

# **Report on Proposed Designated Suppliers Program\***

## **University Senate External Relations Committee**

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## Executive Summary

The Designated Suppliers Program (DSP) outlines a proposal to ensure university logo apparel are not produced under sweatshop conditions, to an extent not feasible through current codes of conduct and enforcement strategies. The Program calls for university logo apparel to be sourced from a set of designated supplier factories. The Worker Rights Consortium (WRC) would act as the accrediting and monitoring agency on behalf of participating universities. In addition to current standards embodied in university codes of conduct, accreditation as a designated supplier requires that factories:

- Demonstrate that their employees are represented by a legitimate, representative labor union or other representative employee body;
- Demonstrate that their employees are paid a living wage, predicated on their receiving prices and quantities for their products sufficient to cover costs; and
- Produce primarily or exclusively for the university logo goods market, or for other buyers committed to equivalent standards (including a living wage).

The Program raises a number of legal, economic, and logistical concerns:

- **Legal:** Horizontal agreements between Columbia and other universities regarding the terms by which they do business with licensees and manufacturers may present a significant risk of antitrust liability.
- **Economic:** i) Price elasticity of demand suggests that licensees may face difficulty meeting purchase quotas with the rising cost structure that the Program entails; and ii) the two-thirds production quota dictates that licensees must use the same factories, which may limit product differentiation and innovation and insulate inefficient plants from market forces.
- **Logistical:** i) Concentrating production does not mitigate the need for effective, ongoing monitoring; and ii) the WRC acts as both the accrediting and monitoring agency with neither an independent check, means for arbitration, nor a role for the Fair Labor Association (FLA).

The Senate External Relations Committee therefore recommends that the University:

1. Reaffirm its commitment to our current Codes of Conduct;
2. Seek better means to ensure that our suppliers and licensees adhere to these ethical business practices;
3. Reaffirm our commitment to work within the frameworks established by both the Fair Labor Association and Worker Rights Consortium;
4. Support the general goals and principles embodied in the DSP as one possible avenue for improved monitoring and oversight to ensure the required respect of workers' rights;
5. Work with participating universities to mitigate to the extent possible the legal economic, and logistical barriers posed by implementing the DSP;
6. Request that the WRC obtain a Department of Justice letter of understanding regarding the DSP's potential antitrust liabilities;

7. Explore possible alternatives, such as monitoring the top five licensees, incentivizing factories and licensees to use a “No-Sweat Logo,” and hiring an independent monitoring agency;
8. Report annually to the Senate on the compliance rates of licensees and suppliers, including any violations detected and any remedial actions taken;
9. Establish an independent review committee to evaluate WRC, FLA or other monitoring agencies’ decisions regarding violations of codes of conduct and any remedial actions taken, similar to the Committee on Socially Responsible Investing; and
10. Hold a Global Initiatives Forum to educate the Columbia community about the social, economic, and humanitarian issues raised by the global supply chain.

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# Evaluation of Proposed Designated Suppliers Program

## Overview

The purpose of this document is to provide an overview of the Designated Suppliers Program (DSP) and review the legal, economic, and logistical issues that may arise with Columbia University's participation. The proposal, drafted by the United Students Against Sweatshops (USAS) and endorsed by Columbia's Students for Economic and Environmental Justice (SEEJ), responds to a real need to meet the challenges of monitoring labor standards in a global economy. Two key factors accentuate these difficulties: 1) monitoring and verifying compliance is uneven, costly and difficult; and 2) the global supply chain creates significant competitive pressures that work against implementation and enforcement of university codes of conduct, as manufacturing is outsourced and production is shifted to the lowest-cost suppliers.

In recognition of these trends, the goal of the DSP is to provide a more effective means to ensure that university logo apparel is made in an environment respectful of workers' rights, that provides a fair (living) wage, and that allows for legitimate worker representation. Under the plan, participating universities would require their logo apparel to be produced from a list of designated or accredited suppliers. To that end, the Worker Rights Consortium (WRC) would identify those factories that comply with certain specified conditions regarding their employees.

In reviewing the proposal, the University Senate External Relations Committee met with concerned student groups, the Senate Student Affairs Committee, and members of the WRC Advisory Board. Committee members also consulted with administration officials, sought expert advice on the economic and legal implications of the proposed Program, attended public hearings, and reviewed relevant documents.<sup>1</sup> In parallel, administration officials participated in WRC-organized meetings and Fair Labor Association (FLA) conference calls, and they discussed the DSP with relevant licensees and suppliers.

As a result of these deliberations, and as a foundation for its later recommendations, the Senate External Relations Committee determined that:

- 1) The University's current Codes of Conduct are sound and need not be altered at this time;
- 2) Current monitoring and oversight efforts may be inadequate to ensure compliance with University Codes of Conduct;
- 3) The Designated Suppliers Program is a serious effort to mitigate these monitoring issues;
- 4) Implementation of the DSP in its present form presents a number of legal, economic, and logistical issues that may prove difficult to overcome;

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<sup>1</sup> Appendix 1 provides a timeline of Senate activities around this issue.

- 5) Other alternatives that are more market-based may meet similar objectives of the DSP and induce the participation of key stakeholders, without running the risks of antitrust violations;
- 6) Monitoring agencies could aid the University's enforcement efforts by providing greater transparency and reporting on violations found, remedial actions taken, and annual compliance rates to assess the effectiveness of enforcement strategies and whether performance targets are met; and
- 7) The WRC and FLA need to improve organizational competency to adequately carry out their current mandates of monitoring activities, reporting to member universities about compliance with their codes, and assisting suppliers to meet labor standards.

This report first provides background material relating to University Codes of Conduct and their implementation. It then provides an overview of the Designated Suppliers Program as currently formulated and offers an assessment. The last section details the committee's recommendations for achieving the goals embodied in the DSP.

## ***Background***

The Senate External Relations and Research Policy Committee holds the primary policy jurisdiction in overseeing University relations with commercial vendors and other third-party organizations. On March 31, 2000 the Senate resolved that the External Relations Committee annually "evaluate the University's involvement in the Fair Labor Association, Worker Rights Consortium, and other groups dedicated to ending sweatshops," and report to the University Senate. In the execution of these powers, the Committee has been requested to review and provide recommendations concerning the DSP.

Columbia University has a long history of involvement and activism in promoting workers' rights and fair international labor standards.<sup>2</sup> In 1999, Columbia University became a member of the Fair Labor Association, which represents universities and industry leaders to provide ongoing monitoring of licensees and their relations with suppliers of university logo apparel. In 2000, the University became a founding member of the Worker Rights Consortium, which brings together concerned students, university administrators and economic and legal experts to monitor factory violations of workers' rights.

On January 28<sup>th</sup>, 2000, the University Senate proposed and adopted a Code of Workplace Conduct for Columbia University's Licensees. The Code sets forth a number of goals regarding the conditions under which Columbia University logo apparel is produced and rewards licensees who help work towards achieving these goals, including:

- No forced or child labor;
- Compliance with local health, safety and environmental standards;

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<sup>2</sup> An overview of Columbia resolutions regarding business codes of conduct can be found at: <http://www.columbia.edu/cu/senate/committees/external/main.html>.

- Freedom of association and collective bargaining;
- Equal pay and employment opportunities; and
- A living wage to be “determined for individual workers or households in each country.”

These enabling resolutions define the backdrop against which the Designated Suppliers Program is to be reviewed and evaluated.

## ***Designated Suppliers Proposal***

### **Global Supply Chain**

Figure 1 outlines the links in the global supply chain for the manufacture and distribution of university logo apparel. In the first stage, Columbia University grants a license to a vendor providing them with the rights to use our trademarks and logos to manufacture emblematic apparel. Licensees, such as Nike and Reebok, pay a royalty to Columbia for the sales of these products.<sup>3</sup>

The licensees can either manufacture the product themselves or, more commonly, outsource production to garment producers throughout the world. Examples of producers of university logo apparel, but not necessarily Columbia University logo apparel, include MexMode in Mexico and Just Garments in El Salvador.

At the factory level, the garments are produced to the quality, price and quantities negotiated between the licensees and the factories. The product is then shipped to fulfill orders that the licensee receives from the Columbia University bookstore and other retail outlets.

### **Current Monitoring Arrangements**

Figure 2 illustrates the current sequence of events by which Columbia University’s Codes of Conduct influence the production process. First, in entering into contracts with Columbia, licensee brands such as Nike and Reebok agree to adhere to University Codes of Conduct and whatever other conditions Columbia specifies.

Second, as part of its agreement with Columbia, the licensee inserts University Codes of Conduct into the contracts it negotiates with the factories that produce the university logo apparel. Also specified in this contract are the usual terms of prices, quantities, delivery times, and so on. Third, the factories then produce the goods consistent with the contract that they have signed with the licensees.

The figure also makes clear the advantages and disadvantages of the current system. On the positive side, contracts between universities and licensees and between licensees and producers are negotiated freely and openly on an individual basis. This helps ensure

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<sup>3</sup> While some universities rely solely on in-house management of licensees and trademarks, Columbia University outsources a part of its program to a third party to manage its royalties and licensing proceeds.

some degree of competition in the market and thus provides incentives for efficient production and distribution.

On the other hand, adherence to the University's Codes of Conduct is a bit like a game of "telephone:" the codes are transmitted from the university to the licensee to the producer, the latter of which is under constant pressure to reduce costs in order to remain competitive. This raises the possibility that, contractual obligations notwithstanding, producers may fail to fully comply with the hours, working conditions, and wages specified in the Codes of Conduct. Also, there is a growing trend for brands to move production to low-cost suppliers who may not meet codes, which may undermine the incentives workers and plants have to push for improved working conditions.

To ensure that Columbia University Codes of Conduct are respected in the production and distribution of logo apparel, the University thus relies on third party monitoring agents, such as the FLA and the WRC. As indicated in the figure, the FLA monitors contracts between licensees and producers to guarantee their compliance with University Codes of Conduct. The FLA also monitors working conditions at factories on a spot-check basis. The WRC monitors factories by investigating specific complaints brought against those producers. Both organizations make available data on complaints and enforcement actions taken.

### **Designated Suppliers Program**

The Designated Suppliers Program was devised as a response to the problems of monitoring and compliance under the existing set of arrangements. The program is based on the principle of *ex ante* accreditation, rather than *ex post* investigation of alleged abuses. Figure 3 illustrates the sequence of events as currently formulated under the DSP.<sup>4</sup>

The process now begins with WRC accreditation of factories producing university logo apparel goods. In addition to complying with local and internationally recognized labor standards, accreditation as a designated supplier requires:

- Firms to pay a living wage for a family;
- Two-thirds of each factory's production to be for university licensees or others who adhere to the same codes; and
- Legitimate worker representation, through a union or other elected representative body.

Second, universities negotiate contracts with licensees, as before. For all universities participating in the DSP, these contracts will have similar requirements regarding wages, hours and union representation. Third, licensees negotiate contracts with suppliers, but under more stringent conditions than before. Implementation of the Program is to be phased in over a three-year period, with the percentage of goods that licensees are required to source from designated supplier factories increasing from 25 percent in the first year to 50 percent in the second, and up to 75 percent in third. Also, the price

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<sup>4</sup> The DSP proposal can be found at: <http://www.columbia.edu/cu/senate/committees/external/dss.htm>. Appendix 2 provides a summary of the roles mandated by the DSP for each stakeholder.



negotiated in this contract must be consistent with the living wage requirement. If the producer believes that the negotiated price is too low, they may appeal to the WRC to investigate and, if necessary, adjust the contract accordingly. Thus, all licensees doing business with any given factory will perforce negotiate similar wage levels.

Finally, the factory produces the university logo apparel under the conditions specified in the contract. Designated supplier factories must produce at least two-thirds of their annual sales for the university logo goods market. It is the responsibility of the licensees to ensure that this condition is met.

In summary, the DSP fundamentally alters the way the WRC would monitor and oversee the production of logo apparel. In particular, relative to the *status quo*, the proposal:

- Creates Designated Suppliers
  - Currently, the WRC and FLA investigate complaints of non-compliance and violations.
  - The proposal requires the WRC to accredit a plant as being in compliance, as stated above.
  - Universities must purchase a minimum amount of products from suppliers that are accredited by the WRC.
  - Universities will rely solely on the WRC as the monitoring organization.
  - The WRC would expect a university to accept its conclusions about infringements without the possibility of review.
- Mandates a Living Wage
  - Currently, plants are required to adhere to all local minimum wage laws and rules and regulation regarding wages.
  - The proposed plan mandates that the factory must demonstrate that its employees are paid a living wage.
- Requires Union Representation
  - Current policies endorse the concept of free association.
  - The proposed plan requires that employees be represented by a legitimate, representative labor union or other representative employee body—they cannot choose to forego such representation.

### ***Assessment of the DSP***

To begin with, the Committee praised students' involvement in promoting the Designated Suppliers Program. The proposal addresses core values of the University, it raises valid concerns that adequate oversight and monitoring of current Codes of Conduct is not taking place, and highlights a pressing issue of maintaining workers' rights in a globalized environment. Some concerns about antitrust violations remain, however, as well as economic and logistical issues that must be addressed if the DSP is to be effective at reaching its goals.

## Antitrust Risks

In January 2006 the Worker Rights Consortium, the sponsoring agency of the Designated Suppliers Program, retained Donald Baker, senior partner at Baker & Miller, PLLC, and former Head of the Department of Justice's Antitrust Division, to offer an assessment of the antitrust risks associated with the implementation of the Program.<sup>5</sup> The Report found minimal risk of antitrust actions taken pursuant to the requirements of the Program. In response, the Fair Labor Association, an alternative monitoring agency of which Columbia is also a member, offered a series of counterpoints to the arguments advanced by the Baker Report, to which Baker offered rebuttals and qualifications.<sup>6</sup>

In light of the contradictory risk assessments advanced by FLA and the WRC, the University Senate External Relations Committee requested that Columbia University's Office of the General Counsel (OGC) undertake its own antitrust review of the Designated Suppliers Program. The Committee raised concerns about the proposed Program that it felt were not adequately addressed by the Baker Report. In particular, the Committee sought to understand whether horizontal coordination among universities with respect to contract terms imposed on licensees would constitute resale price maintenance and may violate U.S. antitrust law.

In response, the OGC retained its own antitrust counsel, who provided a general assessment of the antitrust risks to Columbia's potential participation in the DSP. To our knowledge, this advice provides the first independent assessment of the potential antitrust liabilities created by the University's membership in the Program.

In brief, the OGC was advised that some aspects of the Program will pose little or no antitrust risk, but that other aspects of the Program may present more substantial risks. In particular, the advice addressed two potential sources of liabilities created by the coordination among universities with respect to contract terms: vertical and horizontal agreements.

Vertical agreements entail actions taken by Columbia or other universities to insist that their licensees meet certain requirements regarding the labor conditions under which their licensed products are manufactured. Provided that each university acts on its own rather than pursuant to an agreement with other universities, requirements regarding the process by which university apparel goods are produced present no substantial antitrust risk. Unilateral action by Columbia that requires licensees to comply with various specifications regarding working conditions would be regarded by the antitrust laws as a permissible unilateral decision by a licensor about the terms on which it is willing to enter into a license agreement.

In many ways, this is equivalent to the University deciding to boycott Coke, Nike or another producer because its business practices do not meet with our codes of conduct or

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<sup>5</sup> The Baker Report can be found at: <http://www.columbia.edu/cu/senate/committees/external/nova06.pdf>.

<sup>6</sup> For various exchanges and debates concerning the DSP see <http://www.workersrights.org/dsp.asp>.

other stated values. As long as this assessment is made independent of other universities' actions, Columbia University would not incur antitrust liability.

To the extent that the DSP program entails horizontal agreements between Columbia and other universities, however, it could raise antitrust risks. One of the key, though disputed, premises of the Baker Report is that logo products of one university do not compete with those of another university. Laying aside this assumption about the competitive nature of the downstream retail market, the Program is more directly focused on upstream markets in which universities deal with manufacturers and distributors of logo products. In these markets, the universities are competitors with one another. Therefore, agreements among universities regarding their dealings with licensees and suppliers may be viewed as horizontal agreements for antitrust purposes.

There are two potential types of horizontal agreements. The first is Columbia's collaboration with other universities to enjoin the WRC and/or the FLA to verify that our codes of conduct are adequately met. Cooperation among universities on monitoring and labeling of logo apparel presents little antitrust risk as it seeks to achieve cost savings and efficiencies and do not interfere with market conduct.

A second more problematic collaboration occurs when universities enter into agreements about the terms on which they conduct business with licensees and manufacturers. In such cases, antitrust laws usually require that anticompetitive agreements among competitors promote economic efficiency. It is not clear whether the humanitarian goals of the DSP will be found to meet this requirement. Therefore, there is a real risk that a horizontal agreement between Columbia and other universities about contract terms will be found unlawful.

To avoid such risks, Columbia University should not enter into any agreement with other universities about terms that it will require from its licensees. One way for Columbia to participate in the DSP while avoid antitrust risk is to continue supporting the WRC's monitoring, labeling, and information gathering functions, but make it clear that it is acting unilaterally in setting the conditions under which it transacts business with licensees.

A number of additional concerns have surfaced about the antitrust implications that may arise with the implementation of the DSP. First, any attempt to arbitrarily fix the number of "accredited firms" will automatically raise suspicions of a closed anticompetitive group.<sup>7</sup>

Second, the DSP envisions that prices will be negotiated between the licensees and suppliers. However, in setting the living wage, the WRC will perforce set a floor to this price. While such a minimum price poses some concern, a more significant issue arises with the oversight the WRC exercises on the contracted price. That is, if a factory asserts that the licensees did not offer prices sufficient to cover the living wage, the WRC will

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<sup>7</sup> The consolidation of production into 140 to 200 firms has been raised a number of times in various communications with the WRC.

mandate that the licensee renegotiate this price. The outcome of this bargaining and renegotiation will be that the WRC *de facto* sets price, which may be viewed as horizontal price fixing for antitrust purposes.

Third, while the WRC can monitor and certify that suppliers are in compliance with codes of conduct, the University must reserve the right to review each decision to decertify suppliers or terminate contracts independently and act unilaterally from either the WRC or other participating universities. Such assessments place an enormous burden on the University, but may be worthwhile, and are similar to the efforts undertaken by the Socially Responsible Investing Committee in reviewing each of the proxy statements of companies held in the university's investment portfolio.

## **Economic Issues**

### **Living Wage**

The DSP requires that licensees pay their workers a living wage based on the amount needed to support a family. Not only would this wage be higher than the minimum necessary to attract workers, it would be higher than the minimum wage, prevailing wages, and even the wages required in Columbia's current Code of Conduct, which calculates a living wage with respect to either individual or family needs, according to the case.

This disparity in wages presents a number of issues. How, for instance, would factories parcel out these highly lucrative jobs, and what steps would be necessary to avoid corruption and/or kickbacks in this process?<sup>8</sup>

On a purely economic level, the rise in costs will adversely affect employment in the industry by two routes. First, rising costs will be passed on to consumers as increased prices, which will lower aggregate demand for these products and thus shrink the size of the market. Second, significant increases in labor costs will encourage licensees and producers to substitute capital for labor in the production process, again reducing industry employment. It is almost certain, then, that adoption of the DSP would cost some workers their jobs, and these losses need to be balanced against the gains that accrue to those still in the industry.<sup>9</sup>

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<sup>8</sup> This point sidesteps the numerous concerns raised regarding the criteria for setting a living wage. What is clear, however, is that flexibility is essential. Firms and workers should be able to choose among a menu of options to reflect local economic, political and social conditions, such as trading off higher wages for increased health benefits.

<sup>9</sup> These same employment issues apply to any wage standards, such as the minimum wage requirements in the U.S. There are significant differences, too, however. For one thing, U.S. minimum wage standards are substantially below the equivalent of what the DSP defines as a "living wage." Also, countries with large proportions of the population living at or below the poverty line often lack an adequate safety net for their poorest citizens. The impact of losing one's job in these countries is thus significantly greater than it would be in the U.S. or other advanced industrialized countries.

## **Fair Price**

Associated with the living wage is the requirement that licensees pay a fair price for logo apparel goods, defined as a price sufficient to allow factories to meet the demands of adhering to DSP wage, hour, and working condition requirements. Since the WRC is the ultimate arbiter of whether a given licensee-supplier contract embodies a fair price, it has *de facto* control over wages in each market. One concern is that the WRC will use its leverage over the contract price to equalize costs of production across markets, and thereby drive out competition. In this scenario, price competition will no longer be a factor in the selection of suppliers.

## **Production Quota**

Licensees now have the obligation to verify that associated factories produce at least two-thirds of their output for the logo apparel market. According to the DSP, “the purpose of this requirement is twofold: to ensure that designated suppliers receive sufficient orders at prices adequate to allow for compliance with Program standards, and to ensure that these orders are sufficient in volume, and in consistency over time, to enable suppliers to provide stable employment to their workers.” The two-thirds production quota dictates that licensees must use the same factories for production, which may limit product differentiation and innovation and insulate inefficient plants from market forces.

These provisions also raise participation issues for both licensees and suppliers. For suppliers, it is not clear that any one factory would agree to restrict itself to producing two-thirds of its output for the university logo apparel goods market. Such a production strategy would greatly reduce diversification, restrict supplier volume and expose the supplier to the vagaries of this particular market.

Licensees now face a number of new requirements as well. They must monitor the total output of each factory with which they do business, to ensure that the two-thirds production requirement is met. And they, apparently, are also required to assure suppliers a certain volume of business. By setting both the price and quantity of goods bought and sold in this market, the DSP would have to make provisions for the possibility that aggregate demand falls short of the desired level, given the rise in prices and the responsiveness of consumers to that price. As a result, many licensees, both small and large, may simply refuse to participate in the DSP.

## **Logistical issues**

### **Monitoring**

First and foremost, adoption of the DSP would not eliminate the need for monitoring accredited factories. The two-thirds production quota will inevitably consolidate production into a smaller number of firms than currently supply the university logo apparel market. However, the intensity and scope of monitoring activities at each factory will increase significantly.

The DSP envisions the WRC not just as a monitoring agency, but as an accrediting body whose responsibilities include setting the living wage on a case-by-case basis, overseeing

contracts between licensees and factories to ensure that the price and quantity are sufficient to cover the costs of the DSP, and ongoing monitoring of the two-thirds production quota.

These increased responsibilities come despite the fact that the WRC's current resource constraints and competencies hinder effective monitoring and reporting of information to member institutions. Of particular concern to the University is the lack of adequate, updated compliance data. For example, as an exercise to determine the compliance rate of our top five licensees, inquiries were made to the WRC, FLA, and directly to three of the licensees. The full results of this exercise are reported in Appendix 3: in short, the outcome was disappointing, as little useful information was uncovered.

### **Potential Lost Revenues**

Participating in the Designated Suppliers Program may have economic consequences for the University. Sales of emblematic merchandise support two main areas of University activity: the Columbia University Student Center and the Athletics Department.

#### *Columbia University Student Center and Barnes & Noble College Bookstores (BNCB)*

Our Agreement with BNCB was negotiated in good faith based on the then current levels of sales and codes of conduct. If the licensees are limited by Columbia's participation in the DSP or if licensees exit the market because of the new criteria, and we continue to allow only emblematic apparel products to be sold in our Bookstore, then sales have the potential to decrease. It would seem likely that BNCB would attempt to renegotiate the terms of its agreement based on these new assumptions.

The top three licensees currently comprise approximately 72% of Columbia's emblematic apparel business. If the top three licensees decide to eliminate Columbia from their programs, this decrease in sales could affect the funding of the Alfred Lerner Hall Student Center by numbers into the six figures.

#### *Columbia Athletics and Licensing*

By the same reasoning, if the royalties paid by licensees decrease, the funding to Athletics will decrease. If Columbia's top two licensees discontinue agreements, 46% of our licensing revenue will be lost or will need to be replaced.

In addition, Nike is one of the largest suppliers of athletic uniforms and equipment. Based on our knowledge of Nike's own investment in code compliance, Nike would most likely not participate in the DSP. Columbia Athletics would need to source and replace the above mentioned items and additional equipment incentives that Nike currently offers.

### **Other Logistical Concerns**

A number of other logistical concerns have been raised throughout the deliberative process. These include:

- What is the minimum number of designated factories required to fulfill licensee obligations, and what would the WRC consider the maximum allowable number of factories in order to maintain monitoring ability?
- What is the minimum number of universities required to join the DSP for licensees and factories to maintain adequate sourcing levels?
- Is the 6-18 month period for transition lengthy enough to accommodate current sourcing practices? How do licensees source and how far in advance do they make sourcing decisions?
- Regarding the living wage, are there any other programs/industries that have applied this standard, and if so, how successfully?
- What about the labor organization requirement in countries where unions are illegal? Would licensees be able to continue sourcing from these countries? Could the union requirement put workers at risk in some countries?
- How would DSP work with small, local licensees (e.g., those in Manhattan)? Would they face serious problems absorbing the increased cost and higher retail prices? How would we reconcile this with Columbia's "buy local" commitment?
- It is the belief of the DSP authors that sourcing levels are so low in the majority of factories due to the number that are being used that there will be no impact on workers if we move to the designated factories. Has due diligence been completed with our direct licensees to confirm this assumption?
- What role does the FLA play in the monitoring process moving forward?
- What type of criteria will we look for to measure the success of this process vs. our current one? How do we weigh the pros and cons?
- If there are no reasonable improvements in working conditions, do we move forward or revert back to current process?

## ***Recommendations***

Based on the findings and analysis above, the Senate External Relations Committee therefore issues the following recommendations.

### **Recommendation 1: Reaffirm our commitment to current Codes of Conduct**

- In reviewing Columbia's Codes of Conduct, especially when compared to our peer institutions, the committee has found that our current codes governing business practices were sound and should not be altered at this time.

### **Recommendation 2: Require better enforcement of Codes of Conduct**

- The committee found that while the Codes of Conduct and the values expressed in these codes were sound, enforcement strategies have proved

inadequate to ensure that our suppliers and licensees adhere to these ethical business practices.

- Neither the FLA nor the WRC have the competency or resources necessary to oversee the logo apparel supply chain as currently constituted.
- Strengthening the organizational capacity of both monitoring agencies should be a priority.

**Recommendation 3: Reaffirm our commitment to both the FLA and WRC**

- The University should reaffirm its commitment to work within the frameworks established by both the Fair Labor Association and Worker Rights Consortium.
- The FLA and the WRC provide complementary information that helps the University better evaluate whether its licensees are adhering to accepted business practices.
  - The FLA represents universities, licensees and suppliers and therefore reflects the business side of the global supply chain.
  - The WRC represents universities, students, and leading academics in the fields of labor law, economics, and development and therefore reflects the humanitarian and intellectual side of the global supply chain.
- Both sides of the equation are necessary for the University to make well-informed decisions regarding the adherence to its Codes of Conduct.

**Recommendation 4: Support the general goals and principles of the DSP**

- The general goals and principles embodied in the DSP reflect the core moral and humanitarian interests expressed in the University's Codes of Conduct.

**Recommendation 5: Participate in the DSP Working Groups**

- The DSP represents one possible avenue for improved monitoring and oversight to ensure the required respect of workers' rights.
- It is in Columbia's interest to participate in any dialogue concerning the effectiveness of monitoring and oversight of the University's Codes of Conduct.
- Columbia University should, therefore, work with participating universities to mitigate, to the extent possible, the legal, economic, and logistical barriers associated with implementing the DSP.

**Recommendation 6: Request a business letter of understanding**

- Legal counsel raised concerns that agreements between universities on the terms of contract may create significant antitrust liability.
- Columbia University actions to ensure adherence to ethical business practices should not violate U.S. law.



- It may reduce the University’s liabilities if the WRC obtained a letter of understanding from the Department of Justice regarding the DSP’s potential antitrust risks.
- Such a letter would not reduce exposure to private law suits, but it may limit the downside.
- In all cases, the University should reserve for itself the right to make unilateral decisions regarding any alterations in its business arrangements.

**Recommendation 7: Explore alternative monitoring and enforcement strategies**

- The legal, economic, and logistical questions raised by the implementation of the DSP highlight the need for overlapping and complementary oversight.
- It is implausible that any one monitoring mechanism will perfectly oversee as complicated a process as the global apparel supply chain.
  - One possible strategy would be to focus monitoring and oversight efforts on the top five licensees.
    - This strategy will cover 80 percent of the total market supply.
- To give licensees and factories incentives to self-monitor and voluntarily adopt costly and stringent monitoring efforts, more market-based alternatives may be required. These might include:
  - Incentivize licensees and factories to create a “No Sweat” logo, similar to “Dolphin-Free Tuna” and the “Fair Trade Coffee” campaigns.
    - Product differentiation for goods produced in a “sweat-free environment” may create added value.
    - If so, this will cause firms to enter that segment of the market.
    - This in turn creates incentives for producers to adhere to fair labor guidelines.
  - The University may also wish to hire an independent monitoring agency or directly visit factories itself.

**Recommendation 8: Report on compliance rates**

- To assess the effectiveness of the University’s monitoring efforts, it is necessary for the University to obtain timely and adequate compliance data, including five-year aggregate trend data and data broken down by licensee.
- For each of the University’s licensees, the report should clearly define the methodology used, nature of the violation, level of seriousness, remedial action recommended and action taken.
- The administration should report annually to the Senate on the compliance rates of licensees and suppliers. They should also highlight any licensees that have consistent patterns of violations despite intervention.

**Recommendation 9: Independent review committee on socially responsible business practices**

- Establish an independent review committee to evaluate WRC, FLA or other monitoring agency's decisions regarding violations of Codes of Conduct and any remedial actions taken.
  - In effect, this creates a committee similar to the Committee on Socially Responsible Investing, which annually reviews proxy votes as means to check the practices of companies held in the University's portfolio.

**Recommendation 10: Global Initiatives Forum on sweatshops**

- The University should host a Global Initiatives Forum to educate the Columbia community about the social, economic, and humanitarian issues raised by the global supply chain.

# Appendices

## **Appendix 1: Timeline and Senate Actions Taken on Sweatshop Issue**

- In September, the Students for Environmental and Economic Justice (SEEJ) presented a proposal drafted by the United Students Against Sweatshops (USAS) to the University for consideration.
- On November 4<sup>th</sup> the chair of the Senate External Relations committee met with student groups to discuss the proposal and possible follow up actions.
- In January, The Senate has put up a website on Sweatshops. The link is: <http://www.columbia.edu/cu/senate/committees/external/main.html>.
- On January 20<sup>th</sup> the Workers Rights Consortium (WRC) Board of Directors issued a statement endorsing the USAS Designated Suppliers Proposal.
- On January 26<sup>th</sup> the Chair of the External Relations Committee met with WRC Board member and Law School Professor Mark Barenberg to discuss the proposal and potential legal challenges.
- On January 27<sup>th</sup> SEEJ students met with the External Relations Committee to discuss the proposal.
  - This was the first formal introduction of the DSP proposal to a Senate body.
- On February 3<sup>rd</sup> the External Relations chair met with SEEJ representatives, Lisa Hogarty, Honey Sue Fishman (administrators directly responsible for the implementation of University Codes of Conduct), and Professor Mark Barenberg to discuss a range of possible University actions.
  - It was agreed that the chair would draft a preliminary report within two weeks.
    - No unqualified letter of recommendation was guaranteed.
    - It was agreed that the principles and goals of the DSP are consistent with our current codes of conduct.
    - Concerns were raised about the economic feasibility of the proposal, possible antitrust violations, and buy-in from the various stake-holders.
  - It was noted that the Senate External Relations Committee would have to deliberate and review the recommendations.
  - It was stated that the administration and the Senate would work in parallel to complete their respective reviews, hopefully within a two-month time frame.
  - It was also clearly stated that the Senate did not have the authority to bind the Administration to any particular timeline.

- On February 15<sup>th</sup> Sharyn O'Halloran, the External Relations Committee chair, attended a presentation by garment workers hosted by SEEJ and United Students Against Sweatshops. Key findings:
  - Free association and collective bargaining was important to gain access to better worker standards and higher pay;
  - With the end of the Multi-Fiber Agreement, production has shifted orders to lower cost producers, most notably China, Bangladesh, and Vietnam.
    - Focus has shifted from improved working conditions (which continue to be a central concern) to maintaining production demand in the face of rising costs and global competition.
  - In addition, in the face of global competition, brands now seek firms that can offer a “complete package” production process (from stitch to ship).
    - This requires significant up-front costs to be carried by the plants.
    - Limits producers to large, well organized plants and disadvantages cooperatives such as Just Garments.
- On February 17<sup>th</sup> an initial report with preliminary recommendations was made to the Senate Executive Committee, on which the President and Provost sit. The report was also circulated to the University Trustees.
- On March 10<sup>th</sup> the Senate External Relations Committee discussed the DSP and reviewed draft language of the report. A copy of the draft was forwarded to the Student Affairs Committee.
- On March 20<sup>th</sup> the Senate External Relations Committee requested the Office of General Counsel provide an independent review of the antitrust risks implied by Columbia’s participation in the DSP.
- On March 23<sup>rd</sup> SEEJ students met with President Lee Bollinger, Professor Mark Barenberg, Professor Sharyn O'Halloran, and Lisa Hogarty to discuss Columbia’s potential involvement in the DSP.
- On March 31<sup>st</sup> President Bollinger issued a statement supporting the DSP in principle. Professor Sharyn O'Halloran provided an update on the Sweatshop issue to the Faculty Caucus and the entire Senate in Plenary session.
- On April 6<sup>th</sup> SEEJ students wrote a letter demanding that the University come out in full support of the DSP so that Columbia could participate in a DSP Working Group on April 21<sup>st</sup>.
- On April 7<sup>th</sup> Senate External Relations Chair contacted the WRC and Jim Wilkerson from Duke to make sure the Columbia University students could indeed attend the Working Group.

- On April 9<sup>th</sup> Senate External Relations Chair gave the Student Affairs Committee an update on the Designated Supplier Program.
- On April 10<sup>th</sup> Senate External Relations Chair delivered a letter stating that SEEJ would not be barred from attending the meeting. The students requested that the administration also attend the meeting. Honey Sue Fishman called Jim Wilkerson to determine if Columbia University administration could also attend. Senate External Relations Chair called Mr. Wilkerson to get the necessary language in drafting the letter.
- On April 11<sup>th</sup> Lisa Hogarty and Senate External Relations Chair wrote a letter to that effect.
- On April 13<sup>th</sup> President Bollinger reissued his statement stating that Columbia University supported the general goals and principles of the DSP.
- On April 17<sup>th</sup> and 24<sup>th</sup> Senate External Relations Chair spoke with legal counsel regarding the DSP.
- On April 22 draft versions of the report were sent to the External Relations Committee and the Student Affairs Committee for comment and review.
- On April 27<sup>th</sup> revised versions of the report were sent to External Relations and the Student Affairs Committee.
- On April 28<sup>th</sup> Professor Mark Barenberg visited the External Relations Committee to discuss the DSP. The committee discussed the content of the report.
- On May 1<sup>st</sup> Senate Executive Committee reviewed the report and offered comments.
- On May 1<sup>st</sup> the Senate External Relations Committee met to finalize the report.
- On May 5<sup>th</sup> a written and oral report was presented to the Senate in plenary session.

## **Appendix 2: Designated Suppliers Program—Draft Operations Proposal**

The elements and responsibilities outlined below were gleaned from the *DSP Operations Plan Outline Working Paper* dated March 23, 2006.

### **Overview**

The purpose of this program is to ensure to an extent not possible through current codes of conduct and code of conduct enforcement strategies that university logo apparel products are not made under sweatshop conditions

University logo apparel goods would be sourced from a set of designated supplier factories that have been determined by the WRC to have affirmatively demonstrated full and consistent respect for the rights of their employees. In addition to respect for the standards currently embodied in university codes of conduct, the Designated Supplier Program requires the following from the key participants; factories, licensees, universities and the WRC.

### **Factory Requirements**

#### **The role of factories identified as candidates for designated supplier status:**

- Achieve compliance with all labor rights standards embodied in university codes of conduct.
- Cooperate fully and transparently, without resistance or delay, with the various stages of assessment and verification of code compliance that are part of the process of achieving designated supplier status.
- Recognize the union or other representative body of workers' choice as workers' official representative and collective bargaining agent.
- Negotiate a collective bargaining agreement in good faith with the union or worker body, when worker representatives are ready to do so. The collective bargaining agreement must include a living wage. If there is an existing collective bargaining agreement when the factory becomes a candidate designated supplier, the agreement must be renegotiated to include a living wage before full designated supplier status can be attained.

#### **Designated suppliers' role in ongoing management of the program:**

- Maintain compliance with all basic labor rights standards embodied in university codes of conduct. Cooperate fully and transparently with all assessment activities

by the WRC and act immediately to implement all remediation recommendations that are made.

- Fully implement and respect all collective agreements with the union.
- Ensure that the living wage standard is maintained in all future collective bargaining agreements. If, in response to a complaint from worker representatives, the WRC finds that the wage being paid is too low to meet this standard, immediately initiate a renegotiation with the union or representative worker body.
- Provide licensees with the information necessary to organize their production so that university logo goods represent at least 2/3 of each factory's production. It is ultimately the licensees' responsibility to ensure that 2/3 of each factory's production is for brands committed to the standard, but factories may wish to advise licensees on whether this requirement is likely to be met by the end of each year.

### **Licensee Requirements**

#### **During initial implementation:**

- Inform themselves about their obligations under the program.
- Provide the WRC with a list of factories they wish to nominate for designated supplier status, if any, with required application information for each factory.
- From among the nominated factories that the WRC determines to have a strong chance of achieving the code standards (based on nominations from licensees, unions, factory managers, and the WRC itself), identify those factories the licensees intend to use to meet their 25% first year sourcing obligation. This may involve consulting with other licensees to ensure a sufficient level of orders can be placed in a given factory.
- Work with the WRC, workers and their representatives, and factory managers to conduct remediation at these factories and bring them up to the code standards.
- Begin placing orders, at prices consistent with the DSP's fair pricing requirement, as factories achieve provisional designated supplier status.

#### **Licensees' role in ongoing management of the program:**

- Pay a price for each order placed at a designated supplier factory that is consistent with the fair pricing requirement.
- Ensure that the required portion of the licensee's university logo apparel (25% after the first year, 50% after the second year, and 75% after year three) is procured from designated supplier factories; repeat the factory nomination and selection process to bring more factories into the program as the sourcing requirement increases.



- Publicly disclose the level of university logo apparel production at each supplier factory, on an annual basis, in order to demonstrate compliance with the sourcing requirement.
- Coordinate with other licensees, where necessary, to ensure that 2/3 of each factory's production is for the university market.
- Monitor designated supplier factories for potential violations of the program's standards. Monitoring should include communication with the union or worker body to identify any potential problems at the factory as well as factory visits. (In the case of smaller licensees, who are using a designated supplier factory that is also producing for substantial number of other licensees, the monitoring obligation may not apply.)
- Participate in the process of factory nomination, factory selection, remediation, verification, etc. to bring new factories into the program, as needed (primarily in conjunction with the annual increase in the sourcing requirement).
- In the case of complaints and/or findings of violations by a factory or the licensee itself, licensee obligations are as follows:
  - a. In the case of a complaint regarding fair pricing, provide the WRC, on a confidential basis, with access to relevant financial and production records.
  - b. In a case where the WRC determines that a fair price is not being paid, renegotiate a new price with the factory.
  - c. In the case of a violation of the program's standards at a factory in use by the licensee as a designated supplier, press the factory to take appropriate remedial steps.
  - d. If the licensee has failed to meet the program's sourcing and/or disclosure requirements, take appropriate remedial steps as required by university licensors.

## **University Requirements**

### **During initial implementation:**

- Amend existing codes of conduct to include the DSP and incorporate the new code into contracts with licensees.
- Notify licensees of their obligations under the DSP.

### **Universities' role in ongoing management of the program:**

- Address licensee violations of their obligations. The WRC will report violations of the DSP by licensees, including violations of the sourcing requirement and the fair pricing requirement. When licensees are found to be in violation, universities will make decisions as to the appropriate action necessary for enforcement of their policy. Enforcement actions may range from the temporary imposition of stricter sourcing or reporting requirements on licensees who have failed to meet the program's standards to suspension or termination of licensing agreements with licensees who have refused to remediate violations. It is important to understand that, as is the case now, it will not be the WRC's role to take any action with respect to licensing agreements in response to violations. The WRC will, however, work with universities as needed to develop remediation strategies for licensees.
- Work with the WRC, and other stakeholders, to evaluate the impact of the program periodically and consider adjustments to the program as needed. After three years, universities will consider whether it is desirable to move to a 100% sourcing requirement. Universities will also determine when to apply the program more broadly, to other elements of the apparel supply chain (e.g. textile mills, print shops) and/or to non-apparel products.

### **WRC Requirements**

#### **During initial implementation:**

- Educate licensees on their obligations under the DSP. This will include preparing guidance materials and participating in meetings with licensees to address questions and ensure that they understand the program.
- Conduct outreach to unions, NGOs, and factories to solicit nominations of factories for designated supplier status; identify additional nominees, based on the WRC's past factory assessment and remediation work.
- Through various stages of review and assessment, identify a list of factories that have strong potential to meet the code standards and provide this list to licensees, who will identify those factories from which they intend to source
- Develop and help execute remediation plans at these candidate factories, as needed.
- When remediation is concluded, verify compliance with all code provisions (except living wage) and award provisional designated supplier status to those factories that qualify.
- Coordinate regional living wage research to provide guidance to factory managers and worker representatives in the context of wage negotiations.
- Award full designated supplier status to those provisional designated suppliers that successfully negotiate a living wage with worker representatives.

- Conduct spot investigations of mid-year progress by licensees toward fulfillment of the 25% sourcing requirement and toward fulfillment of the 2/3 production requirement at individual factories.

**WRC's roles in ongoing management of the program:**

- Maintain a public list of designated supplier factories and update this list as necessary.
- Coordinate the process of factory nomination, factory selection, remediation, verification, etc. to bring new factories into the program, as needed (primarily in conjunction with the annual increase in the sourcing requirement).
- Monitor conditions in designated supplier factories for compliance with the program's standards through ongoing communication with workers and their representatives at each factory and through complaint-driven and spot investigations. Where violations are found at designated supplier factories, make remedial recommendations and verify remediation, including in cases where the complaint concerns the alleged failure of the factory to pay a living wage.
- Determine whether factories and licensees are meeting the requirement that 2/3 of each designated supplier factory's production is of university logo goods – through annual assessments and mid-year spot assessments.
- Where violations of code standards or the 2/3 requirement are not remediated, remove factories from the designated suppliers list, first temporarily (in the case of code violations), then permanently.
- Issue public reports concerning all investigative findings at designated supplier factories and remedial recommendations and actions.
- Conduct investigations of complaints concerning violations of the fair pricing requirement; where a violation is found, require the licensee to renegotiate with the factory.
- Evaluate production data supplied by licensees to determine compliance with the program's sourcing requirement. This may include a mid-year review of production data before the required year-end disclosure in order to inform universities as to whether licensees are on track to fulfill the sourcing requirement. Spot check the production data to identify potential inaccuracies.
- Report instances of unremediated noncompliance by licensees with the sourcing requirement, the fair pricing requirement, and/or the production data disclosure requirement. As noted in the above section concerning the universities' role, the WRC's task will be to report such instances of noncompliance; the universities will determine what enforcement action to take against the licensee. The WRC will also assist universities in developing remediation plans for licensees, when requested.

## **Appendix 3: Compliance of Licensees to University Codes of Conduct**

As a result of the DSP proposal, a request was made to both the WRC and the FLA to provide information accumulated over the last three years on investigations for Columbia's top five licensees' adherence to the University's Code of Conduct. The purpose was to establish a trend to determine if remedial efforts had made a positive, neutral or negative impact on workers' rights.

The results of this exercise were disappointing and provided little for Columbia to chart progress or confirm the DSP's assertion that workers rights were not improving.

### **WRC Results**

The WRC's mission simply stated is:

- To verify workers complaints;
- To proactively investigate conditions;
- To act as a watchdog once abusive conditions have been exposed; and
- To catalyze research relevant to improving working conditions.

The WRC's public reports show investigations and remedial efforts at factories, but did not tie these factories back to specific licensees. Through additional requests, the WRC was able to provide the names of licensees that manufactured in the investigated facilities but not whether the licensees were manufacturing Columbia University apparel specifically. Therefore, no pertinent information could be inferred from the data. The WRC's method for investigation appears to be reactive monitoring vs. proactive oversight.

### **FLA Results**

The FLA methodology involves participating companies' adopting the FLA Code of Conduct and implementing a comprehensive compliance program, including internal monitoring, throughout their supply chain. The FLA then contracts with accredited monitors to conduct independent monitoring of each company's high risk facilities, works with companies to remediate problems identified in their facilities, and independently verifies and accounts for company internal compliance programs.

The information publicly reported by the FLA lists investigations and remedial efforts by licensee. The information spans over our three year requested period; however, not all information was available on the website, nor did it show more than two reports for any one licensee, thereby eliminating the ability to show a trend.

## Licensee Results

In a final effort to collect the information through alternative means, we attempted to go directly to the licensees.

### *The 1<sup>st</sup> Licensee:*

The first licensee contacted was a company that holds two licenses and manufactures under two separate brands. This company is also Columbia's largest licensee.

In response to our request for compliance information, the company stated that the FLA was established by the Universities as the benchmarking process to be adhered to and used by licensees. Therefore, the licensee preferred not to provide information outside the FLA framework.

In the past, they tried to accommodate individual University requests for information, but the requests were too numerous and in too many different formats. They were spending more time on delivering the various reports than manufacturing the goods.

They stated that if the information that the FLA is collecting is not what the universities want, we should collectively make changes to the FLA methodology and framework. They would be happy to provide information differently, but need to stay in one format.

### *The 2<sup>nd</sup> Licensee:*

A second company within Columbia's top five licensees was contacted, but there was no response.

### *The 3<sup>rd</sup> Licensee:*

The last company contacted, a much smaller company, was happy to provide information from its internal reporting archives. There was not enough data to actually identify a trend. However, they do use a combination of monitoring efforts. They themselves go to each factory where they manufacture goods, no less than every other year. On the years they are unable to send a direct employee, they use an independent monitoring company. In addition, and interestingly, as a small company, they rely (free-ride) on the resources and efforts of large, highly visible companies like Nike to validate workers' rights in a particular factory. They work on the assumption that if its compliance has passed the ratings system at Nike, the factory is acceptable.

# Figures

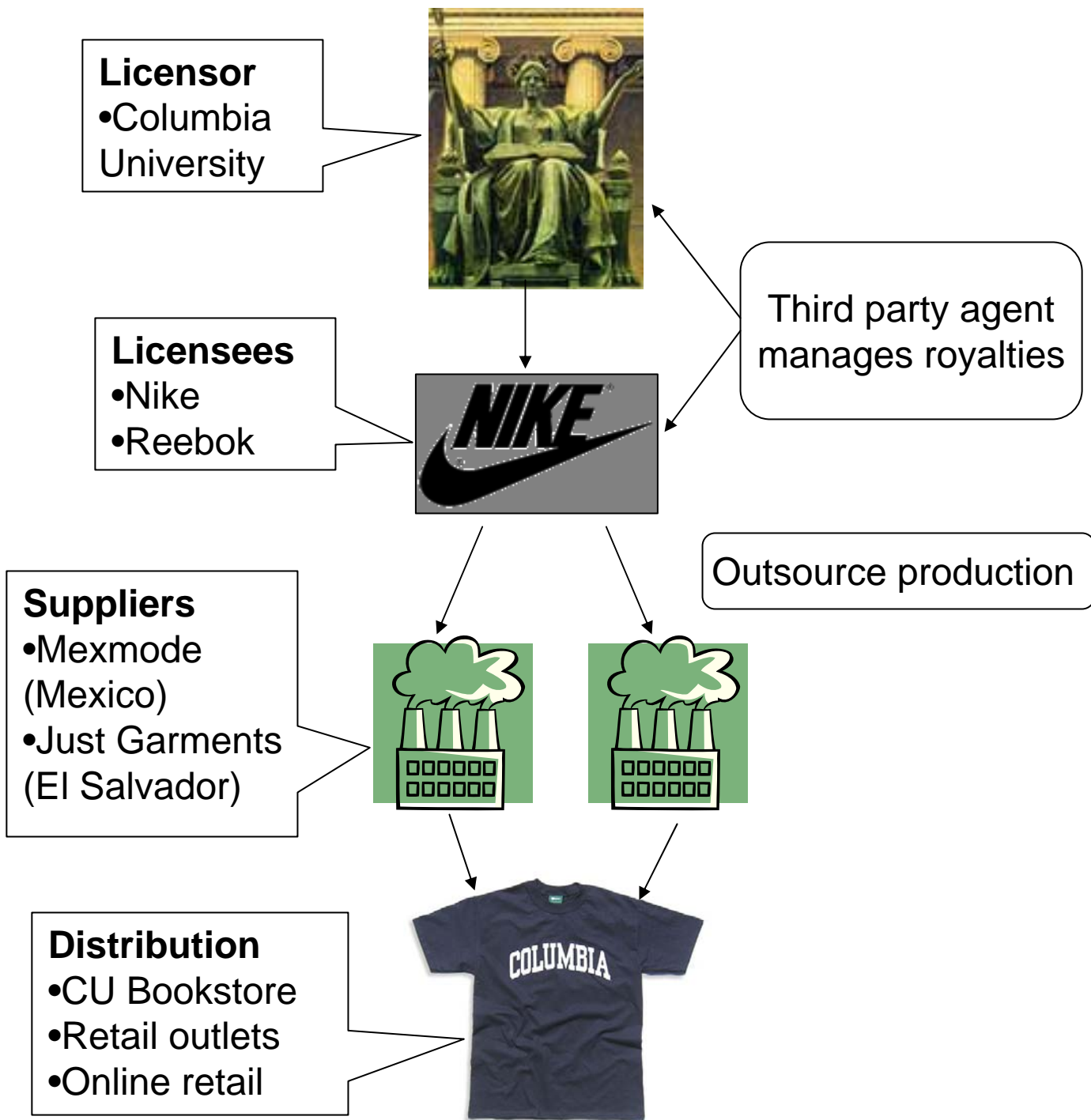


Figure 1: Global supply chain for production and distribution of university logo apparel

# Contracts

# Monitoring

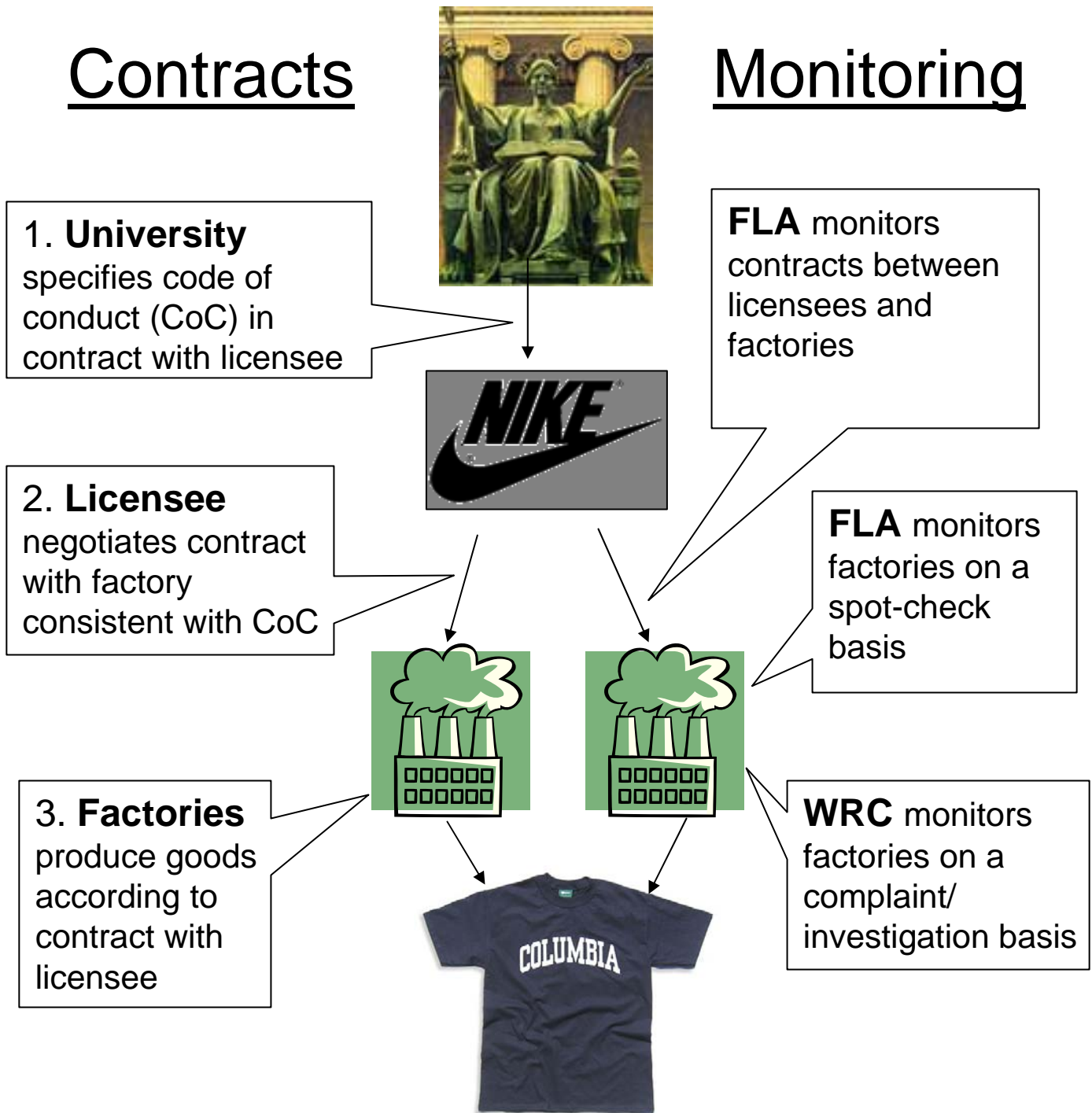


Figure 2: Current method of enforcing and monitoring University Codes of Conduct



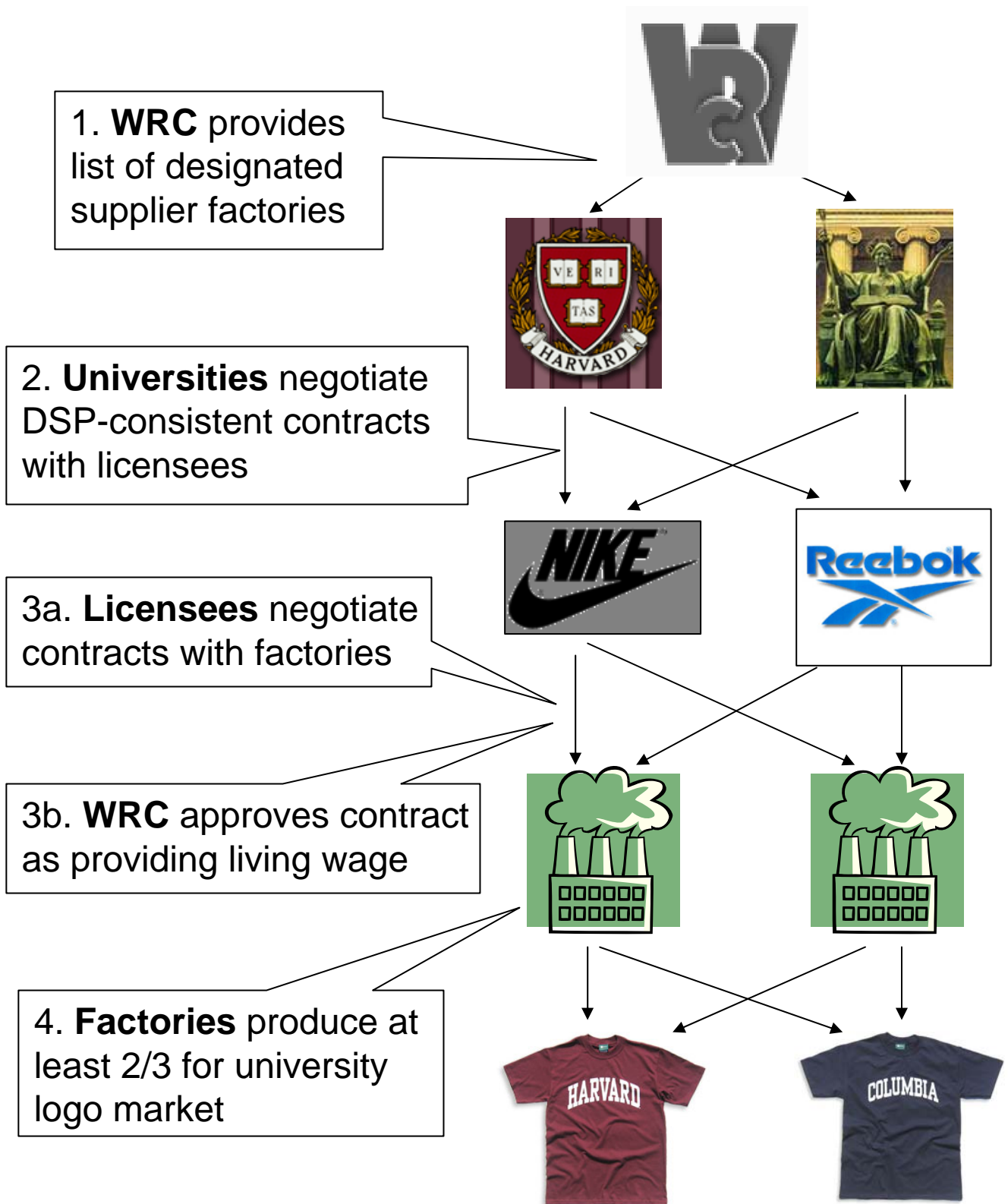


Figure 3: Production and distribution of logo apparel under Designated Suppliers Program