

FLA 3.0 v. DSP: Sweat-Free Stanford's Position

In our first internal meeting Winter quarter, and after a more in depth assessment of both the WRC and the FLA, our group was initially disappointed. While we do feel that the WRC has strategic advantages over the FLA, namely that they work exclusively with NGOs instead of for-profit monitors, that they do off-site interviews with workers and even the FLA has acknowledged that their resulting reports are more in-depth, the two organizations are similar in many ways. Both employ 16 people, they visit a similar proportion of factories out of the overwhelming number they are each responsible for, and both rely on monitoring and attempts at further remediation as the entirety of their battle against sweatshops. During our meeting with Susan Weinstein we recognized that we had independently come to the same conclusion; that monitoring was an empty gesture and certainly not enough to seriously combat global sweatshop use. With university apparel making up only 5% of what is made in any given factory, there are simply too many places that made university apparel for any organization to successfully monitor. In Business Week's cover story on November 27, 2006 titled "Secrets, Lies, and Sweatshops," it reported that in FLA's annual report it found an average of 18 violations per a factory it audited. One compliance manager for a multinational company estimated that only 20% of Chinese factories follow wage laws and only 5% follow hour limitations. Factories that are in full compliance are few and far between, but when they do exist licensees tend to pull away business, because of the higher costs. This can be seen in the recent case of the BJ&B factory in the Dominican Republic. In addition, when there is a problem found in a factory, there is little one can do to remediate the problem, because university licensors have little power to pressure factories to remediate. Due to this situation, we began to look at different alternatives, specifically the FLA 3.0 and the Designated Suppliers Program.

Why do sweatshops exist?

A sweatshop is defined as a factory that is not in compliance with an established code of conduct – this is evident in insufficient wages, forced overtime, unsafe working conditions, child labor, and suppression of the ability to organize workers. There is ineffective regulation and weak infrastructure within countries, thus requiring the use of independent monitors to ensure that factories comply with codes of conduct.

We point to the downward price pressure as the most significant root cause for the creation

and proliferation of sweatshops. In the apparel supply chain, large companies (including universities) place orders with brand-name manufacturers who in turn, hire contractors and subcontractors (factories) to recruit, hire and pay factory workers to assemble the clothing.

As demand for apparel rises, basic microeconomic theory dictates that more manufacturers and factories enter the market in order to fulfill the demand, thus achieving a stable equilibrium price while increasing quantity supplied. Driven by economic forces, manufacturers seek to maximize profits by minimizing their expenditures and as a result of competition, factories with the greatest marginal productivity per unit of labor and the lowest marginal cost per worker are the ones that receive the most orders. Driven by this market, factory owners act to reap profits and to truncate total costs (such as transaction, contract, and wages). Factories will only make positive profits if they receive orders from brands, so the fight for a contract becomes a fierce “race to the bottom” where factories are forced to accept lower and lower prices in order to remain competitive in the global market. As factories search for ways to cut costs they often compromise their workers’ wages, ability to unionize, health and working conditions, in order to maintain their contracts.

This downward price pressure is a prevalent force throughout the supply chain, and it is an indisputable fact that with less capital, a factory cannot pay its workers sufficient wages or create safe and working conditions. To maximize MPL (marginal product of labor) and minimize costs, the pressure to produce in short periods of time often results in forced and unpaid overtime for workers – uncompensated productivity – as well as a host of social ills that are governed by economic competition.

Fair Labor Association 3.0

FLA 3.0 seeks to address the root causes of sweatshops and to solve these problems through a new approach. The FLA believes that sweatshop working conditions are involuntarily caused by imperfections in the current system. As Auret van Heerden explained in our April 6, 2007 meeting, brands place orders as late as possible so that they can be flexible and nimble enough to respond to the changing tastes of their consumers. This means extremely short lead times for factories. The FLA also expressed concern about inefficiencies within factories, which causes them to accept too many orders from brands and do not actually know how to calculate how many man hours it will take to fill all of their orders. To address these issues, the FLA has

proposed to help factories with "capacity building," a blanket term that implies a combination of education and training to ensure that companies understand the FLA's entire code of conduct and training on better management practices. For example, FLA 3.0 includes human resources training to show companies how to end discrimination in hiring procedures and how to better organize their orders. In this same vein, the FLA is also revamping their monitoring efforts, encouraging factory managers to stay in touch through the internet and to self report their violations of the FLA's code of conduct so that the FLA can implement their capacity building strategy and work with the factory managers to improve conditions.

While the FLA's efforts are clearly well-intentioned, we find them to be naïve. Even assuming that the vast majority of factories are as backwards and inefficient as this new approach suggests, capacity building in concrete terms can help reduce the need for forced overtime, but it does not address the right to organize or the right to a minimum wage. While we find it plausible that a factory, under the new system, might report overtime violations in order to be trained in better management skills, we see no reason for a factory to voluntarily admit that they force applicants to take pregnancy tests, or that they refuse to allow their workers to unionize. How would factories benefit by reporting these problems? These infractions occur for obvious reasons; unionized workers demand higher wages and better working conditions, both of which will clearly cost the factory more money. Compliance with labor standards is costly, and it is far more expensive to pay workers fair overtime compensation, to comply with minimum wage regulations, to provide health and safety materials and to employ unionized workers than it was under the previous unregulated system of accepted sweatshops. As it stands today, factories have no incentive to comply with the FLA's code of conduct because they get the same price whether or not they follow the code of conduct. Also, the FLA's own data acknowledge that problems reported by workers are often inconsistent with those reported by factory managers and we fail to see how FLA 3.0 would address this problem. As President Hennessy brought up in our first meeting, it is certainly conceivable that not all factory managers are interested in their workers well being and there may well simply be bad factory managers out there who exploit their workers. How does FLA 3.0 solve this problem? The same way that the original FLA did, through a broken system of monitoring.

Given the evidence, it sounds patronizing to suggest that factories don't comply because they don't understand the rules. "A compliance manager for a major multinational company who

has overseen many factory audits says that the percentage of Chinese suppliers caught submitting false payroll records has risen from 46% to 75% in the past four years.” Falsifying payroll records clearly shows that factories are aware of required codes of conduct and knowingly violating them. We believe that factories falsify pay records and do not comply with minimum wage or overtime regulations because, as a manager at one of Nike’s factories in China says, "the price [Nike pays] never increases one penny...but compliance with labor codes definitely raises costs."

The Designated Supplier Program

Like FLA 3.0, the goal of the Designated Supplier Program (DSP) is to address the root causes of sweatshops. The DSP, unlike the FLA however, identifies downward price pressures as the primary cause of sweatshops. Factories, competing with one another in an attempt to win orders from licensees, seek to minimize costs. While certain expenses, such as materials, transportation, and overhead, cannot be reduced beyond a certain level, the excess supply of labor and weak regulation of labor standards in impoverished countries allows wages and working conditions to get squeezed in a “race to the bottom.” As a result, factories ban unions, pay wages below the legal minimum, force overtime without compensation, use child labor, and violate women’s rights to lower costs. To reiterate a previous point, another cause of sweatshops is abusive factory owners who seek to maximize their own profits by exploiting their workers. The widespread nature of collegiate apparel production makes it difficult to hold abusive factory owners accountable for their actions through monitoring. This clear lack of enforcement encourages these types of factory owners to defy company and university codes of conduct.

The DSP seeks to address these root problems with a multi-faceted approach. The keys to the DSP are a factory certification process, The Fair Price Standard, and the consolidation of collegiate apparel production. For a factory to receive DSP certification, companies must nominate the factory and then work with it to ensure that it fulfills the licensor's code of conduct. The Worker Rights Consortium (WRC) will then assess the factory for compliance. We believe that this system represents an important shift in the burden of proof. Rather than assume that all factories are innocent until proven guilty, the DSP requires factories to demonstrate their innocence. While this may seem counter-intuitive, we strongly believe that, given the well-documented pervasiveness of sweatshops in the garment industry, this is an important step in the

right direction. Furthermore, requiring factories to achieve compliance before receiving orders establishes a firm basis for responsible manufacturing and removes all doubt about whether factory managers understand university codes of conduct.

The DSP also seeks to combat the “race to the bottom” by establishing a Fair Price Standard. The Fair Price Standard requires licensees to pay factories enough money to ensure that the factories can pay their workers a living wage and maintain a safe working environment. Unlike FLA 3.0’s plan, the Fair Price Standard of the DSP actually addresses the concerns of factory owners brought up in the Business Week article by paying the factory enough that they can afford to comply with university codes of conduct. The downward pressure on wages and working conditions is alleviated. Though we recognize that the Fair Price Standard removes certain aspects of competition in the manufacturing process, we also believe that establishing a clear floor in the “race to the bottom” is essential. Similar to establishing a minimum wage (or, more recently, a living wage) in the United States, this Fair Price Standard is designed to ensure that hard-working garment workers have enough money for basic life necessities.

In order to receive DSP certification, factories must also demonstrate that over 50 percent of their output is collegiate apparel. Consolidation provides university licensers with increased leverage in remediating violations that occur in factories. Rather than constituting less than 5% of the factory orders, the university now serves as an influential guide in labor practices. This consolidation of collegiate apparel production is essential for enforcement. As discussed earlier, the diffuse nature of collegiate apparel manufacture makes it incredibly difficult to monitor factories for compliance in any meaningful way. By consolidating production, monitoring is made feasible. Furthermore, these increased monitoring capabilities will force factory owners to exercise greater diligence in complying with codes of conduct, because they face certain inspection. Thus, consolidation not only increases the chance that violators of university codes of conduct will be caught, but the threat of improved monitoring also significantly reduces the possibility that factory owners will violate these codes of conduct.

The DSP provides a further incentive for factory owners to comply by requiring a three-year manufacturing contract between the licensee and the certified factory, provided both parties act in good faith. Factory owners, with the possibility of stable orders from licensees for three years, will invest more effort in making sure that they do not violate codes of conduct. Furthermore, this three-year contract benefits the workers by allowing them to develop their

local communities in a sustainable way. The DSP's three-year contract will allow workers to finally climb out of the vicious cycle of poverty.

In sum, we believe that the DSP, with its multi-faceted approach, addresses the root causes of sweatshops. By certifying factories, implementing the Fair Price Standard, and consolidating collegiate apparel manufacture, we believe that the DSP will provide factory managers with the ability and the will to uphold our code of conduct.

Conclusion

We would also like to address concerns about the DSP's implications for the University. One argument made is that licensees will be put off by the DSP's regulations, and will decide to cease contracting with universities. It has been shown in the past that when regulations have been imposed on industries despite their fears of losing profits, companies have adjusted without significant financial repercussions to the business or the group imposing the regulation. For example during the 1970s energy crisis, California imposed energy efficiency standards on refrigerators that called on them to cut refrigerator energy use by half. Despite the refrigerator manufacturers' claims that refrigerators would become too expensive or too small, the industry was able to adjust without any degradation to profits or the quality of the product. According to Steve Schneider, Stanford climatologist, the federal government went on to adopt the same standards a few years later. Similarly, when the Worker Rights Consortium began requiring that licensees disclose the locations of their factories, many brands insisted that such information constituted trade secrets, and that disclosing the information would result in huge financial losses. Today, many brands practice factory disclosure and have not seen their business adversely affected by this regulation. Universities played a leading role in establishing the practice of factory disclosure, and we believe that they can advocate for the new provisions of the DSP in a similar fashion.

Another concern involves possible antitrust rulings against universities for their participation in the DSP. The WRC obtained a legal opinion from Donald I. Baker, former Assistant Attorney General in charge of the Antitrust Division. His legal opinion, which can be found on the WRC's website, suggests that antitrust rulings against universities are not likely. Additionally, the DSP has requested a Business Review Letter from the Department of Justice. The DSP will not go forward in implementation unless they are confident that their members will

not be subject to antitrust lawsuits; thus, we believe that this issue is being addressed to the fullest and should not discourage the University from joining the program.

In conclusion, we believe that the evidence is clear in suggesting that factory monitoring itself is not sufficient in addressing the problem of global sweatshops. Of the two current proposed solutions, it is our belief that the Designated Suppliers Program offers an innovative model that will ensure the enforcement of codes of compliance and greatly improve working conditions and wages by addressing the root cause of the problem: downward price pressure from brands that results in factories lacking the resources they need to run a safe workplace and pay workers a living wage. Additionally, we believe that the DSP's policy of consolidation gives leverage to universities, allowing them to make meaningful progress and take a leading role in ending worker rights abuses. While we appreciate FLA 3.0's capacity building approach as a step in aiding with compliance, it is fundamentally a non-solution, because it cannot remediate the problem of factories lacking the necessary monetary resources to maintain a truly sweat-free workplace. We believe that endorsing FLA 3.0 as a solution sends the dangerous message that the problem of sweatshops is solely a result of the ignorance of factory managers, and that brands hold no share of the responsibility in creating and maintaining a system of downward price pressure that encourages cost-cutting at workers' expense. Fundamentally no industry is going to voluntarily increase their cost of business, which serious compliance with codes of conducts requires. However we believe that seriously combating sweatshops is Stanford's moral duty and we believe that the best way to confront this global problem is through an innovative solution like the DSP.

In addition please see:

Scott Nova at the FLA-WRC Joint Forum in Chicago

http://fairlabor.org/all/colleges/USAS_DSP/Chicago_Scott.mp3

For more information about FLA's monitoring and the total number of companies under their oversight:

<http://fairlabor.org/all/2006PublicReport.pdf>

Business Week, November 27, 2006

http://www.businessweek.com/magazine/content/06_48/b4011001.htm

Regarding Antitrust Issues:

Baker Antitrust Opinion - January 17, 2006

http://www.workersrights.org/Baker_Opinion_1-17-06.pdf

Baker Opinion Concerning the Role of the Licensees - March 1, 2006

http://www.workersrights.org/DSP/BakerOpinion_3-1-06.pdf

Baker Opinion Concerning University Competition – March 3, 2006

http://www.workersrights.org/DSP/UL_Opinion_3.3.06.pdf

Baker Response to Saferstein Opinion – October 31, 2006

<http://www.workersrights.org/DSP/Baker%20Response%20to%20Saferstein%2010-31-06.pdf>

WRC Business Review Letter Request – January 12, 2007

<http://www.workersrights.org/DSP/WRC%20Business%20Review%20Letter%20Request%201-12-07.pdf>