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## U.S. CORPORATE INVOLVEMENT AS A MEANS OF ADDRESSING FOREIGN WORK PLACE INCIDENTS

To curb the number of suicide attempts, a factory in Shenzhen, China installed protective netting around various guardrails to prevent its employees from jumping.<sup>1</sup> The employees worked at Foxconn, an oversea supplier for Apple. In the past few years, international workers' rights and environmental groups have accused Apple's overseas suppliers of poor work environments and violating employee labor rights.<sup>2</sup> The most recent accusation against Apple's suppliers occurred on September 4<sup>th</sup>, 2014, by Green America and China Labor Watch.<sup>3</sup> The accusations ranged from improper handling of chemicals to excessive overtime.<sup>4</sup> In response to these recent accusations, Apple has rigorously audited their supplier chain in an attempt to correct these issues.<sup>5</sup> However, due to reoccurring accusations, the effectiveness of Apple's audits have come into question.<sup>6</sup>

Apple has had a supplier code of conduct since 2005<sup>7</sup> and has revealed its list of suppliers to the public since 2012.<sup>8</sup> The supplier code of conduct addresses significant issues such as anti-discrimination, chemical hazard management, and excessive working hours.<sup>9</sup> In order to enforce its supplier

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<sup>1</sup> Charles Duhigg and David Barboza, *In China, Human Costs Are Built Into an iPad*, N.Y. TIMES, (Jan. 25, 2012) available at <http://www.nytimes.com/2012/01/26/business/ieconomy-apples-ipad-and-the-human-costs-for-workers-in-china.html>.

<sup>2</sup> Neil Gough and Brian Chen, *Group Accuses Apple Supplier in China of Labor Violations*, N.Y. TIMES (Sept. 4, 2014) available at <http://www.nytimes.com/2014/09/05/business/Apple-Supplier-Is-Accused-of-Labor-Violations.html>.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Duhigg and Barboza, *supra* note 1.

<sup>6</sup> Green America, *Two Years of Broken Promises: Investigative Report of Catcher Technology Co. Ltd (Suqian), an Apple parts Manufacturer*, GREEN AMERICA AND CHINA LABOR WATCH (Sept. 4, 2014) <http://www.greenamerica.org/PDF/2014-Two-Years-Apple-Broken-Promises-ChinaLaborWatch-GreenAmerica.pdf>.

<sup>7</sup> Tiffany Kaiser, *Report: Apple's Suppliers Continuously Violate Code of Condcut, Apples Does Nothing to Change It*, DAILY TECH (Jan. 27, 2012, 4:24 AM) <http://www.dailytech.com/Report+Apples+Suppliers+Continuously+Violate+Code+of+Conduct+Apple+Does+Nothing+to+Change+It/article23867.htm>.

<sup>8</sup> Nick Wingfield and Charles Duhigg, *Apple Lists Its Suppliers for 1<sup>st</sup> Time*, N.Y. TIMES (Jan. 13, 2012) available at <http://www.nytimes.com/2012/01/14/technology/apple-releases-list-of-its-suppliers-for-the-first-time.html>.

<sup>9</sup> Apple, *Supplier Responsibility Standards: Version 4.0.2*, APPLE.COM [https://www.apple.com/supplier-responsibility/pdf/Apple\\_Supplier\\_Responsibility\\_Standards.pdf](https://www.apple.com/supplier-responsibility/pdf/Apple_Supplier_Responsibility_Standards.pdf) (last modified Jan. 1, 2015).

code of conduct, Apple audits its suppliers by investigating supplier sites and documenting areas in need of improvements.<sup>10</sup> Apple employees conduct these audits with assistance from third party experts.<sup>11</sup> If a supplier refuses to remedy the violations, Apple states that these suppliers can be terminated.<sup>12</sup> While Apple has terminated business with several suppliers, persistent issues remain. For example, in 2012, one in four suppliers violated Apple's wage and benefit standards despite prior audits.<sup>13</sup> In some safety areas the number of suppliers in compliance with Apple's Supplier Code of Conduct actually decreased.<sup>14</sup> Some labor watch groups believe that the documentation of violations from the audits do little to actually correct the occurring problems.<sup>15</sup> Apple is not the only electronics company that has faced reports of poor working conditions. Labor watch groups have also reported that Samsung has used underage labor to manufacture certain goods.<sup>16</sup> It seems that these issues persist throughout the electronic industry.

The question then becomes, why should U.S. corporations bear some form of responsibility with regards to foreign suppliers? In an economic sense, U.S. corporations should care about these issues because of consumer backlash and potential litigation. Perhaps the most tragic example occurred in Bangladesh back in 2013 when a poorly constructed garment factory collapsed killing over 1,000 workers.<sup>17</sup> Many of the garments made at this factory were meant for multinational retailers such as Wal-Mart.<sup>18</sup> Aside from the human tragedy, a

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<sup>10</sup> Apple, *Supplier Responsibility 2015 Progress Report*, APPLE.COM, [https://www.apple.com/kr/supplier-responsibility/pdf/Apple\\_Progress\\_Report\\_2015.pdf](https://www.apple.com/kr/supplier-responsibility/pdf/Apple_Progress_Report_2015.pdf) (last visited Feb. 3, 2015).

<sup>11</sup> Apple, *Driving Change: 2008 Supplier Responsibility Progress Report*, APPLE.COM [https://www.apple.com/supplier-responsibility/pdf/Apple\\_SR\\_2008\\_Progress\\_Report.pdf](https://www.apple.com/supplier-responsibility/pdf/Apple_SR_2008_Progress_Report.pdf) (last visited Sept. 19, 2014).

<sup>12</sup> *Id.*

<sup>13</sup> Scott Nova and Issac Shapiro, *Apple's Self-Reporting on Suppliers' Labor Practices Shows Violations Remain Common*, ECONOMIC POLICY INSTITUTE, (Feb. 12, 2013), <http://www.epi.org/publication/apples-reporting-suppliers-labor-practices/>.

<sup>14</sup> *Id.*

<sup>15</sup> Wingfield, *supra* note 8.

<sup>16</sup> David Barboza, *Despite a Pledge by Samsung, Child Labor Proves Resilient*, N.Y. TIMES, (July 10, 2014), <http://www.nytimes.com/2014/07/11/business/international/children-found-working-at-samsung-supplier-in-china.html>.

<sup>17</sup> Jim Yardley, *Report on Deadly Factory Collapse in Bangladesh Finds Widespread Blame*, N.Y. TIMES, (May 22, 2013), <http://www.nytimes.com/2013/05/23/world/asia/report-on-bangladesh-building-collapse-finds-widespread-blame.html>.

<sup>18</sup> Victor Luckerson, *Bangladesh Factory Collapse: Is There Blood on Your Shirt?*, <http://business.time.com/2013/05/02/bangladesh-factory-collapse-is-there-blood-on-your-shirt/> (last visited January 29, 2015).

by-product of the incident were consumer boycotts and mistrust.<sup>19</sup> These issues with the garment industry parallel the issues occurring in the electronics industry today. The most stunning parallel is that companies in each industry had existing supplier codes of conduct. Even though a company like Wal-Mart, much like Apple, had their own supplier conduct program before the Bangladesh incident, it was not enough to prevent the tragedy.<sup>20</sup> U.S. corporations also risk potential lawsuits if these foreign work violations are not addressed. In 2003 there was a \$20 million dollar settlement between multinational retailers and garment workers from the U.S. commonwealth of Saipan over illegally low wages among other complaints.<sup>21</sup> While the analysis slightly differs because Saipan is a commonwealth of the U.S., it is not improbable for foreign workers to sue U.S. corporations. However, some scholars have noted that with the Supreme Court's decision in *Kiobel v. Royal Dutch Petroleum*, U.S. corporations are less likely to be sued by foreigners under the Alien Tort Claims Act.<sup>22</sup> Even past lawsuits based on good faith effort in regards to this specific topic have been dismissed by circuit courts.<sup>23</sup>

In order to address this matter, the topic of corporate transparency seems to come to mind. Greater transparency concerning issues with suppliers can not only build greater consumer trust<sup>24</sup> but can also put greater pressure on corporations to force suppliers to correct cited violations, therefore lowering the chances of another Bangladesh tragedy. One way to have greater transparency is to pass legislation that mandates certain disclosures with regards to U.S. corporations utilizing foreign suppliers. One proposed bill is HR 5247.<sup>25</sup> HR 5247, introduced by Representative Ron Kind, is an

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<sup>19</sup> Emily Fox, *Shoppers lash out at stores over Bangladesh*, CNN MONEY (May 2, 2013) available at <http://money.cnn.com/2013/05/01/news/companies/bangladesh-factory-shoppers/index.html> (last visited February 1, 2015).

<sup>20</sup> Walmart, *Walmart's Standards for Suppliers*, WALMART, <http://corporate.walmart.com/global-responsibility/ethical-sourcing/standards-for-suppliers> (last visited April 6, 2015).

<sup>21</sup> Steven Greenhouse, *U.S. Retailers See Big Risk in Safety Plan for Factories in Bangladesh*, N.Y. TIMES (May 22, 2013) available at <http://www.nytimes.com/2013/05/23/business/legal-experts-debate-us-retailers-risks-of-signing-bangladesh-accord.html?pagewanted=all>.

<sup>22</sup> *Id.*

<sup>23</sup> *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677 (9th Cir. 2009).

<sup>24</sup> Guardian Labs, *Corporate transparency: Why honesty is the best policy*, THE GUARDIAN (Aug. 4, 2014) available at <http://www.theguardian.com/sustainable-business/corporate-transparency-honesty-best-policy>.

<sup>25</sup> Rep. Ron Kind Introduces Bill to Stop child Labor Overseas, H.R. 5247, 2014 Sess. Available at <http://kind.house.gov/latest-news/rep-ron-kind-introduces-bill-to-stop-child-labor-overseas/> (last visited Nov. 15, 2014).

amendment to the Tariff Act of 1930.<sup>26</sup> The amendment would do away with the “necessary labor process” portion of the Act and thus would, “prohibit the importation of goods made with labor classified as convict labor, forced labor, or indentured labor.”<sup>27</sup> The bill would require reports to “ensure accountability” by requiring, “the Commissioner of U.S. customs and Border Protection [to] submit a report on compliance” to the bill.<sup>28</sup> A concern with these types of bills is that they do not address the whole issue. HR 5247 only address workforce issues. It does not address other crucial issues such as factory safety, chemical management, possibly excessive overtime, or product education.

A more impactful solution would be to set up an independent committee much like the two committees set up in the aftermath of the Bangladesh incident. The Bangladesh Accord and the Alliance for Bangladesh Worker Safety are two separate committees that various corporations have signed and gave funds to in order to address a range of worker safety issues in Bangladesh.<sup>29</sup> Both committees have inspections and governing bodies that oversee the inspection of various garment factories. All aspects of factory safety are inspected.<sup>30</sup> More importantly, these inspection reports, which detail levels of compliance and deficiencies of each factory, are released to the public.<sup>31</sup> These reports also detail the progress that the factories are making. While an electronic company like Apple does release its audit reports, it does not state important information such as which supplier has violated which standard and how much progress a supplier is making.<sup>32</sup>

A committee that has signatories from various electronics companies is a viable solution to foreign supplier conduct. Like the two Bangladesh

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<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Steven Greenhouse and Elizabeth A. Harris, *Battling for a Safer Bangladesh*, N.Y. TIMES (April 21, 2014) available at [http://www.nytimes.com/2014/04/22/business/international/battling-for-a-safer-bangladesh.html?\\_r=1](http://www.nytimes.com/2014/04/22/business/international/battling-for-a-safer-bangladesh.html?_r=1).

<sup>30</sup> Accord, *Inspections*, BANGLADESHACCORD.ORG (last visited April 6, 2015) available at <http://bangladeshaccord.org/inspections/>; Alliance, *Standards and Assessments*, BANGLADESHWORKERSAFETY.ORG (2013) available at <http://www.bangladeshworkersafety.org/programs/standards-assessments>.

<sup>31</sup> Alliance, *Inspection Reports and Corrective Action Plans*, BANGLADESHWORKERSAFETY.ORG (2013) available at <http://accord.fairfactories.org/ffcweb/Web/ManageSuppliers/InspectionReportsEnglish.aspx>; Alliance, *Factory List and Inspection Reports*, BANGLADESHWORKERSAFETY.ORG (2013) available at <http://www.bangladeshworkersafety.org/factory-list-inspection-reports>.

<sup>32</sup> Apple, *supra* n. 9.

committees, this committee would also issue transparent reports with regards to whether a certain supplier is compliant to standards and the progress that supplier is making. Unlike a specific bill, the committee and its inspectors would survey all aspects of these suppliers, which include handling chemicals, work place safety, and structural safety. Unlike the Bangladesh committees, this committee could adopt Apple's monitoring of excessive overtime and wage rates. The committee could also adopt the inspection provision by the Bangladesh Accord, which hires independent inspectors to evaluate these suppliers, unlike Apple who conducts their own inspections. While this may be a derisive point because of how important trade secrets are to the electronics industry, especially with Apple<sup>33</sup>, independent inspectors would provide a greater credibility to the audits that are conducted. It is clear that more needs to be done with regards to foreign workers and a committee such as this one could provide the solution.

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<sup>33</sup> Duhigg and Barboza, *supra* note 1.

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