APPLE, REPUTATIONAL RISK, AND THE PROSPECTS FOR LABOR RIGHTS REFORM

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The reason we are here discussing Apple's recent audit report and the company's pledges to clean up labor rights problems in its supply chain is because Apple is facing an intense public relations crisis. Apple's most valuable asset –which is not its patents, nor the aesthetic acumen of its designers, but its brand image – is at serious risk. Years of meticulous and courageous research by organizations like SACOM and China Labor Watch, desperate protests by workers, and increasing media scrutiny have brought to light the ugly truth about labor practices in Apple's supply chain – to a degree that far exceeds previous bursts of public attention in 2006 and 2010. Apple has been forced to respond. The central question we face is whether this public pressure and Apple's promises of reform will translate into actual improvements in the wages, conditions and lives of the workers who make Apple's products. That outcome remains very much in question.

Reasons for Pessimism

There are a number of reasons to be pessimistic about whether real and substantial gains for workers are in the offing, which I will review. There are, I am glad to say, also a couple of reasons to have some hope about the ultimate outcome, which I will discuss as well.

The first reason to be pessimistic is that Apple has promised to clean up its act before and failed to deliver.

Indeed, Apple has been promising to improve working conditions and eliminate labor rights violations at Foxconn since 2006, when journalists first exposed sweatshop conditions at Foxconn's giant factory in Shenzhen. For example, in 2006, Apple stated the following with respect to the problem of excessive overtime at Foxconn: "Employees worked longer hours than permitted by our Code of Conduct, which limits normal workweeks to 60 hours and requires at least one day off each week...[Foxconn] has enacted a policy change to enforce the weekly overtime limits set by our Code of Conduct. The policy change has been communicated to supervisors and employees and a management system has been implemented to track compliance... Supervisors must receive approval from upper level management for any deviation." In other words, problem solved. However, despite this explicit and quite specific pledge, the problem persisted, as Apple's own audit report last month from the Fair Labor Association (FLA) amply demonstrates. Excessive overtime remains rampant at Foxconn's Apple production facilities, six years after Apple announced that Foxconn was putting an end to such practices. When a company has repeatedly promised to correct labor rights problems and repeatedly failed to do so, further promises should be treated with skepticism.

A second reason to doubt the new round of labor rights promises from Apple is the lack of any accountability for Apple's and Foxconn's past failures.

Apple said in 2006: "We are committed to ensuring compliance with our Code of Conduct and will complete audits of all final assembly suppliers in 2006… In cases where a supplier's efforts in this area do not meet our expectations, their contracts will be terminated." Thus, in 2006, Apple publicly promised that it would terminate any supplier that did not meet its expectations. Sticking with the example of excessive overtime, it is very clear – again, from Apple's own FLA audit, as well as the work of independent investigators – that Foxconn has not met Apple's expectations. They did not do so in 2006, or 2007, or 2008 or any intervening year up to the present. If Apple's pledge to hold suppliers accountable had been sincere, Foxconn's contracts would have been terminated years ago. Instead, the only punishment Foxconn faces, for systematically flouting Apple's labor standards year after year, is having to promise to do better next time.

Nor has Apple acknowledged, in any way, its own failures. Apple has been claiming for six years that it is auditing all its factories; here is Apple in 2010: "The companies we do business with must provide safe working conditions [and] treat workers with dignity and respect…Apple requires suppliers to commit to

our comprehensive Supplier Code of Conduct as a condition of their contracts with us. We drive compliance with the Code through a rigorous monitoring program, including factory audits, corrective action plans, and verification measures." Now, in 2012, Apple's chosen auditor has reported large-scale labor violations at all three of the production facilities it inspected. Quite clearly, Apple did not "drive compliance" and its monitoring and auditing program was obviously less than "rigorous." However, nowhere in Apple's many public pronouncements about its new labor rights initiatives is there any acknowledgement of the shortcomings of its prior ones.

On the contrary, Apple continues to insist that it has been doing everything right. Speaking to the Goldman Sachs Technology Conference in February, just as the FLA was beginning its recent audits, Tim Cook said: "I can tell you that no one in our industry is doing more to improve working conditions than Apple. We are constantly auditing facilities, going deep into the supply chain, looking for problems, finding problems and fixing problems. We report everything because we believe transparency is so very important in this area. I am so incredibly proud of the work that our teams are doing in this area. They focus on the most difficult problems and they stay with them until they fix them. They are truly a model for the industry." Yet, when the FLA report confirmed what independent investigators have been reporting for years – that the program that inspires such pride on Cook's part has been an abject failure – not a word from Cook or anyone else about the obvious implications vis-à-vis the adequacy of the company's prior efforts and not a single report of any individual at Apple being held accountable. No firings; no shakeup in personnel in Apple's "supplier responsibility" program. Not that this was a surprise. Despite multiple explosions at Apple factories in 2011 that killed and maimed workers, and a highly publicized case of widespread chemical poisoning, Apple never acknowledged that there was anything seriously wrong with the system it was using to enforce the requirement that its suppliers provide "safe working conditions."

It is the same at Foxconn. The company, despite its numerous previous denials that it was violating workers' rights, has admitted the violations the FLA identified – mostly the same ones Foxconn refused to acknowledge when pointed out by independent investigators. Yet this company, which is notorious for its harsh methods of discipline where workers are concerned, announced no disciplinary action against the managers and executives responsible for its systematic failure to comply with law and the labor standards of its largest customer.

When a corporation fails to admit mistakes and hold anyone accountable for past abuses, it is not a positive sign that it genuinely intends to bring those abuses to an end.

A third reason for pessimism is that the model of labor rights enforcement Apple has adopted, codes of conduct enforced through monitoring by corporate-funded auditors, is a proven failure, based on its fifteen year track record in the apparel sector.

This not just about the Fair Labor Association, but about a much broader complex of corporate-funded labor rights monitoring, involving multiple facets. These include the in-house monitoring staffs maintained by most major apparel brands and retailers; for-profit auditors working on contract to the brands (like Intertek, Bureau Veritas, and SGS); the alphabet soup of "multi-stakeholder" monitoring organizations in which industry funding is combined with some degree of NGO involvement (including SAI, ETI, GSCP, BSCI, WRAP, etc.); and the vast range of activities in which these entities participate, including tens of thousands of factory audits, voluminous reports and analyses, and endless seminars and meetings to discuss monitoring issues.

All of this activity has led to very little in the way of genuine improvements in wages and working conditions for the tens of millions of apparel workers in global apparel supply chains. Wages are lower in real terms in many countries than they were when this work started more than a decade ago – and, in virtually all key apparel exporting countries, apparel workers' wages are a fraction of a living wage; forced and excessive overtime are still rampant; managers and supervisors continue to use psychological pressure and humiliation as a primary strategy for maximizing production speed; attention to worker health and safety is still grossly insufficient; and any attempt by workers to exercise their right to act collectively to challenge these abuses is still met with swift and brutal repression. Some journalists writing about Apple's current labor rights mess have cited Nike and other apparel brands as examples of

companies that have faced and successfully addressed the problem of labor rights violations in their supply chains. This is nonsense. Modest improvements in a few areas (such as child labor) notwithstanding, global apparel supply chains continue to be defined by sub-poverty wages, abusive workplace conditions and disdain for workers' dignity and well-being. And despite the fact that their labor codes all require respect for the right to organize and bargain collectively, none of these brands can point to more than a few token examples, at best, of factories in their supply chains in key exporting countries where workers have been able to bargain for wages and benefits appreciably above legal minimums – some brands would be hard pressed to cite a single such example. The firing of any worker identified as a union leader remains virtually automatic in apparel industry supply chains. This is what fifteen years of corporate-funded monitoring of freedom of association has yielded.

However, while they have failed to protect the rights of workers, these programs have proven quite effective at addressing the public relations problems of the brands. These programs, combined with effective corporate communications strategies, have convinced a lot of opinion leaders, including many journalists, that most of the major players in the industry are engaged in earnest efforts to police their suppliers and correct abuses. The brands have been able to create the impression of legitimate efforts to protect workers, without having to incur the substantial costs, in terms of labor flexibility as well as dollars, of making broad improvements in wages and conditions for the workers who make their products. This has allowed the brands to continue to profit from the use of abused and exploited labor while effectively containing and managing the threat to reputational risk that this production strategy creates.

It should not be surprising that brands and retailers in the apparel industry have taken this approach (and that they are now being mimicked by their counterparts in the consumer electronics sector). When faced with a problem to solve (in this case, the threat of reputational damage arising from the otherwise profitable use of sweatshop labor), a corporation will always seek the least expensive, least cumbersome, most efficient way to solve the problem. This is how profit-maximizing corporations behave, in practice as well as in theory.

Actually achieving decent wages and working conditions in a global supply chain – whether in apparel or electronics – is feasible, but it is not without significant costs. It requires at least modestly higher prices to factories, more reasonable delivery demands, and related adjustments.
It is the relentless price pressure that brands place on suppliers that is the primary driver of labor rights abuses in their supply chains. When you source from countries where there is no meaningful enforcement of labor law, and you constantly pressure your suppliers to cut production costs by threatening to dump them for cheaper alternatives if they fail to do so, the inevitable result is that suppliers will flout labor standards as part of their strategy to meet your price demands. This is the primary reason why sweatshop conditions persist in global supply chains. It is impossible to improve those conditions significantly without higher prices for suppliers. However, paying higher prices is something brands will not do if there is any way to avoid it.

Thus, if brands can contain the threat to their image and reputation through the far less costly strategy of affecting the appearance of aggressive monitoring while making only cosmetic reforms, it is logical for them to do so. This plays out within a company over time and in complex ways – for example, there are junior executives at many of these companies who make a genuine effort to enforce the labor standards, only to be consistently thwarted by the more powerful players who place orders and negotiate prices with factories. However, it is the institutional actions that matter, not those of individuals, and the consistent institutional response of apparel brands and retailers to reputational threats arising from sweatshop practices has been to manage the threats through the appearance of reform while maintaining the practices.

There is every reason to conclude that Apple will employ – indeed, already is employing – the same strategy. Consider the contrast between the company's public rhetoric and private actions. As with the apparel brands, Apple's labor rights program is sold to the public with claims about the company's ostensibly heartfelt concern for workers, deep commitment to human rights, and abhorrence of any business partner that mistreats its employees. Meanwhile, Apple has developed a reputation as the most ruthless and effective company in the industry at squeezing suppliers on price, while failing for six years

to address the abusive labor practices to which those price pressures inevitably give rise. This dichotomy – between the rhetorical fantasy world of "corporate social responsibility" and the real world in which workers' interests are daily ignored in the relentless drive to cut prices and speed delivery – is a central feature of the strategy pioneered by the apparel brands.

Consider these recent statements from Apple CEO Tim Cook, followed by one from a former Apple executive speaking on condition of anonymity to the New York Times:

Cook:

> We care about every worker in our worldwide supply chain…any issue with working conditions is cause for concern. Any suggestion that we don't care is patently false…
>
> We take the conditions of workers very seriously. I worked in factories; I worked at a paper mill. We understand working conditions at a very granular level."
>
> No one is doing more to improve working conditions in China than Apple.

And now the former Apple executive:

> We've known about labor abuses in some factories for four years, and they're still going on. Why? Because the system works for us. Suppliers would change everything tomorrow if Apple told them they didn't have another choice. If half of iPhones were malfunctioning, do you think Apple would let it go on for four years?

A fourth reason to be pessimistic is the significant weaknesses in the recent report and recommendations of the FLA.
I will summarize these briefly and then emphasize one weakness that is of particular concern:

The report largely ignores, and makes no broad-based proposals to address, one of the most serious and oft-reported problems at Foxconn: the harsh and psychologically abusive management tactics to which workers are routinely subjected. The FLA's factory-specific analyses touch on a couple of examples of this, including Foxconn's practice of publicly posting the names of workers accused of disciplinary infractions in order to humiliate them. However, the issue goes completely unmentioned in the FLA's summary report on its Foxconn audits and the FLA fails to propose any substantial management reforms in this area.

The FLA did not investigate in depth Foxconn's use of student interns as a readily exploitable supplementary workforce and failed to mount a broad critique of this practice. Specifically, the FLA did not address the coercive means used by educational institutions, working in collusion with Foxconn, to compel students to accept these bogus "internships," which are in fact low-skill production jobs that in most cases have nothing whatsoever to do with students' studies, but which students cannot in practice refuse.

The FLA accepts a Foxconn/Apple remediation plan in which the companies will address the FLA's finding of widespread violation of Chinese overtime laws by continuing to violate Chinese overtime laws for at least fifteen months from the date of the FLA's March report. There are two possible explanations for this plan to delay compliance. One is Apple and Foxconn have no intention of ending the use of excessive overtime, and their plan is to "kick the can down the road" to a point when, they hope, there will be less public scrutiny on Foxconn's practices. The other possibility is that there is, at least at this point, a plan to reduce hours to legal levels, but doing so promptly would make it impossible for Foxconn to maintain current production levels and delivery schedules – thus, Apple wants to give the company an extended period of time to hire additional workers and make other changes before it has to forego illegal

overtime practices. Even if the latter, more charitable, interpretation is the correct one, this is still a case of Apple placing its financial priorities ahead of its suppliers' legal obligations and the rights of workers. Indeed, this is a perfect illustration of the point where "corporate social responsibility" rhetoric meets economic reality. In order for Apple and Foxconn to stop breaking the law now, Apple would have to accept substantially slower delivery for a period of time. Alternatively, workers' rights and the law must continue to be violated into the middle of next year, so that Apple will not have to deal with the inconvenience of more limited production. If Apple were genuinely committed to protecting the rights of workers, it would end illegal practices now and accept the necessary sacrifices on delivery. Instead, once again, it is workers who must sacrifice.

It is important to bear in mind that we are talking not about some voluntary labor standard, but about the law. Foxconn has been systematically violating Chinese overtime laws with respect to hundreds of thousands of workers – that means literally millions of individual violations of the law over a period of years. Now, Apple and Foxconn say they promise to stop systematically breaking the law around the middle of 2013. This is not an example of moral leadership. It would be interesting to see how Apple would respond if one of its US executives announced his intention to stop embezzling funds from the company – just as soon as he can find an alternative means of paying his children's private school tuition.

Most importantly, while the FLA found very serious labor rights violations by Foxconn, the organization said nothing in its report about Apple's role in causing these violations. The report does not discuss the price pressure Apple places on Foxconn, nor the impact of unreasonable delivery demands – such as the incident reported by the New York Times in January, in which a last minute product change from Apple forced Foxconn to drag 8,000 workers out of bed, after a long day of work, and compel them to worker another 12-hour overnight shift. The FLA does not comment on the contrast between Apple's 38% profit margin in the fourth quarter of 2011 and Foxconn's recent margins, which have been as low as 1.5% – nor on what this tells us about where the power lies in this partnership. Crucially, the FLA does not acknowledge the essential truth that no meaningful reform will be achieved and sustained at Foxconn without concrete commitments from Apple to raise the prices paid to its suppliers and to rationalize its delivery demands. Nor did Apple make any such commitments, or even acknowledge the issue, in its public response to the FLA report.

A fifth reason for pessimism, and the last one I will cite, is concern about the ability of the FLA to hold Apple accountable for labor practices at its Chinese factories.

The FLA has been monitoring working conditions at hundreds of factories in China for more than a decade, yet there is no compelling evidence that the FLA has been able to compel its member apparel brands to implement at those factories the reforms the organization says will be achieved at Foxconn. The most important example is the right to organize. The FLA reported, correctly, that workers are not represented by a legitimate union at Foxconn; indeed, as is well understood by most observers, independent unions are illegal in China. There is some space under the law for democratic union elections at the factory level and for collective bargaining – and large buyers like Nike, Adidas and Apple likely have the power to compel factories to allow such elections and to allow factory access so that independent groups can support workers' efforts. The FLA has recommended such steps at Foxconn. These steps, which labor rights groups like SACOM have been demanding for years, could be effective at facilitating some meaningful level of worker collective action and bargaining. Achieving this is no easy task and would require tremendous diligence by the FLA and Apple, but in theory it could be done. However, there is every reason to doubt the ability of the FLA to carry it out – for the simple reason that this is the standing recommendation the FLA makes at *all* of the factories it monitors in China and yet, despite more than a decade of monitoring, the organization cannot cite a single FLA-monitored factory where such representation and bargaining exist.

The Uniqueness of the Situation Yields Reasons for Optimism

Despite the concerns outlined above, I do see two reasons to harbor optimism that Apple could, in the end, be forced to undertake meaningful reforms in its supply chain.

First, the level of reputational pressure on Apple is very substantial and the company is particularly susceptible to this pressure.

Apple is the quintessential image-driven brand: despite the quality of the company's technology, Apple's success derives first and foremost not from what its products do for consumers, but from how its products make consumers feel. Buying Apple products feels to many consumers like buying a ticket to a richer, more vibrant personal world and this has a great deal to do with how people think about Apple as a company: clean, cool, and cutting-edge; smarter, bolder, better; a force for enriching and improving the world. Without this ability to make consumers feel good about themselves, and more hopeful about their lives, merely by purchasing one of its (extraordinarily expensive) products, Apple would be merely an electronics maker with some particularly nice gadgets. The prospect that its pristine image could be substantially tainted therefore carries immense risk for Apple – substantially more so than is the case for any other electronics brand. Apple clearly understands that the risks are great; this is what explains the frantic public relations gyrations that began just before the appearance in January of the New York Times devastating series on labor practices in the company's supply chain in China.

The only thing that can convince Apple, or any major corporation, to accept the higher costs and reduced flexibility of a global supply chain in which workers' rights and the law are respected rather than ignored is a threat to reputation and image so grave that the company concludes that the potential long-term costs of the reputational damage are greater than the long-term costs of the labor reforms. There are no moral epiphanies in corporate boardrooms, only cost-benefit analysis: Apple will respect the rights of the workers in its supply chain when and if it concludes that it is in its financial interest to do so. Because the reputational risks for Apple are especially high, Apple is more prone than its competitors to reach that conclusion.

Second, Apple's circumstances are also fortuitous in terms of the cost side of the equation. Quite simply, Apple is so profitable, and is sitting on so much cash, that it is substantially better able to absorb the cost of labor rights reforms than other consumer products companies.

In the near term, Apple will, as the signs indicate and as logic would dictate, try to fake it. It will try to get off cheap, just like its apparel industry counterparts, with a show of transparency and a lot of rhetoric about its concern for workers, an energetic embrace of corporate-funded monitoring, and some limited and relatively inexpensive real-world improvements – while business as usual in the supply chain continues.

The outcome for the workers who make Apple products hinges on the success or failure of this gambit – and it is the job of independent researchers, labor rights advocates, consumer activists and the international labor movement to do whatever can be done to ensure that the gambit fails. This requires aggressive efforts to expose the gap between rhetoric and reality, between Apple's labor rights pledges and actual conditions for workers at Foxconn and other Apple suppliers. Apple must be convinced that the pretense of reform won't be sufficient to protect its reputation and image – that, for Apple, the only way to contain the reputational risk associated with producing in sweatshops is to stop producing in sweatshops.

Its vulnerability to reputational damage and its unparalleled financial resources make Apple the global corporation most likely to start treating workers like human beings, provided public scrutiny and pressure are sustained and increased. If the scrutiny and pressure fade, so will the hope for real reform. This is the key variable – not the work of the FLA, or the personality differences between Steve Jobs and Tim Cook, or the particulars of corporate policy at Foxconn – but the efforts of researchers, activists and advocates to hold Apple's feet to the fire.