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You Are Too Soft!: What Can Corporate Social Responsibility Do For Climate Change?

Issachar Rosen-Zvi*

I. INTRODUCTION

In the run-up to the global climate summit in Copenhagen (COP-15),¹ environmentalists, scientists, and politicians referred to it as a historical event. As COP-15 drew near, climate change activists and United Nations (UN) officials had high hopes that December 2009 would be a watershed moment for creating a new carbon-restricted global economy for decades to come. Furthermore, following the result of the 2008 American presidential elections, many in the international community felt that the path was clear to finally include the United States in the agreement that would replace the Kyoto Protocol,² and that developing nations—among them China and India—would also take on some binding and enforceable restrictions on Greenhouse Gas (GHG) emissions. The European Parliament even had lofty expectations that an

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1. The fifteenth Conference of Parties (COP-15) to the UN Framework Convention on Climate Change was held in Copenhagen on December 7-18, 2009. UNITED NATIONS CLIMATE CHANGE CONFERENCE 2 (2009), *available at* http://unfccc.int/files/meetings/cop_15/logistics/application/pdf/cop15_ifp_web.pdf.

2. Conference of the Parties to the Framework Convention on Climate Change: Kyoto Protocol, *adopted* Dec. 10, 1997, 37 I.L.M. 22.

emissions reduction of 80% compared to 1990 levels by 2050 would be agreed on, possibly with a mid-term goal by 2020.³

None of this happened, of course. The Copenhagen Accord,⁴ accepted by twenty-eight parties to the United Nations Framework Convention on Climate Change (UNFCCC),⁵ is a political instrument—rather than a legal one—and thus is non-binding on the parties. Moreover, there was no agreement on concrete goals for GHG emissions reduction and no concrete financial commitments were made by developed countries to help poorer ones. In fact, the Accord contains only vague aspirational language asking nations to voluntarily reduce their emissions.⁶ The sixteenth Conference of Parties (COP-16), held in Cancun in December 2010, justified the pessimistic outlook that preceded it and achieved no progress on new post-Kyoto targets.⁷

In light of this failure of international climate change negotiations, it is incumbent upon governments, civil society organizations, and conscious citizens that care about the future of the planet to explore innovative methods to combat climate change. One such method is harnessing new regulatory tools—often called “new governance” or “regulatory capitalism”—in the service of restricting GHG emissions. The question is, however, whether these novel regulatory tools can provide a (partial) solution to the world’s predicament. This study is an

3. EUROPEAN PARLIAMENT, 2050: THE FUTURE BEGINS TODAY – RECOMMENDATIONS FOR THE EU’S FUTURE INTEGRATED POLICY ON CLIMATE CHANGE 17, *available at* <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&language=EN&reference=A6-2008-0495>.

4. REPORT OF THE CONFERENCE OF THE PARTIES ON ITS FIFTEENTH SESSION HELD IN COPENHAGEN FROM 7 TO 19 DECEMBER 2009, PART TWO: ACTION TAKEN BY THE CONFERENCE OF THE PARTIES AT ITS FIFTEENTH SESSION 4-9 (2010), *available at* <http://unfccc.int/resource/docs/2009/cop15/eng/11a01.pdf>.

5. See Lavanya Rajamani, *The Making and Unmaking of the Copenhagen Accord*, 59 INT’L & COMP. L.Q. 824, 825 (2010); see also United Nations Conference on Environment and Development: Framework Convention on Climate Change, *adopted* May 9, 1992, 31 I.L.M. 849.

6. See Rajamani, *supra* note 5, at 831-35.

7. See Press Release, United Nations Framework Convention on Climate Change (UNFCCC), UN Climate Change Conference in Cancun Delivers Balanced Package of Decisions, Restores Faith in Multilateral Process (Dec. 11, 2010), *available at* http://unfccc.int/files/press/news_room/press_releases_and_advisories/applications/pdf/pr_20101211_cop16_closing.pdf.

initial exploration into this question.

The remainder of this article proceeds in three parts: Part II of this article discusses briefly the many facets of the notion of regulation. It argues that the study of regulation, and particularly that of climate change regulation, should go beyond traditional national and transnational regulation. It should look for innovative and hybrid forms of regulation that blur the distinction between public and private and destabilize the boundaries between mandatory and voluntary regulatory methods. Part III explores one such soft regulatory mechanism—corporate codes of conduct and Corporate Social Responsibility (CSR) reports—and evaluates its effectiveness in the realm of climate change. In Part III, I report and analyze the findings of a large-scale empirical study I conducted with regards to climate change reporting by corporations. The study covers the codes of conduct and accompanying CSR reports of thirty multinational corporations (MNCs) in three sectors—petroleum, automobile, and apparel—and from different regions around the globe for the years 2008 and 2009.⁸ I take at face value the hard numbers provided by corporations as to their climate change performance, as well as the actual actions they claim to have taken in order to reduce GHG emissions (rather than the softer public relations statements). On this basis, I assess whether such actions represent a real effort to combat climate change. In light of these findings, the concluding Part IV reflects on the main question posed by this article—namely, whether, and under what circumstances, codes of conduct and CSR reports can serve as a useful tool in the global battle against climate change.

II. FROM REGULATION TO GOVERNANCE

The perceived crisis of the centrist state set in motion a major shift, characterized as a transition from regulation to governance.⁹ This shift—informed and morally legitimized by

8. The CSR reports are generally published around April of the year following the year discussed in the report. For example, the 2009 CSR reports discuss the corporations' performance in the year 2008, and the 2010 CSR reports discuss the corporations' performance in the year 2009.

9. See Yishai Blank, *Federalism, Subsidiarity, and the Role of Local Governments in an Age of Global Multilevel Governance*, 37 *FORDHAM URB. L.J.* 509, 517-18 (2010).

Over the past few decades, the centrist state has been attacked from the right, center, and left for its inability to efficiently manage resources and provide services, its susceptibility to capture by rent-

neo-liberal ideology¹⁰—is a response to the challenges of globalization, which has undermined states' sovereignty by transforming them (both normatively and practically) into one among many norm-setting agents. It is also a product of the perceived failure of command-and-control regulation to cope with the complex, heterogeneous, and rapidly changing world.¹¹ While previous conceptualizations conceived of regulation as the promulgation of binding norms done exclusively by states, current understandings point to the many regulatory institutions beyond the state—among them international, transnational and sub-national entities; social movements; non-governmental organizations (NGOs); and business organizations.¹² Further, there has been a proliferation of new regulatory tools spanning from classic “hard law” command-and-control regulations issued, monitored, and enforced by states to “soft law” mechanisms promulgated, administered, and implemented by non-state agents.¹³ In some cases the tools encompass hybrid “hard/soft” regulatory mechanisms such as enforced self-regulation,¹⁴ meta-

seeking elites, its lack of responsiveness to citizen preferences, its turning into all-powerful bureaucratic apparatus which hinders its democratic legitimacy, its want of creativity and flexibility, its coercive legislation and regulation, its oppression towards various minorities . . . and its infringement on the basic negative liberties.

Id.

10. See Ronen Shamir, *Corporate Social Responsibility: Towards a New Market-Embedded Morality*, 9 THEORETICAL INQUIRIES L. 371, 371-78 (2008).

11. See Orly Lobel, *The Renew Deal: The Fall of Regulation and the Rise of Governance in Contemporary Legal Thought*, 89 MINN. L. REV. 342, 356-61 (2004).

12. See David Levi-Faur, *Regulation and Regulatory Governance* 3-9 (Jerusalem Papers in Regulation & Governance Working Papers Series, Working Paper No. 1, 2010), available at <http://levifaur.wiki.huji.ac.il/images/Reg.pdf>.

13. See *id.*, at 7–8 (distinguishing between “hard” and “soft” law). The definition of “regulation” used in this article is quite broad and follows Colin Scott who defines “regulation” as “any process or set of processes by which norms are established, the behavior of those subject to the norms monitored or fed back into the regime, and for which there are mechanisms for holding the behavior of regulated actors within acceptable limits of the regime” Colin Scott, *Analysing Regulatory Space: Fragmented Resources and Institutional Design*, PUB. L., Spring 2001, at 329, 331.

14. Enforced self-regulation takes place when the regulator forces the regulated business to issue rules and standards tailored to its specific needs, which are then approved by the regulator or sent back for revision if they are found lacking. The enforcement of these rules and standards is also carried out by the business that is required to establish a compliance administration

regulation,¹⁵ and co-regulation.¹⁶

Two major transformations are associated with the emerging order of new governance: (1) a shift from public to private and (2) from mandatory to voluntary regulation. Each of these transformations focuses on different aspects of the regulatory process and particularly on two questions: (a) who are the regulators? and (b) how is regulation carried out? This article will briefly discuss each transformation separately, but it is important to bear in mind that real-world forms of regulation are inherently intertwined and the analytical boundaries between them are far from clear.¹⁷

A. FROM PUBLIC TO PRIVATE REGULATION

The shift from public to private regulation covers two complimentary transformations: one focuses on how regulation is carried out (whether through traditional regulatory tools, such as prohibitions in the criminal law or through market mechanisms), while the other centers on the identity of the regulator. The more important transformation for this article's purposes is the latter, namely the emergence of new types of private and quasi-private regulators. Business entities, global financial institutions, NGOs, international NGOs, and social movements have become major contributors, both directly and indirectly, to the content and shape of national and international regulation.¹⁸ Among the new regulators, corporations—and especially MNCs—play a key role. With revenues exceeding the Gross Domestic Product (GDP) of many

and bear all its costs. See IAN AYRES & JOHN BRAITHWAITE, *RESPONSIVE REGULATION: TRANSCENDING THE DEREGULATION DEBATE* 106 (1992).

15. Meta-regulation enables the regulated actors to determine their own rules and standards while the role of the regulator is limited to monitoring the integrity of the work of the compliance administration established by the regulated entities. See Christine Parker, *Meta-Regulation: Legal Accountability for Corporate Social Responsibility*, in *THE NEW CORPORATE ACCOUNTABILITY: CORPORATE SOCIAL RESPONSIBILITY AND THE LAW* 207, 217-19 (Doreen McBarnet et al. eds., 2007).

16. Co-regulation is a regulatory scheme in which the responsibility for regulation is shared by the regulator and the regulated entities. See Levi-Faur, *supra* note 12, at 11.

17. See, e.g., Jason Morrison & Naomi Roht-Arriaza, *Private and Quasi-Private Standard Setting*, in *THE OXFORD HANDBOOK OF INTERNATIONAL ENVIRONMENTAL LAW* 498, 499-500 (Dan Bodansky et al. eds., 2007); David Vogel, *Private Global Business Regulation*, 11 *ANN. REV. POL. SCI.* 261, 265 (2008).

18. See Vogel, *supra* note 17, at 262.

developing countries, MNCs operating in such countries are able to exert enormous economic and political pressure on governments to regulate in a manner that is favorable to them, and thus become the de-facto regulators.¹⁹ Yet corporations shape the regulatory landscape in developed countries as well. They do so by using their immense power to influence decision makers through lobbying and campaign contributions, as well as by directly shaping regulation through sophisticated interpretations, evasions, and by “making rules” where none exist.²⁰

While for many years corporations approached environmental regulation as something that is imposed from above, devoting efforts and spending money to resisting it,²¹ in the new governance era many corporations have changed their attitude. They have begun to operate under the assumption that there is a business case for CSR, which often means going “beyond compliance.”²² As a result, corporations became active participators in a host of innovative regulatory practices, through both public-private initiatives (such as co-regulation and negotiated agreements)²³ and unilateral voluntary practices (such as taking part in certification programs, adopting codes of conducts, and publishing annual CSR reports).²⁴

Corporations, however, are not the sole private regulators that have emerged to prominence in recent years. They compete (or cooperate) with civil society organizations (such as NGOs), social movements, and local communities—which work strategically to create new forms of consciousness, shape market preferences, and more generally, implement their own version of social and environmental responsibility. Civil society organizations entered the field of CSR following their failure to convince national and transnational regulators to issue “hard”

19. See JOSEPH E. STIGLITZ, *MAKING GLOBALIZATION WORK* 187-88 (2006).

20. See Dan Danielsen, *How Corporations Govern: Taking Corporate Power Seriously in Transnational Regulation and Governance*, 46 HARV. INT'L L.J. 411, 412 (2005).

21. See ANDREW J. HOFFMAN, *FROM HERESY TO DOGMA: AN INSTITUTIONAL HISTORY OF CORPORATE ENVIRONMENTALISM* 3 (2001).

22. Neil Gunningham, *Environmental Law, Regulation and Governance: Shifting Architectures*, 21 J. ENVTL. L. 179, 193 (2009).

23. See *id.* at 186.

24. See *id.*

regulation protecting the environment, and in light of their frustration about the many successful challenges to such governmental regulation from trade-oriented transnational bodies such as the WTO.²⁵ Without fully abandoning their attempts to influence the more traditional regulatory mechanisms, civil society organizations began to also employ less formal—but often more effective—regulatory tools, which came to be known as “civil regulation.”²⁶

Civil regulation positions civil society organizations in a complex relationship vis-à-vis corporations, cooperating and competing with them at the same time. On the one hand, they use adversarial strategies to challenge the irresponsible behavior of corporations; for instance, through the sophisticated deployment of various forms of media they are able to gather and disseminate information about such behavior, organize high-profile “naming and shaming” campaigns, and orchestrate consumer boycotts all around the globe.²⁷ Some of these campaigns—such as those against Shell²⁸ and Nike²⁹—were so successful that brand-sensitive corporations are willing to “voluntarily” adopt social and environmental norms, not mandated by hard law, in order to make sure they do not fall prey to the next campaign.³⁰ More recently, even as such adversarial practices continue, civil society organizations have begun to cooperate with corporations, formally and informally, moving “from boycotts to global partnerships.”³¹ Such cooperation can take different forms, the most prominent of which are the many certification programs that have emerged in the recent decade in which NGOs “set standards, require external monitoring, and certify

25. See Vogel, *supra* note 17, at 264-65.

26. See Gunningham, *supra* note 22, at 197.

27. See, e.g., *id.* at 196 (explaining how, disapproving of the oil company Shell’s proposal to dismantle and dispose at sea an abandoned oil rig, Greenpeace garnered public support against the plan that led to a Northern European boycott of Shell gas stations and ultimately to Shell withdrawing its proposal).

28. *Id.*

29. See generally Vogel, *supra* note 17, at 274 (noting that Nike has made significant effort and investment in monitoring factory working conditions as more labor codes have emerged).

30. See Gunningham, *supra* note 22, at 197.

31. Joseph Domask, *From Boycotts to Global Partnership: NGOs, the Private Sector, and the Struggle to Protect the World’s Forests*, in GLOBALIZATION AND NGOS: TRANSFORMING BUSINESS, GOVERNMENT, AND SOCIETY 157, 157 (Jonathan P. Doh & Hildy Teegen eds., 2003).

compliance.”³²

B. FROM MANDATORY TO VOLUNTARY REGULATION

Regulation is often thought of as norms that are *legally* binding on the regulated entity. Under such formal conceptualization, the shift from public to private regulation entails a move from mandatory to voluntary standard-setting, since private regulators do not possess the legal power to promulgate and enforce binding rules on market actors. A less formalistic understanding of regulation, however, involves no such entailment. Although there is an apparent connection between the two shifts, the portrayal of private standards as inevitably voluntary and of public regulation as invariably mandatory is grossly inaccurate. The failure of governments to effectively regulate global markets led to the emergence of norms set by private agents—such as international financial institutions and institutional investors—which cannot be conceived of as “voluntary,” notwithstanding the fact that they are unenforceable by state agents, since corporations are not in a position to refuse to abide by such norms.

An example of a private non-voluntary regulation is the “Equator Principles,” which require corporations seeking project finance to abide by specific standards that are dictated, audited, and enforced by International Financial Institutions.³³ While this private regulatory practice is not legally binding on the corporations, neither is it voluntary, owing to the indispensability of finance for large-scale projects and the monopolistic power that global banks possess over such financing. Another example is institutional investors using

32. Tim Bartley, *Certification as a Mode of Social Regulation* 3 (Jerusalem Papers in Regulation & Governance, Working Paper No. 8, 2010), available at <http://regulation.huji.ac.il/papers/jp8.pdf>. Governments and industry bodies also use certification programs as a “mode of regulation.” *Id.* In addition, certification programs can become more “public” if a governmental agency decides to adopt it as a prerequisite for participation in a public program.

33. See John M. Conley & Cynthia A. Williams, Paper for Presentation, at Tel Aviv University, *Global Banks as Global Sustainability Regulators: The Equator Principles 3-5* (June 2-4, 2010) (on file with the author); see generally *About the Equator Principles*, THE EQUATOR PRINCIPLES, <http://www.equator-principles.com/index.php/about-ep> (last visited June 12, 2011) (explaining that financial institutions adopting the Equator Principles commit to not providing loans when the borrower is either unwilling or unable to comply with the Equator Principles).

their proxy power to demand that corporations abide by those social and environmental standards dictated by the institutional investors.³⁴ What is witnessed, therefore, is a variety of different types of norms that defy easy categorization as either mandatory or voluntary³⁵—displaying various degrees of corporate discretion in adopting and abiding by such norms.³⁶

C. CLIMATE CHANGE GOVERNANCE

The transitions from public to private and from mandatory to voluntary regulation are apparent in climate change governance. Market-based mechanisms are widely used to combat climate change by both state and non-state actors, the most prominent of which are cap-and-trade programs.³⁷ The European Union (EU) was the first to institute a mandatory emissions trading program for carbon dioxide (CO₂), called the European Union Emissions Trading Scheme (EU ETS),³⁸ and was followed by other mandatory GHG emissions trading schemes, such as the Australian's NSW Greenhouse Gas Reduction Scheme (GGAS).³⁹ More interesting is the development of evolving voluntary GHG emissions markets, which includes all carbon offset trades not required by mandatory regulation.⁴⁰

34. An example is the California Public Employees' Retirement System (CalPERS), one of the largest institutional investors in the United States, using its proxy power to enforce upon corporations the implementation of its Core Principles of Accountable Corporate Governance. CALPERS, CORE PRINCIPLES OF ACCOUNTABLE CORPORATE GOVERNANCE 4-6 (2007), available at: <http://www.calpers-governance.org/principles/domestic/us/downloads/us-corpgov-principles.pdf>.

35. See Mathias Koenig-Archibugi, *Transnational Corporations and Public Accountability*, in GLOBAL GOVERNANCE AND PUBLIC ACCOUNTABILITY 122 (David Held & Mathias Koenig-Archibugi eds., 2005); Morrison and Roht-Arriaza, *supra* note 17, at 499-500.

36. See Koenig-Archibugi, *supra* note 35.

37. See Carol M. Rose, *Liberty, Property, Environmentalism*, 26 SOC. PHIL. & POL'Y 1, 2 (2009).

38. For an exhaustive description of the EU ETS, see John C. Dernbach & Seema Kakade, *Climate Change Law: An Introduction*, 29 ENERGY L.J. 1, 12-14 (2008).

39. GREENHOUSE GAS REDUCTION SCHEME, <http://www.greenhousegas.nsw.gov.au> (last visited Apr. 4, 2011).

40. For a good description of the voluntary carbon markets, see generally KATHERINE HAMILTON ET AL., BUILDING BRIDGES: STATE OF THE VOLUNTARY CARBON MARKETS 2010 (2010), available at http://www.forest-trends.org/documents/files/doc_2433.pdf. For an analysis of the legal aspects of

Certification programs are another voluntary private regulatory measure used to combat climate change, mostly in the field of renewable energy. A renewable energy certificate (REC) program, also called a green certificate system, is a response to both governmental policies (the most common of which is the renewable portfolio standard (RPS)),⁴¹ and the demand of consumers (both businesses and households) for green electricity. These certificates can serve two purposes. First, in the case of governmentally-set obligations, they can act as an accounting mechanism, or even as a proof to customers that a certain amount of renewable electricity has been produced.⁴² Second, they can help to facilitate the creation of a market for green electricity and environmentally responsible behavior that functions independently from the market of electricity as a commodity.⁴³

Of voluntary private regulation, the “softest” and least institutional are corporate codes of conduct, which are the focus of this article. This article provides an in-depth analysis of the codes of conduct and associated CSR reports that are published by thirty MNCs from three different industrial sectors (petroleum, automobile, and apparel) and from different regions of the world (the United States, Europe, and Asia) for the years 2008 and 2009. This article asks whether codes of conduct can ever be useful for addressing climate change, and if so, what are the necessary conditions for their effectiveness.

voluntary carbon markets, see Michelle Passero, *The Voluntary Carbon Market: Its Contributions and Potential Legal and Policy Issues*, in LEGAL ASPECTS OF CARBON TRADING: KYOTO, COPENHAGEN, AND BEYOND 517 (David Freestone & Charlotte Streck eds., 2009). It is important to note, however, that doubts have been raised lately with regards to the effectiveness of voluntary carbon markets due to the failure of the most prominent carbon market, the Chicago Climate Exchange (CCX). See, e.g., Ezra Levant, *Imaginary Exchange Goes Poof: The Green Scheme Known As The Chicago Climate Exchange Will Stop Trading Hot Air at the End of The Year*, TORONTO SUN, Nov. 14, 2010, at O6.

41. A RPS requires that an energy supplier provides a set amount of electricity from renewable sources as a share of supplier’s total sales. RYAN WISER & GALEN BARBOSE, RENEWABLE PORTFOLIO STANDARDS IN THE UNITED STATES: A STATUS REPORT WITH DATA THROUGH 2007, at 2 (2008), available at <http://eetd.lbl.gov/ea/ems/reports/lbnl-154e-revised.pdf>.

42. See ED HOLT & LORI BIRD, EMERGING MARKETS FOR RENEWABLE ENERGY CERTIFICATES: OPPORTUNITIES AND CHALLENGES, NATIONAL RENEWABLE ENERGY LABORATORY TECHNICAL REPORT, at 15 (2005), available at <http://apps3.eere.energy.gov/greenpower/resources/pdfs/37388.pdf>.

43. *Id.* at 9-10.

The corporations chosen for this research are among the largest in the world in their respective sectors, and the sectors themselves represent industries with varying degrees of harmful effects on the environment.⁴⁴

III. CORPORATE CODES OF CONDUCT AND CLIMATE CHANGE

A. WHAT ARE CORPORATE CODES OF CONDUCT?

Corporate codes of conduct first came to prominence towards the end of the twentieth century.⁴⁵ Codes of conduct enhance corporations' social and environmental commitments by articulating the norms and standards by which they profess to be bound.⁴⁶ Although some state governments have encouraged this kind of disclosure either directly or indirectly,⁴⁷ corporate codes and CSR reports are a mostly voluntary activity intended to give an account to external stakeholders of the social and environmental effects of their business.⁴⁸ The reasons for the emergence and persistence of codes of conduct are both complex and contested. Corporations adopt them for one or more of the following reasons: in order to prevent governmental intervention in the form of mandatory regulation (known in literature as the "shadow of hierarchy"⁴⁹); to limit political opposition to the growing globalization of markets; as a response to pressures from consumer groups; and as a means to protect their reputation.⁵⁰ Be that as it may, most MNCs today, especially those based or operating in developed countries, cannot afford to operate without codes of

44. For a list of the Corporations see *infra* Appendix I, Tables 1–3.

45. See Ans Kolk & Rob van Tulder, *Setting New Global Rules? TNCs and Codes of Conduct*, 14 *TRANSNAT'L CORP.* 1, 4-7 (2005).

46. See *id.* at 3-4.

47. See generally KPMG INT'L, KPMG INTERNATIONAL SURVEY OF CORPORATE RESPONSIBILITY REPORTING 4 (2008), available at <http://www.kpmg.com/Global/en/IssuesAndInsights/ArticlesPublications/Documents/International-corporate-responsibility-survey-2008.pdf> ("One of the most significant findings of the 2008 survey is that corporate responsibility reporting has gone mainstream - nearly 80 percent of the largest 250 companies worldwide issued reports, up from about 50 percent in 2005.").

48. See Kolk & van Tulder, *supra* note 45, at 7.

49. See Adrienne Héritier & Dirk Lehmkuhl, *Introduction: The Shadow of Hierarchy and New Modes of Governance*, 28 *J. PUB. POL'Y* 1, 1-2 (2008).

50. See Tim Bartley, *Corporate Accountability and the Privatization of Labor Standards: Struggles Over Codes of Conduct in the Apparel Industry*, 14 *RES. POL. SOC.* 211, 212, 220-27 (2005).

conduct.⁵¹

Codes of conduct can take various shapes and forms—widely varying in their scope, norms, and the monitoring and enforcement mechanisms included in them.⁵² They can be adopted unilaterally by individual corporations or by a group of firms in a particular industry.⁵³ Corporations can also subscribe to existing model codes prescribed by international organizations, NGOs, or trade unions.⁵⁴ They can be authored independently or in cooperation with several stakeholders. In terms of scope, codes can touch on some or all of a variety of issues (among them corporate governance, prevention of corruption, human rights, labor standards, and environmental protection) and range from vague declarations of intent to specific detailed commitments.⁵⁵ In terms of monitoring, they can be audited internally (first-party audit), by accounting firms, or by independent third-parties such as NGOs.⁵⁶ Despite this variety, one crucial aspect of the codes is similar across the board—they are adopted voluntarily by corporations and are currently beyond the reach of the state's legal apparatus. Thus, they rely on civil society organizations that use the market for their monitoring and enforcement. Such private agents require reliable information in order to become potent regulators. Without reliable and comparable information regarding the corporations' environmental practices, achievements, and targets, the "market for virtue"⁵⁷ cannot function.

The codes and CSR reports are, I submit, a reliable source of information as to some of the corporations' climate change practices and achievements. This is so because corporations are legally prohibited from making misleading statements in their

51. See, e.g., Ans Kolk, *Sustainability, Accountability and Corporate Governance: Exploring Multinationals' Reporting Practices*, 17 BUS. STRATEGY & ENV'T 1, 4-5 (2008) (noting that 161 of the Fortune Global 250 companies publish sustainability reports, which indicates growing attention by multinationals on corporate accountability of non-financial issues).

52. See Kolk & van Tulder, *supra* note 45, at 3-4.

53. See *id.* at 4.

54. See Rhys Jenkins, *Corporate Codes of Conduct: Self Regulation in a Global Economy* 14-18 (Tech., Bus. & Soc'y Programme Paper No. 2, 2001), available at <http://digitalcommons.ilr.cornell.edu/codes/10/>.

55. See *id.* at 19-23.

56. See *id.* at 19-26.

57. DAVID VOGEL, MARKET FOR VIRTUE: THE POTENTIAL AND LIMITS OF CORPORATE SOCIAL RESPONSIBILITY (2005).

publications (which include the codes and annual CSR reports) and such actions are punishable under various trade legislations around the developed world, including the United States' Federal Trade Commission Act (US FTC),⁵⁸ The European Unfair Commercial Practices Directive,⁵⁹ and the Australian Trade Protection Act.⁶⁰ For instance, the US FTC guidelines on environmental marketing states that “[a]n environmental marketing claim should not be presented in a manner that overstates the environmental attribute or benefit, expressly or by implication.”⁶¹ Thus, while it is unlikely that outright false representations will be made in a corporations' CSR documents, it is still in a corporation's interest to depict itself in the best light possible and show that their practices are better than their competitors. Otherwise, why bother to prepare and publish a code of conduct and CSR reports? I, therefore, relied in my study on the “hard” numbers provided by corporations with regard to their GHG emissions reduction, which can be measured and verified, while ignoring the softer public relations statements they make.

58. In *Nike Inc. v. Kasky*, 45 P.3d 243, 258-62 (Cal. 2002), *cert. dismissed*, 539 U.S. 654 (2003), the California Supreme Court held that factual statements made by corporations about their operations—the type of information that is found in corporate codes and CSR reports—are commercial speech and as such are subject to regulation preventing consumer deception. The case was settled before the Supreme Court reached a decision, but the California Supreme Court's ruling remains good law.

59. Directive 2005/29, art. 5, 2005 O.J (L 149) 22 (EC).

60. *Trade Practices Act 1974* (Cth) (Austl.). For a discussion of the Act and the various green guideline issued under it by the Australian Competition and Consumer Commission, see Brian Preston, *Climate Change Litigation*, 26 ENVTL. & PLAN. L.J. 169, 171-75 (2009).

61. FTC Guides for the Use of Environmental Marketing Claims, 16 C.F.R. § 260.6(c) (1998). *See also* 16 C.F.R. § 260.5 (1996)

[A]ny party making an express or implied claim that presents an objective assertion about the environmental attribute of a product, package or service must, at the time the claim is made, possess and rely upon a reasonable basis substantiating the claim. A reasonable basis consists of competent and reliable evidence. In the context of environmental marketing claims, such substantiation will often require competent and reliable scientific evidence, defined as tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

Id.

B. THE “DIVISION OF LABOR” BETWEEN CODES OF CONDUCT AND CSR REPORTS

Before delving deeper into the analysis, an account of the relationships between the codes of conduct and CSR reports is called for. As expected, the environmentally-sensitive industries studied in this research (i.e., petroleum and automobile) report heavily on environmental issues in general, and GHG emission reduction efforts in particular. This is true, however, only for the corporations’ annual CSR reports. The codes of conduct, on the other hand, are surprisingly dull and use, almost invariably, generic and non-binding statements regarding environmental protection. For example, the codes of conduct of corporations in the petroleum sector include vague statements such as: “[w]e continually look for ways to reduce the environmental impact of our operations, products and services,”⁶² “[w]herever we operate, we will strive to minimize any damage to the environment arising from our activities,”⁶³ and “Chevron’s policy is to maintain the safety and health of people and the quality of the environment where we operate.”⁶⁴ Furthermore, in most cases the environmental protection requirements do not even attain a separate section in the code, but are relegated to a subsection under the Occupational Safety and Health Administration (OSHA) section. Similarly, the codes of corporations in the automobile industry contain mostly vague statements regarding environmental protection and contain no commitments to reduce GHG emissions.

Thus, in order to understand the actual climate change practices, one has to look at the CSR reports published annually by the corporations. These hefty documents breathe life, so to speak, into the loose statements corporations make in their codes of conduct, translating them into detailed

62. ROYAL DUTCH SHELL, SHELL CODE OF CONDUCT 10 (2006), *available at* http://www-static.shell.com/static/public/downloads/corporate_pkg/code_of_conduct_english.pdf.

63. BP GROUP CO., OUR COMMITMENT TO INTEGRITY: BP CODE OF CONDUCT 16 (2005), *available at* http://www.bp.com/liveassets/bp_internet/globalbp/STAGING/global_assets/downloads/C/coc_en_full_document.pdf.

64. CHEVRON CORP., BUSINESS CONDUCT AND ETHICS CODE 14 (2010), *available at* <http://www.chevron.com/Documents/Pdf/ChevronBusinessConductEthicsCode.pdf>.

achievements, commitments, and targets.

We can understand the seeming vacuity of codes of conduct containing abstract and rather empty norms, as compared with detailed CSR reports consisting of more concrete commitments, as an evasive maneuver aimed at avoiding legal liability. As described by Shamir⁶⁵ and Bartley,⁶⁶ NGOs and advocacy groups have begun to attempt to hold corporations accountable to commitments undertaken in their codes of conduct. These attempts, though so far unsuccessful, raised concerns among corporations and discouraged them from assuming upon themselves commitments that could be later interpreted as legally binding. The result is a “division of labor” between the codes of conduct and CSR reports that reflects an attempt by the corporations to minimize their exposure to the risk of being held legally liable while at the same time continuing to benefit from the advantages of CSR, including bypassing governmental intervention and protecting the corporations’ reputation from “naming and shaming” campaigns.

C. CLIMATE CHANGE REPORTING

The attitudes corporations manifest towards their environmental responsibility vary from sector to sector. In some sectors the environment is a major concern, while, in others, much less so. This is reflected in CSR reports. Environmental reporting is widespread in the petroleum and automobile sectors, and less so in the apparel sector.⁶⁷ This is due to the diverse levels of risk—both legal and extra-legal—each sector is exposed to, as well as the different expectations arising from their economic, regulatory, and social licenses to operate.⁶⁸ Traditionally, NGOs, social movements, and conscientious consumers targeted corporations in the apparel sector for their labor practices and cared much less about their

65. Ronen Shamir, *Between Self-Regulation and the Alien Tort Claims Act: On the Contested Concept of Corporate Social Responsibility*, 38 LAW & SOC'Y REV. 635 (2004).

66. Bartley, *supra* note 50, at 228–32.

67. The opposite is true with regard to labor practices. See Guy Mundlak & Issachar Rosen-Zvi, *Signaling Virtue? A Comparison of Corporate Codes in the Fields of Labor and Environment*, 12 THEORETICAL INQUIRIES L. (forthcoming 2011) (on file with author).

68. On the social license to operate, as distinguished from other types of licenses to operate, see NEIL GUNNINGHAM, ROBERT A. KAGAN & DOROTHY THORNTON, *SHADES OF GREEN: BUSINESS, REGULATION, AND ENVIRONMENT* 41–74 (2003).

environmental behavior, while the opposite was true for companies in the petroleum industry.⁶⁹

That said, negative corporate attitudes to climate change are gradually becoming an exception to this pattern. Apparent differences do still exist between sectors in both the pervasiveness and the quality of reporting, but these are narrowing. Climate change stands out as something no corporation (at least those operating and/or marketing products in developed countries) can afford to disregard. The high visibility of climate change in both public discourse and the media, and the enormous social and political attention it receives, has resulted in the emergence of climate change as “one of the most important and urgent corporate responsibility issues.”⁷⁰ There is also a growing uniformity in climate change reporting (mostly in form rather than in substance) as a result of the continuous efforts undertaken to standardize reporting by institutions such as the Global Reporting Initiative (GRI)⁷¹ and the Carbon Disclosure Project (CDP).⁷² All the same, climate change reporting still varies both within and between industries, and it is therefore useful to divide the discussion accordingly.

1. The Petroleum Sector

Until recently, many corporations in the petroleum sector contested climate change being a serious problem.⁷³ This is no longer the case. None of the corporations in the petroleum sector surveyed in the study contests the fact that climate change is a major global issue and that fossil fuel is a chief

69. See PHILLIP STALLEY, FOREIGN FIRMS, INVESTMENT, AND ENVIRONMENTAL REGULATION IN THE PEOPLE'S REPUBLIC OF CHINA 194 (2010) (advocating a sensitivity to sectoral differences when conducting empirical studies).

70. KPMG INT'L, *supra* note 47, at 49.

71. GLOBAL REPORTING INITIATIVE, SUSTAINABILITY REPORTING GUIDELINES (2006) *available at* http://www.globalreporting.org/NR/rdonlyres/ED9E9B36-AB54-4DE1-BFF2-5F735235CA44/0/G3_GuidelinesENU.pdf.

72. CARBON DISCLOSURE PROJECT, <http://www.cdproject.net> (last visited Apr. 3, 2011).

73. See Robert L. Glicksman, *Anatomy of Industry Resistance to Climate Change: A Familiar Litany*, in ECONOMIC THOUGHT AND U.S. CLIMATE CHANGE POLICY 83, 83–106 (David Driesen ed., 2010).

contributor to climate change.⁷⁴ To the contrary, nowadays not only do corporations pledge to lower their carbon footprint, but they also compete among themselves regarding which one is doing more to combat climate change.⁷⁵ All the same, and notwithstanding the standardization attempts described above that brought about some uniformity in reporting, corporations still have wide discretion as to which environmental data to highlight and which to hide, as well as in their reporting methodology (i.e., choosing a baseline year from which reductions are measured, the share of holding that requires reporting, reporting data of operated versus owned facilities, and the like). As a result, oftentimes the data reported leads to an “information overload”⁷⁶ and confusion, instead of clarifying

74. See, e.g., BP GROUP CO., SUSTAINABILITY REVIEW 2008, at 15 (2009) [hereinafter BP, SUSTAINABILITY REVIEW 2008], available at http://www.bp.com/liveassets/bp_internet/globalbp/STAGING/global_assets/e_s_assets/e_s_assets_2008/downloads/bp_sustainability_review_2008.pdf; ROYAL DUTCH SHELL, SUSTAINABILITY REPORT 2008, at 12 (2009) [hereinafter SHELL, SUSTAINABILITY REPORT], available at <http://www.unglobalcompact.org/system/attachments/1307/original/COP.pdf?1262614257>. For a discussion of this transformation in attitude see Ans Kolk & David Levy, *Winds of Change: Corporate Strategy, Climate Change and Oil Multinationals*, 19 EUR. MGMT. J. 501 (2001).

75. Shell, for example, takes pride in its CSR report that “we were one of the first energy companies to recognise the climate change threat and to call for action. We understand we have a role to play in helping address this challenge” SHELL, SUSTAINABILITY REPORT, *supra* note 74, at 12. See also BP GROUP CO., SUSTAINABILITY REVIEW 2009 AT 14–15 (2010), available at http://www.bp.com/assets/bp_internet/globalbp/STAGING/global_assets/e_s_assets/e_s_assets_2009/downloads_pdfs/bp_sustainability_review_2009.pdf; CHEVRON CORP., CORPORATE RESPONSIBILITY REPORT 2009 3 (2010) [hereinafter CHEVRON, CORPORATE RESPONSIBILITY REPORT 2009], available at http://www.chevron.com/globalissues/corporateresponsibility/2009/documents/Chevron_CR_Report_2009.pdf; TULLOW OIL, 2009 CORPORATE RESPONSIBILITY REPORT 25–27 (2010) [hereinafter TULLOW, 2009 CORPORATE RESPONSIBILITY REPORT], available at http://www.tulloil.com/files/pdf/tulloilcr09_cr_report_2009.pdf.

76. For a general discussion of the idea of “information overload,” see, for example, Kenneth E. Himma, *The Concept of Information Overload: A Preliminary Step in Understanding the Nature of a Harmful Information-Related Condition*, 9 ETHICS & INFO. TECH. 259 (2007) (unpacking the idea that people have access to more information than is good for them); Oren Perez, *Complexity, Information Overload, and Online Deliberation*, 5 I/S: J.L. & POL’Y FOR INFO. SOC’Y 43 (2009) (arguing that information overload affects online democratic practices); . *But see* David M. Grether, Alan Schwartz & Louis L. Wilde, *The Irrelevance of Information Overload: An Analysis of Search and Disclosure*, 59 S. CAL. L. REV. 277 (1986) (arguing that consumers do not, in fact, find themselves with too much information).

the achievements and commitments undertaken by the corporations and facilitating a comparison between them. This can make it very hard to assess the merit of a given corporation's claims.

To highlight this problem, some examples are in order. BP reports in 2009 that in 2008 its total direct GHG emissions were 61.4 metric tons of carbon dioxide equivalent (MteCO_{2e}), down 2.1 MteCO_{2e} from 2007.⁷⁷ Yet, it is noted in the footnotes that the data is reported only from operations under BP management control and that direct GHG emissions "are the physical emissions from operations on an equity-share basis. TNK-BP direct emissions are not included."⁷⁸ These qualifications turn out to be quite significant, making the general statement rather misleading. First, operations under BP's management control represent only a small portion of BP's actual holdings. Second, TNK-BP, which is excluded from the report, was in 2008 Russia's third largest oil company, half-owned and of enormous importance to BP, representing 24% of its production and 19% of its total reserves.⁷⁹ Thus, omitting it from the report is not trivial. Moreover, later in the report the 2.1 MteCO_{2e} drop from 2007 is explained as following: "The principal reason for the drop in emissions is the change in BP Shipping's treatment of time-chartered vessels to better align with industry practice for emissions reporting."⁸⁰ In other words, an accounting trick enabled the drop in emissions, not actual initiatives taken by BP. It is worthwhile to note that in the 2009 report BP demonstrates better reporting practice by candidly admitting the exclusion of direct GHG emissions associated with their 50% equity in their Russian associate TNK-BP from previous reports.⁸¹ Furthermore, BP reports that

77. BP, SUSTAINABILITY REVIEW 2008, *supra* note 74, at 6.

78. *Id.* at n.a., n.e.

79. BP GROUP CO., ANNUAL REPORT AND ACCOUNTS 2009, at 27, *available at* http://www.bp.com/assets/bp_internet/globalbp/globalbp_uk_english/set_branch/STAGING/common_assets/downloads/pdf/BP_Annual_Report_and_Accounts_2009.pdf.

80. BP, SUSTAINABILITY REVIEW 2008, *supra* note 74, at 11.

81. BP GROUP CO., SUSTAINABILITY REPORTING 2009: ENVIRONMENTAL MANAGEMENT 37 (2010) [hereinafter BP, SUSTAINABILITY REPORTING 2009], *available at* http://www.bp.com/liveassets/bp_internet/globalbp/STAGING/global_assets/e_s_assets/e_s_assets_2009/downloads_pdfs/Environmental_management.pdf.

in 2008 GHG emissions from the TNK-BP group of companies amounted to 22 MteCO_{2e} on a 100% operated basis, and adds that “while we do not yet include our equity share of emissions in our reported total we continue to work with TNK-BP on emissions reporting.”⁸²

Another major energy company, Shell reports in 2009 a reduction of its direct GHG emissions from 82 MteCO_{2e} in 2007 to 75 MteCO_{2e} in 2008.⁸³ Yet, in the footnotes that accompany the report the company adds the following important disqualification: “Petroleum Industry Guidelines for Greenhouse Gas Estimate, December 2003 . . . indicate that uncertainty in GHG measurements can be significant depending on the methods used.”⁸⁴ Moreover, the report notes that “environmental data are for our direct emissions. We report this way because these are the data we can directly manage and affect through operational improvements.”⁸⁵ Lastly, reading the report carefully reveals that about one third of the reduction in emissions was not due to performance improvement but a result of reduced production in Nigeria since 2006 due to the security challenges Shell is facing there.⁸⁶

Tullow Oil reports that between 2008 and 2009 its total emissions fell by 55%, undoubtedly a huge reduction.⁸⁷ Alas, a deeper analysis of the report reveals that the reduction is due largely to the sale of the group’s UK Bacton facilities.⁸⁸ Moreover, careful analysis of the report exposes that when subtracting the reduction that resulted from the sale of the UK Bacton facilities, Tullow Oil’s emissions in fact increased in 2009 due to a substantial growth in the corporation’s well-drilling exploration program.⁸⁹

One reporting practice that distinguishes between environmental leaders and laggards is to determine to what extent a corporation proclaims concrete, verifiable and ambitious commitments with regard to future GHG emissions reduction targets. Such targets can later serve to evaluate the

82. *Id.*

83. SHELL, SUSTAINABILITY REPORT, *supra* note 74, at 36.

84. *Id.* at 36 n.A.

85. *Id.* at 36.

86. *Id.* at 20.

87. TULLOW, 2009 CORPORATE RESPONSIBILITY REPORT, *supra* note 75, at 26.

88. *Id.*

89. *Id.*

success or failure of the corporation in hitting its declared targets, rather than just bragging about past achievements. In this regard regional variations between corporations are apparent: while American, British and non-western corporations generally fail to report any targets and commitments (let alone ambitious ones), continental European corporations do set targets, and in some cases very impressive ones.

BP (Great Britain) is a prime example of a laggard corporation as it was criticized in its 2008 report by its auditor (Ernst & Young) for failing to disclose “future performance targets in relation to GHG emissions reduction.”⁹⁰ Unfortunately, this critique did not register with BP, as in its 2009 Sustainability Review BP again fails to include any targets.⁹¹ Tullow Oil (Great Britain) does not even mention in its 2008 report GHG emissions reduction as a goal in its “future issues/targets” section.⁹² In its 2009 report, Tullow Oil is more candid about the influence of the changing nature of its business on its ability to report GHG emissions and to formulate meaningful emissions reduction targets.⁹³ Chevron (United States) declares in its 2008 report, in the section dedicated to future plans, that it plans to “[c]ontinue to reduce flaring and venting in our operations where feasible.”⁹⁴ Later on, Chevron reports that its total emissions for 2008 were 59.6 million metric tons (mmt), exceeding its goal of 62.5 mmt, and declares a preliminary goal of 60.5 mmt for 2009, slightly higher than 2008’s actual emissions.⁹⁵ In its 2009 report Chevron declares a preliminary goal for 2010 set at 59 mmt, which is slightly higher than 57.4 mmt, which was its actual emissions level in 2009.⁹⁶ Lastly, Bharat Petroleum (India)

90. BP, SUSTAINABILITY REVIEW 2008, *supra* note 74, at 23.

91. BP, SUSTAINABILITY REPORTING 2009, *supra* note 81, at 37.

92. TULLOW OIL, 2008 CORPORATE SOCIAL RESPONSIBILITY REPORT 7 (2009), *available at* http://www.tulloil.com/files/pdf/csr_08.pdf.

93. TULLOW, 2009 CORPORATE RESPONSIBILITY REPORT, *supra* note 75, at 26.

94. CHEVRON CORP., 2008 CORPORATE RESPONSIBILITY REPORT 7 (2009), *available at* http://www.chevron.com/globalissues/corporateresponsibility/2008/documents/Chevron_CR_Report_2008.pdf.

95. *Id.* at 14.

96. CHEVRON, CORPORATE RESPONSIBILITY REPORT 2009, *supra* note 75, at 8.

declares a goal for 2010 set at a 0.7% reduction from current GHG emissions levels.⁹⁷ Chevron's and Bharat Petroleum's practice of announcing such unimpressive goals enable them to declare any reduction, however small, in the following year a success.

This is not to say, however, that Environmental leaders also do not exist (mostly in Europe). For example, ENI (Italy) commits in its 2009 Sustainability Report to achieving a 70% reduction of its gas flaring emissions by 2012 compared to 2007 levels, adding that "thanks to this objective, the CO₂eq emissions index per ktoe [kilotonne of oil equivalent] produced will be reduced by 40% by 2013."⁹⁸ Total (France) pledges to halve flaring at operated sites from 2005 levels by 2014,⁹⁹ and projects that its combined initiatives will lead to a reduction of their direct GHG emissions from operated activities in 2015 by roughly 15% from 2008 levels.¹⁰⁰ And OMV (Austria) sets an impressive target of reducing its direct GHG emissions from Exploration and Production and Refining and Marketing by one million tons, or at least 10%, by 2015, as the result of efficiency improvements.¹⁰¹ Interestingly, Gazprom (Russia) is also an environmental leader in this respect, setting the target of GHG emissions (including transport emissions) at 91 million tons by 2020, which amounts to a 32% reduction from 2009 levels.¹⁰²

This regional variation in climate change related practices is by no means obvious. Most of the corporations included in the study are MNCs that operate and market their products all around the globe and the product itself (oil & gas) is not a "consumer product." Nonetheless, as apparent from the study, the country of incorporation and the structure of shareholding

97. BHARAT PETROLEUM, RESPONSIBLE DEVELOPMENT: CORPORATE SUSTAINABILITY REPORT 2008–09, at 53 (2010), *available at* http://www.bharatpetroleum.com/pdf/BPCL_CSR_2008_09.zip.

98. ENI S.P.A., SUSTAINABILITY REPORT 2009 83 (2010), *available at* <http://www.eni.com/attachments/sostenibilita/sustainability-report-09-eng.pdf>.

99. Total cites the need to acquire the agreement of all of its partners to invest in the capital-intensive projects required to achieve such a target to explain the remoteness of the 2014 target year. TOTAL, ENVIRONMENT AND SOCIETY REPORT 2009, at 13 (2010), *available at* http://publications.total.com/2009-rse/beevirtua/data/TLCO_1004403_RA_TOTAL_BV_GB_ACC_bd.pdf.

100. *Id.* at 12–13.

101. OMV, SUSTAINABILITY REPORT 2009, at 28 (2010), *available at* <http://www.omv.com/Sustainabilityreport/SR09.pdf>.

102. OAO GAZPROM, ENVIRONMENTAL REPORT 2009, at 34 (2010), *available at* www.gazprom.com/fl/posts/05/285743/environmental-report-2009.pdf.

correspond, to a large extent, to the level of environmental responsibility demonstrated by a corporation.

2. The Automobile Sector

All the corporations studied in the automobile sector report their GHG emissions, and unlike the corporations in the petroleum industry, car manufacturers include in their reports not only GHG emitted in the production process, but also (and more extensively) emissions from their products—the vehicles.

In their 2008 reports, most car manufacturers report their respective plans to decrease the carbon footprint of their products, setting specific targets and due dates. Renault, for example, pledges to achieve an average of 140g CO₂ per km for all vehicles sold in the EU by the end of 2008.¹⁰³ BMW commits to achieving CO₂ fleet emissions of below 140g CO₂ per km for all the group's new vehicles in Europe by 2015.¹⁰⁴ Volvo¹⁰⁵ reported that in 2008 average emissions levels in its European fleet decreased from 190g to 182g CO₂ per km,¹⁰⁶ and announced its target to reduce emission levels to between 90g and 100g CO₂ per km by the year 2020.¹⁰⁷ Toyota announced that it proceeded with its Fourth Toyota Environmental Action Plan—a five-year plan (2006-2010) designed to reduce CO₂ emissions by 35%.¹⁰⁸ Volkswagen declared its intention to

103. RENAULT, 2008 REGISTRATION DOCUMENT 130 (2008), *available at* <http://www.renault.com/en/Lists/ArchivesDocuments/Renault%20-%202008%20Registration%20Document.pdf>.

104. BMW GROUP, SUSTAINABLE VALUE REPORT 2008, at 25 (2009), *available at* http://www.bmwgroup.com/e/0_0_www_bmwgroup_com/verantwortung/publikationen/sustainable_value_report_2008/_pdf/SVR_2008_engl_Gesamtversion.pdf.

105. In the years covered by this study, Volvo Cars was fully owned by the American automobile manufacturer Ford Motors. In 2010 Ford Motors sold Volvo Cars to the Chinese corporation Geely Holding Group. *See, e.g.*, David Pierson, *Ford sells Volvo to China's Geely auto group for \$1.8 billion*, L.A. TIMES (Mar. 29, 2010), <http://articles.latimes.com/2010/mar/29/business/la-fi-ford-volvo29-2010mar29>.

106. VOLVO CAR CORP., 2008/09 CORPORATE REPORT WITH SUSTAINABILITY 7 (2009) [hereinafter VOLVO, CORPORATE REPORT], *available at* http://www.volvocars.com/de/top/about/environment_protection/Documents/Sustainability_Report_08_09.pdf.

107. *Id.* at 15.

108. TOYOTA MOTOR CORP., SUSTAINABILITY REPORT 2008, at 22 (2009), *available at* http://www.toyotainbusiness.com/Images/TMC_Sustainability_Report_2008_tc

“reduce the CO₂ emissions of our new-car fleet in Europe (EU 27) by 20 percent over 2006 levels by 2015.”¹⁰⁹ Lastly, Tata, clearly an environmental laggard in the industry (probably because its non-Indian market share is relatively small), does not provide any concrete CO₂ emissions reduction targets or achievements, and only included general statements in its CSR reports, vowing to reduce emissions from vehicles that are being manufactured.¹¹⁰

Apparent from this data are two facts: first, the level of commitment made by the various corporations in the industry is quite similar; and second, most corporations limit their reduction targets regionally to cars sold in the EU only. This turns out to be the key to understanding the reporting norms in the automobile industry, as well as their divergence from those prevalent in the petroleum industry. The almost universal reporting of GHG reduction targets in the car industry are due not to superior norms that evolved voluntarily in the industry, but to a different regulatory environment. A new regulation issued by European Parliament and the Council require car manufacturers to cap the average CO₂ emission levels for vehicle fleets sold in the EU at 140g per km by 2012 and at 95g by 2020, with monetary penalties imposed on non-compliers.¹¹¹

m634-838999.pdf. It is, however, difficult to evaluate Toyota’s targets, since they use different metrics. Rather than using the common measuring method in the car industry —reduction of CO₂ emissions per kilometer driven, Toyota measures reduction of emissions volumes per unit of sales from the 2001 level. This makes it relatively impossible to compare Toyota to the other car manufacturers in terms of targets set and achieved.

109. VOLKSWAGEN GROUP, DRIVING IDEAS: SUSTAINABILITY REPORT 2009/2010, at 59 (2010), available at http://www.volkswagenag.com/vwag/vwcorp/info_center/en/publications/2009/09/sustainability_report0.-bin.acq/qual-BinaryStorageItem.Single.File/VW_Sustainability_Report_2009.pdf.

110. TATA MOTORS LTD., GLOBAL REPORTING INITIATIVE REPORT 2008–09, at 45–46 (2009), available at <http://www.tatamotors.com/sustainability/pdf/GRI-report-08-09.pdf>; TATA MOTORS LTD., 65TH ANNUAL REPORT 2009–10, at 30–31 (2010), available at www.tatamotors.com/know-us/pdf/CG-Report-2010.pdf.

111. Regulation (EC) No 443/2009 of the European Parliament and of the Council of 23 April 2009 Setting Emission Performance Standards for New Passenger Cars as Part of the Community’s Integrated Approach to Reduce CO₂ Emissions from Light-Duty Vehicles, 2009 O.J. (L140) 5, Annex I, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:140:0001:0015:EN:P> DF. Current regulation reduces the cap even further demanding an average of 120g per km by 2012. It is also worth noting that on April 1, 2010, the United States Environmental Protection Agency (EPA) and National Highway Traffic

When taking this regulation into account, it is apparent that the norms correspond to the regulatory requirements with very few attempts to go beyond compliance.

Interestingly, in their 2009 reports most car manufacturers cease to report compliance with the EU regulation, and instead discuss improving average fuel economy and energy consumption more generally. Volvo, for instance, announces its target for 2009–2012 to reduce energy consumption per manufactured unit by additional 15%.¹¹² Toyota vows to improve average fuel efficiency—in all regions—by 15% compared to 2005 and reduce emissions per unit produced by 29% compared to 2001.¹¹³ Renault pledges to reduce CO₂ emissions from internal combustion vehicles to an average of 130g CO₂ per km by 2012 for its entire fleet.¹¹⁴ Ford's stated objectives are to "reduce CO₂ emissions from our U.S. and European new vehicles by 30 percent by 2020, relative to a 2006 model year baseline."¹¹⁵ BMW, although not publishing a

Safety Administration (NHTSA) announced a joint final rule establishing a national program aimed at reducing GHG emissions for new cars and trucks sold in the United States. Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards, 75 Fed. Reg. 25,234 (May 7, 2010) (to be codified at 40 C.F.R. pts. 85, 86, 600). The standards that make up the first phase of the National Program apply to passenger cars, light-duty trucks, and medium-duty passenger vehicles, covering model years 2012 through 2016. *Id.* at 25,328. They require these vehicles to meet an estimated combined average emissions level of 250 g of carbon dioxide per mile, equivalent to 35.5 miles per gallon (MPG) if the automobile industry were to meet this carbon dioxide level solely through fuel economy improvements. *Id.* Since the codes and reports reviewed in this study are from 2008, this new regulation has not yet affected the reporting.

112. VOLVO GROUP, VOLVO GROUP'S SUSTAINABILITY REPORT 2009, at 47 (2010) *available at* http://www.volvogroup.com/SiteCollectionDocuments/VGHQ/Volvo%20Group/Investors/Financial%20reports/Sustainable%20reports/sustainability_report_09_eng.pdf.

113. *But see* TOYOTA MOTOR CORP., SUSTAINABILITY REPORT 2009, at 18 (2010), *available at* http://www.toyota.eu/SiteCollectionDocuments/Sustainability%20report%2009/2009_sustainability_report.pdf (noting Toyota's commitment to meeting the EU-JAMA target of 140g/km in all markets, illustrating the manner in which the EU regulations have influenced performance in other geographic regions).

114. RENAULT, 2009 REGISTRATION DOCUMENT 150 (2009), *available at* <http://www.renault.com/en/Lists/ArchivesDocuments/Renault%20-%202009%20Registration%20Document.pdf>.

115. FORD MOTOR CO., 2009/10 BLUEPRINT FOR SUSTAINABILITY: THE FUTURE AT WORK 4 (2010), *available at* <http://corporate.ford.com/doc/sr09-blueprint-summary.pdf>.

new report for 2009, responded to a private inquiry stating as follows: “we intend to reduce emissions and the use of resources in our production facilities (Energy, GHG, VOC, Waste) by 30% in the period between 2006 and 2012.”¹¹⁶ And Hyundai declared its plan to achieve 50% improvement in vehicle fuel efficiency by 2020 compared to 2008 average.¹¹⁷ This shift from regional (EU) to universal improvement in average fuel economy and energy consumption validates the claim that in a globalized economy, regional environmental regulation of consumer products can result in a global “race to the top” phenomenon. This is so since

[f]irms producing for markets with a high degree of environmental regulation and targeting high-end consumer markets have little incentive to use different production standards in areas of limited statehood [in which less stringent or no environmental regulation exists] thereby polluting the environment. They tend to transport their regulatory standards abroad.¹¹⁸

A problem discovered in petroleum industry reporting, that recurs in CSR reports in the automobile sector, is the absence of uniform reporting methods. This leads to unreliable data and makes it impossible to compare between corporations. Corporations are thus free to choose their format and method of presentation in a way that makes them look more environmentally responsible than they actually are, and that hinders the comparative assessment of the achievements and targets of the various corporations in the sector. One such ubiquitous manipulation among car manufacturers (and probably among other manufacturers of environmentally sensitive consumer products) is choosing a favorable *baseline year* from which GHG emissions reduction is measured.¹¹⁹

116. E-mail from Jochen Frey, Corporate and Governmental Affairs Officer, BMW Group to Issachar Rosen-Zvi, Assistant Professor of Law, Tel Aviv University (Dec. 13, 2010) (on file with the author).

117. HYUNDAI MOTOR CO., 2008 SUSTAINABILITY REPORT 44 (2009), *available at* http://worldwide.hyundai.com/Web/C_Sustainability_down/2008_report.pdf.

118. Tanja A. Borzel & Thomas Risse, *Protecting the Environment – How Much State Does it Take?* 11–12 (Nov. 23, 2010) (unpublished manuscript) (on file with the author).

119. In addition to the examples provided above, there are some additional examples of this phenomenon. Volvo projects halving its climate impact from goods transport by 2020 compared to 2005. VOLVO, CORPORATE REPORT, *supra* note 112, at 51. Honda undertakes to reduce its automobile and motorcycle emissions as well as its production emission per automobile unit by 10%, and its production emission per motorcycle unit by 20% compared to 2001. HONDA MOTOR CORP., HONDA ENVIRONMENTAL ANNUAL REPORT 2010, at 13 (2010),

Since actual emissions reduction is a function of both the percentage of reduction and the baseline year, the power to choose a baseline year enables corporations (potentially) to manipulate the data by choosing a favorable year. Thus, if a manufacturer chooses the “right” year, the reduction percentage may look very impressive, but in fact may turn out to be an increase rather than a decrease from the previous year’s actual emissions. It also makes it difficult, and in some cases impossible, to compare the levels of reduction presented by different corporations.

3. The Apparel Sector

Environmental reporting in the apparel sector is quite lacking. The environment is not a major concern for corporations in the industry for two reasons: (1) the main inputs of the sector are not inherently toxic or otherwise burdening on the environment; (2) and no less important, since the apparel industry is labor-intensive and comprises of intricate supply chains, NGOs and conscious consumers focus heavily on the labor standards of corporations in the sector, and to a much lesser extent on their environmental outputs. This is reflected in both the codes and the CSR reports that, relative to corporations in the two other sectors studied, devote only scant attention to environmental norms. Yet, even in the apparel sector, we can see the exceptional character of climate change as an issue about which all corporations feel obliged to report. In fact, a clear pattern of improvement can be detected even in the two years surveyed in this study.

The codes of conduct of most corporations in the apparel industry discuss the environment only briefly, usually as part of the health and safety section,¹²⁰ while others, such as Liz

available at http://world.honda.com/environment/report/pdf/2008_report_E_full.pdf. Mazda declares an objective of 43.5% reduction in emissions from 1990 levels. MAZDA MOTOR CORP., MAZDA SUSTAINABILITY REPORT 2010, at 30 (2010), *available at* www.mazda.com/csr/download/pdf/2010/2010_n_p01.pdf.

120. VF’s Code of Business Conduct instructs the company to maintain a safe and healthy work environment and manage its business in ways that are sensitive to the environment. *Code of Business Conduct*, VF CORP., 8 (Dec. 2006), http://media.corporate-ir.net/media_files/irol/61/61559/CorpGov/Code_of_Conduct.pdf. Gap’s Code of Vendor Conduct requires all factories to comply with all the applicable environmental laws and regulations. And “where such requirements are less

Claiborne, do not mention the environment at all.¹²¹ A notable exception is H&M, whose corporate code takes the environment seriously, assuming concrete commitments and mandating that its suppliers act environmentally responsibly.¹²²

The CSR reports divulge a wide variation among the corporations in both the quantity and quality of environmental reporting. As with the other sectors studied, here too the variation reveals a clear regional pattern, especially between corporations that market their products mainly in Europe (leaders) and those that are more focused on the American market (laggards).

In their 2008 reports Liz Claiborne, Quiksilver, and VF do not bother to discuss their climate change policy, achievements, or targets. Gap, Abercrombie & Fitch, and Levi Strauss include an environmental section in their reports, but their contents are frankly insipid, containing neither specified commitments nor clear targets. With regard to climate change reporting, Levi Strauss and Abercrombie & Fitch ignore the issue altogether, while Gap announced the completion of the first phase of an environmental footprint assessment across select owned and operated locations and pledged to develop quantifiable environmental goals based on that assessment by the end of 2010.¹²³ It also reported a reduction of GHG emissions by 20% between 2003 and 2008.¹²⁴ No concrete targets for emissions reduction are set by any of the mentioned corporations.

The 2009 CSR reports reveal real progress in climate change reporting. While Liz Claiborne and Quiksilver still ignore the issue altogether and Gap reiterates its obligation to complete the first phase of an environmental footprint

stringent than Gap Inc.'s own, factories are strongly encouraged to meet the standards outlined in Gap Inc.'s statement of environmental principles" *Code of Vendor Conduct*, GAP INC., 5 (2007), http://www.gapinc.com/GapIncSubSites/csr/documents/COVC_070909.pdf.

Quiksilver's Supplier Workplace Code of Conduct manifests a similar attitude. *Supplier Workplace Code of Conduct*, QUIKSILVER INC. (Feb. 18, 2008), http://www.quiksilverinc.com/code_of_conduct.pdf.

121. See *Standards of Engagement*, LIZ CLAIBORNE INC., <http://lizclaiborneinc.com/web/guest/standardsofengagement> (last visited June 11, 2011).

122. See H&M, *CODE OF CONDUCT 5*, available at http://www.hm.com/filearea/corporate/fileobjects/pdf/en/COMMON_CODEOFC ONDUCT_ENGLISH_PDF_1124202692491_1150269822085.pdf.

123. See GAP INC., 2007/2008 SOCIAL RESPONSIBILITY REPORT 78, available at http://www2.gapinc.com/GapIncSubSites/csr/Utility/report_builder.shtml.

124. See *id.* at 79.

assessment, other corporations show an improvement from previous year's reports. Abercrombie & Fitch, for instance, announces that it recently hired Clear Carbon Inc. to help them better understand their carbon footprint and improve their efforts to improve sustainability in their stores and home office campus. Abercrombie & Fitch also claims to have developed a baseline by which to measure future reduction initiatives and to help it identify potential reduction opportunities. The inventory collected, it concludes, will be instrumental in preparing its GHG reduction goal as part of its commitment to the Climate Leaders program.¹²⁵ Similarly, VF adds a Carbon Footprint & Energy Efficiency section to its report and states that its

long-term aspiration is to operate with optimum energy efficiency while continuously working to minimize our carbon footprint globally. In 2010 we will complete our first global greenhouse gas (GHG) emissions inventory, and begin the process of identifying opportunities for reduction. Using 2009 as our baseline, by mid-2011, we expect to establish and communicate our long-term GHG reduction targets.¹²⁶

Levi Strauss provides for the first time a real reduction target in its *Response to Carbon Disclosure Project 2010*, announcing that it is working to reduce its carbon emissions by 11% by the year 2011, compared to a 2007 baseline, and specifies reduction targets for different regions in which it operates.¹²⁷

The two European corporations studied, H&M and C&A, go much further than other corporations in the sector in terms of environmental reporting, thus positioning themselves as environmental leaders. A substantial portion of their respective sustainability reports are dedicated to environmental protection, providing real commitments and specified targets in a wide variety of environmental matters, including the use of chemicals in the production process, water and sewage

125. See *Sustainability*, ABERCROMBIE & FITCH, <https://afcares.anfcorp.com/anf/intranet/site/afcares/sustainability> (last visited Apr. 5, 2011).

126. *Sustainability at VF*, VF CORP., <http://www.vfcorporation.com/corporate-responsibility/sustainability-at-vf> (last visited Apr. 5, 2011).

127. See LEVI STRAUSS & CO., RESPONSE TO CARBON DISCLOSURE PROJECT 2010, at 7 (Oct 28, 2010), available at <http://www.levistrauss.com/sites/default/files/librarydocument/2010/10/carbon-disclosure-response-2010.pdf>.

treatment, and consumption of energy in the production process, transportation, and the stores. Particular attention is given by H&M and C&A to their carbon footprint. H&M's *Sustainability Report 2008* states that in 2005 H&M set the target of a 10% reduction in CO₂ relative to sales within 5 years, compared to a 2004 baseline.¹²⁸ It also pledges to reduce CO₂ emissions intensity by 5% per year until 2012.¹²⁹ Another specified commitment made in the report is to make sure that by 2020 the energy per square meter of retail space would be reduced by 20% and that 20% of all energy consumption will come from renewable energy.¹³⁰ In its *Sustainability Report 2009*, H&M announces that not only did it meet its 2005 target but substantially surpassed it, achieving a CO₂ emissions reduction relative to sales of 32%, compared to a 2004 baseline.¹³¹ It goes on to set another target of cutting the group's CO₂ emissions relative to sale by a minimum of 5% per year compared to the previous year from 2010 through 2012.¹³² C&A's 2010 report vows to increase the use of renewable energy to reach 80% of their floor space by the end of 2010, saving more than 100,000 tons of CO₂ emissions in relation to a 2007 baseline, which amounts to a 22% reduction.¹³³

It is impossible to deduce from the data collected in this study what the reasons are for the environmental leadership demonstrated by H&M and C&A. A plausible hypothesis is that it has to do with the shareholders and the locus of operation of these corporations. Both corporations are based in Europe (H&M in Sweden and C&A in Germany), and the lion's share of their sales also take place in Europe (more than 90% for H&M and 100% for C&A).¹³⁴ Since European NGOs and consumers

128. See H&M, SUSTAINABILITY REPORT 2008, at 34-36, available at http://www.hm.com/filearea/corporate/fileobjects/pdf/en/CSR_REPORT2008_PDF_1240240530209.pdf.

129. *Id.*

130. *See id.*

131. See H&M, SUSTAINABILITY REPORT 2009, at 42, available at http://www.hm.com/filearea/corporate/fileobjects/pdf/en/CSR_REPORT2009_US_REPORT_1272005348413.pdf.

132. *Id.*

133. See C&A, ACTING SUSTAINABLY: C&A REPORT 2010 at 132, available at http://www.c-and-a.com/uk/en/corporate/fileadmin/mediathek/uk-uk/downloads/CSR_Report_2010_en.pdf.

134. H&M, ANNUAL REPORT 2009, pt. 1, at 52-54, available at http://www.hm.com/filearea/corporate/fileobjects/pdf/en/ANNUAL_REPORT_ARCHIVED2009_ITEM_3_1269424409886.pdf; *Bringing fashion to Europe*, C&A INT'L, <http://www.c-and-a.com/uk/en/corporate/company/about-us/ca->

pay much more attention to the environmental performance, including climate change related practices, of private businesses, corporations that market in Europe are required to behave environmentally responsibly in order to not lose business or become the target of naming and shaming campaigns. Another possible explanation is the more favorable attitude of continental European corporate managers to their companies' environmental responsibility.¹³⁵

The growing awareness of NGOs and consumer groups around the globe to the carbon footprint of corporations can also account for the clear pattern of improvement in climate change reporting standards in the apparel industry as a whole. Levi Strauss, for instance, candidly admits that “[c]onsumers, media and nongovernmental organizations are increasingly aware of climate change and the role business can play in reducing its emissions. As a consumer facing company, LS&Co. is at risk for negative publicity or nongovernmental organization (NGO) campaigns regarding our climate change impact.”¹³⁶

IV. CONCLUDING REMARKS

What can we conclude from these findings? Are companies indeed increasingly becoming environmentally responsible and responsive to societal concerns about climate change? Or does the move to new governance merely represent better public relations strategies, with codes of conduct and CSR reports serving as a new form of window dressing? The answer to these questions is complicated. It is clear that codes of conduct and CSR reports are “too soft.” They are a rather weak regulatory tool, and it would be wrong to advocate for the replacement of more traditional state regulation with codes of conduct or other voluntary soft law mechanisms. Having said that, it would be also imprudent to dismiss such mechanisms off-hand as mere “green-wash” and forsake this path completely.

The accumulated research has clearly shown that soft law mechanisms can be manipulated by corporations, but it is as evident that such mechanisms can also be used to bring about change. The question is, therefore, not *whether* codes of conduct

international/ (last visited May 27, 2011).

135. See Gunningham et al., *supra* note 68, at 95-134.

136. LEVI STRAUSS & CO., *supra* note 127, at 5.

are inherently effective or ineffective, but what are the conditions under which can they be made effective.¹³⁷ The following is a preliminary reflection on this question as can be concluded from the findings of this study.

First, the “hard” regulatory environment, which serves as a background for soft law’s operation, is of utmost importance. Soft law cannot by itself provide an answer to the mammoth problem of climate change. For all their novel features, the new forms of regulation exist “in the shadow of the state.”¹³⁸ But, as we have seen, the more stringent the hard regulation is, the more effective the soft law mechanisms that complement it are. Moreover, in some cases—particularly when consumer products are involved—regional “hard” regulation can have a universal impact and bring about an environmental improvement that spills over to markets all around the globe. Luckily, national regulators, local governments, NGOs and other public and private regulators do not have to choose just one among the many tools that are on the plate, but can devise and apply many strategies to combat climate change using, concomitantly, hard, soft and hybrid regulatory mechanisms.¹³⁹

Second, stakeholders’ market pressure can bring about real change in corporate attitudes and practices. This study confirms what many studies have shown before: that corporations operating in stakeholder-oriented countries or producing consumer products that are sold in stakeholder-oriented countries are more likely to adopt a better attitude towards environmental responsibility.¹⁴⁰ This is apparent in

137. See, e.g., Richard M. Locke & Monica Romis, *The Promise and Perils of Private Voluntary Regulation: Labor Standards and Work Organization in Two Mexican Garment Factories*, 17 REV. INT. POL. ECON. 45 (2010); Cesar A. Rodriguez-Garavito, *Global Governance and Labor Rights: Codes of Conduct and Anti-Sweatshop Struggles in Global Apparel Factories in México and Guatemala*, 33 POL. & SOC’Y 203 (2005); Marc Schneiberg & Tim Bartley, *Organizations, Regulation, and Economic Behavior: Regulatory Dynamics and Forms from the Nineteenth to Twenty-First Century*, 4 ANN. REV. L. & SOC. SCI. 31, 50 (2008).

138. David Levi Faur, *The Global Diffusion of Regulatory Capitalism*, 598 ANNALS AM. ACAD. POL. & SOC. SCI. 12, 13 (2005).

139. For an illuminating discussion of the beneficial effects of “mixing” hard and soft regulatory tools see Dorit Keret, *Don’t Judge a Book by its Cover: Use of an Analytic Framework and Empirical Data in Analyzing Environmental Policy Tools* (Unpublished manuscript) (on file with the author).

140. See, e.g., Ans Kolk & Paolo Perego, *Determinants of the Adoption of*

the realm of climate change reporting as well. European corporations in all sectors performed better than non-European corporations and both performed better than corporations in developing countries. The more corporations that realize their markets are socially embedded and that customers care about these issues, the more they will become environmentally responsible.

Lastly, and most importantly, this study has shown the critical role of transparency and standardization for the success of CSR. As this article demonstrates, most corporations feel obliged to report their GHG emissions and initiatives to combat climate change since they realize that they have to answer to their stakeholders. This development opens new opportunities for NGOs and state regulators. The challenge we face today is how to make the environmental reporting, currently quite deficient, into a better and more effective regulatory tool. The answer is more uniformity and substantive standardization in reporting in order to make manipulation of the data much harder and facilitate the comparative analysis of the performance of different corporations. Finally, NGOs and State regulators should leverage corporate attitudes in order to improve uniformity and standardization, which would be much easier to do (and much harder to resist) from a political standpoint than prescribing substantive norms for GHG reductions. Such improvements are needed for transparency, which is, in turn, the basis for the further ratcheting up of environmental standards.¹⁴¹

Sustainability Assurance Statements: An International Investigation, 19 BUS. STRATEGY & ENV'T 182 (2010).

141. See Charles Sabel, Dara O'Rourke, & Archon Fung, *Ratcheting Labor Standards: Regulation for Continuous Improvement in the Global Workplace* (John F. Kennedy School of Government Faculty Research Working Paper Series, Working Paper No. 00-010, 2000), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=262178; see also Stalley, *supra* note 69, at 204 (advocating the making of ISO certification more transparent).

APPENDIX I – CORPORATIONS SURVEYED IN THE
RESEARCH

Name of Corporation	Sector	Country
Abercromby & Fitch	Apparel	USA
BMW	Automobile	Germany
Bharat Petroleum	Petrol	India
BP	Petrol	UK
C&A	Apparel	Germany
Chevron	Petrol	USA
Chrysler Group	Automobile	USA
ENI	Petrol	Italy
Ford	Automobile	USA
Gap	Apparel	USA
Gazprom	Petrol	Russia
H&M	Apparel	Sweden
Honda	Automobile	Japan
Hyundai	Automobile	South Korea
Levi Strauss & co.	Apparel	USA
Liz Claiborne	Apparel	USA
Lukoil	Petrol	Russia
Mazda	Automobile	Japan
ÖMV	Petrol	Austria
Quiksilver	Apparel	USA
Renault	Automobile	France
Shell	Petrol	Netherland
Surgutneftegas	Petrol	Russia
Tata Motors	Automobile	India
Total	Petrol	France
Toyota	Automobile	Japan
Tullow Oil	Petrol	UK
VF	Apparel	USA
Volkswagen	Automobile	Germany
Volvo	Automobile	Sweden (USA)

APPENDIX II – SOURCES AND REFERENCES

Table 1: Apparel Sector

Document	URL
Abercrombie & Fitch	ABERCROMBIE & FITCH, http://www.bercrombie.com (last visited Apr. 15, 2011).
Sustainability	<i>Sustainability</i> , ABERCROMBIE & FITCH, https://afcares.anfcorp.com/anf/intranet/site/afcares/sustainability (last visited Apr. 15, 2011).
C&A	C&A, http://www.c-and-a.com (last visited Apr. 15, 2011).
Acting Sustainably 2010	C&A, ACTING SUSTAINABLY: C&A REPORT 2010, <i>available at</i> http://www.c-and-a.com/uk/en/corporate/fileadmin/mediathek/uk-uk/downloads/CSR_Report_2010_en.pdf .
H&M	H&M, http://www.hm.com (last visited Apr. 15, 2011).
Code of Conduct	H & M, CODE OF CONDUCT, <i>available at</i> http://www.hm.com/filearea/corporate/fileobjects/pdf/en/COMMON_CODEOFCONDUCT_ENGLISH_PDF_1124202692491_1150269822085.pdf .
Sustainability Report 2008	H&M, SUSTAINABILITY REPORT 2008, <i>available at</i> http://www.hm.com/filearea/corporate/fileobjects/pdf/en/CSR_REPORT2008_PDF_1240240530209.pdf .
Sustainability Report 2009	H&M, SUSTAINABILITY REPORT 2009, <i>available at</i> http://www.hm.com/filearea/corporate/fileobjects/pdf/en/CSR_REPORT2009_SUS_REPORT_1272005348413.pdf .
Gap Inc.	GAP, http://www.gap.com (last visited Apr. 15, 2011).
Code of Vendor Conduct	GAP INC., CODE OF VENDOR CONDUCT, <i>available at</i> http://www.gapinc.com/GapIncSubSites/csr/documents/COVC_070909.pdf .

2007/2008 Social Responsibility Report	<i>2007/2008 Social Responsibility Report</i> , GAP INC., http://www2.gapinc.com/GapIncSubSites/csr/Utility/report_builder.shtml (last visited Apr. 15, 2011).
Goals and Progress - Environment	<i>Goals and Progress</i> , GAP INC., http://www.gapinc.com/GapIncSubSites/csr/Goals/Environment/En_Goals.shtml (last visited Apr. 15, 2011).
Levi Straus & Co.	LEVI'S, http://www.levi.com (last visited Apr. 15, 2011).
Worldwide Code of Business Conduct	LEVI STRAUSS & CO., WORLDWIDE CODE OF BUSINESS CONDUCT (2010), <i>available at</i> http://levistrauss.com/sites/default/files/librarydocument/2010/5/wwcoc-english_0.pdf .
Global Sourcing and Operating Guidelines	LEVI STRAUSS & CO., GLOBAL SOURCING AND OPERATING GUIDELINES, <i>available at</i> http://levistrauss.com/sites/default/files/librarydocument/2010/4/Sourcing_and_Operating_Guidelines.pdf .
2008 Annual Report	LEVI STRAUSS & CO., PROFITS. PRINCIPLES. 2008 ANNUAL REPORT, <i>available at</i> http://levistrauss.com/sites/default/files/librarydocument/2010/4/AR_2008.pdf .
Climate Change Impact	LEVI STRAUSS & CO., CLIMATE CHANGE, <i>available at</i> http://levistrauss.com/sites/default/files/librarydocument/2010/9/climate-change.pdf .
Carbon Disclosure	LEVI STRAUSS & CO., RESPONSE TO CARBON DISCLOSURE PROJECT 2010 (Oct. 28, 2010), <i>available at</i> http://www.levistrauss.com/sites/default/files/librarydocument/2010/10/carbon-disclosure-response-2010.pdf .
Liz Claiborne	LIZ CLAIBORNE, http://www.lizclaiborneinc.com (last visited Apr. 15, 2011).
Code of Conduct	LIZ CLAIBORNE INC., CODE OF CONDUCT, <i>available at</i> http://lizclaiborneinc.com/web/guest/search/journal_content/56/10123/10668 .

Philanthropic Programs	<i>Philanthropic Programs</i> , LIZ CLAIBORNE INC., http://lizclaiborneinc.com/web/guest/overviewofprograms (last visited Apr. 15, 2011).
Quiksilver	QUIKSILVER, INC., http://www.quiksilverinc.com (last visited Apr. 15, 2011).
Supplier Workplace Code Of Conduct	QUIKSILVER INC., SUPPLIER WORKPLACE CODE OF CONDUCT (Feb. 18, 2008), <i>available at</i> http://www.quiksilverinc.com/code_of_conduct.pdf .
Annual Report 2008	QUIKSILVER INC., QUIKSILVER ANNUAL REPORT 2008, <i>available at</i> http://www.quiksilverinc.com/AnnualReports/Quiksilver_Annual_Report_2008.pdf .
VF	VF CORPORATION, http://www.vfc.com (last visited Apr. 15, 2011).
Code of Business Conduct	VF CORP., CODE OF BUSINESS CONDUCT (Dec. 2006), <i>available at</i> http://media.corporate-ir.net/media_files/irol/61/61559/CorpGov/Code_of_Conduct.pdf .
Global Compliance Principles	VF CORP., GLOBAL COMPLIANCE PRINCIPLES, <i>available at</i> http://www.vfc.com/VF/corporation/resources/images/Content-Pages/Corporate-Responsibility/VFC-Global-Compliance-Principles.pdf .
Global Compliance Report 2005	VF CORP., GLOBAL COMPLIANCE REPORT 2005, <i>available at</i> http://www.vfc.com/VF/corporation/resources/images/Content-Pages/Corporate-Responsibility/VFC_Glo_Compli_Report.pdf .
Sustainability at VF	<i>Sustainability at VF</i> , VF CORP., http://www.vfcorporation.com/corporate-responsibility/sustainability-at-vf (last visited Apr. 15, 2011).

Table 2: Oil & Gas Sector

Bharat Petroleum	BHARAT PETROLEUM, http://www.bharatpetroleum.com (last visited Apr. 15, 2011).
Corporate Sustainability Report 2008/9	BHARAT PETROLEUM, RESPONSIBLE DEVELOPMENT: CORPORATE SUSTAINABILITY REPORT 2008–09 (2010), <i>available at</i> http://www.bharatpetroleum.com/pdf/BPCL_CSR_2008_09.zip .
BP	BP, http://www.bp.com (last visited Apr. 15, 2011).
Annual Report and Accounts 2009	BP GROUP CO., ANNUAL REPORT AND ACCOUNTS 2009, <i>available at</i> http://www.bp.com/assets/bp_internet/globalbp/globalbp_uk_english/set_branch/STAGING/common_assets/downloads/pdf/BP_Annual_Report_and_Accounts_2009.pdf
Code of Conduct	BP GROUP CO., OUR COMMITMENT TO INTEGRITY: BP CODE OF CONDUCT (2005), <i>available at</i> http://www.bp.com/liveassets/bp_internet/globalbp/STAGING/global_assets/downloads/C/coc_en_full_document.pdf .
Sustainability Review 2008	BP GROUP CO., SUSTAINABILITY REVIEW 2008 (2009), <i>available at</i> http://www.bp.com/liveassets/bp_internet/globalbp/STAGING/global_assets/e_s_assets/e_s_assets_2008/downloads/bp_sustainability_review_2008.pdf .
Sustainability Review 2009	BP GROUP CO., SUSTAINABILITY REVIEW 2009 (2010), <i>available at</i> http://www.bp.com/assets/bp_internet/globalbp/STAGING/global_assets/e_s_assets/e_s_assets_2009/downloads_pdfs/bp_sustainability_review_2009.pdf .
TNK-BP - Evaluation of GHG Emissions	<i>Programs and Initiatives</i> , TNK-BP, http://www.tnk-bp.com/hse/programs/gases-emissions (last visited Apr. 15, 2011).
Chevron	CHEVRON, http://www.chevron.com (last visited Apr. 15, 2011).

Business Conduct and Ethics Code	CHEVRON CORP., BUSINESS CONDUCT AND ETHICS CODE (2010), <i>available at</i> http://www.chevron.com/Documents/Pdf/ChevronBusinessConductEthicsCode.pdf .
Corporate Responsibility Report 2008	CHEVRON CORP., 2008 CORPORATE RESPONSIBILITY REPORT (2009), <i>available at</i> http://www.chevron.com/globalissues/corporateresponsibility/2008/documents/Chevron_CR_Report_2008.pdf .
Corporate Responsibility Report 2009	CHEVRON CORP., CORPORATE RESPONSIBILITY REPORT 2009 (2010), <i>available at</i> http://www.chevron.com/globalissues/corporateresponsibility/2009/documents/Chevron_CR_Report_2009.pdf ;
ENI	ENI, http://www.eni.com (last visited Apr. 15, 2011).
Sustainability Report 2009	ENI, SUSTAINABILITY REPORT 2009 (2010), <i>available at</i> http://www.eni.com/attachments/sostenibilita/sustainability-report-09-eng.pdf .
Gazprom	GAZPROM, http://www.gazprom.com (last visited Apr. 15, 2011).
Environmental Report 2009	GAZPROM, ENVIRONMENTAL REPORT 2009 (2010), <i>available at</i> www.gazprom.com/f/posts/05/285743/environmental-report-2009.pdf .
Lukoil	LUKOIL, http://www.lukoil.com (last visited Apr. 15, 2011).
Sustainability Report 2007/08	LUKOIL, 2007-2008 SUSTAINABILITY REPORT: RUSSIAN FEDERATION, <i>available at</i> http://www.lukoil.com/materials/doc/reports/Social/lukoil_eng_07-08.pdf .
ÖMV	ÖMV, http://www.omv.com (last visited Apr. 15, 2011).
Sustainability Report 2009	ÖMV, SUSTAINABILITY REPORT 2009 (2010), <i>available at</i> http://www.omv.com/Sustainabilityreport/SR09.pdf .
Shell	SHELL, http://www.shell.com (last visited Apr. 15, 2011).

Code of Conduct	ROYAL DUTCH SHELL, SHELL CODE OF CONDUCT (2006), <i>available at</i> http://www-static.shell.com/static/public/downloads/corporate_pkg/code_of_conduct_english.pdf .
Sustainability Report 2008	ROYAL DUTCH SHELL, SUSTAINABILITY REPORT 2008 (2009), <i>available at</i> http://www.unglobalcompact.org/system/attachments/1307/original/COP.pdf?1262614257 .
Sustainability Report 2009	ROYAL DUTCH SHELL, SUSTAINABILITY REPORT 2009, <i>available at</i> http://sustainabilityreport.shell.com/2009/servicepages/downloads/files/all_shell_sr09.pdf .
Surgutneftegas	SURGUTNEFTEGAS, http://www.surgutneftegas.ru (last visited Apr. 15, 2011).
Environmental Report 2009	SURGUTNEFTEGAS, ENVIRONMENTAL REPORT 2009, <i>available at</i> http://www.surgutneftegas.ru/uploaded/ekologia2009titul.pdf .
Total	TOTAL, http://www.total.com (last visited Apr. 15, 2011).
Environment and Society Report 2009	TOTAL, ENVIRONMENT AND SOCIETY REPORT 2009 (2010), <i>available at</i> http://publications.total.com/2009-rse/beevirtua/data/TLCO_1004403_RA_TAL_BV_GB_ACC_bd.pdf .
Tullow Oil	TULLOW OIL, http://www.tulloil.com (last visited Apr. 15, 2011).
Code of Business Conduct	TULLOW OIL, CODE OF BUSINESS CONDUCT (2009), <i>available at</i> http://www.tulloil.com/files/pdf/Code_of_Business_Conduct_2009_Rev_2.pdf .
Delivering growth responsibly	TULLOW OIL, DELIVERING GROWTH RESPONSIBLY (2008), <i>available at</i> http://smartpdf.blacksunplc.com/tulloil2008csr/Tulloil_2008_CSR.pdf .
Environmental health and safety policy	TULLOW OIL, ENVIRONMENTAL HEALTH AND SAFETY POLICY (2009), <i>available at</i> http://www.tulloil.com/files/pdf/EHS_policy.pdf .

Corporate Social Responsibility Policy	TULLOW OIL, CORPORATE RESPONSIBILITY POLICY (2009), <i>available at</i> http://www.tulloil.com/files/pdf/CSR_policy.pdf .
Corporate Responsibility Report 2009	TULLOW OIL, 2009 CORPORATE RESPONSIBILITY REPORT (2010), <i>available at</i> http://www.tulloil.com/files/pdf/tulloilcr09_cr_report_2009.pdf .

Table 3: Automobile Sector

BMW	BMW GROUP, http://www.bmwgroup.com (last visited Apr. 15, 2011).
Compliance. Acting Responsibly and Lawfully	BMW GROUP, COMPLIANCE. ACTING RESPONSIBLY AND LAWFULLY (2008), <i>available at</i> http://www.bmwgroup.com/bmwgroup_prod/e/0_0_www_bmwgroup_com/unternehmen/unternehmensprofil/compliance/BMWGroup_Legal_Compliance_Code.pdf .
Environmental Protection. BMW Group Environmental Guidelines.	BMW GROUP, ENVIRONMENTAL PROTECTION. BMW GROUP ENVIRONMENTAL GUIDELINES (2003), <i>available at</i> http://www.bmwgroup.com/bmwgroup_prod/e/0_0_www_bmwgroup_com/verantwortung/publikationen/downloads/_pdf/BMWGroup_Environmental_Guidelines.pdf .
Sustainable Value Report 2008	BMW GROUP, SUSTAINABLE VALUE REPORT 2008 (2009), <i>available at</i> http://www.bmwgroup.com/e/0_0_www_bmwgroup_com/verantwortung/publikationen/sustainable_value_report_2008/_pdf/SVR_2008_engl_Gesamtversion.pdf .
Ford	FORD MOTOR CO., http://corporate.ford.com (last visited Apr. 15, 2011).
Sustainability	FORD MOTOR CO., 2009/10 BLUEPRINT FOR SUSTAINABILITY: THE FUTURE AT WORK (2010), http://corporate.ford.com/doc/sr09-blueprint-summary.pdf .

GHG Emission	<i>Operational Energy Use and CO₂ Emissions</i> , FORD MOTOR CO., http://corporate.ford.com/microsites/sustainability-report-2009-10/environment-data-energy (last visited Apr. 15, 2011).
Progress and Goals	<i>Progress and Goals</i> , FORD MOTOR CO., http://corporate.ford.com/microsites/sustainability-report-2009-10/environment-progress (last visited Apr. 15, 2011).
Honda	HONDA WORLDWIDE, http://world.honda.com (last visited Apr. 15, 2011).
Environmental Annual Report 2009	HONDA MOTOR CORP., HONDA ENVIRONMENTAL ANNUAL REPORT 2009, <i>available at</i> http://world.honda.com/environment/report/pdf/2009_report_E_full.pdf .
Environmental Annual Report 2010	HONDA MOTOR CORP., HONDA ENVIRONMENTAL ANNUAL REPORT 2010 (2010), <i>available at</i> http://world.honda.com/environment/report/download/2010/2010_report_E_full.pdf .
Hyundai	HYUNDAI, http://worldwide.hyundai.com (last visited Apr. 15, 2011).
Sustainability Report 2010	HYUNDAI MOTOR Co., 2008 SUSTAINABILITY REPORT (2009), <i>available at</i> http://worldwide.hyundai.com/Web/C_Sustainability_down/2008_report.pdf .
Mazda	MAZDA, http://www.mazda.com (last visited Apr. 15, 2011).
Sustainability Report 2010	MAZDA MOTOR CORP., MAZDA SUSTAINABILITY REPORT 2010 (2010), <i>available at</i> http://www.mazda.com/csr/download/pdf/2010/2010_n_p01.pdf .
Renault	RENAULT, http://www.renault.com (last visited Apr. 15, 2011).
Code of Good Conduct	RENAULT, CODE OF GOOD CONDUCT, <i>available at</i> http://www.renault.com/en/Lists/ArchivesDocuments/Renault%20-%20Code%20of%20ethics%20-%20en.pdf .

Annual Report 2008	RENAULT, 2008 ANNUAL REPORT, <i>available at</i> http://www.renault.com/en/Lists/ArchivesDocuments/Renault%20-%202008%20Annual%20Report.pdf .
Annual Report 2009	RENAULT, 2009 ANNUAL REPORT, <i>available at</i> http://www.renault.com/en/Lists/ArchivesDocuments/Renault%20-%202009%20Interactive%20Annual%20Report.pdf .
Registration Document 2008	RENAULT, 2008 REGISTRATION DOCUMENT (2008), <i>available at</i> http://www.renault.com/en/Lists/ArchivesDocuments/Renault%20-%202008%20Registration%20Document.pdf .
Registration Document 2009	RENAULT, 2009 REGISTRATION DOCUMENT (2009), <i>available at</i> http://www.renault.com/en/Lists/ArchivesDocuments/Renault%20-%202009%20Registration%20Document.pdf .
Tata Motors	TATA MOTORS, http://www.tatamotors.com (last visited Apr. 15, 2011).
Code of Conduct 2008	<i>Tata Code of Conduct</i> , TATA MOTORS LTD. (Oct. 1, 2008), http://www.tata.com/aboutus/articles/inside.aspx?artid=NyGNnLHkaAc= .
Global Reporting Initiative Report 2008-09	TATA MOTORS LTD., GLOBAL REPORTING INITIATIVE REPORT 2008–09 (2009), <i>available at</i> http://www.tatamotors.com/sustainability/pdf/GRI-report-08-09.pdf
Social Responsibility Annual Report 2008-2009	<i>Social Responsibility Annual Report 2008-2009</i> , TATA MOTORS LTD., http://www.tatamotors.com/sustainability/CSR-09/content.php (last visited Apr. 15, 2011).
Social Responsibility Annual Report 2009-10	<i>Social Responsibility Annual Report 2009 – 10</i> , TATA MOTORS LTD., http://www.tatamotors.com/sustainability/CSR-10/content.php (last visited Apr. 15, 2011).

Global Compact – Communication on Progress 2008 – 09	TATA MOTORS LTD., GLOBAL COMPACT — COMMUNICATION ON PROGRESS, <i>available at</i> http://www.tatamotors.com/sustainability/pdf/COP-2008-2009.pdf .
Toyota	TOYOTA, http://www.toyota.co.jp (last visited Apr. 15, 2011).
Code of Conduct	TOYOTA MOTOR CORP., CODE OF CONDUCT (2006), <i>available at</i> http://www2.toyota.co.jp/en/vision/code_of_conduct/code_of_conduct.pdf .
Supplier CSR Guidelines	TOYOTA MOTOR CORP., SUPPLIER CSR GUIDELINES (2009), <i>available at</i> http://www.toyota-global.com/sustainability/stakeholders/pdf/supplier_csr_en.pdf .
Green Purchasing Guidelines 2006	TOYOTA MOTOR CORP., GREEN PURCHASING GUIDELINES 2006 (2006), <i>available at</i> http://www.toyota.co.jp/en/environment/vision/green/pdf/all.pdf .
Sustainability Report 2008	TOYOTA MOTOR CORP., SUSTAINABILITY REPORT 2008 (2009), <i>available at</i> http://www.toyotainbusiness.com/Images/TMC_Sustainability_Report_2008_tcm634-838999.pdf .
Sustainability Report 2009	TOYOTA MOTOR CORP., SUSTAINABILITY REPORT 2009 (2010), <i>available at</i> http://www.toyota.eu/SiteCollectionDocuments/Sustainability%20report%202009/2009_sustainability_report.pdf .
Sustainability Report 2010	TOYOTA MOTOR CORP., SUSTAINABILITY REPORT 2010 (2011), <i>available at</i> http://www.toyota-global.com/sustainability/sustainability_report/pdf_file_download/10/pdf/sustainability_report10.pdf .
Volvo	VOLVO, http://www.volvocars.com (last visited Apr. 15, 2011).
Code of Basic Working Conditions	VOLVO CAR CORP., VOLVO CARS GRI REPORT 2008 (2009), <i>available at</i> http://www.volvocars.com/SiteCollectionDocuments/TopNavigation/About/Corporate/VolvoSustainability/Volvo_Cars_GRI_Report_2008.pdf .

GRI Report 2008	VOLVO CAR CORP., VOLVO CARS GRI REPORT 2008 (2009), <i>available at</i> http://www.volvocars.com/SiteCollectionDocuments/TopNavigation/About/Corporate/VolvoSustainability/Volvo_Cars_GRI_Report_2008.pdf .
Corporate Report With sustainability 2008/9	VOLVO CAR CORP., 2008/09 CORPORATE REPORT WITH SUSTAINABILITY (2009), <i>available at</i> http://www.volvocars.com/de/top/about/environment_protection/Documents/Sustainability_Report_08_09.pdf .
Sustainability Report 2009	VOLVO GROUP, VOLVO GROUP'S SUSTAINABILITY REPORT 2009 (2010), <i>available at</i> http://www.volvogroup.com/SiteCollectionDocuments/VGHQ/Volvo%20Group/Investors/Financial%20reports/Sustainable%20reports/sustainability_report_09_eng.pdf .
Logistics Department Targets	<i>Ambitious Targets for Our Own Logistics</i> , VOLVO GROUP, http://www.volvogroup.com/group/global/engb/responsibility/envdev/env_work/production/logistics/Pages/logistics.aspx (last visited Apr. 15, 2011).
Volkswagen	VOLKSWAGEN, http://www.volkswagenag.com (last visited Apr. 15, 2011).
Sustainability Report 2009	VOLKSWAGEN GROUP, DRIVING IDEAS. SUSTAINABILITY REPORT 2009/2010 (2010), <i>available at</i> http://www.volkswagenag.com/vwag/vwcorp/info_center/en/publications/2009/09/sustainability_report0.-bin.acq/qual-BinaryStorageItem.Single.File/VW_Sustainability_Report_2009.pdf .