MAGAZINE

OFFICIAL PUBLICATION OF THE WORLD FEDERATION
OF THE SPORTING GOODS INDUSTRY

REINVENTING THE MARKET, A SPIDER WEB OF CHANGES.

WORLD FEDERATION OF THE
SPORTING GOODS INDUSTRY

2023


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MESSAGE

Chairman

I am honoured to have been elected to be the Chair of the WSGFI and I will be happy to serve our members and the organisation to the best of my ability for the next 3 years.

As you may know, my family has had a long association with the WSFGI as my father, Stephen, served as President for 2 terms in the 1990's. During his tenure the WFSGI developed the first codes of conduct for sourcing from third party factories and successfully led the industry in eliminating child labour from the manufacture of footballs in India and Pakistan.

I joined our family owned business, Pentland, 31 years ago and joined the WFSGI Board 13 years ago in 2009. Over the years, I have listened and learnt from some great leaders in our industry and stand on the shoulders of the giants who have come before me.

Today the WFSGI covers a broad remit that includes: representing the industry to global sports organisations, working for free and fair trade, driving sustainability, increasing physical activity, improving compliance and supporting supply chain initiatives and innovation.

Together we can face into some of the world's biggest problems and especially climate change, inequality and protectionism.

The first major issue we need to face into is climate change. Our planet is warming up and is currently 1.2°C above pre industrial temperatures and is heading towards 1.5°C over pre-industrial temperatures. This is having a serious effect on weather conditions and biodiversity and accentuating issues of inequality around the world.

Inequality continues to be an issue globally and as an industry we must strive to ensure that everyone has access to sporting activities and to appropriate sporting goods to lead healthy lives and improve self-esteem. As the WHO tell us regular physical activity is proven to help prevent and manage noncommunicable diseases (NCDs). Physical activity refers to all movement. Popular ways to be active include walking, cycling, sport, active recreation and play, and can be done at any level of skill and for enjoyment by everybody.

The third issue we need to face into is protectionism as barriers to free trade have arisen around the world, we need to work together towards free and fair trade, allowing everyone access at affordable prices.

As the WFSGI we are stronger together than as individual companies, we will continue to work with all the representative bodies around the world that enable us all to work and compete freely and fairly.

Our Purpose is: serving the sporting goods industry to enable people to be physically active on a healthy planet.

Our Ambition is: to create commitment to our purpose and achieve specific goals with and for our members based on our priorities; to be the global voice of the sporting goods industry; to be the leading source of insight, knowledge & resources for the sporting goods industry; and to be operationally excellent and have appropriate infrastructure to deliver our purpose.

We will achieve our Purpose and Ambition by focusing on Our Priorities, they are:

- **Partnering with international sports organisations**
- **Enabling trade**
- **Driving sustainability**
- **Increasing physical activity**
- **Improving compliance**
- **Supporting supply chain & innovation**

In addition to these priorities, I would like to see the WSFGI and our industry in general be a leader in diversity and inclusion. Being accessible to all and enabling people from all backgrounds to thrive and flourish.

We are very lucky to be working in an amazing industry that can be a force for good in the world. Let us focus all of our efforts to work together to make more people healthy on a healthy planet through all that we do.

I look forward to serving as your Chair.

Andy

Andy Rubin
WFSGI Chairman

SUSTAINING MEMBERS

The sustaining membership is a complementary membership. Companies that choose to be a sustaining member demonstrate a strong identification with the Sporting Goods Industry worldwide, the WFSGI and its objectives.

GOLD

SILVER

BRONZE

The WFSGI thanks all its sustaining members for their support.

CHECK THE FULL MEMBERS DIRECTORY HERE

MESSAGE

President and CEO

2023: The start of a new era offering a spiderweb of new ideas and possibilities. Despite three challenging years for the industry caused primarily by COVID and made more complex by the Ukraine war, WFSGI has managed to successfully navigate the choppy waters by reacting fast and flexible to the various road blocks. We are delighted that we were finally able to meet again in person for our General Assembly, Board, and Committee meetings in Munich in November 2022. What a nice feeling and experience to see each other face to face again.

We can be proud of our sporting goods industry for its positive societal impact over the past year: we continued to stand strong in the promotion of sport and physical activity but we also show more and more results on environmental impact. WFSGI signed and joined the Fashion Industry Charter for Climate Action and we are working to communicate the implementation of the various recommendations to our sporting goods industry.

Besides many good messages and a still very bright future, we also have to deal with unfortunate situations such as the war in the Ukraine. The most serious consequences are the loss of life and we express our deepest sympathies to all those who have lost loved ones. This war also has a direct impact on the local markets but also on our international markets now dealing with spiralling energy costs. In certain situations and for certain income levels, this will have a direct effect on the discretionary spending of our consumers.

We also observe some worrying challenges emerging from China. The ongoing zero COVID policy has led to a continued reliance on lockdown periods as a protective methodology long after many other parts of the world have abandoned them. The sustained use of lockdowns have proven challenging for China's industries and its people. The production disruption, supply chain challenges and slow local market are also causing issues for the rest of the world who are reliant on the Chinese labour, products, and market.

We are also going through a paradigm shift in retail, wholesale and the way in which the consumers want to be treated. Gen Z displays radically different behaviours to those born before it and is therefore demanding significant change in return for their loyalty. What used to be the product is now the brand. Consumers are now asking 'Who are you?' and 'What do you as a brand deliver?' and 'Can I identify myself with that brand?' If the answer to the last question is 'yes', then they will choose your products. How different to the past but are you ready for this? Have a read in our WFSGI – McKinsey Annual Sporting Goods Report 2021, 2022 or 2023. It will give you some good indications and directions in to the future pathway.

Now, we would not be the sporting goods industry if we were not able to survive adversity, master the challenges, and come back stronger! And I have full faith that we will do so.

In conclusion, WFSGI has valued collaboration and teamwork with all the members and parties involved over the past year. We thank you for the flexibility and our online meetings and I feel confident that with the continued support of the WFSGI Staff, the Board of Directors, Committee Chairs, Committees members, Members and Partners, we can continue to shape the future of the sporting goods industry.

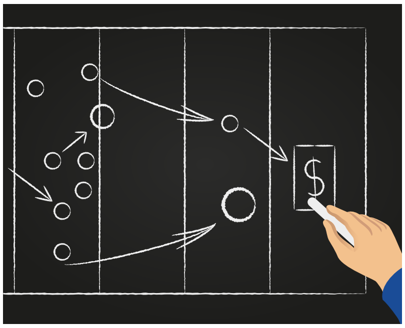
Thank you for your membership and support!

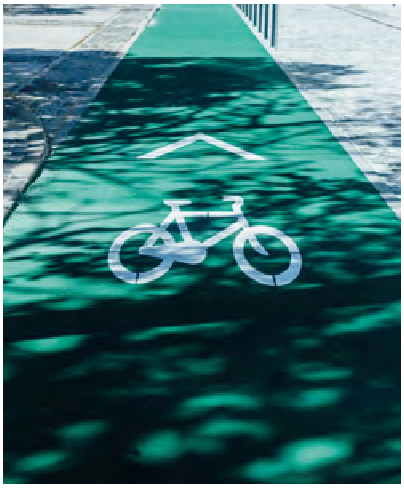
With best personal regards,

Robbert de Kock
WFSGI President and CEO

TABLE OF **CONTENTS**

REINVENTING THE SPORTING GOODS INDUSTRY





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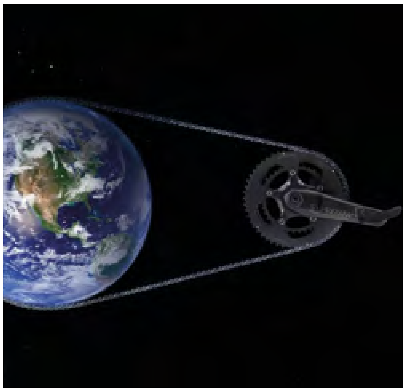
REINVENTING THE ENVIRONMENT



REINVENTING THE REGULATIONS

WFSGI COMMITTEE REPORTS

LEVERAGING WEB3 IN THE SPORTING GOODS INDUSTRY

By Anne Rose,
Managing Associate
(and Co-Lead of
Blockchain Group),
Mishcon de Reya

Charlie Wright,
Trainee Solicitor,
Mishcon de Reya

Web3 presents opportunities for businesses in every sector – including the sporting goods industry. Tokenisation, community-building and linking digital assets with physical goods can all help sporting goods businesses leverage existing commercial relationships. Mishcon de Reya Managing Associate (and Co-Lead of the Blockchain Group) Anne Rose and Trainee Solicitor Charlie Wright discuss how the tech behind web3 works and how sporting goods businesses can best utilise these new advancements.

"Anne has acted for multiple domestic and international clubs, governing bodies, promoters, sponsors and advised on broadcasting matters, image/digital rights agreements, sponsorship arrangement and other commercial contracts. She joined the firm in 2018 and since then has worked on many high profile matters with a focus on NFT and fan token projects. She has also advised many sporting organisations on the acquisition, protection and exploitation of data. Anne lectures at the Sports Law Academy."

"Charlie Wright is a Trainee Solicitor at Mishcon de Reya. Charlie has written previously about legal developments in the sports sector and holds a strong interest in the growing relationship between the sports industry and technology. Prior to joining Mishcon, Charlie worked with a sports consultancy and completed a law degree at the London School of Economics."

The opportunity for sporting goods businesses to leverage the technology presented by web3 is greater than ever. Global brands such as Nike and Asics were some of the first brands to explore the space with digital goods in the form of collectible sneaker non-fungible tokens (NFTs). Asics took it one step further with its collaboration with STEPN, a fitness app that rewards runners with cryptocurrency for each step they take ("play-to-earn"). The virtual sneaker can be worn in the app, and "gamification" features include shoe-minting and NFT customisation. However, for many brands and businesses, the greatest opportunity may lie in its existing sponsorship relationships.

At its core, Web3 is built on the idea of community-driven, decentralised web interactions that take place on the blockchain. The blockchain is an online database or ledger that is distributed and shared across a decentralised network. The network collects, timestamps and links 'blocks' of information from its users to preceding blocks of information – eventually forming a chain.

This is the technology that lies behind NFTs. NFTs (sometimes referred to as NFAs - non-fungible assets – to denote their proprietary nature) are held on a blockchain platform (e.g. Ethereum), that cannot be readily exchanged for a different crypto-asset of the same value – making them 'one of a kind'. They are typically linked to an object (i.e. digital art or a collectable) which can form part of a wider collection. However, they're more than digital art, for example they can be used by brands as tokens to unlock a range of benefits – from tickets, to discounts, to access, as well as resell perks.

Within the sporting goods industry, Puma have recently taken to leveraging their established commercial partnerships using NFTs. In May 2022, Puma teamed up with Manchester City to release a series of NFTs in celebration of the 10th anniversary of Sergio Agüero's title-winning goal against Queens Park Rangers. Puma and Manchester City linked the NFTs to digital art by visual artist Musketon which featured Puma's ULTRA Football Boots with '93:20', the time of Aguero's goal, printed on the side. Puma capitalised on the publicity of the hotly anticipated NFTs by releasing the ULTRA Football Boots on the same day – a clear example of the opportunity to market physical goods using a mirrored online release. Although Puma and Manchester City limited the campaign to only 120 NFTs, Manchester City fans are still able to purchase the Puma boots separately and can customise them to match the style of the NFTs sold.

Credit: Manchester City (link)

Web3 is for the "active consumers", the ones that are willing to engage with brands. Digital assets present whole new product opportunities and utility for loved brands. Tokenisation will reshape how we value fan engagement - transforming a spectrum of activity into monetisable, tradable value. There are many opportunities for brands to benefit from the multiple touch points that Web3 offers. Brands, for example, may collaborate with partners and sponsored organisations to incentivise fans or consumers to wear specific items and unlock exclusive content as a result. By using radio-frequency identification (RFID) chip technology, fans donning certain items from partnered brands could be identified and rewarded when entering stadiums, events or stores. As a result, sports fans entering their team's stadium could then redeem an NFT which allows them to purchase an exclusive, limited piece of team paraphernalia if they are wearing an RFID-embedded item from their team's sponsor.

Away from the arena of sponsorship, sporting goods businesses may leverage Web3 to hold exclusive events that are only accessible if attendees wear specific digitally linked items. Whether it be specific skiwear which grants access to a private après ski party, a pair of shoes that allow wearers to boulder exclusive routes or swimwear that comes with a digital invitation to a secret pool party – by providing chances for fans to become involved in a unique community of like-minded individuals - businesses can build a platform which revolves around brand loyalty in an exciting new Web3-enabled environment.

One aspect of developing and releasing virtual goods or NFTs that businesses must consider is the importance of brand protection and trade mark applications. It is vital for brands to protect and control their trade marks in the Metaverse and online. For example, Nike sought to protect itself by filing trade mark applications with the USPTO for its name, Swoosh logo, "JUST DO IT" and Air Jordan marks for the following products and services:

(a) "downloadable virtual goods" (Class 9)
(b) “retail store services featuring virtual goods” (Class 35) and
(c) “entertainment services, namely, providing on-line, non-downloadable virtual footwear, clothing, headwear, eyewear, bags, sports bags, backpacks, sports equipment, art, toys and accessories for use in virtual environments” (Class 41).

In response to the sudden increase of trade mark applications containing terms relating to virtual goods and NFTs, the European Intellectual Property Office (EUIPO) issued guidance on its approach to classifying virtual goods and NFTs. The EUIPO defines NFTs as “unique digital certificates registered in a blockchain, which authenticate digital items but as distinct from those digital items”. When applying the terms "virtual goods" and "NFTs" the content to which the virtual goods relate must be specified. In the case of Puma and Manchester City's '93:20' NFT drop, the specific content would be the Puma ULTRA Football Boots digital art, for example. Protecting your intellectual property and connected potential registrations should therefore make up part of the initial thought process when putting together a campaign to leverage Web3.


B.A.A. BOSTON

COMMITTEE **ON INTERNATIONAL SPORTS ORGANIZATIONS**

2022 Activity Report

Mandate

CISO represents the WFSGI as the industry consensus voice before all sports federations and organizations on a range of issues including advertising and marketing regulations, uniform and equipment regulations, ticketing and accreditations and sport development and innovation. The CISO promotes maximum and equal benefit to all WFSGI members and the sporting goods community at large.

Summary

2022 was a busy year for the sport industry featuring the Beijing 2022 Winter Olympic Games, the Women's European Football Championships, the Commonwealth Games, and the Men's Football World Cup. COVID countermeasures continued to challenge organisers, brands, and athletes during Beijing 2022 but CISO members were still able to provide critical uniform support to 36 athletes from 12 NOCs. During 2022, CISO members focused on working constructively with International Federations on their product approval and certification schemes, with FIFA on the development of their Equipment Regulations, and with the IOC on further development of Rule 50 and the holistic relationship between the industry and the Olympic Movement.

Update on Key Activities

In 2022, the Committee focussed on the following activities:

1. IOC Relations

WFSGI, on behalf of CISO, continued to work constructively with the IOC to provide feedback on the opportunities and challenges presented by the current relationship between the industry and the Olympic Movement. The overall aim of these discussions is to identify mutually beneficial ways to broaden the collaboration and elevate Olympic athletes and the Olympic Games, particularly amongst Gen Z and Gen Alpha. Further, to explore joint activities relating to women in sport, sustainability, and physical activity.

2. NOC Uniform Support Programme

During the Beijing 2022 Winter Olympic Games, five WFSGI members (adidas, Descente, Mizuno Odlo, and Under Armour) delivered the fourth WFSGI IOC NOC Uniform Support Programme. The WFSGI members provided free of charge competition uniforms to over 36 athletes from 12 NOCs and the programme was promoted by the IOC and the Olympic Channel (see QR CODE). WFSGI thanks its participating members and the IOC for their collaboration in this important solidarity initiative. Work has already begun on the programme for Paris 2024 where the IOC and WFSGI will seek to implement the learnings of the previous editions to ensure the best possible experience for WFSGI members and supported athletes.

NOC Competition Uniform

3. Technical Accreditations

Through WFSGI's MOU with the IOC, WFSGI was able to support its members in obtaining vital Technical Accreditations to support their sponsored athletes during the Beijing 2022 Winter Olympic Games. Brand representatives are a vital support for athletes during the Olympic Games as they provide the highest standard of servicing and support to allow them to perform at their best when it matters most. With COVID countermeasures still limiting the number of brand staff that could be present, WFSGI members are still estimated to have supported over 800 athletes on the ground.

WFSGI and the IOC have also agreed to work towards a new, standardised approach to Technical Accreditations for future editions of the Olympic Games. The new approach aims to streamline the process and ensure that WFSGI members are better able to access and support their sponsored athletes during the Olympic Games while ensuring that the numbers of personnel able to access the critical athlete and field of play areas in venues are kept to a reasonable number.

4. Rule 50

During 2022, CISO members also provided the IOC with a range of feedback on the Rule 50 General Guidelines for the Paris 2024 Olympic Games. This continues the constructive dialogue that the IOC has had with the industry on the evolution of Rule 50 for past editions of the Games. WFSGI is grateful to the IOC for providing this opportunity to our members.

5. IF Product Approval and Certification Schemes

Throughout 2022, CISO members worked constructively with a variety of International Federations on their product approval and certification schemes ensuring that they allow Federations to be confident that products used in competition are safe while preventing the regulations from becoming an unreasonable barrier to market.

Chair

Johan Adamsson
Global Director of Sports Marketing and Sports Licensing, PUMA SE

Vice-Chair

Jens Jacobsen Jensen
Vice President Global Brand & Sports Marketing, Legal & Business Affairs, adidas AG

Vice-Chair

Craig Masback
Senior Director, Global & NA Athletics Sports Marketing, Nike, Inc.

6. FIFA Equipment Regulations

WFSGI's Football Working Group worked closely with FIFA's competition team to provide input on the development of their Equipment Regulations in force for the 2022 World Cup. WFSGI looks forward to working closely with FIFA on future editions of the Regulations as they move on to a regular four-year update cycle that will provide the industry with regular opportunity to give input on their development while also allowing the brands certainty concerning the regulatory framework against which they need to design and produce product in the intervening years.

7. Association of International Organizations for Sport (AIOS)

In light of the pending dissolution of GAISF and the redistribution of its activities under a restructured SportAccord, WFSGI has become a founding member of the Association of International Organizations for Sport (AIOS) which will be a not-for-profit legal entity representing the former Associate Members of GAISF. AIOS will, amongst other objectives, represent its members in matters related to the governance of sport at international and continental level, determine the appropriate representative on international sport organisations, and actively support the inclusion of international organisations promoting sport and its values in the Olympic movement. The other founding members of AIOS are the CGF (Commonwealth Games Federation), CSIT (International Workers & Amateurs in Sports Confederation), FICS (International Federation of Sports Chiropractic), IAKS (International Association for Sports and Leisure Facilities), IMSA (International Mind Association), PI (Panathlon International), SOI (Special Olympics International) and WMC (Martial Arts Mastership Committee).

WFSGI and CISO members would like to thank all International Federations and the International Olympic Committee staff members for their constructive cooperation over the past 12 months. As one of the key stakeholders in the sports ecosystem, WFSGI and its members appreciate the opportunity to engage openly and in good faith with the relevant regulators towards the mutual aim of further developing and safeguarding the future of sport.

Ex Officio

Emma P. (Mason) Zwiebler
WFSGI Vice President for Strategic and External Affairs

CHECK ALL COMMITTEE MEMBERS

THE BURGEONING WORLD OF PRIVATE EQUITY IN SPORTS. WHATS HAPPENING AND WHERE YOU SHOULD BE LOOKING

By Michael Broughton,
Partner, Sports Investment Partners

Michael is leading sports industry executive who has extensive experience across, fan engagement, commercial partnerships, sports finance and sports tech. From Global Sponsorship Roles to C-Suite operational roles and having been Non-Exec of public companies, Michael brings a diverse and unique skill set to the industry.

He is at the forefront of the incoming wave of external investment into sports. He was a key man in a bid to acquire Chelsea Football Club and has advised on a number of acquisitions and fund raises across the industry.

He is a leader in the Web3 and Sports Marketing Technology space, understanding the commercial realities of fan engagement and acts as a Board Advisor and Consultant to a variety of leading sports companies.

Previously, Michael led the Technology Strategy for FIFA holding the strategic relationship with the big data and tech companies globally. Additionally, he was responsible for the investment strategy within the organisation and supported the Gaming and eSports group.

He joined from Sports Investment Partners (SIP) where he was co-Founder of Europe's first Sports investment vehicle. Within SIP he led the companies approach to new technologies and disruptive business models to uncover new ways for sports businesses to grow.

Prior to starting SIP he spent time with Nolan Partners working with Chairmen and Chief Executives to enhance their executive teams and also in Motorsports where he worked with preeminent sponsors such as Lucky Strike and Diageo to manage their sports assets.

Key Roles

Senior Advisor in Business Technology, Investment Strategy and Innovation, FIFA 2018-2020, Zurich

Managing Partner, Sports Investment Partners, 2010-2018, London

Consultant, Nolan Partners, 2007-2010, London

Account Director, 63G Communications, 2002-2007, London

Education

MBA, University of Liverpool, 2010

BA, History and Political Science, Tufts University (USA) 2001

Language

Conversational Brazilian Portuguese

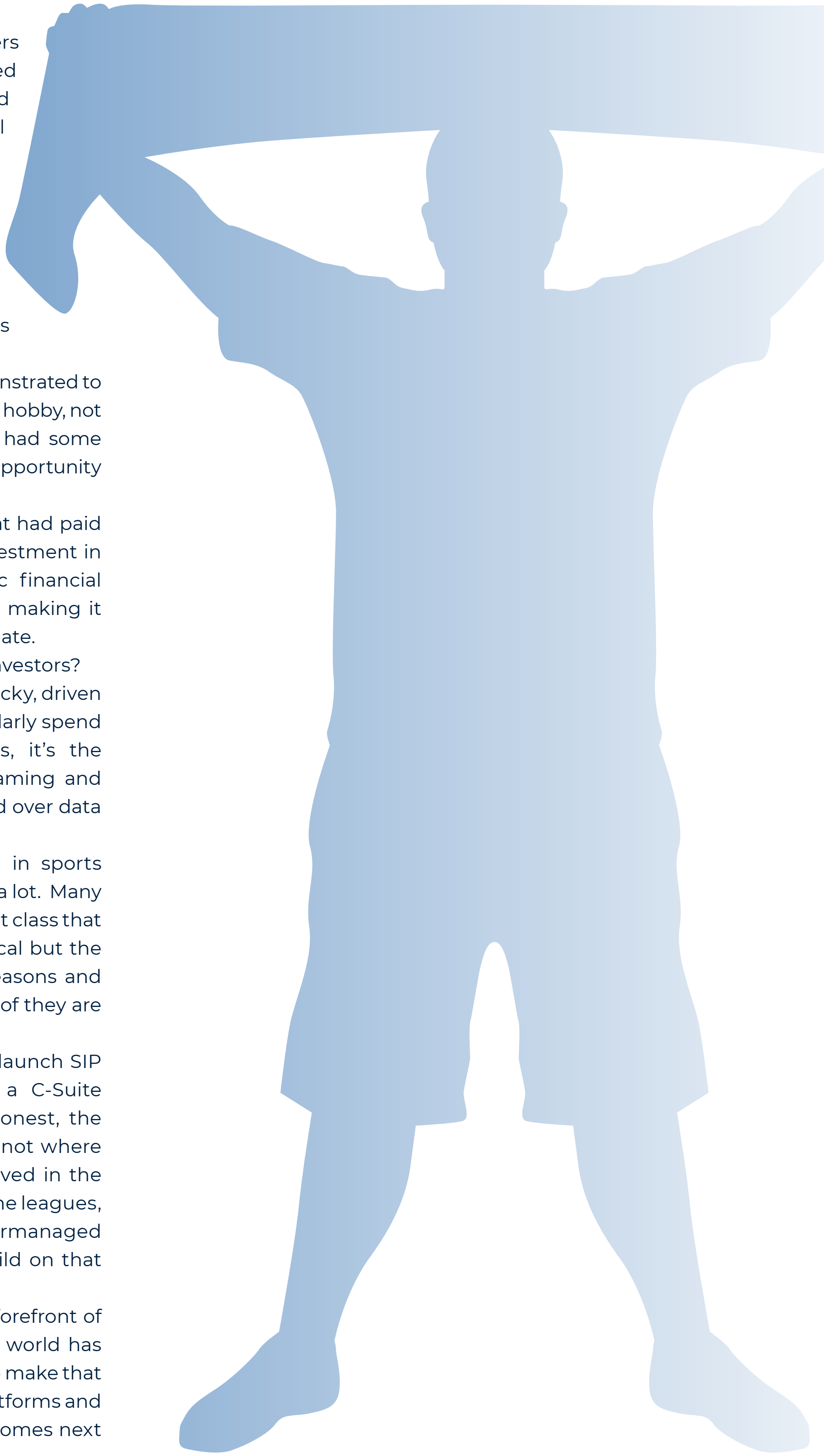
michael.broughton@sportsip.co.uk

Marc Andreessen likes to talk about how there are no bad ideas, just bad timing. Equally, he likes to focus, and has been very successful in doing so, on what he refers to as 'the inevitable'.

Capital inflows into sports are inevitable. Other than religion there is no bigger community in the world than the one that comes together around sports. The value of the IP is growing, the professionalization of sports is ongoing and with Covid the cracks in the industry have been laid bare.

It is not without pitfalls, and hidden delights. At the heart of it all there must be an understanding that this is a goldfish bowl and it won't be like every other investment. However, if you look carefully enough you will find the symbiotic relationship you need.

At the end of the day there continues to be enormous untapped value in the place it matters the most – The Fan.



In 2010 I founded Sports Investment Partners (SIP). It was Europe's first ever sports focused investment vehicle. We did our research and noted that private equity and venture capital had largely ignored the industry. There were no dedicated funds, very little specialist advice and precious little appetite for the space.

Eight years later I left to head up Business Technology and Investment Strategy for FIFA. As a boy who had literally grown up on Ipanema Beach this was too intriguing to pass up, but it was also a great time to do so.

In the intervening 8 years I like to think we demonstrated to the PE and VC communities that sport was not a hobby, not a cottage industry but a viable industry that had some remarkable foundations and represented a real opportunity to drive returns.

There had also been some classic PE plays that had paid off spectacularly for some – such as CVC's investment in Formula 1. Just the refinancings and classic financial leverage play had generated outsized returns making it the single best investment they had made to date.

What makes sport so interesting for external investors?

The Audience – makes sense. Its notoriously sticky, driven by often irrational emotional drivers, they regularly spend over the odds to be entertained in sports, it's the underpinning of venues, broadcast and streaming and amazingly the audience is often willing to hand over data that they wouldn't give to others.

Un-Correlated Investment – having invested in sports companies for 12 years now, this one comes up a lot. Many investors are looking for a way to access an asset class that is not correlated to the market. Sports is cyclical but the cycles are identifiable and focused around seasons and quadrennial events. Though not recession proof they are remarkably resistant.

Under Appreciated – The reason I pitched to launch SIP in the first place came from my role as a C-Suite headhunter to the sports industry. I'll be honest, the overall talent level across the board was just not where you would think or hope (it has much improved in the past decade). This immediately told you that the leagues, teams and technology companies were undermanaged and underutilized and the opportunity to build on that was substantial.

Tip of the Spear – the industry is often at the forefront of changing times. Just look at how the media world has pivoted and used sport (spending vast sums) to make that pivot. It first came with subscriptions/cable platforms and then streaming and social media. Whatever comes next will use sport to be the beach head.

How Can Sport view Private Equity?

If you read the mainstream press you may have a nervous disposition around Private Equity in sports. Even the Sunday Times will refer to them as 'Vulture Funds' but this is a misnomer in sport.

As even CVC have recognized the industry has been under invested in for decades. As such there are some enormous challenges to ensuring you get the return that you are looking for. Their investment in Rugby is a case in point. This cannot be about financial leverage and paying down debt from cashflows as they did in Formula 1. Much of Rugby is already in debt, has rarely made money and has a business model that is highly dependent on traditional revenue streams that are already mature: Ticketing (venues either sold out or hard to sell), sponsorship (industry grows around 4-6% CAGR but is becoming harder and harder) and broadcast (a model that is itself under stress and which is focused increasingly on premium rights).

CVC also got unlucky in that the money all the teams received from their central deal was spent trying to survive Covid and not as much needed investment in infrastructure. The result is a need to centrally drive investment in product – from ticketing to data to streaming as the majority of teams are not in a position to support.

There has clearly been an influx of investment from PE and other Asset Management firms into sports. The current focus being around leagues and federations.

This clearly makes sense for the investors – particularly in sports with promotion and relegation. They have insulated themselves from risk as the league is likely to always exist, be the central port of call for the biggest revenue streams and have minimal cost bases.

Think of the French Football League as an example. Owning a team in the league comes with inherent risk. Calling the bottom of the market is hard, but you also have competition from European football or avoiding relegation, and that's before you have to deal with French regulatory issues and employment law. That has massive risk, on top of which the fans demand you overspend, but hate you if you have overspent on the team. Additionally, your Opex is high as you try to stay in the league or go up. For an investment fund de-risking that scenario is critical. At the league level none of that risk exists and the vast majority of leagues will have centralized rights.

The challenge, of course, is that these central organizations have typically been non-profits. That doesn't work for an investor – so something has to give. Intriguingly it has been the teams that have agreed to give up future cash flows for cash now, in the hope that better management centrally will drive up overall value so they still make good.

The Risks that Exist

I am a bull on both sports and the role of Private Equity and Venture Capital in the sports industry. Yet it does come with risk.

Investment is about profits and a return on capital and there is an underlying challenge that the fans that love our sport will push back against this need to make money. The fans want to see investment but the mentality is that it should remain in the game not go to external investors.

Cultural fit and Politics is one of the bigger issues. Excel sheets showing pretty pictures of rising tides for all parties is one thing but the way sports has traditionally been run, and the way investors may see it will no doubt lead to challenges ahead. There will be times when a rightsholder wants money and the investor wants capital invested but that might be the only thing they really agree on.

One of the biggest mistakes I have seen is that investors look at the past five years, project forward but don't understand how engrained the model is or don't challenge the business model at all. At the same time the party selling the IP often believes that the incoming investor will be able to fix their problems – but the investors rarely have that internal capability.

I have seen many in rugby and French football raise the valuation of their own business based on the premise that CVC owning a minority of the league means that their own asset has immediately appreciated in value. Whilst I like much of what CVC is looking to do, that is quite a leap to make.

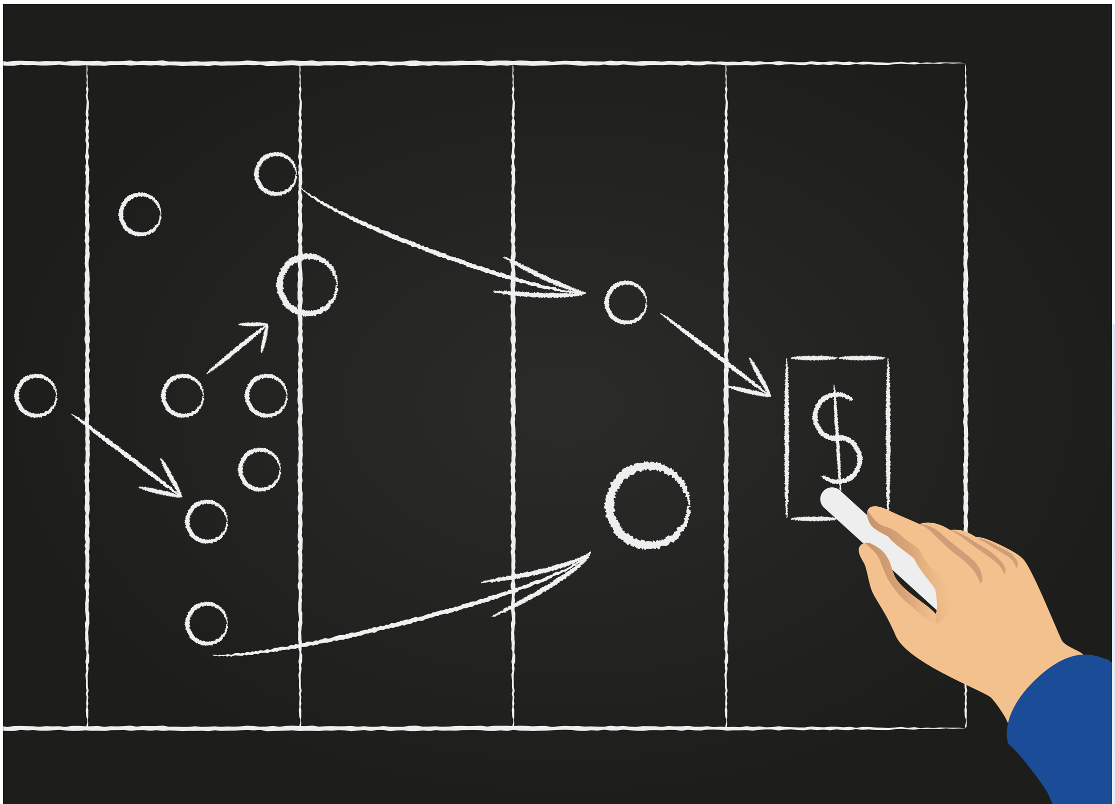
The Opportunity Exists

Ongoing investment in sports is inevitable. The intangibles that were so hard to value are now the exciting part. Valuations will continue to rise as capital comes in and there will be a continued high level of interest.

It is also inevitable that we will witness a few car crashes along the way. There are a couple of key things sports rightsholders should be thinking about before they go down the path of raising capital.

Are we a cultural fit? Will the weekly P&L calls drive us crazy, will the need for an exit be possible and can we meet there without the traditional cutting of costs that comes after the initial investment phase?

Who's Advising us? Do NOT enter any conversations with investors using your typical sports legal team. You need to get the very best advisors you can. Assume that the people opposite you are smarter and done this a thousand times already. Make sure the advisors have your best interests at hearts – and pay for good advice.



What will our athletes and fans think and how can we involve them? This is often ignored but these are two of the most important stakeholders and they will be impacted. Make sure you bring them on the journey.

Smart Money? Can this investor and his team actually help us? What are our key business and sporting issues, do they understand and what is their solution? Is it just doing things the same but a little better or is there real operational insight?

Is it equity or debt pretending to be equity and where is it secured? There are lots of clever ways to make an investment, make sure if you are selling equity you aren't on the hook for interest payments?

Sports teams, leagues, federations and the companies that make the industry tick continue to have enormous untapped value. Bringing in smart money to support that growth is the right idea and there is no shortage of capital to be deployed.

What would really change the game? An investor who came in backing new management that identifies that this is inherently a B2C business sector that has always operated in a B2B model. The Fan, which every partner in sports is looking for access to, is generally ignored by the incumbent players in sports. There is little to no data on them, there is minimal understanding about how a D2C relationship can begin to foster change. Yet, if the right management and rightsholder combine with external investment you will be able to see a change not just in the underlying revenue model but in the valuation model. Most of sports is valued on a Sponsorship and Licensing economic basis. When that transitions you will see not just accretive growth but a growth in the multiple being used to value the opportunity.

There is risk involved for both parties in making this happen but smart money is a great way to forge ahead and secure the legacy.

STOCKTAKE OF GLOBAL PROGRESS ON INCREASING PHYSICAL ACTIVITY AND SPORT

By Fiona Bull,
Unit Head, Physical Activity
World Health Organization

Dr Fiona Bull heads the Physical Activity Unit in the Department of Health Promotion at the World Health Organization (WHO) headquarters in Geneva, Switzerland. Prior to joining WHO in 2017 she was Professor of Public Health and Director of the Research Centre on Built Environment and Health at the University of Western Australia. Previous positions include Professor of Physical Activity and Director of the United Kingdom's National Centre of Physical Activity and Health and Senior Scientist at the CDC in the Department of Health and Human Services, USA. Dr Bull was also President of the International Society of Physical Activity and Health from 2014 to 2016 and co-authored over 200 scientific publications. At WHO, Dr Bull leads a team working on promoting physical activity through active transport, sport and every-day activities through advancing the science, policy and practice to support countries implement WHO's "Global Action Plan on Physical Activity 2018-2030: More active people for a healthier world".

Global status report on physical activity 2022

WHO Global action plan on physical activity 2018-2030

This article highlights the findings of the World Health Organization's first Global status report on physical activity, and asks how sporting goods manufacturers can help support government efforts to increase physical activity and reach global goals for healthier populations.

Regular physical activity and sport is good for hearts, bodies and minds – quite literally. It helps prevents heart disease, diabetes, obesity, cancers and other noncommunicable diseases. It also makes us feel good – and it is particularly effective for managing depression and anxiety. However, given stagnant levels of participation in physical activity, in 2018 WHO launched the Global action plan on physical activity (GAPPA) 2018-2030 and all countries agreed to increase physical activity by 15% by 2030 (https://www.who.int/publications/i/item/9789241514187). Governments committed to implement a set of recommended policies to support communities be more active, reduce noncommunicable disease and reduce the large economic toll on public health systems. So, where are we today - five years on?

Has your country implemented public communication campaigns to promote physical activity? Does your government have national guidelines on physical activity and set targets to increase participation in children and adults? Are national physical activity policies being implemented? Is road safety addressed to make roads safer for walkers, scooters, and wheelers and other forms of active transport?

The answers to these questions and others can be found in the recently launched Global status report on physical activity 2022 which presents a global 'stock take' of national progress in implementing the policy recommendations set out in the WHO Global action plan on physical activity 2018-2030.

Using the best available and comparable data from 194 countries, results were reported for 29 indicators across the four GAPPA policy pillars: active systems, active environments, active societies and active people.

What we found

This first global assessment of national action aimed at increasing physical activity revealed that while there had been some implementation of some policies, overall progress is slow and uneven.

Table 1 provides selected results. The full report and 194 country profiles are available on the WHO website (https://www.who.int).

TABLE 1

PHYSICAL ACTIVITY – PA

Active systems in countries

Governance, policies and guidelines are essential:

- 92% have national surveillance on PA
- less than 50% have standalone national PA policy, strategy, or action plan.
- over 50% have specific national target for PA
- 30% guidelines for all age groups.
- 46% an operational National NCD Coordination mechanism.

Active environments in countries

Creating an enabling active environment is critical to encourage people to use active forms of transport.

- only 40% have national design standards for three key road-safety criteria,
  - separating pedestrians and cyclists from motorized traffic,
  - safe crossings for pedestrians and cyclists, and
  - road design for management of speed.
- only 42% have national policies to encourage walking and cycling for transport.

Active societies in countries

An important step in promoting PA and creating active societies, is building awareness. Over the last two years:

- 52% conducted one communication campaign on the benefits of PA
- 56% organised free mass-participation events

Active people

Overall less than 50% of countries showed progress in implementing PA policies to promote active people where they live, work and play:

- 30% implementing national PA policies in child-care settings
- 42% implementing PA policies in public open spaces (including parks)
- 40% have national protocols for managing PA in primary health care
- 40% implementing national policies for promoting walking and cycling

The cost of not acting to increase physical activity (PA)
The Global status report also revealed new estimates of the cost to the public health system of not acting on physical activity. The price tag is significant. WHO estimates the total cost of treating predicted new cases of seven NCDs and mental health conditions will reach nearly US$ 300 billion by 2030, or around US$ 27 billion annually. This is a substantial amount for already fragile and overburdened health systems and is, for example, equivalent to the cost of training around 1 million medical doctors in the UK, or 2.3 million medical doctors in Brazil. However, these data are conservative as they do not include some key diseases, nor an assessment of the cost of the impact of physical inactivity on economic productivity.

The way forward - accelerating GAPPA implementation to achieve greater impact
In the majority of countries, policy development and policy implementation must improve if global targets on physical activity are to be met.

The potential savings of US$ 300 billion, would train over 1 million (1,019,022), medical doctors, in the UK, and about 2.3 million (2,307,692) medical doctors in Brazil, for example:

The Global Status report concludes by recommending five actions to help countries and accelerate the recovery from the impact of COVID-19, develop new and effective policies, ensure existing policies are implemented, and strengthen the national promotion of physical activity. The recommendations address key enabling factors for policy implementation and are listed below:

1. All relevant government departments recognize their contribution to increasing PA and reinforce a joined-up approach to PA in the interests of national development.
2. Ensure PA is embedded in all relevant policies, facilitate implementation with simple tools and "how to" guidance, and strengthen workforce capacity through multi-sector training.
3. Establish national coordination mechanisms to provide direction and oversight of the national agenda on PA involving government and non-government stakeholders, including the voice of the local communities.
4. Ensure data systems are aligned and provide tracking of policy implementation as well as participation levels
5. Identify and secure sustainable funding and align with needs to ensure sustained national policy commitments

In launching the Global status report, Dr. Tedros Adhanom Ghebreyesus, WHO Director-General, urged countries to get moving. "We need more countries to scale up implementation of policies. The benefits are huge, not only for the physical and mental health of individuals, but also for societies, environments, and economies".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What is the role of sports industry?

Sporting goods manufacturers have a key role to play to support government efforts to act on these recommendations and increase participation in physical activity, particularly in those who are the least active. There are at least three ways in which the sector can assist. First, through advocacy and communications on the value of the multiple benefits that increasing physical activity can provide to people, community, the environment and the economy. Second, by sharing knowledge and scaling capabilities across the ecosystem in communications and marketing of physical activity, and third through supporting initiatives that create more inclusive, accessible opportunities for people to be active in ways they enjoy and sustain - especially the young, girls and women, and people living with disabilities.

The Global status report is a wake-up call to government and all other stakeholders - academia, researchers, civil society, advocates and the private sector - to join efforts and drive both policy making and policy implementation so we can really get the world moving.

Did you know?
The WFSGI's Physical Activity Committee is the global platform for the sporting goods industry that's committed to raising awareness of the benefits of physical activity and sport and increasing participation levels, especially among the next generations.

What we do.
The Physical Activity Committee is comprised of many of the leading sporting goods brands including NIKE, Inc., adidas, Pentland Brands, ASICS, Decathlon, and many more. We work directly with the World Health Organisation, UNESCO, and many other key stakeholders to leverage the power of the sporting goods industry to reverse the physical inactivity trend.

What's at stake?
28% of the world's adult population is insufficiently active and that rises to 80% when we look at the world's adolescent population. **Gen Z is the least active in history.**

Why join us?
By working together, the industry is stronger and can achieve sustainable and scalable action to reverse physical inactivity. **Together, we can be one voice on physical activity.**

Interested in joining?
Scan the QR code to know more or contact Emma (Mason) Zwiebler on emason@wfsgi.org.

PHYSICAL ACTIVITY COMMITTEE

2022 Activity Report

Mandate

The PAC's mission is to promote physical activity on a global level. The Committee also seeks to foster and encourage the participation of citizens of all countries in healthy sporting activities.

The PAC coordinates the industry's joint response to the global physical inactivity epidemic by focusing on the following areas:

- Working with the United Nations Agencies and other multi-lateral organisations to prioritize physical activity on the global development agenda.
- Providing a global forum for WFSGI members to share best practices and lessons learned on approaches that increase participation in sport and physical activity.
- Supporting global, regional and national level advocacy work to promote physical activity and sport.

Summary

2022 was characterised by an uneven global recovery from the ongoing impacts of COVID-19. While many communities were able to begin to return to pre-COVID activities, certain communities within Asia and Oceania still contended with COVID restrictions for much of the year. Despite efforts from multiple stakeholders to encourage citizens to stay active, early data from UNESCO showed that there had been a 41% decline in physical activity levels globally since the start of the pandemic[1]. This is a statistic that is of significant concern since 80% of adolescents were already classified as being insufficiently active pre-pandemic[2].

In 2022, the Committee continued its work to support efforts by both the World Health Organisation (WHO) and UNESCO to address physical inactivity at the global policy level.

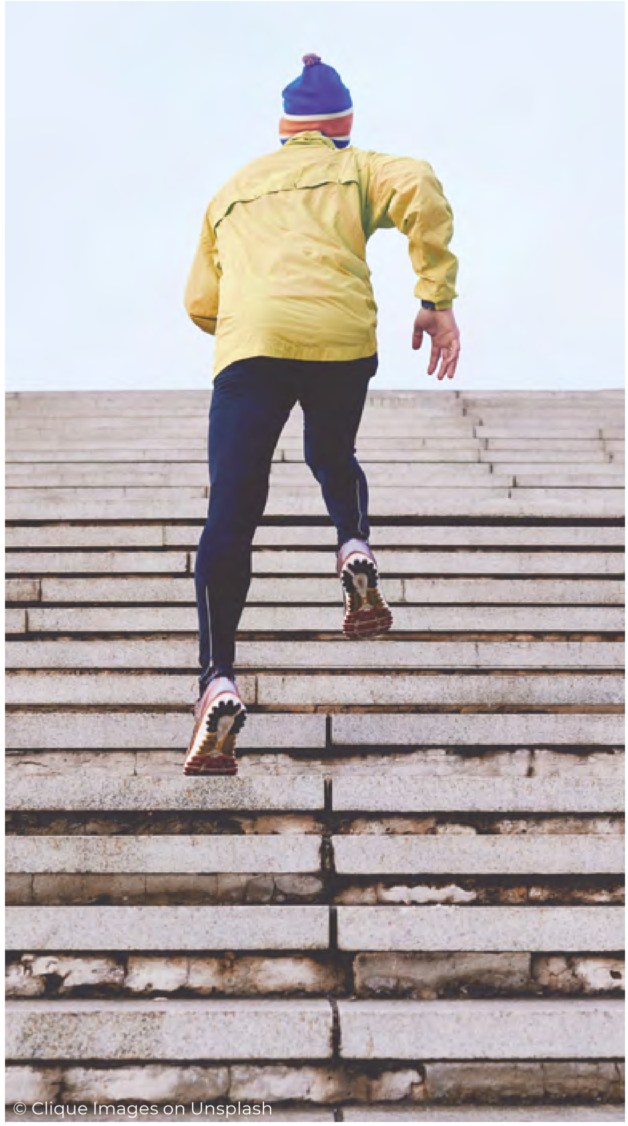
1 UNESCO.org

2 who.int

Update on Key Activities

During 2022, the Committee focused its work on the following activities:

- WHO Relations – WFSGI also continued its efforts to support broader private sector engagement in GAPPA via participation in the Sport Sector Dialogue hosted by WHO in March 2022.
- UNESCO Relations – the Committee continued its support of UNESCO's development of its Fit for Life flagship programme including providing an opportunity for the UNESCO team to present to the Physical Activity Committee.
- PAC Advocacy and Communications – during 2022, the WFSGI Secretariat participated in several conferences to advocate a multistakeholder approach as a key driver to reversing the inactivity crisis. Conferences included UNESCO's 'Fit for Life: sport powering Gender + Equality', Global Sports Week and the Spot. WFSGI also worked with its McKinsey partners to ensure that their second industry report (Sporting Goods 2022: the New Normal is Here) [3] – clearly highlighted the continuing inequality in access to physical activity and the widening inactivity gap.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3 SPORTING GOODS 2022

Chair

Rosalynn Kennedy
Social and Community Impact, Communications & Partnerships, Nike Inc.

Vice-Chair

Bettina Benzing
Senior Manager Government & Community Affairs, Adidas

Vice-Chair

Simon Rowe
Head of Global Sports Marketing, Pentland Brands Ltd.

Ex Officio

Emma P. (Mason) Zwiebler
WFSGI Vice President for Strategic and External Affairs

CHECK ALL COMMITTEE MEMBERS

AQUATICS COMMITTEE

2022 Activity Report

Mandate

The Aquatics Committee is the aquatics-specific industry representative body towards the Fédération Internationale de Natation (FINA), World Triathlon, organizers of major aquatics events, international standards institutions and Non-Governmental Organizations with the intention of fostering the general development of aquatic sports with an eye on athlete safety in aquatic sports.

Summary

2022 continued to be a challenging year for the Aquatics industry. While the impact of COVID-19 was less significant in terms of events and swimming pool closures, the year challenged the industry in terms of factory closures and raw material costs. The cost-of-living crisis and inflation also posed a threat to swimming pool operators in terms of electricity costs. The Aquatics Committee work in 2022 focused on working with the new FINA team on their swimwear approval regulations and with FESI on surface wetsuits and the application of the PPE Regulation.

Update on Key Activities

In 2022, the Committee focused on the following activities:

FINA Relations – the Committee was pleased to welcome Johan Lefebvre to its first Committee meeting of the year to provide an update on FINA's activities and overall strategic vision for the sport. The Committee also worked with FINA to clarify and confirm the new submission and publication timeline, particularly ahead of the Paris 2024 Olympic Games.

PPE Regulation – the Committee continued to support WFSGI's European counterpart, FESI, in relation to its position toward the EU Member States regarding the classification of surface wetsuits and the application of the PPE Regulation. The Aquatics Committee spent a significant amount of time on this issue to support the WFSGI members manufacturing surface wetsuits as the market is dominated by SME brands for whom any significant changes without a grace period could prove very challenging.

CHECK ALL COMMITTEE MEMBERS

Ex Officio

Emma P. (Mason) Zwiebler
WFSGI Vice President for Strategic and External Affairs

Chair

Greg Steyger
Product Category Director,
Arena S.p.A.

Vice-Chair

Jonathon Higham
Brand Manager,
Speedo,
Pentland Brands Ltd.

Vice-Chair

Franck Horter
President,
TYR Sport, Inc.

EVERYONE IS DIFFERENT, THAT'S WHY BESPOKE PRODUCTS ARE INEVITABLE AND NECESSARY

By Edwin van Vugt,
Owner and founder
of Speedbar
Owner and founder
of Bikesettings.com
Co-owner and founder of
Carbonreparatie.nl

A modern time trial frame is a show case of what's possible when using cutting edge technology, the latest simulation techniques and the best available materials known to men. Many brands claim that their machine is the fastest one on the market. However, the basics of the bike stay's the same: You need a person on it to make it fast. This is where it becomes interesting. Not one human being is the same as the other one. We are all individuals. But that cutting edge time trial bike only comes in 3 or 4 sizes? This is where bespoke parts can make the difference.

I started my career in cycling in 2009 with Carbonreparatie.nl - a carbon repair shop that is active in repairing hospital equipment, race car products but with a particular emphasis on bicycle frames and wheels. It was one of the first companies in Europe that specialized in bicycle related carbon repairs. From our inception we received a lot of requests from pro cycling teams to make modifications to their products. This also led to the birth of the Bike settings measurement jigs I produce. This is a mobile measuring device that gives you the exact coordinates of the saddle and handlebar, with the bottom bracket axle as a point zero.
The majority of requests that we received to modify standard bicycle products were to find the perfect time trial position on the bike. At first, I only modified existing materials, but soon this lead to producing arm pads, extension poles, and combinations of the two as Speedbar. Speedbar is a one-man-business. It's my individual choice to stay small. Making bespoke products for high-end consumers and athletes requires a lot of attention to every single detail. By working with a big team this can only led to misunderstandings. I'm quite sure I have the smallest business in pro-cycling, but with over 100 world tour riders using my product, Speedbar is one of the most used brands in bespoke products.

© Remco Smits

Time trial bikes are the most advanced, tested and high-end bikes that are produced. However, sales of this specific category of bikes is only a fraction of the market compared to road or mountain bikes. To lower the costs of production, most brands choose to reduce the number of frame sizes. Where race bikes are available in 6 to 10 different sizes, TT bikes come only in 3 to maximum 5 sizes. To be sure that all customers can find their ideal position with only a few sizes available, most major brands have come up with a system of spacers, bolts and clamps to fit the aerobars in every possible height, length, width and angle. But once the perfect position is found, there is no need any more for this adjustability. Recently introduced aerobar systems contain a large number of bolts to set it up. I have seen systems can contain 18 bolts. 18 times an opportunity to overtighten, snap, raddle loose or get stuck. This is the reason why I was contacted by a world tour team after the 2016 Rio Olympics. A small mistake was made during the setup of the aerobar system which resulted in a failure during the race. To prevent this from happening ever again, I was asked to make a one-piece aero bar system with only two bolts to attach it to the base bar. The rider himself also requested longer and higher arm pads for more control of the bike.

After the first tests, we saw a lot more benefits. By losing the majority of all bolted connections, not only did the weight drop dramatically, but also the stiffness of the entire structure increased.

On top of that the rider experienced a much more comfortable, and therefore, stable riding position because of the extra support for his lower arm. This was the moment when I realized that by maximizing the comfort of the rider, he can maintain his aero position easier and longer.

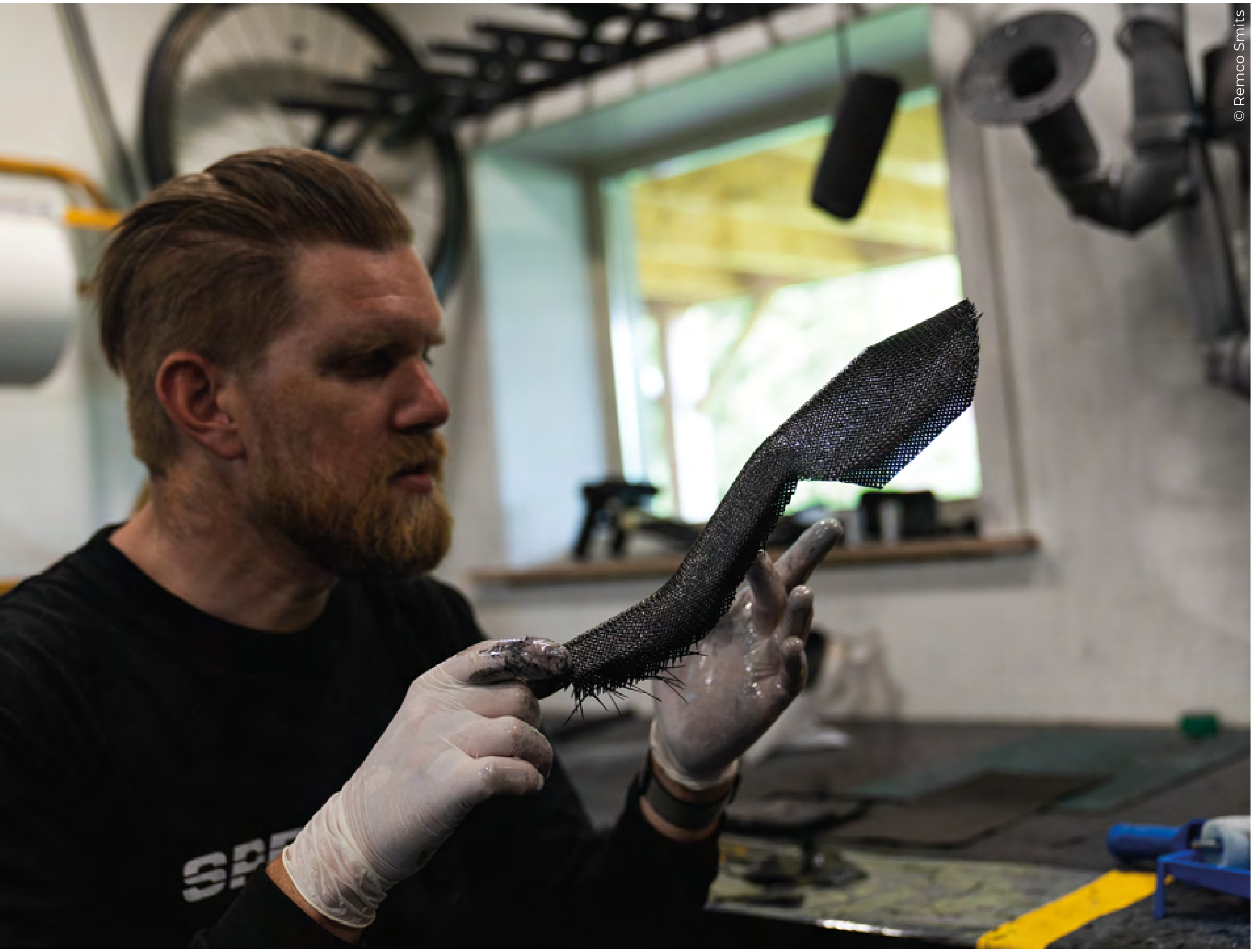
I created a method that allows me to make a mold of the lower arm of each rider, which I can use to produce the lower arm support. In this way the entire lower arm of the rider is supported by the aerobar. The stability for the riders upper body increases and so there is also a huge aerodynamic gain.

This project was soon picked up by UCI World Tour teams as they are always searching for the marginal gains within their sport. Other brands saw this new upcoming marked and stepped into the game. Most of all world tour teams are now using bespoke time trial bars for their gc riders and time trial specialists. You can say that bespoke has become the standard when it comes to aerobars at UCI world tour level.

© Leon van Bon Photography

© Remco Smits

In my perception, bespoke is always custom made. But bespoke doesn't mean it's not available for other teams or consumers. In some way, a taylor-made suit is a bespoke product as well, but is available for every individual person who is willing to pay the price. On the other hand, quality checks and production control is not as simple as with standard products. Every bespoke product is different from the other in some way. In case of time trial aero bars, there is no standard test method or certification that guarantees the quality of the product. Even the UCI doesn't have guidelines for this. With 3D printing being available for every individual person, it's not that hard to make a bespoke time trial aero bar that has all the benefits mentioned above, but doesn't have the structural stiffness to cope with the forces during racing it.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Another trend that frightens me is that UCI world tour teams are hooking up with companies that only produce for that team. It's within the rules of UCI that every part on the bike has to be available for the consumer. In theory it is, but in reality, it's far from that. Hard to find websites, delivery times that take years, and prices that are not in conformity with reality. When it comes to sports in general, the basics are the efforts of the individual. In a lot of cases helped by high-end sports equipment. In many cases this equipment is sold because it is used by those athletes. If we fool the end consumer by selling any other equipment other than the one their idols are using, we will only fool ourselves in the end.

I truly think that mass produced products can benefit from bespoke parts. In this example you could say that a standard bicycle can become a personalized one by adding a bespoke product. I'm sure there will be many more examples of this in other sports. It doesn't have to be a competition between mass produced and bespoke. If we can make it a collaboration, more products will be sold.

Get involved!
BE THE FIRST TO HEAR ABOUT REGULATORY CHANGES AND UPDATES.

The WFSGI is the industry representative for the cycling industry. We represent brands, manufacturers in discussions and negotiations with the UCI around rules and regulations with one united voice.

Interested in getting more information and to become a member brand?

CYCLING COMMITTEE

2022 Activity Report

Mandate

The Cycling Committee is an assembly of member brands from the industry and offers them global representation across regulatory, sport, social and environmental issues. The Committee is the voice of the cycling industry towards the international federation (Union Cycliste Internationale – UCI) and the International Olympic Committee.

Summary

The past year has seen a lot of change; commencing in January 2022 with the arrival of Michelle Smyth to the WFSGI team as Head of Cycling. In one of the first changes when taking on the role, the committee's name was amended from Bicycle Committee to Cycling Committee to reflect the wider, relevant to the industry topics, that are discussed.

The Cycling Committee is an assembly of member brands from the industry and offers those brands global representation across regulatory, sport, social and environmental issues. The Committee is also the voice of the cycling industry towards the international federations for cycling (Union Cycliste Internationale -UCI), triathlon (World Triathlon) and the International Olympic Committee (IOC).
This year the main emphasis of the WFSGI Cycling Committee has been on the Technical Committee. Beneath the Technical Committee are various working groups and which evolve depending on the topics of the moment.

Technical Committee

The majority of 2022 was focused around negotiating the finer detail to the amendments of the UCI Technical Regulations and Clarification Guide. The discussions commenced in February ahead of the Equipment & New Technologies Commission in April and were adopted by the UCI Management Committee in June. The move by the UCI towards box dimensions was a major change to the previous Technical Regulations and had repercussions across 15 different articles with very short timeframes. The changes from June were made both with and without prior consultation with brands and spanned across helmet, fuselage, brake calipers, bottle cages and saddle position. Retrospectively, the WFSGI were able to agree:

- Limitation on implementation for certain articles to track and road
- A grandfathering rule on helmets

Handlebar Working Group

Given the importance of the changes around handlebars, base bars and extensions, a new working group was formed with 23 member brands taking part. The new dimensions were deemed restrictive on innovation and also rendered several previously authorised products that were either on the market, in design or production phase, illegal. Since the original changes were announced, the Working Group has worked closely with member brands to find compromise with the UCI. A huge achievement here was to ensure a grandfathering rule is incorporated into the Clarification Guide. Overall, there is minimal to no impact to both the industry and cyclists. The brands are able to continue to sell-through on stock and non-professional cyclists who are using the product in lower tier races are able to continue to using their product. The WFSGI with member brands were able to successfully negotiate:

- A grandfathering rule across handlebars, basebars and extensions that were already on the market, manufactured or in production stage
- A decrease in the minimum length of extensions for men and women from 210mm (M) and 200mm (W) to a gender-neutral measurement of 180mm
- Delay the full implementation of the Handlebar Approval Process until post Paris 2024.

Textile Working Group

This is a newly formed working group within the Technical Committee to cater for those member brands that also work in soft goods. The current topic that is being discussed (a topic not exclusively an issue for cycling) is the issue of bib numbers and trying to find a workable solution that works for riders, manufacturers, commissaires and the media. A future discussion point that is likely to be introduced in next year's meetings is the pricing and availability of skin suits in track cycling.

The WFSGI also has Wheel & Tyre, Saddle, Design and eMTB Working Groups that have not convened this year however, these are topics that will be reignited in 2023.

UCI - Memorandum of Understanding

In early December the WFSGI will finalise a landmark agreement consolidating the relationship with the UCI. The formalisation of the MoU reaffirms the industry's role as a stakeholder of the UCI. The evolution of this MoU will bring a framework to the future discussions for the Cycling Committee and on wider cycling topics such as Sustainability, E-sports, eMTB and developing clear processes and communication channels between the UCI and the manufacturers when future amendments to the Technical Regulations are being discussed including defining and refining the approval process for frames and handlebars.

In 2023 – we also hope to introduce a bi-annual in-person meeting with the UCI where a jointly agreed agenda will be shared with all member brands who wish to attend. We anticipate the first of these to take place at the UCI headquarters in Aigle, Switzerland and are currently looking at dates in early Spring 2023.

Cycling Sustainability Working Group

Since EUROBIKE in July, the WFSGI has been actively engaging with cycling brands in order to see how we can best support the industry's quest to become more sustainable. This has started with several individual exchanges with brands of varying sizes to see how they are tackling the climate change topic internally. We will be looking at scope 1 and 2 targets and life cycle analysis across products. This is a topic that is being lead by Marc-Ivor Magnus the WFSGI Vice President on Trade, Corporate Responsibility and Legal: mmagnus@wfsgi.org.

Date for your diary

After a two-year hiatus, we reconvened for an in-person meeting at the new location of EUROBIKE in Frankfurt in July 2022. With a little more advance warning and moving to yet another new month, we can now confirm that the 2023 Cycling Committee meeting will take place at EUROBIKE in Frankfurt from 13:00 – 18:00 on **Tuesday, 20th June 2023**. The meeting room at Messe Frankfurt will be confirmed closer to the time. To book a one-on-one meeting on Wednesday through Friday, please share your availability when known with Michelle: msmyth@wfsgi.org.

Chair Cycling Technical Committee

Bernhard Johanni
Director Product Development Europe,
SRAM Corp.

Chair Cycling Wheel and Tyre Committee

Tim Gerrits
Product Manager,
Shimano, Inc.

Chair Cycling Saddle Committee

David Bunce
COO,
ISM Saddles LLC

Chair Cycling Handlebar Committee

Mark Kikkert
Team Manager Product Development PRO,
Shimano Europe Group

Ex Officio

Michelle Smyth
WFSGI Head of Cycling

CHECK ALL COMMITTEE MEMBERS

The World Federation of Sporting Goods Industry (WFSGI) and McKinsey & Company have teamed up once again to prepare our third edition of the Sporting Goods Industry Report:

SPORTING GOODS 2023 THE NEED FOR RESILIENCE IN A WORLD IN DISARRAY

By Sabine Becker,
Associate Partner, part of the leadership of McKinsey's Sporting Goods Practice EMEA, McKinsey & Company

By Alexander Thiel,
Partner, Leader Sporting Goods Practice EMEA, McKinsey & Company

Sabine Becker is part of the leadership of McKinsey's Sporting Goods Practice EMEA. She serves primarily Sporting Goods Brands and Retailers on the topics of Strategy and Supply Chain. Sabine holds an MBA from Harvard Business School and a B.As in Business Administration and Economics from the University of St.Gallen.
Alexander Thiel is the Leader of McKinsey Sporting Goods Practice in EMEA. He serves Sporting Goods Brands, Retailers and Manufacturers, particularly on the topics of Strategy, Operating Model and Organization Transformation.
Alexander holds an MBA from Stanford Graduate School of Business and B.As from Columbia University New York and the University of St. Gallen.

The world is in disarray – the ghost of global recession, the return of War to Europe's borders, global supply chain shocks, rapidly rising interest rates, and borrowing costs create an almost unparalleled challenging environment.
Our upcoming WFSGI / McKinsey & Company report ***"Sporting goods 2023 – the need for resilience in a world in disarray"*** *to be published in January will explore how the industry can increase its resilience to weather the current storm.*
We will focus on key trends shaping the industry in 2023, including increasing brand relevance, growing pressure to deliver on sustainability promises, nearshoring as an exciting option, and the growing interest in sporting goods assets by private investors.

Surfing the recession wave

A "perfect storm" of cyclical, structural, and supply chain issues has been fueling inflation – and it is expected to persist, at least in the mid-term. The effect on the sporting goods industry has been delayed compared to other industries such as mass apparel players or grocery players due to the order to buy and supplier contracts that are often signed many months in advance. However, with each new year/season, we start to get into the window where we have already seen input costs rising.

As consumer confidence continues to fall, and disposable income shrinks further with inflation on necessities and increasing interest rates, consumers are planning to scale back spend.

In order to navigate the storm, we believe it is time to invest in resilience and productivity, activating levers that won't harm demand and that will build the right foundation for a steep recovery post-recession.

However, these actions require investment upfront in a context where the cost of capital is increasing. This will likely mean a further gap between super winners and the rest of sporting goods players once the storm is over.

Brand relevance increase

Building brand heat and loyalty is more relevant than ever, especially in a context of recession where consumers tend to down trade.

We observe the consumer journey shifting, especially when shopping for lifestyle categories. Whereas before, we used to see consumers driven first by factors such as functionality, design and price, we are now seeing consumers increasingly driven by brands.

Super winners (i.e. financially best performing companies) in the industry have all valued and strong brands, with high awareness and loyalty.

As sports brands continue to enter lifestyle apparel, they are undertaking a similar journey as that of the most relevant fashion companies to build strong and trusted brands, incl. DTC revolution, collaborations with desired fashion brands, community marketing.

Sustainability, time to deliver on promises

In the past years and especially since COVID, brands, retailers and manufacturers have made bold announcements promising a more sustainable future but are they really rising up to the challenge? After years of bold commitments, it's time for sporting goods companies to make it real as the deadlines approach.

We see two relevant actions that brands need to undertake:

1) Drawing and executing the road to net zero by setting their CO_2 baseline, defining their emission abatement curve, prioritizing the CO_2 reduction levers and planning for the different challenges
2) Defining the company's role in the booming circular economy choosing from a range of possible business models

However, companies need to be careful and deliver on the claims and promises, in a context where greenwashing is being targeted by regulators and consumers.

Nearshoring, a potential solution for SC disruptions

Supply chain disruptions, increasing prices as well as increasing trade barriers and geopolitical turmoil are putting pressure on supply security and increasing costs substantially.

Nearshoring unlocks a wide range of benefits in a disruptive context: control and de-risk of supply chain, agility and speed, cost structure competitiveness, protection against trade barriers as well as a more sustainable choice in the eyes of the consumer.

We observed a number of SG companies announcing plans to nearshore, but also some others that had to reverse their decisions.

Whether to nearshore or not should be decided at product level assessing product exposure to supply chain shocks and the need for short lead times. It is important to ensure that the nearshore country meets specific requirements like presence of raw materials and components, availability of capabilities and capacity. A detailed business case should take into account the financial impact, as well as consider potential government incentives.

In parallel, companies should assess alternative solutions. For instance, de-risking their supply chain by moving into a multi-country production (not necessarily nearshore) or shortening lead times by streamlining their operating model and improving forecast accuracy.

Sporting Goods industry, a hot target for private investors

The Sporting goods industry has experienced strong growth in the past years (excluding 2020). This growth is expected to continue in the coming years driven by underlying trends like increasing health awareness, as well as the rise of outdoors and athleisure. In addition, the industry has proven to be more resilient in downturn economic periods, bouncing back faster than other industries such as fashion.

This has raised interest among private investors (VC, PE, Corporates), with the number of yearly deals doubling in the last decade and emerging themes such as outdoors, connected fitness equipment, athleisure/active wear, sustainable sportswear.

The funds or corporates behind these deals have now a challenging task ahead, needing to grow these target companies in a market dominated by super-winners. We see three key focus areas beyond the obvious ones needed to approach the challenge: (i) Aspire to build a Sporting Goods portfolio to drive synergies, (ii) Elevate the digital game, addressing communities whilst engaging with each consumer in a personalized way, (iii) Leverage analytics at scale to harness the power of data.

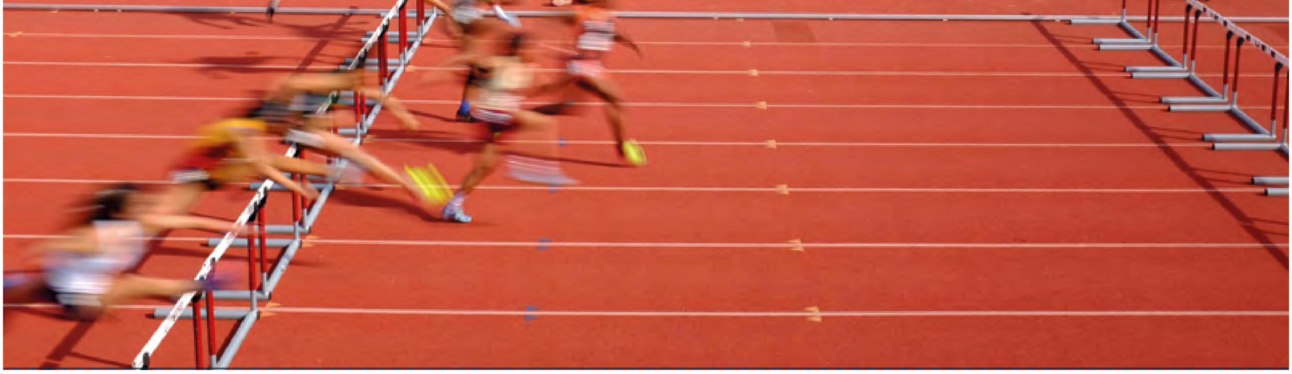
The third edition of the Sporting Goods Industry Report will be launched in January 2023. In the report, we will provide a detailed perspective on these trends.

McKinsey & Company

SPORTING GOODS 2021

SPORTING GOODS 2022

SPORTING GOODS 2023



ATHLETICS COMMITTEE

2022 Activity Report

Mandate

The Athletics Committee is the sport--specific industry representative body towards World Athletics, organizers of major athletics events, international standards institutions, and Non--Governmental Organizations with the intention of fostering the general development and growth of athletics.

Summary

2022 marked two years of constructive collaboration between World Athletics, WFSGI, and its members in relation to regulation of athletics footwear in competition. In recognition of the mutual benefit of further expanding this collaboration into other areas of the sport, WFSGI and World Athletics signed a unique Memorandum of Understanding that will be the framework for future consultation and initiatives for the benefit of World Athletics, the sport, the athletes, and the industry.

Update on Key Activities

In 2022, the Committee focused on the following activities:

Shoe Regulation – At the end of 2021, the Committee provided World Athletics with further feedback on the evolution of Technical Rule 5 and the formation of the new Athletic Shoe Regulations that came into force on 1 January 2022. This feedback was provided via the representatives of the shoe brands on the World Athletics Shoe Working Group and the WFSGI President & CEO who acted as the Working Group's Co-Chair.

During 2022, WFSGI and its members continued to work with World Athletics on the development of the Availability Scheme for new shoes. The scheme was suspended during part of the year owing to significant supply chain challenges caused by the ongoing impact of the pandemic in Asia. WFSGI thanks World Athletics for their pragmatic and fair approach to the implementation of the Scheme during a challenging logistical and economic environment for the brands.

WFSGI World Athletics MOU – During the consultation between World Athletics and WFSGI on shoe regulation, it became apparent that there were many other areas where it may be mutually beneficial to collaborate on. Therefore, a unique Memorandum of Understanding was drawn up between the two organisations covering topics such as sport development, advertising and marketing regulations, physical activity, anti-doping, and ticketing. A first meeting under the MOU was held in Monaco at World Athletics HQ in November 2022.

Bib Evolution – one of the immediate areas of work that arose under the new MOU was the opportunity for brands to participate in a think tank of key stakeholders looking at the evolution of athletes' bibs. This work will continue to develop into 2023.

CHECK ALL COMMITTEE MEMBERS

Chair

Spencer Nel
Senior Director, Global Sports Marketing Running, Adidas

Vice-Chair

Hoyt (CJ) Davis III
Assistant General Counsel, Sports Business and Legal Affairs, PUMA SE

Vice-Chair

Ryan Montgomery
Global Sports marketing Manager, ASICS Corp.

FROM AMBITION TO ACTION: THE IMPORTANCE OF CLIMATE TRANSITION PLANS

By Maxfield Weiss,
Executive director,
CDP Europe

Maxfield leads all CDP's activities in Europe as Executive Director to drive environmental disclosure, insight and action among companies, financial institutions and local governments, and manages the CDP Europe team and operations. Prior to this role, he held the position of Director of Corporate Engagement at CDP Europe and was previously Vice President of Insights for CDP North America, leading intersectional research and impact work for all CDP stakeholders.

Climate transition plans are vital for corporates to demonstrate to investors and other stakeholders that they have developed an action-oriented and climate science-led strategy that will keep their business and value chain on the pathway to 1.5°C. These plans are what is needed from corporate governance to align with a net-zero world and are therefore a key evolution of our reporting mechanism going forward.
In light of the recent UN report, having more ambitious climate transition plans in place will help governments close the gap between their national commitments and the efforts to enact those commitments.
CDP aims to support corporates in creating credible transition plans that are underpinned by science-based targets and will continue to define and develop guidance while measuring performance against them.

When CDP started more than 20 years ago, few companies, investors and cities were concerned about the impact of their operations on the planet. Indeed, few recognized that climate change, water insecurity, and deforestation would impact them – whether through the physical costs from disaster damage, or the risks from not transitioning business models at pace to keep up.

We have come a long way since then. We have normalized transparency and disclosure is now mainstream: Over 18,700 companies, worth half of global market capitalization, disclosed their environmental data through CDP this year with an increase of 38% since 2021 across all three categories CDP currently covers: climate change, deforestation and water security. These include big names in the sports arena lsuch as Nike, Adidas, Puma, Asics and New Balance. However, a total of 29,700 companies failed to respond to disclosure requests from investors and customers.

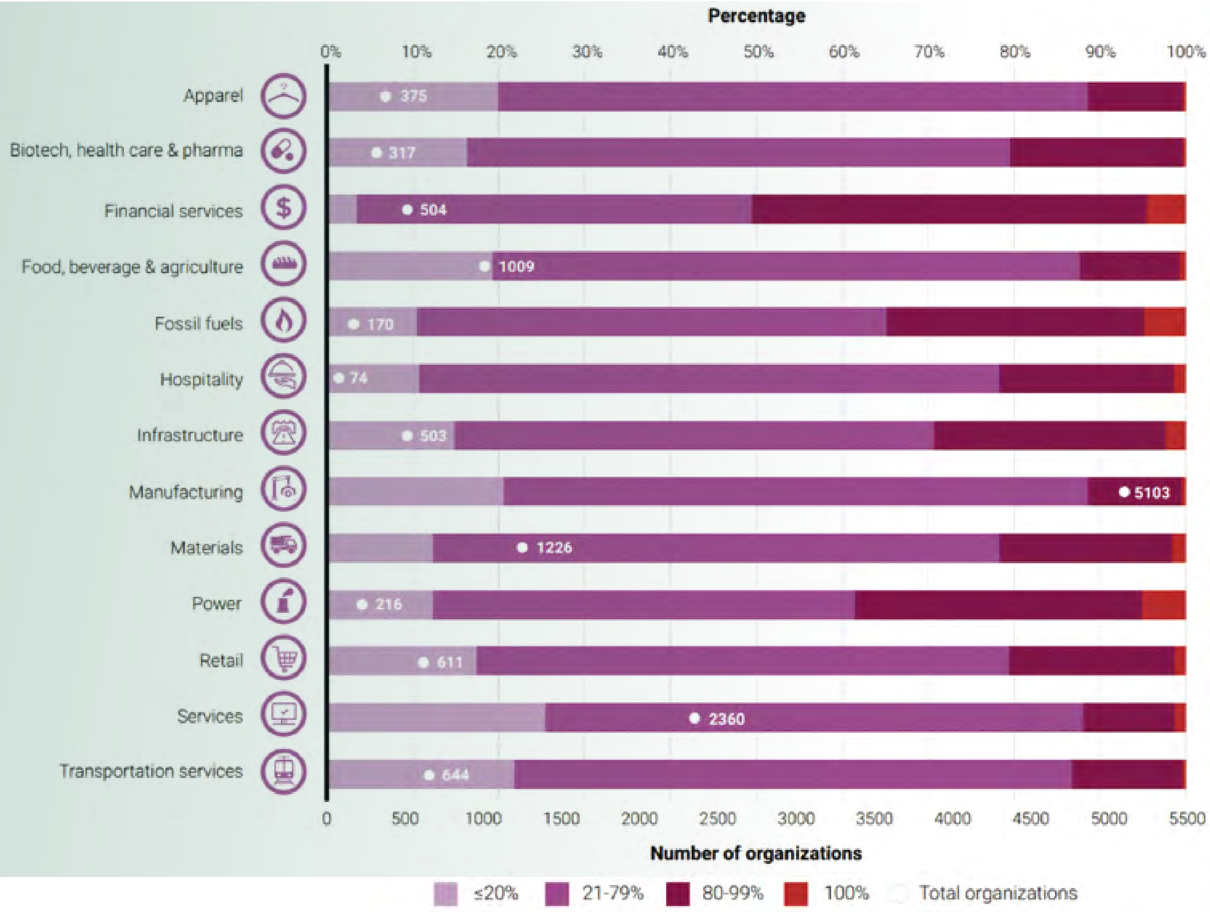
Disclosure is the first step in climate action. There are several tangible business benefits from environmental disclosure, from brand value and risk management to uncovering opportunities and tracking progress.

- Reputation: Being transparent about the environmental impacts of your business activities helps protect and improve your company's reputation
- 87% of companies say it "helps my organization to be more transparent about its environmental impact".
- Efficiency: 61% say disclosing helps them be more efficient
- Stakeholder confidence: Credible reporting and outcomes make companies more attractive to investors and improves stakeholder confidence.
- 76% of companies say reporting makes them more competitive
- Ahead of regulation: Sustainability reporting helps keep your company abreast of regulations and non-financial reporting requirements.

As policymakers assess during COP27 the progress made towards meeting the Paris Agreement through the Global Stocktake, it is critical that both governments and non-state actors are held to account for progress against their own, as well as national and international, commitments and targets. After a swathe of commitments were made by big business last year, it's essential we ensure commitments are being implemented, have led to tangible action and hold all actors to account for their progress (or lack thereof).

While it would seem that the issue of climate has been somewhat mainstreamed, and targets are gaining increasing traction, impact seems limited. Commitments require more transparency and bolder ambition, with companies and local governments recognizing the benefits of acting early to mitigate business risks and taking a leadership position as our economy urgently moves towards a net-zero emissions, nature-positive model.

An increasing number of companies reporting to CDP are aligning their targets with climate science through the Science Based Targets initiative, including Nike who have set a target to reduce scope 1 and 2 emissions by 65% and scope 3 by 30% and Adidas who have committed to reducing scope 1, 2 and 3 emissions by 30% in 2030, among others. CDP is pushing the private sector to deliver the Paris Agreement.



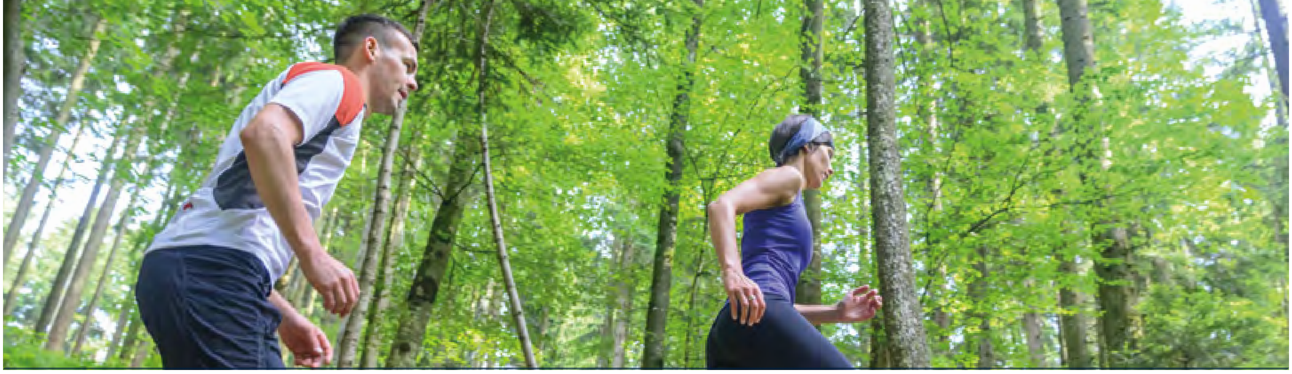
Percentage of disclosure by threshold to climate transition plan indicators by sector

However, just 256 companies worldwide operating in the textiles, apparel, footwear and luxury goods field have science-based targets in place. We must see more, and this change must be economywide. It is now time to move from ambition to action and ensure a just, equitable and inclusive transition. A 2021 CDP report (https://www.cdp.net/en/guidance/guidance-for-companies/climate-transition-plans) shows that only one third of organizations disclosing through CDP reported actually developing a low carbon transition plan, with apparel and transportation being the worst performing sectors.

Climate transition plans are vital for corporates to demonstrate to investors and other stakeholders that they have developed an action-oriented and climate science-led strategy that will keep their business and value chain on the pathway to 1.5°C. These plans are what is needed to align with a net-zero world and are therefore a key part of the evolution of our reporting mechanism going forward.

CDP aims to support corporates in creating credible transition plans that are underpinned by science-based targets and will continue to define and develop guidance, while measuring performance against them. You can watch CDP's 2022 disclosure workshop series and webinars here and register for the upcoming ones.

Did you know?
The WFSGI signed the unfccc climate action fashion charter and we are providing members with examples of how to engage.



CORPORATE RESPONSIBILITY COMMITTEE

2022 Activity Report

Mandate

The CR Committee is focusing on global societal, social and environmental trends like climate change, resource depletion, labour and health issues.
Its work is targeted at developing and promoting an understanding within the World Federation about the relevance of global social and environmental challenges for each individual member company offering members an opportunity to tackle challenges through guidance and sharing best practice services, supporting members in identifying synergies to tie resources and enhance leverage through collaborative work.

Summary

As every year, the WFSGI continued the Communication on Action (CoA) reporting. The WFSGI CR Heads-Up Newsletter has been regularly published and the increasing number of subscribers is a proof of success of this industry specific corporate responsibility newsletter.

The Covid-19 pandemic still provoked factory lockdowns in Asia and thus created a challenging environment for auditing. Nevertheless, the WFSGI further exchanged with FIFA on extending the pledge system to new product categories.

The WFSGI also regularly participated in the different webinar of the Centre for Sports and Human Rights. Amongst others a “Responsible sport sponsorship framework” has been developed by the CSHR. The WFSGI CR Committee has reviewed and commented this work.

The WFSGI Board accepted the WFSGI CR Committee’s proposal to address Climate Change on industry level by joining the UNFCCC Fashion Industry Charter for Climate Action as a supportive organization. After having formally joined the charter, the WFSGI has organized webinars this year around the topic of climate action. Specialists from the Carbon Disclosure Project, the Science Based Targets Initiative, the GIZ (German Cooperation), and adidas have provided insights and put forward practical solutions to take actions. The webinars have been recorded and are available for WFSGI members.

In addition, the WFSGI secretariat has experienced an increasing interest from members regarding emerging due diligence laws. Thus, a webinar has been organized with Intertek and the law firm Reuschlaw to provide expertise to members on developments such as the German Supply Chain Law.

Outlook/Forecast 2022

The focus in the upcoming year will be on climate action. The WFSGI will be looking into how to support the bicycle industry to take consolidated actions.

And as usual, the WFSGI CR Committee will pursue its role as an expert group to provide positions for other working groups at the WFSGI on sustainability. It will further look into relevant developments in the field of corporate responsibility to make sure that the industry is kept informed. It is expected that the legal due diligence developments will request companies to take further actions to ensure compliance.

Chair

Frank Henke
Senior Vice President Sustainability, Global Operations, adidas AG

Vice-Chair

Sara Brennan
Head of Corporate Responsibility, Pentland Brands Ltd.

Ex Officio

Marc-Ivar Magnus
WFSGI Vice President Trade, Corporate Responsibility and Legal

CHECK ALL COMMITTEE MEMBERS

SPECIALIZED BICYCLE COMPONENTS AND OUR SUSTAINABILITY PROGRAM

By Susan Leonard,
Finance & Logistics Manager, Racing Division, Specialized Bicycles

Susan Leonard is the Racing Division's Finance + Logistics Manager at Specialized. Susan began at Specialized in 2000, first with the pro MTB team, then working in-house with founder Mike Sinyard, then back to Global Sports Marketing with the road racing teams. Susan has an MSc in Sustainability from the University of Sussex. Susan lived in California, Belgium, Spain, Italy, and is now based in the UK. She enjoys cycling, sea swimming, sustainability, and languages.

Our people and products make the world a better place. One of our slogans at Specialized is to PEDAL THE PLANET FORWARD, and it is a key element in our sustainability program. The bicycle industry faces unique challenges: although cycling is "green," our industry must urgently act to reduce emissions and be responsible for the entire life cycle of our products. PEDAL THE PLANET FORWARD means we consider the future in all we do, to care for people and the planet, while delivering a material difference to all stakeholders. Sustainability is now an integral part of our corporate mission and we are committed to being responsible and sustainable industry leaders.

2030 GUIDING ASPIRATIONS:

- Reduce our environmental footprint
- Halve the negative impact of our operations
- Double the positive impact of our products
- Have a positive impact on our communities
- Advance inclusion and diversity
- Eliminate injuries and improve the quality of life for our employees and their families

Reduce Environmental Footprint and Halve Negative Impact of Our Operations

To be a net-positive company, our handprint (the positive impacts of our people and products) must be larger than our footprint (the negative impacts). We're proud of our progress in shrinking the negative impact of our global operations, but we must do more.

In some cases, we don't yet know exactly how we are going to achieve these goals. Significant creativity and innovation are required. We depend on our employees, suppliers, customers, external experts, and public policy makers to succeed.

CO2: Reduce GHG emissions from our operations by half. Our target has been validated and approved by the Science Based Targets initiative.

• Switch to 100% renewable electricity
• Reduce emissions from our processes, improve energy efficiency, and move away from fossil fuels
• Cut emissions of VOCs and fine particulate matter in half
• Cut in half the amount of local water supplies where scientific methods indicate water quantity/quality is limited
• Send zero waste to landfill by cutting in half the amount of waste we generate and recycling the rest. Become "waste-positive" (use more waste in our products/processes than we create.
• Develop biodiversity goals. Assess the full impact of our operations on biodiversity by 2025.

Double the Positive Impact of Our Products
Product Handprint Aspiration: Offer the most recognized and preferred products for sustainability.
Reducing the negative impacts of our operations is critical, but not enough. With the company's purpose in mind, we define sustainability as meeting the needs of the present while leaving the world a better place for the future.
Our products help others meet their own sustainability goals. Bicycles are negative carbon offset when used for transportation and utility. We are also shifting to a circular economy for a sustainable future. This concept influences our aspirations and approach to sustainability.
Circular Economy Aspiration: Every raw material used for our products/processes remains in the economy indefinitely.

- Offer quality products that meet customers' needs
- Design our products with the entire life cycle in mind, from raw materials to recycling
- Establish a viable circular economy business model with customers, suppliers, academics, policy makers, government entities, and other organizations
- Reduce GHG emissions in tandem with our suppliers by 30%
- Increase recycled/renewable content and decrease virgin raw materials in our products

Have a Positive Impact on Our Communities
Expand our social handprint: Net-positive means more than working for a healthy planet. Our aspiration also drives our work to support healthy people and thriving communities. We recognize that with growth comes responsibility, and as a global company, we are positioned to be a force for good for the people who are touched by our company.
Community Aspiration: All of our employees are actively engaged in their communities, volunteering time and talent across the globe. The Outride Foundation supports, encourages, and recognizes youth education in cycling. It's a way to develop a future generation of cyclists.

© Specialized

Advance Inclusion and Diversity
We are committed to being an inclusive workplace as we remove barriers and empower all employees to unlock their full potential. We seek to attract and develop the industry's best talent. Our aspiration inspires us to meaningfully measure and continuously improve recruitment, retention, training and development, mentorship and sponsorship, professional growth, and employee engagement.

- Ensure pay equity through periodic third-party reviews and ongoing internal analytics
- Build and support diverse workforce and leadership teams that reflect the communities in which we live, work, and serve
- Increase internal succession with an emphasis on expanding the number of female candidates, underrepresented minorities, and representation of cultures from around the world

Eliminate Injuries and Improve the Quality of Life for Employees and their Families
Wellness Aspiration: We aspire to eliminate all lifestyle-induced disease and enable the best possible quality of life – where people are healthier because they work for Specialized. The progress-challenge of the U.S. Healthy People 2030 and WHO Global Action Plan are our guides.
Safety Aspiration: To eliminate all employee injuries and occupational illnesses at work and at home. Because of our long-standing commitment to this aspiration, Specialized is among the safest companies in the world.

Call to Action: Sustainability is no longer a choice for businesses – it's a must. The impacts of climate change are already being felt throughout the world and urgent action is needed to limit its negative effects. The industry must lead and collaboration is vital.

Become an active member
JOIN FORCES WITH THE WORLD'S BIGGEST BRANDS
TO MAKE A DIFFERENCE

The WFSGI is working across both the CR Committee and Cycling Committee towards a greater importance on Sustainability for cycling brands. To get involved in the Cycling Sustainability Working Group please contact the Head of Cycling.

Interested in finding out how the WFSGI can help your company's sustainability initiatives?

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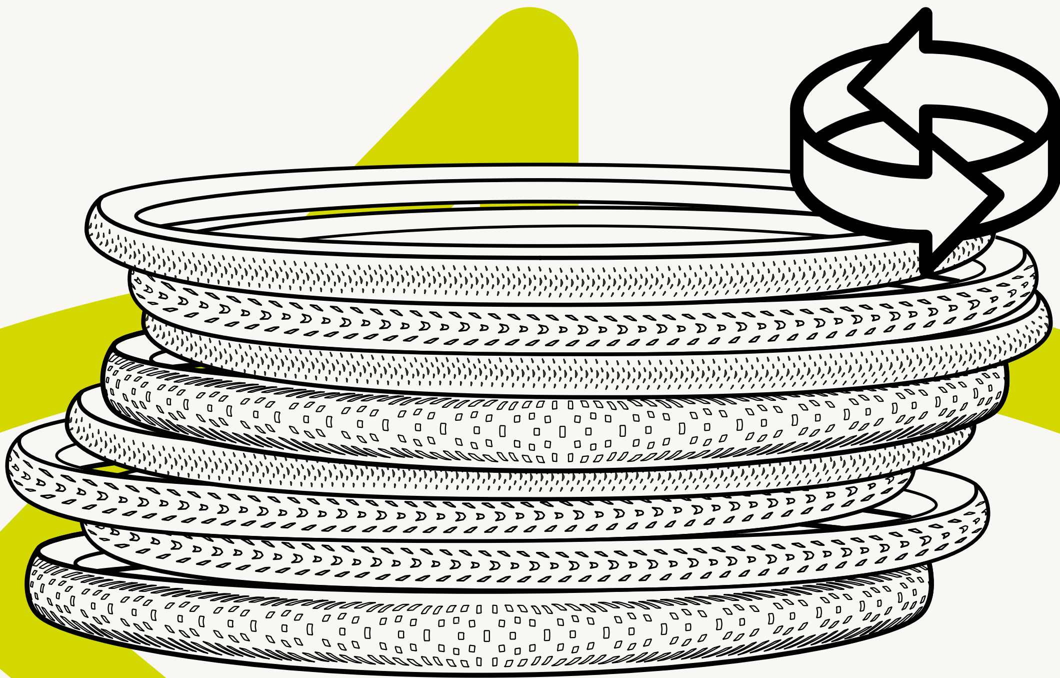

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LEVERAGING DIGITAL INNOVATION TO ADDRESS CLIMATE CHANGE

By Intan Hamdan-Livramento,
Senior Economic Officer, Innovation Economy Section, Department for Economics and Data Analytics, World Intellectual Property Organization

Intan Hamdan-Livramento is an economist working at the World Intellectual Property Organization (WIPO) in Geneva, Switzerland. She is responsible for conducting and supervising areas of the section's research work relating to the economics of innovation and intellectual property (IP). She is also one of the four authors of the World Intellectual Property Report. Previously, Intan worked at the International Monetary Fund and the World Trade Organization.

Global warming threatens global economic growth. From floods to scorching heatwaves, the change in the earth's weather is affecting people's lives and their livelihoods, with adverse consequences worldwide.

This needs to change.

Unfortunately, innovation in climate change mitigation technologies (CCMT) is far less than what we need. Many factors can account for this – from the lack of the "right" incentives to encourage private investments and policies that undermine transition away from fossil fuels, to high risk and uncertainty associated with these investments, as well as lack of motivation for individual consumers to change their consumption behaviors towards more sustainable ones.

So what should we do?

In our recent World Intellectual Property Report 2022 on The Direction of Innovation, we address this issue head on. We argue that innovation can be harnessed to address grand challenges such as climate change. But that it requires the involvement of all innovation stakeholders to make it happen. These innovation stakeholders range from governments to the private sectors, public research institutions and universities, and even private citizens.

At the same time, we argue that a new wave of digital innovation is transforming the global economy. These technologies are changing the innovation process and improving productivity across all industries and sectors. They are also generating other new innovations. More importantly, the report highlights that these digital technologies can be leveraged to address the climate change imperative.

What are these new digital technologies?

A new "class" of digital technologies is emerging. These technologies include artificial intelligence (AI), automation, Internet-of-Things (IoT), cloud computing and big data. These innovations are being used in many industries and sectors, and have led to new follow-on innovations.

These digital technologies are thought to be the next engine of economic growth, the digital industrial revolution. Their impact are already felt generally across all areas of economic activities such as in medicine, sports, and health care industries, to name a few.

The importance of these digital innovations and their potential can be seen in patent filing trends, a proxy many economists use to measure innovative activities. Over the past few decades, patent filings in these digital innovations have grown significantly, outpacing the average patenting rates of across all patenting activities. They have grown at an impressive 172% over five years, 2015-2020.

Box 1:

Fast growing digital technologies, 2015-2020

- **AI (+718%)**
- **Big data (+699)**
- **Cloud computing (+109%)**
- **Cloud computing (+122%)**

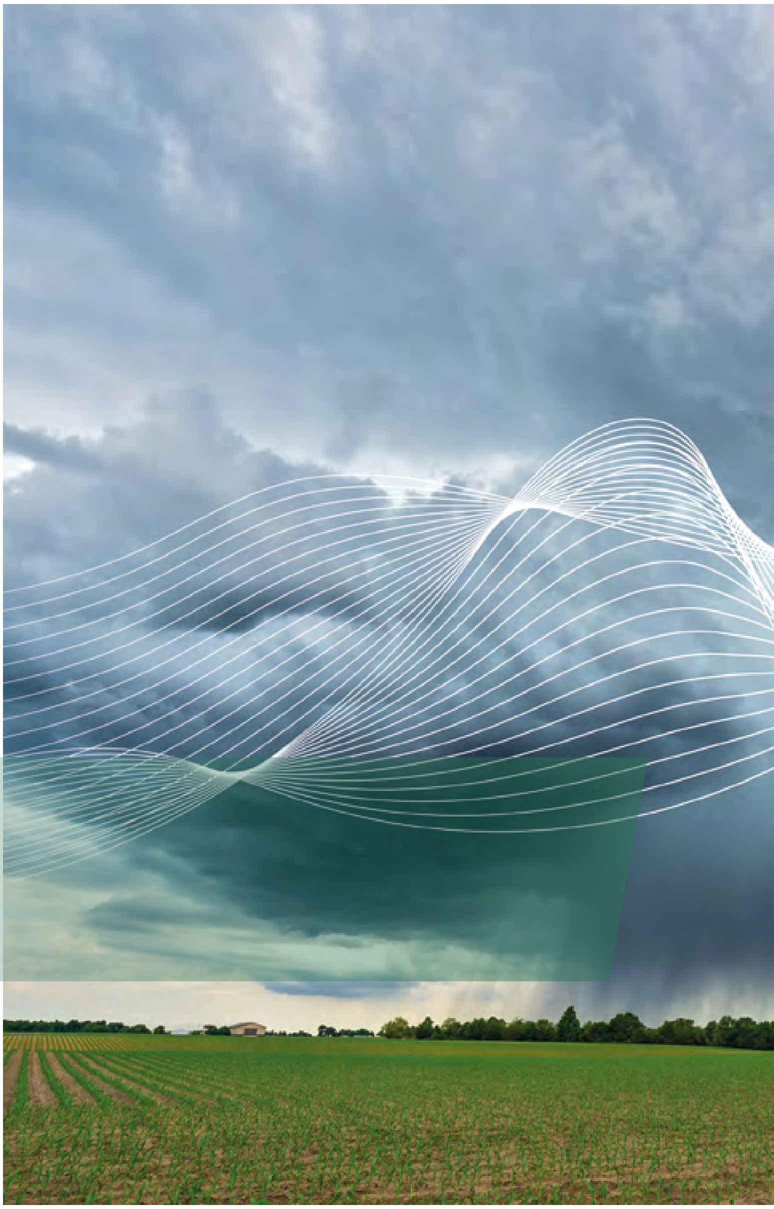
Source: WIPO (2022).

In addition, the lockdowns during the outbreak of the COVID-19 pandemic in 2020 have accelerated the deployment of digital technologies across many industries.

How digital technologies impact the sports industry

The sports industry is no stranger to digital technologies. Several areas across the sporting world have taken to adopting and incorporating these digital elements into the industry. Smart devices, such as the smartwatch, can be used to track the physical performance of athletes; data captured on movements of basketball players on the court help build relevant statistics to analyze their success rates, when they are tired, and so on. Smart stadiums, stadiums that links devices such as sensors and cameras together, improve the fans experiences and safeguard their safety, while optimizing energy use and building management.

These digital technologies are improving the sports industry. They make it easier for athletes and their coaches to maximize their performances using real time data statistics.[1] For fans, the data collected on their favorite competitive sport players or clubs help deepen their relationship with their favorite sports. In addition, these digital innovations help to create a more personalized experience for fans.[2] In addition, using these digital technologies helps generate new sources of revenues for sports organizations.[3]



1 Rigamonti et al (2020).

2 Rathonyi et al (2018).

3 Giorgio et al (2022).

4 Tao et al (2021) estimate that the global conference industry generated about the same amount of annual greenhouse gas emissions of the United States of America per year (0.138 to 5.31 billion tons of CO2 equivalent).

Digital technologies to fight climate change

Many elements of using these digital technologies are sustainable. Smart houses, buildings and stadiums make it easier to monitor and manage the use of energy consumption. Sensors used in agriculture allow the efficient use of watering systems by ensuring that the soil conditions are perfect for the plants. Location data can be used to identify congestions on roads, which could help public transportation authorities to effectively plan their bus or train schedules to alleviate the traffic. The same data could be used to warn drivers to use different routes to avoid the time wasted in traffic.

Since the COVID-19 lockdown, many meetings and conferences can now be conducted virtually. This has resulted in significant time-saving from commuting to meeting boardrooms or conference events, and reduces carbon footprints. One study in Nature Communications estimate that holding conferences online reduces energy use by 90% and carbon footprint by 94%![4]

All of these examples of employing digital technologies allow for the efficient use of limited resources, and help combat climate change. More importantly, they can be employed by private citizens – like us.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LEGAL CONSIDERATIONS OF NFTS: HOW TO EARN MILLIONS AND PROTECT YOUR DIGITAL REVENUE

By Julia Kolikova,
Corsearch, Brand protection consultant.

Julia Kolikova is the Brand Protection Consultant at Corsearch and has over five years of experience helping companies protect their intellectual property online and offline. She has a background in IP law, open-source intelligence (OSINT) analysis, and cyber security investigations, which gives her a valuable perspective on the tools and techniques used by bad actors, helping to ensure Corsearch's services continually evolve with the threat.

NFTs are a new avenue for businesses to increase online revenues and brand presence. Nike, Dolce & Gabbana, Tiffany & Co. are just some examples of brands effectively leveraging NFTs. But how do you protect your NFT revenue? What type of violations can you face? Who owns the exclusive rights to NFTs? Is it legal to create NFTs with third-party content? And finally, what can you do if your rights are violated? This article has answers to all these questions.

If you are looking for a way to increase your company's e-commerce revenue, then creating ("minting") NFTs might be one of the ways to do so. Nike, Dolce & Gabbana, and Tiffany & Co. are great examples of brands that have learned how to make substantial profits with NFTs.

Brands' success with NFTs

Last year, Nike acquired RTFKT, 'a leading brand that leverages cutting edge innovation to deliver next generation collectibles that merge culture and gaming'. Following this acquisition, Nike has now established its own corner of the metaverse. In total, Nike earned $185.31 million from digital goods. Interestingly, the company stipulated a varying amount of royalties on secondary sales. 5% of royalties from the CloneX collection brought Nike $38.95 million, and 10% of the fresh MNLTH collection brought $24.22 million.

In 2021, Dolce & Gabbana's Collezione Genesi 'luxury NFT collection' became a sensation and brought the brand $5.7 million. Since then, Dolce & Gabbana have expanded its NFTs and earned $25.65 million of which $2.52 million is royalties from secondary sales.

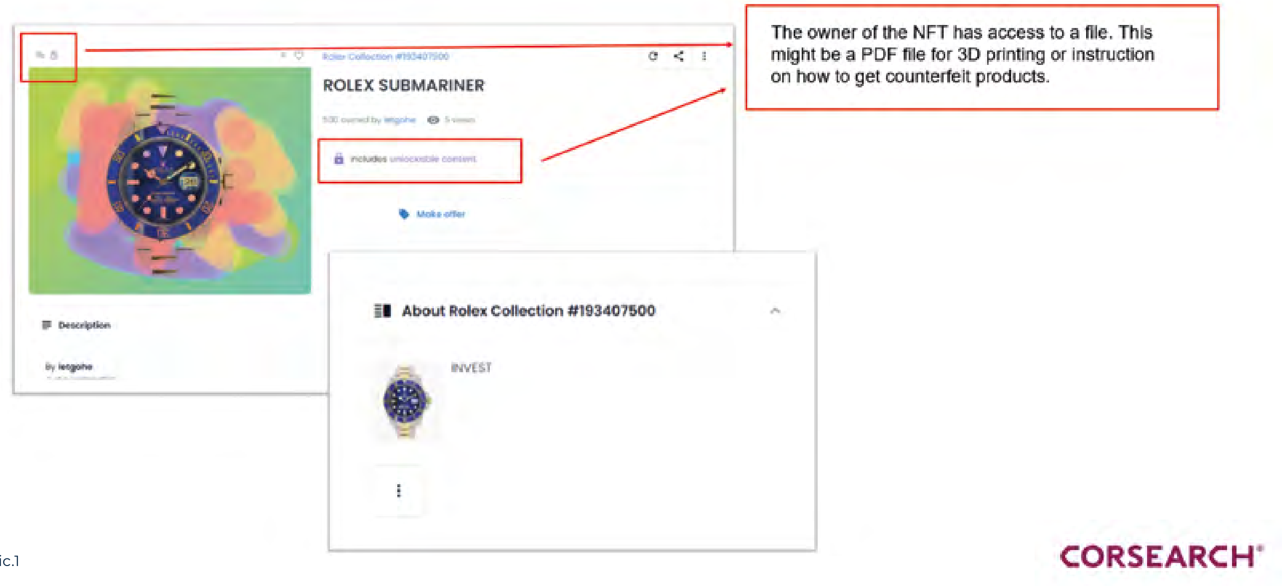
Tiffany & Co has just launched its NFT collection and has immediately left its mark. Although they do not receive royalties on secondary sales, they have raised in $12.62 million with the original sale of 250 NFTs alone.

Why do people buy NFTs?

There two main types of investors: those who buy NFTs to speculate and make a profit as if they are stocks, and those who buy NFTs to use them; obtaining rights to use digital art, gaining membership to private clubs, and so on.

Speculative NFTs are getting less popular, while NFTs that bring some real value to an owner are getting more and more popular. A good example of the connection between NFTs and a real product is Johnnie Walker's NFT collection. Their token gives you the access to the rarest single malt whiskey, an opportunity to chat with blending master Dr. Emma Walker, and of course a collectible NFT for connoisseurs.

POTENTIAL COUNTERFEIT PRODUCT



pic.1

NFTs and IP infringement

Johnnie Walker is a positive example. But there are a lot of cases when NFTs provide access to counterfeit products. How it works: the NFT includes unlockable content which will be available for the owner. Once you purchase it, you get the file which often contains instructions on how to receive the counterfeit product (pic.1). Another example is NFTs that come attached with a file to 3D print a counterfeit product (pic.2).

What other types of intellectual property violations might you face with NFTs? If a brand mints its own NFTs then it is likely that others will look to issue further identical NFTs in order to confuse consumers. In this case we can talk about counterfeit NFT. A brand may not produce its own NFTs, in which case an infringer could create a work that infringes copyright or a trademark and then mint an NFT, offering it for sale. It is copyright/trademark infringement. Another type of violation is impersonation. We have already seen an example of this issue. In early 2021, Banksy-style NFTs sold for $900,000. Given Banksy's anonymity, buyers were not sure if this was the real Banksy or someone impersonating him. It turned out to be the latter.

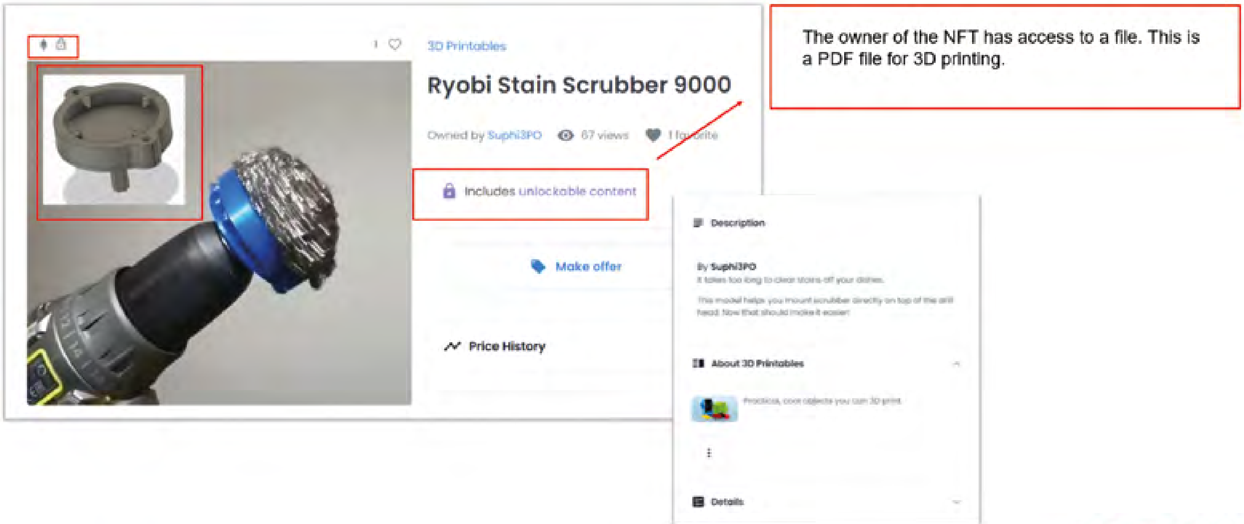
And last but not least, is brand abused domains and cybersquatting on blockchain platforms. These issues potentially might inflict more damage to a brand then other types of violation since Web3 domains (blockchain-based DNS addresses) can be used as a cryptocurrency wallet. If a brand wants to create its own blockchain domain but a third-party already registers that name, the brand will likely need to pay a high cost (pic.3). In such cases it might be more efficient to enforce it.

Who owns the exclusive rights to NFTs?

NFTs are used for tokenization of pictures and GIFs. In the smart contract code, a link to an image is simply indicated as metadata. At the same time, the picture itself can be stored on centralized (AWS) or decentralized servers (IPFS) (pic.4).

As an example, I'll explore the auction where an artist named Beeple sold their NFT painting for a record $69 million. The Beeple painting sold at auction is just such a token; only in the metadata there is a link to the original painting by the author. The history of the owners of the painting can be viewed on the makersplace website, with the help of which the same NFT for $69 million was created. It's also possible to check the owner in the smart contract: you should enter the NFT id "40913" in the field number 16 "ownerOf".

3D PRINTING



pic.2

Beeple is the author and copyright holder of the painting, not because they made the NFT, but because they are the creator of the painting – the one who put it into an objective form by editing on their computer or on any other device that the author uses in their creative process. It means that any third party that makes an NFT with a Beeple picture will not become the owner of exclusive rights to the picture itself. Beeple will remain its copyright holder.

What rights belong to the buyer who paid $69 million for this token? This is a crucial question. For example, a new owner might want to print 100,000 Beeple t-shirts or other merchandise as a memento of the first digital token auction. The buyer of the token has exactly the rights that are specified in the contract with the auction house Christies. The transfer of a token is not a valid way to issue a license unless it is expressly stated in the agreement between the parties. According to the agreement that governed the terms of the sale of the Beeple painting, the buyer did not acquire any exclusive rights or licenses to the image itself.

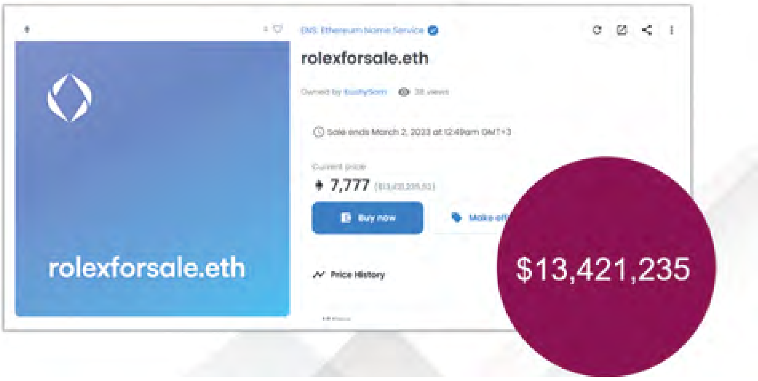
The NFT itself was created on the third-party platform MakersPlace. MakersPlace Terms of Service says that the platform itself receives a limited license to use downloadable materials and allows the fact that one user can sell their content to another. There is no direct indication of the transfer of any exclusive or licensing rights to the buyer.

When it comes to other NFT marketplaces we have a similar picture. It follows from the OpenSea Terms of Service that you grant OpenSea a non-exclusive, worldwide license free of charge with the right to enter into sublicensing agreements. Such license is granted for the following designated purposes: use, copy, reproduce, process, adapt, modify, publish, transmit, display, and distribute by any means. Separately, it is emphasized that the granting of such a license does not limit your rights as the owner of an asset, and it is also noted that OpenSea does not have the right to sell your assets.

Rarible's Terms of Service are largely devoted to the issues of token economy, smart contracts, and the governance system in DAO. At the same time, the rules say that users are not entitled to create NFTs that violate the rights of third parties. The issue of the transfer of exclusive rights to the intellectual property objects themselves has not yet been settled.

We can summarize it like this: if there is no legal agreement between the creator and the buyer of the NFT, the exclusive rights do not pass to the buyer with their purchase of the token.

Another important question is if it's legal to create NFTs with third-party content? The law protects the interests of the authors of the creative, granting them a monopoly on the use of the created objects of intellectual property. When creating an NFT, the subject can take the public link pic.3



of an image uploaded to the server by someone else and add it to the metadata of the token or, either independently or via the platform, upload the image to the server and use the resulting link in the metadata. Both cases are violations in terms of the platform rules that were described above. If the right holder finds such an NFT on one of the platforms, they can enforce such violations by sending a notice to the platform. The takedown will remove the listing offering the NFT from the marketplace, but the NFT (metadata) will remain in the blockchain.

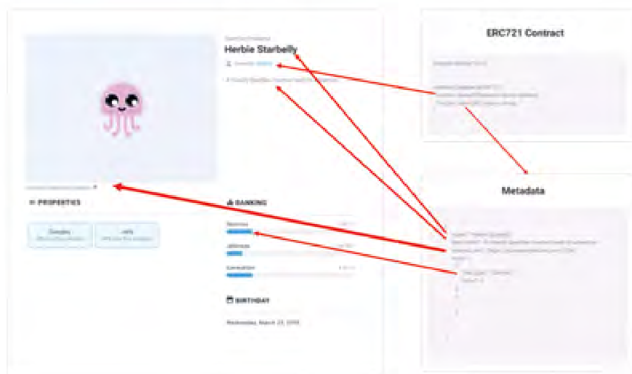
The minting of an NFT is not a way to register any digital rights. The creator of the token does not have any rights in relation to the copyright object, only by virtue of the creation of the token. Third parties, when buying tokens on marketplaces, also do not acquire any rights to the content itself, unless the parties have expressly agreed otherwise in the accompanying documentation. Minting an NFT only records that a certain anonymous account has packed a set of metadata in one of the NFT formats (ERC721, ERC98, ERC1155) and has access to them.

Further use of the token outside the platforms may also be considered a violation of the exclusive rights of the authors. If a collector of NFTs decides to make their own gallery site that will read the public address of Ethereum and show pictures that they have in their wallet in NFT format, but for which they do not have rights, then this will be considered as a violation of the exclusive rights of the authors. In this case, the copyright holder can file a lawsuit against the site administrator or even block the domain.

How can you protect your intellectual property in the digital world?

If a brand wants to mint its own NFT, it's necessary to register its trademarks according to NICE Class 9 of 'Digital goods'. This provides the best legal protection. Brands are also registering in Class 35 and 41, but to enforce on NFT-marketplaces it's not necessary to have such a registration. In absence of a Class 9 trademark, enforcement is still possible with other classes, as many platforms have been compliant. It is also possible to use copyright as an enforcement tool.

What can we recommend to a brand that wants to protect its digital rights? First of all, monitor for domains that appear to be NFT trading/minting platforms which are used to scam users and to discover URLs within the domain where infringing NFTs are listed. Secondly, scrape legitimate platforms to find fake NFTs or infringing works that have been minted. It's also critical to build relationships with the legitimate platforms to ensure effective and efficient takedown procedures exist. The next step is tracking legitimate NFT content to determine if there is widescale distribution that would erode value. And finally, you should monitor for domains that are purporting to be official NFT stores for the brand.



pic.4

Did you know?

JOIN THE WFSGI ONLINE COALITION AGAINST COUNTERFEITING & ONLINE BRAND ABUSES

The striking growth of eCommerce and digital media consumption with people spending more and more time online, have undoubtedly offered new global market opportunities for businesses, but also lead to the increasingly common threats of counterfeiting, gray trade, brand abuses, and online piracy. More than ever before, the World Federation of the Sporting Goods Industry (WFSGI) is proud to partner with Corsearch, to take the sporting goods companies to the next level of performance when it comes to clean the online market from counterfeiting and brand abuses, and put suspects completely out of business.

Interested in getting more information and/or to join your peers in this fight?

REGULATORY TRENDS IN A POST PANDEMIC MARKET

By Stacey Bowers,
MILS, Manager, Global Market Access, Compliance & Risks

Stacey consults on global regulations and standards applicable to apparel, footwear and more. Stacey's team addresses strategic business needs for brands entering new geographic markets and developing compliance best practices.

While COVID led to pauses in proposals, enactments and enforcement of global legislation, a number of geographies continued to enact laws that significantly impacted the sporting goods industry throughout the pandemic, including laws on extended producer responsibility (EPR) for sporting goods and restrictions and prohibitions on per- and polyfluoroalkyl substances (PFAS) in apparel.

Extended Producer Responsibility (EPR) for Sports & Leisure Articles in France

France has led the way on extended producer responsibility (EPR) globally, with its 2020 Anti-Waste Law for a Circular Economy (commonly called AGEC).[1] Thus far, the country has established EPR requirements for products such as textile articles and footwear, electrical and electronic equipment, packaging and batteries.

In December 2021, France enacted an Order[2] extending these requirements to sports and leisure articles (abbreviated as ASL), including articles for:

- Cycling and mobility, such as bikes, scooters, skateboards, rollerblades and associated protection and accessories, like helmets, knee pads, elbow pads, pumps, etc.;

- Water sports and recreation, such as swimming fins, snorkels, pool masks and goggles and wetsuits; fishing rods, lines and hooks; and surfboards, bodyboards, paddles, kayaks and water skis;
- Mountain sports, such as skis, ski poles, boots, ice skates and sleds;
- Outdoor recreation, such as camping equipment, bows and arrows, trampolines, petanque balls and climbing axes;
- Horse riding, such as saddles, riding crops and bits;
- Racket sports, such as rackets, balls and ping pong tables;
- Ball sports, such as basketballs, footballs, handballs and rugby balls;
- Personal protective equipment (PPE), such as helmets, ropes and carabiners;
- Sports fitness and bodybuilding, such as fitness mats, dumbbells, non-electric weight machines, etc.; and
- Hunting and shooting, such as cartridges, targets, bandoliers, noise-canceling headphones, game bags, hunting boots, etc.

Producers of ASL are responsible for the end-of-life of their waste and must either join an eco-organization or set up their own system. In both cases, the producer has the obligation to:

- Register on ADEME's national register of producers, SYDEREP;[3]
- Annually declare the total quantities and weight of ASL placed on the French market and the rate of incorporation of recycled material by equipment;
- Inform the end users of the ASL;
- Fund the collection and processing of ASL, and support repair and reuse;
- Ensure collection and processing and promote repair and reuse; and
- Transmit the annual collection and processing reports to the public authorities.

As of the 1st January 2023, certain distributors will be required to take back used ASLs from their customers:

- Sales area between 200-400 m2 dedicated to ASL: 1 for 1 take-back obligation
- Surface >400 m2 dedicated to ASL: 1 for 0 take-back obligation with no obligation to purchase
- Distance selling CA sup. to €100,000 dedicated to ASLs: take-back obligation 1 for 1

Ecologic will offer an approved solution for ASLs in 2022. This solution will likely include the use of the Triman, a mark which represents a common set of symbols associated with waste-sorting instructions, as well as "sorting information," intended to specify the methods of deposit for waste resulting from the ASL.

3

Proliferation of PFAS Laws in the US

A number of US states have proposed bills and enacted laws to restrict or prohibit per- and polyfluoroalkyl substances (PFAS) in a wide variety of products. These are intended to mitigate exposure to high levels of certain PFAS, which, per the US Environmental Protection Agency (EPA)[4], may lead to adverse health outcomes.

4

State	Bill/ Law	Applicability	Highlights	Status
Maine	H.P. 1113 - L.D. 1503, An Act to Stop Perfluoroalkyl and Polyfluoroalkyl Substances Pollution5	"Product" means an item manufactured, assembled, packaged or otherwise prepared for sale to consumers, including its components, sold or distributed for personal, residential, commercial or industrial use.	Requires a manufacturer of a product that contains intentionally-added PFAS to submit a written notification to the Department of Environmental Protection (DEP). Also prohibits the sale, offer or distribution of any product that contains intentionally-added PFAS, unless the Department has determined by rule that the use of PFAS in the product is a currently unavoidable use.	Enacted 15 July 2021, without the signature of Governor Janet Mills Reporting requirements take effect 1 January 2023. Prohibition on products containing PFAS takes effect 1 January 2030. unavoidable use.

State	Bill/ Law	Applicability	Highlights	Status
California	AB 1817, Product safety: textile articles: perfluoroalkyl and polyfluoroalkyl substances (PFAS)6	“Textile articles" are textile goods customarily and ordinarily used in households and businesses, and include, but are not limited to, apparel, accessories, handbags, backpacks and towels.	Would prohibit any person from manufacturing, distributing, selling or offering for sale in the state any new, not previously owned, textile articles that contain regulated PFAS, and require a manufacturer to use the least toxic alternative when removing regulated PFAS in textile articles. Would also require a manufacturer of a textile article to provide persons that offer the product for sale or distribution in the state with a certificate of compliance stating that the textile article is in compliance and does not contain any regulated PFAS.	Signed into law by Governor Gavin Newsom on 29 September 2022. Takes effect 1 January 2025.

State	Bill/ Law	Applicability	Highlights	Status
New York	S.6291A/A.7063A, An Act to Amend the Environmental Conservation Law, in Relation to Prohibiting the Use of Perfluoroalkyl and Polyfluoroalkyl Substances in Apparel7	“Apparel" means clothing items intended for regular wear or formal occasions including, but not limited to, undergarments, shirts, pants, skirts, dresses, overalls, bodysuits, vests, dancewear, suits, saris, scarves, tops, leggings, leisurewear, formal wear, onesies, bibs and diapers.	Would prohibit the sale or offer for sale of any apparel containing PFAS as intentionally-added chemicals.	Have passed both the Senate and Assembly and await the signature of Governor Kathy Hochul. If enacted, take effect 31 December 2023.

Compliance & Risks' Subject Matter Experts can help you to track and monitor global laws and standards applicable to your products.

To find out more, contact us today:

Did you know?

JOIN THE WFSGI GLOBAL LABELLING DATABASE, RESULT OF A COLLABORATIVE & PIONEERING EFFORT AMONG SPORTING GOODS COMPANIES

Since 2017, the World Federation of the Sporting Goods Industry (WFSGI) partnered with Compliance & Risks to launch the WFSGI Compliance Labelling Requirements (CLR) Database, to address the jungle of global labelling requirements. This online tool provides worldwide information on labelling requirements for the sporting goods industry, as well as other sectors facing the same challenges. With this intelligence companies avoid regulatory headaches, potential costly re-work, stop ships, product recalls, and ultimately revenue and brand damage.

Interested parties experiencing issues with labelling their products and packaging, such as those from the fashion sector, are invited to join the project to benefit from significant economies of scale.


WITEBLAZE

THE IMPACT OF COMPETITION LAWS ON THE DISTRIBUTION OF SPORTING GOODS


By Dr. Jochen M. Schaefer,
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Legal Counsel WFSGI
and FESI

By Simon Barnes,
Partner,
Shoosmiths LLP


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By Kate E. Gehl,
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Milwaukee, Foley

Dr. Jochen M. Schaefer is a German practising attorney based in the Munich area. For numerous years he represents both the World Federation of the Sporting Goods Industry (WFSGI) and the European Federation of the Sporting Goods Industry (FESI) as Legal Counsel. He is a specialist in national and international distribution topics, intellectual property (IP) and risk management issues and in the drafting and negotiation of comprehensive contracts at an operational level, in particular in the area of European selective distribution schemes. For more details please visit his web site www.sjlegalonline.de or contact him at sj@sjlegal.de.

Simon Barnes heads up the UK competition law practice at Shoosmiths. He has extensive experience advising on compliance, merger control, investigations and litigation. He regularly works with businesses to develop and implement effective compliance training programmes for their staff and advises on the competition law considerations arising from clients' commercial arrangements.

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Elizabeth chairs the firm's Antitrust Practice Group. She regularly counsels clients on matters related to antitrust investigations, compliance, and litigation. She is known for her practical, results-oriented advice relating to product distribution issues including product pricing, price discrimination, collaborations with competitors, commercial agreements, advertising and marketing, supply chain relationships, and e-commerce.

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Kate supports clients in connection with antitrust litigation and compliance issues. Kate provides antitrust guidance related to intellectual property licensing and other issues, participation in trade associations and industry organizations, product distribution and supply chain logistics, joint ventures and commercial agreements, collaborations with competitors, and general antitrust compliance.

Since the WFSGI is a global industry federation, this article compares in a nutshell the European legal environment with the current competition landscape in two other key markets, the UK and the US. Such comparison is not meant to be exhaustive and does not replace the need for seeking individual legal advice.

Introduction:
In 2022 the European Union completed a substantial reform of its competition laws relating to the vertical distribution of goods and services, when a revised version of the Vertical Block Exemption Regulation together with its Guidelines became effective on June 1, 2022 ("VBER 2022") and will remain in force until May 31, 2034.

A. Key Topics of VBER 2022 in the EU

by Dr. Jochen M. Schaefer; Legal Counsel WFSGI and Attorney-at-Law (Germany):

1. Governing Principle:
Very much simplified: Commercial operators in the vertical supply chain enjoy the benefit of the safe harbor principle of VBER 2022 in terms of being compliant with EU competition law rules, provided their respective individual market shares do not exceed 30% and the agreement in question does not involve any hardcore restrictions of competition such as resale price maintenance practices.

2. Preferential Treatment of Brick & Mortar Retailers:
The revised regulation reflects a substantial paradigm change of the EU Commission: traditional stationary sales channels (including hybrid retailers) now enjoy a higher standard of protection than pure online players, which includes inter alia that a brand/manufacturer is now generally entitled to grant more favorable conditions to brick & mortar retailers than to its online retail customers (so-called dual pricing policy) and that quality criteria defined for online and offline sales in a selective distribution system no longer need to be equivalent; Platforms and other online operators are no longer allowed to prevent their customers from offering and selling products at more favorable prices in other sales channels (so-called wide parity clauses).

3. Marketplace Operators with Dual Distribution Policies:
Marketplace operators, who sell products online in their own name and at the same time act through their dealer customers, fall outside of the scope and applicability of VBER 2022 and do not benefit from the safe harbor principle.

4. Better Protection against Gray Market Activities of Wholesalers/Retailers:
Brands/manufacturers are permitted to restrict/prohibit active marketing/sales activities of their customers, which are negatively affecting the exclusivity rights of other customers in other territories.

5. Price Fixing/Resale Price Maintenance Activities:
These practices in a vertical supply relationship remain strictly forbidden in almost all cases and constitute a hardcore competition law infringement in the EU, where fines can reach up to 10% of the global annual turnover of the infringer.

6. Communication Restrictions in Dual Distribution Schemes:
As an entirely new element, VBER 2022 now foresees that in those cases where a supplier/brand sells directly B2C and to the retail trade (so-called dual distribution), communications between the brand/supplier and its retailers needs to be restricted since they are intra-brand competitors at the same horizontal level. The scope of this restraint remains, however, quite unclear.

B. The Legal Situation in the U.K.

by Simon Barnes, Partner at Shoosmiths

Like the EU, the UK has also recently adopted new competition law rules for the distribution of goods and services.

Upon Brexit, they chose to retain into UK law the existing EU block exemptions. This continuity and consistency were welcomed by businesses who operated across both the EU and UK. However, that position has recently changed. Since June 1, 2022, a new UK-specific block exemption (called the Vertical Agreements Block Exemption Order, "VABEO") has applied in the UK, with accompanying guidance published by the UK's Competition and Markets Authority ("CMA").

In practice, the UK rules remain very closely aligned to those of the EU. There are differences in the language used in the respective block exemptions, but in substance they are very similar. The key themes highlighted above in relation to the EU apply equally in the UK, including: retaining a 30% market share test; greater flexibility for suppliers to support bricks & mortar outlets, and to impose conditions on how their products are sold online (albeit with warnings that restricting resellers' ability to make effective use of the internet is unlawful); continuing to permit dual distribution, albeit with somewhat cautious new guidance on the extent to which information may be shared between suppliers and resellers; and reinforcing suppliers' ability to operate exclusive and selective distribution.

There are however some differences in the UK, albeit most are relatively technical and not of general interest to businesses. For example, unlike the EU, the UK block exemption covers suppliers who, within a given territory, operate exclusive distribution at the wholesale level and selective distribution at the retail level. Also, in the UK, certain types of parity provisions applied by online platforms are designated "hardcore" restrictions of competition.

Of longer-term interest will be whether (and, if so, how) UK competition law might diverge from EU law over time. Whilst the CMA and the European Commission currently remain broadly aligned on competition policy, it is entirely possible that their enforcement priorities might differ in time as they respond to new challenges in the markets that they are each overseeing.

At a political level, there are also recent indications that the UK government wants to greatly reduce the extent to which pre-Brexit EU competition law remains relevant in the UK, which may open the door to new arguments that might be used to challenge – or, indeed, justify – business conduct in the UK on competition law grounds. Time will tell.

C. The Legal Situation in the U.S.

by Elizabeth A. N. Haas, Partner and Kate E. Gehl, Senior Counsel, at Foley & Lardner LLP/Milwaukee:

In the U.S., most vertical distribution agreements are evaluated under a "rule of reason" standard, which requires a court to balance a restraint's procompetitive benefits against its anticompetitive effects. As a result, vertical non-price restrictions such as customer or territorial restrictions are permissible provided the manufacturer has a legitimate procompetitive justification for the restraint and does not have a sizable market share.

Treatment of Online Platforms. In contrast to the VBER 2022, U.S. antitrust laws do not contain any rules or exemptions that treat online sales platforms differently than other sales channels.

Resale Price Maintenance ("RPM"). Certain RPM agreements are evaluated more leniently under the U.S. federal antitrust laws than under the VBER 2022. Competitive concerns arise for maximum RPM arrangements in certain circumstances, for instance, if the resale price ceiling does not permit sufficient margin for a reseller to compete effectively in the market. Though minimum RPM is no longer per se or automatically unlawful at the federal level, it can be difficult to establish procompetitive justifications for price floors and many states still forbid minimum RPM. Generally speaking, the ability to influence or control the resale price or price advertising, including minimum advertised pricing (or MAP) policies, unilateral pricing policies, suggested resale prices and RPM, can present some of the most challenging antitrust issues under U.S. laws.

Dual Distribution. A manufacturer may engage in direct-to-consumer sales in actual or potential competition with its authorized resellers. As with the VBER 2022, because the manufacturer becomes a competitor of its distributors and retailers, extra care is needed to avoid any improper agreements between the manufacturer's direct reselling arm and the competing distributors or retailers. Unlike the VBER 2022, online platforms engaged in dual distribution are not treated any differently...

Price Discrimination. The Robinson-Patman Act ("RPA") and state law equivalents limit a manufacturer's ability to offer different pricing or promotional assistance to distributors or retailers that compete for the resale of the same products. Several defenses to RPA claims exist, which include whether: (1) a different price is offered to meet a competitive offer; (2) the price differential is equivalent to the actual savings in the costs of manufacture, sale or delivery that the manufacturer realizes when dealing with the favored reseller; (3) the price differential constitutes a reasonable reimbursement for the cost of the functions actually performed by the favored reseller for the manufacturer; (4) the better price is practically available to all competing resellers; and (5) changing conditions, like imminent deterioration of goods , affect the marketability of the goods at issue.

Exclusive Distribution. Exclusive dealing arrangements are generally permissible provided significant harm to competition or market foreclosure issues are not present. Courts tend to assess the percentage of commerce foreclosed to competing sellers within a relevant antitrust market, often finding that market foreclosure of 30 percent or less is generally acceptable. Exclusive distributorships (where a distributor is the sole outlet for a manufacturer's products in a certain area or for a specific set of customers) can be permissible. In analyzing exclusive relationships, courts will consider whether the firm implementing the arrangement has monopoly power, the strength of Interbrand competition and the duration and geographic scope of the restriction.


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PANDEMIC SERVES AS BOOSTER TO COUNTERFEIT TRADE – INSIGHTS FROM AN IPR INVESTIGATOR

By Lee Bumgarner,
IPR Private Investigator

Lee Bumgarner is an experienced investigator. He specialized in IPR services including a broad range of corporate consulting services. In the last 40 years, he gained experience throughout Asia in intelligence collection and analyses, due diligence, special investigations, litigation support, asset searches, security audits and Crisis and Risk Management. The last 12 years, Lee focused mainly on the Philippines and Malaysia.

While the underlying drivers of counterfeit goods trade have not changed in the past years, the pandemic has shaken up the market. The flourishing e-commerce, the extensive use of social media platforms, and the Covid-19 pandemic have all led to the counterfeiting issue becoming a critical concern. Lee Bumgarner gives us some insight into his work in the Philippines as an IPR Investigator.

The Covid-19 pandemic held the entire world in its firm grip for the last three years. Slowly, quarantines are lifted, employees return to the office after working at home for an extended period, and even travel has an upturn. Nevertheless, we can still see the immense impact of the virus on industries. Especially manufacturing production struggled with the supply chain disruption, the drop in demand, and the overall recession, and for some countries it will take years to go back to their pre-pandemic production and income levels. These major logistic disruptions created a ripple effect and industries had to make adaptations to meet the increasing demand. A shift to e-commerce took place to respond to the new global demand but unfortunately, this gave organized crime groups the chance to infiltrate supply chains.

Big companies such as Amazon and E-bay rely on third-party vendors to increase their trade, and such websites have facilitated counterfeit trade due to minimal authentication of the vendors. Counterfeit goods can be sold via live-streaming, social media platforms, and more, misleading buyers with discounts or low-price products. During the pandemic, enforcement actions were sporadic, and investigators now have to combine the online trade with their on-the-ground investigations. We have asked Lee Bumgarner to give us some insight into his work in the Philippines against counterfeiters.

Mario Pianta, The impact of the pandemic on industries. A conceptual map and key processes

Global Initiative against Transnational organized crime

What are the consequences of the covid-19 pandemic on the counterfeit market in the Philippines?

One of the effects of the pandemic has been the accelerated shift to how quickly the online shopping business has grown, especially for counterfeit (CF) products. In 2021, the Philippines eCommerce market sales reached $17 billion, and this is estimated to reach $24 billion by 2025, with a 17% growth. With Filipinos working and studying from home, we are observing the need for more local courier companies due to the eCommerce shift. New pick-up and delivery companies surface almost monthly and CF suspects have taken well advantage of the situation.

Sources in recent warehouse raids have advised us that with CF footwear the workers are packaging more than 2000 packages a day for courier pick up.

The internal employment for these CF goods' warehouses is averaging twenty to forty staff members dedicated to photographing the items, uploading the goods, assembly line type packing stations, and finally an established local courier network with typically more than two local couriers. Our direct observation of these warehousing target facilities have shown the conversion of a large portion of the warehouse area into space to process online business operations. In some cases, this has led to the requirement to increase warehouse sizes or utilize additional smaller nearby warehouses to allow for online servicing floor space to cope with the sales demand surge.

On which e-commerce platforms are counterfeit products mostly being sold?

The top Philippine eCommerce platforms are Shopee, Lazada, Zalora, and BeautyMNL. Most counterfeit sporting goods items are normally sold via Shopee and Lazada and from our own research and intelligence collection we clearly see the increase trends within the CF market for these main online platforms. Additionally, there is an increase in sales on social media platforms such as Facebook, Instagram or TikTok. During live-streams counterfeiters promote their products and mislead customers into buying their CF goods.

How did you and your team adapt to this shift?

Well, we did multiple things. First of all, we established a local daily monitoring and research system for the e-commerce platforms. The goal is to develop them into critical sources of intelligence and information identifying potential physical raid targets, specifically in the Philippines and Malaysia. Online daily research has now become the norm conducted for various client brands as one of the primary starting points for collecting pertinent intelligence.

The second stage of the case buildup will utilize more traditional investigative and intelligence collection techniques to fully develop targets for actual enforcement actions, but monitoring through the online platforms remains critical right up to the time of the raid. The shift is more important since some of the storage warehouses are not as focused on the local retailers as there is less foot traffic going in and out of the typical CF reselling areas.

Before the pandemic, raids were used to disrupt counterfeit trades. How has this method changed?
We still use raids to disrupt the CF trade, but like most we had to make a few adaptations. During the pandemic, law enforcement encountered a few challenges. Courts were closed, search warrants were therefore not given and costs in general had to be lessened. Before the pandemic, we would usually target traditional retail shopping and now there has been a focus shift on online sales. Nevertheless, long-term targeting of storage and manufacturing sites is still beneficial for brand owners.

Warehouse sites will likely serve multiple retail outlets and all major online platforms. Thus during raids, the target premises and suspects will feel the impact, and it will spread across the retail outlets and online sales. Our experience has shown that seizing the CF items from the suspects is a large detriment to them financially, which hurts them the most and lessens the brand risks for the brand owners.

Raiding a retail outlet might result in seizing minimum quantities, but the disruption factor is a crucial component of curbing the sales of CF products. Our experience over the past five years has shown that the main counterfeit suspects view the most raided brands as high risk to have in inventory. To avoid the risk of losing funds and business, the suspect will most likely look at less risky brands. And after multiple raids, certain brands are now less visible and available in the marketplace. It is a continual chase with some eventual positive results.

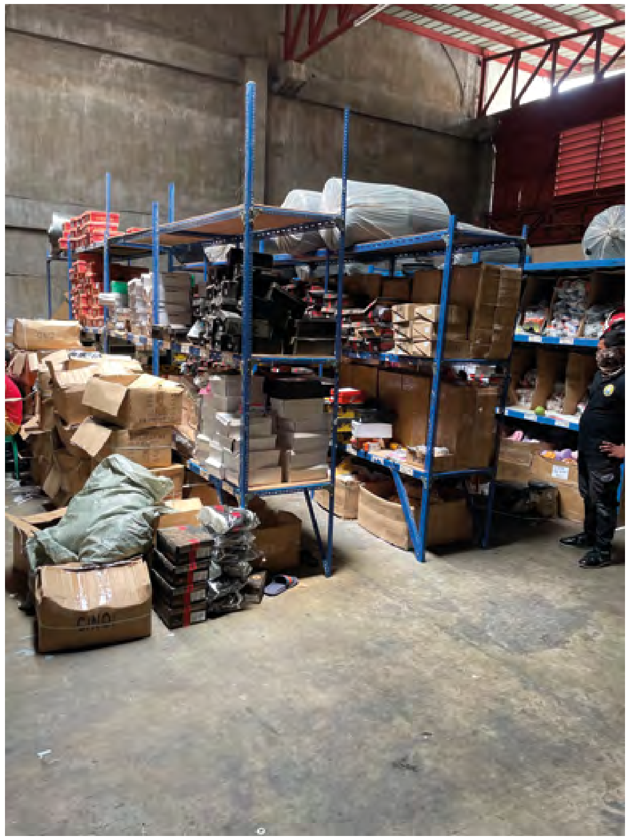
Why are the Philippines or Malaysia attractive to counterfeiters?
The Philippines and other third world countries are attractive to counterfeiters to establish niche segments of their businesses. For example, the goal is to become involved by providing the CF brand logos to apply to apparel items. Unfortunately, CF logos or other raw materials are sold through online platforms servicing a wide range of the CF community. Locally, the CF apparel items are assembled and then sold. When conducting a raid of a production site, the amount of finished products may be relatively small volumes as many operate on a just-in-time inventory/supply chain process, but I believe that we should not only focus on finished CF items. Seizures of CF raw materials which are arriving from China and utilized for the final assembly can be critical to the interruption of the manufacturing process and the end user sales. As already mentioned before, the financial impact may also be significant when raiding a distribution warehouse and/or a manufacturing site that has impact downstream to all who obtained CF stocks from that target.

Where do most counterfeit products come from?
Experience has shown for years that China is the primary source of the finished CF footwear. Therefore, we are always researching the best means and methods for gathering the intelligence useful to slow down the CF goods into the marketplace. We have to remain flexible and ready to adapt and change with the new processes that the CF suspects are employing. This is the key to being moderately successful with curbing the amount of CF goods being sold to end users.

What can brands and specialist dealers do to defend themselves against counterfeits and adapt to these new counterfeiters' operational modes?
Online sales, just as with the retail outlets, should be utilized as intelligence gathering opportunities to trace and locate the main warehousing networks, which will also provide the CF online sales packing centers and the associated retailers as viable take-down targets along with the warehousing. Combining actions from test buys, online research, surveillance, and source networks are now the more cost-effective means and methods for identifying viable warehousing raid targets.

If brand owners are interested in further developing their current online research, then provide this information before the site takedown (not all online sites would be viable to conduct additional research) to the various local investigators. This will allow for a more locally initial research review to determine if it could lead to a viable target for a physical raid on a storage, distribution and packing warehouse.

What is your advice to take down counterfeits cheaply?
Brand owners should continue their online take downs as much possible as this is a less expensive method to continue the constant chase of the suspects. Disruption is key.



And brand owners can conduct less expensive enforcement operations by raiding a larger number of retailers at once (no warehousing) in the key CF retailing areas. The project should include several brands owners as participants in one overall large project. This will lessen the costs per raid target per brand owner. As long as brand owners can accept that the number of CF items seized will be small, but the disruption factor and sending the right message that specific brands are serious and high risk to sell.
These types of enforcement operations can be conducted with the cost spread out across several brand owners and achieve good marketplace interruption goals with minimum costs for each brand.

Did you know?

JOIN THE WFSGI COALITION TO FIGHT AGAINST COUNTERFEITING ON THE GROUND
As counterfeiters rarely target one brand, anti-counterfeiting feels like an area in which affected industries could join forces. Since 2019, the WFSGI has built an on-the-ground coalition _ open to WFSGI members and/or any other associated industries such as the fashion sector, facing similar challenges _ with the intention to organize joint raids in order:

- to share costs of enforcements
- to put suspects completely out of business by seizing bigger volume
- and send a strong signal to the authorities that the industries were acting together.

So far, joint raids have been successfully conducted in Southeast Asia, with the support of trusted investigators recommended by asics and Under Armour, targeting multiple shopping malls, several warehouses, and involving many fashion and sport brands.

Interested in getting more information and/or in joining us?

LEGAL COMMITTEE

2022 Activity Report

Mandate

The Legal Committee facilitates and enhances the interaction, information exchange and co-operation between the WFSGI members on the latest international legal developments within the Sporting Goods Industry. This neutral platform offers the advantage of enabling to development of concrete and tangible solutions to address emerging legal challenges.

Summary

Even during this in many respects very challenging year of 2022, the activities of the LC could be broadened and sharpened in their scope and the LC membership increased. After the long Covid 19-related break, a full day physical LC meeting was held in Munich in the context of the ISPO trade show on November 30, 2022.

- In general, it is noteworthy to mention that the word ‘digital’ was THE buzz word, which determined or at least significantly influenced most of the activities the LC had been dealing with in 2022.

- On June 15, 2022, a virtual web meeting took place with inhouse legal professionals and experts representing the traditional sporting goods industry. A short update was provided on the status of the ongoing LC projects, further the pros and cons for new possible projects were intensively discussed and vibrant current topics such as the increasing number of copyright claims of third parties of an alleged infringement of music and image rights by sports brands, or the new challenges created by the substantially changed global geopolitical environment were discussed.

Update on key activities

WFSGI Digitization of Product Information WG

The working group received an equally a high degree of positive attention at WFSGI member level. Several virtual web conferences were held in 2022. During the most recent one (October 18, 2022) discussions continued as to whether and to which extent the WFSGI should be represented at the International Organization for Standardization (ISO)’s level. One of the co-chairs of the WG, Decathlon, shared valuable up-to-date information about its lobbying activities and new initiatives at EU regulatory level, which might be possibly door openers for allowing digital labelling in certain specific fields such as textile and PPE. As a very concrete work product, the WG is in the final stage of finalizing a position paper to be followed by an executive summary. Such statements are intended to be used for lobbying activities with the support of national and regional sporting goods associations. Based upon requests from various WFSGI members it is explored whether either under the umbrella of the existing working group or more likely by forming an additional one, the areas of meta-verse,

Web 3.0 and non-fungible tokens (NFTs) shall be dealt with. A WFSGI pool pf experts is being created on these topics and guest speakers from other industry sectors such as the automotive and luxury goods segment, were invited to the last LC meeting to share expertise and experience.

Intellectual Property Rights (IPR) – Online Brand Abuse

In 2022 the WFSGI underwent an intensive global screening process to find a suitable successor for its previous cooperation partner company Convey to efficiently and with the support of state-of-the-art digital and KI technology collectively fight illicit online offerings. An in-depth evaluation/selection process took place with the involvement and recommendations of various in-house IP experts of leading WFSGI member companies. Ultimately it has been decided to choose company Corsearch (www.corsearch.com) which is operating worldwide, with more than 1,250 multilingual employees, and not at least also due to the fact that we received very positive feedback from a number of WFSGI companies, who are already Corsearch clients. WFSGI members will enjoy favorable discounted subscription conditions and will be informed in more detail in the last quarter of 2022/in early 2023.

WFSGI Compliant Labelling Requirements (CLR) Database

WFSGI and its partner Compliance & Risks deployed joint significant marketing efforts to promote the database, including interviews but also webinar on May 17, 2022 with the title "What's New? Regulatory Trends in the Fashion and Sporting Goods Industry 2022", which received lots of attention and a high number of participants. New subscribers to the CLR Database include shiny names in the fashion and sports sector such as Gymshark, Marks & Spencer and Tendam, this in addition to the already existing users (Nike, Asics, Under Armour, New Balance, Columbia, Pentland, Puma, Shimano, Sport 2000, VF corporation, Tory Burch, Burberry, PVH, Fenix, Buff).

WFSGI Legal Alert Mechanism – Horizon Scanning

This digital information tool of the WFSGI, which provides quarterly targeted information at global level on legal topics and developments has received increasing attention and popularity among the WFSGI membership and beyond.

Chair

Jochen Schäfer
WFSGI Legal Counsel

Vice-Chair

Dora Zachou
Brand Protection Team Lead, Nike Inc.

Vice-Chair

Dr. Markus A. Kürten
Vice-President, Compliance & Privacy, adidas AG

Vice-Chair

Alistair Kilgour
General Counsel, Pentland Brands Limited

Ex Officio

Charlotte Giudicelli
WFSGI Head of Legal

CHECK ALL COMMITTEE MEMBERS

TRANSFORMING THE FUTURE OF SOCIAL AUDITING

By Andrea Buckley Gilders,
Director of Membership,
APSCA

A lifelong technology enthusiast, Andrea's work builds upon her understanding of governance, social and environmental audit, and her supply chain experience in the electronics industry. Andrea holds a Bachelor of Arts (Psychology) Queens University, completed the Canadian Council of Innovators Innovation Governance Program (iGP) and is working to complete graduate certificate in Technical Writing.

APSCA (Association of Professional Social Compliance Auditors) is the professional standards body for independent Social Compliance Auditors (https://www.theapsca.org/). We represent the vast majority of Social Compliance Audit Firms and more than 4600 Auditors who audit globally. Collectively, APSCA Member Auditors conducted over 160,000 Social Compliance Audits during 2021, engaging with hundreds of thousands of workers directly, and ultimately benefit millions of supply chain workers globally through the identification of labour violations, including warning signs of forced labour.

APSCA enjoys the support of the largest brands and retailers around the world and the partnership of the social compliance collaborative programs (schemes) who require professional credential for performance under their programs. The organization is a US-based Non-Profit with staff located in four countries.

WFSGI AND APSCA TOGETHER THROUGH TIME

1992

WFSGI creates an environmental committee including Social Compliance.

1995

WFSGI creates a CSR committee.

2010

WFSGI begins assessment on how to handle Corporate Responsibility topics within their organisation.

2019
FEBRUARY

APSCA President and CEO Rona Starr presents at WFSGI Annual Conference. The early approach centring on Building Credibility and Promoting Trust.

2019
SEPTEMBER

Following information exchange with various industry stakeholders, WFSGI recognize APSCA's work as their growing presence moves towards the shared goal of ensuring the credibility of Social Compliance Audits: WFSGI sign the APSCA support statement.

2021

WFSGI extends their support of APSCA into a tangible requirement within the WFSGI Pledge for the FIFA Quality Program. Step 2 of the pledge requires all social audit reports be issued by an APSCA Member Firm.

WHAT IS SOCIAL COMPLIANCE?

- Social Compliance is generally thought of as part of ESG Compliance (Environmental Social and Risk Governance) structure which most public businesses and governments have become increasingly concerned with over the last 20 years

- Social Compliance Audits specifically relate to the human rights, health and wellbeing and occupational health and safety of workers as well as the overall ethical conduct of the business and its management systems

APSCA's Beginnings

APSCA's journey began in 2015, as a practitioner led initiative with the initial focus to develop and deliver a three-part exam process to professionally certify Social Compliance Auditors. These exams would allow Member Auditors to gain professional certification and have their auditing skills recognized by the professional standards body.

APSCA's CSCA program is a rigorous, multi-dimensional three-part examination process, available in over 90 languages. As of 30 September 2022, more than 1,670 APSCA Member Auditors who represent 35% of our total Auditor Membership, have successfully achieved the status of Certified Social Compliance Auditor (CSCA).

APSCA provides Member Firms and their clients with a professional and skilled cadre of Social Compliance Auditors. This is increasingly being recognized by businesses as many enterprises are mandating that their audits be completed by APSCA Certified Auditors only.

APSCA Exams

The APSCA CSCA exam program pilot occurred late 2017 through early 2018 with the final launch in Q4 2018. When APSCA launched we partnered with a third-party proctoring service to expand opportunities for our global Member base. Part I and Part II Exams, are computer-based exams which are delivered online 24/7 in 10 languages, with an additional 85+ languages available through browser level translation. The Part III exam is a unique format, conducted through video-based conferencing, with highly specialized, trained interviewers who take auditors through three mock scenarios, assessing their foundational skills and functional knowledge identified within the APSCA Competency Framework. Initially, Part III was available in four languages and in 2022 APSCA partnered with a multinational translation service provider to expand exam support with live translators enabling exams to all Member Auditors. With expanded access to translators and translation, the completion of all three parts of the exam has increased, enabling Auditors from around the globe to achieve certification status.

"APSCA encourages the WFSGI reader community to recognize, support, and promote effective voluntary initiatives that promote credible Social Compliance Auditing as a part of forced labour due diligence"

AN EVOLVING REALITY

• Audit now sits in a changing social measurement reality. The **EU Human Rights and Environmental Due Diligence Directive (eHRDD)**, the German Supply chain law, modern slavery legislation in various countries and recent moves to require human rights due diligence in Japan, all herald a new dynamic for the role of social auditing.

• Human rights "respect", expected of companies, goes beyond compliance, but compliance still lies at the heart of this new human rights due diligence approach. Legal compliance also lies at the heart of "respect". How can efforts go beyond legal compliance when we know such compliance is not to be assumed?

• As a profession, social auditing is well placed to pivot to include effective eHRDD in its' toolbox. **EHRDD** will require new skills of enquiry and assessment but given the APSCA approach to ensuring a well-trained and responsive auditor community, the profession is well positioned to enhance its skills offering to business.

• At the same time, Audit Firms need to re-engage with clients. The contribution of Social Compliance Audits to enhanced due diligence, cannot be seen as a "tick the box" exercise. Companies need to better understand audit and/or **EHRDD** reports to identify the risks they are trying to understand, and then work on the remediation of harms found. Companies will need to be able to give better transparency to their efforts which may occasion a need to review how audits are undertaken and how the information is collated and reported.

Human rights due diligence is a process to identify, prevent, mitigate, and account for how businesses address their impacts on human rights. APSCA encourages organizations to recognize that Social Compliance Audits are one of the most highly utilized, globally available processes that form part of the "identification" element of human rights due diligence and serve as a baseline for further remediation

The Future of Social Compliance

With the exam process well in hand, APSCA has expanded our field of vision (and mission) by engaging additional stakeholders in public policy and academia, setting our sights on the future, and sustaining the profession we have worked to codify, monitor, and refine.

As stated, APSCA is seeing more focus on broader eHRDD efforts by regions and companies where social audits continue to play an important role alongside other tools and processes being developed to understand and manage wider human rights risks. Companies are looking separately, as well as collectively, to APSCA Member Firms as key partners in these developments.

As the environment around audit develops, with the support of our Stakeholder Advisory Board, APSCA has provided feedback on several pieces of developing legislation and guidance documents, including the EU Forced Labour Initiative, the EU Human Rights and Environmental Due Diligence Draft Directive, and the US National Action Plan on Responsible Business Conduct (NAP RBC). Participating in these types of feedback is critical for allowing APSCA to provide real "from the ground" information to policy makers to help ensure the feasibility of final provisions.

We also continue to work daily to expand engagement and data exchange more broadly with both policymakers and collaborative programs in the Social Compliance Audit profession.

The People of the Profession

APSCA is becoming increasingly focused upon representing the challenges and concerns of individuals who choose this profession.

With organizations like WFSGI continuing to create awareness of vulnerable workers and working conditions for consumers, investors, and Programs supporting the betterment of workers expanding and are further entrenched in the new ways of doing business, demand for Social Compliance Audits is increasing rapidly. So too is the need for qualified, credible professionals

To keep pace with the growing demands of audit and due diligence programs, APSCA seeks to engage new professionals to join the industry. This profession was built upon the skills of passionate individuals with enthusiasm for doing the right thing, moving the practice, and utilizing the skills and knowledge required to protect workers and the environment.

APSCA has been actively engaged in expanding our ability to connect professionals with opportunities, thus supporting our Member Firms to connect with Member Auditors. APSCA has additional plans to support our Member Firms and Member Auditors which will be announced in 2023.

APSCA is enhancing collaboration with Member Auditors in various regions to have open discussions regarding their learnings from the field as well as the concerns and challenges they may face. As an association for professional auditors, it is part of our work to prepare and support them in their efforts to do the work we all believe in.

Through the input from our Members and society, updates are made to the APSCA certification processes to ensure it adapts to include emerging social compliance issues as well as continuing to dig deeper into existing audit challenges through a robust continuing education requirement to ensure proven professional competence is maintained.

A Final Word

APSCA shares the WFSGI's commitment to eliminate forced labour. Our profession has been on the forefront of conducting onsite assessments around the world to detect the warning signs of forced labour in a wide array of sectors. Our Members' assessments provide clients with timely information to enable swift action with their suppliers to eliminate forced labour and prevent it from recurring. APSCA stands ready to engage with the WFSGI Audience as and when needed in advancing the shared goal of a world without forced labour.

For more information,
please see APSCA's website
or contact us.

GLOBAL DEVELOPMENT OF HUMAN RIGHTS AND DUE DILIGENCE LAWS

By Mark Temme,
Global Business Development Manager at Intertek Business Assurance

Working in the field since 2006 with practical working experience on various continents. Although Mark has a technical background as a chemical processing engineer he has developed his passion for sustainability and social responsibility over the last 16 years, and has been working and gathering practical working experience on various continents. And he is addicted to rugby.

The changes and developments regarding requirements on human rights as well as on due diligence pose some challenges to global businesses. Having an overview of existing as well as upcoming requirements and laws is compulsory to be able to take right decisions.

Expectations from investors, business partners, non-governmental organizations and governments have never been higher for businesses to make meaningful progress towards 'knowing and showing' their respect for human rights. Corporate human rights due diligence is slowly becoming expected conduct for all types of businesses, regardless of the size or sectors.
Government actors from around the world have attempted to create incentives, and on the flip side put legal action as a threat, for human rights due diligence through mandatory regulations and disclosure laws. These laws require businesses to report their policies and practices concerning the identification and mitigation of human rights impacts within their supply chains.
Proper management of the supply chain remains a key element that must be in place to mitigate risk and avoid related reputational, operational, business disruption and litigation costs.

The responsibility of business enterprises to respect human rights refers to internationally recognized human rights as expressed in the Universal Declaration of Human Rights, the eight fundamental Conventions of the International Labour Organization (ILO), the United Nations Guiding Principles on Business and Human Rights (UNGP) and the Organisation for Economic Co-operation and Development Responsible Business Guidelines (OECD).

What does this term "Due Diligence" mean in this context? According to OECD Guidelines, Due Diligence is the process enterprises should carry out to identify, prevent, mitigate, and account for how they address actual and potential adverse impacts in their own operations, supply chain and other business relationships. Effective Due Diligence should be supported by efforts to embed Responsible Business Conduct into policies and management systems and aims to enable enterprises to remediate adverse impacts that they cause or contribute to. In essence, it means that companies must take clear actions to ensure that people and local communities that are part of its supply chain must not be harmed. It is designed as a process approach for companies to establish an appropriate risk management system that is flexible enough to meet each unique operating context that includes a risk analysis, complaints procedure, and active steps to take preventive measures to effectively stop any known human rights violations.

Due Diligence is defined by the United Nations as the responsibility of business enterprises to (a) Avoid causing or contributing to adverse human rights impacts through their own activities and address such impacts when they occur and (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products, or services by their business relationships, even if they have not contributed to those impacts. The foundational mantra is "Do no harm".

What is "Human Rights" exactly? This boils down to the essential conditions that all of us need if we are to live lives of dignity and equality. They include our rights to be treated decently at work, to be free to express our opinions and beliefs, to have privacy and be free from harassment, abuse, or discrimination; and our rights to access clean drinking water, sanitation, healthcare, and nutrition.
Great practical examples of implementing Due Diligence and Responsible Business conduct across company value chain are provided by the World Business Council for Sustainable Development Implementation Guidance, including:

- When a company tackles gender discrimination or sexual harassment across its workplaces, it isn't just "doing no harm"; it is trying to change often long-standing behaviors both in work and beyond, so that women can pursue their work and home lives with dignity and security.
- When a company plays its part in rooting out forced labor from its supply chain, it isn't just "doing no harm"; it is working to lift people out of misery and bondage and into a life of new freedom and hope.
- When a company engages with communities around its operations to hear their fears and concerns and works with them to find solutions, it isn't just "doing no harm"; it is empowering them to be partners in decisions that affect their lives and to claim that same treatment from their government and other organizations.
- When a company minimizes carbon and greenhouse gas emissions in its vast supply chain, it creates the largest possible positive net impact on reversing climate change for a healthier planet

Supply chains are inherently complex. The expectation is that Human Rights Due Diligence starts with Tier 1 of the supply chain, but obligations will progressively be cascaded down value chains through business-to-business pressure. For many companies, an assessment of potential human rights impacts reveals that the most severe risks to stakeholders occur one or more levels down within the supply chain.

What's new in human rights legislation?
In recent years, the United Kingdom, Canada, and Australia have released sweeping legislation to combat modern slavery and other offenses relating to trafficking and slavery. In the United States, California released the Transparency in Supply Chains Act. Below you will find several new pieces of legislation aiming to improve the conditions of workers around the world.

German Due Diligence Law
The German Bundestag passed the Supply Chain Act on 11 June 2021. It makes German companies much more responsible than before for the implementation of Corporate Social Responsibility (CSR) throughout their supply chain. From 2023, companies will be obliged to trace procured intermediate goods or finished products at all stages of their supply chain back to any production processes that are harmful to the environment or that violate working conditions.

Norwegian Transparency Act
A new Norwegian law, the Transparency Act, became effective on July 2022 requiring companies to make sure human rights and decent working conditions are respected in their operations and supply chains.
Norway's Transparency Act requires companies to carry out due diligence activities to ensure they are operating responsibly, respecting both human rights and decent working conditions.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EU directive proposal

The European Commission has adopted a proposal in February 2022 for a Directive on corporate sustainability due diligence. The proposal aims to foster sustainable and responsible corporate behaviour throughout global value chains. Companies play a key role in building a sustainable economy and society. They will be required to identify and, where necessary, prevent, end or mitigate adverse impacts of their activities on human rights, such as child labour and exploitation of workers, and on the environment, for example pollution and biodiversity loss. For businesses these new rules will bring legal certainty and a level playing field. For consumers and investors, they will provide more transparency. The new EU rules will advance the green transition and protect human rights in Europe and beyond.

The new due diligence rules will apply to the following companies and sectors:

EU companies:

Group 1: all EU limited liability companies of substantial size and economic power (with 500+ employees and EUR 150 million+ in net turnover worldwide).

Group 2: Other limited liability companies operating in defined high impact sectors, which do not meet both Group 1 thresholds, but have more than 250 employees and a net turnover of EUR 40 million worldwide and more. For these companies, rules will start to apply 2 years later than for group 1.

Non-EU companies active in the EU with turnover threshold aligned with Group 1 and 2, generated in the EU. Small and medium enterprises (SMEs) are not directly in the scope of this proposal.

This proposal applies to the company's own operations, their subsidiaries and their value chains (direct and indirect established business relationships). In order to comply with the corporate due diligence duty, companies need to:

- integrate due diligence into policies;
- identify actual or potential adverse human rights and environmental impacts;
- prevent or mitigate potential impacts;
- bring to an end or minimise actual impacts;
- establish and maintain a complaints procedure;
- monitor the effectiveness of the due diligence policy and measures;
- and publicly communicate on due diligence.


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TRANSFER PRICING AND CUSTOMS VALUE: THE CHALLENGE FOR CROSS-BORDER INTERCOMPANY TRANSACTIONS

By Massimo Fabio,
Partner at KPMG Italy,
EMEA Trade & Customs
Regional Leader

Massimo Fabio, Partner in KPMG's Tax & Legal in Italy, is a tax lawyer dealing with international tax and trade subjects. His experience is particularly oriented in transnational trade areas as per GATT/WTO agreements and international and EU customs law, rules and principles, as well as excise duties and VAT. Faculty at Bocconi (Milano), LUISS (Roma), UNIL (Lausanne). Member of " International Customs Law Academy".

In order to properly reconcile transfer pricing adjustments with customs value, advance customs rulings should be used in order to share the TP policy with the Authorities concerned, as provided by the Trade Facilitation Agreement, and be allowed to neutralize any sanction, clear the delta value and be entitled to get back any potential refund of unduly paid duties.

Transfer pricing adjustments adopted “a posteriori” represent a potential issue when they refer to cross border sales and have direct impact with the customs value declared at the import, being that nowadays more than 60% of the transactions are intercompany sales.

Not even medium-sized enterprises restrict their business to the domestic market. Many enterprises root their interests in foreign countries through location savings.

A very common practice in the textile sector, regardless of the business size, offshoring occurs in almost all industrial and commercial sectors.

Indeed, relationships between manufacturers and distributors are sensitive to the issues of transfer pricing and, consequently, customs valuation. In fact, such transactions:

- imply the crossing of a border
- are between related companies.

In the past, the relationship between seller and buyer, as well as the crossing of a border, were almost always managed separately, not considering the customs relevance and regarded as a matter of direct taxation. Instead, the approach to customs impact has been relegated mainly to a matter of logistics.

Traditionally, income tax and customs rarely coincide in respect to valuation. Very often there is, on the one hand, proper and accurate transfer pricing policies and, on the other hand, over-estimated or under evaluated customs valuations, exposing businesses to sanctions, even of criminal nature.

In the same transaction, it might happen that whereas transfer pricing policies are regarded as adequate and acceptable, the customs valuation attracts criticism and claims. Revenue and Customs (where separate) might have different expectations on import transactions:

- For the Revenue authorities, costs borne by the buyer should be reasonably low, in order to prevent profits from being transferred to countries with preferential tax regimes and not to affect adversely the determination of the taxable base for the purposes of direct taxation.
- For the Customs authorities, the customs value should be reasonably high in order to determine a higher dutiable basis to which the relevant duty rate applies.

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In addition, from a mere customs point of view, in 2018 WCO[1] observed that "TP adjustments take place for different reasons, with different results. It is therefore necessary for Customs to gain an understanding of the different types of transfer pricing adjustment and then consider which may have an impact on the Customs value and how this should be dealt with. It can be argued that given that the effect of a transfer pricing adjustment is to achieve an arm's length price, in some cases - depending on the type of transfer pricing adjustment– the adjusted price will be closer to the 'un-influenced' price actually paid or payable for Customs valuation purposes. In other cases, such as tax-only transfer pricing adjustments, it may demonstrate that the price was in fact influenced by the relationship. Put another way, Customs may not be able to make a final decision on the question of price influence until any adjustments have been made (or quantified)."

In the global market, despite the recent WCO auspices, "Customs' treatment of transfer pricing adjustments remains inconsistent around the world"[2]. Some Customs administrations consider both upwards and downwards price adjustments and make corresponding duty adjustments where appropriate, others do not, or only consider upwards adjustments (with additional duty payment) but do not consider downwards adjustments (duty refund). This approach does not offer a symmetry in evaluating the circumstances surrounding the sale. If the transaction is eligible to pay an additional duty deriving by an upward TP adjustment, a refund must be given in case of downward ones.

Well, in any WCO member country, just because of the last WCO position, businesses now have the concrete opportunity to ask for symmetrical treatment, being allowed to report the upward and downward adjustments, taking the benefit of the solutions proposed by the ICC[3] to ease the customs review of the assessment.

In its "Policy statement", despite the inconsistency underlined by WCO, ICC (since 2012) suggested the recognition by the customs administration of post-transaction transfer pricing adjustments (upward or downward). This recognition should be applicable for adjustments made either as a result of a voluntary compensating adjustment – as agreed upon by the two related parties – or as a result of a tax audit.

Despite some reluctancy within some Customs Authorities worldwide, post-transactions adjustments are permitted by both the OECD Guidelines and WTO customs valuation rules. Post-transaction adjustments can be made for a variety of reasons, including voluntary adjustments, but also for year-end adjustments when trying to get within a pre-agreed range or price at the end of a year or period.

Thus, in order to be allowed to properly reconcile TP adjustments with customs value and to avoid being challenged for a misrepresentation of such value in case of audit executed prior to the official reconciliation, an advance agreement with Customs is always advisable. The agreement - to be finalized filing a specific customs ruling – is the way to disclose the TP policy earlier than the import/export declarations and let the authorities be aware of the potential changes which may be generated by the post-transaction adjustments, with the perspective of neutralizing any sanction and be entitled to ask any potential duty refund.

Well, WTO members concluded negotiations at the 2013 Bali Ministerial Conference on the landmark Trade Facilitation Agreement (TFA), which entered into force on 22 February 2017 following its ratification by two-thirds of the WTO membership. Among the relevant new provisions given by the TFA, this analysis must mentioned the tool of the advanced rulings, as per TFA art. 3. This means that, also (especially) in the field of transfer pricing and customs valuation, in each WTO member country, companies must be allowed to file advanced rulings with the perspective of defining - jointly with the competent authority – the best way to reconcile TP adjustments with customs value.

It must be noted that art. 3, par 9(b)(i), states that an advanced ruling may be used to identify the appropriate method or criteria, and the application thereof, to be used for determining the customs value under a particular set of facts. In EU Customs Law, Art. 22 of the UCC (EU Reg. 952/2013) provides the right to submit request for Decisions relating to the application of the customs law.

1 WCO Guide to Customs Valuation and Transfer Pricing (2018).

2 WCO Guide to Customs Valuation and Transfer Pricing (2018), pag. 69.

3 See the "Policy Statement" on Transfer pricing and customs value, prepared by the ICC Commission on Taxation and the ICC Committee on Customs and Trade Regulations (Doc. No. 180/103-6-521, February 2012).


GRAB YOUR SHOES
FIND YOUR RHYTHM
MAKE IT YOUR
GAME
INTERSPORT
INTERSPORT
THE HEART OF SPORT

THE EU'S PROPOSED BAN ON PRODUCTS MADE WITH FORCED LABOUR


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Edwin Vermulst represents governments, trade associations, exporters and importers in WTO, trade remedy and customs cases and is, among others, the trade counsel of the SGI. He is invariably selected as a top trade practitioner by the leading legal directories such as Chambers, Legal 500 and Who's Who Legal (trade lawyer of the year for eight years).

Zudeima Cadavid Cardenas was a 2022 summer associate at VVGB. She is currently doing an internship at the European Commission.

On 14 September 2022 the European Commission presented its long-awaited proposal on banning products made with forced labour. This proposal, if adopted, may have far-reaching consequences for globalized companies as it will necessitate their checking their entire supply chain all the way back to ensure that no forced labour is used.

The European Commission presented its long-awaited proposal on banning products made with forced labour in Strasbourg on the 14th of September 2022. This instrument introduces a prohibition for economic operators to place or make available in the Union market or export from the Union, products made with forced labour. As such, the instrument, which takes the form of a Regulation, provides clarification on the competences of and obligations imposed on the 27 EU Member States and in addition offers a general overview and certainty for companies of what awaits them.

Practical aspects of the new instrument

First of all, as mentioned previously, the proposal concerns a Regulation. It follows that it will apply directly in all 27 EU Member States, without the necessity of being transposed into national legislation. However, the Regulation leaves some room for Member States to decide on its enforcement. The outcome may thus be that despite the aim of a 'uniform enforcement', Member States will take a different approach in their assessments. This will thus play an important role for companies when considering their entry point into the Union.

Second, the initiative distinguishes itself from other trade instruments through its scope, namely the placing or making available on the EU market of products made with forced labour and their export. The emphasis is clearly on the 'products'. This implies that any product involving forced labour in its production, manufacture, harvest or extraction will be prohibited. It will moreover apply regardless of the sector, the origin, whether they are domestic or imported, or placed or made available on the Union market or exported. This coverage supposedly enables the Union to comply with the rules of the WTO on non-discrimination. It is thus clear that this initiative, once approved, will cover both domestic (EU) and imported products.

Designated Member States' authorities would be empowered to detain, seize, or order the withdrawal of a product on the basis of a finding that it was made, whether in whole or in part, with forced labour. However, the Regulation does not go so far, as to require the withdrawal of products which have already reached the end-users in the Union market.

Procedure

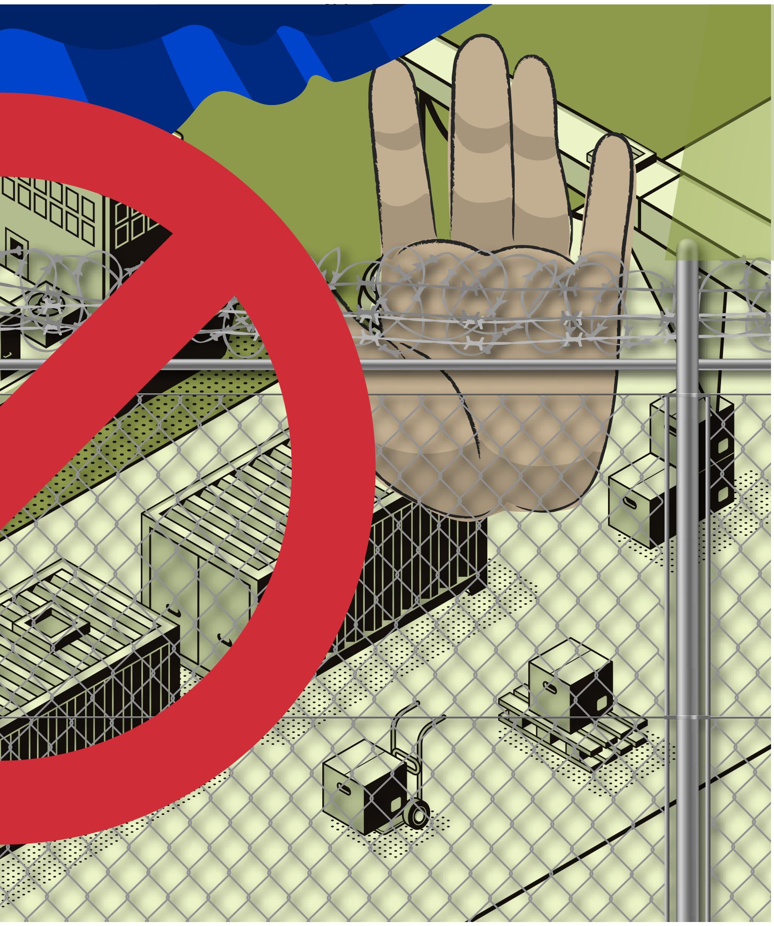
The first procedural step is the preliminary phase of investigation in which the competent authorities of Member States must identify violations of the prohibition. They will have to follow a risk-based approach to assess the likelihood of a violation. To do so, they can rely on all available information. The Regulation offers a non-exhaustive list for the competent authorities to gather the necessary information. Think for instance of the submissions made by natural or legal persons or any association without legal personality, risk indicators issued by the Commission, a database indicating specific geographic areas or products linked to forced labour, and so on.

The real focus, however, will be on the economic operators located in the supply chain closest to where the risk of forced labour is likely to occur. Considering that research indicates a higher risk of forced labour in the early stages of supply chains, it is likely that these stages will face further scrutiny. At the same time, some parameters will play an important role in the assessment, such as the size and economic resources of the economic operators, the quantity of products concerned, as well as the scale of suspected forced labour. It must moreover be noted that economic operators could influence the decision of the competent authorities, by taking actions to identify, prevent, mitigate or bring to an end any risks of forced labour in their operations and supply chains with respect to the products under assessment.

Economic operators will, moreover, be able to rely on information and guidelines to be issued by the Commission to avoid infringing the prohibition. These reportedly will include guidance on due diligence in relation to forced labour, information on risk indicators of forced labour, a list of publicly available information, relevant sources and practical information for the implementation of the Regulation. This will facilitate economic operators' identification of risk factors relating to forced labour in their supply chains. Complying with due diligence obligations may then reduce the risk of having forced labour in the supply chains and thus, the risk of infringement. Accordingly, one could minimise the exposure to an investigation by identifying and addressing the forced labour issues in the supply chain in accordance with relevant Union legislation and international standards, such as the OECD due diligence framework.

The second procedural step, namely the investigation itself, will be initiated if the authorities' assessment leads to the establishment of a 'substantiated concern' of a violation of the prohibition in the sense that they can demonstrate that forced labour has been used in any stage of the supply chain, i.e., production, manufacturing, harvest, extraction, working or processing of the product. The economic operators will have the opportunity to submit information in support of their defence.

Where it can be ascertained that the prohibition on products using forced labour has been violated, a decision will be adopted including the following three elements: a prohibition to place or make the products concerned available on the Union market and to export them; an order to withdraw the products that have been placed or made available in the Union market; and an order to dispose of the products. Based on their size and economic resources, affected parties will be granted a reasonable time to comply with the decision. If parties do not comply with such decision, penalties may be imposed in accordance with the national laws of the Member State(s) concerned.



Second, a system of transparency and close cooperation on decisions and information among competent authorities, customs authorities and the Commission is envisaged. In this regard, the Commission intends to set up a 'Union Network Against Forced Labour Products' in charge of streamlining the practices and facilitating the implementation of the enforcement across the Member States.

Third, customs authorities will be able to suspend the release for free circulation or the export of a product until notification by the competent authorities either acknowledging or denying the inclusion of the product. If no answer is provided in due time by the competent authorities, the product will be released for free circulation or export, provided that other applicable requirements and formalities are fulfilled. Where the product is identified as falling within the scope of a violation decision, the customs authorities will not release the product(s) for free circulation nor allow their export. In accordance with Union law, these products will be destroyed, rendered inoperable, or otherwise disposed of. It follows that the re-export in case of non-Union goods will be excluded.

Products entering or leaving the union

A crucial element to consider is the role of the customs authorities. They will be in charge of overseeing the products entering and leaving the Union. In order to do so, they will have several means at their disposal.

First, economic operators will be required to submit the information that would allow the matching of a decision with the concerned products. Think for instance of the product's description, name or brand and other specific requirements, such as a type, reference, model, batch or serial number or unique identifier of the product, as well as details of the manufacturer or producer and the product suppliers.

Final remarks

Despite the final text being subject to negotiation and thus change, it seems safe to say that companies willing to remain active in the EU market will have to step up their supply-chain monitoring. They will, however, have some time to do so, considering that the proposed Regulation first needs to undergo the trilogue process and, second, will apply only 24 months after its entry into force.

Did you know?

JOIN THE WFSGI TRADE COMMITTEE

Are you challenged to enter new markets or are you facing barriers to trade your products? The WFSGI Trade Committee is addressing a wide range of topics such as customs, technical barriers to trade, market access, protectionism, regulations, transfer pricing and customs valuation, supply chain, logistics and government relations/affairs related to trade. Members jointly engage in trade cases through this group and benefit from the expertise and world-beating support of Edwin Vermulst, founding partner of VVGB Advocaten in its role as WFSGI Trade Counsel.

Interested in getting more information and/or to join your peers?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TRADE COMMITTEE

2022 Activity Report

Mandate

The Trade Committee is focusing on international trade issues facing the global sporting goods industry, including eliminating trade barriers, defending against trade cases, examining new product safety and testing requirements, removing restrictions that impact WFSGI member companies' supply chains, supporting international trade agreements that benefit the global sporting goods industry.

2022 opened with a renewed focus by the WFSGI Trade Committee on the challenges created by the Covid 19 pandemic. Members were confronted with supply chain disruption and also sharply increasing ocean freight costs.
Traditional trade barriers such as the anti-dumping expiry reviews of footwear from China in both Brazil and Argentina concluded. Significantly, in Brazil, anti-dumping duties against certain footwear producers were eliminated. The Trade Committee continues to monitor the potential for an investigation against footwear imports from Vietnam and/or Indonesia.
Technical Barriers to Trade continue to increase in importance. The registration and the certificate of inspection for exports to Egypt was on the agenda in 2022 and will remain of importance in the near future. While there is a lack of written regulatory information, the WFSGI reached out to testing and auditing institutes and committee members are trying to gain clarity through their contacts with local law firms.

Another important trade case of this year was related to the United Arab Emirates control scheme of textile products. The WFSGI Trade Committee gathered different open points and issues that the industry face with the scheme. After that a position paper has been shared with the UAE Ministry of Industry and Advanced Technology (MOIAT). The MOIAT invited the WFSGI and members to participate in a webinar where all concerns have been addressed and partly solved. Further exchange is taking place to gain full clarity over the process and try to address remaining industry issues.
Finally, the WFSGI and a few of its member companies have been interviewed by the World Trade Organization in a series of interviews. The WTO will use these interviews for its podcasts series “Trade Goals podcast” which is part of its "Let's Talk Trade" programme which focuses on the global value of chain of football.
The activity of the Trade Committee in 2023 will continue to focus on ensuring free and fair trade for the sporting goods industry. While the pandemic is still impacting the supply chains, the global challenging economic situation and the still rising number of trade barriers will have the Trade Committee’s attention.

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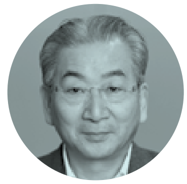

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TO POSITION PAPERS AND THE PROJECTS DATABASE KNOWHOW

GET FREE OR REDUCED ENTRIES
TO THE SPORTING GOODS INDUSTRY EVENTS

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Yaroslava Mahuchikh
Ukrainian high jumper

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