

A social conscience in the global marketplace? Labour dimensions of codes of conduct, social labelling and investor initiatives

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Over the past decade, a new generation of private-sector initiatives in enterprise social responsibility has been born. Once the primary domain of large enterprises seeking to be good citizens, social responsibility is becoming a generally accepted principle that applies to a growing variety of business partnerships involving multinational and local enterprises in industrialized and developing economies alike.¹ New models of enterprise social initiatives have replaced the “self-applied”, single-enterprise model. Social specifications now govern joint ventures, licences and supply contracts across the entire chain of transactions necessary for procuring and marketing products and services. Beyond these enterprise-generated initiatives, an increasing number of strategic alliances are being set up in order to pursue systems of accountability. A wide range of actors thus participate in private-sector initiatives across the global, regional, national and local levels; and recently, hybrid coalitions between enterprise, workers, non-governmental organizations (NGOs), investors and others have emerged as well.

This article focuses on private-sector initiatives that address labour practices in transnational enterprise operations, and comments on their effectiveness. Specifically, it examines codes of conduct, social labelling programmes and investor initiatives, drawing inter alia on a preliminary review of some

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¹ The concept of enterprise social responsibility has evolved over recent decades. In 1965, the Delhi Declaration, developed at an international seminar on “Social Responsibility of Business”, articulated a prototype model of what has evolved into “stakeholder theory”. In the United States, theorists emphasized the need for enterprise to accept the community as a stakeholder in governance, while in Japan enterprises developed a sense of linkage to national values, community life and the environment. For the purposes of this article, the term “stakeholders” refers to “individuals and groups who may affect or be affected by the actions, decisions, policies, practices or goals of an enterprise” (Carroll, 1996, p. 74).

215 codes and 12 social labelling programmes.² Codes and labels form part of a broader set of initiatives which seek to inform and influence consumers, business partners, investors and/or the media in regard to particular enterprises' social goals or achievements.³ Investor initiatives, by contrast, are part of a range of activities aimed at influencing enterprise decision-making and, in this case, enterprise adherence to codes and labels. A review of the content and operation of these three types of initiative reveals the mixed reception they are given, not only by business, consumers and other interested private-sector actors, but also by those concerned with the public effects of this disparate, yet persistent pursuit of a private form of social justice for private gain.

Background and motivations

In principle, such private-sector initiatives reflect commitments made voluntarily — in response to market incentives rather than regulatory compulsion. The “mismatch of regulatory scope and actual economic structures” (Murray, 1998, p. 60), arising from the growth of contractual and joint-venture arrangements across borders, has contributed to public demands for ways of ensuring accountability for the social and environmental impacts of enterprise operations. As a result of public pressure, enterprises feel vulnerable to exposure of potentially abusive labour practices on the part of their foreign business partners in the commodity or service chain. Private-sector initiatives thus seek to establish commitments across the chain, which commonly aim to reinforce or, in some cases, improve on existing legal requirements. This, however, raises the question of whether such initiatives are genuinely “voluntary”. Indeed, private-sector initiatives are supposed to be voluntary only because they are not directly enforced by law,⁴ but some — particularly representatives of develop-

² The codes were collected by the International Labour Office from companies, trade unions and NGOs, and through publicly available information. More than 80 per cent belonged to multinational enterprises (MNEs), primarily based in developed and newly industrialized countries; some were developed by industry associations and employers' organizations, while others were developed by enterprises or enterprise associations together with workers' organizations and/or NGOs.

The selection of social labelling programmes included all such programmes known to be operative in 1998 and addressing labour issues, namely: Care & Fair, Kaleen, RUGMARK, STEP, Double Income Project, Pro-Child, Abrinq, Baden, Reebok, Fairtrade Labelling Organization International, Flower Label Program, and Forest Stewardship Council (FSC) (see table 1).

³ In some cases, the same or related initiatives pursue social and environmental goals unrelated to labour practices. Enterprises are facing growing pressure to be accountable for non-financial benchmarks in what has been termed the “triple bottom line”, a reference to economic, social and environmental performance which has been criticized for its potential to compromise three disparate forms of value on one balance sheet (see, for example, Mayhew, 1998). The role of enterprise in addressing issues of environmental protection, or social or community development beyond specific issues encountered or reflected in the workplace, lies outside the primary focus of this article.

⁴ However, the publicizing of private initiatives for commercial purposes is usually considered to have implications under laws generally regulating enterprise representations, advertising and, in cases of joint-enterprise action, anti-competition.

ing country enterprises or governments — contend that market pressure effectively renders them compulsory on terms which can be unfair.

However, the growing number of private-sector initiatives concerned with labour practices raises a host of other issues as well. For example, how do such initiatives relate to other efforts to achieve social justice through better working conditions and fuller employment, particularly those made through public policy or regulation? And what sort of effects, if any, do they have on the social dimension of international trade, and on economic development in particular? Is it fair to be sceptical of their value, or should they be welcomed as a step in the right direction? Even if transnational private initiatives can present a sustainable “high road” for business conduct amidst the complexities of global transactions over time, claims by enterprises and other actors concerning social improvements achieved through private initiatives are not easily categorized, evaluated or compared. Some controversy may thus be inevitable. These initiatives operate across diverse economic, political and legal contexts, without standard reference points or generally accepted methods of development, implementation or assessment. A number of implications therefore arise from limitations inherent in the way such initiatives are developed, implemented and ultimately assessed.

Private-sector initiatives spring from the desire to add value to the enterprise, generally by fostering relationships with customers (including consumers), intermediary buyers and other business partners. The need to preserve or legitimize a reputable public image, including the reputation of brand names, has prompted such initiatives at all stages from production to retail sectors active in outsourcing consumer goods internationally, especially in those with labour-intensive operations. Producers of capital goods and intermediary products, who do not independently respond to consumer demands, may in turn be pressed by intermediary buyers to satisfy the demands of consumers. Besides, evidence that good corporate behaviour may enhance financial performance has tended to reinforce the moral incentives for firms to act as “good citizens”.

Preventive action has contributed to the growth of private-sector initiatives as well. By displaying efforts to improve workplace conditions, enterprises can pre-empt consumer boycotts as well as formal accusations of unacceptable or illegal business practices. Such efforts may also obviate the need for government regulation by demonstrating that industry best practice satisfies the public interest. Indeed, in some cases, governments may encourage enterprise initiatives as a substitute for social regulation of trade or business. Some countries may also view such initiatives as a way of improving labour practices or public image for trade and investment purposes. None the less, debate continues over whether other considerations, such as protectionist instincts, may contribute to some government efforts to encourage voluntary initiatives.

A wide range of actors contribute to the development, implementation and assessment of private-sector initiatives. Initiatives led by enterprises or enterprise associations appear to be the most rapidly proliferating; these vary widely in membership, activities and priorities. Local and international workers’ organizations view enterprise social initiatives as a tool to enhance or sup-

plement — rather than replace — collective bargaining processes. Non-governmental organizations and coalitions employ combative as well as collaborative approaches, including negative publicity campaigns, boycotts and court actions against enterprises.⁵ Debate persists on the efficacy of such methods. Some argue that boycotts hurt the workers they are intended to help, while others believe that, at times, negative publicity operates to complement collaborative efforts. Professional accounting firms and new consulting firms are increasingly offering services in social accounting and monitoring, though few have expertise in labour relations or inspection.

Types of private-sector initiatives

At the heart of any private-sector initiative is a decision to communicate a message about the social behaviour of enterprise. The message may target various recipients, including investors, employees, managers, consumers, business partners, local community members, governmental entities, NGOs and media watchers. The means chosen to communicate that message — and its ultimate impact on enterprise social behaviour — vary considerably depending upon operational circumstances, although they do share functional and normative similarities.

For convenience of presentation, the following typology of initiatives is structured around codes of conduct, social labelling programmes and investor initiatives. But given the difficulty of drawing the precise boundaries of each of these three categories of initiatives at this stage in their development, some overlapping is unavoidable. Any attempt to categorize them is therefore bound to be imperfect. Besides, initiatives aimed at enhancing enterprise social responsibility may include other forms of action as well.⁶

Codes of conduct

Codes of conduct are written statements of principle or policy intended to serve as the expression of a commitment to particular enterprise conduct. As such, information about the code must be communicated externally to become known to consumers, suppliers and others, whether through company advertis-

⁵ Examples include the 1998 “People’s Tribunal” orchestrated by the NGO coalition Clean Clothes Campaign (CCC), which denounced labour practices in specific apparel and sportswear MNEs; lawsuits pending in the United States against UNOCAL, a United States-based oil company, for alleged forced labour in the construction of an oil pipeline in Myanmar, and against NIKE Inc., for alleged negligent misrepresentation, fraud and deceit, and unfair business practices, in adopting and not properly implementing a code of conduct; a lawsuit in Hong Kong (China) against Adidas, by Chinese dissidents who claim to have made Adidas soccer balls as prisoners in a Chinese labour camp (see, for example, “Adidas said to use slave labor”, in *Washington Post* (Washington, DC), 19 Aug. 1998).

⁶ One early initiative, for example, is embodied in the contractual specifications and follow-up system developed by Migros, a grocery chain in Switzerland, to improve labour relations and conditions in agricultural production in sourcing countries (see Stückelberger and Egger, 1996).

ing, published annual reports, audit letters or third-party certification which itself is communicated to the outside world (e.g. through a label).

Although many codes fall within the realm of general business ethics with no implementation methods, this article is concerned only with those that enterprises adopt with the intention of applying them internationally, particularly as “sourcing guidelines” to specify requirements for the workplace conduct of their business partners. In such cases, the code of an international buyer or retailer, for example, is applied to other enterprises in supply (or “value”) chains which are not necessarily directly owned, operated or controlled by the enterprise having adopted the code. Such codes may be adopted unilaterally by enterprises, negotiated between management, workers and/or NGOs, or influenced in some way by shareholders.

Enterprises apply *operational codes* directly to themselves and their business partners to articulate commitments to specific conduct, or subscribe to such codes through systems sponsored by third parties (typically enterprise associations or coalitions of enterprises, trade unions and/or NGOs). Most of the codes which have propelled the topic into the spotlight are operational codes in large retailing and manufacturing operations engaged in international trade,⁷ or developed by industry associations of export suppliers or import retailers, especially for use by their small and medium-sized enterprise members.⁸ This latter category of operational codes, sometimes called *subscription codes*, may involve a system for self-reporting by subscribers, or certification by the third-party sponsors themselves. *Model codes*, by contrast, are generic statements intended to serve as a basis for enterprises to develop their own codes. Model codes are generally issued by industry associations, trade unions, NGOs and/or governments. Although these codes do not operate directly within enterprise or through enterprise subscriptions, their provisions may be reflected, in full or in part, in the codes adopted by enterprises.

Social labelling programmes

Social labelling programmes operate as verification systems for enterprise social performance by using a highly visible means of communication: a physical label about the social conditions surrounding the production of a product or rendering of a service.⁹ Labels show symbols such as logos, trade marks and, in

⁷ The world’s largest MNEs — particularly United States-based MNEs in the textile, clothing, leather and footwear (TCLF) sector and related commerce sectors (e.g. manufacturers, retailers including department stores, mass merchandisers, specialty stores and mail-order clothing companies) — have led the trend toward the use of codes as a means of responsible sourcing. Japanese and Korean MNEs of comparable size appear to operate with creeds or philosophies of a general ethical nature.

⁸ At the global level, associations in the toy, tea, sporting goods and chemical industries, among others, have developed codes with labour provisions. Some of these have been criticized for inadequate provisions for implementation, and insufficient incentives to encourage retailers to invest in, and work with, suppliers.

⁹ “Social conditions” refer to the impact of the processes of production or service on the people involved, including workers, local communities, suppliers or subcontractors.

some cases, text, which seek to differentiate the product or enterprise. If the label has no text, its meaning must usually be acquired from some other source, e.g. advertising or the media. Like codes of conduct, labels are considered to be voluntary responses to market demands. Aimed at consumers and/or potential business partners, social labels may be affixed to products or their packaging, displayed at the retail site, or assigned to enterprises (usually producers or manufacturers).

Stand-alone social labelling programmes sponsoring *independent labels* often involve a high degree of NGO participation and indeed leadership, reflecting the fact that civil-society processes, including campaigns and public demands, create the perceived market for social labels. Yet independent labels have been developed and administered not only by NGOs, but also by workers' organizations (union labels), industry and trade unions or other enterprise associations, or hybrid partnerships of one or more of those actors. Social labelling programmes run by NGOs or hybrid partnerships tend to be dominated by organizations in developed countries, particularly in their initial phases. However, some of those led by enterprise associations or public/private partnerships have involved coalitions in developing countries, such as Abrinq in Brazil and Kaleen in India (see table 1). In some cases, small and medium-sized enterprises, or enterprises in industries enjoying little brand loyalty, have shared the costs and higher visibility of an independent social label, usually administered by an enterprise association or hybrid partnership on the basis of a commonly accepted code of conduct. In such situations, the label may be affixed to the product, as with RUGMARK, or may consist of a trade name used by certified companies, as with Responsible Care, a chemical industry initiative. Some programmes which start as multi-stakeholder subscription codes may eventually adopt a certification label as, for example, the Clean Clothes Campaign.

Single enterprises engaged in production, export or retail sales,¹⁰ and enterprise/government partnerships, may also develop social labels to affix to products, using slogans and symbols distinct from brand names, and applying the system to outsourced operations with external suppliers. Some labelling programmes, both stand-alone and enterprise-generated, operate with specific codes of conduct to guide enterprise efforts to obtain licence or use of a label. Operating costs may be subsidized by importers who pay levies on labelled products, or by producers or distributors.¹¹ Some of these costs are usually passed on to the consumer or, in programmes run by individual enterprises, sometimes absorbed in some internal way (see "sources of financing" in table 2).

¹⁰ See the discussion of individual company labels, in United States Department of Labor (1997, pp. 109-114), e.g. Dunkin Donuts, K-Mart, Spalding Sports Worldwide, American Challenge, American Soccer Company.

¹¹ Producers may pay licensing fees for using a label or fees assessed in proportion to the value of labelled products exported or earnings from their exportation.

Programme	Started	Sector	Product	Market sector		Primary countries of operation		Leaders					
				Export	Domestic	Producers	Buyers	W E G IGO NGO					
								W	E	G	IGO	NGO	
Care & Fair	1994			X		India, Nepal, Pakistan	Germany, UK, Netherlands, Luxembourg	X					
Kaleen	1995			X		India	Germany, Nordic countries	X	X				
RUGMARK ¹	1994	Textiles	Hand-knotted carpets	X		India, Nepal, Pakistan	Germany, US, other W. European countries, Canada						X
STEP ²	1995			X		India, Nepal, Pakistan, Morocco, Egypt	Switzerland			X			X
Double Income Project	1995		Textile, hand-crafts, jewellery			Kenya, India, LA, esp. Peru	Switzerland			X			
Pro-Child	1995		Footwear		X	Brazil	Brazil			X			
Abrinq	1995	Diverse	Footwear and other ³	X	X	Brazil	Brazil, other LA			X			X
Baden	1997	Textiles & leather	Sporting balls	X		China	Primarily NA and W. Europe, some in LA, Pacific Rim			X			
Reebok	1996		Soccer balls	X		Pakistan	US, Europe, LA			X			
Fairtrade Labelling Org. International ⁴	1988	Agri-culture	Agricultural products	X		About 20 in Africa, LA & Asia	W. Europe, US, Canada, Japan						X
Flower Label Program	1997		Cut flowers	X		Ecuador, Israel, Kenya, Zambia, Zimbabwe	Germany, Austria, Sweden, Switzerland			X			X
Forest Stewardship Council (FSC)	1996	Forestry	Forestry products, including timber	X	X	Brazil, Mexico, Malaysia, Poland, S. Africa, Sri Lanka, Sweden, UK, US	Australia, Japan, W. Europe, NA			X	X		X ⁵

¹ RUGMARK International is expected to maintain uniform standards across the RUGMARK system; RUGMARK Foundations in Germany and the USA manage and protect the trademark system and promote the labelled carpets in the importer countries; RUGMARK Foundations in India and Nepal are autonomously responsible for implementing the RUGMARK criteria locally. ² STEP (Stiftung für gerechte Bedingungen in Teppichherstellung und -handel) — Foundation for fair conditions in carpet production and carpet trade) is a joint initiative of a Swiss industry association and five Swiss NGOs. ³ The Abrinq Foundation for Children's Rights created the Child-Friendly Company Programme, which includes a labelling component. The Foundation is an NGO established by members of Brazil's Association of Toy Manufacturers. It also covers toys, agricultural products, chemicals, transport equipment, financial and other (restaurant, parking) services and utilities. ⁴ FLO International is an umbrella organization comprising the independent labels Max Havelaar, TransFair and Fairtrade Mark. FLO agricultural products include coffee, tea, honey, sugar, cocoa, bananas, and orange juice. FLO products are largely exported through alternative trade structures, but aim to reach a broader market through exports through mainstream retail channels. ⁵ Indigenous peoples also have an equal voice as stakeholders in FSC International.

Table 2. Structure and operation of social labelling programmes

Programme	Sources of financing		Grant/ assistance from G, IGOs, NGOs, W, E		Primary implementation methods				Object of label or certification		Manner of publicity	
	Flat fees for licence or membership (buyer or manufacturer)	Proportional fees for the use of label	Upon export	Upon import or sale	Self monitoring (enterpriser, contractual partners or individual entrepreneurs)	Input by W	Third party monitoring	G NGOs prof. auditors	Product or service	Company		Other
Care & Fair		X		X	X				X	X		X
Kaleen		X			G		X	X	X			X
RUGMARK	X	X			G, NGO, IGO		X	X	X			X
STEP	X ¹	X		X	G, NGO		X	X	X			X
Double Income Project		X		X	Initial small G grant				X			X
Pro-Child	X				E, G, IGO	X ²	X	X	X			X
Abring					E, IGO, NGO	X ³				X		X
Baden					X				X			X
Reebok							X	X	X			X
Fairtrade Labelling Organisations Int'l.				X	G, IGO, NGO		X	X	X			X
Flower Label Program	X	X					X	X	X			X
Forest Stewardship Council (FSC)	X	X			NGO, G, IGO		X	X ⁴	X	X	X ⁵	X

¹ Manufacturing licensees are expected to donate to the project an amount equal to the wages given their workers. See footnote 2 in previous table. ² The Pro-Child Institute may make unannounced visits to production sites, but primarily relies on self-monitoring processes that include complaints of child labour made by labour inspectors and unions, and also by visiting business partners. ³ Although no formal third-party monitoring takes place in the Abbring scheme, the decision to grant a one-year licence to applicant enterprises is taken in consultation with public officials, trade unions, employers' associations and other NGOs. Abbring subsequently carries out investigations in the event complaints of child labour are received informally from similar sources. ⁴ The independent national certification bodies are accredited by the Forest Stewardship Council. ⁵ The FSC provides (1) certification of forest management which applies to forests (currently in 25 countries) and is issued to companies, indigenous peoples and other forest managers, and (2) certification of chain of custody, which applies to the market chain, from certified forest through processing to retail, and is issued to a company for use on products or in advertising.

In contrast to independent labels, *brand names* may acquire, over time, sufficient public association with socially responsible conduct so that they operate like social labels. An enterprise with a “brand label” in this sense is unlikely to see the utility of an independent social label shared by other enterprises which may undermine consumer confidence or require changes in its established business practices.¹² In some cases, institutions, retailers or private-label manufacturers license the use of their logos or trade names to contractors who meet preset standards that are typically spelt out in the licensor’s code of conduct. In such cases, the logo or trade name operates as a means of signalling code compliance to buyers and vendors along the chain of production as well as to the general public and consumers. Recent licensing examples include the procurement policies of Duke University and Notre Dame University in the United States,¹³ FIFA soccer balls used in the World Cup and athletic equipment procured for the Sydney Olympics.

Investor initiatives

Private-sector initiatives seeking to leverage financial capital — as well as market share — contribute to enterprise responsiveness to the concerns of prospective investors and present shareholders in the context of the “socially responsible investment” (SRI) movement that has grown recently in certain developed countries. Although there is no single accepted definition of SRI, the term generally indicates investment-related decisions that seek social change while maintaining economic returns. Two SRI approaches seek to influence enterprises in development or implementation of codes, labels and other private initiatives, though their social objectives vary considerably and appear to be based on highly subjective judgements. The first is *investment fund screening*, i.e. the inclusion in investment portfolios (investment) — or exclusion therefrom (divestment) — of publicly traded corporate securities based on the social performance of companies.¹⁴ The second consists of *shareholder initiatives* that involve the exercise of rights based on established share ownership as a means of influencing company behaviour.¹⁵ These two approaches differ in

¹² It is possible for independent and brand labels to appear on the same product, as with the fair-trade labelled products sold under the brand names Cafédirect and Max Havelaar.

¹³ In both cases, the codes of conduct which apply to licensees that manufacture products bearing University trademarks include measures for the rehabilitation of child labourers, independent monitoring of factories and the publication of results of factory monitoring, as well as the option of terminating contracts where such conditions are not met.

¹⁴ “Community investing”, in which investment programmes select community-based financial institutions to support community development initiatives, is beyond the scope of this study (but see Social Investment Forum, 1997, section 1).

¹⁵ Formal shareholder action includes submitting and voting shareholder resolutions and asking questions at companies’ annual meetings; informal action involves attempts to reach agreements with management through dialogue and negotiation. A growing “spirit of compromise” has been observed recently, together with a desire to avoid embarrassing publicity and the high costs of management time in dealing with the resolutions (see Zondorak, 1991, p. 477, footnote 109).

timing and orientation. In principle, fund screening occurs prior to the purchase of company stocks, though subsequent verification may lead to withdrawal of money from a company deemed socially irresponsible. In contrast, shareholder initiatives occur after purchase and seek to influence corporate policy decisions by maintaining a relationship rather than through a “boycott” approach.

Both screening by investment fund managers and shareholder initiatives appear to be gaining ground, at least in industrialized countries. Overall, formal shareholder activism has recently increased in the United States, Japan — albeit with an overwhelming proportion of environmental concerns — and Germany, distantly followed by other European countries and Canada.¹⁶ The geographic distribution of these initiatives reflects various cultural, legal and economic factors, including civil-society involvement in share ownership, level of development of publicly held corporations, and legal restrictions on grounds for shareholder activism.

Shareholders are influenced to take action by many of the same forces that put pressure on enterprises to act, including media coverage, boycotts, support by public authorities for private initiatives, and reports of research organizations, universities and NGOs. Coalitions among different types of institutional investors have emerged as the main driving force behind many successful shareholder actions. The most important sponsors of labour-related resolutions are indeed institutional investors, including insurance companies, pension funds, church funds, union funds, local authority funds and also fund managers who manage investments for other people. Public employees’ pension funds and church investors are particularly active, but the evidence is inconclusive as to their specific action on labour issues. As a group, trade unions and union pension funds only occasionally sponsor labour-related shareholder proposals, although they do support such resolutions when they are submitted by other sponsors.¹⁷

Linkages and agents

“Commodity chains”

Private-sector initiatives — particularly operational and model codes and social labelling programmes — appear to operate primarily in relation to sectoral concerns or commodity linkages. Indeed, the structure and operation of com-

¹⁶ In 1996, shareholder-sponsored resolutions numbered more than 650 in the United States; 54 in Japan; 39 in Germany; four in the United Kingdom (13 in 1995); five in Sweden; three in Canada; two in Denmark; and one in each of France, Switzerland, Ireland and Norway (see IRRC, 1996a and 1996b).

¹⁷ Exceptionally, in the United States, the Union of Needletrades, Industrial and Textile Employees (UNITE) has simultaneously waged publicity and shareholder campaigns, working with labour rights activists, involving companies such as Gap, Disney, NIKE, Wal-Mart, Philips-Van Heusen and Guess (see Varley, Mathiasen and Vorhes, 1998, p. 18).

modity chains play a defining role in the development and implementation of transnational private-sector initiatives, especially in the case of codes of conduct (see van Liemt, 1998).

Codes of conduct with labour-related provisions are known to exist in nearly all catalogued sectors of activity, though the extent of participation by sector varies widely.¹⁸ Some codes develop by virtue of common ownership or equity relationships between enterprises in the chain (e.g. tea plantations and packaging). Others are applied as conditions to contractual arrangements, which may represent long-term relationships or fragmented, highly opportunistic outsourcing arrangements. The closer and more long-lasting the relationship between retailer and supplier, the easier the application of the code appears to be. The longer the production chain and the more complex the levels of contractors, subcontractors and buying agents, the more daunting the code's application becomes. Manufacturers with wholly owned facilities abroad or ongoing relationships with contractors have built-in arrangements for code implementation, while retailers removed from their suppliers must use bargaining power to ensure compliance with code standards. Retailers who directly contract out manufacture of private-label merchandise can directly influence their contractors. A global "solidarity negotiation" between international trade secretariats and MNEs, in some cases across commodity chains and sectors, has emerged with code systems and other initiatives that involve varying degrees of participation by local unions.¹⁹ The effectiveness of the chain-wide model, however, depends in part on the degree of cohesiveness of the commodity chain involved.

The role of trade unions and NGOs

In a trend that appears to be increasing, codes of conduct are being negotiated and implemented jointly between workers' organizations and enterprises or enterprise associations,²⁰ especially in regional initiatives in Europe. This feature may be attributed in part to the effect of pre-existing regulations which

¹⁸ For the purposes of its work, the ILO has identified 22 industry and service sectors which are listed on the Internet at <<http://www.ilo.org/public/english/100secto/sectors.htm>>. Enterprises in sectors that deal directly in consumer products are more likely to have codes, including those in the TCLF, commerce (retailers and home manufacturers of consumer products), food and beverage, and chemical and toy industries. The chemical and forestry industries have proportionately high representation, focusing largely on health, safety and environmental concerns. Emerging sectors include hotel, financial services, telecommunications, high technology, agriculture, and oil and gas industries.

¹⁹ For example, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers Associations (IUF) brought tea producer and distributor affiliates together in 1997 to spur enterprise initiatives in the tea industry. In addition, multi-sector coalitions involving codes of conduct are emerging in efforts against child labour developed through a coalition of workers in the surgical instruments industry in Pakistan and public-sector health-care workers in developed countries.

²⁰ For example, the World Chlorine Council and the workers' global representative in the chemical sector, ICEM, entered into a labour-relations agreement in 1998 which covered, among other aspects, implementation of Responsible Care principles in subscribing companies.

nurtured a culture of consultation between labour and management, hence a predisposition to extend discussions to new issues and ultimately arrive at code agreements (see, for example, European Union, 1994). Such codes apply increasingly to operations owned or managed by European enterprises, or operations in Europe owned or managed by United States and other foreign MNEs. Most of them incorporate international labour standards in a more consistent pattern than do other types of codes reviewed.²¹ One innovative approach has been to commit the enterprise, within the “code agreement”, to incorporating that agreement into its existing local-level collective agreements. This approach has developed primarily in the context of a leading regional agreement in the textile sector between the European sectoral industry association, EURATEX, and its worker counterpart, ETUF-TCL, and reflects national variations in law and practice relating to collective bargaining relationships. Transposition of collective agreements to the national level brings with it the framework of existing implementation systems and relationships, and a method for achieving uniformity of standards among enterprise operations in various countries and circumstances.

Hybrid systems involving enterprise, workers’ organizations and NGOs concerned with labour practices are often initiated by NGOs and operate as code systems and/or social labelling programmes primarily through the subscription method. Sensitive to public and media attention, hybrid code partners tend to concentrate on labour practices in particular sectors, e.g. textiles, clothing and footwear; forestry; or food and agriculture. In contrast to the traditional balance of bargaining power between workers and employers, the participation of NGOs has lent a more piecemeal character to negotiations over hybrid codes. The priorities of civic groups are marked by negotiation processes with few rules of procedure and little transparency. In several high-profile efforts, workers’ organizations have been noticeably outweighed by their enterprise and NGO counterparts.²² Recently, however, workers’ organizations have become increasingly important contributors to such initiatives.²³ For example, social labelling programmes aimed at non-labour issues, such as fair-trade labelling programmes²⁴ and the Forest Stewardship Council, have recently added labour issues to their agendas as workers’ organizations become

²¹ Non-European agreements between workers’ organizations and enterprise associations generally present widely disparate results, ranging from codes focused on a single issue (usually child labour) to codes containing a full set of fundamental labour standards.

²² The United States-based Apparel Industry Partnership, which consists mainly of MNEs in the TCLF sector and United States-based NGOs, disagreed publicly over the requirement for a “living wage” in its code. Recently, participating worker representatives withdrew from the Partnership in disagreements over the terms for establishing the Fair Labor Association, a system for external monitoring and verification. For a record of worker participation in social labelling programmes, see table 1.

²³ For example, the United Kingdom-based Ethical Trading Initiative has equal representation as between enterprise, workers’ organizations and NGOs.

²⁴ The fair-trade labelling programmes have begun to collaborate, to a limited extent, with workers’ organizations as they expand, on the production side, from smallholders to plantations and, on the distribution side, from alternative trade shops to mainstream retailers.

more involved in the programmes; and the Flower Label Programme incorporated labour issues from the start due to early trade union involvement (see table 3). Governments and inter-governmental organizations (IGOs) tend to play supportive roles in such systems.²⁵

Labour content of private-sector initiatives

Recent efforts at assessing the labour dimensions of private-sector initiatives have yet to identify either the extent to which enterprises around the world are engaged in promoting labour-related standards or the extent to which such initiatives result in actual improvements in their social conduct. Most available surveys of codes of conduct are specific to particular enterprises in developed economies, to only a few labour issues, or both.²⁶ Case-study approaches by sector or issue have been undertaken, with some notable contributions (see also UNCTAD, 1994; Burns et al. 1997). Studies on the labour dimensions of social labelling are similarly limited in number, scope and methodology — partly because of the relatively few years of experience with social labels, and the limited number of programmes in operation.²⁷ Information on investor initiatives is likewise sporadic and non-comprehensive.

From a public-policy perspective, self-regulation of the type reflected in enterprise codes of conduct and private-sector labelling programmes offers certain advantages. In principle, such initiatives can promote corporate behaviour in line with the spirit of the law and thus complement public regulatory efforts. This is particularly evident where the scope of codes or labelling programmes is extended to suppliers in countries and situations where the will or capacity to enforce labour laws or policies is lacking. Some private initiatives move beyond mere compliance requirements and serve as catalysts to advance law or policy beyond the current thresholds that shape commercial behaviour. But despite these advantages, private-sector initiatives are fraught with special challenges arising from their private character and development outside traditional regulatory frameworks. A first step in understanding these challenges involves assessing whether such initiatives consistently complement public policy goals and regulatory efforts and, if not, how they could do so.

²⁵ The Ethical Trading Initiative, for example, receives funding from the United Kingdom Government; and the Apparel Industry Partnership is encouraged by the United States Government.

²⁶ See, for example, Incomes Data Services (1998); Ferguson (1998), for a survey of 18 United Kingdom company codes and three “sample” codes; Council on Economic Priorities (1998), for a survey of 360 companies for workers’ rights in codes; Forcese (1997), for a survey of 98 Canadian enterprises; United States Department of Labor (1996); and Varley, Mathiasen and Vorhes (1998), on child and forced labour.

²⁷ Available studies are based on case-study, survey and/or field research. See, for example, Hilowitz (1997); Haas (1998); Zadek, Lingayah and Forstater (1998), for a literature review, survey questionnaire, dialogue-based research; United States Department of Labor (1997), for non-random survey research, site visits to eight countries, public hearings, and hundreds of contacts; Burns et al. (1997); Dickson (1996); and Center for Ethical Concerns (1995). In contrast, research on ecolabelling, in operation for more than 20 years, spans private and public organizations (see WTO, 1997b).

The selectivity of codes and labelling programmes

Based on the ILO's preliminary review of approximately 215 codes and 12 social labelling programmes, significant discrepancies in content and operation have been found both from one code or label to another and between private-sector initiatives and public regulatory frameworks.²⁸ The review focused on labour practices reflecting internationally recognized fundamental principles and rights — i.e. freedom of association, the right to collective bargaining, elimination of all forms of forced or compulsory labour, the effective abolition of child labour and the elimination of discrimination in employment and occupation²⁹ — and on wage levels and occupational health and safety. A high degree of selectivity was discovered as to which of these labour issues was taken up in the codes and labelling programmes reviewed.

Appearing in about 75 per cent of the codes reviewed, occupational health and safety was the most frequently addressed issue. Discrimination in hiring or terms and conditions of employment was variously addressed in approximately two-thirds of the codes reviewed. Elimination of child labour — or refusing to use child labour or to work with companies that did employ children — appeared in 45 per cent of the codes reviewed. The issue of wage levels followed, appearing in about 40 per cent of the codes reviewed. Prevention of forced labour — or refusing to contract with companies that used forced labour — was found in only 25 per cent of the codes reviewed. Strikingly, the principles of freedom of association and collective bargaining, which are fundamental to trade union development and functioning, were addressed, in varying ways, in only 15 per cent of the codes reviewed.

The selectivity reflected in the labour issues covered by codes of conduct can be attributed to various factors. Firstly, the content of codes often appears to be largely decided in non-transparent and non-participatory processes, which may be conducted within executive boardrooms or through ad hoc negotiations between parties with varying degrees of access to information and bargaining power. Secondly, concern for particular labour problems also varies from one sector of commercial activity to another because of the specific nature of the industry or service concerned and, perhaps, its degree of exposure to negative

²⁸ On the review, see note 2 above, and ILO (1998a). There are significant difficulties in evaluating the labour content of codes of conduct due to low response rates from companies to survey methods of data collection. However, among the companies responding to surveys, a majority of those that have international sourcing guidelines or codes of conduct do address labour practices. See, for example, Council on Economic Priorities (1998): of 38 per cent responding, 99 per cent had sourcing guidelines addressing basic workers' rights; United States Department of Labor (1996): of 42 responding, 36 had child labour policies, with up to half of these incorporating other labour standards as well; Forcese (1997): of 43 Canadian company responses, 49 per cent had international codes of conduct, with 46 per cent of these incorporating labour provisions.

²⁹ These principles are recognized in paragraph 2 of the 1998 ILO Declaration of Fundamental Principles and Rights at Work, which acknowledges the constitutional obligations of all member States of the Organization to respect and promote certain principles concerning fundamental labour rights (see ILO, 1998b). For a discussion of the Declaration adopted at the 86th Session of the International Labour Conference, see Kellerson (1998).

publicity. For example, codes in the TCLF sector tend to concentrate on elimination of child labour and forced labour. Similarly, special attention to occupational health and safety was apparent in the codes of enterprises in the chemical, transport, TCLF, mining, commerce, postal and toy-manufacturing sectors. And thirdly, the selection of labour issues is also conditioned by the degree to which a particular labour practice is — in principle at least — considered acceptable by enterprise itself. This may help to explain the wide gap between the high proportion of codes (representing most sectors of activity) which address employment discrimination, and the relative few which address freedom of association and collective bargaining.

The 12 labelling programmes reviewed displayed similar selectivity in the labour issues they addressed (see table 3). As with codes of conduct, some social labels focus on a single labour issue (e.g. child labour), while others address multiple labour issues,³⁰ or a broader range of issues that includes not only labour practices but also matters such as fair trade or forest conservation. The issue most frequently targeted among the programmes reviewed was child labour (11 out of 12 programmes).³¹ Half of the programmes addressed wage levels, and one-third took up one or more of the following issues: freedom of association, collective bargaining and occupational safety and health. Other labour-related concerns were less frequently addressed, including forced labour and non-discrimination.

A number of factors contribute to the selectivity of social labelling. Labelling programmes naturally reflect the concerns of the consumers, media and civil society campaigns from which they arise. They primarily cover export markets involving retail trade,³² with market “niche” products, affluent consumers and eye-catching circumstances. In addition, products vary in amenability to social labelling depending on the price sensitivity of the sector, the role of brand recognition and consumers’ concern for social issues in the supply chain involved.³³

³⁰ Notably, STEP, a joint initiative in social labelling established by an industry group with five NGOs in Switzerland, covers nearly all fundamental labour issues as well as wage levels and occupational health and safety.

³¹ For an earlier review of social labelling programmes relating to child labour, see Hilowitz (1997).

³² Exceptional labelling programmes which cater to domestic-market consumption as well as export markets include Abrinq Foundation programmes for domestic-market sectors in Brazil, the Australian Homeworkers’ Code of Practice in that country’s mixed textile sector, and union labels in the United States (see table 1 for details).

³³ Some labels apply only to highly specific sectors such as hand-knotted rugs, soccer balls or cut flowers; more general labels cover various products in the clothing industry or selected agricultural products. Labels may be developed more readily with products bought and consumed “publicly” or associated with social identity (e.g. clothing, footwear, food and luxury goods) or discrete production processes (such as tea). See also Zadek, Lingayah and Forstater (1998).

Table 3. Content of social labelling programmes

Programme	Nature of labour issue				Freedom of association	Right to collective bargaining	Wage levels	Social benefits	Working hours	OSH	Job security and training	Requirements refer to ILO and/or inter-national labour standards
	Child labour		Non-discrimination	Forced labour								
	Remove children from workplace	Fund education or related social measures										
Care & Fair	X	X					X	X				
Kaleen	X	X					X					
RUGMARK	X	X					X					
STEP	X (gradual)	X		X	X	X	X	X	X	X		X
Double Income Project	X	X					X					
Pro-Child	X ¹	X										
Abrinq	X ¹	X										
Baden	X			X ²								
Reebok	X	X										
Fairtrade Labelling Organisations Int'l. ³	X			X	X	X	X	X	X	X		
Flower Label Program	X			X	X ⁴	X	X	X	X	X		X
Forest Stewardship Council (FSC) ⁵					X	X			X	X		X

¹ In both programmes child labour is defined in accordance with Brazilian law, which prohibits employment of children under age 14. ² The Baden label states: "No child or slave labor used to make this ball". ³ The labour issues in this table apply only to FLOs working at the plantation level with tea (six countries) and bananas (three countries). Wage levels, working conditions and health and safety standards (OSH) are set with reference to national legal standards or, if none, standard regional conditions. ⁴ Freedom of association among workers is respected where unions are legally recognized in the country ("wenn politische Organisationen (Gewerkschaften) im Land gesetzlich zugelassen sind"). ⁵ In some cases, FSC affiliates at the national level have interpreted the international labour requirements for application at the national level. Thus, the treatment of freedom of association is different at the national level in Bolivia, Germany, New Zealand and the United Kingdom.

Definitions and reference sources

Codes and labels

Along with a high degree of selectivity in the choice of labour issues, the review of codes and labels uncovered wide variation in the way in which the targeted labour practice was defined. Most codes and labelling programmes tend to reflect their drafters' own definitions of what the desired improvements in labour practices should be. Among the codes reviewed, such "self-definition" was the most widely used means of setting "standards" concerning wage levels, health and safety, and certain fundamental labour rights. Other code provisions referred to one or more of the following sources: national law, industry practice, and international labour standards.

National law is the most frequently cited of those three reference sources for code "standards". General provisions guaranteeing respect for national law appear frequently in the commerce sector, and industry associations regularly choose to refer to national law. A few codes mentioned national law as a minimum standard only.³⁴ References to industry standards, by contrast, appear to play a lesser role in code provisions than do references to either national law or international standards. The nature of code initiatives as tools for enterprise leadership might explain this.

In all, no more than one-third of the codes and labels reviewed referred to international standards, whether general human rights standards or labour-specific standards.³⁵ References to international standards occur proportionately more often in joint enterprise/worker codes and in hybrid codes than they do in codes developed by industry associations, employers' organizations or enterprises alone. Many of the codes developed by enterprises widely considered to be pioneers in social responsibility make no reference to international standards or other ILO instruments.³⁶

³⁴ Of all the issues addressed, the most frequently referenced to national law was wage levels — an area where there is no international standard.

³⁵ ILO Conventions, like other international treaties, are directed to States, although many of them concern action to be taken by private entities (for which States parties are responsible). To the extent that ILO and other treaty standards applicable to States parties reflect underlying aims capable of being translated into day-to-day enterprise operations, those standards may be considered relevant to private-sector initiatives. ILO principles and standards stand out as being particularly relevant to the growing social frameworks of various regional schemes for economic integration, including the European Union and the Southern Cone Common Market (MERCOSUR). The ILO Tripartite Declaration on Multinational Enterprises and Social Policy — the only global set of guidelines for enterprise social responsibility adopted at intergovernmental level — was referred to in just one code. The 1998 ILO Declaration on Fundamental Principles and Rights at Work (ILO, 1998b) was incorporated in one code as well. Both of these codes were hybrid in character.

³⁶ In particular, this applies to Liz Claiborne and Levi-Strauss. Reebok's code contains only a general reference to international human rights standards.

Most self-definitions differ from, and even contradict, international labour principles. For example, although some of the codes that address freedom of association affirm that principle and the right to collective bargaining,³⁷ others only allude generally to respect between labour and management.³⁸ Other codes favour the elimination of trade union activities,³⁹ while some propose a combination of approaches.⁴⁰ Even on labour issues which enterprise initiatives have addressed for some time, such as employment discrimination, there appears to be very little convergence of content or approach as between codes. Many of those reviewed dealt with non-discrimination in general allusions to respect and dignity of workers, although some did directly refer to eliminating discrimination. Others specifically rejected certain grounds for discrimination,⁴¹ but few reiterated all the internationally recognized grounds of discrimination.⁴² Some of the codes promoted not only freedom from discrimination but also equal opportunity for advancement. Mention of equal pay for work of equal value appeared in only a handful of codes.

The prohibition of forced labour, despite its overwhelming international recognition,⁴³ is treated through self-definition in roughly 80 per cent of the codes that address this issue. Most definitions are limited to prohibiting forced

³⁷ One industry association code reads: "Members shall only do business with partners whose workers are in all cases ... allowed the right of free association and not exploited in any way" (*Athletic Footwear Association — Statement of guidelines on practices of business partners*).

³⁸ Under *Toyota Motor Corporation's Guiding Principles* (1997 revision), the company aims to "foster a corporate culture that enhances individual creativity and teamwork value, while honoring mutual trust and respect between labour and management".

³⁹ One company code, reported to be on every employee's desk, states that enterprise policy seeks "[t]o operate the business in such a way that employees don't feel a need for representation by unions or other third parties. Where employees have elected in favour of — or are required by law to have some form of — union representation, Caterpillar will endeavor to build a sound company-union relationship" (*Caterpillar — Code of worldwide business conduct and operating principles*). Another, less union-friendly code reads: "The company believes in a union-free environment except where laws and cultures require [it] to do otherwise ... [and] believes that employees themselves are best able to voice their concerns directly to management" (*Sara Lee Knit Products — International operating principles*).

⁴⁰ For example: "Employees shall be encouraged by lawful expression of management opinion to continue an existing no-union status, but where employees have chosen to be represented by a union, management shall deal with the union in good faith" (*DuPont — Labour relations policies and principles*). This is followed by explanation of good-faith dealings.

⁴¹ "Perceptions of equality naturally vary between different cultures and it is not the business of a company to smooth out the differences. However, within SKF, in all the locations where we are active, we strive to maintain equality — between the sexes, between different generations, different nationalities, races and creeds. We view equality not only as an ethical principle but also as an efficient working rule. It promotes a good team spirit" (*SKF — Our views on ethics and morals*).

⁴² Article (1) (a) of the ILO's Discrimination (Employment and Occupation) Convention, 1958 (No. 111), enumerates race, colour, sex, religion, political opinion, national extraction or social origin. In addition to these grounds, the International Covenant on Economic, Social and Cultural Rights also specifies language, political or other opinion, property, birth or other status (Articles 2 (2) and 7).

⁴³ For a discussion of the ILO's Forced Labour Convention, 1930 (No. 29), and the United Nations slavery conventions, see Diller and Levy, 1997, pp. 669-672.

labour in the production of goods; services are added only exceptionally. Many also mention prison labour to qualify or extend the concept of forced labour, and some focus on physical or mental abuse as well. Similarly, the issue of child labour, which has received much media and international attention in the past decade, is addressed primarily through self-definitions, many of which lack specificity as to what a “child” is. References to national laws are common on this issue, although some enterprises might supplement such a reference with a minimum-age standard of their own, which applies only if the national standard is lower.⁴⁴ Others defer to national law in the event of conflict between their self-defined minimum age and the age set by international standard. Still others make their own minimum-age standard applicable where no national law addresses the question of child labour. Very few refer directly to the ILO’s Minimum Age Convention, 1973 (No. 138), although those that determine their own minimum-age standard typically specify 14 or 15 years which, in certain respects, resembles the general minimum-age standards set in the Convention for work that does not jeopardize the health, safety or morals of young persons. Similarly disparate definitions are given in code provisions addressing wage levels, and occupational health and safety (see ILO, 1998a, paras. 51-52).

Investor initiatives

Although shareholder resolutions address a wide range of issues, the number that directly address international labour issues is relatively small.⁴⁵ And by comparison with codes and social labelling programmes, the labour criteria used in screening by managers of investment funds appear to be less specific, with no apparent standardization among screens. Moreover, financial analysts tend to judge “socially responsible” funds primarily in terms of comparability of financial performance with funds which make no distinction between general and potentially “cleaner” investment options, including those with notable anti-discrimination and social protection programmes (see, for example, Glassman, 1999). About one quarter of the “socially screened” mutual funds in the United States use labour-related criteria such as “no sweatshop labour”, advancement of women and people of colour in the workplace and issues of concern to unions.⁴⁶

⁴⁴ For example: “Sara Lee will not knowingly use suppliers who employ workers in violation of the local mandatory school age, or under the legal employment age in each country. In no case will Sara Lee procure goods or services from firms employing workers under age 15” (*Sara Lee Corporation — Supplier selection guidelines*).

⁴⁵ In the United States, for example, among the more than 650 shareholder resolutions recorded by the Investor Responsibility Research Centre (IRRC) in 1996, only 50 were linked to international labour issues (see Varley, Mathiasen and Vorhes, 1998, pp. 27-29).

⁴⁶ Other selection criteria range from tobacco, alcohol and gambling to environment and animal welfare (see Social Investment Forum, 1997, section 2; Co-op America, 1999).

Implementation and impact of private-sector initiatives

Without a generally accepted methodological framework that results in the reporting of comparable data, it is difficult to arrive at any objective assessment of efforts to implement codes or labelling systems, and impossible to measure progress even within a single enterprise, let alone within or across industry sectors. Most efforts to establish principles and procedures for the implementation of labour-related codes emphasize the need for participation by all interested parties, comparability of reported data, periodic evaluation and revision of methods, transparency (including disclosure of reports), and the need for external auditing to verify and validate such processes as are used. However, private-sector initiatives generally remain lacking in standardized principles and procedures for defining criteria and conducting assessments.

Monitoring and assessment

Actual implementation of any commitment involves, in the first instance, the application of management systems within the enterprise, but “[v]ery few ... codes emphasize or discuss in detail internal oversight and personal integrity” (Lefebvre and Singh, 1992, p. 807, whose study of Canadian codes exhibits this tendency in almost 70 per cent of cases). Common management systems to implement private-sector initiatives include the establishment of a clear and detailed enterprise policy, allocating managerial resources for effective dissemination of the policy (including translation) and staff training, and developing and implementing tools for monitoring, reporting, and taking corrective action.

Enterprise-based tools for monitoring and reporting on performance range from self-certification of code compliance by managers, suppliers or affiliates, to active monitoring, evaluation and reporting processes conducted by enterprise personnel or consultants, or externally by third parties or professional inspectors. Enterprises generally favour internal reporting because of concern about leaks of confidential information. According to one study, the more vertically integrated the enterprise is, the more likely monitoring is to be conducted through an in-country or regional presence that facilitates frequent inspections (United States Department of Labor, 1996).⁴⁷ Less monitoring occurs with less integrated relationships in the chain or in the company’s own operations.

⁴⁷ The Department of Labor’s study found that, in the apparel industry, retailers may concentrate internal monitoring efforts on facilities that produce private label merchandise or brands sold exclusively at their stores where more public image was invested.

Self-policing methods for monitoring the implementation of private-sector initiatives have both advantages and drawbacks.⁴⁸ Not infrequently, a code launched with much publicity in an industrialized country is unknown, unavailable or untranslated at producing facilities; and even where it is made available, workers may have no way of reading the code or reporting non-compliance without risking disciplinary treatment or dismissal (van Liemt, 1998). Reports from practice suggest that code implementation systems often lack sufficient human resources, adequate participation by workers, and transparency in application. Such reports have increased both consumer scepticism about private-sector claims and public pressure for credible and independent methods of reporting on enterprise performance.

In contrast to self-policing methods, third-party reporting offers various models for balancing control by the enterprise concerned with the perceived need for credibility derived from independent assessment. Growing numbers of enterprises are choosing to call upon professional inspection or auditing firms which may be providing other inspection or auditing services to them already. In general, however, such firms are thought to be less experienced in the detection of workplace violations and less independent due to pre-existing contractual relationships with enterprise management. NGO assessors have also been hired, but without notable success. Small and medium-sized enterprises, especially those in developing countries, have chosen to develop industry association programmes for monitoring and reporting; these programmes provide some degree of independent assessment at lower cost and, presumably, with higher visibility than could be achieved by a single enterprise. Increasingly, joint implementation structures between trade unions and enterprises are being recognized as a means of operating independently of management control and enlisting worker participation. Under other arrangements, NGOs work together with international workers' organizations and enterprise to pursue accreditation systems with certification fees.

Assessment methods for social labelling systems generally mirror hybrid code certification arrangements (see "primary implementation methods" in table 2). Most of these systems use NGO or professional auditors, with various forms of self-monitoring found in one-third of the programmes reviewed. Arrangements for worker input were found in very few of the programmes reviewed, and typically took the form of an opportunity to provide information to monitors (Abring), to comment on certifiers' reports (FSC), or to be represented as observers (FLO tea registry).

The problem of cost associated with independent inspection arises under codes and labelling systems. This problem is particularly acute for producers subject to varying requirements of different buyers and retailers. In many cases,

⁴⁸ One study found that few workers were aware of the existence of codes and that formal training about codes was not common among suppliers overseas, though it was more likely to occur where a supplier produced largely for the company with the code. Knowledge among host governments of codes applying to suppliers operating in their countries was found to be variable (United States Department of Labor, 1996).

the added costs of code systems are reflected in a retail mark-up, but if the cost is significant it can damage the competitive position of enterprises. Some have responded with sectoral initiatives, such as those taken under ILO technical assistance programmes to eliminate child labour,⁴⁹ while others have opted for the uncertain shelter of social labelling programmes. However, the costs of running a social labelling programme have not yet been proven to operate on a self-sustaining basis, nor has the investment yet proven its worth in terms of added market share.

Effects of implementation

The effects of private-sector initiatives on their purported aim of improving labour practices are not easily measured, nor are their potential collateral effects on enterprise growth (especially in developing countries), employment, and comparative advantage in international trade and investment. Indeed, whether they stem from codes, labelling programmes or other initiatives, socially responsible sourcing conditions can have critical implications for developing country enterprises in a value chain, especially for small and medium-sized enterprises. In many cases, such conditions require enterprises to find cost-effective ways of making the technical and managerial changes needed in order to maintain, or obtain, access to foreign markets or the large international buyers or investors who impose social requirements (on these difficulties of compliance, see WTO, 1997a; Kumar, Gessese and Konishi, 1998). Private-sector initiatives have been at the root of the summary termination of supply contracts where plants have been exposed for non-compliance with code standards imposed from the outside.

Social labelling programmes also produce direct and indirect effects, both helpful and adverse. They may improve working conditions, raise funds for educational and rehabilitation programmes for former child workers, and improve compliance with labour laws. However, they may also bring adverse effects, including financial difficulty among participating enterprises and consequent loss of jobs. Higher prices of labelled products may result in lower penetration of the market, and child workers may be driven into less formal sectors where their exploitation is more difficult to eliminate.

Debate on how to determine the effects of social labelling focuses on the use of such factors as market share of the label, consumer recognition, percentage take-up of participating companies, number of beneficiaries involved and magnitude of change involved in beneficiaries' income and consumer spending. In the context of ecolabelling, economic theory (unsupported by empirical data) has been used to suggest that negative effects could arise when successful labelling schemes drive down the price of unlabelled goods, thereby increasing demand for those goods (Mattoo and Singh, 1994). A counter argument is that the increased sale of labelled goods would result in increased economies of scale and consequently lower prices, which could in turn be expected to result

⁴⁹ For a description of these programmes, see ILO (1998a, note 26 and table 3).

in diminished sales, reduced economies of scale and higher prices for unlabelled products (Appleton, 1998), and that awareness-raising itself may result in increased demand for labelled goods.

As with codes and labels, the impact of shareholder proposals is difficult to measure, given the number of intervening factors. Even a modest vote in favour of a resolution can assist proponents in discussions with management since it demonstrates a measure of shareholder support for the spirit of the resolution. But measurable progress may take several years, since proponents often put a resolution to the vote several times. The impact is perhaps most visible when the effort results in an agreed plan of action with management leading to withdrawal of the resolution. This is what happens to about one-third of the resolutions submitted in the United States.⁵⁰ The action taken often mirrors that requested in the proposed resolutions, whereby shareholders ask management to take some voluntary initiative to address labour practices within the enterprise's operations or outsourcing partners. In various cases, shareholders have asked the enterprise to develop a code of conduct, adopt a third party (subscription) code, amend its articles of incorporation to include international labour standards as binding provisions, increase activity under a code of conduct, or monitor and report on contractors' compliance with the enterprise's code of conduct. Shareholders have even accepted an active role in the monitoring process. In other efforts, shareholders have requested enterprises to restate formal company policy in response to various labour concerns, or prepare a report on the enterprise's labour practices abroad or its supplier standards. As a means of circumventing a rule excluding shareholder proposals concerning the "ordinary business" of the company, shareholders in the United States have proposed linking executive compensation to social performance of the company. In any event, it is clear that enterprises targeted by shareholders face unpredictable parameters in designing and implementing initiatives to satisfy their demands, and in reporting to, and negotiating with them. In turn, shareholders have few reliable ways of assessing enterprise progress on issues of concern.

As to social screening by investment funds, the criteria used by fund managers — e.g. "no sweatshop labour" or the advancement of women — may serve as a basis for excluding or including a particular company's shares.⁵¹ But

⁵⁰ In other situations, either management finds legal grounds for omitting the proposal from the proxy ballot or, if the proposal is voted upon, it never comes close to achieving a majority vote, partly because of the nature of shareholder proxy voting. Proposals dealing with social matters rarely receive more than 15 per cent of shares voted and frequently less than 10 per cent (see Varley, Mathiasen and Vorhes, 1998, p. 18). Exceptionally, in 1996, a resolution filed with the retailer and private label manufacturer J.C. Penney requesting a report on labour standards for overseas suppliers obtained the support of the management, and then received 87 per cent of the votes (*ibid.*, p. 28).

⁵¹ Investors often base their decisions on information gained from research institutions and that provided by the company itself, usually in reply to "screening questionnaires". In deciding how stringently to apply the criteria, fund managers usually compromise between a strict application that would exclude any enterprise with problems and traditional investment criteria.

differences between the criteria used by various investment funds tend to weaken their ability to send a clear message to enterprises; indeed, in some cases, the act of divestment could amount to nothing more than a silent withdrawal of money.⁵² As some advocates of these initiatives acknowledge, screened funds may have to operate in combination with other instruments to have an effect. In most cases, screened funds do not own enough shares in single companies to influence their decision-making by damaging share prices, but they may make a difference when combined with campaigns and other social strategies.

Implications for social policy

Overall, private-sector initiatives share certain potential benefits and drawbacks. On the positive side, they stimulate social concern among enterprises and consumers through market mechanisms. To the extent that they complement, supplement or catalyze government policy goals, they offer alternative means of leveraging public efforts. However, these benefits apply selectively as to the labour practices and sectors concerned. Moreover, the initiatives tend to lack transparency, and reliable and comparable verification methods. To the extent that they differ in content from public objectives of social justice, they may even undercut national efforts to improve labour practices, increase employment, liberalize trade and, ultimately, distribute gains equitably. In addition, they may ultimately discriminate against producers in developing countries who face undue costs or other constraints in the process of assessment/certification of conformity. The balance of such risks against the benefits of private-sector initiatives is a matter of concern to policy makers and enterprise stakeholders alike.

While it is difficult to predict the future of private-sector initiatives, as to both their sustainability and their direction, the fact remains that the market alone has so far failed to produce generally accepted principles for their content or implementation. The degree to which coordination of public and private action, and even regulation, is needed to enhance the benefits and minimize the risks inherent in the operation of such initiatives has been the subject of vigorous debate in public and private fora alike.

Concern for greater coordination of public and private action marks the approaches of the Governments of the European Union countries and the United States.⁵³ At the World Economic Forum in January 1999, the Secretary-Gen-

⁵² Exceptionally, some large, socially screened funds also engage in shareholder activism, opening dialogue with companies in which they invest on labour-related and other issues and sponsoring shareholder proposals on these issues while retaining the divestment option as a last resort, e.g. Franklin Research & Development Corporation and the Calvert Group, Ltd. (on the latter, see Calvert Group Ltd., 1997).

⁵³ In December 1998, at the EU/US Symposium on Codes of Conduct — attended by representatives of United States and European business, employers' and workers' organizations, labour ministries, NGOs and auditing firms — there was broad support for the view that any code of conduct should reflect the aims underlying the ILO's 1998 Declaration on Fundamental Principles and Rights at Work, though some business representatives insisted that choice should be left to the discretion of each company.

eral of the United Nations noted the relevance to private initiatives of the universal aims reflected in ILO principles and methods of work. He urged multinational investors, employers and producers to “uphold human rights and decent labour and environmental standards directly, by your own conduct of your own business” by promoting universal values in their dealings (Annan, 1999, p. 3). A promotional approach has been adopted thus far in discussions within the ILO itself. The Organization has embarked on a research agenda focusing on the effects of private-sector initiatives on working conditions and job creation. It has also been mandated to provide assistance upon request relating to enterprise needs in this area so long as the Organization’s own objectives are served.

Meanwhile, the World Bank is exploring a global code of social policy, and the United Nations Commission on Sustainable Development is engaged in consultations with enterprises, NGOs, trade unions and governments on a universal set of principles to guide industry in promoting sustainable development (see Chote, 1999; United Nations Commission on Sustainable Development, 1999). The OECD, for its part, is considering a revision to its Guidelines on International Investment which would, among other things, reflect certain core labour standards (Blanpain, forthcoming).

Other approaches have focused more squarely on regulatory means. The European Parliament has recommended, in a resolution to the European Commission, that a model code of conduct incorporating labour and other standards be adopted for European businesses operating in developing countries (see European Union, 1999).⁵⁴ But further direct public regulation of private-sector actors — particularly if it is legally binding, such as that proposed by the European Parliament — would appear an inadvisable means of seeking to standardize the content of private-sector initiatives concerned with labour practices. A global system promoting the realization of minimum standards in national law and policy might provide a more appropriate and effective framework by encouraging national authorities to ensure that private action is in line with public policy. Indeed, with strengthened public systems for pursuing universally accepted standards — which would essentially amount to a uniform global “bottom line” — private-sector initiatives would likely reflect at least a coherence based on those minimum standards in most cases.

As regards implementation, however, complementarity between public goals and private-sector initiatives could be achieved more effectively and equitably by promoting a framework for such initiatives that encourages comprehensive, transparent and reliable corporate social policy. Such a framework could aim to uphold a set of widely-recognized basic principles analogous to the “generally-accepted accounting principles” (GAAP) which served to charter the profession of financial accounting. Possible approaches include the use of a multilateral private framework, national-level public regulation, or

⁵⁴ The resolution recognized a need for minimum standards applicable to transnational dealings, and supported a model code that would include the ILO’s core Conventions and the Tripartite Declaration of Principles on Multinational Enterprises and Social Policy.

multilateral public regulation. Yet the most promising solution to date, as outlined below, involves a combination of those three approaches, supported by concrete technical assistance, provided to the enterprises concerned on the basis of equal access and impartiality.

Approaches using a *privatized multilateral framework* would involve agreements to follow guidelines on a voluntary basis, or a voluntary mechanism for setting benchmarks and assessing enterprise performance.⁵⁵ Taken alone, such frameworks present advantages as well as risks, including lack of transparency and narrow participation in the development and implementation of initiatives. The workings of a privatized framework can be illustrated by the experience of the International Organization for Standardization (ISO) generally⁵⁶ and, in particular, by its current development of standards for ecolabelling criteria, symbols and verification processes.⁵⁷ This effort, promoted by Agenda 21 of the United Nations Conference on Environment and Development, seeks to establish guidelines for standardizing criteria, label development and verification systems. Proponents argue that such standards could help prevent confusion among consumers arising from the conflicting criteria and unclear meaning of various labels, minimize the risk of loss of credibility over unverifiable claims, and diminish potential liability if enterprises fail to meet national legal minimum standards.

Other approaches to promoting coherence among initiatives are primarily public in nature. Resort to some sort of *reciprocity or equivalence exchanged at the national level*⁵⁸ presents some advantages but also risks imbalance of application globally and distortion of trade. A review of the relevant clauses of bilateral investment treaties (BITs) and treaties of friendship, commerce and

⁵⁵ A purely private international framework could be developed, for example, through an international business association such as the International Chamber of Commerce or the World Business Council for Sustainable Development.

⁵⁶ ISO is a private organization composed of national standards institutes or organizations representing some 120 countries. It has developed more than 11,000 international uniform standards to facilitate international exchange of goods and services, primarily in technical fields. In recent years, ISO has developed two series of generic standards applicable to a wide range of industries and services: in 1989, a quality assurance systems management (ISO 9000) series, and, in 1996, an environmental systems management (ISO 14000) series. Enterprises worldwide have sought third-party certification of conformity with the two systems-management standards, but some enterprises in developing countries have reported limitations in access to recognized certification services. In 1997, ISO decided not to launch the development of a management system standard for occupational health and safety.

⁵⁷ ISO is developing five such standards: on basic principles (ISO 14020); self-declaration claims (14021-14023 covering terms and definitions, labelling symbols, and testing and verification methodologies); and 14024 on principles and procedures for certain third-party labelling systems (Type 1). ISO 14040-14043 address principles and guidelines for assessing environmental impact throughout the whole of a product's life.

⁵⁸ Mere reliance on existing regulatory frameworks for commercial behaviour, including in respect of fraud and antitrust, has so far proven unsuccessful in view of the evidence presented here.

navigation (FCN) reflect the patchwork results of such approaches, when taken in isolation.⁵⁹

Another public model — *guidelines on enterprise social policies, developed at the intergovernmental level* — provides a multilateral framework for the realization of voluntary commitments through reporting and application to particular cases. Examples of this model include the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (“Tripartite Declaration”),⁶⁰ and the OECD Guidelines on Multinational Enterprises.⁶¹ The follow-up of these systems, however, has demonstrated the difficulty of maintaining, and monitoring, concrete commitments to certain social behaviour under systems that are not legally binding (see Diller, forthcoming).

In one hybrid model, which adapts voluntary private-sector guidelines to a legally-binding conventional system of *multilateral public regulation*, States assume certain obligations respecting private-sector standardizing activities while the voluntary and non-state character of the underlying private-sector initiatives is acknowledged. For example, the Technical Barriers to Trade (TBT) Agreement of the World Trade Organization and its annexed Code of Good Practice govern the development and assessment of technical regulations and standards with a view to preventing unjustifiable non-tariff barriers.⁶² Article 2.5 of the TBT Agreement provides that, whenever a mandatory domestic technical regulation is prepared, adopted or applied for a legitimate objective (including protection of human health or safety, and the environment) and in accordance with relevant international standards, it is rebuttably presumed not to create an unnecessary obstacle to international trade. Similarly, the TBT Agreement encourages Members to harmonize conformity assessment procedures through the use of international guides and participate in the preparation of those guides by international standardizing bodies with a view to reducing unnecessary obstacles to trade that might result from national differences in conformity assessment procedures (Preamble and Articles 5.4 and 5.5). Stand-

⁵⁹ The majority of BITs have been concluded between Western, capital-exporting countries and developing countries. In some bilateral commercial treaties — especially those to which the United States is party — references to labour standards recognize international labour standards or incorporate respect for national law protecting workers.

⁶⁰ The Tripartite Declaration, adopted in 1977, applies globally to governments, MNEs, employers and workers. Lists of ILO Conventions and Recommendations particularly relevant to enterprise operations are annexed to the Declaration. Its implementation is reviewed through periodic surveys and a procedure permitting requests for interpretation in specific cases. The system as a whole offers an international framework for the development of voluntary labour-related commitments in codes of conduct and other social initiatives.

⁶¹ The OECD Guidelines on Multinational Enterprises apply only to enterprises operating within OECD countries, and are interpreted through a “clarification procedure”, whereby the OECD seeks to interpret the Guidelines consistently with provisions and interpretations given in the ILO’s Tripartite Declaration.

⁶² Whether voluntary social labelling schemes constitute “standards” covered by the Code of Good Practice is beyond the scope of this study. The Code of Good Practice has not been determined to apply to product labelling that references processes and production methods which do not have an impact on the final product (“unincorporated PPMs”).

ardizing bodies themselves, including governmental and non-governmental domestic bodies, may register their acceptance of the Code of Good Practice which, in turn, requires that they use international standards in the development of their (national) standards. The Code of Good Practice also encourages transparency and cooperation among standardizing bodies at the local, central (e.g. national or federal) and regional levels through such requirements as notification of standardizing activities, provision of information upon request, and consultations in an objective effort to solve any complaints.⁶³ The Code seeks, in the long run, equivalence, mutual recognition and harmonization of public and/or private standards on “as wide a basis as possible” by reference to international standards.

It is not clear whether international labour standards are directly relevant to the interpretation of the TBT Agreement and its annexes,⁶⁴ but in the context of labour-related private initiatives, a type of framework analogous to that presented by the TBT Agreement and Code of Good Practice is worthy of consideration. This general model offers commercial non-state actors — whose voluntary conduct is guided by governmental commitments to encourage internationally based standards — an opportunity to enter directly into a relationship of commitment and accountability to both public and private actors. Specifically, it provides a practical means of encouraging coherence in the content of voluntary standards and in procedures for conformity assessment, and of preventing confusion from arising over conflicting sets of voluntary standards and/or distortion in various methods of assessment and certification of conformity with such standards.

Some substantive and procedural coherence in the field of labour-related private-sector initiatives could be encouraged by combining a set of recommended principles — like those set out in the ILO’s Tripartite Declaration or in the OECD Guidelines, or their more recent outsourcing equivalents — with a sign-on system like a voluntary Code of Good Practice annexed to a commitment binding on governments. To be effective and non-protectionist, the framework would necessarily require support through concrete and targeted programmes of technical assistance and guidance to enterprises, especially in developing countries, seeking to address the challenges inherent in developing and applying private-sector initiatives. Such programmes, financed by private and, as available, public sources, could seek to build capacity and complementarity of approach between private- and public-sector activities. The results

⁶³ Since the establishment of the TBT Committee in January 1980, a total of 41 cases of standards-related concerns have been pursued in the consultation stage; no dispute settlement panel has been established in any case (see WTO, 1997a).

⁶⁴ Standards such as those on working conditions and environment, occupational safety and health, equality of treatment between men and women, non-discrimination, rights of tribal and indigenous peoples and employment appear relevant. See Annex I to the TBT Agreement, article 4 (*international body or system* is considered to be a “body whose membership is open to the relevant bodies of at least all members”) and the ISO/IEC Directory of International Standardizing Bodies (listing the ILO and the specified standards). See also WTO (1997a, pp. 6-8).

of a capacity-building approach, together with a framework for harmonization of procedures, might well bring the uncertain promise of private-sector initiative to fulfilment by preserving the broader pursuit of social justice in the liberalization of international trade.

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