Executive Summary. United Students Against Sweatshops (USAS) has proposed a Designated Supplier Program (DSP) to upgrade and focus the enforcement of collegiate codes of conduct. The proposal calls for limiting the number of suppliers making collegiate apparel to factories approved by the Worker Rights Consortium (WRC). In addition to current code of conduct provisions, the proposal requires these designated suppliers to pay workers a “living wage” and have a union or other representative body that can bargain over wages and working conditions.

The committee has reviewed and discussed this proposal, seeking input from licensees and others who were not included in developing the proposal. In addition to its regular monthly meetings, members of the committee have attended meetings organized by the Worker Rights Consortium and the Fair Labor Association (FLA), participated in conference calls, and held three on-campus committee meetings with licensees and the WRC. The committee also organized a public forum on campus to address this issue.

The DSP would fundamentally change how licensees select and work with suppliers. Committee discussion has focused on the assumptions underlying the DSP, the overall rationale of shifting attention from apparel workers generally to only those in the collegiate sector, logistical challenges of implementing and administering the proposed system, and potential unintended consequences. Based on this discussion, the committee makes the following recommendations:

Recommendation #1: The committee recommends that the University, individually and in concert with others, take steps to increase the effectiveness of our codes of conduct on improving labor conditions for workers in the apparel industry.

Recommendation #2: Because of concerns about the proposed structure of the Designated Supplier Program, potential unintended consequences, and a range of implementation questions, the committee recommends that the University not endorse the proposal at this time.

Recommendation #3: The committee recommends that the University (1) initiate procedures to require licensees to document how they monitor/enforce our code of conduct and (2) develop protocols with other universities and external groups (e.g., FLA, WRC, and CLC) to monitor and support adherence to our code of conduct.
Introduction

The Designated Supplier Program (DSP) was developed by United Students Against Sweatshops (USAS) to address labor conditions in factories producing university apparel. The proposal is premised on the view that, despite codes of conduct, “university apparel is still made under sweatshop conditions in factories around the world.” (USAS website—www.studentsagainstsweatshops.org) USAS argues that “sweatshop conditions and poverty wages” are endemic in the apparel supply chain. Further, they contend that the current sourcing system itself, in which constant price competition among factories is a key factor, systematically penalizes those factories that have better working conditions.

The DSP would address this situation by restricting production of university apparel to a set of “designated suppliers,” which pay a “living wage” and have a legitimate union or other representative employee body. “Under the new proposal, university apparel companies will be forced to produce garments in truly sweat-free factories where workers have a voice on the job and the power to win livable wages.” (USAS website) As currently formulated, the DSP would fundamentally change how licensees work with suppliers manufacturing collegiate apparel.

The discussion engendered by the DSP has revealed broad recognition that code of conduct violations continue to plague the apparel industry and steps should be taken to address this situation. In the course of deliberations concerning the DSP, the committee has considered both the basic rationale for concentrating university influence on the small subset of apparel workers who make university apparel and whether the DSP, as an approach to code enforcement, represents a workable solution within the broader context of the licensee-supplier relationship.

The committee has sought input from a variety of sources and members of the committee have engaged in a number of activities, including:

- two WRC conference calls for universities
- one FLA conference call including universities and licensees
- a WRC meeting in Washington, DC
- an FLA meeting in Houston, TX
- on-campus committee meetings with the Collegiate Licensing Company (CLC), New Era Caps (licensee), the WRC, and Nike (licensee)
- an open campus forum and subsequent committee meeting with representatives of WRC, FLA, CLC, and Knights Apparel (licensee)

In the following sections, we first highlight the problem in the collegiate apparel sector. We then summarize the DSP and discuss the issues raised by this proposal, both in general and with regard to specifics of implementation. We then describe our conclusions and recommendations.
A Continuing Problem of Labor Standards in the Collegiate Apparel Sector

Consideration of the Designated Supplier Program has brought attention to continuing problems with regard to codes of conduct in factories that manufacture collegiate apparel. In general terms, the core of the problem appears to be:

a. **Cost pressures in the sourcing system.** Despite the existence of university codes of conduct, labor conditions that violate those codes continue to be common in the apparel industry. Price competition among supplier factories often discourages improvement of labor conditions, making factories that improve conditions more vulnerable to losing orders because of their increased production costs.

Although the specifics vary with the particular sector, competition throughout the supply chain—among retailers, licensees, and factories—pressures factories to reduce costs, to the detriment of labor standards. While this may not always be the case, it is a strong dynamic within the system. To be effective, any solution must address the issue of licensees paying a price to suppliers that is adequate to meet the requirements of codes of conduct.

b. **The large number of factories producing university apparel.** Under the current licensee-supplier structure, thousands of factories produce for the collegiate logo market. This presents a serious challenge for monitoring and re-mediating violations of labor standards.

c. **University influence on licensee-supplier behavior.** University codes of conduct have increased recognition and visibility of the issue of labor standards, but in the face of other market factors, their impact has been limited. This is particularly true for small and medium-size licensees, many of which have not developed the infrastructure for monitoring the labor conditions for their suppliers.

**Designated Supplier Program: What is Being Proposed?**

The DSP is predicated on the view that the impact of university codes of conduct has been limited. To address this situation, the USAS proposal would change how collegiate goods are produced/sourced by limiting production to “designated suppliers” approved by the WRC. To be a designated supplier, a factory would have to:

a. comply with university codes of conduct
b. pay a “living wage”
c. “fully respect employees’ associational rights, as evidenced by the existence of a legitimate labor union or other representative employee body”
d. produce primarily for the collegiate market (at least two-thirds of their production)
The proposal requires licensees to pay suppliers enough so that they can meet “living wage” and other code requirements. The proposal notes that “it is the responsibility of the licensees to ensure, in the case of each order, that the price paid to the supplier is sufficient, in view of actual production costs, to allow all of the standards to be met.” The WRC will adjudicate cases in which there are disputes about whether the pay levels offer a “living wage” or the price for an order is “fair.”

The proposal calls for a phase-in period, after which licensees will be required to initially source at least 25 percent of their collegiate production from “designated suppliers” with that percentage later increasing to 50 percent and then 75 percent. Further increases are to be determined later.

Adopting the DSP would represent a major change in the structure and operation of the university apparel industry. USAS developed the proposal without input from licensees and there are many questions about how it would operate in practice, its impact on other aspects of the licensee-supplier relationship, and unintended consequences of this basic change in how the industry sources production. Before considering some of the details of the proposal, we first look at an underlying premise of the DSP: that universities should shift their attention from apparel workers generally to only those in the university apparel sector.

### Shifting from Apparel Workers Generally to Only Those Making Collegiate Products

The DSP would shift the attention of universities and colleges from apparel workers generally to only those producing for the collegiate market. This raises basic issues of focus and impact. On one hand, if the current arrangements are failing to improve working conditions in apparel factories, then seeking alternatives limited to the collegiate sector may be a more effective use of the influence of colleges and universities. Also, if the DSP could be implemented in the way envisioned by its designers, it would ensure that those workers who actually produce university apparel are afforded higher wages and better working conditions. On the other hand, the influence of university codes of conduct currently applies to a much larger group of workers because some collegiate production takes place in many factories. The DSP would change this.

Under the existing structure, both the FLA and the WRC extend the influence of universities and colleges to workers well beyond the collegiate market. From the point of view of the FLA, participating universities require companies to affiliate with the FLA and abide by the relevant strictures about having a monitoring system that meets FLA standards. The effectiveness of licensees’ current monitoring of codes—particularly small and medium-size licensees—is questionable and needs further development. But the current system brings many more factories under the FLA umbrella than would be the case under the DSP.

The activities of the WRC also extend to many more workers than would be the case under the DSP. The WRC, in its investigative efforts, has leveraged college and university influence when problems are found in a factory even when only a small part of
production involves collegiate goods. In virtually every situation in which the WRC has sought remediation of code violations, it has achieved factory-wide impact because there was some college production there. If collegiate production were to be confined to a small set of “designated suppliers,” the WRC would no longer have a basis for intervention in these other factories.

Whether it makes strategic sense to focus all college and university influence on the small subset of apparel workers making collegiate apparel depends on one’s assessment of the effectiveness, ineffectiveness, and potentials of the current approaches.

**Practicalities of the DSP Approach: How Would It Operate in Practice?**

The DSP seeks to change aspects of the licensee-supplier relationship that its authors see as inimical to improved labor standards. For example, market-determined wages in producing countries are seen as inadequate, so a “living wage” floor is established. Freedom of association is resisted by employers and is difficult to monitor, so the workers in a designated supplier factory must actually have an active union or an equivalent representative body. Price competition is seen as driving down wages and working conditions, so there is a “fair pricing requirement.”

USAS, in consultation with the WRC, formulated the DSP. Licensees and universities were not integrated into this process. Since the public introduction of the proposal, its overall thrust and its specific provisions have elicited a range of questions and concerns about how the proposed program would work in practice.

**Sourcing Requirement.** The heart of the DSP is that university apparel would be made in a set of designated factories that are primarily devoted to such production. Instead of selecting suppliers based on a range of considerations that are part of the current sourcing decisions, licensees would have to order most university products from a limited number of factories approved by the WRC.

Unanswered questions:

- How many factories would be needed to meet the demand for manufacturing the different types of university apparel?

- With a limited number of factories, would licensees have sufficient sourcing alternatives to ensure that they receive the quality, timely delivery, and product differentiation that they seek?

- Although the DSP allows for licensees to nominate factories that they currently use, would this be a viable option since college goods would have to comprise two-thirds of their production?

- Given the cyclical nature of the collegiate market, how would the designated factories handle “down-time” when there are fewer orders for university apparel?
**Living Wage.** The living wage requirement goes beyond the wage provisions of most current codes of conduct, which generally call for wages to meet or exceed the legal minimum wage law or prevailing industry wage in the area. There is little experience in how a living wage requirement in this context would work in producing countries.

Analyses by the WRC in two producing countries suggest that the “living wage,” as they calculate it, would be two to three times the current wage level. If implemented, the wages in designated factories would be more than double the wages in other local factories.

**Unanswered questions:**

Given that wages in “designated” factories would far exceed wages in other factories, how would these premium-wage jobs be allocated?

How would one monitor or control favoritism/corruption in hiring and firing, given the large disparities in wages created by the DSP?

Would having such a wage difference between “designated suppliers” and neighboring factories create other unintended consequences?

Would collective bargaining on wages be relevant only for increases above the calculated “living wage?”

**Freedom of association.** Freedom of association is one of the most important aspects of codes of conduct and one of the most difficult to implement and monitor. The freedom of association provision under the DSP requires that a legitimate union or other representative employee body is in place at a “designated supplier.” This goes beyond current codes, based on a dual rationale. First, the existence of such a representative body is seen as the best indicator that freedom of association truly exists. Second, the presence of an active union or its equivalent provides a means for local monitoring-oversight of labor conditions in the factory.

As currently written, this requirement does not acknowledge that workers might freely choose not to have a union. It also raises challenges for implementation. In some situations, it may be clear that a union is not representative or actively engaged in furthering the interests of workers. For example, “white unions” or “ghost unions” in Mexico and elsewhere are often established by employers to avoid the creation of legitimate unions. But in other situations, such distinctions may not be clear, particularly over time as unions evolve, internal disputes arise, or new leadership emerges. Under the DSP, the WRC will be responsible for resolving conflicting claims of representation of between unions or between factions within a union.

**Unanswered questions:**

Under the DSP requirements, could workers freely choose not to have a union and still maintain their “designated” status?
Would this requirement punish workers in repressive regimes by effectively prohibiting suppliers in countries in which the legal structure limits independent unions (e.g., in China where unions must be part of the government-controlled All-China Federation of Trade Unions—ACFTU)?

If so, would the implementation of the DSP work against current efforts by licensees to encourage movement toward freedom of association through the formation of factory-based grievance or health-and-safety committees?

What protocols/approaches would be used to ensure that a particular union is (and continues to be) truly representative of workers?

**Fair pricing requirement.** The DSP’s “fair pricing requirement” sets a floor for the price paid for an order based on some calculation of costs of production. A supplier could appeal to the WRC if they believe the price offered by a licensee is too low. The WRC would then assemble an “assessment team” to determine whether a particular price paid by a licensee is sufficient to cover the supplier’s costs for that order.

Determining whether a price is “fair” involves complex calculations reflecting variations in material costs and labor processes. A “fair price” determination must also factor in assessments of non-production costs (e.g., managerial pay, acceptable profit levels, depreciation, etc.).

**Unanswered questions:**

Who would be on an assessment team formed by the WRC to decide whether a price for a specific order is “fair?”

Could prices be contested in an expeditious manner when factory orders are often highly time-sensitive?

How would considerations beyond direct production costs (e.g., overhead, profit) be included in the “fair price?”

Would price competition be eliminated from licensee’s selection of suppliers?

If so, what would be the implications with regard to other performance standards such as quality and on-time delivery?

**Potential anti-trust issues.** Concerns have been raised about potential anti-trust violations associated with the DSP. These relate to the overall approach of designating a limited number of factories to participate in the manufacture of university apparel as well as the details of implementation. A legal opinion, commissioned by the WRC, concluded that universities were unlikely to be considered in violation of anti-trust laws. However, universities have continued to raise concerns about this possibility. It has also been noted
that licensees themselves may be at risk for anti-trust violations in the implementation of the DSP.

It has been suggested that it would be prudent for the WRC to request a “business review letter” under the Department of Justice’s Business Review Procedure, to clarify whether or not the DSP presents anti-trust concerns. It is noted that the FLA had followed this path during its formation.

Unanswered questions:

Has there been sufficient exploration of whether or not the DSP may place universities and/or licensees at risk for anti-trust violations?

Would potential anti-trust concerns limit the involvement of licensees in planning/ modification of the DSP?

Should a “business review letter” be requested from the Department of Justice concerning anti-trust concerns?

Capacity and resources of the WRC. The WRC was created to assist in the enforcement of codes of conduct and has focused on identifying and working to remediate code violations. Under the DSP, the WRC would take on a new and greatly expanded role. It would shift its attention to a range of new areas, including certifying factories, assessing the representativeness and legitimacy of unions, defining living wage levels, and determining the fair price for factory orders. It is unclear how many “designated factories” there will be. In various discussions, estimates have ranged from several dozen to hundreds.

Currently, the WRC has a total of fourteen employees. They have indicated that they would be able to handle the increased workload with a small number of additional staff members. In terms of additional resources needed, the WRC has expressed confidence that funding could be secured from external sources.

Unanswered questions:

Does the WRC have the capacity to play the role outlined for it in the DSP?

How are the estimates of additional staff and resources being made?

Are these estimates based on a formal analysis?

What external sources are expected to be available to meet the need for expanded resources?

Will universities be expected to provide additional resources to the WRC?
Committee recommendations

Based on these considerations, the committee makes the following recommendations:

Recommendation #1: The committee recommends that the University, individually and in concert with others, take steps to increase the effectiveness of our codes of conduct on improving labor conditions for workers in the apparel industry. (unanimous recommendation)

Commentary: As noted above, the committee unanimously agrees that continuing problems of violations of codes of conduct call for action by colleges and universities. A key source of these problems is the manner in which licensees operate within the cost-competitive sourcing system. Problems of oversight and implementation are compounded by the large number of factories and current limits on the effectiveness of universities in impacting licensee behavior. The committee recommends that the University undertake initiatives to address these problems.

Recommendation #2: Because of concerns about the proposed structure of the Designated Supplier Program, potential unintended consequences, and a range of implementation questions, the committee recommends that the University not formally endorse the proposal at this time. (majority recommendation)

Commentary: The DSP is an innovative approach to improving labor rights among those making university apparel. If implemented the way its designers would like, it would result in higher wages and greater security for those workers who work in “designated factories.” But there are serious questions about its general direction and about whether the proposal would work in practice. As noted in the analysis, the DSP would fundamentally change the nature of sourcing and introduce an untried administrative/regulatory structure. Further, the proposal could have negative impacts on the much larger number of workers who do not work in “designated” factories. By narrowing the focus of universities from apparel workers generally to only those involved in collegiate production, it would significantly reduce the number of factories subject to university codes of conduct.

Although the committee does not currently recommend endorsing the DSP, further development or modification may address fundamental concerns. Also, the committee recognizes that if other efforts fail to improve conditions, the University should reconsider the DSP in light of those failures.

Recommendation #3: The committee recommends that the University (1) initiate procedures to require licensees to document how they monitor/enforce our code of conduct and (2) develop protocols with other universities and external groups (e.g., FLA, WRC, and CLC) to monitor and support adherence to our code of conduct. (unanimous recommendation)
Commentary: Cost pressures associated with the sourcing system are a major problem impacting labor conditions. The DSP would change the sourcing system itself. The committee believes that a more feasible approach at this time would be to change how our licensees operate within the existing system. This alternative is based on upgrading code enforcement standards and oversight of licensees. This approach would focus responsibility on licensees to ensure that they are in compliance.

Although details of implementation must be developed, committee discussion has focused on two general areas. First, the University should immediately begin working on ways to require licensees to document how they monitor compliance with our code of conduct. Second, the University should undertake collaborative efforts with other universities and external groups (e.g., FLA, WRC, and CLC) to achieve greater compliance with codes of conduct. A key element would be seeking ways to limit the negative impacts of price pressures on labor standards in supplier factories.