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Corporate Codes of Conduct

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April 2001

# Codes of Conduct: Self Regulation in a Global Economy

Rhys Jenkins

*United Nations Research Institute for Social Development (UNRISD)*

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# Codes of Conduct: Self Regulation in a Global Economy

## **Abstract**

Program paper that details changes in corporate regulation and assesses their significance. Explores the drivers that account for the growth of corporate codes of conduct and the different stakeholders and interest groups involved. The focus is primarily on labour standards.

## **Keywords**

Business, Catherwood, Code, Codes, Conduct, Cornell, Corporate, Economic, Engagement, Global, Globalization, Globalisation, ILO, ILR, Industrial, International, Labor, Labour, Law, Legal, Legislation, Library, Organization, Organisation, Portal, Regulation, Relations, Responsibility, Rights, School, Social, Standards, University, Work, Workers, Workplace

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# Corporate Codes of Conduct

## *Self-Regulation in a Global Economy*

*Rhys Jenkins*

Technology, Business and Society  
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for Social Development



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## Acronyms

<b>BGMEA</b>	Bangladesh Garments Manufacturers and Exporters Association
<b>BP</b>	British Petroleum
<b>CEO</b>	Chief Executive Officer
<b>DFID</b>	Department for International Development
<b>ECCR</b>	Ecumenical Committee for Corporate Responsibility
<b>EUROTEX</b>	European Textile and Garment Employers
<b>FDI</b>	foreign direct investment
<b>FIFA</b>	Fédération Internationale de Football Association
<b>ICCR</b>	Interfaith Centre for Global Corporate Responsibility
<b>ICFTU</b>	International Confederation of Free Trade Unions
<b>IFBWW</b>	International Federation of Building and Wood Workers
<b>IIP</b>	Investors in People
<b>ILO</b>	International Labour Organization
<b>ISO</b>	International Standards Organization
<b>ITGLWF</b>	International Textile, Garments and Leather Workers Federation
<b>IUF</b>	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations
<b>NEF</b>	New Economics Foundation
<b>NGO</b>	non-governmental organization
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>OPEC</b>	Organization of Petroleum Exporting Countries
<b>PWC</b>	PriceWaterhouse Coopers
<b>RTZ</b>	Rio Tinto-Zinc
<b>TCCR</b>	Task Force on the Churches and Corporate Responsibility
<b>TNC</b>	transnational corporation
<b>UK</b>	United Kingdom
<b>UNCTAD</b>	United Nations Conference on Trade and Development
<b>UNCTC</b>	United Nations Centre on Transnational Corporations
<b>UNRISD</b>	United Nations Research Institute for Social Development
<b>US</b>	United States
<b>USS</b>	Universities Superannuation Scheme Ltd.
<b>WBCSD</b>	World Business Council for Sustainable Development
<b>WRAP</b>	Worldwide Responsible Apparel Production
<b>WTO</b>	World Trade Organization

## **Summary/Résumé/Resumen**

### ***Summary***

The 1990s saw a proliferation of corporate codes of conduct and an increased emphasis on corporate responsibility. These emerged in the aftermath of a period that saw a major shift in the economic role of the state, and in policies toward transnational corporations (TNCs) and foreign direct investment. Whereas in the 1970s many national governments had sought to regulate the activities of TNCs, the 1980s was a decade of deregulation and increased efforts to attract foreign investment. A similar trend occurred at the international level, where efforts at regulation had been unsuccessful.

It is in this context that the recent wave of voluntary codes of conduct must be situated. US companies began introducing such codes in the early 1990s, and the practice spread to Europe in the mid-1990s. Voluntary codes of conduct range from vague declarations of business principles applicable to international operations, to more substantive efforts at self-regulation. They tend to focus on the impact of TNCs in two main areas: social conditions and the environment. A variety of stakeholders, including international trade union organizations, development and environmental NGOs and the corporate sector itself have played a role in the elaboration of codes of conduct for international business.

Several changes in the global economy have contributed to the growing interest in corporate social responsibility and codes of conduct. The growth of “global value chains”, through which Northern buyers control a web of suppliers in the South, has led to calls for the latter to take responsibility not only for aspects such as quality and delivery dates, but also for working conditions and environmental impacts. At the same time, the increased significance of brands and corporate reputation makes leading companies particularly vulnerable to bad publicity. Changing public attitudes are also an important part of the context in which corporate codes of conduct have been adopted. Companies in the North can no longer ignore the impact of their activities on the environment with impunity. Developments in global communications, which have enabled corporations to control production activities on an ever-widening scale, have also facilitated the international transmission of information about working conditions in their overseas suppliers, increasing public awareness and facilitating campaigning activities.

A range of stakeholders are involved in drawing up voluntary codes of conduct, or can be affected by their adoption. These include large and small firms, Northern and Southern NGOs, trade unions, shareholders and investors, consumers, consultancy firms and verifiers, Southern exporters, workers in the South, Southern governments, and local communities. All have specific interests that predispose them more or less favourably toward corporate codes, and influence the kinds of codes that they would like to see implemented.

One of the striking characteristics of the recent growth of codes of conduct is their tendency to be concentrated in certain sectors, particularly trade, textiles, chemicals and extractive

industries. Codes addressing labour issues tend to be concentrated in sectors such as garments, footwear, sports goods, toys and retailing, whereas environmental codes are more likely to be found in chemicals, forestry, oil and mining.

Codes of conduct can be divided into five main types: company codes, trade association codes, multi-stakeholder codes, model codes and inter-governmental codes. Codes vary considerably in scope. Many do not even cover all of the International Labour Organization's core labour standards. Company codes and trade association codes often have a more limited scope than those developed in conjunction with other stakeholders. There are also differences in the coverage of codes. Although many do cover the firm's suppliers, they often do not extend all the way along the supply chain, and very rarely cover home-based workers. Provisions for the implementation of a particular code, and for effective monitoring, are crucial if it is to have any real impact. Here, too, one finds weaknesses, with only a small proportion of codes making provision for independent monitoring.

In evaluating corporate codes of conduct, several limitations need to be pointed out. Some of these are practical, arising from the way codes have (or have not) been implemented up to now. Others are inherent to corporate codes as an instrument, and therefore go beyond constraints related to the way codes have been applied in the past. Despite the recent proliferation of codes, their implementation remains relatively limited. Other shortcomings relate to the limited number of issues they address, and who such codes apply to. More deep-seated structural limitations of codes of conduct relate to the "drivers" that gave rise to their proliferation during the 1990s. Not only are they limited to particular sectors, where brand names and corporate image are important, but they are also mainly applied to firms engaged in exporting. Finally, there is a tendency for codes to focus on particular issues – those regarded as potentially highly damaging for companies to be associated with. In other words, issues that have a high profile in developed countries are likely to figure prominently in most codes.

Notwithstanding the limitations of codes, they can and have generated positive benefits for stakeholders. Examples where working conditions have improved show that codes can provide leverage on corporate behaviour. Furthermore, because of codes of conduct, firms increasingly accept responsibility for the activities of their suppliers as well as their own subsidiaries.

There is a danger, however, of codes being seen as something more than they really are, and used to deflect criticism and reduce the demand for external regulation. In some cases, codes have led to a worsening of the situation of those whom they purport to benefit. Concern has also been expressed that they may tend to undermine the position of trade unions in the workplace.

The limitations and dangers of codes of conduct identified in this paper are undoubtedly real. It is thus important to develop strategies to ensure that codes are complementary to government legislation and provide space for workers to organize. They are most likely to do so when they are multi-stakeholder codes, rather than when they are unilaterally developed by companies or

trade associations. Codes of conduct should be seen as an area of political contestation, not as a solution to the problems created by the globalization of economic activity.

Rhys Jenkins is a Reader of Development Studies at the University of East Anglia, United Kingdom.

### **Résumé**

Les années 90 ont été marquées par la prolifération des codes de conduite et par une volonté plus forte de responsabiliser les entreprises. On sortait alors d'une période pendant laquelle le rôle économique de l'Etat s'était profondément modifié, tout comme les politiques à l'égard des sociétés transnationales (STN) et des investissements étrangers directs. Tandis que de nombreux gouvernements nationaux s'étaient attachés pendant les années 70 à régler les activités des STN, les années 80 ont été celles de la libéralisation où l'on s'est efforcé d'attirer les investissements étrangers. On a observé la même tendance au niveau international où les efforts en faveur de la libéralisation se sont avérés loin d'être satisfaisants.

C'est dans ce contexte qu'il faut replacer la vague récente des codes de conduite volontaires. Des sociétés américaines ont commencé à introduire ces codes au début des années 90 et la pratique a gagné l'Europe vers 1995. Les codes de conduite volontaires recouvrent des réalités très diverses, allant de vagues déclarations de principes applicables aux opérations internationales à des efforts réels d'autorégulation. Ils ont tendance à se focaliser sur les effets des activités des STN dans deux grands domaines: les conditions sociales et l'environnement. Diverses parties prenantes, dont des organisations syndicales internationales, des ONG travaillant dans le domaine du développement et de l'environnement et les entreprises elles-mêmes, ont contribué à l'élaboration de codes de conduite pour les sociétés internationales.

Plusieurs changements dans l'économie mondiale ont contribué à éveiller l'intérêt pour les codes de conduite et pour une responsabilisation sociale des entreprises. Avec le développement des "chaînes mondiales des valeurs", dans lesquelles des acheteurs du Nord contrôlent un réseau de fournisseurs implantés au Sud, ces derniers ont été appelés à répondre non seulement d'aspects comme la qualité et les dates de livraison, mais aussi des conditions de travail et des effets sur l'environnement. En même temps, l'importance accrue des marques et de la réputation des entreprises rend les grandes sociétés particulièrement vulnérables à une mauvaise publicité. L'évolution des comportements du public est aussi un facteur de poids parmi ceux qui ont amené les entreprises à adopter des codes de conduite. Les sociétés du Nord ne peuvent plus impunément ignorer les effets de leurs activités sur l'environnement. L'évolution des communications mondiales, qui a permis à des sociétés d'exercer un contrôle plus important sur leurs activités de production, a aussi favorisé la diffusion au niveau international d'informations sur les conditions de travail chez leurs fournisseurs à l'étranger, augmentant la sensibilité du public et facilitant les campagnes.

Participent à l'élaboration des codes de conduite volontaires ou peuvent être touchés par leur adoption des entreprises, grandes et petites, des ONG du Nord et du Sud, des syndicats, des actionnaires et des investisseurs, des consommateurs, des cabinets de consultants et d'audit, des exportateurs du Sud, des travailleurs du Sud, des gouvernements du Sud et des collectivités locales. Ces diverses parties ont des intérêts spécifiques qui font qu'elles sont plus ou moins favorablement disposées envers les codes d'entreprises et qu'elles souhaitent voir appliquer tel ou tel type de code.

Ce qui frappe lorsqu'on étudie la multiplication récente des codes de conduite, c'est qu'ils se concentrent généralement dans certains secteurs déterminés, notamment le commerce, l'industrie textile, les produits chimiques et les industries extractives. Les codes relatifs aux questions du travail portent surtout sur des secteurs tels que l'habillement, la chaussure, les articles de sport, les jouets et le commerce de détail, tandis que les codes environnementaux vont plutôt réglementer l'industrie chimique, pétrolière et minière et la sylviculture.

On distingue cinq catégories principales de code de conduite: les codes de sociétés, les codes d'associations commerciales, les codes élaborés par des groupes d'intérêt multiples, les codes modèles et les codes intergouvernementaux. Leur portée peut varier considérablement. Beaucoup ne reprennent même pas toutes les normes essentielles du travail édictées par l'Organisation internationale du travail. Les codes de sociétés et d'associations commerciales ont une portée plus limitée que ceux qui sont élaborés avec le concours d'autres parties. Les sujets traités varient aussi. Bien que beaucoup comportent des dispositions visant les fournisseurs de la société, ils ne vont généralement pas jusqu'à couvrir toute la chaîne de l'approvisionnement et ne s'intéressent que très rarement aux travailleurs à domicile. Les dispositions relatives à l'application du code en vue d'un contrôle effectif sont cruciales si l'on veut qu'il ait un impact réel. Les codes pèchent aussi par là: seul un faible pourcentage d'entre eux prévoit un contrôle indépendant.

En évaluant les codes de conduite, l'on peut remarquer et signaler leurs limites. Certaines d'entre elles sont pratiques et tiennent à la façon dont ils ont été appliqués jusqu'à présent. D'autres sont inhérentes aux codes comme instrument et vont donc au-delà de la façon dont ils ont été appliqués dans le passé. Bien qu'ils prolifèrent depuis peu, leur application reste assez limitée. Ils pèchent aussi par le nombre restreint des questions abordées et des entités auxquelles ils s'appliquent. Leurs faiblesses structurelles plus profondes tiennent aux mobiles qui expliquent leur prolifération dans les années 90. Ils se limitent non seulement à des secteurs concrets où les marques et l'image de l'entreprise ont leur importance mais encore le plus souvent aux sociétés d'exportation. Enfin, ils ont tendance à porter sur des questions particulières — celles qui peuvent se révéler extrêmement dommageables pour une société si son nom y est associé. Autrement dit, les questions auxquelles les pays développés sont très sensibles ont des chances de tenir une place de choix dans la plupart des codes.

Malgré toutes leurs faiblesses, les codes peuvent avoir et ont eu des avantages pour les parties prenantes. Les exemples dans lesquels les conditions de travail se sont améliorées montrent que les codes permettent d'influer sur le comportement de l'entreprise. De plus, à cause des codes de conduite, les sociétés répondent de plus en plus des activités non seulement de leurs filiales mais aussi de leurs fournisseurs.

Il existe un danger, pourtant, celui de voir dans le code plus que ce qu'il n'est vraiment et de s'en servir pour désamorcer les critiques et réduire la demande de régulation extérieure. Dans certains cas, les codes ont entraîné une dégradation de la situation de ceux qui étaient censés en bénéficier. Certains craignent aussi qu'ils ne sapent la position des syndicats sur le lieu de travail.

Les limites et les dangers des codes de conduite relevés dans ce document sont à n'en pas douter bien réels. Il est donc important d'élaborer des stratégies pour veiller à ce qu'ils complètent la législation du gouvernement et laissent aux travailleurs la liberté de s'organiser. Les codes de conduite ont plus de chances de remplir ces conditions lorsque diverses parties ont concouru à leur élaboration que lorsqu'ils résultent du travail unilatéral de sociétés ou d'associations professionnelles. Ils devraient apparaître comme un lieu de contestation politique et non pas comme la solution des problèmes posés par la mondialisation de l'économie.

Rhys Jenkins est professeur d'études du développement à l'Université d'East-Anglia (Royaume-Uni).

### ***Resumen***

En el decenio de 1990 proliferaron los códigos de conducta y hubo mayor insistencia en la responsabilidad empresarial. Dichos códigos surgieron tras un periodo en que el papel económico del Estado y las políticas experimentaron un cambio de orientación hacia las empresas transnacionales y las inversiones extranjeras directas. Si bien en el decenio de 1970, muchos gobiernos nacionales habían procurado regular las actividades de las empresas transnacionales, los años 80 se caracterizaron por la liberalización y los esfuerzos redoblados para atraer la inversión extranjera. Hubo una tendencia similar a escala internacional, donde la labor desplegada en pro de la liberalización no fue satisfactoria.

La oleada reciente de códigos de conducta voluntarios debe situarse en este contexto. Las empresas americanas comenzaron a introducir dichos códigos a principios de los años 90, y su práctica se extendió en Europa a mediados de este decenio. Los códigos voluntarios de conducta abarcan desde las declaraciones vagas de principios comerciales aplicables a operaciones internacionales, hasta esfuerzos más sustanciales para la autorreglamentación. Tienden a centrarse en las consecuencias de las empresas transnacionales en dos esferas principales: las condiciones sociales y el medio ambiente. Varios participantes, inclusive organizaciones sindicales internacionales, organizaciones no gubernamentales para el

desarrollo y el medio ambiente, y el sector empresarial propiamente dicho, han contribuido a elaborar códigos de conducta para las empresas internacionales.

Algunos cambios producidos en la economía mundial han fomentado el interés creciente de las empresas por la responsabilidad social y los códigos de conducta. El crecimiento de “las cadenas mundiales de valor”, a través de las cuales los compradores del Norte controlan una red de proveedores del Sur, ha dado lugar a que se invitara a las empresas a asumir responsabilidades no solamente con respecto a la calidad y las fechas de envío, por ejemplo, sino también a las condiciones de trabajo y las consecuencias ambientales. Al mismo tiempo, la mayor importancia adquirida por las marcas y la reputación de las empresas líderes conduce a que estas últimas sean particularmente vulnerables a la crítica. Las actitudes del público en constante evolución también son una parte importante del contexto en que se han adoptado los códigos empresariales de conducta. Las empresas del Norte ya no pueden ignorar las consecuencias de sus actividades en el medio ambiente con impunidad. La evolución de las comunicaciones mundiales, que ha permitido a las empresas controlar sus actividades de producción a una escala cada vez mayor, también ha facilitado la transmisión internacional de información sobre las condiciones de trabajo de sus proveedores en el extranjero, aumentando la conciencia pública y facilitando actividades de acción.

Una serie de partes interesadas participan en la elaboración de códigos voluntarios de conducta, o pueden verse afectadas por su adopción. Estas partes incluyen pequeñas y grandes empresas, organizaciones no gubernamentales del Norte y del Sur, sindicatos, accionistas e inversores, consumidores, asesorías y verificadores, exportadores del Sur, trabajadores del Sur, gobiernos del Sur y comunidades locales. Todos ellos tienen intereses específicos que les predisponen a favor de los códigos empresariales, e influyen los tipos de códigos cuya aplicación desearían.

Una de las características sorprendentes del crecimiento actual de los códigos de conducta es su tendencia a concentrarse en determinados sectores, en particular el comercio, la industria textil, de productos químicos y extractiva. Los códigos que abarcan las cuestiones laborales tienden a concentrarse en sectores como el del vestido, calzado, material de deporte, muñecos y la venta al pormenor, mientras que los códigos ambientales suelen ser más frecuentes en el ámbito de los productos químicos, la silvicultura, el petróleo y la minería.

Los códigos de conducta se dividen en cinco categorías principales: códigos de empresas, códigos de asociaciones comerciales, códigos elaborados por múltiples grupos de interés, códigos modelo, y códigos intergubernamentales. El alcance de los códigos varía considerablemente. Muchos ni siquiera abarcan todas las normas de trabajo fundamentales de la Organización Internacional del Trabajo. Los alcances de los códigos de empresas y de los códigos de asociaciones comerciales a menudo son más limitados que los elaborados en conjunción con otras partes interesadas. También se observan diferencias en la cobertura de los códigos. Aunque muchos no cubren a los proveedores de la empresa, a menudo no abarcan toda la cadena de suministro y muy raramente abarcan a los trabajadores a domicilio. La aplicación de un código particular a los fines de una vigilancia efectiva es fundamental si se

desea que éste tenga una repercusión real. Se observan igualmente defectos a este respecto, ya que sólo un pequeño porcentaje de los códigos prevé la vigilancia independiente.

Es necesario señalar algunas limitaciones, al evaluar los códigos de conducta. Algunas de éstas son de naturaleza práctica, debidas al modo de aplicación de los códigos hasta el momento. Otras son inherentes a los códigos como instrumentos, por lo que van más allá de las limitaciones relacionadas con el modo de aplicación de los códigos en el pasado. A pesar de la proliferación reciente de los códigos, su aplicación sigue siendo relativamente limitada. Otras desventajas están relacionadas con el número limitado de cuestiones que abordan y a las que se aplican dichos códigos. Las limitaciones estructurales más arraigadas de los códigos de conducta están relacionadas con “los motores” de su proliferación en el decenio de 1990. No sólo se limitan a sectores concretos, donde las marcas comerciales y la imagen empresarial son importantes, sino que también se aplican principalmente a las empresas dedicadas a la exportación. Por último, los códigos de conducta tienden a centrarse en cuestiones particulares – las consideradas potencialmente muy peligrosas para que las empresas se asocien con ellas. Es decir, es probable que las cuestiones de gran repercusión en países desarrollados ocupen un lugar destacado en la mayoría de los códigos.

No obstante las limitaciones de los códigos, éstos pueden y han proporcionado beneficios a las partes interesadas. En ejemplos específicos de mejora de las condiciones de trabajo, se muestra que los códigos pueden influir en el comportamiento empresarial. Además, debido a los códigos de conducta, las empresas asumen cada vez más la responsabilidad de las actividades realizadas por sus proveedores y sus propias filiales.

Sin embargo, cabe el peligro de que los códigos se consideren algo más de lo que son en realidad, y de que se utilicen para desviar las críticas y reducir la demanda de reglamentación externa. En algunos casos, los códigos han empeorado la situación que pretendían mejorar. Se ha expresado inquietud por que tiendan a menoscabar la posición de los sindicatos en el lugar de trabajo.

Es indudable que los peligros y limitaciones de los códigos de conducta identificados en este documento son reales. Así pues, es importante elaborar estrategias que aseguren que los códigos sean complementarios a la legislación del gobierno y que faciliten la sindicación de los trabajadores. Es más probable que esto suceda más bien cuando se trata de códigos elaborados por varios grupos de interés que cuando son diseñados de un modo unilateral por empresas o asociaciones empresariales. Los códigos de conducta deberían considerarse una esfera de confrontación política, y no una solución a los problemas ocasionados por la mundialización de la actividad económica.

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## **1. Introduction**

The 1990s saw a proliferation of corporate codes of conduct and an increased emphasis on corporate responsibility. This was a result of economic developments in the 1980s, which saw a major shift away from the social democratic and Keynesian interventionism of the postwar period in the North, and from import substituting industrialization and statism in the South. The emphasis on monetarist economic policies and increased integration of international markets for goods and finance, the massive privatization of state assets and, in developing countries, the shift to trade liberalization and export promotion, all served to redefine the economic role of the state.

The change in the role of the state and the increased reliance on market forces has not been unproblematic, however. Capitalism has always required the establishment of certain “rules of the game” in order to avoid being subject to the “law of the jungle”. Yet both the ideological shifts of the 1980s, and the globalization of economic activity, meant that nation states have been less willing and less able, to perform many of these regulatory functions in recent years.

It is in this context that a new emphasis has been placed on self-regulation and the social responsibility of business. Corporate codes of conduct are a manifestation of this in the areas of labour and environmental standards, and of human rights. Instead of the social and environmental impacts of big business being seen as issues primarily for governments to deal with, they are now regarded as matters of corporate responsibility for which companies themselves, or their trade associations, should set standards.

This paper sets out to explain in more detail the changes that have taken place in corporate regulation, and to assess the significance of these changes. It explores the drivers that account for the growth of corporate codes of conduct, and the different stakeholders and interest groups involved. Although codes have been developed covering various issues, of which the most prominent are labour standards, environmental impact and human rights, the focus of this paper will be primarily on the first of these. Environmental codes have a longer history and have tended to be less conflictual than those dealing with labour issues. Since the tendency has been to develop labour and environmental codes separately (see Blowfield, 1999), it is viable to concentrate on those dealing with labour rights, although some reference will also be made to environmental codes.

## **2. Changes in the Regulation of Corporate Activity**

When the postwar international economic order was established, it was originally intended that there should be three major international organizations: the World Bank, the International Monetary Fund, and the International Trade Organization. The failure of the United States to ratify the Havana Charter, which established the last of these, meant that it never got off the ground and international trade rules were governed for four decades (prior to the creation of the World Trade Organization) by a much more *ad hoc* arrangement, the General Agreement on Tariffs and Trade (GATT). The ITO also included provisions for the protection of investment

and the control of restrictive business practices but, as these did not come within the purview of the GATT, the postwar system left the activities of international business unregulated.

This refers to regulation at the international level: individual nation states were, of course, able to impose controls on foreign corporations that operated in their territory, but no comprehensive framework of international regulation for such activities existed. From the Declaration of Philadelphia in 1944 onwards, an international framework of labour standards with the various conventions of the International Labour Organization did develop. However, these conventions were essentially addressed to the Member States (as the principal actors in a public international law regime) (Hepple, 1999). They placed certain obligations on governments—for instance to permit freedom of association and collective bargaining—but did not directly address the behaviour of international business.

It was not until the 1970s, with the emergence of a more critical attitude toward transnational corporations (TNCs)—in developing countries in particular<sup>1</sup>—that there was a major effort to develop international standards for corporate behaviour. Although the first proposal of this kind, the International Chamber of Commerce's **Guidelines for International Investment** of 1972, came from the corporate sector itself, most of the efforts emanated from international organizations, particularly United Nations agencies. The demand for a New International Economic Order was part of a general climate of change, which saw Southern governments become more assertive in international economic negotiations in the aftermath of the OPEC oil price rises.

In 1974 the United Nations set up its Centre on Transnational Corporations following the Report of the Group of Eminent Persons set up by the UN Economic and Social Council. This led to the development of a Draft Code of Conduct on TNCs, which set out a framework for regulation. Several specialized UN agencies also developed codes covering particular aspects of TNC behaviour. These included the ILO's **Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy** (1977) and UNCTAD's proposed codes on Restrictive Business Practices and on the Transfer of Technology.

In the same period the OECD adopted its **Declaration on International Investment and Multinational Enterprise** (1976). This was an attempt by the governments of the North to respond to the growing criticism of TNCs from the South, while at the same time making it clear that they were not prepared to see excessive controls imposed on TNC activity. It was described by one commentator as a "pre-emptive Western strike emphasizing business responsibility" (Robinson, 1983) and was voluntary and not legally binding.

International efforts to regulate TNCs were paralleled in the 1970s by a more restrictive climate at the national level in many countries in the South. Some 22 developing countries passed

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<sup>1</sup> A significant event that focused attention on the activities of TNCs in developing countries was the ITT scandal in Chile in the early 1970s, when it was revealed that the US company had been involved in attempts to overthrow the democratically elected Popular Unity government led by Salvador Allende.

legislation controlling TNC activities in the late 1960s and 1970s (Hepple, 1999). Nationalization of foreign corporations reached a peak in the first half of the 1970s (Jenkins, 1999). Regional agreements such as the Andean Pact imposed controls on incoming investors.

A common perception that underlay these efforts at regulation was that the interests of TNCs and those of host countries in the South did not coincide. Although what was good for General Motors might have been good for the United States, it was not necessarily good for Brazil or Mexico. Economic development could best be promoted, not by a policy of total openness to foreign capital, but by regulation, which would ensure that foreign investment was channelled into the areas where it could make a particular contribution. Foreign investors were also required to promote local development through joint ventures, local purchasing and indigenization policies. The role of the international codes of conduct proposed during this period was largely to improve the bargaining power of Southern states in their efforts to obtain a greater share of the benefits from the activities of TNCs.<sup>2</sup>

The 1980s, as already noted, saw a major shift in the attitude toward TNCs, which reflected a more general shift toward market-based policies and away from state intervention in both developed and developing countries. Sectors which had been closed to foreign capital began to open up once more in the 1980s. This began with manufacturing and, in the late 1980s and early 1990s, partly as a result of privatization, it was extended to public utilities and natural resources. Access to certain service sectors, which were traditionally closed to foreign capital, also started to be liberalized (UNCTAD, 1994:294).

At the same time most of the countries that had imposed across-the-board restrictions on foreign ownership abandoned them by the 1990s. The trend toward less strict ownership requirements began in the late 1970s or early 1980s, and has resulted in a reduction in the use of 50-50 joint ventures and minority-owned subsidiaries by US TNCs in developing countries (Contractor, 1990). Similarly, restrictions on profit repatriation and the terms permitted in technology transfer agreements have been relaxed, as have performance requirements regarding local content and exports.

In contrast to the 1970s, the attitude of Southern governments has shifted emphasis dramatically toward attracting, rather than regulating, TNCs and foreign investment. As UNCTAD's Division of Transnational Corporations and Investment, which took over the work of UNCTC after it was dissolved, noted in 1995:

The mid-1990s are characterized by a general movement towards the liberalization and facilitation of FDI. Today, inward FDI policy regimes of quite different countries around the world are broadly liberal in character... They (governments) are fine-tuning their policies to attract capital, technology and skills, and to facilitate access to markets with the help of FDI (UNCTAD, 1995:272).

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<sup>2</sup> In this context it is interesting to note that one of the roles played by the UNCTC in this period was to provide training and advice to developing country governments on negotiation strategies *vis-à-vis* TNCs.

The vast majority of changes in investment regimes in developing countries from the early 1990s have involved either the removal of existing restrictions or new promotional measures (see table 1).

	<b>1991</b>	<b>1992</b>	<b>1993</b>	<b>1994</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>
Number of countries changing investment regime	35	43	57	49	64	65	76	60
Number of changes	82	79	102	110	112	114	151	145
More favourable to FDI	80	79	101	108	106	98	135	136
Less favourable to FDI	2	-	1	2	6	16	16	9

Source: UNCTAD, 1999:table IV.1.

Given the change in attitudes among Southern governments, it is hardly surprising that efforts at international regulation of TNCs did not prosper during the 1980s. The UNCTC Code was never agreed upon, despite being watered down considerably. In a 1993 restructuring of the UN's economic and social agencies, the Centre on Transnational Corporations was transferred into a Division within UNCTAD.

The two major international codes to survive from the 1970s were those of the OECD and the ILO. As already noted, the OECD Guidelines did not represent a genuine attempt to control transnationals, but was rather designed to deflect criticism of their activities. It was voluntary in nature and had no enforcement mechanisms. Although cases have been taken to the Committee on International Investment and Multinational Enterprises, which processes matters arising from the OECD Guidelines, these are usually dealt with through "clarifications" of the Guidelines. Trade unionists have expressed disappointment with the Committee's handling of complaints, and even when it has been found that companies have engaged in anti-union activities, the Committee has merely reaffirmed the view that management should take a positive approach toward union activities (Murray, 1998).

The ILO Declaration is narrower in scope, focusing on the social aspects of TNC activities. Like the OECD Guidelines, the Declaration is not binding and compliance is on a voluntary basis. Disputes are referred to the Committee on Multinational Enterprises for "interpretation" of the Declaration. It is not a procedure for dispute settlement over compliance with the Declaration. During its first decade in operation, the Committee only issued two such interpretations (ILO, 1989). Like the OECD Guidelines, therefore, the impact of the Declaration has been relatively limited.

While the trend in terms of both national and international policies from the late 1970s was toward liberalization and deregulation, the same period saw a new trend toward voluntary corporate codes of conduct. These began to be adopted in the late 1970s, particularly by US corporations, in response to the bad publicity received by TNCs, not only as a result of the ITT scandal, but also from revelations about bribery and questionable payments by many leading US companies (Kline, 1985:23–25).

The first wave of corporate codes were predominantly concerned with issues of questionable payments. A study of 174 codes in 1978 found that more than half of them covered questionable payments.<sup>3</sup> Ninety per cent of the codes studied by Kline were formulated after the Securities and Exchange Commission began to investigate questionable payments, and the passage by the US Congress of the Foreign Corrupt Practices Act of 1977 gave further impetus to this movement (Kline, 1985:103).

By the mid-1980s however, Kline (1985:108) was commenting that the public pressure for adoption of codes had decreased. The 1990s saw a renewal of interest in corporate codes of conduct. The main areas that are now addressed in these codes are environmental and labour issues, which contrasts with the emphasis found in the first wave of corporate codes. The OECD inventory of 246 codes found that 60 per cent referred to labour standards and 59 per cent to environmental stewardship (OECD, 2000:figure 3).<sup>4</sup> In contrast, only 23 per cent of codes in the 1990s addressed the issue of bribery.

The second wave of corporate codes began to emerge in the early 1990s. Levi Strauss, with its Business Partner Terms of Engagement adopted in 1992, was one of the first companies to establish this type of code, and it was followed in the United States by a number of other clothing manufacturers and retailers (Sajhau, 1997). By the mid-1990s, the fashion for codes had spread to Europe and a number of companies in the United Kingdom and on the continent were beginning to take them up. Again clothing manufacturers and retailers were among the first to adopt codes covering labour conditions. These included C&A, Otto Versand in Germany and the Pentland Group in the United Kingdom.

Although comprehensive codes are relatively limited in number, they are being introduced by a growing number of companies, and there is a trend for the scope of codes to expand as company experience with them increases.<sup>5</sup> Their significance, if any, lies in the fact that they are being adopted by leading corporations in their fields, such as Levi Strauss and Gap in clothing, Nike and Reebok in sports goods, and the major British supermarkets in retailing.

Although sharing a common nomenclature, corporate codes of conduct are very different from the international codes that were proposed in the 1970s, particularly the UNCTC Draft Code. The latter were seen as a means of regulation of TNCs by international bodies, which would support or supplement national state regulation. Corporate codes are voluntary initiatives, which have been adopted by the business sector itself. These codes range from vague declarations of business principles applicable to international operations, to more substantive efforts at self-regulation.

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<sup>3</sup> Survey by the Foundation of the Southwestern Graduate School of Banking quoted in Kline (1985:105).

<sup>4</sup> This contrasts with the 1978 survey by the Foundation of the Southwestern Graduate School of Banking quoted in Kline (1985:105) which found that only 14 per cent of codes dealt with social aspects.

<sup>5</sup> This is not invariably the case. Shell's Revised Statement of General Business Principles, published in 1997, made no reference to labour standards despite the fact that an earlier statement in 1990 referred to both the OECD Guidelines and the ILO Declaration.

The international codes were seen in the main as an attempt to redress the balance between the growing power of TNCs and the nation states, particularly in the South, where they invested. They emerged from a perception that the growth of giant international companies posed a threat to the sovereignty of small, poor states. A common perception at the time was that of “sovereignty at bay”<sup>6</sup>. International regulation was seen as necessary in order to ensure that developing countries shared in the gains from the growth of international corporate activity.

The recent wave of corporate codes has tended to focus on the impact of TNCs in two main areas—social conditions and the environment. They are part of a much wider debate concerning the impact of globalization on labour and the environment, which is also reflected in the call for social and environmental clauses in trade agreements and within the WTO. Whereas support for codes in the 1970s came mainly from the South, and particularly from Southern governments<sup>7</sup>, in the 1990s support came mainly from the developed world. Here international trade union organizations, development and environmental NGOs and the corporate sector itself have all contributed to the demand for some form of code of conduct for international business.

Although the range of issues covered by the corporate codes of the 1990s tends to be more focused than the comprehensive efforts of the 1970s, in another respect the scope of the more recent codes is broader. Whereas the 1970s emphasized the activities of TNCs and their subsidiaries, in the 1990s this was extended to include a responsibility for the labour and environmental practices of their suppliers as well as their direct activities. Indeed for many companies, the major impetus behind their code of conduct is to ensure acceptable behaviour on the part of their subcontractors.

### **3. The International Context of the Growth of Corporate Codes of Conduct**

As was indicated in the last section, voluntary self-regulation has become an important feature of the world economy, while meaningful efforts by national governments and international organizations to control the activities of TNCs have been declining. Before discussing the responses of the various stakeholders who are affected by transnational corporate activities, the global context, which has affected the growth of corporate codes of conduct, will be analysed briefly.

The impacts of globalization have been widespread. Since the 1970s, trade barriers have been further reduced and many more countries have been integrated into the global economy. The end of communism in the former Soviet Union and Eastern Europe, and the opening up of China and Viet Nam, as well as more liberal policies in many developing countries (particularly significant in India) have meant increased scope for the operation of TNCs. On one estimate, the

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<sup>6</sup> This was the title of a book written by one of the leading academic authorities on TNCs, Ray Vernon, in 1971, although his view was in fact critical of the belief that the nation state was decisively weakened by TNC expansion.

<sup>7</sup> Northern governments and companies were on the whole resistant to such codes, unless they were voluntary and could be used to head off the demand for binding international regulation.

proportion of the world's population taking part in the global economy has increased from around a quarter to four-fifths.

Foreign investment and the activities of TNCs have grown even more rapidly than global trade in this period. But the changing nature of global corporations means that these figures underestimate the true extent of their international activities. A significant factor here has been the growth of global "commodity" or "value" chains in many industries (Gereffi, 1999; Kaplinsky, 2000). While trade has always been a significant feature, what is new is the ability to control production over large distances without exercising ownership. A variety of consumer goods, including garments, footwear and vegetables, are characterized by value chains in which control of the chain resides with brand name producers such as Levi Strauss and Nike, or large retailers such as WalMart and Tesco.

A key feature of the development of such buyer-driven value chains is that the buyer ensures that the producers meet delivery dates, quality standards, design specifications and so on. In other words, the buyer controls many of the aspects of production carried out by the producer. It is then but a short step to argue that the buyer should also take responsibility for the conditions under which subcontractors operate, in terms of their relations with labour and their impact on the environment. It is often these types of industries that saw explicit codes of conduct introduced in the 1990s.

Another important structural feature has been the growing importance of intangible assets<sup>8</sup> in the valuation of major corporations. Ernst and Young contrast "Traditional Companies" in which intangibles account for 43 per cent of the share price with "Tomorrow's Companies" in which they make up 65 per cent (Gonella et al., 1998, fig.2.2) This is often associated with brand names, which in turn leads to the concept of corporate reputation. A company such as Nike, which does not carry out its own manufacturing processes, and which spends heavily on advertising and promotion in order to establish a corporate image, is highly vulnerable to anything that would tarnish that image. In a similar vein, the CEO of Levi Strauss, Bob Haas, stated in 1994 that "In today's world a TV expose on working conditions can undo years of effort to build brand loyalty" (quoted in Zeldenrust and Ascoly, 1998:14). Critically then, it is the growing importance of brand names which enables large corporations to earn large profits and acts as a major barrier to other firms entering the market, which also makes them vulnerable to challenges on their labour or environmental policies (Klein, 2000).

Changing public attitudes are also an important part of the context in which corporate codes of conduct have been adopted. The awareness of environmental issues has increased significantly since the 1970s. Companies in the North can no longer ignore the impact of their activities on the environment with impunity. Moreover, new legislation has meant that corporate liability for environmental damage is a factor that companies have to be responsive to.

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<sup>8</sup> A firm's market value is made up of physical assets, such as plant and equipment and land; financial assets (currency, bank deposits, shares); and intangible assets, which are not tangible items of property (Beynon, 1999:155).

The developments in global communications, which have enabled corporations to control production activities on an ever widening scale, have also facilitated the international transmission of information that companies would prefer not to have widely disseminated (O'Neill, 1999). The speed with which information about working conditions in a subsidiary or subcontractor of a multinational corporation somewhere in Asia can be made available to NGOs and consumers in North America is unprecedented (Kearney, 1999:208).

#### **4. Stakeholders and Their Attitudes toward Codes of Conduct**

The precise definition of who are the stakeholders in relation to transnational corporate activity will depend on the particular sector concerned. In the case of mining it will include the local community whose lives are likely to be disrupted by the opening of a new mine. In the case of horticultural products it will be necessary to distinguish between large landowners, smallholders and landless labourers. However, without going into the specifics of particular sectors, some broad generalizations can be made that can be applied, with suitable modifications, to different situations.

##### ***(a) Large corporations***

Although the precise structure of each value chain differs, large corporations tend to be the target of NGO campaigners and have taken a lead in adopting codes of conduct. In some cases, they are large supermarket chains such as Sainsbury and Tesco buying horticultural products, or retailers such as C&A in Europe and WalMart and Sears in the United States purchasing garments. In other cases they are sellers of branded products such as Levi Strauss in clothing and Nike and Reebok in sports footwear. They may have some overseas production but mostly rely on foreign contractors to manufacture their products. Other large companies are more directly involved in foreign production as in the case of oil or mining companies such as Shell, BP Amoco and RTZ.

These companies have a high public profile and tend to rely heavily on their corporate image. As such they have been particularly vulnerable to negative publicity and NGO campaigns. It is not uncommon for a code to be adopted by such companies in the aftermath of some major event that has been a public relations disaster for the company concerned. Shell, for example, incorporated human rights into its code of conduct as a result of the criticism of its Nigerian operations following the execution of Ken Saro-Wiwa (Amnesty International, 2000:94). BP Amoco was similarly severely criticized for alleged complicity with human rights violations in Colombia (**Financial Times**, 1999:19).

In some cases, corporations may adopt a code of conduct simply to pre-empt external pressure. Consultants have explicitly advocated such a strategy to deal with criticism from "watchdogs". A.L. Roinick, writing in the US textile industry magazine **Bobbin**, recommends that:

Although following these steps will not guarantee that you will not be bitten by the watchdog, they should ensure that any bites you get will be “nips” as opposed to gashes that require rabies shots (quoted in Clean Clothes Campaign, 1999).

Codes of conduct can also be used as a means of heading off more draconian measures that might be applied to business. The United States Council for International Business, which has argued against legally binding standards, points out that:

...to the extent business regulates itself, develops and implements best practices, and cooperates with the business community in other countries, the pressure for new rules may be tempered. Positive efforts on the part of business to confront legitimate concerns about social and environmental issues will also help blunt the efforts of trade unions and NGOs who seek to control corporate behavior in the pursuit of their objectives (quoted in Zeldenrust and Ascoly, 1998:45).

There is a history of companies adopting some kind of code as the lesser of two evils. Thus US companies accepted the Sullivan Principles for doing business in South Africa in the apartheid era, as an alternative to a boycott, which would have put their investments in jeopardy.

In addition to a pre-emptive motive, codes of conduct at a sectoral level can be a means of levelling the playing field, or giving a competitive advantage to the sectoral leaders. In highly competitive industries, a company will be unable to improve working conditions or reduce environmental damage unless its competitors do the same. In such a situation, where a market leader feels that it needs to act to protect its image, it will be in its interest to negotiate a sector-wide agreement to ensure that its competitors have to meet the same standards. Given that a large company is likely to be better placed to monitor its suppliers than a smaller one, such measures may even tilt the playing field slightly in its favour. Thus the motive behind the adoption of a code may be self-interest.

It may also be the case that the adoption of ethical principles can increase the commitment of company staff. If a corporation relies heavily on attracting motivated personnel, such an approach can help raise productivity and improve overall performance. The British organization, Investors in People (IIP) claims that high productivity requires committed staff, which in turn requires a company to earn that commitment (Gonella et al., 1999:14). The Body Shop is often quoted as an example of a company that has used such a strategy successfully.

It is debatable how far such considerations would lead to the widespread adoption of codes of conduct in the absence of external pressures. Indeed it is striking how the adoption of corporate codes of conduct reflects such pressures, both in terms of timing and content. As was mentioned above, the first wave of corporate codes of conduct in the late 1970s focused on bribery and questionable payments in the aftermath of investigations by the US Securities and Exchange Commission. More recently a number of environmental disasters, most notably that at Bhopal, prompted firms to adopt environmental codes, while revelations concerning child labour and working conditions have motivated firms to include labour issues. Yet the potential benefits that large companies may derive from corporate responsibility mean that they will not

necessarily be resistant to the adoption of codes, although this will differ between firms and sectors.

***(b) Smaller producers***

Small firms in the North may be less interested in codes of conduct than the larger retailers and producers of branded goods discussed above. They are less visible to the public and less likely to attract the attention of campaigning NGOs, so that the external pressures on them are less intense. They also usually work within much tighter margins than the larger firms, and are therefore less able to absorb any increased costs associated with better labour or environmental conditions. Furthermore, where a code of conduct requires the buyer to monitor conditions at the plants of suppliers, smaller firms are much worse placed to do so than their larger competitors. All these factors imply that small producers are less likely to adopt or support codes of conduct.

In some value chains, the differences between firms may be between retailers and manufacturers. In the UK toy industry, for instance, it has been found that there is much greater interest in establishing verifiable good practice among toy retailers than among manufacturers (Murray, 1998:61).

Under certain circumstances it is possible that small firms have a specific interest in seeing that larger producers adopt codes of conduct. Small producers manufacture domestically, whereas larger firms source internationally. Smaller producers may have a protectionist motive for supporting higher labour or environmental standards overseas. Further work on the political economy of codes would be required to reveal whether this has, in practice, played a part in their development.

***(c) Northern NGOs***

The 1990s saw a considerable increase in NGO activism around issues of corporate responsibility. No doubt this was partly a response to the perception that governments were not effective in controlling the activities of large corporations, following the deregulation of the 1980s.<sup>9</sup> There was also an increased awareness of the power and influence of TNCs among NGO activists, who became concerned that unregulated globalization would have negative social and environmental consequences in developing countries.<sup>10</sup>

Three major areas of the impact of TNCs became a focus of NGO campaigns. First there were issues of labour rights. These were taken up by development NGOs such as Oxfam, Christian Aid and the Catholic Institute for International Relations. Some focused on specific issues within their remit, such as Save the Children Fund focused on child labour. Campaigning

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<sup>9</sup> As Jessica Woodroffe of the World Development Movement points out, "Some governments are unwilling to regulate multinationals. A downward spiral is occurring where Third World governments are pressured to reduce standards in order to compete for foreign investment. Other governments are unable to stand up to the powerful multinationals to enforce their own legislation" (Woodroffe, 1999:132).

<sup>10</sup> See O'Reilly and Tickell (1999) for a discussion of Oxfam's reasons for becoming increasingly involved in issues of corporate responsibility in the late 1990s.

specifically around labour issues, new NGOs or coalitions of NGOs emerged, such as the Clean Clothes Campaign in Europe and the Coalition for Justice in Maquila in the Americas.

A second area that came to prominence was human rights, particularly in relation to the actions of security forces and the rights of indigenous peoples. Mining and oil companies, opening up new sources of natural resources in the South, often found themselves in conflict with indigenous groups in the areas where they operated. Frequently the nation state, interested in expanding exports and increasing tax revenues and extractive royalties, repressed local opposition to the expansion of extractive activities. Thus TNCs found themselves conniving, at least tacitly, in the suppression of the indigenous population. The most prominent example of this was the involvement of Shell in Nigeria, and the repression of the Ogoni people (Amnesty International, 2000:94). Organizations such as Human Rights Watch and Amnesty International have raised the question of the impact of TNCs on human rights.

Finally, NGOs have also been active in highlighting the effect of corporate actions on the environment. Shell was once more the high profile target of the Greenpeace campaign against the dumping of the Brent Spar oil platform in the North Sea. Other examples have arisen of campaigns against the environmental impact of mining TNCs as, for example, in the case of BHP in Papua New Guinea. Friends of the Earth drafted a model code of conduct for mining projects in 1997.

Northern NGOs see codes of conduct as one element in the regulation of international business. Given the lack of an inter-governmental system for regulating TNCs, they see comprehensive codes of conduct, which are effectively monitored and independently verified, as a means of constraining corporate power. However, codes should complement government regulation and not be seen as a substitute for it.

In some cases there has been a tendency for NGOs to concentrate on issues that have an immediate appeal and can evoke a popular response. Child labour is a case in point, although a number of NGOs have argued that a simple ban on the use of child labour might be counter-productive in terms of raising living standards. Indigenous rights is another issue which has been taken up prominently by NGOs.

It is in fact difficult to generalize about the position of NGOs in relation to codes of conduct because of the wide variety of organizations that tackle the issue. Environmental NGOs tend to focus primarily on environmental codes, while development NGOs tend to concentrate more on labour rights. However, what is clear is that, in a number of instances, NGO activism, by threatening a company's reputation, has forced those who are targeted to respond in some way. Often the response is to adopt a code of conduct, or where one already exists, to revise it to alleviate criticisms. Thus NGO pressure has played an important role in putting codes on corporate agendas.

#### ***(d) Trade unions***

Another interest group that has been at the fore in advocating codes of conduct covering social issues, and has a direct interest in their application, is the trade union movement. The International Confederation of Free Trade Unions produced a draft code of conduct in 1996.

At the sectoral level, several international trade secretariats have also been involved in developing codes of conduct and negotiating framework agreements, which can include a code of conduct, with employers. The International Textile, Garments and Leather Workers Federation (ITGLWF) participated in developing codes of conduct with the European Textile and Garment Employers (EUROTEX); and the European Footwear Employers was one of the parties involved in developing the FIFA-sponsored code for footballs (Kearney, 1999). Similarly the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) has played a role in establishing codes with the French TNC Danone and with the ACCOR hotel chain. The International Federation of Building and Wood Workers (IFBWW) has an agreement with IKEA that covers suppliers and incorporates the ILO core standards (Justice, undated).

An important concern for the trade unions is to prevent the erosion of workers' rights through the exploitation of unorganized workers in the South. A major factor for them is support for the various ILO conventions, particularly the core labour standards that relate to freedom of association and collective bargaining.

Trade unions regard codes as an inferior means of securing labour rights compared to the self-organization of workers in trade unions and collective bargaining (Justice, undated:3). They are also sceptical of unilateral codes adopted by companies and those of trade associations, which they regard as public relations exercises (Kearney, 1999:209). While trade unions stress that codes of conduct should not be seen as a substitute for national legislation effectively implemented by governments, nor as an alternative to trade union representation and collective bargaining (Kearney, 1999:208), they have in some cases negotiated codes of conduct with companies which have real bite. Despite reservations that they may create alternative channels of representation, trade unions have supported specific codes on the grounds that they give a space for workers to organize and may, if they become widespread, provide a platform from which governments can develop new mechanisms to enforce labour legislation (Kearney, 1999:209).

#### ***(e) Shareholders and investors***

Given the separation of ownership and management in the modern corporation, it is necessary to identify shareholders as a distinct stakeholder in relation to corporate codes of conduct. Ultimately shareholders' interests are in the value of the shares of the companies in which they have invested. In a minority of cases, however, they are also interested in the ethical behaviour of the companies in which they invest. This is the case both for some individual investors and

for institutional investors. The latter include religious organizations, “ethical” or “green” investment funds and some pension funds.<sup>11</sup>

Even in cases where ethical investment criteria are used, from the investor’s point of view these should not render the asset financially unattractive. This places a limit on the extent to which shareholders are prepared to push for the adoption of such policies. However, against this, there is evidence to suggest that taking such factors into account does not, in practice, adversely affect returns. Indeed some analysts claim that companies that behave ethically perform better, and that failure to do so can damage the financial position of a company (Sajhau, 1997:4; Gonella et al., 1998:13). It has also been suggested that the stock market reacts unfavourably to adverse environmental news about a company (such as criticism of its environmental impacts) and positively when good environmental performance is recognized (Dasgupta et al., 1999, and references cited therein).

The extent to which stock markets are a major factor in promoting corporate responsibility is open to question. Despite the recent rapid growth of ethical funds in the United Kingdom, they have only just broken through to take more than 1 per cent of the market (Cowe, 2000). With such a small market share, these funds have minimal impact on the share price of individual companies (Lewis and Mackenzie, 2000:84). This may change in the future, however. Since July 2000 new government legislation has required all UK pension funds to state which social, environmental and ethical considerations are taken into account in their investment policies. This has led some mainstream fund managers, who in the past have taken no account of corporate social responsibility in their investment decisions, to start addressing these issues (Henderson Investors, 2000).

Although initially ethical funds were characterized by avoiding investment in companies with operations in particular sectors that were considered unethical, such as tobacco or armaments, recently the criteria for ethical investment have become more sophisticated. In the United States, which has a much longer history of ethical investment than the United Kingdom, investment in ethically screened portfolios doubled between 1997 and 1999, increasing their share of professionally managed investments from 9 per cent to 13 per cent (Amnesty International, 2000:69).

The stock market is not the only way in which the influence of shareholders can make itself felt. In the United States “active engagement” has become a routine way of pressuring companies to adopt ethical policies (Lewis and Mackenzie, 2000). Minority shareholders have tabled resolutions and raised questions concerning the ethical behaviour of companies. This first arose in relation to companies with investments in South Africa, but has subsequently been extended to other issues (see Amnesty International, 2000:68, for specific examples). Institutional shareholders have significant power in this regard. In the United States, the Interfaith Centre for Global Corporate Responsibility (ICCR), which brings together 275 religious institutional investors who hold a portfolio estimated at around \$110 billion, have been extremely active in

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<sup>11</sup> In the United Kingdom the university lecturers’ pension fund, USS, has adopted an ethical investment policy.

this area, sponsoring 140 resolutions related to over a hundred companies (ICCR, 2000:2-3). In the United Kingdom, however, shareholder activism has been less extensive than in the United States (Lewis and Mackenzie, 2000:86).

The need to develop criteria on which to base their investment to ensure ethical corporate behaviour in the fields of human rights, and social and environmental issues has led the churches to develop their own code of conduct. This led to the **Principles for Global Corporate Responsibility: Benchmarks for Corporate Responsibility** proposed by the ICCR in the United States, the Ecumenical Committee for Corporate Responsibility (ECCR) in the United Kingdom and the Task Force on the Churches and Corporate Responsibility (TCCR) in Canada.

Given that the primary responsibility of managers continues to be to their shareholders, the growth of shareholder activism around ethical and environmental issues has a potential to alter corporate behaviour, at least as far as publicly quoted companies are concerned. Moreover, whereas pressure organized around consumption tends only to apply to companies which produce consumer products, and particularly those which rely heavily on branding and image, shareholder pressure can be brought to bear on quoted companies operating in any sector of the economy, whether or not they are a household name.

Codes of conduct can be one way of assuring shareholders and investment funds that a company does meet certain ethical standards. As the criteria on which ethical investors base their decisions are extended beyond the avoidance of holdings in certain "unethical" industries, it is possible that the adoption of a code of conduct could become an important indicator of a firm's ethical stance. However, the extent to which investors will insist on adequate monitoring and verification of such codes, in order to be assured that the fund is meeting its ethical objectives, is yet to be seen.

### ***(f) Consumers***

It is often claimed that as consumers become more aware of the impacts of production on labour and the environment, they demand ethically produced goods. Codes of conduct are then simply a response by firms to consumer preferences expressed in the marketplace. The current UK Secretary for State for International Development, Clare Short, has explicitly adopted this view, stating that "Codes have come into existence because consumers do not want to purchase goods produced by exploiting workers here or abroad" (Ferguson, 1998:foreword). While at first sight plausible, the role of consumer demand needs to be problematized.

In a market economy, the consumer is individualized and her/his decisions can have little or no influence on producer decisions. In other words, there is a problem of collective action as far as consumers trying to change the overall ethical behaviour of a firm is concerned (Rodrik quoted in Lee, 1997:10). Of course, this is not to say that there is not a market for products with an ethical dimension, as the growth in demand for fair-traded coffee illustrates. Some consumers obviously do value such a product and are prepared to pay a premium price for it. However such examples remain niche markets supplying a predominantly middle class customer base. Their market penetration remains very limited (Cowe, 2000).

Theoretically, therefore, there is reason to be sceptical about the likely impact of consumers as such bringing about greater corporate responsibility. In fact, what is often referred to as consumer pressure is usually *political* pressure from civil society, orchestrated by NGOs, which uses the threat of consumer action to achieve this end. There are relatively few cases where there appear to have been significant actual effects on consumer demand for a particular product or range. The most notable are boycotts, such as the boycott of South African products during the apartheid era, and of Nestlé in reaction to the baby milk scandal.

The logic of the argument above applies to the individualized consumer of the economics textbooks. However, not all consumers are individuals, and it may well be possible to affect corporate behaviour through consumer pressure. This can be seen, for instance, in cases where local authorities are a major purchaser from a corporation. Although there are many instances where local governments have attempted to use their buying power in an ethical way, this has been severely circumscribed in recent years by the actions of national governments. In the United States, the Supreme Court struck down the attempt by the state of Massachusetts to prevent companies with activities in Myanmar from participating in state contracts. In the United Kingdom, local government legislation passed under the Conservative government has limited the ability of councils to take non-financial considerations into account in awarding contracts.

Another example of pressure from collective consumers has been the movement in US universities to ensure that the sportswear supplied with their name and logo is not produced in sweatshop conditions. Again, because firms are faced with bulk purchasers rather than individualized consumers, this has evoked a corporate response.<sup>12</sup> As in the case of local authorities, this is a result of political decisions and mobilizations, rather than the development of consumer preferences.

With the exception of these collective purchasers, therefore, the majority of consumers are mainly concerned with value for money. A study in Canada found that only 5 per cent of consumers were willing to pay more for fair-traded products (Forcese quoted in Utting, 2000:27). While a minority have an interest in buying ethically produced goods, the majority are unwilling to pay more for such products.

### ***(g) Consultancy firms and verifiers***

The proliferation of codes of conduct and other related activities in the areas of environmental and social management, and auditing, has created a rapidly growing sector of consultants and verifiers who have an interest in the growth of these activities. Accountancy firms such as Ernst and Young and PriceWaterhouse Coopers have expanded into this area. Verifiers who have been involved in auditing quality standards, such as ISO 9000, have also moved into environmental and social auditing.

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<sup>12</sup> In the case of Nike, the response was to withdraw sponsorship from some universities which supported the anti-sweatshop campaign. Although this was not the response sought by the campaigners, it does indicate that firms are influenced by the actions of collective consumers.

These firms have a direct interest in the formalization of codes of conduct, and ensuring that codes move beyond mere statements of business principles to include verifiable standards and clear procedures for monitoring (Burns et al., 1997:28–29). However, since most of these organizations are moving into social auditing from other fields, they are likely to bring with them the procedures and attitudes which apply elsewhere, and this may introduce a particular slant to their approach toward codes of conduct.

Since monitoring reports are usually produced in confidence for the companies which commission them and the entire process lacks transparency, the extent to which this colours the way in which monitoring is carried out remains largely unexplored. However, a recent report by Dara O'Rourke (2000) on factory inspections in Asia by PriceWaterhouse Coopers, the world's largest private monitor of labour and environmental practices, raises serious concerns. The standard format used by PWC is designed primarily to elicit information from managers and does not effectively gather information from workers, or compare the opinions of workers and managers. Factory walk-through inspections are brief and cursory, in one case lasting only 30 minutes. As a result, the inspection team missed a number of flawed labour practices and did not give an accurate picture of conditions in the factory.

While it is true that not all the firms involved in labour monitoring have come from the fields of accountancy, consultancy and quality control, such firms are playing a leading role in defining standards.

PWC is leading the development of corporate monitoring standards and is poised to become one of the main auditors for, and most influential participants in, the Fair Labor Association and the Worldwide Responsible Apparel Production (WRAP) monitoring programs. In many ways, PWC is setting the standard for what corporate monitors will do, how they will do it, and how much they will charge (O'Rourke, 2000:2).

#### ***(h) Southern exporters***

In developing countries, corporate social responsibility is not generally seen as being very high on the business agenda (WBCSD, 2000:12–13). In most cases, the demand for codes of conduct has been externally driven. Therefore, firms in developing countries, which produce for developed country markets, have a somewhat ambivalent attitude toward codes of conduct. On one hand, where their customers require them to meet certain labour or environmental standards, they need to comply in order to keep their markets. On the other hand, they are likely to perceive such measures as increasing their costs, either directly or indirectly.

Where inspections reveal that suppliers are not complying with the code of conduct of their customers, then corrective action has to be paid for by the supplier itself in order to comply. Suppliers also complain about lack of support in the form of training to meet code requirements. In Indonesia, for example, subcontractors often receive no training but are required to make and pay for all the changes to be carried out (Kemp, 2000). Since the subcontractors generally operate in highly competitive markets, they may find it difficult to

pass on such costs. Indeed in an Indonesian case study, it was found that one foreign company did not increase its purchase price to the contractor who was required to improve working conditions.

This tends to lead to a situation in which the subcontractors favour relatively weak codes of conduct, which will meet the requirements of their customers without imposing undue costs. Weak codes of conduct are a much more attractive option for them than the incorporation of labour standards into trade agreements. They are opposed to any toughening of the regulatory regime, or to measures that would strengthen the role of trade unions (Zadek, 2000:16).

Given the proliferation of codes of conduct, exporters are likely to be faced with a variety of demands from different companies, each with its own code. This can lead to conflicting demands or, at best, considerable transaction costs in meeting the requirements of a range of customers. In such circumstances, there are advantages to the exporters in having a single industry wide code, or a standardized code covering a limited number of key issues (Burns et al., 1997:31–22).

### ***(i) Workers in the South***

In many, but not all, of the industries in which codes of conduct are found, workers are not unionized and are often women. In export processing zones where a large share of the garment industry is located, exemption is often granted from national labour laws. In horticulture the producers are often unorganized.

Relatively little is known about the attitudes of workers in these industries toward codes of conduct. Their priorities, however, are not necessarily the same as those that are highlighted in many codes. While women workers have an interest in improving their working conditions, it has been found that their demands often revolve around issues such as protection of employment following pregnancy, prohibition of enforced pregnancy testing and provision of safe transport home (Pearson and Seyfang, forthcoming). These specific issues are rarely mentioned in codes of conduct.

Codes of conduct may also have a negative effect on the most marginal workers. In horticulture, for instance, there is a tendency for production to become centralized and for smallholders to be displaced where buyers find it easier to monitor conditions among a reduced number of producers. Similarly, efforts to eliminate child labour in the football industry led to production being shifted away from homeworking, carried out by women and children, to larger factories where men were employed.

Thus while codes of conduct are intended to improve conditions for workers, they do not necessarily achieve this. First of all, they may not address the priorities of the workers themselves. Second, they may have indirect effects, which actually worsen the position of those who were originally employed.

***(j) Southern NGOs***

It is necessary to treat Southern NGOs separately from their Northern counterparts, as their interests are not necessarily identical. They have different constituencies and different priorities. Some even argue that Northern NGOs are driving the agenda for the South, and that this is a form of “ethical imperialism” (Murphy and Bendell, 1999:55). Attempts have been made to overcome this, through dialogue between Northern and Southern NGOs, such as the consultation organized by the NGO Labour Rights Network held in London in 1998 (Green, 1998).

Southern NGOs have often opposed any measures that could prove to be a non-tariff barrier to exports. They are also suspicious of the links that may develop between Northern NGOs and business around codes of conduct (Zadek, 2000:16). The danger is that there will be increasing co-optation of NGO activists (Utting, 2000:32). However, in some cases, Southern NGOs themselves have become involved with codes of conduct as verifiers, as in the case of the Smart Wood certification process and the monitoring of the Mandarin factory in El Salvador (Burns et al., 1997:36).

Southern NGOs see themselves as augmenting the role of trade unions. This can either be through supporting and providing training for trade unions in those areas where they exist, or facilitating the organization of groups which traditionally have weak trade union links (women, child workers, homeworkers and the informal sector). There is particular concern that NGO support for codes of conduct should not take the pressure off governments in terms of improving and enforcing labour legislation (Green, 1998).

***(k) Southern governments***

As was indicated earlier in this paper, over the past two decades the priority of Southern governments has shifted from controlling TNC activities in their countries, to seeking to attract as much foreign direct investment as possible. They are also concerned to promote exports and are, therefore, generally favourably disposed toward measures that will help ensure access to overseas markets. However, they are concerned about the growth of non-tariff barriers, and have strongly opposed attempts to include environmental and social clauses in the WTO. From this standpoint, voluntary codes can be seen as a more attractive option for host governments, although there are concerns even here that the development of eco-labels and social labels could be a form of disguised protectionism.

***(l) Local communities***

Local communities hold a significant stake in the impact of environmental codes and those that refer to indigenous peoples and human rights. However, since the main focus of the paper is on codes that address labour issues and the situation of workers in the workplace, the role of local communities will not be discussed in any detail here.

## 5. The Morphology of Codes of Conduct

### (a) Sectors

One of the striking characteristics of the recent growth of codes of conduct is the tendency for them to be concentrated in particular sectors. The OECD inventory of codes of conduct indicated that the leading sectors in terms of number of firms were trade, textiles, chemicals and extractive industries (see table 2). This table includes not only codes which cover labour standards, but also those focusing on environmental stewardship, consumer protection, bribery and other issues.

**Table 2: Sectoral composition of firms issuing codes**

Sector	Activity	Number of firms
Primary	Agriculture	3
	Extractive	20
Secondary	Food	7
	Textile	23
	Wood	4
	Petroleum related	12
	Chemical	22
	Plastic	5
	Metal	13
	Electronics	14
	Mechanical product	15
	Office machinery	6
	Vehicles	10
Others	15	
Tertiary	Electricity, gas, water	10
	Construction	6
	Trade	61
	Hotel/restaurant	6
	Transport and communication	12
	Financial activities	10
	Real estate and other business	9
	Others	14

Source: OECD, 2000:table 2.

More detailed case studies indicate that codes of conduct addressing labour issues tend to be concentrated in sectors such as garments, footwear, sports goods, toys and retailing. These sectors supply consumer goods and usually involve well-known brand names. They have also been the sectors on which NGOs have focused their campaigns to promote ethical trade.<sup>13</sup>

In contrast, environmental codes are most commonly found in quite different industries. The sector that has led in this respect has been the chemical industry, but other sectors where such

<sup>13</sup> Examples of such campaigns include the Clean Clothes Campaign and the Labour Behind the Label Network in garments, Christian Aid's "Change the Rules" campaign directed at UK supermarkets, the "Fair Play for Toy Workers" campaign co-ordinated by the World Development Movement, the Catholic Institute for International Relations and the Trade Union Congress.

codes are common include forestry, the oil industry and mining. These tend not to be consumer good industries, although in the case of oil, they do produce well-known brand names. They are largely process industries, which have significant environmental impact, and may also involve hazardous processes.

### ***(b) Types of codes of conduct***

Codes of conduct come in a wide variety of different forms, and this can be a cause of some confusion. While it is possible to classify codes in a number of ways, here five main types of codes are identified.<sup>14</sup>

#### **1. Company codes**

These are codes that are adopted unilaterally by companies. They can relate to their own operations as, for example, with Shell's "Revised Statement of General Business Principles", or be applied specifically to their suppliers as in the case of Levi Strauss's "Business Partner Terms of Engagement".

#### **2. Trade association codes**

These are adopted by a group of firms in a particular industry. Like company codes, they tend to be a unilateral measure adopted by the firms. They may be adopted by associations of firms based in developed countries, as in the case of British Toy and Hobby Association code, or by developing country firms, such as the Bangladesh Garments Manufacturers and Exporters Association (BGMEA) code and the Kenya Flower Council code.

#### **3. Multi-stakeholder codes**

These are adopted as a result of negotiations between several stakeholders, including firms or their industry representatives, NGOs and/or trade unions. Governments may also be involved in the development of such codes. The UK's Ethical Trade Initiative Base Code is an example of such a multi-stakeholder approach.

#### **4. Model codes**

These are designed to provide a benchmark of what a particular organization regards as good practice in terms of codes of conduct. They are not generally applied in practice, but intended as a model which companies or trade associations could follow. These have been proposed, both by trade unions as, for example, the ICFTU's Basic Code of Conduct covering Labour Practices, and by NGOs like Amnesty International.

#### **5. Inter-governmental codes**

These are negotiated at an international level and are agreed to by national governments. They date back to the 1970s when both the OECD's Guidelines for Multinational Enterprises and the ILO's Tripartite Declaration of Principles Concerning Multinational Enterprises were adopted.

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<sup>14</sup> OECD distinguishes between four types of codes: company codes, business association codes, codes involving partnerships of stakeholders and those created by international organizations (OECD, 2000, Fig. 1). A similar classification has been used by Kolk et al. (1999).

***(c) Scope***

The selection of which issues are covered (and which are avoided) is a key element of any code of conduct. Several surveys of individual company, sectoral and comprehensive codes provide summaries of the coverage of a sample of such codes.

The most comprehensive type of code of conduct would refer to the core labour standards identified by the ILO. These are derived from the following ILO Conventions:

- Freedom of Association (C87)
- Right to Collective Bargaining (C98)
- No Forced Labour (C29, C105)
- Minimum Age (C138)
- No Discrimination (C111)
- Equal Remuneration (C110)

In addition, such a code might refer to a number of other aspects of labour conditions, which have not been included within the core labour standards, such as provisions on health and safety, maximum hours of work, wages, and security of employment.

Table 3 presents the results for the 148 codes of conduct in the OECD inventory. This shows that there is considerable variation in the issues covered; only three aspects are dealt with in more than half the codes surveyed. These are a rather general commitment to a reasonable working environment, an agreement to comply with local laws, and protection against discrimination or harassment. The ILO codes were mentioned in only one in 10 of the codes, and it is clear that most codes do not cover ILO core labour standards.

Unfortunately the OECD data on the coverage of labour issues does not distinguish between the different types of codes. This is an important limitation since it is likely that codes drawn up by international organizations, or by social interest groups, will have a more comprehensive coverage of core labour standards than those of individual companies or business groups (Kolk et al., 1999:table 1a).

**Table 3: The labour content of the codes**

	Percentage of codes mentioning attribute*
Reasonable working environment	75.7
Compliance with laws	65.5
No discrimination or harassment	60.8
Compensation	45.3
No child labour	43.2
Obligations on contractors/suppliers	41.2
No forced labour	38.5
Provision of training	32.4
Working hours	31.8
Freedom of association	29.7
Specific mention of "human rights"	25.0
Monitoring	24.3
Right to information	13.5
ILO codes mentioned	10.1
Promotion	8.8
Reasonable advance notice	3.4
No excessive casual labour	3.4
Flexible workplace relations	0.7

\* Calculated as:  $100 \times [\text{the number of codes mentioning attribute}] \div [\text{the number of codes citing labour}]$

Source: OECD, 2000:table 4.

## 1. Company codes

Studies of company codes of conduct confirm that there is considerable variation in terms of the extent to which different labour standards are covered. A study of 18 UK companies found that, whereas all codes include a statement about health and safety, and more than half had provisions on non-discrimination, minimum wages, child labour and forced labour, only a minority referred to hours of work and freedom of association. The least common measure to be included was job security (only 3 companies). Collective bargaining rights were not addressed in any of the codes (Ferguson, 1999:table 2). This last omission is highly significant since it is regarded as a core labour standard.

A study of 10 US company codes in the clothing and retail sector showed a somewhat similar pattern (Sajhau, 1997). The most commonly included measures were on forced labour, child labour, health and safety, and non-discrimination. Half of the companies included a reference to minimum wages and maximum hours of work, although, in some cases, these merely stated that they should be in accordance with local laws. Only one company mentioned freedom of association and collective bargaining, and in no case was there any provision for job security

## 2. Multi-company codes

Table 4 provides information on multi-firm codes, which have either been developed for particular industries, or which are intended to be more generally applicable. These have been grouped into four types as discussed above. It can be seen that the most comprehensive in terms of coverage tend to be the model codes and the multi-stakeholder codes. Most of these

included all the core labour standards and other issues such as provision of proper employment contracts.

In contrast, codes organized by business associations have much less extensive coverage of both core labour standards and other issues. Although a majority mention child labour and forced labour, as well as health and safety, hours of work and minimum wages, none included freedom of association, collective bargaining and non-discrimination.

This is very similar to the picture that emerged from individual company codes. It is clear, therefore, that where codes are introduced as a form of self-regulation, either by companies acting on their own, or when industry associations act collectively, they do not usually cover the entire range of core labour standards. In particular, they tend not to allow for freedom of association or collective bargaining. They are also selective in terms of the other rights that are incorporated so that, although health and safety is frequently mentioned, proper contracts giving workers job security is very rarely included.<sup>15</sup>

#### ***(d) Coverage***

A further question is: who do these codes cover? There are several levels on which a code can operate. First, it can apply only to the company's own operations and thus operates as a declaration of business principles. Some companies, such as the Sara Lee Corporation, have both a code of principles, which it applies to its operating units, and a separate set of guidelines used in selecting suppliers (Sajhau, 1997).

In many cases the code of conduct is specifically designed to ensure that suppliers comply with certain standards. For example, over 40 per cent of the codes covering labour issues in the OECD survey placed obligations on suppliers (see table 3). This was particularly prevalent in the garment industry where 26 out of 32 company codes surveyed were addressed to suppliers and contractors (OECD, 2000:24). However, there is the question of how far along the supply chain these standards are met. In the clothing industry, multiple subcontracting relationships are common and it is not always clear whether the code only applies to immediate suppliers to the firm, or to sub-subcontractors as well.

There is also the issue of whether the code applies only to enterprises, or whether it also includes homeworkers, who are not formally employed by the manufacturer or its suppliers. None of the UK company codes studied by Ferguson covered home-workers or small-scale farmers (Ferguson, 1999:4). The only code that has been specifically developed for homeworkers is the Australian Code of Practice for Homeworkers developed by the Textile, Clothing and Footwear Union of Australia. Home-Net has been active in initiating discussions of the implications of codes of conduct for homeworkers, and is now involved in the UK's Ethical Trade Initiative.

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<sup>15</sup> These are similar to the reported findings of a preliminary analysis of approximately 215 codes of conduct carried out by the ILO. This found that while three-quarters of the codes mentioned health and safety, and two-thirds addressed discrimination, only 15 per cent contained references to freedom of association and/or collective bargaining (ILO, 1998:12-13).

**Table 4: Coverage of labour issues in multi-firm codes**

Initiative	Health and safety	No forced labour	Hours of work	Minimum age	Wages (*living)	Freedom of association	Collective bargaining	No discrimination	Equal remuneration	Proper employment contracts
<b>Inter-governmental</b>										
ILO	✓	✓	✓	✓	✓	✓	✓	✓	✓	
OECD GMNE						✓	✓	✓	✓	
EU: CoC		✓		✓		✓	✓	✓	✓	
<b>Model codes</b>										
Amnesty	✓	✓			✓*	✓	✓	✓	✓	✓
ICFTU CLP	✓	✓	✓	✓	✓*	✓	✓	✓	✓	✓
ICCR		✓		✓	✓*	✓	✓	✓	✓	
LBTL: WF	✓	✓	✓	✓	✓*	✓	✓	✓	✓	✓
CLPAIS	✓	✓	✓	✓	✓*	✓	✓	✓	✓	✓
HKCSPT	✓		✓	✓		✓	✓			
<b>Multi-stakeholder</b>										
ETI	✓	✓	✓	✓	✓*	✓	✓	✓	✓	✓
SA8000	✓	✓	✓	✓	✓*	✓	✓	✓	✓	
Nicaragua	✓		✓ norm	✓	✓	✓	✓	✓	✓	✓
FTCG: Dutch	✓	✓	✓	✓	✓*	✓	✓	✓	✓	
WHAIP	✓	✓	✓	✓	✓	✓	✓	✓	✓	
EURATEX/ETUC	✓	✓	✓	✓	✓*	✓	✓	✓	✓	
FIFA CLP	✓	✓	✓	✓	✓*	✓	✓	✓	✓	✓
<b>Business Association</b>										
BGMEA				✓						✓
PAECLSBI				✓						
ICTI	✓	✓	✓ (law)	✓	✓					
BTHA	✓	✓	✓ (60)	✓	✓					

Source: Pearson and Seyfang, forthcoming:table 2.

***(e) Substance***

Although the range of issues that are addressed by different codes gives a very broad picture of their coverage, a simple checklist approach does not provide a full picture of the extent to which a code achieves an improvement in labour conditions. Thus, for instance, codes may specify a maximum number of hours per week, but this can be as high as 60 hours in many cases. Similarly, in some cases, the code only requires the observance of local requirements, for example, in terms of minimum wages or the use of child labour. It could be argued that a code of conduct that requires that a supplier or subsidiary operate within the law is not a very stringent one.

***(f) Implementation***

For a code of conduct to be meaningful, it must have clear methods of implementation and means to ensure that it is being complied with. The adoption of a code involves a statement of principles concerning business behaviour, which is not necessarily the same as application of those principles in the firms operations. The International Organization of Employers, for example, estimates that 80 per cent of codes are really statements about general business ethics, which have no implementation methods (quoted in ILO, 1998:7).

In practice, implementation can only be guaranteed where there is an element of independent monitoring of codes of conduct. This has often proved to be a contentious issue because firms are reluctant to accept such arrangements. Even where there is a commitment in principle to independent monitoring, different stakeholders may differ over what they consider “independent” in this context.

Of the 246 codes included in the OECD inventory, only just over 10 per cent included provisions for independent (external) monitoring, and only four out of over 100 company codes had such provisions (OECD, 2000:table 6). A survey of 132 codes by Kolk et al. (1999:168) came to very similar conclusions. In 41 per cent of cases there was no specific mention of monitoring, and in a further 44 per cent the firms themselves monitored compliance. Less than 10 per cent of company codes and 5 per cent of those set up by business groups had some form of external monitoring (Kolk et al., 1999:table 4b). In the United Kingdom, Ferguson’s (1999) study of company codes found that none of them made a clear commitment to systematic monitoring and independent verification. This is despite the fact that model codes often emphasize the importance of such systems.

There are some exceptions to this general rule. The Gap in El Salvador has set up an independent monitoring working group in co-operation with the Interfaith Centre on Corporate Responsibility, Business for Social Responsibility and the National Labour Committee (Sajhau, 1997:box 3). Involvement of other groups in monitoring is more common in the case of sector wide codes than individual company codes and, not surprisingly, is particularly evident in the case of codes that have been initiated by NGOs (Seyfang, 1999:table 8).

However the general conclusion that can be drawn is that, in most cases, stakeholder involvement in implementation is minimal. This is paradoxical since the discourse of corporate responsibility is replete with references to stakeholders and the need to take account of more than narrowly defined financial returns. It is in this area that the contrast between rhetoric and reality is particularly jarring. In the absence of independent monitoring and verification, it is difficult to evaluate whether company codes are applied extensively in practice or remain mere expressions of good intentions.<sup>16</sup>

There is also the further question of the sanctions imposed when a code is not adhered to. In many cases no clear sanctions are defined. Around 60 per cent of the company and business association codes in the OECD inventory do not specify any penalties for non-compliance (OECD, 2000:table 6). When a supplier code is applied, it may specify that failure to comply will result in a contractor being dropped, although this is not always the case. It can also be argued that such an approach is not necessarily desirable since those who ultimately suffer from such sanctions are the workers themselves, ending up without a job. Therefore, in addition to the need for monitoring, it is also desirable that there be clear guidelines on how to deal with compliance failure.

## **6. An Evaluation of Corporate Codes of Conduct**

There is no doubt that the growing emphasis on corporate social responsibility and the increased adoption of corporate codes of conduct in the 1990s represent a significant new development. However, the question of what they really represent remains to be answered. Are codes of conduct part of a public relations exercise on the part of corporations keen to deflect criticism of their activities, or do they reflect a new form of stakeholder control over business that is more appropriate in a globalized economy? Are codes a realistic alternative to the traditional mechanisms of state regulation and trade union bargaining, or do they need to operate in conjunction with them?

### ***(a) Limitations***

As the previous sections have suggested, there are a number of limitations to codes of conduct as an instrument for promoting improved standards in developing countries. Some of these are practical limitations, which arise from the way in which codes have (or have not) been implemented up to now. Others are inherent to the nature of corporate codes and, therefore, go beyond just problems related to the way in which codes have been applied in the past.

Despite the considerable publicity surrounding codes of conduct, the extent to which they have been adopted so far is relatively limited. Many company codes are little more than general statements of business ethics with no indication of the way in which they are to be implemented. Model codes are, by their very nature, only intended as an example of best practice on which individual firms or sectors can base their own codes. Many of the codes that

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<sup>16</sup> Even where third party monitoring does occur, there are questions concerning the rigour of such monitoring, as the discussion in section 4 indicates.

have been drawn up by NGOs or by other collective organizations have so far been adopted by relatively few, if any, firms. Indeed in some cases the codes are still under negotiation and remain in draft form. For instance the Code of Labour Practices for the Apparel Industry Including Sportswear, the Ethical Trading Initiative Base Code and the Dutch Fair Trade Charter for Garments are still under negotiation. The International Federation of Football Associations Code of Labour Practices has not yet been adopted by any firms, and relatively few have so far been accredited under SA8000 (Seyfang, 1999:table B). Codes tend to be taken up by industry leaders, but they are not necessarily adopted by the majority of firms. However, this last factor is partly a reflection of the recent increase in the number of firms adopting codes.

Other limitations are the scope and extent of most corporate codes, in terms of issues addressed and workers covered. As was noted above, many codes do not even cover the ILO core labour standards, particularly those on freedom of association and collective bargaining, let alone go beyond these core standards to include other aspects of workers rights, such as security of employment. In terms of coverage, although codes usually cover immediate suppliers to the firm adopting the code, they do not always link further along the supply chain. Furthermore, there are whole groups of workers, often the most marginal, who do not come under the code. This is often the case for homeworkers, who are not directly employed by suppliers. In agriculture too, some of the most marginal and vulnerable groups are not always covered by a code of conduct .

The other major limitation of existing codes of conduct is the lack of independent monitoring to ensure that they are not just general statements of business principles, but actually regulations that get applied to the firm's operations and those of its suppliers. The reluctance of many firms to include independent monitoring as an integral part of their code of conduct gives rise to some suspicion that they may be used as a public relations exercise rather than a genuine attempt at improving conditions and performance. However, some leading firms have accepted such monitoring, and the growth of auditing and accreditation bodies indicates some improvement in this area.<sup>17</sup>

The more deep-seated structural limitations of codes of conduct relate to the drivers identified earlier as giving rise to the growth of such codes in the 1990s. First of all, they tend to be concentrated in consumer good sectors where brand names and corporate image are very important. This helps explain why the large-scale retail sector, garments and footwear, toys and some food products have been the sectors where codes covering social issues have most commonly been found. They also tend to be sectors in which the cost of individual purchases is relatively low, and where production costs often make up a relatively small part of the final product price. Sectors that produce durable consumer goods, where the cost of a single item is relatively high, such as cars, have been much less prominent in the discussion of corporate codes of conduct.

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<sup>17</sup> There are questions concerning the nature of some of the bodies that have taken up social auditing, in terms of their expertise in this area, and there is a suspicion in some quarters that auditing firms and consultancy companies have entered this area in order just to diversify their portfolio of activities.

Not only are codes limited to particular sectors, they are also mainly applied to firms which are engaged in exporting. Since pressure for the adoption of codes of conduct has come primarily from the North, it is firms selling in Northern markets that need to meet these requirements. Despite globalization, many producers in the South are not linked to the global market directly or indirectly and, therefore, do not have to worry about codes of conduct. There is a possibility, therefore, that when codes are adopted, they become oases of best practice, leaving most producers unaffected.

Finally, there is a tendency for codes to focus on particular issues regarded as highly damaging for companies to be associated with. Issues that have a high profile in developed countries are likely to figure prominently in most codes. Child labour is a case in point, highlighted because of the emotive reaction of those in the North to the idea of children working in factories. This does not necessarily coincide with what are perceived as key issues by other stakeholders, particularly those in the South. It is inherent, therefore, to the way in which codes of conduct have developed that they tend to be patchy in scope and not at all comprehensive.

### ***(b) Benefits***

Notwithstanding the limitations of codes, they can and have generated positive benefits for stakeholders. The Gap agreed to continue to source from the Mandarin factory in El Salvador, following improvements in working conditions. Workers were reinstated (including members of the union executive) and allowed to re-establish the union. A similar situation occurred in the Kimi garment factory in Honduras—sacked workers were also reinstated and allowed to organize a union (Jeffcott and Yanz, 2000). Concrete improvements have also been reported in Nike's factories in Viet Nam, including the reduction of hazardous chemicals and improvements in ventilation and safety conditions (Grayson, 1999:20)

These examples illustrate the fact that codes of conduct do provide a point of leverage on corporate behaviour. First, if companies adopt codes that are very limited in scope and coverage, the company can be criticized by other stakeholders. Model codes perform a useful role in this context since they can be used to show how far a company's practice falls short of recommended standards or industry best practice.

Second, if companies sign up to codes that are meaningful, they are open to criticism if they fail to implement the code. Although, in the absence of independent monitoring, it is difficult sometimes to know whether a company is abiding by the terms of its own code, instant international communications and contact between different stakeholders, particularly NGOs and trade unions, can help reveal cases of violation. Management then runs the risk of being accused of hypocrisy if these failures are publicized.

A third potential benefit from the emphasis on codes of conduct is the growing awareness that consumption is not divorced from production, not only an activity of exchange in the marketplace. Codes of conduct, therefore, whether covering social or environmental aspects, go beyond what is produced to look at how it is produced. This could have long-term implications

for the way economic activity is viewed. In conventional economic thinking, consumer concerns are limited to the quality of the product and its price. This means that the individual consumer's priorities are directly at odds with those of the social actor. However, once wider issues of production are recognized, then the potential for further mobilization around the implications of consumer choices is opened up.

Finally, an important advance associated with codes of conduct is the acceptance by firms of responsibility for the activities of their suppliers as well as their own subsidiaries. This concept of extended responsibility makes it more difficult for firms to externalize costs, whether social or environmental, and then claim that they themselves are behaving ethically or in an environmentally friendly way. Just as lifecycle analysis of the environmental impacts of products has widened the concept of corporate responsibility in relation to environmental issues, the development of codes covering social issues, which apply to suppliers, has widened the concept of social responsibility.

### ***(c) Dangers***

There are nevertheless several dangers associated with the growth of codes of conduct. The first is that they may come to be seen as something more than they really are. In some cases they can simply be a means to deflect public criticism, without really changing what is happening on the ground. In other words, there is a distinct possibility of "bad faith" in the development of codes of conduct. It is important, therefore, that codes not be seen simply as a set of guidelines to be established and complied with for the rest of time. Rather they should be thought of as a process which facilitates stakeholder engagement, and which provides a platform for further advances in terms of improving the impact of big business on social and environmental conditions.

Even when a code of conduct is adopted in good faith, its effects may prove to be counter-productive. Codes tend to involve prohibitions, but this may not always be the best way of improving conditions. It has been argued that an outright ban on the use of child labour can bring about a deterioration in the livelihoods of the most vulnerable families, who depend on the additional income that children bring in. It is also possible that, where children are banned from working in export industries, they will end up being employed in even worse conditions in enterprises that only supply the domestic market. This is reported to have occurred in Bangladesh after child workers were dismissed from the garment industry in the mid-1990s (DFID, 2000).

Another situation in which the requirements of codes of conduct may worsen the situation of the least well placed is the case of firms that find it impossible to ensure that a large number of small suppliers all abide by the terms of its code of conduct. In this case, there may be pressure to centralize suppliers and dispense with the smaller suppliers that are impossible to monitor. Thus, a shrinking of the supplier base may leave the most disadvantaged without access to the export market.

Another concern is that the development of codes of conduct will tend to undermine the position of traditional trade union organizations. Of course, in some cases codes of conduct can be used where trade unions are not recognized. If trade union organization is impossible, then it is hard to argue that codes of conduct are displacing trade unions. In general, the appropriate response would be to ensure that codes maximize the space for trade unions to act, rather than bypassing them or trying to replace them.

A further fear is that codes of conduct will replace government regulation and remove the pressure for government control of corporations. It is true that, as was pointed out earlier in the paper, codes of conduct have grown rapidly in the aftermath of the period of extensive liberalization. However, the growth of codes as such has not led to the reduced role of the state, although the reverse may be partially true. Corporate codes often explicitly mention the need to observe local standards as an element in their code, whether in terms of hours of work, wage levels or environmental standards. It would be a mistake to see codes of conduct as a substitute for government regulation, and any realistic evaluation of codes must take this point into account.

The limitations and the dangers of codes of conduct that have been identified above are undoubtedly real. It is important, therefore, to develop strategies to ensure that codes are complementary to government legislation and provide space for workers to organize. They are most likely to do so when they are multi-stakeholder codes rather than unilaterally developed by companies or trade associations. Codes of conduct should be seen as an area of political contestation, rather than as a solution to the problems created by the globalization of economic activity.

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