

Social responsibility in New Zealand's offshore supply chains: What would it take to contribute towards improved labour conditions in China?

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Contents

Acknowledgements.....	iv
Abbreviations and Figures.....	v
Abstract.....	vi
Chapter 1: Introduction.....	1
Thesis concept.....	2
Research process.....	4
Outline of the thesis.....	9
Chapter 2: Private Regulation and the Governance of Labour Conditions.....	11
Private regulation.....	11
<i>The rise of corporate social responsibility</i>	13
CSR in New Zealand.....	17
Why worry about poor labour conditions? The pro-sweatshops argument.....	23
The effectiveness of private regulation for improving working conditions.....	26
The emergence of CSR as a method for improving labour conditions.....	31
<i>The competitiveness approach: Private regulation as a defence or pursuit of competitive advantage</i>	34
<i>The political approach: Private regulation as a settlement between competing actors</i>	36
Conclusion.....	45
Chapter 3: Labour Conditions in China.....	46
Current labour conditions in China.....	47
<i>China's migrant workers</i>	47
<i>Wages</i>	48
<i>Occupational safety and health</i>	50
<i>Work hours</i>	52
<i>High labour intensity, discipline and abuse</i>	52
<i>Bonded and forced labour</i>	53
<i>Child labour</i>	53
<i>Core labour rights</i>	54
Factors Influencing Labour Conditions.....	55
<i>Labour supply</i>	55
<i>Economic pressures</i>	57
<i>Political barriers to core labour rights</i>	60
<i>Labour resistance</i>	65
Conclusion.....	68
Chapter 4: Social Responsibility in New Zealand: Why the Trend Towards Private Regulation?.....	69
Existing approaches to supply-chain social responsibility in New Zealand.....	69
<i>Domestic legislation</i>	69
<i>International instruments</i>	72
<i>Bilateral trade agreements: Memoranda of understanding on labour cooperation</i>	73

<i>Government and non-governmental bilateral cooperation</i>	75
<i>Corporate social responsibility</i>	78
Explaining the emergence of CSR in New Zealand	80
<i>The competitiveness approach</i>	80
<i>The political approach</i>	90
Conclusion	96
Chapter 5: The Effectiveness of CSR in China	98
Limits to the coverage and scope of CSR in China	99
Common CSR methods in China: What do these achieve?	101
Exceptional cases of CSR in China: What do these achieve?	102
<i>Increased transparency</i>	103
<i>Projects on wages and working hours</i>	104
<i>NGO involvement and access</i>	105
<i>Worker participation and empowerment</i>	106
Potential that CSR is harmful for labour conditions	111
<i>Impact on the NGO movement</i>	112
<i>Impact on the labour movement</i>	113
<i>Impact on state regulation and enforcement</i>	114
<i>Impact on democratic governance</i>	116
Conclusion: Suggested terms of engagement with CSR	118
Chapter 6: Improving Social Responsibility in New Zealand's Offshore Supply Chains and Contributing to Improved Working Conditions in China	121
Improving social responsibility in New Zealand's offshore supply chains	122
<i>The UN Protect, Respect & Remedy Framework</i>	122
<i>Institutionalising Action on Social Responsibility: Examples from the EU</i>	123
The spectrum of options for enhancing social responsibility	124
<i>Developing demand for social responsibility</i>	124
<i>Improving the spread and depth of CSR</i>	126
<i>Imposing legal sanctions: reform of company law</i>	135
Overcoming inevitable opposition	141
Contributing towards improved working conditions in China	146
<i>Improving cooperation under the MoU: Capacity building and poverty alleviation</i>	147
<i>Directing development aid towards improved working conditions</i>	147
<i>Raising issues of non-compliance with China</i>	148
<i>Supporting the Chinese labour movement</i>	149
Conclusion	155
Chapter 7: Conclusion	157
Findings	157
Limitations of this study	163
Opportunities for further research	164
Reference List	167
Appendix A: Selected interviewees	199
Appendix B: Supply-chain labour initiative assessment tool	200

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Abbreviations

ACFTU	All-China Federation of Trade Unions
AMRC	Asia Monitor Resource Centre
ATCA	Alien Tort Claims Act
BSO	Business-led sustainability organisation
CCP	Chinese Communist Party
CORE	The Corporate Responsibility Coalition
CSR	Corporate social responsibility
EICC	Electronics Industry Citizenship Coalition
ETI	Ethical Trading Initiative
ETJ	Extra-territorial jurisdiction
FIDH	International Federation of Human Rights
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
GUF	Global Union Federation
GZFTU	Guangzhou Federation of Trade Unions
ICFTU	International Confederation of Free Trade Unions
ICTI	International Council of Toy Industries
IFA	International Framework Agreement
ILO	International Labour Organisation
ITUC	International Trade Union Confederation
KTS	Kong Tai Shoes
OECD	Organisation for Economic Cooperation and Development
MFAT	Ministry of Foreign Affairs and Trade
MoU	Memorandum of Understanding on Labour Cooperation
MSI	Multi-stakeholder Initiative
NAFTA	North American Free Trade Agreement
NCP	National Contact Point
NGO	Non-governmental organisation
NZBCSD	New Zealand Business Council for Sustainable Development
SACOM	Students and Scholars Against Corporate Misbehaviour
SAWS	State Administration of Work Safety
SME	Small and medium enterprises
SOE	State-owned enterprise
TBL	Triple bottom line
TNC	Transnational Corporation
UN	United Nations
UNHRC	United Nations Human Rights Council
WRAP	Worldwide Responsible Apparel Production
WTO	World Trade Organisation

List of Figures

Figure 1. Public policy options for promoting social responsibility.....	15
Figure 2. Environmental practices 2003-2010.....	20
Figure 3. Social practices 2003-2010.....	20
Box 1. Steps to improve social responsibility in New Zealand's offshore supply chains.....	143
Box 2. Steps for New Zealand groups to contribute to improving labour conditions in China.....	153

Abstract

New Zealand initiatives to address supply-chain labour conditions are tending towards reliance on Corporate Social Responsibility (CSR), a form of private regulation. This thesis explores the effectiveness of private regulation for improving labour conditions, and reasons for its emergence, using the case study of the New Zealand-China relationship. It is argued that CSR brings only cosmetic improvements to a minority of workers in China. It is no replacement for strengthened law enforcement and organisation of workers for affecting significant improvements. CSR can also *undermine* improvements, and should be approached with caution. The trend towards CSR in New Zealand can be explained by businesses' gradually-increasing need and capacity to defend and pursue competitive advantage. However, the trend is best explained as a result of the constraints and power imbalances resulting from the neoliberal political context. For New Zealand to make a genuine commitment to social responsibility would require a shift in power, to groups that will challenge existing constraints and demand explicit action from the Government. It would also require New Zealand consumers and businesses to assume a greater share of the true costs of production. For New Zealand to contribute to improved labour conditions in China would require greater support for the Chinese labour movement and state enforcement. This support could take the form of increased cooperation, highlighting non-compliances, union collaboration and development aid.

Chapter 1: Introduction

On January 2, 2012, dozens of workers at the Foxconn plant in Wuhan, China, threatened mass suicide. Foxconn is the world's largest electronics manufacturer and supplies major brands such as Apple, Hewlett-Packard and Microsoft. The workers, reports of whose numbers vary between 80 and 200, demanded severance pay and compensation for being transferred to another site (Barboza, 2012; The Guardian, 2012; Zhang, 2012). Threatening to jump from a factory roof, they also complained of low pay, insufficient training and a high work pace which left them with blisters on their hands (Moore, 2012; United Press International, 2012). After two days they were coaxed down by managers and local officials (Moore, 2012). However, this incident is only the most recent insight into conditions at Foxconn. In 2010, at Foxconn's Shenzhen plant, maker of Apple's iPhone among other brand products, 17 workers attempted suicide and 13 died (Students and Scholars Against Corporate Misbehaviour [SACOM], 2010c, p. 2).

2010 investigations revealed low wages, military-style discipline, excessive overtime and cramped conditions (Chen, 2010; SACOM, 2010a,c). Foxconn's management system was described by a Chinese union official as "quasi-military", with workers forbidden from talking during shifts (Chen, 2010; SACOM, 2010c). Workers were compelled to work as many as 120 hours of overtime a month, more than three times the legal limit (SACOM, 2010a, p. 7; see also SACOM, 2010b). Monthly base wages were as low as 800 yuan (\$NZ160) (SACOM, 2010a, p. 7). With illegal overtime, workers could make between 1,500 and 2,000 yuan (\$NZ300-400) (Anonymous, 2009, p. 4; Hille, 2010). The 2010 findings echoed those of a 2006 exposé by a British newspaper: dormitories with up to 100 workers per room, strict discipline, low wages and long working hours (The Mail on Sunday, 2006).

Six years since the first exposés, brand buyers from Foxconn, developed-country consumers of its products and the Chinese Government have all failed to address the unsatisfactory conditions. Workers have been unable to demand improvements. Consumers and non-governmental organisations (NGOs) have pressured Apple and other buyers to adopt some of the world's most developed supplier auditing practices. Foxconn itself reports to have comprehensive corporate social responsibility policy (Foxconn, 2008, 2009, 2010). In 2012, Apple joined the Fair Labour Association, thus subjecting itself to third-party audits and international scrutiny (Arthur, 2012). Yet these initiatives have failed to effect significant improvements. This raises a number of questions: Why have "corporate social responsibility" (CSR) approaches been so ineffective, and

why, despite their lack of effectiveness, are they still pursued? Why have Chinese workers been unable to secure better conditions? Why does their government apparently support current practices? And what role *should* trading partners play to contribute to improvements?

Trading partner governments and consumers are intrinsically connected to poor conditions in offshore production. Manufacturing increasingly takes place through globalised production networks, spanning dozens of countries and as many as tens of thousands of individual suppliers. As local industries close down in developed countries, and extremely cheap products appear in local shops, uncomfortable questions emerge as to the responsibility of trading partners for protecting offshore workers in situations like Foxconn. Concerns are raised not only for humanitarian reasons, but also from a desire to protect domestic jobs and standards. For both these reasons, those trading with developing countries are increasingly accepting responsibility for a role in addressing the conditions of work in their supply chains. Predominantly, trading partners attempt to influence offshore labour standards through CSR. This is defined as businesses' voluntary initiatives to deliver environmental and social outcomes beyond legal requirements. CSR is a form of private regulation: the formulation and enforcement of codes, regulations and standards not enforced by any state (Vogel, 2008).

New Zealand is one of many states confronted with the dilemmas of labour conditions in its producers' and retailers' supply chains. It is rapidly expanding trade with developing countries, particularly with China. China is now New Zealand's largest developing-country trading partner. It is New Zealand's second largest source of imports. In 2008, New Zealand and China finalised a free trade agreement (FTA), China's first with a developed country. The New Zealand-China relationship is thus an excellent case to explore supply-chain social responsibility.

Thesis Concept

The aim of this thesis is to examine the effectiveness of private regulation for improving labour conditions in developing countries, and reasons for its use, through a case study of the New Zealand-China relationship. I will examine to what extent, and why, private regulation dominates as the method of improving offshore working conditions in the case of New Zealand. I will also explore the impact of private regulation on working conditions in China. These findings will inform a discussion of what it would take for New Zealand to genuinely improve social responsibility in its supply chains, and to contribute to improving working conditions in China more broadly.

There has been insufficient research into New Zealand efforts to address supply-chain labour conditions, both generally and in relation to China. Alongside the FTA, New Zealand and China signed a Memorandum of Understanding on Labour Cooperation (MoU), yet there has been no research into its effectiveness. Neither has there been research into private initiatives to improve labour conditions, or third-sector partnerships in this area. To my knowledge, this thesis is the first time New Zealand efforts to address supply-chain labour issues have been documented.

The significance of the research extends well beyond this particular case. Increasing international reliance on CSR makes continued research into its effectiveness in various contexts essential (Blowfield & Frynas 2005, p. 506). The way in which social responsibility is handled in the New Zealand-China relationship may offer insights into other trade relationships worldwide. The sheer number of workers affected in China—China has 104 million manufacturing workers (Harney 2008, p. 8)—makes a focus on China pertinent. Furthermore, China is an expanding power, and projects its norms and practices to other developing countries along with outflows of Chinese investment. The improvement of conditions in China may therefore be relevant to the developing world more generally.

This thesis contributes to two key debates. The first concerns the effectiveness of private regulation for delivering outcomes of social responsibility. While advocates of CSR herald its success at regulating supply-chain labour conditions, opponents argue its effectiveness is fundamentally limited by its reliance on market forces. A third group argues that CSR is counterproductive and potentially harmful; consequently, it should be treated with caution.

The case study of China is used to examine the effectiveness of private regulation. Through an analysis of the common and “best case” CSR initiatives in China, the following questions are asked: How *effective* is private regulation in improving labour conditions in China? What *limits* its effectiveness? The three positions in the literature, that CSR is effective, of limited effectiveness or counterproductive, are considered against the evidence in the China case. It is argued that while CSR delivers cosmetic improvements to a minority of workers in China, it is no substitute for the legislation, enforcement and collective bargaining which have brought improvements in other countries. Furthermore, CSR can be potentially harmful; consequently, it should be implemented cautiously, and alternatives prioritised.

The second debate concerns *why* private regulation tends to emerge rather than alternatives. The *competitiveness* approach argues that CSR emerges as a result of rational actors' pursuit of competitive advantage. The *political* approach argues that actor-focused explanations are insufficient. The political approach explains the emergence of CSR as a settlement of conflicts between competing actors, in light of their differing degrees of power in the neoliberal context.

The case study of New Zealand is used to test the contending explanations. The following questions are asked: To what extent is *private* regulation used to regulate social responsibility in New Zealand's offshore supply chains? *Why* is private regulation used to regulate New Zealand's offshore supply chains? It is argued that the competitiveness approach explains some, but not all the movement toward CSR activity in New Zealand. In the absence of government and NGO pressure, businesses have voluntarily pursued a solution to defend their reputations, and to maintain positions in foreign markets where social responsibility is more important. Businesses have also proactively pursued power benefits and positions in newly-emerging markets. However, the political approach offers a far more thorough explanation, taking into account the (lack of) action by states and NGOs. Both these explanations are necessary to understand the trend towards CSR in New Zealand. However, the political approach is particularly important, as it sheds light on the shifts in power necessary for stronger alternatives to be pursued.

Finally, these discussions shed light on the broader questions: *What would it take* to improve social responsibility in New Zealand's offshore supply chains? *What would it take* for New Zealand to contribute towards improved working conditions in China? Given the limited effectiveness and risks of CSR initiatives in China, it is essential that alternatives be pursued. The findings culminate in recommendations offering a path forward for New Zealand.

Research Process

This thesis will address the following questions:

- To what extent is private regulation used to regulate social responsibility in New Zealand's offshore supply chains?
- Why is private regulation used to regulate New Zealand's offshore supply chains?
- How effective is private regulation in improving labour conditions in China?
- What limits the effectiveness of private regulation in improving labour conditions in China?

Following on from this, it will also consider:

- What would it take to improve social responsibility in New Zealand's offshore supply chains?
- What would it take for New Zealand to contribute partner towards improved working conditions in China?

Background

This thesis was inspired by a personal desire to take responsibility for the social and environmental impacts of my own consumption. As I studied Chinese language throughout my degree, my interest came to focus on Chinese workers.

In 2009, I tailored a brief Honours project to investigate the extent of New Zealand efforts to address supply-chain labour conditions. I aimed to determine which companies I should and should not buy from, or alternatively, with which companies my dollars would make a positive impact or at least not cause harm. I interviewed business people, read numerous company websites, and wrote to roughly 30 managers with the questions:

- What company policies ensure you are having a positive impact on labour conditions in your supply chain? How are these policies audited?
- How do you assure customers that your products are not made under exploitative working conditions in your suppliers' factories?

I found nothing that suggested that supply-chain issues were adequately addressed. Ten companies made no response. Three companies responded saying that these issues were commercially sensitive and policies could not be disclosed. Even when companies did disclose attempts to address these issues, initiatives appeared painfully inadequate. As a consumer seeking to mitigate negative impacts of my consumption, I found myself unable to do so in New Zealand, hampered by the lack of transparency and my inability to discern effective initiatives. To ensure I was not contributing to harm, I was left buying second hand goods and the limited products available from the nascent Fair Trade movement. (At that time, there were no Fair Trade products available from China.)

Participant Observation

Many subsequent experiences have shaped this thesis. In 2010, I studied for one year at Sun Yat-sen University, Guangzhou. I also undertook a six-week internship at the Asia Monitor Resource

Centre (AMRC), a labour rights NGO in Hong Kong. This led me to work as note-taker in a conference organised by AMRC for its network of occupational safety and health organisations throughout Asia, held in Bandung, Indonesia. During this time, while not intentionally in the role of “researcher”, I was a participant observer¹ in a number of activities which have shaped my research.

During my stay in China I made six factory visits. One visit was accompanying a Chinese social auditor to the supplier of a New Zealand company. This included sitting in on worker interviews. Of the other visits, two were accompanying Western business people to visit their suppliers; one was with a Chinese business person visiting their own factory, a supplier to Chinese and foreign markets; and a further two visits were with a Chinese middleman who purchased on behalf of Western buyers. These visits gave me insights into the range of labour conditions at manufacturing plants, the varying attitudes of business people to labour issues and the practicalities of social auditing.

During my stay I also sat in on a dialogue between the Guangzhou district-level trade union and the Canadian auto workers union, which happened to be timed soon after the Honda strikes. This gave me insight into the working of the Chinese union, and the potential of international union exchange.

As a language student at Sun Yat-sen University, I was also able to sit in on a course of lectures “Labour in China and the US Compared,” taught by a visiting US lecturer. Through this I not only learned about aspects of labour in China, but also experienced the sensitivities of labour issues in China and the reactions of Chinese students.

During my stay at AMRC in Hong Kong, I observed day-to-day operations of a labour NGO. I sat in on a training course for Chinese labour NGOs. I also participated in a demonstration to demand compensation for victims of cadmium poisoning at a Chinese battery plant. During the conference in Indonesia I met more staff of Chinese labour NGOs, as well as their counterparts from other Asian countries. These experiences demonstrated to me the challenges of NGO work and labour rights campaigning. I also got a feeling for the constraints facing Chinese labour NGOs and other Asian counterparts, and the efforts underway to overcome these constraints.

¹ Becker and Geer define participant observation as “a method in which the observer participates in the daily life of the people under study, either openly in the role of a researcher or covertly...observing things that happen, listening to what is said, and questioning people, over a length of time” (1957, p. 28).

Methodology

Primary Sources

To conduct this research I undertook email correspondence and approximately forty qualitative interviews and informal discussions with labour activists, business people, social auditors, academics, unionists, staff of business associations and government officials, in New Zealand, Hong Kong and China. These contacts provided invaluable first-hand insight into many subjects. Interviewees demonstrated and explained a variety of opinions, and raised numerous issues for consideration.

Interviews and personal correspondence were used primarily to inform my own understanding and research direction. Given this intention and the range of interviewees and subjects, interviews were unstructured and grounded theory methods were used (Atkinson & Hammersley, 1994, p. 248; Glaser and Strauss, 1967, as cited in Charmaz 2002, p. 675). Data was not coded. Interviews were in a conversational style. While I prepared questions specific to interviewees' area of expertise, I allowed conversations to follow tangents, and asked subsequent questions as they arose. I also sought further participants whose experiences related to new concerns raised. With interviewees' permission, I took notes. None have been quoted without their permission. A list of disclosable interviewees is provided in Appendix A.

New Zealand interviewees consisted of business people, social auditors, academics, unionists, staff of business associations and government officials. Business contacts were selected in an attempt to cover a range of industries and levels of attention to supply-chain labour issues. Initial business contacts were selected from my 2009 Honours project. To ensure I covered a range of sectors, I identified others from company websites. Once I began interviewing, I used snowball sampling, asking each interviewee to recommend others they thought I should speak to (Warren 2002, p. 87). I also sought further participants whose expertise related to newly-raised concerns (an element of the grounded theory method above).

Hong Kong interviews included labour activists, trade unionists and business people. These were recommendations from AMRC staff, as well as experts I had come across in secondary sources. In Hong Kong I also met staff of Chinese labour NGOs, to whom I spoke informally. Formal interviews in China were limited to two social auditors working for foreign companies, including

one that sells in New Zealand. These were contacts recommended by New Zealand interviewees. Given their regular contact with foreigners, these interviews were not sensitive.

Throughout the year in China I undertook numerous informal discussions. These included conversations with foreign and Chinese labour academics, Chinese postgraduate students, foreign unionists, Chinese trade union officials and one government official responsible for implementing health and safety legislation in a small manufacturing town. In the contexts these conversations took place, the interviewees were not at risk.

The understanding I formed from interviews has the following limitations. Due to my process of selecting interviewees, it is possible I missed some perspectives. It is likely business interviewees were biased towards responses that painted their companies in a good light. Their responses were restricted by commercial sensitivities. Furthermore, it was primarily businesses with well-developed initiatives that were willing to speak with me. I have needed to take these biases into account. Despite this, I did manage to speak to several business people opposed to implementing supply-chain labour initiatives, so was not uninformed of their perspectives.

My research was also limited by language barriers. Some informal discussions were in Mandarin or Cantonese. With only stilted Mandarin, I was limited in what I could ask and understand. Even in environments where interpreting was provided, this was sometimes limited by the skills of available interpreters. I may therefore have misinterpreted some experiences.

In addition to personal communication, I also acquired transcripts of the negotiations on the New Zealand-China Memorandum of Understanding on Labour Cooperation, under the Official Information Act.² I also read numerous company websites.

² I requested:

1. Key documents relating to negotiations of the NZ-China Memorandum of Understanding on Labour Cooperation (including proposed drafts).
2. Minutes of any discussions during MoU negotiations in which prison labour, re-education through labour, freedom of association or collective bargaining were mentioned.
3. Minutes of discussions during MoU negotiations in which the second point of the preamble was discussed ("sharing a common aspiration...").
4. Key documents from the NZ-China FTA negotiations which concern technical barriers to trade, exceptions, or China's adherence to ILO conventions.

Secondary Sources

Secondary sources used were academic books and journal articles, reports and websites of NGOs, business associations and international organisations, and online media articles. These were selected by database searches, recommendations and exploring bibliographies of relevant articles. With one or two exceptions, sources have been in English.

My use of secondary sources has been limited by the availability of relevant information. Chinese data on labour conditions is typically of a low quality. My access to Chinese sources has been limited by my painstakingly slow reading of Chinese texts. I have tried to overcome these limitations by relying on research by international experts who can access Chinese sources. In the case of secondary sources on CSR initiatives, commercial sensitivities and transparency barriers have created a bias towards positive case studies. Failed cases of CSR are less likely to be disclosed, particularly where they paint businesses in a poor light. In the New Zealand case, sources on CSR are further limited due to the recent development of this field.

Outline of the Thesis

The thesis has seven chapters, which are organised as follows.

Chapter Two provides an overview of private regulation, and details the development of CSR in New Zealand. I then review the literature on the two key debates about CSR. The first debate concerns whether CSR is an effective tool to improve labour conditions. Important background to this debate is to consider “pro-sweatshop” arguments, that contend that *any* intervention to improve labour conditions is misguided. The second debate concerns the *emergence* of CSR, and whether the competitiveness or political approach best explain this trend.

Chapter Three provides an outline of current labour conditions in China. This discussion establishes the *need* for social responsibility, by outlining the conditions prevalent in many factories that export to New Zealand companies. Next, factors affecting the improvement of labour conditions are discussed: the labour supply, economic pressures, political barriers to workers’ representation and the development of the labour movement. This demonstrates that there are complex factors that determine the state of labour conditions. There are therefore many avenues through which trading partners can contribute towards improvements.

Chapter Four addresses the first two research questions. I examine to what extent New Zealand has turned to private regulation to regulate labour conditions in its offshore supply chains. I also explore whether the competitiveness or political approach best explains this trend. It is argued that social responsibility efforts in New Zealand are at a low level of development, and tending towards private regulation. The competitiveness approach explains these trends in light of businesses' defence and pursuit of competitive advantage. However, the political approach offers a far more comprehensive explanation, taking into account the influence of the neoliberal context, and subsequent state and civil society (in)action.

Chapter Five explores the effectiveness of private regulation for improving labour conditions in China, addressing the third and fourth research questions. After exploring the spread and effectiveness of both common and “best case” examples of CSR practice, it is argued that CSR can bring improvements in *select* aspects of labour conditions in China. However, these are fundamentally limited by CSR’s reliance on market forces. CSR also has potential to cause harmful effects. This makes over-reliance on CSR not only misguided, but potentially counterproductive. It is argued that CSR should be seen as one of many tools to advance labour conditions in China, and implemented with caution. Alternatives should be prioritised.

Chapter Six outlines the possibilities for New Zealand if it were to challenge the current settlement at private regulation and take serious steps to address labour conditions in its offshore supply chains. This chapter answers the fifth and sixth research questions, and provides a framework for action. It is argued that to improve social responsibility of New Zealand businesses would require explicit state action, and ultimately for the Government to impose mandatory requirements and legal sanctions. Short of these methods, New Zealand should promote and resource CSR, but only with acknowledgement of its limitations. Any of these steps would require a shift in power towards confrontational groups, and a willingness to accept costs. For New Zealand to contribute to improving labour conditions in China more broadly would take increased support of the Chinese labour movement and state enforcement. This support could occur through cooperation, highlighting non-compliances, union collaboration and development aid.

Chapter Seven concludes, with a discussion of the limitations of this study and suggestions for future research.

Chapter 2: Private Regulation and the Governance of Labour Conditions

Developed countries are increasingly choosing to address labour conditions in their supply chains through corporate social responsibility (CSR) initiatives, a form of private regulation. This thesis contributes to two key debates concerning private regulation. The first is CSR's effectiveness for addressing supply-chain labour conditions. The second concerns *why* private regulation currently predominates. This chapter introduces private regulation and provides background to the case study of supply-chain labour initiatives in New Zealand. The two debates on CSR are then outlined.

Private Regulation

Private regulation is the formulation and implementation of codes, regulations and standards not enforced by any state (Vogel, 2008). Usually private regulation initiatives are constructed by a firm or industry sector, though occasionally there is collaboration with civil society actors and even states (Bartley, 2005, 2007). However, private regulation mechanisms increasingly develop with no input from public authorities (Fuchs, 2005). The defining feature is that they are *voluntary* (not accountable to states), and that sanctions come from non-government actors or market forces. The rise of private regulation thus has two consequences: first, many standards and practices which were traditionally governed by the state are now *commodified*, made subject to the market. Second, regulation and enforcement roles are *privatised*, moving out of the hands of the state (which can impose legal sanctions for non-compliance), to private actors. Traditional state-centric views of regulation are inadequate (Cutler et al., 1999, p. 4).

Private regulation is used to govern product safety, quality, technical standards, and increasingly social and environmental standards (civil regulation). The most basic forms are guidelines and codes of conduct, adopted at the firm, sectoral and international levels. Examples include the Apple Supplier Code of Conduct (Apple, 2012), the Electronics Industry Code of Conduct (Electronics Industry Citizenship Coalition, 2009), and the international code of conduct for marketing of breast milk substitutes (Utting, 2005b, p. 10). Advanced codes receive third-party auditing, as do standards and certifications. The most developed forms of private regulation are multi-stakeholder initiatives (MSIs), in which a coalition of private and civil society actors collectively negotiate a code. These sometimes include sanctions for non-compliance, such as public disclosure of breaches or expulsion from the association (Gunningham & Rees, 1997, p. 396), though some have no sanctions (for instance the UN Global Compact). While private regulation is technically a form of

“soft law” in that it is not legally binding (Cutler, 1999, p. 284), businesses do face various pressures to participate. In cases where costs of non-participation are high, or where participation is integral to entering a market, private regulation can effectively be *required* (Vogel, 2008, p. 264). Initiatives exist on a spectrum from the “softest” mechanisms (pure self-regulation) to “harder” initiatives requiring some certification of compliance.

Private regulation is not a new phenomenon (Bartley, 2011; Cutler, 1999, 2003; Fuchs, 2005, p. 18-19; Porter, 1999; Vogel, 2008). Industry self-regulation has existed since medieval Europe, involving technical rules and guidelines to improve coordination and lower costs. Certifications were used to indicate product quality, safety and technical standards throughout the 20th century (Bartley, 2011, p. 6). However, private regulation has historically fallen in and out of favour. For instance, private regulation of maritime rules dates back to the medieval period, was displaced by state authority during the late 19th and early 20th centuries, and is now seeing a comeback (Cutler, 1999, 2003).

What has been seen in recent decades has not only been a return to private regulation seen in previous eras, but an explosion in *numbers* of private regulation mechanisms, and their spread to a wider range of policy areas. There are now approximately 300 codes covering numerous economic sectors (Vogel, 2008, p. 262): environmental governance, labour standards, data privacy, marine transport, international finance, advertising, transport of dangerous goods and food safety, among many others (Cutler et al., 1999; Fuchs, 2005; Haufler, 1999, 2001). These mechanisms have risen to hold immense power in many markets. Private standards can act as barriers to market access (Cutler, 1999:315-6; Sinclair, 1999; Vogel, 2008, p. 273), for instance, if certifications become *de facto* requirements for entering a market (Bartley, 2011, p. 13; Huige, 2011, p. 175-6). Private regulation mechanisms can also *assist* in trade access, by providing guidance on necessary legal compliance. This makes the formation of private regulation a site of intense contestation, as participation or non-participation may have significant economic consequences.

While lacking legal sanctions, private regulation is far from illegitimate or ineffective. Industry associations and other mechanisms can regulate effectively. Gunningham argues that private regulation is the “most effective mechanism” for governing futures markets, as peer pressure provides stronger sanctions than distant and unenforced state rules (Gunningham, 1991). Private regulation appears to have effectively prevented overfishing in Turkey (Ostrom, 1990, as cited in Gunningham & Rees, 1997, p. 367) and protected reserve land in Brazil (Gunningham & Rees,

1997, p. 368). Private regulation has also made a “highly significant” contribution to the safety of nuclear power plants (Rees, 1994, as cited in Gunningham & Rees, 1997, p. 369). In New Zealand, private industry associations regulate the legal and dentistry professions (the New Zealand Law Society and Dental Council). Private bodies also regulate advertising standards, the content of print media (Barker & Evans, 2007, p. 12) and insurance practices (BusinessNZ, 2006, p. 12).

The interaction between private and public regulation is complex. In some cases, states have initiated private regulation (Bartley, 2003). It is also common for states to have ongoing involvement, creating a continuum of co-regulation forms (Gunningham & Rees, 1997, p. 365-6; Lipschutz & Fogel, 2002, p. 125; see also Figure 1 in this chapter).³ Co-regulation is seen, for instance, in the regulation of New Zealand broadcasting standards, in which a complaints panel is funded 50 percent each by Government and industry (Barker & Evans, 2007, p. 8). Private initiatives can complement state regulation. Private standards have assisted compliance with environmental legislation in Serbia (Zaric, Gorton, Lowe, & Quarrie, 2008, p. 1, 5) and food safety legislation in the EU, by providing step-by-step guidelines on what compliance entails (Huige, 2011, p. 177). Private regulation can also provide a precursor to state regulation, as soft laws are later “hardened” (Utting, 2005b, p. 11; Vogel, 2008, p. 265). The rise of private regulation does not, therefore, signal the demise of the state.

However, there is evidence that private regulation can undermine public regulation objectives, by “crowding out” more stringent mandatory regulations. For instance, some states have reduced state regulation for factories that have ISO 14001 certification (a private standard of environmental management relying on market sanctions) (Fuchs, 2005, p. 18). Private actors have also sought self-regulation in order to avoid perceived risk of state regulation (Salzmann, Ionescu-Somers, & Steger, 2005, p. 27; Vogel, 2008, p. 268). This raises questions about the effect of private regulation on the pursuit of social goods. As Vogel notes (2008, p. 276), the question is what *mix* of public and private regulation would enable the best governance of global firms and markets? This mix differs markedly between sectors.

The Rise of Corporate Social Responsibility

A significant aspect of the shift to private regulation has been the rise in *civil* regulation, “regulations that govern the social and environmental impacts of global firms and markets without

³ Braithwaite depicts the degrees of state involvement as a pyramid, with self-regulation at the base, and increasing input from state and other actors on subsequent tiers, as necessary to promote compliance (Braithwaite, 2006).

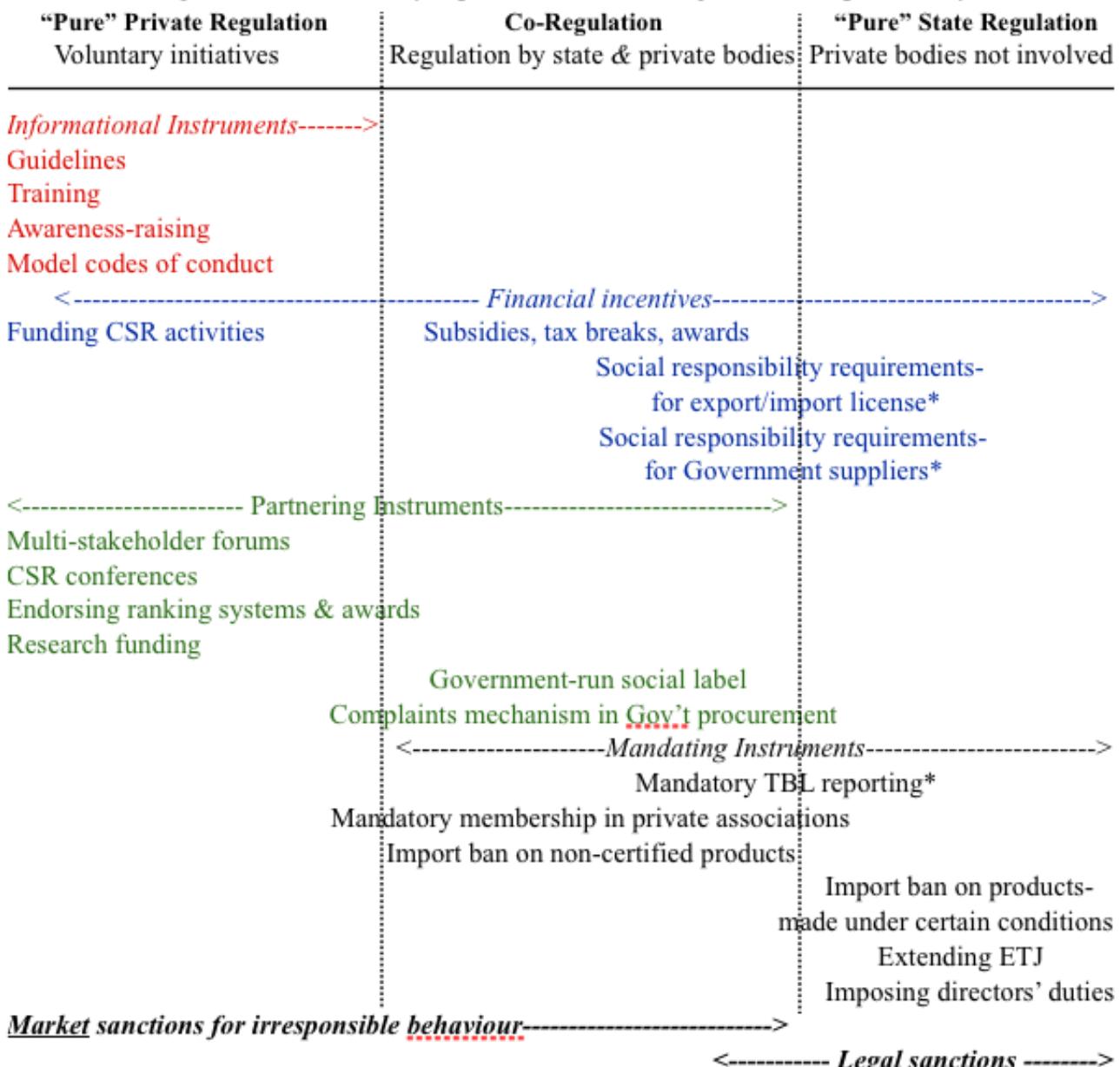
state enforcement” (Vogel, 2008, p. 261). Civil regulation is most commonly referred to as part of corporate social responsibility (CSR), defined as businesses using voluntary initiatives to deliver environmental and social outcomes over and above legal requirements. The umbrella term CSR refers to business initiatives to protect the environment, employees and communities in national and offshore supply chains. Many initiatives constitute civil regulation (such as codes of conduct, standards and certifications), however some aspects of CSR fall outside the purview of regulation (such as community projects and philanthropy). The term “social responsibility” will be used more broadly, referring to all efforts to increase business responsiveness to stakeholders (workers, local communities and the environment). Social responsibility encompasses CSR, but also binding regulation and non-business-led initiatives.

Government policy towards social responsibility can include enabling and incentivising CSR, imposing legal requirements through co-regulation, or imposing legal sanctions for social irresponsibility, as depicted in Figure 1. Policy instruments can be divided into informational instruments, partnering instruments, financial incentives, and legal or “mandating” instruments, as shown (Berger, Steurer, Konrad, & Martinuzzi, 2007, p. 11; Steurer, Martinuzzi, & Margula, 2011). Governments can therefore play an active role in promoting CSR, among a range of tools.

Like other forms of private regulation, CSR initiatives have existed for some time. As early as the 1890s, US consumer movements created a White Label which certified garments produced under fair conditions (Boris, 2003). In the 1930s, similar movements again used private regulation. Organic certifications have grown since the 1970s, and fair trade certifications since the 1980s (Bartley, 2011, p. 6). However in more recent decades civil regulation has expanded to an altogether new scale.

The CSR movement began in force in the 1990s. Firm-level codes of conduct proliferated, along with “triple bottom line” (TBL) reports, which document an organisation’s social, environmental and economic performance (also known as “CSR reports”). The CSR movement initially focused on environmental issues (Bartley, 2007, p. 303; Brammer, Hoejmose, & Millington, 2011, p. 17). The earliest labour-focused codes emerged in the early 1990s (Andersen & Skjoett-Larsen, 2009, p. 77; Harney, 2008, p. 188), though until the end of the decade they were far from commonplace. As codes spread among firms, they also developed at the industry and international levels. While some

Figure 1. Public Policy Options for Promoting Social Responsibility



*These may be considered co-regulation or pure state regulation, depending on their form. Mandatory reporting may be required in the format of, or in cooperation with a private body (such as the GRI). “Social responsibility requirements” also may or may not reference private bodies or CSR certifications. Whether these initiatives fall under co-regulation or state regulation, the sanctions for socially-irresponsible behaviour derive from market forces.

remain guidelines, such as ISO26000 on social responsibility, codes have increasingly conformed to international standards and been made subject to in-house or third-party auditing.

Some codes also developed into certifications, such as ISO14001, certifying environmental management in a company, and labeling schemes, such as the Fair Trade label and Rugmark. The Fair Trade label on products certifies that producers are ensured a fair return and work in acceptable conditions throughout the supply chain (see for instance, Becchetti & Costantino, 2008). Rugmark

certifies that carpets have been produced without child labour in India, Pakistan and Nepal (Nadvi & Waltring, 2004, p. 26). However, there remain few other *certifications* of compliance with supply-chain labour standards. SA8000, certifying a company for taking steps towards providing a decent workplace, and OHSAS 18001 on occupational safety and health, focus on management systems rather than compliance levels (Kortelainen, 2008:433). The overwhelming majority of CSR activity internationally on supply-chain labour issues remains limited to TBL reports and codes of conduct, which involve minimal to modest investment. While to varying degrees foreign companies divert value to auditors, they almost never transfer value to suppliers in order to resource improvements.

In a minority of cases of CSR, businesses join MSIs, or demonstrate greater commitment to transparency, stakeholder engagement and tackling systemic problems. MSIs arose in response to concerns about the “democratic deficit” of CSR initiatives and consensus about the insufficiency of even well-audited codes (Hughes et al. 2008, Bulut and Lane 2010, AMRC, 2006a). Examples in the labour field include Worldwide Responsible Apparel Production (WRAP), the Fair Wear Foundation, the Ethical Trading Initiative (ETI), Workers’ Rights Consortium and the Fair Labour Association (Hughes, 2001; O'Rourke, 2003, 2006). While firms may join MSIs without any genuine change in practice (AMRC, 2006b), *activity* in these mechanisms does demonstrate comparatively high commitment. In addition, in a few highly advanced cases, firms have invested considerable resources in greater disclosure, NGO involvement and efforts to address systemic problems. (They still fall short of *resourcing* improvements in suppliers.) These initiatives are described in Chapter Five.

Many companies that implement supply-chain CSR initiatives are transnational corporations (TNCs), companies with a head office in their “home” country and offices or factories in other “host” countries. Some participants do not have overseas offices or their own factories, but simply purchase from overseas suppliers (whether directly or indirectly). Many New Zealand companies fall into this category. New Zealand companies are predominantly small and medium enterprises (SMEs). In 2011, 97 percent of New Zealand companies employed 19 or fewer staff (Ministry of Economic Development, 2011, p. 5). Many do not have offshore bases. However, while SMEs may have particular peculiar motivations and barriers to take-up of CSR (Collins, Dickie & Weber, 2009), they are in no way precluded from participation in supply-chain labour initiatives. Depending on their degree of clout over the foreign factory, SMEs may be more capable than some larger companies of implementing these initiatives.

As will be expanded in this thesis, all CSR activities are implemented *without* state enforcement. They operate in response to market pressures, as “socially-responsible production” becomes a means of adding value to a product. Thus, while tasks of protecting society and the environment from the hazards of private sector competition are traditionally the role of governments, social responsibility has now been commodified; it has become a product on the market.

CSR in New Zealand

The case of CSR development in New Zealand provides necessary background for understanding the emergence of labour-focused initiatives. CSR in New Zealand is at a low level of development, and like elsewhere, has historically focused on environmental initiatives. Supply-chain initiatives have only recently emerged and are implemented by a minority of businesses. Compared to other forms of CSR, supply-chain initiatives are relatively costly to implement, and address problems largely hidden from consumers. They are therefore a “pinnacle” of CSR practice. As there has been limited research into CSR implementation in New Zealand, some parts of the picture remain unknown.

Triple Bottom Line Reporting

One measurable indicator of business attention to social responsibility is the prevalence of TBL reporting. While reporting does not necessarily reflect a change in behaviour, it does indicate a consideration of CSR issues, and is often a first step towards implementation.⁴ TBL reporting is voluntary in New Zealand. The trends in reporting have been the area of CSR most extensively researched in New Zealand (Bebbington, Higgins, & Frame, 2009; Chapman & Milne, 2004; Davey, 1985; Guilding & Kirkman, 1988; Hackston & Milne, 1996; Hall, 2002; Ho, 2007; Hossain, Perera, & Rahman, 1995; Milne & Gray, 2008; Milne, Tregidga & Walton, 2003, 2004; Ng, 1985; Orr, 2000; Robertson, 1977; Tregidga & Milne, 2006).

New Zealand rates of TBL reporting are extremely low and lag behind other countries (Chapman & Milne, 2004; Kuruppu & Milne, 2009; Milne & Gray, 2008; Milne, Owen, & Tilt, 2001; Nichols, 2005). A 1996 KPMG survey of corporate environmental reporting ranked New Zealand last out of

⁴ The potential for divergence between reporting and practice should be noted. In 2011, the New Zealand company Sanford Ltd. received two New Zealand awards for its sustainability report (Association of Chartered Accountants, 2011). In the same year, it became embroiled in allegations of mistreatment, underpayment and even bonded labour of employees in its immediate contractors (Skinner, 2012).

13 Organisation for Economic Cooperation and Development (OECD) countries (Milne et al., 2001, p. 2). By 2007, only five of New Zealand's 100 largest listed companies produced standalone TBL reports (Ho, 2007), compared to 2008 figures of 37 in Australia, and 60 by leading countries (Kuruppu & Milne, 2009, p. 45). By 2008, the New Zealand businesses reporting on social and environmental impacts numbered no more than "a couple of dozen" (Milne & Gray, 2008, p. 8).

With the exception of a few stellar performers, the quality of these reports is low (Milne, Ball & Gray, 2005; Milne et al., 2003). In 2008, New Zealand had no organisations with reports registered under the Global Reporting Initiative (GRI) (Milne & Gray, 2008, p. 60-61). One study found "no apparent continuous improvement" of report quality (Nichols, 2005, p. 88). Neither do New Zealand companies commonly provide independent verification of their reports (Milne & Gray, 2008, p. 60-61). TBL reporting in New Zealand is thus scarce and of a generally low quality. This indicates that CSR in New Zealand is developing from a low base.

Extent of CSR Implementation

Implementation appears to be more widespread than the level documented in TBL reports, however it remains at an early stage of development. Research documenting implementation in New Zealand is limited (Collins, Lawrence, Pavlovich, & Ryan, 2007; Lawrence, Collins, Pavlovich, & Arunachalam, 2006; Nichols, 2005; New Zealand Business Council for Sustainable Development [NZBCSD], 2010b; Stenger, 2007). Three survey series do monitor the gradual changes in New Zealand. Massey University annually surveyed between 15 and 88 top companies by turnover (Massey University, 1999, 2000, 2001, 2002, 2003, 2005, 2007). Waikato Management school conducted surveys in 2003, 2006 and 2009/2010 which included 500 and 750 businesses of varying sizes (Collins, Lawrence, & Roper, 2007, 2010; Collins, Lawrence, Roper, & Haar, 2010; Lawrence & Collins, 2004; Lawrence, Collins, Roper, & Haar, 2011). ShapeNZ surveyed consumers about businesses' environmental roles in 2007 (ShapeNZ, 2007). It then conducted the online ShapeNZ Fairfax Business and Consumer Surveys of over 1000 business and consumer participants in 2009, 2010 and 2011 (ShapeNZ 2011, as cited in Gibson, 2011a; ShapeNZ 2009, as cited in Mandow, 2009; ShapeNZ, 2010, as cited in NZBCSD, 2010b). The surveys document a gradual increase in CSR activity in New Zealand, with an initial focus on environmental activities.⁵

⁵ Because the surveys were filled out on a voluntary basis, all are likely to reflect greater engagement with sustainability practices than is representative of the entire business population. They nevertheless provide insight into practices and trends.

Environmental Initiatives

While in 2001 the overall level of CSR performance in New Zealand was “modest” (Massey University, 2001, p. 14), surveys indicated “continued steady improvement” in environmental responsiveness (Massey University, 2003, p. 7). The areas of least progress were environmental management systems, stakeholder communication, and supplier programmes. Even the 2007 survey of 15 “leaders” found that few had environmental management systems in place. The surveys also found significant sectoral differences. Heavy industries such as manufacturing, chemicals and pharmaceuticals, and oil or electricity producers were more likely to score highly in environmental activities. “Retail, wholesale and distribution” scored among the lowest (Massey University, 2007).

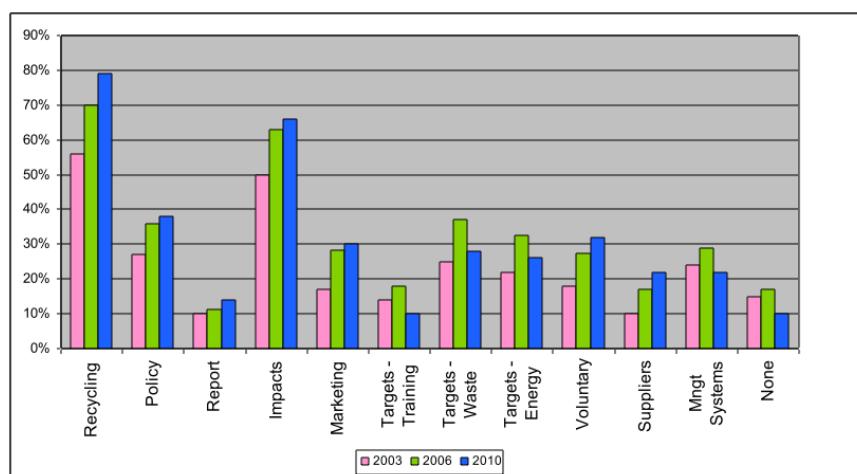
The Waikato surveys document the nature of environmental initiatives among New Zealand businesses (see Figure 1 below). In 2006, 83 percent of respondents had instituted some form of environmental initiative (Collins, Lawrence, & Roper, 2010, p. 483-484). The most common activities were recycling programmes (79 percent of businesses in 2010 [Collins, Lawrence, Roper et al., 2010, p. 4]). Business size had an impact on activity, with smaller businesses more likely to have no environmental practices (Collins, Lawrence, Roper et al., 2010, p. 6). In larger companies there appears to be some degree of institutionalisation of environmental strategy. In 2010, 32 percent of respondents from large firms reported having an environmental manager at their organisation (Collins, Lawrence, Roper et al., 2010, p. 4). While generally the trend was towards increased take-up of environmental initiatives, the recession caused some decline in activities by businesses outside of sustainability networks (Collins, Lawrence, Roper et al., 2010, p. 1). This indicates that these networks are a significant driver of sustainability practice.

Social Initiatives

The Waikato surveys found social initiatives to be more common than environmental initiatives, despite the slower development of research in this area (Collins, Lawrence, & Roper, 2010, p. 479). In 2006, 98 percent of respondents had instituted some form of social initiatives (Collins, Lawrence, & Roper, 2010, p. 488). The most common activities were giving to charity (75 percent of businesses) and job training (p. 486). It is noteworthy that “ethical sourcing” was included in Waikato survey only in 2010.

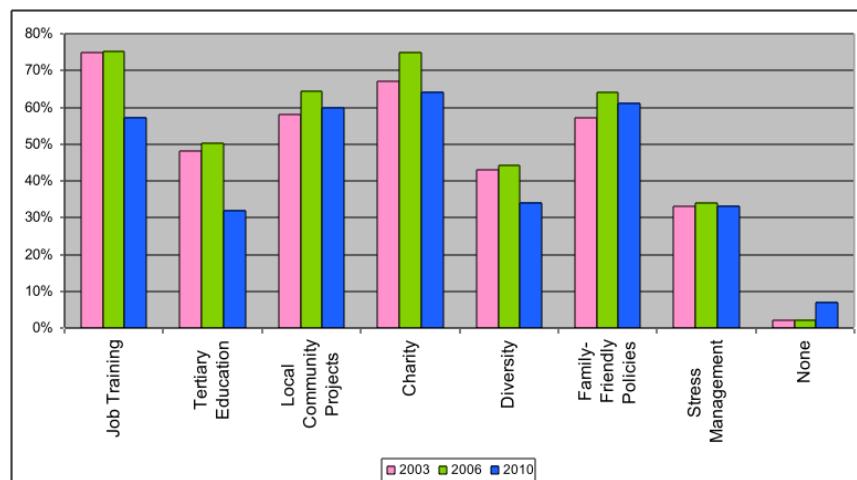
ShapeNZ and Massey surveys document lower involvement, but similar types of social activities. The 2010 ShapeNZ survey found 60 percent of New Zealand businesses were engaged in some form of community or social activities, for instance volunteering, philanthropy or staff education (ShapeNZ 2010, as cited in NZBCSD, 2010b, p. 1; see also, ShapeNZ 2009, as cited in Mandow, 2009). The 2005 and 2007 Massey surveys document similar activities. The 2007 Massey survey notes that CSR is an important goal for leading New Zealand businesses, and that some responses indicate strategic approaches. However, relationships with suppliers “poses a more difficult problem” (Massey University, 2007, p. 8).

Figure 2. Environmental Practices 2003-2010



Collins, Lawrence, Roper et al., 2010, p. 5

Figure 3. Social Practices 2003-2010



Collins, Lawrence, Roper et al., 2010, p. 12

Supplier Programmes

Supplier programmes have consistently been the least-developed area of CSR in New Zealand. This is understandable as they address offshore problems, hidden from consumers, and implementation often necessitates travel or communication with suppliers from foreign cultures. They can therefore be costly and complex to implement. *Environment*-focused supplier programmes can deliver some cost savings (for instance through reduced packaging), and are therefore more appealing to many businesses than *social* supplier programmes. Yet even environmental supplier programmes have been an area in which New Zealand has scored “very poorly” (Massey University, 2000, p. 21). In each year of the Massey surveys (1999-2007), “supplier environmental programme” was consistently the lowest scoring section. Scores generally improved, indicating that more companies had programmes or were planning them. However, even in the 2007 survey of companies leading in CSR, only “a few” had put in place environmental purchasing policies (p. 20).

The Waikato surveys, with a much larger survey cohort, provide a better picture of the spread of environment-focused supplier programmes. In 2003, 10 percent of respondents reported to have such programmes (Collins, Lawrence, & Roper, 2010, p. 483). By 2006, this had increased to 18 percent, and by 2010 to approximately 23 percent of respondents (Collins, Lawrence, Roper et al., 2010, p. 5). These findings equated to 39 percent of respondents affiliated with a sustainability network, and 11 percent of those not affiliated. Firm size was insignificant (p. 31-32). These findings demonstrate growth in implementation of environment-focused supplier programmes. However, without more specific research, it is uncertain what these initiatives entail. To what degree programmes consist of mere discussions with suppliers, contracted agreements, certifications or codes of conduct remains unknown.

Supply-Chain Labour Initiatives

Supply-chain labour initiatives have been extremely rare in New Zealand, but are gradually becoming more numerous. Prior to 2005, dialogue on managing supply-chain labour conditions remained “in its infancy in New Zealand” (APEC Human Resources Development Working Group, 2005, p. 15). No major surveys questioned businesses about supply-chain *social* responsibility, indicating a lack of activity and awareness in this area. An informal 2005 survey by the *New Zealand Herald* found only “a handful” of businesses with checks in place for their suppliers (Chan, 2005). In the 2005 Massey survey, businesses were asked about initiatives to address “social

responsibility in the supply chain” for the first time. Fourteen of 30 respondents reported having some form of audits in place (Massey University, 2005, p. 29). However, the survey did not probe into what social criteria were addressed, what audits entailed, or what proportion of suppliers were covered. Respondents may have re-cited environmental supplier programmes.

In recent years, initiatives appear to have become more numerous. By 2007, “a few” of the fifteen respondents to the Massey survey were “grasping the challenge of supply-chain social responsibility” (2007, p. 25-26), albeit through poorly monitored initiatives. One company reported that it checked suppliers against a code. A few more companies scrutinised environment and health and safety records of their suppliers, or were in the process of developing codes of conduct or procurement policies. These initiatives were undertaken by a minority of companies recognised as CSR leaders. They monitored progress only through meetings with suppliers, or, in some cases, audits of “high risk” suppliers. The survey notes that “monitoring and measuring progress in the area of supply and procurement is still relatively new to companies” (p. 8; see also Stenger 2007, p. 170).

Since 2010, more information has become available, as “ethical purchasing policies” were for the first time included in the Waikato survey. While not defined in the survey, ethical purchasing policies were included as a “social activity”, and were a category distinct from “environment-focused supplier programmes”. Thirty-eight percent of respondents reported having ethical purchasing policies (Collins, Lawrence, Roper et al., 2010, p. 10). There was no significant difference between small and large businesses (p.33). Affiliation with sustainability networks was a significant factor, roughly doubling the likelihood of involvement in ethical purchasing. Fifty-two percent of affiliated businesses reported ethical purchasing policies, compared to 26 percent of those not affiliated (Lawrence et al., 2011, p. 13).

However, the 2011 ShapeNZ Fairfax Business and Consumer Survey reported similar levels of activity for environmental and social supplier programmes *combined* (ShapeNZ 2011, as cited in Gibson, 2011a). Thirty-four percent of managers or executives reported their organisation to include social *or* environmental criteria in their supplier terms and conditions. Twenty-six percent said they had discontinued a supplier relationship for poor performance in these areas. These figures suggest that the Waikato findings may be overly optimistic. The findings suggest it may be well under one third of businesses that engage in *labour*-focused CSR initiatives.

There has yet to be focused research into what ethical purchasing and supplier programmes entail or to what degree they are implemented. (What companies determine as “ethical” has not been defined, and policies may concern only suppliers within New Zealand). Focused research is needed to determine what proportion address labour issues. Nevertheless, from the limited information available, these initiatives do appear to be an area of growth in New Zealand.

However, there is considerable contention internationally about the *effectiveness* of private regulation to deliver outcomes of social responsibility. There is also contention about *why* CSR tends to emerge rather than more effective alternatives. Both questions are pertinent to a discussion of what it would take to improve supply-chain labour conditions. Before turning to these debates, an important issue must be addressed.

Why Worry About Poor Labour Conditions? The Pro-Sweatshops Argument

There are arguments that *any* intervention to improve labour conditions is misguided and detrimental to the impoverished workers it aims to help. This literature typically refers to and defends “sweatshops,” defined as “workplaces employing vulnerable labour and which systematically fail to pay a living wage and to comply with labour and health and safety legislation” (Montero, 2011, p. 5). There are many authors that defend sweatshops as “tickets out of poverty”, workplaces freely chosen, and a vast improvement on impoverished agricultural work or unemployment (Bhagwati, 2000; Kristof, 1998, 2002, 2006, 2009; Kristof & WuDunn, 2000; Krugman, 1997). To these authors, sweatshops are a temporary and necessary phase in industrial development, and improving conditions can actually *harm* workers, by raising costs and creating unemployment (Academic Consortium on International Trade, 2000 as cited in Miller, 2003, p. 9). This argument must be addressed to justify any action towards the improvement of labour conditions.

Does Improving Labour Conditions Harm Workers?

There is truth in the argument that sweatshops are a step up for impoverished workers. The “free choice” of these jobs is dubious given workers’ multiple vulnerabilities, such as irregular immigration status and a desperate economic situation (Miller, 2003, p. 7). In some cases, the persistence of forced labour means that workers are coerced by even more than these vulnerabilities. Nevertheless, the contribution of sweatshops to the betterment of livelihoods should

indeed be celebrated. The spread of foreign-invested factories in developing countries does provide employment, and the conditions in multinational firms have been found to surpass domestic factories in many cases (Powell & Skarbek, 2006). However, this is no reason to ignore the desperate need to improve these conditions. Instead, improving sweatshop conditions must be part of broader action against exploitative working conditions, in factories and in rural areas. Miller advocates linking anti-sweatshop movements to those on ending poverty, so that action is also taken for the “brothers and sisters” of factory workers left toiling in the informal and agricultural sectors (2003, p. 17).

The argument that improving conditions *harms* production workers is not supported by evidence. Numerous cases contradict the claim that improving labour conditions results in unemployment. Pollin, Burns and Heintz, using data from forty-five countries over the period 1992-97, found no statistically significant relationship between real wages and employment growth in the apparel industry (2001, in Miller, 2003, p. 12). A study from the US showed that the imposition of minimum wage laws did not increase unemployment, as was feared (Rothstein, 2005, p. 43-4). Furthermore, an analysis from Indonesia found that wage increases from anti-sweatshop activism did not harm employment, perhaps due to the large profit margins of brand companies (Harrison & Scorse, 2006, p. 14-5). While global competition does mean that rising costs can deter investment, labour conditions are just one factor. For instance, costs of raising standards can be offset by improved productivity. Falling employment is thus not an inevitable consequence of improving conditions. Small wage rises make a substantial difference to workers (Rothstein, 2005, p. 44), and, as in the examples cited above, can be absorbed without raising unemployment. Objections to this merely distract from the need for redistribution of wealth in production chains, and justify the current excessive disparities (Montero, 2011, p. 12).

Are Sweatshop Conditions Just a Temporary Phase of Industrial Development?

The second major argument from sweatshop defenders is that poor labour conditions are a temporary phase, an “essential first step” in industrial development (Conforti, 2006; Kristof & WuDunn, 2000; Krugman, 1994, in Miller, 2003; Miller, 1997).⁶ These authors assert that for the Asian Tigers (Hong Kong, South Korea, Singapore and Taiwan) and the industrialised West, labour-intensive industries were stepping stones to improved conditions before they outgrew this

⁶ Bender and Greenwald note this view also contains traces of racism typical of early 20th C anti-sweatshop activism, in which the sweatshop was seen as primitive and foreign. The return of sweatshops in the US, discussed below, puts to rest these arguments (Bender & Greenwald, 2003, p. 12).

phase through market-led development and productivity increases (Krugman, 1994, in Miller, 2003, p. 12). Although individual conditions may be horrible, they are “representative of a whole generation sacrificed in varying ways, and to varying degrees, for the future of the country” (Conforti, 2006, p. 120-121). These arguments imply that action need not be taken on poor labour conditions, as they will more or less automatically become obsolete.

These arguments ignore the historical record in which far more than economic development has been required to improve labour conditions (Boris, 2003; Miller, 2003; Rothstein, 2005). Historians stress that improved labour conditions are the product of continuous struggle. The history of the US garment industry provides but one example (Bender, 2004, p. 12-13; Boris, 2003, p. 207; Greenwald, 2003, p. 82; Ross, 2004, in Montero, 2011, p. 50; Rothstein, 2005, p. 45). In the 1890s, abysmal conditions in US workplaces (see Montero, 2011, p. 48) ignited a movement of unions, consumers and reformers. These groups were instrumental in provoking leaps forward in state and federal legislation and enforcement. Tripartite alliances of government, labour and business also supplemented enforcement by government inspectors (Bender & Greenwald, 2003, p. 9). Unions and consumer groups were a necessary addition to ensure legislation was enforced. It was thus the combination of these movements and government protection, not merely economic development, that led to an almost sweatshop free era in the US from World War II to the 1970s. Political struggle was essential, as was also seen in Britain, France, and other European countries (Bender & Greenwald, 2003, p. 9; Boris, 2003, p. 207).

The importance of this struggle is highlighted by the re-emergence of sweatshops in the highly-industrialised US (Ross, 2004, in Rothstein, 2005, p. 45). Since the 1970s, as union movements have been weakened, sweatshops have returned (Montero, 2011, p. 64-65). The Reagan administration also reduced funding for labour inspectors who monitored wage levels and working hours, and overturned bans on homework (Boris, 2003, p. 213; Greenwald, 2003, p. 78). Sweatshops are not, therefore, a temporary phase of low industrialisation, and progress a direct product of economic development. Rather, labour conditions are the product of political action. Specifically, labour conditions reflect unions’, consumers’ and reformers’ ability to *maintain* legislative protection and enforcement, a capacity that waxes and wanes with the political context. In this neoliberal era, the struggle for reform is, if anything, more sorely needed.

A final response to proponents of sweatshops is that we can do better (Collins, 2003, p. 411; Miller, 2003). Even if sweatshop phases have been seen in other countries, “nothing requires us to go that

route again” (Bhagwati, 1997, as cited in Miller, 2003, p. 16). Avenues for international cooperation, and to require greater business responsibility have progressed. Technology, legislation and enforcement methods can be transplanted to alleviate suffering. Developed countries can afford to contribute to the betterment of conditions. Without corresponding efforts to improve conditions, justifications for continued use of sweatshop labour do not withstand scrutiny.

The Effectiveness of Private Regulation for Improving Working Conditions

Having settled that action on poor labour conditions is needed, the question is whether private regulation is a useful route to take. The ability of private regulation to improve supply-chain working conditions is hotly contested. There are three positions in this argument: those who view CSR as effective, those who believe its effectiveness is severely limited, and those who believe it is counterproductive.

CSR is Effective for Improving Labour Conditions

Many authors argue that CSR is an effective means of regulating offshore supply chains (Cashore et al., 2004, p. 4, in Bartley, 2007, p. 297-298). Proponents point to the theoretical advantages of market mechanisms over government regulation (Nadvi & Wältring, 2001, as cited in O'Rourke, 2003, p. 4). Others back arguments with successful case studies. They also argue that CSR will inevitably spread as a result of market forces. This view, of the market and therefore CSR as “the solution”, is an unspoken assumption in management literature on CSR implementation (for instance, Andrew W. Savitz & Weber, 2006; Brammer et al., 2011). (This literature often refers to “ethical sourcing” and “supply chain management” rather than CSR.) This pro-CSR view is also commonly held by businesses and business organisations (for instance, Business for Social Responsibility, 2002). This view puts faith in the market to deliver improved labour conditions.

Many herald CSR for its speed, flexibility, sensitivity to market circumstances and capacity for greater effectiveness than government regulation (Gunningham & Rees, 1997, p. 365-366; Nadvi & Wältring, 2001, as cited in O'Rourke, 2003, p. 4). Government enforcement of labour standards has its own shortcomings. Laws can be absent, standards unrealistic, and monitoring plagued by corruption or lack of resources for stringent checks. CSR can fill these gaps. Standards in codes of conduct can also be adjusted to a level realistic enough to promote improvements. While national laws necessarily set high standards, enforced through sanctions, these are not necessarily the most

effective means of encouraging improvements. High government standards may simply be ignored. The rectification periods offered by many CSR mechanisms may more effectively encourage improvements than do government sanctions, which can encourage suppliers to conceal problems. Furthermore, the economic clout of business partners may more effectively motivate improvements than the requirements of corrupt or incompetent officials (personal communication with social auditor, 2011).

Advocates back up these principles with a variety of successful case studies. In the manufacturing industry, CSR initiatives have increased the frequency of factory inspections and reduced accidents (personal communication with social auditor, 2010), improved worker health (Business for Social Responsibility, 2010a), helped establish factory health and safety committees (Association for Sustainable and Responsible Investment in Asia, 2002, p. 34) and in some cases reduced overtime and increased wages (Ramaswamy, 2005). Proponents use such cases to argue that CSR is successful. It should be noted that businesses often deny access for research on CSR due to commercial sensitivities and fear that findings will expose persisting violations. They usually grant access only when confident of a good report. However, in literature which assumes the potential effectiveness of CSR, any non-compliances that are reported are attributed to poor implementation, for instance, poorly-trained auditors. Problems are not depicted as a structural failure of CSR. Those who believe in CSR's effectiveness thus advocate putting energies into improving CSR methodology, in order to iron out these problems (Brammer et al., 2011, p. 50; Kortelainen, 2008).

Proponents of CSR also argue that it is effective as a means of regulation broadly. They argue that the "business case for CSR" will ensure its spread, as businesses seek to do good as a strategy for business success (Business for Social Responsibility, 2010b; Hart, 2005; Kemp, 2001; Savitz & Weber, 2006). The business case holds that CSR is good for profits, as it improves a business's reputation, manages risks, attracts customers and employees, and seizes opportunities for efficiency and position in socially-responsible markets (Holliday, Schmidheiny, & Watts, 2002; Porter & Van der Linde, 1995, in Utting 2005a, p. 379). Some further argue that CSR will lead to a "race to the top", as businesses compete to "ratchet up" labour standards (Auld, Bernstein, & Cashore, 2008, p. 4; Sabel, Fung, & O'Rourke, 2000). In the view of advocates, CSR thus has potential to be a widespread, effective regulation method, if given time to develop in response to market pressures.

CSR is of Limited Effectiveness for Improving Labour Conditions

Opponents argue there are inherent limits to the effectiveness of private regulation. While most critics acknowledge that CSR can bring some positive outcomes (Bulut & Lane, 2011; Chan, 2005; Prieto-Carron, 2006; Yu, 2008), many note that its spread and scope are fundamentally limited by its voluntary nature and reliance on market forces (Aaronson, 2007a; AMRC, 2006b; Chang, 2004; Doane, 2005; Haufler, 2001; Lipschutz & Fogel, 2002; O'Rourke, 2006; Pun, 2006, Clean Clothes Campaign, 2005). Buyers almost never share the costs of implementation, but instead demand compliance at the same time as lower prices. CSR therefore does not build capacity among suppliers incapable of improving conditions. Lack of transparency and inadequate auditing are named as further problems (AMRC, 2006a; Bhushan, Prieto-Carron, Lund-Thomsen, Chan, & Muro, 2006; Blackett, 2004; Gunningham & Rees, 1997, p. 370; O'Rourke, 2002; Pun, 2005a).

In the view of these authors, CSR strategies, as market mechanisms, are highly vulnerable to market failures. Consumers are the primary actors to reward or sanction CSR behaviour, yet they have imperfect information, divided loyalties, few and simplistic options for action,⁷ and are likely to be fickle or apathetic. At the same time, companies face a fundamental conflict of interest, as their profitability is enhanced by extracting maximum value from their labour force (AMRC, 2006c; Blackett, 2004; Bulut & Lane, 2011; Pun, 2005a). In the view of these authors, the “business case” for CSR therefore applies only in very limited cases. While to an extent higher labour standards are good for business, where they conflict with profitability, ethical principles are sacrificed (Doane, 2005). In most circumstances, the weak consumer driver cannot overcome businesses’ conflict of interest.

In the area of supply-chain labour initiatives, the business case is particularly weak. While other forms of CSR (for instance recycling programmes) can be pursued for direct cost benefits, supply-chain labour initiatives are more likely to be *costly* to firms. Any cost benefits that may arise from improved conditions, such as enhanced productivity from healthier workers, would likely be accrued by the offshore suppliers; not the foreign company buying from them. The business case for CSR therefore applies to supply-chain labour initiatives only insofar as initiatives preserve or improve reputation, or prevent other costs.

⁷ Consumers can act only through boycotting products, or as citizens, pressuring for regulation. The numbers and types of sectors, companies and products able to be “named and shamed” is very limited. Furthermore, businesses are inconsistent. How should consumers respond if a firm is doing well in one area, and poorly in another? (Utting, 2003, p. 26).

These authors argue that market pressures can force supply-chain labour initiatives only in very select circumstances. CSR is more likely to be implemented where there is threat of government or international regulation, low economic competition, high probability of activist pressure, high asset specificity (business tied to a specific locale or production process, increasing the likelihood of long-term customers), high importance of reputation, high levels of information exchange and CSR consensus within the industry (Haufler, 2001, p. 3). A further factor is the economic clout of the foreign company over its suppliers, influenced by its relative size, its significance as a customer, and whether it sources directly (AMRC, 2005). To the extent that these factors align, social responsibility is more likely to be provided by the market. However, confluence of these factors is rare (Haufler, 2001, p. 3). Market pressures are thus insufficient to push CSR into all sectors and tiers of the supply chain (AMRC, 2006c; Blackett, 2004; Pun, 2005a; Yu, 2008, p. 296). They are also insufficient to push for consistent implementation, and deepened scope of CSR initiatives (Chang, 2004; Doane, 2005; O'Rourke, 2006).

These limitations are seen in CSR's spread primarily to industries visible to consumers, for instance toys, apparel, sports equipment and electronics. The limitations are evident even within these industries, as businesses who implement CSR initiatives are undercut by those who do not. This appears to motivate some businesses to seek government regulation in order to create a "level playing field". This may have been behind one unusual case in 1999, in which Levi Strauss and other US companies contacted the Chinese leadership, asking it to more strongly regulate labour standards (Emerson, 2000, as cited in Pun, 2006).

Critics therefore argue that even while CSR may be improved in various ways, it remains structurally flawed. At best, CSR is merely one tool among many (Compa, 2008, p. 6; Haufler, 2001, p. 121; Vogel, 2005, p. 3; Zarsky, 2002). These authors argue that CSR is an inadequate substitute for alternatives, and advocate stronger additional (or alternative) measures.

The limited effectiveness of CSR can be seen by examining the role of private regulation in US labour history. In the early 19th century, the "White Label" served as a symbol around which the National Consumers League organised to win stronger legislation and enforcement (Boris, 2003, p. 206). This labeling scheme was administered by the National Consumers League, and was given to manufacturers who passed inspections. By 1904, sixty factories had earned the label. However, the White Label was dropped in 1918 to prevent competition with collective bargaining. By this time

collective bargaining had won higher standards, and manufacturers' promotion of the label's lower standards was counterproductive (Boris, 2003, p. 208). In the 1930s, private regulation was again used. Tripartite boards formulated hundreds of codes of conduct, marking compliance with a "Blue Eagle" symbol. However, despite state backing of this system, enforcement was sporadic. Unions and consumers instead pushed for (and won) the Fair Labour Standards Act (Boris, 2003, p. 211).

As this history shows, private regulation was useful but insufficient for long-term progress on labour standards. The real progress came as a result of union, consumer and reformers' pressure for legislation and enforcement. Private regulation was one of many tools. These limitations of CSR occurred in a domestic context. In the context of transnational supply chains, where consumer pressure must be rallied in support of overseas (unseen) workers, and CSR mechanisms often lack government backing, the potential of CSR seems even more limited.

Recent activity at the UN has also emphasised the limits of private regulation. The UN has made its own efforts to promote private regulation, with the development of the UN Global Compact, now the largest private business code (Vogel, 2010, p. 72). However, in 2008 the UN developed the voluntary Protect, Respect and Remedy Framework. This outlines three areas of responsibility: the State duty to protect against human rights abuses by third parties, including business enterprises; the corporate responsibility to respect human rights; and the need for victims to have greater access to remedy (United Nations Human Rights Council [UNHRC], 2009, 2011). In doing so, the Framework is the first international instrument to highlight the areas of *state* action necessary to regulate global supply chains. This new focus could be interpreted as a high-level recognition of the limits of private regulation. The Framework therefore provides a useful model for state action (discussed in Chapter Six).

CSR is Counterproductive for Improving Labour Conditions

To some critics, CSR is not only of limited effectiveness. Some view it as *counterproductive*, having the potential to undermine protection for workers. There are concerns that the CSR movement hinders unionisation (Compa, 2001; van Regenmortel, 2010) and divides NGOs supporting the labour movement (Jeffcott & Yanz, 2000; van Regenmortel, 2010). There are concerns that CSR can undermine local labour law enforcement (AMRC, 2011b; Bhushan et al., 2006; Compa, 2008; Fuchs, 2005, p. 18; Justice, 2001, in O'Rourke, 2006) or even reduce the perceived need for government regulation (Braithwaite, 1993, p. 91 in Gunningham and Rees,

1997, p. 370; International Labour Organisation, 1998; Nadvi & Wältring, 2001). There are also concerns about the effect of the rise of private regulation on democratic governance (Bhushan et al., 2006; Blackett, 2004; Chang, 2003, as cited in AMRC, 2005; Cutler, 1999, p. 301; Lipschutz & Rowe, 2005, p. 64; Pun, 2005a). Critics are further concerned that over-reliance on CSR may distract from necessary alternatives (Hui, 2011).

While these problems may be unintentional side-effects of well-intentioned initiatives, not all authors see them this way. Some see CSR as a charade, a corporate strategy *intended* “to deceive the public into believing in the responsibility of a[n] irresponsible industry” (Braithwaite, 1993, p. 91, in Gunningham and Rees, 1997, p. 370). TNCs’ rhetoric about labour conditions does indeed ring hollow, where they demand improvements, but make no contribution to resourcing them. Rowe argues that the primary motivation for CSR is “to quell popular discontent and the political change that discontent might propel” (2005, p. 132). Many critics therefore suggest that the rise of CSR be opposed, to allow a focus on hard law or worker organising (Christian Aid, 2004, p. 14, in Lipschutz and Rowe, 2005, p. 166). Alternatively, critics argue that CSR should be implemented only under certain conditions, for instance high worker participation and acknowledgement of CSR’s limitations (Compa, 2008, p. 6).

The effectiveness of private regulation is thus highly contested. However, the CSR movement continues to grow, and many states are reluctant to pursue alternatives. Explanations for the continued focus on private regulation are necessary.

The Emergence of CSR as a Method for Improving Labour Conditions

The second key debate in this thesis is why CSR tends to emerge rather than alternatives. Numerous authors describe the context in which CSR has emerged. A common starting point is the trend towards globalised production and the complexity this has created in international supply chains (Bartley, 2007, p. 298; Cutler et al., 1999, p. 5-6; Lipschutz & Rowe, 2005, p. 25; Vogel, 2008, p. 266). Alongside these developments has been the rise in power of corporations, to the point that they control resources and wield influence comparable to many states (Cutler et al., 1999, p. 5-6). States have proven unable (or unwilling) to regulate increasingly complex international supply chains, or to rein in the power of business (Cutler et al., 1999, p. 8-9; Vogel, 2008, p. 266). Multiple attempts to do so through international law have failed (Cutler, 1999, p. 295-297; Johns, 1993, p.

897; Lipschutz & Rowe, 2005, p. 32). It is in the context of this “regulatory deficit” that private regulation has emerged (Lipschutz & Rowe, 2005, p. 162; Rowe, 2005, p. 25).

Activists have made numerous attempts to close this regulatory gap. Societies have borne the negative externalities produced by unregulated business, such as damage to the health of workers and the environment. The resulting injustices have sparked a “double movement” of activists seeking reactive protections (Polanyi, 1944). This social activism is itself increasingly globalised (Cutler et al., 1999, p. 15; Lipschutz & Rowe, 2005, p. 1). Many activists operate through “confrontational groups”, non profit organisations that “function as corporate watchdogs, blacklist ‘irresponsible’ corporations, arrange for public shaming campaigns, take corporations to court, and lobby for the taming of [TNCs] through national and transnational governance structures” (Shamir, 2004, p. 647). These groups include some consumer groups, environmental and labour NGOs. Trade unions and tertiary institutions also play some “confrontational roles” (such as lobbying, and monitoring corporate activities respectively). The confrontational groups and corresponding activism has provoked defensive reactions from businesses. Many depict CSR as one such reaction (Gunningham & Rees, 1997, p. 392; Klein, 2000, p. 430, in Lipschutz and Rowe, 2005, p. 148; Lipschutz & Rowe, 2005, p. 19; Potoski & Prakash, 2005 in Bartley, 2007, p. 299; Vogel, 2008, p. 261).

Authors also point to the influence of business norms around socially responsible production (Gunningham & Rees, 1997, p. 376-7; Haufler, 1999, p. 213; 2001). There has been a growing trend towards business responsibility for stakeholders (see, for instance, the literature on stakeholder capitalism: Allen, Carletti, & Marquez, 2009; Freeman, 1984; Freeman, Martin, & Parmar, 2007; Haufler, 1999, p. 201; Kelly & Gamble, 1997). Haufler (1999) argues that norms of eco-efficiency have influenced business behaviour even *beyond* those industries directly visible to consumers. The influence of social responsibility norms are also visible in the chemical, forestry and nuclear power sectors (Gunningham & Rees, 1997, p. 377). These norms are often spread by business-led sustainability organisations (BSOs): networks or councils of businesses which exist to promote business participation in sustainability discussions and practices. Many authors cite the growing social responsibility norms as influencing the emergence of CSR.

A further factor cited is the neoliberal context and the corresponding shift from “welfare” to “competition” states (Cutler, 1999, p. 299-300; Gunningham & Rees, 1997, p. 363). As states seek to maximise growth and competitive advantage by liberalising trade, “costly” regulatory protections

are unpopular (Vogel, 2008, p. 264). In addition, business actors enjoy growing legitimacy in the eyes of policy-makers and the public (Cutler et al., 1999, p. 16; Hall & Biersteker, 2002; Vogel, 2008, p. 265-6). In this context, market-based solutions are increasingly favoured (Bartley, 2003, 2007; Haufler, 2001; Vogel, 2008, p. 263).

While these factors are all likely to contribute, these descriptions do not explain the rise of private regulation over alternatives. A number of questions are unanswered: Why were pursuits of binding regulation unsuccessful? Why did business pursue CSR rather than alternatives as the means to defend its reputation?⁸ Why did those seeking competitiveness accept *any* form of regulation at all? The context described could have led to national and international regulation, purely symbolic commitments or even ad hoc or non-systematised efforts (Bartley, 2007, p. 298). Why private regulation emerged over alternatives demands explanation.

Approaches to explaining the rise of private regulation for addressing supply-chain labour conditions can be loosely grouped into two categories (Cutler et al., 1999, p. 336; Keohane, 1988). The first category focuses on *individual actors* as the unit of analysis. These explanations attribute the rise of private regulation to the preferences and capabilities of individual actors (mainly firms) as they seek to increase competitive advantage. The second category of explanations focuses on deeper structures, and systemic or social factors. These approaches explain the rise of private regulation as a result of the political context, resulting power imbalances, and historical trends. The boundaries between these two categories are not absolute. Indeed, one explanation offered by Cutler et al (1999) bridges both.⁹ For this analysis, I outline two contending explanations which do fit within the category divisions above. The following explanations are based on the *market-based* and *political* approaches delineated by Bartley (2007). As I supplement Bartley's *market-based* approach with other authors, I use the title "competitiveness approach" to distinguish it from his original work. Both approaches are necessary to explain the rise of private regulation.

⁸ In the outlier case discussed above, Levi Strauss contacted the Chinese leadership, asking it to more strongly regulate labour standards (Emerson, 2000, as cited in Pun, 2006).

⁹ They offer "power dynamics" as one explanation for the rise of private authority (of which private regulation is one element). As they show, power operates in two ways. Firms pursue private authority for the power *benefits* likely to result (a competitiveness explanation). *Existing* power also affects firms' ability to pursue private regulation (a political explanation). While interesting to consider separately, power dynamics play a significant role within both competitiveness and political approaches. I cover the contribution of power within the other explanations.

The Competitiveness Approach: Private Regulation as a Defence or Pursuit of Competitive Advantage

A number of authors explain the emergence of private regulation as the result of actors seeking to maximise competitive advantage, either by reducing costs and uncertainty in the market or by proactively pursuing power or a favourable market position (Cutler et al., 1999; Gunningham & Rees, 1997; Potoski & Prakash, 2005; Spar, 1998; Spar & Yoffie, 2000 in Bartley, 2007, p. 299).¹⁰ In the context described above, businesses face risks and uncertainties, all of which threaten their competitive position. They also face an opportunity to improve their power, and pursue market leadership. From the perspective of businesses, cooperation in private regulation schemes can bring collective benefits (Bartley, 2007, p. 299).

In Bartley's *market-based* approach, businesses are the dominant actors, and the rise of CSR is seen as an inevitable market *solution* to the problem of the regulatory gap (Bartley, 2007). In this view, businesses have shaped an institutional response to preserve their reputations and market positions, and to minimise market disturbance from activist activity. (Firms' adoption of social responsibility norms, and the promotion of these by industry associations, can be seen as part of this strategy.) Private regulation is therefore a rational response to incentives, risks and uncertainties in the market. Other authors offer similar explanations. Cutler et. al (1999, p. 336) argue that private authority is pursued to reduce costs and uncertainty for private actors. Gunningham and Rees (1997, p. 380) note that the uncertainty created by activist pressure was influential in sparking private regulation in the forestry sector.

An uncertainty for businesses that Bartley hints at, but does not elaborate upon, is the threat of costs of binding regulation. Several authors note that this threat increases businesses' willingness to pursue private regulation (Aalders, 1993, p. 75, in Gunningham and Rees, 1997, p. 401; Purchase, 1996, p. 3, in Gunningham and Rees, 1997, p. 401; Rowe, 2005; Shamir, 2004). The risk of state action may have provoked private regulation in the wake of crises in the chemical and nuclear industries (Gunningham & Rees, 1997, p. 380; Vogel, 2008, p. 267). The modern CSR movement may even have been provoked by the threat of binding codes of conduct on TNCs sparked in the 1970s (Rowe, 2005). Under certain circumstances, pursuit of binding regulation may be *beneficial* for competitive advantage. Businesses advanced in social responsibility may seek Government assistance to create a level playing field, to protect their competitive advantage being undercut by

¹⁰ Cutler et al use the language of "efficiency" rather than competitive advantage.

irresponsible competitors. (This may explain the Levi Strauss case mentioned in Note 8).

Businesses may also pursue binding regulation for reputational benefits. However, these cases are rare. For most businesses, the costs of binding regulation would hinder competitive advantage, and is therefore to be avoided. In many cases, risk of regulation is low (Vogel, 2008, p. 268); yet, where this risk is present, firms pursuing CSR can be seen to be acting to minimise disturbance (and costs arising) from binding regulation. This is a useful addition to Bartley's approach.

A further factor is firms' pursuit of private regulation for the anticipated benefit of increased *power*. Power is a significant benefit to competitive advantage. Cutler et al. argue that anticipated power benefits arising from private authority (of which private regulation is one element) is a more significant motivation than efficiency gains (ie. reduced costs) (1999, p. 338-44). Businesses may undertake CSR either to strengthen their power, or to defend it. Acknowledging the pursuit and defence of power further strengthens Bartley's market-based approach for explaining the rise of private regulation.

A final addition is the proactive pursuit of market leadership. Businesses' pursuit of competitive advantage can be proactive as well as defensive, as businesses undertake CSR to position themselves favourably in social responsibility markets. With these additions I refer to this explanation as the competitiveness approach.

It is important to note the role of the business case for CSR in underpinning the competitiveness approach. Despite the dubious connections between CSR and profits, the business case is widely promulgated (De Schutter, 2008, p. 217; Shamir, 2011, p. 329). To the extent that CSR is perceived as profitable (and social *irresponsibility* perceived as costly), it is an easy assumption that CSR will inevitably arise due to market forces. The competitiveness approach appears compelling.

Despite Bartley's focus on firms, the competitiveness approach could also be seen to explain promotion of private regulation by *states*. Many authors attribute states' pursuit of private regulation to their desire to reduce costs of state regulation and enforcement, reduce burdens on business, and thereby increase national competitiveness (Abbott & Snidal, 2000, in Vogel, 2008, p. 264; Morth, 2004, in Vogel, 2008, p. 264; Shelton, 2000, in Vogel, 2008, p. 264). It is also possible that states may promote private regulation in order to gain power in international fora which favour liberalised trade. To this extent, the competitiveness approach appears to explain states' promotion of private regulation.

However, the competitiveness approach is inadequate to explain states' behaviour. That the state should be seen as a "market actor" that pursues competitiveness is only one perspective on the role of the state. This concept of the state stems from neoliberal ideology, and the dominance of this perspective itself demands explanation. Indeed, at other times states' have pursued binding regulation (discussed below). Competitiveness explanations alone are therefore shallow for explaining the behavior of states. I therefore address the role of states in promoting private regulation in the political approach below.

Explanatory Power of the Competitiveness Approach

The competitiveness approach goes some way to explaining the rise of CSR. It explains the hardening of CSR initiatives towards certification and MSIs, as businesses, seeking to maximise competitiveness, respond to increasing demand for social responsibility and compete for reputation, legitimacy and dominance in socially responsible markets. It also explains the general absence of CSR outside of sectors visible to consumers. The addition of other motivations, businesses' desire (in most circumstances) to avoid regulation costs, and their proactive pursuit of power and market position, gives the approach further strength at explaining the emergence of CSR.

However, the approach fails to take into account the political context, or provide *reasons* for the influence of business actors. The approach does not explain the level of demand for social responsibility (the power of civil society actors). Businesses are not the only actors of relevance in discussions of CSR, yet this approach is silent on the actors seeking alternative routes. It does not explain why stronger requirements have not been imposed on business. To comprehensively explain the rise of CSR, these other factors must also be considered.

The Political Approach: Private Regulation as a Settlement Between Competing Actors

Bartley's *political* approach interprets the rise of private regulation as a settlement of conflicts between competing actors, in light of their differing degrees of power in the neoliberal context (Bartley, 2007; Dezelay & Garth, 2002). Other authors offer similar explanations. Utting depicts CSR as a "compromise" between different groups (2005b, p. 23). Shamir (2004) describes CSR's rise in light of the power of business vis-a-vis other actors.

The *political* approach takes into account the strategic negotiation of governments and NGOs, as well as firms. While activists vie for strong regulation, businesses tend to favour weaker regulation. Private regulation schemes therefore represent a compromise between the preferences of these actors. However the settlement is *not* the result of a “contest among equals” (Bartley, 2007, p. 301). Rather, the outcome has been shaped by the power of capital, the inability and unwillingness of governments to legislate binding standards, and the relative weakness of NGOs. These power imbalances have been shaped by the political context.

Neoliberalism and its Consequences: Redistribution of Power

The context of neoliberalism provides an important backdrop for understanding political explanations. A central assumption of neoliberal ideology is that “free trade” and self-regulating markets are the best means to determine the allocation of resources; capital accumulation should maximise growth, and the benefits eventually trickle down. The state’s role is to create the ideal conditions for the accumulation of capital, by providing only the minimal requirements for the free functioning of the market (Harvey, 2007, p. 2). Otherwise, the state should intervene as little as possible.

Some analysts have emphasised the difference between this ideology, “packaged” for public consumption, and the frequently more active role of the state under neoliberal regimes. This has been conceptualised variously as “roll-back” and “roll-out” movements (Peck & Tickell, 2002). Not only is the state simply being rolled back, it has been transformed in its goals and methods to become a “competition state” (Cerny, 1997). Competition states aim to reconfigure internal institutions to maximise involvement in trade, and to “improve their own competitive position as an entity vis-a-vis other states in the global market” (Harvey, 2007, p. 65). For instance, states actively establish and defend property rights, protect free competition and in other ways craft the state to prioritise the full functioning of the market.

Government withdrawal from many activities is an important aspect of this state reconfiguration. Since the 1970s, many governments have repealed regulations that impede capital mobility, actively undermined trade unions, environmental regulation and other barriers to capital accumulation, and reduced or privatised welfare and service provision, leaving these roles to be provided “more efficiently” by the market. Liberalisation of capital mobility and international trade has been constitutionalised via international agreements in the World Trade Organisation (WTO) and the

requirements of institutions such as the International Monetary Fund. This limits the options available to governments.

Neoliberalisation thus serves to “dis-embed” the market from regulation and institutions constraining them to provide social and environmental protections. The promise of neoliberalism is that a free-functioning market will most efficiently provide (and maximise) these social goods. This has often failed (George, 1999; Harvey, 2007, p. 17-25).¹¹ Nevertheless, for reasons that will be discussed, the ideology has grown to become “hegemonic as a mode of discourse” (Harvey, 2007, p. 3).

The primary consequence of neoliberalism (or perhaps its primary goal [Harvey, 2007, p. 201]) has been a marked redistribution of power to those who own and control capital (Dumenil & Levy, 2001, in Harvey, 2007, p. 16; George, 1999). This has resulted in concentrations of wealth and power on a scale last seen in the 1920s (Harvey, 2007, p. 119). Neoliberalism has also meant a redistribution of wealth and power to businesses, which exist as vehicles for capital accumulation. Privatisation allows wealth to be accumulated in the private sector. Heightened competition prompts states to provide improved conditions for capital accumulation. In a deregulated environment, businesses relocate with minimal obstacles.

The resulting power of business is used to perpetuate conditions that further entrench their power (Harvey, 2007, p. 72; Peck & Tickell, 2002, p. 392). This occurs in three ways (Fuchs, 2005; Fuchs & Lederer, 2008). First, growing resources and access to policy-makers have increased the ability of business to lobby and campaign to influence policy output (instrumental power). Second, business has gained power in agenda and rule setting (structural power). This occurs through passive “exit power” as regions compete for the investment and jobs businesses offer (Cox, 1987, in Fuchs, 2005, p. 6). This competition can cause a “race to the bottom” on environmental and social standards, as regulations that would hamper competitiveness are removed or forgone. Business has also gained avenues to *actively* contribute to agenda- and rule-setting, seen in rising involvement in policy discussions, public-private partnerships and self-regulation (Fuchs, 2005, p. 20).

¹¹ Rising inequality has been a feature of neoliberalisation in nearly every case, as poor majorities have received meagre improvements, or have been adversely affected (Harvey, 2007, p. 17). For instance, during the 1980s, while the top one percent of US families increased their income by 50 percent, the bottom 10 percent lost 15 percent of already meagre incomes (George, 1999). Real wages in the US have declined since 1990 despite rising gross domestic product, reflecting increasing accumulation of wealth in the top strata (Harvey, 2007, p. 25).

Third, business has also grown in its ability to influence societal norms by constructing the discourses that undergird them (discursive power) (Fuchs & Lederer, 2008, p. 8). The perceived legitimacy of business actors has grown with the belief in decentralised governance and the ability of market actors to solve complex problems. Business investment in the research sector and involvement in public debate and social marketing has also built this legitimacy. As a result, legislators increasingly seek their expertise (Cutler et al., 1999, p. 16; Fuchs, 2005, p. 22-23; Vogel, 2008, p. 265-6). From this base, business actors have been increasingly capable of influencing discourses in their own favour. There have been rising numbers of business statements on policy issues, media campaigns, business-funded conferences, research institutes, and even business-established NGOs, designed to influence public opinion towards policies favourable to business (Fuchs, 2005, p. 31). Given the competitive advantage of the business sector in resources and channels for influence (Fuchs & Lederer, 2008, p. 11; Harvey, 2007, p. 3), the business sector is more able than ever to influence what is discussed, and what is said about it. All these channels are used to tout the benefits of neoliberalism, control policy in this direction, and discredit opposing voices (Harvey, 2007, p. 113, 156).

According to the *political* approach, these elements of the political context are essential for understanding the rise of CSR over alternatives. While businesses, civil society actors and states all vie for different outcomes with regard to labour regulation, the resulting “settlement” is determined by their relative power and constraints in the political environment.

Impacts of the Political Context: Constraints on National Policy-Makers

The hegemony of neoliberalism and rise of business power have created legal or quasi-legal and *de facto* constraints on policy-makers that limit their options to protect workers and the environment. The crystallisation of neoliberal discourses in the General Agreement on Tariffs and Trade (GATT) and in subsequent agreements of the WTO *prohibits* states from enacting binding regulations that would act as trade barriers. Apart from situations listed in Article XX of the GATT (General Exceptions), WTO member states are prohibited from discriminating between trading partners or erecting trade barriers, even to protect workers or the environment.¹² In one case in 1992, Austria was forced to revise a law banning imports of non-sustainable timber, after timber-exporting

¹² Article XX allows states to enact measures “necessary to protect public morals... to protect human, animal or plant life or health...relating to the products of prison labour” or “relating to the conservation of exhaustible natural resources” (GATT, 1947).

countries threatened to challenge it as a trade barrier under GATT rules (Bartley, 2003, p. 447).¹³ Austria instead funded private regulation, which avoided the constraints.

States also face *de facto* constraints: a drive for economic competitiveness, a climate favouring liberalised markets, and a growing corporate lobby. At a national level, the drive to become competition states makes states unwilling to impose even regulation allowable under WTO rules, as this might harm their competitiveness and cause capital flight to states which do not implement such protections. Widespread belief in neoliberal ideology, and a corporate lobby opposing regulation add to this unwillingness. The pursuit of competitiveness deters *developing* states from enacting and enforcing basic protections. It also deters *developed* states from mandating that their businesses operate in a socially-responsible manner overseas.

Constraints on Social Movements: Failed Attempts to Impose International Regulation

The hegemony of neoliberalism and rise of business power have also blocked social movements' attempts to fill the regulatory gap at the international level. In high points of backlash against economic globalisation (1970s and 1990s), social movements have called for binding international labour standards, the inclusion of labour standards in international institutions, and enforceable "social clauses" in bilateral agreements (Bartley, 2003; Haufler, 2001; Johns, 1993, in Cutler, 1999, p. 295-7; Lipschutz & Rowe, 2005, p. 32). It should be noted that these efforts have been motivated by dual agendas, the humanitarian imperative and the desire to protect industries in developed states. From the perspective of developed states, developing countries that undermine labour and environmental conditions receive an unfair competitive advantage. To remedy this perceived "distortion of trade", developed states have at times sought avenues to *require* standards of trading partners (Aaronson, 2007b, p. 28).

Since the 1970s, there have been attempts through numerous international institutions to develop legally-binding codes of global business conduct, including clauses on working conditions. Attempts to regulate TNCs have been made in the UN Economic and Social Council, the European Union (EU), the International Chamber of Commerce, the International Labour Organisation (ILO), the World Bank, the OECD, the UN Conference on Trade and Development, the UN Food and Agriculture Organisation, the International Confederation of Free Trade Unions (ICFTU), and the Japanese business council, among others (Johns, 1993:897, in Cutler, 1999, p. 297; Vogel, 2008, p.

¹³ Australia is currently debating a similar bill.

267). However, these efforts have been opposed both by business sectors and by developing states who argue that binding standards constitute harmful trade barriers. While many declarations and guidelines have been produced (for instance the Tripartite Declaration of Principles Concerning Multinational Enterprises, 1977, and the OECD Guidelines for Multinational Enterprises, 1976), they have fallen short of enforceable instruments. (While the OECD Guidelines have been updated to include an enforcement mechanism, this provides only for a consultation process, and is thus ultimately non-binding.)

In the most recent example, the UN attempted to create a binding code of conduct for TNCs, known as the UN Norms on the Responsibilities of TNCs and Other Business Enterprises with Regard to Human Rights (UN Economic and Social Council, 2003). However, the 1999 draft met strong opposition. The proposed sanctions for non-compliance were opposed on the grounds that existing voluntary mechanisms were sufficient (Utting, 2005b, p. 16). The UN was diverted from this strategy and instead hired a Special Representative, John Ruggie, who proposed the Protect, Respect and Remedy framework, another voluntary instrument.

Attempts through the ILO provide a further example of the barriers to creating enforceable labour standards. A 1996 attempt to push the ILO to administer a social labeling system was opposed as a breach of WTO rules and eventually rejected (Bartley, 2003, p. 450). The ILO has developed *non-binding* international conventions on numerous areas of labour conditions, most notably, the 1998 Fundamental Principles and Rights at Work (Aaronson, 2007b, p. 28; Alston, 2004). While these conventions are helpful for norm-setting, there are no real sanctions even for serious breach. According to the American Federation of Labour and Congress of Industrial Organisations, the ILO's "efforts to remedy even the most blatant violations of workers' rights [have been] isolated and ineffective" (as cited in Alston, 2004, p. 496).

There have also been efforts to incorporate labour standards into international trade institutions, and to reduce the constraints on national policy-makers. From as early as 1948 the US, Canada and European countries have sought to incorporate labour standards into GATT (Aaronson, 2007b, p. 28). In the 1990s, the US and French Governments again pushed for social clauses to be incorporated (Aaronson & Zimmerman, 2008, p. 16; Bartley, 2003, p. 450; Nadvi & Wältring, 2001, p. 22). These efforts were unsuccessful. A 2002 suggestion by the WTO Director General himself that a code of conduct be linked to WTO agreements was rejected (Aaronson, 2007a, p. 3). So too was an attempt to incorporate social responsibilities into an international investment

agreement (Aaronson, 2007a, p. 3, 10). While at times labour standards have been required as conditions of WTO accession (Aaronson, 2007b, p. 13-15), attempts to impose ongoing environmental or labour standards on WTO members have failed. Developing countries have argued that such “trade barriers” are inappropriate in institutions designed to facilitate trade (Aaronson, 2007b, p. 25; Aaronson & Rioux, 2008, p. 2; Alston, 2004, p. 472-5). These voices have consistently won. To date, international trade institutions have no mandate to promote labour standards. Social concerns have been left to the ILO despite its inability to enforce standards.

Attempts to allow trade discrimination on social and environmental grounds also meet strong opposition, though states continue to test these boundaries. For instance, Australia is currently debating a ban on imports, similar to the Austrian law that was challenged under WTO rules and eventually overturned. Some states have explored national social labels. However, the threat of challenge under WTO rules remains a constraint.

States have achieved some success at incorporating social clauses in regional and bilateral agreements (Aaronson & Rioux, 2008, p. 2). Since the 1990s, labour and environmental agreements have been signed alongside the North American Free Trade Agreement (NAFTA), Central American Free Trade Agreement, and agreements between the US and Singapore; Jordan and Chile; Canada, Chile and Costa Rica; and New Zealand and China, among others (Alston, 2004, p. 499; Greven, 2005). (It is important to note that some recent free trade agreements, such as that between the US and Vietnam, have no such provisions [Greven, 2005, p. 31]). Some labour agreements include sanctions, such as fines, mediation or trade sanctions (Greven, 2005, p. 25, 29).

While these labour agreements are a positive step (and reflection of the strength of domestic labour movements), they are widely criticised for having next to no impact in improving labour conditions (Alston, 2004, p. 500; Greven, 2005, p. 36). Many agreements merely formalise cooperation. Those that do include enforcement provisions are limited by vague language, a high threshold before complaints are considered and the reluctance of participating governments to create diplomatic frictions (Greven, 2005, p. 27, 36). In most agreements, labour issues are less enforceable than commercial disputes. Existing sanctions therefore bring few tangible benefits for workers. For instance, in the first nine years of the North American Agreement on Labour Cooperation, the side agreement to NAFTA, only 25 complaints were filed, and none led to fines or sanctions (Alston, 2004, p. 501). Even these weak instruments are opposed *within* developed states from quarters promoting liberalised trade.

As suggested by the political approach, the political context is thus a vital background to understanding the emergence of CSR. While numerous social movements have pressed for enforceable instruments, they have failed to overcome business opposition, states' reluctance (and inability) to impose trade barriers, and pervasive belief in the effectiveness of market mechanisms. A settlement at binding regulation has not been achieved. Instead, the ruling consensus persists that the social good is maximised through liberalised trade ("dis-embedding" markets from social concerns), not through protecting vulnerable interests. It is in light of these failed attempts that states and NGOs have increasingly turned to private regulation initiatives.

The Influence of Business Power

The power of business toads to the constraints on states and social movements. Businesses have used every aspect of their power to reduce the costs arising from confrontational groups' pressure. Lobbying power has been used not only to oppose binding regulation directly, but also to tout CSR's effectiveness in order to prevent future attempts. In one example, relative lobbying power allowed business actors to frame the EU social responsibility agenda so that it promoted private regulation rather than any form of public enforcement (Shamir, 2011, p. 324).

Business has also deterred binding regulation by mobilising to control the agenda and discourses of the CSR movement (Utting, 2005a, p. 375). Business first positions itself as expert in social responsibility and establishes legitimacy to govern itself. From this platform it promotes discourses touting the effectiveness of self-regulation (Utting, 2005a, p. 380; 2005b, p. 14). The channels of this discursive power are numerous. CSR conferences position business actors as social responsibility "experts", and publicise successful case studies. Social marketing promotes business as caring and capable. Cooperation with NGOs increases the legitimacy of self-regulation initiatives, and co-opts many groups to promote CSR. Proliferating CSR classes and education institutions promote the business case. There has even been the emergence of NGOs set up by business, which specialise in defending the voluntary approach (Utting, 2005a, p. 378). Gramscian understandings of power help to explain this activity: business is creating consensus around its own version of CSR (Utting, 2005a, p. 380; 2005b, p. 14). This version touts CSR's effectiveness and its inevitable growth under market pressures.¹⁴

¹⁴ It should be noted that these activities contribute to the perceived explanatory power of the *market-based* approach. As the business sector promotes CSR as *effective* for improving labour conditions, and also good business strategy, it

The strength of this consensus has reduced the perceived need for binding regulation. Governments and the wider public believe social marketing and popular research, and are won over by a preponderance of positive case studies. In particular, the spread of the business case for CSR has been a crucial element in resisting regulation. So long as there is widespread belief that market forces will encourage the spread of CSR, there is the perception that states need not regulate (Shamir, 2011, p. 331). CSR has “won the battle for ideas” (AMRC, 2011b).

Nevertheless, the continued pressure from social movements has prevented a settlement at even weaker efforts (Bartley, 2003, p. 446), and requires more action from businesses than they would prefer. At times, NGOs have had victories vis-a-vis business power and the balance of power has tipped to allow enactment and use of binding measures. In 1996, activists for the first time applied existing legislation in the US to hold a TNC to account for a violation of international human rights, starting a raft of similar litigation (Shamir, 2011, p. 320). In 2003, the WTO banned trade in conflict diamonds, despite this violating GATT rules (Aaronson, 2007a, p. 3, 25; Woody, 2006, p. 336). Pressure from social movements has at times led to social clauses accompanying free trade agreements, as described above. Even within the spectrum of private regulation, business actors have been pressured towards harder measures (Uting, 2005b, p. 15). As NGOs continue to challenge the inadequacy of firms’ efforts, this settling point continues to be contested.

Explanatory Power of the Political Approach

The approach to the rise of CSR as a political settlement thus has strong explanatory power. The lack of binding regulation can be explained by *de jure* and *de facto* constraints on policy-makers at the national level. It can also be explained by the failure of attempts at the international level due to social movements’ and states’ relative weakness vis-a-vis the business sector. Private regulation has emerged as a compromise between those seeking binding regulation (for humanitarian or protectionist goals) and those seeking to avoid it.

This view also demonstrates that the emergence of private regulation is *not* inevitable. Indeed, at times, the balance of power has tipped to allow enactment and use of binding or harder measures. This indicates that power imbalances can be altered to create alternative settlements. In light of this, the question is not only what *mix* of public and private regulation would enable the best governance

appears more compelling that businesses will pursue it for competitive advantage. It therefore seems natural that CSR will arise as a result of market pressures.

(Vogel, 2008, p. 276), but in a neoliberal context, how can power structures be altered to enable pursuit of this “best mix” for labour standards? Without this restructuring, is it the goal of advancing social goods, or the goal of retrenching business power that determines the mix of public and private regulation that eventuates? These debates inform what it would take for trading partners to contribute to improving labour conditions in developing countries.

Conclusion

This chapter has provided a broad background in which to view the issue of private regulation for improving labour conditions in developing countries. The rise of private regulation, and CSR in particular, are an important backdrop to the emergence of supply-chain labour initiatives. In the case study of New Zealand, the CSR movement has historically focused on environmental issues, and businesses have only recently turned to supply chain labour initiatives. These remain poorly developed. It is also relevant to consider the arguments of pro-sweatshop authors, who contend that *any* action on labour conditions is detrimental to workers. These arguments do not withstand scrutiny.

Two debates on private regulation—its effectiveness for improving labour conditions, and reasons for its emergence—shed significant light on its use as a means of regulation. While advocates of CSR argue it can effectively improve supply-chain labour conditions, critics argue it is fundamentally limited due to its reliance on market forces. Some even argue CSR has the potential to bring harmful effects. The first explanation for the emergence of CSR, the competitiveness approach, attributes the rise of CSR to businesses’ pursuit or defence of competitive advantage. The political approach provides a more holistic view, explaining CSR’s emergence as a result of power imbalances and constraints in the political context. Before using the case study of China to explore the debates on the effectiveness of CSR, and examining the New Zealand case to analyse reasons for its emergence, it is necessary to explore the current labour conditions in China and the factors that contribute to them. This is the subject of the next chapter.

Chapter 3: Labour Conditions in China

Two contrasting incidents of labour unrest in 2010 demonstrate divergent prospects for improving labour conditions in China's export manufacturing plants. The first was the Foxconn suicides and attempted suicides described in Chapter One. The suicides provided a focal point around which international media exposed the low wages, harsh discipline, excessive overtime and lack of independent union representation at Foxconn, but also pervasive throughout China's manufacturing industry. To quell the outrage, Foxconn offered wage increases, among a range of other measures. However, soon after, Foxconn began moving substantial parts of its production to inland provinces, where wages are 30 percent lower than those in Shenzhen (Li, Zhang, & Li, 2010). The systematic problems which contributed to the suicides were not addressed. Foxconn continues to attract a steady flow of migrant workers, and provincial governments vie for its investment (Chan & Pun, 2010, p. 17).

The second was a series of automobile industry strikes. From May 17, a wave of strikes broke out at automobile plants in Guangdong, sparked by an initial strike at one Honda parts factory in Foshan (AMRC, 2010b, p. 5; China Labour News Translations, 2010b). More than 1500 workers at this factory led a two-week strike for higher and fairer wages. Highly unusually, they also demanded democratic union elections, and the reinstatement of the two initial strike organisers, who were fired five days into the strike (Globalisation Monitor, 2010, p. 22). Initially, the trade union tried to coerce the strikers back to work. However, when they refused to back down, even after being attacked by thugs wearing trade union uniforms, the Government urged the workers and management to undertake collective bargaining (AMRC, 2010b, p. 5-6). These negotiations eventually won the workers substantial wage increases, as well as other concessions. The workers were later granted a democratic election of their enterprise trade union, which has since negotiated further wage increases (International Trade Union Confederation [ITUC] Hong Kong Liaison Office, 2011).

Both of these cases demonstrate worker dissatisfaction with conditions in China's export manufacturing plants. The outcomes demonstrate the sources of both discouragement and hope for the improvement of labour conditions in China. The Foxconn suicides can be interpreted as the ultimate act of submission, as the workers' actions could not be further from challenging capital by asserting their rights.¹⁵ The company took only token steps to address the problems. A 2012 survey

¹⁵ The suicides have also been interpreted as the ultimate act of protest: a permanent withdrawal of their labour (Chan & Pun 2010).

of 35,000 Foxconn workers nearly half reported working 11 days without a break, and nearly two thirds considered their salaries too low to live on (Fair Labour Association, 2012b, p. 8-9). In contrast, through collective action, Honda workers were able to demand significant improvements. While such cases remain in the minority, they offer proof that organisation of workers provides hope for advancing labour rights in China.

Building on the themes raised in these cases, this chapter will give an overview of labour conditions in China, and the pressures causing them to improve, deteriorate or remain entrenched. I first look at different aspects of labour conditions in turn, to address the questions: What are labour conditions currently like in the Chinese factories producing for New Zealand supply chains? To what extent are the true costs of production externalised? This will establish the *need* for action on labour conditions. I then discuss four factors affecting the improvement of labour conditions: the labour supply, economic pressures, political barriers to workers' representation, and the development of the labour movement. All these factors must be considered in any response from trading partners.

Current Labour Conditions in China

There is wide variety in working conditions in Chinese factories. Standards vary with workplace size, sector, region and the nationality of ownership and management. In many large, foreign-invested or state-owned factories, wages are above legal minimums and conditions appear comparable with counterparts in industrialised nations. However, further down supply chains, poor conditions are prevalent and have drawn international criticism (see for instance Alston, 2004, p. 474). The focus of this chapter are conditions faced by migrant workers, predominantly those in export manufacturing plants making consumer products. Migrant workers form the bulk of China's manufacturing workforce, 68 percent in 2006 (China Labour Bulletin, 2008).

China's Migrant Workers

A number of factors make China's migrant workers particularly vulnerable to exploitation. Migrant workers number at least 130 million (China Labour Bulletin, 2009a, p. 23),¹⁶ and are characterised by their youth and transience. Most migrate in their mid-late twenties, then after three to five years, return home to marry (Pun, 2005b, p. 5, 48). The vast majority have low levels of education. In

¹⁶ CLB puts the figure at 130 million, or over 200 million if migrants employed in towns closer to home are included. Other authors estimate 140 million (O'Rourke & Brown, 2003) or 200 million (Pun & Lu, 2010).

2006, only 10 percent had received education beyond middle school (China Labour Bulletin, 2008). Migrant workers also face language barriers, as China has hundreds of regional dialects in addition to the national language Mandarin.

Migrants suffer institutionalised discrimination as a result of the *hukou* system, under which they are excluded from enjoying welfare benefits in their region of work, and are subject to considerable control. The *hukou* is China's system of household registration, used to control internal migration. The system has been likened to the "pass" system in South Africa under apartheid, though with a markedly different ideology (Chan, 2003, p. 5-6; Smith, 2003, p. 341-2; Solinger, 1999). Migrants from rural areas have a rural *hukou* and thus can only reside in cities by obtaining a temporary residence permit (Smith, 2003, p. 342). Without the relevant urban *hukou*, migrants cannot access subsidised healthcare or other benefits and cannot settle in the cities (Amnesty International, 2007; Pun & Lu, 2010, p. 499).¹⁷ Migrants are thus second-class citizens in their regions of work, and often face abuse. Under the guise of enforcing the *hukou* system, arbitrary beatings, fines and detentions of migrants at the hands of police have been noted to be a regular occurrence in Guangdong (Chan, 2003, p. 9).

In China's industrial heartland, workers on temporary residence permits can vastly outnumber permanent residents. In 2002 in Guangdong, only 19 percent of the population were permanent residents (Smith, 2003, p. 342). Yet workers on temporary permits can stay only while their labour is valued (Pun, 2005b, p. 46). Migrants unable to work due to injury or sickness may not have their permits renewed (Chan, 2003, p. 6). The granting or withholding of residence permits allows officials to control the supply of labour to any region. While the extent of this control varies between regions, the system can have significant impacts on working conditions (Chan, 2003, p. 6). Bulut and Lane argue that the *hukou* turns the population into a "reserve army of labour" (2011, p. 48), a labour force that is readily exploitable.

Wages

While average wages have risen in China, wage levels of the most vulnerable workers have not necessarily followed this trend. Regional minimum wages were instituted in the 1990s and have generally risen every two years to keep pace with inflation and rising average wages (Chan, 2002; China Labour Bulletin, 2009a, p. 10). Several scholars use official statistics to show that migrants'

¹⁷ Reforms have enabled a "blue *hukou*" which provides more benefits, but this comes at a high fee and applies only in specific regions (Smith, 2003, p. 342).

wages have risen along with these trends. Banister and Cook note a steady real rise in compensation in urban manufacturing units between 2002 and 2008 (2011, p. 45). A study by Knight, Deng and Li (2010) found that real migrant wages increased annually from 2006 to 2009. Zhao and Wu, using data from the Ministry of Agriculture's rural household survey, found migrant workers' average wages to increase 3.9 percent annually in real terms between 2003 and 2006 (Zhao & Wu 2007, as cited in Knight et al., 2010, p. 13).

However, official data do not necessarily reflect what workers actually receive. Other scholars contend that migrants' real wages have remained stagnant or even *declined* (Chan, 2003, 2005; China Labour Bulletin, 2009b). Chan reports that migrant workers' incomes progressively fell in real terms during the 1990s to early-2000s period, as minimum wage increases failed to keep pace with rising living expenses (Chan, 2003, p. 41-49; 2005, p. 2). In 2004 the Ministry of Labour and Social Security reported that migrants' wages in the Pearl River Delta had increased only 68 yuan in 12 years, far outpaced by rising living costs (as cited in Chan, 2005, p. 2). Another study found that real wages for uneducated migrants declined over the period 2001-2005 in Shanghai, Fuzhou, Wuhan, Shenyang and Xian (Du & Pan, 2009, as cited in Knight et al., 2010, p. 12). Two studies of small numbers of workers in Guangdong found wages to have barely increased (Chen and Feng, 2008, as cited in China Labour Bulletin, 2009b, p. 29; Meng & Bai, 2007, as cited in Knight et al., 2010, p. 7). These findings suggest that despite China's rapid economic growth, migrant workers in many regions face increasing hardship.

Low wages remain among the highest sources of unrest among migrant workers (AMRC, 2005). In 2011, the minimum wage in many parts of Guangdong was 850 yuan per month, equating to \$NZ160 per month or well under NZ\$1 per hour (Fair Wage Network, 2011). Minimum wages are well below a living wage, and insufficient to support a worker without overtime (China Labour Bulletin, 2009b; SACOM, 2010c, p. 7). Many workers fail to receive even the legal minimums, as piece-rate systems, fines and deductions reduce already-meagre incomes. A 2006 study found that the *majority* of migrant workers fail to receive minimum wages (ICFTU, 2006, as cited in Bulut & Lane, 2011, p. 48). Overtime is frequently not adequately compensated. One survey by the Guangdong trade union found that 35 percent of workers were not paid proper overtime wages (Harney, 2008, p. 49).

Non-payment of wages is also a serious problem, responsible for nearly half of labour disputes in some provinces (China Labour Bulletin, 2009a, p. 14). In recent years, the practice has become so

prevalent that it is regarded as “normal” (Chan, 2004a). Factory closures also end with unpaid wages, as companies can easily default by closing one factory and opening another (Chan, 2011, p. 3). High levels of unpaid wages and the frequency of related disputes have forced the Government to intervene. For instance, in 2008 labour departments helped 6.98 million workers recover 8.33 billion yuan in back pay (China Labour Bulletin, 2009a, p. 15). Anecdotal evidence indicates these interventions may have improved the situation (Chan, 2011, p. 46).

In addition to low absolute incomes, workers are well aware that the income gap is growing in China (Pun & Lu, 2010, p. 493). Wages have declined as a proportion of GDP (AMRC, 2010a, p. 3). Average migrant workers’ wages have also declined in relation to average incomes (Knight et al., 2010, p. 14). Despite a Government directive that minimum wages be pegged between 40 and 60 percent of average wages, most regions’ minimum wages are well below this threshold (Chan, 2003, p. 3; 2004b). In Beijing and Shanghai, the minimum wage in 2006 was approximately 20 percent of the average wage (China Labour Bulletin, 2009b, p. 29). In many provinces, the proportion of minimum to average wages is declining (Chan, 2003, p. 3). This indicates that workers, particularly migrants and those on minimum wages, are receiving a declining share of the benefits of economic growth.

Occupational Safety and Health (OSH)

China has been described as the world’s deadliest manufacturing centre (Leung, 2002). In 2009 the Ministry of Health reported that 200 million workers in China work in hazardous workplaces (as cited in Yu et al., 2012, p. 1). While systems to address occupational accidents and diseases are improving, relevant laws go widely un-enforced (Pringle & Frost, 2003). Government inspections are understaffed and underfunded. In 2003, there was approximately one OSH inspector per 35,000 workers in China, compared to one per 4,000 in Hong Kong (O'Rourke & Brown, 2003, p. 380). Migrant workers feature disproportionately in occupational accident and disease statistics. In 2004, over 80 percent of fatalities were migrant workers (People's Daily, 2004, as cited in Li, Meng, & Wang, 2006, p. 6). Ninety percent of victims of occupational disease are believed to be migrants (Harney, 2008, p. 65).

Conditions are significantly better in state-owned and former state-owned enterprises (Chen & Chan, 2010). Some foreign-invested enterprises and large domestic factories also have relatively well-developed systems. However, many factories flout health and safety obligations. As a result,

workers face widespread, uncontrolled exposure to chemicals, noise, and radiation as well as to heat stress, and ergonomic and safety hazards (Brown, 2003). Workplace safety systems, including fire evacuation, are often lacking. Some hazardous chemicals do not yet have regulatory limits (see for instance, Brown, 2003, p. 329).

The worst conditions occur in small, domestic private enterprises (Chen & Chan, 2010, p.44; Ma & Yuan, 2009, p. 1043). A 2000 Workers' Daily article described conditions in small-scale plants as "abominable," and "devastating" to workers' health (as cited in Brown, 2003, p. 328). These conditions persist. While far from the spotlight, small domestic factories provide components and sub-contracting work to larger factories and foreign-invested enterprises. They thus constitute a significant part of export production chains.

China's rate of fatalities from occupational injuries is the highest in the world in absolute terms, and among the highest rates per capita (Hamalainen, Takala, & Saarela, 2006; Liu, Zhong, & Xing, 2005, p. 508). According to the State Administration of Work Safety (SAWS), in 2005, 728,000 accidents caused 127,000 fatalities (as cited in Chen & Chan, 2010, p. 44), figures likely to be underestimates (see Hamalainen et al., 2006, p. 147; Jin & Courtney, 2009). SAWS data from 2008 suggests that one quarter of fatalities are from the manufacturing industry (He & Song, 2011, p. 3). An independent survey of more than 3,000 frontline manufacturing workers in Shenzhen found more than half to report musculoskeletal disorders (Yu et al., 2012, p. 3). A survey of hospitals in the Pearl River Delta revealed that about 40,000 attempts were made in one year to re-attach severed fingers (Chen & Chan, 2010, p. 45). Obtaining compensation for injuries is a time-consuming process, in 2007, taking an average of 1,070 days (China Labour Watch, 2007, p. 3). However, compensation payouts are increasing, which appears to be incentivising greater investment in health and safety (Harney, 2008, p. 82).

The occupational disease situation is "grim", and becoming increasingly severe (Ministry of Health, 2007, as cited in Harney, 2008, p. 83). In 2005, there were 665,000 recorded cases of occupational illness (figures likely to be understated) (Harney, 2008, p. 57). Roughly 90 per cent of cases were pneumoconiosis—a group of lung diseases, caused by exposure to certain dusts—which has grown to become one of the most serious social problems in rural China (p. 57). According to state media, in 2007 all occupational disease was estimated to cost the country \$US13 billion per year, and costs were rising by \$US79 million annually from pneumoconiosis alone (Harney, 2008, p. 83).

Occupational disease is still under-recognised in China. While reforms are increasing access to compensation (Caixin Online, 2012), many victims remain ineligible.

Work Hours

Excessive overtime is pervasive in export factories. By law, workers have a 40 hour week, overtime hours are capped at 36 per month, and workers are required to have one rest day in seven (Harney, 2008, p. 200). These limits are systematically violated. A 2002-2003 Verite survey found 93 percent of enterprises to be in excess of legal limits (Harney, 2008, p. 49). In 2003, 10-16 hour workdays were common, and 18 hour days and seven-day weeks also frequently reported (Brown, 2003, p. 329). These conditions have not changed. In a 2011 report on the electronics industry, all 10 factories investigated required their workers to work between 36 and 160 hours of overtime per month (China Labour Watch, 2011).

Excessive overtime is facilitated by dormitory regimes. The vast majority of manufacturing workers live on-site, creating an incentive for employers to hire fewer workers on longer hours. Workers can be called up at any time, and become susceptible to management control over all aspects of their lives (Smith, 2003, p. 334). Workers' apparent willingness to work long hours is related to their extremely low base wages (China Labour Watch, 2011; Pun, 2006). Overtime may also be effectively enforced by management tactics, for instance, setting impossibly high quotas.

Excessive overtime negatively impacts workers' physical and mental health. Long hours contribute to social isolation. Aloneness is a theme repeatedly articulated by migrant workers (Pun, 2005b, p. 9). Long hours are particularly devastating to the prevention of occupational accidents and disease. Tiredness increases the likelihood of accidents (Yu et al., 2012, p. 1). Long exposure to chemicals and other hazards increases the likelihood of disease. Safe exposure limits, designed for 40-hour weeks, are rendered useless (Brown, 2003, p. 329).

High Labour Intensity, Discipline and Abuse

Other aspects of the work environment also affect workers' health. An authoritarian management style is common in export factories (Lee Ching Kwan, 1998, as cited in Pun, 2005b, p. 108), and workers are subject to high labour intensity and strict discipline (SACOM, 2010c). Assembly line workers perform repetitive, monotonous tasks for hours without breaks, often while standing (China

Labour Watch, 2011). Breach of factory rules frequently involves fines which add stress and can bring wages below legal minimums. In some cases, discipline borders on militaristic. Chan reports visiting factories where workers were marched to and from meals in tight squads (Chan, 2003, p. 9). A SACOM investigation into conditions at Foxconn found workers were punished for any failure to give absolute obedience to management staff (SACOM, 2010c, p. 13-14). In 2003, physical abuse was common in Taiwanese, Korean and Hong Kong-owned factories (Chan, 2003, p. 9). While this has not been reported in recent investigations of large factories, it is still likely to occur at factories away from the media spotlight.

Bonded and Forced Labour

Actual or effective bonded labour is widespread in export factories, despite authorities' attempts to crack down on the practice. Migrants are reliant on employment to renew their temporary residence permits. Migrants without a job risk being arrested and deported (Chan, 2003, p. 5-6). They are also desperate to recoup travel expenses. They therefore face pressure to "choose" or remain with an unsafe employer.

In more severe cases, the "bonding" of labour is outright. Employers may charge deposits at the start of employment, or withhold wages to ensure the worker sees out a contract. Previously, it was common for employers to hold workers' identity cards or documentation (without which, migrants can be arrested on the street) (Pun, 2005b, p. 46), though authorities have increasingly cracked down on this practice. To the extent that bonding practices persist, migrants are even more vulnerable to all other forms of exploitation.

State-sanctioned forced labour occurs in prisons and re-education through labour camps (a form of detention for minor offenses) (ITUC, 2010, p. 14-15). Some prisoners are contracted out to non-prison enterprises. While Chinese law supposedly prohibits the export of prison-labour products (Laogai Research Foundation, 2011, p. 15), there are no effective controls to prevent this (ITUC, 2010, p. 14). There have been reports of prison labour products getting into export supply chains (Laogai Research Foundation, 2011, p. 5-6).

Child Labour

There is scant research documenting child labour in China. Cases in export manufacturing plants appear isolated, suggesting government enforcement has to some extent reduced the problem.

However cases do occur, calling into question the stringency of enforcement methods. Employment of children under the age of 16 has been prohibited since 2002 (ITUC Hong Kong Liaison Office, 2007, p. 1). Despite this, in one county particularly notorious for child labour, authorities returned home 115 child workers in 2004 (China Labour Bulletin, 2007a, p. 13). In 2007, state media reported that nearly 1000 children had been abducted into forced labour at a Shanxi brickyard (p. 3). In 2012, Apple revealed finding six active and 13 historical cases of underage labour at five of its direct suppliers (Apple, 2012, p. 9). While in most areas Government inspections and fines appear to have curbed the problem (China Labour Bulletin, 2007a, p. 9-10), the above cases demonstrate the importance of vigilant monitoring. There are concerns that in some regions monitoring may be lenient, allowing cases to become increasingly frequent (China Labour Bulletin, 2007a, p. 4).

Systematic use of child labour is documented in “work-study programmes”, in which school students work during vacations to earn money for tuition fees or for their school (ITUC Hong Kong Liaison Office, 2007, p. 3). Work-study programmes are legally ambiguous (p. 2). They are well-documented in cotton production in Xinjiang province (Congressional-Executive Commission on China, 2011, p. 204; Radio Free Asia, 2005), but have also been reported in manufacturing industries. China Labour Bulletin reports “large groups” of 11 to 15-year-old students were sent to factories in the coastal regions during summer vacations (2007a, p. 6). Cases have been documented at a stationery factory in 2007, a shoe factory and an electronics factory in 2006, a toy factory in 2004, and a connector component factory, all in Guangdong (ITUC Hong Kong Liaison Office, 2007). In addition, at least one case has been reported at a canning factory in Ningbo, Zhejiang, involving up to 200 middle-school students (China Labour Bulletin, 2007b). The ITUC reports that work-study programmes occur in “many schools” (2007, p. 2), however it is uncertain how many schools and factories are affected. The products of this labour may contribute to export supply chains.

Core Labour Rights: Freedom of Association, Collective Bargaining and the Right to Strike

The rights to freedom of association and collective bargaining are systematically denied in China. The sole legal union, the All-China Federation of Trade Unions (ACFTU), does not support workers to undertake confrontation with management. Elections of workplace unions are unusual and heavily supervised. Collective bargaining is largely unknown, with the exception of a few cases.

The right to strike was removed from the People’s Republic of China Constitution in 1982 (China Labour Bulletin, 2009a, p. 36). It is now not mentioned in law, making it neither legal or illegal (Chan, 2011, p. 43; see also China Labour News Translations, 2011). In practice, however, the ACFTU considers strikes “unlawful” action, and does not support striking workers. Strikes are suppressed, sometimes violently (Chan, 2011, p. 43). Nevertheless, strikes frequently occur, accounting for nearly half of labour disputes (China Labour Bulletin, 2009a, p. 36-37).¹⁸ The denial of core labour rights in China presents fundamental a barrier to the improvement of labour conditions.

Factors Influencing Labour Conditions

Labour Supply

The backdrop to China’s labour conditions is its surplus-labour, developing economy with high levels of poverty. These factors have not always meant downwards pressure on conditions. In the Maoist era (1949-1976), labour was not viewed as a commodity. The state assigned employment and set wages, and surplus labour was absorbed through over-staffing, or in critical periods, sending youth to work in the countryside (Leung, 1995, p. 139). However, since the 1980s shift to commodified labour and reduced state involvement, working conditions have become subject to the pressures of labour market supply and demand (p. 142). The prevalent labour surplus has given employers the advantage.

According to the Lewis model (Lewis, 1954), incomes rise generally only when a developing economy moves from a labour surplus to a labour shortage (the “Lewis turning point”). Up to this point, the benefits of economic growth accrue in the absorption of surplus labour (Knight et al., 2010, p. 3). Beyond this point, the model suggests that economic growth will be manifested in improved wages and conditions, as labour scarcity puts pressure on employers to offer better conditions. In fact, as discussed in Chapter Two, economic growth alone is insufficient to improve conditions. Nevertheless, as surplus labour is absorbed, labour shortages do create pressures to improve conditions.

¹⁸ China Labour Bulletin documents collective actions that receive media attention on an online map, see China Labour Bulletin 2011-2012.

Labour shortages in select areas are creating some benefits for workers. Some argue that China has reached the Lewis turning point, noting rising nominal wages and labour shortages in coastal cities (Cai et al. 2007, Park et al. 2007, and Wang 2008, as cited in Knight et al., 2010, p. 7; Zhang, Yang, & Wang, 2010). Labour shortages have been reported in these regions since 2004 and became a major concern during 2005-2007 (Chan, 2005, p. 2; Harney, 2008, p. 124). Though concerns were muted by lay-offs during the economic crisis (China Labour Bulletin, 2009a), shortages again surfaced, leading some manufacturers to raise wages and improve conditions to attract workers (Banister & Cook, 2011, p. 46). However, other manufacturers have shifted production inland, where there remains an estimated labour surplus of 100-200 million unemployed and underemployed in the countryside (Harney, 2008, p. 143-144). Workers' lack of bargaining power in these regions means that employers face little incentive to improve conditions. In fact, the economy is only in the early stages of its shift towards labour scarcity and away from labour-intensive, export-oriented production. While regional shortages drive up some aspects of conditions, national surpluses allow extremely poor conditions to persist elsewhere (Knight et al., 2010).

Labour shortages in coastal cities are an aberration caused by a variety of factors. First, constraints on labour mobility (caused by the *hukou* system) prevent surplus rural labourers from filling the labour shortages (Banister & Cook, 2011, p. 47). Second, rural migrants have increasing choices of destination, allowing them to flock to regions with better conditions, and creating shortages in less-favoured areas (Harney, 2008, p. 123-124). Third, rural labourers face less incentive to move far away to work. Policy changes have increased rural incomes (Pun & Lu, 2010, p. 505). Increased awareness of poor conditions in the cities makes leaving the countryside less attractive. Furthermore, as production moves inland migrants also have the option to work closer to home. These factors pull migrants away from coastal regions, creating localised shortages.

Future demographic trends may bring advantages for workers. China's leadership anticipates a population decline from 2013, and correspondingly is shifting the focus of its development towards higher skilled production (Global Times, 2011). The population decline will create a strain on the labour supply. A further strain will be workers' delayed entry to the workforce, as students remain longer in education (Harney, 2008, p. 145). These factors have potential to give workers greater advantage in the job market.

However, it would be wrong to be too optimistic about these trends. Labour scarcity alone will not improve every aspect of labour conditions. Due to political barriers, workers have been denied core labour rights even where there are acute labour shortages (discussed below). As seen in US labour history, described in Chapter Two, political struggle will be needed to overcome these barriers. Furthermore, labour scarcity may not benefit all workers. Rising wages do not necessarily filter down to migrant workers. On the contrary, the accompanying shift towards higher-skilled production may reduce demand for unskilled workers, and further weaken their bargaining power. Finally, the pace of poverty alleviation shouldn't be overestimated. The pool of unemployed and underemployed rural labour is vast. The persistence of this reserve army of labour will enable the exploitation of vulnerable workers for some years to come.

Thus, while regional shortages may improve some aspects of conditions, they cannot be relied on to improve all aspects. The labour surplus and manufacturers' option to move inland allow employers to ignore pressure to raise conditions. Other factors also affect to what extent regional labour shortages in fact lead to better conditions for migrant workers.

Economic Pressures

China has chosen a development path in which it has opened itself to world markets and modeled itself into a competition state (Bulut & Lane, 2011, p. 46; Cerny, 2000, p. 117). In doing so, China has opened itself to vastly heightened competitive pressures. This creates incentives to weaken regulation and enforcement to maintain competitive advantage (the “race to the bottom”). It also creates incentives for the state to maintain its reserve army of labour.

Pressure to Weaken Labour Regulation and Enforcement

China's drive for competitiveness occurs at the levels of the state, local government and the individual enterprise. At every level, this drive puts downwards pressure on labour conditions. The effect at the enterprise level is well documented (Association for Sustainable and Responsible Investment in Asia, 2002; Barrientos & Howell, 2006; Chan, 2001; Hong Kong Christian Industrial Committee, 2001; Pun, 2005a; Yu, 2008). Without law enforcement from the state or the ability of workers to organise, enterprises achieve cost-competitiveness at the expense of labour conditions. Factories that follow laws are “handicapped” (Harney, 2008, p. 11). Foreign buyers contribute to these competitive pressures. Their purchasing practices can also exacerbate the competitive

pressures, for instance if they demand prices or lead times that are impossible for suppliers to meet while complying with the law. While suppliers are technically free to refuse these demands, in reality, the burdens are passed on to workers.

Local governments' own competition to attract investment creates incentives for officials to weaken labour regulations (Brown, 2003, p. 332). In 2002 local governments stopped receiving central funding and dividends from state-owned enterprises (SOEs), leaving them to survive on tax income. As Brown describes, this makes regulatory enforcement "economic suicide" (p. 332). Local authorities have been quoted explaining that regulations would not be implemented for fear that investment would relocate to other areas. In addition, in some areas, some local residents have become a "rentier class" leasing to foreign factories (Chan, 2011, p. 41). These locals therefore benefit from their governments allying with foreign investors. As a result, local governments have blocked unionisation efforts, and served the economic interests of their locals rather than workers who come from out of town. Government departments responsible for enforcing labour conditions have little power and are frequently overruled (AMRC, 2005; O'Rourke & Brown, 2003, p. 379).

Weak enforcement is also due to local officials' personal incentives. Bureaucratic promotions are frequently linked to economic goals, rather than multidimensional criteria that include workplace safety (Li et al., 2006, p. 12). This disincentivises law enforcement. Officials may also have financial interest in the enterprises they supposedly regulate, through taxes, fees and bribes (Brown, 2003, p. 332).

Competition also works against improving labour conditions on the national level. Although the central Government is generally more willing than local governments to protect workers' interests, it still faces competition with other low-wage economies. The Government has also been subject to foreign corporate lobbying. For instance, a strong American and European corporate lobby opposed China's 2008 Labour Contract Law (Pun, Chan, & Chan, 2009, p. 25). A weakened version of the legislation eventually passed (Swift, 2011). The central Government's prioritisation of economic interests is clear in the extent to which it under-resources enforcement, for instance the low number of labour inspectors mentioned above (Brown, 2003, p. 380). The central Government has also failed to rectify the incentive schemes preventing enforcement at lower levels.

The central and local governments are aware that workers' grievances will create instability if not addressed, and at times this has led to "pacifying concessions" in favour of workers. Since the mid-

1990s, the Government has developed labour legislation and an arbitration system through which workers can raise complaints (Lu, 2007, p. 3; Pun et al., 2009, p. 143). The Government has made social insurance mandatory (Pun et al., 2009, p. 138). It also tentatively tolerates labour NGOs. While to some extent these concessions may impact negatively on potential profit and economic growth levels, they also prevent unrest. The constantly adjusted “economic growth-worker protection tradeoff” means that worker unrest can at times lead to positive developments. However, concessions are often bare minimums, as seen in the vast array of much-needed protections which are not provided.

Maintenance of a Reserve Army of Labour

China’s pursuit of competitive advantage is assisted by maintaining a large pool of vulnerable workers which is achieved through the *hukou* system. The vulnerable labour force attracts investors seeking cheap labour, and bears many of the externalised costs of production.

As described above, the state has not paid the price to provide migrant workers with social welfare necessities (Pun et al., 2009, p. 145-146). By a Government estimate, it would take 80,000 yuan to provide each migrant worker with the access to the schooling, health and welfare benefits available to urban counterparts, a huge sum when multiplied by the roughly 150 million migrant workers (Development Research Centre of the State Council, 2011, as cited in Anderlini, 2011). Instead, migrant workers are prohibited from settling permanently in cities, or accessing the benefits enjoyed by their urban counterparts. While migrants have the option of returning to the countryside, less than nine per cent choose to do so (Development Research Centre of the State Council, 2011, as cited in Anderlini, 2011). A huge proportion of China’s workforce thus labours in cities without rights or social protections.

This underclass of migrant workers is attractive to employers for many reasons. As described above, migrant workers cannot organise to demand better conditions. Their insecurity and dependence on employers makes them susceptible to bonded labour, and forces them to tolerate poor work environments. The hardships, discrimination and lack of dignity migrants face makes them particularly unlikely to assert their rights. The Government has failed to alleviate these problems, and thus facilitates migrant workers’ exploitation for the sake of competitive advantage.

The arrangement perpetuates severe inequalities between urban and rural residents. The costs of social reproduction of labour are borne by rural areas, despite the constraints of relative poverty. Migrants cannot register births or marriages in cities, and face higher costs for education there; they thus raise children in their hometowns (Swift, 2011). Injured migrants, unable to work, may no longer reside in cities (Chan, 2003, p. 6). The costs of injuries and disease, some of the many “externalities of production”, therefore also fall to migrants’ hometowns (Pun, Chan & Chan 2009, p. 137). The system thus sacrifices migrant workers for the sake of urban residents’ enjoyment of economic development. While a minority of urban residents (those with the relevant urban *hukou*) enjoy the benefits of developed cities, migrants are excluded from these benefits, despite having laboured to achieve them. Meanwhile, the true costs of industrial development are borne by these migrants and their home communities.

China’s choice of a development path thus has profound implications for working conditions. Rejecting more equitable alternatives, the state has succumbed to competitive pressures that prevent the protection of workers. The Government’s choice of development path is thus one which sacrifices workers for economic growth and contributes to a “sharp rise of migrant worker struggles” (Pun et al., 2009, p. 145-146). This path has been pursued virtually unchallenged, because of the nature of the Chinese state and the relative weakness of workers’ bargaining power.

Political Barriers to Core Labour Rights

Another vital backdrop to China’s working conditions is the state’s dual priorities to maintain political stability and pursue economic growth. Controlling workers has always been a major concern to the Chinese Communist Party (CCP) (China Labour Bulletin, 2009b, p. 9; Perry, 2002). The Government treats industrial disputes as an inherent threat to social and political stability (China Labour Bulletin, 2009a, p. 38). As a result, the state has obstructed the development of core labour rights, and has co-opted China’s sole legally-sanctioned trade union, the ACFTU, to maintain control over workers. Since the reform period, the goal of economic growth has created the additional need to control workers to serve the interests of capital. The ACFTU has been employed for both.

China's Union: A State Tool for Stability and Economic Growth

The ACFTU is very different from a typical union in most capitalist countries. In countries where unions can operate independently, unions' primary role is to regulate wages and conditions by representing workers' interests against management through collective bargaining (Ebbinghaus, 2004, p. 574; see also Yu, 2008b, p. 292). This role is inherently confrontational. As competition drives firms to cut costs, opposition from organised workers is vital to prevent the devaluing of labour. The dispute-resolution mechanism of collective bargaining, assisted by the right to strike, is considered in many countries to be *necessary* for stable labour relations. Workplace unions also serve a feedback role, for instance on health and safety (O'Rourke & Brown, 2003, p. 382). In addition, in many countries unions advocate for workers in policy discussions. In some countries this role is formalised in tripartite negotiations, in which unions and their confederations represent workers in discussions with employers' associations and the state (see Avdagic, 2005, p. 26).

China has not developed a confrontational union able to represent workers' interests. The ACFTU is a bureaucratic organisation of over 200 million members (China Labour Bulletin, 2009a, p. 53), with branches at the levels of province/autonomous region, municipality, county and enterprise. There are also rural township and urban-district unions in some areas, and seven sectoral unions (China Labour Bulletin, 2009b, p. 20-21). Independent (non-affiliated) unions are illegal, and organisers are dealt with harshly. By law, the ACFTU has a triple role, to protect employees' legal rights and interests; to support the state's policies and represent the overall interests of the entire people; and to promote enterprise development (China Trade Union Constitution, 2003, Art. 29, as cited in Yu, 2008b, p. 280). These roles fundamentally conflict. In practice, the worker protection role is subsumed to the needs to assist in economic reform and maintain social stability.

The union's ineffectiveness at representing workers is partly due to its historical role. In the Mao years when workers were employed in SOEs, the union was in charge of social and recreation activities, welfare functions, health and safety, and production-boosting and morale. As workers were guaranteed the "iron rice bowl" (job for life), protecting laid off workers was not necessary (Walker, 2005).

Nowadays, even though 75 percent of the urban workforce are employed in the private sector (Brady, 2012, p. 189), these reactive, non-confrontational roles continue. Enterprise branches of the ACFTU primarily provide social activities and welfare functions. Some even organise birthday

parties, partner-matching events and laundry services for their members (Lee, 2003, p. 81). District level unions have set up worker welfare centres, helped workers recover wages in arrears and collated complaints from worker hotlines (China Labour Bulletin, 2009b, p. 21, 28-31). They have arranged petitioning letters and provided workers with legal aid (p. 19). These activities are almost entirely reactive. Not only do they blur the union's role with that of other state departments, they are "pacifying" roles that alleviate the most likely causes of disruptions from worker dissent. These roles do not challenge the root problems. Enterprise unions also provide a means of Party supervision in the enterprises, to replace the *danwei* (work unit) system which has been dismantled during the reforms (China Labour Bulletin, 2009b, p. 29).¹⁹ Among workers, there is little awareness of the confrontational roles of a union necessary in a market economy (see, for instance Chan, 2009, p. 303).

Barriers to Confrontational Roles

The high-level ACFTU has not allowed genuine union independence at the grassroots level. Enterprise unions are established by negotiations between the ACFTU and management (China Labour Bulletin, 2009a, p. 68). By law, unions should be established by democratic election (China's Trade Union Law, Art. 11, as cited in AMRC, 2005). In practice, the candidates, if not the representatives themselves, are hand-picked by management (Yu, 2008b, p. 280). In the majority of cases, union chairs are Party members, civil servants, or management staff, and union behaviour is supervised (China Labour Bulletin, 2009a, p. 55; 2009b, p. 26; Pun, 2005a). Unsurprisingly, these unions do not champion workers' concerns. Some have even been known to represent management during arbitration and court hearings (China Labour Bulletin, 2009a, p. 68). In many cases, workers do not even know they have a union, do not know whether they are members, or do not know who the officials are.

Even recent movements towards union elections show evidence of the state's tight control. In 2008, the ACFTU introduced new measures on "direct elections" of enterprise unions (China Labour Bulletin, 2009a, p. 57). This was a revamp of a system introduced nearly 10 years previously. Many elections were held in the early 2000s, including at more than 300 enterprises in Hangzhou (Chan, 2005, p. 7), and the renewed focus may have seen these rolled out to more regions. However, at the same time as acknowledging its "commitment to democratic elections," the ACFTU made it clear

¹⁹ Prior to the reform and opening up period, each work unit had a Party representative, responsible for supervision among other functions. To some extent, enterprise unions have replaced this role in private enterprises, as union officials are often concurrently party members, or at least share their sympathies (China Labour Bulletin, 2009b, p. 29).

that elections should be supervised by the Party and higher levels of the union (China Labour Bulletin, 2009a, p. 57). It also restricted the candidates eligible to stand.

The union has also failed to provide collective bargaining. The ineffective workplace unions do not pursue collective negotiations. While in 2008, higher levels of the union initiated a campaign to establish collective contracts through “collective consultation,” this was merely a rubber stamping exercise. The Chinese term for “collective consultation” (*jiti xieshang*) is deliberately distinct from the more confrontational “collective bargaining” (*jiti tanpan*). “Collective consultation” does not include consultation with workers, but merely a ceremony in which management and a management-controlled union sign documents provided by the district union. Collective contracts do not reflect contentious issues. Even this imperfect model ceased during the economic crisis, as the union was co-opted to focus on economic goals (China Labour Bulletin, 2009a, p. 21). Genuine dispute-resolution mechanisms remain obstructed due to the fundamental risk they pose to economic growth.

The state’s obstruction of core labour rights can also be attributed to the CCP Government’s misunderstanding of the nature of industrial disputes, which it interprets as an inherent threat to stability. The state responds to industrial disputes as “mass incidents” requiring government intervention and control, rather than seeing them as naturally-occurring conflicts between labour and capital (China Labour Bulletin, 2009a, p. 38). It is therefore unsurprising that the Chinese state opposes genuine workplace dispute-resolution mechanisms. Ironically, the denial of collective bargaining is in fact a *barrier* to stability and economic growth, as it leaves workers with few alternative channels but to protest to resolve their problems. Workers often escalate disputes on the perception that officials will “only step in when things have got out of hand” (China Labour Bulletin, 2009b, p. 8).

Some hope of confrontational union activity may exist in China’s system for tripartite consultations. Since 2001, China has had a National Tripartite Consultative Committee, as well as counterparts at lower administrative levels (Chan, 2005, p. 8). Currently, the tripartite mechanism falls far short of a role as a neutral mediator, as both the ACFTU and its counterpart for representing employers, the China Enterprise Confederation, are subordinate to the state (Shen & Benson, 2008, p. 245). However, representatives at various levels have shown commitment to developing the mechanism (Chan, 2005, p. 8). The ACFTU has also been the most active proponent. To the degree that the

ACFTU is able to escape its co-option for state purposes, the tripartite mechanism may offer a forum for greater worker representation, at least at the peak level.

Legal Channels: Deterring Collective Interests-based Claims

Instead of providing much-needed collective bargaining, the Chinese Government has attempted to regulate labour disputes through legal channels (Chan, 2011, p. 44; Lu, 2007). Since 1994, China has passed numerous labour laws (see Bulut & Lane, 2011, p. 47-48),²⁰ and developed an arbitration system for worker complaints (Pun et al., 2009, p. 143). The changes have led to a torrent of cases being filed, providing workers with compensation and putting pressure on enterprises to abide by the law (Harney, 2008, p. 82). However, while workers have won the majority of cases that get to court (Harney, 2008, p. 76), there are many administrative problems. The courts are slow. Some cases drag on for years, posing many barriers to migrant workers (see also Huang, 2007, p. 2; Harney, 2008, p. 75). The legal system is also subject to corruption and political interference (Pun et al., 2009, p. 145). Many workers turn to protests due to the deficiencies of this system.

This state focus on legal channels can be seen as a further means of pacifying workers (Chan, 2004a, p. 2; Pun et al., 2009, p. 133). The provision of legal avenues as a sole lawful option leads to perceptions of violations as *individualised* cases, rather than systemic abuse. This deters collective actions (Chan 2004a). In addition, legal complaints address solely reactive, rights-based claims (Chan, 2011, p. 49). Workers with *interest-based* demands have no opportunity for redress. Workers do not typically bring demands for collective rights through the legal system, such as claims against management for obstructing collective bargaining, or against the trade union for failing to protect their rights.²¹ Therefore, despite the development of legal channels, workers remain barred from challenging fundamental problems. At the same time, the option to seek individual compensation distracts workers from seeking stronger alternatives.

The state focus on stability and growth has thus almost completely obstructed core labour rights. While the ACFTU performs “pacifying” functions, it has been barred from pursuing independent

²⁰ These include the Labour Law 1994 (which set out basic protections for workers), the Work Safety Law 2002 and the Prevention of Occupational Disease Law 2002, the 2008 Labour Contract Law (which tightened regulations of contracts, and provided more secure employment), and the 2008 Labour Dispute Conciliation and Arbitration Law (reducing barriers to the arbitration process). See Bulut and Lane, 2010, for a more thorough overview.

²¹ However, there has been at least one case in which a worker sued the Labour Bureau for failure to handle their labour dispute properly (Pun & Lu, 2010, p. 511).

workplace elections or collective bargaining, as these are perceived to threaten state goals. To address the growing number of labour disputes, the state has provided legal channels. However, legal remedies are inadequate replacement for core labour rights, and have further obstructed their development. The ongoing barriers to labour rights are evident in the growing number of labour disputes. As these incidents threaten political instability and economic disruption, they are essential in creating pressure towards improvements.

Labour Resistance

The labour movement in China is growing from a very low base. While strikes were common in SOE restructuring in the 1980s and mid 1990s, the first generation of migrant workers in the private sector (those who migrated in the 1980s and 1990s) largely internalised their discontent (Pun & Lu, 2010, p. 499). However, the second generation of migrant workers is far more prone to collective action (Chan & Pun, 2009; Pun et al., 2009, p. 136; Pun & Lu, 2010). This group entered the labour market in the late 1990s and 2000s. Enjoying greater legal protection, higher rights awareness, and with high expectations of consumerism, job prospects and urbanisation, these workers experience severe discontent.

Labour disputes have increased dramatically since the 1990s (Chan, 2004a; Lee, 2003, p. 80), by one estimate rising from 19,000 in 1994 to 317,000 in 2006 (Chan, 2011, p. 44). Worker protests occur on an almost daily basis in the Pearl River Delta alone (Pun et al., 2009, p. 138). These take the form of strikes, work stoppages, blockades, sit-ins, protest marches and letter petitions to the Government (China Labour Bulletin, 2009a, p. 36-37). While there have been a number of strike waves, for instance across 73 factories in 2010 (Chan, 2011, p. 39), protests are usually isolated incidents. Government supervision and censorship prevent the development of nationwide networks. Protests are generally repressed, sometimes violently (Chan, 2011, p. 38). Nevertheless, protests have been an increasingly effective means of gaining concessions. In 37 of 100 cases analysed by China Labour Bulletin, workers demands were fully or partially met (2009a, p. 50).

Workers' demands are typically reactive, and rights- (not interests-) based. Their expectations are low. According to Chan's analysis, the "great bulk" of workers' demands are for the minima provided by law (2011, p. 50). China Labour Bulletin also found the majority of 2007-2008 incidents to be reactive, rights-based claims (2009a, p. 24). This is in part due to the relatively high standards of Chinese law, which promises a lot which is not delivered. In one case, workers even

demanded the reinstatement of illegal overtime hours in order to retain sufficient income, instead of demanding a wage increase (Chan, 2011, p. 36). While workers make demands of their employer, they do not make proactive demands of the state.

Labour NGOs

The Government has obstructed the development of an independent workers' movement. Labour activists are supervised, and media coverage of strikes is limited. Despite this, in some locations workers are supported by fledgling labour NGOs, the majority concentrated in South China. According to a government document, there are approximately 50 offering advisory services in Guangdong (Guangdong Provincial Committee on Politics and Law of the Chinese Communist Party, 2009, p. 1).

Labour NGOs face constraints and harassment. Activists risk arrest and sentencing to re-education through labour camps (China Labour Bulletin, 2009a, p. 40-41). They also risk violence from employers (China Labour News Translations, 2007). Networking with other organisations is prohibited, as are confrontational activities. As a result, the majority of NGOs self-censor away from sensitive issues. Many operate worker assistance centres, providing legal advice or offering in-factory training on labour law or health and safety (Huang, 2007). Some individual activists, known as "citizens' agents", focus on providing legal assistance (Zhang, 2007). These activities are generally tolerated, some even welcomed for their contribution to social stability (China Labour News Translations, 2008). However, NGOs constantly risk their centres being closed down, due to a change in policy or opposition from local commercial interests (Huang, 2007, p. 3). Mainland NGOs are supported by a lively network of labour NGOs in Hong Kong, which play advocacy, resourcing and coordination roles.²² Mainland NGOs also receive funding from overseas groups, which is a further source of concern for the Government (Huang, 2007, p. 6-8). Foreign funders include European and US NGOs, and US Government departments (Harney, 2008, p. 126).

The state's tradeoff between economic growth and worker protection is demonstrated in its strategy towards labour NGOs. Government strategy varies between tolerance, attempts at co-option (control) and harsh clampdowns. In 2006, two Shenzhen NGOs were closed down due to their lobbying for lower arbitration fees (Harney, 2008, p. 135). In 2007, however, the Shenzhen City

²² Hong Kong NGOs supporting the mainland labour movement include Asia Monitor Resource Centre, SACOM, Globalisation Monitor, China Working Womens' Network, Labour Action China and Labour Education Solidarity Network, among others.

trade union offered more than 10 NGOs the option of working under local governments on condition that they stop receiving foreign funding (China Labour News Translations, 2008). State action on NGOs appears to be the result of ongoing struggles between government departments (China Labour News Translations, 2010a). In 2009, a state investigation of NGOs in Guangdong led to a report describing them in very harsh terms (naming individuals, and even claiming that NGOs pose a threat to national security). However, this did not lead to a crackdown on NGOs. Apparently, other departments' did not see them as a threat, or perhaps even considered their services valuable (China Labour News Translations, 2010a). As NGOs' services inherently threaten economic interests, they remain very vulnerable. For NGOs to be tolerated by the Government relies on them being perceived to offer a net benefit to social stability.

Recent Developments in the Labour Movement

There are indications that workers are making more proactive, interest-based demands. In a handful of cases, workers have demanded participation in existing enterprise unions, or have tried to establish ACFTU-affiliated unions at their workplace (Chan, 2011, p. 49). While these are anomalies, the growing rights awareness, labour shortages and increasingly supportive media are allowing workers to become more assertive, particularly in Guangdong. While the majority were rights-based, nationwide China Labour Bulletin found as many as 35 of 100 cases in 2007-2008 to be *beyond* redress for rights violations (China Labour Bulletin, 2009a, p. 24). These included demands for higher wages, shorter working hours and reductions in workload.

The development of interest-based demands (and the growing frequency of strikes over legal rights) demonstrates the failure of the state's attempt to regulate solely through legal channels. The unrest has forced the state to make other responses. On the enterprise level, protests have forced local governments to intervene and mediate. This occurred in the case of the Honda strike, and in four of the 100 cases analysed by China Labour Bulletin (2009a, p. 50). In other cases, local governments have paid wages in arrears themselves (p. 50). On a regional level, unrest has provoked minimum wage rises and the "partial fix" of further legal developments (Beja, 2011, p. 3). Such cases demonstrate the potential of worker unrest to counterbalance the economic competition that puts downwards pressure on labour conditions. If labour unrest threatens stability, the balance will be tipped in favour of worker protection, and concessions granted.

Conclusion

Trading partners buying from China enjoy labour costs that do not reflect the true cost paid by China's workers. While China does have some world-class factories, migrants in the majority of export factories continue to work in dangerous environments. They face authoritarian management systems, excessive overtime and are highly susceptible to becoming bonded labour. Wages are dissatisfyingly low and not necessarily paid. These conditions are perpetuated by the almost complete denial of core labour rights, which prevents workers organising for improvements. Instead, the externalities of production are borne by the workers themselves, and their rural communities. A minority of urban residents, and foreign trading partners, enjoy the benefits.

There are multiple factors for trading partners to consider, if they seek to contribute to improvements. Current conditions are in part due to China's labour surplus in impoverished rural areas, which for some time will reduce pressure on employers for improvements. However, eventual labour scarcity will not solve all problems. China has chosen a development path in which workers are sacrificed for economic growth. Chinese employers and officials have neglected the enforcement of labour laws in their bid to win external investment. Trading partners contribute to these competitive pressures. The Government has also maintained migrant workers as a reserve army of labour through its perpetuation of the *hukou* system. Trading partners have benefited from this arrangement.

China's sole legal union, the ACFTU, has been co-opted for stability and economic growth. It has been prevented from playing confrontational roles. Instead, the state has promoted legal channels as a sole avenue for redress, which prevents workers challenging fundamental problems. However, worker protections can only be sacrificed so much before worker resistance threatens stability and growth. At times the level of workers' resistance has made workers' improvements *necessary* for political stability, or to prevent economic disruption. These cases remain rare. However, they do demonstrate that workers' resistance can tip the "economic growth-worker protection tradeoff" in favour of workers. While the workers' movement is weak in China, the hope for future concessions lies in its development.

Trading partners have a responsibility to address these conditions, as beneficiaries of, and contributors to current standards. In formulating their response, they should consider potential avenues offered by *all* the factors contributing to conditions. New Zealand falls far short of meeting its responsibility in this area. Its activities are the subject of the next chapter.

Chapter 4: Social Responsibility in New Zealand: Why the Trend Towards Private Regulation?

The development of New Zealand initiatives to address supply-chain labour conditions has not kept pace with the growing imports from China and other developing countries. There is minimal binding regulation to incentivise socially-responsible behaviour by New Zealand businesses operating offshore. Bilateral cooperation avoids the most pressing of labour concerns. When the issue of supply-chain social responsibility has been raised in New Zealand, CSR has been advocated. While CSR is poorly developed, it is becoming the primary means of addressing offshore labour standards.

In this chapter, I explore and seek to explain these trends. I first outline areas of New Zealand attention to supply-chain social responsibility, to assess to what extent private regulation has emerged as a preferred method. The extent of binding regulation, bilateral cooperation and CSR are analysed. Examples relating to China are offered where possible. It is argued there are few measures in New Zealand to incentivise socially responsible behaviour, or to contribute to improved labour conditions in China. While currently at a very low level of development, private regulation is the preferred strategy. I then analyse explanations for the growing trend towards CSR. It is argued that the *competitiveness* approach offers some explanation, as New Zealand actors address social responsibility in relation to their need to defend or pursue competitive advantage. However the *political* approach is far more comprehensive, explaining the rise of CSR in light of the political context, civil society demand for social responsibility and the reluctance of the Government to pursue alternatives.

Existing Approaches to Supply-Chain Social Responsibility in New Zealand

Domestic Legislation

New Zealand has minimal legislation requiring New Zealand businesses to operate in a socially responsible manner when sourcing or manufacturing offshore. Unlike counterparts in other countries, New Zealand businesses are not required to report on their social and environmental impacts (Chapman & Milne, 2004, p. 37). Businesses are not required to undertake any due diligence processes, such as taking “reasonable steps” to prevent adverse effects on stakeholders. New Zealand importers face only one restriction based on the labour conditions under which goods

were made: goods must not be produced by prison labour (Street, 2009). Schedule 1 of the Customs and Excise Act 1996 states that imports “manufactured or produced wholly or in part by prison labour” are prohibited. This law is enforced in that where Customs “becomes aware of these goods... by examination, baggage search or whatever means, then such goods are seized under the relevant Act” (New Zealand Customs Service, personal communication, March 27, 2010). To detect such items, they rely on “information, indicators and the goods in hand, on a case by case basis”. Given the difficulty of detecting goods produced under prison labour, this law is unlikely to be effective. Meanwhile, the import of goods produced by processes using bonded labour, child labour, causing environmental destruction, or perpetuating conflict, is not prohibited. New Zealand businesses *are* required to follow domestic laws in the countries where they operate. However, as discussed above, weak enforcement in developing countries means that in reality, many businesses operate in a regulatory gap.

In one attempt at reform, in July 2009, Parliament discussed the Customs and Excise (Prohibition of Imports Made by Slave Labour) Amendment Bill, which proposed a ban on the import of goods produced by slave labour (see Customs and Excise [Prohibition of Imports Made by Slave Labour] Amendment Bill- First Reading, 2009). This Member’s bill, introduced by Labour’s Maryan Street, was in response to a 17,000-strong petition brought by Geoff White of Trade Aid (Street, 2009). Proponents hoped to allow prosecutions of businesses under this legislation, giving teeth to NGO efforts (Geoff White, personal communication, September 2009). While the bill only addressed goods produced under one aspect of unsatisfactory conditions (slavery), the question at stake was whether the Government would act decisively to protect offshore workers. The Government opposed the bill and was able to defeat it in Parliament. The Government instead advocated that the private sector assume responsibility for regulating offshore labour conditions through voluntary codes (Groser, 2009).

In theory, New Zealand courts may exercise extraterritorial jurisdiction to hold businesses accountable for abuses of workers offshore. There are few procedural barriers to overseas victims filing proceedings in New Zealand against any company incorporated in New Zealand. Should victims file proceedings, the New Zealand High Court will have jurisdiction (High Court Rules 1908, s 6.12). However, in practice, offshore victims seeking redress through extraterritorial jurisdiction face formidable barriers to success (Day, 2010).

First, New Zealand's jurisdiction in cases occurring overseas is highly likely to be challenged. It is arguable that the offshore jurisdiction is more appropriate,²³ which moves the claim back into the regulatory gap. Second, the use of extraterritorial jurisdiction is politically and economically unfavourable. It may generate accusations of treading on the sovereignty of another nation or be seen to undermine trade. With a lack of consensus over its use, it also has the potential to cause uncertainty for New Zealand businesses. Finally, while *procedures* are straightforward, offshore victims often face language, knowledge and resource barriers preventing them from bringing their case in a foreign country. In reality, the possibility that offshore victims may successfully bring a case in New Zealand courts is so slight as to provide next to no deterrent of socially irresponsible behaviour.

New Zealand businesses can further escape liability by incorporating subsidiaries—deemed a “separate corporate personality”—or purchasing through subcontractors. By operating in this way, New Zealand businesses also “subcontract” responsibility for labour rights. They can then claim ignorance of abuses and escape liability, even if their economic influence is sufficient to impact their suppliers’ activities (for instance demanding prices too low to enable suppliers to pay minimum wages). Some argue that the ability to escape legal liability is precisely the *reason for* operating through subsidiaries or subcontracting networks (Muchlinski, 2010).

The law provides little incentive for company directors and shareholders to consider supply-chain social responsibility. As is standard in Western nations’ company law, in New Zealand the convention of “limited liability” legally separates shareholders from the company (Muchlinski, 2010, p. 915-6). Shareholders cannot be held personally liable for abuses. Company directors are not under any duty to consider impacts on offshore stakeholders. There is thus no direct economic or legal incentive for shareholders or directors to monitor their company’s behaviour with regard to social responsibility.

Legal mechanisms in New Zealand to incentivise socially-responsible behaviour offshore are therefore extremely limited. Those mechanisms that do exist are weak, and unlikely to deter irresponsible behaviour or provide redress for victims.

²³ The defence of *forum non conveniens*. Jurisdiction is decided on matters such as which has most real connection to the action, (eg. where the TNC has headquarters), the resources available to the plaintiff, adequacy of justice systems, and in which jurisdiction justice is most likely to be done.

International Instruments

New Zealand businesses are theoretically encouraged to comply with voluntary international instruments addressing social responsibility. These include the 1977 Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, produced by the ILO (International Labour Organisation, 2006), and the 2008 UN Protect, Respect, Remedy Framework (UNHRC, 2009). These instruments are seldom publicised in New Zealand. Both are voluntary, and neither has a grievance mechanism. They are therefore weak in their ability to deter irresponsible behaviour.

A third international mechanism has received more attention in New Zealand, and may have some impact over the actions of New Zealand businesses operating offshore. As New Zealand is a member of the OECD, New Zealand businesses are expected to comply with the 1976 OECD Guidelines for Multinational Enterprises (OECD, 2011a). The Guidelines are voluntary recommendations for socially responsible business practice, endorsed by New Zealand and over 40 other governments. Complaints about business conduct can be made to National Contact Points (NCP) in any adhering country, which are responsible for encouraging implementation of the Guidelines. If allegations are considered serious, the NCP will intervene by offering mediation. The Guidelines have received some attention in New Zealand, for instance being publicised on the websites of the Ministry of Economic Development and Sustainable BusinessNZ (Ministry of Economic Development, 2012; Sustainable BusinessNZ, 2011a).

While the NCP mechanism could lead to allegations about New Zealand businesses' violations offshore, this is unlikely to happen. Only two complaints laid to date have had any link to New Zealand businesses, both concerning the same banking company (OECD, 2011b, p. 7, 32).²⁴ Neither complaint progressed past initial assessments. Offshore victims attempting to lay a complaint face the same knowledge, language and resource barriers that would prevent them bringing legal cases in New Zealand. In addition, the Guidelines fail to provide a solution to businesses shedding responsibility through the subsidiary structure. A 2005 complaint raised to the Italian NCP appears to have been limited by this. The complaint concerned an industrial relations dispute in China, and was rejected on the basis there was "no connection between the accused firm and an Italian firm" (OECD, 2011b, p. 23). A further limitation is that complaints can only be pursued concerning activity in a country which has endorsed the Guidelines. Many trading partners, including China,

²⁴ Two complaints have been laid against the operation in Papua New Guinea of Australia and New Zealand (ANZ) banking group, a company headquartered in Australia (OECD 2011b, p.7, 32).

have not done so. Finally, the Guidelines are voluntary. The strongest sanctions are a damaged reputation and non-binding mediation. While these sanctions may assist victims, they are unlikely to be devastating to a company. The slim possibility of these sanctions is unlikely to deter irresponsible behaviour.

Bilateral Trade Agreements: Memoranda of Understanding on Labour Cooperation

The above mechanisms concern the liability of New Zealand businesses operating offshore. However, New Zealand has also undertaken measures to address labour conditions in its trading partners generally. One method is through its bilateral trade agreements. Since 2001, New Zealand has had a policy of incorporating labour and environmental standards into trade agreements (Ministry of Foreign Affairs and Trade [MFAT], 2001). This has led New Zealand to negotiate side agreements on labour alongside free trade negotiations with Thailand (2005), the P4 (2005), Malaysia (2009) and Hong Kong (2010) (MFAT, 2012b). However, these mechanisms bind parties only to ongoing cooperation. They do not require parties to improve conditions. Examination of the memorandum of understanding (MoU) with China reveals what can and cannot be expected of these agreements.

New Zealand pushed to negotiate a side agreement on labour cooperation alongside negotiation of the 2008 FTA with China (New Zealand Department of Labour and Ministry of Human Resources and Social Security of the People's Republic of China, 2008). China had previously entered into one other such agreement, a cooperation-only Memorandum of Understanding on Labour and Social Security Cooperation with Chile. However, the stronger agreement proposed by New Zealand was “novel for China”, and New Zealand negotiators worked hard to persuade them of its necessity (David Walker, personal communication, October 17, 2011). According to one union interviewee: “it was amazing [the MoU] even got in. It only got in because the Labour Government of the time insisted on it” (Robert Reid, personal communication, May 30, 2011). The most significant contention was over the form of the agreement (MFAT, 2007). While New Zealand pushed for an inter-governmental agreement, the result was an agreement signed at agency level, though this was still binding.

The MoU was aimed at improving dialogue and facilitating cooperative activities on labour issues (MFAT, 2010). The parties agreed on shared trade and labour principles, reaffirming their obligations as members of the ILO (Article 1.1). They agreed that “it is inappropriate to encourage

trade or investment by weakening... domestic labour laws," or to use labour laws for protectionist purposes (Articles 1.4 and 1.3). They also agreed on a framework for cooperation in areas of mutual interest and concern, and on a consultation process should disputes arise. As part of this, the parties agreed to meet once in the first year, then regularly, at least every two years. The MoU is linked to the FTA itself through Article 177, which binds the parties to enhance cooperation through the MoU. The MoU is therefore described as "legally binding" (New Zealand Foreign Affairs Defence and Trade Committee, 2008).

However, the MoU binds the parties to little beyond formalised discussions, likely to be about peripheral issues. While parties have recognised the inappropriateness of weakening labour laws to encourage trade, there are no measures to prevent this from occurring, save negotiations between the parties (which will always be tainted with other political considerations). Parties are not bound to any standards, or to improve their conditions. Like labour provisions in other FTAs internationally, the MoU imposes no new duties on the parties (except regular meetings), sets no timelines for improvements, and does not require that prior international commitments are in fact met. The MoU is not a regulatory measure that will ensure progress or assure any minimum standards.

Neither has the MoU enabled discussion of sensitive issues. As the publicised intent of the MoU is to promote "better...observance of the principles of the ILO Declarations," (New Zealand MFAT, N.Y., p. 13), observers would be forgiven for expecting that the MoU would at least bring about *discussion* of non-adherence to these standards. Indeed, the official FTA website promotes the MoU as helping to "reinforce the objectives of raising working standards" (MFAT, 2010). However, nowhere in the negotiations or subsequent implementation have issues of non-compliance been discussed. Disregarding submissions such as that from Amnesty International (Amnesty International, 2008a, 2008b), MoU negotiations did not touch on China's (or New Zealand's)²⁵ non adherence to ILO conventions, instead taking as given both parties' commitment to abide by these.

Topics of non-compliance have not come up in subsequent implementation. Since the first implementation meeting in December 2009, the parties have undertaken two projects. The first, on youth employment, was conducted through APEC (see Asia-Pacific Economic Cooperation [APEC], 2009). The second, on labour market forecasting, is underway. These projects steer clear

²⁵ New Zealand has yet to ratify all key ILO conventions, for instance ILO Convention 87. Therefore, while an ideal outcome of the MoU negotiations would have been for both parties to commit to *all* goods meeting ILO Conventions, neither China nor New Zealand currently meet this standard (Peter Conway, personal communication, June 3, 2011).

of any sensitive issues. As Peter Conway, Secretary of the New Zealand Council of Trade Unions (NZCTU) described, in implementing the MoU the Government has been “very, very cautious” not to get involved in sensitive areas (personal communication, June 3, 2011).

While at face value, the MoU appears a legally-binding agreement to improve labour standards, (thereby assuaging some concerns about the impacts of liberalised trade), it is highly unlikely to broach the most pressing issues. Inarguably, long-term cooperation has potential to advance labour standards. However, couched within the need to maintain positive trade relations, it is unlikely the MoU will lead to cooperation in any areas of any sensitivity, which include the most pressing labour rights violations in China. New Zealand therefore lacks any binding measures that can be relied on to improve offshore labour conditions in its supply chains.

Governmental and Non-Governmental Bilateral Cooperation on Labour Issues

Bilateral cooperation with trading partners has also been pursued to address labour conditions. In recent years the New Zealand and Chinese Governments have begun cooperative activity in this area. Prior to the MoU, there was no formal programme for cooperation; however, according to Department of Labour staff, New Zealand agencies received a “constant flow” of at least five visits from Chinese agencies per year, most on the regional and provincial level (Michael Hobby, personal communication, October 17, 2011). Most visits entailed brief discussions on specific disciplines, for instance OSH. However, it is likely that many of these trips are little more than official tourism (*guangfang luyou*), a means of rewarding loyal staff, funded by the Chinese taxpayer. (A number of union and NGO interviewees noted the frequency of this practice). There has been one instance of a more substantial effort of bilateral cooperation. In 2007 the New Zealand Government co-sponsored a joint project in the mining industry, an area in which China is keen to improve its performance.

The MoU formalised cooperation. However, as mentioned, the two official initiatives steer clear of any sensitive issues. New Zealand unions have suggested the Government undertake a joint project to research conditions in the largest three sectors each way (Peter Conway, personal communication, June 3, 2011). The suggestion was not taken up. There is potential for other projects in the future, but they rely on funding, which has been limited.

Bilateral cooperation has also been undertaken through union links. New Zealand unions have taken a pioneer role in engagement with China. The New Zealand Council of Trade Unions (NZCTU) was among the first in the ITUC to engage with China, despite icy controversy in the international movement about whether to engage with or disregard the ACFTU. In 2001, a NZCTU delegation was the first to meet with the ACFTU President (Ross Wilson, personal communication, July 14, 2011).

The NZCTU has aimed to develop a relationship through which they could challenge the ACFTU to become more accountable to its members. Ross Wilson, former head of the NZCTU notes that many “frank discussions with their leadership” have been held (personal communication, July 14, 2011). Since the 2001 delegation to China there have been a number of visits in both directions. The NZCTU made an official visit to the ACFTU in 2007. Union staff have also visited China under the banner of the Global Union Federation. In addition, there have been a number of unofficial or semi-official visits, for instance New Zealand union staff meeting union officials while on personal trips to China, or attending research seminars organised by the ACFTU (Robert Reid, personal communication, May 30, 2011). One visit included a discussion with the Suzhou Federation of Trade Unions (Voxy News Engine, 2010).

Like delegations of Government labour officials, Chinese union delegations to New Zealand are frequent, estimated at six to seven groups per year (Robert Reid, personal communication, May 3, 2011). These visits are predominantly by low-level officials, and appear to be focused around tourism. NZCTU receives one ACFTU delegation per year (Helen Kelly, personal communication, November 3, 2011).

The relationship has allowed exchanges in technical expertise. New Zealand unions set up a framework for discussions between Chinese and New Zealand unions in the mining industry. This included a Chinese delegation visit to Huntly, New Zealand, for a two-week seminar on coal-mine safety in April 2007, followed by a seminar with a Chinese company in Inner Mongolia in June (Feickert, 2007, p. 4).²⁶ The project was later picked up by the EU (Helen Kelly, personal communication, November 3, 2011). The initial project was enabled largely through the work of Dave Feickert, a New Zealand mining expert with a long history of experience with China.

²⁶ This was coordinated by NZCTU and the Engineering, Manufacturing and Printing Union, and supported by Solid Energy (the New Zealand state-owned coal corporation) and the New Zealand Government (Feickert 2007, p. 4).

In other cases of interaction, the NZCTU has provided assistance on employment laws, collective bargaining and health and safety. On at least one occasion, NZCTU has raised to the ACFTU the issue of human rights abuses in Burma (Helen Kelly, November 3, 2011). New Zealand unions also sought assistance from Chinese counterparts to increase pressure for their preferred outcome in the FTA negotiations. The 2007 New Zealand union delegation to China aimed to get ACFTU support for the New Zealand unions' stance on the FTA, which favoured a gradual transition to zero tariffs. The NZCTU believed the ACFTU would be more receptive to their views than New Zealand negotiators (Robert Reid, personal communication, May 30, 2011). While it is unknown whether the ACFTU did assist in providing pressure, gradual transitions were included in the eventual agreement.

The potential of the MoU for facilitating joint union or NGO projects, or for raising disputes, has not yet been tested. According to Peter Conway, unions' only use of the MoU to date has been their reference to the MoU as a way of getting New Zealand Government support for the bilateral cooperation in the mining industry, mentioned above (personal communication, June 3, 2011). The MoU could enable further projects. Unions could also use the MoU to raise a dispute. During MoU negotiations, unions pushed for a process through which they could spotlight exploitative working conditions in China in situations where these may be the "competitive advantage" which result in Chinese products or services being purchased in New Zealand (Ross Wilson, personal communication, April 30, 2012). There is room to explore the effectiveness of this dispute process. While New Zealand unions are keen to avoid perceptions that they "pick on China", China's rise to become New Zealand's second largest trading partner means greater attention is justified.

There is potential for bilateral cooperation from non-union groups, such as OSH organisations. Individuals may also spark cooperation, as demonstrated in the case of the mining project above. The MoU may enable individuals or groups to appeal for official support.

The potential of bilateral cooperation as a means of contributing towards improved labour conditions has yet to be fully tested. Resources for joint government and union projects are limited. With the exception of the mining project, non-governmental groups have yet to pick up the MoU as a mandate under which to initiate cooperative projects, or to initiate a dispute. Government cooperation has not approached sensitive issues. Nevertheless, there is opportunity for improved cooperation, which will be discussed in Chapter Six.

Corporate Social Responsibility

In the absence of binding legislation, and with only limited bilateral cooperation to address labour conditions, New Zealand has increasingly relied on CSR to address supply-chain labour issues. However, as noted in Chapter Two, the CSR movement in New Zealand is at a low level of development, and historically has focused on environmental sustainability (Eweje & Bentley, 2006, p. 6). In recent years, more businesses have undertaken social initiatives, including some steps to address supply-chain labour conditions. This remains the “pinnacle” of CSR practice, attempted by only a minority of companies.

Supply-chain labour initiatives have been very rare in New Zealand, and patchy data has only recently become available. When businesses were asked about initiatives to address “social responsibility in the supply chain” for the first time, fourteen of 30 respondents reported having some form of audits in place (Massey University, 2005, p. 29). However, the survey did not probe into what social criteria were addressed, what audits entailed, or what proportion of suppliers were covered. By 2007, “a few” of the fifteen respondents to the Massey leaders survey had some form of ethical purchasing policies (2007, p. 25-26), although initiatives were poorly monitored.

Recent surveys suggest roughly a third of New Zealand businesses are engaged in *some form* of ethical purchasing initiatives (Collins, Lawrence, Roper et al., 2010, p. 10; ShapeNZ 2011, as cited in Gibson, 2011a). However, no studies document what these policies entail, or enable any ranking of businesses. It is likely that far fewer than one third of businesses conduct *labour-focused* initiatives. As quantitative research to fill this gap is outside the scope of this thesis, case studies and personal correspondence provide some insight into the nature of labour-focused supply-chain initiatives.

The Warehouse, a retailer with annual sales of NZ\$1.46 billion, is frequently cited as a New Zealand leader in ethical purchasing (Association of Chartered Certified Accountants, 2011, p. 12; Gibson, 2011a; NZBCSD, 2003b). In 2011, 61 percent of its products were made in China (The Warehouse, 2011, p. 7). The Warehouse expects suppliers to comply with its own code of conduct on labour issues, and annually audits about 100 factories (p. 19). Auditing covers roughly 20 percent of direct suppliers (Gibson, 2011a). Of suppliers audited between 2007 and 2010, 11.4 percent of suppliers failed to meet minimum standards and were discontinued (The Warehouse, 2010, p. 15). Forty-five percent were in “probationary” status, meaning that trade continued despite

non-conformances awaiting rectification. The majority of factories showed improvement between audits.

The Warehouse has begun a register of factories from whom it sources indirectly, allowing consideration of conditions at these sites (The Warehouse, 2011, p. 19). As of 2011, nearly 500 suppliers to the Warehouse had provided details of their source factories for this register. The Warehouse has also maintained FTSE4Good supply-chain criteria, an international standard which certifies that its efforts are achieving minimum levels of compliance (p.28). The Warehouse ethical sourcing programme is highly unusual among New Zealand businesses, in terms of number of audits, the degree of transparency and for its international certification, though these practices are not uncommon among international brands.

Another example of advanced CSR activity is ABS Logistics (Stenger, 2007). This New Zealand company led the adoption of CSR practices in its greater supply chain dealing with China. After adopting its own CSR policy regarding labour conditions, ABS Logistics also convinced its customer, Woodward Laundry Products, to adopt a similar policy. These firms then worked together to negotiate compliance from their Chinese supplier, Conghua Metals.

My own correspondence with roughly 30 New Zealand manufacturers and retailers revealed no examples more developed than the Warehouse and ABS initiatives. Eleven companies I approached had some forms of monitoring in place. In six of these companies, supply-chain labour issues were addressed by overseas parent companies. Excluding The Warehouse, the four other businesses that undertook monitoring conducted this through self-auditing. These four companies purchased from only one or two offshore factories, in which they were the sole or primary buyer. Their checks of compliance with codes of conduct were done alongside quality checks or other factory visits, by non-specialist staff who may or may not have high awareness of Chinese labour issues. Given the difficulties even qualified auditors have in detecting problems (discussed in the next chapter), the effectiveness of informal checks is dubious.

Two further companies had considered labour conditions but did not conduct audits. Of these, one was a small apparel company that conducted no audits themselves, but instead purchased only from suppliers to big brands, and relied on the brands to conduct audits. This was possible because the company was in high-end apparel and could afford to follow high-quality overseas brands. The

other was a shoe retailer that reported to have a code of conduct which they asked suppliers to sign. They did not monitor compliance.

The majority of companies I approached had no codes of conduct or auditing in place. Some claimed to have inspected premises when conducting quality checks. Two companies refused to provide any information on their sourcing, stating the information was “commercially sensitive”. No companies I approached were members of multi-stakeholder initiatives (with the exception of one company whose parent company was a member of the Ethical Trading Initiative). Transparency was extremely poor among companies I approached, with TBL disclosure largely *ad hoc*. While a few issued TBL reports, the majority had only limited information available on their websites. None disclosed audit results or suppliers, or had complaint mechanisms in place. Only a minority (The Warehouse, ABS Logistics, and one other) had undertaken any proactive steps. Even the Warehouse, a New Zealand leader in ethical sourcing, has a number of areas needing improvement. Audits cover only a minority of direct suppliers, are pre-announced, and largely self-audited. Audit findings have only a limited impact on purchasing. Based on this brief investigation, New Zealand supply-chain labour initiatives appear very shallow in scope. However, they are gradually developing.

Explaining the Emergence of CSR in New Zealand

It is evident there is a trend in New Zealand towards using CSR to address supply-chain labour issues, even if efforts remain poorly developed. Binding measures remain minimal, and where existing, are weak. Bilateral cooperation does not yet address the most pressing offshore labour concerns. CSR supply-chain labour initiatives, while undeveloped, are an area of growth. The remainder of this chapter will examine what explains the trend. Both the *competitiveness* and *political* approaches are necessary.

The Competitiveness Approach

The competitiveness approach explains the promotion of CSR initiatives as a result of individual actors’ defence or pursuit of competitive advantage. CSR can be seen as a business effort to reduce risks and uncertainties in the market (such as the threat of costs from activism or government regulation). CSR can also be seen as a means to attain power or pursue a favourable market position. In New Zealand, the approach can help to explain both the slow but increasing development of supply-chain labour initiatives, and also the existence of some advanced cases.

CSR as a Defence of Competitive Advantage

New Zealand businesses have faced minimal need to take up supply-chain labour initiatives to defend their competitive advantage. There has been next to no demand from consumers, civil society and the Government for business to address their impact on stakeholders. As recently as 2010, the majority of businesses surveyed felt *no* internal or external pressure to adopt environmentally- or socially-responsible practices (Collins, Lawrence, Roper et al., 2010, p. 15, 19). This was especially true among small businesses. The Government has demonstrated its unwillingness to impose regulation for supply-chain social responsibility. The threat of Government-imposed costs is therefore minimal.

Pressure from New Zealand consumers for *any* sustainability practices is very low. Consumer attitudes to environmental and social responsibility have been documented— therefore publicised to businesses— only since 2007 (2009 for social issues) (ShapeNZ, 2007; Madow, 2009). While consumers increasingly consider environmental and social factors, price remains their primary consideration (Colmar Brunton, 2010; ShapeNZ 2011, as cited in Gibson, 2011b; ShapeNZ 2010, as cited in NZBCSD, 2010a; ShapeNZ, 2007). Only four in 10 consumers would pay a premium for sustainable and ethical products (Colmar Brunton, 2010). When supply-chain social responsibility issues are considered, the figures are even lower. In 2010, 55 percent of consumers reported that they consider fair trade when selecting a product, and 37 percent that they consider “social responsibility” (ShapeNZ 2010 as cited in NZBCSD, 2010a). However these issues would trump price for only seven percent of consumers. Unsurprisingly given these low figures, in 2010, only 11 percent of companies reported being motivated by consumer pressure to implement social practices (Collins, Lawrence, Roper et al., 2010, p. 19).

New Zealand faces a lack of confrontational groups²⁷ to critique corporate activity and demand attention to supply-chain social responsibility. New Zealand does have a “strong and outspoken conservation movement,” for instance the Forest and Bird Society (Bebbington et al., 2009, p. 597). National tourism marketing that promotes New Zealand as a “100 percent pure” destination and “clean and green” are also likely to raise consumer awareness of environmental issues. In recent years, conservation groups and the Green Party have led attention to supply-chain environmental

²⁷ As defined in Chapter Two, confrontational groups are non profit organisations that “function as corporate watchdogs, blacklist ‘irresponsible’ corporations, arrange for public shaming campaigns, take corporations to court, and lobby for the taming of [TNCs] through national and transnational governance structures” (Shamir, 2004, p. 647). In short, they are critics of corporate activity.

issues, with campaigns for an end to the use of palm oil in chocolate (New Zealand Herald, 2009), and non-sustainable timber in toilet paper production (Fairfax NZ News, 2011). However, in 2010, only five percent of businesses reported pressure groups as a source of motivation towards environmental activities (Collins, Lawrence, Roper et al., 2010, p. 15). For social practices, the figure was three percent (p.19).

There are very few groups addressing supply-chain *labour* issues specifically. NGOs Trade Aid and Oxfam do this to some degree. In 2010, public pressure led two large New Zealand chocolate companies to pursue fair trade certification in some product lines (Stock, 2010). This followed similar activity in these companies in the UK. However, the focus of Trade Aid and Oxfam is on producer conditions and returns in selected agricultural supply chains (primarily coffee, cocoa and banana production). They have no initiatives in China.

New attention to a select area of supply-chain labour issues was sparked in 2011. Research from Auckland University revealed extremely poor conditions for migrant workers aboard foreign-owned vessels fishing for New Zealand companies (Skinner, 2012; Stringer, Simmons, & Coulston, 2011). The revelations provoked widespread media criticism in New Zealand, and spurred action from the Christchurch Indonesian Society, the Anglican Church and the Salvation Army, among others. The Salvation Army is now working to establish a New Zealand branch of the NGO Stop the Traffik to target human trafficking and slavery on an ongoing basis.

There remains, however, an almost complete absence of groups regularly demanding attention to labour issues in offshore *manufacturing*. During the New Zealand-China FTA negotiations, submissions regarding labour standards were made by the Green Party and Amnesty International (Amnesty International, 2008a, 2008b; Norman, 2008). Pressure from high-level union staff, and their involvement in negotiations, was instrumental in maintaining attention on labour issues. The Customs and Excise bill 2009 also provoked discussion. Aside from these periods, the issue of labour conditions in offshore manufacturing has seldom been raised. Neither have there been groups educating consumers about these issues. Regarding New Zealand activity to address offshore manufacturing conditions, an email from Geoff White, general manager of Trade Aid, paints a bleak picture:

I am not aware of any New Zealand initiatives dealing with either work conditions or slavery in offshore manufacturing supply chains. I am not aware of any other individual or

organisation that has this concern and is taking steps to address it... There is a lot more that can be done in this area. (Personal communication, April 30, 2012.)

In light of these low levels of demand from consumers, civil society and Government, businesses have not needed to implement or improve supply-chain labour initiatives to defend competitive advantage. Neither have they needed to pursue *stronger* measures for this purpose. Given the low development of social responsibility in New Zealand, there are few businesses advanced in CSR initiatives, and therefore few that would *benefit* from regulation to require social responsibility of businesses. There do not appear to have been any moves from the business sector to defend competitive advantage in this way.

However, demand for supply-chain social responsibility is growing. Some businesses already risk losing position in foreign markets which place a greater emphasis on social responsibility (see the EU examples in Chapter Six). This may explain the rise of CSR in certain companies. Awareness of social responsibility issues is also growing in New Zealand. The 2010 and 2011 ShapeNZ surveys document increasing attention to social responsibility and fair trade among New Zealand consumers (ShapeNZ 2011, as cited in Gibson, 2011b; ShapeNZ 2010, as cited in NZBCSD, 2010b). The Waikato surveys report that businesses expect pressures to rise in the next five years (Collins, Lawrence, & Roper, 2010, p. 488). The increased costs and risks businesses anticipate could be motivating the gradually-increasing attention to supply-chain issues. Businesses may be acting to pre-empt activist attention and forestall a need for regulation.

Given the low number of confrontational groups in New Zealand, the trend towards growing awareness can primarily be attributed to the work of business-led sustainability organisations (BSOs).²⁸ Until January 2012, there were three BSOs in New Zealand. These included the Sustainable Business Network, a forum of roughly 450 members, predominantly SMEs; the New Zealand Business Council for Sustainable Development (NZBCSD), whose roughly 45 members' annual sales comprise about 43 percent of GDP; and Sustainable BusinessNZ, an initiative of BusinessNZ, New Zealand's largest business lobby. Sustainable BusinessNZ therefore represents 14,000 direct members and 76,000 associate members. These organisations have provided resources, training and research and have run projects to encourage business sustainability. They have also contributed to policy development. In January 2012, Sustainable BusinessNZ's forum of

²⁸ Informal networks of individuals, such as Green Drinks and Sustainability Matters, also raise awareness about the responsibility of business. These groups focus on environmental issues.

10 members joined with the NZBCSD, and the merged body was named the Sustainable Business Council (Sustainable BusinessNZ, 2012).

BSOs have primarily focused on environmental sustainability in New Zealand, but have also led the limited attention to supply-chain labour issues. The NZBCSD Business Guide to a Sustainable Supply Chains remains the foremost New Zealand-produced document promoting supply-chain social responsibility (NZBCSD, 2003a). In 2006, NZBCSD required its members to introduce sustainability criteria into procurement from six of their top 10 suppliers (Collins, Lawrence, & Roper, 2007, p. 16). The NZBCSD initiative ShapeNZ is responsible for the majority of the surveys to date into consumer attitudes towards social responsibility. In addition, Sustainable BusinessNZ has led the strongest New Zealand effort towards motivating supply-chain initiatives currently underway, discussed below. (These initiatives are the full extent of New Zealand efforts to promote supply-chain social responsibility.)

BSOs are likely to maintain the growing trends towards demand for social responsibility, and CSR as the defensive response. BSOs' activities directly and indirectly raise consumer awareness. BSOs promote the business case for CSR, advocating initiatives as a means to defend or enhance competitive advantage (see for instance, Sustainable Business Council, 2012). They also communicate perceptions of consumer demands to their members (Collins, Lawrence, Roper et al., 2010). As a result, BSOs not only generate increasing demand for social responsibility (raising the costs and risks of inaction), but also promote CSR as an effective means of reducing these costs and risks. The competitiveness approach is therefore useful in the New Zealand case. CSR can be seen to correlate to low but growing consumer demand (therefore growing costs and risks of inaction), businesses' perception of these risks, and their growing awareness of CSR as means of defending competitive advantage. Pursuing stronger measures to defend competitive advantage is unnecessary.

The competitive approach also appears to explain the emergence of the most advanced voluntary effort to promote supply-chain social responsibility in New Zealand. Sustainable BusinessNZ is in the process of establishing a national database into which businesses can upload environmental and social responsibility information. The information would then be available to prospective customers, and possibly to the general public. The initiative is a direct response to the "steadily increasing" disclosure requirements faced by New Zealand businesses (Sustainable BusinessNZ, 2011, p. 1). The database will save businesses the costs of preparing the information separately for

multiple tenders. It would also streamline the selection of socially-responsible suppliers. The initiative has therefore arisen as a means to reduce costs and increase businesses' competitive advantage. In this case, the depiction of CSR as a means to defend competitive advantage appears to have strong explanatory power.

CSR as a Proactive Pursuit of Market Rewards

Given that pressures for supply-chain labour initiatives are only recently emerging in New Zealand, the relatively high level of commitment by companies such as the Warehouse demands explanation. "Reputation and Brand" was cited in the Waikato surveys as among the leading motivations for CSR activity in New Zealand (Collins, Dickie, & Weber, 2009, p. 52). Given that pressure groups were not a strong motivation, it is likely that this concern for reputation was proactive, not defensive. The market for socially-responsible products is newly developing in New Zealand (Colmar Brunton, 2010). Given its current low level of development, *any* demonstrated commitment to supply-chain labour issues positions the company as a leader in this market. Some businesses may undertake advanced CSR to attain these leadership positions. As these rewards can be attained through voluntary initiatives, there is certainly no motivation to pursue stronger measures.

However, it is unclear why companies that invest in genuine supply-chain labour initiatives choose these over "easier" CSR methods. The low level of public attention means that positive reputation may in some cases be "bought" with minimal investment. For instance, a company may derive reputational benefits simply by devoting a website page to offshore labour conditions, which in reality are poorly monitored. Such greenwash currently receives no critique. Furthermore, supply-chain labour initiatives are among an array of avenues to attaining leadership in socially-responsible markets. In the Colmar Brunton survey 2009-2010, consumers cited "improving the supply-chain" as only third of *six* ways in which businesses could improve their reputation (Colmar Brunton, 2010). Businesses can therefore improve their market position through a range of easier alternatives.

It is possible that in certain sectors, supply-chain labour initiatives are particularly useful for branding. Advanced companies may also pursue supply-chain initiatives as a point of difference, as other CSR initiatives become more common. However, many forms of CSR remain rare, and supply-chain labour initiatives are complex and expensive compared to these alternatives.

Therefore, where supply-chain labour initiatives are pursued, market position is unlikely to be the sole motivator. It is likely that other factors, such as anticipation of future risk, also contribute.

The range of easier alternatives is likely to contribute to the low take-up of supply-chain labour initiatives among the general business population. There are next to no initiatives aiming to build business capacity on implementing supply-chain labour initiatives. While BSO provide resources on many areas of CSR, their programmes on supply-chain labour initiatives are limited to the above examples, and are therefore minimal. The Government does not appear to have initiated any programmes to encourage supply-chain social responsibility. This lack of resourcing may further explain the low spread of these initiatives: most businesses remain ill-equipped to “add value” in this way.

There are not yet many market rewards for businesses to undertake supply-chain labour initiatives for proactive reasons. Consumer demand, while increasing, remains low. Additional incentive schemes largely focus on environmental sustainability. BSOs run CSR awards, such as the Sustainable Business Network annual awards and the Sustainability 60 Series, however the awards criteria do not emphasise supply-chain social responsibility. Businesses can succeed in these awards with no attention to supply chain issues. The Government has endorsed an Environmental Choice eco-label to create market rewards for CSR leadership (Environmental Choice New Zealand, 2012), but this too focuses on environmental sustainability. There are thus few additional incentives for businesses to undertake supply-chain labour initiatives specifically.

The Government is also missing an opportunity to promote supply-chain social responsibility through its procurement, an estimated NZ\$14-20 billion annually (Australian Procurement and Construction Council, 2007, p. 4). As significant customers, Governments can model socially-responsible purchasing. They can also create market rewards for socially-responsible business, by requiring disclosure and favouring socially responsible companies in their tendering processes. These market rewards incentivise social responsibility by making this a criterion on which businesses compete for contracts.

Under the Labour Government (1999-2008) there was a strong push to promote social responsibility in this way. In 2003 the Government initiated the Govt3 programme to encourage sustainability in Government departments. Drive for sustainable procurement was also seen at the level of local

government. In 2003, the Christchurch City Council established a Sustainable Supply Chain policy (Christchurch City Council, 2003).²⁹

In 2006 the Labour Government produced a national framework on sustainable procurement, which included the goal to “support suppliers to government who are socially responsible and adopt ethical practices” (Australian Procurement and Construction Council, 2007, p. 10). As a result of this national Framework, suppliers to Government are required to declare social and environmental performance during tenders for all-of-government contracts. Furthermore, in 2007, the Government centrally mandated minimum environmental standards for certain goods (Ministry for the Environment, 2008, p. 5-6). Supposedly, timber, travel and light fittings purchased by the 32 core agencies must meet the specifications given, or instance, using only certified products (p. 57-58).

While these are significant steps towards creating a market for social responsibility, implementation has been poor. The Government does not appear to monitor or audit the sustainability performance of its suppliers. Procurement staff in the Ministry of Economic Development did not know of anyone checking through the supply chain (personal communication, October 19, 2011). Minimum environmental standards do not appear to be enforced. While they do offer guidance for departments, and act as a precedent for a Government-set minimum social responsibility standard, their impact is uncertain.

In recent years, momentum on sustainable procurement appears to have waned (MED staff, personal communication, October 19, 2011). The Govt3 programme was disbanded under the National Government (2008-2014). Without a focused programme to encourage government agencies to implement the Framework, efforts are disparate and there is little incentive for improvement. The drive for supply-chain social responsibility appears particularly weak. As MED staff put it, “It’s very hard for us to know [the extent of supply-chain initiatives]. Agencies each do their own thing. No reporting mechanism would tell us if they were” (personal communication, October 19, 2011). Despite the early progress toward sustainable procurement in New Zealand, the Government is missing an opportunity to create market rewards for businesses that purchase responsibly.

²⁹ The policy states that where possible, the Council will seek to give preference to suppliers/contractors who can show they are working towards supply chain sustainability, including social responsibility. In 2010, the Tauranga City Council established a similar policy (Tauranga City Council, 2010).

Market rewards for supply-chain labour initiatives therefore remain undeveloped. In light of the low consumer demand for supply-chain labour initiatives, the low resourcing, and the lack of additional incentives such as awards or preference in Government contracts, it is likely that supply-chain labour initiatives do not appear a viable or rewarding option to most businesses. There is no motivation for stronger initiatives. While some advanced cases may benefit from pursuing supply-chain labour initiatives specifically, in most cases similar market rewards can be derived from easier alternatives.

CSR as a Proactive Pursuit of Power

Within the competitiveness approach is the possibility that businesses pursue CSR for the anticipated benefits to their power (this in turn benefiting competitive advantage). Pursuit of power has been acknowledged by Roger Spiller, previous Executive Director of the NZBCSD, as a motivation for membership of BSOs (as cited in Milne, Tregidga, & Walton, 2009, p. 15-16). The power benefits that derive from implementing supply-chain labour initiatives specifically are harder to identify. These initiatives bring no obvious instrumental or structural power benefits. However, they may bring some benefits to discursive power. The complexity of supply-chain labour initiatives may afford those businesses that undertake them a higher degree of legitimacy as a socially-responsible business. This reputation, in turn, could translate into greater ability to shape discourses about social responsibility, as they are seen to “walk the talk”. However, as with positioning in socially-responsible markets, businesses could accrue similar power benefits through easier CSR initiatives.

Some businesses may perceive an advantage in developing authority in the area of supply-chain labour issues specifically. Given the current low threat of regulation or reputation damage, there is a low likelihood of discussions on supply-chain labour issues, and therefore little need for businesses to establish authority in this area. However, just as businesses may act pre-emptively to *defend* their market position, they may also proactively establish authority in preparation for future developments. Demonstrating a commitment to supply-chain labour initiatives may earn businesses the right to speak in future media or policy discussions. This gives them power to shape discourses in a way that enhances their competitive advantage.

It is therefore possible that businesses pursue supply-chain labour initiatives to increase their power. Demonstrating commitment to supply-chain labour initiatives brings businesses general credibility

as well as authority in discussions on supply-chain labour issues, and these in turn bring discursive power. However, this is an unlikely sole explanation. If authority on supply-chain issues specifically is not required, alternatives would more cost-effectively bring similar power benefits.

Explanatory Power of the Competitiveness Approach

The competitiveness approach is thus useful in explaining the emergence of supply-chain labour initiatives in New Zealand. The low attention to social responsibility can be attributed first to businesses' minimal need to *defend* competitive advantage. Threats of binding regulation and purchaser pressures for supply-chain social responsibility have been weak, and businesses have not needed to pursue any initiatives in order to defend their market position. However, these pressures are gradually developing, causing increasing attention to these issues. Given the low levels of pressure, businesses only need to undertake CSR, not stronger measures, to allay costs and risks. There are few advanced businesses that would pursue binding measures to prevent their position being undermined. This explains the lack of activity in this area.

The low development of supply-chain labour initiatives can also be attributed to the few market rewards, and the range of easier alternatives through which businesses can improve their reputations and seek discursive power (*pursue* competitive advantage). Rewards from consumers, civil society and Government (through procurement) are minimal, as are programmes to *enable* businesses to implement supply-chain labour initiatives. There are therefore few reasons why businesses would choose supply-chain labour initiatives as a means of adding value. There are no motivations for stronger initiatives. While in a few advanced cases of CSR, businesses may require supply-chain labour initiatives specifically in order to pursue market leadership or increase discursive power, in most cases, similar benefits could be derived from other initiatives. The competitiveness approach therefore explains the low but gradually-increasing attention to supply-chain issues. Even as rewards and sanctions gradually develop, voluntary initiatives remain sufficient to allay costs and attain rewards.

The competitiveness approach offers several lessons for improving attention to social responsibility. The approach suggests that increasing market rewards and sanctions should increase attention to supply-chain labour issues. Increasing the *costs* of irresponsibility, improving market rewards for social responsibility, or building business capacity to respond to these pressures, are all likely to lead to greater business activity in this area. However, expecting market pressures to provoke

businesses to pursue binding regulation for the sake of competitive advantage is overly optimistic, unless in highly advanced cases. While it is possible that some businesses may pursue binding regulation for competitive advantage, the majority of businesses would seek to avoid these costs.

However, the competitiveness approach has limitations. It provides no explanation of state behaviour. It is silent on the role of other actors. The approach does not explain the low level of demand for social responsibility, or the failure of other actors to impose restrictions on business. The approach therefore provides limited insight into how *stronger* alternatives could be pursued.

The Political Approach

The political approach fills many of these gaps. The approach interprets the rise of private regulation as a settlement of conflicts between competing actors, in light of their differing degrees of power in the neoliberal context. In New Zealand, the emergence of supply-chain labour initiatives cannot be divorced from the reluctance of the Government to impose binding regulation, and the severe power imbalance of business over civil society groups. These trends must be understood within the neoliberal context.

Constraints on Policy-makers: New Zealand's Unwillingness to Regulate

New Zealand has frequently been called a competition state (Lewis, 2004, p. 151; 2005, p. 7; Larner & Walters, 2000, p. 362). Between 1984 and 1995 New Zealand embarked on “one of the most notable episodes of liberalisation that history has to offer” (David Henderson, 1995, as cited in Evans, Grimes, Wilkinson, & Teece, 1996, p. 1856). Embracing key tenets of neoliberalism, the Government privatised state assets, deregulated financial markets, labour markets and industry, and liberalised international trade (Evans et al., 1996, p. 1860-61; Larner & Walters, 2000, p. 369). The reforms aimed to create a business environment free of political intervention, and to open the economy to international competition (Evans et al., 1996, p. 1883). They took New Zealand from the one of the most regulated economies in the OECD, to the least (Brash, 1996, p. 4). The reforms also signaled New Zealand’s remodeling from a welfare state into a competition state, in which management of the state is aimed at promoting international competitiveness, and attracting foreign investment (Lewis, 2004, p. 151). Lewis argues this shift is “highly visible in the New Zealand case” (2004, p. 151).

The reforms have had a lasting impact on perceptions towards regulation in New Zealand. Improved private sector performance became seen as “a powerful promoter of the public interest” (Larner & Walters, 2000, p. 370). Foreign investment became perceived as a means to ensure national well-being. The business community has come to support free trade, to “an unusual degree by OECD standards” (Evans et al., 1996, p. 1895). The reforms also led to increased faith in market actors (Lewis, 2004, p. 150-1).

The dominance of these neoliberal scripts—belief in liberalised trade and market actors to maximise the social good—has imposed *de facto* constraints on the New Zealand Government. The Government has proven unwilling to enact regulation that is perceived to hinder the competitiveness of its businesses. New Zealand remains one of the world’s most liberalised economies, and in 2009 was ranked the world’s second best place for doing business (Hong, McCann, & Oxley, 2009, p. 4). These reforms have paved the way for the rise of market-driven, private regulation (Lewis, 2004, p. 149). New Zealand has developed a model of the state that deploys “self-regulation as a programme of government,” as seen in the examples below (Lewis, 2004, p. 149).

The international trade regime also imposes constraints. In discussions on social responsibility, New Zealand policy-makers have cited WTO rules as a barrier preventing regulation. In fact, there is opportunity to push the boundaries of WTO rules in the case of supply-chain social responsibility (as discussed in Chapter Six). However, there have been no efforts by the New Zealand Government to test these boundaries.

Impact of these constraints: Failure of the attempt to ban slave labour imports

The debate over the Customs and Excise (Prohibition of Imports Made by Slave Labour) Amendment Bill 2009 demonstrates the influence of these neoliberal assumptions. The first objection to the bill was that enforcement would be unworkable. This fell flat given the existing ban on imports produced under prison labour, which shared all the challenges of enforcement. In an earlier political context, Parliament had not been constrained by this argument.

In speaking to the bill, Tim Groser, Minister of Trade, argued that the solution to the problem of slavery was poverty reduction through economic development (Groser, 2009). He raised the concern that a ban on slavery imports would inadvertently harm workers in poverty, for instance if

their product became tainted with slavery elsewhere in the supply chain. Groser also raised the concern that a unilateral definition of slavery, and any import ban, would lead to opposition from trade partners. A report from the Foreign Affairs, Defence and Trade Committee in response to the petition that sparked the Bill took a similar line (Foreign Affairs, Defence and Trade Committee, as cited in Hutchison, 2009). Proving a trade ban was *not* a disguised trade barrier was perceived to be a difficult task. These objections reflect a prevailing belief in free trade to advance the social good, and a reluctance to upset trading partners (which would damage competitiveness). Options for challenging international perceptions about acceptable grounds for a trade barrier were not explored. Instead, prevailing neoliberal assumptions determined the outcome.

While highly likely, the influence of New Zealand's drive for competitiveness was not made explicit in this case. At no point in the debate was the objection raised that an import ban would impose costs (and liability) on New Zealand business. No speakers mentioned the threat the bill posed to New Zealand competitiveness as a result of business uncertainty, or from adding costs of due diligence. Groser raised concerns about the broad definition of slavery, which hints at this issue. (Indeed, one speaker to the bill interpreted the definition to include sweatshop labour in China, which would implicate a large number of New Zealand businesses [Harawira, 2009].) However, it is surprising that the threat to national competitiveness was not more explicitly raised. This omission could mean that New Zealand's pursuit of international competitiveness was *not* a motivation in its failure to enact regulation. It could equally suggest that competitiveness concerns have become so influential that they need only be implied. To oppose the bill on the basis of costs would blatantly expose the choice to be made between "economic competitiveness" (particularly cheaper consumer products) and incentivising protection of offshore workers. Such an uncomfortable admission may not have been needed.

A similar case: Failure of the attempt to ban imports of products of illegal logging

A similar case demonstrates even more clearly the influence of neoliberal assumptions on the New Zealand Government's approach to supply-chain social responsibility. In November 2009, Parliament considered another amendment to the Customs and Excise Act 1996, this time on the issue of forestry imports (Customs and Excise [Sustainable Forestry] Amendment Bill- First Reading, 2009). The proposed amendment would prohibit the import into New Zealand of timber and wood products produced illegally and unsustainably. Only forestry products with recognised certifications would be permitted. While the bill aimed to end the import into New Zealand of non-

sustainably produced timbers, which voluntary initiatives had failed to do (Delahunty, 2009), the measure would also have brought economic benefit, as the New Zealand forestry industry was undermined \$270 million per year by the effects of illegal and unsustainable logging.

Even in this case, in which an economic benefit was clear, the bill did not make it to its first reading. The sector was left to continue using voluntary initiatives. The bill was opposed on the grounds it would add compliance costs to the forestry sector (Ardern, 2009). It was opposed for anticipated negative impact on trade relations (Goudie, 2009). It was also opposed due to the perceived general benefits of promoting free trade principles. One speaker raised the point that New Zealand exports are successful due to New Zealand's general support of free trade around the world. They also raised that this promotion of free trade is the "best thing we can do for small, undeveloped Third World countries" (Ardern, 2009). In all these objections to regulation, the influence of neoliberal assumptions can be clearly seen.

The Influence of Power Imbalances

The political approach, with its consideration of the political context, is therefore useful in understanding the lack of binding regulation in New Zealand. However, it is also necessary to consider power imbalances between contending actors, as these help to explain the compromise at private regulation that has eventuated. Due to a lack of data on business lobbying (instrumental power) in New Zealand, the following discussion is confined to structural and discursive power.

A significant bias exists in New Zealand discussions of social responsibility. Lacking a strong voice from confrontational groups, discussions of social responsibility are dominated by BSOs. All three BSOs in New Zealand are funded by business, and exist to serve their members. Consequently, should members' activities conflict with the social good, "doubts must remain" as to whether they can reconcile these tensions (Milne, Tregidga, & Walton, 2006, p. 20). The conflict of interest inherent in BSOs is clearest in the case of Sustainable BusinessNZ. Its parent organisation exists to campaign for business freedom, and is an active advocate of self-regulation (see for instance, BusinessNZ, 2006). Its ability to accept costs on business is therefore dubious.

One case seems to provide evidence of BSOs' inability to overcome their inherent conflict of interest. A 2005 stance by the NZBCSD in *favour* of a carbon tax on business, appears to have contributed to a marked membership decline (Wright, 2011). The case of this carbon tax was one in

which costs had to be imposed on business for the social good. However, it appears the BSOs' attempt to accept this "win-lose" outcome was not tolerated by its members. The case suggests that BSOs do indeed face limitations in advocating for outcomes that impose costs on business.

The dominance of BSOs means the promotion of "pro-business" discourses of CSR, at the expense of other narratives (Prasad and Elmes, 2005, as cited in Brown & Fraser, 2006, p. 104-5; Milne et al., 2006, p. 19; Milne, 2005a). New Zealand BSOs promote the business case for CSR as "the only discourse", creating assumptions that it is neutral and objective (Milne et al., 2006, p. 19). CSR is promoted as effective. There is an underlying assumption that any business can become sustainable, and there is distraction from outcomes in which business has to make sacrifices for the sake of social responsibility (Milne et al., 2006, p. 14, 19).

As the only players in the market, BSOs have grown to positions of considerable power. The NZBCSD has become particularly influential because of its promotion of a pragmatic "middle way" between the Business Round Table and Parliamentary Commission for the Environment (Milne et al., 2006, p. 10). (This position may shift following NZBCSD's merger with the Sustainable BusinessNZ forum.) NZBCSD has formed "extremely close links" with the Government (p. 19). Sustainable BusinessNZ has significant credibility as a representative of mainstream business, and has close ties to the Ministry of Economic Development. These relationships equate to avenues for structural power. BSOs also promote discourses that reinforce economic logic, expert control and business superiority, which further strengthens their position (Milne et al., 2006, p. 20). These discourses are likely to be reinforced should mainstream business (through Sustainable BusinessNZ) play a growing role on the newly-formed Sustainable Business Council. This would make the dominance of BSOs increasingly difficult to challenge.

The relative lack of consumer and confrontational groups leaves only tertiary institutions and trade unions to critically analyse the role of BSOs and their prominent business-case discourses. Tertiary institutions and the few existing confrontational groups lack resources compared to business associations, and face an uphill battle to compete. The prominence of pro-business discourses of CSR also reduces the perceived *need* for critique, or indeed for *any* confrontational activities (naming and shaming, boycotts, or lobbying for binding social responsibility requirements). Somewhat ironically, one result of the dominance of BSOs is that awareness is low about the shortcomings of CSR and the desperate need for stronger alternatives. There is also low awareness of the dangers of business power and the need for more balanced debate. Critique of attention to

supply-chain social responsibility is particularly lacking. With the exception of this thesis, there has not been any academic critique of supply-chain labour initiatives in New Zealand.

In light of these power imbalances, it is unsurprising that BSOs are successful in directing the New Zealand public and policy-makers towards voluntary CSR as a means of addressing supply-chain labour conditions. However, why *any* form of regulation has emerged, given the weakness of demand for attention to supply-chain labour standards, demands explanation. Through the political approach, the gradual emergence of supply-chain labour initiatives, rather than no regulation at all, could be explained in several ways. For businesses that sell to offshore markets, it could be a result of the relative power of activists overseas. For businesses selling to New Zealand markets, the emergence of private regulation could result from the (even weak) pressure there has been towards binding regulation on supply-chain social responsibility in New Zealand. While confrontational groups are weak, there has been sufficient pressure to see two bills before Parliament (though not for several years). This may be sufficient power to provoke a settlement at private regulation.

The emergence of supply-chain labour initiatives among businesses selling to the New Zealand market could also be a result of the *observation* of overseas experiences. As New Zealand businesses and BSOs witness increasing activism overseas, they may anticipate similar activism at home. New Zealand consumers may therefore possess “latent power” from their very *potential* to raise concerns about supply chains. This may be proving sufficient to ensure a settlement at voluntary regulation rather than none at all.

Explanatory Power of the Political Approach

The political approach is therefore highly useful to explain the emergence of supply-chain labour initiatives in New Zealand. The lack of binding regulation can be explained by the *de jure* and *de facto* constraints on policy-makers as a result of the dominance of neoliberal discourses. These constraints are seen in the debates on the failed Customs and Excise Act amendments. The portrayal of supply-chain labour initiatives as a political settlement also has strong explanatory power. The dominance of BSOs in New Zealand, and lack of critique, has led to a dominance of perceptions that CSR is effective. This reduces the perceived need for alternatives, both within Government and wider society. However, some demand for social responsibility does exist in New Zealand. The existing and latent power of consumers may be sufficient to pressure a settlement at voluntary private regulation, and make inaction by businesses no longer an option.

The political approach offers important lessons for improving social responsibility. Most importantly, the approach suggests that the current settlement at private regulation is not inevitable. Should neoliberal assumptions be challenged, or power balances altered, alternative settlements would be possible. These lessons are incorporated into the recommendations in Chapter Six.

The political approach also has limitations. It does not explain the presence of advanced “outlier” cases, which have arisen despite minimal pressure. Advanced cases could only be explained by the political approach if these businesses had unusually high levels of information about overseas or domestic activism, and therefore had higher perceptions of consumers’ latent power. An investigation of motivations in these advanced companies is outside the scope of this paper. From this necessarily limited discussion alone, the competitiveness approach appears to better explain advanced cases.

Conclusion: Explaining the Extent and Emergence of Private Regulation in New Zealand

New Zealand efforts to address supply-chain social responsibility are tending towards reliance on private regulation. There are minimal legally-enforceable instruments to incentivise socially-responsible behaviour. Bilateral agreements on labour conditions do not bind parties to improvements or ensure problems will be discussed. Bilateral cooperation largely avoids the most pressing labour concerns. CSR has been advocated by BSOs and the Government. While only a minority of New Zealand businesses undertake CSR to address supply-chain labour issues, CSR appears to be the area of growth.

To explain the trend towards private regulation in New Zealand, both the competitiveness and political approaches are helpful. The competitiveness approach attributes the emergence of CSR to businesses defence and pursuit of competitive advantage. In light of the low level of demand, businesses have not needed to pay attention to social responsibility in order to defend competitive advantage. Neither have businesses been offered market incentives for action, equipped with resources or given additional incentives, to encourage them to choose supply-chain labour initiatives as a means of pursuing competitive advantage. While demands for social responsibility have increased, CSR remains unusually progressive. There are no motivations for stronger initiatives. Therefore, aside from a few advanced cases, which may derive market benefits from supply-chain labour initiatives specifically, the majority of businesses have not yet faced significant market incentives to undertake supply-chain labour initiatives. The competitiveness approach thus

has some explanatory power in the New Zealand case. However, the approach is silent on the role of non-business actors, the reasons for current demand and the capabilities of actors pursuing alternatives. Its explanation for the emergence of CSR is therefore limited.

The political approach fills this gap, explaining the level of supply-chain labour initiatives as a settlement resulting from business organisations' relative (but not absolute) power over other civil society actors in New Zealand. This approach also offers a thorough explanation for the Government's failure to regulate, in light of *de jure* and *de facto* constraints arising in the neoliberal context. Consequently, the political approach is far more comprehensive in explaining the New Zealand case. It offers significant lessons for how social responsibility could be improved.

These explanations assist understanding of the current attention to supply-chain labour issues in New Zealand. Most importantly, they show that the current levels of attention are not inevitable. The competitiveness approach sheds light on the need to increase market rewards for social responsibility, or the perceived *costs* of irresponsibility, to generate greater spread and depth of CSR. The political approach suggests what is required to move *beyond* voluntary initiatives. Confrontational groups could challenge the political constraints preventing binding regulation. They could aim to alter power balances. A strong effort to strengthen confrontational groups, and challenge the dominance of BSOs, could therefore shift the settlement towards more effective alternatives. These possibilities are the subject of Chapter Six. Before turning to these possibilities, it is necessary to explore the effectiveness of CSR in the case of China. This sheds light on the consequences of the current trend towards CSR.

Chapter 5: The Effectiveness of Corporate Social Responsibility in China: What Can and Cannot be Expected of Supply-Chain Labour Initiatives?

New Zealand is one of many trading partners attempting to use corporate social responsibility (CSR) to regulate labour conditions in its Chinese supply chains. Among foreign multinationals operating in China, CSR is a growing phenomenon (Chahoud, 2011, p. 158). The earliest codes by foreign multinationals emerged in China in the early 1990s. As the social auditing industry has boomed in China and NGOs have proliferated offering consultancy on CSR implementation, the belief has become widespread that CSR can effectively improve labour conditions. In the early stages of the movement, the Chinese Government viewed CSR as foreign protectionism and approached it with skepticism. However, after engaging in its own debates on CSR, the Chinese Government now views CSR as a business contribution to China's "harmonious society" policies, and a measure that can supplement the enforcement of labour law (Chahoud, 2011, p. 158-160).

Whether CSR is in fact beneficial for Chinese workers is a matter of considerable contention. While successful case studies spread the belief that CSR can assist workers in China, critics argue that its effectiveness is fundamentally limited. There are also strong concerns that it may be detrimental to Chinese workers, as it detracts from state labour law enforcement and worker organising. There are fears that CSR may in fact contribute to "social harmony" by *muting* workers' struggles.

This chapter will address these debates, seeking to determine the effectiveness of foreign companies' supply-chain labour initiatives on the ground in China. I first outline the spread and scope of these initiatives, and analyse the effectiveness of the most common mechanisms. I next explore the effectiveness of the most advanced mechanisms. Finally, I examine to what extent the potential risks of CSR—to labour organising, the NGO movement, government regulation and democratic governance—are indeed cause for concern in the China case. It is argued that while CSR can bring superficial improvements, there are fundamental limits to its spread and scope. Furthermore, both CSR practice and over-belief in its ability have the potential to cause harmful effects in China. If the aim is effective improvement of labour conditions, CSR should be considered merely a "band-aid", implemented as one of many tools, and only with full knowledge of its limitations. It should never be prioritised above alternatives of worker organising or enhanced state labour law enforcement.

Limits to the Coverage and Scope of CSR in China

Despite the spread of the CSR movement, coverage and scope of CSR initiatives in China remain extremely limited. China is the world's leading producer in the sectors most "eligible" for CSR: apparel, footwear, toys and electronics. Yet even in these sectors CSR initiatives touch a minority of factories. Coverage of labour certifications and audits by multi-stakeholder initiatives (MSIs) is minimal. SA8000, one of the few certifications to include labour conditions, had certified less than 100 apparel factories in 2006, out of an estimated 100,000 producing for the US market alone (O'Rourke, 2006, p. 15). By 2011, there were still less than 380 certified facilities in China (Social Accountability Accreditation Services, 2011). World Responsible Apparel Production (WRAP), a garment industry standard, had certified only 333 facilities in China by 2011 (WRAP, 2011). In 2012, the Worker Rights Consortium listed 1,782 Chinese factories that supplied its members. It provided factory assessments for only two (Worker Rights Consortium, 2012). The Fair Wear Foundation, a US garment industry MSI, had 33 members producing in 530 factories in China in 2011, but conducted only 25 audits (Fair Wear Foundation, 2011, p. 1). The Fair Labour Association conducted less than 53 audits in China in 2010, a tiny proportion of the 1,792 Chinese factories supplying its members (Fair Labour Association, 2010 , p. 10, 20).

Auditing by industry associations also touches a mere fraction of suppliers in China. In 2009, members of the Electronics Industry Citizenship Coalition (EICC) conducted a total of 1,300 audits, a tiny minority of a total of 11,000 major suppliers (EICC, 2009, p. 16). In 2011, the International Council of Toy Industries (ICTI) had certified 1,236 suppliers in China, representing just under 1 million workers (ICTI CARE Foundation, 2011). In 2008, China had more than 8,000 toy factories (Chen, 2009, p. 37). In total, China has more than 100 million manufacturing workers (Banister & Cook, 2011, p. 39; Harney, 2008, p. 8). Audits by industry associations therefore touch but a fraction of China's workers. While CSR also occurs outside MSIs and industry associations, it is haphazard and even shallower in scope (Utting, 2003, p. 22). There are almost no CSR initiatives into sectors hidden from consumers, or in sub-tiers of the supply chain (Business for Social Responsibility, 2007, p. 38). In China, as elsewhere, CSR touches only a minority of first-tier suppliers (Chan, 2003, p. 11).

Even where CSR *is* implemented in China, initiatives are shallow. The vast majority of CSR activity in China is limited to codes of conduct, which may or may not be implemented. Many companies have yet to take *any* action to implement codes. A 2007 survey of EICC members found

that 20 percent of members conducted no audits and another 20 percent conducted less than 10 total audits per year (Business for Social Responsibility, 2007, p. 21). Due to transparency barriers between Northern consumers and factories in China, it is possible for businesses to pacify consumer concerns simply by joining an MSI or adopting a code of conduct, without any change in activity.

Of the companies who do implement codes in China, the majority rely on auditing methods shown repeatedly to be inadequate (AMRC, 2006a, 2006c; Bhushan, Prieto-Carron, Lund-Thomsen, Chan, & Muro, 2006; Blackett, 2004; Business for Social Responsibility, 2007; Clean Clothes Campaign, 2005; Harney, 2008; Jeffcott & Yanz, 2000; O'Rourke, 2002; Pun, 2005a; Utting, 2003). Auditing in China is severely limited by deception from factories and corruption from auditors. Workers are trained to lie to auditors. Many suppliers hide poor conditions in “shadow factories”, while showing model facilities to auditors. The practice of double-book keeping (hiding problems of low wages and excessive hours) is extremely common, and there is even software available to facilitate the practice (see, for instance, Harney, 2008, p. 46, 199). It is standard practice for audits to be pre-announced audits, yet these detect only the most obvious (cosmetic) problems. Corruption among auditors is also a widespread problem (Clean Clothes Campaign, 2005, p. 25). In a survey of supplier factories audited by the ICTI Foundation, 14 percent reported being solicited by an auditor with inappropriate benefit requests during 2010 (ICTI, 2010, p. 2). Even the most advanced MSIs are still establishing auditing methods to address these deficiencies. However, whether it could ever be feasible to resource the “extensive” approaches necessary is highly questionable (Utting, 2005, p. 9). Critics of CSR argue that reliance on deficient methods can be intentional. Many foreign companies prefer not to learn of violations, and therefore hire auditors who will seldom detect problems (Chan, 2009; Pun, 2005a).

When auditors do uncover problems, action to remedy them is poor. Standard practice is to cease trade only in the event of egregious non-compliances. It is common for foreign companies to identify problems in the *majority* of their suppliers, yet to continue trade while problems await rectification. Requests to remedy problems may or may not be enforced. For instance, in 2009, less than half of EICC members provided follow-up audits to check problems had been remedied (EICC, 2009, p. 16-17). (This was despite an average of 6 major non-compliances per facility.) Follow-up audits share all the above problems. While there is a spectrum of stringency, even the best methods are subject to serious shortcomings.

There is next to no commitment from foreign companies to resource improvements in their suppliers. While to varying degrees TNCs divert value to auditors, they do not redirect value to suppliers (Bulut & Lane, 2011, p. 45). As one manager of a shoe manufacturer factory put it: “If you’re looking for the same working environment as developed countries, then you have to pay for it” (as cited in Harney, 2008, p. 184). Instead, buyers “paradoxically” expect improved compliance levels at the same time as lower costs and shorter lead times (Sum & Pun, 2005; see also Yu 2008a, p. 520). Suppliers often lack capacity to achieve both. It is standard practice for the foreign company to make no contribution.

Common CSR Methods in China: What do These Achieve?

Despite these limitations, in the sectors they touch, the common CSR methods are generally agreed to have brought some positive developments in China (AMRC, 2005; Chan, 2005; Chen, 2009; Clean Clothes Campaign, 2005; O'Rourke & Brown, 2003; Pun, 2005a). Improvements brought by audits tend to address violations that are easily detectable, cheap or economically beneficial to remedy, or particularly abhorrent to consumers (see, for instance, Yu, 2008a, p. 517). An investigation of code implementation at two “typical” Chinese factories reports that all workers were given contracts, there was no bonded labour, and disciplinary and wage systems were closer to legal requirements than factories without codes (Pun, 2005a). A survey of 240 workers at 12 toy manufacturers, including suppliers to Disney, Mattel, McDonalds and Wal-Mart, also found that factories with codes of conduct had higher standards of workshop safety and food, and fewer serious labour violations than those without (Chen, 2009, p. 5, 21). In a 2005 survey of workers in 40 factories, some in China, it was found that audits can bring partial improvements in reducing child labour and forced labour, and improving workers’ health and safety situation (CCC, 2005, p.29). Foreign companies’ own data (limited by auditing methods as noted above) documents gradual improvements in individual factories, and between initial and follow-up audits (Apple, 2012, p. 4; Hewlett Packard, 2010; The Warehouse, 2009, p. 15). These improvements naturally rely on a certain degree of stringency. CSR initiatives reliant on infrequent or poor quality audits, or with merely un-audited codes, are highly unlikely even to bring cosmetic improvements.

Codes and audits fail to address systemic problems. The Clean Clothes Campaign found that auditing fails to bring “significant improvements in freedom of association and right to collective bargaining, non-discrimination, wages, working hours, employment relationship, and abusive treatment of workers” (2005, p. 29). In the case studies of “typical factories” above, codes and

auditing failed to prevent illegally underpaid wages, or excessive overtime (Pun, 2005a, p. 14, 17). The survey of toy workers found serious violations at factories *with* codes of conduct, and the author notes that codes do not improve freedom of association and collective bargaining (Chen, 2009, p. 31-32). A further study into toy manufacturers in China found that over two thirds did not comply with the *majority* of the studied code criteria (Egels-Zandén, 2007, p. 11-12). A survey of workers at suppliers of Wal-Mart, which conducts the largest number of audits of any company, found that audits consistently failed to achieve compliance in wages and working hours (Chan & Siu, 2009). Even TNCs themselves acknowledge that issues of wages and working hours remain pervasive problems (Apple, 2012, p. 6-7; Hewlett Packard, 2010; The Warehouse, 2009). The Apple 2012 Supply Responsibility Progress report concedes that of 229 factories audited, at least 108 did not pay workers according to legal requirements. Only 38 percent complied with Apple's code of conduct on working hours, which itself violates legal limits (Apple, 2012, p. 6-7). Freedom of association clauses are frequently ignored. Furthermore, auditing is incapable of solving the problem of suppliers subcontracting "as a means of shedding social responsibility," (Utting, 2003, p. 23), a major concern in China.

To some extent, audit-reliant CSR has had positive effects on labour consciousness. Ironically, even suppliers' efforts to trick auditors by teaching workers "model answers" in line with labour law can in fact educate workers about their rights (AMRC, 2005; Clean Clothes Campaign, 2005, p. 49). Research by Hong Kong Christian Industrial Committee estimates that the level of migrant worker consciousness about labour law and codes of conduct rose approximately 20 percent between 2001 and 2003 (AMRC, 2005). This indicates CSR initiatives have made a contribution in this area.

Common CSR methods have thus had some positive impacts in China. However, given their minimal coverage and effectiveness only in addressing cosmetic problems, CSR in China has made only a "slight dent" in the problem of poor working conditions (Utting, 2003, p. 24). Despite this, in a handful of highly-advanced cases, CSR initiatives have achieved more impressive outcomes.

Exceptional Cases of CSR in China: What Can These Achieve?

In the best cases of CSR in China, initiatives have been deep in scope and addressed systemic problems. Some foreign companies have been pressured to increase transparency, and to seek NGO involvement. They have undertaken projects to address wages and working hours. TNCs have even sought to establish worker representation mechanisms that would not otherwise have been provided.

These rare examples demonstrate the potential effectiveness of advanced CSR initiatives. However, even these “best-case scenarios” show their own limitations, as they still work within market pressures. The majority of New Zealand companies fall far short of these standards.

Increased Transparency

In most common CSR practice internationally, there is minimal commitment from TNCs to transparency about their initiatives in China. Audit results, and supplier factory names are almost never published. However, in a minority of cases, TNCs have been pressured to provide greater transparency. In 1995, Nike and Levi Strauss disclosed their supplier lists (Doorey, 2005, 2011). A handful of others have since followed, including Hewlett Packard in 2007 and Dell in 2009 (Dell, 2011; Hewlett Packard, 2008). In January 2012, Apple also disclosed a list of 156 of its suppliers (Apple, 2012, p. 3). Some MSIs have disclosed factory locations and audit reports for some time. For instance, since 2002, the Fair Labour Association has published 32 investigations into third-party complaints, four of these in China (Fair Labour Association, 2012a). Disclosure of suppliers and conditions remains far from common practice, as these are usually considered commercially sensitive. However, norms of greater transparency are gradually developing and raising expectations of what qualifies a CSR leader, even if the current levels are extremely low.

Where disclosure does occur, it equips activists with greater ability to monitor conditions in TNCs’ supply chains (O'Rourke & Brown, 2003, p. 381). Activists can then more easily expose shortcomings and pressure towards improvements. However, this disclosure comes with limitations. TNCs whose CSR is poorly developed (those most needing to be targeted) do not equip activists in this way. This leaves activists torn over whether to applaud TNCs for their disclosure, or to use this information for criticism, effectively punishing the TNC for publishing its suppliers. To use the information for criticism may deter transparency from others.

Incentives for greater transparency remain extremely weak. The commercial risks associated with inviting scrutiny of conditions are perceived to outweigh the benefits of improved reputation from social responsibility. Buying structures also present barriers. A large proportion of buyers from China purchase through sourcing agents, for instance Li & Feng Ltd. (Cheng, 2001), making their supply chains particularly opaque. TNCs themselves may be unaware of their own suppliers. However, steps can be taken to require suppliers to disclose subsequent tiers of the supply chain, as seen by The Warehouse’s initiative to form a supplier register (The Warehouse, 2011, p. 19).

Activism could encourage others to pursue similar initiatives. To the extent that great disclosure eventuates, activists are enabled to push for more effective CSR.

Projects on Wages and Work Hours

A small number of initiatives have attempted to address the systemic problem of excessive overtime hours and low wages, and have had some effectiveness. These are among a few cases internationally (ETI, 2009; United Nations Global Compact Human Rights and Business Dilemmas Forum, 2012). In one example in China, a collaborative effort between Chinese organisations and eleven UK companies helped reduce excessive overtime and raise wages in their suppliers' factories (Association for Sustainable and Responsible Investment in Asia, 2005; Ramaswamy, 2005). Through negotiations and training to increase productivity, the most successful factories reduced hours by 20 to 37 per cent, and wages rose in four out of five factories (Ramaswamy, 2005, p. 20-23). These success rates are comparable with a similar project at suppliers to a UK fashion retailer in Bangladesh. In the first year of the project, wages of the lowest level of workers increased by 24 percent, and overtime rates dropped by 46 percent (ETI, 2009). These cases demonstrate that it is possible for advanced CSR initiatives to increase wages and lower working hours.

However, the potential spread of such projects in China is extremely limited. The above project was intended as an investigation only. It relied on heavy involvement from stakeholder organisations, long-term relationships with suppliers, and unusual cooperation and trust between participants. It also necessitated significant investment of time (three years). This investment and cooperation would seldom be available. The applicability of lessons from the project is also limited. The project was framed around productivity gains and promised economic benefits for suppliers. Addressing systemic problems is not always economically beneficial. In the majority of situations, market forces incentivise the opposite behaviour. It is therefore unlikely that CSR initiatives would produce the above outcomes on a widespread basis.

In-depth projects of this nature are extremely rare. In more common attempts, TNCs have sought to adapt their own purchasing practices to reduce overtime hours. Steady purchasing practices and long-term relationships with suppliers are known to reduce overtime (ETI, 2007, p. 5, 8). This issue has been pushed by the ETI, and some members have undertaken to improve purchasing practices (Buttle, Hughes, & Wrigley, 2007, p. 20). One New Zealand manager I interviewed also reported considering the impacts of their purchasing practices on suppliers. However, competition often

necessitates quick changes of orders or suppliers. While pressure from the ETI has put purchasing practices on the agenda of TNCs in the UK, as of 2007 it remained “relatively absent as an issue” in the US (Buttle et al., 2007, p. 2). The take-up of CSR practices is again limited by commercial pressures. It is uncertain how many New Zealand businesses consider these issues.

NGO Involvement and Access

Some advanced CSR initiatives have allowed greater involvement of NGOs, which are excluded from the majority of CSR methods (Social Accountability International & Center for International Private Enterprise, 2009, p. 13). In sectors where CSR policies are criticised as being corporate-driven, businesses can co-opt “partner” NGOs as a means of increasing their own legitimacy. This can create problems, as discussed below. However, it does provide NGOs with access to factories.

NGOs have used factory access to empower workers. In the late 1990s, the ETI invited a coalition of Hong Kong labour NGOs to participate in a pilot monitoring project in China (Jeffcott & Yanz, 2000). The NGOs suggested that monitoring should instead be the responsibility of workers themselves, supported by training from NGOs on workers’ rights and how to register complaints. This proposal was rejected. However, these methods of involvement have since become increasingly common.

Many brand companies now invite NGOs to train Chinese workers on codes of conduct and labour rights, and even to establish worker participation mechanisms. A number of Hong Kong NGOs operate in this way. In 2008 to 2009, SACOM coordinated in-factory labour rights training programmes at two suppliers to Hewlett Packard in China, assisted by Labour Education and Service Network. They provided 1,549 workers with basic labour rights training and a guide to the Electronics Industry Code of Conduct and Chinese labour law (Cheng & Yi, in van Regenmortel, 2010). Many advanced brands in the garment, toys, shoes and electronics sectors now conduct worker training in at least a couple of their suppliers. While there are no official figures, due to the large number of organisations hired, “a fair portion” of the 10 million migrant workers in South China may well have received some awareness training (Chan, 2005, p. 5).

This involvement has directly empowered workers, for instance providing skills to communicate with management. It has also had indirect effects. While NGOs usually sign confidentiality orders preventing them from exposing violations, factory access does provide them with a greater

understanding of problems. Furthermore, it has opened the door to worker organisation (van Regenmortel, 2010). Many NGOs engage in worker training in the hope of identifying and empowering worker leaders, who may go on to organise in their factories. While carrying risks, this increased NGO involvement is a positive outcome of the pressure towards more advanced CSR initiatives.

Worker Participation and Empowerment

In some of the most advanced cases of CSR in China, practitioners have pushed for worker participation in their suppliers. This has led to outcomes of worker empowerment not otherwise possible given China's heavy restrictions on freedom of association and collective bargaining. These initiatives are motivated by the acknowledgement that worker representation (or at least feedback) is more effective than audits at ensuring implementation of codes (AMRC, 2005; see also Cahn as cited in Maitland, 2002). CSR-driven worker participation mechanisms could be considered a response to a structural need of capital to have shop floor disputes resolved, and the need for an alternative to the ineffective ACFTU (see Yu, 2008b, p. 282). Worker participation mechanisms are also a response to growing pressure from consumer campaigns for code clauses on freedom of association to be implemented (AMRC, 2005). Several forms of worker participation mechanism are worthy of analysis.

Worker Feedback

Some TNCs have responded to the inadequacy of auditing, and pressure to implement freedom of association clauses, with worker feedback mechanisms. In poorly implemented cases, these have consisted of complaint boxes, or management-controlled worker hotlines, which workers do not feel comfortable to use. However, in more advanced cases, workers are encouraged to raise complaints directly to brand representatives (AMRC, 2005; Chan, 2009). For instance, at Reebok suppliers, workers have been given stamped envelopes to send complaints directly to Reebok (Chan, 2009, p. 298). After Reebok received 1,200 complaints in one year, they pressured supplier management to take complaints more seriously. Worker hotlines have also proven effective. In one example, a Hong Kong NGO China Working Womens' Network set up a hotline at an electronics factory, and trained workers to run it themselves (Lee in van Regenmortel, 2010).

These CSR-driven worker feedback initiatives can be a positive step in worker empowerment, particularly in a culture of hierarchical authority, autocratic factory regimes and a society with no experience of confrontational unions. However, these mechanisms have limitations. Vital to these feedback mechanisms are provisions to ensure anonymity and safety for workers, and to prevent management control. This requires considerable expertise in implementing the system. It also often requires involvement from the TNC or an NGO, either of which necessitate a high degree of investment and economic clout over the supplier. These mechanisms are therefore possible only in certain buying structures. While MSIs or brands with monopoly buying power may implement these mechanisms in select factories, not every foreign company has the economic clout and resources to do so, certainly not in all suppliers. Most New Zealand companies would be incapable of doing so.

CSR-driven worker feedback mechanisms also carry risks. They can be used for greenwash (misleading claims of social responsibility) and misrepresented as sufficient alternatives to freedom of association. Poorly implemented or intentionally inadequate measures may be a low-cost way to pacify consumer demands. They may even be a means of pacifying *workers*, by attempting to crowd out, or reduce the perceived need for, worker organising.

Worker Committees

In light of the barriers to independent trade unions in China, some TNCs have attempted to implement freedom of association clauses by pressuring suppliers to create workers' committees (AMRC, 2006b; O'Rourke & Brown, 2003; Szudy, O'Rourke, & Brown, 2003). Non-union worker representation structures *are* legal in China, if recognised and supervised by the ACFTU (Yu, 2008b, p. 283). They can take the form of health and safety committees or worker welfare committees. These are virtually impossible for employees to set up independently (O'Rourke & Brown, 2003, p. 382).

Several projects have aimed to encourage suppliers to set up health and safety committees. One project between 2000 and 2002 brought together US and Hong Kong labour rights organisations and three TNCs (Nike, Adidas and Reebok). This project led to three plants creating or expanding health and safety committees, and to increased worker participation (Szudy et al., 2003). In another project, in 2003 the ETI aimed to work with Chinese suppliers to establish elected health and safety committees, in collaboration with nine Hong Kong groups (AMRC, 2005). The ETI has since

undertaken other projects to encourage the establishment of worker committees (ETI, 2010). While health and safety committees play too narrow a role to fulfill freedom of association clauses, they do empower workers and provide a feedback role, in addition to improving workplace safety. They can also provide a stepping stone towards more genuine forms of representation, as in the Reebok case below.

Labour NGOs and CSR practitioners have also pushed suppliers to establish worker committees with broader mandates. In 2004, Social Accountability International (SAI) partnered with an international trade union to set up an independently elected workers' committee at a 'typical' garment factory (Social Accountability International & Center for International Private Enterprise, 2009, p. 16-21). SAI convinced the factory to participate by explaining the economic benefits of a worker committee. According to the project report, this committee improved working conditions, reduced turnover, and increased productivity and communication with management. The committee even achieved a small wage rise. In 2005, 74 workers were randomly interviewed, and 89 per cent of these believed that the committee was beneficial to workers. After the success of this project, another local manufacturer also decided to implement a similar initiative. Other NGOs have also undertaken similar projects, for instance the China Working Women's Network (Chan, 2006).

While delivering some benefits, there are limitations to CSR initiatives to establish worker committees. Worker committees are incapable of making controversial demands. The SAI project was sold to the factory on the basis that it would prove economically beneficial. This prevents the committee from any activity that conflicts with the interests of management. Furthermore, representatives of worker committees in China have no legal protection from dismissal (van Regenmortel, 2010). Management may dismiss representatives, or even dismantle the committee should it become an economic burden. Finally, workers' committees depend on management for information. In many cases committees are integrated into the human resources department, serving the economic welfare of the company (as appears to be the situation in the SAI case). Management can easily control any disputes that arise.

These aspects of workers' committees make them highly questionable means of implementing freedom of association clauses. As van Regenmortel notes, "all this sounds like the practices of a yellow union; yet - under the name of CSR – it is considered a legitimate 'good practice'" (2010). Yu also notes similarities between workers' committees and "company unions" of the early 20th C US, which were established to boost productivity, stabilise labour relations and deter the spread of

the American Federation of Labour (2008, p. 286). While CSR-driven workers' committees are heralded as providing freedom of association, these efforts hinder stronger solutions. Like the worker feedback mechanisms above, they can distract from, and crowd out efforts for genuine worker organising.

Democratically-Elected Workplace Unions: the Reebok Case

In the most exceptional cases, CSR departments have successfully pushed for democratic trade union elections at suppliers in China. However, while creating "windows of opportunity for worker organising" (O'Rourke & Brown, 2003, p. 382), these attempts have not created lasting change. Close analysis of the following case demonstrates the challenges of CSR activity, even in the most conducive circumstances.

In 2001 and 2002, Reebok facilitated democratic elections for trade unions at two suppliers, Shun Da and Kong Tai Shoes (KTS) (Chan, 2009; Lee, 2007; Yu, 2008a, p. 523; Yu, 2008b). Reebok had previously set up a "Livelihood and Counseling Centre" in KTS in 1999 (Chan, 2009, p. 298). The new unions were affiliated to the ACFTU. The elections, facilitated entirely by Reebok, are thought to be the first of their kind in China (Maitland, 2002). The ACFTU has since noted other cases of suppliers holding direct elections to meet Western codes of conduct (Chan, 2005, p. 7).

Reebok's situation was unusually conducive to progressive CSR activity (Yu, 2008a, p. 515). It is a brand company with high importance of reputation and risk of activist pressure, in a sector with established CSR norms. Its size and purchasing structure also made it particularly capable. Both suppliers were mono-client factories, which could not reject Reebok's demands. District level governments (and with them district level trade unions), also cooperated because of the importance of Reebok and its suppliers to their tax base. In the negotiation process, Reebok's economic clout proved vital for overcoming suppliers' and local governments' objections.

Despite initial success at one factory, these unions were ultimately unsustainable. At KTS, the new union saw initial success (Chan, 2009, p. 305). Management was willing to work with the union, and the union achieved some concessions (particularly on rights-based issues). The higher-level ACFTU provided tacit support during this period, even naming the KTS union the district's "model union branch" (p. 305). At Shun Da, however, the new union struggled from the start. Despite Reebok's attempts to involve an NGO, the district trade union insisted on training the new union,

and instilled the idea that unions should work closely with management. Active worker representatives who had other ideas became management targets; one was even forced to quit. Despite Reebok's clout and careful negotiation, it was unable to overcome the ACFTU and supplier in power dynamics.

Later developments saw even the KTS union silenced (Chan, 2009, p. 306-307). The factory was sold and new management was unwilling to accommodate the union's demands. The factory ceased allowing NGO support. Reebok also withdrew assistance. This was out of belief that the union should fend for itself, and also to maintain good relations with the supplier. It was also a response to a shift in the ACFTU's stance. In mid 2003, a vice president of the ACFTU said publicly that "foreigners should not intervene in Chinese trade union affairs" (p. 308-9). When Reebok sought a second KTS election in 2003, the industrial zone union informed Reebok that "further interference in the union election would be illegal" (p. 306).

By 2003, this project had failed. Neither union had achieved independence or the strength to bargain with management. The election was thwarted by power dynamics between Reebok, the local ACFTU and management, all of which gained from the union becoming ineffective (Yu, 2008b, p. 287-291). The local ACFTU initially accepted the elections to maintain good relations with Reebok (a large tax payer) and to appear active to higher levels of the union. However, the local ACFTU also received considerable income from the supplier factory, and therefore faced financial incentive to oppose a strong union, which may drive the factory out of the area. Reebok's support of the new union committee was vital in both cases, but was eventually withdrawn to maintain good relations with the suppliers and local government. An investigation of the Shun Da union five years on found that working conditions had deteriorated and the new union was almost entirely ineffective (Lee, 2007).

The case does show that CSR-driven democratic union elections *are* possible in China. However, these initiatives are precarious, and have yet to bring lasting change. This case may have been more successful, had Reebok provided a longer period of support for the new unions to protect them from management opposition (Chan, 2009, p. 309). The case also offered learning opportunities for officials. However the extreme challenges (and ultimate failure) in this case show the difficulty of implementing progressive CSR even when brand clout and enormous resources can be brought to bear.

It also remains highly questionable that Reebok genuinely sought a confrontational trade union. As Chan notes, “It would have been a strange trajectory in the history of global capitalism if capital were to become a genuine promoter of trade unionism” (2009, p. 310). While a union would have assisted Reebok by reducing the workload of Reebok’s CSR department, or improving productivity, it is doubtful that Reebok would have continued to support a union that conflicted with its own profitability. The very attempt to establish the union has brought Reebok considerable benefit to its reputation. In the eyes of consumers, this failed experiment alone may well be sufficient to demonstrate Reebok’s “commitment to workers’ rights”.

Limits of Exceptional Cases

As these cases show, there are limits of CSR even in the most conducive circumstances. While transparency and NGO participation have increased in some cases, there have only been a handful of individual projects to address systemic problems, and these have not advanced beyond pilot projects. Ten years after the first initiatives to create worker representation mechanisms, none have achieved ongoing confrontational activity.

It must be stressed that these cases are the “pinnacle” of CSR practice. The shift from monitoring labour rights to freedom of association has occurred in only “a handful of buying companies” (AMRC, 2005), almost exclusively brands. One estimate suggests that brands produce less than five percent of the Chinese export market for sports footwear (Utting, 2003, p. 26). For a handful of these brands to implement progressive policies is indeed a drop in the ocean. Furthermore, whether the improvements brought by these few cases are in fact “better than nothing” depends on the risks arising from the CSR movement.

Potential that CSR is Harmful for Labour Conditions

There are also fears that the CSR movement has the potential for harmful effects. Many critics decry the trend towards private regulation as harmful to the mechanisms truly capable of improving labour conditions: the labour movement and its NGO supporters and state labour regulation. There are also fears of the impact that CSR has on democratic governance. In the case of China, some of these fears are justified.

Impact on the NGO Movement

Critics of CSR raise concerns that it harms workers by dividing the NGO movement that supports them (Jeffcott & Yanz, 2000; van Regenmortel, 2010). In light of the rise of CSR, labour NGOs must decide to what extent they should partner with corporations to make some improvements, versus drawing attention to the misplaced reliance on CSR and its many shortcomings, in the hope of securing future regulation (Labour Rights in China, 1999; Yu, 2006). Those that cooperate are co-opted to become “partners” rather than “watchdogs” (confrontational groups), thereby weakening the critical voice (Justice, 2001, as cited in O'Rourke, 2006). The strategies of NGOs in these two roles can even potentially conflict, undermining the effectiveness of both (Doris Lee in van Regenmortel, 2010).

Division of strategies towards CSR has been a problem among Hong Kong labour groups supporting the Chinese labour movement. While mainland NGOs have not focused on criticising the shortcomings of CSR, this has historically been the role of many Hong Kong labour groups. [I think further background on these NGOs would be a distraction here.] For instance, in 1999 a coalition of Hong Kong labour groups named SA8000 (a management-system certification) a “global cosmetic” with potential to bring adverse effects to labour movements (Labour Rights in China, 1999). However, alongside the rise of CSR, an increasing number of Hong Kong labour groups have taken on partnering roles. Some have even been established for this purpose (for instance CSR Asia). A study interviewing seven Hong Kong and mainland NGOs demonstrates that there are a range of strategies in relation to CSR (Yu, 2006).

This divergence has split the movement’s efforts, and created tensions. Partnering with foreign companies has distracted groups from worker organising, as they instead spend time engaging with firms and MSIs. This is a source of tension among groups who feel the core task of worker organising is being neglected. In 2006, this led nine Hong Kong labour groups to withdraw from the ETI. After investing three years and hundreds of hours of involvement, they concluded that this had delivered “almost nothing” (AMRC, 2006b). These groups sought to return to a core focus on worker organising. However, confrontational NGOs are in turn criticised for turning down opportunities to directly assist workers. Neither strategy is as effective without the full strength of the NGO movement behind it. Tensions also arise from perceptions that NGOs partner with foreign companies solely to chase funding, which is much easier for partner NGOs to obtain. Partner NGOs

can report measurable outcomes to funders, while the success of confrontational groups' activities (monitoring and critiquing businesses) is far harder to quantify.

Tensions also arise where partnering and confrontational strategies conflict. Some confrontational groups believe that any NGO support for CSR adds to misplaced belief in "CSR as the solution" (Yu, 2006), directly undermining their own work. They argue that NGOs are used by corporations to add legitimacy to corporate claims. NGOs' efforts to encourage progress in CSR can also directly conflict with efforts to expose its limitations. For instance, one CSR ranking system published by Oxfam Hong Kong cited Foxconn as a "CSR leader", to recognise its positive steps (Oxfam Hong Kong, 2009). This undermined the efforts of other Hong Kong groups drawing attention to labour rights violations in Foxconn. Concerns about conflicting strategies are likely to rise as confrontational NGOs form a declining proportion of labour groups. The growth of CSR has brought increased funding opportunities for partner NGOs, and there are concerns that the confrontational voice will be drowned out entirely. Hong Kong groups are attempting to respond by calling for the labour movement to form a more unified position on CSR (AMRC, 2011b; van Regenmortel, 2010). However whether NGOs can see past the opportunities for short term benefits and funding offered by the CSR movement, and agree on terms of engagement with CSR remains to be seen.

Impacts on the Labour Movement

There is debate over the effect of CSR on unionisation efforts (Compa, 2001; O'Rourke, 2006; van Regenmortel, 2010). Commentators in Central America raise concerns that NGO monitoring of codes can crowd out worker organising, by taking over worker representation roles usually played by unions (Compa, 2001). However, others argue that NGO monitoring has *assisted* union campaigns in El Salvador and Guatemala, and that CSR initiatives can be helpful in creating space for this (Quinteros, 2001 as cited in O'Rourke, 2006). In the case of China, CSR initiatives can be argued to both assist and potentially hinder unionisation efforts. As described above, CSR initiatives have increased NGOs' access to workers, raised awareness of labour rights and brought about unique windows of opportunity for worker representation. Progressive initiatives such as the Reebok case may even fuel ACFTU action towards democratic elections for workplace unions (Chan, 2009, p. 311). The foreign CSR movement has been among the biggest pressures for workplace democracy in China (Chan, 2005, p. 26-27).

However, CSR initiatives may simultaneously hinder the development of the labour movement. First, the *practice* of CSR auditing may crowd out the development of effective workers' representation. NGO monitoring of codes is rare in China. Instead, private auditors have taken the role of delivering improved labour conditions, supposedly on behalf of workers. These auditors can be viewed as "competing" with the ACFTU to represent workers (AMRC, 2005). Furthermore, the prominence of CSR auditors may present a stumbling block to worker organising, as they remove the perceived need, and space, for workers or the ACFTU to seek improvements themselves.

Second, there is the risk that the *outcomes* of CSR may unintentionally discourage worker organising, or intentionally obstruct it. Suppliers and TNCs may implement basic CSR initiatives in order to pacify workers, reducing the likelihood that they will organise. CSR-driven mechanisms for workers representation may also remove space and perceived need for stronger alternatives (van Regenmortel, 2010). While workers' committees can give workers a thirst for greater representation, in the cases where they are ineffective, they may put workers off the concept of unionisation altogether. Furthermore, the granting of labour rights from above, as occurs in the CSR model, only solidifies the East-Asian authoritarian, paternalistic factory regime that is typical in China (Pun, 2006). Management "protects" workers from exploitation, but opposes any self-organisation. The spread of CSR perpetuates this notion that improvements are bestowed from above rather than sought through grass-roots organising. This reduces the likelihood of workers organising for improvements.

These risks make it imperative that labour advocates push for CSR initiatives that *promote* and not hinder labour movement development. CSR should be developed only alongside efforts to develop the labour movement. In light of the transparency barriers, it is near impossible to expose CSR efforts intentionally blocking worker organising. However, this risk should be publicised, and CSR practitioners demanded to reach higher standards.

Impact on State Regulation and Enforcement

There are concerns that CSR initiatives undermine government regulation and enforcement (Justice, 2001, as cited in AMRC, 1998, 2011; Bhushan et al., 2006; Jeffcott & Yanz, 2000; Nadvi & Waltring, 2004; O'Rourke, 2006). These are primarily concerns with the widespread over-reliance on CSR, rather than with its practical implementation. Investment in CSR initiatives by NGOs and governments can distract from attempts to improve regulation. Overinflated CSR claims may

reduce the perceived need to improve labour law and enforcement. There are also concerns that corporate entities may encourage over-reliance on CSR as a ploy to avoid regulation (AMRC, 2011b; Shamir, 2004; van Regenmortel, 2010). These risks are ironic given that the very need for CSR *originated* in defective labour law. Critics therefore argue that CSR must be “demystified” (AMRC, 2006c, 2011; Chang, 2004), to prevent alternatives being supplanted.

At the same time, there is the potential for CSR to have positive effects on regulation and enforcement. In cases in Indonesia and Mexico, international pressure has been found to have helped state regulators do their job (Barenberg, 2003, as cited in O'Rourke, 2006). Some NGOs remain optimistic that CSR can be tailored to complement and reinforce the state’s role (Jeffcott & Yanz, 2000). Voluntary CSR initiatives may also provide a stepping stone towards regulation (Gordon, 1999, as cited in Haufler, 2001, p. 3).

It is very hard to assess the impacts of CSR on labour law and enforcement in China. There is a lack of academic analysis on this subject. However, some possible impacts can be suggested. First, CSR may have strengthened state regulation where it has brought state and private actors together to discuss labour conditions. As mentioned above, in 1999 the chief executives of several US apparel companies contacted the Chinese President Jiang Zemin directly over the issue of labour conditions. They requested a meeting to explore the possibility of working together to improve labour rights in China (Emerson, 2000, as cited in Pun, 2006). More recently, forums between CSR practitioners, businesses and government have become increasingly common. For instance, the 2011 forum “Establishing a Harmonious Collective Negotiation Mechanism” hosted by Business for Social Responsibility and the China Training Institute included Government, trade union, brand and worker representatives (Business for Social Responsibility China Training Institute, 2011b). These meetings serve as valuable feedback mechanisms. Such interaction may have some effect on encouraging the leadership to improve labour conditions.

There is also the likelihood that CSR initiatives have provided impetus and learning opportunities that have enhanced government regulation. The development of the social auditing industry may enable information-sharing between auditors and law enforcement officials. The success of CSR-driven worker committees may teach officials to look to workers as sources of information on factory conditions (O'Rourke & Brown, 2003, p. 382). The Reebok case was also watched closely by the ACFTU and local governments, and may model some practicalities. As mentioned, such cases may push the government and ACFTU towards providing workplace democracy.

However, there is undoubtedly the risk that CSR could hinder regulatory efforts in China. In addition to distracting NGOs and other labour advocates from calling for state regulation, the rise of CSR may crowd out government action and enforcement. The increasing numbers of social auditors, and increased faith in CSR's effectiveness, may reduce the perceived need for local governments to resource enforcement of labour law. Increasing spread of CSR auditing may also cause complacency among government enforcement staff. For instance, in one case, CSR practitioners are training factory-based "labour relations practitioners" to ensure employers and workers are aware of their responsibilities and grievance processes under the new labour law (Business for Social Responsibility China Training Institute, 2011a). This may reduce the perceived need for the Government or union to undertake similar activities. Research would be needed to see whether these impacts in fact occur. Some anecdotal evidence suggests that suppliers take code of conduct inspections more seriously than visits from the Labour Bureau. It would be worthwhile to consider whether this has any impact on Labour Bureau resourcing and inspections.

In addition, government support for CSR may *distract* it from enforceable activities. In 2006, the Henan local government began to survey companies on their CSR standards, and declared it would assist companies attain SA8000 certification (Lin, 2008, p. 363). While this involvement may have provided a helpful framework for the government to enforce its laws, it may also have distracted the government from enforcing labour law, in favour of voluntary private standards. In another case, the Shenzhen local government invested time to create its own corporate social responsibility standards (Lin, 2008, p. 363). While this may be a step towards new regulation, it may also be a distraction from actions that would advance compliance with existing laws. The concern has also been raised that the rise of CSR could distract the ACFTU, as it assists CSR development and certification programmes in order to promote exports (AMRC, 2005).

As shown, the effect of CSR on China's regulation and enforcement is uncertain. However, there is potential for these to be undermined. A thorough exploration of CSR's effect on regulation and enforcement in China is warranted, in order to avoid these risks.

Impact on Democratic Governance

The final deep concern associated with CSR is that the trend towards privatised regulation is a shift away from democratic governance (Chang, 2003, as cited in AMRC, 2005; Bhushan et al., 2006;

Blackett, 2004; Pun, 2005a). Many critics decry the lack of worker and local stakeholder participation in CSR initiatives (O'Rourke, 2006; Pun, 2005a, 2006; Rodriguez-Garavito, 2005). Standard-setting, enforcement and monitoring (if any) are carried out almost entirely by business, NGOs and consumers in Northern countries, making the movement top-down. Aside from being fraught by conflict of interest, this is “institutional capture” of what is arguably the job of the state or unions. It subjects developing countries to predominantly Northern and corporate-led standards. It also shifts input (standard-setting and motivation for enforcement) from citizens and local stakeholders to consumers (Jeffcott & Yanz, 2000). As described above, consumers’ ability to influence these mechanisms is extremely limited. To whom CSR initiatives are accountable (consumers, workers or shareholders) is also highly questionable.

CSR in China suffers from a lack of local input. The overwhelming majority of code standards and monitoring procedures are developed outside of China, the majority in Western countries. Workers are seldom even aware of code content, and do not believe codes can assist their situation. In one investigation of the impact of codes of conduct at Wal-Mart suppliers, the vast majority of workers surveyed did not even know about the code (Chan & Siu, 2009, p. 20). The motivation for implementation comes primarily from Northern consumers. It is therefore understandable that the Chinese Government at first resented CSR as a foreign imposition.

However, because workers in China also lack avenues to contribute to *state* regulation of labour standards, the infliction of CSR standards in China can not be considered a step away from democratic governance. Rather it is a shift from solely Chinese Government-imposed standards, to those imposed by Northern consumers and labour advocate organisations. It is possible therefore, that in terms of the numbers of voices able to contribute, CSR standards and monitoring may be more “democratic” than China’s state monitoring of labour law, even if Chinese workers are not the ones having a say. Both state and private regulation methods therefore leave a lot to be desired regarding workers participation in China. Both should be enhanced to give workers a voice.

CSR does offer one avenue for facilitating *increased* worker input in labour regulation. Partnerships could be formed between Northern groups and Hong Kong and mainland NGOs supporting the Chinese labour movement. These could enable the voice of Chinese workers to be channeled to those setting CSR standards and enforcement methods. O’Rourke notes that the best cases of CSR internationally are those that involve these partnerships, however they are “extremely labour intensive and expensive,” and are a very small minority of CSR cases (2006, p. 909). They would

be very difficult to achieve in China, due to government fear of foreign involvement with NGOs. The resources required would also arguably be better spent building workers' ability to contribute to workplace unions or state regulation, which could achieve more enforceable outcomes.

Conclusion

CSR in China thus offers some actual and potential benefits to workers, which carry a number of serious risks. Due to its reliance on market pressures there is an inevitable ceiling on CSR's effectiveness. Nearly 20 years since the first CSR initiatives in China, coverage remains extremely low. In the vast majority of cases, scope is confined to codes of conduct, with auditing inadequate to bring anything beyond cosmetic improvements. Initiatives almost never involve any transfer of value to suppliers. Even the minority of initiatives that do address systemic problems (low wages, long hours or lack of freedom of association) have yet to advance beyond pilot projects. No projects to date have enabled ongoing confrontational activity, and advanced projects remain couched in the language of "win-win" solutions. In reality, improving conditions for workers inevitably comes at a *cost* to suppliers and their foreign buyers, particularly in the case of addressing systemic problems. This demonstrates the fundamental flaw in relying on market actors to solve systemic problems. In fact, many foreign companies *choose* low-wage manufacturing regions such as China because of the *presence* of these problems. This aspect of globalised production makes it unsurprising that foreign companies are reluctant to address these problems through CSR.

CSR is therefore an ineffective means of bringing significant improvements. It is an attempt to "re-embed" liberalism, while relying on the market forces which are simultaneously propelling global production towards evermore rapid dis-embedding and liberalisation. CSR is cushioning the seats of economic development without questioning the direction of the ride. While CSR does bring some benefits, these should be considered merely a "band aid". CSR cannot solve the deep-seated problems of devaluing of labour that is pursued under neoliberal development.

Reliance on CSR is not only misled, but potentially harmful for Chinese workers. Undue belief in the effectiveness of CSR hampers the pursuit of more meaningful solutions. This is seen in the China case in the distraction of the Hong Kong NGO movement, and in critical voices being overpowered. It is also seen in the potential for CSR initiatives to crowd out worker organising and state enforcement. CSR must therefore be demystified, and acknowledged as a limited, and risky,

means of improving supply-chain labour conditions. Its positive impacts must be held in tension with the risks.

Suggested “Terms of Engagement” with CSR

Groups seeking to improve labour rights in China should engage with CSR cautiously, and as one weak mechanism among many tools. First, they should recognise the limited capabilities of CSR. Where CSR can fill gaps and bring cosmetic improvements, labour advocates should encourage initiatives. However, they should publicise its inevitable shortcomings. Any such work that exposes CSR’s limitations is likely to arouse opposition from powerful beneficiaries of the regulatory gap. Confrontational groups would therefore need to be intentionally resourced.

Labour advocates should focus on alternative means for improving labour rights in China. While NGO partnership with CSR can bring “quick benefits” they should prioritise work that strengthens state regulation and enforcement, and encourages worker organising. Hong Kong labour NGOs should also encourage Northern actors to support alternatives to CSR. They could thereby divert consumer support towards more effective avenues.

Given the spread of CSR, it is unrealistic for groups to focus solely on alternatives. Where it is necessary to be involved with the CSR movement, labour advocates should agree on conditions of engagement.

- They should consistently expose greenwash and the short-comings of inadequate audit practice, and demand that firms move beyond this. They should publicise the best practices in auditing methods, but *only* while calling these businesses to even higher standards.
- NGOs should refuse to partner with firms until they have demonstrated a minimum level of commitment to “genuine” CSR, for instance, commitment to resourcing improvements, or disclosure of supplier lists. (NGOs’ unity on this minimum level would prevent firms “using” NGOs to legitimise inadequate practices.)
- NGOs should push for more foreign companies to attempt to provide worker representation mechanisms. However, noting the risk that workers’ committees can crowd out genuine worker organising, NGOs should consistently demand higher standards of freedom of association, and publicise the shortcomings of initiatives that fail to meet these standards.
- NGOs should push for greater opportunities for worker input in CSR standard-setting and monitoring.

- In all discussions of CSR, NGOs should repeatedly list its shortcomings and the need for worker organisation and state regulation and enforcement. Highlighting TNCs' lack of commitment to resourcing improvements may be one way to expose rhetoric.
- In any instances where development of CSR is seen to *hinder* development of worker organising or state regulation, the latter should be prioritised.

CSR has proven a useful band-aid to bring some relief to the problem of labour rights violations in China. However, it must not take the place of alternatives. Wherever possible, labour advocates must expose CSR's limitations and risks, so that state regulation and worker organising, the measures that *are* capable of systematically improving labour conditions, may be advanced. How New Zealand can apply these lessons will be the subject of the following chapter.

Chapter 6: Improving social responsibility in New Zealand’s offshore supply chains and contributing towards improved labour conditions in China

“...it pains me that sweatshop labour is the best we can do... I expect that future technology will permit painless child births for women... Hopefully, the same be true for future industrialisations. Unlike design issues associated with the human body, we have only ourselves to blame for the social design problems of industrialisation.” (Collins, 2003, p. 410)

It is hard not to hope for alternatives to an economy in which foreign workers and their communities bear the true costs of production. The “design problems” of industrialisation have a human cause, and can have a human cure. The previous chapters have demonstrated the need for attention to social responsibility in New Zealand’s offshore supply-chains. It is necessary to explore what it would take to improve New Zealand’s performance in this area. It is also necessary to explore how New Zealand can contribute towards improving labour conditions in China. In each of these discussions, I draw on lessons from the previous chapters.

I first address opportunities to enhance New Zealand social responsibility. I outline the UN Protect, Respect and Remedy Framework, and the strategies of states that lead in implementation of these principles. These examples offer a direction to which New Zealand can aspire. I then discuss the possibilities for New Zealand, which can be thought of on a spectrum from the softest to hardest measures. To varying degrees, all require New Zealand businesses and consumers to assume costs that are currently borne by offshore communities.

It is argued that to seriously address social responsibility of New Zealand businesses will take explicit action from Government, in the form of a National Framework towards upholding the UN Principles, and an institutional structure to implement the Framework. Ultimately, New Zealand must impose mandatory requirements and increase legal liability for their activities. These steps would inevitably arouse opposition, which will not be overcome until power balances are shifted in favour of confrontational groups. In the shorter term, New Zealand should promote and resource supply-chain CSR initiatives as a significant part of the National Framework. However, in light of the shortcomings of CSR, demands should extend *beyond* these measures, and challenge the “settlement” at voluntary private regulation. Such a challenge will be vital if New Zealand is to implement the UN Principles, and to play its part in addressing the design problems of industrialisation.

Second, I explore avenues for New Zealand to contribute to improving labour conditions in its trading partners more generally, focusing on the case of China. I argue that New Zealand groups should increase support of the Chinese labour movement and state enforcement. To do so, they should make greater use of opportunities for cooperation provided by MoU, and should use available forums to more frequently raise concerns about non-compliance. New Zealand groups should also consider directing development aid to improve working conditions, and create additional channels to support the Chinese labour movement. This would make best use of New Zealand's opportunity to partner with Chinese organisations towards improved labour conditions.

Improving social responsibility in New Zealand's offshore supply chains

Explicit state action is essential to improve social responsibility. As described in Chapter Two, Governments can promote private regulation, increase state involvement through co-regulation, or enact binding measures that introduce legal liability for non-participation. As depicted in Figure 1 (Chapter Two), policy options include informational instruments, partnering instruments, financial incentives, and legal or mandating instruments. All these come into play in the policy areas discussed below. Civil society groups (BSOs and confrontational groups) are also essential for demanding, enabling and incentivising social responsibility. While their roles will be described below, the discussion focuses on the agency of states.

The International Direction of Social Responsibility: the United Nations Protect, Respect and Remedy Framework

The UN Protect, Respect and Remedy Framework provides a useful overview of areas for state action. Not only is the Framework unique in outlining state responsibilities, the 2011 Guiding Principles on Business and Human Rights make it usable by breaking it into a series of actionable points (UNHRC, 2011). The Principles, while voluntary, have become an important reference point for state and corporations (European Commission, 2011, p. 6). If implemented, they would demonstrate a significant commitment to social responsibility.

Of the state responsibilities outlined in the UN Principles, the following are relevant to this discussion:

2. "States should set out clearly the expectation that all business enterprises... respect human rights throughout their operations.

- 3c. States should provide effective guidance to business enterprises on how to respect human rights throughout their operations.
- 3d. States should encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.
- 4. States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State...
- 6. States should promote respect for human rights by business enterprises with which they conduct commercial transactions.
- 25. States must take appropriate steps to ensure...that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.
- 26. States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce... barriers that could lead to a denial of access to remedy.”

These principles suggest the need not only for enhanced *private* regulation, but also stronger measures.

Institutionalising Action on Social Responsibility: Examples from the European Union

Before outlining specific steps to advance social responsibility and uphold the UN Principles, it is helpful to explore how leading states have institutionalised this task. Some advanced cases are evident in the EU. Discussions on CSR began in the European Parliament as early as 1999 (De Schutter, 2008, p. 211). In 2002, EU states launched a multi-stakeholder forum to promote dialogue (De Schutter, 2008, p. 213), and in 2004 they established a High-Level Group to promote CSR development (Faracik, 2008, p. 6). The Group encouraged the take-up of national policy frameworks to promote CSR. By 2011, 15 out of 27 EU member states had such frameworks (Europa, 2011).

The European Commission oversees the regional agenda on CSR. It released its most recent three-year plan in 2011 (Commission, 2011). The Commission plans to create an awards programme, increase funding for education and training and to introduce national benchmarking for CSR progress. It plans to encourage the spread of international standards, to create priorities for implementing the UN Principles, and to bring forward mandatory reporting requirements (Bell, 2011). Examples of implementation in individual member states are impressive, as discussed below.

The adoption of strategic plans allows states to monitor progress. For instance, in Belgium the 2006 national action plan has provided a focal point for progress reports and stakeholder discussions on CSR implementation (Knopf et al., 2010, p. 16). In Denmark, the national action plan aims to increase the number of Danish companies that sign the UN Global Compact (p. 16). In the Netherlands, a special committee annually reports on progress on CSR issues (p. 20). These national action plans, along with the overarching agenda of the European Commission, enable states to work strategically towards implementing the UN Principles and to measure progress.

European states have institutionalised social responsibility in a number of ways. Most situate a mandate for social responsibility in either in Ministries of Labour and Social Security (54 percent), or in Ministries of Economy, Trade and Industry (25 percent) (Berger et al., 2007, p. 10). Others locate CSR within Ministries of Foreign Affairs. Some states have set up inter-ministerial work groups or altogether new organisations (Knopf et al., 2010, p. 14). The UK Government appointed a CSR minister, although it abolished this position in 2008. The Polish Government established an auxiliary body of the Prime Minister's office on social responsibility issues in 2009, comprising of independent experts and business and stakeholder representatives (Knopf et al., 2010, p. 15). These examples demonstrate a range of avenues through which to institutionalise social responsibility.

To stimulate similar activity in New Zealand, the Government should adopt a National Framework to uphold the UN Principles. The Government must also identify where best to situate a mandate for implementing the Framework. This could be within the Ministry for Economic Development alongside the National Contact Point of the OECD Guidelines. It could also become a role of New Zealand Trade and Enterprise. Alternatively, social responsibility could be the role of an inter-departmental group or independent body. The following discussion raises numerous further suggestions for inclusion in the Framework. These are summarised in Box 1.

The Spectrum of Options to Enhance New Zealand Social Responsibility:

1. Developing Demand for Social Responsibility

Building public demand for social responsibility is vital for real progress to be made in New Zealand. States with more advanced social responsibility policies have for some time had lively civil society movements demanding attention to supply-chain labour conditions. In the late 1990s in Canada, a two-year campaign pressured the Government to promote a multi-stakeholder process towards a voluntary code of conduct (Jeffcott & Yanz, 2000). In the UK a coalition of 130

organisations campaigned for social responsibility to be better recognised in the 2006 reform of the Companies Act (The Corporate Responsibility Coalition [CORE], 2006a). In Poland, numerous NGOs draw attention to supply-chain labour issues (Knopf et al., 2010, p. 22). These civil society communities have developed over time, and have been instrumental in the progress seen in these countries. The development of equivalent groups in New Zealand is essential, both to increase market demand for social responsibility, and to build a political force to push for a settlement at stronger initiatives.

Fostering Consumer Demand Through Awareness-Raising

Governments can play an active role in raising public awareness about social responsibility issues. Governments have launched multi-stakeholder CSR forums and conferences in Belgium and Finland, led programmes to raise consumer awareness on fair trade in Germany, Ireland and Austria, run seminars for consumers in Poland, and run public awareness campaigns in Italy (Berger et al., 2007, p. 43-48; Knopf et al., 2010, p. 23). The Irish Government contributed to a study of consumer awareness of CSR issues (Berger et al., 2007, p. 46). Government programmes on social responsibility awareness that target consumers and the general public are rare (only seven percent of such programmes reported in the EU in 2007) (p. 14). However, activities targeting other sectors also raise consumer awareness indirectly. Numerous governments have promoted CSR among the private sector. The New Zealand Government should consider similar initiatives. The Government should also foster confrontational groups, continue to support BSOs and increase research funding, in order to raise consumer awareness indirectly.

The non-government sector can also play a role. In Europe, BSOs partnered with government agencies in many of the projects listed above. In New Zealand, BSOs could branch into projects that raise consumer awareness on supply-chain issues. However, as BSOs usually advocate in favour of private regulation, awareness-raising by *confrontational* groups is necessary, to raise public awareness of the shortcomings of the current initiatives.

Developing Groups to Demand Social Responsibility

Activism is a key driver of voluntary initiatives (Utting, 2005, p. 10). To challenge BSOs' monopoly in social responsibility discussions, it is necessary to develop confrontational groups to critique businesses' efforts and call for deepened spread and scope of CSR initiatives.

Confrontational groups could also become the primary advocates for stronger alternatives to CSR, and monitor its risks. Some “watchdog” activities, such as monitoring and critiquing current activities could be picked up by research institutions. However, campaigning is also needed to translate research findings into public awareness, pressure on businesses for change and pressure on the Government for binding measures.

The Government could provide important support to foster groups that critique social responsibility efforts. The Government could encourage their development through state grants and research funding. A state-sanctioned ranking system or complaints mechanism (discussed below) may also provide an opportunity for their development. Essential to the development of confrontational groups is increased awareness among the public. Once these groups are established, they will raise further awareness, which should create a growing movement. This is a further argument for investment in awareness-raising initiatives.

2. Improving the Spread and Depth of CSR

A second step to advance social responsibility is to improve the spread and depth of CSR. As discussed in previous chapters, the current political climate is not conducive to imposing binding measures on business. This is far from an inevitable condition, and must be challenged. In the meantime, improving CSR is a necessary alternative, and should constitute a significant part of the National Framework. However, in light of the shortcomings of CSR and the risks of over-reliance on voluntary initiatives, it is important the Framework maintain an agenda towards binding measures. CSR should be considered a precursor to stronger alternatives.

The discussion of the competitiveness approach in Chapter Four suggests a number of avenues to improve the spread and scope of CSR. According to this approach, businesses take up CSR to reduce costs and risks, and to pursue market rewards. Their capacity to respond to these pressures is also relevant. Steps to improve CSR should therefore focus on streamlining the ability of the *market* to provide greater rewards and sanctions, and supplementing the market with additional incentives. Consumers need to be empowered to demand social responsibility, through education, transparency and regulation of social marketing. Businesses need to be enabled to respond to these demands. Businesses also need further incentives where consumer demands are weak. These steps would provoke CSR by making it more necessary, or more rewarding, for businesses’ competitive advantage.

Empowering Consumers to Support Socially-Responsible Business

BSOs and confrontational groups can provide tools that increase transparency for consumers. The French Observatory for CSR, for instance, has developed a web-based tool to enable CSR reporting (Knopf et al., 2010, p. 30). In New Zealand, the BusinessNZ Sustainable Supply Chains database offers similar potential to encourage transparent disclosure. So long as the content is made public, this tool would enable consumers to compare and act on CSR claims. The move by Sustainable BusinessNZ to encourage companies to upload TBL reports on their website may also facilitate transparency.

BSOs and confrontational groups can also guide consumers, through education on certifications and social labels, and by comparing businesses through awards and ranking systems. Current awards schemes in New Zealand, such as the SBN Sustainability Awards and the Sustainable 60 Series should be continued, and should develop a greater emphasis on supply-chain initiatives.

Proliferation of awards should be avoided to prevent greenwash. Ultimately, to enable comparison of businesses' efforts, a civil society group should develop a comprehensive ranking system of New Zealand companies' social responsibility. One earlier system included only 15 businesses (Massey University, 2007). A ranking system could compare businesses using criteria in the Sustainable Supply Chains database.

Alternatively, a ranking system could focus on supply-chain labour initiatives specifically. To this end, I have developed a tool which ranks supply-chain labour initiatives according to three criteria: monitoring compliance, transparency and proactivity (Appendix B). Companies can be scored 0-4 in thirteen subsections, creating a total maximum score of 36. As a quick glance shows, the majority of New Zealand initiatives described in Chapter Four (Corporate Social Responsibility section) would score very poorly. Research ranking businesses with this or another tool would assist consumers to identify and reward companies relatively advanced in social responsibility. It would also publicise areas in which they could pressure for improvements.

Governments can play a role in empowering consumers to demand social responsibility. In addition to the awareness-raising methods above, Governments can support the education programmes, disclosure tools and ranking systems run by civil society groups. Governments can also establish their own equivalents. The Dutch Government runs a national "Transparency Benchmark" scheme, which compares and rates participating companies' sustainability reports (van Wensen, Broer,

Klein, & Knopf, 2011, p. 21). The Czech and Austrian Governments both award a national prize on the basis of sustainability criteria (Berger et al., 2007, p. 4. 29). These steps should be considered in New Zealand. In addition, the Government should monitor the use of green marketing, and update advertising standards and the Fair Trading Act to prevent greenwash.

The New Zealand Government could also consider endorsement of a *social* label, to supplement Environmental Choice label in the environmental sector. The Belgian Government began administering a voluntary social label in 2002, which is granted to products “whose chain of production respects the eight fundamental ILO conventions,” a stringent standard (Aaronson, 2007a, p. 21-22). The system also includes a complaints mechanism (De Schutter, 2008, p. 223). While the compatibility of national social labels with WTO rules has yet to be fully tested, the Belgian system arguably does not contravene non-discrimination rules, as both domestic and foreign products can apply. The New Zealand Government could consider an equivalent. A New Zealand social label could use similar criteria to the Belgian label, or could be awarded to companies that adopt a nationally-agreed code of conduct, or that participate in a complaints mechanism (discussed below). This measure would enable consumers to identify socially-responsible companies. It would also represent a national commitment to exploring the limits of WTO rules for matters of social responsibility.

Civil Society Promotion of CSR to the Private Sector

In order to respond to demand for social responsibility, businesses require greater awareness of CSR issues, capacity to respond, and increased incentives (rewards or sanctions). In New Zealand, BSOs and research institutions are the primary groups that meet these needs. BSOs’ current advocacy of CSR, resourcing and awards schemes should be continued. Through these initiatives, BSOs should develop a greater focus on supply-chain labour issues.

Research on social responsibility can be a key driver of private sector initiatives. New Zealand research institutions should continue to survey consumer awareness and the extent of CSR activities, in order to publicise the potential rewards from CSR activity. In addition, they should increase specific research into supply-chain initiatives specifically, to raise awareness and build capacity in implementation. Such research should include surveys into attitudes towards ethical purchasing and the extent and effectiveness of supply-chain activities. Researchers should also track New Zealand’s CSR development compared to international trends, to motivate businesses to keep up with overseas counterparts.

Government Promotion of CSR to the Private Sector

The UN Principles suggest several areas in which governments can promote CSR to the private sector. These steps require governments to *enable* businesses to respond to market pressures. They also require governments to create additional incentives.

Enabling Businesses: Promoting and Resourcing CSR

“UN Principle 2. States should set out clearly the expectation that all business enterprises... respect human rights throughout their operations.

3c. States should provide effective guidance to business enterprises on how to respect human rights throughout their operations.” (UNHRC, 2011)

Foreign governments have undertaken a range of measures to set out expectations of social responsibility. Governments in Brazil, Denmark and Canada have run nation-wide campaigns to raise awareness of CSR in the private sector (Ascoli & Benzaken, 2009, p. 5; Berger et al., 2007, p. 4). Many states actively promote the OECD Guidelines. It is a provision in the European Commission’s bilateral agreements that signatories “jointly remind their multinational enterprises...to observe the OECD Guidelines wherever they operate” (Aaronson, 2007a, p. 18). In the Netherlands, the Government requires companies to declare familiarity with the Guidelines as a precondition to being granted export guarantees (Aaronson, 2007a, p. 19). In Italy, the OECD Guidelines NCP actively commissions awareness-raising campaigns (Knopf et al., 2010, p. 18). All these initiatives set out clear expectations that businesses should respect human rights (Principle 2 above).

Governments have also provided guidance on CSR implementation. Governments in Latvia, Poland, France, Sweden and Spain have promoted business conferences on CSR (Knopf et al., 2010, p. 11, 30). The Danish Government ran a three-year CSR education programme for the private sector (Berger et al., 2007, p. 4). Sweden, Poland and the Netherlands have all established independent bodies for CSR education (Berger et al., 2007, p. 4-5; Knopf et al., 2010, p. 14). Numerous governments have provided guidelines to resource businesses. In Japan, the majority of businesses’ reports reference government documents (Phung, 2011, p. 146). In Austria, the Government developed sector-specific CSR guidelines for 120,000 SMEs, a project requiring €100,000 (Berger et al., 2007, p. 3). The Canadian Government encourages CSR among its

businesses overseas by making its embassies available as venues for dialogues with local governments and citizens (Ascoli & Benzaken, 2009, p. 5). These examples demonstrate a variety of avenues through which governments can provide guidance and build capacity among businesses (Principle 3c).

Many states have undertaken initiatives to promote supply-chain labour initiatives specifically. In 2010, the Swedish Government announced it would create a “Centre for Corporate Social Responsibility” at its Beijing embassy to develop dialogue with Chinese groups on CSR implementation (Knopf et al., 2010, p. 15). In the Netherlands, a specific council promotes supply-chain management, and an additional committee reports annually on progress (Knopf et al., 2010, p. 20). The Danish Government has funded a multi-stakeholder initiative to promote supply-chain management, which provides guidelines, dialogues and workshops (Knopf et al., 2010, p. 23). The UK, German, Dutch and Irish Governments fund CSR improvements in *supplier* states as part of development aid (Knopf et al., 2010, p. 21-23). In addition, the Belgian social label and the French system to enable disclosure of supply-chain conditions both encourage the business sector to participate in supply-chain initiatives.

New Zealand has a lot to learn from these examples. The proposed National Framework for New Zealand should include a strategy for enabling CSR and streamlining market incentives. As priorities, the Government should consider a national awareness campaign on the importance of social responsibility, including a focus on supply-chain issues. The Government should also commission resources and training programmes on implementing supply-chain labour initiatives. Beyond this, the Government could consider drafting a national code of conduct as a reference point for businesses. (This code could be used in Government procurement.) As seen in the examples above, the Government could also consider referencing the OECD Guidelines in bilateral trade agreements, using New Zealand foreign embassies to provide CSR training or facilities for stakeholder dialogues and directing development aid towards overseas social responsibility.

Financial Incentives

Some states create additional financial incentives to encourage companies to take up CSR initiatives. Some states directly fund the implementation of CSR programmes (Ascoli & Benzaken, 2009, p. 1). In the 2009-2010 financial years, Canada’s Department of Foreign Affairs and International Trade provided approximately CN\$350,000 towards 50 corporate social responsibility

initiatives in over 30 countries (Foreign Affairs and International Trade Canada, 2010). The Polish Government subsidises some CSR certifications (Knopf et al., 2010, p. 20). In the Netherlands, businesses are only granted export access when they declare familiarity with the OECD Guidelines (Aaronson, 2007a, p. 19). Other states provide their own CSR awards. These financial incentives undoubtedly increase awareness and take-up of CSR initiatives, and should be considered in New Zealand. While it has been suggested that tax incentives may provide a viable mechanism (see, for instance, Welford, 2005, p. 49), there appears to be no evidence of states instituting tax incentives for activities such as conducting due diligence or obtaining CSR certifications.

Mandatory TBL Reporting

3d. “States should encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.” (UNHRC, 2011)

To complement the partial success of voluntary initiatives, many countries have adopted binding standards on TBL reporting. Some states require either standalone reports, or for CSR criteria to be added to broader annual reports. They aim to increase reporting and to ensure comparability, enabling consumers and investors to support socially responsible companies (Holder-Webb, Cohen, Nath, & Wood, 2009). Mandatory reporting is therefore a means of enhancing the market’s ability to incentivise social responsibility. While *reporting* is required, sanctions for irresponsible behaviour still come only through the market.

Mandatory TBL reporting exists in various forms in Australia, Canada, Denmark, France, Japan, the Netherlands, Norway, South Africa, Sweden, the UK and the US, among others (Architecture Source, 2011; CORE & Trade Justice Movement, 2006, p. 5; Ho, 2010, p. 90; Kerr & Aboubakr, 2005; see also Knopf et al., 2010; van Wensen et al., 2011). In Japan, environmental reporting has been mandatory for specified companies since 2004 (Phung, 2011, p. 150-151). In the UK, the Government has required TBL reporting from 1300 publicly listed companies since 2006 (CORE & Trade Justice Movement, 2006; CORE, 2006b). In Sweden, the Government has required SOEs to issue reports in the Global Reporting Initiative framework since 2007. This is a clear effort to prevent human rights abuse by state enterprises (Principle 4), and is helpful for setting norms (Ascoli & Benzaken, 2009, p. 2). In addition, in South Africa, Malaysia and some European countries, stock exchanges specify reporting requirements (CORE & Trade Justice Movement, 2006, p. 5; Vogel, 2010, p. 75). While reporting adds some costs to business, it also delivers cost

savings through improved business performance, and businesses have been found to benefit from access to Socially Responsible Investment (SRI) (Phung, 2011, p. 150-151).

One recent example of a shift to mandatory reporting received a lot of media attention. In 2010 the US state of California introduced the Transparency in Supply Chains Act, which came into effect in 2012. The Act requires that all retailers and manufacturers doing business in California, with annual revenues of more than \$100 million, publicly disclose the extent of their due diligence to eradicate slavery and human trafficking from their direct supply chains (Verite, 2011a, p. 31; 2011b, p. 3).³⁰ This is expected to apply to approximately 3,200 companies (Todres, 2012, p. 191). A similar bill at federal level is currently under discussion (Christian Brothers Investment Services, 2012).

However, should a company disclose that it undertakes *no* measures, there are no legal penalties. The initiative relies on market sanctions to push the company towards more responsible behaviour. This demonstrates the shortcomings of mandatory reporting compared to legal sanctions for irresponsible behaviour.

Despite these limitations, mandatory reporting should be considered in New Zealand. Requiring businesses to disclose information through the Sustainable Supply Chains database could be one possible avenue. Disclosure could be mandated first for SOEs and suppliers to Government, then for all New Zealand businesses. This would contribute to upholding Principles 4 and 6. It would also help to set clear expectations that businesses operate in a socially-responsible manner (Principle 2), and empower consumers to identify and support socially-responsible business.

Government Procurement

- “4. States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State...
- 6. States should promote respect for human rights by business enterprises with which they conduct commercial transactions.” (UNHRC, 2011)

A number of foreign governments create additional market rewards for CSR by favouring socially-responsible companies in their own procurement. Procurers in France are obliged to consider sustainable development in their purchasing process (Steurer, Berger, Konrad, & Martinuzzi, 2007,

³⁰ Businesses must publicly disclose to what extent they evaluate and address risks of human trafficking and slavery, perform supplier audits, and train relevant employees to mitigate risks of human trafficking and slavery in the supply chain.

p. 4). They are also required to include at least one social or environmental clause per large contract (p. 27). In Belgium, at least 50 per cent of newly purchased vehicles must comply with specific environmental criteria (Steurer et al., 2007, p. 19). The Belgian Government has also pushed for ILO conventions to be used as selection criteria (Aaronson, 2007a, p. 35-36). In Italy, some provinces include SA8000 certification among selection criteria when awarding contracts (Aaronson, 2007a, p. 35-36). Socially-responsible procurement is a fulfillment of Principles 4 and 6. It serves as a model for the private sector. It also creates an additional source of demand, and therefore market rewards, for socially-responsible businesses.

To make a genuine commitment to social responsibility in New Zealand, the Government should revive efforts through its own procurement. The Government should reintroduce incentives for TBL reporting among government departments, and move towards mandatory reporting. It should develop a standardised code of conduct for use in all government tenders, and for purchasing through individual departments. This could double as a model code for the private sector, as suggested above. The code should specify minimum acceptable standards. These should include the mandatory standards already existing for forestry and other products, and be expanded to other products over time. The Government should introduce auditing to monitor compliance. It should also train staff to discern acceptable minimum standards when awarding tenders. In addition, the Government should consider introducing a complaints mechanism into its procurement (discussed below). This would hold departments accountable, and ensure transparency.

A Non-Judicial Complaints Mechanism

“25. States must take appropriate steps to ensure,... that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.” (UNHRC, 2011)

Regardless of the spread of market-driven initiatives, their scope remains limited until they provide redress for victims. States have the responsibility to address these limitations (Principle 25). Ultimately, redress is best provided through reforms of company law, discussed below. Currently, very few states provide *any* effective sanctions for their companies’ irresponsibility offshore, whether through legal measures, or a non-judicial alternative. While the OECD Guidelines National Contact Point system provides some opportunity for redress, this is not accessible to victims outside participating countries.

Short of company law reform, New Zealand could deepen the scope of its CSR by backing voluntary initiatives with a non-judicial, national grievance mechanism. Labour advocates could assist offshore victims to raise complaints about the conduct of New Zealand companies or their subsidiaries. The mechanism could publicise complaints in New Zealand, allowing the public to pressure the company to provide redress. Such a mechanism would add teeth to other measures to promote CSR, by providing transparency and credible sanctions. It would also shift attention from monitoring companies' activities, to providing redress in the event of identified problems (Utting, 2005, p. 9).

A complaints mechanism in New Zealand could take a number of forms. The most far-reaching option would be to incorporate a complaints system into the BusinessNZ Sustainable Supply Chains initiative. A government agency or alternative group could set up a national complaints hotline, which would be run by an independent ombudsman. The ombudsman could forward any complaints received to the company responsible. The company could then be required to disclose the complaint, and their response to it, in a public database. State departments or other agencies could play a role in such a mechanism. It is possible that the Human Rights Commission, or the Parliamentary Office of the Ombudsman could expand their mandates to include receiving complaints about business conduct. Alternatively, a confrontational group could play the ombudsman role. In a similar example, Oxfam Australia established an ombudsman to monitor complaints in the mining industry, received through Oxfam networks throughout the world (International Federation for Human Rights [FIDH], 2012, p. 402). Should a company fail to remedy a complaint, Oxfam generates pressure through international media. A new organisation could be established to play this role in New Zealand.

A similar option is to incorporate a complaints mechanism into Government procurement. This could be similar to the complaints mechanism adopted by the London Olympics Organising Committee. The Committee adopted a code of conduct, which included clauses on supply-chain labour standards (London Organising Committee of the Olympic Games and Paralympic Games, N.Y.). Should breaches be reported to their hotline, the Committee will attempt to remedy these through mediation (Ergon Associates, N.Y.). Complaints are also publicised on the Committee's website.

The New Zealand Government could follow a similar route. They could first adopt a national code of conduct for suppliers. The Government (or a civil society group) could then establish a complaints hotline, open to any stakeholder claiming breaches of this code in the production chains supplying to Government. Complaints could be followed by a mediation procedure. While the mechanism would extend only to suppliers to Government, it would promote transparency and communicate the expectation that New Zealand businesses should promote human rights (Principle 2 above). It would also promote due diligence among suppliers tendering for government contracts (Principles 4 and 6), and provide redress for any victims (Principle 25). Such a mechanism would also demonstrate genuine Government commitment to transparency and social responsibility in its procurement.

3. Imposing *Legal* Sanctions for Irresponsible Behaviour

The measures discussed above would undoubtedly improve the coverage and depth of CSR among New Zealand businesses. However, all rely on market sanctions, which have numerous shortcomings. As discussed, even “hardened” CSR is of limited effectiveness. Legal sanctions are also necessary.

It would be an oversight to discuss means to improve social responsibility without addressing the aspects of company law that incentivise *irresponsibility* in the first place. As discussed in Chapter Four, New Zealand has no duties on company directors to consider adverse impacts on stakeholders. Due to the restricted use of extraterritorial jurisdiction, there is a lack of liability for activities offshore. In addition, the “corporate veil” allows parent companies to escape responsibility for abuse by their subsidiaries. A genuine effort to uphold the UN Principles (particularly Principles 2, 25 and 26) would require New Zealand to reform these aspects of its company law.

Responsibility to Seek More than Maximised Profits: Reform of Directors’ Duties

2. “States should set out clearly the expectation that all business enterprises...respect human rights throughout their operations.
25. States must take appropriate steps to ensure,... that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.” (UNHRC, 2011)

At the heart of the problem of business irresponsibility is the corporation's primary motivation to maximise value for *shareholders*, without a duty to consider impacts on stakeholders. Any serious attempt to promote business responsibility must challenge this purely shareholder-oriented view (Doane, 2005). One improvement could be in the form of a duty on directors to *consider* the impact of the company's activities on stakeholders. A stronger improvement would be a positive duty to take reasonable steps to prevent harm. The strongest reform would be to require a *plural* duty on directors, to maximise not only benefit to shareholders but also benefit to stakeholders. This would be a radical shift from the current view of corporations, as it implies that corporations should benefit society in ways other than maximising shareholder wealth.³¹ Any of these measures would communicate the expectation that businesses respect human rights throughout their operations (Principle 2).

The UK Government has taken small steps to encourage *consideration* of stakeholders. In its 2006 reform of the Companies Act, the Government imposed a new duty on directors not only to maximise profit, but also to "have regard to" the impacts of their business on people and the environment (CORE, 2006a). This fell far short of campaigners' demands for a positive duty on directors "to take reasonable steps to minimise significant adverse impacts on workers, local communities and the environment" (CORE & Trade Justice Movement, 2006, p. 2-3). The new duty is also described as "practically unenforceable", as its language is subjective and breaches are difficult to prove (Ellis & Hodgson, 2011). However, the reform does represent a paradigm shift. For the first time, company law enunciated the concept of "enlightened shareholder value", that directors should consider value to shareholders more broadly than short-term financial interests (Ellis & Hodgson, 2011). It also acknowledges that community impacts may affect long-term profitability. While this reform is far from a plural duty on directors, it does raise the profile of stakeholder interests.

³¹ Some critics of shareholder capitalism go even further, arguing that corporations should indeed be vehicles for the public interest. See for instance, Corporation 2020 (<http://www.corporation2020.org/>) which campaigns for the following principles:

1. The purpose of the corporation is to harness private interests in service of the public interest.
2. Corporations shall accrue fair profits for shareholders, but not at the expense of the legitimate interests of other stakeholders.
3. Corporations shall operate sustainably, helping to meet the needs of the present generation without compromising the ability of future generations to meet theirs.
4. Corporations shall distribute their wealth equitably among those who contribute to its creation.
5. Corporations shall be governed in a manner that is participatory, transparent, and accountable.

If serious about incentivising social responsibility, New Zealand could also move to impose duties on directors. A first step could be to follow the UK in requiring *consideration* of social and environmental impacts. A next step could then be to impose a positive duty on directors to *take steps to minimise* the negative social and environmental impacts of their operations (discussed further below). Inevitably, these steps would be opposed by business sectors, and are therefore politically unfavourable. However, as the UK has taken steps in this direction, it is conceivable that New Zealand could at some time do so.

The reforms in the UK could be strengthened significantly by enabling *stakeholders* to enforce directors' duties. Such a step could also be considered in New Zealand. Currently, a breach can only be enforced by the company, or in limited circumstances, by shareholders or creditors (Companies Act, 1993, s. 301). While stakeholders *can* become creditors, this involves numerous procedural barriers. Enabling stakeholders to enforce directors' duties would provide more direct access to remedy (a step towards upholding Principles 25 and 26). Increasing the likelihood of a challenge by stakeholders would incentivise greater attention from businesses, and thereby create a deterrent from irresponsible behaviour.

Increase Liability for Activities Offshore: Broaden the use of Extra-Territorial Jurisdiction

25. "States must take appropriate steps to ensure... that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy."
26. States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce ...barriers that could lead to a denial of access to remedy." (UNHRC, 2011)

To impose greater liability on New Zealand companies for their offshore activities would require greater extraterritorial application of New Zealand company law. As described in Chapter Four, there are a number of barriers to New Zealand's jurisdiction being accepted, and for offshore victims bringing claims. These must be overcome to give victims genuine opportunities for redress.

Other countries exercise extraterritorial jurisdiction to a greater extent than New Zealand, suggesting possibilities for wider use. The United States Alien Tort Claims Act 1789 (ATCA) is the most far-reaching example. The ATCA provides US courts with jurisdiction over civil actions that violate "the law of nations" or a treaty of the US, even where these occurred outside the US and did

not involve a US actor (Flynn & O'Brien, 2010, p. 218). The one requirement is that the defendant is on US soil when the case is brought (FIDH, 2012, p. 181). The ATCA has been interpreted to apply to some labour rights cases. In 2001, it was used to bring accusations against Coca-Cola for the murder of union officials by paramilitary units in Colombia, and for denying workers the right to organise (FIDH, 2012, p. 197; Shamir, 2004, p. 640). As of April 2012, no cases against corporations regarding human rights violations had come to a conclusion, though some victims have received compensation through out of court settlements (FIDH, 2012, p. 187).

While the ATCA suggests one measure to hold corporations to account, its use is highly controversial. Due to opposition from economic interests, use of the ATCA is increasingly restricted. Furthermore, it is also unlikely that sweatshop conditions, wage or working hour issues would be deemed of necessary gravity to constitute violations of the law of nations (Flynn & O'Brien, 2010, p. 219). This application would bring a flood of litigation. The use of ATCA is certainly moving away from any possibility of this application (Day, 2010, p. 20; Shamir, 2004). For these reasons, it is unlikely that an equivalent would be introduced in New Zealand.

In the EU, the use of extraterritorial jurisdiction is narrower than ATCA, but broader than that in New Zealand regarding where cases may be heard. Provided a company has its parent company somewhere in the EU, plaintiffs may bring a claim against them in any EU jurisdiction where the company has a *branch* (FIDH, 2012, p. 218). This reduces barriers to the plaintiff bringing claims, and allows them to choose the most favourable jurisdiction. Barriers to the exercise of extraterritorial jurisdiction also vary between countries. The obstacle of the *forum non conveniens* doctrine (that the home territory is not the appropriate forum) applies in most, but not all jurisdictions (Oxford Pro Bono Publico, 2008, p. ii). Some states are more willing than others to reject claims based on this doctrine. States also extend different degrees of support to reduce practical barriers for victims.

There are therefore a range of ways in which New Zealand could broaden its application of extraterritorial jurisdiction. If New Zealand is to do so, there is a continuum onto which this could fall. The most far-reaching option would be to adopt an equivalent of the US ATCA. In light of the opposition to the use of the ATCA in the US, pursuing a New Zealand equivalent is far from pragmatic. A less expansive option is for New Zealand courts to accept claims for breaches of limited international law, for instance the core ILO conventions, anywhere in the world, by companies incorporated in a select group of self-appointing states. Flynn and O'Brien suggest that

states could open their courts to do this simultaneously (2010, p. 221). This would bring enforceability to the ILO conventions. This measure could be possible in the future, for instance if undertaken by the majority of ILO members.

Alternatively, similar to the EU model, New Zealand and select trading partners could agree to hear cases against companies from any of the participating states, for breaches of collectively acceptable standards. Claimants could then select whichever jurisdiction was most favourable, increasing their access to remedy. Such a collective effort to expand extraterritorial jurisdiction would have several advantages. Communicating the parameters of extraterritorial jurisdiction through international agreements would allay fears over sovereignty. It would also reduce the loss of predictability for business. However, there are enormous practical challenges of coordinating states in such a manner.

A more practical alternative would be to incorporate parameters of extraterritorial jurisdiction into bilateral treaties. For instance, the NZ-China FTA or MoU could have included the parameters under which New Zealand courts could hold New Zealand companies liable for abuse in China. New Zealand could extend the range of cases eligible to be heard in New Zealand Courts to include breaches of ILO conventions, even in states which have not incorporated these concepts into their domestic law. This practice may not be well-received from developing states whose (poorly-enforced) laws New Zealand would override. However, it would be a decisive step towards providing justice for victims in these countries who have suffered abuse by New Zealand companies. If New Zealand is to expand trade into regions with weak legal systems, this is arguably a responsible means of doing so.

At a minimum, New Zealand should investigate the current practical and legal barriers to offshore victims seeking redress from New Zealand companies. Second, it should expand the circumstances under which extraterritorial claims can be heard in New Zealand. Current challenges such as *forum non conveniens* should be reconsidered and reduced. New Zealand courts should make it as easy as possible for vulnerable stakeholders to bring complaints against New Zealand companies. To reduce the risk of extraterritorial jurisdiction causing sovereignty issues, or reducing predictability for business, the parameters of its use should be clearly established. Outlining these in bilateral trade treaties seems one potential avenue.

These reforms would increase the liability of New Zealand companies *directly* contributing to abuse offshore, or of those causing abuse through very close relationships with subsidiaries. However, reforms for piercing the corporate veil are also essential.

Responsibility for the Behaviour of Subsidiaries and Subcontractors

Expanding extraterritorial jurisdiction would do little without addressing the other significant barrier to redress: parent companies escape liability for their subsidiaries' and sub-contractors' actions. The problem hits right to the heart of the problem of global production operating through sub-contracting chains. The legal dilemma is as follows: what legal test would determine a buyer company's liability for other entities with whom it is in an economic relationship?

An Argentine law provides a novel approach to this dilemma (Montero, 2011, p. 123-124). The Law of Homework regulates the link between brands, intermediaries and production workshops, and attributes equal responsibility to brands as to those below them in supply chains. If a worker at the bottom of the supply-chain raises a problem, the brand is held as much responsible as those further down the chain. A thorough investigation of this law, including what impact it has on the conduct of production workshops, is outside the scope of this thesis. However, the law is currently being used to take 113 national and multinational brands (including Adidas and Puma) to court, accused of profiteering from trafficked labour. The law may therefore offer a direction for New Zealand.

For New Zealand to increase the liability of its companies operating through subsidiaries it must undo the limits to liability these structures were set up to achieve. In the case of subsidiaries, the proximity required for parent companies to be responsible should be reduced. In the case of operation through sub-contractors, a degree of responsibility over the behaviour of the sub-contractor must be established. This is in recognition of the control they do exert over suppliers.

In both subsidiary and sub-contractor models, New Zealand should take steps to impose on firms a legal responsibility that mirrors the *benefit* they extract from a supplier. One means of doing this is to impose a duty to take steps to prevent foreseeable harm³² to stakeholders, in keeping with the size of their contract with the supplier. (This would be similar to the directors' duty to minimise

³² The understanding of "foreseeable harm" should be broad enough to incorporate common abuses of labour rights. For instance, low wages, long working hours, and harm to offshore workers of purchasing practices such as low unit prices, and short lead times. Taken to the extreme, behaviour such as withdrawing contracts at the last minute, resulting in suppliers going out of business, could even be considered an outcome that buyers should take steps to prevent.

adverse impacts on stakeholders, proposed above.) In the event of abuse, the company could be held liable based on the size of their contract as well as their purchasing behavior— therefore their contribution to the abuse— and the extent of their steps to prevent the abuse. While difficult to form into a legal framework, this task may not be impossible. In light of the political difficulties of such reform, it could apply first only to large companies, or to companies with contracts in developing economies.

Import Bans

While import bans have been unsuccessful to date, banning imports produced under unsatisfactory conditions is a route New Zealand could reattempt. An import ban would give Customs the power to seize such goods, as in the case of goods produced under prison labour. A fine could also be imposed. An import ban would therefore create an incentive for businesses to conduct due diligence. In sectors where mature certifications are available (as in the forestry industry), imports could be restricted to certified goods. In sectors without adequate certifications (as in most areas of labour standards, or regarding production in conflict zones), onus on identifying goods produced in unacceptable conditions could fall to confrontational groups. Such a ban would therefore add teeth to activists' efforts. While it would not create an obvious redress avenue for victims, it would signal clearly that socially-responsible behaviour is required (Principle 2).

While overseas import bans have been challenged under WTO rules (see Bartley, 2003, p. 447), they are arguable under the GATT General Exceptions as a measure “necessary to protect public morals...” or “to protect human... health” (GATT, 1947). These debates have yet to be fully aired in international trade forums. New Zealand could contribute to efforts to explore these boundaries. The case of the diamond industry, in which the trade of non-certified products has been banned *internationally* through the WTO (Aaronson, 2007a, p. 3, 25; Woody, 2006, p. 336), demonstrates that import bans for humanitarian reasons are not entirely off the agenda.

Overcoming Inevitable Opposition

The degree to which the business sector will oppose any reforms that increase their costs or liability cannot be overstated (Flynn & O’Brien, 2010, p. 220-223). Extending extraterritorial jurisdiction has been opposed by “the most powerful economic actors on the planet” (p. 223). A review of 13 jurisdictions found that attempts to extend territorial jurisdiction and pierce the corporate veil have

not led to *any* cases found in favour of foreign victims (Oxford Pro Bono Publico, 2008, p. iv). The weak reforms of directors' duties in the UK required a coalition of over 130 organisations, with a combined membership of over nine million people (CORE, 2006a). Even attempts to harden CSR initiatives have been strongly opposed. Mandatory reporting requirements in California prompted outcry from business, and mere *discussions* of mandatory reporting in the EU have aroused similar opposition (De Schutter, 2008, p. 207). In New Zealand, with a consumer movement undeveloped and confrontational groups near non-existent, these types of change appear impossible.

Despite these challenges, it is important to retain sight of what *would be* required for New Zealand to make a genuine effort towards social responsibility and upholding the UN Principles. As this chapter has shown, explicit state action is necessary to improve social responsibility. Such action would require a concerted political lobbying effort in New Zealand, to persuade Government that protecting offshore workers is an important issue. CSR will bring only limited improvements. Ultimately, for a genuine effort towards social responsibility, reform of company law and mandatory requirements must be on the agenda.

These outcomes can only be achieved by a shift in power towards confrontational groups. Lessons from the competitiveness approach suggest that market forces are highly unlikely to provoke businesses to pursue binding regulation. This does not appear likely to occur in the New Zealand case. The political approach suggests that to move *beyond* voluntary private regulation would require confrontational groups to challenge the current settlement, and push for stronger alternatives. Confrontational groups could challenge neoliberal assumptions at the New Zealand or international level. In discussions such as those around the Customs and Excise amendment bills or free trade negotiations, they could campaign for binding measures on states and businesses. They could resume efforts towards the linking of trade with labour standards, and challenge existing constraints, including perceptions of WTO rules. Most fundamentally, these groups could question the presumption that protecting vulnerable stakeholders in the production process should be subsumed to the pursuit of free trade. They should also advocate for New Zealand businesses and consumers to accept a greater share of the true costs of production. These would be significant paradigm shifts in New Zealand. They would also represent strong steps towards progress on social responsibility.

The status quo in New Zealand, of poorly-developed, voluntary initiatives, is therefore not inevitable. While opposition should be expected, increased pressure from confrontational groups

can not only increase the supply of CSR, but also create alternative settlements. The development of this pressure should be a priority in New Zealand.

Based on the discussion above, Box 1 summarises the steps that could be taken to improve social responsibility in New Zealand's offshore supply chains.

Box 1. Steps to improve social responsibility in New Zealand's offshore supply chains

Institutionalise attention to the UN Principles

- Launch a multi-stakeholder discussion on social responsibility of New Zealand businesses operating offshore, with a view to determining where to situate ongoing responsibility for directing implementation of the UN Principles. Consider:
 - Broadening the mandate of the OECD NCP to include advising Government on implementation of the UN Principles
 - An independent multi-stakeholder body to advise the Government
 - An inter-departmental body with representatives from New Zealand Trade and Enterprise, Ministry for Economic Development, Department of Labour, Ministry for the Environment and the OECD NCP.
- Draft a National Framework on Social Responsibility, considering the points below.

Foster market demand for social responsibility

At a minimum:

- Endorse the Sustainable Supply Chains database as the primary tool for promoting transparency, with a view to making disclosure a mandatory requirement. Require that this database be publicly accessible.
- Continue to support existing awards schemes.
- Commission a comprehensive national ranking system on social responsibility criteria, using the Sustainable Supply Chains database, or the tool in Appendix B.
- Commission research into the extent of greenwash in New Zealand, and update advertising standards accordingly.
- Foster the development of confrontational groups through specific research funding, a grant to establish the ranking system above, or a grant to establish a complaints mechanism.

Consider in future:

- A national social label similar to that in Belgium.

- Making disclosure in the Sustainable Supply Chains database compulsory for suppliers to SOEs and Government, and later, for all New Zealand businesses.

Enable and incentivise CSR among the private sector

At a minimum:

- Undertake a national awareness campaign on the importance of business responsibility when operating offshore. This should include raising awareness of the OECD Guidelines and UN Principles. The campaign should involve a focus on supply-chain issues.
- Prepare or commission guidelines documents on CSR, with an emphasis on supply-chain initiatives. Guidelines could be country- or sector-specific.
- Draft a national code of conduct as a model for businesses. This could be made mandatory in government procurement (discussed below). It could also provide the basis for a social label, or complaints mechanism.
- Commission a comprehensive training programme on CSR, similar to the Danish, Swedish and Dutch models, with emphasis on implementing supply-chain initiatives. This could involve seminars and forums in which businesses can share best practices.

Consider in future:

- Including reference to the OECD Guidelines in bilateral trade agreements.
- Introducing financial incentives for CSR initiatives (direct funding or subsidies for CSR certifications).
- Using New Zealand foreign embassies to provide training in CSR, or facilities for stakeholder dialogues, as in the Swedish and Canadian examples.
- Requiring New Zealand companies to declare familiarity with the OECD Guidelines as a precondition for importing goods.
- Directing development aid towards overseas social responsibility.

Raise the profile of social responsibility in Government procurement

At a minimum:

- Revive efforts to implement the Government Framework for Sustainable Procurement.
- Reintroduce incentives for TBL reporting among government departments and SOEs, with a view to making reporting mandatory, for instance through the Sustainable Supply Chains database.

- Develop a national code of conduct for compulsory use in all-of-government purchases, and purchases by individual departments. Introduce auditing of high-risk suppliers, with a view to extending auditing to more supply chains.
- Raise the priority of social responsibility considerations when awarding contracts. Train procurement staff to discern acceptable minimum standards.
- Re-publicise and enforce the existing mandatory minimum standards in government procurement.

Consider in future:

- Requiring compulsory TBL reporting from all government departments and SOEs.
- Extending mandatory minimum standards to more products.
- Introducing a complaints mechanism into Government procurement.

Investigate legal sanctions for irresponsible behaviour

At a minimum:

- Commission research into the current barriers that prevent offshore victims being able to seek redress in New Zealand. Initiate discussion around this research.
- Investigate options for including parameters of extraterritorial jurisdiction in bilateral trade negotiations.
- Explore the implications of imposing a duty on company directors to *consider* their companies' impacts on offshore stakeholders, as included in the UK Companies Act 2006.

Consider in future:

- Reforming company law to enable *stakeholders* to enforce directors' duties.
- Reattempting import bans.
- Exploring ways to broaden the use of extraterritorial jurisdiction.
 - Restricting challenges to New Zealand's jurisdiction, such as *forum non conveniens*.
 - Allowing foreign victims to file claims in New Zealand for any breach of ILO conventions by a New Zealand company.
- Exploring options for piercing the corporate veil.
 - Reducing the proximity required for parent companies to be responsible for abuse by their subsidiaries.
 - Exploring the implications of a *positive* duty on directors to take reasonable steps to prevent harm to stakeholders. Define "reasonable steps" in keeping with their purchasing power, therefore their extent of contribution to the abuse.

Track ongoing progress

- Fund ongoing research into the extent of New Zealand social responsibility, in a manner comparable with international benchmarks. The research agenda should include:
 - Extent and nature of New Zealand CSR initiatives in general
 - Extent and nature of supply-chain labour initiatives
 - Effectiveness of initiatives
 - Business attitudes and perceived barriers
 - Consumer attitudes
 - Publish regular progress reports concerning implementation of the UN Principles and/or the National Framework on Social Responsibility.
-

Contributing towards improved working conditions in China

As concluded in the Chapter Five, the hope for improved working conditions in China lies in improved state enforcement and a strengthened labour movement. While New Zealand CSR initiatives may bring small improvements, the effectiveness of these initiatives is fundamentally limited. Spread and scope are subject to weak market demand. Buyer companies seldom share in the costs of improving compliance. Even hardening CSR and imposing legal sanctions would benefit only a fraction of workers in New Zealand's developing-country trading partners. Supply chain conditions are intrinsically affected by the wider societies in which they operate, and it would be foolish to imagine they could be improved in isolation. It is therefore worthwhile to consider what contribution New Zealand can make to improving labour conditions in trading partners more broadly. This part will investigate possibilities for the case of China.

Options for greater contribution exist on the levels of Government, unions and NGOs. Individuals can also play a valuable role. Possibilities fall into four categories, greater cooperation under the MoU, use of development aid to improve working conditions, increased use of forums to call the Chinese Government to account, and greater use of avenues to support the Chinese labour movement. In the case of trading partners generally, New Zealand should consider including sanctions to strengthen future labour agreements.

Improving Cooperation Under the MoU: Capacity Building and Poverty Alleviation

There is potential for the MoU to facilitate further cooperation around labour issues. As discussed in Chapter Four, it is unlikely the New Zealand Government will pursue projects on sensitive issues, such as collective bargaining, which is obstructed by the Chinese state. However, the New Zealand Government should still prioritise projects that address *pressing* labour rights problems. For these reasons, it is most pragmatic to focus collaboration on capacity building and poverty alleviation,³³ which are pressing but not sensitive. There is scope for many such projects.

More capacity-building projects, using the model of the coal industry collaboration, should be undertaken. These could include projects on health and safety in shared sectors such as manufacturing. In the area of poverty alleviation, New Zealand could use existing links to seed further projects. New Zealand already contributes NZ\$500,000 annually to poverty-alleviation projects in China's western regions (MFAT, 2012a). Additional projects could be established in migrants' sending provinces under the purview of the MoU, and such projects could incorporate training on worker rights. Projects on workers' rights awareness are supported by local governments in some provinces, so similar projects may be welcomed. These projects could benefit and empower the workers that eventually migrate to industrial zones, who may work in New Zealand supply chains.

Unions, NGOs and individuals should use the opportunity of the MoU to propose cooperative projects with China. Union projects could include sectoral or regional exchanges, or collaboration and research around a particular supply chain or international framework agreement (discussed below). Individuals can also spark cooperation. New Zealand NGOs with interests in labour issues or poverty alleviation may be able to set up joint projects under the MoU's purview. The Government should increase funding for MoU projects and resource projects suggested by non-government groups.

Directing Development Aid Towards Improving Working Conditions

New Zealand could consider directing *existing* development aid towards projects on working conditions. The UK Department for International Development has established a fund to improve conditions for workers in low-income countries that supply the UK market (Knopf et al., 2010, p.

³³ Poverty alleviation projects, given their contribution to preventing people becoming vulnerable workers, also can be deemed to fall under the purview of labour.

21-23). The German Government uses part of its development aid to support developing-country suppliers that seek CSR certifications. The Dutch Government provides CSR advisory services to developing-country producers exporting to the Netherlands. In addition, the Irish Government has provided more than €15 million towards fair trade programmes. These projects have a broader target than simply the supply chains of the country in question. New Zealand could consider similar initiatives. It should also consider using aid funding to support the Chinese labour movement, discussed below.

New Zealand Ministry of Foreign Affairs and Trade could consider granting Development Scholarships on the subjects of work safety and industrial relations. New Zealand awards a number of these scholarships to developing-country trading partners. It currently offers four postgraduate scholarships per year to candidates selected from China's poorest provinces. However, subjects relating to working conditions are not included under the list of available choices (MFAT Aid Programme, 2012b). This list of applicable subjects could be expanded to include "labour relations" and "work safety".

Raising Issues of Non-Compliance With China

New Zealand's policy of engagement with China does not rule out drawing attention to instances in which the Chinese Government has actively blocked progress on labour standards. Indeed, it is vital the international community keeps a spotlight on these issues. Before raising criticisms with China, New Zealand should ensure its own labour conditions comply with international standards. New Zealand has yet to ratify ILO Conventions 138 regarding minimum working age, and 87 on freedom of association (ILO, 2012). This is a sensitive issue in China (Peter Conway, personal communication, June 3, 2011), and limits New Zealand's ability to raise concerns. Once New Zealand has ratified these conventions, it can then encourage progress from China.

The New Zealand Government can raise criticisms through several forums. First, Ministers should raise the profile of labour rights concerns in ministerial meetings. They should discuss violations of core labour conventions, repression of labour leaders and discrimination through the *hukou* system among wider human rights concerns raised with China. This would communicate that a spotlight remains on the issue. Ministers should also encourage China to ratify outstanding labour conventions, while acknowledging areas of improvement. Second, New Zealand should use opportunities in the ILO and UN to encourage progress. While there is the opportunity for states to

instigate an ILO Commission of Inquiry into systematic violations (FIDH, 2012, p. 91), this is unlikely to be a pragmatic route for New Zealand, unless supporting an action from other states.

New Zealand unions and civil society actors can also respond to violations. They can expose Chinese labour disputes in the New Zealand media and conduct solidarity actions. They can also keep pressure on New Zealand Ministers to ensure they do in fact discuss labour rights violations with Chinese counterparts. For serious violations of ILO conventions, there are two avenues New Zealand unions could pursue. Unions could attempt to persuade the Government to raise a complaint through the MoU. They could consider raising a complaint through the ILO. International unions have already laid six cases against China with the ILO's Committee on Freedom of Association (FIDH, 2012, p. 86). New Zealand unions could participate in bringing a similar complaint. They must be careful, however, to preserve avenues for cooperative activity.

Supporting the Chinese Labour Movement: Union Engagement with the ACFTU

New Zealand's union engagement with the ACFTU could be enhanced in light of overseas examples.

Exchanges

Several unions undertake exchanges with the ACFTU, aiming to build capacity among progressive officials and to expose them to foreign models. One example is the persistent exchange programme undertaken by the Canadian union movement, including the Canadian Auto Workers, the Canadian Union of Public Employees, and the Ontario Public Service Employees Union (Walker, 2005). German and US unions also undertake similar exchanges (China Labour News Translations, 2010c). The unions have encountered a variety of responses, but some Chinese officials have received their presentations extremely warmly. This strategy is based on the acknowledgement that the ACFTU is not monolithic, but rather contains a proportion of officials with progressive opinions.

New Zealand unions have developed a good base of exchanges with China, and there are numerous ways these could be improved. First, New Zealand exchanges with the ACFTU should be made more strategic. New Zealand unions should build relationships with Chinese unions in regions with relatively heavy New Zealand investment, with industries common to New Zealand, or with other links, such as sister-city relationships. They should prioritise regions with potential for collaborative

projects. Rather than receiving all Chinese delegations, many of which are merely sight-seeing tours, unions should accept fewer delegations, prioritising the above. Whenever resources allow, New Zealand unions should aim to send delegations to these places.

The content of dialogues can also be made more strategic. Noting the success of New Zealand-China dialogues in the coal industry, future exchanges could also bring together New Zealand and Chinese groups in a particular sector. (These could be considered capacity-building projects under the MoU.) New Zealand unions should also use exchanges to share perspectives on the technicalities of collective bargaining and Western unions under capitalism. This should be made an intentional strategy, as seen with Canadian unions.

International Framework Agreements and Collaboration Along a TNC's Supply Chain

A developing trend in international union movement strategy is collaboration between Northern and Southern unions to support workers throughout a particular supply chain. In some instances, collaboration is formalised through international framework agreements (IFAs). These are negotiated between a TNC and a global union federation, and aim to ensure that the company respects the same standards in whichever countries it operates. Sectoral unions in the home country may participate in negotiating the agreement. They can then work with union counterparts in other countries where the TNC operates, to monitor implementation throughout the supply chain. IFAs therefore present an alternative to CSR programmes as a means of improving conditions for workers. They may also provide a focal point for collaboration with Chinese unions.

One New Zealand example of an IFA is that with Fonterra, New Zealand's largest dairy company. Fonterra is expanding production in China. New Zealand unions could explore the potential of this IFA as a focal point for collaboration. Unions could monitor implementation of the IFA, or use this opportunity to conduct research into conditions in the two countries' dairy sectors. (Such investigation could double as research into the effects of the FTA's dairy provisions on Chinese workers.)

Short of IFAs, foreign unions have pursued other means of collaboration with Chinese counterparts. One example is San Francisco union, which has had friendly relations and exchanges with the Guangzhou Federation of Trade Unions (GZFTU) since 2008, and even proposed a city to city union alliance (Century Economic Report, 2010, p. 1). In 2011, following the suicides at Foxconn,

the San Francisco union pressured Apple to increase its payment to Chinese workers. Eventually Apple conceded, claiming it would give each Foxconn worker an allowance of 3.98 to 7.96 yuan per iPad. While it is unknown whether the allowance reached the hands of workers, the case does demonstrate the potential for international union collaboration to benefit workers. In a further example, a Nokia head office union representative approached the GZFTU in the hope of a cooperation agreement to protect the rights of Nokia workers. These is great potential in these partnerships which align the interests of unions in Northern and Southern countries. This collaboration enable pressures on multiple levels of the supply chain.

Foreign Union Involvement in Chinese Suppliers

One further step is for foreign unions to interact with ACFTU branches in certain major factories supplying to their countries (Chan, 2009, p. 313). Some German and Danish trade unions have already made attempts, and similar efforts may be on the agenda of American and Belgian unions (p. 313). These selected suppliers could become focal points for capacity building or other forms of collaboration. New Zealand unions could also attempt union collaboration through certain major suppliers to New Zealand. This would be particularly effective if focused on a supplier to an SOE or the Government. New Zealand and Chinese unions could collaborate to monitor conditions in the supplier, with the New Zealand union creating pressure towards consumer activism and good purchasing practices, and the Chinese union monitoring changes on the ground. A best case scenario could be for the New Zealand union to gain access to the Chinese supplier, in order to work with the Chinese union or to train workers. Depending on the buying structure of the company, unions could work towards an IFA.

A 2011 purchase of rail wagons could have provided a good case for collaboration. The New Zealand Government, through its SOE Kiwirail, awarded a NZ\$49 million contract to a Chinese supplier at the cost of 44 New Zealand jobs (Benson, 2012). As Kiwirail does not have a long history of purchasing from overseas, it did not have a code of conduct for offshore suppliers. Given that this was such a significant SOE contract, research and monitoring into labour conditions would be warranted.

Other Avenues to Support the Chinese Labour Movement

Non-governmental groups can support the Chinese labour movement in a number of ways. Unions, NGOs and individuals can use the New Zealand media to raise awareness of Chinese labour

disputes. They can conduct solidarity actions, pressure companies directly, or provide funding to support Chinese or Hong Kong labour NGOs' or individual workers' causes.

The New Zealand Government could also consider supporting Chinese organisations that focus on workers' rights. For instance, it could use for this purpose the \$80,000 annual development aid grant administered by the New Zealand embassy in Beijing (MFAT, 2012a). While it would be important to ensure this use of funding was acceptable to the Chinese Government, such support would not be unusual. The US State Department's Bureau of East Asian and Pacific Affairs, and Bureau of Democracy, Human Rights, and Labour make considerable contributions to Chinese labour organisations, as do the UN Development Program and other organisations (Harney, 2008, p. 126).

A further avenue is for New Zealand unions, NGOs and individuals to pursue alternative production models that prioritise the interests of workers. For a production system to prioritise workers may require a different model to the globalised supply chain (AMRC, 2011a, p. 3). Existing examples, such as fair trade certifications, have yet to spread into China, as they are limited by the requirement that fair trade producers enjoy freedom of association. Exploring the options for fair trade and other models to be introduced into China may be enormously worthwhile. These could make a significant contribution to improving conditions and to empowering the Chinese labour movement.

Strengthening Future Labour Agreements

In light of the weakness of the New Zealand-China MoU, New Zealand should consider incorporating trade sanctions in future bilateral trade agreements. Sanctions are already seen in a number of cases internationally (Alston, 2004, p. 499; Greven, 2005). A coalition of international trade unions suggest that in the event of derogation from ILO standards, labour agreements should provide "effective dispute resolution procedures with strong remedies up to and including trade sanctions" (Burrow et al., 2011, p. 2). This coalition also suggests that compliance with ILO conventions should be pursued in tandem with FTA negotiations and made a prerequisite for completion of the agreement. While sanctions have been shown to be a weak measure internationally, and seldom effective to deliver redress, their inclusion would demonstrate greater commitment to advancing labour standards than do current instruments. Labour advocates could consider pursuing these measures, though should prioritise projects likely to have a more direct impact on workers.

Based on the above discussion, Box 2 outlines the steps that could be taken by the Government, unions, NGOs and individuals to contribute towards improved working conditions in China.

Box 2. Steps for New Zealand groups to contribute to improved working conditions in China

Government

To Improve Cooperation Under the MoU

- Increase resourcing of MoU activities. Encourage non-government cooperation by endorsing and funding union, NGO and individuals' projects.
- Prioritise projects that address pressing labour issues. As one possible project, consider research into conditions in the three largest service and goods sectors each way.

To Channel Development Aid Towards Improving Working Conditions

- Weighing the issue of working conditions against other development needs. Explore avenues for directing existing or future projects to include a focus on working conditions.
- Consider expanding the allowable subjects of Development Scholarships to include those relating to working conditions.

To Raise Issues of Non-Compliance With China

- Ratify ILO Conventions 87 and 138.
- Have Government ministers raise concerns with Chinese counterparts about violations of ILO conventions. Ensure labour rights violations have a high profile among human rights concerns.

To Support the Chinese Labour Movement

- Channel aid funds towards organisations that directly or indirectly empower workers.
- Consider using the grant of the New Zealand embassy in Beijing to support organisations that focus on workers' rights.
- Consider endorsing alternative production models.

To Strengthen Future Agreements

- Consider including sanctions to allow action in the event of non-compliances.

Unions

To Improve Cooperation Under the MoU

- Propose cooperative projects. These could include sectoral or regional exchanges, or collaboration and research around a particular supply chain or IFA.

To Raise Issues of Non-Compliance With China

- Expose violations in the media. Conduct actions of solidarity with victims.
- Keep pressure on New Zealand Government Ministers to discuss labour rights violations with Chinese counterparts.
- For serious violations of ILO conventions:
 - Consider persuading the Government to raise a complaint through the MoU
 - Consider raising a complaint through the ILO.

To Support the Chinese Labour Movement

- Make exchanges more strategic.
 - Prioritise relationships with Chinese unions in regions with relatively heavy New Zealand investment, industries common to New Zealand, other links, or potential for supply chain collaboration projects.
 - Make content of dialogues more strategic. Consider sectoral exchanges. Share perspectives on collective bargaining and unions under capitalism. Use exchanges as a basis for other projects.
- Consider collaboration around a particular supply chain.
 - Consider a project around monitoring the Fonterra IFA.
 - Consider a project around one significant supplier, for instance a supplier to SOE or Government. Seek access for NZ unions to this supplier, or pursue an IFA.
- Support Chinese workers' demonstrations. Use media to raise awareness, conduct solidarity actions, provide donations to the workers' cause.
- Pursue alternative production models that prioritise the interests of workers.

To Strengthen Future Agreements

- Consider campaigning for stronger labour clauses in trade agreements, including trade sanctions. However prioritise projects that are more likely to bring practical benefits to workers.

NGOs and Individuals

To Improve Cooperation Under the MoU

- Propose cooperative projects. These could include projects on labour issues or poverty alleviation.

To Raise Issues of Non-Compliance With China

- Expose violations in the media. Conduct actions of solidarity with victims.
- Keep pressure on New Zealand Ministers to discuss labour rights violations with Chinese counterparts.
- For serious violations of ILO conventions, consider persuading the Government to raise a complaint through the MoU.

To Support the Chinese Labour Movement

- Support Chinese workers' demonstrations. Raise awareness through media, conduct solidarity actions, provide donations to the workers' cause.
- Pursue alternative production models that prioritise the interests of workers.

To Strengthen Future Agreements

- Consider pursuit of stronger labour clauses. However, prioritise projects more likely to deliver practical benefits.
-

Conclusion

The steps discussed demonstrate what is required for New Zealand to improve social responsibility of its businesses, and to contribute to improving labour conditions in its trading partners more generally. To improve social responsibility would require explicit state action, and ultimately for the state to impose mandatory requirements and increased liability on businesses operating offshore. Short of these measures, the Government and civil society groups can promote CSR as a step towards binding measures. As the competitiveness approach suggests, this can be achieved through increasing market rewards for CSR, and increasing costs of irresponsibility. While CSR is wholly insufficient to affect significant changes, it can bring limited improvements. To varying degrees, all these steps impose costs on New Zealand businesses and consumers, as they internalise production costs currently borne by offshore communities.

Any progress on social responsibility would inevitably arouse opposition from businesses that prefer to operate in a regulatory gap. To encourage progress would require a shift in power towards confrontational groups. As suggested in the political approach, to move beyond the settlement at private regulation, confrontational groups must challenge existing constraints on policy-makers imposed by the neoliberal context. These include the assumption that free trade should trump freedoms to protect vulnerable stakeholders. Confrontational groups should also advocate for New Zealand businesses and consumers to assume a greater share of the true costs of production, currently borne by offshore communities. These represent significant paradigm shifts. They also signify important steps towards improving social responsibility in New Zealand.

For New Zealand to contribute to improved labour conditions in China would take greater support for the Chinese labour movement and state enforcement. This could take the form of increased cooperation, highlighting non-compliances, union collaboration and development aid. While these steps also require increased investment, these costs should be considered necessary in order to trade

responsibly with China. With New Zealand's economy increasingly reliant on Chinese workers, New Zealand has an accompanying responsibility to contribute towards improving their conditions.

Chapter 7: Conclusion

This thesis has examined the effectiveness of private regulation for improving labour conditions in developing countries, and the *reasons* for its use, through a case study of the New Zealand-China relationship. The case of the export-manufacturing sector in China has provided insight into the effectiveness of private regulation. The case of social responsibility development in New Zealand has shed light on the reasons for the emergence of private regulation. Both debates inform a discussion of what it would take to improve social responsibility in New Zealand, and for New Zealand to contribute to improved labour conditions in China.

Findings

The findings confirm the need for greater attention to supply-chain labour conditions. As discussed in Chapter Three, labour conditions in China require improvement in many areas. Migrant workers in export factories work in dangerous environments for low pay and hours in excess of legal limits. They are highly susceptible to becoming bonded labour. In addition, workers are systematically denied the rights to freedom of association, collective bargaining and the right to strike. Trading partners buying from China do not pay the full costs of production. Instead, the externalities are borne by migrant workers and their home communities.

These conditions will not improve automatically as a result of increased trade. Core labour rights are obstructed by political barriers which prevent workers organising for improvements. A national labour surplus will weaken workers' bargaining power for some time, even while regional shortages improve conditions in some areas. It is likely that the Chinese state has tolerated systematic discrimination against migrant workers at least in part to maintain foreign investment. Economic competition puts downwards pressures on conditions, and trading partners further contribute through their buying practices. Trading-partner companies and governments have a responsibility to address these conditions, as beneficiaries of, and contributors to current standards.

Research Question 1: To what extent is private regulation used to regulate social responsibility in New Zealand's offshore supply chains?

New Zealand efforts to address supply-chain social responsibility are tending towards reliance on private regulation. As described in Chapter Four, New Zealand businesses face minimal legal

sanctions for irresponsible behaviour when operating offshore. The structure of New Zealand company law allows businesses to escape liability for offshore abuses. While some international instruments and bilateral agreements supposedly cover social responsibility issues, they are weak at encouraging socially-responsible behaviour. The MoU with China provides no assurance that conditions will be improved. Meanwhile, bilateral cooperation to address labour issues in China largely avoids the most pressing concerns. There is therefore minimal attention in New Zealand to labour rights violations in the offshore communities that supply its products.

Private regulation to address supply-chain labour issues is also poorly developed, but is an area of growth. In discussions of supply-chain social responsibility in New Zealand, the Government has promoted voluntary initiatives. While there is no research to confirm the extent of supply-chain labour initiatives, it is likely well under one third of businesses currently undertake these initiatives. Scope appears confined to codes of conduct, and monitoring attempts are poor. These initiatives are very limited in their ability to improve conditions in China. Nevertheless, New Zealand businesses' attention to CSR is gradually increasing. While there remains minimal attention to any forms of supply-chain social responsibility in New Zealand, CSR is a significant part of future plans.

Research Questions 3 and 4: How effective is private regulation in improving labour conditions in China? What limits its effectiveness?

CSR in China offers limited actual and potential benefits to workers. It also carries a number of serious risks. As discussed in Chapter Five, CSR initiatives have brought some improvements. In sectors exposed to consumers, initiatives that do not threaten profits, or that address abhorrent or easily-detectable problems are implemented. In addition, in visible sectors the CSR movement has to some extent increased workers' rights awareness, and provided NGOs with factory access. It may also have advanced state regulatory capacity by providing learning opportunities for government officials.

However, the spread and scope of initiatives has been fundamentally limited by CSR's reliance on market forces. Nearly 20 years since the first CSR initiatives in China, coverage remains extremely low. Scope is overwhelmingly limited to codes of conduct and unreliable auditing methods. These common initiatives fail to affect significant improvements. Even in the best-case examples, CSR has failed to solve systemic problems. The market has therefore prompted the development of supply-chain CSR initiatives only to a very limited degree. The business case for CSR, positing that effective regulation will be prompted by market forces, is flawed.

Reliance on CSR is not only misguided, but potentially harmful for Chinese workers. Engagement with CSR distracts from efforts to enhance state enforcement or organise workers. Hong Kong labour NGOs are divided over whether to partner with companies implementing CSR. The CSR movement may undermine state enforcement, democratic governance and the development of the labour movement. Labour advocates should therefore demystify CSR. In order to engage wisely, they should dispel illusions that it offers anything beyond cosmetic improvements, and call businesses to a higher standard. Ultimately, CSR is no substitute for the legislation, enforcement and collective bargaining which have brought improvements in other countries. These alternatives should be prioritised.

Research Question 2: Why is private regulation used to regulate New Zealand's offshore supply chains?

Both the competitiveness and political approaches are useful for explaining the emergence of private regulation in New Zealand. However, the political approach provides a far more thorough explanation, offering insight into what would be required for alternatives to CSR.

The competitiveness approach explains the emergence of CSR as a result of New Zealand businesses' defence and pursuit of competitive advantage. It explains the low level of attention to social responsibility in light of the low risks of activism or government regulation, and therefore the low need for businesses to *defend* their competitive advantage. It also explains CSR's emergence in light of limited market rewards, and therefore limited motivation to choose supply-chain initiatives to *pursue* competitive advantage. The gradual increase in attention can be explained by businesses anticipating growing pressure in New Zealand, and the gradual development of social responsibility markets. While some advanced businesses may perceive specific market benefits from supply-chain social responsibility initiatives, for the majority of businesses there remain few motivations even for voluntary initiatives. There are no motivations for stronger alternatives. The competitiveness approach therefore explains the emergence of CSR in New Zealand in light of the low but gradually-developing market rewards and sanctions, and the minimal motivations for stronger alternatives.

The competitiveness approach has a number of limitations. It provides no explanation for the levels of demand for social responsibility. It provides no explanation for the activities of non-state actors,

and therefore does not explain why binding regulations have not been imposed on business. The approach is therefore limited to suggesting how to improve CSR through market pressures, not how to move beyond it.

The political approach is far more comprehensive, explaining the emergence of CSR as a result of New Zealand's neoliberal trajectory, and the constraints this imposes on policy-makers. The approach also takes into account resulting power imbalances. The New Zealand Government has been unwilling to impose binding regulation for the sake of social responsibility. Instead, the National Government prioritised trade freedom, under the belief (or at least with the justification) that free trade maximises social goods. In maintaining and acting on these neoliberal assumptions, New Zealand has limited its freedom to protect vulnerable stakeholders in the production process.

Power balances have also led to the settlement at private regulation, rather than alternative means of addressing supply-chain labour conditions. In light of the low development of confrontational groups in New Zealand, BSOs dominate in discussions on social responsibility. BSOs' structural and discursive power, and the subsequent dominance of business-case discourses, reinforce the current Government's reluctance to regulate. However, consumers and confrontational groups do possess some actual and latent power, which is forcing businesses to pay some degree of attention to supply-chain labour issues. The settlement therefore falls at private regulation, rather than no regulation at all. The political approach thus provides considerable insight into the emergence of private regulation in New Zealand.

Both these approaches suggest what *would* be required for more effective supply-chain social responsibility in New Zealand. As the competitiveness approach suggests, increasing demand for social responsibility, or *costs* of irresponsibility should encourage firms towards more widespread and harder CSR activity. The political approach offers further insight, suggesting what is required to move *beyond* private regulation. As this approach shows, the fact that the conflict has settled where it has—at private regulation—is not inevitable. Rather, it is a consequence of actors' relative power, and the constraints of neoliberal rules and scripts, that stronger alternatives have not eventuated. The balance of power between business and confrontational groups could be shifted. The constraints of the national and international neoliberal context could be challenged. Should this occur, alternative settlements would be possible.

Research Question 5: What would it take to improve social responsibility in New Zealand's offshore supply chains?

Explicit state action is necessary to improve social responsibility in New Zealand. As discussed in Chapter Six, strengthening confrontational groups is an essential foundation. To follow the example of the most advanced states internationally, the New Zealand Government should institutionalise action on social responsibility and codify it in a strategic framework. All steps to uphold social responsibility to varying degrees involve assuming costs, as the externalities of production are internalised.

In light of the shortcomings of CSR, a genuine effort to uphold supply-chain social responsibility would require the Government to impose legal sanctions on New Zealand businesses operating offshore. New Zealand could extend its use of extraterritorial jurisdiction to allow offshore victims easier access to redress. The Government could also impose a duty on directors to consider stakeholders' interests, and increase their liability for subcontractors over whom they exert significant influence. These reforms would require significant power of confrontational groups, and therefore seem aspirational in the current climate. However, states advanced in social responsibility have made steps towards these reforms. New Zealand should aim towards a similar paradigm shift.

Short of these measures, New Zealand should promote and resource CSR initiatives as a step towards mandatory requirements. As shown in Chapter Five, audited codes can bring cosmetic improvements. Improving the spread and depth of CSR initiatives would therefore be helpful. As suggested by the competitiveness approach, the Government and civil society should streamline the ability of the market to provide CSR, by increasing market rewards and sanctions. These groups should enable consumers to demand social responsibility, and resource businesses to respond to these demands. The Government could also create additional incentives, for instance by mandating TBL reporting, or creating a market for social responsibility by requiring it in Government procurement. The Government could also commission a complaints mechanism to expose businesses to sanctions for irresponsible behaviour. These steps would incentivise socially-responsible behaviour through market sanctions and rewards.

However, it is unrealistic to expect CSR to spread to all sectors, or to address systemic problems. Labour advocates should deter undue belief in the capabilities of CSR by maintaining an agenda towards company law reform. As the political approach suggests, moving beyond CSR would

require a shift in power to confrontational groups, to challenge existing constraints and to push for a settlement at binding measures. The development of these groups is therefore essential. Pursuing avenues to improve labour conditions *beyond* New Zealand supply-chains would also be a means to prevent reliance on CSR.

Research Question 6: What would it take to contribute towards improved labour conditions in China?

This thesis has also shed light on a number of avenues to improve working conditions in trading partners more generally. As indicated in Chapter Three, while some factors are pushing labour conditions in a positive direction in China, political barriers remain and economic pressures threaten to weaken labour standards. Positive trends therefore do not displace the need for the development of the labour movement and state law enforcement in China. New Zealand can support these developments in a number of ways.

The Government and non-governmental groups can improve cooperation under the MoU. There is scope for an increased number of projects, by Government, unions and NGOs. Unions could also investigate opportunities for testing the MoU disputes mechanism. Second, there is the potential to direct development aid towards projects that contribute to improving working conditions. This could be in the form of poverty alleviation in migrants' sending provinces, projects to raise workers' rights-awareness, or postgraduate scholarships for Chinese students on subjects relevant to labour relations.

Third, New Zealand should encourage greater state enforcement of labour law, and challenge the state obstruction of labour rights, by more frequently raising these issues with China. This could be in the form of ministerial discussions with China, media coverage or solidarity actions by unions and confrontational groups when state violations arise.

Finally, there are a range of avenues through which New Zealand groups can support the Chinese labour movement. Union exchanges are an obvious avenue. The current relationship with the ACFTU should be made more strategic, introducing a focus on industries shared by the two countries, or other areas of commonality. Avenues for China-NZ union collaboration along a particular supply chain should be considered. New Zealand unions could also explore opportunities to collaborate with ACFTU branches in high-profile New Zealand suppliers. Finally, New Zealand

groups can support the labour movement through media reporting and solidarity actions, financial support of labour NGOs, and an exploration of alternative production models. These steps would demonstrate a significant commitment by New Zealand groups to act as a partner with Chinese groups towards improved labour conditions in China.

Limitations of this Study

A lack of available data has limited these findings. A lack of quantitative research on the spread and scope of CSR initiatives in China, and on supply-chain labour initiatives in New Zealand, may mean that the estimations in this thesis (and the picture portrayed by interviewees) are unduly pessimistic. The outline of current labour conditions in China is limited by the research available. Furthermore, there is scant research documenting the effects of CSR on the Chinese labour movement, democratic governance and state regulation and enforcement. These findings are therefore limited to *suggesting* potential outcomes. As discussed in Chapter One, the method of gathering data also has limitations. It is possible there are significant cases of CSR in China which did not come to light during my research. These may have altered the conclusions reached.

A lack of available data has limited the discussion of CSR's emergence. To determine definitively the explanatory power of the competitiveness approach would require targeted interviews exploring businesses' motivations for implementing supply-chain labour initiatives. These have been outside the scope of this thesis. The analysis of the political approach was also limited by the lack of information on businesses' lobbying power in New Zealand. Access to data on business lobbying during discussions of social responsibility would shed further light on the influence of business power in the emergence of CSR.

Some factors which may influence the emergence of CSR have been omitted entirely from this thesis. Neither the competitiveness nor political approach takes into consideration the impact of business norms, or the values of management, in businesses' take-up of supply-chain labour initiatives. (The competitiveness approach touches on the adoption of social responsibility norms only as a strategy for defending reputation, not as a motivating factor in itself.) I have not explored whether the decline of New Zealand's manufacturing sector in any way motivates attention to supply-chain labour conditions. Neither have I touched on the issue of Socially Responsible Investment and shareholder activism in the development of CSR. The influence of these factors is an area for further research.

The exploration of the political approach in New Zealand would benefit from more thorough analysis than has been possible here. As there have been few attempts to regulate supply-chain social responsibility in New Zealand, the above discussion focused on only two cases. The findings could be strengthened with an exploration of private regulation in sectors other than social responsibility. This has been outside the scope of this thesis.

An investigation of motivations and barriers in SMEs has also been outside the scope of this research. Given New Zealand's predominance of SMEs, their capabilities and attitudes regarding supply-chain initiatives are highly relevant. However, as mentioned in Chapter Four, the limited existing research on ethical sourcing found no significant difference between small and large businesses (Collins, Lawrence, Roper et al., 2010, p. 10). Small businesses may also be more capable than some larger businesses of implementing supply-chain labour initiatives, if their buying structure allows economic clout over a particular supplier. While the specific characteristics of SMEs should be considered in any future work, the omission does not invalidate these findings.

Opportunities for Further Research

A number of areas for further research have been mentioned above. These include the spread and scope of CSR initiatives in China and the impacts of CSR on China's labour movement, state regulation and democratic governance. Specific surveys into the motivations for New Zealand businesses' supply-chain labour initiatives, and research on the extent of business lobbying would provide greater insight into the explanations for the emergence of CSR. Research into socially responsible investment in New Zealand, the decline of New Zealand's manufacturing sector, the influence of business norms and values of management on CSR development, and specific motivations and barriers faced by SMEs would also be relevant. These areas of research would address some shortcomings of this thesis.

As recommended in Chapter Six, the following areas warrant ongoing research to advance the development of social responsibility in New Zealand.

- Consumer attitudes towards social responsibility, including supply-chain labour issues.
- New Zealand's performance in social responsibility generally, against international benchmarks, and against the UN Guiding Principles.
- The extent of supply-chain labour initiatives among New Zealand businesses.

- The frequency of these initiatives (in a manner comparable with international benchmarks)
- The profile of businesses that do or do not undertake initiatives (including sector, company size, purchasing structure (degree of economic clout over suppliers), affiliation with BSOs, and whether they sell to New Zealand or offshore markets)
- Motivations for and barriers to take-up.
- The effectiveness of individual New Zealand supply-chain labour initiatives.
- The *nature* of ethical purchasing initiatives.
 - Do these concern New Zealand or offshore supply chains? What countries and risk areas are most frequently targeted?
 - What do initiatives entail? The tool provided in Appendix B may be helpful to assess and compare supply-chain labour initiatives. Such research could form the basis for a ranking system, to empower consumers to support socially-responsible businesses and to identify areas in which to call businesses to a higher standard. A confrontational group or research institution could routinely rank businesses using this or another tool.

The development of social responsibility in New Zealand would also benefit from research into:

- The extent of greenwash in New Zealand, and reforms to advertising standards necessary to reduce it.
- The development of confrontational groups to demand supply-chain social responsibility. Why have these groups been slow to develop in New Zealand? What factors hinder, or would assist, their development?
- Current barriers to offshore victims successfully seeking remedy in New Zealand courts.
- Options for including parameters of extraterritorial jurisdiction in bilateral trade negotiations.
- Implications of imposing a duty on company directors to *consider* impacts on offshore stakeholders.

Research is also warranted into the most viable avenues for collaborative projects with Chinese groups. These include viable opportunities for collaboration and joint research under the MoU, projects on working conditions that would fit within development aid, and specific supply-chains and major suppliers to New Zealand that would be suitable for union collaboration or IFAs.

Several areas of further research would fill gaps in the wider literature. Research into the use of private regulation in the labour histories of industrialised nations would supplement existing literature on CSR. Research into trends in companies including *social* criteria in TBL reports would

shed light on the development of social aspects of CSR. Case studies of international support of the Chinese labour movement would also be useful for states considering such cooperation.

Conclusion

Developed countries have a responsibility to contribute to improved working conditions in their trading partners, as contributors to, and beneficiaries of current standards. Private regulation is an ineffective means of upholding this responsibility. It also carries risks. That CSR continues to emerge as the primary means to regulate offshore working conditions is not inevitable. Rather, it is a product of power balances and constraints imposed by the political context. These are factors that can be altered.

For states to demonstrate a genuine commitment to social responsibility in their offshore supply chains would require explicit state action, and a willingness to impose legal sanctions for irresponsible behaviour. While improving CSR can bring some benefits to workers in China, its effectiveness is fundamentally limited. As the political approach shows, to impose legal sanctions would require a shift in power towards confrontational groups. These groups should challenge political constraints that prevent progress on social responsibility. They should also advocate for New Zealand groups to assume a greater share of the true costs of production.

A contribution to improving labour conditions in trading partners more generally can be made through bilateral cooperation, development aid and keeping a spotlight on violations, at the level of Government, unions, NGOs and individuals. Ultimately, there is no alternative to an organised workers' movement and enhanced state law enforcement for improving working conditions. The above measures are a contribution to these ends. All these activities require significant investment, and do impose some restrictions on businesses. However, to internalise the true costs of production necessarily comes at a price. For developed countries to assume a greater share of these costs is unavoidable if they are to take responsibility for the offshore communities on whom their economies increasingly rely.

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Appendix A: Selected Interviewees

Cathy Walker	Former National Health & Safety Director of the Canadian Auto Workers Union
Anita Chan	Australia National University College of Asia and the Pacific
Diana Beaumont	Australia Asia Worker Links
Andrew Wang	Supplier Program Director, Verite, China Office
Monina Wong	Executive Director, ITUC/GUF Hong Kong Liaison Office
Debby Chan	SACOM (Students and Scholars Against Corporate Misbehaviour)
May Wong	Globalisation Monitor
Dmitri Kessler	China Representative, Ethical Trading Initiative
Geoffrey Crothall	China Labour Bulletin, Hong Kong Office
Helen Kelly	New Zealand Council of Trade Unions (CTU) President
Peter Conway	CTU Secretary
Ross Wilson	Former CTU President
Robert Reid	General Secretary FIRST Union, New Zealand
Trevor Johnston	Sustainability Manager, The Warehouse
David Walker	Deputy-Secretary, Ministry of Foreign Affairs and Trade
Steve McCombie	New Zealand Ministry of Foreign Affairs and Trade, Asia Desk
Jessica Russell	Adviser International, New Zealand Department of Labour
Michael Hobby	Principal Adviser International, New Zealand Department of Labour
Liz Innes	Government Procurement Solutions, Ministry of Economic Development
Andrew Woodwork	Government Procurement Solutions, Ministry of Economic Development
Tim Barber	Government Procurement Solutions, Ministry of Economic Development
David Feickert	Recipient, China's Friendship Prize for Foreign Experts 2009
Jacinta Syme	Sustainable Business Forum Manager, Sustainable BusinessNZ
Julie Donvin-Irons	Director, The Stanley East Company
Larry Podmore	Christchurch Sister Cities Committee for Wuhan; Canterbury Development Corporation
Michelle MacWilliam	Christchurch Sister Cities Committee for Gansu Province; New Zealand China Trade Association Executive
John Richards	Strategic Procurement Manager, NZ Post
Geoff White	General Manager, Trade Aid

Appendix B: Supply-Chain Labour Initiatives Assessment Tool

Monitoring Compliance								Transparency			
Code of Conduct		Auditing				Complaints procedure	TBL reporting	Audit results disclosed	Suppliers disclosed	Stakeholder complaints disclosed	
0. Low standards	0. Poorly communicated	0. Low stringency	0. Low proportion of supply-chain	0. Findings do not impact purchasing	0. None	0. Low quality	0. Never	0. Never	0. Never	0. Never	
1.	1.	1.	1.	1.	1.	1.					
2.	2.	2.	2.	2.	2.	2.					
3.	3.	3.	3.	3.	3.	3.	3.	3.	3.	3.	
4. High standards	4. Well communicated to workers	4. High stringency (certification)	4. High proportion of supply chain	4. Findings do impact purchasing	4. In place and acted upon	4. High quality	4. Results fully disclosed	4. Direct suppliers disclosed	4. Complaints fully disclosed	4. Complaints fully disclosed	

Grading System

Code of Conduct

Standard of Code Content

- 0. Code compiled arbitrarily, fails to cover some areas of concern (wages, working hours, health and safety, bonded labour, child labour, discipline methods, freedom of association).
- 1. Code covers five or more of the above areas, however standards refers to *local laws and norms* on wages, freedom of association AND overtime hours. (Codes that refer to local laws and norms are considered “realistic” codes.*)
- 2. Content refers to local laws/norms on *two* of the following: wages, collective bargaining, overtime hours.
- 3. Content refers to local laws/norms on *one* of the following: wages, collective bargaining, overtime hours.
- 4. Comprehensive content, international standards on collective bargaining, overtime hours and living wage provisions included. (Such codes are considered aspirational.*)

*It is a matter of debate whether realistic or aspirational codes are more effective for bringing improvements.

Communication of the Code

- 0. Code not communicated to suppliers.
- 1. Communicated in English only.
- 2. Communicated in English AND native language, to management only.
- 3. Communicated in English AND native language, management *encouraged* to communicate code to workers.
- 4. Communication to workers *checked* during auditing (eg. Is code visibly displayed in the factory in local language?).

Proactive Steps		
Contributes to a MSI	Cooperates with other buyers	Undertakes projects with suppliers
0. Never	0. Never	0. Never
1.	1.	
2.	2.	2.
3.	3.	3.
4. Frequently	4. Frequently	4. Frequently

Auditing

Stringency

0. No auditing, or sporadic self-auditing during visits for other purposes.
1. Regular* self-auditing or auditing by third-party against a code. However audits pre-announced, brief, workers not interviewed (or interviewed in environment in which their ability to answer honestly is questionable). Non-compliances not followed up.
2. Regular self-auditing or auditing by third-party against a code. Thorough audits, but noncompliances *not* followed up, OR brief audits, but follow-up audits for non-compliances.
3. Self-auditing or auditing by third-party against a code, conducted at least annually. Thorough audits AND follow-up audits for non-compliances.
4. Regular auditing by third-party meeting the above conditions. Compliance certified.

*Regular- at least every 18 months. Less frequent auditing can be considered sporadic.

Proportion of the Supply Chain Covered

0. No auditing
1. Auditing covers direct suppliers of less than 50% (by value) of product imported from high-risk regions.
2. Auditing covers direct suppliers of *more than* 50% (by value) of product imported from high-risk regions. Evidence that highest-risk suppliers are included in those audited.
3. Auditing covers direct suppliers of *more than* 90% (by value) of product imported from high-risk regions. Evidence that highest-risk suppliers are included in those audited.
4. Above conditions met, plus evidence that suppliers are encouraged to extend standards to subsequent tiers of supply chain.

Findings Impact Purchasing

0. Audit results do not impact purchasing.
1. Purchasing is discontinued if compliance fails to meet minimum standards.
2. The compliance histories of suppliers are communicated to the NZ company's purchasing team. Either: 1) some evidence of attempts to enlarge contracts with suppliers that have improved compliance, or reduce contracts for deterioration OR 2) Audits are conducted prior to commencing contract with a new supplier.
3. The compliance histories of suppliers are communicated to the NZ company's purchasing team. Both 1) and 2) above.
4. Systematic practice of linking contracts with compliance history. Evidence that these considerations trump economic considerations on a more than *ad hoc* basis.

Worker Complaints Procedure

0. No complaints procedure.
1. Requirement in code of conduct that supplier install *workplace-based* complaints procedure.
2. Mechanism in place for workers to raise complaints to NZ company, however the mechanism is poorly communicated to workers, and/or complaints are not acted on.
3. Mechanism in place for workers to raise complaints to NZ company. Well-communicated to workers. NZ company relays complaints to supplier without disclosing workers' identity.
4. Mechanism in place for workers to raise complaints to NZ company. Well-communicated to workers. NZ company relays complaints to supplier without disclosing workers' identity. NZ company follows these up, and complaints and the supplier's response are publicly disclosed.

Transparency

TBL Reporting

0. No disclosure of social or environmental impacts.
1. Limited disclosure in an *ad hoc* format.
2. Limited disclosure follows internationally-recognised format (allowing comparability) OR comprehensive disclosure in *ad hoc* format.
3. Comprehensive disclosure in an internationally-recognised format.
4. Comprehensive disclosure in an internationally-recognised format, independent assurance provided.

Disclosure of Audit Results

0. No public disclosure of audit results
3. Public disclosure of selected audit results.
4. Systematic disclosure of audit results.

Disclosure of Suppliers

0. No disclosure of suppliers
3. Disclosure of selected suppliers
4. Disclosure of suppliers collectively supplying more than 50 percent of goods.

Disclosure of Complaints

0. Stakeholders' complaints not disclosed.
3. Some disclosure of complaints.
4. Disclosure of all complaints.

Proactive Steps

Contribution to a Multi-Stakeholder Initiative

0. No contribution.
1. Membership and occasional participation.
2. Regular involvement.
3. Regular involvement, including in at least one cooperative project annually.
4. Evidence of leadership role.

Cooperation with Other Buyers (outside of a MSI)

0. No cooperation
2. Limited cooperation
3. Regular cooperation
4. Evidence of leadership role

Individual Projects with Suppliers to Improve Conditions

0. No involvement.
1. Projects proposed to suppliers, but none taken up.
2. At least one project attempted.
3. Any project attempted in which any assistance was provided by the NZ company.
4. Any project attempted in which financial assistance was provided by the NZ company.