RATCHETING LABOR STANDARDS:
Regulation for Continuous Improvement in the Global Workplace

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ABSTRACT

Ratcheting Labor Standards (RLS) is a regulatory alternative that aims to improve the social performance of firms in the global economy. Under RLS, firms disclose to a certified monitor information on their social performance, minimally including working conditions, hours, and wages. The monitors rank firms on the basis of their current social performance and their rates of improvement and make these rankings, and the methods on which they are based, accessible to the public. This process, it is argued, encourages leading firms to strive toward superior social practices. Competition among firms and monitors will help establish two kinds of standards: *best practices* defined by the most advanced firms and *rates of improvement* shown to be feasible at various levels of development. Both continually "ratchet" upward as the best practices get better still and firms find ways to accelerate improvement, in a race to the top. These and other RLS mechanisms would create incentives for firms to dedicate a portion of the ingenuity and resources now devoted to product development to the continuous improvement of labor practices.

RATCHETING LABOR STANDARDS: REGULATION FOR CONTINUOUS IMPROVEMENT IN THE GLOBAL WORKPLACE

I. INTRODUCTION[1]

Transformations in the global economy have outpaced traditional labor laws and regulatory institutions. As firms decentralize their decision-making over sprawling supply chains and investments flit across national borders, they undermine what regulatory order there was in the world's labor markets. Partly as a consequence, the present wave of globalization has given rise to widespread abuses, including child labor, punishingly long work days, harsh discipline, hazardous work conditions, sexual predation, and suppression of the freedom to associate and organize. These forms of servitude recall outright slavery in some instances, and provoke moral outrage the world over whenever they come to light.

There is broad agreement among the world's publics that labor markets must be re-regulated to curb these abuses. This deep consensus is captured in the core labor standards adopted by the International Labour Organization (ILO), and ratified, or being considered for ratification, by its member countries. Other international organizations, including the World Bank, increasingly accept some responsibility for promoting several core standards, although they do not explicitly endorse them. Core labor standards recast a more elaborate corpus of regulation previously promulgated by the ILO into a compact list of incontestable human rights of the workplace, including freedom of association, the right to organize and bargain collectively, prohibition of forced and child labor, and non-discrimination in employment. These standards - which were recently advanced through the ILO's "Declaration of the Fundamental Principles and Rights at Work" - express the

[1] This essay has been prepared as a discussion draft; we expect that discussion will result in substantial revision. We would like to especially thank Sean Cooney, Ashraf Ghani, Robert Holzmann, Yevgeny N. Kuznetsov, Michael J. Piore, and two anonymous reviewers for incisive commentary on previous versions of this paper. Many of the ideas here derive in part from on-going collaborative work on deliberative democracy and emergent regulatory forms with Joshua Cohen, Michael Dorf, and Bradley Karkkainen, among others. The findings, interpretations and conclusions expressed in this paper are entirely those of the authors and should not be attributed in any manner to the aforementioned individuals or the World Bank, to its affiliated organizations, or to the members of its Board of Executive Directors or the countries they represent.

public's moral convictions about the respect due to labor as a partner in global production, and its determination that these convictions be honored. The open and crucial question, then, is how to construct a regulatory framework that protects vulnerable groups against the abuses identified in core labor standards?

One common response entrusts monitoring of compliance to national and international governmental agencies, and, perhaps, trade unions and non-governmental organizations. Some influential organizations in the US labor movement favor this solution, and hope to play an active role in the administrative and adjudicative institutions that it would create.

The appeal of this model lies in its evocation of a familiar, fixed-rule understanding of regulation and law: society defines certain acts as criminal or unconscionable, and those who commit them are punished. Gaps in the rules are presumed to be correctable by judges and administrators. While this approach may work with their elaborate rule systems and enforcement agencies of the developed countries, the intrinsic ambiguities of core standards can overwhelm their application in the global context.

To begin, 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, given complexities of process and circumstance, would it address environmental problems at the workplace and in local communities? 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? Even in advanced countries, moreover, with their entrenched monitoring regimes and established rule of law traditions, 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? Finally and perhaps most crucially, critics of these labor standards charge that they amount to trade protectionism for the developed countries,

would restrict economic activity in developing areas, and thus ultimately harm those populations that they are designed to protect. How can labor standards protect the interests of these workers while nevertheless promoting development? Without answers to these questions, core standards could become no more than an expression of public outrage and a symbol—as though an additional sign were needed—of the limits of traditional forms of government.

An alternative approach sidesteps these customary standard setting bodies. It uses the pressure of public opinion and financial markets to move multinational firms to adopt "codes of conduct" in which they promise that their own internal units and their suppliers will adhere to various labor, environmental, and social standards. More and more, large firms such as Nike and Reebok have allowed consulting and accounting firms—and more recently NGOs—to conduct social performance audits to verify that their operations obey these codes of conduct. Suppliers found to be out of compliance are sometimes sanctioned with order reductions or contract cancellations. To serve this emerging market for social performance monitoring, organizations in North America and Europe have begun to define general standards for corporate labor practices and certify numerous third-party monitors as competent to audit compliance with them.[2] The appeal of this approach is that it creates incentives for prominent firms to increase their social performance and, as they do so, generates *de facto* standards with which to criticize firms with poor labor practices.

But this course too has obvious limits. First, public pressure may move only the most conscientious or publicly exposed corporations. Second and worse, the open character of these voluntary codes invites abuse of the public trust. An unscrupulous company, or one that is simply indifferent to labor conditions in its subcontracts, need only adopt (or affiliate with a standard-setting body that adopts) a version of core standards that emphasizes vaguely framed intentions to improve, rather than good performance, and then retain pliant monitors to testify that the corporations' motives are sincere. Such captured monitors would make voluntary codes at best a form of public relations for powerful multinationals and at worst a misleading seal of approval affixed by those with no legitimate claim to judge these matters.

[2] For a fuller background on core standards and codes of conduct see Appendix A.

In what follows, we propose a framework called *Ratcheting Labor Standards* to make good on the commitments of core labor codes. Like the metaphorical ratchet wrench we invoke, the framework attempts to set into motion a process that begins with the dismal labor outcomes often found in the facilities worldwide, and then gradually, but systematically move them upwards. The standards are based initially upon the best that current performance offers, the regulatory frame compels facility-level improvements, and then re-sets standards at that new, elevated level of realized performance. The ratcheting-rule framework recognizes (like voluntary codes) that we have limited knowledge of the diverse needs of workers in developing countries and of feasible social performance, but aims nonetheless (like other traditional proposals) to provide enforceable standards backed by sanctions.

RLS embodies three central dynamics: public transparency, comparison and evaluation, and continuous improvement. Transparency begins from the simple requirement of public disclosure of factory performance conditions. Firms are responsible for rating their own social performance—their treatment of workers, the community and the environment—on condition that their ratings be subject to credible public review, and provided in a way that allows comparison of conditions and efforts to improve them. In this information regime, firms first develop and implement their own means of enhancing labor and social performance. In return for this freedom of initiative, however, they must report their methods and outcomes to organizations, accredited with an international body, which can both certify that firms actually carried out the investigations reported and rank the social performance of the firm against its peers. The accredited, certifying organizations would in turn supply sufficient information about their certification and ranking practices to the public and superordinate bodies so that *their* performance could be compared. Thus forgiving inspections by firms, their agents, or monitoring entities can be distinguished from demanding ones.

These rankings would produce a two-sided competition: Firms confident of their outstanding social performance would seek out verifying organizations demanding enough to value their accomplishments; the best verifiers would want to demonstrate and hone their evaluative skills by working with the outstanding social performers. The medium-term result would be the production of enough information about how firms

actually perform socially, and how to improve that performance, to allow definition of effective baseline regulatory standards, including, crucially, standards for improvement. As time goes on these baselines would be revised to reflect new possibilities. Put another way, enforceable yet corrigible standards are the product—not the starting point—of a process in which monitors constitute themselves as effective actors even as they come to understand more precisely the ends towards which monitoring is directed. The desire of global publics, organized as consumers, advocacy groups, and governments, to abolish horrific labor conditions drives this simultaneous competition for social performance and monitoring integrity.

This proposal grows out of three overlapping sets of developments. First and most obviously, it formalizes and makes transparent—and thus effective—the sophisticated efforts at self-monitoring already underway. It allows firms that respond to public pressure in good faith, but in different ways, to demonstrate their accomplishments credibly, without requiring agreement from the beginning on common standards and assessment protocols.

Second and more broadly, RLS builds on the re-organization of production and supply chains that constitute the current wave of decentralization: the system extends those forms of disciplined self-monitoring integral to competitive success in world markets to labor and labor-related domains. That is why, as we will see, leading firms in sectors such as footwear and apparel, aware that the costs of proceeding further down a familiar path are low (and may indeed bring surprising benefits) have begun to increase the reach of process-control and quality-assurance regimes in just this way. Public disclosure of these improvements makes their experience available and compelling to less advanced firms in the formal sector and to firms in the informal sector as well.

Third and most generally, the effort to construct a system of rolling rules for labor standards is inspired by, and borrows from, recent regulatory innovations that are themselves responses to changes in the economic environment analogous to those relevant here. In areas such as industrial toxics control and pollution prevention, nuclear power generation, the restoration and governance of natural habitats, and the management of large-scale ecosystems in the United States—as well as in the workplace and labor markets—fixed-rule regulation has been frustrated by the inability of regulators

to match the pace of change, complexity, and diversity of their targets (Weber 1999, Sabel et. al. 1999, Fung and O'Rourke 2000, World Bank 1999). One common response has been to develop rolling rule systems that enable producers or other parties to select improved performance and monitoring methods; in return, the regulated entity must reveal these practices and their outcomes to the regulator. Typically this information pooling is accomplished by an entity responsive to but independent from the regulated actors, which organizes peer-reviews and compares the results to generate rolling rules and procedures that become standards for all. In the most fully developed systems—as in the regulation of the US nuclear-power generating industry, for example—regulated entities are further judged by their ability to respond to improvements developed by peers or the pooling center (Reese 1994). From this perspective, a rolling-standard regime of labor regulation is not a contrivance necessary to accommodate the institutional deficiencies of developing countries, but rather a step towards the creation of a labor-standards regime that takes account of current circumstance.

The body of this essay elaborates the claim that a regime built on the principles underpinning these successes can yield effective enforcement of core labor standards where fixed rules and voluntary codes cannot. Section II characterizes the current wave of decentralization and globalization according to the organization of firms. Rising demands for quality and timely delivery in the world markets requires firms to adopt an ensemble of disciplines that make competition in social standards and monitoring methods not only workable but competitively attractive for the good performers among them. Section III sets out the principles of Ratcheting Labor Standards and shows how they create continuously more demanding standard by organizing this competition. Section IV argues that current developments in labor-standard monitoring in the formal sector are converging into a rolling-rule enforcement regime consistent with these principles. Section V makes a similar argument, more speculatively, for the informal sector. We conclude by showing how the proposed regime creates places for firms, trade unions, NGO's, national regulatory entities and international organizations such as the ILO, World Bank and WTO to exercise their authority together to give force to the public consensus for labor standards.

II. THE ECONOMIC BASIS OF GLOBALIZATION: REGULATORY ROAD BLOCKS AND OPPORTUNITIES

The current wave of globalization at once undermines conventional approaches to labor standards regulation, yet creates opportunities for the RLS alternative. As with previous waves of globalization and decentralization, the search for ever cheaper labor drives the current relocation of production to the abundant supply of workers in developing countries. What distinguishes the contemporary movement is the need to integrate cheap labor into production systems that deliver high-quality, precisely timed delivery of components and goods, and rapid product innovations. At the same time, the globalization of information and transnational advocacy campaigns has allowed labor and human rights activists to raise public awareness about broad social concerns and to even target individual factory problems. These multiple dynamics give rise to novel relationships between retailers, large-multinational firms, and their tiers of suppliers in both the formal and informal sectors of developing economies, as well as between producers and consumers. It is these new relations that directly create the possibility for RLS in the formal sector and, through secondary effects, buttress them in the informal sector as well.

Changes in the Formal Sector

Instead of arms-length decentralization in which relationships are made and broken solely on the basis of wage levels, producer relationships under contemporary globalization are based upon careful assessments of the desirability of firms as potential partners, able to provide not only cheap labor, but product and process improvements that increase the competitiveness of the whole production chain (Gereffi 1996, Helper and Sako 1995, Sako 1996; Abernathy et. al. 1999). Large firms decentralize in order to undertake 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 mechanically complete tasks given them by managers remain all too common in many production processes, the "globalization" of production increasingly means decentralized co-development (Helper et. al. 1998).

To coordinate these relationships, improve them, and know when some partnerships ought to be terminated in favor of more productive ones, firms engaged in co-development must monitor the capacities and actions of their collaborators with a previously unimagined scope and attention to detail. The risky nature of globalized 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, measure just this ability. 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. Leading firms therefore periodically re-evaluate the performance and potential of their upper tier suppliers; and suppliers in consequence are required to demonstrate growing capabilities in order to rise in the hierarchy of tiers.

The significance of these linkages for contemporary globalization is manifest in the influence of the largest and most sophisticated suppliers, the so-called "first-tier." In contemporary footwear production, for example, the largest supplier is a Taiwanese firm called Pou Chen. This Taiwanese conglomerate produces for virtually all of the well-known sports shoe merchandisers, such as Nike, Reebok, Adidas, Fila, Puma, Timberland, etc., and so is not overly dependent on any of them. The CEO of Pou Chen has bragged that one in six humans on the planet wear shoes made by the company. Pou Chen and other first tier suppliers have become expert in plant layout and design for

manufacturability to meet performance standards while cutting production costs. These suppliers engage in extensive co-development of products and production processes with their household-branded end-producers, while simultaneously carefully managing relationships with their own downstream suppliers in multiple developing countries. One precedent for this structure of global organization comes from circuit board manufacturing. In the last decade and half, the leading suppliers moved from simply "stuffing" boards to their customer's exact specification to jointly developing complex and rapidly changing products like personal computers and manufacturing those products with advanced logistical systems.

Another manifestation, unprecedented as far as we know, is the organization of manufacturing into enormous production complexes. The combination of elaborate performance demands and labor intensive production has been solved by combining thousands of workers with large, multinational managerial staffs into assembly plants whose size rivals those from the age of vertically integrated mass production factories. For example, Frenkel (1999) documents one footwear plant in southern China that employs 4,600 workers and another that employs 8,000. Pou Chen runs plants with 60,000 workers and more. Unlike the earlier industrial age, however, these plants operate in a decentralized environment in which their workers often assemble parts imported from elsewhere. Furthermore, the lines within contemporary factories are also subject to frequent reorganization to accommodate process and product innovations, and overall operations obey exacting logistical disciplines.

Globalization and the Informal Sector

The "informal sector" of semi-legal production groups a vast range of activities: women pieceworkers stitching baseball covers for a US-Honduran company under subcontract; street vendors, often with ties to established commercial outlets, selling foodstuffs and piece goods to the poor and the middle class; skilled artisans working wood, stone, metal or plastic with simple machines; brick-makers burning old tires to fuel crude kilns in order to supply small construction sites, to name only a few. Much of this activity is undertaken for the sake of subsistence, but hardly all. Although exact numbers are hard to come by, evidence suggests that informal-sector workers in general, and

home-based women workers in particular, account for a significant share of the workforce in the export industry of developing countries (Chen, Sebstad, O'Conell 1999).

The transformation of global supply chains recasts these activities directly and indirectly. Directly, some of the components and sub-assemblies used in the large facilities mentioned above can instead be manufactured in the informal sector, for example by women in outlying villages or small firms operating in the shadow of the law. This second level of production decentralization—from large firms in developing countries to informal workers there—is governed by the same logistical and quality demands that govern global production generally. Formal sector customers typically meet their quality and timeliness requirements by shifting the costs of failure to the informal sector producers. Usually, this means high rates of rejection, large inventories, and consequently lower incomes.

The most ambitious and capable among these producers, however, understand that their own progress depends upon mastering the same disciplines of process control, monitoring, and innovation that yield such large returns for their formal-sector partners. Already, informal sector operators are becoming familiar with ISO 9000 and its underlying principles just as many of them gained expertise in second-hand machinery long ago. The distance between the formal and informal sectors is thus not as great as it might at first appear; many informal producers are connected to global production chains not only through regular cooperative exchanges, but also potentially by deeper organizational practices that bridge the divide and may allow the most able informal firms to cross it.

At the same time, the entry of transnational firms and their commodities into developing nations exerts indirect pressures on the informal sector. First, competition from world-class firms often pushes weak domestic producers, perhaps previously shielded by protectionist measures, into the informal sector of lower quality, but less expensive, goods. Second, 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). This wider array of product choices, in turn, increases the market power and schools the tastes of even the poorest consumers, and so forces the street retailers who serve them to aggressively seek

out higher-quality, more fashionable merchandise. The upshot of these direct and indirect effects is that globalization undoes the unwritten rules of the informal sector—the social conventions and practices framing wages, business relationships, and working conditions—just as it undoes much in the written agreements governing the formal sector.

Why Conventional Approaches Will Fail

The changes canvassed above undermine conventional regulatory efforts to secure decent working conditions first and most directly by their scope. The most effective regulatory bodies belong to national governments, but the subjects they seek to regulate are by definition international, sprawling across the globe. At most, these national authorities can enforce labor standards by rejecting goods that they identify as having been produced under sub-standard conditions (as in the Fair Labor Standards Act of the United States). Such regulation is bound to be haphazard in its ability to improve worldwide working conditions, and raises questions about the degree to which standards developed in one country—say a wealthy industrialized one—are appropriate for another whose central problem is economic development.

The constant re-organization of production within firms and across supply chains poses a second obstacle to conventional regulatory approaches. 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 regime or labor regulation system based on fixed standards. As local units use their discretion to solve their particular problems, they inevitably violate externally determined general rules. A reflection of this tendency is that collective bargaining agreements setting job definitions, subcontracting limits, and work time in the developed economies have been substantially relaxed in recent years to allow diverse solutions to a common problem even within the same firm. Why would developing countries have an easier time accommodating these incessant changes?

These perturbing effects of continuous re-organization might, perhaps, be met with labor regulations that use a least-common-denominator of labor standards were it not for a third problem of fixed-rule regimes: they require extensive inspectorates and

other administrative capacities to monitor firms, sanction violators, and counter their evasion efforts. Even in the advanced industrialized countries, regulators lack these capacities and are searching for alternative models and methods (Esbenshade 1999, Weil 1999). The regulatory capacities of developing countries rest on much shakier foundations. Furthermore, they face the daunting challenges posed by informality; in many of these nations, large shares of the workforce are unregistered and by definition do not benefit from official labor standards or inspection efforts.

These three difficulties feed and are compounded by a fourth: the problem of unintended consequences. When authorities impose prohibitions or performance requirements upon distant and complexly interconnected producers, enforcement efforts can easily thwart the original aims of regulators. For example, regulatory demands may drive firms from the formal to the informal sector in their efforts to avoid costly compliance, and thus make further abuses harder to detect, much less to correct. Bans on child labor illustrate this dynamic dramatically. Outright prohibitions on child labor often force children out of factories only to drive them into deeper poverty or the sex industry.

Foundations for a Regulatory Alternative

But these same pressures that frustrate conventional regulatory efforts can serve as the building blocks for an alternative approach based upon the core principle of globalization itself: continuous competitive innovation driven by public comparisons of firm performance in which outstanding enterprises set the par.

Consider the formal sector. Many of the units in contemporary supply chains embody substantial fixed investments to satisfy their demanding quality and logistical requirements. These plants may be footloose by the standards of developed economy corporations. But they are rooted compared to traditional sweatshops which have no fixed costs at all. (In the classic garment-industry sweatshop, seamstresses rent the machines the use from the firm owner and are paid by the piece. The fabric parts to be sewn are the even thread with which to sew it are supplied by the customer. The firm owner rents the premises with a short-term lease.) Recall the large footwear facilities discussed above. Relocating these facilities and recreating these relationships is expensive. Therefore,

firms prefer to comply with labor regulations when it is not too costly to do so. This creates the possibility of regulation despite the continuing possibilities of flight.

Second, a rolling rule regime makes compliance costs bearable by building upon the capacities of reorganization and learning that firms have already developed in the course of competition. It begins by asking them to extend their ingenuity, honed for the purposes of improving product quality and variety, to the problems of labor conditions and social performance generally. Beyond this, regulators will demand only that firms meet the social standards that pioneers like them have already achieved, and so ask firms to exercise their benchmarking and learning abilities. Because it builds upon these familiar disciplines and demands demonstrably feasible levels of performance, compliance with a ratcheting regime is manifestly less costly than adherence to abstract and uniform standards formulated by distant agencies. As we shall see shortly, many firms and supplier clusters have already begun to integrate various social performance standards and improvement routines into their internal quality control efforts.

Consider next the informal sector. Operators who participate in global supply chains, perhaps by providing inputs to formal sector firms, have incentives to improve the social performance in order to improve their standing in their production hierarchy. On one hand, compliance with labor standards is a condition of participation and advancement. On the other, developing the capacities that allow one to learn and improve on social performance dimensions will likely enhance competitive quality, logistical, and innovative capacities as well. A central task of economic development is to make the prospects of such advancement from informal to formal sectors credible. In this sense, regulating labor standards in the informal sector is a component of advancing economic development overall, and efforts toward the former strengthen the latter as well.

For informal sector operators who do not participate in these supply chains, the keys to regulation lie in proximity to home and work life. Whereas these are typically distinct in the advanced economies, they are closely intertwined in the informal sector. Adults often work alongside children and other family members, and the workplace may be adjacent to, or a part of, the home. This means that environmental or health and safety problems at work are almost inevitably also problems for the household and the community. Conversely, efforts to improve community life by cleaning up the

environment or reducing other hazardous conditions almost inevitably require interventions at the workplace. Therefore, community development efforts often become in part efforts to improve labor conditions and standards. As we shall see below, the ability of ratcheting regimes to discover and diffuse innovations is particularly suited to these efforts because they typically occur against diverse backgrounds of political uncertainty and uneven local capacities and resources.

Finally, firms and informal operators that agree to incorporate social performance as part of their regular innovation efforts and to compare themselves against one another in this way would potentially ease the path for regulators as well. Instead of aspiring to the impossibility of inspecting hundreds of thousands of facilities (or homes) scattered across dozens of countries, a public authority on this alternative approach would gather data that was generated and collected primarily by firms in the course of developing or monitoring their quality and social-improvement programs. This obviously brings up many difficulties in the veracity of the information and of enforcement, and we shall turn to those in a moment. The central proposition here, however, is that by developing regulatory demands that are compatible with the fundamental operating routines of global producers, regulators can enlist those firms in its efforts to improve social performance and so share the burdens of formulating standards, monitoring them, and even of enforcement.

None of these outcomes—the social improvement of firms or the adoption of a regulatory frame that builds upon the drivers of globalization—is automatic. A few firms, highly vulnerable to public retaliation and versed in the disciplines of continuous reorganization, find it cheaper to adopt effective, labor practices than to run the risk of scandal. But firms that are less capable or less exposed, such as those who do not participate in global supply chains, whose customers are other businesses, and those with lower public profiles, may hesitate to follow suit. A regime of global labor regulation will only become effective if it can expand the incentives and dynamics that govern the former group to discipline the latter. The next section shows how a system of rolling rule labor standards can do just that.

III. THE DESIGN OF ROLLING RULE LABOR REGULATION

The core idea of ratcheting labor regulation, as we said at the outset, is to compel firms to compete publicly with one another to improve their social performance. In its fullest version, every firm regulated under this regime would report wages, workforce profiles, environmental and labor management systems, and other elements of social performance to a certified monitor. Each monitor then unifies reports and ranks the overall performance of firms under its purview. Monitors would then make these rankings and the methods used to derive them publicly available. The reputation and credibility of monitors would be built upon public evaluations of their capacities for evaluating and improving their member firms. The information provided by this system allows the public acting as consumers, in interest groups, and through their national governments to put firms and monitors under complementary competitive pressures. Firms thus seek highly regarded monitors to elevate their public standing. Monitors would seek out the most sincere and capable firms and encourage their member firms to adopt best practices in order build their reputations and expand their influence. Consumers and others would be able to distinguish leaders from laggards in social performance. Under this system, responsible firms could assume that their behavior would be rewarded and irresponsible ones would fear embarrassment, pressure campaigns, and official sanctions.

A second effect, resulting from competition, is continuous improvement in labor and other social practices. Laggard firms that seek refuge in less demanding regimes are 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.

Third, this process establishes standards that are inherently feasible because they are derived from field-proven practices of best performers. No one can dismiss them as the dreams of idealists because established competitors are already complying with them.

Fourth and relatedly, the framework accommodates great diversity in political conditions, community capacities, and sectoral circumstances. Since requirements upon

firms and operators are based in the first instance upon comparable leaders in social performance, the regime incorporates contextual considerations automatically as monitors and publics select appropriate boundaries for comparison and ranking. There is a world of difference between an advanced manufacturing facility with 5,000 workers and a village-based piecework operation with a dozen; the rolling-rule monitoring regime acknowledges these contrasts in its fundamental design.

Fifth, because the social performance of a firm in RLS is compared with others economically and socially like itself, but not necessarily subject to the same political jurisdiction, the system is not easily bent to protectionist purposes. If some firms in a developing economy can document superior social performance, or rapid rates of improvement, it is hard for the political authorities to claim, for example, that the very idea of elaborating labor standards of any kind is inherently designed to exclude domestically produced goods from international markets. By the same token, this variation of performance within developing economies, combined with variation in the developed ones, makes it harder for governments in the latter to use labor standards as a pretext for banning imports from entire nations. Put another way, by dis-aggregating national economies into diverse groups of firms with differing trajectories, RLS makes it harder—but not, of course, impossible—to build the political coalitions that can transform the fight for or against standards into an instrument of national trade policy.

Finally, the system also provides the basis for elaborating a framework of baseline social performance levels and procedures over time. In the first instance, there will be many diverse and contending practices and standards among monitors and firms. Over time, however, some routines will become widespread and accepted as so basic that all sincere and capable firm should adopt them. These routines would then become minimal in the sense that all firms participating in the rolling rule regime would be required to adopt them.

Though RLS offers compelling advantages over fixed standards, it may seem less desirable on three counts: its scope of application, its ability to negotiate the adversarialism inherent in efforts to improve labor practices, and its complexity.

Regarding scope, RLS is in part inspired by a promising dynamic in which consumers in high income countries demand products made with good labor practices

and large firms respond by improving their treatment of workers, incorporating these priorities into their supply-chain management practices, and retaining third-party auditors to verify that they have responded effectively. Many markets—such as informal sector production, business-to-business commodities, and production for domestic consumption in developing countries—lack such ethically inclined consumers. If RLS's scope is to extend beyond a limited number of high-profile consumer multinationals, other parties must pressure firms in these arenas to improve their labor practices. This again is a serious challenge. However, by enhancing the publicity and quality of monitoring of labor practices through dedicated institutions and regulatory requirements, RLS expands social competition beyond its currently limited range by inviting an array of parties to press less visible firms to behave more ethically. This framework potentially creates broad opportunities for local community groups, labor organizations, official regulatory agencies, investors and other financial market actors to drive RLS competition by motivating firms that lie beyond the view or reach of wealthy consumers.

Another objection grows out of an important difference between efforts to improve product quality, such as through ISO 9000, and to improve labor practices. Labor conditions are frequently distributive and adversarial contests, rather than clear win-win opportunities for managers. Because of this difference, the organizational disciplines of continuous improvement may not seem relevant to labor practices. RLS bridges this gap in two ways. First, solutions to many workplace concerns can be bought cheaply—for a modicum of management attention and flexibility—and do not require demanding distributive trade-offs. One labor-management effort to improve conditions in an Indonesian footwear facility, for example, revealed that some of the most pressing concerns such as workplace temperature, ventilation, noise, occupational safety, ergonomics, and protective equipment could be addressed at very modest cost (IHS 1999). In this regard, many labor practice improvements resemble pollution prevention initiatives that frequently yield mutual gains solutions (Massachusetts Toxics Use Reduction Program 1997). RLS motivates firms to constantly seek out these solutions. Outside of this cooperative zone, RLS takes advantage of the variance between firms. In any development context, some workers are treated better than others on the distributive dimensions of work hours, compensation, and benefits. The comparative framework of

RLS rewards firms that make these trade-offs in workers' favor and sets standards based on their behavior, while identifying those that perform poorly for additional official or informal sanction. Finally, this framework may appear too complex to work. Why should there be two competitions, one for firms and another for monitors, rather than just a single contest between firms organized by a single super-ordinate monitoring body? This decision is a second-order design choice, not a matter of principle. Either path might spark the social performance race just outlined. Indeed, other rolling-rule monitoring regimes[3] operate with a single monitor. Two considerations, however, weigh in favor of multiple competing monitors for global labor standards.

An array of monitoring organizations seems more suited to the diversity of production contexts and concerns that any regulatory regime must face. Some monitors might specialize in sectors with articulated production chains—like footwear and electronics—while others might focus on informal sector activities. These two would likely develop different data collection, verification, and technical assistance capacities suited to the particularity of their regulatory targets. Furthermore, there is at present an array of social monitoring and certification efforts afoot. Some are led by NGOs, others by accounting and consulting firms, and a few are run by large multinational firms, each utilizing different techniques, concepts, and approaches. At this point in their early history, no one knows which will turn out to be most effective, and so one reasonable path toward RLS is to incorporate them all into a competitive social performance contest.

IV. RLS BUILDING BLOCKS IN THE FORMAL SECTOR

Consider now four social monitoring trends—firm-centered initiatives, NGO led efforts, partnerships between multinational corporations and NGOs, and public disclosure—that might form the building blocks of an RLS. Each is partially flawed from the point of view of the design principles we have been discussing. None, moreover, is yet connected to the others in the ways necessary to form an integral whole. Indeed some actors treat these developments as though they were and will remain separate endeavors, to be pursued independently, but not integrated. The gap between the reality and the regulatory project is thus large.

[3] The U.S. nuclear power industry offers one good example. See Joseph Rees (1994).

But it is also possible to understand the partially divergent developments and the simultaneous pursuit of multiple strategies as signs of experimentation and exploration. Faced with the urgent need to respond to a critical situation, firms and NGOs have responded in a wide range of ways, creating a welter of programs and institutions. These efforts potentially converge into a unified regulatory regime on the lines suggested. Mindful of the complexity and fluidity of the current situation, we do not suggest that all roads lead to RLS. Rather, the RLS principles suggest a fruitful way to join together and reinforce a striking set of novel initiatives that, left in isolation, could flounder because of their separate weaknesses and their partially conflicting aims.

Firm-Centered Initiatives

Political pressures and the structure of global production chains has led several large, high-profile multinational footwear and apparel manufacturers to take steps which display a number of the features of ratcheting labor standards. Nike is a case in point. Over the last six years, Nike has faced increasing public pressure regarding its labor practices. A transnational advocacy network has emerged focusing specifically on Nike and its subcontractors. Almost everywhere the company turns, it now faces sophisticated media campaigns, boycotts, picket lines, and most recently literal rocks through its windows at "NikeTown" in Seattle during the WTO meetings. The structure of Nike's production has also forced the company to look to new strategies to resolve labor problems throughout its dispersed subcontractor networks. Nike does not own any of the factories which manufacture its sports shoes or apparel. Direct control and regulation are thus not feasible. Instead, Nike must manage a network of over 350 factories around the world (employing approximately 500,000 workers) through incentives, suasion, and occasional sanctions. The company has responded to public pressures by bringing labor and environmental issues into this subcontractor management system.

In 1992, Nike established a code of conduct on labor and environmental practices, and in 1994, began a program of external monitoring. Subcontractor compliance with the code is monitored through a program of internal 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 its 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, though it seeks to go further by evaluating actual factory performance (not just whether a subcontractor has appropriate management procedures). Reebok and Adidas, Nike's main competitors, as well as companies such as Levi's, Disney, the Gap, and other prominent merchandisers, have established similar programs that combine in-house assessment with audits by consulting firms. Reebok for instance, has instituted a worldwide "Human Rights Production Standards Factory Performance Assessment," while Adidas has implemented a "Standards of Engagement Survey Form on Health, Safety, and Environment" for all its subcontractors.

Through these auditing tools, companies like Nike, Reebok, etc. now regularly rate their subcontractors for environmental and labor performance. In the case of Nike, points are assigned for the ranking in each category, with double weight given to the two social-performance rankings (labor and environment). Subcontractors are then told how they rate against other subcontractors in the same country. High scorers often garner more lucrative orders and low scorers risk losing contracts. Nike bases these labor and environmental programs on long-standing quality control management systems for evaluating and ranking subcontractors. Requirements to improve labor conditions simply extend the scope of commitments agreed to in the code of conduct and subcontractor Memoranda of Understanding. Providing some evidence that this effort is an earnest one, Nike has cancelled some subcontractor contracts due to poor social evaluations.

But how much improvement have Nike's code of conduct and self-monitoring programs really achieved? Little research exists on the impacts of codes of conduct and self-monitoring on actual labor conditions. Nike naturally asserts that they respond effectively and sufficiently to labor concerns. The company argued for several years that it alone (perhaps with the assistance of a consulting firm) could solve its labor problems. However, judging by press reports, human rights NGOs and the general public put little credence in corporate self-evaluation and monitoring. 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 guided tours around their factories by former-UN Ambassador Andrew Young (O'Rourke 1997).

To be sure, conflicts of interest and other drawbacks burden company self-monitoring. Their procedures are rarely transparent to the public or workers, lack public accountability, and provide no basis for comparison between firms. Quite simply, NGOs and even average consumers don't trust firms like Nike to self-regulate their labor practices. Without independent verification the pubic cannot discern the truth of Nike's claims. For those who distrust it, the company's monitoring 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.

Certifying Bodies

Public skepticism (and further activist pressure) has led to a recent profusion of programs in the US and Europe to establish more independent monitoring through certified third-parties. Five 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, the British-based Ethical Trading Initiative (ETI), and the US-based Worker Rights Consortium. Each of these programs has a code of conduct informed largely by ILO core standards. They differ substantially, however, in procedures for monitoring, enforcement, and financing inspections.

The Clean Clothes Campaign (CCC) model combines many of the most promising elements in this certification trend. In 1998, the CCC developed a model code of conduct based on ILO conventions that applies to entire subcontracting chains (including homeworkers) and then followed up with proposals for monitoring systems. Firms who open themselves to monitoring and comply with the CCC code are eligible to use a "clean" label. 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.

Other certifying bodies are competing to play a similar role. The Fair Labor Association (FLA), convened by the Clinton administration in 1996, is the most advanced and most controversial of current initiatives to establish monitoring and verification systems. SA8000, created in 1997 by the U.S. NGO Council on Economic Priorities (CEP), is patterned on the ISO family of standards and requires corporations seeking their stamp of approval to hire certified auditors to evaluate whether their subcontractors are complying with the code of conduct. The Ethical Trading Initiative, established by a British coalition in 1998, is also developing a monitoring system, conducting pilot studies, organizing training programs for monitors, and building coalitions in developing countries to carry out verification work. Finally, the Worker Rights Consortium (WRC), developed by the United Students Against Sweatshops (USAS) in 1999, employs a different strategy focusing on information forcing, verification systems, and pro-active inspections. The WRC differs from the other four models in that it will explicitly not certify company compliance with a code of conduct or standard.

While there are some important differences in the requirements of 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. However, a number of the NGO-developed codes go much further than the ILO in defining outcome-based standards, such as a "living wage," women's rights, 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. USAS and the CCC 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 various 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.

Corporate-NGO Partnerships

Nike and Reebok, who would appear to be natural foes of NGOs or at least unlikely allies, are also beginning to include them in monitoring programs. In what appears to be the most in-depth independent assessment of factory conditions for a major multinational footwear manufacturer, Reebok commissioned a local NGO in Indonesia (called IHS) in 1998 to conduct an audit of two factories producing its shoes. The assessment included over 1400 hours of research inside the factories involving: (1) general worker surveys of 5 percent of the workforce; (2) in-depth worker interviews; and (3) direct observation by experts on labor relations, occupational health, and women's issues. The local NGO was given complete access to factory records, workers, and the shop floor, and granted control over the final, public reporting. This report, titled "Peduli Hak" ("Caring for Rights") set the standard for independent auditing and public transparency. Liz Claiborne, a major women's clothing company, has established a smaller pilot monitoring project with an NGO for one of its Guatemalan factories.

The Reebok report however, represents much more than just an example of independent monitoring. The process also served to advance a nascent form of ratcheting labor standards. The report (and the process behind it) spells out how problems can be identified by local actors, feeding new information to subcontractors and multinational buyers, and how potential solutions can be jointly identified and implemented. The report is a clear example of a process of independent information gathering and public disclosure that can drive improvements in factory conditions.

Nike has responded with an NGO initiative of its own. In collaboration with the MacArthur Foundation, the World Bank, and the International Youth Foundation, Nike has established the "Global Alliance for Workers and Communities." The stated purpose of the Global Alliance is to gather information on workers' needs and aspirations in five areas: workplace conditions, career goals, educational opportunities, health and nutrition, and linkages with their local community. Based on this assessment, the Global Alliance plans to address problems in workplace conditions identified in the surveys, and to fund

development projects which meet needs raised by workers (such as life skills training, small business development, etc.). Skeptics fear that the Global Alliance is simply an attempt to subvert union organizing by gathering information on worker grievances and then mediating between firms and workers. One international trade union official has accused the Global Alliance of supporting the worst form of "yellow company unions."[4] Despite these serious concerns, the Global Alliance may yet ratchet labor standards upward by raising standards for worker involvement and NGO assessment. As one labor-rights activist recently asserted, "We have crossed a continental divide when the two leading sport shoe companies are trying to outbid each other in the area of improving labor rights."[5]

Public Disclosure

With a growing student movement led by the United Students Against Sweatshops, university administrations have similarly been forced to take action to evaluate and improve the conditions of the factories that produce university-logo goods. Students across the US have won public disclosure agreements from their administrations which require licensees to disclose factory locations. This relatively recent demand for public disclosure has been surprisingly successful (and would have not have been predicted even two years ago). Over 30 universities have now pledged to require public disclosure of factory locations by the subcontractors producing their goods. Thus far, five major firms (Nike, Champion, Jansport, Gear for Sports, and Eastpack) have publicly disclosed their subcontractor locations producing university goods and more are likely to follow suit in the coming months. The next challenge is to establish procedures and systems that monitor these far-flung networks of subcontractors.

Limitations and Future Directions

These seemingly convergent developments represent innovative strategies of formal sector producers and NGOs to expand the coverage of codes of conducts and labor standards, deepen the credibility of monitoring and enforcement, and to more effectively

[4] Kearney, Neil, "Letter to the Editor," *Financial Times* of London, January 31, 2000.

identify problems and prioritize solutions. Recent initiatives involve a wide range of actors, including merchandising multinationals, subcontracting producers, public-private partnerships to establish oversight and certification bodies, and NGOs and workers themselves. Taken together, these initiatives offer the potential for gathering new information and learning from experiences of local implementation, and for creating multiple mechanisms and incentives to improve working conditions across production chains.

Unfortunately, these initiatives still lack critical inter-connections. Though they all proceed from the obvious common concern for labor conditions, each has different goals, techniques, and approaches that have to date operated separately from one another. If RLS moves forward, it will do so by building upon the achievements of these and related programs and incorporating them into a larger frame of comparison. That, in turn, requires these thus far independent programs to pool the results of their efforts so that the public has some basis on which to gauge the seriousness and merits of each and so each can learn from the successes of the other. Borrowing from software development, another field that is deeply concerned with compatibility while nevertheless preserving a diversity of approaches, current corporate and independent monitoring efforts should be made "interoperable" with one another. "Users" of one regime, be they consumers, MNCs, supplier firms, or national regulatory agencies, should be able to compare performance measurements, rankings, and techniques with those of other monitoring regimes. There is no straightforward path to interoperability, but consider two alternatives.

One path might begin by developing a set of basic metrics, perhaps derived from the concerns that drive the ILO's core labor standards, on which the results of production facilities and their monitoring agents could be compared. Such basic metrics might include wage levels (perhaps as a function of regional prevailing wages), workforce age profiles, turnover, health and safety outcomes, worker satisfaction, worker association, and the like. As participants in RLS, monitoring bodies would add the collection and reporting of these metrics to the other functions they presently performs. Some centralized coordinating body—perhaps convened by a reputable international

[5] Bissell, Trim, "Nike, Reebok Compete to Set Labor Rights Pace," unpublished manuscript, Campaign for Labor Rights, March 25, 1999.

organization such as the World Bank or the ILO—would then compile these metrics, generate rankings from them, and then publicize these results. Since such metrics provide only a thin basis of information, we imagine that the participants, perhaps organized in a standards governance body, would constantly revise the set of basic metrics to make it more useful and reflective of underlying labor conditions, and then also increase its sophistication by adding process and implementation considerations.

An alternative might focus on particular industrial sectors, like footwear or apparel. This approach begins with the recognition that workers in different sectors face very different working conditions and problems that stem from the location and organization or those sectors, and that these considerations constitute the relevant boundaries for comparisons. Here, the most forward NGOs, MNCs, and monitors might form a governance and standards body to deliberate about the merits and effectiveness of the labor improvements strategies that they each pursue, and then generate rankings of production facilities, MNCs, and monitoring regimes based upon those deliberations. To be credible and actionable by national regulatory agencies, consumers, and advocacy organizations, the methodologies, justifications, and rankings themselves would of course be publicly available.

Interoperability and transparency would be further enhanced by the systemic pooling of these monitoring results in a centralized and publicly accessible knowledge base, similar to the Toxics Release Inventory (TRI) or NGO sponsored scorecard projects in the United States. A prestigious International Financial Institution like the World Bank might house such a knowledge base and the deliberations that govern its generation and use. Such an institutional home would lend RLS a level of legitimacy and technical capability that far exceeds that of current monitoring efforts.

Furthermore, RLS ultimately requires mechanisms that motivate laggard firms to open themselves to evaluation and to participate in monitoring systems and certifying associations. Certainly, firms like Nike will put upward pressure on other competing firms to participate, but also most certainly, there will be firms that attempt to opt out of a system of RLS. Some range of sanctions and incentives might motivate these firms to participate, including: national regulatory sanctions for firms that do not participate, support of consumer and advocacy campaigns to pressure firms to participate, national

market-based mechanisms to incentivize participation, and international trade mechanisms that motivate participation.

If RLS gains momentum, these sanctions will be supplemented by incentives for large corporations to follow the lead of Nike and Reebok in establishing their own labor monitoring and improvement practices that are integrated in their mainstream supplier development and management systems. In the long term, they will realize that social performance will become its own basis of competition and labor monitoring programs will become a necessary element of success, just as quality improvement programs are taken for granted today. In the short term, they will realize that their own internal monitors will in many cases have a deeper understanding of particular production practices than an outside independent monitor, and so internally generated recommendations for improvement will likely be more effective in achieving social improvements and more compatible with other production considerations. Since RLS compels them to adopt independent monitoring unless they establish a comparably effective internal alternative, many will seek the latter route.

V. BUILDING RLS FOUNDATIONS IN THE INFORMAL SECTOR

Though the principles of ratcheting regulation can apply to the informal sector as well, its development must attend three crucial differences. First, informal sector institutions lack the expansive capacities of firms that operate in the global economy. Unlike Nike, Reebok, and their suppliers, informal-sector firms operating on the margins of solvency typically lack both the resources and know-how to improve their social performance. Therefore, an effective regulatory regime must begin by building these capacities for monitoring and betterment. Second, most informal sector activity is not well connected to developed country consumers and their governments. These actors' demands for good labor practices motivated the development of RLS building blocks such as SA8000 and the Nike initiatives, but these drivers are unavailable in informal production contexts. And third, the informal sector often melds community and economy - often bringing production into peoples' homes and communities. Given this proximity, grassroots organizations can sometimes motivate informal sector social performance improvements through local campaigns. Just as consumer and producer pressure drives

regulatory reform in the formal sector, community pressure can drive it in the informal one. These same organizations can enable labor practice improvements by providing technical know how, connecting into local social norms and networks, and providing the motivation to make changes.

Conditions in the informal sector are most accessible to reform when highly capable firms operating in the global economy are motivated to connect to informal sector producers and to assist these firms to improve. For example, Nike, anxious to escape the problems of production in Bangkok, Thailand, decided to subcontract stitching of uppers to an NGO-managed project employing women in outlying villages. To guard against abusive practices from the start, as well as to ensure a dedicated and reliable workforce, Nike worked with a Thai NGO, Population and Community Development Association, to build the capacity of these rural women workers and to ensure that working conditions in the new plants meet corporate standards. Operators like these, who simultaneously occupy both the formal and informal spheres, are susceptible to the formal sector RLS designs described in the previous section.

But most informal operators lack these direct linkages to global firms. Therefore capacities to improve social performance in areas such as labor standards and environment must be built up from diverse and scattered sources. Several recent projects aimed at improving the environmental performance of small firms in developing economies illustrates these challenges. In these cases, capacity building depends on complex and fragile alliances that span not only the boundaries between formal and informal sectors, but frequently bridge national boundaries as well. Even the most schematic presentation of promising informal sector regulatory projects reveals the complexity of the problems of institutional coordination required to build these alliances.

In Guadalajara, Mexico, for example, a group of eleven large firms teamed with the national Ministry of Environment, Natural Resources and Fisheries (SEMARNAP), the World Bank, local research institutes, university researchers, as well as private consultants to school their small suppliers in environmental management systems based on ISO 14000. Over the course of this project, suppliers completed nearly all the required planning tasks and implemented nearly half of the plans. Unsurprising in light of the marginal positions they occupy, project evaluators concluded that success depended on

"substantial implementation support," including provision of staff to translate the overall project into achievable tasks (World Bank 1999).

Similarly, a project to reduce the emissions of some 300 small brick kilns in Ciudad Juárez, Mexico, by switching to propane fuel, involved an extraordinary coalition of public and private groups: FEMAP, an NGO with experience in grass-roots organizing in the poor neighborhood where the kilns, and their some 2,000 employees, are located; PRONASOL, the micro-enterprise arm of the solidarity program of the Salinas administration (interested to demonstrate its concern for environmental conditions along the US, Mexican border), which provided funding; extension agents from Monterrey Tech and the Ciudad Juárez Campus as well as propane gas companies there and from El Paso Natural Gas across the border, who advised on technical problems of switching to propane; experts from Los Alamos National Laboratory in New Mexico, who tried to achieve dramatic fuel efficiencies through affordable redesign of the traditional brick kilns. Rival trade unions representing different groups of highly organized brick makers as well as rival community-based organizations defending the interests of particular neighborhood participated less directly. Despite the ample resources and high political priority it enjoyed locally, nationally and even internationally, the project failed to switch the sector to propane, much less to adopt new kiln designs. Brickmakers used their political clout to resist requirements that they pay the higher costs of this alternative fuel. However, community pressure did move them to abandon the dirtiest and most toxic fuels, such as waste plastic (Blackman and Bannmeister 1998).

Improvement of social performance in the informal sector is likely to require a complex, and therefore institutionally demanding, web of complementary capacities. The problem of child labor is a case in point. For example, projects in India and Pakistan 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 or her 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). These projects succeed by establishing intricate alliances between

families and grass-roots organizations representing them, schools and their associated bureaucracies, and donor institutions able to compensate mothers for the wages forgone by their children.

Community involvement—on the local, national, and even international levels—is thus crucial to regulatory reform in the informal sector. Standard regulatory regimes—which suppose capacities that frequently do not exist and overlook connections that must be established to build them—are almost sure to fail. Even ratcheting regimes, open as they are, will strain to achieve their regulatory ends. If the cases just presented offer any guide, the first step is to foster the capacity of local organizations to mobilize support in the community and within firms for the improvement of social performance. Such capacity building will typically go hand in hand with exploration of possibilities of working with a range of national and international organizations to define and execute projects. Institutions, ranging from international NGOs to the World Bank, which are already explicitly or indirectly helping to build the kind of organizations that can link economic, community and social development can help to organize these initial efforts. Many transnational NGOs, local community-based organizations, and trade union groups might, especially if supported with the appropriate technical assistance, take on the monitoring of informal production facilities as part of their missions to enhance conditions for communities, workers, women, or the environment. Wages and workplace conditions have always been central to each of these concerns, and so monitoring would be a natural extension of many NGO and union activities.

The next step is to connect these efforts so that they can learn from one another, inventory existing initiatives, and establish mechanisms for culling and diffusing best practices. Community-focussed transnational networks such as Global Exchange and the "Women in Informal Employment Globalizing and Organizing" (WIEGO) project, already build such linkages, and so offer a sound base in this activity area. An informal sector RLS rating system—for both informal sector operators and GSOs that monitor and seek to improve them—might grow out of these or allied networking initiatives as a way to more systematically learn from their diverse experiences. Given the diversity of activities and circumstances causally grouped under the "informal" heading, any such knowledge-base must be built one bit at a time, perhaps by beginning with fractional

categories such as home-workers that supply particular portions of the apparel industry. In this respect, however, informal sector RLS would mirror progress in the formal sector, where independent monitoring efforts may incrementally contribute to an formal sector RLS knowledge base.

VI. TOWARD RATCHETING LABOR STANDARDS

So far we have focussed on the way that MNCs, NGOs, consumers and other public groups, and international organizations could create a coherent scheme of labor regulation based on four basic norms: transparency, performance comparison, continuous improvement, and sanction for misbehavior. However, we have said little about the role of parties in the traditional systems of labor regulation that are being eroded by contemporary globalization: trade unions and national governments. By way of conclusion we review the principles and show how they can coherently inform the choices of these actors as well.

First and foremost, RLS requires a high degree of transparency and disclosure from both producers and monitors. Odd as it may seem, disclosure of factory locations, labor standards audits, performance rankings and outcomes, and monitoring methodologies, is a novel, sometimes contentious demand in the labor standards debate. Until now that debate has largely revolved around whether labor standards should be strictly policed or voluntaristic, and more or less encompassing, rather than on actual labor practices and outcomes in the global economy. Since RLS begins from current practices and formulates goals based upon them, it relies much more heavily on information compilation, analysis, and dissemination. In RLS, consumers, advocacy groups, and national regulators depend upon this actual labor practices and monitoring techniques to identify laggards in labor practices and to exert pressure on them. Though the detailed meaning of transparency must be worked out in the course of institutional construction, even in bare-bones form the requirement provides a useful guide to action, as the examples of MNCs and supplier monitoring show.

Transparency makes possible comparison, which is the second norm of RLS. Companies, governments, pressure groups, and publics should base their assessments of labor outcomes and management practices not upon absolute thresholds or prohibitions.

Instead, evaluations should be based upon what best-of-class performers have been able to achieve with respect to factors such as wages, child labor, workplace health and safety, workforce organization, and discrimination. This norm imposes a burden on companies to justify their own levels of performance with respect to leaders and to incorporate labor considerations into their supplier choices.

Continuous improvement, the third RLS norm, focuses regulation and the efforts of regulated entities upon increases in labor practice and other dimensions of social improvement rather than satisfying fixed thresholds such as a particular living wage level or various prohibitions. The norm requires producers to seek (and publicly explain how they are doing so) novel ways to improve their labor performance outcomes on various dimensions. Community and labor groups might press producers who lack them to establish such improvement systems, or participate in improvement procedures where appropriate.

RLS is not a voluntary system, and the fourth norm specifies the basis of its sanctions. Generally, formal (e.g. legal penalization), associational (e.g. expulsion from accreditation regimes such as the Clean Clothes Campaign), and informal (public pressure and corporate campaigns) sanctions and rewards should be applied according to the norms of transparency and continuous improvement. On the former, firms that fail to disclose their labor outcomes or join a monitoring regime that does so should be presumed to have something to hide, and be punished for violating the first norm. Regarding the latter norm, truly recalcitrant firms, deserving of the harshest castigation that the regime can offer, are those who have been identified as laggards in labor performance and fail to adopt improvement measures that have proven effective for their peers.

New Roles and Responsibilities

What, then, of the traditional actors in labor discussions such as the ILO, trade unions, and nation-states? What roles might they play in RLS?

Clearly, the ILO, in collaboration with the World Bank, would be indispensable to RLS in underwriting the centralized pooling of social performance knowledge and coordinating its governance. No other institutions have the global authority and

competence for the task. At the ground level, these organizations might sponsor prototype monitoring efforts and social partnerships in specific countries or regions as RLS demonstration projects. They might coax national governments to adopt RLS-compatible labor law by developing model legislation and international covenants. Convictions aside, these institutions might be drawn to support this regulatory alternative because it frees them from adjudicatory responsibilities they are ill equipped to handle, while allowing them to participate in the articulation of feasible standards according to principles they know from the arenas of economic development and trade: transparency and competition.

Some national governments, especially those of developing countries that have suffered imperialism, may be more reluctant to adopt RLS on the grounds that it, or indeed any external labor standard, impinges upon their territorial sovereignty. Perhaps. But it is worth observing that it is often these very same countries that locate foreign firms and sometimes their subcontractors in extraterritorial "free-trade zones" today. If these zones are to be subject to the law of the market, then consistency demands they be subject to the full information and comparisons of RLS.

Alternatively, many nations might find RLS attractive as an international regulatory scheme and adopt it as their own. The usual objection of developing nations to international labor and environmental minimums—that they will drive capital to nations that already implement these minimums or to those who flaunt them—would not apply to the open RLS system. Its standards, after all, are based upon the best feasible practices, always taking context into account, of combining social protection and productive activity. That objection mooted, governments might embrace RLS in several ways. They might require firms operating in their jurisdictions to participate in RLS by selecting internationally certified monitors. Administratively, they might build RLS monitoring capacities in their own labor agencies. Or, they might use the RLS knowledge base to formulate minimum labor standards that they then promulgate through national legislation. While neither path offers a definitive resolution of the tensions between RLS and national sovereignty, these points of departure perhaps render the conflict less insuperable.

RLS would by no means completely replace national systems of labor regulation. Rather, RLS would supplement existing systems of regulation, shine light on the

successes and weaknesses of current regulatory structures, and point the way toward improvements in regulatory and management strategies. Firms will of course still face a bottom-line requirement of complying with national standards. However, leading firms will seek to move beyond compliance and beyond their competitors in social performance. If designed and taken up strategically, RLS would complement and help advance national regulatory systems.

Countries may of course choose to oppose (or ignore) RLS. Non-participation would however entail costs. Advocates will raise questions about why a country seeks to hide its labor regulation and performance from comparison. And consumer groups and unions may even advance campaigns or boycotts of production in countries that fail to meet RLS-style transparency requirements.

Finally, RLS would benefit enormously from the contributions of powerful trade unions. Organized workplaces might prove to be the most capable social monitors and agents of continuous improvement and worker organizations among the staunchest of allies in national and international advocacy for RLS. Conversely, RLS would confer substantial capabilities and points of leverage upon trade unions. As a transparent and encompassing knowledge-base, RLS would enable trade unions to enhance their own knowledge of best labor practices world-wide and to constantly update that knowledge as new trends emerge in sectors or regions. It would also enable them to effectively deploy this knowledge in the service of improving the treatment of workers. RLS would allow them to lodge challenges to workplace practices or regional standards simply by pointing out how their own methods, or those of private sector leaders elsewhere, are feasible yet demonstrably superior. Based as it is upon social competition, RLS would thus empower such worker groups to compel laggards to improve. These two features—knowledge generation and opportunities for legally-backed challenges to exposed laggards—enable robust trade union strategies for conducting corporate campaigns against the most egregious firms on one hand, and for improving workplaces through the diffusion of best practices on the other.

The progress of Ratcheting Labor Standards now depends largely on the willingness of these powerful parties in the private, non-governmental, state, and international sectors to adopt perspectives and measures along these lines. A testament to

the vitality of this emergent trajectory, however, is that many of its elements, already established and currently in play, were built without such understanding and deliberate action. Rather, they emerged as local, provisional responses to political and market pressures taken in the context of global production dynamics. Those actors, concerned as they are with enhancing the welfare of workers in global production, must now digest the lessons of these recent developments to reformulate their advocacy, management, and regulatory strategies. We have offered RLS as a crystallization of those lessons into a regulatory alternative that is more promising than the main approaches of either fixed-rules or voluntary codes. In the end, RLS attempt to seize an important opportunity to harness the distinctive cultural, legal, and economic features of present globalization processes for the sake of social goals.

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, ILO Recommendation No. 146, and Convention No. 182 on the "Worst Forms of Child Labour");
- 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. Notably, several union and NGO members of the original AIP walked out of the organization when it evolved into the FLA in protest of what they believed was insurmountable flaws in the organization and its monitoring procedures.

- 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, and then CEP publicizes the results. Approximately 30 firms have been certified under SA8000 as of January 2000.
- 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 Worker Rights Consortium (WRC) was developed by the United Students Against Sweatshops (USAS) in cooperation with UNITE, the AFL-CIO, and a number of human rights, labor, and religious NGOs in 1999. The WRC employs three broad strategies: (1) information forcing; (2) verification systems; and (3) pro-active inspections. The WRC requires members to commit to broad public disclosure and to mechanisms to verify information reported by companies and their workers. The WRC will also support investigations by NGOs and human rights groups in countries of concern. The WRC however, is explicitly not going to certify company compliance with a code of conduct or standard
- 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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