



Work Hours, Overtime, And Codes of Conduct

[Draft for discussion](#)



About the Joint Initiative for Corporate Accountability and Workers' Rights

The Joint Initiative brings together six key organisations in a programme of collaborative work. These are: Clean Clothes Campaign, Ethical Trading Initiative, Fair Labour Association, Fair Wear Foundation, Social Accountability International and Workers Rights Consortium ('the organisations'). Each of these organisations is involved in the global effort to improve working conditions in global supply chains by implementing codes of labour conduct.

The aims of the Joint Initiative are:

- to maximise the effectiveness and impact of multi-stakeholder approaches to the implementation and enforcement of codes of conduct, by ensuring that resources are directed as efficiently as possible to improving the lives of workers and their families;
- to explore possibilities for closer co-operation between the organisations;
- to share learning on the manner in which voluntary codes of labour practice contribute to better workplace conditions in global supply chains.

Jo-in's first pilot project is to test the variety of code implementation strategies and approaches in the garment industry in Turkey. The pilot will involve European and US companies and their garment suppliers in Turkey, as well as trade unions, NGOs, industry and employers' associations and other interested parties. The objectives of the pilot are to:

- improve working conditions and the observance of international labour standards in participating garment factories in Turkey;
- develop a shared understanding of the ways in which codes of labour practice contribute to this end;
- generate viable models for ongoing co-operation between the organisations. The project will lead to guidelines that can support other efforts to improve working conditions through the implementation, and use of, codes of labour practice. Jo-in will disseminate these guidelines, together with learning gained on the pilot of the implications for policy.

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This memo was prepared by Mathew Amengual under the supervision of Professor Richard M. Locke of MIT.

This memo is not a comprehensive review of the literature on work hours and overtime. Rather, it is intended as a background paper for the Jo-In/MIT meeting on *Exploring common approaches to Corporate Accountability and Workers' Rights* to held

Work Hours, Overtime, And Codes of Conduct

Introduction

While a stipulation against excessive work hours is not one of the four core labor standards, working time is a critical aspect of working conditions. Indeed, working time was the subject of the first International Labour Organization (ILO) convention in 1919, which defined a work week as 48 hours. In addition, nearly every country has some type of regulation regarding working time. Despite long-standing and wide-spread agreement that work hours should be limited, preventing excessive overtime is currently a pressing issue, particularly in developing countries. For example, a recent Verité report on China found that 93% of factories surveyed were in violation of overtime rules.¹ Similar findings were reported in other studies on other countries as well.

The case of PT Dea Joo Leports factory in Indonesia illustrates some of the issues surrounding working time.² An assessment of this factory found that workers were required to work at least two hours of overtime per day and at times much more, often keeping them at the factory until late at night. The overtime was required by managers who were trying to meet production deadlines for the factory, which are imposed by global buyers. Requiring overtime is in violation of Indonesian law but, nevertheless, was common practice at the factory. In addition, workers reported pressure to work night and evening shifts and were penalized when they complained about these shifts. Management responded to these allegations stating that workers often want to work the extra hours because they want to receive the higher pay. The auditors found that this is mostly true; workers stated that they did need the extra pay from overtime. However, at times workers wanted to refuse overtime but were harassed into working longer hours.

This case illustrates a number of dimensions of the working time problem. Overtime is often needed by factory management in order to meet the stringent deadlines imposed on them by global buyers. In many developing countries, national legislation and codes of conduct seeking to regulate work hours are often ignored. In addition, workers in many of the factories frequently want to work overtime, as this provides them with a way of earning additional income, given that their base wages are so low. Even when workers do not want to work these extra hours, often they cannot refuse and, consequently, they suffer from social and health/safety problems associated with excess overtime. In short, this case illustrates both some of the root causes underlying excessive work hours and some of the difficulties governments face in regulating work hours.

Work Time Regulation

Because of the negative effects of long working hours and the economic pressures that induce them, almost all countries have sought to regulate working time. This regulation can be separated into four broad categories that help demarcate the dimensions of the debate. The first type of regulation defines the “normal” working week. This is the number of hours that workers are expected to work on a regular basis. Defining a normal work week raises questions about-work life balance, trade-offs between jobs and hours, and utilization of capital. The second type of working time regulation limits the total number of hours and controls how the hours are organized. These regulations raise questions about the point at

¹ Verité *Excessive Overtime in Chinese Supplier Factories*.

² Worker Rights Consortium, 2003.

which working time becomes excessive, the period of time within which the maximum number of hours is determined (e.g. a week, month, or year), and how flexible hours can be arranged. A third set of policies regulate the way time beyond the normal work week is compensated. The debate around overtime compensation centers on creating disincentives for employers' use of overtime and incentives for workers. Related, but often kept separate, are a fourth set of policies that regulate rest. These policies often mandate a weekly day of rest and require breaks during the working day and a day of rest during the week. This last group of policies raises questions about the trade-offs between meeting business needs and protecting workers from accidents and injuries.

The sum of these decisions creates a labor market that is more or less protective, balancing the tradeoffs between worker protection and business needs. Before describing these tradeoffs in more depth, we will discuss the negative effects of working long hours. Then we will describe the range of policies that exist and how they balance the needs of business with the goal of protecting workers. In the end, however, we will show that there is evidence that these policies are largely ignored. The question then becomes not only what should the policy be to balance worker protection with business needs, but also how should this policy get at the root causes of excessive overtime to ensure that it actually addresses the problem.

The Case for Regulating Work Hours: Health and Safety Effects of Working Long Hours

There have been many studies on the effects of working long hours, yet there is still no clear consensus on what exactly constitutes excessive work hours. There are two interrelated ways to try to arrive at a definition of excessive hours. One is through epidemiological studies that identify cut off points at which negative effects become manifest. Another is through the political process. In this section, we will address the former and in doing so describe the negative effects of excessive working hours. In the next section we will describe the range of definitions agreed upon through political processes.

Health Effects of Long Hours

Negative effects of working long hours can be broken out into two groups: health effects and increased risk for accidents. A recent report by the ILO gathered research on the effect that working time has on health and safety.³ This report cites a number of studies that link working over 8 hours a day with mental health problems and high stress. One such study linked increased overtime with depression, fatigue, and confusion. In addition, cardiovascular disorders are also linked to long hours. For example, another study cited in the report found that working more than 48 hours per week doubled the chance of dying from coronary heart disease during a three-year period. Working long hours is also correlated with a number of other negative health outcomes, such as increased smoking as a response to the stress and increased exposure to occupational hazards, such as toxic chemicals and loud noises. In sum, working long hours greatly increases many health risks.

Safety Effects of Long Hours

There is also evidence linking working long hours with accidents. The primary mechanism by which accidents are caused by long hours is "reactive inhibition," which is defined as "a disinclination of the brain to continue producing the same response over and over again."⁴ One study cited by the ILO report showed a constant accident/injury rate up to the first nine hours of work. This rate increased progressively as hours were extended. After 16 hours of work, the accident and injury rate tripled. There is a dearth of studies on the relationship

³ Spurgeon 2003

⁴ Spurgeon 2003 p. 69

between accidents and long overtime hours, nevertheless the data that are available from workplace studies and laboratory experiments indicate that longer hours result in a higher risk of accidents.

Irregular Work and Night Work

Finally, there is evidence that irregular shift work, specifically night work, has negative impacts. While this is not directly related to the number hours that workers work, it is relevant to this discussion because the organization of working time is influenced by overtime. The ILO report states that night work has a number of negative health impacts, including increased risks for mental health, cardiovascular, gastrointestinal, and reproductive disorders. Data on accidents during night shifts are inconclusive, but some have shown increased accidents during night shifts compared with day shifts.

It is important to note that nearly all of these studies are in set in the U.S., E.U. Canada, and Japan. In addition, these studies followed workers from all sectors of the economy—transportation, health care, accounting, and manufacturing. This does not mean that one would not expect the same impact in developing countries on workers that are generally subject to codes of conduct, but it should be considered when applying these studies. Indeed, one might reasonably expect the impacts of excessive hours to be greater on workers that have less access to health care and more stressors overall in their lives.

It is apparent from studies of long work hours' negative effects that there is a range of ways to define excessive working hours. The studies cited in the ILO report find some effects beginning at 48 hours and others at 60 hours. Moreover, irregular working hours and long continuous hours may change what causes negative effects. At this point we leave excessive working hours undefined because there are many questions that still are unresolved.

Nevertheless, we can conclude that long hours are associated with a number of negative effects, making the case for regulation. In the next section, we will describe where legislation has drawn the line and identify some of the tradeoffs.

The Response: Regulating Overtime

To add to the understanding of the debate, we turn now to international conventions and national regulations that address working time. In this section we provide a description of the range of policies that are out there and the debates that still exist.

ILO Conventions

The ILO conventions set guidelines for, among other things, normal working time, weekly rest, and the scheduling of work time. These conventions cover all workers, but there are also additional conventions dealing with specific categories of workers, such as night workers.⁵ The first ILO convention, in 1919, defined the normal working day as 8 hours and the normal working week as 48 hours. This convention was ratified by 52 nations. Later, in 1930, a new convention allowed this 48-hour week to be averaged over three week periods as long as daily working time does not exceed 10 hours. In 1935, the ILO endorsed a shift to the 40-hour week, but this convention was only ratified by 14 nations. Later ILO conventions, in 1962 and 1970, proposed reducing work time further and stipulated paid holidays totaling three weeks at the minimum. Moreover, the ILO conventions mandate 24 hours rest every seven days, which has been ratified by more countries (62) than the other conventions that relate to work time. Finally, ILO conventions limit discrimination against part time workers, call for maternity leaves, and restrict young people's night work. The ILO conventions, however, are silent concerning overtime. No maximum number of hours that can be worked in a day or

⁵ Bosch 1999.

week is specified, nor is the way overtime should be compensated. For this level of specificity we need to turn to national legislation.

National Legislation

There are two very different debates surrounding working time regulation at the national level—one set of debates is around work time in developing countries; the other set is around work time in industrialized countries. In the European Union (EU) and the United States (US), as well as other industrialized countries, the debate is around decreasing work hours and an increase in jobs that require flexible working hours. There has been a steady trend towards setting the definition of a normal work week as shorter and shorter hours. This has conspicuously played out in France with the shift to a 35-hour work week. The hope of these policies is that decreasing hours will lead to increasing employment. However, there is no consensus over whether these policies are effective.⁶ An open question is whether shorter normal working times will just result in more overtime. Another trend is the shift away from standard working hours. The discourse around this change pertains to the potential social, health, economic, and safety implications of new forms of work organization—such as increasing part time work, work sharing, shift work, and night work.

Policies in developing countries have not had the same trend in decreasing work hours. Many simply cannot afford it. One debate concerning developing countries centers on what to do about excessive working hours that are occurring in violation of national laws, which tend to be as strict as those in developed countries. This is very much where the discussion of codes of conduct enters, as these codes impose limits on working time that are implemented by the private sector and non-governmental organizations. These codes reference national legislation but are very much independent of it. However, they are relevant as they hold up standards across national boundaries and will be addressed in more detail below.

Another debate focuses on whether national policies in developing countries are appropriate for their level of development. There are some who argue that the working time regulations in many developing countries are too strict and that working time regulations that are too rigid ultimately result in less growth. This view calls for gradual tightening of standards to avoid perverse effects, as opposed to keeping them at their current strict level.⁷ The World Bank's recent *World Development Report* makes some of these arguments. The report argues that there can be tradeoffs between labor regulations and benefits for all workers because strict regulation in working time can push firms and workers into the informal sector where there are no protections. This view cites the lack of capacity in developing countries to enforce their own labor standards, which can create a situation in which some groups are protected by the strict work hours regulation and other are not. Moreover, it creates an atmosphere of general non-compliance with the law.

When countries can actually enforce strict work time regulations, the report argues, the regulations potentially decrease “firms’ ability to accommodate fluctuations in demand” and therefore drive investment away from countries with strict regulations.⁸ For example, Jamaica saw a large increase in foreign direct investment in the apparel sector in the 1990s. However, when it instituted stricter work regulation, including decreasing weekly hours to 40, investment moved to neighboring countries with more lax regulation.⁹ Here, the debate about working hours is along the same lines as the larger debate about labor standards and globalization in general. The question becomes whether regulation will help or hurt workers by stifling growth.

⁶ Roche et. al. 1996

⁷ Hagen 2005

⁸ World Bank 2005, p. 145

⁹ Hagen 2005.

This argument is countered by the host of evidence cited above about the negative impacts of working long hours. If there are indeed negative impacts of regulation on competitiveness and growth, they must be balanced with the need to protect people from working dangerous numbers of hours. Moreover, it is not clear that looser regulations do necessarily translate into greater economic growth. In industrial countries the shift in the work week to 40 hours resulted in gains in productivity per hour, less down time, and fewer accidents.¹⁰

Bringing these broad arguments down to the details of the policies is necessary to fully inform the discussion of working time policy. The ILO Report *Conditions of Work Digest, Vol. 14* contains results of a 1995 survey of country legislation from 151 countries regarding work hours, providing an overview of working time regulations. These data, and others, were used to construct the table below, which contains the specifics for selected countries. These countries were selected either because they are large garment exporters or to show the range of regulation.

Table 1: Selected National Legislation¹¹

| Country | Total Hours in Normal Work Week | Limit on Total Overtime Hours | Compensation Premium for Overtime Hours | Rest Time |
|------------------------------------|---|---|--|---|
| Cambodia¹² | 48 hours not more than 8 hours per day. | 2 hours per day, or not more than a total of 10 hours in a day, making the maximum work week 60 hours. | Time and a half for overtime and double time if overtime occurs at night, on Sunday or on a holiday. | 9 public holidays, plus 1.25 days for every month of continuous employment. Compensatory day off for work on weekly rest day. |
| China¹³ | 40 per week and 8 hours per day. | 1 hour a day, or in special circumstances 3 hours a day totaling 36 hours in a month. | Time and a half on working days, double time at night, weekly rest day, and holidays. | 7 public holidays. Two days rest per week. |
| European Union¹⁴ | Not set. | Average maximum 48 over a four month period. Not more than 14 hours in 24 hour period, or 72 hours in a week. | Not set. | One day for each 7 day period. Also, not less than 10 hours in each 24 hour day, and 77 hours a week. |
| India¹⁵ | 9 hours in a day, or 48 | No generally applicable limit. | Double time for work over 9 | One day in 7. No more than |

¹⁰ Hagen 2005.

¹¹ Please note the dates in the footnotes for each country's information. This table is not meant to compare countries, and the same exact information is not provided for all countries. The goal is to illustrate the range of legislation regarding working time in the world. In addition, this information is on adult workers generally, some countries have different rules for specific sectors such as hazardous work and agriculture, and different rules for children and women. These were not included.

¹² ILO Conditions of Work Digest, 1995. U.S. Department of Labor Foreign Labor Trends, updated in 2003.

¹³ ILO Conditions of Work Digest, 1995.

¹⁴ Directives 93/04/EC and 2000/34/EC.

| Country | Total Hours in Normal Work Week | Limit on Total Overtime Hours | Compensation Premium for Overtime Hours | Rest Time |
|-------------------------------|----------------------------------|--|---|--|
| | hours in a week. | | hours a day, or over 48 hours in a week. | 5 hours without a half hour of rest. |
| Indonesia¹⁶ | 7 per day, 40 per week. | 54 hours per week. | 150% for first hour, 200% thereafter. On non-working days, 150% up to 7 hours, 200% for 8th hour, 300% for the remainder. | One day in 7. 30 minutes rest after five hours in factories. 13 public holidays. |
| Malaysia¹⁷ | 8 per day, 48 per week. | Maximum of 12 hours in a day and 104 in a month. | Time and a half during working days, double time on weekly rest days and holidays. | 1 day a week, 30 hours for shift workers. Daily rest of 12 hours. 30 minute breaks after 5 hours and 45 minutes in 8 hours for a meal. |
| Mexico¹⁸ | 48 hour week, 8 hour days. | No worker can compelled to work more than 9 hours overtime in a week, or more than 3 hours of overtime in any one day. | Double time for the first 9 hours, triple for more than 9 hours in the week. | One day in 7. Rest period of a half hour for work of a full day. |
| Spain¹⁹ | 40 hours when annually averaged. | 80 hours per year. | Not less than ordinary pay. | 1.5 consecutive days, including all of Sunday. 15 minutes after 6 hours. Daily rest of 12 hours uninterrupted. |
| Turkey²⁰ | 45 hours | 270 hours in the year. | Time and half. | One day in 7. 15 minutes for not more than 4 hours work, 30 minutes up to 8 hour days, and an |

¹⁵ India Factory Act. ILO Conditions of Work Digest, 1995.

¹⁶ ILO Conditions of Work Digest, 1995.

¹⁷ ILO Conditions of Work Digest, 1995.

¹⁸ Mexican Labor Law provided by the Canadian Government

http://www.hrsdc.gc.ca/en/lp/spila/fialc/pcnaalc/12mexican_law.shtml June 2005. Mexican Labor Law provided

by NAFTA: http://www.nafta-mexico.org/sphp_pages/canada/invierte/doing_business/labor_law.htm June 2005. ILO Conditions of Work Digest, 1995.

¹⁹ ILO Conditions of Work Digest, 1995.

| Country | Total Hours in Normal Work Week | Limit on Total Overtime Hours | Compensation Premium for Overtime Hours | Rest Time |
|------------------------------|-------------------------------------|---------------------------------|--|--|
| | | | | entire 8 hours or longer 1 hour. Not paid. |
| United Kingdom ²¹ | No generally applicable provisions. | No limit. | No generally applicable provisions. | No generally applicable provisions. |
| United States ²² | 40 hours per week, 8 hours per day. | No limit. | Time and half for “non-exempt” workers | No generally applicable provisions. |
| Vietnam ²³ | 8 hours per day, or 48 in a week. | 4 hours per day, 200 in a year. | Time and half during working days, double time during holidays and days off. | One day in 7, 12 hours daily rest, and minimum of 30 minutes in 8 hours of work. |

The ILO data and this table show that policies vary but also that the large majority of countries regulate normal hours, total hours, rest periods, and overtime. In addition, the data show that there are not tremendous differences between developed and developing countries in working time policy. This finding is supported by an analysis by the World Bank, which created a strictness index of labor regulations and determined that most developing countries have similar regulations of work hours as developed countries.²⁴ Indeed, some developed countries like the U.S. have much looser regulations than most developing countries. Overall, the policies have more in common with one another than they have differences. **The differences are in the details of the policies and whether or not they are enforced.** Below, we will describe each of these cleavages and the questions they raise.

What should constitute a normal work week?

This is the most basic question of work time regulation, setting the reference point for most other regulation. Here there is consensus around two points, 40 and 48 hours. Indeed according to the ILO survey, 53 countries designate 48 hours as the weekly norm, while 42 countries designate 40 hours a normal week. Only one country did not designate any normal working time. The normal working time ranged from 38 to 54 hours a week at the time of the survey. Defining normal working time is important as it triggers overtime with its protections and premium wages. It is difficult to say what is the significance of a 48 versus a 40-hour work week. This depends substantially on what kind of overtime policies are triggered when work goes beyond normal hours. In addition, their significance depends on the wages that are being paid. To some degree, the normal work week is a function of how many hours one needs to work in order to sustain oneself—that is, assuming a living wage. This may account

²⁰ Labour Act of Turkey, provided by the ILO: <http://www.ilo.org/public/english/region/eurpro/ankara/legislation/law4857.htm> June 2005. ILO Conditions of Work Digest, 1995.

²¹ ILO Conditions of Work Digest, 1995.

²² U.S. Department of Labor <http://www.dol.gov/esa/whd/flsa/> June 2005.

²³ ILO Conditions of Work Digest, 1995.

²⁴ Pierre and Scarpetta, 2004.

for some of the variation. Nevertheless, there is clearly a debate in national policies over what should constitute normal working hours.

Should the maximum number of hours allowed to be worked be decided through regulation?

Some countries, such as the U.S. and India, do not have limits on the maximum number of hours people can work, while many others do. The ILO dataset identifies 100 countries with some form of limit on the maximum hours that can be worked. Further, some of the limits are on the total number of hours workers are allowed to work under any circumstances, while others, such as Mexico's, limit the number of hours a worker can be "compelled" to work. The ILO dataset from which most of these data were drawn did not always make such distinctions, which potentially have a large impact on the force of the policy. The choice, whether or not to set a limit in national policy, presents a trade-off between meeting the needs of business to adjust to fluctuations of demand and protection of workers.

How should the maximum time worked be determined: daily, weekly, monthly, or yearly?

Once a country decides to place a limit on the maximum number of hours that can be worked, the way this limit is calculated will have a large impact on the protection the workers and on any potential negative consequences for business. The most common of these limits is 2 hours over the normal working time each day. In addition, 43 countries have weekly limits, most limiting overtime to 12 hours. Also, 41 countries have yearly limits in the number of hours that can be worked. For example, Chinese law limits overtime to not more than 3 hours in a day and not more than 36 in a month. Turkish law is quite different; it averages overtime over the entire year with a ceiling of 270 hours. Recalling the discussion of health and safety implications of excessive working time, policies that average time over a long period, such as a year, will do little to protect workers from working long hours that make them more prone to accidents. Moreover, these policies may be more difficult to monitor and enforce than weekly or daily limits in overtime. Hours worked have to be logged over the entire year, and, when there is a violation, it is likely to be after long periods of working excessive hours. However, policies with longer averaging provide more flexibility to managers to meet production deadlines and to adjust to seasonal cycles. The trade-offs involved in averaging put worker protection in competition with economic interests. The different stances that national legislations take towards averaging shows that, despite setting the same targets for maximum and normal work hours, these policies endorse vastly different practices of overtime.

Should overtime be compensated at a premium? And if so, how much of a premium?

Another major difference between these regulations is the way that overtime is compensated. Not all countries have premiums for overtime, and where they do, they differ in amount. The ILO survey found that 122 countries have some provision for paying a premium for overtime. Of these countries, 23 set overtime at 25% above usual pay, 50 countries set overtime at 50% above, and 8 countries set overtime at 100% above usual pay. Some of these premiums increase as overtime hours get longer and others remain flat. On the one hand, overtime premiums are one of the aspects of working time regulation that critics say stifle development. The World Bank *World Development Report* specifically cites requiring double pay for overtime as one of the strict regulations that curtails growth.²⁵ On the other hand, the

²⁵ World Bank 2005.

overtime premium helps many workers with low base wages earn more money. It is not clear, however, what the effects of overtime premiums have on working hours and compensation in developing countries. Those studies that have been conducted are based on the U.S. and are inconclusive as to the effects of overtime premiums on working hours.²⁶

Should workers be given the option to take time off instead of more pay in exchange for overtime?

One sure way of reducing working time in the face of overtime is to allow for compensatory time off in lieu of overtime pay, which is the policy of some countries. Turkey, for example, allows workers to opt for one hour and a half off with pay for every hour of overtime worked. By providing this option, it seems that excessive overtime can be curtailed. This way if managers are requesting large amounts of overtime, workers can even out their total work hours and take paid time off later. This has the potential of giving workers more control over their work. However, with low wages, one would expect few workers to take this option. Moreover, with such lax enforcement of many overtime rules, this and other policies may be unlikely to have their desired effect without the workers truly having a choice. Nevertheless, this policy option remains with the potential to provide a mechanism in which overtime can be compensated resulting in a decreased total number of hours, and, in turn, fewer negative effects.

What kind of daily rest and breaks should be afforded to workers?

In addition to the host of differences regarding overtime rules, there are a number of other important differences among these policies. There is a large consensus on weekly rest, with 145 countries calling for some weekly rest. However, there is less agreement on daily rest, with 77 countries calling for some daily rest and 101 for some rest breaks during the day. For example, some countries, like Malaysia and Vietnam, have a minimum daily rest of 12 hours. Yet, where these policies exist, the length of rest in a day varies. Similarly, some countries have provisions for breaks during the day, while others do not. Moreover, these breaks differ in length and frequency. In addition, some breaks are considered paid, while others are not. Regardless of these variations, where policies promoting rest periods and breaks are in force and the length of the working day is limited, risks of on the job accidents decrease.

Should there be different rules for night work and other irregular working hours?

Although night work policies were not included in the table above, these policies also have an impact on working time that should be considered. Many countries have specific policies regulating work at night. For example, Mexico has 7-hour shifts for night workers, one hour shorter than the 8-hour day shift. Vietnam provides 45-minute breaks for night workers, as opposed to the normal 30-minute breaks. Turkey mandates that night workers have to be certified by a health examination to ensure that they are capable of night work, and workers need to be examined every two years while they are performing night work. These policies specifically address the increased health risks due to night work. In addition, many countries have special policies regarding women and younger workers. These policies, however, are not universal. The question remains, should night work and irregular working hours be regulated differently than daytime workers.

Before concluding the discussion of national policies, it is important to note that these policies are not necessarily enforced. Low levels of enforcement and the causes of excessive overtime will be addressed in detail the next section. Nevertheless, these national policies are important because they show some of the range of policy options that are available and the

²⁶ Trejo 2001

debates that are open in work time policy. They also show what kind of policies the codes of conduct interact with at the national level. Finally, they show the range of working time regimes that have been determined through political processes in developed and developing countries. This is relevant because these policies are **not** imposed on developing countries by industrial countries, but are self-imposed regulations.

Compliance With Regulations and Causes of Excessive Overtime

So far, we have been discussing the negative effects of excessive work time and the policy choices seeking to regulate work time and prevent these negative effects while maintaining economic growth. In reality, of course, policies have to be implemented to make a difference. In this section, we will review the evidence on the lack of implementation of work time policies. As one might expect, compliance with work time regulation is lacking. To better understand why, we will discuss some of the drivers of excessive overtime, the largest source of non-compliance.

Evidence for Excess Overtime

There is relatively little data on actual working hours in developing countries, but two recent studies do provide some evidence of the problem.²⁷ The Fair Labor Association's (FLA) *2004 Annual Report* found 130 instances of work time violations in the 110 factories that were audited.²⁸ Most of the violations were due to exceeding overtime limitations. The FLA report found 63% of all violations of excessive overtime occurred in China. Another report, *Excessive Overtime in Chinese Supplier Factories* by the non-profit monitoring group Verité²⁹, found that 93% of the factories it audited in 2002 and 2003 exceeded legal or code of conduct limits for overtime. Of the 133 factories with violations, 23% had monthly overtime hours between 37 and 60 hours, 20% between 61 and 80, 23% had overtime between 81 and 100, and 33% had overtime over 100 hours.

Drivers of Excessive Overtime

These same studies provide insight into the drivers of the excessive overtime. The FLA Report attributes the excessive overtime to "pressures on workers to achieve high production quotas set by management; inflexible and very short production deadlines."³⁰ The Verité report also provides insight based on their survey of managers and workers. According to their report, 38% of managers said that overtime was necessary to meet market demands and last minute production orders. The second most frequent response (15%) was that overtime is due to communication delays such as "delays in the approval of samples."³¹ As a response to these pressures, the two strategies that were most prevalent were "prior planning" (30%) and turning down orders (23%). However, most thought that turning down orders would result in the loss of future orders. Hence, the favored response to deal with fluctuations in demand is overtime. The majority of managers saw a decrease in productivity and claimed they wanted

²⁷ For an example of country level data see the ILO report *Labour practices in the footwear, leather, textiles and clothing industries* 2000.

²⁸ There can be multiple instances per factory, the report does not readily break down the percentage of factories where there were violations.

²⁹ Verité *Excessive Overtime in Chinese Supplier Factories*, 2005.

³⁰ p. 195.

³¹ p 23

to maintain less than 20 hours of overtime a week. However, the volume of overtime that the survey found indicates that the managers are failing to keep overtime under control. The recent *Nike Corporate Responsibility Report* also provides some insight into the causes of excessive overtime.³² By their own analysis, Nike found 10 causes of excessive overtime, several of which were the product of their own company practices. These include: late confirmation of styles, last minute orders, and compressed order windows that track changes in the market. The Nike report also found that their suppliers' contributed to excess overtime through poor planning, agreeing to too many orders from buyers, and low productivity due to high turnover.

The Verité report also provides insight into the reasons for excessive overtime from the workers' perspective. The primary reason (53%) workers worked overtime was to earn additional income. This additional income was considered by the workers as an important part of their total income. As evidence of workers' low wages, the survey found that 45% of factories paid illegally low wages. This shows the relationship between low wages and worker motivation to work overtime. Still, overtime wages were also illegally low in 72% of the factories. In addition, the FLA report found a large number of cases in which overtime wages were not paid. Therefore, workers may be putting in extra hours but not be compensated for it. The Verité report found that 35% of the employees said that the factory expects that they work overtime, and while it is not mandatory, workers have limited choice. The survey found that workers are putting in more overtime hours than they want. The majority of workers said they wanted to work 20 hours of overtime or less per week. Somewhat surprisingly, this is consistent with what they found the managers hoped overtime would be.

Codes of Conduct and Working Time

Codes of conduct enter the debate in response to regulations that are largely not followed. In the broad level debate, they fall squarely on the side of ensuring that working time regulations are followed. The codes take a decisive stance on many of the questions concerning work time regulation that were described above. Nevertheless, there is variation in the way some of the codes address the questions raised above. The codes, however, do not directly address the root causes underlying excess overtime.

The codes of conduct analyzed for this memo are almost at consensus on many issues regarding working time. Nearly all of the codes of conduct included in this study call for 48 hours in a normal week, 12 hours of overtime, one day off in every 7, and some kind of premium to be paid for overtime. Like the national legislation, however, there is some variation in the way codes of conduct handle working time. Below is a table of a sample of codes of conduct. The highlighted cells contain provisions that differ most significantly from the others.

³² Nike Corporate Responsibility Report FY04, 2005.

Table 2: Working Time in Codes of Conduct³³

| Code | Total Hours in Normal Work Week | Limit on Total Overtime Hours | Compensation Premium for Overtime Hours | Rest | Other Features |
|--------------------------------|--|--|---|--|---|
| Jo-In Draft Common Code | 48 or national limits if less. | 12 hours | "[A]t least at such a premium rate as required by law" | At least one day off after each six consecutive days & holidays. | Comply with nation laws or industry standards as they offer more protection. Voluntary overtime. |
| Clean Clothes Campaign | 48 or national limits | 12 hours or national limits if less. | Premium | One day in 7 | Shall "comply with applicable laws and industry standards." Voluntary overtime. |
| Ethical Trade | 48 or national limits | 12 hours or national limits if less. | Premium | One day in 7 on average | For all, if the national laws or industry standards are greater, otherwise follow the code. Voluntary overtime |
| Fair Labor Association | 48 or national limits if less. | More than 12 hours should not be required or national limits if less | Premium if required by law, otherwise at least their regularly hourly rate. | One day in 7 | For all, "except in extraordinary business circumstances." No specification for voluntary overtime. |

³³ Source: Organization web sites accessed in June 2005.

| Code | Total Hours in Normal Work Week | Limit on Total Overtime Hours | Compensati on Premium for Overtime Hours | Rest | Other Features |
|-----------------------------------|---------------------------------|-------------------------------|--|---|--|
| Fair Wear Foundation | 48 hours. | 12 hours | Premium | One day in 7 | Comply with applicable laws and industry standards. Overtime shall be voluntary. |
| Social Accountability 8000 | 48 or national limits if less | 12 hours | Premium | One day in 7 | Comply with all national laws for all aspects. Where the company is party to a collective bargaining agreement, it may require overtime to meet short-term business demand. Otherwise, overtime is voluntary. |
| Workers Rights Consortium | 48 or national limits | None Specified | Premium required by nation, or if there is not one, time and half. | One day in 7 as well as holidays and vacations. | Voluntary overtime. For entire codes, comply with national legislation or code, whichever has higher standards. |

This table highlights differences between the codes of conduct among the organizations comprising Jo-In. The FLA code departs from the other codes the most. First, it is one of two codes that does not set absolute limits on the number of hours that can be worked. The FLA code states that workers should not be *required* to work more than 12 hours, but it does not specifically limit the total number of hours that can be worked. Most of the other codes set 12 hours as a maximum limit that cannot be breached. Second, it is the only code that does not mandate that overtime is voluntary; in the FLA code, overtime can be mandatory unless it is

more than the 12 hours as specified by the code.³⁴ Third, it is the only code that does not compensate overtime at a premium unless it is required by law. Fourth, the FLA code has a clause in its section on working time stating that the code should be followed “except in extraordinary business circumstances.” Depending on how this is interpreted, the same policy could have much different outcomes.

Two other codes of conduct have significant deviations from the majority of codes. Ethical Trade’s code of conduct states that one day a week on average should be given for rest. Most other codes state that there should be one day of rest per week. The draft common code is an exception, stating that one day should be given off after six consecutive days. The other notable difference is that the Workers Rights Consortium does not specify a maximum number of hours that can be worked in a week.

This discussion identifies a number of questions that remain open after in the debates concerning working time in codes of conduct. First, should there be exceptions for extraordinary business needs? This exception has the potential to reduce worker protection, but also is realistic in that codes may not be adhered to in these circumstances. Second, should overtime be voluntary and premiums be paid regardless of local law? Again, this balances worker protection with business needs. Third, should there be one day of rest on average, or one day in every six? A related fourth is, should the total number of hours allowed be set for the week, or be averaged? For these last two, it is not clear whether there is actually agreement because the codes are not specific as to how work time and rest time are calculated. This brings us to the last question, how specific should codes of conduct be? Should they rely on national laws to handle the details while preventing egregious labor conditions? Or should they be as comprehensive as national legislation to level the playing field for those producing under the code in different regulatory environments? From this list of questions, it is obvious that codes resolve some of the questions that remained after describing the national policies, but also that they open up new questions concerning their role vis-à-vis national policies.

It is useful to compare the national laws to the codes. There is one major difference between the codes and the national laws, level of specificity. This is understandable given the complexity of many national laws and because the codes all require following national legislation, which takes care of many of the details. However, as shown above, there is fairly large variation in national legislation when it comes to the details of work time regulation. Some policies, if followed, have much greater potential than others to put workers at risk. For example, the codes are silent as to the period in which the maximum number of hours per week is calculated. In addition, the codes say nothing about breaks during the working day or night work. Also, while many of the codes specify a premium, they do not determine how this premium is calculated. Therefore, in countries that do not have any rules calling for a premium it is not clear how much of a premium the codes call for.

Monitoring of the Codes of Conduct

To better describe the codes of conduct and to identify choices that need to be made when developing work time policy, it is necessary to look at the way the codes are monitored. Monitoring is important because it is one significant aspect of code implementation; others include remediation or penalties when violations are found, and capacity development to help suppliers comply. Detailed monitoring information for all of the codes was not readily available, therefore we draw mainly on the Fair Labor Association (FLA) and Fair Wear

³⁴ SA8000 does allow mandatory overtime, but only when there is a collective bargaining agreement.

Foundation (FWF) monitoring principles as described in their guidance documents.³⁵ The monitoring guidelines are quite detailed and not easily compared. Therefore, we will describe a basic outline of the process of monitoring for work time compliance and then describe salient differences between the two processes. This is by no means a comprehensive comparison. In the end of this section, we will describe the implications of monitoring practices for the debates around working time policy and codes of conduct.

When monitoring compliance with working time rules in codes of conduct, auditors try to determine if the factory has basic practices that are necessary for compliance. For example, auditors are instructed to determine whether the workers and managers have basic knowledge of the limitations that the code and local laws set on working time. Further, auditors determine whether the workers and managers know that overtime must be voluntary. The auditors also look to see if there is adequate record keeping to measure how much time employees are working. For example, auditors determine if workers punch in and out and if there are records for piece work. Record keeping is required by some codes, such as the FLA code, and has to be made available to auditors. These benchmarks, however, do not directly determine whether the working time is excessive, but provide indicators for the likelihood of code compliance.

Through interviews with workers and managers, and a review of the records, the auditors try to determine whether the factory is actually complying with the code's rules regarding overtime and work hours. Workers are asked, for example, what their hours are, if they can decline overtime, if they are paid a premium, if there are clear announcements of working hours and breaks, and how much overtime wages they have recently earned. This information is triangulated with interviews from managers, whom are asked similar questions, including details about the way working time organized and compensated for. It is also triangulated with information from records described above. Through site observations, auditors also try to determine if all work is being accounted for and if the amount that the factory is producing and the hours/productivity add up.

It is clear from the monitoring guidelines for the FLA and FWF that auditors are instructed to use multiple methods of gathering data, as listed below, and to adapt to the conditions of the factory and host country. These include offsite interviews with workers when possible, interviews with managers, reviews of records, and interviews with local stakeholders. However the combinations of these methods are somewhat loose, making comparison difficult. Nevertheless, it is possible to identify some types of data that are collected in one audit but not the other. Below is a table comparing the questions that the two audits ask concerning working time. The issues that are highlighted are those that are not asked by both organizations. This is not a perfect comparison, because there are differences in the location of certain questions in the audits and the exact wording of the questions. Nevertheless, it does provide an idea of how similar the benchmarks are and identify some differences.

Table 3: Comparison of Monitoring Benchmarks

| Issue | FLA | FWF |
|---------------------------------------|-----|------------|
| Normal working hours, weeks, holidays | Yes | Yes |
| Are they documented | Yes | Yes |
| Usual high/low seasons | | Yes |
| How often does overtime occur | Yes | Yes |
| Are overtime hours in compliance | Yes | Yes |
| Is a premium rate being paid | Yes | Yes |

³⁵ FLA Monitoring Guidance and Compliance Benchmarks <http://www.fairlabor.org/all/monitor/compliance.html>.
Fear Wear Foundation Audit Manual May 2005
<http://en.fairwear.nl/tmp/Audit%20manual%20final%20may%202005-EN.pdf>

| Issue | FLA | FWF |
|---|------------|------------|
| Does the rate meet law | Yes | Yes |
| How high is the rate | | Yes |
| What are the causes of overtime | | Yes |
| How much overtime have the interviewees worked | Yes | Yes |
| How free are workers to not accept overtime | Yes | Yes |
| How are piece rate workers compensated for overtime | Yes | Yes |
| Are there clear public announcements of hours, breaks, etc. | | Yes |
| Likelihood of dishonest record keeping assessed by local stakeholders. | Yes | Yes |
| Reports from security and other clues of excessive overtime | | Yes |
| Employers provide workers with pay statement for each period with hours and overtime | Yes | |
| Under “extraordinary circumstances” efforts are made to use voluntary overtime | Yes | N.A. |
| Demonstrated commitment to reduce mandatory overtime from employer | Yes | N.A. |
| Employer provide explanations for extraordinary business periods | Yes | N.A. |
| Reasonable meals and rest breaks | Yes | |
| Are workers informed about overtime rates | Yes | Yes |
| How managers recruit voluntary overtime | Yes | |

Two of these differences are significant. First, FWF asks managers what is causing overtime and if the client can do anything to reduce overtime. This is a significant departure from focusing on identifying excessive overtime. Second, FLA benchmarks how managers recruit workers for overtime.

It is apparent from this brief overview of monitoring that much of the information that the auditors gather is not highly detailed or comprehensive. Without being able to trust the records of management, or without the existence of reliable records, auditors rely on the recollections of workers and managers. Recall debates around averaging working time, whether it should take place on a weekly, monthly, or yearly level. This debate is almost moot when it comes to monitoring, as basic information about working hours may not be available to even measure working time over long periods of time. Monitoring is likely to find examples of excessive hours without a level of specificity necessary to identify different types of violations and trade-off between averaging weekly or yearly. There may be a balance that has to be struck between the level of specificity of the code and the ability to monitor practices in detail.

Conclusion

This memo presented an overview of working time policy and debates surrounding working time. In the context of codes of conduct, there are several conclusions that can be drawn from this analysis. First, working time stipulations in codes of conduct are often not imposing stricter regulation than exists in many countries. This is important because the legitimacy of the codes imposed by western NGO’s on conditions in developing countries may suffer if the differences are great. However, this is not the case. Therefore, the codes work more towards ensuring that local laws are respected than by imposing new rules. That said, the major challenge with working hours is implementation, not getting the policy right. This is evidenced by the widespread noncompliance.

Another conclusion that can be drawn is that the codes of conduct leave many aspects of working time that are regulated by national legislation out of the codes, such as stipulations about break time and night work. If codes are to create a baseline of minimum standards, these may have to be included. Moreover, if codes are to ensure that national policies, when more strict, are enforced, codes may have to specifically address a broader range of aspects of working time.

Finally, low wages and the need for producers to meet deadlines are likely the main drivers of excessive overtime. This conclusion must be taken cautiously, as the drivers are not well studied. Nevertheless, it points out that implementation of working time policies may lay in changing buyers' practices in ordering and in increasing wages. Revisiting the national policies and codes of conduct in light of the causes of excessive overtime, it seems like the policies are not well positioned to address the problem. Most aspects of the policies and codes—such as the limits on the total number of hours that can be worked—are 'end of pipe' solutions. That is, they fail to address the root causes of the problem. There may be room for the codes of conduct to place restrictions on the ordering process of the buyers to encourage them to decrease the pressure they put on producers to use large amounts of overtime. Stipulations could be included that the buyers agree not to knowingly make orders that exceed the capacity of the factories. This would, understandingly, affect a small number of factories which manufacture a large portion of their production for a single buyer. Nevertheless, regulating the relationship between the buyer and seller may be a place to begin to address the problem.

In summary, there are two main sets of questions that still remain open. The first set concerns how many hours people should work, how hours should be organized, and how they should be compensated. In essence, this is the trade-off between worker protection and meeting the needs of business. This set of questions was addressed in much detail and, despite agreement in many areas, there are still details that need to be discussed. The second set of questions are those raised at the end of this paper. These concern what should be done to get at the root causes of work time violations. These questions have not been explored the same in detail as the former set of questions in this paper because they largely fall outside the purview of work time regulation and codes of conduct. Nevertheless, given the high rate of non-compliance, these questions may be equally, if not more important than, the initial set of questions. Therefore the debate remains, what should work time be *and* how should we get there.

References

Bosch, Gerhard. "Working time: Tendencies and emerging issues," *International Labour Review*, Vol. 138, No. 2, 1999.

Fair Labor Association. *FLA Monitoring Guidance and Compliance Benchmarks*
<http://www.fairlabor.org/all/monitor/compliance.html> accessed June 2005.

Fear Wear Foundation. *Audit Manual May 2005*

<http://en.fairwear.nl/tmp/Audit%20manual%20final%20may%202005-EN.pdf> accessed June 2005.

Hagen, Katherine. "Working Time and International Competitiveness," Friedrich Ebert Stiftung Briefing Paper April 2005.

India Factories Act. <http://dgfasli.nic.in/statutes1.htm>, accessed June 2005.

International Labour Organization. *Labour practices in the footwear, leather, textiles and clothing industries*, Report for discussion at the Tripartite Meeting on Labour Practices in the Footwear, Leather, Textiles and Clothing Industries, 2000.

International Labour Organization. *Conditions of Work Digest Vol. 14*, 1995.

Labour Act of Turkey, provided by the ILO:

<http://www.ilo.org/public/english/region/eurpro/ankara/legislation/law4857.htm> accessed June 2005.

Mexican Labor Law provided by NAFTA: http://www.nafta-mexico.org/sphp_pages/canada/invierte/doing_business/labor_law.htm accessed June 2005.

Mexican Labor Law. Provided by Canadian Government

http://www.hrsdc.gc.ca/en/lp/spila/ialc/pcnaalc/12mexican_law.shtml accessed June 2005.

Nike, *FY04 Corporate Responsibility Report*.

<http://www.nike.com/nikebiz/nikebiz.jhtml?page=29&item=fy04> accessed June 2005.

Pierre, Gaëlle. Scarpetta, Stefano. *How Labor Market Policies can Combine Workers' Protection with Job Creation*, Background Paper for the World Development Report 2005, "Better Investment Climate – for Everyone", World Bank, 2004.

Roche, William; Fynes, Brian; Morrissey Terri. "Working time and employment: A review of international evidence," *International Labour Review*, Vol. 135 No. 2, 1996.

Spurgeon, Anne. *Working time: Its impact on safety and health*, International Labour Office, 2003.

Trejo, Stephen. *Does the Statutory Overtime Premium Discourage Long Workweeks?*, Institute for the Study of Labor Working Paper, 2001.

United States Department of Labor. “Foreign Labor Trends,”
<http://www.dol.gov/ILAB/media/reports/flt/main.htm>, accessed June 2005.

United States Department of Labor. “Compliance Assistance – Fair Labor Standards Act”
<http://www.dol.gov/esa/whd/flsa/>, accessed June 2005.

Verité. *Excessive Overtime in Chinese Supplier Factories*, Research Paper, 2004.

Workers Rights Consortium. *Worker Rights Consortium Assessment Re Pt Dae Joo Leports (Indonesia) And Re Kawasan Berikat Nusantara Export Processing Zone, Marunda & Cakung Branches (Indonesia) Findings And Recommendations August 26, 2003*, 2003.

World Bank. *World Development Report 2005: A Better Investment Climate for Everyone*, World Bank, 2005.

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