

**OPEN LABOR STANDARDS:  
TOWARDS A SYSTEM OF ROLLING RULE REGULATION OF  
LABOR PRACTICES**

by

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**Discussion Paper presented at the Annual Meetings of the World Bank  
Seminar on Labor Standards  
September 28, 1999**

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## **I. INTRODUCTION<sup>1</sup>**

Changes in the global economy have outpaced traditional labor laws and regulatory institutions. Decentralization of firm decision-making to widely dispersed supplier chains, and with it the rapid and continuing redeployment of capital worldwide, has disrupted what regulatory order there was in the world's labor markets. These changes have given rise to widespread abuses of labor including child labor, punishingly long work days, harsh discipline, hazardous work conditions, sexual predation, and suppression of the freedom to associate: forms of servitude that recall outright slavery. Insofar as these abuses come to light, they provoke moral outrage the world over—not least among those schooled since Adam Smith to see raw power used for economic gain as a threat to market order and freedom generally. The question confronting the world's publics and governmental authorities is not whether, but how to re-regulate labor markets so as to curb these abuses.

Public debate on these issues focuses on two competing responses to regulatory challenges. The first, core labor standards, attempts to reinforce existing national and international institutions of labor market supervision. It attempts to establish a list of incontestable human rights of the workplace—such as freedom of association, the right to organize and bargain collectively, prohibition of forced and child labor, and non-discrimination in employment—based upon standards already promulgated by the International Labour Organization (ILO). In this model, the ILO, local governmental agencies, and perhaps trade unions and non-governmental organizations monitor producer compliance. Sanctions for non-compliance are imposed by local regulators and potentially by international organizations, such as the World Trade Organization (WTO) which have authority to police world markets.

In the second approach multinational firms adopt voluntary codes of conduct regarding these same social performance standards and then institute programs to guarantee that their suppliers comply. Third party monitors, for example certified accounting or consulting firms, then audit subcontractors to detect code infractions. Sanctions come either internally within a supply chain (in the form of canceled orders) or from the public shame of violating rules of

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<sup>1</sup> This essay has been prepared as a discussion draft; we expect that discussion will result in substantial revision. Partly for that reason, we have for the most part omitted citations in the body of the text in favor of a selected bibliographic list appendix. We would like to thank Sean Cooney, Yevgeny N. Kuznetsov and Michael J. Piore for incisive commentary.

decency affirmed by companies themselves as a promise to their customers and the general public.<sup>2</sup>

To proponents of core standards, these voluntary codes are impotent. They are at best a form of public relations for powerful multinationals and at worst a misleading seal of approval affixed by those with little legitimate claim to judge these matters. From this point of view, regulation is intrinsically adversarial. Voluntary codes are therefore oxymoronic and public shame a negligible deterrent to nearly shameless corporate actors.

Advocates of voluntary standards, on the other hand, doubt that any real system of core standards can work as well as its enthusiasts promise. Even in advanced countries, with their entrenched monitoring regimes and institutional traditions such as the rule of law, homework and other informal forms of “sweated” labor are spreading. Given that monitoring tasks will be more difficult in the developing world than in the developed and that background conditions are generally less favorable there, how can traditional systems that are increasingly strained even in their home precincts hope to meet vast new burdens? How would a system that relies on monitoring by formal labor organizations come to grips with the largely informal economies of the third world, where many sectors have few legally registered factories, let alone official worker representatives, and where those labor organizations that do exist often collude with government or business? How would such a system begin to establish a “living wage” where the diversity and complexity of economic and cultural conditions makes it impossible to formulate one precise standard? And how can core standards respond to child labor, where simple prohibitions, if enforced, can push children out of abusive factory work into outright prostitution?

This juxtaposition of views however, is in some ways overdrawn, as it incorrectly suggests that the debate is stalemated. In fact, the most inventive partisans of each camp recognize defects in their own proposals and have sought to remedy them in part by adopting elements of the contrary position. The most reflective labor activists see that core standards designed to protect male industrial workers in mass production enterprises often exclude large segments of workers employed in the informal sector, such as women and youth moving frequently from temporary job to temporary job, who do not enjoy the protection of official regulatory oversight. Some core-standards advocates also recognize that they lack the most basic

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<sup>2</sup> For a fuller background on core standards and codes of conduct see Appendix A.

information about contemporary production processes, such as the location of subcontractors, and that this information might be usefully generated by disclosure requirements associated with voluntary codes. And there is the further hope that alliances between NGOs and labor organizations might augment their joint monitoring capabilities and build the legitimacy necessary to support any regulatory system.

At the same time, many of those favoring corporate codes—most notably corporations themselves—have begun to see that voluntarism is not enough. Companies who seek approval for decent behavior realize that the public will not accept their word alone: professions of accountability and claims of model behavior ring hollow without verification. Consequently, companies such as Nike, Reebok, Levi's, and Mattel have begun to seek independent monitors with public credibility to verify they have complied with their own voluntary codes. To assure that they reap the fruits of these efforts through public recognition and consumer patronage, these corporations have begun to pressure their competitors to join a wider regime that reliably compares and publicizes codes, compliance, and actual performance.

In what follows, we propose a framework of international labor regulation that builds upon these approaches, but responds to their defects. The central idea is to create a setting in which actors with different understandings of what standards to apply, how to monitor compliance with them, and how to set goals for improvement, can themselves test, evaluate, and modify their proposals in practice. In return for this freedom of initiative they must openly compare the results of their methods with those obtained by others. These comparisons create a structured competition at various levels—between standards, monitoring methods, actual practices, and strategies for improvement—that reveals which of these are feasible, and how they might be improved. Enforceable yet corrigible standards are the product—not the starting point—of this process in which monitors constitute themselves as effective actors even as they come to understand more precisely the ends towards which monitoring is directed. We call this third possibility Open Labor Standards (OLS) or, more generally, rolling rule regulation. OLS recognizes (like voluntary codes) that we have limited knowledge of the diverse needs of workers in developing countries and of possible performance levels, but aims nonetheless (like core standards) to provide enforceable standards backed by sanctions.

In an OLS regime, firms or communities of informal producers would select a monitoring regime and its associated standards of worker welfare. For example, a corporation might choose

a code of conduct which guarantees baseline standards and then subject itself to compliance assessment through a certified accounting agency. Alternatively, it might adopt the standards of a more encompassing and publicly accountable organization—a foundation, representing consumers, labor, and NGOs—and then open itself to their verification protocols. Periodic evaluations of the success of each standards-and-monitoring package, conducted in the light of the results obtained by the others, would make it possible to (re)set minimal acceptable standards for monitoring, actual performance, and targets for improving both.

Any proposal as unfamiliar as this may seem an implausible intellectual contrivance. But as we will explain, OLS is in fact inspired by a closely related framework that is already outperforming, and thereby superceding, core-standards style regulation in arenas as diverse as industrial-toxics control, nuclear-power generation, the restoration and governance of natural habitats, and the management of large-scale ecosystems in the United States. As in OLS, the central principle of these approaches is an exchange. The regulator grants discretionary latitude to the producer or other party to determine ways to improve performance and monitoring methods. In return, the regulated entity must reveal these practices and their outcomes. By peer-review, typically coordinated and bolstered by an entity responsive to but independent from the regulated actors, the results of these multiple experiences are collected and compared to generate rolling rules and procedures that become standards for all.<sup>3</sup>

In the US nuclear-power generating industry, for example, plant operators submit reports of potentially dangerous disruptions, response strategies, and preventative operational changes to the Institute for Nuclear Power Plant Operation (INPO). Officials there, in collaboration with a peer inspectorate drawn from the staff of generating facilities themselves, then use these reports to rank plants on the quality of their procedures, strategies for improving them, and consequent safety levels. Best practices defined in this way frequently become *de facto* operating standards. In the case of protecting endangered species, national agencies have given stakeholders such as environmentalists, developers, and government officials powers jointly to specify restoration measures, monitoring methods, and expected biological goals in local Habitat Conservation

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<sup>3</sup> For a discussion of this regime and its environmental applications, see Charles Sabel, Archon Fung, and Bradley Karkkainen, “Environmental Democracy,” forthcoming in the *Boston Review* (1999).

<sup>4</sup> See Joseph Rees, “Development of Communitarian Regulation in the Chemical Industry” (Unpublished manuscript on file with authors).

Plans. The results of various Plans are then compared to extract feasible performance levels and best available methods, and, ideally, to diffuse superior procedures.

The body of this essay elaborates the claim that an OLS regime built on the principles underpinning these successes can overcome the fundamental difficulties in both core standards and voluntary codes. Section II shows how protagonists in both labor-regulation camps have independently discovered and attempted to implement pieces of this new regime. Given these innovations, OLS is therefore one natural (but hardly inevitable) extension of current debates and practice. Section III provides a more detailed account of the economic bases and central mechanisms of the new architecture. It shows, on one hand, how decentralization and globalization obligates capable firms to reorganize continuously and thereby makes competition in social standards and monitoring methods not only workable but competitively attractive for the good performers among them. On the other, it shows how rolling rule regulation requires higher-level verifiers—verifiers who pool and review the results of monitoring conducted by others—to transform good performance into an effective discipline for laggards. These super-ordinate agents, which we call pooling verifiers, must be at least as capable of conducting evaluations as the firms or third-party evaluators whose assessments they review. Finally section III argues that competition among such capable pooling verifiers is necessary to prevent entrenchment of particular practices or targets. It follows from all this that familiar concepts like disclosure, compliance, correction, and remediation take on novel, but not unprecedented, meanings in the new regime. Section IV applies the general principles of OLS to the design of institutions that could realize this new regulatory frame in the formal sector of multinational supply chains on one hand, and in the more shadowy world of informal production on the other. By way of conclusion, Section V looks back to the origins of our argument to address concerns that the collaboration contemplated here among actors with diverse and conflicting goals will confuse, not advance, the interests of the public and labor, and forward to proposals for very first institutional steps in building OLS.

## **II. CURRENT DEBATES CONVERGE: A NEW ARCHITECTURE FOR LABOR PROTECTION**

Current, innovative versions of both core standards and voluntary codes are arguably converging towards systems that expand the coverage of standards and codes, deepen the credibility of monitoring and enforcement, and more effectively prioritize problems and

responses. To do this they involve a wide range of actors, gather and learn from the experiences of local implementation, and create multiple mechanisms that press firms to improve working conditions at all levels in their production chains. The full story of this convergence is for another time. Here we focus on four clusters of initiatives emerging from exploratory exchanges between core standards and voluntary codes that form the building blocks of the regulatory architecture we propose: (1) company self-monitoring and evaluation of subcontractors; (2) the emergence of higher-level institutions that monitor the monitors and pool experiences; (3) efforts to expand the role and capacity of NGOs and workers' organizations as local evaluators; and, (4) continued reflection, analysis, and experimentation that further refines both standards and monitoring. We review these in turn, referring throughout to developments at several prominent multinationals, and in particular, Nike, Inc., the world's largest producer of athletic shoes. Nike is especially interesting because, as the leading firm in its industry, it is a symbol of managerial efficiency. However, recent public scandals have also made Nike, a company that sells a lifestyle of excellence as much as it sells shoes, a symbol of the brutal treatment of labor: a company, as Nike's CEO recently lamented, "synonymous with slave wages, forced overtime, and arbitrary abuse." This combination of capacity and vulnerability means that Nike—not to mention its direct and subcontracted workforce—has much to gain from devising a system that leverages its production capabilities into publicly credible social performance.

### *Monitoring and Evaluation of Subcontractors*

Thus Nike, as one of the companies facing the greatest public scrutiny, has led the way in subcontractor monitoring and evaluation programs. The company has established an extensive monitoring and evaluation program for the 37 footwear factories and more than 300 garment, accessory, and equipment factories that produce its branded products and employ approximately 500,000 workers worldwide. Nike established its original code of conduct in 1992, updating it regularly since, and began a program of contracted external monitoring in 1994. Subcontractor compliance with the code is monitored through a program of internal monitoring and self-evaluation conducted first by Nike staff and factory managers, and then reviewed by external accounting, health and safety, and environmental consulting firms. Nike has also developed in-house assessment tools such as the SHAPE program (Safety, Health, Attitude of Management, People Investment, and Environment) and MESH program (Management, Environment, Safety,

and Health) that allow the company to integrate the evaluation of labor and environmental issues into broader management practices and training. MESH resembles the ISO 14000 management auditing program (discussed further below), though it goes further by evaluating actual factory performance (not just whether a subcontractor has appropriate management procedures in its books). Reebok, Levi's, Disney, the Gap, and other prominent merchandisers have established similar internal monitoring programs that combine in-house assessment with audits by consulting firms.

### *Monitoring the Monitors and Public Pooling*

To judge by press reports, human rights NGOs and the general public put little credence in this corporate self-evaluation and monitoring. Consulting firms hired by corporations have come under particularly heavy fire. Based upon recent cases in which codes and monitoring have been used for public relations rather than improving labor conditions, many criticize voluntary codes and internal monitoring for their vulnerability to corporate manipulation. For example, Nike's early attempts at monitoring involved audits by poorly trained consultants from Ernst & Young and Potemkin-village tours around their factories by former-UN Ambassador Andrew Young.

Public wariness has led to a recent profusion of programs in the US and the European Union (EU) to establish pooling verifiers that certify third-party monitors and review corporate self-evaluations. Four major initiatives of this type stand out: the US-based Fair Labor Association (FLA), the SA8000 program sponsored by the Council on Economic Priorities Accreditation Agency, the Clean Clothes Campaign (CCC) monitoring foundation which operates across Europe, and the British-based Ethical Trading Initiative (ETI).

Each of these programs has a code of conduct informed by the ILO core standards. The programs differ substantially, however, in procedures for monitoring, enforcement, and financing inspection. Whereas the CCC is establishing a foundation model that centralizes oversight and taxes members to pay for monitoring, the FLA and SA8000 allow companies to pay their own monitors directly, notwithstanding the objection that this method creates the appearance if not the reality of a conflict of interest. Each of these programs have been criticized for being opaque in its operations, undemocratic in the formulation of standards and monitoring implementation, and consequently exclusive of local community and labor views. But the same concern for public

credibility that led Nike and other major corporations to shift from company-run monitoring schemes to prominently support public oversight organizations like the FLA may yet lead them to favor financing arrangements like that of the CCC and more accountable organization generally. Only by minimizing the real possibilities of undue influence in these programs can confident companies such as Nike enhance their own credibility through participation in them. Once they do manage to provide unbiased results consistently, their social benchmarking will embarrass laggards and reward leaders. The competitive edge conferred by this system may force the former to emulate the latter.

### *Capacity Building for NGOs and Informal Sector Interlocutors*

In addition to raising fears of self-serving reports, voluntary codes and monitoring have also been criticized for ignoring workers' accounts of their own experiences and excluding the groups closest to them from monitoring. NGOs, it is argued, and not consulting firms, have the trust of workers and the long-term, local connections to facilitate effective monitoring. First advocacy groups, then multinationals and international organizations have responded to this concern with demands for greater inclusion of NGOs in monitoring and for programs to build the capacity of these groups to participate meaningfully.

A number of new training programs thus aim to build the capacity of local NGOs to assess the problems of workers in the formal and informal sectors. Training is directed to technical issues such as health and safety, as well as basic research methods to better document workers' stories. Pilot programs – sponsored by the International Labor Rights Fund (ILRF), the ETI, and the CCC – are also beginning to help identify interested NGOs and worker organizations in supplier countries and support their participation in monitoring.

Nike and several other multinationals, who might seem to be natural foes of NGOs or at least unlikely allies, are also beginning to include them in monitoring programs. Thus Nike has joined with the Mattel toy corporation, the MacArthur Foundation, and the World Bank to establish a Global Alliance for Workers and Communities. The purpose of the Global Alliance is to develop an international program of assessment and monitoring that puts worker concerns at its center. The program will involve capacity building for local groups on means to gather information directly from workers and to include workers' organizations in monitoring procedures. Nike also recently pledged to allow a team of independent experts and local NGOs

to conduct health and safety audits of their footwear factories in Asia. Levi's, Phillips Van-Huesen and Reebok are also engaged in programs that involve NGOs and workers.

### *Reflection, Analysis, and Further Debate*

All these changes have resulted in the growing realization inside and outside the core-standards and voluntary-codes movements that an effective regulatory regime will require continuing, wide-ranging discussion across organizational lines. A lively debate has resulted in which each actor carefully scrutinizes the others' proposals and these evaluations in turn receive thorough review. Harvard University for example, has commissioned a one-year study of codes and monitoring as they relate to university licensees. Such studies are supplemented and updated by conferences around the world to report, debate, attack, and develop new initiatives.

A second, deeper expression of the deliberate search for alternatives is the recognition by organizations such as the FLA, SA8000, CCC, and ETI that it will take considerable experimentation to make codes and monitoring work. Monitoring pilot projects are thus springing up around the world. A critical next step for these programs will involve the pooling of information on early experiences and challenges. These coordinating efforts will not only need to compare the performance of individual factories, but also the performance of pooling verifiers, the roles of other stakeholders, and ultimately the impact on working conditions. The CCC seems most aware of this challenge, having already established a European "reference group" to share country experiences, analyze pilot studies, create a knowledge inventory of codes and monitoring, and build networks around the world in order to make these systems work.

Although they would not describe themselves as such, current movements appear to be converging on what might be called an experimentalist approach to regulation that recognizes the value of advancing different types of codes and monitoring systems on the ground, encouraging participation from a wide scope of stakeholders, learning from pilot studies and the exchange of information and experiences, and generating a range of possible solutions through critical analysis of what does and doesn't work in different settings. In the next section we set out the guiding principles for such an experimentalist regime, beginning with a brief account of the economic background conditions that facilitate its construction.

### **III. THE ECONOMIC BASIS OF OPEN LABOR STANDARDS**

Decentralization and globalization demand that firms continuously reorganize themselves in order to remain competitive. This constant transformation simultaneously undermines the foundation of the old, core standards regulatory regime while creating conditions for an alternative—suited to just these circumstances—based upon rolling standards and mutually accountable monitors. This section sets the stage for the concrete institutional proposals that follow by showing how Open Labor Standards extends fundamental developments in global production to achieve effective social regulation.

#### *Between Regimes: Complexity, Decentralization, and Regulation*

Take first the broad changes in the formal sector. Corporate managers decentralize authority within firms and to outside contractors when, faced with growing complexity and volatility, they can no longer reduce tasks to detailed instructions that subordinates and sub-contractors simply execute. In environments of extreme complexity and volatility, corporations and managers can no longer even define precisely the tasks necessary to reach overall goals. Decentralization then becomes a kind of co-development in which work teams and sub-contractors not only suggest the means to reach given ends, but propose what those ends should be. Though low-level tasks in which workers are expected mechanically to complete tasks given them by managers remain in many production processes, decentralized co-development is increasingly common.

Globalization of investment is propelled by this decentralization and in turn encourages it. As developing economies with abundant supplies of productive, low-wage labor enter world markets, firms with labor-intensive needs naturally locate there to reduce their labor costs. But companies are also drawn to emerging economies in order to learn about the tastes and buying habits of millions of current and potential consumers. Additionally, they use greenfield sites in emerging countries to test new and potentially radical forms of organizing production. In the course of diversifying their product offerings and production styles in one country, companies inevitably discover successful combinations that they transfer to business units elsewhere and thus encourage further decentralization and reorganization. The exact balance among these motives—to hire low-wage labor, gain access to consumer markets, and acquire greenfields for innovation—varies from firm to firm.

As firms respond more and more to their markets on one side and decentralize authority to contractors and work teams on the other, it becomes increasingly difficult to maintain an industrial relations or labor regulation regime based on fixed standards. As local units use their discretion to solve local problems, they inevitably violate externally determined general rules. Stable procedures imposed unilaterally by management, set government standards, and rigid agreements negotiated with labor all become obstacles that frustrate decentralized creativity. One reflection of this tendency is that collective bargaining agreements setting job definitions, subcontracting limits, and work time have come under enormous pressure in even the advanced economies. Many of these agreements have had to be substantially relaxed in recent years to allow diverse solutions to a common problem within the same firm, to say nothing of the diversity of solutions among firms in the same industry. The current climate thus erodes fixed-rule regimes.

The pressure for continuous reorganization, however, also creates building blocks for an alternative regulatory regime. Above all, it requires firms engaged in co-development to monitor the capacities and actions of their collaborators with a previously unimagined scope and attention to detail. The risky nature of co-development and collaboration creates a premium for knowing which collaborators are capable of what, and beyond that whether they can improve in tandem by working with one another. Hence leading firms in various industries go to extraordinary lengths to qualify their sub-contractors. Practices vary by sector of the economy, but typically suppliers must demonstrate their ability to set goals and detect implementation shortfalls (“saying what you do and doing what you say”). The ISO family of standards (ISO 9000 for manufacturing, ISO 14000 for environmental practices) on which several of the voluntary codes mentioned above are modeled, measures just this ability and ISO certification is widely regarded as a basic qualification for collaborative production.

More demanding customers and suppliers frequently exchange or “co-locate” engineers and other personnel in order to assure a rich exchange of information about design and production problems. The most sophisticated firms periodically rank their suppliers with regard to their abilities as co-developers and their attractiveness as more extensive collaborators. Finally, as the production and hence collaboration requirements change, so too do the needs for evaluation. Supplier rankings are thus accompanied by continuing debates among firms over monitoring and evaluation methods. Even given the resulting uncertainties, leading firms know a

great deal about their upper tier suppliers, and these suppliers are required to demonstrate growing capabilities in order to rise in the hierarchy of tiers.

Of course, this monitoring has generally not focused on the quality of labor conditions, environmental problems, or social concerns more broadly. But neither, as the environmental case discussed above suggests, can the sources of economic performance and innovation be neatly separated from these affairs. As a general matter, it is impossible to closely observe and control operations in one part of a closely coupled system without affecting others. While firms may not initially focus on labor issues, they systematically neglect them at their peril. The example of Nike and others show that managing this connection can be profitable. At a minimum, firms that treat their workers savagely cannot then utilize the initiative of victims to help solve problems of complex reorganization, any more than firms leaking toxics into the environment are likely to exercise sufficient control over their production process to be able to improve it.

These developments in the formal sector in turn exert manifold pressures on the informal economy, pressures which, again, work in part to break down the existing order, in part to create the conditions for a new one. Firms operate in the informal sector precisely when they fear they will be unable to compete without recourse to illegal or at least legally dubious methods. The extension of the formal sector through globalization and decentralization—particularly the ability of transnational corporations to continue reducing costs as they enter new markets—therefore pushes some weak local competitors who had been operating officially into the informal sector, and further burdens the firms already doing business there. The strain on vulnerable local producers is further increased by flows of second-hand clothing, textiles, and other goods from richer economies (the result of liberalization of trade and higher living standards in the exporters), as well as a heightened demand for quality among local consumers, who may reject some domestic products as shoddy by comparison to the goods now available first- or second-hand on the opening market. The upshot is that globalization undoes the unwritten rules of the informal sector—the social conventions and practices framing wages and working conditions—just as it undoes much in the written agreements governing the formal sector.

At the same time globalization and decentralization in effect bring the world economy closer to the informal sector, blurring in at least two ways the boundary between it and the formal one. Decentralization means, first, that domestic firms have to for high-level participation in transnational supply chains; and the development of these suppliers is likely to result in a

cascade of subcontracting that reaches into the informal sector. Thus many informal-sector producers are likely to be only a few steps removed from firms that do, or could, collaborate with the formal sector. Despite their location in the penumbra of the global production system, they are hardly cut off from it. At this level, the more ambitious firms understand that their own progress depends upon gaining capacities for reorganization, collaboration, and monitoring on one hand and, on the other, a willingness to expose themselves more fully to the kinds of self-examination that prevail elsewhere. This ambition is not wholly fanciful because decentralization entails, second, the explosive diffusion of knowledge about new production disciplines, especially as these apply to customer-supplier relations. Familiarity with ISO 9000 and its underlying principles is becoming part of the common knowledge of informal-sector operation as expertise in second-hand machinery long has been. Drawing on this combination of proximity to formal operations, ambition to participate in them and understanding of the conditions for doing so, we will see, an OLS regime can arrive at contextualized definitions of abusive behavior in the informal sector, and how to correct it.

### *Principles for an OLS Regime*

While some firms in the formal sector recognize that the core discipline of continuous reorganization of production is linked to labor and other social conditions, that connection has been made only haphazardly and intermittently. Nothing guarantees that it will evolve into an effective regulatory system. OLS thus enlists public authority to extend the growing experience of individual firms with self-monitoring and ranking to areas of performance that might otherwise remain underexposed. It does this by creating an institutional framework that makes the emergent links between re-organization and labor conditions publicly accessible, compares them to labor practices derived from various other starting points, and elaborates rolling rules that oblige firms to improve their practices.

OLS organizes a competition between different monitoring regimes that uses diversity in economic settings (the difference between the formal and informal sectors), in firm performance (those at the head of supply chains in contrast with those at the bottom), and in background understandings of problems. Under threat of sanctions described below, firms (or, clusters of small producers in the informal sector) must report their labor-related goals and actual performance to a monitor of their choice. Rankings of site-level outcomes derived from these

reports are then periodically constructed and publicly released. This multidimensional competition and comparison—between firms, monitors, methods of improvement and assessment, and social outcomes—achieves two crucial ends.

First, good performers—firms confident that their labor practices compare favorably to others—can demonstrate their accomplishments in a publicly credible way. Such firms will presumably choose demanding monitoring regimes because they have little to fear and perhaps much to learn from them. Their participation in these monitoring regimes then reveals what is possible in terms of feasible and verifiable social performance. Laggard firms that sought refuge in less demanding regimes can thus be called to account by invoking the documented achievements of leaders. But even good performers who choose rigorous monitoring will find that some are better still, and so they will try and improve their rankings by emulating or leapfrogging them. Thus the same framework of comparisons that raises the bar for bad performers pushes good ones as well. Second, allowing choice of monitoring regime while demanding comparison of monitoring results respects the substantial diversity that in fact characterizes the global economy. Practices that work in the informal sector may be irrelevant to monitoring in the formal one, and vice versa. OLS's prudent search for feasible methods therefore creates fora where similar firms or production systems can be compared with each other. Periodically, the results of these separate reviews will have to be compared and integrated; but keeping them distinct gives greater scope to initiative and experimentation in the crucial early search for workable solutions.

This competitive method places substantial burdens on the pooling verifiers who must review the performance of individual firms or geographic units and then participate in comparisons of the results. At a minimum, pooling verifiers in this regime will have to meet three conditions. First, they must be at least as capable of evaluating labor conditions as the entities that they review. Otherwise, comparison is impossible. We expect that high-level monitors will acquire the capacities needed for these comparisons in part through the very act of comparing actual results as they use each firm's goals and actual performance to illuminate potential shortfalls in the methods and outcomes obtained by others. Partly competition will drive monitors to acquire necessary capacities. Just as no firm can ever be secure in its labor practices except in that it improves relative to its competitors, each pooling organization must enhance its capabilities to inspect and disseminate successful practices to its firms.

Second, each pooling organization must obviously remain independent in order to perform these facilitative and investigatory functions. Perhaps the greatest danger to this OLS regime is the capture of these organizations by self-interested firms, NGOs, or certification agencies. The primary guarantee of independence is that these pooling organizations are themselves monitored by the general public. Transparency in financing, operations, decision criteria, and the body of information on which they rely would generate a broad public debate about appropriate labor standards and requirements for credibility that mirrors debate inside the organization itself and so checks tendencies toward bias. An additional assurance of integrity comes from the self-interest of monitors and firms themselves. In order to maintain credibility in the public eye and perhaps gain corporate customers for their services, each monitoring group must show that it is more capable and honest than the others, and so will take pains to remain independent and advertise that fact. Advanced firms, furthermore, will reinforce this pressure for integrity by seeking out those monitors who are viewed as the most publicly credible. An obvious analogy here is to the mutual discipline imposed by firms that want to issue debt in public markets and rating services that rank the issuers creditworthiness and the debt instrument on offer: the most creditworthy firms want to be rated by the most demanding ranking service, and no ranking service can long survive if it acquires a reputation as compliant or lax.

Third, pooling organizations must have the power to impose sanctions on non-compliant firms. This ability distinguishes OLS from voluntary programs. It furthermore insures that a whole apparatus of coercive comparisons is set in motion when the prospect of embarrassing public scrutiny is insufficient to motivate participation in a ranking system. The sanctions themselves are straightforward: non-compliant firms would first be ranked poorly, then, assuming no improvement, be excluded from the monitoring regime they had chosen. The most recalcitrant would ultimately suffer trade sanctions or targeted national regulation.

But the notion of compliance in OLS differs fundamentally from core standards. The latter regime aims to enforce broadly acknowledged minimum standards of acceptable behavior and so punishes firms for violating those floors. OLS, in contrast, aims to elicit largely self-reported information from firms and engage them in good-faith deliberations regarding feasible social performance. Punishment for revealing poor performance alone would create incompatible incentives; firms would conceal their activities rather than incriminate themselves. Since OLS depends crucially on broad disclosure, it sanctions firms for failing to choose a monitoring

regime, failing to reveal information that the monitoring regime of their choice requires of them, but not “merely” for poor performance. Once a level of performance has been established, however, low performers are sanctioned for failure to improve at a rate that has proved feasible for others in comparable situations, and in ways already proven to be socially and productively superior. Fixing the period between the self-report of non-compliant conditions and the imposition of sanctions will naturally be difficult in practice. One of many possible solutions is to allow subcontractors that do poorly on the customer’s ranking system a period of time to improve set with respect to the improvement rates of others who have solved similar problems. Public sanctions, in the form of action by the pooling verifier against the customer or the supplier would only be applied if the rankings stayed unacceptably low.

To those accustomed to the more familiar alternatives of core-standards regulation or voluntary codes of conduct, these principles might seem needlessly complex and impossibly demanding. To show how large firms, suppliers, public authorities, and even informal producers and the general public can fulfill the tasks this alternative asks of them, we show how the efforts already undertaken by these parties can easily grow into a fully blown OLS regime.

#### **IV. ENVISIONING THE OPEN LABOR STANDARD REGIME**

To elaborate this architecture of OLS, we now draw on the new initiatives in labor monitoring canvassed above, as well as more advanced developments in environmental regulation, to sketch how the institutions of an OLS regime might look in practice. We focus on the system’s lynchpin: competing pooling verifiers in the formal and informal sector. Though these institutions are sufficiently tied to circumstance and disciplined by workable principle to be more than mere speculation, we have no pretension to offer a definitive design. Rather, in keeping with the spirit of the overall project, the goal is to provide a proposal that at least elicits better ones.

##### *Pooling Verification in the Formal Sector*

We begin, therefore, with a contrast between two approaches to pooling in the formal sector that, as indicated above, are already beginning to emerge. The first is a foundation model in which firms join an entity (the foundation) and in doing so agree to adopt its labor and social standards, evaluation and monitoring protocols, and schedule of sanctions. The second is based

on an accounting model in which firms call upon certified third parties to verify their social performance.

The foundation regime might well grow out of some combination of advanced voluntary efforts at self-regulation—such as those at Nike—and parallel consumer-driven attempts to impose social constraints on producers—such as the Clean Clothes Campaign in Europe. As we saw, Nike is one of several firms that has sought to improve its social performance, both to fend off public criticism and gain competitive advantages, by implementing routines and requirements to compare and rank the labor practices of its suppliers against one another and thus to goad them all to improve. Two familiar and closely related obstacles, however, prevent the company from reaping the benefits of these changes. Without independent verification the public cannot discern the truth of Nike's claims. For those who distrust it, the company's social initiatives seem designed to pacify consumers and avert more serious regulation by masking its repressive labor practices and anti-union efforts. And even if Nike's claims were substantiated, it would still be difficult to evaluate them without a comparison of Nike's social performance to that of its major competitors.

A straightforward solution to Nike's dilemma and, more importantly, to the public's problem of verifiable evaluation, is for firms such as Nike to become members of a foundation pooler. All participating firms would report both their social monitoring procedures and their performance to the foundation, which would then rank—for public consumption—the capacities and achievements of its members. Firms would join these bodies to gain public recognition, improve their competitive edge, and because some large consumers such as universities and state governments would make membership a condition of doing business. To insure that individual companies could not buy favorable reviews, the foundations' operations would be financed by membership fees. In this way, a foundation pooler would give the public a reliable tool with which to gauge a firm's social performance and thus catalyze a competitive race-to-the-top between them.

A capable foundation-style organization would not only rank firms, but use the results of those rankings to alter its own membership rules and evaluation techniques. Beyond simply maintaining minimum social requirements and ensuring transparency, foundation poolers could scan the vast body of measures and practices among its member firms, determine which are reasonably workable, and then make those the conditions of continued participation. As the

social performance of firms improves, so the rules for membership become periodically more demanding. This rolling-rule system would formalize a race-to-the-top inside the foundation.

This could be done by, for instance, generalizing the relevant portions of the extensive system that Nike has developed to evaluate and rank its subcontractor factories. Besides rating subcontractors along quality, price, and other traditional criteria, Nike also rates them for environmental and labor performance. Points are assigned for the ranking in each category, with double weight given to the two social-performance rankings. Subcontractors are then told how they rate against others in the same country. High scorers increase their chances of receiving more lucrative orders and low scorers are at risk of losing contracts. The foundation could use a ranking scheme of this sort as a starting point, and then incorporate additions such as ranking firms according to their ability to achieve rates of performance improvement at least as good as the initial benchmark.

If both firms and their foundations developed in these ways, they would mesh into a system of regulation that closely resembles INPO, the joint regulatory entity of the nuclear-power generating industry, discussed above. Firms in the foundation model correspond to nuclear power plants in INPO. Nuclear plants in the US are allowed, within a broad range, to set their own procedures for dealing with potentially dangerous operational anomalies. Each plant submits reports of anomalous events, their own response procedures, and the outcomes of implementing those procedures, to INPO, which in turn assesses responses and ranks plants on their safety levels. These rankings were initially provided to a restricted circle of line managers and INPO staff. When reports of the inability to learn from errors persisted, the circle was widened to include the “public” of high-level plant managers, boards of directors, and ultimately the NRC, which must respond to Congress. Through both *de facto* practice and NRC authority, the best of the proven response procedures become operating requirements for all plants, and nuclear safety in the United States has improved remarkably through this rolling-rule regime. INPO thus provides a compelling analogy that supports the strategy of OLS regulation.<sup>5</sup>

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<sup>5</sup> Through its Responsible Care program, the Chemical Manufacturing Association (CMA) has encouraged its some 200 member firms to join a similar regime of planning and performance monitoring. Like INPO at its inception, this effort is purely private, with little public transparency or sanctioning capacity. Again, as in the early period at INPO, results are mixed, at best, and pressure is mounting to insulate the monitoring regime from the activities of the trade association. See Joseph Rees, "Development of Communitarian Regulation in the Chemical Industry" (Unpublished manuscript on file with authors).

A substantial difference between INPO and the foundation model, of course, is that all US nuclear plants are members of INPO, while foundations must persuade firms to join them. This voluntary feature of the model leads to a self-correcting regulatory vulnerability. Lacking INPO's monopoly control, foundations might be tempted to weaken their rolling-rule standards in the hope of attracting more corporate members and hence more prestige and revenue. Competition between foundations themselves or, for example, with alternative social monitoring models of the kind to be discussed next, check this temptation for laxity.

A second, formal-sector monitor that could compete with and complement the foundation model patterned on INPO might well develop from the system of third-party certification currently advanced by the SA8000 program and its certification body, CEPAA, or successors to both. The SA8000 program is loosely patterned on the ISO 9000 quality standard, with the CEPAA training and accrediting third-party monitors who conduct these social audits. Both SA8000 and CEPAA have been subject to substantial and often compelling criticism.<sup>6</sup> At worst, ambiguities in the language of SA8000 might allow cynical inspectors, more interested in generating auditing fees than improving labor conditions, to ignore the reality of unacceptable performance when management professes its intentions to improve. Indeed, absent competition from other, competent monitors, it is hard to rule out the possibility that SA8000 will come to certify bad performance as normal and acceptable.

But with competition from a capable foundation, SA8000 or a successor could itself become a competent monitor that effectively disciplines both firms and the overall monitoring regime. First, CEPAA, shaped by its emulation of ISO 9000, is manifestly aware of the need to connect labor questions to core concerns with the disciplines of continual adjustment. Indeed CEPAA argues that one of its distinct advantages as a monitoring entity is precisely its recognized dedication to registering and improving this relation.<sup>7</sup> If member firms (embarrassed that a competing foundation ranks its members with respect to their systematic management of labor issues) decide to press SA8000 to make good on its intentions, it is likely that CEPAA will

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<sup>6</sup> See the report by the coalition for Labour Rights in China (LARIC), "No Illusions: Against the Global Cosmetics SA8000," June 1999.

<sup>7</sup> In order to ensure maximum effectiveness of this system, CEPAA asserts that it will continually improve techniques for verifying factories' compliance with the standard. These techniques can also help employers develop more effective management systems that have the potential to reduce the risk of accidents and improve productivity. To this end, CEPAA consults with a broad range of stakeholders – workers, employers, and other interested parties such as NGOs and unions – thus working to make the SA8000 system responsive to regional and cultural differences.

conduct similar evaluations. Second and similarly, the third-party monitors that CEPAA has already accredited are institutionally well qualified to respond to the most demanding monitoring requirements in this regard, but are only likely to deploy their capabilities if competitive pressure moves them to do so. For example, Den Norske Veritas (DNV), one of three firms accredited to conduct SA8000 audits, has developed from a maritime insurer to one of the most sophisticated certifiers of complex engineering and production systems in the world. The company's special expertise in ship-building—necessary to rate the sea-worthiness of ships—allowed it to accumulate engineering prowess that could then be applied to even more demanding analysis of off-shore construction platforms. DNV is not likely to casually risk its reputation for excellence and probity. But when, as now, the standards for inspection are low, and likely to remain so, DNV risks little by not trying to raise them. Competition increases the risks associated with doing “acceptable” work under the cover of an overall reputation for excellence; and once third-party monitors of this quality know their reputation is on the line, they can begin to draw on or increase their expertise in ways that eventually raises the general standards applied in the regime. Put more generally, the faults of SA8000 and its associated institutions are more a reflection of the context in which they operate than their intrinsic nature; changing the context for the better through the introduction of competition will likely increase the integrity of these standards and organizations.

### *Pooling Verification in the Informal Sector*

Both the foundation and third-party verification models assume conditions that can be assumed in many developing economies: well established firms with stable corporate identities, reputations to maintain, and departments devoted to regulatory compliance and supplier evaluation. Informal producers which account for a large share of employment and labor abuses in many developing countries often lack all of these characteristics. According to some estimates, for example, informal firms employ ninety percent of the total workforce in India.

The models discussed so far presume capacities for self-monitoring, or a willingness to cooperate with third-party evaluators, that informal producers, and their likes operating in the homework-sector of advanced economies, simply lack. These difficulties are heightened by the near absence of unions, and the difficulties of organizing them in firms that operate semi-clandestinely.

A further issue concerning the physical and social proximity of work and home compounds these organizational problems. Whereas work and home life are typically distinct in the large firms of the advanced economies, they are often closely intertwined in the informal sector. Adults often work along side their children or other family members, and the workplace may be adjacent to, or a part of the home. On a larger scale, the economic fate of whole towns or villages may be tied to the fortunes of an agglomeration of many small, informal firms operating in the same or closely related industries. These ties may pose brutal choices, where the well-being of a child employed under harsh conditions is sacrificed for the good of a family, or the health of families, exposed to environmental harm, is sacrificed for the good, perhaps the survival, of the village. A regime of bans and prohibitions, addressed to fugitive firms unchecked by unions and supported by the complicity of workers and neighbors, is unlikely to achieve much, even if the enforcing authorities commanded vastly more resources than they typically do. And these bans, supposing they were effective, might in the end cause more harm than good. A ban on child labor thus has as much potential to push children from the semi-clandestine factory into the sheer criminality of the sex industry, as to result in improved treatment of minors. Even where the firms' status is in many aspects formal, as in the US garment industry, efforts to combat sweatshop conditions by policing bans have shown meager results. In a pilot program in the Los Angeles garment industry, for example, the Department of Labor has succeeded in obliging non-compliant firms to agree to more frequent monitoring. But it remains an open question whether the increased vigilance has raised compliance rates or simply given the malefactors the chance to develop sophisticated ways of evading detection.

Yet the same connectedness and fluidity of the informal sector that poses obstacles to certain forms of monitoring creates opportunities for others. The problem of child labor is a case in point. Projects in India and Pakistan, among other places, have shown that child labor can effectively be eliminated by paying an amount equal to the child's daily wage (between 50 cents and one dollar) to his mother (re-enforcing her status in the family, and decreasing the chance that the income is squandered), on condition that the child's teacher report a school-attendance record of, say 90 percent (insuring that the child receives sufficient education to provide access to decent employment, and thus essentially eliminate the temptation to impose child labor on their future offspring). Relatedly, in Indonesia a combination of village-level activism, provincial

audits of major polluters, and a national system of ranking polluting facilities by a five-color scheme (black for firms that are openly indifferent to the harm they cause; gold for those meeting international standards) has arguably resulted in a significant reduction in pollution levels.<sup>9</sup> Projects that link, in the one case, firms, families, and schools, and, in the other, villagers, reform-minded provincial officials and their national counterparts in creative alliances, have the potential to facilitate new solutions to the problems that remain almost surely beyond the ken of organizations whose very constitution disposes them to separate these actors and privilege one—the one they know best—in fashioning solutions.

At the limit this interconnectedness suggests a conclusion as familiar in theory as it is disregarded in practice: Improvement of living conditions in the informal sector broadly conceived ultimately depends on economic development. Reconsider for a moment the examples just introduced. School reform is impossible if the pupils are toiling in sweatshops. But absent international donors, child labor will continue in poor economies until mothers can find jobs that pay enough to make school an affordable occupation for their children. So school reform depends on expanding employment opportunities. Similarly, if community health depends on environmental protection, and environmental protection depends on reducing pollution without imposing ruinous charges on the producer, then community health depends on the producer learning to do better cheaply: increasing efficiency. Regulation of the informal sector aimed at stopping abuses thus shades into and requires economic development. More precisely, it requires consideration of forms of economic development that extend the incipient connections between informal and formal sectors discussed above.

The first task of building a monitoring regime for the informal sector is therefore to foment the development of organizations which, starting from rich local knowledge, can learn enough about adjacent arenas to effectively evaluate the social performance of firms and locales in relation to evolving economic possibilities. Women's groups organizing micro-finance or fighting sexual abuse, associations for agricultural development or to improve the situation of artisan producers, environmental organizations, trade unions or human-rights groups might in various circumstances all be candidates. Additional funding will have to come from outside donors, as organizations of poor, vulnerable persons and fragile farms or firms will generally lack the resources to extend the range of their activities significantly. The line between

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<sup>9</sup> See Afsah, Laplante, and Wheeler (1995).

identifying promising organizations and helping them build the capacities to engage in systematic evaluation of firms and locales is typically blurred. A straightforward way to accomplish both simultaneously is for funders, in consultation with local actors, to solicit proposals, on the assumption that groups with real initiative will put themselves forward, and then back the most promising ones. The Global Alliance founded by Nike, Mattel, the MacArthur Foundation, and the World Bank intends to work along these lines with local NGOs monitoring conditions in the formal and informal sectors. To obstruct the entrenchment of this, or any other organization's preferences and methods, it is important that there be at least one other, competing entity engaged on a broad scale in such institutional capacity building. A UN affiliate, perhaps in alliance with one or more multinationals and some combination of NGOs that themselves operate on a global scale, might be the germ of such a competitor.

It is a short and natural step from the identification and development of NGO evaluators to the construction of pooling organizations for the informal sector. In picking and funding candidate evaluators, the Global Alliance could for instance, rank their potential capacities as evaluators, and then their actual performance. The successful organizations would improve by learning from their own mistakes and the successes of others as revealed in these rankings. They would in time become good judges of performance and of ranking systems. As these capacities grew, representatives of the most capable organizations, together with representatives of the funding foundation, could form a new entity, affiliated with the foundation or distinct from it, whose chief task—like that of their formal-sector foundation counterpart—would be to compare, under conditions of public transparency, the social performance of informal economies and the methods of evaluation that have emerged in the very process of building evaluators. There are of course potential problems with organizations such as the Global Alliance. A more cynical reading of the Global Alliance might lead one to fear that the organization will seek to co-opt NGO participation in monitoring (by finding and supporting illegitimate NGOs or buying off legitimate ones) or use the guise of NGO participation to block worker self-organizing and union representation efforts. A second, competing pooling organization would plainly discipline the first.

As with large firms and their suppliers in the formal sector, we can expect good social rank to confer competitive advantages on and thus create economic opportunities for clusters of informal producers. First, reputationally sensitive formal sector firms will more likely source

production orders to these certified producers. This is all the more likely because informal producers who have the monitoring capacities and self-discipline to improve their social performance will likely possess other production capacities as well, and so would be attractive partners for large firms. These ranking institutions and the partnerships they facilitate thus blur the distinction between informal and formal sectors by creating a transition path between them and subjecting them to the same dynamic disciplines of competition for accurate monitoring and good social outcomes.

### *The OLS Convenor*

Two closely related pieces are needed to complete the OLS architecture. The first follows immediately from the last remark. As the formal and informal sectors are already entwined—most conspicuously in supply chains—and as monitoring illuminates and reinforces the connections, it will become easier but more necessary to coordinate ranking regimes between the two sectors. Some superordinate body—call it the OLS Convenor—will be charged with responsibility for facilitating periodic exchanges between the two sets of poolers, as well as for harmonizing overlapping standards. Just as foundations and accreditation bodies facilitate competition between firms to learn feasible social performance boundaries and the practices that achieve those limits, so a super-ordinate international body might organize the contest between foundations, third-party auditors, and efforts built on other models. This group, composed perhaps of representatives from the World Bank, the ILO, large NGOs, and highly ranked foundations and firms, would assess various monitors, rank them, disseminate best practices to the extent possible, and in other ways assure that the contest between monitoring groups remains open and fair.

Connected by such competition, the information generated in the separate sectors would make it possible to arrive at a comprehensive evaluation of a multinational's treatment of labor, or its relation to the environment, along the entire length of its supply chain. It would also facilitate an exchange of best practices, and the monitoring regimes that encourage them, across sector boundaries. Thus the more informal-sector poolers and evaluators know about formal-sector supplier ranking systems, the better they are at recognizing, perhaps even supporting (or helping to arrange support for), informal-sector firms aiming at the improvement necessary to gain entrée into those supply chains. Conversely, the more formal-sector poolers and monitors

learn about informal-sector devices for investigating the links between workplace and home, the more comprehensive their analysis of effects of company labor practices on family life. The ILO, with its extensive experience in formal-sector monitoring, and the World Bank, with its growing involvement with the informal sector and NGOs in developing countries, are natural core convenors for such a body, whose membership would reasonably include representatives from the poolers from both sectors, and other interested parties as well. Since this peak institution has no competitor, its operations would have to be especially transparent—and the composition of its membership especially responsive to changing conditions—to guard against entrenchment.

The OLS Convenor could easily do double duty to accomplish the second, closely related task: declaring sanctions if firms, locales, or nation states refused to respond to sanctions imposed by pooling verifiers. The combination of distance from but connection to these poolers suits the body to the task of harmonizing standards and also equips it to be a kind of court of appeals that brings the rich evidence generated by OLS to bear on particular cases. Eventually the OLS Convenor assume the authority to coordinate the imposition of trade and related sanctions or incentives with the WTO, and would have responsibility for determining when sanctions should be lifted for parties that gain compliance.

## **V. CONCLUSION**

We have tried to show above that this vision of Open Labor Standards—a system of competing monitors and information poolers that creates pressures and learning opportunities for all producers to improve their social performance—comes from current trajectories of movements toward core labor standards and voluntary codes of conduct. We conclude with brief speculations that begin to address two remaining concerns. The first regards the advisability of OLS as a form of regulation and the second (assuming that the first has been adequately addressed) asks how we might begin to implement this design.

Despite initial experiments with parts of OLS from all sides, the full regime described above breaks with familiar forms of regulation in ways that will strike some as both pollyannaish and reckless. In particular, businesspeople and activists may fear that collaboration across lines of natural enmity—among firms, or between firms and labor or NGOs—will lead them to betray fundamental values. Thus the interests of labor and capital are distinct and adversarial in conventional regulation. Labor organizations are essentially critical; they must call attention to

goal conflicts and capital's excesses whenever they arise. Therefore, many trade unionists argue that labor should not participate in, or even acquiesce to, any method of evaluating the social performance of firms much less "certifying" their satisfactory conduct. Playing this role would dull labor's vigilance, reduce its capacity for dissent, and ultimately render it incapable of defending the interests of workers. Those concerned with the public interest might argue similarly that citizen participation—via NGOs—in the creation and monitoring of standards might blunt the capacity of grassroots organizations to speak forcefully against business for the sake of the public.

But many labor organizations and other groups have already begun to realize that they cannot know, much less advance, the interests of their constituents without engaging in just the kinds of collaboration and introspection evoked by OLS. For example, UNITE, the major apparel workers union in the US, has been working with both student movements and NGOs to broaden its strategic perspective and scope of action. The lessons brought out by this exploration may cause UNITE itself to undergo a fundamental strategic reorientation. For surprisingly similar reasons, Nike has engaged in dialogues with NGOs—sometimes the very same ones sought by UNITE. These discussions have in turn arguably altered Nike's strategic course. Indirectly and unexpectedly, then, these supposedly distinct and opposed groups are already collaborating with one another through intermediaries.

Historical retrospect amply justifies this sort of reflection through collaboration, for past attempts to understand and advance the public's or workers' interests have frequently resulted in exclusions of the most vulnerable. For example, the ILO, despite its historical dedication to stop the worst labor abuses, only recently began to investigate horrific conditions in the sex industry. Similarly, an environmental movement well practiced in strategies of entrenched adversarialism as the best defense of the common interests of nature and humanity long overlooked, or perhaps turned a deaf ear to, the plight of minority communities exposed to toxins in urban settings. The argument of course is not that organizations or theories that speak for labor or the public are illegitimate or have no authority, but only that their legitimacy is not exclusive and their authority not ultimate. From this self-skeptical point of view, OLS provides opportunities for these organizations to re-articulate their positions and programs as they engage other parties in dialogue that draws upon a rich corpus of actual experiences. By respecting both the legitimacy of these groups and their limits in this exploration, OLS uses differences in their understandings

of interests (including, of course, different estimates of whether and when the interests of labor and capital clash) to compel continual testing of the assumptions that ground regulation.

This wariness about collaboration is associated with a misunderstanding of the (im)possibility of conflict within deliberation. To claim that an open set of organizations with sometimes differing, occasionally overlapping goals, can effectively protect labor or the public against certain abuses (when no single theory or closed group of organizations can) does not presume or project a harmonious world with *no* differences between, say, labor and capital. OLS instead responds to a world of continuing dis-equilibrium, where overlaps as much as divergences of interest drive participants to relentlessly criticize current practices, requirements, and standards by offering improvements to them. Far from demanding that they betray their constituencies and their own passionate commitments, this world routinely provides actors with the information they need to convince us all that there are better ways.

The only fully convincing response to such objections, of course, is a demonstration that OLS works as we claim it will. Here the relentless incrementalism of the architecture—changes are piece by piece, but all the pieces can in the long run change—offers an important advantage: The system need not be established all at once in the fateful gamble that all will perform as hoped. Rather, it can be assembled by the actors themselves from the building blocks discussed so far; and the information that needs to be exchanged among them to determine the particulars of the emergent design can be used to hold them publicly accountable. The key is to choose first steps that oblige the actors to make current practices transparent enough to be comparable, so that comparability sets off the competition for improvement.

One way to do this would be to for the World Bank and the ILO, as indispensable partners in any new labor-standards regime, to establish a seed group or constituent convenor, with the goal of formulating procedures and timetables for potential pooling verifiers to establish themselves as recognized associates of the OLS system. Other participants at this initial meeting would include representatives of firms currently engaged in monitoring or developing codes of conduct, NGOs, existing monitoring groups such as the FLA and SA 8000, labor organizations, and delegates from other relevant international agencies. The first task of this constituent convenor would be to organize a series of regional workshops on the operation of OLS with interested local actors. These open meetings would allow for presentation of OLS as seen from the vantage of the constituent convenor, and revision of the overall idea in light of the local

participants' experience with monitoring and pooling programs in their areas. The workshops could be used to develop initial dimensions and metrics for pooling, as well as to formulate proposals for modifying existing standards bodies and sanctioning mechanisms to reinforce the structured competition of OLS.

The OLS seed group would then use the results of these discussions to develop baseline criteria and requirements that pooling groups (such as the FLA, Clean Clothes Campaign, SA8000, ETI, etc.) must satisfy to become OLS affiliates. Affiliation would indicate not only social commitment, but more importantly signal capacities to engage in effective monitoring and collaboration with others in comparing outcomes and joint improvement. The group would then announce its initial criteria, accept applications from monitoring and pooling groups, review them, and a few months later announce the first set of organizations that qualify for affiliation status. Organizations would work hard to gain initial qualification for the same reasons that they would later strive to excel within the system; they desire public recognition as capable social performers. The formation of this initial group would be a major milestone in the development of the OLS regime that marks its legitimacy in the eyes of major practitioners as an organizing system.

The real fruits of OLS blossom, however, in the collaborative competition that follows this inaugural milestone. Those who are already members must constantly improve their techniques and standards to compare well against their peers in OLS. In the course of doing so, their efforts and outcomes will be again verified by the scrutiny of a skeptical public and outside watchdogs. But those who thrive in these monitoring trials will be widely recognized for their successes, and this recognition will in turn translate to their advantage in the marketplace. This dynamic creates additional pressures to expand the base of affiliates. Those outside the circle will suffer public criticism for being unable or unwilling to participate in this broad social enterprise and conversely desire the benefits enjoyed by those inside OLS's circumference.

But once again we are assuming that all goes well. Can OLS achieve significant improvements despite these uncertainties around its construction and, more importantly, the enormity of the abuses it confronts? Can any international labor standards regime effectively combat that brutality? You will have to decide for yourself. We see no better way to do equal justice to both our sense of the fallibility of human design in a complex world and the

determination, nonetheless, to effectively express our outrage at the abuse of vulnerable persons at work.

## **APPENDIX: BACKGROUND ON STANDARDS AND CODES**

### **Core Labor Standards**

Since its inception in 1919, the International Labour Organization has developed conventions defining acceptable labor practices, sought ratification from its member nations (now 174 countries), provided guidance on implementing the conventions through national laws, and managed a monitoring and reporting process for all member countries. To date, the ILO has formulated 182 conventions, most of which are detailed, narrow in scope, and have been ratified by only a minority of member countries.

Recently, however, the ILO has begun to emphasize fewer and broader standards as its primary strategy for promoting better labor conditions. In 1995, the ILO initiated a campaign to promote the ratification of seven core conventions. Three years later it adopted a “Declaration on Fundamental Principles and Rights at Work,” which asks member countries to reaffirm the universal respect for core workers’ rights regardless of whether they have ratified the specific conventions relating to each right.

This new emphasis assimilates labor standards to what are generally considered basic human rights: protections that persons enjoy because of their humanity, irrespective of their home country’s level of development. Thus core standards are explicitly differentiated from other types of outcome-based or substantive standards, such as levels of wages or other social protections, that might be expected to vary with the prosperity of a country.

The core labor standards include:

- Freedom of association (ILO Convention No. 87);
- The right to organize and bargain collectively (Convention No. 98);
- Prohibition of forced labor (Conventions No. 29 and No. 105);
- Prohibition of child labor (Convention 138 and ILO Recommendation No. 146);
- Equality of treatment and non-discrimination in employment (Conventions No. 111 and 100).

120 member countries have now ratified at least five of the seven ILO conventions supporting these core standards. All 174 member countries have stated their commitment to respect the basic standards outlined in the “Declaration of Fundamental Principles and Rights at Work” adopted at the ILO’s annual conference in June, 1998. However, little has been done thus far at the national level to promulgate laws and establish effective institutions to implement these standards. The prospects that the ILO, unaided, will give force to the declared aspirations are bleak: By itself, the ILO itself has very weak monitoring and enforcement capacities. The worst

sanction the ILO can currently impose is to establish a commission of inquiry to look into abuses of workers' rights. The ILO is not even authorized to use shaming tactics to name countries which breach basic worker rights. The only member state ever to be expelled from the organization for labor abuses is South Africa under apartheid.

Out of humanitarian concern and the recognition that public concerns about labor abuses can sway domestic debate against extension of free trade, governments in the US and the EU have begun to lend their authority to the movement towards core standards, and to explore ways of improving the capacity to ensure respect for them. Four strategies are being pursued to advance core standards:

- Strengthening the capacity of the ILO to implement and monitor specific standards (such as child labor provisions). The US recently pledged to increase funding to the ILO by \$25 million for these purposes.
- Strengthening the capacity of developing country agencies to monitor and enforce national regulations. The US has also pledged to increase aid to developing countries to implement and enforce core standards.
- Establishing incentive systems and enforcement programs which operate independently of the ILO. For example, the US and EU have used their General System of Preferences (GSP) to pressure individual countries to improve labor standards and enforcement. Under the US system, tariff-free access is removed if countries fail to comply with specific labor standards. Under the European system, countries win lower GSP tariffs if they meet standards on freedom of association, collective bargaining, and elimination of child and forced labor.
- Incorporating core standards into the World Trade Organization and the programs of International Financial Institutions. For example, the US and France have recently advanced proposals to include a "social clause" in the WTO. However, powerful interests (from the IMF, to developing country governments, to multinational corporations) have allied themselves against these efforts to link trade with social concerns.

Voluntary codes of conduct can be thought of partly as complements, partly as substitutes for this ensemble of strategies.

## **Voluntary Codes of Conduct and Independent Monitoring**

Voluntary corporate codes of conduct are the fruit of long debate. The UN Commission on Transnational Corporations (UNCTC), created in 1975, drafted a UN Code of Conduct on Transnational Corporations. The agency tried for 12 years to promulgate a code requiring corporate disclosure of potential dangers of products and processes, non-discrimination in the workplace, and a range of other labor and environmental measures. Lobbying by transnational corporations and direct opposition by the Reagan administration and the Japanese government blocked the code, and in time the entire agency was dismantled. The OECD and ILO also developed voluntary codes of conduct for multinational corporations in the 1970s. Neither was effectively implemented.

Codes of conduct resurfaced in the 1990s as a strategy for motivating improvements in the performance of MNCs. A number of non-governmental organizations have worked to revive the UNCTC code and to advance other voluntary codes through the G-8 and the OECD. But in both the US and Europe, NGOs are now at the forefront of efforts to develop entirely new institutions (some non-governmental, some public-private partnerships) to advance codes and to define institutional procedures to monitor compliance with them. Increased pressure by labor and human rights groups has also motivated a growing number of multinational corporations to adopt their own codes of conduct and to submit to external monitoring.

Four of the most important initiatives are the Fair Labor Association, SA8000, the Clean Clothes Campaign foundation, and the Ethical Trading Initiative.

- The Fair Labor Association (FLA). In 1996, the Clinton administration convened the Apparel Industry Partnership (AIP) to “ensure that the products companies make and sell are manufactured under decent and humane working conditions, and to develop options to inform consumers that the products they buy are not produced under exploitative conditions.” In 1997, the AIP released a “Workplace Code of Conduct and Principles for Monitoring,” which includes provisions for freedom of association and collective bargaining and a process for developing a system of independent external monitoring. In the fall of 1998, the AIP evolved into the Fair Labor Association (FLA) which is the body now responsible for establishing monitoring criteria, certifying monitors, reviewing audits, granting “sweat-free” labels, and reporting on audit results. FLA members include Nike, Reebok, Liz Claiborne, Patagonia, Levi’s, Adidas, Kathie Lee Gifford, LL Bean, Nicole Miller, Phillips Van-Heusen,

the Lawyers Committee for Human Rights, the International Labor Rights Fund, the RFK Memorial Center for Human Rights, the National Consumers League and over 100 US universities.

- SA8000, created in 1997 by the US NGO Council on Economic Priorities (CEP), is patterned on the ISO family of standards and includes the core ILO conventions and a number of additional provisions on wages and work hours. It seeks to motivate multinational firms and their subcontractors to agree to a code of conduct and to a system of inspections. CEP designed the code and also created the Council on Economic Priorities Accreditation Agency (CEPAA) to officially certify firms as capable of performing competent social audits. Corporations seeking the SA8000 stamp of approval hire certified auditors to evaluate whether their subcontractors are complying with the code of conduct. CEP publicizes the results.
- The Clean Clothes Campaign (CCC), with members throughout Europe, developed a 1998 model code of conduct based on ILO conventions that applies to entire subcontracting chains (including homeworkers). Firms who comply with the code would be eligible to use a label showing they are a “clean” firm. The CCC plans to establish a foundation that will certify monitors, collect funds from member firms, and then pay monitoring organizations directly. The foundation would also coordinate pilot studies in different countries around the world, pool information on successes and failures of the codes and monitoring systems, and make information public on the results of the audits. The CCC has forged agreements with a number of European retailers and manufacturers and is now moving forward in its implementation of this monitoring program.
- The Ethical Trading Initiative is a coalition of NGOs, labor unions, and businesses that was convened by the British government in 1998. It has established a “Base Code” of conduct and monitoring system and is now conducting pilot studies, organizing training programs for monitors, and building coalitions in developing countries to carry out verification work. The ETI is committed to testing various models for inspections and verification of standards and for local stakeholder participation.

While there are some important differences in the codes advanced in these programs, most tend to be based around the ILO’s core standards, particularly the prohibitions on forced

labor, child labor, and discrimination in the workplace. Few codes developed by corporations are as specific as ILO conventions, and many omit important requirements on freedom of association and collective bargaining. Many of the NGO-developed codes go much further than the ILO in defining outcome-based standards, such as a “living wage” and fair treatment of workers.

Even within the class of codes originating with NGOs, there is significant variation in the procedures for monitoring and enforcing. The CCC and more recently the United Students Against Sweatshops have sought to establish a “foundation” model that centralizes oversight and controls all payments for monitoring. The FLA and SA8000 employ a “consulting firm” model which allows companies to choose and pay for their own monitors. The different programs also assign different roles for local NGOs, unions, and other stakeholders, have widely varying levels of transparency and public disclosure, and have established a range of systems of sanctions and penalties.

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Ethical Trading Initiative: [www.ethicaltrade.org](http://www.ethicaltrade.org)

Fair Labor Association: <http://www.lchr.org/sweatshop/main.htm>

Global Alliance for Workers and Communities: [www.theglobalalliance.org](http://www.theglobalalliance.org)

Global Exchange: [www.globalexchange.org](http://www.globalexchange.org)

International Labour Organisation: [www.ilo.org](http://www.ilo.org)

International Labor Rights Fund: <http://www.laborrights.org>

Investor Responsibility Research Center: [www.irrc.org](http://www.irrc.org)

National Labor Committee: [www.nlcnet.org](http://www.nlcnet.org)

New Ideas in Pollution Regulation: <http://www.worldbank.org/nipr>

SA8000: [www.cepaa.org/products.htm](http://www.cepaa.org/products.htm)

Sweatshop Watch: [www.sweatshopwatch.org](http://www.sweatshopwatch.org)

UNITE Stop Sweatshops Campaign: [www.uniteunion.org](http://www.uniteunion.org)