing worker rights violations in supply chains might actually achieve greater productivity and other economic benefits. Just as the examination of the supply chains of soccer balls and cocoa revealed previously unrecognized risks of child labor, they also revealed previously unrecognized opportunities for Pakistani and Ivorian manufacturers and their global customers. Anecdotal evidence from Pakistan suggests that concentrating production in wholly owned stitching centers gave manufacturers much greater control over the stitching process. As a result, the quality of stitching increased, the number of rejected balls was reduced, and completed balls were more frequently shipped on schedule. The Starbucks program in Central America is premised on the expectation that preferred suppliers will grow more and higher quality coffee more reliably as well as more responsibly than farms that do not meet the company's sustainability standards.

The research also reveals that the greatest costs associated with PVIs often do not result from changing business practices to reduce or eliminate violations of worker rights, but rather from documenting achievements (including obtaining third party certification of compliance) or coping with the social fallout of assuring compliance. Even for the Pakistani soccer ball manufacturing community, the costs associated with establishing centralized stitching centers were not as great as the costs of independently monitoring those centers using ILO inspectors, or the costs of offering social protection programs to the children displaced from the industry and their families who needed to replace their income. The major costs of the Cocoa Project are devoted to monitoring compliance with its prohibition on forced child

labor and providing social programs for affected children, not on changing practices at cocoa farms.

b. Industrial Structure

Industrial structure plays a less recognized but similarly pivotal role in predicting the effectiveness of PVI. Individual companies acting alone face daunting challenges when attempting to influence the labor practices of their global supply chains. They generally do not have the market power to pressure their suppliers to change their practices. Similarly, unless they have sufficient scale to integrate their supply chain vertically, individual companies that make any significant investment in promoting improvements in their supply chains confront a “free rider” problem, with other companies in their industry benefiting from their efforts.

Both Nike and Reebok ultimately developed individual corporate responses to the allegations of child labor in Pakistan’s soccer ball industry. In each case, the companies agreed to concentrate their business relationships with a single supplier, and required that supplier to integrate its stitching operations vertically. Nevertheless, both companies were strong supporters of the collaborative industry initiative. This was no doubt due in part to their desire to protect the reputation of Pakistan as a sourcing market for soccer balls, since the taint of the allegations threatened to make it impossible for any sporting goods company to source balls there. In addition, the companies perceived some competitive value in forcing their competitors, no matter how small, to meet the same social standards in their supply chains that they had declared for themselves.

Analysis of the cases reveals which elements of the industrial structure are likely to have the greatest impact on the effectiveness of PVI. Industries with more narrow and stable, more integrated, supply chains are most likely to achieve improvements in labor conditions from PVI. Similarly, the existence of a strong and committed industry leader (or group of leadership companies) is a critical factor in the development and success of industry initiatives. Companies in highly competitive industries, with no industry leader, or with an industry leader that has chosen not to participate, are likely to have the greatest difficulty establishing successful PVI.

(1) Geographic Concentration of the Production Markets

The geographic concentration of the production markets is an important predictor of the success of a PVI. At the time allegations arose over child labor in soccer ball production, Pakistan was the source of almost 75% of the world’s hand-stitched soccer balls each year. China is today the source of almost 75% of all toys imported into the United States. The Côte d’Ivoire is the source of more than 40% of the world’s cocoa production.

This concentration makes for a much easier development of a PVI. First, the standards can be much more tightly drawn, since local requirements play a much more important role in program development. Second, there is much less concern about spillover, since it is less likely that production will shift to other markets even if the

PVI results in modest increases in production costs. Third, it is easier to build partnerships to administer the program, since one set of local partners can effectively assist in managing the bulk of the program.

(2) *Narrowness of the Vendor Base*

The narrowness of the vendor base is another critical ingredient. In the soccer ball project, fewer than fifty Pakistani manufacturers produced virtually all hand-stitched soccer balls for sales to athletes. China's toy industry consists of over 2,500 factories. By contrast, the agricultural sector consists of a significant number of independent farms. There are thousands of cocoa and coffee farms in Côte d'Ivoire and Guatemala.

(3) *Degree of Vertical Integration*

The degree of vertical integration is also an important predictor of a PVI's success. The fewer business intermediaries between the alleged perpetrator of worker rights violations and the organizers of the PVI, the more likely the initiative will succeed. In the Pakistan project, the global sporting goods brands contracted directly with Pakistani manufacturers, who subcontracted stitching to intermediaries. By contrast, in the toy industry, toy retailers and brands often operate through a variety of agents and intermediaries to assist in production, marketing and distribution of product. This low level of integration in the industry presents significant challenges for brands that seek to influence labor practices in their supply chains. Without the clear support of the major brands and close coordination and cooperation among smaller industry participants, toy suppliers will have only limited incentives to take PVIs seriously.

(4) *Concentration of the Global Market*

The concentration of the global market is yet another key ingredient. The fewer major corporations who influence supply chains, the easier it should be to develop an effective PVI. In the soccer ball project, three major brands—Adidas, Nike, and Reebok—dominate global sales and had the greatest influence over the shape of programs to address child labor allegations in soccer ball production. In the cocoa industry, two companies control two thirds of all chocolate sales in the United States (Mars, Inc. and Hershey Foods); five dominate global sales (Nestlé, Mars, Inc., Hershey Foods, World's Finest Chocolate, Inc., and Britain's Cadbury Schweppes). Similarly, one might predict that the Starbucks initiative could influence the practices of the specialty coffee industry (a market distinct from the rest of the coffee industry), since it has such an important market position.

(5) *Degree of Overlap with Other Industries*

Another predictor of the effectiveness of PVIs is the degree of overlap with other industries. The more the targeted industries overlap with other industries that are not targeted for participation in the PVI, the less likely the PVI will succeed. In the Pakistan project, for example, it quickly became clear that Pakistani manufacturers participated in two separate soccer ball markets. One produced high quality hand-stitched soccer balls for athletic use. The other produced much lower quality balls—still hand-stitched—for

sale as toys or promotional items but not for use by serious athletes or in team play. The sporting goods brands had great influence over the former market, and virtually no influence over the latter. As a result of the program, these markets, which had overlapped, became separate markets.

Similarly, a PVI to address worker rights violations in coffee production must recognize that there are at least two critical sub-markets in the world coffee market: arabica and robusta. The dynamics of these markets are completely different and therefore different approaches must be developed to advance PVIs for each. The model offered by the Starbucks initiative has the potential to change supply chain practices in the arabica market, where demand threatens to exceed supply and customers see benefits in establishing close, long-term relationships with suppliers of high quality product. Such a model would not likely succeed in improving labor practices in the robusta market, a commodity market where price competition is particularly fierce.

(6) Leadership by a Major Competitor

Related to the concentration of power in the global market is the impact of leadership by a major competitor in the design or development of a PVI. In the soccer ball project, Reebok took the lead in promoting an industry solution. This was the result of a fortuitous set of circumstances. First, Reebok had been closely associated with the promotion of international human rights and had begun, in 1992, to move more aggressively to incorporate human rights considerations into its sourcing policies. At the same time, in 1995, when allegations surfaced in Pakistan, Peter Moore, a widely respected Reebok executive, was serving as President of the Soccer Industry Council of America, the trade group charged with advancing the interests of the U.S. soccer industry. The combination of his company's commitment and his leadership position enabled the industry to come together much more quickly than it might otherwise have done.

B. Integrating PVIs into U.S. Foreign Policy

To date, U.S. policymakers have approached PVIs with ambivalence. The U.S. government has never formally worked with a single company to address labor standards issues across its global supply chain because of the obvious competitive implications and concerns of favoritism. At the same time, the U.S. government has only rarely played a central role in creating or expanding industry initiatives. The Department of Labor in the Clinton Administration was the driving force behind the creation of the Apparel Industry Partnership in the summer of 1996, but the Administration's interest appeared to wane after the Presidential election and declined even more after the trade unions pulled out of the process. By the end of the Administration, the U.S. government's role was limited to financial support for the Fair Labor Association (FLA) that the partnership had created. The Department of Labor also provided funds to ILO's IPEC program to support the Pakistan Project, while the Agency for International Development has served as the lead government participant in developing and funding the Cocoa Project.

In the future, support for PVIs should not be the exclusive—or even primary—domain of the U.S. Department of Labor or AID. The potential impact of PVIs extends far beyond the workplace. They demonstrate the importance of the rule of law and promote respect for legal standards by workers, factory managers, and local government officials. They also promote civil society by reaching out to local partners, including nongovernmental organizations, universities, and private companies dedicated to social monitoring. They create a climate for political activity without violence, by providing a forum for the resolution of disputes. Such efforts have been recognized by the Department of State as critical for promoting democracy and human rights. More recently, the U.S. Trade Representative has described such activities as essential “capacity building,” a necessary prerequisite for effective trade negotiations and sustainable trade agreements.² Clearly, other parts of the Executive Branch must play a more prominent role in the development and implementation of a coherent policy toward PVIs.

Furthermore, U.S. government support for PVIs should not come exclusively or even primarily in the form of financial assistance. The U.S. government has helped fund several PVIs, either directly or through contributions to the ILO. Examples include Social Accountability 8000, the Fair Labor Association, the Program to Eliminate Child Labor in Soccer Ball Production in Pakistan, and the Cocoa Project. While financial support can be critical to the development of a PVI, other forms of U.S. support could have even greater impact.

U.S. policy should do more to integrate PVIs into an effective human rights policy surrounding globalization. The U.S. should help lay the foundation for PVIs, by defining the essential elements of effective programs and bringing potential partners together. It should serve as an honest broker, facilitating credible evaluations of the performance and effectiveness of PVIs and offering lessons for future initiatives. It should create incentives for companies and industries to develop and participate in such programs. Finally, it should help construct the business case for businesses to participate in them. It can integrate PVIs in its globalization policies, from bilateral trade and investment agreements to international economic policies.

1. “Setting the Stage” for PVIs

The case studies reveal that access to credible information is a critical prerequisite to the development of effective PVIs. Much of the delay in the development of PVIs involves disagreements over the collection and evaluation of data on supply chain practices. In the Pakistan experience, for example, over a year was lost as companies and their critics argued over the scope of the problem.

U.S. policy could play a meaningful role by supporting greater research into labor violations in global supply chains. To date, the research has focused on specific

² See e.g., “Trade Capacity Building” on the official website of the USTR, at <http://www.ustr.gov/new/tcb.htm> (last visited Nov. 12, 2003).

labor violations rather than on industries and supply chains. By placing the focus on global supply chains, research can educate, inform, and engage global companies in the process early. Research has effectively targeted low-wage, unskilled labor in the toy, cocoa, athletic footwear, sporting goods, and apparel industries.

Future research should examine labor and environmental practices in the electronics assembly and light manufacturing industries as well as in agricultural sectors other than coffee and cocoa. Certainly public interest in these issues suggests that a focus on consumer products industries will generate the media interest, but the focus should be on industries that rely on labor with minimal or no skills and that work in industries whose sourcing patterns and structure make them promising candidates for effective PVIs.

Research can also help the private sector determine the economic impact of improved labor standards compliance in its supply chains. By supporting the development of independent analysis to quantify the productivity gains or costs associated with labor standards compliance in specific industries, U.S. policy can help prepare the “business case” for successful PVIs.

2. Articulating Requirements for Government Support of PVIs

With more than twenty-five years of practice, including an explosion of programs over the past ten years, it is not surprising that PVIs take a wide range of forms and structures. They range from simple “aspirational” company statements to elaborately documented programs that involve many stakeholders, including rigorous independent inspections, and receive financial support from the government.

The United States should use its prestige and credibility to serve as an honest broker to endorse or “qualify” serious PVIs that address labor standards violations. The U.S. already performs this function through its decisions about which PVIs to support financially. By formalizing the minimum requirements a PVI must satisfy before it can receive official U.S. support, U.S. policy can exert an impact far beyond that realized by its purse strings. Moreover, the U.S. will be able to offer assistance to PVIs in new and creative forms.

One set of requirements must focus on the minimum acceptable labor standards a PVI seeks to achieve. At the very least, U.S. policy should insist that PVIs seek to promote compliance with local law (to the extent such law is consistent with international legal standards). Promoting private enforcement of such standards achieves many of the objectives of U.S. foreign policy, including promoting respect for the rule of law, described earlier.

Whether U.S. policy should insist that PVIs promote compliance with international legal standards where such standards are more stringent than local law is a more complicated question. The answer will depend on U.S. policy priorities relative to PVIs. Nevertheless, the more U.S. policy targets improving specific conditions for specific workers, the higher the minimum standards should be. But the

second- and third-order benefits of PVIs described earlier suggest that policymakers need to balance the immediate benefits to workers with the broader benefits to civil society of engaging the private sector in serious efforts to enforce even basic standards. Moreover, nothing prevents U.S. policy from “ratcheting up” its requirements for PVIs once the initial goals have been met,³ and there may be every reason to do so once the ancillary benefits have been triggered. The experience of the soccer ball and cocoa projects indicates that U.S. policy has been comfortable with PVIs that have a narrow focus and simultaneously insisted on the application of international law.

A second set of requirements for “qualifying” PVIs covers minimum standards for documenting performance. U.S. policy should not endorse PVIs that cannot demonstrate that they are taking meaningful steps to improve workplace conditions standards. The experience of PVIs suggests several possible approaches for doing so. Transparency is the vehicle most frequently adopted. By publicly reporting on its successes and failures, a PVI invites public accountability. Critics can review a PVI’s performance and independently verify if the achievements claimed have in fact been realized. The Pakistan Project and the Cocoa Project both have elements of transparency built in to their program design.

Other approaches, either in conjunction with public reporting or as an alternative to it, also can build credibility and legitimacy for PVIs. In general, these approaches reduce transparency in favor of independent review or oversight. The ongoing participation of individuals or organizations independent of industry, or which have criticized industry practices, serve as a proxy for rigorous public disclosure. So long as the independent participants are satisfied with the performance of the PVI, the program merits continued government support.

Additional requirements might be imposed on PVIs to achieve the broader foreign policy objectives that have been described earlier. A requirement of local partners will promote development of strong institutions of civil society in local sourcing markets. A requirement of outreach to local government authorities might help promote greater local law enforcement and improvement in the administration of local justice. Training requirements for supply chain partners and their workforces will also improve awareness of legal rights and responsibilities.

3. Facilitating the Establishment of Qualified PVIs

Constructing PVIs is not a core competency of the private sector. Identifying expertise in labor standards, designing labor monitoring programs, and establishing mechanisms to document program performance are not standard operating procedures

³ See Charles Sabel, Dara O’Rourke & Archon Fung, *Ratcheting Labor Standards: Regulation for Continuous Improvement in the Global Workplace* (Feb. 23, 2000), available at <http://www2.law.columbia.edu/sabel/papers/ratchPO.html> (last visited Nov. 12, 2003) (providing an interesting discussion of the concept of “ratcheting” labor standards).

for business organizations. They involve knowledge, skills, and relationships that generally are not found within senior management of global corporations.

In contrast, such activities are routine for public interest organizations and the public sector. The United States is ideally suited to facilitate the formation of PVIs. Through its funding of development activities in emerging markets and its reporting on labor conditions around the world, the U.S. government has relationships with local organizations and government officials in key sourcing markets. These contacts could prove invaluable for private sector organizations looking for partners to implement PVIs in key sourcing markets.

Similarly the U.S. government can serve as a bridge in the home countries of multinational companies, particularly for companies based in the United States. Policymakers can link nongovernmental organizations, academic institutions, and others to private companies and trade associations interested in building their capacity to develop, implement, and oversee PVIs.

Finally, the U.S. can pursue policies to promote the transformation of “best practices” of industry leaders into qualified PVIs covering entire industries. This might be an approach that U.S. policy might take, for example, to diffuse the Starbucks “preferred supplier” program to reach the broader specialty coffee market.

4. Providing Incentives for Corporate Participation in PVIs

The ambivalence of U.S. policy towards PVIs has limited the U.S. government’s ability to encourage the private sector to take them seriously. Clear recognition of the role that PVIs can play to advance U.S. foreign policy objectives—both to protect worker rights in the global economy and to promote respect for human rights and respect for the rule of law in emerging economies—opens up numerous opportunities to leverage the power of the U.S. government to encourage companies to become active participants of PVIs.

The range of incentives the U.S. can offer to companies that participate in PVIs is significant, ranging from creating new markets and business opportunities to lowering the costs of capital. Implementing many of these initiatives would not require authorizing legislation and could be easily implementing by Executive Order. They could include:

- policies to encourage—or require—federal government procurement of products produced by companies that participate in qualified PVIs;
- policies to provide favored access on trade missions or related government-sponsored programs for companies that participate in qualified PVIs; and
- policies that persuade international financial institutions (IFIs) to require private sector participants in IFI-funded projects to participate in qualified PVIs as a condition financing.

U.S. policy should seek also to provide protection to companies that participate in PVIs from lawsuits based on allegations of human rights abuses. A growing number of companies have faced legal challenges under the Alien Tort Claims Act⁴ based on allegations of forced labor or other violations of international law in their global supply chains. Creating a “safe harbor” from such lawsuits for companies that successfully participate in “qualified” PVIs would serve as a powerful incentive for companies to join such initiative.

⁴ 28 U.S.C. § 1350. For a discussion of the elements of a policy framework of “safe harbors” for good-faith PVIs, see Elliot Schrage, *Judging Corporate Accountability in the Global Economy*, in 42 COLUM. J. TRANSNAT’L L. 153 (2003).

Appendix

The University of Iowa Center for Human Rights (UICHR) treats human rights not as a corpus of fixed thought and action but as a set of assumptions and choices that are open to constant rethinking because of ever evolving ideas, conditions, and needs. In this spirit, it invited the author of this report to allow his observations and conclusions to be subjected to the scrutiny of persons immediately associated with the UICHR and to allow their confirming and/or dissenting views to be appended to this report in advance of its delivery to the U.S. Department of State. Mr. Schrage graciously accepted this invitation. Two members of the UICHR family—one a member of its Executive Council, the other a member of its Society of Center Fellows—took the opportunity to submit written comments. These comments follow.

Comments of Professor Lon D. Moeller, Clinical Associate Professor of Management and Organizations, Henry B. Tippie College of Business, The University of Iowa. Professor Moeller, a member of the UICHR's Executive Council, chaired the university committee that drafted the first University of Iowa licensee code of conduct. He is presently the University's representative to the Worker Rights Consortium, headquartered in Washington, DC.

1. Report's Introduction

A. Codes of Conduct in Historical Context

The Sullivan and MacBride Principles demonstrated marked contrasts to the then-prevalent school of corporate responsibility based on the writings of economist Milton Friedman. Friedman maintained that “there is one and only one social responsibility of business—to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud.”¹ The Friedman view has been criticized by both scholars and those engaged in business.² Today, companies are more cognizant of emphasizing their labor and manufacturing practices in codes of conduct, e.g., Mattel's

¹ MILTON FRIEDMAN, CAPITALISM AND FREEDOM 133 (1962). See also, Milton Friedman, *The Social Responsibility of Business Is to Increase Its Profits*, N.Y. TIMES MAG. (Sept. 13, 2003) at 32-33, 122-126.

² See Marylyn Carrigan, *POSIT-ive and Negative Aspects of the Social Marketing Concept: Stakeholder Conflicts for the Tobacco Industry*, 11 J. MARKETING MGMT. 469 (1995).

Global Manufacturing Principles³ and the Levi Strauss & Company Global Sourcing and Operating Guidelines.⁴ The Sullivan Principles have likewise been revised to keep up with the transformation of codes of conduct mentioned in the introduction to this report.⁵

B. The Globalization of International Trade and Investment

An interesting question is what exactly is meant by the term “globalization”? Generally speaking, globalization involves a marketplace where national borders matter very little. Globalization has been defined to mean “a process whereby producers and investors increasingly behave as if the world economy consisted of a single market and production area with regional or national subsectors, rather than a set of national economies linked by trade and investment flows.”⁶ The need for some regulation of the global marketplace was reflected in Pope John Paul’s comments on World Peace Day, January 1, 1999:

The rapid advance towards the globalisation of economic and financial systems also illustrates the urgent need to establish who is responsible for guaranteeing the global common good and the exercise of economic and social rights. The free market by itself cannot do this because in fact there are many human needs which have no place in the market.⁷

C. Pressures for Corporate Accountability; Market-Based Pressures; Judicial/Litigative Pressures

The pressures for corporate accountability reflected in this section point toward a concept of “corporate citizenship.” Windsor suggests that “[a] multinational

³ See http://www.mattel.com/about_us/Corp_Responsibility/cr_global.asp (last visited Nov. 19, 2003).

⁴ See <http://www.levistrauss.com/responsibility/conduct/guidelines.htm> (last visited Nov. 19, 2003).

⁵ See <http://www.globalsullivanprinciples.org/> (last visited Nov. 19, 2003).

⁶ International Labour Organization Working Party on the Social Dimensions of Liberalization of International Trade, *Country Studies on the Social Impact of Globalization: Final Report* (Nov. 1999), available at <http://www.ilo.org/public/english/standards/relm/gb/docs/b276/sdl-1.htm#Synthesis%20report> (last visited Nov. 24, 2003). See also *The Realization of Economic, Social and Cultural Rights: Globalization and Its Impact on the Full Enjoyment of Human Rights*, Preliminary Report of J. Oloka-Onyango & Deepika Udagama to the Sub-Commission on the Promotion and Protection of Human Rights, in accordance with Sub-Commission resolution 1999/8, U.N. Doc. E/CN.4/Sub.2/2000/13 (June 15, 2000).

⁷ Message of His Holiness, Pope John Paul II, For the Celebration of the World Day of Peace, *Respect for Human Rights: The True Peace* (Jan. 1, 1999), available at http://www.vatican.va/holy_father/john_paul_ii/messages/peace/documents/hf_jp-ii_mes_14121998_xxxii-world-day-for-peace_en.html (last visited Nov. 24, 2003).

enterprise in an integrating world economy should practice global corporate citizenship: It should be a good citizen (and neighbor) in every host country in which it operates.”⁸

Socially responsible investing is a trend that has gained momentum over the last decade. Stockholders have increased financial pressure on corporate boards to engage in more socially responsible business activities. Other stockholders have taken steps to specifically invest in “socially responsible companies.”⁹ This shareholder movement has led also to an emphasis on social reporting.¹⁰

Wiwa v. Royal Dutch Petroleum Company, 226 F. 3d 88 (2d Circuit 2000), is another case reflecting the judicial/litigative pressures discussed in the introductory section of this report. The case involved claims that the Royal Dutch/Shell Group should be held accountable for the torture and death of activist Ken Saro-Wiwa.¹¹

2. Report’s Appraisal and Recommendation

PVIs are indeed “compelling” vehicles to bring about positive change in the area of global labor standards. Support for PVIs by the government is necessary to “institutionalize” the norms that many business stakeholders expect of domestic and multinational corporations. Linking corporate codes of conduct which reach higher than the minimum level of local law found in other countries to types of business and trade opportunities offered by government can create the type of culture needed to make these standards the “bottom line” norm in business. The proposed “safe harbor” to the Alien Torts Claim Act for compliant companies is an interesting and possibly compelling incentive. Academic research—focusing on lowered morale, absenteeism, and turnover costs in facilities employing child labor—will build on the findings emphasized in the four

⁸ Duane Windsor, *Corporate Citizenship: Evolution and Interpretation*, in PERSPECTIVES ON CORPORATE CITIZENSHIP 39 (Jörg Andriof & Malcolm McIntosh eds., 2001). For additional background information on the concept of “corporate citizenship,” see Frank Vogl, *Ethics & Compliance in a Global Economy*, at <http://www.ethics.org> (last visited Nov. 19, 2003); Mark Malloch Brown, *Globalisation, Business and Social Responsibility*, at <http://www.undp.org/dpa/statements/administ/2000/November/6nov00.html> (last visited Nov. 19, 2003); and John G. Ruggie, *Globalization, the “Global Compact” and Corporate Social Responsibility*, at <http://www.uia.org/uiata/ruggie.htm> (last visited Nov. 19, 2003).

⁹ See, e.g., Social Investment Forum, *Online Guide to SRI*, at <http://www.socialinvestmentforum.org> (last visited Nov. 19, 2003).

¹⁰ See David W. Hess, *Social Reporting: A Reflexive Law Approach to Corporate Social Responsiveness*, 25 J. CORP. L. 1 (1999).

¹¹ For background, see *The Story of Ken Saro-Wiwa*, at <http://www.mosopcanada.org/text/ken.html> (last visited Nov. 19, 2003). Shell Nigeria’s response to the death of Ken Saro-Wiwa and to the “Ogoni issue” may be found at http://www.shellnigeria.com/shell/hr_rhs.asp (last visited Nov. 19, 2003).

case studies of this report and sell American business leaders on the real and perceived costs of aligning with facilities that operate using child labor.

Comments of Ned O. Bertz, Ph.D. Candidate in History at The University of Iowa, specializing in modern Africa and South Asia. In 1999-2000, while a leader of student activism against sweatshop labor amongst the University's licensees, Mr. Bertz was a member of the UICHR's first Executive Council. Presently he is a member of the UICHR's Society of Center Fellows. In 1998-99, he was the recipient of The University of Iowa's annual Philip G. Hubbard Human Rights Award.

By and large, I am deeply impressed at the rigor and detail applied in producing this thoughtful and relevant analysis. However, as the report's subtitle implies, there is room for concern that codes of conduct and other private voluntary initiatives (PVI) risk serving public relations more than public policy considerations.

It is abundantly clear from the case studies that, in each instance, the initiative to reduce worker rights violations was not located with the individual companies or industries involved. In most cases, in fact, it appears to have been the media that created an atmosphere of coerced change, leading one to wonder whether the initiatives are more cosmetic than substantive. Therefore, while there also is reason to be heartened, I strongly support the report's call for greater U.S. Government involvement in encouraging and overseeing the development of PVIs. Further, I would support the report's conclusions toward linking each industry's/company's PVI to research and oversight by independent organizations in local, national, and international civil society.

However, I also would stress (more heavily than does the report) the crucial importance of independent monitoring of global workplaces. As shown in the case studies, corporations (before media attention) rarely fear legal mechanisms, especially voluntary ones; only with rigorous oversight by independent organizations, with access to international media, will the PVIs be at their most effective. This is heightened by the very important discussion concerning the report's conclusions that rest much responsibility for enforcement at the level of local governments. While true, one aspect of this discussion that the report misses is that, oftentimes, corporations choose worksite locations where local governments or their laws are weak, or where those in power are susceptible to look the other way as abuse continues (whether for a bribe, to boost economic performance numbers for domestic or international political purposes, or because of an inability to enforce laws). As such, I feel strongly that the report's suggestions toward enhancing the capacity of local governments and organizations to create positive change should be more forcefully highlighted. It also seems that the group of people who, if empowered, could do the most for labor conditions is somewhat ignored in this report, to wit, the workers themselves. Thus, I would strongly recommend that the right to freedom of

association—acknowledged in the report to be a fundamental human right—be included in any code of conduct or other appropriate PVI.

As noted above, I particularly commend the report for its advice that PVIs should be but one prong of a multifaceted strategy toward the amelioration of human rights abuses in the global workplace. And while regulation, capacity building, and links to internal and external stakeholders are important, I also would stress making public the most amount of information possible to another force, that of the market and the consumer. It has consistently been industry practice, as seen in each case example, to limit the amount of information available to the public concerning supply chains and local workplace conditions. Monitoring and research organizations should keep this information in the public arena, and corporations should be required to declare this to their investors and customers. I believe that programs of labeling (in most industries) would be a very effective tool in promoting this goal. If, indeed, as the report suggests, transparency is important to improving global labor conditions, then the labeling of products should be a key ingredient in the process of making information public.

I also would raise one caution that the report fails to note strongly enough. In introducing government regulation to PVIs, the tendency toward standardization would eliminate a crucial factor in understanding local working conditions, i.e., culture. Part of the problem of the top-heavy strategies suggested here is that, in government offices and corporate boardrooms, the issue on the ground is often not understood well enough, so that negative effects or unintended consequences result from intervention. Thus, as a basic point in every attempt to formulate a PVI, such issues as the culture of landholding (especially for industries that are agriculturally oriented), the class-based nature of employment, the gendered division of work, and the like must be considered in formulating policy. And to this end it is crucial that a diverse selection of local workers be involved at every level of the process of consideration of intervention by the U.S. Government, other national governments, international industries, and civil societies. This does not dilute the case for certain basic minimum standards of PVIs around fundamental human rights; it asserts that looking at how these are understood and enforced at each local level is important. Consistent with the report's flaw of looking too much from top to bottom, this was not put forth in strong enough terms.

Finally, while agreeing that stronger regulatory institutions by the U.S. Government and an attention in U.S. human rights foreign policy to global labor standards is essential, it needs also to be noted that consistency in policy is important. For example, pursuing free trade across certain regional zones while protecting selected American industries from imports for "pork barrel" political concerns is deeply contradictory and harmful to labor improvement initiatives overseas. More important is the issue of global poverty. While Cargill's use of this argument to avoid

action on the abuse of child labor in Côte d'Ivoire is disingenuous and repugnant,¹² it does raise an important issue. By keeping pay low and working standards poor, multinational corporations perpetuate poverty and thus reproduce a cheap and easily exploitable labor force across generations. U.S. foreign policy on human rights and trade must also include the right to a living wage and other basic protections to begin to raise great swaths of the world out of its broad and deep poverty. Too often, American foreign policy neglects its effect on the world's poor, making their poverty worse at the benefit of our relatively wealthy citizens. To push forward on greater regulatory institutions such as PVI's, as the report powerfully argues, would constitute great progress; but it also could turn into just another public relations tool without greater attention being paid to linking poverty and human rights across a broad spectrum of policy.

¹² *See supra* p. 157.

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About the Author

Elliot Schrage is a lawyer, teacher, and advisor with extensive experience at the intersection of international human rights law and economic globalization. Concurrent with his work on this report, he served as Adjunct Senior Fellow in Business and Foreign Policy at the Council on Foreign Relations where his research focuses on the social consequences of globalization.

Earlier Schrage served as a consultant to, and then Senior Vice President of Global Affairs for, Gap Inc., the largest specialty retailer in the United States. In this position, he directed the company's corporate social responsibility initiatives and managed the company's Global Compliance organization, an integrated team of over eighty professionals in twenty countries charged with inspecting working conditions at factories that manufacture products for the Gap, Old Navy, and Banana Republic brands.

Since 1990, Schrage has served also as Adjunct Professor at Columbia University Business School and Columbia Law School where he teaches a seminar on transnational business and international human rights. He has written and spoken widely on this and related topics before corporations, foundations, and trade associations, including the Carter Presidential Center, the Ford Foundation, the Royal Institute for International Affairs, Business for Social Responsibility, the National Coffee Association, and the World Federation of the Sporting Goods Industry. His articles have appeared in such publications as *Ethical Corporation* magazine, *Financial Times*, the *Harvard Business Review*, and the *Washington Post*.

Schrage has represented a wide variety of U.S. and foreign corporations in international transactions and served as consultant to several multinational corporations and trade associations, helping them draft corporate human rights codes of conduct, design mechanisms to monitor their compliance, and evaluate the effectiveness of monitoring programs. In 1996-97, he helped to organize a partnership of the international sporting goods industry, UNICEF, the International Labor Organization, and Save the Children, to end child labor in soccer ball production in Pakistan, the source for three of every four balls produced each year worldwide (a successor project was announced in India in February 1999). He also worked on a team with the American Apparel Manufacturers Association to develop the "Worldwide Responsible Apparel Production (WRAP) Certification Program," a global program to certify apparel factories as meeting fundamental human rights standards.

Paralleling his work with the private sector, Schrage has maintained a long association with the human rights movement, including work with such organizations as Human Rights Watch, the Lawyers Committee for Human Rights, and the Robert F. Kennedy Memorial Human Rights Center. He has participated in fact-finding missions to investigate human rights conditions in Eastern Europe, Central America, Africa, and the Caribbean, and he has authored or edited reports on the legal systems and human rights violations in El Salvador, Guatemala, Haiti, Peru, the former Yugoslavia, and Zimbabwe. He also has worked as a consultant to the U.S. Department of Justice, U.S. Department of State, and the United Nations Civil Mission to Haiti on effective human rights reporting and monitoring

A graduate of Harvard College, the Harvard Law School, and the Kennedy School of Government, Schrage began his professional career with the law firm of Sullivan & Cromwell in New York City and Paris (where previously he had studied at the École Normale Supérieure). He has served on the American Association for the Advancement of Science's Committee on Scientific Freedom and Human Rights and the U.S. Dept of Treasury's Advisory Committee on International Child Labor Enforcement. Currently he is a member of the Corporate Citizenship Advisory Committee of the Conference Board and an "expert advisor" to the London-based Business & Human Rights Resource Centre. His board experience includes the International League for Human Rights and the Harvard Law School Association of New York (Trustee).

About the UICHR

The University of Iowa Center for Human Rights (UICHR), founded in 1999, is a direct outgrowth of *Global Focus: Human Rights '98*, a year-long University of Iowa commemoration of the 50th anniversary of the Universal Declaration of Human Rights of 10 December 1948. Initiated by a multidisciplinary group of faculty, it has as its mission to assist in the promotion and protection of human rights at home and abroad by providing distinguished multidisciplinary leadership in human rights research, education, and public service to The University of Iowa, its surrounding community, the State of Iowa, and beyond. To this end, it attends to all categories of human rights, beginning with “first generation” civil and political rights, while paying special attention to “second generation” economic, social, and cultural rights and “third generation” solidarity or community rights.

Guided by the basic tenets of a free society to which The University of Iowa is committed and which serve as the core of civil and political rights, the UICHR follows an approach to its mission that continuously revisits even the most fundamental aspects of human rights discourse. It treats human rights not as a corpus of fixed thought and action but as a set of assumptions and choices that are open to constant rethinking because of ever evolving ideas, conditions, and needs. In so doing, it

- engages in a diverse array of research, teaching, and other activities (including artistic advocacy and expression and community outreach) that is designed to highlight and consider, constructively and critically, the problems and prospects of human rights at home and abroad;
- nurtures trans-disciplinary and inter-institutional collaboration that seeks to integrate anthropological, educational, environmental, geographic, historical, medical, journalistic, literary, philosophical, psychological, sociological, and even artistic viewpoints as well as the more usual legal and political perspectives into its diverse agenda;
- encourages the active participation of faculty, students, and others both within and beyond the UI campus in the conception and execution of its diverse activities; and
- shares information with both human rights specialists and the general public about its activities and about human rights issues and developments generally.

Through the support of its Friends, the UICHR also awards prizes for human rights scholarship and activism to deserving students, faculty, and off-campus persons and groups. The UICHR makes a self-conscious effort to involve students in its activities and to reach out to local citizens and citizen groups not officially associated with The University of Iowa to facilitate its mission.

For additional information about the UICHR and its operations, consult its website at <http://www.uichr.org>.