

# The Designated Suppliers Program – Revised<sup>1</sup>

## Program Overview

The Designated Suppliers Program is a system for protecting the rights of the workers who sew university logo apparel.

Under the Designated Suppliers Program, university licensees are required to source most university logo apparel from supplier factories that have been determined by universities, through independent verification, to be in compliance with their obligation to respect the rights of their employees – including the right to organize and bargain collectively and the right to be paid a living wage. In order to make it possible for factories to achieve and maintain compliance, licensees are required to meet several obligations to their suppliers. Licensees are required to pay a price to suppliers commensurate with the actual cost of producing under applicable labor standards, including payment of a living wage; they are required to maintain long-term relationships with suppliers; and they are required to ensure that each supplier factory participating in the program receives sufficient orders so that the majority of the factory's production is for the collegiate market. Licensees may bring any factory they choose into the program, provided the factory can demonstrate compliance with the program's labor standards. The program is phased in over a three year period.

## Scope of Application

The DSP applies to the university logo apparel production of licensee companies (small licensees with collegiate apparel sales below a certain threshold are exempt<sup>2</sup>).

The DSP applies only to apparel and textile products (e.g. clothing, headgear, backpacks, towels, *etc.*); the program does not apply to any other university licensed product.

The DSP applies only to those production facilities where products are sewn and/or assembled. If embroidery and/or other embellishments are performed in the facility where the apparel item is sewn or assembled, then those processes are also covered by the DSP; otherwise, they are not.

## Implementation Schedule

The DSP will be implemented in phases. After an initial grace period, the sourcing requirement will begin at 25% of each licensee's collegiate production and will increase annually until phase-in is complete, according to the following schedule:

- Grace Period (6 months): No sourcing requirement
- 1<sup>st</sup> Program Year: 25% of each licensee's collegiate apparel must be sourced from DSP factories

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<sup>1</sup> This document delineates the Designated Suppliers Program; it explains the program's labor standards, enforcement mechanisms, and administrative and dispute resolution procedures. The document reflects modifications to the program made by the Designated Suppliers Program Working Group in September 2006.

<sup>2</sup> The specific threshold is to be determined.

- 2<sup>nd</sup> Program Year: 50% of each licensee’s collegiate apparel must be sourced from DSP factories
- 3<sup>rd</sup> Program Year (and subsequent years): 75% of each licensee’s collegiate apparel must be sourced from DSP factories

The purpose of the grace period, and of the graduated phase-in of the program, is to ensure that licensees can comply with the sourcing requirement without violating any existing contractual obligations and, in general, to make the transition to the DSP less burdensome for all parties. The graduated phase-in also allows universities to evaluate the DSP, based on real-world experience, before it is fully implemented and to make any adjustments in the program that are necessary.

### Workplace Standards and Factory Obligations

In order to qualify as a designated supplier, a factory must meet the following criteria:

- The factory must demonstrate compliance with internationally recognized labor standards as embodied in university codes of conduct.
- The factory must demonstrate that it pays employees a living wage.
- The factory must demonstrate respect for workers’ associational rights. This may be demonstrated by the presence in the factory of a representative labor union (or other representative employee body<sup>3</sup>) or, in the absence of such representation, the factory will be determined to be in compliance if it has taken the steps necessary to ensure that workers can make a free choice about unionization, without fear of reprisal.

In addition, factories may not subcontract collegiate production to non-DSP factories and may not use contract labor as a means to circumvent the program’s worker rights standards.

### Licensee Obligations

Licensees covered by the DSP have the following obligations:

- **Sourcing requirement:** Each licensee is required to source a set percentage of university logo goods from designated supplier factories (see the section on the DSP implementation schedule on pages 1-2 for the specific sourcing requirement for each year of the program).<sup>4</sup>
- **Fair price standard:** Licensees are required to pay each DSP factory a price for its products sufficient to enable the factory to produce under the applicable labor standards (including the factory’s obligation to pay a living wage and, where a union or worker representative body is present, to bargain collectively).

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<sup>3</sup> For purposes of measuring compliance with the freedom of association standard, a “representative employee body” must be an organization that was established without management interference, that democratically elects its leaders, and that is able to carry out the essential functions of a union, including collective bargaining.

<sup>4</sup> It should be noted that the sourcing requirement applies only to products bearing the names and logos of universities that have adopted the DSP. The percentage is measured in terms of the dollar value of the licensee’s applicable production, at factory price.

- **Majority collegiate production requirement:** Licensees are required to place enough business in each of their DSP factories so that more than 50% of the factory's total output in a given year is for the collegiate market. If a DSP factory is used by more than one licensee, the combined total of the licensees' orders must exceed this 50% threshold.<sup>5</sup>
- **Long-term production agreements:** Licensees are required to enter into a long-term production agreement with each of their DSP supplier factories. The contract must be no less than three years in length and must commit the licensee to a minimum volume of orders each year (either by itself or in combination with other licensees using the facility) so that the majority collegiate production requirement is met. Licensees have the right to place escape or "out" clauses in these contracts, which protect licensees by allowing them to terminate the contract before its expiration in the event that the factory fails to meet labor or production standards (despite good faith efforts by the licensee to help the factory achieve compliance).<sup>6</sup>

These long-term contracts, which are essential to ensure a reasonable degree of economic security for factories and job security for workers, are not intended to substitute for individual contracts for specific orders of apparel. They need not contain any volume or production deadlines specific to any individual order, or any specific prices. The contracts must simply commit the licensee to A) provide a minimum volume of business over the contract term, and B) negotiate a fair price for each order that is ultimately placed.

### **Enforcement Mechanisms**

The obligations of licensees and DSP factories are enforced either through independent verification by the Worker Rights Consortium or through arbitration between licensees and factories.

**Factory compliance with the labor standards is verified through compliance assessments conducted by the WRC.** Compliance assessments are conducted 1) at the time of a factory's initial application for DSP status, and 2) on an ongoing basis, in response to worker complaints and in the form of spot inspections. In the case of findings of non-compliance, the factory is given an opportunity to correct the violations identified. Failure to correct the violations results in the loss of DSP status (or denial of DSP status if the non-compliance is discovered in the context of a factory's initial application). WRC compliance decisions may be appealed (see page 5).

**Licensee compliance with the fair price standard is enforced through binding arbitration between the licensee and the factory.** The price standard is incorporated into the long-term production agreement between the parties. When a dispute arises (because the factory and licensee cannot agree on whether the price for a particular order is sufficient to enable the factory to meet its labor rights obligations), either party may trigger arbitration, which is conducted by an arbitrator chosen by both parties and whose decisions are binding. Failure by a licensee or factory to comply with an arbitrator's decision is considered a serious code violation and is reported to universities and the public.

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<sup>5</sup> Orders from a non-collegiate buyer that is willing to abide by the DSP's labor and fair price standards will be counted as collegiate production for the purpose of measuring compliance with this standard.

<sup>6</sup> For additional information concerning long-term production agreements, see page 9.

**Licensee compliance with the sourcing requirement is enforced by the WRC** at the end of each program year. Data is supplied by each licensee, enumerating that year's collegiate production at each of its supplier factories (including both DSP and non-DSP factories). The WRC reviews each licensee's data and calculates the percentage of the licensee's total production that was sourced from the DSP facilities. On this basis, the WRC determines whether the licensee has met the percentage sourcing requirement applicable to that program year (i.e. 25%, 50% or 75%).<sup>7</sup> Failure by the licensee to fulfill the sourcing requirement is considered a serious code violation and is reported to universities and the public.

**Licensee compliance with the majority production requirement is enforced by the WRC** at the end of each program year. Data is supplied by each factory covering all of its production for the year in question and this data is assessed to determine whether a majority of this production was for the collegiate market, as required. If a majority of a factory's production was not for the collegiate market in a given year, orders placed by licensees at that factory, in that year, will not be counted as DSP orders for the purpose of measuring the licensees' compliance with the sourcing requirement.

**Sanctions for non-compliance:** For a factory, non-compliance with the labor standards results in the loss of DSP status. For a licensee, non-compliance with any of its obligations is reported by the WRC to universities and the public. Each university then determines the appropriate sanction under the terms of that university's licensing contract with the licensee. The WRC may recommend a particular sanction, but does not itself have the power to sanction licensees.

### **Transparency Requirements**

Fair and effective enforcement of the DSP requires transparency on the part of both licensees and factories. The transparency obligations of the respective parties are as follows:

**Suppliers:** University enforcement agents must be granted access to each DSP factory – to factory grounds and buildings; to managers, supervisors and workers for the purpose of interviews; and to such documents and records as are needed to assess labor rights compliance (the confidentiality of proprietary information is respected). The enforcement agent will accommodate the factory's production schedule, but the factory must not otherwise restrict this access. The factory must also disclose, on an annual basis, and more frequently if so requested, the production data necessary to determine whether the factory is producing a majority of its goods for the collegiate market.

**Licensees:** Licensees must disclose the production volume data necessary to assess compliance with the sourcing requirement, including the annual volume of production at every sewing and assembly facility used to produce collegiate goods.

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<sup>7</sup> A production order placed by a licensee at a DSP factory is *not* counted toward that licensee's fulfillment of the sourcing requirement if any of the following circumstances arise: 1) the factory does not achieve DSP status within 90 days after production begins on the order. 2) The factory has DSP status when the order is placed, but loses its status due to labor rights violations before the order is completed and shipped. 3) It is determined at the end of the program year that the factory did not produce a majority of its goods for the collegiate market, in which case no orders produced at the factory during that program year are counted. In the case of the majority collegiate production requirement, exemptions may be granted in situations where a licensee can demonstrate that the factory fell below the majority production requirement as a result of circumstances that the licensee could neither anticipate nor control.

In addition, in the context of an arbitration, both parties are required to provide any data requested by the arbitrator.

Information disclosed in the arbitration process as well as proprietary financial information disclosed by a factory or a licensee in the context of a labor rights assessment will be held in confidence.

**Public Reporting:** Reports of all factory assessments conducted by the WRC are public and will include a detailed review of the evidentiary basis of all findings (except where such disclosure would compromise the confidentiality of individual worker interviews). WRC findings with respect to licensee compliance with the sourcing and majority production requirements are also publicly reported (proprietary financial information is not disclosed). The WRC will maintain a public list of all DSP factories and the licensees that have contracts with each factory.

### **Appeals Process for Compliance Disputes**

If a licensee and/or factory believes the WRC has incorrectly found a factory to be in violation of DSP labor standards, the licensee (on behalf of the factory) may file an appeal with the DSP appeals panel. The appeals panel will consider all complaints and conduct a full review of those it determines, based on initial consideration by one or more members of the panel, to be substantially grounded in credible evidence.

After accepting an appeal, the panel examines the WRC's report, any additional documentary evidence supplied by the WRC, and all documentary evidence supplied by the licensee. Representatives of the licensee and the WRC appear together before the panel to present arguments and each party may pose questions to the other. Based on the documentary evidence and the presentations of the two parties, the panel makes a determination as to whether the WRC findings were or were not accurate. (The review process is not a repeat of the compliance assessment process itself and the appeals panel does not carry out its own investigation of the factory.) If the panel determines the WRC findings to have been inaccurate, the factory is deemed to be in compliance with DSP standards. Any subsequent WRC assessments of the facility in question are automatically reviewed by the appeals panel for a period of two years.

The appeals panel is comprised of individuals with demonstrated expertise in worker rights, international labor law, and relevant investigative procedures. The panel members are chosen through a multi-stakeholder process in which all parties involved in the DSP and collegiate apparel production (factory owners, licensees, unions, NGOs, universities and their enforcement agents) play a role. Panel members must be free of all financial conflicts of interest (e.g. they may not be employed by apparel corporations or unions involved in the apparel industry).

Appeals are limited to those based on evidence of 1) factual error by the WRC, including omission of relevant evidence, misinterpretation of factory records or other documentary evidence, misinterpretation of applicable labor law, etc., or 2) failure by the WRC to abide by the DSP's rules with respect to the resolution of instances of non-compliance (e.g. granting factories an opportunity to remediate).

## **Factory Selection Process**

The identification and qualification of designated supplier factories will proceed as follows:

**Licensee Selection of Candidate Factories:** Licensees will select candidate designated supplier factories – these are factories that licensees are confident can meet the program’s labor standards and at which they intend to place orders. Any stakeholder (universities, unions, NGOs, factory owners, etc.) may recommend a facility to licensees as a potential candidate factory, but licensees decide which factories, from their own supply chains and/or from recommendations made by other parties, they wish to bring into the program. Upon selection of a candidate factory, the licensee must provide public notice that the factory has been selected.

**Consultation and Remediation:** Once a candidate factory has been selected, the licensee is responsible for working with that factory to address any outstanding compliance issues. The WRC also consults with the management of each candidate factory to ensure that managers fully understand their obligations under the program. When requested by the factory and licensee, the WRC will assist with the development and execution of a remediation program. The WRC will advise licensees of any concerns about a candidate factory’s commitment to, or ability to abide by, the program’s labor standards; however, the licensee makes its own determination in each case as to whether to proceed and seek designated supplier status for the facility.

**Compliance Assessment and Designation:** Beginning 90<sup>8</sup> days after announcing the selection of a candidate factory, a licensee may request that the factory be considered for DSP status and that a full compliance assessment be conducted by the WRC. Prior to this request being made, the factory must have in place a long-term production agreement with one or more licensees sufficient to ensure that a majority of the factory’s productive capacity will be devoted to collegiate apparel. The WRC will complete the assessment within 60 days after the request is submitted. If the factory is determined to be in compliance with the labor standards, designated supplier status is granted. If areas of non-compliance are identified, the WRC recommends remedial action and grants the factory a reasonable period of time to complete remediation (the amount of time allowed is at the discretion of the WRC and depends on the nature of the outstanding compliance issues). The factory is then re-assessed and DSP status is granted or denied. If DSP status is denied, the factory is not eligible to reapply for DSP status for a period of one year.

**Timing of Factory Selection:** The timing of factory selection is up to each licensee. A licensee may select a new candidate factory at any time, provided that the licensee is ready to commit to placing enough business at that factory so that the majority collegiate production requirement will be met.

### **Factories Where University Codes Have Helped Workers Achieve Major Labor Rights**

**Improvements:** There have been a small number of factories that have achieved and maintained substantial labor rights improvements due in significant part to intervention under university codes of conduct, undertaken in response to worker complaints. Because of the long-standing relationship of many universities with these facilities, and because of the principle that demonstrated compliance should be rewarded, it is important to ensure that these factories are supported as universities transition to the DSP. For this reason, in the first year of the DSP, any licensee that used one of these factories for collegiate production at any time between June 30, 2001 and July 1, 2006 is required to contract with that factory as one of its DSP facilities, provided the factory

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<sup>8</sup> The specific time periods referenced in this section are not final and may be adjusted by the Designated Suppliers Program Working Group prior to implementation of the DSP.

wishes to participate in the DSP and is able to meet the labor standards. Licensees with small supply chains are exempt from this requirement, in order to ensure that the requirement does not unreasonably restrict licensees' sourcing options. Only licensees that have twenty or more collegiate production facilities as of July 1, 2006 are subject to this requirement. The list of factories to which this provision applies, as determined by the WRC, is as follows:

- BJ&B (Dominican Republic)
- Lian Thai (Thailand)
- Mexmode (Mexico)
- PT Dada (Indonesia)
- PT Kolon Langgeng (Indonesia)

### **Determination of the Living Wage Standard and Appeals Procedure**

Under the DSP, factories are obligated to pay a living wage for full-time work – exclusive of overtime, non-cash benefits, and any bonuses that do not automatically accrue to workers. The specific living wage level for a given country or region is determined by local experts, identified by the WRC. These experts construct a culturally appropriate market basket of goods and services, for each country or region, sufficient to support a family of average size, and then determine the price for each of these goods and services in local markets.<sup>9</sup> At the time of program implementation, an initial set of baseline studies will be conducted, in order to guide factories and unions. After this, additional living wage analyses – specific to a particular factory, location and time – will be conducted, as needed, to address worker complaints that a factory has violated the standard.

If a licensee, a factory or a union believes that the wage standard determined through this process is factually wrong, an appeal may be filed with an expert panel. The panel functions in the same manner as the appeals panel for labor rights compliance issues (see page 5) and is established through a multi-stakeholder process. In order to be considered valid by the panel, an appeal must be based on concrete evidence that the local experts erred in one or more respects in defining the components of the market basket and/or in determining the proper local market price for a particular good or service. Decisions of the panel are final and binding on all parties.

The living wage is the *minimum* wage that DSP factories are required to pay. Payment of the living wage does not absolve factories of the obligation to bargain in good faith over wages and other issues with any duly constituted union or other representative employee body. The purpose of the living wage standard is to ensure decent wages for workers and to prevent DSP factories from being undercut competitively by factories paying unfairly low wages. It is not intended to substitute for collective bargaining as the ultimate wage-setting mechanism.

### **Program Evaluation**

Universities will evaluate the impact of the DSP as it is implemented; the most fruitful period for review will be at the end of the first program year, when it will be possible to assess, at least to some degree, every major issue of interest: impact on workers and labor rights in DSP factories; the efficiency, fairness and efficacy of the program's administrative and enforcement procedures; the

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<sup>9</sup> Sample living wage calculations, and a more detailed explication of the methodology involved, are available at: <http://www.workersrights.org/LivingWageEstimates.pdf>

initial impact of the program on licensee-retailer relationships, retail sales, and licensing revenue; etc. Evaluation will continue, with emphasis on the end of each program year. After full implementation, one of the major issues universities will address is the desirability of increasing the sourcing requirement beyond 75%.

### *Further Explanation of Key Standards and Procedures*

#### **Freedom of Association**

The DSP's freedom of association standard is based on the standard developed by the Joint Initiative on Corporate Accountability (JO-IN) – a joint project involving the Fair Labor Association, Social Accountability International and the WRC, among other groups – with the assistance of the International Textile, Leather and Garment Workers Federation and the International Confederation of Free Trade Unions. The JO-IN standard is stronger than those in most other codes of conduct in that it requires factories to adopt a positive attitude toward unionization and addresses issues of factory access for union representatives. As elaborated in the DSP, the standard requires factories to take concrete steps to ensure that the environment within the factory is conducive to genuine freedom of choice, including steps to undo any existing damage – whether resulting from past actions by the factory or perceptions on the part of workforce based on the broader experience of workers in that country or region.

Under this standard, a factory's participation in the DSP requires demonstrable respect for the right to organize and bargain collectively, as evidenced by the presence of a legitimate trade union (or other representative employee body) and/or proactive steps by management necessary to ensure that workers can freely exercise these rights without fear of retaliation. These steps shall include:

1. Communicating to the workforce the factory's openness to workers' exercise of their associational rights, its commitment to refrain from any punitive action against workers for the exercise of their right to unionize and bargain, and its commitment to recognize and commence good faith negotiations with any duly constituted worker body, without unreasonable delay.
2. Granting free access to the worksite for union representatives to carry out their organizing and representational functions, without unreasonable restriction and in the context of a formal neutrality or recognition agreement where a union so requests.
3. Ensuring that there is no effort by management and/or supervisory employees, through word or action, coercive or otherwise, to influence any worker's decision about unionization or participation in union activities (with the exception of communicating the factory's openness to unionization and its commitment to abiding by the standards outlined herein).
4. Fulfilling – as soon as any legitimate, representative union or worker body is duly constituted – management's commitment to grant recognition and to bargain in good faith.
5. Permitting access to the factory to labor rights experts and representatives of NGOs and trade unions to conduct a program of worker rights education, overseen by the WRC.

These activities must be carried out in a manner consistent with compliance benchmarks, which will be developed by the WRC in consultation with relevant stakeholders, prior to program implementation.

### **Long-Term Production Agreements**

In addition to the fair price standard and the commitment by the licensee to provide a minimum volume of orders, the long-term production agreements between licensees and designated supplier factories include the following:

- 1) Escape clauses, to protect the licensee in the event that the factory fails to fulfill its obligations, with respect to product quality, delivery schedules and related production matters; in the event that the factory loses its DSP status; or in the event that the licensee suffers a reversal of fortune so severe as to preclude its fulfillment of its commitment to place orders (for example, the licensee's loss of its university licenses or the collapse of demand for the product made by the factory). The escape clauses are intended to ensure fairness to the licensee, but they may not be used as a pretext for severing a contract.
- 2) An arbitration clause that commits both parties to binding arbitration, by an arbitrator chosen by the two parties, in the event that they cannot resolve a dispute over the price standard or one of the above mentioned escape clauses.
- 3) A non-renewal clause, requiring the licensee, if it decides not to renew the agreement at the time of expiration, to offer the factory a one-time, one-year extension of the contract, under the same terms, but at a reduced volume of production (no less than half of the annual volume called for in the original contract). The purpose of this clause is to ensure that factories that lose their DSP business can effect an orderly transition back to the non-collegiate market, with substantially less disruption for workers than would otherwise occur.

### **The Arbitration Process**

Arbitration may be triggered, in the case of a dispute over the fair price standard or one of the escape clauses in a production agreement, by either party. The arbitration process, once triggered, proceeds as follows:

- The two sides meet, without delay, and choose a neutral arbitrator, who may be any individual with the requisite knowledge and capacity for objectivity (to assist with the selection process, a list of recommended arbitrators will be developed by the WRC through consultation with all relevant stakeholders). The arbitrator chosen must also be willing to conduct the arbitration in a timely fashion, initiating the arbitration in no more than ten days and resolving it within ten days after initiation.
- The arbitration is paid for by the two parties, with the licensee covering the majority of the cost.
- The two parties are required to provide the arbitrator with any documentation or other information requested and otherwise to participate in the process with dispatch and in good faith. The information provided will be kept confidential.

- The arbitrator, based on his or her expertise and good judgment, interprets the fair price standard (and/or the relevant out clause) in the context of the particular dispute under consideration. The arbitrator may at his or her discretion consult with the WRC on the question of the intent of the price standard.
- The WRC has the right to observe the arbitration process. The WRC may provide input to the arbitrator concerning its views and analysis of the dispute. The arbitrator may consider the WRC's input at his or her discretion.
- Based on all of the information and input the arbitrator chooses to consider, he or she reaches a determination and issues an order to the parties (which may, for example, state the price that will be paid by the licensee and accepted by the factory for the specific order in dispute). The arbitrator's decision is binding and may not be appealed. Failure by either party to implement the arbitrator's order in a timely fashion is, in the case of the licensee, considered a serious code violation. In the case of the factory, non-compliance results in revocation of DSP status.
- The arbitrator issues a public report on the arbitration, providing a general summary of the dispute and his or her decision; the report is provided to universities by the WRC. This report does not include any specific pricing information or other proprietary data.
- If the WRC identifies evidence that the fair price standard is being violated, but no arbitration has been triggered (which may occur in some instances because of fear on the part of the factory that demanding arbitration could harm its business relationship with the licensee), the WRC has the authority to convene a mandatory meeting, involving the licensee, the factory and the WRC, to discuss the potential violation. The contents of the meeting are confidential, but the parties are obligated to provide such information to the WRC as is necessary to inform the discussion. If the meeting does not result in the triggering of arbitration, or in a voluntary agreement to modify the price (the WRC will not have the power to impose any change in price), the WRC will institute a regime of stepped-up inspections of the factory's labor practices. The inspections will take place on a schedule to be determined by the WRC, and will focus on those areas of code compliance most likely to be affected by a violation of the fair price standard. This inspection regime will continue for one year. If labor rights violations are found at the factory, and if the WRC concludes that inadequate prices were a significant factor in causing these violations, this will be considered a code violation on the part of the licensee and will be reported to universities.
- The WRC will report periodically to universities on whether the arbitration mechanism is functioning adequately as a means of ensuring fair prices.