

Section	Initial Audit		First Follow-up Audit		Second Follow-up Audit	
	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	Clause(s) to be improved	Acceptable <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Clause(s) to be improved	Acceptable <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Clause(s) to be improved
2. Working Hours	<input checked="" type="checkbox"/> No	2.3,2.5, 2.6,2.7	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	2.3,2.5, 2.6,2.7	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Nil
3. Wages & Compensation	<input checked="" type="checkbox"/> No	3.3	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	3.3	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Nil
4. Underage Labor	<input checked="" type="checkbox"/> No	4.6	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Nil
5a. Forced Labor	<input checked="" type="checkbox"/> No	5.1	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Nil
5b. Prison Labor	<input checked="" type="checkbox"/> No	Nil.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Nil
6. Disciplinary Practices	<input checked="" type="checkbox"/> No	6.1	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Nil
7. Discrimination	<input checked="" type="checkbox"/> No	Nil	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Nil
8. Employee Representation	<input checked="" type="checkbox"/> No	8.2,8.3,8. 4,8.5	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	8.5	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	8.5

**CARE
PROCESS**

A LONG RUN-UP – YET ONLY A SHORT LEAP FORWARD

DISCUSSION PAPER
BY THE GERMAN TOY CAMPAIGN
AKTION FAIR SPIELT
ON THE ICTI CARE PROCESS

UWE KLEINERT
in cooperation with Elisabeth Strohscheidt
Heidelberg and Aachen, November 2009



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1. Introduction

Serious violations of national labor laws and internationally concerted social standards are rife in labor-intensive industries – especially in developing and emerging countries but also beyond. Trade unions and NGOs have kept records of these violations for years.

Against this backdrop it is commendable that the International Council of Toy Industries (ICTI) revised its original 1995 Code of Business Practices (ICTI Code) in 2001 and began to draw up a monitoring and certification program for factories, the ICTI CARE Process. The revised Code was intended to be the global benchmark for the entire industry.

David Hawtin, then President of ICTI and Director General of the British Toy and Hobby Association (BTHA), declared at the time: ‘The approval of this new Code represents the world-wide toy industry’s commitment to ensure further the protection of workers throughout the world.’¹

ICTI mandated its ICTI CARE Foundation to begin implementing the ICTI CARE Process in China. This is comprehensible since toys manufactured in China account currently for 80 percent of all toys traded worldwide.

The first factory inspections in the framework of the ICTI CARE Process took place in 2003. The first Seals of Compliance were awarded in 2004. 2,102 factories are currently registered for the Process and 1,054 factories are certified.²

This paper presents the structural elements and procedures of the ICTI CARE Process in chapter 2. Chapter 3 subjects them to a critical analysis. Chapter 4 sets out the minimum requirements regarded by *Aktion fair spielt* as indispensable prerequisites for an effective, credible and transparent ICTI Care Process.

Claire Lingaya, Gifta Martial and Sabrina Schadwinkel translated the German original into English.

Aktion fair spielt is a joint initiative of Misereor – the German Catholic Bishops’ Organization for Development Cooperation, the Catholic Workers’ Movement of Germany (*Katholische Arbeitnehmer-Bewegung Deutschlands*), the Catholic Women’s Association of Germany (*Katholische Frauengemeinschaft Deutschlands*), the Nuremberg Fair Toys Alliance (*Nürnberger Bündnis Fair Toys*) and *Werkstatt Ökonomie*.

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¹ International Council of Toy Industries press release of 26 June 2001.

² ICTI CARE Foundation website, <http://www.icti-care.org> (26 October 2009).

2. The ICTI CARE Process: players, structures & procedures

2.1. The ICTI Code

Under the section 'Labor', the International Council of Toy Industries (ICTI) calls upon its member companies to ensure that ...

- working hours per week, wages and overtime pay practices comply with the standards set by law
- no one under the legal minimum age is employed at any stage of toy manufacturing and C138 Minimum Age Convention (1973) and C182 Worst Forms of Child Labor Convention (1999) of the International Labor Organization apply
- no forced or prison labor is employed, workers are free to leave once their shift ends and guards are posted only for normal security reasons
- all workers are entitled to sick and maternity benefits as provided by law
- all workers are entitled to freely exercise their rights of employee representation as provided by local laws

Under the section 'The Workplace' the Code calls upon the ICTI member companies to guarantee that ...

- toy factories provide a safe working environment for their workers and comply with or exceed all applicable local laws concerning sanitation and risk protection
- the factory is properly lighted and ventilated and corridors and exits are accessible at all times
- there is adequate medical assistance available in emergencies, and designated workers are trained in first aid procedures
- there are adequate, well-identified emergency exits, and all workers are trained in emergency evacuation
- protective safety equipment is available and workers are trained in its use
- safeguards on machinery meet or exceed local law
- there are adequate toilet facilities which meet local hygiene requirements, and that they are properly maintained
- there are facilities or appropriate provisions for meals and other breaks
- if a factory provides housing for its workers, it ensures that dormitory rooms and sanitary facilities meet basic needs, are adequately ventilated and meet fire safety and other local laws
- no mental or physical disciplinary practices are employed

Under the section 'Compliance' the Code points out, among other things, that ...

- the purpose of the Code is to establish a standard of performance, to educate, and to encourage commitment to responsible manufacturing, not to punish
- to determine adherence, ICTI member companies will evaluate their own facilities as well as those of their contractors. They will examine all books and records and conduct on-site inspections of the facilities, and request that their contractors follow the same practices with sub-contractors
- an annual statement of compliance with the Code must be signed by an officer of each manufacturing company or sub-contractor
- contracts for the manufacture of toys should stipulate that a material failure to comply with the Code, or to remedy shortcomings in due time, is a breach of contract for which the contract may be cancelled
- the Code must be posted or made available to all workers in the local language

The ICTI Code is complemented by four appendixes clearly defining its content and the procedure used to monitor factories and to remedy shortcomings.³

- **Appendix I: Methodology for Evaluating Compliance**

The 1½ page paper merely states that in order to evaluate the compliance with the Code the following procedures are deemed necessary: check local laws, check written factory policy and procedures and any other evidence, conduct on-site inspections and interview workers.

- **Appendix II: Audit Checklist**

This comprehensive 20-page document shows what data has to be collected in the framework of factory inspections and which questions have to be answered regarding all criteria of the Code.

- **Appendix IIa: Guidance Document**

This very comprehensive 40-page document explains in all details which individual criteria a company has to meet in order to be recommended for certification by the auditors.

- **Appendix III: Corrective Action Plan**

This 2½ page form records the findings of factory inspections, the necessary actions taken to remedy shortcomings and the corresponding timeframe.

Only ICTI is entitled to alter the wording of the ICTI Code. The ICTI CARE Foundation, or rather its Governance Board, may decide upon changes to the other documents involved in the ICTI CARE Process.

³ The Code and the appendixes are available on the ICTI Care Foundation website at <http://www.icti-care.org/resources/codeofbusinesspractices.html>.

2.2. The ICTI CARE Foundation and its bodies

The ICTI CARE Foundation is a non-profit association incorporated in the State of New York, USA. Its purpose is to run the ICTI CARE Process. The Foundation has an operating office in Hong Kong, at ICTI CARE Foundation Asia Limited, Ltd. It also has a European office in Brussels

Christian Ewert has been the President and Chief Executive Officer of the ICTI CARE Foundation since July 2004. His responsibilities include the day-to-day management, finances and operation of both the ICTI CARE Process and the ICTI CARE Foundation. He reports to the Governance Board.

The Governance Board is the supreme decision-making body of the ICTI CARE Foundation and is the owner of the ICTI CARE Process. It provides leadership and oversight, and supports funding of the ICTI CARE Process, ensuring that the operations are effective, credible, and transparent to all stakeholders.

The Governance Board currently comprises 15 members, amongst them three active and six former executives of toy companies. Alan Hassenfeld (Hasbro) and Maria Livanos Cattai (former Secretary General of the International Chamber of Commerce) co-chair the Governance Board. Amir Dossal (United Nations Office for Partnerships), Jane Nelson (Harvard Kennedy School), William S. Reese (International Youth Foundation), Paul Rice (TransFair USA) and the Finnish politician Pär Stenbäck are non-industry members.

Furthermore, there are three independent regional advisory bodies – the Technical Advisory Boards (TABs) for Asia, the Americas and Europe consisting respectively of six to ten voluntary members.⁴ They advise those responsible for the ICTI CARE Process, provide technical expertise and quality control to the ICTI CARE Process. The TABs operate according to the principles and procedures as set out by the Governance Board. Executives of toy factories can only serve on a TAB provided that their company is certified in compliance with the ICTI Code. Representatives of brand-name firms can serve on a TAB provided that their company makes a self-commitment in the framework of the Date Certain program.

2.3. The ICTI CARE Process

According to the definition by the ICTI CARE Foundation, the ICTI CARE Process is the ICTI program to promote ethical manufacturing with the aim of guaranteeing a safe, decent work environment within the global toy industry. The ICTI CARE Foundation runs the Process.

⁴ As from November 2009 the three regional TABs will be replaced by a Technical Advisory Council (TAC). The TAC will comprise 15 voluntary representatives of factories, manufacturers, trade and licensors recommended by the national associations and appointed by the ICTI President. The other TAC regulations seem to largely correspond to the TAB regulations.

2.3.1. Auditing and certification

The ICTI CARE Foundation describes the process from the application for an ICTI CARE Foundation certificate to its issuing as a sequence of seven steps:

1. A (Chinese) company seeking certification has to fill in the application form⁵;
2. The ICTI CARE Foundation will assign one of the accredited audit firms⁶ to the company. The audit firm will contact the company to arrange an initial audit;
3. The applicant company and the audit firm will reach an agreement on the cost of the factory audit and any accruing travel expenses, both of which the applicant company has to bear;
4. Conducting the audit, reaching an understanding between the audit firm and the applicant company on the findings of the audit, if necessary reaching agreement on a corrective action plan serving as the basis for a re-audit, which is again subject to costs;
5. Should the audit or the re-audits give no cause for complaints, the audit firm will report on the findings to the ICTI CARE Foundation Asia Limited which will review and approve them, as appropriate;
6. Issuing of a certificate (subject to costs) called the Seal of Compliance by the ICTI CARE Foundation Asia Limited;
7. Renewing the certificate after one year on the basis of a new successful audit, again subject to costs.

2.3.2. Quality control

The Technical Advisory Boards (TABs) – or rather the Technical Advisory Council (TAC) replacing them – are responsible for quality control. The Quality Control Audits (QC Audits) are instruments to guarantee the quality of regular audits and the validity of audit findings.

QC Audits are conducted if the TAB identifies irregularities regarding the audit report which give rise to the suspicion that the report misrepresents the actual situation in the company. The receipt of a complaint – lodged by the staff for example – or information about irregularities from external sources may also trigger an unannounced QC Audit.

To conduct a QC Audit, the ICTI CARE Foundation mandates an audit firm and schedules an audit with the audit firm, not the company which is to be monitored. The audit firm that conducted the

⁵ To facilitate the distinction between toy manufacturers in China and American, European or Japanese toy manufacturers – the last three manufacture only a small share of their products themselves, increasingly commissioning the Chinese manufacturers to do so – the Chinese manufacturers will be described in the following as ‘suppliers’, ‘companies’ or ‘factories’. The American, European or Japanese manufacturers will be referred to as ‘purchasers’ or ‘brand-name companies/firms’. The terms ‘toy company’ or ‘toy firm’ refer to both categories of manufacturers.

⁶ Audits are factory inspections conducted by accredited auditors who monitor the compliance with the criteria of the ICTI Code. The findings of the inspections are compiled in an audit report. Companies that conduct such factory inspections are called audit firms. Audit firms that are involved in the ICTI CARE Process have to be accredited by the ICTI Foundation. Eight audit firms are currently accredited.

last regular audit of the company under scrutiny must not be mandated with the QC Audit. Alongside audit firms, officers of the ICTI CARE Foundation or TAB members may conduct the QC Audit. Observers may be allowed by the TAB.

If grave violations are identified in the course of a QC Audit, the company may be subjected to a range of requirements:

- Employment of a full time Compliance Manager with support from the factory's top management to ensure compliance
- Contribution by the factory of funds to be used for the benefit of the factory workers, for example on education and training of workers
- Repayment of any lost compensation and wages to workers from the time that the last Seal of Compliance was granted
- Establishment of a free-of-charge complaint hot-line serviced by the ICTI CARE Foundation or a third party at the factory's expense
- Additional surveillance audits of the factory at its own expense for a defined period of time that can be extended, depending on the audit results
- Off-site meetings between factory workers and the ICTI CARE Foundation to ascertain adherence to working hours, pay scales etc.
- Listing the factory as 'On Probation' in the Factory Database on the ICTI CARE Foundation website at <http://www.icti-care.org>

If a company does not meet the requirements, the Seal of Compliance will be withdrawn.

2.3.3. Date Certain Program

Under the Date Certain Program, branded companies and retailers can undertake to buy exclusively from suppliers participating in the ICTI CARE Process, as of a time of their own choosing. The buying companies enter into this commitment in order to encourage as many of their suppliers as possible to join the ICTI CARE Process.

The names of the companies taking part in the Date Certain program are published in the Date Certain Database on the ICTI CARE Foundation's website. Moreover, the companies are authorized to use a special seal issued by the ICTI CARE Foundation for advertising purposes. The terms of use of this Seal of Commitment are regulated in a separate agreement.

In case of indications of a violation of the commitment, the ICTI CARE Foundation might, as a first step, urge the company to comply with the terms of the commitment. However, if need be, the Foundation reserves the right to exclude the company from the Date Certain Database or to disallow the use of the Seal of Commitment.

2.3.4. Convergence Program

The Convergence Program aims at establishing uniform standards within the toy industry by means of creating the broadest possible recognition of the ICTI CARE Process by retailers and other programs promoting socially responsible production. Against this backdrop, the ICTI CARE Foundation and each participating company negotiates an agreement describing the transition from e.g. the company-specific monitoring program to the ICTI CARE Process. These agreements are planned to be published on the ICTI CARE Foundation's website.

So far, such agreements have been concluded with the following companies (status: 30 September 2009) (1) ARGOS Ltd., (2) ASTRA, (3) Carrefour, (4) Chelsea Stores, (5) Colruyt Group, (6) Costco, (7) Disney, (8) Gopro! Creative Marketing, (9) Groupe Emeraud, (10) Hamley's, (11) Marks & Spencer, (12) Sears/Kmart/Land's End, (13) Top-Toy, (14) Toys 'R' Us, (15) Walmart Stores. A further company does not want its participation in the Convergence Program to be made public.

2.3.5. Continuous Improvement Process

The ICTI CARE Foundation has revised the 2004 requirements concerning wages and working hours. According to the ICTI CARE Foundation, this is the area in which Chinese companies face the biggest problems in complying with the ICTI Code standards. In September 2009 the Foundation introduced the Continuous Improvement Process. Its aim is to facilitate access for Chinese companies to the ICTI CARE Process and to call upon them to enforce greater transparency instead of forging documents. This change enables companies to register for the ICTI CARE Process regardless of current wages and working hours. The prerequisite is that all companies concerned guarantee full transparency, undergo strict monitoring and comply with the transitional period until the requirements of the ICTI Code are met.

With regard to wages and overtime pay, the companies are granted a transitional period of three months in the framework of the Continuous Improvement Process. In other words: to participate in the ICTI CARE Process, factories are not obliged to provide evidence of the prescribed minimum wages and extra pay at the time of the first audit, but only three months later, in the framework of an additional audit.

With regard to working hours, companies can take advantage of longer transitional periods until they meet the requirements of the Code, without being excluded from the ICTI CARE Process: companies which register for the Process before 30 June 2011 have to comply with the prescribed maximum of 66 working hours per week by 30 June 2012.⁷ A one-year transitional period will be granted to companies which join at a later point in time.





⁷ The ICTI CARE Foundation considers the new procedure an important step in improving working conditions and complying with legal requirements. The calculation of the maximum of 66 working hours per week is based on the core working hours of 8 hours a day, a maximum of 3 extra hours a day and 6 working days per week. It ignores the fact that the Chinese labour law (art. 41) limits the number of extra hours to 36 hours a month.

Depending on the respective maximum working hours and provided that there are no further complaints, the factories receive a Class A Seal of Compliance (up to a maximum of 66 working hours), Class B Seal of Compliance (up to a maximum of 72 working hours) or a Conditional Seal of Compliance (over 72 working hours).

Class A factories are audited every six months for the first year. Factories belonging to the other two categories are audited every three to six months. They have to provide evidence of continuous improvements with regard to the goal of maximum 66 working hours. No backsliding, e.g. from Class A to Class B or from Class B to a Conditional Seal, will be accepted, unless strict improvement requirements are fulfilled to return to the higher class.

3. The ICTI CARE Process from the perspective of *Aktion fair spielt*

The following section contains a critical assessment of the ICTI CARE Process from the perspective of *Aktion fair spielt*. It opens with two fundamental preliminary remarks, followed by an evaluation of strengths, shortcomings and first improvement measures. The icons at the beginning of each sub-section indicate the respective degree of the need for action.

	no immediate need for action
	need for action
	increased need for action
	urgent need for action

3.1. Two fundamental preliminary remarks

3.1.1. The industry's commitment to shared responsibility – more than mere lip service

In principal, *Aktion fair spielt* is of the opinion that it is the duty of the state, or rather of government, to implement national labor legislation as well as internationally agreed environmental, social and human rights standards and to create the necessary conditions for collective bargaining between employees and employers. However, irrespective of whether a state actually discharges all these duties, it is also the employers' duty and responsibility to contribute to the implementation of these norms. This principle of shared responsibility does not only apply to a company's own factories or affiliated companies, but also to its suppliers and other contractors.

Aktion fair spielt recognizes that by adopting the revised version of the ICTI Code and by developing the ICTI CARE Process, the International Council of Toy Industries has taken significant steps towards living up to the principle of shared responsibility.

Aktion fair spielt further recognizes that the ICTI Code raises central problems of working conditions in the toy industry and that, if effectively implemented, it might contribute to a noticeable improvement of the workers' situation.

However, *Aktion fair spielt* is of the opinion that such a contribution to improving the situation of workers depends on certain preconditions. The ICTI Code has to be consistently applied in as many companies as possible, monitoring has to be both effective and credible and the Process has to be transparent to the interested public. All that is not yet the case.

Furthermore, *Aktion fair spielt* is convinced that the attempt to achieve humane working conditions solely by means of the ICTI CARE Process has its limits. Other factors are equally essential; the buying companies for instance need to adjust their buying practices. They have to grant their suppliers the necessary room for maneuver by allowing for adequate delivery time and by paying fair prices, thus enabling them to avoid excessive working hours and to afford decent wages.

3.1.2. The limitations of voluntary commitments

A pivotal problem of the ICTI CARE Process is that it is voluntary. This is a general problem of all instruments of corporate social responsibility (CSR). The degree of voluntary commitment in the relationships between companies can vary considerably from company to company, depending mostly on their size. Involvement in the ICTI CARE Process depends to a large extent on the motivation of the managers in charge, the specific interests of the companies in question, their economic capacity and the level of public awareness in their respective social environment.

A company's attitude towards the ICTI CARE Process can change dramatically from one day to the next, through a change of CEO. A new investor or a slightly different assessment of the business benefit of the commitment can have the same effect. A smaller brand-name firm might not be able to convince a supplier to take part in the ICTI CARE Process, in spite of its commitment and efforts, simply because it lacks the necessary economic leverage. However, the same supplier could voluntarily commit to the Process when cooperating with a bigger company with more economic clout. In the view of *Aktion fair spielt*, it is doubtful whether non-governmental organizations will be able to persuade companies (beyond the big-brand firms in particular, which risk a considerable loss of reputation) to make a sustainable and long-term commitment to the Process solely by means of public pressure. This is probably equally true with regard to influencing businesses via the consumers' buying decisions.

Aktion fair spielt estimates that certain measures have to be included in the voluntary instruments, e.g. binding disclosure and accountability obligations. Only that way can it be ensured that "voluntary" does not equal "non-binding". Therefore, *Aktion fair spielt* advocates utmost transparency for the ICTI CARE Process. The interested public has to be granted access to all relevant information needed to evaluate existing options for action, e.g. making an informed decision as a consumer.⁸ Moreover, *Aktion fair spielt* strongly advises fully including the workers in the ICTI CARE Process as they can best assess whether all their rights are respected or not. The workers need effective

⁸ See 3.2.9. Informing the public

and efficient procedures which they can safely use in order to defend their interests vis à vis their company and, if need be, the ICTI CARE Foundation.⁹

3.2. Strengths, shortcomings & first improvement measures

3.2.1. Structural strengths: certification according to an industry-wide code



A considerable advantage of this approach is the fact that the ICTI Code, unlike other codes of conduct, is not restricted to setting out rules of conduct. It is closely interlinked with a system (the ICTI CARE Process) which allows the monitoring of the compliance with these rules. The ICTI Code thus goes beyond a conventional code of conduct which often is a mere PR measure, writing down standards without actually monitoring their implementation.

Another fundamental strength lies in the ICTI Code's objective to be applied as a uniform standard within the whole toy industry and - ideally - to be implemented worldwide.¹⁰ As far as *Aktion fair spielt* is aware, the toy industry is the first industry to introduce such an approach. The ICTI Code helps factories to deal with the otherwise almost impossible task of complying with all of their customers' different codes of conduct. As a consequence, it can also reduce the number of factory inspections, thus reducing the costs of providing evidence of adequate working conditions.

3.2.2. A solved root problem: independent monitoring as a paid service



The nature of the business relation between a factory and the audit company carrying out the factory inspection as a paid service used to be a fundamental structural problem. This company was decisive for whether a company was granted the certificate of the ICTI CARE Foundation or not. The ICTI CARE Process regulations therefore state that an audit company already working for a factory in the context of another consultancy contract is barred from carrying out the audit within the framework of the ICTI CARE Process.

Furthermore, the prospect of a potential follow-up audit can equally influence the results of a factory inspection. This would, however, nullify the whole approach. *Aktion fair spielt* therefore welcomes the fact that, as a consequence, companies are no longer able to choose 'their' audit firm themselves. Since January 2007, it has been allocated to them by the ICTI CARE Foundation.

⁹ See 3.2.7. Complaints procedure

¹⁰ Although it is perfectly understandable that the ICTI CARE process was introduced first in China for practical reasons and not implemented worldwide right from the start, it must be clear that the process therefore has its limitations and cannot be used unrestrictedly. For example, the process's regional character poses an obstacle to integrating the ICTI CARE Process with other seals of quality like Germany's eco-label Blue Angel. It is also an obstacle to turning it into an independent product label, although there are other reasons why that would not be advisable.

3.2.3. The quality assurance of audits remains a challenge

The validity of the factory inspection results is crucial to the ICTI CARE Process: this opinion of *Aktion fair spielt* corresponds to the purpose of the ICTI CARE Foundation.



Experience with the implementation of the ICTI Code and similar codes shows that factory inspections which have been announced in advance often lead to irregularities and fraud. It is therefore to be welcomed that the ICTI CARE Process now exclusively works with unannounced audits (with the exception of the initial audit). As of January 2007 the factories are not informed about the date of the audit. In order to ensure that the auditor is not able to give it advance warning, the audit firm receives the relevant data (name and address of the factory to be inspected) only one day before the audit takes place.

Quality assurance was also the decisive reason for prescribing a training program for auditors. The program, which is certified by the International Register of Certified Auditors (IRCA), was introduced in 2008 and is compulsory for all auditors desiring to receive the ICTI CARE Foundation's accreditation. Moreover, all accredited auditors have to take part in an annual refresher course. If an auditor is found guilty of corruption, they are removed from the IRCA list and are no longer entitled to perform audits within the ICTI CARE Process.

However, *Aktion fair spielt* is convinced that these two measures alone are not sufficient to guarantee the quality of the audits. It has therefore called upon the ICTI CARE Foundation for quite some time to double-check the results of the routine inspections by establishing additional unannounced spot checks. *Aktion fair spielt* estimates that one spot check per ten regular audits would be a reasonable ratio.

By introducing the QC Audits¹¹ in 2006, the ICTI CARE Foundation has partially complied with this request. Since their introduction, 135 QC Audits have been carried out. With three exceptions, all of them found that violations of the ICTI Code had been hushed up – or at least not discovered – during the preceding, regular factory inspections. According to the ICTI CARE Foundation, the majority of the uncovered infringements were due to fraudulent behavior on the part of the company inspected.

However, the QC Audits have so far only been carried out in cases of concrete suspicion, and thus not as random checks. That is also how the ICTI CARE Foundation explains the worryingly high number of violations of the Code that initially go unnoticed. This disillusioning “hit rate” demonstrates serious quality defects of factory inspections, even if one acknowledges that the companies are subjected to stricter controls and that the infringements were finally exposed.

Therefore, *Aktion fair spielt* is convinced that spot checks must be carried out in addition to the QC Audits. Only with such random checks is it possible to realistically assess the validity of the regular inspection results.

¹¹ See 2.3.2. Quality control.

3.2.4. Supply chain integration: a pending agenda



Another problem that is even more pressing than the still inadequate quality of the regular factory audits is the fact that the sub-contractors have not yet been integrated into the certification process. This fact is important for two reasons.

(1) According to the ICTI Code, the branded companies do not only have to ensure that their suppliers comply with the required standards, they also have to make sure that the suppliers require their sub-contractors to comply with the Code (principle of responsibility for the upstream production stage). The non-integration of sub-contractors is therefore a violation of the self-imposed rules of the ICTI Code and undermines the whole ICTI CARE Process.

(2) If the sub-contractors are not even included in the ICTI CARE Process, let alone monitored, the ICTI CARE Foundation has no basis for action with respect to “shadow factories”. In the estimation of observers, it is common practice to move considerable parts of production from the certified “model factory” to a “shadow factory”. Usually neither the customers nor the authorities know anything about these factories operating in the “shadows” under illegal conditions. The complete absence of monitoring often entails inhumane working conditions.

For this reason, the ICTI CARE Foundation must ensure that the only factories to receive certification in future are those working exclusively with sub-contractors cooperating in the ICTI CARE Process. Furthermore, they must disclose the names of their sub-contractors (at least beyond a certain size of order). Concealing business relations or transactions with a certain sub-contractor must be classed as a grave violation of the ICTI CARE Process rules and penalized accordingly.

3.2.5. Clear & brief: the Factory Worker Card



The precondition for factory worker participation is the accessibility of all relevant information: about the rights contained in the ICTI Code, Chinese labor legislation and the functioning of worker representative bodies within a factory.

The Factory Worker Card or Worker Information Card is a first starting point in this respect. This card informs the workforce about the contents of the ICTI Code by listing its main points. It also provides the number of a hotline for the workers' complaints.¹² Since 2007, it has been compulsory to distribute this card to the workforce of factories which are “on probation” after a negative QC Audit.

There are different statements about the degree of inclusion of local non-governmental organizations in formulating the first version of the card. *Aktion fair spielt* is, in any case, convinced that the card has to be better adapted to the workers' perspectives for them to consider it relevant. Furthermore, it should provide access to comprehensive sources of information, e.g. on the internet.

¹² See 3.2.7. Appeal procedure.

According to information given by the ICTI CARE Foundation in November 2009, a new improved version is to be distributed in all factories from 2010. The audits will also include checking in order to find out whether the cards have indeed been handed out to all workers. It seems that the text of the new card, now titled "What you should know", has been substantially revised, taking into consideration the proposals made by *Aktion fair spielt* and its Chinese partner organizations. Apart from giving a hotline number, the card now also refers to the ICTI CARE Foundation's website where the workers will soon be able to find further important information in Chinese.

3.2.6. Management training courses a priority: no interest in worker training?

A further precondition for an effective participation of the workers, besides providing essential information, is an offer of comprehensive training courses, e.g. about the contents of the ICTI Code, occupational health and safety, Chinese labor legislation and elections for the company-level worker representation. Such training courses should be run in close coordination with competent non-governmental organizations.



Devising a training program for managing directors, managers and the staff/workforce was to have been one priority of the ICTI CARE Foundation's work from 2007. According to the Foundation, a sum of USD 1.3 million was earmarked¹³ for this purpose for a period of four years. However, the about 100 training courses held so far have been primarily directed at managers and managing directors of factories.¹⁴ So far, the ICTI CARE Foundation has been rather evasive regarding the topic of training courses for the workforce. The attempt of *Aktion fair spielt* to ensure the inclusion of the workforce in the training program via cooperation with the German government's organization for technical cooperation (GTZ) failed at first because of the increasing lack of interest on the part of the ICTI CARE Foundation.

The originally planned training program was to contain modules on health and safety in the workplace, labor law and on the ICTI CARE Process itself. It was to be developed and implemented with external partners; Chinese NGOs were to at least be consulted about the content of the modules. The current status of the training program is unclear. At least, to the knowledge of *Aktion fair spielt*, no training programs for workers have taken place to date and nothing is known about the participation of any relevant NGO in the conception of these training programs.¹⁵

¹³ According to earlier information given by the ICTI CARE Foundation in October 2006, it was planned to use the fines paid by the companies for violations uncovered in the context of the QC Audits to fund training programs for the workforce. However, the Foundation no longer considers the introduction of fines as an appropriate tool (see footnote 15).


¹⁴ *Aktion fair spielt* recognizes that management training programs can be important elements on the way to improving working conditions in the factories. Those in charge of ICTI CARE Foundation have expressed their readiness to offer such training. By contrast, there is little willingness to run courses for workers on at least the same scale and with the participation of appropriate organizations concerned with labor law. As a matter of principle, therefore, *Aktion fair spielt* concentrates on calling for worker training and gradual involvement of the workforce in the structures of the ICTI CARE process.

¹⁵ In early November 2009 the ICTI Care Foundation presented excerpts of a project application to *Aktion fair spielt*, which they had submitted to the GTZ. It refers to the Factory Worker Education and Capacity Building Project, a pilot

A training video first mentioned to *Aktion fair spielt* in June 2008 and which the ICTI CARE Foundation wants to realize with the US-based NGO China Labor Watch has still not been completed (at the time of writing). Relevant Chinese NGOs who in talks with *Aktion fair spielt* welcomed the idea of the video have, to our knowledge, not been associated with the project.

Aktion fair spielt continues to press for target group-specific information and training courses for workers in the framework of the ICTI CARE Process. Such plans must be implemented quickly and relevant Chinese non-governmental organizations need to play a substantial role.

3.2.7. Complaint procedure: no comprehensive strategy yet




A core concern for *Aktion fair spielt* is the involvement of workers in monitoring the ICTI Code – at least in the form of a risk-free complaint procedure. *Aktion fair spielt* outlined the main features of a possible procedure in a letter to the new ICTI President, T.S. Wong, in April 2004. *Aktion fair spielt* proposes a two-track procedure. Firstly, complaint procedures are to be established in the factories and their existence monitored during the audits. Secondly, the ICTI CARE Foundation or an independent third party should establish a complaint system for cases that cannot be addressed at the company level. Both systems must ensure that there is a fixed procedure to deal with complaints, shortcomings can be eliminated and, if necessary, sanctions can be imposed on companies. Disadvantages for complainants must be avoided. If possible, they must be individually informed of the outcome of the procedure. Moreover, the results should be made public, while preserving anonymity, in order to strengthen the credibility of the complaint system.

In the estimation of *Aktion fair spielt*, the complaint hotline mentioned by the Factory Worker Card does not go far enough to meet requirements. The workers are neither informed about the actual recipient of their complaints nor about any steps taken in response. It also seems that workers are not informed about the outcome of their complaint.

Aktion fair spielt therefore continues to push for the establishment of a two-track complaint system in the factories and within the ICTI CARE Foundation or another external institution. The procedure must avoid disadvantages for the complainant and there must be a fixed procedure to remedy shortcomings.

3.2.8. Lack of involvement of independent players: the industry is still its own watchdog

From the outset, *Aktion fair spielt* pointed out to ICTI and the ICTI CARE Foundation that a prerequisite for the credibility of the ICTI CARE Process is the equal participa-



project which is to be carried out in 16 medium-sized Chinese toy factories from January 2010 to October 2011. The project involves training sessions on health and safety, employment contract law, the ICTI CARE Foundation complaint hotline and the complaint system at factory level.

tion of independent figures or representatives of organizations from outside the toy industry. These include relevant non-governmental organizations with experience in the fields of human rights and social standards, trade unions or academics (e.g. labor law specialists). The impression that the industry is certifying itself can only be avoided if there is an independent and mandated supervisory or oversight body with the ability to act.

The ICTI CARE Foundation argues that it is an organization independent of ICTI. While this might be formally true, it is misleading for two reasons. (1) The Council and the Foundation are closely linked with regard to staff and the exclusive right of ICTI to change the Code. (2) There is also a clear majority of industry representatives in the bodies of the ICTI CARE Foundation.

This holds true for the Governance Board of the ICTI CARE Foundation, in which there are not many independent members. Very few of them have any relevant experience and none of them is mandated by an organization. In fact, they all act exclusively on their own behalf. There are also no representatives of local trade unions and non-governmental organizations. As long as the independent players are under-represented and have no decision-making authority independent of the majority, they cannot hold their own, if necessary, and run the risk of being made responsible for majority decisions. In case of serious disputes, the only way for them to assert their position would be by withdrawing from the body in a high-visibility move, or by threatening to do so.

The regional Technical Advisory Boards (or the new Technical Advisory Council) have an actual regulatory function and the possibility to intervene, but their members are exclusively industry representatives.

The regional Technical Advisory Boards or its successor, the Technical Advisory Council, which do have an oversight role and their own ways of intervention, are even exclusively comprised of industry representatives.

An independent NGO advisory council, as recently discussed, would only be a sensible option, in the opinion of *Aktion fair spielt*, if it did not merely have a consultative function. Rather, decisions made by the Governance Board should require the approval of the NGO advisory council and it should also have rights of initiative and oversight.

Therefore, *Aktion fair spielt* insistently continues to urge that the ICTI CARE Process be supervised and shaped with the help of players from outside the industry equipped with adequate rights. This can be achieved by strengthening the involvement of relevant non-governmental organizations and experts in the Governance Board or in the Technical Advisory Council. Alternatively, an independent NGO advisory council could be established under certain conditions. These first steps should ultimately lead to the transformation of the ICTI Care Foundation into a multi-stakeholder initiative.¹⁶

¹⁶ Multi-stakeholder initiatives involve relevant players in the decision-making process, especially those concerned locally. The stakeholders are represented e.g. by trade unions and non-governmental organisations. No individual stakeholder has a dominant position.

3.2.9. Informing the public: no credibility without transparency



In the interest of the credibility of the ICTI CARE Process, *Aktion fair spielt* urges the ICTI CARE Foundation to practice a minimum of transparency with regard to providing information to the public: The only step in this direction had been the naming of all certified companies in the Factory Database on the ICTI CARE Foundation website since 2007. As of 2008, all registered companies have been recorded in the database with their respective status.

Aktion fair spielt has urged the ICTI CARE Foundation to inform consumers and anyone interested of the extent to which individual companies have implemented the Code in their supply chain. But this demand has still not been fulfilled. The website still only provides information on which companies have committed to purchasing from certified suppliers as of a certain, arbitrary date within the framework of the Date Certain program. The public is not informed whether, and if so, to what extent, this commitment has been fulfilled.

Even though, due to competition laws, the ICTI CARE Foundation cannot disclose information which would allow Chinese suppliers to be matched to individual companies, it should be ensured that the ICTI CARE Foundation itself knows the name, number and certification status of all sub-contractors of a given company (beyond a certain size of order and after an appropriate time limit). It should post the figures on certified suppliers of brand-name companies on its website.

However, this demand of *Aktion fair spielt* that the public be informed on the progress of companies in implementing the ICTI Code in their supply chain has come up against the problem of companies apparently refusing to inform the Foundation about the suppliers they work with. In October 2008, the ICTI CARE Foundation admitted on enquiry that there is no majority in favor of demanding that the companies present a complete list of their suppliers on signing the ICTI Member Pledge (in which the Date Certain is registered). Only a few companies were willing to do so, it reported. In addition, the ICTI CARE Foundation said it did not have the capacity to collect information on the suppliers and to supervise compliance with Date Certain commitments.

In March 2006 the ICTI CARE Foundation announced that all companies were to submit annual reports on their progress in certifying their suppliers. According to the Foundation, this is to be implemented from 2010. However, the collected data is said to be for internal use only and not for publication.

It is still a core requirement for *Aktion fair spielt* that the ICTI CARE Foundation inform the public on progress made by companies in implementing the ICTI Code in their supply chain and in monitoring Date Certain commitments.

3.2.10. Date Certain: self-commitments are worthless without clear rules

The Date Certain program has shortcomings not only with regard to the informing the public but also with regard to clarity and stringency.



Using the example of German toy companies, it is obvious that the Date Certain Database is still inadequately structured. Despite numerous reminders from *Aktion fair spielt*, it has since 2006 continued to list toy firms which admit that they have no intention of joining the ICTI CARE Process. The ICTI CARE Foundation takes the line that it should be able to rely on the information provided by national associations when drawing up its list. In any case, the ICTI CARE Foundation says that it is not able to supervise every Date Certain commitment. It was originally announced that companies could directly commit to a Date Certain with the ICTI CARE Foundation via an online form as of February 2008. In November 2009, however, the Foundation stated that this simple solution was no longer pursued, in the interest of integrating the national associations.

In addition, there is still no clear-cut definition establishing the nature of a company's commitment when it specifies a Date Certain and to which of its suppliers the commitment applies.

The ICTI CARE Foundation and *Aktion fair spielt* basically now agree on the following points:

1. The Date Certain commitment does not apply to 100% of a company's suppliers (this percentage has been taken as a basis to date and is regarded as unrealistic by many companies) but only to the largest suppliers who together represent 95% of the value of the toys purchased by a given company in China.
2. A new supplier does not have to be certified immediately. It can be certified after one year of business relations. At the beginning it merely needs to be audited and start with the Corrective Action Plan.
3. The Date Certain commitment applies only to toys. Business divisions that do not belong to the toy category can remain out of consideration but suppliers from outside the industry who deliver components for toys (e.g. suppliers of electronic components) need to be considered.
4. The Date Certain commitment applies to all toys produced or "only" distributed by a company.

However, these agreements are apparently not yet fully anchored in the ICTI CARE Process. At least they are not yet being communicated to the companies. There have been no relevant revisions of either the ICTI Member Pledge, with which companies formally commit to a Date Certain vis-à-vis the ICTI CARE Foundation, or other documents available to companies via the ICTI CARE Foundation website.

In the opinion of the *Aktion fair spielt*, the Date Certain program requires more precise rules concerning the commitments made and the obligation to inform the ICTI CARE Foundation and the public, especially since it can be used for PR purposes by the companies. There must also be an efficient supervisory procedure and the option to sanction violations.

3.2.11. A consistent body of rules: all toy companies are equal – but some ...



A further point of criticism which has been raised insistently by the *Aktion fair spielt* since 2004 is the lack of consistency between the ICTI Code, the guidance documents and the implementation of the ICTI CARE Process.

Among other things, the supplementary documents and the ICTI CARE Process disregard all requirements the ICTI Code sets for the companies (e.g. the requirement that the ICTI Code has to be part of all supply agreements). As a result, brand-name companies are not obliged to report or submit to supervision. As such, the responsibility of complying with the ICTI Code has been completely left to the supplier.

In the estimation of *Aktion fair spielt*, this practice is incompatible with ICTI's ambition to implement a uniform, global standard for all companies in the industry. At the same time, this unequal treatment hinders the acceptance of the Code and its rules amongst Chinese suppliers and prepares the ground for avoiding implementation through manipulation.

In the interest of credibility, the ICTI CARE Foundation (or ICTI itself) must define the ICTI CARE Process in a general but precise way and adhere to the wording of the Code. A revision of the Code should be taken as an opportunity to relate its criteria to the core labor standards of the International Labor Organization (ILO) and the Universal Declaration of Human Rights.

4. Minimum requirements for the ICTI CARE Process according to *Aktion fair spielt*

This chapter will outline what *Aktion fair spielt* considers minimum requirements essential for the efficiency, credibility and transparency of the ICTI CARE Process. It expects the ICTI CARE Foundation to take a clear position by mid-2010 and also expects a binding schedule for implementing the individual elements.

1. Supply chain integration

The prerequisite for certification according to the ICTI Code must be the disclosure of all immediate suppliers (above a certain size of order) who must also register for the ICTI CARE Process.

Failing to disclose business relations must be regarded as a serious violation of the rules of the ICTI CARE Process and sanctioned accordingly.

2. Involvement of the workforce

There must be a two-track complaint system (a) in factories and (b) in the framework of the ICTI CARE Process, according to proposals made by *Aktion fair spielt*.

The ICTI CARE Foundation should provide comprehensive information to the workers about their legal rights and those granted by the ICTI Code; the information should be appropriate to the group concerned and substantially involve local non-governmental organizations.

3. Independent supervision

Individuals from outside the toy industry may play a role in shaping and monitoring the ICTI CARE Process, provided they have adequate rights, through their participation either in the Governance Board, the Technical Advisory Council or in a new, independent supervisory body. The goal, in the mid-term, is to transform the ICTI CARE Foundation into a multi-stakeholder initiative.

4. Quality of factory audits

Unannounced spot checks that are carried out without concrete suspicions must be the basis for assessing the average validity of regular factory audits.

5. Transparency

The ICTI CARE Foundation must inform the public about the progress made by the branded companies in implementing the ICTI Code in their supply chain and in meeting their Date Certain commitments. This information must be based on reports by the companies and audits of the branded companies.

The ICTI CARE Foundation must establish clear rules regarding registration for the Date Certain program, the factual content of self-commitments and the obligation of companies to provide information.

It should also establish an efficient monitoring procedure for the Date Certain program and provide for sanctions if necessary.

6. Consistency

The Code must define the ICTI CARE Process in a universally valid but precise way. The content of the explanatory documents and the ICTI CARE Process itself must adhere strictly to the wording of the Code. The Code's criteria should refer to the core labor standards of the International Labor Organization (ILO) and the Universal Declaration of Human Rights.

All obligations defined in the documents should be equally monitored and have the same consequences, regardless of the addressee.