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Considerable criticism has been voiced over the level of compensation and working conditions of people employed by US companies abroad to make American merchandise.

What Prevents Labor Abuses Abroad? A Voluntary Code of Conduct

Companies respond that they provide jobs and higher wages to people who would otherwise not be employed, and that they are actively working to end any alleged labor abuses abroad.

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Unequal in an Organization of Equals? Developing Countries and the WTO

It was the year that was supposed to have changed international trade for the benefit of all countries. In 1995, the developed and developing countries of the world created and joined the ranks of the World Trade Organization (WTO). For developed countries, the WTO would promote open and stable trade relations and quickly settle disputes among its members. For developing countries, the WTO would help increase their standards of living by opening overseas markets to their goods. And in a world where stronger countries routinely used raw economic and political power to attain their goals, the WTO would aspire to give every member an equal chance to participate in the organization.

That was six years ago. What do we see today? While many countries have benefited from their WTO membership, most developing countries are still struggling to comply with basic WTO obligations and commitments. Developing countries also say that their richer counterparts haven't sincerely implemented certain WTO agreements which would benefit them. Developed countries argue that many developing nations are using some of their difficulties in fulfilling their membership obligations as a ploy to renegotiate several WTO agreements in their favor.

The frustrations of the developing countries boiled over in December 1999 during the much-publicized WTO trade meeting in Seattle where developing and developed country members failed to start a new round of global trade talks amidst the backdrop of thousands of anti-globalization demonstrators. Developing country members have threatened to delay any new talks until the WTO addresses their concerns and gives them a better footing in the organization.

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Founded in 1996, the Center for International Law supports teaching and research in all areas of international law, and concentrates on the law of international trade and finance. The Center organizes events whereby students, faculty, and guests of New York Law School may interact with experts who link theory and practice.

Open trade and the WTO: The great equalizer?

The Geneva-based WTO serves as the premier forum for promoting open trade and settling disputes among its 140 member nations, 80 percent of whom are developing and least-developed countries. There are 28 governments currently negotiating to join the WTO (almost all of them are developing countries). Unlike other international organizations such as the United Nations, the WTO (through its member governments) makes and enforces decisions through consensus rather than taking votes.

According to the WTO, every member nation, rich and poor, has equal access to using its dispute settlement procedures and participating in its biennial trade negotiations. "Even the smallest WTO member has a wide range of rights which are enforceable under the WTO," says the organization's Director General, Mike Moore. Since 1995, developing countries have filed 25 percent of the over 200 complaints lodged at the WTO, and have won several cases against stronger members. Recent figures also show that developing countries represent a growing and substantial share of international trade, exporting nearly a third of the world's goods and a quarter of its services.

Why are so many countries, especially developing nations, applying for WTO membership? Long-term studies show that open trade (which is trade largely unhindered by high tariffs, quotas, and heavy government intervention) promotes economic growth and helps to reduce poverty. According to separate studies conducted by the WTO and the World Bank, economies with an open trade policy grew at an average rate of 4.49 percent between 1970 and 1990, compared to just 0.69 percent for closed economies. While these studies acknowledge that open trade has brought uneven growth (and, in many cases, economic disruption) to developing countries, they conclude that "poor people within a country generally gain" from open trade. And in developing and least-developed countries, where over 2 billion people live on less than $2 a day, "such growth is absolutely necessary if poverty within these countries is to be eradicated," says the World Bank.

The slow road to trade: From the GATT to the WTO

Until the creation of the WTO in 1995, the General Agreement on Tariffs and Trade (GATT) was the most important trade agreement of its time. Negotiated in 1947, the GATT called for regularly scheduled trade negotiations or "rounds" (some of which lasted years) among its member governments in order to open markets, lower tariffs, and increase prosperity for its members (much like the WTO's mission today). The GATT also tried to integrate developing countries into the world trading system. In fact, developing countries represented 11 of the original 23 GATT signatories.

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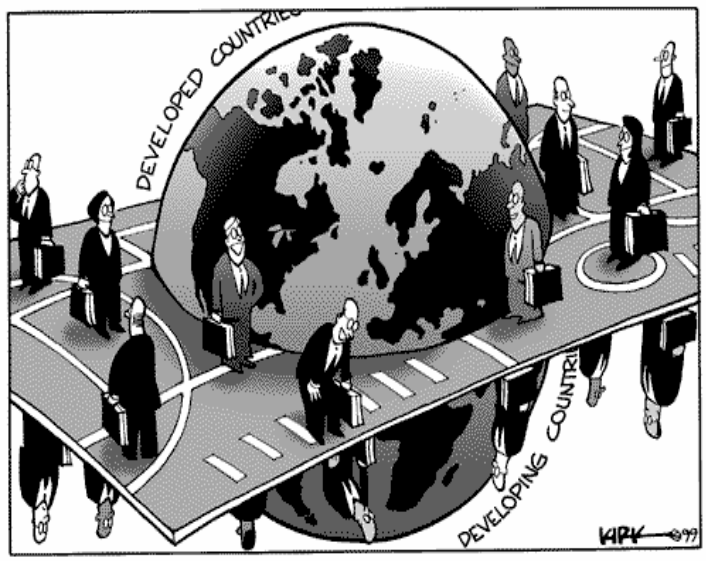

According to the World Trade Organization, "even the smallest WTO member has a wide range of rights which are enforceable under the WTO." Some developing countries would disagree. KIRK ANDERSON ©1999.

The original GATT agreement did not make distinctions among its members or even recognize the special needs of developing countries. Instead, the GATT called for its members to extend "most-favored-nation" (MFN) treatment to one another (i.e. members had to treat each other equally). If one member extended benefits to another member, it had to do the same for all other members.

When it became apparent that developing country members faced recurring problems such as persistent economic volatility, GATT member nations slowly began to make exceptions to its MFN rule. In 1965, member nations amended the GATT agreement to allow “non-reciprocity in trade negotiations” in which developed countries granting trade concessions to developing countries “should not expect the developing countries to make matching offers in return."

In 1979, the GATT formally established an exception (called the "Enabling Clause") to its MFN rule by allowing "members to grant special concessions to developing countries without having to do the same for the entire WTO membership." Despite this exception, developed countries did not (and were not legally required to) grant significant benefits to developing countries which were not active participants in GATT trade negotiations.

A new beginning for developing countries?

But the trade landscape changed in 1995 when the WTO Agreements superseded the GATT and set forth benefits for developed and developing countries alike. Unlike the GATT whose rules mainly covered trade in goods, the WTO created new agreements in areas where developing countries had a competitive advantage. Economists calculated that the WTO agreements would create $86 to $122 billion in new benefits for developing countries alone.

Two agreements, in particular, would help developing countries. Under the new WTO Agreement on Agriculture, developed countries would cut tariffs on agricultural products by 36 percent while developing countries would make a 24 percent cut. Agricultural products represent an important trade sector for developing countries who exported $178 billion of agricultural products in 1997, up from $114 billion in 1990. This new agreement was expected to increase further agricultural exports from developing countries.

A second agreement, the Agreement on Textiles and Clothing (ATC Agreement), would require developed countries to eliminate textile import quotas over a period of ten years (ending in January 2005) and to provide better access for developing country imports. The International Textiles and Clothing Bureau estimates that textiles make up almost 20 percent of the total manufactured exports for developing countries. Until the creation of the WTO, developed countries used a quota system to protect domestic textile industries from foreign imports. Once the ATC Agreement is fully implemented, the United Nations Conference on Trade and Development (UNCTAD) estimates that developing country textile and clothing exports will increase by 78 percent and 135 percent, respectively.

In return for these benefits, developing countries adopted other WTO agreements which would initially benefit the developed countries. For example, a new Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) created new trade rules protecting intellectual property (such as computer software and new medicines), and an Agreement on Trade-Related Investment Measures (TRIMs) created new rules for investments. The WTO gave its developing country members an additional five years (ending on January 1, 2000) before they were bound by TRIPs and TRIMs and promised technical assistance to help them implement their new obligations.

Back to square one for developing countries?

But it soon became apparent that not all nations would benefit equally from their WTO memberships. While members such as the US have seen clear benefits, the same didn‘t seem to hold true for certain developing countries, which have voiced three broad complaints.

First, they charge that the developed countries have hindered the implementation of the Agreement on Agriculture by using "tariff peaks," which are high tariffs placed on politically-sensitive imports (such as agricultural products) to protect domestic industries and which are reduced at a much slower rate than other tariffs. Developing countries also say that their rich counterparts have thwarted the ATC Agreement through a practice called "tariff escalation" which sets lower tariffs on raw material imports (such as unprocessed fabrics) while setting higher tariffs on finished clothing from developing countries.

Although a joint WTO-UNCTAD study released last July confirmed that "developing countries' exports continued to suffer from significant tariff and non-tariff barriers," developed countries such as the US argue that WTO

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What Prevents Labor Abuses Abroad? A Voluntary Code of Conduct

In today's business world, nothing can be as valuable as a good public image to sell a message, product, or service. So it must have come as an unpleasant surprise for such polished celebrities as former basketball star Michael Jordan and talk show host Kathie Lee Gifford to find themselves in the company of multinational enterprises (MNEs) operating what seemed to be sweatshops around the world.

According to human rights groups and consumer advocates, these two celebrities endorsed products such as sneakers and blouses made by workers abroad who were employed in factories where labor standards were routinely violated. MNEs have responded that they provide jobs and higher wages to people who would otherwise not be employed, and that they are actively working to end any supposed labor abuses abroad.

These embarrassing allegations have renewed a momentum to regulate the business practices of MNEs and their thousands of overseas contractors. Legal analysts describe past efforts to regulate MNEs as a decades-long struggle littered with half-hearted and unenforceable measures. But under the glare of recent media scrutiny and consumer pressure, MNEs began a serious effort to regulate themselves using "codes of conduct." Whether these codes of conduct will actually promote corporate responsibility remains to be seen.

Effective Self-Regulation or Publicity Stunt?

Codes of conduct are general policy statements and principles used by organizations to self-regulate many areas of activity or to address many kinds of issues. Current examples include codes of conduct which oversee labor standards in the apparel industry, monitor the sale of weapons to dictators abroad, and establish the professional conduct of nurses in Australia.

Private associations, religious groups, corporations, international organizations, and even governments have devised codes of conduct. Adherence to a code of conduct is, however, purely voluntary.

Critics argue that codes of conduct, especially those created by MNEs to monitor their overseas business activities, are publicity exercises which allow companies to avoid making meaningful changes in their operations. Several weaknesses in these codes of conduct, they say, include: (i) a failure to specify whether the code applies to a company's contractors abroad who actually make the merchandise; (ii) covering only obvious prohibitions such as a ban on slave labor, but excluding more difficult issues, such as worker safety standards; and (iii) not indicating how a company will actually monitor and enforce a code of conduct. One analyst commented that "setting standards [under a code of conduct] is five percent of the job, ensuring compliance is 95 percent." Others argue that codes of conduct will relieve governments of their responsibilities to uphold human rights, and environmental and labor standards which they should be doing in the first place.

Given these criticisms, why are codes of conduct still being used today? Corporate analysts believe that companies view codes of conduct "as a way of promoting self-regulation and deterring government intervention and regulatory action." For code supporters, one nonprofit group expressed the hope that (short of new legislation) a code will at least "draw more attention to a company's practices and raise expectations of improvements in those practices."

A Coded History: International and Government Efforts

Codes of conduct date back to 1937 when the International Chamber of Commerce created the first corporate code of conduct (called the "Code of Standards of Advertising Practice") restricting inter-company competition among its members. During the 1970s, several international organizations began devising corporate codes of conduct in response to allegations of MNEs engaging in unethical behavior (such as participating in the overthrow of governments) in their countries of operation.

In 1976, the Organization for Economic Cooperation and Development (a forum of economically-advanced countries) called on MNEs to adhere to ethical business principles by adopting its "Guidelines for Multinational Enterprises." In 1977, the United Nations began and, fifteen years later, abandoned work on its own "Code of Conduct for Transnational Corporations." UN member nations couldn't agree on whether the code should be legally binding. In that same year, the International Labor Organization issued its "Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy," calling on member governments to set minimum standards on basic labor rights such as freedom of association and the right to organize. But, as critics point out, adherence to these codes was voluntary and legally unenforceable.

Some governments have also undertaken efforts to regulate MNEs. For example, the US Congress passed the 1930 Smoot-Hawley Tariff Act prohibiting imports made by prison labor and, in 1986, passed the "Comprehensive Anti-Apartheid Act" restricting American business activity in South Africa, to protest that country's policy of racial discrimination. In recent decades, the US has imposed trade sanctions and investment restrictions on certain countries such as Cuba, Iran, Iraq, Libya, and North Korea. Some members of Congress have also tried, unsuccessfully, to pass legislation encouraging American MNEs operating in the former Soviet Union and China to adopt a code of conduct protecting human rights (the Slepak Principles in 1989 and the Miller Principles in 1991, respectively).

While the US government has, to some extent, regulated US businesses overseas, it has never imposed broad regulations on them in the areas of labor standards, human

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A Nike-contracted factory in Indonesia. Will a code of conduct help those factory workers abroad who allegedly make American merchandise in sweatshop conditions?

rights, and environmental protection. American retailers argue that it is simply impossible (logistically and financially) to monitor the tens of thousands of foreign contractors who actually manufacture their products abroad. Other companies argue that they comply with the laws of their host countries and see no reason for further regulation. Several point out that their foreign competitors don't have to follow any codes of conduct, and that compliance on the part of American companies only would put them at a competitive disadvantage. As one critic put it: "The company that seeks to pursue profit and do 'good works' at the same time is likely to do neither very well."

In recent years, several state governments have passed "selective purchasing laws" restricting state agencies from purchasing goods from companies doing business with countries allegedly violating human rights such as Myanmar. Recently, the US Supreme Court struck down as unconstitutional a Massachusetts law restricting business with Myanmar, arguing that an existing federal statute pre-empted that state's law. But the Court did not explicitly bar the enactment of similar laws in the future.

A Coded History: Private and NGO Efforts

Disappointed by these measures on the part of governments and international organizations, private and nongovernmental organizations began devising their own codes of conduct to regulate MNEs in the areas of child labor, fair compensation, and worker safety. In 1977, the Rev. Leon Sullivan, a Baptist minister and a member of the board of directors at General Motors, encouraged American corporations operating in South Africa to adhere to a set of voluntary human rights principles. Although these "Sullivan Principles" did attract broad support from many corporations, the Rev. Sullivan himself deemed them ineffective in 1987.

The nonprofit group Social Accountability International devised an accountability code called SA-8000 to track and grade the business practices of hundreds of corporations. In 1990, an international coalition of labor and human rights groups created the Maquiladora Code for companies operating in the factory zones along the US-Mexican border. Later that year, the European-based Clean Clothes Campaign created a code of conduct for the labor-intensive global garment industry.

These efforts did focus more attention on MNEs, but most companies simply refused to adhere to these codes of conduct, saying that they would work among themselves to correct any labor or human rights abuses. While some companies such as Levi Strauss and Reebok did create strong codes of conduct regulating their overseas operations in the early-1990s, they were the exceptions to the rule. But soon, a change in the social and political climate (combined with several high-profile stories on continuing labor abuses abroad) would persuade MNEs to regulate their overseas operations more seriously.

Kathie Lee Gifford and Michael Jordan sweat it out

The public became increasingly responsive to calls for greater corporate responsibility. In a 1993 Boston College survey, 74 percent of respondents said they would buy products only from companies acting in the best interests of a community. A Marymount University poll in 1995 revealed that 84 percent would pay "an extra dollar on a $20 item to ensure that the garment had been made in a worker-friendly environment." Investment analysts also estimated that the number of mutual funds using social investment criteria grew from four in 1984 to 144 in 1997, and that since 1984, people have invested over $1.19 trillion in portfolios using at least one social investment criterion.

In academic and legal communities, scholars began to make the case for greater corporate responsibility. As MNEs have gained more power and influence in recent decades, they say, many have directly or indirectly supported human and labor rights abuses in their countries of operation. Because of their involvement, these scholars argue, MNEs have taken on an ethical obligation to prevent further abuses from taking place in the future. Said one legal advocate: "Corporations, because they are the dominant institution of the planet, must squarely face and address the social and environmental problems that afflict humankind." Recent statistics attest to the growing power of these companies. Of the 100 largest economies in the world, over half are MNEs. The Wal-Mart discount chain alone has revenues larger than the economies of 161 countries.

Unflattering media stories also brought to light continuing MNE involvement in alleged human rights and labor abuses in their countries of operation. In 1995, the government of Nigeria tried and executed an activist, Ken

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Signs of a Greener WTO?

WTO critics have long accused the organization of promoting trade above all other concerns. In a recent decision, however, the WTO affirmed a French ban on asbestos imports, marking the first time that the WTO has allowed a member nation to restrict trade on public health grounds.

In December 1996, France passed a decree banning the manufacture, import, and sale of chrysotile or "white" asbestos (which is the main form of commercial asbestos used today in such items as underground pipes, shingles, and brake pads) after declaring it a carcinogen and public health threat. According to the European Union (EU), tens of thousands of people in Europe die every year from cancer caused by exposure to asbestos. Before the French ban came into effect, chrysotile asbestos was the last form of asbestos which could be used legally in the EU. Most EU member states had already passed measures banning the import, sale, and use of all types of asbestos.

Canada asked the WTO, in 1998, to overturn the French asbestos ban by arguing that it violated a provision of the WTO's Agreement on the Application of Sanitary and Phytosanitary Measures. France and the EU replied that the ban was permitted on public health grounds under a provision of the WTO's General Agreement on Tariffs and Trade ("GATT"), Article XX(b), which allows WTO member nations to restrict trade in order to protect animal, plant, and human health. Canada argued that because asbestos is safe if handled under proper precautions, the French ban was not based on a significant health threat. While acknowledging that older asbestos products were "very dusty and crumbled under hand pressure" [releasing potentially dangerous fibers into the air], Canada said that "modern asbestos products are as different from the old ones as night and day." The US, which has had strict restrictions on the use of asbestos for many years, filed a brief supporting the EU's position.

According to the Montreal-based Asbestos Institute, Canada is the world's leading exporter and the world's second largest producer of chrysotile asbestos (after Russia). In 1999, Canada exported C$162.5 million in chrysotile asbestos. Before the ban, Canada exported nearly 30,000 metric tons of asbestos to France, making that country the biggest market for Canadian asbestos exports. But in the wake of the ban (which allows certain exceptions), yearly exports have dropped to 40 tons per year.

The asbestos case takes on significance when placed in the context of recent protests accusing the WTO of failing to protect public health and the environment. In fact, up until the filing of the suit by Canada, the WTO had never approved a trade restriction under Article XX(b). And several high-profile trade disputes have provided WTO opponents with ammunition for their claims. For example, many Europeans resent American efforts to overturn a recent EU ban on genetically modified crops and a 12-year old ban on beef treated with growth hormones which they believe are harmful to human health. The US, as the largest exporter of genetically modified crops and as a big exporter of beef, claims that these bans violate Article XX(b) because they lack scientific justification (and have cost American exporters hundreds of millions of dollars in sales). Talks continue today to resolve these issues.

In July 2000, a WTO dispute settlement panel upheld the French ban on chrysotile asbestos imports, making it the first time that the WTO has allowed a member nation to ban certain imports on public health grounds under Article XX(b). In its ruling, the panel argued that "the carcinogenity of chrysotile fibers has been acknowledged for some time by international bodies."

Although welcoming the decision, environmental groups criticized the WTO ruling as placing "too many conditions on the use of trade-restrictive measures needed to protect public health." They argued that rather than simply trying to determine whether the asbestos ban was justified under Article XX(b), the WTO created extra hurdles.

In its decision, the WTO panel first declared the French ban illegal because it violated the WTO's rules on "national treatment" (Article III(4) of the GATT) which prohibits member nations from discriminating between an import and domestically-produced "like products." The panel accepted the Article III(4) argument that because Canadian chrysotile asbestos and available French substitutes (such as non-toxic cellulose and glass fibers) were "like products," France should not have discriminated between the two products by placing a ban on the Canadian product but not on the French non-toxic substitutes. (Environmentalists scoff at the comparison: "The reasoning that a carcinogenic product is the same as a non-carcinogenic product defies logic.")

The panel then reasoned that the French ban, though illegal, was justified under Article XX(b) because of public health concerns surrounding chrysotile asbestos. Environmental groups described this case as one where "once the principle of free trade was secured, the public health was left to bear the burden of proof." They said that in future cases where evidence of a public health threat is not as clear-cut as that posed by asbestos, a WTO panel might deny an exemption under Article XX(b).

But in an appeal issued in March 2001, the WTO's Appellate Body not only upheld the French ban under Article XX(b), it also ruled that chrysotile asbestos and its substitutes were not "like products" given the health concerns surrounding asbestos: "This carcinogenicity constitutes, as we see it, a defining aspect of the physical properties of chrysotile fibers." In response to this final ruling, the EU trade commissioner announced: "Legitimate health issues can be put above pure trade concerns." ❖

NYLS Alumnae Profile

Name and Year: Liliana Correia '98

Employer and Title: Zurich Financial Services (Zurich, Switzerland). Assistant Compliance Facilitator & Officer.

Describe your work and responsibilities: Zurich Financial Services (ZFS) is a major insurance and financial services company. In the US, its companies include Farmers Insurance, Zurich Scudder Investments, and Zurich Kemper Life. It has over 65,000 employees in over 60 countries. As a compliance officer/facilitator, I work with the staff to address and meet the company's legal obligations as well as the expectations of customers, shareholders, regulators, and the public regarding our overall corporate conduct. My most interesting project has been the drafting of a privacy policy for our legal entities. Privacy has been in the headlines in the past year and is an area of law which will continue to grow.

I have also been working on ZFS's equivalent of a "code of conduct" which describes the company's mission and values to our customers, employees, stakeholders and the community-at-large. (More details on codes of conduct appear on page four of this newsletter.) In today's "New Economy," customers and investors are paying closer attention to a company's values.

Describe a favorite aspect of your job: Living and working in Zurich, and being able to travel around Europe are great aspects but my favorite is working with colleagues around the world, especially in Latin America and Portugal where I am able to take advantage of my Portuguese and Spanish language skills.

Career advice for NYLS students: Many people have asked what brought me to Zurich. My answer is simple: continuous determination. As a first-year law student, I dreamed of practicing law in Europe. I believe that the practice of international law is best experienced abroad. Working abroad in a foreign legal environment also allows you to truly appreciate a different legal culture. I knew that the journey would be long (even the Office of Career Services warned me), so I approached the job search process from many different angles. Not only did I write to law firms, but I also contacted alumni working overseas and some individuals whose names I had been given through networking. I sent out countless letters and resumes, and received many rejections. Although at times I felt like giving up, I never did. Additionally, many people did not understand why I wanted to go to Europe and thought that I was bound to fail. I wanted to prove them wrong. I should also mention that my difficulty in finding a legal position overseas was due, in large part, to my lack of legal experience after graduation.

Whenever you begin your search for an overseas job, you must be able to answer the question: "Why do you want to practice law in a foreign country?" Stating that you always wanted to live overseas will likely not suffice. It is important that you carefully draft your answer.

You must also decide if you are interested in a particular area of law. But narrowing your area of interest considerably can add to the difficulty of finding a job. When I began my job search, I purposely did not specify an area of interest. I only knew that I didn't want to practice criminal law. I am now working in an area that I had never thought about.

Other advice: (i) Knowing a second language is important. I can attest to this, as one of the reasons why I was hired was my ability to speak Portuguese and Spanish. (ii) Taking international law classes is helpful, but concentrate on those courses covered in the bar exam (passing a US bar exam is, by far, more important). Practicing law in a foreign country generally does not require you to take additional legal courses or even pass a bar exam or its equivalent. The legal skills that you have acquired in law school are by far more important. (iii) Look into summer internship opportunities abroad. Many law schools offer summer study abroad programs in Europe or Latin America combined with an internship. I know some NYLS students whose internships turned into full-time job offers after graduation. (iv) The key is to be resourceful and creative, as it is only by being persistent that you will be successful in your job search.

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Code of Conduct Continued from page 5

Saro-Wiwa, who campaigned against Royal Dutch Shell drilling and pipeline projects in that country. A *New York Times* investigation revealed that Shell not only called in the Nigerian military's hit squad to protect its property, but that it had also transported and paid bonuses to the troops participating in the crackdown.

In 1996, morning talk show host Kathie Lee Gifford was accused of profiting from sweatshop labor. Labor rights activists revealed that part of Wal-Mart's Kathie Lee Collection was made in Honduras by seamstresses working 20-hour days for 31 cents an hour. (Ms. Gifford later became an activist working to end labor abuses abroad.)

Kathie Lee Gifford worked to end labor abuses abroad when labor rights activists revealed that some of her Wal Mart Collection clothing was made under sweatshop conditions.

The Department of Labor also released a survey in 1996 showing that of the 42 American apparel companies having codes of conduct, only a few had made any effort to inform overseas workers about the provisions of their codes.

In a grassroots campaign against Nike and its operations in Vietnam and Indonesia, labor activists say that tens of thousands of entry-level employees in factories making Nike shoes were paid $1.60 a day while working 60 to 70 hours a week in sweatshop conditions. Analysts estimate that a pair of Nikes costs around $16.50 to produce and is typically sold for over $65. Nike countered that their workers, such as those in Indonesia, made at least 25 percent more in cash and allowances than what local governments required, and that independent monitors oversaw working conditions in Nike-contracted factories. It was also unfair, said a Nike spokesman, to compare the living standards of a certain country making Nike apparel to American living standards – in countries where the per capital income is a few hundred dollars, he says, a salary of US$50 a month is a good salary. Nike later requested that its star endorser, former basketball player Michael Jordan, tour its factories in Vietnam to assure the public that the company was taking steps to prevent any alleged labor abuses.

What's Next? More voluntary codes

Spurred by mounting public pressure, several MNEs (with help from the US government) began a more concerted effort to create more codes of conduct regulating overseas business practices. In 1995, the Clinton administration became the first administration to devise a code of conduct of ethical practices (called the "Model Business Principles") for American companies doing business abroad. While the principles encouraged US firms to provide a safe workplace for employees and adopt fair employment practices, critics complained that the code was voluntary and unenforceable.

In 1998, a presidential task force called the White House Apparel Industry Partnership (whose members included Nike, Liz Claiborne, Patagonia, Reebok, L.L. Bean, and several public interest groups) created a voluntary code of conduct for overseas factories used by US apparel makers. The code prohibited these factories from using forced labor and the employment of children under the age of 14; required that they pay their employees the minimum wage set forth by the country of operation; and prohibited employees from working more than 60 hours per week. Despite the code's voluntary nature, its provisions included the creation of a new organization, the Fair Labor Association, which would monitor and enforce the code. Companies complying with the code and undergoing an audit by a reputable accounting firm would then be able to attach a "No Sweat" label to their clothing.

Codes of conduct soon proliferated in other industries. In December 1996, after the television program "Dateline NBC" revealed 13-year-old girls in Indonesia making Barbie Doll clothing for $2 a day, Mattel, Inc. (the world's largest toy company) announced that it would establish a code of conduct for its suppliers and would permit independent monitoring of its factories.

These developments also led to more activity on the international stage. In 1999, the United Nations created a "Global Compact" calling on MNEs to adopt the Compact's principles dealing with labor, environmental, and human rights standards in their business operations abroad. Under the Compact's provisions, signatory companies would have to provide an annual report showing how they have complied with the Compact's principles. While human rights groups criticized the Compact as voluntary and unenforceable, they praised the UN for continuing work in this area.

In 1999, some members of the World Trade Organization attempted to initiate a study examining the relationship between trade and labor standards but were opposed by developing countries who believed that industrialized nations would use the final report as a veil for protectionism against developing country exports.

Since the major exposés of the 1990s, have codes of conduct improved labor and human rights conditions in those overseas factories used by American companies? Most analysts point to mixed results. A 1997 report from the accounting firm of Ernst & Young revealed that a factory in Vietnam making Nike products forced thousands of young women to work 65-hour weeks for $10 a week in excessive heat. Nike argued that its code of conduct helped to root out and cancel its contract with this particular factory. In December 2000, the US Department of Labor completed a

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President Bush's Cabinet Officials on International Trade and Finance

Donald L. Evans
"The Best Friend"

Robert B. Zoellick
"The Brains"

Paul H. O'Neill
"The Maverick"

Although domestic issues such as education reform and tax cuts dominated last year's presidential campaign (and dominate today's headlines), political analysts say that President George W. Bush will have to face many issues in international trade and finance during the next four years of his presidency. The more prominent issues include:

- Overcoming anti-trade sentiment at home. Polls show that a majority of Americans oppose free trade agreements, fearing job loss to and greater competition from foreign countries. Since 1993, the US government has signed over 300 trade agreements, including the North American Free Trade Agreement, and recent trade pacts with Vietnam and Jordan, and has also voted to establish permanent normal trade relations with China. During last year's campaign, President Bush advocated the creation of a free trade zone stretching from Alaska to the tip of South America.
- Persuading Congress to approve "fast-track" legislation which will allow the President to negotiate international trade agreements and submit them to Congress for an up-or-down vote without any amendments. The legislation authorizing fast-track authority for the President expired in 1994 and has yet to be renewed by Congress.
- Settling the largest case ever brought to the World Trade Organization. It was brought by the European Union against the United States concerning foreign sales corporations which enable US companies to avoid paying billions of dollars in taxes on American exports (see Fall 1999 newsletter).
- Handling the US trade deficit which stood at a record $366 billion for the year 2000. The previous record of $265 billion was set in 1999.
- Ensuring that China meets its obligations when it officially becomes a member of the WTO (see Fall 2000 newsletter).
- Helping Japan bring its economy out of a decade-long recession. Growth is negative. The national debt is excessive. The capital markets are experiencing difficulties. These factors are having an unhealthy impact on the economies of other countries, including the US.

President Bush appointed (and the US Senate recently confirmed) the following officials to handle these and other issues:

DONALD L. EVANS (US SECRETARY OF COMMERCE)

The Department of Commerce is the largest federal agency dealing with international trade (in terms of the number of staff people and responsibilities). In addition to promoting American exports, investigating allegations of unfair foreign trade practices, and licensing US exports, the Department of Commerce also conducts the census, engages in ocean research, and reviews patents.

In recent years, most commerce secretaries have used their position to cultivate good relations with business leaders, leaving the most important international trade functions to the US Trade Representative. Though a former commerce

Continued on next page

secretary once recommended the abolition of the department (which he described as the "hall closet" of the federal government), the current administration tried to endow the Commerce Department with more power over negotiating international trade agreements.

Background: A long-time friend of the President who raised over $100 million as chairman of the Bush-Cheney 2000 campaign, Mr. Evans served as chief executive of Tom Brown, Inc., an oil exploration company in Midland, Texas (which is Mr. Bush's hometown). Not counting his service on the University of Texas Board of Regents (to which he was appointed by then Governor George W. Bush), Mr. Evans has never held a government post.

Other interesting facts: Mr. Evans' wife, Susie, attended the same grade school as Mr. Bush, and introduced the two men to each other. Mr. Evans also attended Mr. Bush's 40th birthday party, an event which prompted Mr. Bush to quit drinking and change his life. The *New York Times* describes Mr. Evans as "something of a straight man to Mr. Bush's occasional clown."

ROBERT B. ZOELLICK (US TRADE REPRESENTATIVE)

Although it is one of the smallest government agencies (in terms of staff size), the Office of the US Trade Representative (USTR) packs a big punch. It is responsible for coordinating all trade negotiations and formulating all trade policy for the United States. The trade representative serves as the President's principal advisor and spokesperson on trade and investment matters, including all World Trade Organization issues.

Background: Mr. Zoellick (pronounced ZELL-ik) is a veteran policymaker and Republican insider who worked in the Treasury Department during the Reagan administration and then the State Department during the first Bush administration. His resume has been described as "an encyclopedia of diplomatic and economic abbreviations – NATO, WTO, NAFTA, G-7, APEC, and the Uruguay Round."

Mr. Zoellick helped to persuade the current Bush administration to maintain the post of US Trade Representative as a cabinet-level position. When Bush aides discussed whether to downgrade the position, Congress complained that almost all of America's largest trading partners had a Cabinet-level official dealing with trade matters. The former US Trade Representative described the idea as "madness" since no country would negotiate trade deals with a lower-ranking official whose decisions could be overturned by a higher-ranking official. In an apparent turnaround, Mr. Bush later announced that the trade representative would remain a Cabinet-level position "because of the importance of a global economy."

Interesting Facts: In his State Department office during the first Bush administration, Mr. Zoellick kept copies of *Time* magazine parodies and a picture book of rat-eating snakes on the coffee table for visiting dignitaries.

PAUL H. O'NEILL (US SECRETARY OF THE TREASURY)

The Treasury Department is responsible for formulating domestic financial policy and the country's international economic policy. The treasury secretary serves as the administration's senior economic policymaker, its ambassador to Wall Street, and also the chief liaison with foreign financial leaders. The Bush administration will look to the treasury secretary to help continue the country's longest economic expansion in history (over ten years and counting). The treasury secretary also serves as the US governor on the International Monetary Fund and other international development banks.

Background: As deputy director of the Office of Management and Budget from 1967 to 1977, Mr. O'Neill met current Vice President Richard Cheney, Secretary of Defense Donald Rumsfeld, and the Chairman of the Federal Reserve, Alan Greenspan. After serving as president of the International Paper Company from 1977-87, Mr. O'Neill became chairman and chief executive of Alcoa where he helped the once-struggling company succeed as the world's largest manufacturer of aluminum.

Interesting facts: Mr. O'Neill earned a reputation of being a maverick by taking nonpartisan positions on issues ranging from global warming to President Bush's proposal for a $1.6 trillion tax cut. After becoming chairman of Alcoa, he prohibited the use of company funds to pay for dues at private clubs that discriminated against women and blacks. Mr. O'Neill also worked with labor unions to promote worker safety issues which earned him the support of the president of the United Steelworkers Union, who declared that Mr. O'Neill "would make a great treasury secretary in any administration, Democratic or Republican." ❖

Code of Conduct Continued from page 8

report detailing labor abuses in an apparel factory in American Somoa contracted by retailer JC Penney. Some of the abuses included paying below-minimum wages and withholding food from workers. JC Penney immediately canceled its contract with the factory and its suppliers.

Despite all the weaknesses inherent in a code of conduct, supporters agree that MNEs have become more conscious of how their operations affect human rights and labor conditions abroad. Code supporters also point to a 1999 DePaul University study showing that companies following high ethical principles did better financially than companies that did not. The report concluded, "companies are slow to realize that good ethics is good business." ❖

Developing Countries and the WTO Continued from page 3

agreements (such as the ATC Agreement) give them until 2005 to lower these tariffs. They also point out that the WTO had concluded that developed countries have legally adhered to the letter of the ATC and textile agreements.

Second, many developing countries are demanding a renegotiation of the TRIPs and TRIMs agreements and a blanket extension to comply with them, saying they lack financial resources and qualified trade personnel to implement the agreements. Almost half of all WTO members haven't yet implemented one or both agreements, and economists estimate that each member will have to spend over $130 million to comply with them. Last year, 28 out of 140 WTO members couldn't afford to lease office space in Geneva. In 1999, over 90 percent of all WTO members participated in workshops to help them comply with their WTO obligations. But the WTO's $1.4 million annual training budget provides only 10 percent of the total cost of training (with the other 90 percent coming from donations made by developed countries).

Third, developing countries say that they are excluded from important WTO meetings and negotiations in the "green room" (which is the conference room located across from the WTO Director-General's office). Green room meetings are informal, invitation-only meetings among some select WTO members to help build consensus (or to break deadlocks) on key issues and whose final decisions are presented to the WTO membership as a whole.

Developing countries are now demanding that the WTO address their concerns before the next round of trade talks scheduled in the country of Qatar in November 2001. Any delay in resolving these issues, argues UNCTAD, will continue to "create a serious imbalance in the exercise of rights and obligations, as many countries [in the WTO] do not have the capacity and resources to enforce their rights."

Bringing developing countries back into the fold

In May 2000, the most influential WTO members – the US, the European Union, Canada, and Japan (also known as the Quad Group) – offered several confidence-building measures to build support among developing countries for the next round of trade talks. First, the Quad Group offered to hold a series of high-level meetings to tackle the most contentious problems in implementing the various WTO agreements.

Second, rather than granting blanket extensions, the WTO would give case-by-case extensions to those developing countries which haven't yet implemented one or more of the WTO agreements. The Quad Group also refused to renegotiate the TRIMs and TRIPs agreements simply because (as they believe) many developing countries have decided that they no longer like the terms of the agreements. One US trade official warned that a "terrible signal" would be sent to the world's markets if developing countries reneged on their commitments. And if the terms of the TRIPs and TRIMs agreements were so onerous and unfair, they say, then why are more developing countries lining up to join the WTO? Third, developed countries would grant duty-free and quota-free access for "essentially all" goods from the *least* developed country members, excluding sensitive exports such as textiles and clothing, and agricultural products.

The Quad Group also rejected a proposal from the WTO Director General to increase the technical assistance budget to $6.06 million from the current $1.4 million, and would continue to rely on donations to make up for shortfalls. The member governments also concluded that because of the WTO's ever-growing membership, the "green room" meetings would stay in place but that developing countries would be kept up-to-date through consultations. The Quad Group also pointed out that four of the seven judges sitting on the WTO Appellate Body are from developing countries.

Although developing countries expressed "huge disappointment" with the confidence-building package, these efforts continue today to help developing countries establish a more equal footing in the WTO. Economists and political analysts are still uncertain about the prospects for a successful round of trade talks scheduled in November. ❖

NYLS WINS AWARD at Jessup International Law Moot Court Competition

A very special thank you to the team representing New York Law School at the world's largest moot court competition: AJ Kamra, Damaris Rosario, Natalie Suárez, Joseph Tornberg, and Agnieszka Twarog. On February 17, 2001, the team finished as a Semi-Finalist in the Atlantic region and was also given the award for "Best Brief." Commendations also go to the coaching staff: Janet Abrams, Daniel Curtin, Souren Israelyan, visiting fellow Roy Kreitner, and Professor Gerald Lebovits. The Jessup team recruitment meeting and try-outs will be held in Fall 2001. ❖

The 2001 Otto L. Walter Lecture

"A Lawyer Has an Obligation: Pro Bono and the Legal Profession" By Evan A. Davis

Pro bono work remains one of a lawyer's greatest obligations to society. But as the legal profession has become more stressful in recent years, some lawyers are committing less time and fewer resources to pro bono work. And as public funding for legal aid programs remains inadequate, there is reason for concern that the need for pro bono assistance will not be met. Evan A. Davis, President of the Association of the Bar of the City of New York and a former Executive Committee member of the Legal Aid Society, will discuss a lawyer's ethical responsibility to provide pro bono services; what the legal profession can do to support and expand pro bono opportunities; and what the future holds for lawyers and students interested in public interest law.

Tuesday, April 10, 2001
4:30 pm - 6:00 pm

The Wellington Conference Center
New York Law School

International Business and Tax Law: A New Curriculum at NYLS

International business and tax law covers legal areas relevant to the conduct and taxation of cross-border sales, trade, finance, investment, and technology transfers, as well as the settlement of international commercial disputes. Lawyers practicing in these areas may have clients that are commercial, financial or industrial enterprises which are established in the United States or abroad, or both. Their activities may involve multi-jurisdictional institutions such as the United Nations, the World Trade Organization, the International Monetary Fund; or may involve non-governmental organizations concerned with (for example) the environment or human rights. Various types of expertise may be relevant with respect to national and international regulations, national tax regimes, and inter-governmental tax treaties. Some lawyers may specialize in international dispute resolution, counseling clients on how best to anticipate and avoid disputes, or representing clients in arbitration, litigation, or other forms of dispute resolution.

Please read "Planning Your Schedule" (pages 12-14) in the black binder of your registration materials for more details on the international business and tax law curriculum or contact the Director of the Center for International Law, Professor Sydney M. Cone, III, or the Assistant Director, Michael Rhee, at (212) 431-2865 or send an e-mail to mrhee@nyls.edu.