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Hrsg. von Prof. Dr. Susanne Lütz

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Only Strategic Action?
Private Governance in the Global Sportswear Industry

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Abstract

What motivates companies to invest in corporate social responsibility (CSR)? Analysing CSR in the global sportswear industry, this paper advances the hypothesis that the campaigning activities of human rights activists pushed industry leaders Nike and adidas to incorporate labour norms in their business (sourcing) practices. Drawing on the spiral model of human rights norm internalization, the paper's findings suggest that the efforts of leading sportswear companies to address poor labour standards in their supply chains can no longer be explained by mere strategic behaviour induced by external pressure, but are increasingly the result of norm guided behaviour. In the case of adidas and to a lesser extent with regard to Nike evidence points to a "prescriptive status" in which the dominant mode of action shifts from the logic of consequences to the logic of appropriateness.

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Acronyms

CEO	Chief Executive Officer
CCC	Clean Cloth Campaign
CLIST	Centre for Labour Information Service and Training
CSR	Corporate Social Responsibility
CSO	Civil Society Organization
DL	Daejoo Leports
DoL	U.S. Department of Labor
FLA	Fair Labour Association
FTZWU	Free Trade Zone Workers Union
ILO	International Labour Organization
IPE	International Political Economy
IR	International Relations
ITGLWF	International Textile, Garment and Leather Worker Federation
MSI	Multi-Stakeholder Initiative
MSN	Maquila Solidarity Network
NGO	Non-Governmental Organization
NSAP	New Source Approval Process
SEA	Social Environmental Affairs Department
SPN	Serikat Pekerja Nasional
SOE	Standards of Engagement
TNC	Transnational Company
WFSGI	World Federation of the Sporting Goods Industry
WRC	Workers Rights Consortium

1. Introduction

1.1 Subject and Research Question

In the final decades of the 20th century, the world experienced an unprecedented wave of globalization (Zürn 1998). The rise of global production chains increasingly blurs international borders and creates integrated economic structures. In this context of a global economy in the making, many scholars asked how regulation can and should be organized and pointed to the private sector as an important source of regulation itself (Haufler 2001: 121). In recent years, private initiatives have literally proliferated in numbers and across policy areas. Today, most of the larger transnational companies (TNCs) invest in self-regulation, in order to reduce their negative social and/or environmental impact. The growing scholarly interest in the phenomenon of CSR and the new political role of TNCs is reflected by their number and size. Today, there are more than 53,000 TNCs with about 450,000 affiliates worldwide. Multinationals are the world's largest employers, and they determine wages and working conditions of employees around the globe. Wal-Mart, for example, possesses approximately 1,140,000 employees and thereby exceeds the population of countries such as Estonia and Gabon (Haufler 2001: 55). The same is true for the business volume of large TNCs, which is often greater than the gross national product of many developing countries.

To analyse the phenomenon of CSR many students of International Relations (IR) and International Political Economy (IPE) adopt a governance perspective, as this allows an analysis of regulation decoupled from traditional governmental or intergovernmental decision-making. According to Mayntz, governance refers to *“all institutions designed for the deliberate solving of collective action problems, irrespective of the private or public character of the actors involved and the hierarchical or horizontal mode of their (purposive) interaction”* (Mayntz 2007: 6. Private governance or “governance without government” (Rosenau/Czempiel 1992) modifies the concept in such a way that rule implementation and collective good provision is exercised by private actors only. So far, the academic discussion on private (corporate) governance mainly focuses on two distinct forms: Business self-regulation by codes of conduct and co-regulation involving business, public and/or civil society actors (Fuchs 2007).¹ This paper is concerned with the former.

An industry which has reached a particular high degree of corporate self-regulation is the global sportswear industry (World Bank 2003). The sectors' leading companies have publicly committed themselves to guarantee proper working conditions in their supply chains. To meet their commitments, they have drafted formal codes of conduct and invested time and resources in supplying monitoring, training and verification procedures. Thereby, as defined above, they engage in collective good provision or private governance. However, the phenomenon of corporate self-regulation remains puzzling, as it creates extra costs, which business actors normally seek to avoid (Hassel 2008: 232). By asking: *Why do leading sportswear companies make efforts to implement labour standards in their supply chains*, this paper seeks to contribute to a better understanding of companies' motivation to engage in self-regulation.

To explain the phenomenon of CSR, most explanations focus on pressure exercised by non-governmental organizations (NGOs), the media, and the state (Fung et al. 2001; Gereffi et al. 2001; Klein 2000). During the 1990s, campaigners targeted highly visible companies such as Nike and adidas by publicly disclosing working conditions in their supplying factories. These naming and shaming tactics made companies fear that revelations about poor working conditions could eventually result in a loss of profit. From this

¹ In the literature, business self-regulation is commonly subsumed under the label of CSR.

perspective, externally induced strategic behaviour is the most important driver for corporate self-regulation. Another line of argumentation stresses norm internalization as a possible explanation for companies' continued CSR efforts. From this perspective, companies invest in CSR, because they have incorporated labour norms in their business practices. However, why should one assume that companies internalize labour norms given the market's imperative to be efficient? The spiral model for human rights norm internalization provides a potential explanation (Risse et al. 2002). In its original form, the model describes the process by which coalitions of civil society actors may succeed in forcing (convincing) norm violating states to adhere to human rights norms. In case of a successful internalization process, states' motivation to comply with human rights norms switches from externally induced strategic behaviour to norm guided behaviour. Little doubt exists that the early CSR efforts in the sportswear industry are exclusively due to strategic behaviour. However, continued CSR progress on the one hand and diminishing civil society pressure on the other hand do not conform to an explanation emphasizing a pure strategic motivation. As the following sections will show in detail these developments suggest that CSR is no longer the result of pure strategic action, but is increasingly the result of norm guided behaviour. In theoretical terms, the dominant logic of action shifts from the logic of consequence towards the logic of appropriateness.

1.2 Method and Outline

To examine the above proposed research question, this paper deduces two competing hypothesis and tests them in a setting in which activist pressure on TNCs had diminished considerably. For such a situation, the spiral model of human rights norm internalization specifies observable implication to proof or disproof whether actors have reached a prescriptive status (a status in which their behaviour is guided by norms) or not. The analysis focuses on Nike and adidas, two companies which experienced high pressure from anti-sweatshop activists during the 1990s. The proposed method resembles a hard case design, as for several reasons the sportswear industry is a least likely case for norm guided behaviour (Eckstein 1975). A least likely case constitutes a though test for the hypothesis tested, because it is a case in which the corresponding theory is least likely to hold true (Bennett 2004: 29). With regard to norm internalization, the sportswear industry is such a case, as: Firstly, companies are generally conceptualized as rational actors. Operating in a market environment, their primary objective is to maximize their profits. As labour standards, e.g. fair wages and decent working hours, are considered to impose extra costs, they collide with this primary objective of business. Secondly and closely related to the first point, the sportswear industry is highly competitive. Consequently, companies have to be even more efficient, in order to survive. Thirdly, the complexity of global supply chains makes effective labour standard implementation an extremely resource intensive endeavour (Barrientos 2002; Esbenschade 2004; Roberts 2002). Finally, the sportswear industry is highly labour intensive, which makes the savings potential of keeping labour costs low considerable (Elliot/Freeman 2004). Summing up, the companies of the sportswear industry face a strong economic imperative to act strategically with regard to labour standard implementation. Therefore, the sectors' CSR efforts seem to be the result of external pressure exercised by the anti-sweatshop movement. Against this background, an explanation stressing a normative motivation of TNCs to implement labour standards appears rather unlikely.

This paper is structured as follows: The next section will shortly summarize the state of the art. Chapter two introduces the depended variable and deduces two competing hypothesis. Chapter three elaborates the theoretical framework and specifies observable implications for testing the hypotheses. Chapter four

uses the cases of the Nike and adidas, to test the hypotheses with regard to the output and the outcome dimension of labour standard implementation. Finally, a concluding chapter summarizes the studies major findings.

1.3 State of the Art

Functionalist explanations trace the rise of private governance back to macro-level transformations such as the process of economic globalization. This literature points to the increased mobility of business actors and capital, which, according to them, has created a regulatory void and consequently a functional necessity for private regulation. In this regard, Haufler prominently proclaimed that economic integration has resulted in “*a mismatch between markets and politics in terms of governance*” and that “*the demand for rules to govern commerce has given rise to a variety of sources of supply, and one of the most significant (...) is the private sector itself*” (Haufler 2000: 121).

Focusing more on the concrete motivation of companies to engage in self-regulation, explanation at the micro-level commonly stress the role of external pressure. In this regard, proponents of the so called displacement hypothesis argue that companies engage in voluntary self-regulation in order to prevent public regulation (Cutler et al. 1999; Strange 1996). As Bartley puts it: “[T]he rise of codes of conduct is a classic case of an industry engaging in self-regulation in order to fend off government intervention” (Bartley 2005: 223). In this vein, Haufler argues that leading apparel and sportswear companies invested in CSR, in order to prevent the Clinton administration from including labour standards in bilateral and multilateral trade agreements (Haufler 2001: 62ff.). Others point to a more active role of the state in promoting private regulation. They put forward that in the context of a neo-liberal political culture states intentionally source out public functions to private actors, as it is considered to be more efficient (Hummel 2004: 36).

However, most researchers and practitioner point to the role of the anti-sweatshop movement (Fung et al. 2001; Gereffi et al. 2001; Klein 2000). As elaborated in further detail below they argue that in the mid 1990s a network of human rights groups launched a transnational campaign against poor labour standard practices. By using campaigning techniques such as naming and shaming, they were able to exercise considerable pressure on the sector’s leading companies. In order to mitigate pressure and to prevent damage to their brand names, companies seek to mitigate pressure and invested in CSR.

Furthermore, some authors advance the argument that companies’ motivation to engage in private governance is due to the ethical commitment of their top managers (Burns et al. 1997). Although, this literature stresses also the role of norms, it differs fundamentally from the explanation advanced in this paper. In contrast to Burns et al, who point to the normative beliefs of individuals, my argument assumes the incorporation of labour norms in the institutional design of TNCs.

2. Variables and Hypotheses

2.1 Dependent Variable: Implementation of Labour Standards

Implementation describes the process of putting a rule into practice. This encompasses rule creation, the supply of monitoring, training and verification procedures. At the centre of corporate self-regulation are so called codes of conduct, which can be defined as “[a] set of standards, rules or guidelines for ethical behaviour. In the context of working conditions in the garment industry, codes of conduct (...) have been

drafted that indicate for example the labour standards or language about their application that companies claim to uphold in the workplaces where their garments are produced” (Ascoly/Zeldenrust 2003: 5). The majority of corporate codes of conduct cover the International Labour Organization’s (ILO) fundamental principles and rights at work of 1998: (1) Freedom of association and the effective recognition of the right to collective bargaining; (2) Elimination of all forms of forced or compulsory labour; (3) effective abolition of child labour; (4) Elimination of discrimination in respect of employment and occupation (ILO 1998). Moreover, most codes of conduct contain standards such as working hours, occupational safety and health, and overtime regulations. Code implementation aims at achieving standard compliance. In other words, the objective is to achieve *“rule-consistent behavior of those actors to whom a rule is formally addressed and whose behaviour is targeted by the rule”* (Börzel 2002: 160). On the basis of the work of David Easton, one can distinguish three dimensions of code implementation (Easton 1965): (1) *Output* refers to the formal and administrative implementation of labour standards in the company and its supply chain. (2) *Outcome* refers to the behaviour of rule addressees (In the underlying case this group consists of TNC and their suppliers). (3) *Impact* relates to the consequences for the wider socio-economic environment (Fuchs 2006; Huckel et al. 2007). For reasons of practicability, the following analysis will focus on the output and the outcome dimension of labour standard implementation.

2.2 H₀: Instrumental Strategic Motivation

What motivates TNCs to devote resources to the implementation of social and environmental standards? In the social sciences we distinguish two logics of action, which provide possible answer to this question: The logic of consequences and the logic of appropriateness. For explaining CSR, most explanations rely on the former. Embedded in the rational choice paradigm, the logic of consequences refers to the idea that *“behaviors are driven by preferences and expectations about consequences. Behavior is wilful, reflecting an attempt to make outcomes fulfil subjective desires, to the extent possible”* (March/Olsen 1989: 160). Generally, the preferences of companies are an uncontested issue. Operating in a market environment, companies strive to maximize their profits. Therefore, the profit maximization motive forms the basis for corporate decision-making. From this perspective, companies invest in the public good labour standards only when the (perceived) costs of inaction exceed the costs of supplying the good. According to the literature, this explains why companies started to invest in CSR. The sector’s leading companies became the targets of a transnational naming and shaming campaign. They feared a massive loss of image, an important asset in the branch, and seek to mitigate pressure by investing in CSR. Summing up, most scholars explain corporate collective good provision by instrumental adaptation to external pressure. From this perspective the following hypothesis can be derived:

H₀: Companies invest in labour standards, if the (perceived) costs of inaction exceed the costs of implementing labour standards.

2.3 H₁: Normative Motivation

An alternative explanation for labour standard implementation by TNCs can be deduced from the logic of appropriateness. Embedded in the constructivist school of thought this mode of action fundamentally differs from the logic of consequences. According to March and Olson appropriate behaviours *“involve fulfilling the obligations of a role in a situation, and so of trying to determine the imperatives of holding*

a position. Action stems from a conception of necessity, rather than preference” (March/Olsen 1989: 160). In other words, the logic of appropriateness conceptualizes behaviour to be guided by norms. Therefore, actors ask “*which norm applies to the situation given?*” or “*what kind of behaviour is expected of me?*” instead of “*how to best achieve my goals?*” (Translated by the author from: Risse et al. 2002: 21). However, it is not always clear which norm constitutes appropriate behaviour in a given situation. Therefore, only if TNCs have incorporated labour norms in their institutional design, then the logic of appropriateness constitutes an alternative explanation for labour standard implementation. From this perspective, the following hypothesis can be deduced:

H₁: If companies have incorporated labour norms in their institutional design, then they invest in labour standard implementation.

3. Theoretical Framework

3.1 The Spiral Model of Human Rights Norm Internalization

Is it all plausible to argue that companies internalize labour norms, given the systemic imperative of the market to be efficient? In the field of human rights the process of human rights norm internalization of states has been explained by stressing the role of transnational human rights networks. In this regard, Keck and Sikkink conceived the so called boomerang model in which local civil society organizations (CSOs) within a repressive state seek support from transnational human rights NGOs. Those provide the local groups with resources and lobby other states and international organizations to exercise pressure on the norm violating government. This ideally leads to an improvement of the human rights situation (Keck/Sikkink 1998). Based on the work of Keck and Sikkink, Risse et al developed a dynamic version of the boomerang model in which they conceptualize the process of human rights norm internalization of states in five sequences: 1) Repression; 2) Denial; 3) Tactical Concession; 4) Prescriptive Status; 5) Norm Guided Behaviour. In an ideal sequence, states first deny norm violation. In this early phase of the model the logic of consequences dominates states’ behaviour. However, given increasing pressure, they start to make tactical concessions by publicly recognizing human rights norms, in order to mitigate pressure. In the subsequent phase governments undertake first visible reforms and human rights norms become increasingly institutionalized. They reach what is called a prescriptive status in which the dominant mode of action shifts from the logic of consequences to the logic of appropriateness. In other words, the government starts to recognize that compliance with human rights norms constitutes appropriate behaviour. However, although governments recognize human rights norms, non-compliance still occurs, as states lack the institutional capacity to ensure full compliance. The final phase of the model is reached when the government succeeds in effectively integrating human rights norms in their institutional design (behaviour) (Risse et al. 2002: 26 ff.).

The shift from strategic behaviour to norm guided behaviour which takes place in the phase called prescriptive status is due to a third mode of action: The logic of arguing (Risse 2000). Grounded in the theory of communicative action by Jürgen Habermas², the logic of arguing conceives a discourse situation in which the participants seek to determine their beliefs and identities. Risse et al admit that it is rather unrealistic to assume that repressive governments can simply be persuaded to respect human rights by the better argument. Given a high level of norm prominence, the public nature of the discourse and the desire of the norm violating state to become a legitimate member of the international community, persuasion

² Habermas, Jürgen 1981: Theorie kommunikativen Handelns (volume 1 + 2), Frankfurt/M., Suhrkamp.

may take place even in absence of an ideal speech situation as conceived by Habermas.³ Once states start to make tactical concessions and thereby implicitly recognize the norms advocated by the campaigners, they might lose control over the discourse. According to Risse et al, this, under the condition of continued pressure, may lead to a subsequent institutionalization of human rights norms (Risse et al. 2002: 22 ff.).

3.2 Have the A Brands Reached a Prescriptive Status?

The hypothesis advanced in this paper suggests that the campaigning activities of the anti-sweatshop movement have triggered a process of norm internalization of the leading sportswear companies as conceptualized by the spiral model. Local and transnational CSOs active in the field of labour rights formed an advocacy coalition which succeeded to launch a transnationally coordinated naming and shaming campaign against Nike and others. Put under pressure, they first denied the allegations but in the face of hard evidence started to make tactical concessions. Today, some of the leading companies have reached a prescriptive status with regard to labour norms. They no longer contest labour norms as such and admit to have a problem with labour standard violations in their supply chains. Furthermore, they have publicly committed themselves to improve standard compliance and started to build up monitoring and verification procedures. However, cases of norm violation continue to occur, as TNCs lack the institutional capacity to ensure full norm compliance.

3.3 Testing the Hypotheses

What observations have to be made to confirm or reject the hypotheses above specified? From the spiral model observable implications can be deduced in order to verify, whether leading sportswear companies have reached a prescriptive status with regard to labour norms or not. The first observable implication refers to the output dimension of labour standard implementation. In situations in which the instrumental strategic interest of companies regarding collective good provision changes, for example due to diminishing external pressure, the above specified hypotheses would suggest the following implications: In the case of diminished pressure, the instrumental strategic motivation hypothesis would expect TNCs to curb or at least not to progress any further with formal administrative implementation of labour standards. By contrast, the normative motivation hypothesis would implicate that TNCs continue to further institutionalize labour norms, as, in the prescriptive phase, the motivation to implement labour standards becomes increasingly independent from externally induced pressure. The second observable implication relates to the outcome dimension of labour standard implementation. Under the condition of diminished pressure the instrumental strategic motivation hypothesis would predict that TNCs behave rather reactive when confronted with instances of labour standard violations in their supply chains. However, had the leading companies reached a prescriptive status, then they should take a rather proactive approach to reproaches of bad labour standard practices (Risse et al. 2002: 43). The following section will shortly summarize the history of CSR in the global sportswear industry. It will become clear that by the turn of the millennium pressure on the sector had diminished significantly. In this situation of diminished pressure, the above deduced hypotheses will be put to the test.

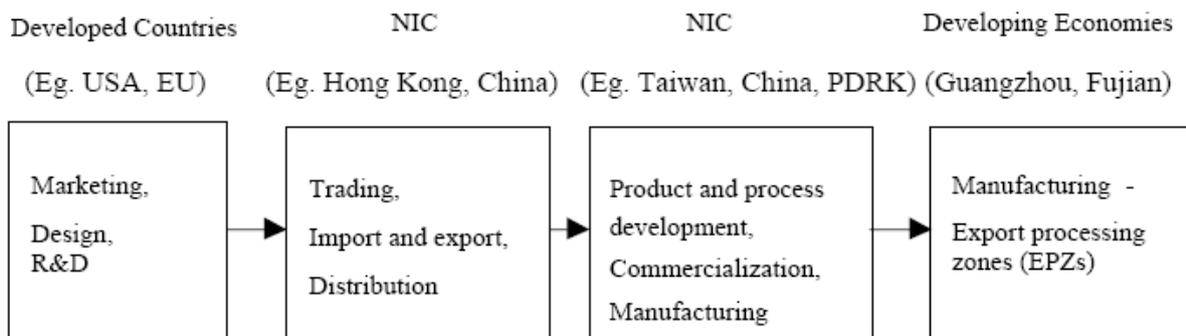
³ According to Finnemore, certain characteristics of norms, such as their prominence, clarity, and content increase their probability of becoming internalized by actors, Finnemore/Sikkink (1998).

4. The Global Sportswear Industry

4.1 Economic Globalization and the Anti-Sweatshop Movement

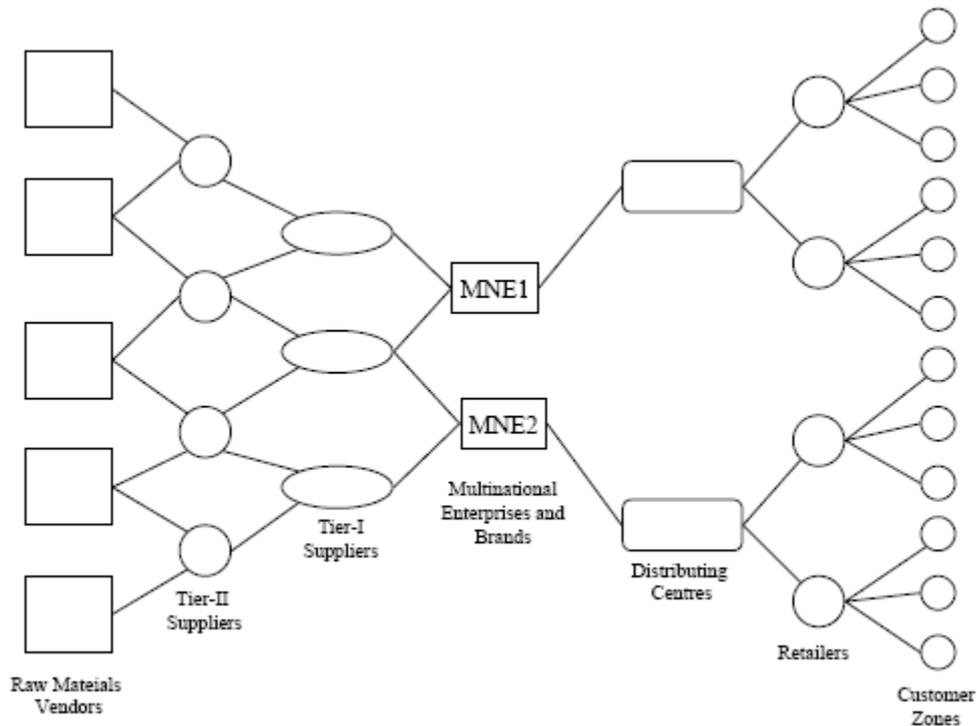
Beginning in the second half of the 20th century, the world experienced an unprecedented wave of globalization, notably, in the economic sphere (Zürn 1998). Above all labour intensive industries started to reorganize their supply chains by shifting production to developing countries. This displacement of production from the high-wage West to the global South created a new, virtual global division of labour (see figure 1).

Fig.1 Global Division of Labour



Western TNCs engaged in outsourcing production to subcontracting factories located in developing countries while specialising in research, marketing, and retailing. This led to the emergence of multilayered global production chains (see figure 2) with consumer markets in the West and production concentrated in the South (cf. Jenkins 2001). An industry branch which was at the forefront of this restructuring along global lines was the sportswear industry (CCC 2004). Beginning in the 1970s, leading apparel and sportswear companies started to outsource production to first and second tier suppliers located in Asia and South America, in order to profit from low wages and low labour standards. Today, the sector's larger companies source from hundreds of factories around the globe. For example, Nike revealed in its CSR Report 2005/2006 that its global value chain consists of 700 subcontracting factories employing 800,000 workers with the majority located in Asian countries (Nike 2005a: 25). Likewise adidas' sources from over 800 factories most of them located in Asia (adidas 2001: 25).

Fig. 2 Enterprise Architectural Framework for Supply-Chain Integration, Kumar et al. 2001

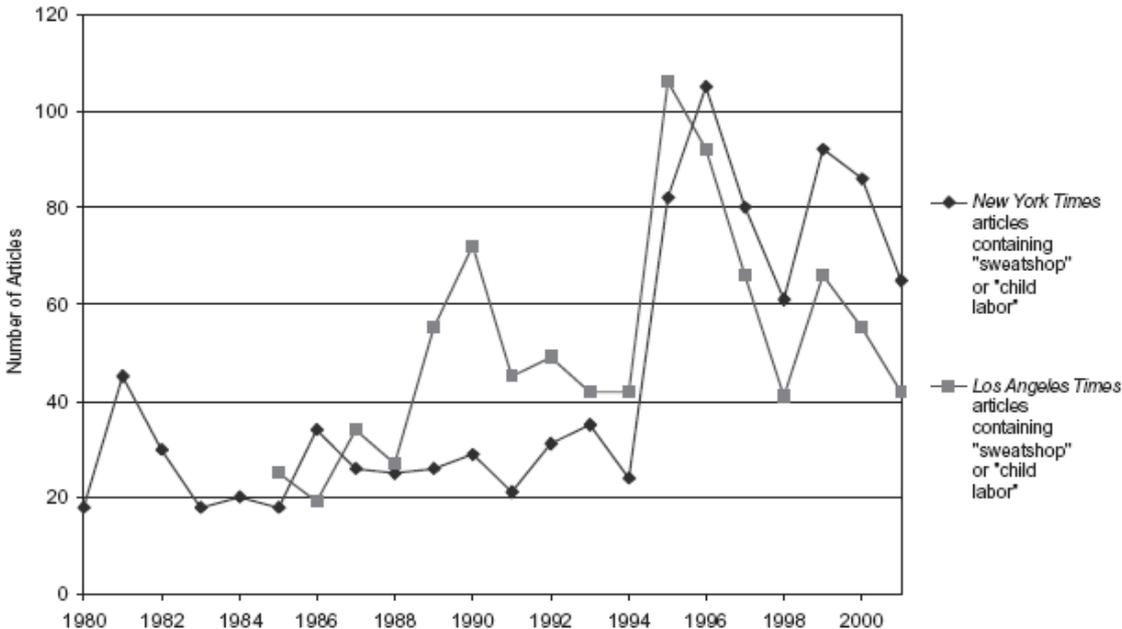


The increased mobility of companies created an imbalance in the relations of capital and labour, as labour unions remained organized at the national and local level (Haufler 2001: 56). However, improved communication and transportation, which enabled these developments, was not confined to the way business was conducted. The 1990s also witnessed the rise of transnational civil society actors, which organized themselves in so called advocacy coalitions (Keck/Sikkink 1998). These loose networks, consisting of NGOs and individuals, started campaigning against states and TNCs, in order to promote human rights, environmental and social standards. In the apparel field, campaigning activities started at the end of the 1980s when information about poor working conditions in the industry's global supply chains became known to a wider public. On behalf of the U.S. Agency for International Development and the Asian American Free Labor Institute-Indonesia Jeff Ballinger, a labour rights activist, conducted a study on working conditions in factories producing goods for the Indonesian export sector. He found that the average worker was paid just under 14 cents per hour, far below the Indonesian minimum wage of that time, and that the plants manufacturing for Nike were the worst offenders (Bullert 2000: 4ff.). Further reports brought to light that other labour rights, e.g. the prohibition of forced labour and the right of freedom of association, were equally violated. These public exposures of poor working conditions in the supply chains of Nike and others marked the beginning of the so called anti-sweatshop movement, which started in North America and soon spread to Europe and Australia. The anti-sweatshop activists accused TNCs for outsourcing not only production but also moral responsibility. In the following years, Nike and other leading apparel and sportswear companies became the target of a transnationally coordinated campaign. From the mid 1990s, the anti-sweatshop movement, succeeded in achieving extensive media coverage on the subject, notably in North America. The issue of poor working conditions in the apparel and sportswear industry also concerned public authorities. In 1995 the U.S. Department of Labor (DoL) launched the "No Sweat Campaign", which aimed at improving working conditions in the garment industry. In 1996 the U.S. DoL initiated the Apparel Industry Partnership, which later became the Fair

Labor Association (FLA). The FLA is a multi-stakeholder initiative (MSI) consisting of companies, universities and NGOs. The FLA seeks to improve labour standards by conducting external audits of their corporate members. Similar initiatives were undertaken by the Dutch and the British governments and several MSIs were created in the subsequent years (cf. O'Rourke 2006).

As style and image is an important asset for selling sportswear products, company leaders feared that the revelations about the working conditions in their supply chains could cause serious damage to their business. Therefore, the public naming and shaming strategy of the anti-sweatshop movement put considerable pressure on the leading companies. They responded by setting up corporate codes of conduct which specified labour and social standards for the workers in their supply chain. However, for the anti-sweatshop movement, companies' reactions were two-sided. On the one hand they proved the success of the campaigning activities, but, on the other hand, they led to a decline of the sweatshop issue on the public agenda. Sweatshops made good news when first discovered, but after a few years of extensive coverage and given the visible reaction of Nike and others the subject lost much of its newsworthiness. Consequently, media coverage, as shown in figure 3, declined by the turn of the millennium (Bartley 2003: 442). Civil protest against sweatshop conditions peaked in the mid 1990s and in the subsequent years the anti-sweatshop movement experienced internal disputes about objectives and strategies (Klein 2000). Some activist favoured the continuation of confrontational campaigning tactics, whereas others opted for a rather collaborative approach with regard to their corporate counterparts. In this situation, it became clear that a strong power centre was lacking and that the coalition's loose network structure also possessed its deficits (Bullert 2000: 10; Global Resistance 2008).

Fig. 3 The rise of public attention and controversy in the apparel field, 1980-2001
 Source: Bartley 2003: 443



Therefore, at the beginning of the new millennium, the anti-sweatshop movement lost much of the dynamic it unfolded during the second half of the 1990s. Consequently, pressure on the industry declined. This phase of diminished transnational pressure marks the starting point for the analysis, as it constitutes a situation in which the companies' strategic interest in labour standard implementation can be considered

as significantly lower compared to the previous years. The testing of hypotheses will be conducted with regard to the output and the outcome dimension of labour standard implementation.

4.2 The Output Dimension of Labour Standard Implementation

The output dimension concerns the formal administrative implementation of the code of conduct in a company's supply chain. In this regard, the question of interest is whether sportswear companies continued to pursue progressive CSR policies under the condition of diminished pressure or not.⁴ Had the companies reached a prescriptive status, then we should observe continued efforts to implement labour standards in their supply chains even though overall pressure had diminished. The empirical basis for the analysis of the output dimension of labour standard implementation consists primarily of the companies' annual CSR reports and the annual reports of the FLA. The reports will be reviewed systematically with regard to the companies' CSR output in the following categories: Policy and transparency, institutional capacity.

4.2.1 Nike

Being one of the major targets of the anti-sweatshop campaign, Nike reacted and started to invest in CSR at the beginning of the 1990s. The company's early CSR efforts arose from a strategic intention directed to mitigate NGO criticism and thereby to prevent the company's brand name from further damage. The milestones of Nike's early CSR efforts were the setting up of a code of conduct and its engagement in the FLA. However, for testing the hypotheses, focus is put on Nike's CSR progress under conditions of diminished external pressure.

4.2.1.1 Policy and Transparency

After setting-up its code of conduct, Nike contractually obliged all its suppliers to acknowledge and to implement its standards. In the following years, Nike undertook efforts to formally integrate social and environmental sustainability in its overall business strategy. In a first step, Nike made suppliers' compliance performance an important criterion for its sourcing decisions. Since 2004, sourcing decisions are made on the basis of a factory's performance in four areas: Cost, delivery time, product quality, and code compliance. In a second step, Nike issued the *Global Corporate Responsibility Strategy* in which specific policy objectives were formulated. With regard to labour standards, Nike committed itself to meet the following policy targets by 2011: To implement freedom of association educational programmes in all focus contract factories⁵, to engage in multi-brand collaboration (shared auditing and capacity building schemes) in 30% of its supplying factories, and to eliminate excessive overtime throughout the supply chain (Nike 2005a: 13).

In 2004 Nike undertook several steps to increase transparency. Firstly, an external review committee, including NGO and union representatives, was put in place to supervise Nike's CSR reporting (Nike 2004). Secondly, Nike organized the first session of a global stakeholder forum which brought together

⁴ The empirical analysis focuses on Nike and adidas, as these companies were major targets of the anti-sweatshop campaign. They experienced a high degree of pressure to invest in CSR and therefore the effect of diminishing pressure should be most significant in these cases.

⁵ The focus contract factories describe a group of about 120 factories accounting for 80% of Nike's footwear and apparel production.

workers, investors, unionists, and NGO representatives. The forum's principal objective was to foster stakeholder dialogue regarding the company's CSR efforts (Nike 2004: 14). Furthermore, as the first company in the industry, Nike announced in that it will publicly disclose the names and addresses of all its supplying factories (Nike 2005a: 25). This step was commented very positively by activist groups belonging to the anti-sweatshop movement such as the Canadian based Maquila Solidarity Network (MSN) (MSN 2004). It was called "*a watershed moment in corporate responsibility*" (The Economist 2007). The same year, Nike published detailed information about its internal auditing tools on its website (Nike 2009a).

4.2.1.2 Institutional Capacity

In 2001 Nike created a formal institutional structure for its social and environmental policy. For this purpose, a *CR Committee* within the Board of Directors was established with the function to rigorously review the company's business activities against the guidelines specified in its code of conduct (Nike 2009b). Further steps followed. In 2004 Nike institutionalized its CSR efforts by creating a comprehensive management framework. Headed by the *Vice President for Corporate Responsibility*, which directly reports to the Chief Executive Officer (CEO), the newly created CSR department consists of different sections, including a team charged with code compliance. On the executive level Nike established the *CR Business Leadership Team* which is responsible for CSR policy planning and supervision. Furthermore, Nike scaled up the number of employees working on CSR issues as their primary function or having CSR work as a significant portion of their workload to 150 (Nike 2004: 7 ff.).

The primary function of the CSR department consists of monitoring factory compliance and of training managers and workers with regard to the company's code of conduct. The monitoring system is based on the so called *Compliance Life Cycle*. Introduced in 2004, this compliance system consists of three stages. In a first stage, potential suppliers have to accomplish the *New Source Approval Process* (NSAP) in which the compatibility of potential suppliers with Nike's standards is assessed. If a supplier successfully accomplishes the NSAP, then its factories are regarded as eligible to produce for Nike. The second stage concerns the monitoring of already approved suppliers (Nike 2004: 18). Nike's factory auditing system is based on internal and external monitoring. For inter-supply chain labour standard monitoring the *Compliance Team* uses the SHAPE (Safety, Health, Attitude of Management, People and Environment) Audits and the M- (Management) Audits. Created in 1997, the SHAPE audit is a tool used to assess a factory's overall compliance with Nike's code of conduct. In 2003 Nike strengthened its internal monitoring capacity by introducing the M-Audits. Therefore, 21 new staff members were hired and professionally trained in labour auditing practices (Nike 2004: 20). In 2006 the monitoring of labour standard compliance was further supplemented by the *Management Audit Verification* tool (MAV-Audit). This auditing tool is different from the M- and the SHAPE-Audits, as it seeks to identify root causes of non-compliance regarding five key areas: Hours of work, wages, benefits, grievance systems and freedom of association. According to Nike, the MAV-Audits were designed to provide the company with information and expertise to support its policy of local capacity building (Nike 2005a: 29ff.). The introduction of the MAV tool reflects a change in Nike's compliance strategy from standard enforcement to an approach of local capacity building. In cases of non-compliance, the compliance team collaborates with the factory management, in order to workout a so called *Master Action Plan*, which defines concrete steps for remediation (Nike 2004: 28). The third step of the *Compliance Life Cycle* concerns contract

cancellation with supplying factories. In 2004 Nike issued a *Factory Exit Response Plan*, which seeks to mitigate negative social impacts for laid off factory workers.

Nike's internal monitoring efforts are supplemented by external monitoring of FLA accredited auditors. After a three-year implementation schedule, Nike became a FLA accredited company in 2005 (Nike 2005b). This means that the company's workplace standard programme meets the requirements set by the FLA code of conduct (FLA 2008). Membership of the FLA further entails that FLA accredited auditors independently monitor factories producing for Nike on a regular basis. Besides monitoring, the *Compliance Team* is further charged with training workers and managers. Training sessions are provided to workers in order to familiarize them with Nike's code of conduct. Managers are trained to build local capacity and to spread best practices throughout the supply chain (Nike 2004: 29).

4.2.2 adidas

As the second largest company in the sector adidas was also a major target of anti-sweatshop campaigners. adidas reacted by setting up a code of conduct, the so called Standards of Engagement (SOE) (adidas 2008a), and by joining the FLA in 1999. The following section summarizes adidas CSR output after the turn of the millennium.

4.2.2.1 Policy and Transparency

After setting up its code of conduct, adidas contractually obliged all its suppliers to acknowledge and to implement the standards specified in its code. Therefore, adidas formulated the *Guidelines of Employment Standards*, which established a legal basis for its business relationship with suppliers and furthermore provides suppliers with best practice approaches regarding compliance management systems (adidas 2000: 20). In 2001 adidas supplemented its workplace standards by including a fair wage clause. Therefore, the company commissioned a study for obtaining further information regarding the material needs of workers in their respective countries (adidas 2002: 33). The SOE were further amended in 2004 by a set of guidelines and guidance notes directed at suppliers which further specified the standards of its code of conduct. Moreover, adidas strengthened the enforcement side of its CSR programme by drafting a document named *Enforcement Guidelines* which specified standard operating procedures in cases of suppliers' non-compliance with its code of conduct (adidas 2004: 23).

Regarding transparency, adidas made stakeholder engagement one of the main pillars of its CSR policy (adidas 2002: 22ff.). For the adidas Group stakeholders are "*those people or organisations who affect, or are affected by, our operations*". As key stakeholders adidas identifies the following groups: Employees of the adidas Group, workers of the suppliers, governments, trade associations, shareholders, unions, suppliers, service providers, journalists, community members, special interest groups, professional sports people, distributors, retailers and consumers (adidas 2006: 12). According to adidas, engaging stakeholders primarily aims at increasing transparency and to gain information about the company's impact (adidas 2007a). Therefore, adidas annually arranges so called *Stakeholder Dialogues* in Asia, the Americas and Europe. These formal stakeholder consultation meetings involve representatives from unions, NGOs, factory workers, and managers. The result of these stakeholder consultations are made public in the company's annual CSR report and on its website. In addition to its stakeholder dialogues, adidas has developed formal partnerships with a wide range of organizations. To name only a few: adidas is member of the FLA, participates in the World Federation of the Sporting Goods Industry (WFSGI) (a business

association with the objective to foster cooperation among companies with regard to social and environmental issues), participates in the roundtable on codes of conducts, initiated by the German Ministry of Economic Development and Cooperation, and collaborates with the ILO in the context of several projects in Asia (adidas 2006: 13ff.; 2007b).

Besides its stakeholder engagement adidas has undertaken several measures to increase transparency. For example, adidas publishes details about the structure of its supply chain in its annual CSR report, including results of the audits conducted (adidas 2000: 18ff.). In 2005 adidas followed the initiative of Nike and disclosed addresses and names of factories to several local union affiliates of the International Textile, Garment and Leather Worker Federation (ITGLWF) (adidas 2006). Furthermore, adidas reports according to the guidelines of the Global Reporting Initiative and assigned an external company to review its CSR report (adidas 2003: 15). Moreover, adidas started to publish the results of the stakeholder dialogues in its annual report (adidas 2003: 16).

4.2.2.2 Institutional Capacity

At the beginning of the new millennium adidas created an institutional framework for the management of its social and environmental policies by creating the *Social Environmental Affairs Department* (SEA). Initially the SEA consisted of 32 staff members, which were scaled up to 62 (adidas 2007c; adidas 2003: 12). Headed by the *Global Director for Social and Environmental Affairs*, the department is organized in three regional teams covering Asia, the Americas/Europe, and the Middle East/Africa. The SEA is directly involved in developing corporate policies and in operating procedures related to social accountability, product safety and compliance with social and environmental regulations. The department issues a monthly report to the executive board and the sourcing management in which it addresses potential risks and progress regarding social and environmental issues (adidas 2003: 12). Furthermore, The SEA is charged with the implementation of the company's code of conduct. Therefore, the SEA audits factories and provides training to managers and workers. The training programme follows adidas' objective to build local capacity. In the long run, this strategy aims at enabling suppliers to independently manage their social and environmental affairs. In this regard, workers receive training to familiarize them with the company's code of conduct, whereas managers are trained to improve their internal compliance systems. In 2007 SEA staff delivered 267 training sessions (adidas 2007d). The SEA's monitoring system consists of so called pre-approval audits and supply chain audits. Introduced in 2001, the pre-approval audits serve to verify, whether potential suppliers meet the company's basic standards or not (adidas 2001: 26). Furthermore, the SEA audits factories producing for the adidas Group. In recent years, the SEA's monitoring system has seen several innovations intended to improve its effectiveness. The early monitoring approach aimed at auditing as much factories as possible with the objective to directly identify cases of non-compliance with labour and environmental standards. Beginning in 2002, the SEA introduced the concept of *Strategic Monitoring*. This new approach to monitoring consists of three elements: Firstly, a factory rating system was introduced in which all supplying factories were rated with regard to their risk of non-compliance. Accordingly, factories with a high risk of non-compliance were audited more often than factories with a low risk. Secondly, the focus of monitoring shifted from directly identifying cases of non-compliance to the assessment of factory compliance systems. Thirdly, an inter-supply chain warning system was put in operation. The system consists of a three-step warning letter system, which warns non-complying suppliers to solve problems in their factories. When non-compliance endures, adidas states to cancel contracts with the factories concerned (adidas 2007e; adidas 2004: 24ff.).

adidas inter-supply chain monitoring efforts are supplemented by its membership in the FLA of which adidas became an accredited member in 2006.

4.3 The Outcome Dimension of Labour Standard Implementation

Measuring norm internalization by output runs the risk of a pro company bias, as much of the information used stems from the companies themselves. For a non-insider it is extremely difficult to distinguish real progress from mere public relations. In order to avoid such bias, the hypothesis will further be tested with regard to the outcome dimension of labour standard implementation. As specified above, outcome refers to the actual behaviour of norm addressees. To assess whether actors have internalized norms or not Risse and his colleagues propose to analyse their behaviour in cases of norm violation (Risse et al. 2002: 42 et seqq.). In such a situation a rather proactive behaviour points to norm internalization, whereas reactive behaviour suggests that actors have not internalized the respective norms. Most notably, this is the case in situations of diminished external pressure in which the strategic interest of companies to ensure labour standard compliance can be considered as rather low. In the following sections, Nike's and adidas' behaviour in cases of non-compliance in their supply chains will be assessed. Therefore, a qualitative content analysis of reports of NGOs belonging to the anti-sweatshop movement will be conducted. Focus is put on the right of freedom of association in factories located in Asian countries. On the one hand, this thematic and geographic restriction is necessary for reasons of practicability. On the other hand, this particular scope is of theoretical relevance, as it constitutes a hard test for the proposed hypothesis for several reasons: Firstly, in contrast to issues such as child labour and forced labour the right to freedom of association possesses a rather low public profile. Therefore, companies' strategic interest in ensuring an effective implementation can likewise be considered as rather low. Secondly, many Asian countries with major apparel sectors possess a rather poor profile with regard to the right of freedom of association (Asian Forum for Human Rights and Development 2007). Thus, companies promoting these rights in their factories could even risk conflicts, as union activities might not be in the interest of the respective public authorities. Thirdly and most important, anti-sweatshop campaigners commonly take an extremely critical stance with regard to companies CSR efforts (cf. Bullert 2000: 10). Therefore, positive reporting by anti-sweatshop NGOs about Nike's and adidas' conduct in situations of non-compliance in their supply chains would strongly support the proposed hypothesis.

4.3.1 Nike

Regarding the outcome dimension of labour standard implementation Nike possesses a rather mixed record. In some cases the company took a rather proactive approach, whereas in others its behaviour was rather reactive. However, activists of the anti-sweatshop movement see some change to the better. In this regard, CCC states: *"Nike has proven to be responsive when cases of labour rights violations in specific suppliers are brought to their attention by labour rights groups. (...) However, there is still a need for improvements to make Nike's supply chain, including their purchasing practices, fair for workers."* (CCC 2009).

4.3.1.1 Jaqalanka Ltd (Katunayake Free Trade Zone, Sri Lanka)

The factory, employing approximately 400 workers, produces sportswear, work wear, outdoor-adventure gear and caps for Nike, Columbia and VF Corporations. In April 2003 the factory's management

informed its workers that Jaqalanka Ltd was unable to pay the annual New Year festival bonus of one month additional salary, as the factory was running a loss. In reaction, workers went on strike, for half a day, to protest against the cutting of their wages. In this context, about 220 of the 400 workers employed at Jaqalanka formed a factory branch of the Free Trade Zone Workers Union (FTZWU), in order to bargain with the management. However, Jaqalanka Ltd refused to negotiate with FTZWU and prevented union members from returning to work. Only under considerable pressure from the FTZWU supported by the Clean Cloth Campaign (CCC) and the ITGLWF the management gave in and accepted to pay its workers one quarter of their monthly salary as a bonus. However, intimidation and harassment of union members persisted (Oxfam International 2006: 22). In this situation, Nike reacted by sending its auditing team to the factory and, in cooperation with the FTZWU, requested the FLA to mediate (FLA 2003). As a result of a roundtable discussion, held in October 2003, Jaqalanka Ltd finally accepted the branch of the FTZWU in its Katunayake factory. Oxfam International assesses Nike's role in the Jaqalanka case as follows: "*Nike played a positive role in the union being recognised at Jaqalanka by mobilising their compliance unit and relevant business managers and sending auditors to the factory (...)*" (Oxfam International 2006: 25).

4.3.1.2 MSP Sportswear (Hutalea Muong Nakornrachaseama, Thailand)

In Hutaela Muong Nakornachaseama MSP Sportswear employs about 400 workers. The factory produces sportswear for Nike and Decathlon. In November 2003 workers at MSP tried to form a union in order to address poor working conditions at the factory (FLA 2005: 279). The management reacted by dismissing two workers which played a major role in the process. In October 2004 the factory's management tried to suppress further efforts to unionization by intimidation and dismissal of union members. The case came to attention of the Centre for Labour Information Service and Training (CLIST) in Thailand and the CCC which informed Nike about the incidents at MSP. Nike, however, argued that the Thai government was the appropriate agency to resolve the matter. As Nike failed to react effectively CCC launched an international campaign calling for the dismissed workers to be reinstated. Faced with increasing pressure Nike became more responsive. In cooperation with CLIST and the FLA Nike negotiated with the factory management the reinstatement and financial compensation of the dismissed workers. Furthermore, an ombudsman was appointed for a period of twelve months, in order to supervise the settlement (Oxfam International 2006: 44). Nike's behaviour in the MSP Sportswear case seems to correspond to a rather strategic motivation. The company reacted as pressure increased. Oxford International's general assessment of the case reflects this lack of responsiveness: "After considerable pressure from the MSP union, CLIST and international campaign organisations, Nike, with the FLA's assistance, played a positive role that saw two of the dismissed union officers who wanted reinstatement being reinstated with back pay. Had Nike taken decisive action when it first became aware that its code had been violated this result may have been achieved sooner" (Oxfam International 2006: 45).

4.3.2 adidas

The analysis of two cases of non-compliance in adidas' supply chain shows that the company adopts a rather proactive approach. Assessing the overall performance of adidas with regard to trade union rights, Oxfam International notes: "*(...) (T)he company provides its suppliers with a detailed and accurate explanation of trade union rights. (...) There is also evidence that adidas has been proactive in protecting*

trade union rights (...). It is noteworthy that adidas is the only sports brand with a policy allowing union officers and members to attend training provided by their own organisations and other labour groups” (Oxfam International 2006: 79).

4.3.2.1 PT Panarub (Tangerang, Indonesia)

In 2001 the CCC in cooperation with Oxfam and the MSN published a report on labour rights abuses in sportswear factories in Indonesia. The report included PT Panarub, a major supplier of adidas located in Tangerang. PT Panarub employs approximately 11,500 workers and produces sport shoes, primarily soccer boots. The report noted that in 2001 Ngandinah Abu Mawardi, the branch secretary of the union in Panarub, was arrested, imprisoned and subjected to an extended trial, because she had helped to organize a strike at the PT Panarub factory (Connor 2002). According to NGOs active in the anti-sweatshop movement, adidas played a rather proactive role in the case of Panarub. Confronted with the imprisonment of Ngandinah Abu Mawardi the company reacted by writing a letter to the Indonesian Minister of Justice requesting her release. In 2004 adidas further agreed to invite an independent third party, the US-based Workers Rights Consortium (WRC), to investigate allegations of labour rights violations at the Panarub factory. The WRC auditors identified numerous grievances in the factory, such as union officials were denied time off work to attend union activities and several health and safety issues. adidas in cooperation with the factory management reacted by implementing all recommendations made by the WRC. In consequence, PT Panarub re-employed union officials and even provided them with an office in the factory. Furthermore, health and safety conditions at the factory were improved (WRC 2004). Interviews with workers of PT Panarub, conducted by Oxfam Australia, confirm that conditions had significantly improved at Panarub. Regarding the state of trade union rights, members of Perbupas union, interviewed in August 2005, also noted some improvements (Oxfam International 2006: 32). Oxfam International assesses adidas behaviour in the PT Panarub case as follows:” *Along with the courage and determination of the workers at PT Panarub, adidas’ support for the implementation of the WRC’s recommendations has persuaded factory management to substantially remedy labour violations and take vital steps toward full respect for trade union rights”* (Oxfam International 2006: 33).

4.3.2.2 PT Daejoo Leports (Jakarta, Indonesia)

Before its closure in August 2004, Daejoo Leports (DL) employed approximately 1,100 workers. The factory, located in Jakarta, produced backpacks and sporting apparel for adidas and VF Corporations. In 2003 the WRC investigated working conditions at the factory and identified several issues not complying with international labour standards and adidas’ code of conduct (WRC 2003). These included health and safety issues, such as high levels of compulsory overtime, poor ventilation, excessive noise, lack of protective equipment, high temperature, and limited drinking water. With regard to union rights the WRC investigation found that DL’s management had illegally threatened active members of the Serikat Pekerja Nasional (SPN) union with demotion and dismissal. Furthermore, managers threatened to move all production to China if workers went on strike and failed to respond positively to the SPN union’s repeated efforts to launch collective bargaining negotiations despite the company’s legal obligation to do so (WRC 2003: 12). In response to the report of the WRC, adidas put pressure on DL to respect the workers’ right of freedom of association and to negotiate with the SPN union. Initially, DL’s management responded positively by engaging in constructive negotiations with SPN union and further allowed the

establishment of a second union (WRC 2003: 13). However, in June 2004 DL informed adidas about its plans to close the Jakarta factory and to move production to China. The management justified its decision with regard to lacking competitiveness of the factory. adidas reacted by urging DL to delay the factory's closure, in order to discuss its economic viability. Furthermore, adidas increased pressure on the management by suspending orders from DL's Chinese factories. As it became clear that the factory's closure could not be prevented adidas encouraged DL to pay the workers a severance payment above the legal minimum. DL, however, refused to do so and in consequence adidas terminated their business relationship (Oxfam International 2006: 42). Although, the WRC's executive director, Scott Nova, stated that adidas could have reacted more decisive, Oxfam International assesses adidas' behaviour rather positively: *"adidas and VF responded positively to the WRC's investigation into labour rights problems in the factory and there was initial progress. (...) Oxfam International recognises adidas' and VF's efforts to persuade DL to reconsider the closure. adidas' efforts to ensure that former DL workers are not discriminated against when applying for jobs with other adidas suppliers are also to be commended"* (Oxfam International 2006: 42).

5. Conclusion

"When the protests and campaigns first started 10 years ago, the companies were really bullish - they either completely denied there was a problem or adopted a 'so what?' attitude. The real change we have seen in the last year or so is that they are putting their hands up to it and admitting that they have got a problem. There is a still long way to go but we are beginning to see real movement on this issue" (The Independent 2005). The above cited statement of Mike Duncan, founder and secretary of the campaign group *No Sweat*, reflects the findings of this paper. The analysis of labour standard implementation of Nike and adidas partially support the hypothesis that leading sportswear companies have reached a prescriptive status with regard to labour norms. The analysis of the output dimension found that, even as external pressure and thereby the economic incentive to further invest in CSR had diminished, Nike and adidas continued to make considerable progress regarding the formal implementation of labour standards in their supply chains. In this regard, they made efforts to incorporate labour standard compliance in their overall business strategies. Both companies linked sourcing decisions to labour standard performance of potential suppliers. Furthermore, by revealing information about the structure of their supply chains and their CSR efforts, Nike and adidas increased the level of transparency. With regard to the outcome dimension of labour standard implementation, the cases reviewed showed that adidas and to a lesser extent Nike adopted a rather proactive approach with regard to non-compliance in their supplying factories. Notably, adidas' behaviour was commented positively by campaigners of the anti-sweatshop movement.

The findings of this paper suggest that under certain conditions business actors incorporate ethical concerns in their business strategies and invest time and resources to realize them. Thereby, they contribute to provision of collective goods in developing economies in which the state is often unable or unwilling to do so. The findings further suggest that leading sportswear companies start to consider these activities as appropriate behaviour. If further research confirms

this finding, CSR might become more than a just a strategy to mitigate external pressure and to fend off public regulation. We might witness the rise of a new corporate model that reconciles for-profit orientation with social and environmental responsibility. Such high-standard companies could play a constructive role in the emerging structures of global governance. They might serve as role models for other companies and spread best practices within and across industry sectors. They further might develop an interest in putting pressure on laggards to adopt their standards in order to establish a level playing field.

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