STUDY ON THE INTERNATIONAL COUNCIL OF TOY INDUSTRIES (ICTI) CARE PROCESS

Author:

Prof. Dr. Nick Lin-Hi
Junior Professorship for Corporate Social Responsibility
University of Mannheim

lin-hi@uni-mannheim.de

2012
FOREWORD

At the request of partner organisations in Hong Kong, since the mid-1990s MISEREOR has been working to help bring about decent working conditions in the toy industry. Activities have included producing publications, conducting campaigns and pursuing constructive dialogue with toy manufacturers and associations. This engagement was triggered by two devastating fires in toy factories in Thailand and China. Dozens of workers died a woeful death in those conflagrations; hundreds were injured because factory doors and windows were locked or fitted with bars. At the time, these measures were not unusual. They prevented employees from leaving the factory building during working hours without prior permission.

The Chinese factory was producing chiefly for the European market. Our partners from Hong Kong rightly pointed out that we also share responsibility for the conditions under which toys imported into Germany and Europe are manufactured. Some 70 to 80 per cent of all the toys made in the world are produced in China, mainly in the Pearl River Delta in southern China. Since the fires mentioned above, working conditions there have improved significantly, especially in the factories producing for export. Occupational safety has also got better. Even so, there is much that has still to be put right. Workers have to put up with excessive working hours, unpaid overtime and a lack of social protection. Many of them also have to handle substances that are hazardous to health on a daily basis, without appropriate safety precautions. MISEREOR’s most essential task here is to raise its voice. We must stand up for human rights, and compliance with social standards that will enable everyone to lead a dignified life.

Through the Fair Play Campaign (Aktion fair spielt)\(^1\) launched by MISEREOR in 1999, in recent years we have been engaging critically and constructively with the International Council of Toy Industries (ICTI) Code of Business Practices, and its practical implementation. In MISEREOR’s view this voluntary code is well suited to helping improve working conditions in factories. Yet in our opinion, this potential is not being fully harnessed. In 2002 the national associations of the toy industry decided to launch a programme to audit and monitor implementation of the code. This programme laid the foundation for the ICTI CARE Process. Some ten years after that process was launched, we believed it was time for an independent and scientific review of the contribution the ICTI Care Process is making, and can make, toward improving labour and social standards in Chinese toy factories.

The present study, published in November 2012, attests to the huge potential of the process to have a positive impact and help improve labour and human rights. At the same time the study highlights the limitations of voluntary codes of conduct. No code of conduct, no matter how good it may be, can relieve the state of its duty to respect, protect and fulfil human rights. To put it succinctly, we might say that Corporate Social Responsibility (CSR) in China is above all a matter of complying with existing national legislation and internationally recognised standards. If these laws and standards were to be followed by companies, and enforced by the state where they were not followed, the ICTI CARE Process in its present form would be superfluous. However, since this is not the case the CARE Process is in the meantime filling a gap and – as the study establishes – counteracting a laissez-faire approach.

\(^{1}\) This campaign is a joint initiative of MISEREOR, the Catholic Women's Association of Germany (kfd), the Catholic Workers’ Movement of Germany (KAB), the Nuremberg Fair Toys Alliance and Werkstatt Ökonomie.
When it commissioned the study in December 2011, MISEREOR made a conscious decision to ‘think outside of the box’ by entrusting the analysis to a recognised scientist with a background in business administration. At many points, the analysis and the conclusions drawn match views often expressed by MISEREOR and the Fair Play Campaign. On a small number of points our assessment of the process differs. In particular, the ‘sense of reality’ of the ICTI CARE Process that the study emphasises as a strength, and the way that has led to the process being gradually adapted to existing market realities, in our view risks undermining national and international human and labour law standards. (See the article on the ‘Toy industry at the crossroads’, a response of the Fair Play Campaign posted on 7 November 2012: www.fair-spielt.de [German only]).

MISEREOR believes the study confirms our multitrack approach. This includes working for transparent and effective implementation of voluntary codes of conduct, and ensuring that our own work and the work of our partners in the South refer to voluntary initiatives of the private sector itself. It also includes working to strengthen government regulatory frameworks and, where necessary, making companies liable for human rights violations. Consequently, at the national and international levels we must stand up for fair rules in global trade, and for the introduction and strengthening of internationally binding standards governing corporate responsibility for human rights. This is quite rightly an essential part of MISEREOR’s work in the field of ‘business and human rights’.

The present study casts a discerning light on one selected voluntary code of conduct. Nevertheless, the sound analysis presented by Professor Nick Lin-Hi does permit general conclusions concerning the functioning of voluntary codes. For instance, the study demonstrates that voluntary codes of conduct do not relieve businesses of the need to work on their own social responsibility. It therefore represents a more general contribution to the current debate in Germany and Europe on CSR, with implications beyond the case in hand. What the study did not do (and did not set out to do) was to conduct an empirical appraisal of actual working conditions in Chinese toy factories, and compare the situation of labour today with that of ten years ago. This would be the task of other possible research projects, which could then generate empirically demonstrable conclusions concerning not only the potential, but also the actual contribution made by the ICTI Code of Business Practice and the ICTI CARE Process toward improving working conditions.

Our thanks go to Professor Nick Lin-Hi for his excellent work and constructive approach. We hope the study will prompt the toy industry and the CSR community to continue the dialogue.

Dr. Bernd Bornhorst
Head, Development Policy Department

Elisabeth Bially
Head, Asia and Oceania Department

Aachen, 07.11.2012
Study on the International Council of Toy Industries (ICTI) CARE Process

The ICTI CARE Process Mission

...to enable the worldwide toy industry to assure consumers that its products are manufactured in safe and humane conditions by providing education and training for toy factory employees and enforcing a thorough and consistent monitoring program for toy factories...

This study was conducted within the scope of a research partnership between MISEREOR and the University of Mannheim and summarizes the major results of the analysis of the ICTI CARE Process (ICP). In this research partnership, MISEREOR was represented by Elisabeth Strohscheidt from the Asia and Oceania Department and Katharina Götte from the Evaluation and Quality Management Department. The University of Mannheim was represented by Professor Dr. Nick Lin-Hi, the holder of the Junior Professorship for Corporate Social Responsibility.

The study would have not been possible without the cooperation of the ICTI CARE Foundation as well as the representatives of business and the civil society. Many thanks are due to the discussion partners for their support and their openness in providing information. In additions, thanks are due to Igor Blumberg and Christian von Falkenhausen from the University of Mannheim for their support during the preparation of the study.
Executive summary

The study examines the actual and potential contribution of the ICTI CARE Process (ICP) to the improvement of labor and social standards in the Chinese toy industry. The ICTI CARE Process is an initiative of the toy industry that is aimed at ensuring that toys are produced in a responsible manner. The main focus of the ICP is thereby the improvement of labor and social standards in Chinese toy factories, in which about 70-80 percent of world-wide toy production take place. Currently, approximately one third of the toy factories that produce for export fulfill the requirements of the ICP and therefore, possess a Seal of Compliance. Altogether, the ICP is the most widespread labor and social standard in the toy industry.

In general, it can be stated that the capacity of the ICP to contribute to an improvement of the working conditions in Chinese toy factories is high. The ICP possesses a variety of strengths. In particular, the way in which the ICP works towards the improvement of and compliance with the standards on the level of factories can be described as exemplary. The ICP is distinguished by its strong orientation on reality which motivates Chinese toy factories to continuously improve labor and social standards in a competitive environment. Currently, the ICP can be considered to be one of the industry codes which currently show the most potential to improve basic labor and social standards.

However, it must also be stated that, at present, the ICP is not able to realize its full capacity so that it remains below its potential in practice. This can be traced back to systematic deficits which mainly result from the insufficient involvement of toy brands in the ICP. The insufficient involvement of toy brands leads to the erosion of the incentives for toy factories to participate in the ICP and hence, to improve working conditions. In the long-run, this endangers the toy factories’ commitment to the ICP which calls the future viability of the entire process into question. Unless the toy brands can be persuaded to contribute to the success of the ICP, the danger that the process will fail in the long run is real. In light of the significant potential for positive change which the initiative possesses, it is to be hoped that the toy industry will be willing to counteract the failure of the ICP and will take the appropriate measures.
Table of contents

List of figures ........................................................................................................................ VIII
List of tables ............................................................................................................................ VIII
List of abbreviations ................................................................................................................ IX

1 Preliminaries ..................................................................................................................... 1
  1.1 Motivation and objective of the study ........................................................................ 1
  1.2 Methodology and procedure ..................................................................................... 2
  1.3 Structure of the study ............................................................................................... 2

2 Corporate Social Responsibility ........................................................................................ 3
  2.1 The focal points of CSR ............................................................................................ 3
  2.2 Relevance and challenges of CSR in corporate practice ......................................... 5
  2.3 Collective self-restraints............................................................................................ 7
  2.4 Determinants of the effectiveness of industry codes ................................................ 8

3 Overview of the toy industry ........................................................................................... 10
  3.1 Overview of the toy market ..................................................................................... 10
  3.2 Overview of toy production ..................................................................................... 11

4 Description of the ICTI CARE Process ........................................................................... 15
  4.1 Historical context .................................................................................................... 15
  4.2 The ICTI CARE Process ......................................................................................... 17
  4.3 Toy factories’ participation in the ICTI CARE Process ........................................... 21
  4.4 Organization of the ICTI CARE Process ................................................................ 23
  4.5 Figures on the ICTI CARE Process ........................................................................ 24

5 Analysis of the ICTI CARE Process ............................................................................... 29
  5.1 Major strengths ....................................................................................................... 30
    5.1.1 Continuous development ................................................................................ 30
    5.1.2 Orientation on reality ....................................................................................... 32
    5.1.3 Promotion of the validity and quality of audit results ....................................... 34
    5.1.4 Promotion of toy factories’ acceptance of the ICTI CARE Process ............... 35
    5.1.5 Worker empowerment .................................................................................... 36
    5.1.6 Relationships with NGOs ................................................................................ 36
  5.2 Procedural deficits of the ICTI CARE Process ....................................................... 37
    5.2.1 Limited transparency ...................................................................................... 37
    5.2.2 Insufficient random examination of audit quality ............................................ 40
List of figures

Figure 1: Number of certified factories.................................................................25
Figure 2: Number of factories terminated from the ICP .......................................25
Figure 3: Percentage of factories which acquired a Seal of Compliance after initial registration .................................................................26
Figure 4: Percentage of factories that acquired a Seal of Compliance after renewed registration .................................................................26
Figure 5: Increase in the number of commitments to the Date Certain Program ....27
Figure 6: Number of toy brands with a Date Certain Commitment by county ..........27
Figure 7: Number of Helpline calls ......................................................................28
Figure 8: Number of German toy brands with a commitment to the Date Certain Program by amount of certified suppliers ..............................................43
Figure 9: Relevant actors in the toy industry ..........................................................46

List of tables

Table 1: Numbers of audits conducted in 2011 .......................................................24
Table 2: Overview of the major developments of the ICP .......................................31
## List of abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>CAP</td>
<td>Corrective Action Plan</td>
</tr>
<tr>
<td>CIP</td>
<td>Continuous Improvement Process</td>
</tr>
<tr>
<td>CSR</td>
<td>Corporate Social Responsibility</td>
</tr>
<tr>
<td>DVSI</td>
<td>Deutscher Verband der Spielwarenindustrie (German Toy Association)</td>
</tr>
<tr>
<td>GIZ</td>
<td>Gesellschaft für Internationale Zusammenarbeit (German Agency for International Cooperation)</td>
</tr>
<tr>
<td>ICTI</td>
<td>International Council of Toy Industries</td>
</tr>
<tr>
<td>ILO</td>
<td>International Labour Organization</td>
</tr>
<tr>
<td>IRCA</td>
<td>International Register of Certificated Auditors</td>
</tr>
<tr>
<td>ICP</td>
<td>ICTI CARE Process</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-governmental organization</td>
</tr>
<tr>
<td>OHCS</td>
<td>Occupational Health Consultation Services</td>
</tr>
<tr>
<td>QC-Audits</td>
<td>Quality Control Audits</td>
</tr>
<tr>
<td>SACOM</td>
<td>Students and Scholars Against Corporate Misbehavior</td>
</tr>
<tr>
<td>TAB</td>
<td>Technical Advisory Board</td>
</tr>
<tr>
<td>TAC</td>
<td>Technical Advisory Council</td>
</tr>
</tbody>
</table>
1 Preliminaries

The object of the study is the analysis of the International Council of Toy Industries (ICTI) CARE Process. The acronym CARE stands for “Caring”, “Aware”, “Responsible”, and “Ethical”. The task of the ICTI CARE Process (ICP) is the operative realization of the self-commitment of the international toy industry to ensure that toys are produced in a responsible manner. Due to China’s high share in the toy production market\(^2\), the ICP is focused on Chinese toy factories.\(^3\)

1.1 Motivation and objective of the study

The motivation for conducting the examination of the ICP is that on the one hand, the toy industry proclaims the effectiveness of the ICP, but on the other hand, the ICP is quite critically appraised by various non-governmental organizations (NGOs). The divergent perception of such an initiative is not specific to this situation, but rather, it is a common phenomenon in the discussion of the social responsibility of corporations. Frequently, voluntary standards that are established by industries themselves are viewed in a particularly critical light and are confronted with the accusation of lacking efficiency.

The direct objective of the study is to reach conclusions in terms of how far the ICP contributes and is able to contribute to an improvement of working conditions in Chinese toy factories. For this purpose, the study highlights the major strengths and weaknesses of the ICP on the basis of the analysis of the functional logics of the process and thereby identifies necessary improvements. Thus, the study also aims to contribute to the further development of the ICP. In addition, the study identifies approaches to continue the fruitful discourse between civil society and the actors in the toy industry. Finally, it must be emphasized explicitly that the reference point of the following evaluation of the effectiveness of the ICP is not constituted by an ideal state, but by the improvement of the status quo.

\(^2\) China’s share in global toy production amounts to 70-80 percent.

\(^3\) It should be noted that factories outside China are also audited. According to the information provided by the ICTI CARE Foundation, 327 audits outside China have been conducted since 2004.
1.2 Methodology and procedure

The study examines the effectiveness of the ICP on a conceptual level. For this purpose, it analyzes the underlying structures and mechanisms of the ICP. Thereby, the study draws on the economic method and, in particular, considers the incentive effects engendered by the ICP as well as the associated implications for actions of the actors who are involved in this initiative. In addition, the study is embedded in a specific CSR approach.4

In order to examine the underlying question as to how effective the ICP is, secondary research was initially conducted to compile and prepare the available information in a problem-specific fashion. Subsequently, the insights generated in this research phase were verified in discussions with expert representatives from the ICTI CARE Foundation, NGOs, companies, and various associations. In addition, the discussions with experts served as a means to generate non-codified knowledge about the ICP and the toy industry and hence, as a means for better understanding of the existing mechanisms. The analysis was complemented by a research stay in Hong Kong and China during which discussions with Chinese NGOs took place and two ICP audits in Chinese toy factories were attended.5

1.3 Structure of the study

The structure of the study is as follows: chapter 2 presents the concept of CSR which constitutes the foundation of the analysis of the ICP. Chapter 3 provides a general overview of the toy industry by addressing both toy brands and toy factories. Chapter 4 presents the ICP as well as its core elements and provides figures on the ICP. Chapter 5 identifies the strengths and weaknesses of the ICP and combines them in an overall evaluation of the process. Chapter 6 sketches approaches for NGOs to effectively promote the improvement of the ICP. The study concludes with a final remark.

---

4 The basic elements of this approach will be presented in section 2.
5 The visits to toy factories were made possible by the ICTI CARE Foundation.
2 Corporate Social Responsibility

This chapter presents the theoretical foundations of the conception of CSR which this study is based on. The social responsibility of corporations is seen to be the improvement of labor, social, and environmental standards within corporate value creation processes. This implies that on the one hand, CSR is tied to the improvement of the status quo and that on the other hand, corporations are (co-)responsible for the standards of their suppliers.

2.1 The focal points of CSR

The CSR conception used in this study distinguishes itself by the explicit consideration of the fact that corporations operate in a competitive environment. Based on this, there is a focus on how CSR can be brought to life in the market economy in a sustainable way. In this respect, the following three aspects constitute the main focal points of the CSR approach underlying this study: (1) the consideration of empirical conditions, (2) the necessity of incentive compatibility, and (3) the relevance of the rules of the game.

(1) The consideration of empirical conditions: Empirical conditions can be understood to be the facts which define the situation in reality that predetermine which options an actor can take within the current status quo. Empirical conditions, for example, include the laws of nature, technical possibilities, time and budget restrictions, the competitive environment, legal requirements, or internationally recognized human rights standards. The given empirical conditions constitute implications and restrictions that have to be taken into account when assigning and demanding the assumption of responsibility. It is not sufficient to just address the question of which social responsibility corporations have to fulfill, but it is also to be asked which responsibilities corporations can assume under the given empirical conditions. Without an adequate integration of “ought to” and “can”, the danger arises that unrealizable demands are put forward such that normative claims and business requirements are played off against each other in an unproductive way.

Therefore, empirical conditions influence the scope and limits of CSR. Since empirical conditions differ locally, the prevailing local circumstances must always be explicitly taken into account in order to determine the social responsibility of corporations in a

---

concrete situation. It should be emphasized that the consideration of empirical conditions is in the interest of society as a whole because otherwise, undesirable consequences may be provoked in the long run.\footnote{See also the next point.}

It is part of the social responsibility of corporations to constantly seek opportunities to fulfill their social responsibility under the given empirical conditions in the best possible manner. In this context, it must be emphasized that empirical conditions are not unchangeable, but can be influenced and hence, shaped within certain limits. For corporations, this implies the social responsibility to participate in shaping their empirical conditions in a way that is conducive to the implementation of CSR in practice.

\section*{(2) The necessity of incentive compatibility:} One important empirical condition is the fact that corporations are active in competitive markets and therefore, dependent on realizing profits. CSR will only assert itself in corporate practice if the assumption of social responsibility is beneficial to corporations. Ultimately, corporations will usually not be willing to endanger their own competitiveness – and thus, their own existence – in the name of CSR. This highlights the necessity of incentive compatibility\footnote{See Homann 2002.} which is given when the assumption of social responsibility is compatible with corporate interests or, at least, is not systematically disadvantageous for a corporation.

It is in the interest of society to recognize the necessity of incentive compatibility; otherwise the socially desirable effects of competition will be undermined.\footnote{For details on the societal function of competition, see, e.g., Homann & Blome-Drees 1992; Lin-Hi 2011; Wagner-Tsukamoto 2005.} In addition, the omission of the premise of incentive compatibility leads to the problem that responsible corporations will have to accept competitive disadvantages vis-à-vis irresponsible rivals and will hence face the threat of being pushed out of the market. As a consequence, this would lead to the problem that, in the long run, only irresponsible corporations remain in a market. Such a result is fundamentally opposite to the objective of promoting responsible behavior in markets on a sustainable basis.

The premise of incentive compatibility also implies that CSR cannot be implemented against the logic of the market economy and competition. Rather, there is a need for approaches that allow for simultaneous progress in the realization of profits and the
assumption of responsibility. The more beneficial CSR is for corporations, the higher the likelihood is that corporations will behave responsibly.

(3) **The relevance of the rules of the game:** The existence of incentive compatibility is also always dependent on the rules of the game in the local environment. Examples of rules of the game include regulations on private property, rules governing liability, employee rights, safety requirements, or DIN standards. The task of the rules of the game is to provide incentives which channel the behavior of actors in a socially desirable way.¹⁰ In general, the rules of the game can only incentivize actors if they are effectively enforced. ‘Enforceability’ thereby relates to both the binding force and the applicability of the rules of the game. These rules can be established and enforced by state and non-state actors.

The existence of appropriate – and hence, enforced – rules of the game is a precondition for an incentive-compatible assumption of social responsibility in competition.¹¹ This also implies that CSR is only able to compensate for lacking rules of the game to a limited extent. In this context, the particular objective of the rules of the game is to ensure that responsible behavior does not systematically engender disadvantages for a single corporation. Ideally, the rules of the game establish a level playing field for CSR.

### 2.2 Relevance and challenges of CSR in corporate practice

The relevance of CSR for corporate practice has continuously increased in recent years. Today, corporations are not only expected to commit themselves to their social responsibility, but also to prove that they fulfill this commitment. The demand for CSR is exemplified, for example, by consumers showing an increasing interest in the working conditions in production processes, graduates taking aspects of CSR into account when choosing their employers, journalists reporting critically about the CSR performance of corporations, and NGOs publicly disclosing omissions in the field of CSR.

Corporations face the task of dealing with the rising demand for CSR in a reasonable way. On the one hand, corporations have the responsibility to ensure that they create value in a responsible manner. On the other hand, it is important to take competition mechanisms and

¹¹ See Lin-Hi 2009.
the associated restrictions regarding the de facto ability of a corporation to assume responsibility into account. Ultimately, it will only be possible to implement responsible behavior in practice if CSR is not played off against the logic of competition, but instead, the necessity of incentive compatibility is taken into account.

In general, the assumption of social responsibility can be understood as an investment in future corporate success. This becomes particularly clear in light of the risks that stem from irresponsible behavior. A corporation that is publicly known for child labor, poor working conditions, or other violations of human rights must expect to be criticized in public and the media, to lose customers, or to demotivate its employees. Hence, irresponsible behavior entails negative effects on corporate reputation and image and, in extreme cases, leads to corporations losing their competitiveness. This demonstrates that the incentive to assume social responsibility, and thus to avoid irresponsible behavior, is already rooted in the aim to not endanger future corporate success. Therefore, CSR is an essential ingredient of corporate risk management.

Although the assumption of social responsibility is beneficial to corporations in the long run, irresponsible behavior repeatedly occurs in practice. This phenomenon is linked with the fact that certain combinations of competitive forces can foster irresponsible behavior. In particular, the pressure to achieve short-term goals can impede the realization of responsible conduct. It is problematic for corporations if the assumption of responsibility – no matter how beneficial it is in the long run – endangers their short-term competitiveness and poses the threat of a forced market-exit. In these sorts of competitive situations, there are strong incentives to realize short-term objectives, for instance, in the form of cost savings. This can foster irresponsible behavior since irresponsible behavior often allows for the realization of short-term cost savings, for example by neglecting safety and labor standards or disposing of waste illegally. In competitive situations in which corporations are motivated to achieve short-term goals, there is always the danger of a race to the bottom.

The tension-filled relationship between short-term and long-term corporate interests is reinforced by the problem that legal regulations on labor, social, and environmental standards are frequently not sufficiently enforced, underdeveloped, or entirely missing in developing and emerging countries. The associated lack of functional rules of the game gives rise to the problem that a single corporation has no incentive to uphold standards of responsibility in its value creation activities. Due to insufficient rules of the game, the costs of

---

12 See also Lin-Hi & Blumberg 2012.
13 Cf., e.g., Haufler 2001, pp. 56; Scherer & Palazzo 2007.
ensuring responsible standards can even sometimes lead to competitive disadvantages for a single corporation. Hence, in order to promote responsible value creation, approaches that alleviate the tension between short-term requirements in competitive markets and long-term interests, and thereby foster the individual incentive compatibility of CSR, are required. Corporations can contribute to shaping empirical conditions in such a way as to improve the condition for the assumption of responsibility. One appropriate mechanism in this regard is collective self-restraint.

2.3 Collective self-restraints

In the context of this study, collective self-restraints are conceived of as the establishment and enforcement of rules of the game beyond state authority – for instance, in the fields of labor, the environment, and social affairs – that serve the goal of promoting responsible behavior in competitive markets.\textsuperscript{14} Collective self-restraints thereby follow the logic of establishing a level playing field so that responsible value creation does not systematically engender competitive disadvantages for an individual corporation. Thus, provided that they are designed appropriately, collective self-restraints are an effective mechanism for the promotion of the incentive compatibility of CSR and hence, for the promotion of responsible behavior in practice. The economic value of collective self-restraints is, among other things, rooted in their ability to counteract corporate misconduct in an industry and hence, to strengthen its social acceptance. At the same time, collective self-restraints reduce the risk of boycotts and critical campaigns. In the long run, collective self-restraints are beneficial to all corporations in an industry.\textsuperscript{15}

A further advantage of collective self-restraints is their high potential to enhance efficiency. Collective self-restraints can become reference standards in an industry and thus, harmonize standards that exist in parallel. This, in turn, allows the inefficiencies associated with multiple audits and multiple certifications to be avoided. In addition, collective self-restraints foster the exchange of knowledge and experience in an industry which renders it possible for corporations to mutually benefit from learning effects.

Typical forms of collective self-restraints are industry codes. A variety of industry codes have been established in recent years, in particular, as a response to public pressure to ensure that corporate value creation is conducted in a responsible manner. Examples are the

\textsuperscript{14} The establishment and enforcement of rules of the game are thus carried out by actors like corporations and associations or by multi-stakeholder initiatives.

\textsuperscript{15} Cf. Lin-Hi & Blumberg 2011.
Responsible Care Initiative of the chemical industry, the Business Social Compliance Initiative of retailers, the Roundtable for Sustainable Palm Oil of the palm oil industry, the Electronic Industry Citizenship Coalition of the electronic industry, the Ethical Tea Partnership of the tea industry, and the ICTI CARE Process of the toy industry which is analyzed in this study.

However, the existence of an industry code is not a sufficient precondition for ensuring responsible business in practice. The effectiveness of industry codes in channelling corporate behavior in practice is dependent on several factors. These factors include both the design of the industry code itself as well as the empirical conditions in an industry. With respect to the design, the determinants which are to be presented in the following are particularly influential in determining the effectiveness of an industry code.

2.4 Determinants of the effectiveness of industry codes

A fundamental precondition for the effectiveness of industry codes is the presence of incentives that induce corporations to comply with the corresponding standards. Without sufficient incentives, it cannot be expected that – despite all public declarations – corporations will indeed fulfill their responsibility in their day-to-day operations. The presence of necessary incentives is thereby dependent on the following interrelated aspects: (1) number of participating companies, (2) clarity, (3) transparency, (4) monitoring, and (5) sanction mechanisms.

(1) **Number of participating companies**: In general, it can be stated that the effectiveness of industry codes increases with the number of participating companies. The more companies in an industry commit themselves to the industry code, the more realistic it is that responsible behavior will not lead to competitive disadvantages. In addition, a rising number of participating companies increases the pressure on those companies that are yet to commit themselves to the industry code.

(2) **Clarity**: In order for corporations to align their activities with an industry code, it requires sufficiently clear and unambiguously formulated behavioral guidelines. Ideally, behavioral guidelines are thereby based on quantifiable measures (e.g., allowable limits). Unambiguous guidelines are conducive to companies understanding and implementing the associated requirements. Furthermore, clarity is the precondition for assessing compliance with an industry code.
(3) **Transparency:** The binding force of industry codes follows the logic that a single corporation complies with standards under the expectation that other corporations in an industry also bind themselves to the standards. This raises the requirement that the behavior of market participants is observable in terms of their handling of the industry code which, in turn, presupposes a sufficient degree of transparency. Insufficient transparency erodes the incentives for corporations to align their actual activities with an industry code. In the case of non-transparency, a single corporation must be wary of non-compliant behavior on behalf of other market participants which reduces its own willingness to comply with an industry code. Thus, transparency carries out a disciplinary function with regard to compliance with standards. The disciplinary function is further reinforced by allowing the external assessment of an industry code.

(4) **Monitoring:** Another precondition for the effectiveness of industry codes is the credible monitoring of the compliance with the industry code’s requirements and, related to this, the possibility to observe deviant behavior. Usually, monitoring is carried out by a superior, ideally independent, body. The possibility to monitor behavior thereby presupposes the existence of indicators that allow for a comparison between the behavior expectations formulated in an industry code and actual corporate behavior. In addition, monitoring serves the function of promoting transparency as well as identifying the systematic difficulties with regard to the implementation of the industry code in practice.

(5) **Sanction mechanisms:** The possibility to sanction deviant behavior is a further powerful mechanism which reinforces the effectiveness of an industry code. Sanction mechanisms effectively alter the incentive structure for corporations in such a way that deviant behavior becomes unattractive. Thus, sanction mechanisms are aimed at increasing the costs of non-compliance with behavioral guidelines and thereby create an incentive for responsible behavior. The nature of the sanctions can vary broadly and range from the public disclosure of deviant behavior to the exclusion of a corporation from the industry code.
3 Overview of the toy industry

This chapter presents an overview of the toy industry and its specific details. Thereby, the chapter firstly considers the international market in general and the German market in particular. Companies that act as providers of toys are termed “toy brands”. In contrast, the producers of toys are referred to as “toy factories”. This distinction is used to serve the problem-oriented analysis of the ICP.

3.1 Overview of the toy market

In 2010, the global toy market generated a sales volume of 83.3 billion US-Dollars and grew by 4.6 percent in comparison to 2009. With a share of 26.3 percent of global sales, the US is the largest toy market in the world. The US is followed by Japan (7.5 percent), China (6.7 percent), Great Britain (5.4 percent), France (4.9 percent), Germany (4.0 percent), Brazil (3.9 percent), Australia (2.8 percent), India (2.7 percent), and Canada (2.5 percent). The largest five toy markets comprise about 50 percent of the world toy sales; the largest ten represent about two thirds of the total market.

The world toy market is dominated by a few large toy brands. The largest toy brands include Hasbro, JAKKS Pacific, Leap Frog, Lego, Mattel, Mega Brands, MGA Entertainment, Namco Bandai, Playmobil, and Takara Tomy. These companies generate approximately 25 percent of world toy sales. The German toy market, with about 700 companies, is also dominated by a few large players, such as Hasbro, Lego, Mattel, Playmobil, Ravensburger, and Simba-Dickie. These toy brands generate about 50 percent of toy sales in Germany. Approximately 85 percent of toy sales in Germany are generated by toy brands with an annual turnover of more than 10 million Euros, whereby only about 5 percent of the toy brands in Germany fall within this turnover category. Since both in

---

16 It should be noted that there is no uniform definition of the toy industry. This leads to the fact that different data on the industry are available – depending on the underlying industry definition. In addition, the availability of high quality data on the toy industry is limited.
17 In general, many toy brands have outsourced their production. Nevertheless, the distinction drawn here is not always clear-cut.
18 Cf. NPD Group 2012, p. 2.
19 Cf. NPD Group 2011, p. 11.
20 Cf. NPD Group 2011, p. 11.
21 Note that, due to a lack of necessary data, the study considers neither retailers with their own brands nor licensors.
23 This figure is based on aggregate turnover of the toy brands mentioned in relation to the entire market volume.
Germany and internationally, retailers with their own brands play an important role in the toy industry, there are further dominant actors such as Walmart or Toys"R"Us.

The toy industry is characterized by intense competition\textsuperscript{25} and increasing consolidation\textsuperscript{26}. Another feature of the toy industry is the strong pressure for innovation in light of the continuously changing consumer interests and demographical developments.\textsuperscript{27} Over the recent years, the demand for toys has become increasingly dependent on fashion trends which has led to decreasing product life cycles.\textsuperscript{28} In combination with the constant need to innovate, intense competition has resulted in enormous price and cost pressures in the toy industry.

Another important feature of the toy market is its traditional seasonality. About two thirds of annual sales are generated during the Christmas season, i.e., between November and December.\textsuperscript{29} For toy brands, this implies that the sales during these months have a significant influence on their overall success. Accordingly, it is crucial for toy brands to be able to meet the customers’ demands as best as possible within a short period of time – which in turn influences the placement of orders and toy production.

3.2 Overview of toy production

Chinese toy factories account for about 70-80 percent of world toy production.\textsuperscript{30} Officially, there are around 8,000 toy factories in China\textsuperscript{31}; approximately 50 percent of these factories possess an export license.\textsuperscript{32} Factories without an export license produce for the domestic market and/or for the factories with an export license. An important role in the Chinese toy industry is played by the Pearl River Delta in the Guangdong Province in the southern part of China where about 70-80 percent of Chinese toy factories are located.\textsuperscript{33} It is estimated that 1.5 million people are employed in this region in the toy industry\textsuperscript{34}, whereby the number increases up to 3 million during the main production season.\textsuperscript{35}

\textsuperscript{25} Cf. Chung & Ng 2011, p. 51; Wong et al. 2005, p. 370.
\textsuperscript{26} Cf. Biedermann 2009, p. 25; Zajak 2009, p. 15.
\textsuperscript{27} Cf. Wong et al. 2005.
\textsuperscript{28} Cf. Chung & Ng 2011, p. 51; Wong et al. 2005, p. 370.
\textsuperscript{29} Cf. Dannwolf et al. 2011, p. 12; Johnson 2001, p. 110; Toy Industries of Europe 2010.
\textsuperscript{30} Cf. Biedermann 2011, p. 344; ICTI CARE Foundation 2010a.
\textsuperscript{31} Cf. Li 2011a.
\textsuperscript{32} Cf. Kleinert 2011, p. 154.
\textsuperscript{33} Cf. Federation of Hong Kong Industries 2010, p. 1; Ruicheng & Hankun 2010, p. 9.
\textsuperscript{34} Cf. Li 2011a.
About 50-70 percent of the annual toy production takes place between June and October\textsuperscript{36} which is the result of the seasonality of business relationships with toy brands. In order to be able to react flexibly to market trends and customers’ requirements, toy brands frequently place their final orders for the Christmas shopping period in spring after the important trade fairs in Nuremberg and Hong Kong. In addition, toy brands expect toy factories to make just-in-time deliveries.\textsuperscript{37} Hence, toy factories must be able to react to short-term order placements as well as order modifications, which is seen by the factories to be one of the major challenges in business relationships with toy brands apart from price requirements.\textsuperscript{38}

In general, it can be stated that the economic situation of Chinese toy factories has significantly worsened over the last few years.\textsuperscript{39} Along with an enormous price pressure, toy factories are faced with rising legal safety requirements of the importing countries.\textsuperscript{40} The difficult situation in toy production is reflected in the decreasing number of Chinese toy factories. In particular in the wake of the financial crisis, several thousands of toy factories were closed down.\textsuperscript{41}

The difficult situation of toy factories is aggravated by general developments in China. In the 2011 INFACT survey\textsuperscript{42} conducted on behalf of the ICTI CARE Foundation the toy factories interviewed named the following points as “most significant issues”: (1) Increasing raw material costs, (2) rising wages, (3) currency appreciation of the Chinese Yuan, (4) economic downturn, and (5) increasing difficulties to find workers. In the following, the issues of rising wages and the increasing difficulties to find workers will be described in detail due to their particular relevance for this study.

(1) \textbf{Rising wages:} Since the late 1980s, average monthly wages in China have increased significantly. For example, the monthly wage level of migrant workers grew by 9.5 percent a year between 2003 and 2009 on average.\textsuperscript{43} One driver of this development was the introduction of minimum wages in China\textsuperscript{44} in the mid-90s.

\textsuperscript{36} The statement about the production volume during the main season is based on dialogues with different actors in the toy industry. The statement is supported by figures on monthly purchase volume from which the production periods can then be derived.
\textsuperscript{37} Cf. Ewert 2012a, p. 17.
\textsuperscript{38} Cf. ICTI CARE Foundation 2011a.
\textsuperscript{39} Cf. CHINADAILY Europe 2011.
\textsuperscript{40} Cf. Li 2011b.
\textsuperscript{41} Cf. Eimer 2008.
\textsuperscript{42} Cf. ICTI CARE Foundation 2011a.
\textsuperscript{43} Cf. Knight et al. 2011, p. 590. Note that due to the effects on the development of labor costs, these figures depict the development of wages in nominal terms. The increase of the real wage in China was about 6.75 percent within the specified time period (cf. Knight et al. 2011, p. 590).
\textsuperscript{44} Note that the minimum wages in China are not defined centrally but through the different prefectures so that there are sometimes significant differences between the provinces (cf. Du & Pan 2009, p. 81).
Between 1995 and 2009, the official average minimum wages almost trebled.\textsuperscript{45} Between 2010 and 2011, the increase of minimum wages amounted to about 20 percent on average in most Chinese provinces.\textsuperscript{46} The Chinese government announced that the average level of increase of the minimum wage will be maintained at 13 percent per year until 2015.\textsuperscript{47}

Since March 2011, the Guangdong Province has been raising minimum wages\textsuperscript{48} by 18.6 percent on average.\textsuperscript{49} Currently, Guangdong’s minimum wage ranges between 850 and 1,300 Yuan\textsuperscript{50}; an exception is Shenzhen where the minimum wage amounts to 1,500 Yuan.\textsuperscript{51} Thus, the minimum wage level in Guangdong is slightly higher than the national average.\textsuperscript{52} For labor-intensive industries and thus, also for toy factories, the continuous increase of minimum wages leads to an enormous cost pressure.

(2) \textbf{Increasing difficulties to find workers:} Over the past years, China has been confronted with rising labor shortage\textsuperscript{53} which is evidenced, for instance, by the current ratio of job openings to job seekers\textsuperscript{54} of 1.05.\textsuperscript{55} The problem of labor shortage is especially intense in growth regions, such as the Pearl River Delta in the south of Guangdong or the Yangtze River Delta near to Shanghai.\textsuperscript{56} For example, in the beginning of 2012, there was a lack of approximately 800,000 workers in Guangdong Province.\textsuperscript{57} Especially in the low-skilled sector, the demand for workers exceeds supply.

The rising labor shortage in China is fostered, in particular, by the enormous growth rates of the Chinese economy as well as the decreasing number of younger people. For example, the number of 15 to 19 year-olds declined from 120.7 million in 2005 to 105.3 million in 2012 and it is expected that this figure will further decrease to 94.9 million by 2015.\textsuperscript{58} In addition, the educational level in China has risen consistently so

\begin{flushleft}
\textsuperscript{45} Cf. Jia & Zhang 2011, p. 17.
\textsuperscript{46} Cf. Jia & Zhang 2011, p. 5; Rabinovitch & Tsui 2012.
\textsuperscript{47} This regulation is part of the Chinese Government’s 12\textsuperscript{th} Five Year Plan (see, e.g., China.org.cn 2012a).
\textsuperscript{48} According to the calculations of Asia Floor Wage, an organization created on the initiative of Asian labor unions, the monthly living wage in China currently accounts for 1,842 Yuan (cf. Asia Floor Wage 2011).
\textsuperscript{49} Cf. Sharif & Huang 2012.
\textsuperscript{50} Cf. People’s Government of Guangdong Province 2011.
\textsuperscript{51} Cf. Wei 2012.
\textsuperscript{52} Cf. World Bank 2011, p. 118.
\textsuperscript{53} See, e.g., Chan 2010; Knight et al. 2011.
\textsuperscript{54} A ratio of more than 1.0 indicates an excess demand for labor.
\textsuperscript{55} Cf. Ding et al. 2012.
\textsuperscript{56} Cf. BSR 2010.
\textsuperscript{57} Cf. China.org.cn 2012b.
\textsuperscript{58} Cf. Orlik & Davis 2012.
\end{flushleft}
that less and less of the workforce is currently available for the low-skilled production sector. For the economically strong regions, the situation is worsened by the circumstance that the number of migrant workers is declining since ever more jobs are available in home regions.\textsuperscript{59}

Altogether, Chinese toy factories are faced with a variety of different challenges. In general, it can be stated that their situation is very tense and will worsen in future. The supposedly greatest and most urgent challenge in the Chinese toy industry is likely to be acquisition of employees. On the one hand, the image of the toy production in the eyes of workers is relatively bad in comparison to other industries.\textsuperscript{60} On the other hand, toy factories are not able to offer permanent employment due to high seasonality of production; only a portion of workers can be employed beyond the main season. The interaction of different factors culminates in the below-average employer attractiveness of toy factories such that the industry is likely to be particularly hardly hit by the labor shortage.

\textsuperscript{59} Cf. BSR 2010, p. 10; Bai et al. 2011.

\textsuperscript{60} This estimation is based on discussions that took place in China. The estimation is also supported by the low job satisfaction in toy factories (cf. Ewert 2012a, p. 18).
4 Description of the ICTI CARE Process

4.1 Historical context

During the 1980s, companies from labor-intensive industries shifted their production to emerging countries in Asia. This relocation was accompanied by growing public concerns about the production conditions in the respective locations. In the early 1990s, these concerns resulted in the emergence of an “anti-sweatshop movement” in industrialized countries that was, in particular, driven by NGOs. The exposure of global corporations to criticism for bad working conditions, insufficient social standards, exploitation of employees, child labor, and other violations of human rights has increased. Repeatedly, corporations have been accused of recklessly increasing their profits at the expense of workers. The criticism of Nike and its founder Philip Knight is a well-known example for this “anti-sweatshop” movement: “At the bottom,shouldering the crushing weight of Mr. Knight's multinational enterprise, are the legions of young Asians, mostly women, who work like slaves to turn out Nike's products.” (Herbert 1996)

Toy brands that relocated their production towards the east, in particular to China, were also strongly criticized for bad working conditions. Two devastating fires in Bangkok (Thailand) and Shenzhen (China) in 1993 that caused more than 250 deaths resulted in more intense criticism. As a reaction to the tragedy, the Hong Kong Toy Coalition was established which published the “Charter on the Safe Production of Toys” in the mid 1990s. In this charter, the Hong Kong Toy Coalition demanded the improvement of labor, social, and safety standards in Chinese toy factories. NGOs from different countries added the bad working conditions to their agenda and began to initiate campaigns. For example, “Aktion fair spielt” that was established in 1999 by MISEREOR engages itself for responsible

---

64 Cf. Sethi et al. 2011, p. 485.
66 On the development of the toy industry in the course of globalization, see Heidel & Kleinert 1997.
68 The “Charter on the Safe Production of Toys” is available at: http://www.cleanclothes.org/resources/ccc/corporate-accountability/code-implementation-a-verification/574#Appendix4
69 See Heidel & Kleinert 1997, pp. 27.
70 “Aktion fair spielt” is a joint initiative of MISEREOR – the German Catholic Bishops’ Organization for Development Cooperation, the Catholic Workers’ Movement of Germany (Katholische Arbeitnehmer-Bewegung Deutschlands), the Catholic Women’s Association of Germany (Katholische Frauengemeinschaft Deutschlands), the Nuremberg Fair Toys Alliance (Nürnberger Bündnis Fair Toys) and Werkstatt Ökonomie that coordinates the initiative; the initiative is supported by Bundesarbeitsgemeinschaft Katholischer Familienbildungsstätten.
working conditions in the toy industry and calls on toy brands and retailers to guarantee decent working conditions in the production of toys. In addition, “Aktion fair spielt” informs the public about the current state of the implementation of responsible working conditions in the toy industry and leads a critical dialogue with the ICTI CARE Foundation about measures to improve the effectiveness and credibility of the ICP.

The criticism on behalf of NGOs and the associated public pressures are likely to have contributed to more and more toy brands acknowledging their social responsibility. Companies began to formulate and implement codes of conduct that defined labor, social, and environmental standards. For instance, Hasbro established its “Global Business Ethics Principles” in 1993, Zapf Creation a code of conduct in 1995, Disney its “International Labor Standards” in 1996, and Mattel its “Global Manufacturing Principles” 1997. By the end of the 1990s, most of the larger toy brands were equipped with a code of conduct.\textsuperscript{71} This resulted in the circumstance that various standards co-existed in the toy industry; it is estimated that there were up to 70 different standards\textsuperscript{72}. In consequence, toy factories were confronted with different standards which led to inefficient multiple audits.

In 1995, the International Council of Toy Industries (ICTI) adopted the ICTI Code of Business Practices which was refined in 1996.\textsuperscript{73} In 2001, the code, that is supposed to be valid for the entire toy industry, was once again revised and extended by, for instance, integrating the prohibition of forced labor and child labor.\textsuperscript{74} In 2002, the national toy associations decided to introduce an auditing-monitoring program for the implementation of the Code of Business Practices which formed the foundation for the ICTI CARE Process (ICP).\textsuperscript{75} In 2003, the first firms were accredited to conduct audits and the first toy factories in China were evaluated on their compliance with the Code of Business Practices.\textsuperscript{76} In 2004, the ICTI CARE Foundation was formally established\textsuperscript{77} which started its operations, based in Hong Kong, in 2005.\textsuperscript{78}

\begin{itemize}
\item \textsuperscript{71} Cf. Biedermann 2007, p. 128.
\item \textsuperscript{72} Cf. Biedermann 2007, p. 139.
\item \textsuperscript{73} Cf. ICTI 2006, p. 6.
\item \textsuperscript{74} Cf. ICTI CARE Foundation 2008, p. 3; Schrage 2004.
\item \textsuperscript{75} Cf. ICTI CARE Foundation 2008, p. 3.
\item \textsuperscript{76} Cf. ICTI CARE Foundation 2008, p. 3.
\item \textsuperscript{77} Cf. ICTI CARE Foundation 2010b, p. 3.
\item \textsuperscript{78} Cf. ICTI CARE Foundation 2012a.
\end{itemize}
4.2 The ICTI CARE Process

The ICP is aimed at promoting responsible value creation in the international toy industry. The focus of the ICP is the improvement of labor and social standards workers in Chinese toy factories where the majority of worldwide toy production takes place. The ICP is based on the ICTI Code of Business Practices. The code, which was most recently revised in December 2010, spans three major areas (1) Labor, (2) Workplace, and (3) Compliance. In these three sections, the responsibilities which the companies are expected to fulfill are detailed. The code is complemented by four appendices: (1) Methodology for Evaluating Compliance, (2) Audit-Checklist, (3) Guidance Document, and (4) Corrective Action Plan. The appendices are operative (process-oriented) in nature and are aimed at further specifying the expectations vis-à-vis companies.

The Code of Business Practices and the appendices provide a general frame of reference for responsible toy production. They contain such typical elements as the prohibition of forced and child labor or requirements regarding working hours and wages. Several times, the code refers to international conventions, which demonstrates that the code is primarily focused on ensuring or promoting compliance with fundamental minimum standards. To achieve this objective, the ICP possesses seven interrelated core elements: (1) auditing, (2) certification, (3) the Continuous Improvement Process, (4) capacity building, (5) worker empowerment (6) the Date Certain Program, and (7) the Convergence Process.

(1) Auditing: From the start of the process, the audits of toy factories constitute a core element of the ICP. With a share of 39 percent in 2011, the auditing activities represent the largest item of expenditure for the ICTI CARE Foundation. The main objective of the audits is to examine and record the status quo in Chinese toy factories, to work towards compliance with the standards specified in the Code of Business Practices, and to assess the necessary improvements of the factories.

Within the ICP, various types of audits, each with an individual focus, are conducted. The ICTI CARE Foundation is the coordinating body for the audits: since 2006, it has been assigning audit firms to factories and setting the appointments for Initial, Annual, and Quality Control Audits (QC-Audits). Since the beginning of 2012, all audits have...

---

79 The code is available at: http://www.icti-care.org/resources/codeofbusinesspractices.html
80 Within the framework of the revision, the following standards of the International Labor Organization were included: (1) Convention concerning the Application of the Weekly Rest in Industrial Undertakings (C14), (2) Convention concerning Forced or Compulsory Labour (C29), (3) Equal Remuneration Convention (C100), and (4) Convention concerning Discrimination in Respect of Employment and Occupation (C111).
81 For reasons of linguistic simplification, the study will refer to the Code of Business Practices only without additionally making explicit reference to the appendices.
82 Cf. ICTI CARE Foundation 2011b.
been unannounced. In addition, the ICTI CARE Foundation is responsible for ensuring the quality of the audits. Thereby, the audits are generally conducted by audit firms that are accredited by the ICTI CARE Foundation.\(^{83}\) The definition of audit content and auditing procedures are managed by the ICTI CARE Foundation via the audit checklists.

(2) **Certification:** The certification of a factory registered in the ICP takes place on the basis of the audit reports. The analysis of audit reports and the award of a Seal of Compliance have been carried out by the ICTI CARE Foundation since the very beginning of the ICP. Thereby, a Seal of Compliance demonstrates that a factory complies with the ICP requirements. Since 2009, the Seals have been divided into three classifications (A, B, Conditional), whereby the classification refers to the number of weekly working hours (A: maximum of 66 h; B: maximum of 72 h; Conditional: more than 72 h). If factories exceed a weekly working time of 66 h, the award of a Seal is tied to the participation in the Continuous Improvement Process. In April 2012, the regulations on the assignments of Seal categories were revised and now allow Class “A” factories to have a weekly working time up to 72 h for a maximum of 12 weeks per year. Class “B” factories are allowed to have weekly working hours greater than 72 h for a maximum of three weeks per year.\(^{84}\)

(3) **Continuous Improvement Process (CIP):** The CIP was implemented in the ICP in 2009 and is aimed at supporting toy factories in improving labor and social standards. For this purpose, toy factories are granted the opportunity to qualify for a certification without fulfilling the requirements regarding wages and working hours in the status quo. As such, toy factories are granted transitional periods to meet the requirements of the ICP. Specifically, the regulation allows factories that fulfill the requirements of the Seal Class “B” (maximum of 72 h per week) up to 12 months to reach the requirements of the Seal Class “A”. Factories in which the weekly working hours fulfill the requirements of the Seal Class “Conditional” (more than 72 h) must reduce the gap between the current working hours and the target value of 72 h by 50 percent.

---

\(^{83}\) In September 2012, there were seven audit firms accredited by the ICTI CARE Foundation (the list of the accredited audit firms is available at: http://www.icti-care.org/process/accredited-companies.html). Specific audits, such as Quality Control Audits, are sometimes carried out by the employees of the ICTI CARE Foundation themselves.

\(^{84}\) The new exception regulations are a reaction to the difficulties of toy factories to comply with required working hours due to seasonality and labor shortage.
after six months and receive 12 months in total to meet the requirements of the Seal Class “B”.  

During the transition period, the progress of factories is examined via audits. The participation in the CIP is thereby generally tied to the condition that factories disclose their wages and working hours. Accordingly, the CIP is also aimed at creating transparency in these areas. The introduction of the CIP is a reaction to the difficulties of toy factories to meet the requirements for wages and working hours. With the introduction of the CIP— and the associated transition periods—, the ICTI CARE Foundation pursued the objective “to improve factory compliance with wages and working hours requirements and to foster improved transparency in this critical area” (ICTI CARE Foundation 2012c).

(4) **Capacity Building:** The capacity building programs that, according to the ICTI CARE Foundation’s own statements, formed the core of the Foundation’s work between 2006 and 2008 are aimed at strengthening the implementation of the ICP by means of education and the transfer of competencies. For this purpose, the ICTI CARE Foundation provides factories with information about the ICP and offers trainings and seminars for factory managers. The first trainings took place in 2005. In addition to an explanation of the ICP, training sessions address such topics as local labor law or occupational safety as well as transfer management tools and management competencies. The latter aspects are intended to enable factory managers to improve value creation processes with reference to both responsible standards and productivity. Apart from capacity building programs for factories, there are also capacity building measures to improve audit quality. These include regularly and mandatory trainings for auditors that, among others, address the current requirements of the ICP.

(5) **Worker empowerment:** An additional element of the ICP is the education of workers in the toy industry about their rights as well as the reinforcement thereof. One instrument applied to this end is the toll-free ICTI CARE Worker Helpline that was...
introduced in 2010 and is operated by the NGO Occupational Health Consultation Services (OHCS), a subsidiary of China Labor Support Network. The helpline provides workers with the opportunity to contact the OHCS in case of questions, complaints, or search for help. In urgent cases, for example, when wages have been withheld or the personal safety of workers has been endangered, the OHCS immediately informs the ICTI CARE Foundation which, in turn, takes the necessary measures.91

The number of the Helpline is communicated to the workers in a number of ways, the most noteworthy of which being the “CARE Card”92, which is one instrument employed in the attempt to empower factory workers.93 The CARE Card was introduced in 2007 in response to a proposal from the Hong Kong-based NGO “Students & Scholars Against Corporate Misbehavior (SACOM)”94 and fundamentally revised two years later.95 The CARE Cards are the size of a credit card, are available in English and Chinese, and contain ten basic worker rights. In addition, the CARE Cards contain the email address and the web address of the ICTI CARE Foundation. Every factory in the ICP must ensure that every worker possesses a CARE Card and carries it with her/him.96 Any failure to comply with this requirement is handled and punished by the ICTI CARE Foundation as a case of “major non-compliance”.97

As of 2010, training sessions for factory workers have also been implemented by the ICTI CARE Foundation. The public private partnership pilot project “Train-the-Trainer” that was started in 2010 and run in cooperation with the Gesellschaft für Internationale Zusammenarbeit (GIZ) pursued the objective to enable factory managers to conduct trainings for factory workers by themselves. Since this program is just a pilot project, training sessions for workers are not sustainably embedded into the ICP yet.

91 Cf. ICTI CARE Foundation 2012d.
93 By June 2012, 862,500 CARE Cards were distributed to 814 factories (cf. Ewert 2012b).
94 Cf. ICTI CARE Foundation 2008, p. 9. In 2007, 37,000 CARE Cards were distributed to 25 factories that were "on probation" (cf. ICTI CARE Foundation 2008, p. 9).
95 Cf. ICTI CARE Foundation 2010b, p. 10.
96 Cf. ICTI CARE Foundation 2012e, p. 8.
97 “Continued failure to distribute the card will lead to suspension of seal validity and additional audits, and may eventually lead to termination of the Seal” (ICTI CARE Foundation 2012e, p. 8).
Date Certain Program: The Date Certain Program that started in 2004 is aimed at reinforcing toy brands’ commitment to the ICP. In the Date Certain Program, toy brands commit themselves to only contract products from Chinese toy factories that participate in the ICP as of a specific, freely chosen future date (“date certain”). A major goal of the Date Certain Program and the associated self-commitment is to strengthen the incentives for toy factories to participate in the ICP. On the website of the ICTI CARE Foundation, there is the Date Certain Database which lists all toy brands that have committed themselves to the Date Certain Program. According to the database, currently, approximately 830 toy brands have pledged themselves to the Date Certain Program.

Convergence Process: The aim of the Convergence Process is the promotion of the ICP as the unified standard in the toy industry in order to reduce multiple audits of toy factories and thereby, to efficiently improve standards in the toy industry. In order to achieve this goal, the ICTI CARE Foundation fosters the acceptance and recognition of the ICP on behalf of the actors of the toy industry as well as the existing social compliance initiatives. On its website, the ICTI CARE Foundation operates the “Retailer and Licensor Database” that lists retailers and licensors which recognize the ICP. Currently, there are 21 retailers and licensors from seven countries (Australia, Belgium, Germany, France, Great Britain, the Netherlands, and the USA).

4.3 Toy factories’ participation in the ICTI CARE Process

The toy factories’ participation in the ICP starts with a registration. The associated costs are thereby borne by the factories. The costs include a fee to be paid to the ICTI CARE Foundation as well as a fee to an audit firm; the value of these fees is dependent on the number of employees in a factory. For example, the fee for the first registration is 650 US-Dollar for factories with less than 1,000 workers and 1,000 US-Dollars for factories with more than 1,000 workers.

---

98 Mattel was the first toy brand to declare its participation in the Date Certain Program in the beginning of 2005.
99 Through the toy brands’ compliance with the Date Certain Commitment, participation in the ICP becomes a precondition for business relationships for toy factories.
100 The Date Certain Database is available at: http://www.icti-care.org/databases/date-certain.html
101 The Retailer and Licensor Database is available at: http://www.icti-care.org/databases/retailers-licensors.html
102 The registration form is available at: http://www.icti-care.org/databases/factory-registration.html
103 An overview of the fees is available at: http://www.icti-care.org/resources/fee-schedule.html
Newly registered toy factories must pass an Initial Audit after the registration in order to receive a Seal of Compliance.\textsuperscript{104} If the Initial Audit detects deviations from the ICP requirements, the factories must submit a Corrective Action Plan (CAP). The implementation of the CAP is assessed in additional audits (a maximum of two additional audits occur).\textsuperscript{105} Newly registered toy factories thereby have a maximum of 12 months to meet the requirements of the Seal Class “Conditional”.\textsuperscript{106} If factories do not achieve this, they can re-apply for the ICP at a later point of time.\textsuperscript{107}

In general, the Seal of Compliance is valid for 12 months and is exclusively issued by the ICTI CARE Foundation.\textsuperscript{108} In order to extend the seal validity, a successful re-audit is required within the framework of an Annual Audit. As of 2012, the Seal Class “A” is valid for 18 months if a factory has been awarded this seal category in two consecutive years.\textsuperscript{109} An Annual Audit is only conducted if a factory requests it and thus, factories are not automatically included in the process for the following year. If deviations from the requirements are detected during the Annual Audit, a CAP must be submitted again and its implementation is controlled by further audits. Following a successful audit, the ICTI CARE Foundation is provided with the audit report. It reviews the report and makes the final decision about the renewal of the certification.

Factories that are not able to meet the ICP requirements in terms of working hours must agree to participate in the CIP in order to receive a Seal of Compliance. Within the framework of the CIP, the factories’ progress is monitored via specific audits (Progress Audits), the number of which is dependent on the respective seal category. Seal Class “A” factories must undergo a Progress Audit in the first year only, and this audit occurs six months after the Initial or Annual Audit.

If “critical violations”\textsuperscript{110} are detected during an audit, the ICTI CARE Foundation decides whether the factory is put “on probation” or terminated from the ICP. The status “on probation” is generally tied to the condition that the factory is transparent and willing to cooperate with the ICTI CARE Foundation. If a factory is put on probation, it must rectify the

\begin{itemize}
  \item \textsuperscript{104} For details on the procedure of the initial registration, see http://www.icti-care.org/process/seven-steps.html
  \item \textsuperscript{105} The inspection is conducted by the audit firm that was initially assigned to the factory by the ICTI CARE Foundation.
  \item \textsuperscript{106} Cf. ICTI CARE Foundation 2012e, p. 7.
  \item \textsuperscript{107} Cf. ICTI CARE Foundation 2012e, p. 7.
  \item \textsuperscript{108} Cf. ICTI CARE Foundation 2010a.
  \item \textsuperscript{109} Cf. ICTI CARE Foundation 2012b.
  \item \textsuperscript{110} The ICTI CARE Foundation defines “Critical Violations” as “violations of the major Social Compliance standards of the ICTI CARE Process, National and International labor standards” (ICTI CARE Foundation 2012f). This includes, among other things, delayed payment of wages, not granting the required break time, or insufficient emergency exits.
\end{itemize}
deviations and is again monitored by specific audits. A factory that has been terminated is allowed to re-apply for the ICP after a period of six months.\textsuperscript{111} On its website, the ICTI CARE Foundation administers a database\textsuperscript{112} which lists all factories that have hitherto participated in the ICP and displays their status there.

As of 2006, QC-Audits have been included in the ICP. In particular, QC-Audits are carried out in cases of evidenced deviations from the ICP requirements that, for instance, stem from Helpline calls, whistleblowers, or NGOs. In addition, the QC-Audits have the aim to ensure validity and credibility of the audits conducted and the ICP as a whole. If no deviations are detected during QC-Audits, the costs associated with these audits are borne by the ICTI CARE Foundation.

4.4 Organization of the ICTI CARE Process

The organization and implementation of the ICP is done by the New York-based non-profit organization ICTI CARE Foundation that was established in 2004. CEO and president of the ICTI CARE Foundation is Christian Ewert who was previously a member of the board of the German toy brand Zapf Creation AG. The financing for the operational start of the ICTI CARE Foundation was provided by actors of the toy industry who raised approximately five million US-Dollars. Today, the ICTI CARE Foundation is primarily financed by the fees that factories have to pay for the participation in the ICP. In 2011, the ICTI CARE Foundation generated an income of 2.88 million US-Dollars. Of these, 92 percent stem from audit operations and 8 percent from donations.\textsuperscript{113} The expenses in 2011 totalled to 2.8 million US-Dollars. Of these, 39 percent were used for audits, 22 percents for capacity building, 22 percent for communication and stakeholder activities, 12 percent for oversight and policy, and 5 percent for quality assurance and QC-Audits.\textsuperscript{114}

The supreme decision-making body of the ICTI CARE Foundation is the Governance Board which is responsible for leadership and oversight of the ICP. According to Article 4.1 of the Care Process Handbook\textsuperscript{115}, the Governance Board has the task of ensuring that all ICP operations are effective, credible, and transparent.\textsuperscript{116} According to Article 4.1, the Governance Board has 14 members from the following areas: (1) five former executives from

---

\textsuperscript{111} Cf. ICTI CARE Foundation 2012f.
\textsuperscript{112} The ICP Factory Data Base is available at: http://www.icti-care.org/databases/seal-of-compliance.html
\textsuperscript{113} Cf. ICTI CARE Foundation 2011b.
\textsuperscript{114} Cf. ICTI CARE Foundation 2011b.
\textsuperscript{115} The Handbook is available at: http://www.icti-care.org/handbook/section1.html
\textsuperscript{116} Cf. ICTI CARE Foundation 2012g.
the toy industry ("Industry Statesmen") with extensive experience in the international toy industry, (2) five non-industry persons from the civil society, (3) three members who are currently active in the international toy industry, and (4) the current president of the International Council of Toy Industries.\footnote{Details on the current composition of the Governance Board are available at: http://www.icti-care.org/governance-board.html} The Board is co-chaired by Allan Hassenfeld, the former CEO and chairman of the board of the US toy brand Hasbro, and Maria Livanos Cattau, the former Secretary General of the International Chamber of Commerce.

The operative implementation of the ICP on the level of toy factories is undertaken by the ICTI CARE Foundation Asia Ltd. (ICFAL) that is based in Hong Kong.\footnote{For the sake of a better understanding, this study does not distinguish between the ICTI CARE Foundation and ICFAL.} In particular, ICFAL is responsible for organizing factory audits, certifying the factories, as well as conducting and/or organizing trainings. Since June 2011, Rosie Zhang is the Chief Operating Officer of ICFAL. Currently, ICFAL employs 15 people on a full-time basis.

### 4.5 Figures on the ICTI CARE Process

This chapter presents figures that on the one hand, show the development of the ICP over various periods and, on the other hand, depict information for a given date. Unless otherwise stated, the following data was provided by the ICTI CARE Foundation specifically for this study.

<table>
<thead>
<tr>
<th>Initial Audit</th>
<th>Annual Audit</th>
<th>Follow-up Audit</th>
<th>Re-Audit</th>
<th>Progress Audit</th>
<th>Surveillance Audit</th>
<th>Quality Control Audit</th>
</tr>
</thead>
<tbody>
<tr>
<td>425</td>
<td>725</td>
<td>623</td>
<td>92</td>
<td>646</td>
<td>964</td>
<td>136</td>
</tr>
</tbody>
</table>

Table 1: Numbers of audits conducted in 2011
Figure 1: Number of certified factories

Figure 2: Number of factories terminated from the ICP
Figure 3: Percentage of factories which acquired a Seal of Compliance after initial registration

Figure 4: Percentage of factories that acquired a Seal of Compliance after renewed registration.
Figure 5: Increase in the number of commitments to the Date Certain Program

*Further countries with one company committed to the Date Certain Program are Indonesia, Ireland, Norway, Poland, Portugal, Czech Republic, and Turkey

Figure 6: Number of toy brands with a Date Certain Commitment by county

---

119 Own calculation, based on publicly available data and data provided by the ICTI CARE Foundation for this study between 2005 and 2012.

120 The figure is based on the information from the Date Certain Database (see http://www.icti-care.org/databases/date-certain.html).
Figure 7: Number of Helpline calls
5 Analysis of the ICTI CARE Process

In general, the ICTI CARE Process meets a number of important prerequisites for improving the working conditions in Chinese toy factories. A fundamental advantage of the ICP is its focus on a single industry – namely the toy industry. This allows the ICP to take the specifics of the toy industry explicitly into account. In addition, the toy industry is a relatively small sector that is dominated by a small number of large toy brands. This simplifies the necessary coordination processes. Furthermore, the ICP has established itself as the dominant standard in the toy industry which renders it possible for it to efficiently improve the working conditions in Chinese toy factories via the elimination of multiple audits. Therefore, the ICP also adds economic value for the actors in the toy industry.

In order to make statements about whether the ICP can realize its potential to improve the working condition in Chinese toy factories, this chapter analyzes the structures and mechanisms of the ICP. In this respect, it must be noted that the following evaluation proceeds against the backdrop of the question of whether the ICP actually makes and whether the ICP is able to make a contribution to the improvement of the working conditions in Chinese toy factories. This is to be differentiated from the question of whether the ICP ensures an ideal level of labor and social standards. Thus, the criterion in the evaluation of the ICP is not based on the aim to realize an ideal state but rather, on the capacity to improve the status quo.
5.1 Major strengths

5.1.1 Continuous development

Since its establishment, the ICP has been continuously developed in various areas. The following table summarizes the major milestones and developments of the ICP.\footnote{Note that the table is just of descriptive nature und hence, does not include any assessments of the quality of the developments depicted.}

<table>
<thead>
<tr>
<th>Year</th>
<th>Developments</th>
</tr>
</thead>
</table>
| 2003 | - Introduction of the ICP Auditing System  
      - Accreditation and training of the first audit firms  
      - First audits of Chinese toy factories |
| 2004 | - Formal establishment of the ICTI CARE Foundation  
      - Establishment of the Governance Board  
      - Beginning of the Date Certain Program |
| 2005 | - Beginning of the Convergence Process  
      - Beginning of training sessions for factory managers |
| 2006 | - Assignment of auditors to Initial and Annual Audits by the ICTI CARE Foundation  
      - Introduction of QC-Audits |
| 2007 | - Introduction of the Date Certain, Retailer & Licensor, and ICP Factory Databases on the website of the ICTI CARE Foundation  
      - Introduction of CARE Cards  
      - Introduction of IRCA-certified auditor trainings\footnote{IRCA (International Register of Certificated Auditors) is a service company which, among other things, certifies auditors to carry out audits.}  
      - Inclusion of two civil society representatives into the Governance Board of the ICTI CARE Foundation |
| 2008 | - Extension of training measures for factory managers and auditors  
      - Revision of CARE Cards |
| 2009 | - Introduction of seal categories and the associated new regulation regarding weekly working hours (revision of the Seal of Compliance conditions)  
      - Introduction of the Continuous Improvement Process |
<table>
<thead>
<tr>
<th>Year</th>
<th>Developments</th>
</tr>
</thead>
</table>
| 2010 | New system for Audit Reporting Procedures  
Beginning of the annual INFACT Factory Survey  
Beginning of the 18-month pilot project “Train-the-Trainer” (together with the GIZ)  
Introduction of the Worker Helpline  
Revision of the Code of Business Practices (inclusion of selected ILO conventions) |
| 2011 | Revision of the Audit Checklist |
| 2012 | Revision of the requirements regarding the weekly working hours  
(introduction of the possibility to exceed the previously determined maximum working hours within a defined framework\textsuperscript{123})  
Revision of the Probation und Termination Policy (including the definition of “Zero Tolerance”\textsuperscript{124} and “Critical Violation”\textsuperscript{125} criteria)  
Introduction of unannounced Initial Audits |

Table 2: Overview of the major developments of the ICP

As a whole, the developments in the ICP presented here are, in principle, suited to contribute to an improvement of the process. This is reflected, for instance, in the developments in the field of audits. The assignment of auditors to Initial and Annual Audits by the ICTI CARE Foundation, which commenced in 2006, and the decision to conduct the Initial Audits on an unannounced basis, which was implemented in 2012, both contribute to a significant strengthening of audit quality.\textsuperscript{126} Further positive developments are the introduction of different seal categories\textsuperscript{127}, the extension of training measures, as well as the introduction of the CARE Card. The capacity of the ICP is also reinforced by the fact that the developments are carried out in different areas and include various levers so that development occurs on a broad scale. In addition, there are innovative starting points, for instance, in the form of the

\textsuperscript{123} See section 4.2, in particular the section “Certification”.
\textsuperscript{124} The ICTI CARE Foundation defines “Zero Tolerance” as “violations of the fundamental Social Compliance standards of the ICTI CARE Process and/or of National and International labor standards” (ICTI CARE Foundation 2012f). Among others, this includes bribery and corruption, forced labor, physical abuse, sexual harassment, or life-threatening health and safety issues. The disclosure of the violation of Zero Tolerance guidelines immediately leads to the termination of the factory from the ICP.
\textsuperscript{125} See footnote 109.
\textsuperscript{126} See section 5.1.3.
\textsuperscript{127} See also section 5.1.2.
pilot project “Train-the-Trainer” in cooperation with the GIZ\textsuperscript{128}, which demonstrate that the ICTI CARE Foundation is exploring new options for an improvement of the process. Finally, it can be noticed that the different changes and extensions are consistent with one another which indicates the existence of a long-term ICP policy and hence, the goal of continuous improvement.

The introduction of innovations and the modification of existing regulations demonstrate both willingness and ability to improve the ICP on behalf of the ICTI CARE Foundation. The willingness and ability are important factors for the long-term success of an industry code because they allow for the inclusion of past practical experiences made with the process in a fruitful way. In addition, it is important to continuously improve the ICP in order to be able to react to new developments and changing conditions adequately which, in turn, is a crucial precondition for an industry code to not lose its relevance for action.

\subsection*{5.1.2 Orientation on reality}

The nature of the developments outlined above evidences the ICP’s aim to improve the labor and social standards in Chinese toy factories under the given empirical conditions. In all its clarity, the associated orientation on reality reveals itself in the handling of working hours and the respective advancements in this area. As a reaction to the difficulties of factories to comply with the ICP-standards in this field, the ICTI CARE Foundation introduced different seal categories (A, B, Conditional)\textsuperscript{129} in 2009. The introduction of the seal categories has led to an increase in permitted weekly working hours and hence, to a reduction of the ICP-standards in this area.

The relevance of this new regulation becomes evident against the background of the specific empirical conditions of toy production. The high seasonality as well as just-in-time expectations of toy brands in combination with rising labor shortage in China substantially reduce the scope of action for Chinese toy factories. For toy factories, this yields a conflict between the compliance with working time regulations and the participation in the ICP. The new regulation defuses this conflict and, in turn, significantly improves the toy factories’ ability to participate in the ICP. At the same time, the introduction of the CIP works towards a continuous improvement with respect to weekly working hours. However, a point of criticism is that the incentives for a systematic improvement in this area have been reduced by the

\textsuperscript{128} According to the information provided by the ICTI CARE Foundation, approximately 4,000 workers from eight factories participated in this program between January 2010 and January 2012.

\textsuperscript{129} For the precise regulations, see section 4.2, in particular, the section “Certification".
possibility of a limited overdraft of the defined weekly hours that was introduced in spring 2012.\textsuperscript{130} However, this criticism should be viewed in light of the fact that the problems with weekly hours are not primarily rooted in a lacking willingness, but in a lacking ability of toy factories to reduce the weekly working hours substantially.

Regarding the currently applicable ICP working hours regulations, it must be emphasized that they are not compatible with Chinese laws. Toy factories can acquire a Seal of Compliance even if they violate the legal regulations on working hours. However, this fact does not constitute a weakness but rather a strength of the ICP. The Chinese state does not always make sure that companies are following the law which implies that compulsory rules of the game are sometimes missing.\textsuperscript{131} This is also true in relation to weekly working hours. In this field, the respective legal regulations cannot unfold a sufficient binding force on Chinese companies.\textsuperscript{132} Therefore, the problems regarding the working hours are not reasonably attributable to toy factories or the ICP since they are primarily the result of government behavior.\textsuperscript{133} The reaction of the ICTI CARE Foundation to this situation in terms of the introduction of different seal categories is sensible because it defines clear and realistic minimum standards for toy factories in the area of weekly working hours and thereby counteracts laissez-fair behavior. The danger of laissez-fair behavior arises in situations where laws and their enforcement are deficient.

The regulations regarding weekly hours demonstrate that the ICP is not oriented towards normative – and, under given empirical conditions sometimes not feasible – goals, but is aimed at improving the working conditions in Chinese toy factories under the prevailing competitive conditions. This is fundamentally important for an industry code like the ICP to be able to be relevant for action in practice and thus, to make a contribution to an improvement of the status quo. If requirements are made which simply cannot be realized by actors in a competitive environment, there is always the risk that the actors embark on deviant strategies. Thus, it is not conducive for the attainment of the actual goal when there are desirable but unrealistic standards which force toy factories to cheat auditors and pursue other deviant strategies.

\textsuperscript{130} Exceeding the previously defined regulations on maximum weekly working hours was initially envisaged as a temporary exception. It was planned to give factories time until July 30, 2012 to implement weekly working hours of maximum 66h via the Continuous Improvement Process (cf. ICTI CARE Foundation 2009, p. 3). In April 2012, this regulation was effectively revoked and instead, a new permanent exception regulation was put in place, according to which in case of an “A” Seal of Compliance, the weekly working hours may amount to 72 h for maximum 12 weeks per year and in case of a “B” Seal of Compliance may exceed 72 h for maximum of three weeks per year.

\textsuperscript{131} Cf. OECD 2005.

\textsuperscript{132} Cf. Cooney 2007.

\textsuperscript{133} Ultimately, even the best industry code reaches its limits if the fundamental legal requirements are not binding.
Altogether, the ICP’s orientation on reality prevents excessive demands being made of toy factories, strengthens toy factories’ acceptance of the process, and incentivizes them to improve in deficit areas. In light of this, the ICP is characterized by a reasonable focus on a gradual improvement of given working conditions within the framework of existing possibilities.

5.1.3 Promotion of the validity and quality of audit results

A fundamental challenge for audits stems from their ‘snapshot’ character. The insights generated in an audit do not automatically enable conclusions to be drawn about the day-to-day working conditions. In addition, audit results can be economically highly relevant for the factories if they constitute a precondition for business relationships. This implies that there are strong incentives for audited toy factories to achieve results which are as positive as possible, which also means that there is an incentive to manipulate audit results. In practice, cases of falsification of records, manipulation of workers’ statements, bribery of auditors, etc. can be frequently observed.\(^\text{134}\)

Against this background, a strength of the ICP is rooted in the presence of mechanisms that counteract the manipulation of audits. By assigning auditors to the factories, the ICTI CARE Foundation counteracts a relationship between factories and auditors that is too close and hence, potentially susceptible to corruption. In addition, the ICTI CARE Foundation usually sets the dates of the audits and informs the auditors about their exact place on a short-term basis. Furthermore, the ICTI CARE Foundation retains the responsibility for evaluating the audit results so that auditors do not have decision-making power in this respect. The validity of audit results is also improved by the circumstance that all audits are now conducted on an unannounced basis. This reduces the factories’ ability to prepare for audits and take measures to embellish the actual day-to-day situation.

The measures of quality assurance constitute a further means of improving the validity of audits. In particular, this includes the accreditation of audit firms and the associated training sessions for auditors. The latter fosters a common understanding among auditors in regard to ICP requirements and the implementation of the audit checklists as prescribed by the ICTI CARE Foundation. This enhances the comparability of audit results provided by different auditors and audit firms. In addition, there are QC-Audits which have the potential to

\(^{134}\) Cf., e.g., Egels-Zandén 2007; Hoang & Jones 2012.
enhance audit quality. However, due to the fact that QC-Audits primarily take place when there are indications of problems, their potential for quality assurance is hardly realized.

5.1.4 Promotion of toy factories’ acceptance of the ICTI CARE Process

Although controlling and monitoring compliance with standards represents a necessary precondition for the effectiveness of an industry code, this alone is not sufficient to achieve the intended objectives – here: the improvement of working conditions in Chinese toy factories. In other words, the potential of audits to contribute to ensuring responsible working conditions is limited. Even the best audit cannot improve a situation if the audited factory is not committed to this goal. A sustainable improvement of working conditions in the toy industry thus requires factories to have a self-interest in improvement. This is related to the circumstance that toy factories do not perceive the ICP as a cost factor in the first place, but rather as an investment in their future success.

In light of this, it is a strength of the ICP that the process is not limited to the mere control and monitoring of Chinese toy factories, but also includes starting points for fostering the toy factories’ commitment to the ICP. In particular, this involves training sessions and seminars for factory managers which, on the one hand, provide general information about the ICP and labor law-related aspects and, on the other hand, impart basic management competencies. Precisely due to the difficult situation in toy production, competencies that enable factories to master the current and future challenges must be developed. Together with the provision of material detailing the new developments of and challenges in the toy industry – for instance in form of the INFACT-Survey – the ICTI CARE Foundation also assumes the role of a service provider for toy factories and thus, specifically adds value for them.

The acceptance of the ICP is also fostered by partnership-based relationships with toy factories. In cases of toy factories’ difficulties to comply with the ICP’s requirements, the identification of problems and the development of solutions constitute the core of the ICTI CARE Foundation’s work. Accordingly, the termination of a factory from the process constitutes the ultima ratio. As a rule, the termination of a factory only takes place in cases of

135 However, on a critical note, it must be recognized that there is little data available on participants in training sessions and seminars so that statements about their relevance in the ICP can be made only to a limited extent. There are only figures for the “ICP New Policies and Factory Training”. According to information provided by the ICTI CARE Foundation, 770 factory managers from 407 factories participated in this training in the spring of 2012. At least for this training, it can be stated that a significant number of factories was reached.
“Zero Tolerance violations”\textsuperscript{136}, cheating, or lacking willingness to initiate improvement measures. In general, the ICTI CARE Foundation meets toy factories with a high level of benevolence, provided that they express their willingness to cooperate. The partnership-based philosophy of the ICP is also reflected in the option, established in 2007, to continue the membership in the process after violations “on probation”.

5.1.5 Worker empowerment

A further strength of the ICP derives from the existing instruments to improve the position of workers, whereby in particular, the ICTI CARE Foundation adopts the approach of capacity building. The education of the workers about their rights – for instance, through training sessions or the CARE Card – in combination with the Helpline, provides the workers with an infrastructure to improve their ability to assert their rights vis-à-vis toy factories. In addition, these instruments also contribute to making workers familiar with the ICP and the work of the ICTI CARE Foundation.

The number of approximately 862,500 CARE Cards that were distributed to workers so far demonstrates that this instrument is embedded into the ICP on a broad basis. The number of calls received by the helpline further indicates that the attempts to empower the workers are effective in practice – since its introduction in 2010, about 6,000 calls have been recorded.

5.1.6 Relationships with NGOs

Several NGOs have dealt, mostly critically, with the ICP so far. Typically, NGOs and initiatives such as the ICP have different, frequently opposite, views and positions. Especially against this backdrop, it is a strength of the ICP that the ICTI CARE Foundation has always maintained the readiness to engage in dialogue processes – also with rather critical NGOs.\textsuperscript{137} The readiness to engage in dialogue reflects the ICTI CARE Foundation’s willingness to learn and improve which has been acknowledged above and which, for instance, can be evidenced in the exchange of opinions between the ICTI CARE Foundation

\textsuperscript{136} The definition of “Zero Tolerance” can be found in footnote 123.
\textsuperscript{137} Note that the readiness to engage in dialogue as such does not provide any indication of the actual effects of a dialogue. For example, sensible suggestions of NGOs regarding the Date Certain Program have not been incorporated by the ICTI CARE Foundation so far.
and SACOM as well as “Aktion fair spielt” and its supporting organizations. It is also positive that the representatives of the ICTI CARE Foundation actively participated in different events organized by NGOs. It must also be mentioned that the ICTI CARE Foundation enabled NGO representatives to attend ICP audits. Besides that, there are different forms of selective cooperation with NGOs. For example, in 2009 and 2011 the ICTI CARE Foundation entrusted China Labor Watch to conduct employee surveys. The cooperation with China Labor Support Network, that runs the Worker Helpline, is also worth noting.

5.2 Procedural deficits of the ICTI CARE Process

This section presents deficits that are non-systematic in nature and hence, do not indicate general weaknesses of the ICP. The procedural deficits share the common attribute that they can be resolved with relatively little effort.

5.2.1 Limited transparency

A general weakness of the ICP is its limited transparency. Due to limited transparency, it is difficult to understand the ICP as well as the work of the ICTI CARE Foundation. This is also likely to be a problem for representatives of the toy industry unless they have dealt with the ICP very intensively. Thus, the lack of transparency does nothing to counteract the existing knowledge gaps about the ICP in practice.

The deficits in regard to transparency can be attributed to the following areas: (1) comprehensibility of the ICP, (2) audits and evaluation of audit results, and (3) availability and reliability of data.

(1) Comprehensibility of the ICP: Despite the fact that there is a variety of information about the ICP on the website of the ICTI CARE Foundation, it is only possible to

---

138 The statements of the ICTI CARE Foundation about the reports of SACOM and “Aktion fair spielt” are available at: http://www.icti-care.org/process-statements/ICTI-CARE-Process-Response-to-SACOM-8-February-2011-Report.htm. See also the dialogue with the ICTI CARE Foundation documented by “Aktion fair spielt” which can be accessed at: http://www.woek.de/web/cms/front_content.php?idcat=35&client=1&lang=1

139 See also section 4.2, in particular the sub-section “Worker empowerment”.

140 The existence of gaps in knowledge about and understanding of the ICP was also stated by Uwe Kleinert from “Aktion fair spielt”. During dialogues with toy brands, Kleinert observed a limited familiarity with the ICP in different areas. For instance, it was observed that the ICP is frequently reduced to the avoidance of child labor or that the certificates are unknown.
understand the underlying structures and mechanisms of the process to a limited extent. On the one hand, it must be stated that the ICP is highly complex which cannot be avoided in light of the tasks that have to be dealt with. On the other hand, the manner in which information is provided makes it difficult to handle the complexity. For instance, there is a general lack of an up to date descriptive representation of the ICP, i.e. a representation that also includes the recent developments. Related to this, it can also be observed that the information on the website of the ICTI CARE Foundation is frequently not up to date which further impedes the comprehensibility of the ICP. For example, the handbook of the ICTI CARE Foundation still talks about “Investigatory Audits” although they do not exist anymore. In addition, time and again, different terms are used for the same ICP processes and elements, as is, for instance the case with QC-Audits that are not only termed as “Quality Control Audits”, but sometimes also as “Quality Check Audits”.

A further problem is that not all relevant information about the ICP is (publicly) available. It is, for example, not readily apparent that the ICP possesses seven audit types. Furthermore, there is a lack of a concretization of the different audit types with respect to their application and specific details. Suchlike transparency deficits, in combination with the associated difficulties of comprehension of the ICP also engender the problem that the quality of the audits is sometimes being fundamentally called into question by outside experts. For example, Sethi et al. (2011) state: “This program [ICP; NL] professes to carry out independent audits. However, it does not provide any details as to how these audits are carried out, so that one might assess the quality and independent character of these audits. Second, the findings of these audits are not publicly disclosed.” (p. 515)

(2) Audits and evaluation of audit results: The ICTI CARE Foundation does not generally publish audit results. Only toy brands have the opportunity to examine the audit reports under the condition that the respective factory has authorized such an examination. However, at present, there is no mechanism available that automatically informs toy brands about the changes in seal categories or terminations of the factories. Toy brands thus have to find out the status of their factories by themselves.142

---

141 See http://www.icti-care.org/handbook/section6.html#s6dot2
142 According to information provided by the ICTI CARE Foundation, a new IT infrastructure will be implemented soon which will automatically notify registered toy brands about changes in the status of their factories.
In addition, there is little transparency with respect to the evaluation of audit reports conducted by the ICTI CARE Foundation. The “Zero Tolerance issues”\(^{143}\) constitute the only aspect of the process with a clear procedural guideline whereby the respective factory is terminated from the ICP. In cases of violations which do not fall into the category of “Zero Tolerance issues”, the determination of the consequences (control audits, putting the factory “on probation”, or termination of the factory) lie at the discretion of the ICTI CARE Foundation. On the one hand, this allows the ICTI CARE Foundation to do justice to every single case. On the other hand, this reduces the transparency of the ICP.

The limited transparency of audits and the evaluation of audit reports reduce outside observers’ ability to appraise the ICP’s progress regarding the development of working conditions in Chinese toy factories.

(3) **Availability and reliability of data:** The transparency deficit regarding the data availability is twofold. First, the ICP-relevant data is frequently not available or not available on an aggregated level. The publicly unavailable data, for instance, includes annual figures on new registrations in the ICP or the existing certificates in each seal category.\(^{144}\) Second, not all data which is available is also reliable.

In addition, the ICTI CARE Foundation itself does not possess superior data since it does not always systematically analyze available information or does not collect information at all. Thus, there is only limited information on toy factories which participate in the ICP, for example with regard to corporate key figures. Among other things, this yields the problem that the relationships between factory characteristics and typical problem areas, for instance, between the size of a company and weekly working hours, cannot be established. Hence, key indicators which would enable a targeted approach to specific problem areas are lacking. Moreover, there is a lack of key performance indicators which allow reliable statements about the progress of the ICP.

Besides the deficits in terms of the availability of data, there is also the problem that the existing data is not always reliable.\(^{145}\) For example, according to the current

\(^{143}\) See footnote 123.

\(^{144}\) Section 4.5 presents some figures that are not publicly available and were provided by the ICTI CARE Foundation for the purpose of this study.

\(^{145}\) The unreliability of some data was discussed with representatives of the ICTI CARE Foundation who acknowledged that there are problems with data on the website; according to the ICTI CARE Foundation, these problems will be rectified within the framework of the planned implementation of new IT infrastructure.
information on the website of the ICTI CARE Foundation, 2,318 factories are involved in the ICP.\textsuperscript{146} In the rubric “Frequently Asked Questions”\textsuperscript{147} the number of factories involved in the ICP amounts to 2,400 in October 2011. The manual analysis of the ICP Factory Database in October 2012, however, found that less than 2,000 are currently involved in the ICP which indicates that the previously stated figures are too high. In addition, there are discrepancies in regard to the information about the numbers of factories with a Seal of Compliance. According to the 2010 annual report of the ICTI CARE Foundation, there were 1,424 factories with a Seal of Compliance at the end of 2010\textsuperscript{148}, whereas, according to the data provided by the ICTI CARE Foundation for this study, only 1,165 factories were in possession of a Seal of Compliance at that time. Further discrepancies exist in regard to the data on toy brands involved in the Date Certain Program. For instance, the Date Certain Database states that there are 32 German toy brands, whereas according to the list provided by “Aktion fair spielt”\textsuperscript{149}, 39 German toy brands have committed themselves to the Date Certain Program. Moreover, the Date Certain Database includes a German company with the compliance date of 07-21-2003 which, however, is impossible because the Date Certain Program exists since the end of 2004.

5.2.2 Insufficient random examination of audit quality

As presented in section 5.1.3, the ICP possesses appropriate mechanisms that foster the validity and quality of audit results. In principle, this also includes QC-Audits that have the following aim according to Article 6.1.2 of the CARE Process Handbook\textsuperscript{150}: “The aim of Quality Control Audits is to ensure the highest level of quality, integrity and credibility of the ICTI CARE Process by using unannounced audits to control the quality and validity of the results of regularly-scheduled audits.” However, QC-Audits are mainly conducted in cases of grievances in toy factories. Thus, QC-Audits are employed for a random examination of audit quality to a very limited extent only.

However, due to strong incentives to manipulate the audits, random examinations of audit results are highly important to ensure audit quality. In light of the current focus of QC-Audits

\textsuperscript{146} Directly at the bottom of the home page: http://www.icti-care.org (as at October 2012).
\textsuperscript{147} Available at: http://www.icti-care.org/process/faq.html
\textsuperscript{148} Cf. ICTI CARE Foundation 2011c, p. 4.
\textsuperscript{149} The list (as at February 20, 2012) is available at: http://www.woek.de/web/cms/upload/pdf/aktion_fair_spielt/publikation/aktion_fair_spielt_firmenliste.pdf
\textsuperscript{150} See http://www.icti-care.org/handbook/section6.html#s6dot1
which investigate certain pieces of evidence, the QC-Audits do not take this important criterion into account appropriately. Accordingly, the current focus of the QC-Audits also does not correspond with the actual aim of QC-Audits as formulated by the ICTI CARE Foundation in Article 6.1.2. In this light, it must be stated that there is a deficiency in the safeguarding of audit quality in the ICP. An increase in random QC-Audits would create both additional incentives for factories to comply with the Code of Business Practices and for audit firms to ensure audit quality.

5.2.3 Manageability of the Date Certain Program

The commitment to the Date Certain Program involves the obligation to contract products manufactured in China exclusively and hence, to 100 percent from factories that are enrolled in the ICP. However, this obligation is barely realizable in reality. The underlying problems become particularly evident in cases of smaller orders. Due to the associated limited economic leverage, toy brands are not always able to induce the respective factories to participate in the ICP. In addition, toys frequently contain components which are non-specific to toys, such as electronic parts or ceramics. In general, it is questionable whether a toy brand is able to motivate electronic factories to participate in the ICP at all – this applies all the more as the volumes of orders in cases of non-specific toy components are frequently rather small. Moreover, the question arises as to what extent toy-specific certification can be applied to other industries.

Thus, in practice, it can be expected that even a model toy brand will be limited in its capacity to comply 100 percent with the Date Certain commitment. This empirical condition is, however, not addressed in the Date Certain Program. There is a lack of regulations in terms of realistic and clear requirements concerning the Date Certain commitment, for instance, in the form of certain tolerance limits. In practice, the lack of such regulations sometimes leads to arbitrary interpretations of the Date Certain commitment which engenders negative effects on its relevance for action.
5.3 Systematic Deficits

The systematic deficits presented in the following section constitute a significant impairment of the entire ICP. Their causes are rooted in the architecture and organisation of the ICP. Thus, in order to remedy the systematic deficits, a fundamental revision of the ICP structures and/or an implementation of new elements are required.

5.3.1 Date Certain Program I: Implementation on behalf of toy brands

The Date Certain Program is, in principle, a highly effective incentive mechanism to foster the improvement of working conditions in Chinese toy factories. Within the framework of the Date Certain Program, toy brands commit themselves to only contract products from Chinese toy factories that participate in the ICP. Participating factories include those with a Seal of Compliance, those that are “on probation” as well as factories that completed an Initial Audit and, if necessary, have submitted a CAP and committed themselves to its implementation. In principle, the Date Certain Program incentivizes toy factories to participate in the ICP since without participation no business relationships with toy brands, that have committed themselves to the Date Certain Program, should be possible.

On the one hand, it can be observed that the number of toy brands participating in the Date Certain Program has increased in recent years. On the other hand, it can also be observed that frequently, toy brands do not comply with the obligations, as can be evidenced on the example of Germany-based toy brands. According to the list\textsuperscript{151} compiled by “Aktion fair spielt” in February 2012, only 14 of 39 German toy brands fulfill their Date Certain commitment.\textsuperscript{152} The following figure shows the current state of the implementation of the Date Certain Program in Germany.

\textsuperscript{151} The list (as at February 20, 2012) is available at: http://www.woek.de/web/cms/upload/pdf/aktion_fair_spielt/publikation/aktion_fair_spielt_firmenliste.pdf

\textsuperscript{152} Note that toy brands that did not provide “Aktion fair spielt” with reliable information about the degree of their implementation of their commitment are designated as non-compliant with the Date Certain Program.
The current situation indicates an insufficient implementation and hence, an insufficient relevance for action of the Date Certain Program for toy brands. This constitutes a significant impairment of the entire ICP because this reduces the toy factories’ incentives to participate in the ICP and therewith, to improve working conditions. In practice, factories can frequently maintain business relationships with a toy brand which has committed itself to the Date Certain Program without actually participating in the ICP.

5.3.2 Date Certain Program II: Insufficient binding force

The insufficient binding force of the Date Certain Program for toy brands can be primarily traced back to the following three aspects, all of which engender the problem that there are barely any incentives to comply with the commitment: (1) lacking transparency, (2) lacking monitoring, and (3) lacking implementation of sanction mechanisms.154

(1) **Lacking transparency:** The ICTI CARE Foundation does not provide any information on which toy brands fulfill the Date Certain commitment and also does not publish

---

153 The figure is based on the toy brands overview compiled by “Aktion fair spielt”. The list presents the status of the implementation of the ICTI Code of Business Practices by the suppliers of German toy brands (as at February 20, 2012).

154 This shows that three of four determinants of the effectiveness of industry codes presented in section 2.4 are not met.
information about the progress of the Date Certain Program. Thus, it is impossible for toy brands and external parties to observe and assess the degree of the implementation of the Date Certain Program. It must be pointed out that the figure presented in the above section and depicting the current state of the implementation of the Date Certain Program in Germany is based on research conducted by “Aktion fair spielt” that rests on information from toy brands which is verifiable only to a limited extent.

The lacking transparency is reinforced by the fact that there is no requirement for toy brands to disclose their suppliers to the ICTI CARE Foundation or any other institution. In status quo, this entails the problem that on the one hand, it is not possible to reliably control and assess the implementation of the Date Certain Program and hence, to promote transparency. On the other hand, there is a deficiency in a fundamental precondition for effective monitoring.

(2) **Lacking monitoring:** Effectively, the ICTI CARE Foundation does not undertake any appropriate measures to control and monitor the toy brands’ compliance with the Date Certain Program. Instead, there is the hope that the national toy associations assume this task for their member companies which, however, barely takes place in reality. Indeed, there are single national associations that have committed themselves to attach association membership to the commitment to the Date Certain Program, but there is not a single association that actually controls and effectively enforces the implementation of the commitment.

(3) **Lacking implementation of sanction mechanisms:** The non-compliance with the Date Certain commitment has no consequences for toy brands. Neither the ICTI CARE Foundation nor the national associations take any measures in case of violations of duties through toy brands. Thus, the ICTI CARE Foundation does not act in line with procedures defined in articles 5.1.12 and 5.1.13 of the CARE Process Handbook: “Should the ICTI CARE Foundation become aware of a Date Certain committed company that is contracting products from a factory that does not have a Seal of Compliance and is not in the ICTI CARE Process, the ICTI CARE Secretariat will contact the Date Certain committed company and request an explanation and its proposal on how it will remedy the situation. Within 60 days from the initial request of...”

---

155 For the effectiveness of the Date Certain Program, it is not necessary to publicly disclose who the suppliers of the toy brands are. It is sufficient if this takes place vis-à-vis an entity that is subject to confidentiality requirements, for instance, vis-à-vis the ICTI CARE Foundation.

156 See also the next section, specifically the sub-section “National toy associations”.

the ICTI CARE Foundation, the factory must have submitted a valid application to enter the ICTI CARE Process; or the Date Certain committed company must terminate the contract with the particular factory coincident with delivery of any pre-existing orders, and must not place any new orders. If either of these conditions are not met, the ICTI CARE Foundation reserves the right to remove the Date Certain committed company from the Date Certain Database and request that the company immediately cease using the ICTI CARE Seal of Commitment in any of its public or private materials.” (ICTI CARE Foundation 2012h).

This shows that on the one hand, there are formal sanction mechanisms. On the other hand, these sanction mechanisms are not being applied in practice. Despite the fact that it is known and apparent that many toy brands do not fulfill their commitment to the Date Certain Program, not a single toy brand has ever been excluded from the program. The non-compliance of the ICTI CARE Foundation with its own rules contributed to a substantial impairment of the credibility of the entire ICP.

5.3.3 One-sidedness of the ICTI CARE Process

In order to accomplish its goal to improve the working conditions in Chinese toy factories, the ICP primarily addresses toy factories. Five of the seven ICP’s core elements (auditing, certification, CIP, capacity building, and worker empowerment) operate at the level of toy factories. The Date Certain program indeed addresses toy brands, but, as has been previously stated, does not engender a sufficient relevance for action for toy brands due to its lack of a binding force. Hence, there is only one effective element in form of the Convergence Process which does not primarily address toy factories. The following figure presents an overview of ICP elements as well as the addressees in the context of the relevant actors in the toy industry.158

158 For reasons of simplification, the actors of the toy industry are presented sequentially. This does not fully reflect the real situation whereby retailers can also act as toy brands – an aspect that can be neglected in the further argumentation.
Although factories are well addressed by five elements, the ICP suffers from its one-sidedness. This one-sidedness limits the effectiveness of the ICP in contributing to improvements in the working conditions in Chinese toy factories since the process does not (sufficiently) influence the behavior of other relevant actors in the toy industry. The relevant actors thereby include: (1) suppliers of toy factories, (2) toy brands, (3) retailers and licensors, and (4) national toy associations.

(1) **Suppliers:** On a formal level, the ICP demands that the participating toy factories oblige their suppliers to comply with responsible labor standards: “ICTI member companies will evaluate their own facilities as well as those of their contractors. They will examine all books and records and conduct on-site inspections of the facilities, and request that their contractors follow the same practices with subcontractors.” (ICTI CARE Foundation 2012i) In reality, however, the ICTI CARE Foundation does not actively ensure that toy factories pressure their suppliers to comply with the standards of the ICP. Thus, there are no incentives for toy factories to work towards the implementation of responsible labor and social standards of their suppliers.
Accordingly, it is not possible to draw conclusions about the standards of the suppliers of toy factories.159

Moreover, the lacking integration of suppliers into the ICP opens up possibilities for toy factories to circumvent the ICP. By interposing an ICP-certified factory, non-certified factories can maintain business relationships with toy brands that only source from certified factories – an option that is likely to attract wide interest from terminated factories. Correspondingly, toy brands can also circumvent their Date Certain commitment by purchasing from factories without an ICP certification by interposing a factory that participates in the ICP.

(2) **Toy brands:** On the one hand, the ICP obliges toy brands to discharge their duties via the Date Certain Program. On the other hand, this program lacks relevance for action. Currently, no appropriate efforts on behalf of the ICTI CARE Foundation to effectively involve toy brands in the ICP can be observed. Indeed, there have been isolated training opportunities for educating toy brands on the ICP in recent years, but participation was not mandatory. In addition, the measures are not focused on toy brands that are sceptical towards the ICP. On the whole, the ICP lacks incentives which have the power to assign a more active role to toy brands.

(3) **Retailers and licensors:** Similarly to toy brands, retailers and licensors are able to motivate toy factories to participate in the ICP via their purchasing behavior. In general, the ICTI CARE Foundation seeks to involve retailers and licensors in the ICP, in particular via the recognition of the ICP as a standard qua the Convergence Process. However, there are no effective mechanisms in place that systematically support retailers and licensors in incentivizing toy factories to participate in the ICP.

(4) **National toy associations:** While national toy associations played an important role in the establishment of the ICP, their current participation in the process is half-hearted at best. Of the 20 national associations160 that are currently ICTI members, only four associations (Denmark, Sweden, Spain, and the USA) have declared the Date Certain commitment to be a formal precondition for membership in the association. The German association (Deutscher Verband der Spielwarenindustrie, DVSI) ties membership to the requirement that decent working conditions are

---

159 This situation constitutes a serious risk for the toy industry and for individual toy brands since the general public attributes misconduct and grievances occurring on deeper supplier levels directly to the toy brands.

160 An overview of the national member associations of ICTI is available at: http://www.toy-icti.org/about/memberlist.html
guaranteed in toy factories.\textsuperscript{161} In this context, the Date Certain Program is mentioned as a possibility – but not as a precondition – to meet this requirement.\textsuperscript{162} De facto, the DVSI does not oblige its members to participate in the Date Certain Program.\textsuperscript{163}

Yet, the formal obligation of the member companies formulated by the few national toy associations barely engenders a binding force in practice. The respective national toy associations neither systematically monitor whether toy brands comply with the requirement, nor do they sanction non-compliance. To date, not a single case is known where a company was excluded from the membership in an association due to non-compliance with the Date Certain commitment. Against this background, it must be stated that, de facto, national toy associations do not assume an active role in promoting the ICP. This, on the one hand, indicates a lack of appropriate mechanisms in the ICP for involving national toy associations. On the other hand, this raises the fundamental question as to whether, and to what extent, the national toy associations support the ICP.

5.4 Overall evaluation of the ICTI CARE Process

It must be emphasized again that the evaluation of the ICP is based on its capacity to contribute to an improvement of labor and social standards in the status quo. Thus, this study does not address the question about the level of existing standards. In general, it must be noted that the ICP is aimed at ensuring compliance with absolute minimum standards.

When evaluating the ICP, it is first of all important to emphasize its general capacity to contribute to an improvement of labor and social standards in Chinese toy factories. The manner in which the ICP works towards the improvement of the status quo of labor and social standards in the production of toys can be characterized as exemplary as such. In

\textsuperscript{161} In the resolution passed in 2008, the exact wording is: “Jedes DVSI-Mitglied, das Produkte aus Schwellenländern, insbesondere aus China bezieht, ist verpflichtet, spätestens zum 31.12.2008 verbindlich zu erklären, dass es für Spielzeuge am Date Certain Program von ICTI teilnimmt oder anderweitig den Nachweis menschenwürdiger Arbeitsbedingungen führt. Ein Verstoß gegen diese Verpflichtung ist ein Ausschlussgrund im Sinne des §4 Ziffer 3 a) der Satzung des DVSI.” (Each member of the DVSI who sources products from emerging countries, in particular from China, is mandatorily bound to declare by 12-31-2008 at the latest that the member participates in the ICTI Date Certain Program or provides other evidence of humane working conditions with regard to its toy suppliers. A violation of this commitment is an exclusion criterion in terms of §4 section 3 a).

\textsuperscript{162} The British toy association has a similar regulation (see: http://www.btha.co.uk/work/template.php?id=399).

\textsuperscript{163} This is a point of particular note in light of the fact that the DVSI has been named as an association that has made the participation in the Date Certain Program a precondition for a membership on various occasions and also, on behalf of the ICTI CARE Foundation.
particular, it must be emphasized that the ICP aims to promote responsible toy production under given empirical conditions. This allows the process to take the challenges toy factories are faced with – for example, the high seasonality and the just-in-time expectations of toy brands – into account in a productive way. The consideration of empirical conditions meets a fundamental prerequisite for the ICP to be relevant for toy factories’ actions. In addition, the ICP constitutes a real process – as can be evidenced against the backdrop of its development in recent years – that is oriented towards achieving continuous progress in the field of labor and social standards. Altogether, the ICP is one of the industry codes which currently show the most potential to improve basic labor and social standards.

However, the ICP is currently not able to realize its full potential due to the existing deficits. Thus, the ICP remains below its full capacity for contributing to an improvement of labor and social standards in Chinese toy factories. In particular, this shortcoming stems from the insufficient active participation of toy brands in the ICP. With the Date Certain Program, the ICP does possess a mechanism that is, in principle, suited to assign toy brands an active role in the ICP. However, the Date Certain Program is currently not sufficiently relevant for action. On the one hand, the Date Certain Program lacks binding force. On the other hand, there are only limited approaches to incentivize toy brands to commit themselves to the Date Certain Program.

The insufficient integration of toy brands engenders the problem that for toy factories, the participation in the ICP is less relevant than it could be. The ICP can only realize its full potential if it can be ensured that for toy factories, the participation in the process constitutes a necessary precondition for business relationships with toy brands or if such a precondition is foreseeable. However, this condition is currently not fulfilled.

The insufficient integration of toy brands does not only lead to an impairment of the present status of the ICP, but also endangers its future viability. This becomes evident in light of the fact the one of the preconditions for the functionality of an industry code is constituted by a sufficient number of companies that recognize a standard in a binding manner. This counteracts the problem that responsible behavior engenders competitive disadvantages. In general, a certain amount of time is always required to establish a level playing field. This implies that those companies that are the first to adopt the standards of an industry code have to bear additional costs for the sake of moral principles. The willingness to make a moral commitment to the industry code is thereby essentially tied to the expectation that additional companies will do the same in future. If this expectation is not met over time, the motivation to continue to comply with the standards of an industry code will weaken.
This problem applies to both toy factories and toy brands. In practice, toy factories notice that toy brands also maintain business relationships with factories that do not participate in the ICP. This reduces the incentives for toy factories to join the ICP and also discourages those factories that already comply with the ICP requirements in an exemplary fashion. The insufficient integration of toy brands thus virtually sanctions those toy factories that participate in the ICP: on the one hand, toy factories have to bear the costs associated with the participation in the ICP; on the other hand, the benefits for toy factories in business relationships with toy brands are limited. Such divergence between costs and benefits will massively reduce the willingness of toy factories to participate in the ICP in the long run. This situation is aggravated by the fact that the competitive environment of Chinese toy factories is becoming increasingly intense.

A similar problem also exists on the level of toy brands. The compliance with the Date Certain Commitment incurs costs for the single company – for instance, in terms of a reduced flexibility of choosing suppliers – which may engender a competitive disadvantage vis-à-vis toy brands that do not comply with the Date Certain requirements. This problem is aggravated by the fact that the ICP is aimed at ensuring minimum standards which makes it barely possible for toy brands to distinguish themselves from their competitors through ICP standards. In the long run, however, companies will usually not be willing to accept competitive disadvantages in the name of CSR which implies that the willingness to actively participate in the ICP will be constantly reduced in future so long as no preventive measures are taken.

Altogether, the ICP has to be evaluated in a differentiated way. On the one hand, the ICP has high capacity to contribute to the improvement of labor and social standards in Chinese toy factories. On the other hand, currently, this capacity cannot be fully realized in practice. In addition, there is the danger that the insufficient integration of toy brands undermines the incentives for toy factories to participate in the ICP in the long run. This indicates that the ICP is currently not sustainable since the long term survival of the process is not ensured. Without a sufficient integration of toy brands, the ICP risks to disintegrate and thus, to collapse. In light of its demonstrated willingness and ability to improve, the ICP has the potential to eliminate the mentioned fundamental deficits and thus, to ensure its sustainability. In this respect, the governance board of the ICTI CARE Foundation has the responsibility to initiate the necessary steps.

---

164 This can be traced back to the circumstance that the implementation of minimum standards as such is expected in society. This implies that the management of minimum standards can barely be utilized for communication and advertisement.
6 The role of non-governmental organizations

In the globalized world, NGOs act as representatives of the civil society and make important contributions to a successful societal life. NGOs address neglected problem areas, create arenas for public discussions, work towards societal changes, engage themselves for societal well-being, and much more. With their activities, NGOs thus make important contributions to mastering societal challenges on the local and global level.

In the context of business, NGOs assume the task of “watch dogs” and work towards making corporations fulfill their social responsibility. To this end, they, for example, disclose and make public evidence of irresponsible conduct by corporations and work together with corporations on the solution of problems. Today, NGOs are actors that are able to effectively influence the behavior of corporations under certain conditions due to their positive public image and their high media presence. Thus, NGOs in general have the capacity to induce corporations to assume social responsibility. Such an influence is sometimes necessary as corporations are not always automatically willing to fulfill their social responsibility.

In recent years, various NGOs have taken a stand for the promotion of responsible labor and social standards in Chinese toy factories in different ways. For example, NGOs have published critical reports about poor working conditions in Chinese toy factories, initiated campaigns against the poor working conditions, criticized the ICP, led a critical dialogue with the ICTI CARE Foundation, and worked together with the ICTI CARE Foundation. The different efforts of NGOs to promote responsible labor and social standards in Chinese toy factories demonstrate that NGOs assume very different roles and can act both in cooperative as well as confrontational ways. What all activities have in common is that they aim to incentivize the actors in the toy industry to assume social responsibility.

In general, it can be assumed that the various NGOs activities have made a contribution to the development and reinforcement of the ICP. Simply the fact that NGOs deal with the ICP and implicitly and explicitly pose questions as well as articulate demands and criticisms pressures the ICTI CARE Foundation to continuously improve the ICP.

The evaluation of the ICP conducted in this study enables approaches for NGOs to effectively motivate the ICTI CARE Foundation and the actors in the toy industry to undertake further necessary improvement measures to be derived. It should be emphasized again that the capacity of the ICP to contribute to an improvement of labor and social standards in the production of toys is high. The fact that misconduct in Chinese toy factories can be observed time and again during audits does not indicate a general ineffectiveness of
the ICP. Ultimately, it will not be possible to ensure an everlasting ideal state in practice. Thus, a sensible valuation standard is defined by continuous improvement. Therefore, on the one hand, NGOs are well advised to value the productive capacity of the ICP and not be too hasty in calling the entire process into question. On the other hand, NGOs should not diminish their efforts to draw attention to the weaknesses and hindrances in the ICP.

As argued before, the insufficient integration of toy brands constitutes a central deficit of the ICP. This suggests that the most powerful lever for the improvement of labor and social standards is to incentivize toy brands to participate in the ICP. NGOs have the appropriate means to foster the involvement of toy brands in the ICP. A first possibility is to create transparency in regard to the (insufficient) implementation and binding force of the Date Certain Program. The importance of transparency becomes apparent in light of the fact that the toy industry itself does not undertake any special efforts to foster transparency. Transparency is necessary for the functionality of such mechanisms as the Date Certain Program.

There are further approaches for NGOs to foster the integration of toy brands into the ICP. This includes both critical and publicly visible interaction with toy brands that have not committed themselves to the Date Certain Program so far or do not sufficiently comply with the Date Certain commitment (creating negative incentives). Due to the dominance of the toy industry by a few big players, there are good preconditions for efficient and powerful activities. To foster the creation of incentives for the participation of toy brands in the ICP, it is possible to name the toy brands that participate in the ICP in an exemplary fashion (creating positive incentives). By creating negative and positive incentives simultaneously, it is possible to stimulate competitive processes that force toy brands into a race to the top.

In addition to directly addressing toy brands, national toy associations can also be addressed so as to actively promote the integration of toy brands into the ICP. Currently, there are only a few national toy associations (Denmark, Sweden, Spain, and the USA) that name the Date Certain commitment as a precondition for a membership. It must be emphasized again that no toy association is currently working towards compliance with the Date Certain commitment in a satisfactory manner. NGOs could publicly communicate that national associations only make a limited contribution to the functionality of the ICP. It is also possible

---

165 An example in this respect is “Aktion fair spielt” that informs the public about the degree of compliance with the Date Certain commitment of German toy brands and thus, promotes public transparency and creates potential public pressure.
for NGOs to critically discuss the role of the international toy association ICTI in promoting an improvement of labor and social standards in Chinese toy factories. This would also pressure the Governance Board of the ICTI CARE Foundation to take the necessary steps to eliminate the deficits of the ICP.

Another field of action for NGOs is the emphasis of the role of consumers as well as their education regarding their responsibility for labor and social standards in Chinese toy factories (in this context, it is also possible to critically examine the social responsibility of retailers). The buying behavior of consumers is responsible for the strong seasonality in the toy industry which, in turn, impedes the improvement of labor and social standards, in particular in terms of weekly working hours. Ultimately, even the best industry code will not ensure responsible working conditions if the buying behavior of consumers restricts its effective implementation in practice. The seasonality of the toy business and increasing labor shortage in China are the main drivers for the permitted weekly working hours being systematically exceeded during the peak season.

166 On the one hand, ICTI is co-responsible for the initiation of the ICP. On the other hand, ICTI barely engages in fostering toy brands to contribute to the effectiveness of the ICP.
7 Final remark

In general, toy brands would be well advised to be aware of the importance of the ICP for their future success. The ICP can become a highly powerful industry code that is able to offer a variety of benefits for the toy industry in the long run. A collapse of the ICP would entail enormous costs for all toy brands since each toy brand would have to be responsible for ensuring labor and social standards for itself. Thereby, costs are incurred due to both the inevitable multiple audits of toy factories as well as from the need to organize compliance processes individually. This would be supplemented by the damage suffered to the image of the entire industry as well as the costs associated with a loss of public acceptance, should the ICP collapse. Due to the insufficient participation of toy brands in the ICP, it is not unlikely that the process gradually loses its relevance in practice and hence, fails in the long run – unless the fundamental deficit of the insufficient participation of toy brands can be eliminated. Currently, toy brands endanger the implementation of responsible working conditions in Chinese toy factories and are therefore in the process of collectively damaging themselves.

Due to the insufficient implementation of the Date Certain Program, toy brands have a detrimental effect on the ICP. On the one hand, they undermine the incentives for toy factories to participate in the ICP. On the other hand, the failure to fulfill the promises made regarding the Date Certain Program undermines the credibility of the entire ICP. It is also likely that the behavior of toy brands engenders negative effects on the willingness of retailers and licensors to actively reinforce the ICP.

The current behavior of toy brands exhibits the character of free riding. In general, toy brands do strongly benefit from the existence of the ICP since the process relieves them of a considerable amount of pressure regarding the handling of CSR. In return, toy brands frequently lack the willingness to contribute to the effectiveness of the ICP. A necessary contribution to the sustainability of the ICP is to reward toy factories for their efforts in improving labor and social standards. Due to the insufficient implementation of the Date Certain Program, toy brands effectively do the opposite and in fact, indirectly sanction toy factories for their participation in the ICP. This is reflected in the circumstance that by having lower standards and making the associated (short-term) cost savings, non-participating toy factories can realize competitive advantages vis-à-vis toy factories that participate in the ICP. Thus, toy brands actively demotivate toy factories’ participation in the ICP. Altogether, the

---

167 For the problem of free riding in the context of industry codes, see, e.g., King & Lenox 2006. See also Hardin 1968 and Olson 1965.
impression prevails that toy brands follow the strategy to shift their social responsibility on to toy factories.\textsuperscript{168}

The behavior of toy brands calls their general commitment to the ICP and their social responsibility into question. The doubt about such a commitment is reinforced by the circumstance that the ICP requirements mainly constitute absolute minimum standards.\textsuperscript{169}

This is most clearly evidenced by the fact that the requirements regarding weekly working hours are below legal requirements.

As an industry initiative, the ICP must expect to be viewed critically in public. Therefore, to win public appreciation, it must be able to sustainably rebut criticism. However, the manner in which toy brands handle the ICP encourages the point of criticism that this industry initiative is rather a diversionary tactic and has no substance. This fosters the view that the ICP is just window dressing for toy brands, national toy associations, and the international toy association ICTI. The behavior of toy brands undermines both the credibility and social acceptance of the ICP. Thus, toy brands gamble away the public appreciation of the ICP which the process itself deserves due to its high capacity.

It is in the enlightened self-interest of the entire toy industry to implement mechanisms that counteract the collapse of the ICP and thus, to counteract their collective self-damage. To foster the willingness to take the necessary measures, the value of the ICP should be made clear to all toy brands. Their current behavior indicates that the ICP and the active participation in the process are not being understood as a sensible investment, but as a cost factor or even a necessary evil only. Therefore, it is necessary to actively promote the ICP among toy brands. Proving the business case is a most effective means of reinforcing the participation of toy brands in the ICP. Besides the already mentioned general benefits of the ICP for toy brands, it is likely that there are also benefits for the individual company. Within the framework of this study, evidence emerged that factories participating in the ICP have a higher performance capacity – for example in terms of quality standards, reliability, or flexibility.

Altogether, the toy industry is currently faced with the challenge to identify ways in which they are able to ensure the future viability of the ICP. This study has demonstrated that the integration of toy brands plays a fundamental role in this respect. The potential benefits for

\textsuperscript{168} It must be emphasized that there are indeed toy brands that implement their Date Certain commitment to the highest possible standard and also show a strong commitment to the ICP. These toy brands, which represent a minority in the toy industry however, are explicitly excluded from this criticism.

\textsuperscript{169} For the relevance of minimum standards and their importance in the context of CSR, see Lin-Hi 2009.
the toy industry and the potential to improve the working conditions of Chinese workers make the ICP a valuable initiative which deserves to be invested in. It is in the enlightened self-interest of the toy industry to contribute to the realization and maintenance of responsible working conditions in Chinese toy factories as this enables the industry to shape the conditions of its future success in a positive way.
References


Schrage, E. (2004): Promoting International Worker Rights Through Private Voluntary Initiatives: Public Relations or Public Policy? A Report to the U.S. Department of State on behalf of the University of Iowa Center for Human Rights; available at:


