

## Key themes from the conference: an overview

One of the most striking features of this ambitious conference was the convergence of views on core principles and the key challenges facing all involved in ethical trade. Not surprisingly, given the range of contributors, there were differences in perspective and emphasis between stakeholder groups and individuals – indeed a specific aim of the conference was to air such differences. Nevertheless, we were surprised by the degree to which all participants could agree, not only on the key issues but also on the possible solutions to some of the most difficult challenges. This provides a sound basis for bringing key stakeholders together to work collectively on addressing the challenges. For an underlying thread that ran through the conference was the repeated call for more and better collaboration between the various parties involved in ethical trade.

This chapter summarises the common themes that ran through many of the plenary and workshop sessions. We believe that they encapsulate the agenda for ethical trade for the coming years.

### 2.1 Bringing workers centre stage

The rhetoric of labour codes is about improving conditions for workers. Yet the very same workers have been curiously absent as actors on the labour codes stage. Despite the growing number of companies adopting and implementing codes, and the number of workplace inspections that are being conducted each year, very few workers are even aware that codes exist. This is true even in workplaces where employers are making significant efforts to implement codes.

In recognition of this, all of the plenary sessions and workshops called for increased participation of workers in code implementation. Although there were differences in the way that this need was expressed and solutions offered, there was agreement on the basic concept of increased worker involvement, and on a number of core principles on which such involvement should be based.

Many Southern trade union and NGO representatives felt strongly that current approaches to code implementation are typified by well-meaning paternalism. While the good intentions were welcomed, there was a real concern that such an approach

was ultimately flawed and would not lead to far-reaching, sustainable improvements for workers. For these participants, a starting point was therefore that workers need to be actively involved as subjects, not objects, of labour rights and code implementation. Workers do not need to be protected: they need help to protect themselves. They need help in the form of education about their rights, what they can do when their rights are violated, and help to organise themselves to negotiate effectively with their employers.

Participants identified a number of practical benefits of involving workers more actively in code implementation. They argued that, by involving workers more actively in audits, problems in the workplace are much more likely to be identified. By setting up effective complaints mechanisms, whereby workers can complain about labour abuses directly to the sourcing company or an independent body, the pressure on routine auditing can ultimately be reduced. Involving workers in drawing up corrective action plans is more likely to result in effective, and often lower-cost, solutions to problems. And by investing in educating workers about codes and labour rights, workers will be in a better position to contribute constructively to audits, complaints mechanisms and implementing corrective action plans.

### **2.1.1 Promoting freedom of association and the right to collective bargaining**

Worker education and involving workers in audits and other aspects of code implementation are all important steps, but ultimately workers need to be able to act collectively if they are to be effective at bringing about change. For this reason, many speakers and participants called for a greater emphasis on promoting freedom of association and the right to collective bargaining. Freedom of association, that is, the right of all workers to join or form a trade union of their own choosing and carry out trade union activities without interference from their employer or from public authorities, enables workers to voice, analyse and prioritise their concerns within a safe space. The right to collective bargaining, that is, the right for workers' organisations to negotiate with employers or employers' organisations on behalf of their members to determine working conditions and terms of employment, is an essential precondition for workers to raise these concerns with management and negotiate effectively for improvements.

It is not surprising that trade union representatives drew attention to this issue, since those involved in the code debate have always viewed freedom of association and the right to collective bargaining as the most fundamental of the clauses included in labour codes. What was striking was that many of the NGO speakers also highlighted this as a key priority.

The challenge is that, while many companies have had considerable success in implementing some code provisions, few have been effective at improving the recognition of freedom of association and the right to collective bargaining. Why has this been the case? There are a number of factors at play.

First, many suppliers have proved particularly resistant to this aspect of codes because of a deep-seated distrust of unions. In some countries, this has been influenced by a history of bitter and sometimes violent conflict between unions and employers. In some cases unions have been used by political parties to achieve ends that benefit neither workers nor employers. As a result, many suppliers continue to restrict freedom of

association in a variety of ways. Sometimes suppliers openly restrict union membership by deliberately not employing union members, and/or by forbidding existing employees to join unions. But restrictions are often more subtle. For example, employers may not make an effort to inform their employees that they have the right to join a union, or to provide information on relevant unions. Employers may make it very difficult for workers to hold union meetings during work time, or they may intimidate or discriminate against union representatives.

Given the variety of ways in which suppliers can restrict freedom of association, few auditors pick up problems. This is exacerbated by the fact that many auditors lack a detailed understanding or experience of issues around freedom of association and union activity.

There are also legal barriers to freedom of association and union membership which impact heavily on workers in garment and food supply chains. Export processing zones, where much export garment manufacturing takes place, are often excluded from the national legal frameworks which protect freedom of association. There are also countries, including important sourcing countries such as China, where the formation of free trade unions is restricted.

Even where freedom of association and the right to collective bargaining are legally protected, there can be problems with the capacity, effectiveness and representativeness of unions in many developing countries. In these countries informal workers make up a high proportion of the workforce and, for reasons explained in Chapter 6, few are members of a trade union. Low membership means limited resources for local unions both to support existing members and to recruit new ones.

### 2.1.2 Moving ahead on worker participation and freedom of association

Despite the scale of the challenges, conference speakers and participants identified a number of ways in which code initiatives, such as ETI, can improve freedom of association and worker participation in code implementation. These include the following:

- **Make freedom of association and the right to collective bargaining a priority.** It was suggested that code initiatives need to focus on this particular clause of their codes, and make sure that their member companies treat it as a priority and put pressure on their suppliers to take the issue seriously.
- **Provide focused training to sourcing companies and auditors on freedom of association and collective bargaining.** Auditors need to develop a better understanding of the issues so that they appreciate its importance and know how to identify problems.
- **Redress top-down structures.** Code initiatives need to expand the space for dialogue with Southern stakeholders. Moreover, if local unions and NGOs are to participate effectively in code implementation, for example, in providing worker education, code initiatives need to support them with appropriate training.
- **Support the establishment of local multi-stakeholder code initiatives,** building on the model of the Wine Industry Ethical Trade Association in South Africa (see Chapter 3).
- **Support worker education programmes** which address workers' rights, the role of unions and benefits of union membership, workers' role in monitoring and evaluation,

and the role of codes. This work should be done in conjunction with local unions and NGOs.

- **Provide suppliers with the business case** for supporting improved worker participation and freedom of association.

## 2.2 Reviewing purchasing practices

Nearly all social and/or environmental codes of practice adopted by sourcing companies place responsibility on the company's suppliers to improve labour and other conditions. However, few codes require the sourcing company to take responsibility for improving the way they do business with their suppliers, that is, their purchasing practices. Yet experience of implementing codes shows that some of the purchasing practices employed by many sourcing companies not only hinder the improvement of labour practices, but can actually cause or contribute to worsening labour conditions.

For this reason, NGO and trade union speakers and participants emphasised the need to review current purchasing practices and find ways to create a more positive trading environment for improving labour conditions. This issue was seen to be so important that we have included a full chapter on it (see Chapter 9).

## 2.3 Extending the benefits of codes to informal workers

Another major question is how to apply codes effectively in the context of informal work, that is for those members of the workforce who lack a formal, legally-recognised employment relationship. In many developing countries, informal workers make up a large proportion of the workforce – 80 per cent in India, for example. By definition, such workers have little legal protection and often they also face less job security and poorer terms and conditions than formal employees. For these reasons, many speakers representing trade unions, NGOs and the code initiatives, and participants at most of the workshops, stressed the importance of ensuring that the benefits of code implementation reach informal workers.

Informal workers are present in all levels of the supply chain. Formal workplaces, including large factories and farms which supply directly to retailers, may hire some workers on a contractual, seasonal or temporary basis, without providing them with a formal or permanent employment contract. Further down the supply chain, in small workshops sub-contracted by a factory manager/exporter, or small-scale outgrowers supplying a packhouse, workers are mostly hired on an informal basis. As for home-workers, who are typically at the end of supply chains, the vast majority are hired without a formal contract of employment.

In workplaces where there are both formal and informal workers, the latter often have substantially worse conditions. On horticultural farms in Africa, for example, benefits given to permanent workers such as housing, paid sick leave, paid maternity leave, and medical care and schooling for the worker's family, are not available to non-permanent workers. In sub-contracted parts of the supply chain, where workers are mainly hired on an informal basis, wages are often significantly lower than in formal workplaces.

In many ways, therefore, informal workers as a group are most in need of any protection and assistance that codes may offer. However, while code implementation appears to

have resulted in some improvements for permanent workers employed by first tier suppliers, informal workers and all workers beyond the first tier have seen limited benefits. Sourcing companies and auditors find it more difficult to identify and monitor informal workers, especially if they are in sub-contracted parts of the supply chain. Moreover, as explained in Chapter 9, the purchasing practices used by many sourcing companies encourage suppliers to increase their reliance on informal work arrangements, so exacerbating the problem.

So what is the way forward? Participants suggested that code initiatives should strengthen their alliances and place pressure on national governments to enforce legal requirements to issue formal employment contracts to all workers. It was also felt that code initiatives had an important role in putting pressure on their constituent sourcing companies to pay greater attention to informal workers.

In turn, participants believed that sourcing companies could make a difference by:

- **Expanding the focus of code implementation beyond first tier suppliers** and addressing issues that arise through sub-contracting. This would involve developing a better understanding of their supply chains, and joining forces with relevant local trade unions and NGOs.
- **Addressing purchasing practices** which place unreasonable pressure on suppliers and encourage them to rely heavily on an informal, flexible workforce. This includes in particular finding ways to develop longer-term trading relationships.
- **Applying pressure on suppliers to provide formal contracts of employment.** Formalisation of labour is the first step to ensure worker protection under the law.

There is more on extending the benefits of codes to informal workers in Chapter 6 on homeworkers and smallholders.

## 2.4 Reviewing and improving auditing procedures

Another theme that cut across many of the plenary and workshop sessions was the need to review and improve current auditing procedures. This included improving the quality of existing auditing methods, cutting down on duplication of audits, reducing and sharing out costs, and moving away from a compliance-based approach.

Most participants agreed that the **quality** of auditing needs to be improved. Audits tend to be better at identifying certain types of labour issues than others, and problems which cannot easily be identified visually or by review of documentation, such as restrictions on freedom of association and gender discrimination, are frequently missed. A related issue is that many audits still provide little opportunity for workers to participate actively in identifying issues and possible solutions.

Contributing factors include:

- insufficient knowledge of labour issues and inadequate interviewing skills on the part of auditors;
- limited resources allocated by sourcing companies to code implementation, resulting in audits that do not allow sufficient time to spend with workers;

- many auditors, used to quality and technical audits, tend to rely on a rigid, ‘tick box’ approach to auditing which does not provide flexibility to explore labour issues in depth, nor to unearth the underlying causes of problems.

Some participants also felt that, despite the rhetoric of code initiatives such as ETI, codes and auditing have come to be seen by sourcing and supplying companies alike as an issue of compliance. That is, the perceived goal of an audit is to pass it, rather than to use it as a step towards improving labour practices. Some of the multi-stakeholder initiatives acknowledged themselves that this has in part been due to their early emphasis on auditing, over and above other aspects of code implementation. Moving away from a compliance-only approach requires sourcing companies to work with and build the capacity of suppliers and workers’ organisations to develop and implement corrective actions.

The **duplication** of audits is a growing cause of resentment among many suppliers whose labour practices are being inspected by each of their customers, sometimes as much as 35 times per year. The disadvantages are the cost and time implications for suppliers, and also confusion caused by differing interpretations of the same standards by different customers.

A related concern of many suppliers and other participants was the question of who should pay for audits, the customer or the supplier. Some sourcing companies pay for the audits of their suppliers, but others pass the cost down to their suppliers. Exacerbated by the duplication of audits, many suppliers resent having to cover these costs. On the other hand, sourcing companies and others argue that suppliers should pay for at least some of the costs of their audits, since this encourages them to take responsibility for the outcomes.

#### 2.4.1 Moving ahead on auditing

To address the issues, participants proposed that code initiatives could assist by:

- Supporting information-sharing initiatives such as the supermarket-led Supplier Ethical Data Exchange Initiative (SEDEX). SEDEX aims to develop a system whereby a single audit report on a supplier that supplies more than one member company will be shared by all customers, thus avoiding the need to duplicate audits. This requires developing a common audit reporting format for all member companies.
- Working towards a common audit protocol and common guidelines on developing indicators.
- Encouraging sourcing companies to invest more in areas other than auditing, including capacity building, implementing corrective actions, and worker education.
- Encouraging sourcing companies to work more with local organisations in designing, conducting and following up audits.
- Applying pressure on the ILO to develop internationally-agreed standards for commercial auditors.

In turn, participants suggested that sourcing companies should:

- focus on improving audit procedures so that currently neglected areas, such as freedom of association and discrimination, are more likely to be identified;

- develop and implement mechanisms to ensure that workers who participate actively in audits or education programmes do not suffer recrimination from the employer;
- provide suppliers with incentives for worker participation in audits.

## 2.5 Developing a more robust business case for ethical trade

The theoretical business case for ethical trade is well rehearsed. Many people will be aware that improved working conditions can lead to improved worker commitment, fewer accidents and absences, lower staff turnover, better quality product and increased productivity. Many of us have also heard anecdotal examples of the benefits of implementing a labour code. However, this is not enough to convince many suppliers and sourcing companies to take the plunge.

The need to develop a more robust business case for ethical trade was emphasised by many workshop participants and by UK government, trade union, corporate and NGO speakers at the plenary sessions. Participants felt there was a need for more systematic research into the issue. This might include, for example, evaluation of the experiences of different types of company, comparisons of the costs of code implementation against the benefits, and evaluation of the benefits for different business stakeholders (such as sourcing companies versus first tier suppliers versus producer/manufacturers). This would need to be complemented by credible case studies of how a range of sourcing companies and suppliers had realised net benefits from adopting and implementing a code of practice.

Participants also linked the issue of developing a more robust business case for ethical trade to the need to find ways of promoting a longer-term approach to business and encouraging longer-term commercial relationships with suppliers. This would require research on the differences between short- and long-term cost-benefits and may need to involve tracking costs and benefits for a particular company over a period of time.

Participants felt that code initiatives had an important role to play in working with their constituent companies to collect relevant case studies, and in supporting research on the issue.

## 2.6 Codes should support not replace legislation

Codes of labour practice have to a large extent come about as a response to weak or incomplete enforcement of labour legislation in many poorer countries supplying goods to Northern markets. But participants at all the workshops and plenary speakers representing all stakeholders stressed that codes should be used as a tool to support, not replace, the adoption and enforcement of appropriate labour legislation.

In as far as codes and national labour laws share a common root in ILO Conventions, effective code implementation can contribute to the enforcement of law and can also help to create a culture of compliance with labour law. Through appropriate worker education which raises awareness of workers' rights, codes can help to create an environment where workers/citizens are better able to further their own rights through a better understanding of the law and how to make use of it. Participants felt that code initiatives and sourcing companies need to maximise these opportunities to strengthen law enforcement.

However, code implementation can only do so much to support the effective enforcement of labour legislation. Many developing countries are faced with poorly resourced labour inspectorates. In Nepal, for example, there are only 11 factory inspectors and they are expected to monitor conditions of the country's 45 million workers. Inadequate labour inspectorates are partly due to a low tax base, which is often exacerbated by tax breaks given to multinational companies to encourage them to bring foreign investment and exchange into the country. Moreover, export processing zones, in which much garment manufacturing takes place, are exempt from many labour laws. Many of the workshops to which factories subcontract work are, in any case, informal workplaces that tend not to attract the attention of the government labour inspectorates. Thus, in these contexts, code implementation rarely overlaps with the application of labour law and employers and workers alike may see legislation as an irrelevance.

Some sourcing companies and code initiatives have tried to work with government labour inspectorates, either at an institutional level, or with individual inspectors. In theory, government inspectors and code auditors can learn from each other. Auditors can gain detailed knowledge of local labour law and conditions from government inspectors, and the latter can gain experience of working with types of workplaces and workers that they are not accustomed to. In practice, government inspectorates can feel threatened by code auditors, and those who want to develop working relationships need to deal with feelings of mistrust and competitiveness.

Nevertheless, despite the limitations and practical challenges, there is clearly room for government inspectorates and code auditors to learn from each other and to work together to tackle workplaces and labour issues that have traditionally been neglected by both. Code initiatives can play an important role both in developing working relationships with local government inspectorates themselves, and in encouraging auditors and sourcing companies to work with them.

## 2.7 Where is the consumer?

Participants in most workshops asked the question: 'Where is the concerned consumer?' Consumer boycotting has resulted in sourcing companies addressing environmental and to some extent labour issues in their supply chains. For example, studies indicate that 64 per cent of British adults have boycotted a company's product and/or chosen a product because of a company's ethical reputation. At the same time, consumers continue to make purchasing decisions based on price and quality, simply assuming that labour issues have been addressed.

Conference participants argued that the consumer is not sufficiently aware of labour issues and that there is a need for increased media coverage and company reporting of labour issues. Unlike environmental and financial reporting, reporting of social issues such as labour conditions is qualitative in nature and is of itself quite challenging. Reporting raises many questions about what should be included and how it should be measured, for example:

- What are the boundaries of measurement and reporting? Reports need to cover the key issues, but participants called for quality not quantity.

- Who is the reporting aimed at? What do the different target groups, including consumers, really want to know about a company's performance on ethical trade issues?

Participants suggested that reporting on ethical trade should include the following measures/topics:

- the extent to which the company's stakeholders have been involved in defining what should be measured and reported;
- the extent to which the company has mapped its supply chain, and the nature of the supply chain (for example, is it short, fragmented, involving many levels of subcontracting?);
- how the company is engaging with its suppliers on ethical trade issues;
- the extent to which the company is supporting education and training of workers in the supply chain;
- evidence of workers' rights being respected in supply chain workplaces, for example, freedom of association;
- evidence of the company influencing change in their supply chain, for example, suppliers introducing effective measures to address child labour as a result of code implementation.

**The chapters that follow** provide summarised accounts of other issues that were the subject of the workshops and plenary sessions. If the issues described above make up a core agenda for those involved in ethical trade, the ones that follow give some indication of the breadth and complexity of other ethical trade tasks and the recent achievements that, collectively, we can be justly proud of.