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An analysis of multiparty bargaining models for global supply chains

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***An Analysis of Multiparty Bargaining Models
for Global Supply Chains***

Jeremy Blasi & Jennifer Bair

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I. Introduction ¹

Many workers around the world are part of supply chains that connect multiple workplaces into integrated processes of production. Though dynamics vary across industries, supply chains are frequently coordinated by lead firms that exercise influence over the terms and conditions of work at other links in the chain. This is true for both sectors like apparel and agriculture that have long involved extensive subcontracting networks, as well as for a variety of service industries that have more recently “fissured,” as firms contract out work that was formerly done in-house.² The complexity and scope of such chains has been increasing over time, reflecting advances in information-communication technologies, improvements in logistics infrastructure, and the liberalization of trade rules.

The development of global supply chains can bring important benefits: for lead firms, flexibility and the ability to focus on core competencies such as design or marketing; for supplier firms and the countries in which they operate, technology/skills transfer, job creation, and revenue generation; and for consumers, an ever-growing and changing array of inexpensive products and services. The speed with which global supply chains have emerged, however, has outpaced efforts to ensure that, in addition to providing benefits for businesses and consumers, supply chains also offer decent work to those who labour in them.

In recent years, persistently poor labour conditions in some supply chains has helped spur a plethora of new or newly revised international norm-setting instruments applicable to lead firms. The UN Guiding Principles on Business and Human Rights, OECD Guidelines for Multinational Enterprises, and ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy each reinforce the responsibility of firms to avoid causing, or contributing to, adverse impacts on workers in their supply chains, and to mitigate such impacts even where they do not contribute to them.

This working paper reviews one approach for realizing the goal of improving labour standards at the lower rungs of supply chains that has to date received relatively little scholarly attention: substantive, enforceable agreements between lead firms and unions or worker-based organizations.

These agreements recognize that poor labour conditions in many supply chains stem in part from the structural dynamics of buyer-driven supply chains. In its 2016 report on Decent Work in Global Supply Chains, the ILO observed that while a lead firm may employ a relatively small number of workers, “the sheer volume of its purchases grants it substantial bargaining power in an asymmetrical market relationship where a buyer can negotiate prices and specify, what, how, where, and by whom the goods it sells are purchased.”³

Through their relationships with supplier firms, lead firms may exercise significant influence over the terms and conditions of work experienced by workers further down the chain. For example, lead firm demands for low prices or price concessions can put downward pressure on wages and contribute to unsafe conditions at supplier facilities. Demands for tight delivery deadlines or last minute changes to orders can result in excessive working hours for those whose labour is required to meet these deadlines.⁴ Unstable sourcing relationships or sharply fluctuating volumes can incentivize suppliers to shift the burden of economic uncertainty to workers through non-traditional employment relationships, such as short-term contracts and temporary staffing agencies or the use of informal sector subcontractors such as homeworkers.⁵ These pressures put supplier companies—and supplier country governments—that are

¹ This working paper was developed in the framework of the GTZ/BMZ funded development cooperation project “Labour standards in global supply chains: a Programme of action for Asia and the garment sector” (2015-2018).

² David Weil, *the fissured workplace* (2014).

³ International Labour Organization, *Decent work in global supply chains*, Report iv for International Labour Conference, 105th session, 2016 [hereinafter *International Labour Conference 2016 Supply Chains report*] para 30, https://www.ilo.org/ilc/ILCSessions/105/reports/reports-to-the-conference/WCMS_468097/lang-en/index.htm.

⁴ *id.* Para 64, citing Mark Anner, Jennifer Bair and Jeremy Blasi, “Towards joint liability in global supply chains: addressing the root causes of labour violations in international subcontracting networks,” in *comparative labour law & policy journal* (2013, vol. 35:1), pp. 1-43.

⁵ *id.* Para 66, citing, inter alia, J.J.R. Ko: “Contingent and internal employment systems: substitutes or complements?” in *journal of labor research* (2003, vol. 24: 3), pp. 473-490.

committed to decent work at a disadvantage relative to competitors willing to adopt substandard labour practices as part of a strategy to win lead firm business.

At the same time that the dynamics of supply chains create new pressures on global labour standards, the most common approaches for safeguarding worker rights are proving to be of limited effectiveness in supply chain contexts. Public enforcement of labour laws by states, voluntary lead firm private compliance programs, and traditional collective bargaining all have difficulty eliminating labour violations and improving wages and benefits in supply chains. This is because they tend to focus solely on individual worksites and the behaviour of suppliers, leaving unaddressed the upstream procurement practices of lead firms that may be the root cause of the problem.

Domestic employment laws typically are limited in application to direct employers, not their lead firm clients. Innovative joint liability laws, such as those enacted in California, can help to create a degree of accountability on lead firms and create new opportunities for remedies in circumstances where lead firms operate in the same country as their suppliers.⁶ But the limited ability of states to regulate extraterritorially means that they are ill-equipped to address problematic upstream sourcing and purchasing practices when lead firms are based overseas.⁷ And even where all actors in a supply chain are in the same country, states are poorly positioned to carry out the kind of intensive day-to-day regulation of supplier markets that is central to the successful interventions described in this paper.

Voluntary private compliance initiatives (often referred to as Corporate Social Responsibility, or “CSR”) are also ill-equipped to address problematic lead firm procurement practices. These efforts generally involve attempts by lead firms to monitor their suppliers for compliance with labour standards, but do not address the practices of the lead firms themselves that may undermine supplier compliance. While the data obtained through audits of suppliers could in principle prompt lead firms to change the way they purchase products, there is little evidence that this has occurred in practice. Instead, experience has shown that economic considerations such as price and turnaround time generally trump social concerns in driving lead firm sourcing decisions. The failure of voluntary CSR efforts to effectively regulate lead firm sourcing and purchasing practices is one reason such efforts seem to have reached a plateau in terms of in eliminating pervasive labour violations in supply chains.⁸

Finally, traditional collective bargaining between unions representing workers and their direct employers similarly fails to address the dynamics of buyer-driven supply chains. Given the intense global competition within domestic and international supplier markets and the resulting cost pressure on suppliers, a union representing workers of a supplier firm may find that it is bargaining with an entity that is not in an economic position to provide meaningful wage increases or to make other changes that would improve labour standards. There may be resources higher up in the supply chain to pay for significant improvements.⁹ However, as the ILO has observed, “the purchasing practices between buyers and suppliers and intense competition between firms at the end of supply chains place limits on how much value is available for distribution through collective bargaining.”¹⁰ The competitive disadvantage at which agreeing to such improvements would place the supplier can drive intense resistance to unionization.

⁶ California has been a pioneer in legislating joint liability. Since 1999, the state has held apparel brands liable as guarantors for wages owed by their domestic contractors. Cal. Lab. Code § 2673.1. In 2014, the state adopted a law requiring client firms to share liability with temporary staffing agencies and other “labor contractors” where the contractor fails to pay wages or provide workers’ compensation insurance to employees assigned to work at the client firm. Cal. Lab. Code § 2810.3.

⁷ See international labour conference 2016 supply chains report, *supra*, n. 3, para 121. This is not, of course, to say that states—particularly those in the global north—are powerless to improve global labour standards. Rules concerning market access such as the generalized system of preferences can play a critical role in incentivizing decent labour practices. Importing states can also enact “due diligence” laws, as France has recently done, requiring or incentivizing lead firms to ensure respect for human rights in their supply chains, including through the types of initiatives discussed in this paper. These approaches are fully consistent and mutually reinforcing with the bargaining models described here.

⁸ See, e.g., Richard Locke, *the promise and limits of private power* (2013) at 32.

⁹ International Labour Conference 2016 supply chains report, *supra*, n. 3, para 60. One study, for example, found that for a box of tea sold in the United Kingdom for £1.60, a tea picker is expected to make just £0.01. V. Largo, “PG Tips and Lipton Tea estates hit by allegations of sexual harassment and poor conditions,” *The Ecologist* (Apr. 2011).

¹⁰ International Labour Conference 2016 supply chains report, para 95.

As we review in this paper, one strategy that does appear well placed to address these sourcing and pricing dynamics is multiparty bargaining involving representatives of workers, their direct employers, and lead firms or other entities above the direct employers in the supply chain. In contrast to other approaches, multiparty or “triangular” bargaining of this sort holds unique promise in that it can establish legally enforceable obligations on the part of actors throughout the entire supply chain, and thereby ensure that lead firm procurement practices support decent work.

The authors undertook a survey of multiparty supply chain bargaining initiatives involving engagement by unions or other worker-based organizations with lead firms to improve labour standards among suppliers. Our search for examples of such initiatives yielded a diverse set of campaign and bargaining models. Cases reviewed covered a variety of industries (including garment, agriculture, electronics, services, and logistics); time periods (spanning from the 1930s to the present day); geographic locales (both entirely domestic efforts and international efforts focused on Global South countries), and substantive coverage areas (including both comprehensive agreements as well as more narrowly focused efforts). The lead firms in these efforts included corporate actors like apparel brands, food chains, or lead contractors in construction projects, as well in some cases government entities that contract for services or construction. While most of the cases we reviewed involve formal agreements, others represent what we have called proto-bargaining—that is, engagement that is not codified in formal or public agreements, but which do involve concrete changes to lead firm practices and the development of ongoing relationships with suppliers that may evolve over time into lasting and more formal arrangements.

In this working paper, we attempt to distil key lessons from the initiatives we reviewed. We asked what elements make for successful agreements—that is, those that are able to positively affect standards, sustain these improvements over time, and reach a large number of workers across multiple worksites. We found that the most successful of these efforts tend to follow a similar logic and incorporate similar policies to regulate lead firm supply chain procurement practices.

First, successful agreements require lead firms to change their sourcing decisions in ways that make providing decent work in the economic interest of suppliers through both “carrots” and “sticks.” Lead firms provide suppliers with positive incentives by sourcing exclusively or preferentially, and on a long-term basis, with suppliers that are unionized or demonstrably comply with negotiated labour standards. These positive incentives are complemented by potential market consequences, such as suppliers losing access to orders, if they violate the standards. Importantly, the question of whether a supplier is adhering to decent work commitments and is thus eligible to receive the lead firm’s orders is not left to the lead firm’s exclusive discretion as in traditional CSR models, but is instead determined by a third party which the labour signatories oversee or approve, such as an independent non-profit organization or a mutually agreed upon arbitrator.

Second, these instruments oblige lead firms to help fund the improvements suppliers must take to provide decent work. One approach is to require that the prices lead firms pay suppliers are sufficient to enable the supplier’s fulfilment of its labour obligations. Another approach is for the lead firm to contribute a premium on top of its regular payments for products or services, with a portion or the entire premium passed on by the supplier to workers as a supplement to their wages.

Third, whether in combination with the above provisions or as stand-alone remedial efforts, some initiatives address circumstances in which suppliers are not economically capable of remediating labour violations by requiring the lead firm to use its own financial resources to make workers whole or to provide necessary financial relief. Finally, we identify efforts aimed at effectively reversing outsourcing, including by causing lead firms hire formerly outsourced workers directly or acknowledge a joint employment relationship.

The models reviewed also reflect emerging best practices for enforcement of lead firm commitments around labour policy. These include co-governance structures in which labour and industry jointly oversee independent verification programs and robust dispute resolution systems to resolve disagreements, such as final and binding arbitration enforceable in courts of law.

Certain patterns also emerge with respect to external factors and internal strategies that have facilitated the development of robust supply chain labour rights programs. Among these, we note that the most successful efforts cover a large swath of the supplier market, minimizing the threat of unfair competition by non-participants. Such broad coverage, however, can be achieved gradually via agreements with key individual lead firms. We also highlight the importance of precedents and their potential to generate change over time, observing that the accumulation of individual remediation agreements—such as those concerning lead firms’ response to workplace disasters at supplier facilities—can evolve into norms defining what is expected of corporate actors more broadly. In short, successive efforts within particular industries can strengthen over time from informal understandings to formalized agreements to, in some cases, broadly applicable law.

This working paper proceeds as follows. After briefly reviewing our methodology, we provide an overview of the multiparty bargaining models reviewed in our study. Next, we review the key regulations incorporated into these models concerning lead firm procurement and/or sourcing practices, illustrating these principles with capsule summaries of notable cases. We then review mechanisms for enforcing lead firm commitments, including mediation, arbitration, enforcement in court, and transparency. Finally, we conclude with general observations concerning factors favouring the development of the instruments and arrangements reviewed. We hope that the strategies and policies outlined in this report can serve as useful references for worker organizations, industry, and government as they develop the next generation of initiatives to realize decent work in supply chains.

II. Methodology

In undertaking this analysis of supply chain initiatives, we relied upon both primary and secondary sources. Among primary sources, we consulted written records, including agreements and related memoranda, and in some cases interviewed or corresponded with individuals involved in campaigns and negotiations. We benefited from both authors’ prior research on relevant cases, as well as the first author’s personal involvement in several of the apparel cases discussed herein. Among secondary sources, we consulted journal articles, academic reports, reports by International Organizations and news articles. As our research was necessarily limited by resource and language constraints, we do not purport to have created an exhaustive review of all relevant cases. Rather, we conceive of this research as an ongoing project, and we invite others to identify additional examples we may have missed.

In this working paper, our goal is to report the results of our comparative analysis across the agreements we studied. We collected much more data about the individual cases than we can present here. Readers interested in learning more about particular initiatives might want to consult the background study on which this analysis is based, as it includes detailed summaries of each case and additional citations for further reading.¹¹

III. Overview of Agreements

The supply chain agreements and initiatives on which this analysis is based can be classified in four broad categories: (1) comprehensive industrial agreements that include specific terms of employment, such as wage levels and benefits, in a range of substantive areas; (2) thematic agreements designed to prospectively advance particular worker rights issues, such as worker safety and freedom of association, through ongoing labour-business structures; (3) remediation agreements aimed at addressing discrete violations, such as a failure to pay legally required wages and compensation schemes for victims of workplace disasters; and (4) “global framework agreements” that create structures for union-firm

¹¹ The background study will be accessible on the website of Pennsylvania state university’s center for global workers’ rights at: <http://lser.la.psu.edu/gwr/projects>.

dialogue. In light of the existing extensive literature on global framework agreements, we limited our review to several agreements with notable supply chain application.¹²

Table 1 provides an overview of many of the agreements and initiatives reviewed in our study, summarizing the sector, time period, geographic coverage, participants, and enforcement procedures. Each of these cases is described at length in the background study.

Table 1. An Overview of Supply Chain Agreements and Initiatives			
Instrument and Sector	Geographic Scope	Participants	Enforcement
Comprehensive Agreements			
ILGWU Jobbers Agreements Sector: apparel Period: 1930's-1980s	U.S. regional	Domestic union with associations of lead firms and direct employers	Mediation and binding arbitration
Alta Gracia Project Sector: apparel Period: 2010 - current	Single plant in Dominican Republic	Domestic union federation and university-backed NGO with U.S.-based lead firm; CBA with factory-level union	Enforceable contract
FLOC Food Brand Agreements Sector: agriculture Period: 1985 - current	U.S. regional	Domestic union with individual lead firm and direct employer association	Mediation and binding arbitration
CIW Fair Food Agreements Sector: agriculture Period: 2005 - present	U.S. regional	Worker-based NGO with lead firms and individual producers	Binding independent private enforcement
Unison Ethical Care Charter Sector: home care Period: 2005 - present	U.K. localities	Domestic union with local authorities that procure home care for elderly residents; no direct employer participation	None
Project Labor Agreements and Major Projects Agreements Sector: construction Period: 1930s - present	Development projects U.S., Canada, and UK	Domestic construction unions and lead contractor, obliging subcontractors to become signatories	Mediation and binding arbitration
ITF Agreement with Maersk Sector: logistics Period: 2006 - present	International	Global union federation ("GUF") with single lead firm	None publicly identified
Thematic Agreements			
Bangladesh Accord on Building and Fire Safety Sector: apparel Period: 2013 - present	Single country: Bangladesh	GUFs and domestic unions, plus NGO witnesses, with lead firms, requiring compliance by suppliers	Mediation and binding arbitration
Indonesia Freedom of Association Protocol Sector: apparel Period: 2011 - present	Single country: Indonesia	Domestic unions, lead firms, and direct employers	Mediation; potential court enforcement
Fruit of the Loom Freedom of Association Agreements Sector: apparel Period: 2009	Single countries: Honduras and El Salvador	Domestic union federation with U.S.-based lead firm/direct employer; parallel agreement between lead firm and university-backed NGO	Mediation and binding arbitration
ACT Framework Agreement on Industry-wide Bargaining Sector: apparel Period: 2015 - present	Implementation at country level, countries TBD	GUFs with lead firms	None publicly identified
BWI Agreements re Safety in World Cup Construction Sector: construction	Single countries: Qatar and Russia	GUF (in Russian case with national federation), and state	None publicly identified

¹² See, e.g., Felix Hadwiger, "Global framework agreements: achieving decent work in global supply chains," International Labour Office, Geneva (2016), available at: <http://mango.ilo.org/record/466133?Ln=en>.

Period: 2016 - present		entities (and in Russian case, FIFA)	
Remediation Agreements			
Workplace Disaster Compensation Funds Sector: apparel Period: 2005 - present	Single worksites (Rana Plaza, Tazreen, Ali Enterprises, Spectrum)	Lead firms, in concert with government and NGOs	Typically public reporting
Minimum Wage Remediation Cases Sector: apparel Period: 2010, 2014	Single country/region: Haiti, India	Lead firm pledges to require compliance by suppliers	Public reporting; enforceable contracts between unions and suppliers (Haiti)
Various Freedom of Association Remediation Cases Sector and Time Periods: apparel cases (2000 - current); electronics cases (2007, 2014); service cases (e.g. Justice for Janitors (1986 – present)	Single worksites	Lead firms require remediation by suppliers, leading to bargaining between suppliers and factory-level unions	Typically public reporting
Overtime and Terminal Compensation Remediation Cases Sector: apparel Period: 2002 - present	Single plants, various countries	Lead firm, requiring compliance by supplier	Typically public reporting; in some cases binding arbitration (e.g. Nike/Honduras)
Global Framework Agreements			
Global Framework Agreements with Supply Chain Coverage Sectors and Time periods: agriculture: Chiquita (2001); apparel: e.g., Inditex (2007), H&M (2015)	International	GUFs with lead firms requiring compliance by suppliers	Dialogue or mediation / ILO advice

As the table reflects, comprehensive multiparty supply chain labour agreements have long historical roots. Two noteworthy models date to the 1930s: a system of “jobbers agreements” produced through triangular multi-party bargaining between unions, lead firms, and contractors which largely eliminated sweatshops conditions in New York City and surrounding locales for a period of decades; and “project labor agreements” which guarantee specified labour standards throughout the contracting chain on major public and private construction projects.

Enforceable provisions concerning supply chain labour issues have only more recently made their way into labour agreements that are international in scale. The first iteration and still most common breed of global labour agreements—global framework agreements (GFAs), signed by global unions and multinational companies—facilitate dialogue and problem-solving, but generally do not include substantive provisions or binding enforcement mechanisms. In just the past several years, however, a crop of international initiatives have emerged that begin to fill the gap between concrete and enforceable domestic-only initiatives and more aspirational international efforts. These have generally involved thematic or remediation agreements with lead firms whose terms include an intermediate level of detail, focusing on specific themes or issues within a particular country, as in the Accord on Bangladesh Worker Safety and the Indonesia Freedom of Association Protocol. Unlike most GFAs, these agreements involve domestic unions as signatories and include binding enforcement provisions.

The coming years seem likely to see further efforts to improve labour standards through legally enforceable multi-party supply chain agreements in a variety of sectors, whether domestically or internationally. The following sections offer insights for the design of such future initiatives. We first review key elements of existing efforts that aim to ensure effective implementation of labour standards through regulation of procurement practices, followed by a discussion of enforcement mechanisms.

IV. Analysis of Key Supply Chain Procurement Provisions

As reviewed above, a key challenge for the effective implementation of decent work in global supply chains are lead firm procurement practices that undermine supplier commitment and compliance with labour standards. As summarized in Table 2 below, the agreements reviewed in our study include a number of tools aimed at reversing or mitigating these problematic dynamics.

Policy Objective	Policy Tools	Key Examples
Creating supplier market incentives for decent work	<ul style="list-style-type: none"> • Carrots: Exclusive and long-term sourcing commitments to compliant suppliers • Sticks: Market consequences for noncompliance 	<ul style="list-style-type: none"> • ILWGU Jobbers Agreements • Project Labor Agreements and Other Agreements in Construction Sector • Farm Labor Organizing Committee Agreements with food brands • ITF-Maersk FoC Agreement • Bangladesh Accord • Coalition of Immokalee Workers Fair Food Agreements
Funding decent work	<ul style="list-style-type: none"> • Ensuring that supplier prices and other commercial terms are consistent with decent work • Lead firm's direct payment or "pass through" premiums 	<ul style="list-style-type: none"> • ILWGU Jobbers Agreements • Bangladesh Accord • Alta Gracia Project • CIW Fair Food Agreements • Migrant Justice Milk with Dignity Agreement • Histadrut CBAs in public sector security and cleaning
Remedying violations at insolvent suppliers	<ul style="list-style-type: none"> • Compensation to victims of workplace disasters • Guaranteeing wages/compensation to make workers whole 	<ul style="list-style-type: none"> • Disaster Relief Schemes: Rana Plaza Arrangement, Tazreen Claims Administration Trust, Ali Enterprises factory agreement, and • Spectrum Relief Scheme • Various apparel sector cases involving campaigning and university code of conduct enforcement • "Annex D" to Byggnads and Swedish employer's association agreement
Reversing or eliminating incentives for out-sourcing	<ul style="list-style-type: none"> • Requiring lead firms to "in-source" by hiring or restructuring acknowledging employment relationship with subcontracted workers • Requiring contractors to provide employment terms equivalent to direct workers 	<ul style="list-style-type: none"> • Kia and Hyundai insourcing cases in South Korea • EIU California homecare legal reform/agreement • "Union Standards" provisions in myriad CBAs (e.g. Byggnads and Swedish employer's association agreement)

While some agreements include more than one of the policy tools identified in the table, and the tools often reinforce one another, we address the approaches separately in the discussion below for the purposes of analytical clarity.

A) Creating Supplier Market Incentives for Decent Work

As reviewed at the outset, buyer-driven supply chains in which many suppliers compete for the business of a small number of more powerful lead firms are typically characterized by intense competition among suppliers to keep labour costs to a minimum. This competition and the downward price pressure it generates can result in low wages, wage and hour violations, and unsafe working conditions. Additionally, lead firms in such sectors as garments and electronics protect their interest in minimizing dormant inventory and responding rapidly to changes in consumer demand by issuing orders for

production on a short-term basis, with a high level of volatility in the volume of orders. These procurement practices can prompt suppliers to impose excessive mandatory overtime and to minimize their commitments to workers by using temporary work contracts, employing workers through staffing agencies, or subcontracting production without authorization. Because unionization can lead to higher labour costs and regularization of work arrangements, the same pressures lead certain suppliers to resist unionization.

While many lead firms have codes of conduct that purport to require suppliers to adhere to decent labour standards, experience in such sectors as apparel, electronics, and agriculture have shown that economic considerations tend to trump labour issues in lead firm's sourcing decisions. As Richard Locke has observed with respect to the apparel industry, for example, "[i]t is an open secret that few brands ever exit factories, even when they are found not to be in compliance with the codes of conduct and that most compliance officers have less influence than their purchasing colleagues when deciding whether to place (or continue) an order with a noncompliant factory."¹³ As a result, suppliers have limited incentives to improve their labour practices.

Many of the most successful labour-industry agreements to improve supply chain labour practices involve regulations requiring lead firms to provide market incentives for suppliers to commit and adhere to high labour standards. While there are various permutations, the basic model includes the following key elements. First, the lead firm must only source (or must source preferentially) with suppliers that commit to a set of negotiated labour policies. Because suppliers can obtain access to lead firm orders only by agreeing to adhere to these labour standards, the arrangement creates powerful incentives for suppliers to commit to decent work. These positive incentives can be reinforced by lead firm commitments of long-term or higher-volume orders to compliant suppliers. Second, suppliers only remain eligible for such orders if they adhere to these standards on an ongoing basis. Third, the determination of whether a supplier is compliant with the applicable standards is not left to the sole discretion of the lead firm but is instead subject to the determination of a designated third party. Together, these elements represent both "carrots" to incentivize suppliers to adopt a higher road labour strategy and "sticks" to compel the suppliers to remain compliant and deal in good faith with workers and their representatives.

Agreements utilizing market incentives of this sort can generally be divided into two categories: (a) those in which a lead firm is obliged to source only (or preferentially) from suppliers that sign a collective bargaining agreement with a labour union, and (b) those in which the lead firm must source only from suppliers that comply with a set of labour standards that the lead firm negotiates with its labour counterparty—standards that are different from, and typically less comprehensive than, a collective bargaining agreement—with compliance monitored by an independent body. In the latter category, the supplier itself may or may not be a signatory to an agreement with the unions or labour groups. We provide capsule summaries of examples of both approaches below.

Exclusive Sourcing and/or Long Term Commitments with Unionized Suppliers

"Jobbers Agreements" in the U.S. Apparel Sector

The most fully developed and successful example of multiparty bargaining agreements wherein the lead firm agrees to only contract with suppliers that have entered into an agreement with the union is the historical "jobbers agreement" in the U.S. apparel sector. The International Ladies Garment Workers Union (ILGWU) negotiated these agreements with the forerunners of today's apparel brands—companies called "jobbers" that designed garments but contracted out their assembly—and the jobbers' contractors in New York during the middle part of the twentieth century.¹⁴

¹³ Locke, *supra*, n. 7 at 32.

¹⁴ This summary draws on Anner et al., *supra*, n. 4. See also Katie Quan, "Strategies for garment worker empowerment in the global economy," in *u.c. davis journal of international law and policy* (2003, vol. 10:1), pp. 27-38

The first jobbers agreements were signed in the 1920s, but these early iterations—signed with individual jobbers—proved difficult to enforce, largely because jobbers managed to evade union contracts by shifting work to non-union factories. The triangular bargaining model did not take hold on an industry-wide level until the mid-1930s when aggressive worker organization, backed by the supportive administration of Franklin Delano Roosevelt, enabled the ILWGU to begin negotiating jobbers agreements on a sectoral level via paired agreements with groups of jobbers and contractors. Both contractors and jobbers were organized into industry associations, which represented all the firms in a particular segment of the industry (e.g. women’s dresses or men’s suits). By signing an agreement with one association, the union secured the same contract terms with every employer belonging to the association.

Once established, the agreements transformed working conditions and virtually eliminated sweatshop labour in the New York area and surrounding locales, bringing improved worker wages and benefits for workers and security for suppliers from the 1930s until the 1980s, when industrial flight led to their demise.

The jobbers agreements included detailed labour standards on such issues as wages and benefits typical of collective bargaining agreements, but unlike traditional union contracts, these standards applied to the workers employed by their suppliers. The lynchpin of their enforcement was a provision that required jobbers to contract only with suppliers that were unionized and had signed a separate, parallel agreement with the union, with substantive provisions that mirrored those included in the union’s agreement with the jobbers.

The agreements with the jobbers also included numerous provisions to regulate the flow of orders to contract facilities. Jobbers were required to identify each supplier it intended to source from at the outset of the three-year period covered by the agreement, and to register this list with an oversight body. To ensure that each of these contractors received steady business and could afford to pay the union standard, the agreements required jobbers to distribute work evenly across the designated contractors, prohibited the use of new contractors except when additional capacity was needed, and prohibited the discharge of a designated contractor for any reason other than poor quality and/or late delivery.

These provisions created a powerful incentive for contract shops to allow their employees to unionize without interference. Suppliers, instead of fearing unions because they could increase labour costs and potentially render them uncompetitive in the cutthroat supplier market, came to see allowing unionization and signing a collective bargaining agreement as the key to accessing steady orders over a long period from jobbers. Since all or most jobbers for a particular product category ultimately became signatories, contractors had enormous incentives to adhere to the agreement’s standards in order to obtain business. Further, because most jobbers and contractors in each market niche were also signatories, the contractor’s competitors—along with the union—had strong reason to keep watch on one another to avoid being undermined. Together, these provisions guaranteed that unionized suppliers would get ongoing business to enable job security for workers, creating a “win-win” dynamic for contractors and their employees, both of whom benefitted from more stable and longer-term relationships with jobbers.

Over time, the benefits of the jobbers agreement system were recognized throughout the supply chain and across the political spectrum. By 1959, for example, when potential legal reform to the U.S. National Labour Relations Act threatened to outlaw the system, politicians ranging from senator and soon-to-be-president John F. Kennedy to conservative firebrand senator Barry Goldwater, whose family ran department stores and apparel manufacturing businesses, rose to defend the legality of jobbers agreements. Goldwater, for example, remarked in a speech to the Senate:

I have been engaged in the retail end of this business all my life. I have watched what has happened in the garment section of New York and the garment section of Philadelphia and St. Louis and Chicago and on the west coast, and have seen sweatshops disappear. I have seen order come out of chaos. I have seen unions create profits for businesses which were unable to

*produce profits, and Mr. President, none of us wants to disturb for one second the status that the garment trade now occupies under the present law.*¹⁵

The jobbers agreement system held together until the 1980s and 90s when it was upended by the flight of the garment industry to the Southern U.S. and Puerto Rico and, aided by the liberalization of trade rules, ultimately to locales overseas, including many that lack any effective union presence in the garment sector.

Farm Labor Organizing Committee's Agreement with Campbell Soup and Growers

In the agricultural sector, agreements with parallels to the ILGWU's jobbers agreements were negotiated beginning in the mid-1980s by the Farm Labor Organizing Committee ("FLOC"), a union of farmworkers in the Midwestern U.S., with the Campbell Soup Company and later with other food brands. As in the garment sector, lead firms like Campbell exercised a high level of control over work processes at the growers that supplied them with produce, but began to take responsibility for labour conditions only after a major boycott campaign led by FLOC, with the support of churches and other civil society groups.

In 1986, following a seven-year campaign involving multiple worker strikes and consumer boycotts waged with the support of faith-based organizations, FLOC compelled Campbell to resolve its dispute with farmworkers through an innovative process. Campbell agreed to cooperate in the formation of an association of its tomato suppliers in the U.S. state of Ohio and its cucumber suppliers in the state of Michigan. FLOC then negotiated in each state a three-way collective bargaining agreement whose signatories included FLOC, Campbell, and the supplier association of growers. The agreements included detailed labour standards typical of collective bargaining agreements, including classification-specific wage rates, paid holidays, health and safety standards, and a grievance mechanism. They also created working groups to address such issues as day care, healthcare, housing, and pesticides. Additionally, they established a process obliging new members of the growers association to recognize the union if a majority of workers signed union authorization cards.

Similar to the ILGWU's jobbers agreements, these three-way contracts created strong incentives for the suppliers to deal positively with the union. Like the jobbers agreements, FLOC's contracts with the food brands were three years in duration, creating a degree of transparency and stability for the growers, who were guaranteed prices for their crops over the life of the agreements. Campbell agreed to give grower signatories larger volume commitments in terms of the acreage of crops it would purchase each year. This served to "improve [] the farmers' credit rating for seeds, equipment, and other debts incurred in their annual operations."¹⁶ Together, these elements appear to have made adoption and compliance with the agreements' labour standards much more desirable for the growers, who—having initially signed only under pressure from Campbell—over time became fully willing participants in the program.

FLOC continues to organize farmworkers in the Midwestern U.S. and has maintained a stable membership through its relations with lead firms. Food brands are no longer formally parties to the agreements, but the union reports that in practice the essential sourcing and pricing dynamics between the food brands, their suppliers, and the union remains much the same.

Project Labor Agreements and Other Construction Sector Agreements

Another prime example where unions have frequently negotiated to oblige lead firms to contract with suppliers that are signatories to agreements with the union can be found in the U.S. and Canadian construction trade. Project Labor Agreements (PLA) (also known as a Community Workforce Agreements or Project Stabilization Agreements) are a type of collective bargaining agreement entered into by one or more unions and the main contractor for a construction project, specifying the terms and conditions of work for all workers who will work on the project. First developed in the 1930s, they are

¹⁵ Congressional record of United States senate (1959, vol. 105), p. 17381.

¹⁶ W.K. Berger and Ernesto m. Reza, *the farm labor movement in the midwest: social change and adaptation among migrant farmworkers* (1994), p. 82.

widely used in the U.S and Canada on the construction of both major public projects, such as dams, highways, bridges, and power grids, as well as private projects such as amusement parks, universities, hospitals, and factories.¹⁷

Construction projects typically involve multiple layers of subcontracting. PLAs ensure that all employees working on the project receive the wages and benefits negotiated by the union(s) with the lead (or “prime”) contractor, regardless of what entity employs the workers by requiring that all subcontractors (at any level in the contracting chain) sign on to the agreement. The agreements vary in content but, like typical collective bargaining agreements, they usually spell out the wages and benefits that must be paid to workers, and require employers to use a local union hiring hall and/or union apprenticeship programs. Increasingly, agreements include provisions on employee health and safety and targets for the hiring of women, people of colour, and local residents.

Owners of the sites being developed—whether governments or private corporations—often require or prefer that their lead contractors enter into PLAs to help ensure that the project will be delivered on time and within budget.¹⁸ Because of the complex nature of major construction projects in their multiple interdependent activities, a labour dispute halting work among any one group of workers could delay progress on the entire project, with significant cost consequences for the owner. PLAs can serve to avoid such disputes by harmonizing wage and benefit levels for all workers who work on the project, thereby eliminating potential tensions, and through formal dispute resolution mechanisms (typically culminating in binding arbitration) and provisions prohibiting strikes or other job actions.

PLAs are not universally embraced. Many employers and employer-sponsored advocacy groups—particularly those that do not have unionized workforces—oppose Project Labor Agreements in the context of public works projects, arguing among other things that the agreements’ requirements to provide union wages and benefits increase the costs of construction, which are ultimately borne by taxpayers. Critics of PLAs also argue that they may put non-union contractors at a competitive disadvantage.¹⁹

Provisions requiring that subcontractors become signatories to agreements between their client lead firms and unions are not limited to Project Labor Agreements. Such provisions, referred to as “union signatory” or “hot cargo” clauses, are commonly included in master collective bargaining agreements between construction trade unions and major contractors or contractor associations.²⁰ In these cases, the agreement may not be limited to a particular construction project, as with PLAs. The U.S. National Labor Relations Act makes “union signatory” or “hot cargo” provisions unenforceable in industries covered by the Act. However, the law recognizes exceptions from this rule for the garment sector and the construction sector.²¹

Agreements establishing a preference for unionized or otherwise responsible firms can also be negotiated with developers, owners, or investors. In September 2017, North America’s Building Trades Unions and the global private equity firm Blackstone announced an agreement whereby Blackstone will adopt a “strong preference” for “responsible contractors” in the bidding and selection process for its investments in infrastructure development projects. The firm expects to invest \$20 billion in coming years though a

¹⁷ For a helpful review of project labor agreements and their substantive provisions, see Dale Belman and Mathew M. Bodah, “Building better: a look at best practices for the design of project labor agreements,” economic policy institute (briefing paper no. 274) (Aug. 11, 2010), <http://www.epi.org/files/page/-/pdf/bp274.pdf>.

¹⁸ For example, a federal executive order issued by the Obama administration encourages U.S. Agencies to consider requiring the use of Plas on large-scale federal construction projects to promote efficiency and economy in government procurement. Executive order 13502 (Feb. 6, 2009), available at: <http://www.presidency.ucsb.edu/ws/index.php?Pid=85740>. Reflecting differing political views on the use of Plas by democratic and republican administrations, eo 13502 overturned the previous administration’s position on Plas involving the federal government, a cycle repeated in previous changes of party control.

¹⁹ See, for example, associated builders and contractors, Inc., “Say no to project labor agreement mandates,” <http://www.abc.org/en-us/politicpolicy/issues/projectlaboragreements.aspx> (last accessed April 2018).

²⁰ For an example of language typical of such clauses, see master agreement between southwest regional council of carpenters and associated general contractors of California, Inc., et al. 2012-2016, section 503, available at: http://c.ymcdn.com/sites/www.sccaweb.org/resource/resmgr/carpenters_mla_2012-2016.pdf.

²¹ United States Code, Title 29, Section §158 (e). In the construction sector, the exemption applies only to agreements covering workers employed at the same worksites. In other words, a lead firm could not require that a subcontractor become a signatory to a union contract for workers employed at worksites not covered by the union’s agreement with the lead firm.

dedicated infrastructure fund. According to an announcement on the agreement, Blackstone will preferentially contract with firms that operate in compliance with local labour and employment laws, provide employer-provided training such as apprenticeships (which are often run by construction trades unions), maintain and implement workplace health and safety programs.²²

International Transport Workers' Federation Agreement with Maersk

A final example of an instrument obliging a lead firm to contract with unionized suppliers is an April 2016 agreement between the multinational shipping giant Maersk and the International Transport Workers' Federation ("ITF"), the global union representing seafarers. This agreement creates new responsibilities for Maersk vis-à-vis the charter vessels with which it contracts. Maersk committed to changing its charter agreement by adding a new provision requiring vessel owners contracted by Maersk to document that the vessel is covered by an ITF or similar agreement.²³

The ITF-Maersk agreement is the latest achievement in a protracted campaign by ITF to address the precarious conditions that seafarers experience under the Flag of Convenience system, in which a ship flies a flag of a country other than that of the ship's owner, allowing it to take advantage of weaker regulations, cheaper registration fees, lower taxes, and access to lower wage workforces. The ITF campaign against the Flags of Convenience (FoC) system in the maritime sector extends back to the 1960s, though it has shifted over time from eradicating the FoC system entirely to devising strategies that minimize its deleterious impact on seafarers' wages and working conditions.²⁴ When the ITF's efforts to regulate the FoC system began to gain traction in the 1990s, shipping companies formed an industry association, the International Maritime Employers' Committee (IMEC), to negotiate with the ITF. The international collective bargaining agreement between ITF and IMEC sets standards for minimum wages, overtime rates, and standards of accommodation on FoC ships.²⁵

While Maersk has a collective bargaining agreement with ITF covering workers on its owned and operated vessels,²⁶ under the new agreement Maersk will also require charter operators to show that its ships are covered by an ITF contract or by a similar agreement providing protections for crews on FoC vessels. The ITF reports that it has more than 150 ITF inspectors and contacts in ports throughout the world to ensure compliance with its agreements.²⁷

Exclusive Sourcing from Suppliers that Comply with Negotiated Labour Standards

In a second general class of supply chain agreements involving supplier market incentives, lead firms agree to contract only with suppliers that, while not necessarily unionized, demonstrably comply with a set of basic negotiated labour standards. This approach includes cases that have been described as instances of Worker-Driven Social Responsibility ("WSR"), a framework advocates have counter-posed to traditional Corporate Social Responsibility. WSR takes as a premise that workers and their

²² Blackstone, "Blackstone's infrastructure business adopts responsible contractor policy to promote fair wages and benefits for workers on infrastructure projects," (sept. 5, 2017), <https://www.blackstone.com/media/press-releases/blackstone-s-infrastructure-business-adopts-responsible-contractor-policy-to-promote-fair-wages-and-benefits-for-workers-on-infrastructure-projects>; north American's of building trades unions, "Blackstone's infrastructure business adopts responsible contractor policy to promote fair wages and benefits for workers on infrastructure projects," (sept. 5, 2017), https://nabtu.org/news_center/blackstones-infrastructure-business-adopts-responsible-contractor-policy-promote-fair-wages-benefits-workers-infrastructure-projects.

²³ World maritime news, "Maersk only to hire ships with ITF agreements for crews," (Apr. 12, 2016), <http://worldmaritimeneeds.com/archives/188505/maersk-only-to-hire-ships-with-itf-agreements-for-crews>; ITF global union, "Maersk signals way forward on ITF agreements on charters," (Nov. 4, 2016), www.itfglobal.org/en/news-events/press-releases/2016/april/maersk-signals-way-forward-on-itf-agreements-on-charters

²⁴ Mark Anner, Ian Greer, Marco Hauptmeier, Nathan Lillie & Nik Winchester, "The industrial determinants of transnational solidarity: global interunion politics in three sectors," in *European journal of industrial relations* (2006, vol. 12:1), pp. 7-27.

²⁵ Nathan Lillie, "Global collective bargaining on flag of convenience shipping" *British journal of industrial relations* (2004, vol. 42:1), pp. 47-67.

²⁶ A model ITF offshore collective bargaining agreement, dated January 1, 2015, can be found at: <http://www.itfseafarers.org/files/seealsodocs/33562/itfoffshorecollectiveagreement2012.pdf>.

²⁷ ITF global union, "Flags of convenience," <http://www.itfglobal.org/en/transport-sectors/seafarers/in-focus/flags-of-convenience-campaign> (last accessed April 2019).

organizations should be the driving force behind the creation, monitoring, and enforcement of programs designed to improve labour conditions. The WSR model includes a focus on binding enforcement, wherein worker organizations can enforce the commitments of brands and retailers as a matter of contractual obligation and brands and retailers must impose “meaningful, swift, and certain economic consequences for suppliers that violate their workers’ human rights.”²⁸

In this model, a lead firm’s suppliers may, but do not necessarily, have a separate agreement with the union or labour NGO with which the lead firm has entered a labour rights agreement. What is critical to this approach is that a determination of whether a supplier is compliant with labour standards and therefore eligible to receive lead firm orders is not left to the discretion of lead firms but is instead determined by an entity which representatives of unions and/or labour NGOs help oversee. The objective is to create accountability on the lead firm and its suppliers to ensure labour standards are implemented.

Bangladesh Accord on Building and Fire Safety

The Bangladesh Accord on Building and Fire Safety (“Accord”) is a leading example of this approach. The Accord was established in the wake of the April 2013 collapse of the Rana Plaza building in which more than 1,100 Bangladeshi workers died. The result of a labour and NGO campaign, the Accord is a legally binding bilateral industry-labour agreement, comprised, on the industry side, of more than 200 apparel brands and retailers, and, on the labour side, of two global trade union federations—IndustriALL Global Union (“IndustriALL”) and UNI Global Union (“UNI”)—and eight Bangladeshi garment worker union federations. Several NGOs that were involved in the development of the Accord, including the E.U.-based Clean Clothes Campaign (“CCC”), and the U.S.-based Workers Rights Consortium (“WRC”), signed the agreement as witnesses and continue to participate in its implementation. The Accord is governed by a Steering Committee that includes equal representation from the organization’s labour and company constituencies, with the ILO serving as a neutral chair.

The Accord incorporates both carrots and sticks to compel suppliers to ensure that lead firm’s suppliers in Bangladesh—currently a pool of some 1,675 factories employing more than two million workers—adhere to the program’s factory safety standards.²⁹ First, signatory companies may only source from suppliers in Bangladesh that have been inspected by Accord engineers for compliance with electrical, fire safety, and structural standards and that have implemented or are implementing the upgrades identified as necessary for the factory to operate safely. Because the Accord’s lead firm signatories comprise a large fraction of Bangladesh’s export market, including many of the world’s largest apparel buyers, the program creates a powerful incentive for suppliers to cooperate with the process in order to maintain access to brand orders.

Second, this positive incentive to participate is coupled with a complementary provision that strongly discourages noncompliance: Article 21 of the Accord provides that a supplier that fails to cooperate with the inspection process, implement a corrective action plan, or make reasonable progress in remediating hazards cannot supply signatory brands. In the event of such supplier non-compliance, Accord brands are obligated to terminate the business relationship. Moreover, if the supplier owns multiple factories, Accord brands are not permitted to source from any factory under the same ownership, even if only one worksites is in violation of the agreement.

²⁸ Worker-driven social responsibility network, “What is worker-driven social responsibility (WSR)?,” available at: https://business-humanrights.org/sites/default/files/documents/what_is_wsr_0.pdf.

²⁹ See, e.g., “About the accord on fire and building safety in Bangladesh,” accord on Bangladesh worker safety, <http://bangladeshaccord.org/wp-content/uploads/brochure-about-the-accord.pdf>. The accord was signed by its founding members in May 2013, less than a month after the Rana Plaza collapse. One of the reasons that this occurred so quickly is that the accord builds upon an earlier agreement called the joint memorandum of understanding on fire and building safety (MoU). The MoU was forged by the efforts of the international textile, garments and leather workers federation (a predecessor of IndustriALL global union) and several NGOs (the WRCc, ccc, international labor rights forum, and Maquila solidarity network) and signed by one brand, Phillips-van Heusen corporation (PVH) after a mass-fatality fire in December 2010 at a factory called “That’s it,” which produced goods for Tommy Hilfiger, a PVH subsidiary. Although the MoU was signed in March 2012, the factory inspection program that it outlined never went into effect because, under its terms, a minimum of four apparel companies had to sign in order to trigger implementation, and only one other company, the German retailer, Tchibo, did so prior to Rana Plaza.

Importantly, unlike traditional CSR initiatives in which lead firms typically decide for themselves whether to maintain production at a particular facility, the Accord authorizes independent staff to make this determination. Factory inspections are conducted by engineers working under the supervision of the Accord's independent Chief Safety Inspector. Accord staff also review and approve the corrective action plans for inspected factories, conduct follow-up inspections, and sign-off on the remediation process when complete.³⁰ As of mid-2017, the Accord's efforts were supported by nearly 250 staff in Bangladesh, with enough engineers to conduct a target of 500 follow-up inspections per month. The massive data-gathering and monitoring effort this institutional build-up has enabled—a process that includes collecting, tracking, standardising, and verifying conditions at hundreds of factories at once—is possible because the Accord's labour signatories won strong financial commitments from signatory firms to ensure a well-resourced and professionally staffed operation.

Delays in remediation of hazards prompted the Accord staff to ramp up its use of an escalating notice and warning process, resulting when necessary in supplier termination. As of April 1, 2018, the Accord had terminated 109 suppliers. Accord staff have reported that, as intended, the escalation process helped drive progress on remediation of dangerous conditions. The average progress rate, reflecting the percentage of issues reported or verified as corrected, stood at 84% in April 2018. Nevertheless, very significant remediation work remained: Only 128 factories had fully completed corrective action plans, while some 1,290 were behind schedule in implementing reforms. More costly reforms, typically involving structural safety, were among those most likely to be outstanding and/or behind schedule.³¹

The Accord has also launched a program to establish functional safety committees in supplier factories. The program involves, among other components, a seven-session safety training program to develop the leadership and knowledge base of those serving on the factory safety committees; meetings with all workers at every factory to introduce the safety committee and explain its purpose; and ongoing engagement with the committees, including involvement of committee members in the Accord's follow-up inspections. Launched initially as a pilot project at unionized factories, the program now includes both union and non-union facilities. As of April 2018, there were 1,062 factories, employing in total more than 2.2 million workers, participating in the training program. In addition to the safety committee training module, all workers in Accord supplier factories receive basic information about common safety hazards.³²

With the agreement set to expire in May 2018, the Accord's labour groups announced a follow-up agreement, now dubbed the 2018 Accord or Transition Accord. The agreement extends the body's work for three years, until May 2021, or until the government of Bangladesh is able to take over its core inspection and enforcement functions. Signed by more than 100 brands as of February 2018, the agreement includes some new elements, including training and development of a complaints protocol on freedom of association as it relates to worker safety. Like the original accord, the new agreement includes precedent-setting legal enforcement provisions, including final and binding arbitration, which are discussed further below.³³ As of the date of publication, however, the ability of the Transition Accord to continue to function within Bangladesh in the same manner the Accord has to date has been thrown into doubt by a pending legal challenge.³⁴

Employer groups have taken various positions on the Accord. Suppliers—as represented by the main industry association, the Bangladesh Garment Manufacturers and Exporters Association (“BGMEA”)—

³⁰ See accord on fire and building safety in Bangladesh (May 13, 2014), available at: http://bangladeshaccord.org/wp-content/uploads/2013/10/the_accord.pdf.

³¹ Accord on fire and building and fire safety in Bangladesh, quarterly aggregate report: April 2018 (Apr. 18, 2018), at 10, 15, http://bangladeshaccord.org/wp-content/uploads/accord_quarterly_aggregate_report_april_2018.pdf. For views of accord staff leadership on the escalation process, see, e.g., accord steering committee minutes, Oct. 18-19, 2016 at 4, <http://bangladeshaccord.org/wp-content/uploads/161018-19-sc-minutes-nyon.pdf>.

³² See accord quarterly aggregate report: April 2018, fn. 30, at 17-18.

³³ IndustriALL, “leading fashion brands join with unions to sign new Bangladesh accord on fire and building safety” (June 29, 2017), <http://www.industriall-union.org/leading-fashion-brands-join-with-unions-to-sign-new-bangladesh-accord-on-fire-and-building-safety>.

³⁴ Zeba Siddiqui, Ruma Paul, “Bangladesh factory safety group seeks to delay closure, flags lingering risks,” Reuters (Nov. 28, 2018), <https://www.reuters.com/article/us-bangladesh-garments-accord/bangladesh-factory-safety-group-seeks-to-delay-closure-flags-lingering-risks-idUSKCN1NX0XT>.

have expressed different views of the Accord at different times. On the one hand, the BGMEA understood that some response was necessary in the aftermath of Rana Plaza, when the crisis in worker safety posed an existential threat to the industry. However, the industry association has been critical of the agreement, particularly the exclusion of suppliers from its governance structure. The BGMEA opposed the extension of the Accord. Its position was that at the conclusion of the Accord's initial five-year mandate, the Bangladesh government should assume all responsibility for factory safety. Since the announcement of the Transition Accord, it has continued to advocate for an expeditious hand-off to the government entity being created for this purpose, the Remediation Coordination Cell within the Ministry of Labour and Employment.

At the same time, some factory owners have praised the work of the Accord, and expressed a desire for it to continue its operations. Sayeeful Islam, the managing Director of Concorde Garments, expressed his view that independent oversight had played an important role in improving conditions and rehabilitating the reputation of the Bangladesh apparel industry, remarking that he "would be worried" for the future of the industry if these efforts were discontinued.³⁵

Industry leaders in Bangladesh have also spoken out forcefully on the need for brands to help to pay for safety upgrades. On this issue, they concur fully with unions and NGO advocates, who fought to include language in the Accord instrument that requires brands to ensure that remediation is financially feasible for suppliers. However, the BGMEA and individual factory owners have complained that, in practice, brands have not provided sufficient financial assistance to help suppliers deal with the costs of remediation.

Among Western brands, the Accord has enjoyed the support of more than 200 firms, including many of the world's largest brands and retailers, many of which have signed-on to the follow-up Transition Accord.³⁶ Brands that declined to join the original Accord and voiced public criticisms objected principally to the Accord's binding enforcement provisions and/or the inclusion of labour unions in governance.³⁷

Coalition of Immokalee Workers' Fair Food Agreements

Another leading example of the Worker-Driven Social Responsibility ("WSR") approach is the Campaign for Fair Food, an effort to improve wages and working conditions for migrant farm labourers waged by the Coalition of Immokalee Workers ("CIW"), a worker-based human rights organization based in Immokalee, Florida.

Since 2000, the CIW has waged a series of successful campaigns to convince major agricultural buyers to sign Fair Food Agreements. The agreements require buyers to source from growers that have adopted and implemented a comprehensive and agriculture-specific code of conduct, which is subject to independent verification and includes strong enforcement provisions. The code of conduct includes human rights standards on such issues as forced and child labour, sexual harassment, health and safety, and retaliation (though it does not include the sorts of classification-specific pay rates or benefits that are typical of collective bargaining agreements). As discussed in the next section, lead firms are also required to supplement worker wages by paying a premium on each order that is passed-through to workers. The

³⁵ Jonathan Emont, "Bangladesh still grapples with safety lapses," wall street journal (March 30, 2018).

³⁶ A list of signatories to the transition accord can be found here: <http://www.industrial-union.org/signatories-to-the-2018-accord>

³⁷ For example, gap reportedly stated in May 2013 that that it was "Ready to sign on today with a modification to a single area – how disputes are resolved." Sarah Morrison, "Bangladesh factory collapse: gap refuses to back safety deal," UK Independent (May 14, 2013), <http://www.independent.co.uk/news/world/asia/bangladesh-factory-collapse-gap-refuses-to-back-safety-deal-8615599.html>. Walmart criticized the accord in May 2013 saying that, "[w]hile we agree with much of the proposal, the IndustriALL plan also introduces requirements, including governance and dispute resolution mechanisms, on supply chain matters that are appropriately left to retailers, suppliers and government..." Reuters, "Wal-mart will not sign Bangladesh accord" (may 14, 2013), <https://www.reuters.com/article/us-bangladesh-walmart/wal-mart-will-not-sign-bangladesh-accord-idusbre94d15f20130514>

agreements are credited with reducing once-pervasive labour abuses and dramatically raising labour standards for farm workers in Florida and elsewhere in the U.S.³⁸

A key element of the agreements is a requirement that lead firm signatories buy Florida tomatoes from participating growers in good standing under the Fair Food Program.³⁹ Specifically, whenever possible, buyers are required to preferentially source from growers that are compliant with the program's code of conduct or are working collaboratively to correct any non-compliances. Further, buyers must not source from any grower that has been suspended or discharged from the program for failure to comply with its standards.

Importantly, as with the Accord, the question of whether a supplier is in compliance and thus eligible to receive orders is not left to the lead firm's discretion, but is instead determined by the Fair Foods Standards Council, an independent organization which is led by a well-respected former New York judge, Laura Safer Espinoza, and overseen by a board comprised primarily of worker advocates.⁴⁰ As discussed further below, the Council has the authority to investigate compliance with the program's standards and, where necessary, issue findings requiring the lead firm signatories to cease sourcing from a supplier until and unless specified non-compliances are remedied. The Agreements' broad coverage among lead firms and the detailed sourcing provisions provide powerful market incentives that reward growers that adopt and comply with the program's standards. Once growers are participating, the threat of losing access to orders discourages growers from backsliding.

The CIW and Fair Food Standards Council has recently launched a program allowing signatory companies to market products made by covered suppliers with a Fair Food label and other marketing materials highlighting that workers are paid a premium and guaranteed human rights in the field.⁴¹

Leading food brands/retailers initially resisted the CIW's efforts. It took a four-year national boycott campaign organized by students, consumers, and faith organizations to convince the first lead firm signatory, Yum Brands, Inc., owner of the Taco Bell, Pizza Hut and KFC brands, to sign-on in 2005. McDonald's joined the program in 2007 following a two-year campaign. But the pace of growth picked up markedly thereafter.⁴² The CIW now has agreements with fourteen lead firms, including with the world's largest food retailer (Walmart), four large fast food companies (McDonald's, Yum Brands, Burger King, and Subway), and three large food service providers (Compass Group, Aramark, and Sodexo).

Growers in Florida likewise initially resisted participation. In 2007, a cooperative representing Florida tomato growers, the Florida Tomato Growers Exchange, went so far as to threaten to fine its members \$100,000 if they cooperated with McDonald's or Yum Brands in implementing a CIW agreement.⁴³ But amid growing lead firm participation, the Exchange dropped its objections and in 2010 reached an agreement with CIW to extend the Fair Food initiative to farms encompassing 90% of the state's tomato

³⁸ Steven Greenhouse, "in Florida tomato fields, a penny buys progress (Apr. 24, 2017), <https://www.nytimes.com/2014/04/25/business/in-florida-tomato-fields-a-penny-buys-progress.html> , for an excellent summary of the campaign for fair food, see James Brudney, "Decent labour standards in corporate chains" in temporary labour migration in the global era: the regulatory challenges (Joanna Howe and Rosemary Owens, eds., 2016).

³⁹ Fair food standards council, fair food program: 2015 annual report (2015) (hereinafter FFSC 2015 annual report), p. 7, available at: <http://fairfoodstandards.org/15sotp-web.pdf>.

⁴⁰ Reflecting the initiative's origins as the product of CIW'S campaign, the FFSC's six-member board of directors includes three representatives of CIW. The other three members are a leader of the national economic and social rights initiative, a Florida state university economics professor, and a vice president of the food service company compass group. See *id.* at ii.

⁴¹ Amy Bennett Williams, CIW debuts fair food label nationwide, the news-press (Oct. 24, 2014), available at: http://ciw-online.org/wp-content/uploads/ft_myers_news_press_ciw_label.pdf.

⁴² Subsequent agreements were reached with Burger King, Whole Foods Market and Subway signed agreements (2008); Bon Appétit management company and Compass Group (2009); Aramark and Sodexo signed (2010); Trader Joe's and Chipotle Mexican Grill (2012); Walmart (2014); and the Fresh Market and Ahold USA (2015).

⁴³ Steven Greenhouse, "tomato pickers' wages fight faces obstacles," NY times (Dec. 24, 2007), <http://www.nytimes.com/2007/12/24/us/24tomato.html>.

production.⁴⁴ The program has since been extended to cover farms in the additional U.S. states of Georgia, North and South Carolina, Virginia, Maryland and New Jersey.

Migrant Justice's Milk with Dignity Agreement

The nonprofit advocacy organization Migrant Justice has led a “Milk with Dignity” campaign to improve labour standards for dairy farm workers in the Northeastern United States. In October 2017, following several years of campaigning and negotiations, the organization signed an agreement with the leading ice cream brand Ben and Jerry’s, a subsidiary of the Netherlands-based conglomerate Unilever, to implement a human rights program at the brand’s dairy suppliers that is largely modelled upon the CIW’s Fair Food Program.

Like the CIW program, the Milk with Dignity program involves legally binding agreements with buyers obliging them to source milk from suppliers that sign separate agreements with Migrant Justice, which include a code of conduct. Similar to the CIW’s human rights standards, the code provides for zero tolerance of violations of forced labor, child labor, sexual or physical assault, and retaliation. It also includes standards specific to the U.S. dairy sector in which workers tend to live at dairy farms, including guarantees of adequate accommodations and time off each week and between shifts, as well as payment of the state minimum wage (currently \$10 an hour) even if its payment is not otherwise required by law. Buyers must also pay a premium to incentivize and support supplier compliance with the standards; workers receive bonus drawn from the premium to supplement worker wages. Farms must cooperate with Migrant Justice in facilitating workers’ access to a worker-to-worker education program concerning their rights.⁴⁵

As in the CIW program, buyer and supplier compliance with the standards is assessed by a nonprofit organization founded by Migrant Justice, the Milk with Dignity Standards Council, that operates independently of the companies it audits. Workers who believe their rights under the program have been violated can trigger an investigation by the organization, which has the power to issue corrective action plans, and, where necessary, cause a noncompliant supplier farm to be suspended from the program and disqualified from receiving Milk with Dignity premiums from the signatory buyer. Workers and farms provide input into the program through a Milk with Dignity working group.

Observations

Each of the above initiatives involve binding contractual commitments by lead firms to unions or worker rights organizations to contract solely or preferentially with suppliers that demonstrably adhere to decent labour practices. In order to be eligible to receive lead firm business, the suppliers must either have signed binding collective bargaining agreements with labour co-signatories (as in the first set of agreements described) or submit themselves to rigorous labour rights assessments carried out by an organization that is at least jointly governed by unions and/or worker rights organizations (as in the second set of agreements). By conditioning initial and continued access to lead firm business on labour rights performance, this model creates powerful incentives for suppliers to improve working conditions by transforming decent labour practices from a competitive disadvantage to a market advantage.

The ILGWU jobbers agreements, which were arguably the most impactful instruments in transforming industry practices, went further still in regulating lead firm procurement. These agreements included provisions prohibiting lead firms from designating more contractors than their production volumes require and prohibiting the lead firm from discharging a contractor without just cause (e.g. poor quality or late delivery). The provisions were intended to consolidate production in the existing, unionized factory base in order to avoid one of the problems plaguing the industry in the pre-jobbers agreement era:

⁴⁴ Coalition of Immokalee and Florida tomato growers exchange, “Workers and historic breakthrough in Florida’s tomato fields” (Nov. 16, 2010), http://ciw-online.org/blog/2010/11/ftge_ciw_joint_release/

⁴⁵ Noam Scheiber, “Ben and Jerry’s strikes deal to improve migrant dairy workers’ conditions” NY Times (Oct. 3, 2017), https://www.nytimes.com/2017/10/03/business/ben-jerrys-migrant-workers.html?_r=0; Migrant Justice, Milk with Dignity program, <https://migrantjustice.net/sites/default/files/2017%20md%20101%20%20.pdf>;

a radical imbalance between the number of jobbers and contractors, which spurred downward price competition among contractors vying for a limited number of orders. In today's supply chain agreements, this imbalance is addressed solely by provisions requiring lead firms to contract only or preferentially with compliant suppliers.

Some contemporary efforts require the lead firm to sever contractual relations with a supplier that violates certain standards, without providing "positive" incentives to reward demonstrable compliance. As Felix Hadwiger has noted, for example, several Global Framework Agreements include language calling for consideration of the termination of contractual relationships between lead firms and contractors.⁴⁶

Such formal provisions are not required for lead firms to end, or threaten to end, relationships with suppliers in response to concerns raised by unions or NGOs regarding labour practices. Indeed, labour groups regularly rely on lead firms' leverage over suppliers to compel remediation of violations or the resolution of labour disputes. As reviewed in the background study, we documented numerous cases in which unions in the Global South won agreements with suppliers to reinstate unlawfully terminated worker leaders or to take other steps to resolve labour disputes through the intervention of the lead firms they supply. Global North NGOs and unions played a key role in many of these cases. Civil society pressure was also the lynchpin behind the successful Justice for Janitors campaign in the United States.

While negative incentives can be critical in resolving individual cases, the ability of labour groups to threaten suppliers' access to lead firm business represents a weaker form of leverage than one that also incorporates *positive* incentives, such as sourcing preferences and long-term commitments. We identified several instances in which apparel brands have, at the urging of unions or labour advocates, maintained significant production at workplaces where labour rights breakthroughs occurred for much longer than is typical in the apparel sector, even in the absence of a public commitment or agreement to do so. A notable example described in the background study is Levi's continued production at Grupo M's Codevi free trade zone facility in Haiti (a decade after the union was recognized). It is now standard practice for worker advocates and unions to press brands to maintain production (or in some cases resume production) at worksites where major progress on labour rights has been achieved. This demand could be incorporated into more formalized agreements to source from unionized or otherwise compliant suppliers in a manner that rebuilds in a limited fashion the original system of jobbers agreements.

B) Funding Decent Work

When lead firms wield great bargaining power vis-à-vis their suppliers in buyer-driven supply chains, suppliers may feel pressure to cut costs to a bare minimum to compete for lead firm business. In the apparel sector, for example, suppliers must contend with a market in which brands may withdraw production from a factory or even an entire region to save 20 cents per garment.⁴⁷ Since it costs more to comply with than to violate basic labour standards, such price pressure creates perverse incentives that undermine decent work.

Illustrating these dynamics, the authors, together with Mark Anner at Pennsylvania State University, used data from the Office of Textiles and Apparel (OTEXA) at the U.S. Department of Commerce to show that between 1989 and 2010, the real dollar price per square meter of apparel entering the U.S. declined by 48%.⁴⁸ We found the same downward trend in prices over time for particular products. For example, Figure 1 below illustrates the real prices paid for men's and boy's cotton trousers from four top exporting countries: China, Mexico, Honduras, and Bangladesh.⁴⁹

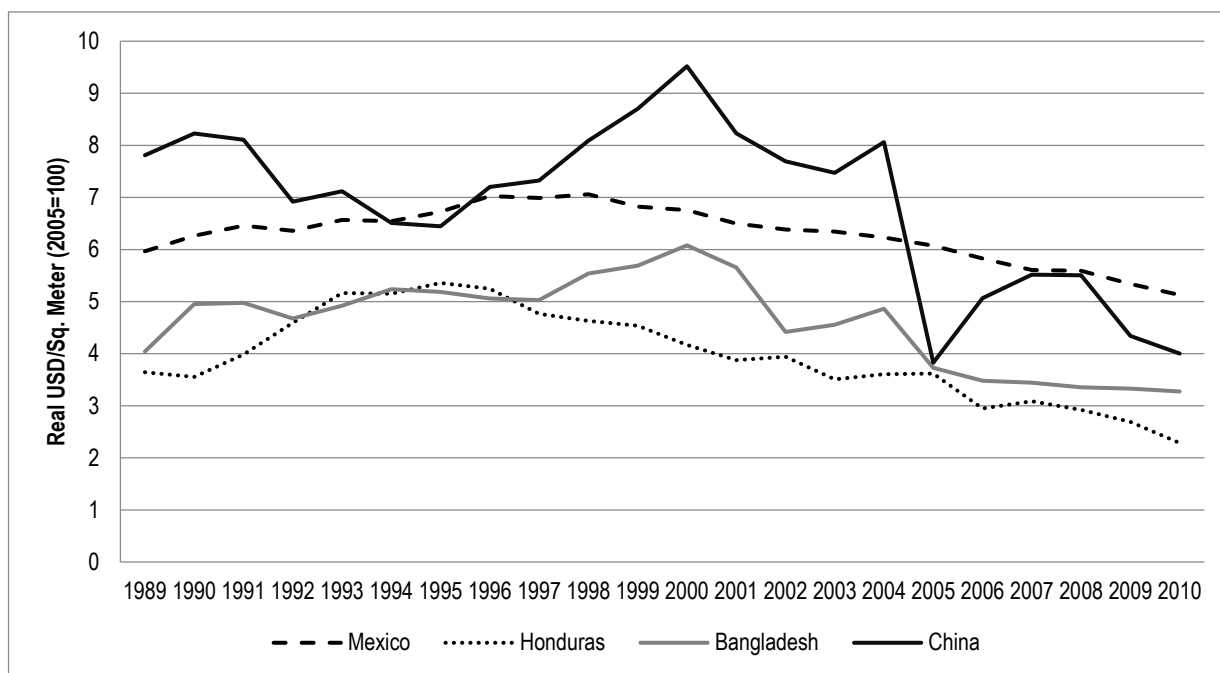
⁴⁶ See Hadwiger, *supra*, n. 12 at 26-27 (citing GFAS with Renault group, Securitas, and Total).

⁴⁷ See, e.g., Locke, *supra*, n. 7 at 38.

⁴⁸ OTEXA records apparel imports by volume and by dollar values. Dividing the value of imports by import volume (measured in square meters) gives us the price per square meter of imported apparel to the United States from 1989 through 2010. In nominal terms, we see that the unit price increased from \$3.48 in 1989 to \$3.77 in 1997 and then declined to \$2.89 in 2010—a drop of 23 percent. To calculate the decline in real dollars, we used the GDP deflator provided by the US Department of commerce, bureau of economic analysis, <http://www.bea.gov/index.htm>. For additional details and analysis, see Anner et al., *supra*, n. 4 at 11-13.

⁴⁹ "Men's and boys' trousers" corresponds to U.S. Harmonized Trade Schedule code 347; see <https://otexa.trade.gov/corr.htm>.

**Figure 1. Unit Price of Men's and Boy's Cotton Trousers
USD/Sq. Meter (2005=100)**

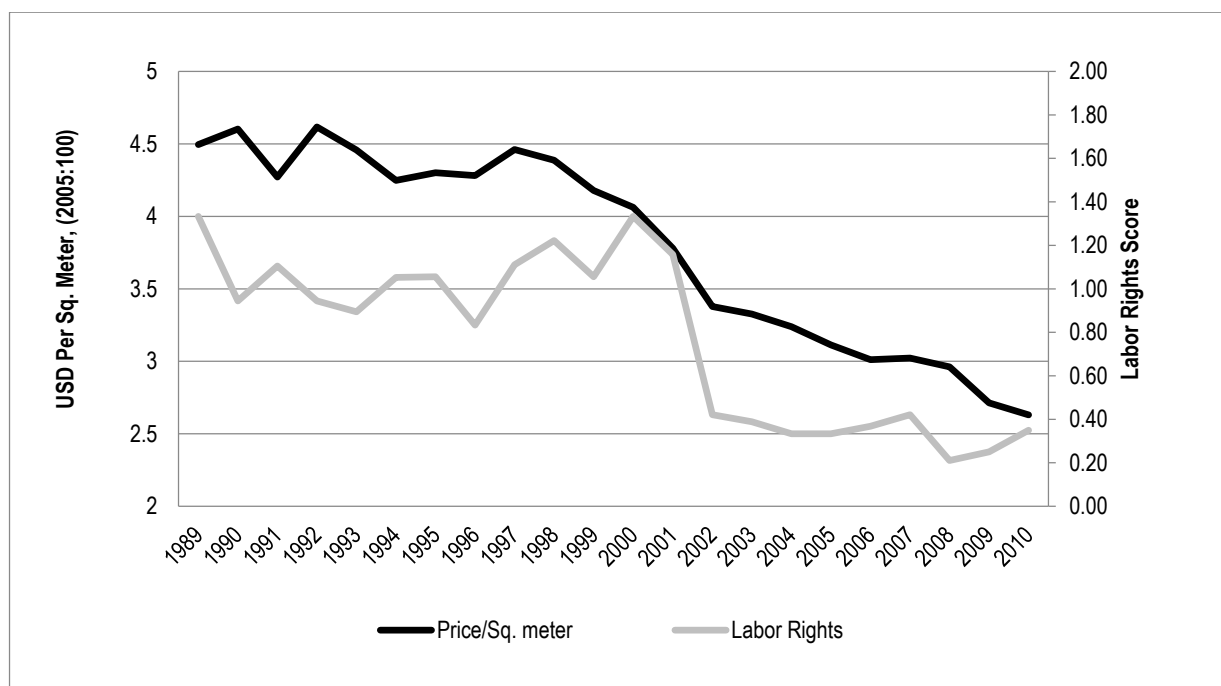


Source: Anner, Bair, Blasi, 2013

To explore the relationship between pricing and labour compliance, we used the Cingraneli and Richards Human Rights Dataset (CIRI), which contains quantitative information on government respect for core labour standards in approximately 195 countries. We first identified the 20 top apparel exporters (by volume) to the United States for each year from 1989 to 2010; depending on the year, this set of countries supplied between 83 percent and 95 percent of U.S. imports. The CIRI Workers' Rights score for each country was recorded for each year and averaged, giving us an indicator of the status of workers' rights during the same period covered by our unit price of imports measure, 1989-2010. As Figure 2 shows, we found that our labour rights indicator held relatively steady in the 1990s, but then declined sharply around the turn of the millennium—a period of intensified competition and heightened volatility in the global apparel industry, due to the phase-out of the quota system that had previously regulated international trade in garments. Our interpretation of this trend is that apparel suppliers, and the states in which they operate, may respond to increasing competition and growing pressure to cut prices by violating labour standards, including associational rights that might allow workers to improve wages and benefits, and thus potentially increase labour costs.⁵⁰

⁵⁰ See Anner et al., *supra*, n. 4 at 12. Note that the data on which figure 2 is based are unweighted. Thus, the major exporting countries like China (with a CIRI score of 0) are weighted the same as much smaller exporters like the Dominican Republic (with a CIRI score of 2). By not using a weighted scale, our data emphasize that the trend in declining respect for workers' rights in apparel exporting countries is widespread, and not solely accounted for by trends in one country. If we were to use a weighted scale, the decline would be much more dramatic. For more recent data and analysis on pricing and sourcing practices in Bangladesh, see Mark Anner, "Binding power: the sourcing squeeze, workers' rights, and building safety in Bangladesh since Rana Plaza," Center for Global Workers' Rights, Pennsylvania State University (May 22, 2018), <http://ler.la.psu.edu/gwr/documents/CGWR2017ResearchReportBindingPower.pdf>.

Figure 2. Unit Price of U.S. Apparel Imports and Labor Rights Performance among Leading Exporters



Source: Anner, Bair, Blasi, 2013

In order to ensure that price competition among suppliers does not undermine core labour standards, it is necessary to ensure that suppliers have the financial capacity to pay for decent work. The instruments we reviewed incorporate measures designed to meet this challenge by causing lead firms to adjust their commercial relationships with suppliers. These provisions fall into two general approaches: a “sufficient price” model and a “pass-through wage premium” model, each of which we discuss below.

Sufficient Prices and Other Adjustments to Lead Firm-Supplier Commercial Terms

In several notable cases, labour groups have won agreements with lead firms requiring them to pay a price to their supplier for labour or goods sufficient for the supplier to comply with negotiated labour standards. This “sufficient price” approach is aimed at addressing the reality that suppliers may not be in a financial position to improve conditions or comply with international standards given the prices lead firms pay for their goods or services.

The most successful historical example of this approach is, again, the ILGWU’s historical jobbers agreements. As noted briefly above, these provisions required jobbers to pay their contractors a price adequate for the contractor to comply with the substantive labour standards, including wage rates, outlined in the agreement. For example, a provision of this sort stated:

A member of the Affiliated [the employers’ association for dress jobbers] whose garments are made in contracting shops shall pay to such contractors at least an amount sufficient to enable the contractor to pay the workers the wages and earnings provided for in this agreement, and in addition a reasonable amount to the contractor to cover his overhead and profit.”⁵¹

Disputes over whether the price paid was sufficient were adjudicated by an arbitrator referred to as an “impartial chairperson.” The requirement that jobbers help pay for labour improvements, together with the various other elements of the jobbers’ agreements which specified standards and incentivized supplier cooperation, contributed to the transformation of the New York garment industry from one marked by

⁵¹ e.g. Agreement between ILGWU and affiliated dress (1936), at 14.

poverty wages to one with the highest hourly pay rate in the nondurable goods sector—one in which negotiated wages substantially exceeded legal minimums.⁵²

In the contemporary context, the Bangladesh Accord includes a similar provision, requiring lead firms to ensure that their commercial terms with suppliers enable the supplier to comply with the Accord’s fire, electrical, and structural safety requirements. The Accord’s provision states:

[P]articipating brands and retailers will negotiate commercial terms with their suppliers which ensure that it is financially feasible for the factories to maintain safe workplaces and comply with upgrade and remediation requirements instituted by the Safety Inspector. Each signatory company may, at its option, use alternative means to ensure factories have the financial capacity to comply with remediation requirements, including but not limited to joint investments, providing loans, accessing donor or government support, through offering business incentives or through paying for renovations directly.⁵³

Note that unlike the jobbers agreement model which focusses solely on price, the Accord’s language allows for lead firms to satisfy their obligation by varying their commercial terms in a variety of additional ways, something which has inevitably made verification of fulfilment of the obligation more challenging. The degree to which lead firms have implemented this requirement is a matter of differing views between the Accord’s signatories. Labour co-signatories and many factory owners have complained that lead firms are not broadly complying with the spirit of the Accord on this point, which is disputed by signatory brands.

Another notable contemporary instance of this concept in the apparel sector is the Alta Gracia Project in the Dominican Republic, where a lead firm committed to pay a “fair price” to enable the factory to pay workers a “living wage” and comply with other project-specific labour standards. The factory, which primarily produces apparel sold or manufactured under license by U.S. colleges and universities, is to our knowledge the only garment factory in the Global South paying its workers a “living wage,” a wage that is more than three times the Dominican minimum wage for apparel workers. In the case of Alta Gracia, the lead firm initially involved in the project, Knights Apparel, went even further by financing the renovation and maintenance of the factory so that it could comply with health and safety requirements, assumed all other financial risks of the business, and has participated directly in bargaining with the union.⁵⁴

There are other less developed examples in the apparel sector of brands’ committing to pay a price sufficient to enable supplier compliance with labour standards. IndustriALL’s memorandum of understanding with ACT member brands states broadly that “Corporate signatories will ensure that their purchasing practices facilitate the payment of a living wage as defined in this document.”⁵⁵ As another example, following reporting on widespread violations of the minimum wage in Haiti,⁵⁶ the Canadian brand Gildan publically committed to pay a price to its Haitian suppliers sufficient to comply with the minimum wage.⁵⁷

In the agricultural context, the connection between the prices paid by lead firms to suppliers, and those paid by the suppliers to their workers, has been a critical element of FLOC’s efforts to reach agreements with both growers’ organizations and the food brands they supply. FLOC’s agreement with Campbell and its growers association acknowledged an expectation that the extra costs incurred by suppliers to

⁵² Anner et al., *supra*, n. 4 at 18.

⁵³ Accord, section 22.

⁵⁴ For a detailed and compelling account of the history of the initiative, see Sara Adler Milstein and John Kline, *sewing hope: how one factory challenges the apparel industry’s sweatshops* (2017). A successor company that was spun off upon knights’ purchase by Hanesbrands Inc. called Alta Gracia Holdco assumed its obligations vis-à-vis the factory. Alta Gracia Holdco was recently acquired by the investment group AG Triada.

⁵⁵ Act, memorandum of understanding at 2.

⁵⁶ Worker rights consortium, *stealing from the poor: wage theft in the Haitian apparel industry* (hereafter, WRC, *stealing from the poor*) (Oct. 25, 2013), p. 17, available at www.workersrights.org/freports/WRC%20Haiti%20Minimum%20Wage%20Report%2010%2015%2013.pdf.

⁵⁷ Rick Westhead, “Gildan vows minimum wage for Haitian garment workers,” *the Toronto star* (Nov. 18, 2013), available at: https://www.thestar.com/news/world/2013/11/18/gildan_vows_minimum_wage_for_haitian_garment_workers.html.

comply with the agreement's terms shall be borne by the lead firm, stating that "members of the Association" shall be provided "compensation by the Company [e.g. Campbell] for the costs of provisions of the Agreement."⁵⁸ In practice, the details of how this expectation were implemented appear to have been worked out directly between Campbell and the growers.

A later FLOC agreement with the Mt. Olive food brand provides another example. A conflict between FLOC, Mt. Olive, and the North Carolina Growers Association whose members supply Mt. Olive was resolved when Mt. Olive committed to increase the price it paid for pickles 2.5% annually for three years. The company agreed to small additional increases in following years. Unlike FLOC's breakthrough agreement with Campbell Soup, Mt. Olive was not a formal party to the agreement between the union and the Growers' Association. But as the Association's largest client, its willingness to pay more for the pickles it purchases from farmers was a critical condition enabling the farmers, as the direct employers of FLOC's members, to meet their obligations under the agreement with the union.

"Pass-through" Premiums to Supplement Wages

The second approach in supply chain agreements in this area is to oblige lead firms to contribute premiums to suppliers that are specifically designated to improve employee wages or benefits. Such premiums are then "passed-through" by the supplier to employees. The amount of premiums the lead firm must pay can be defined as a fixed amount per each unit purchased of a commodity or as a percentage of the price the lead firms pays.

The leading model in this area is the CIW's "penny per pound" wage premium program. In this approach, as briefly summarized above, companies that are signatories to Fair Food Agreements with the CIW are required to pay a premium of about one penny per pound for each 32-pound bucket of tomatoes they purchase in Florida and other locales covered by the agreements. This money is then distributed to workers by their direct employers. Since Florida farmworkers had been receiving only about 1.3 cents per pound of tomatoes picked (40-45 cents per 32-pound bucket), the CIW calculated that the "penny per pound" pass-through premium could increase workers' wages by about 75%.⁵⁹ The amount appears on pay checks as a separate line-item bonus for each contributing buyer.⁶⁰ The Fair Foods Standards Council, an independent body which is controlled largely by worker advocates and which audits the payments and distribution of funds, reported in its 2015 annual report that nearly \$20 million in Fair Food Premiums had been distributed to workers since 2011. These premiums yield weekly pay increases of as much as \$120, a significant amount given baseline pay levels in the farm labour sector.⁶¹

A similar approach is included in Migrant Justice's Milk with Dignity Agreement with Ben and Jerry's Ice Cream, which was modelled after CIW's Fair Food Agreements. Under this recently signed agreement, the brand is required to contribute a premium to support compliance with the program's standards by participating dairy suppliers, as reviewed above. Similar to CIW's approach, the firms' commitments are audited by a non-profit organization launched by Migrant Justice called with Milk with Dignity Standards Council.

The premium pass-through model is also prevalent in many more traditional "fair trade" initiatives, where the approach was first adopted. In traditional fair trade models, buyers sourcing from small farmers or

⁵⁸ Agreement among Campbell tomato growers association and farm labor organizing committee and Campbell Soup Company (Feb. 1, 1989), p. 11.

⁵⁹ *Taco bell agreement analysis*, coalition of Immokalee workers (mar. 10, 2005), available at: <http://www.ciw-online.org/blog/2005/03/agreement-analysis>.

⁶⁰ FFSC 2015 annual report, supra, n. 39, at 9, 35, 50-51. Of the payments made by buyers, growers must distribute 87% to workers using a pro-rata formula. Growers are permitted to retain the remaining 13% to offset payroll taxes and administrative costs, serving to address objections that the program would impose additional costs on them. The actual amount buyers are required to pay per pound varies somewhat by tomato variety. Buyers are required to pay slightly more per pound of small cherry tomatoes, which involve more labor and sell at retail for a higher price.

⁶¹ *id.*

cooperatives contribute a premium, which varies by product category and region, to be used for collective community development projects.⁶²

Lead firms can also contribute directly to improve benefits for employees without working through the supplier. An example is an obligation imposed on lead firms under the ILGWU's jobbers agreements to pay directly into union-administered health and vacation funds for contractors' employees. This approach enabled workers to have portable benefits that they could access even if they moved among various contract shops, or when contractors abruptly closed.

Observations

The "premium pass-through" and "sufficient price" models each have strengths and limitations. A principal strength of the pass-through approach is that it involves clearly defined and straightforward obligations on lead firms and suppliers. The requirements that lead firms pay a set premium to their suppliers for each order and that suppliers pass along some or all of this amount (depending on the agreement) to their employees can be readily verified, as the CIW's Fair Food Standards Council has demonstrated through its auditing program.

One key challenge of the pass-through approach is that the total amount of funds that the supplier receives in the form of premiums is dependent on the proportion of its orders on which premiums are paid. If the premium is only paid on a fraction of the total volume of orders, the supplier may not be in a position to pay any particular wage level to workers or bear the cost of other labour standards improvements. In the worst-case scenario, a product may be certified as "fair trade" based on the buyer's payment of a premium, but because that buyer represents such a small portion of the supplier's volume, the workers' wages and/or working conditions are not appreciably improved. This challenge can be overcome if key lead firms commit to source only from cooperative suppliers and to pay the premium for all of their orders (at least, of a specified type or produce—e.g. Florida-grown tomatoes as in the case of the CIW's Fair Food Agreements). Benefits for workers are also broadened where labour groups win strong agreements with a large share of the lead firms in a particular market niche, a key accomplishment of the CIW.

The "sufficient price" model, on the other hand, has the key advantage of ensuring that labour standards are met by defining a lead firm's obligation as whatever price is necessary for the supplier to afford to comply. This approach makes particular sense where the costs required are not clear at the outset, but instead, as in the Bangladesh Accord, vary from supplier to supplier depending on the particular remediation measures that are necessary. The approach may also make sense if the objective is to ensure that the supplier can pay workers a defined "living wage" level, as in the Alta Gracia example.

The sufficient price model faces challenges, as well. Suppliers may be reluctant to request that their buyers pay increased prices or make other adjustments to their commercial terms, or to complain to enforcement bodies if the terms are insufficient, for fear of damaging relations with the lead firms on whose business their continued existence relies. In the case of the Accord, some advocates have suggested that suppliers have been afraid to ask for higher prices or other financial assistance and instead have affirmed that they are able to self-finance the required safety renovations even when they might not be in a position to do so.

Additionally, the process of determining the sufficiency of a price paid to a supplier requires consideration of the costs required for compliance with the labour standard, the other costs of production, and the economic circumstances of the supplier. It is certainly possible to make such calculations, as the successful history of the ILGWU's jobbers agreements demonstrates, and as experts such as Doug Miller and Peter Williams have described in the context of the modern apparel sector.⁶³ But it is also more

⁶² For a list of current fair trade premium rates, see fair trade international, "minimum price and premium information", <https://www.fairtrade.net/standards/price-and-premium-info.html>. We do not review these efforts in this report, which is focused on efforts initiated and negotiated by unions and other worker-based organizations.

⁶³ For a discussion and a proposal on methodology for pricing apparel to enable payment of a living wage, see Doug Miller & Peter Williams, "What price a living wage? Implementation issues in the quest for decent wages in the global apparel sector," in *global social policy* (2009, vol. 9), pp. 99-125.

labour-intensive for the parties to determine and for an auditor or adjudicator to assess than in the case of a standardized pass-through approach where a fixed premium is defined at the outset.

Ultimately, the success of a program requiring lead firms to help pay for the cost of labour standards compliance appears to depend less on the technical challenge of assessing compliance costs than on putting in place the right incentives for lead firms and suppliers to implement the program's standards. If a lead firm's fulfilment of its own obligations to its labour counterparties is contingent on ensuring that its suppliers are compliant with the agreement's labour standards, then that lead firm has a strong incentive to make whatever adjustments to its commercial terms are necessary for the supplier to be in a position to comply. And if the supplier's continued access to lead firm orders is contingent on compliance with the labour standards, it has a strong incentive to make clear to the lead firm what adjustments in commercial terms are necessary for it to make the required labour upgrades. This incentive should help countervail a fear on the part of the suppliers that asking for such adjustments will negatively affect its relationship with the client lead firm.

Where the lead firm and the supplier fail to make the necessary adjustments to commercial terms, the labour standards are unlikely to be met. Such noncompliance can be readily ascertained through labour standards assessments by a mutually chosen monitor, triggering potential market consequences for the supplier and potential liability for the lead firm if it cannot show that it took concrete efforts to enable supplier compliance. Both dynamics have been at play in the Bangladesh Accord, helping to drive massive and costly renovations, even though compliance with the "sufficient price" provision—the requirement that lead firms ensure remediation is "financially feasible" for suppliers—has proven difficult to assess.

Where these broader market incentives are in place and enforced, the "sufficient price" standard need not be audited regularly in the same way that pass-through premiums should be audited to prevent graft. Rather, the "sufficient price" standard can serve the more limited purpose of helping to define the lead firm's burden in the case of a dispute over why a supplier is not compliant with the labour standards obligations. In an arbitral proceeding initiated by a labour counterparty, a lead firm might be required, for example, to demonstrate that it undertook due diligence to assess the costs of a supplier's compliance with the relevant standards and made appropriate offers to provide the financial assistance necessary for the supplier to bear those costs.

An obligation to pay a sufficient price may also be implicit in an agreement or labour protection scheme. For example, Unisom's Ethical Care Charter in the U.K., a case included in the background study, is premised on a sufficient price approach, though one that is not fully spelled out in any agreement or contractual instrument. By signing the Charter, local authorities—as the main clients contracting home care services—commit to ensuring that these service providers are able to provide their workers with the standards outlined in the charter, and contributing sufficient funding is a necessary component of meeting this obligation.

The pass-through and sufficient price models are not mutually exclusive. A pass-through approach may make the most sense as a means of increasing wage levels among the employees of a supplier. A sufficient price model may work best when compliance with the labour standards require the supplier to incur a range of costs that vary from supplier to supplier and are not easily determined at the outset. Both sorts of labour standards might be included in an agreement. And there are, of course, other means of funding remediation that do not involve direct transfers from lead firms to suppliers, such as through contributions to pools of funds that are then disbursed to suppliers as grants or loans based on demonstrated need.

C) Remedying Violations at Insolvent Suppliers

The most common approach for addressing violations in supply chain labour agreements is for lead firms to press suppliers to remediate. However, in some cases, suppliers may not themselves be in a position to enact such remedial measures, even with proper incentives from lead firms. In such cases, unions and NGOs are increasingly pressing the lead firms to use their own resources to redress labour violations.

There are two primary circumstances in which this occurs: in the context of major workplace disasters in which substantial compensation is required to begin to address the harms caused to workers and their families, and in the context of supplier closures, in which suppliers go bankrupt without paying workers owed compensation.

Workplace Disaster Compensation Schemes

A series of mass-fatality disasters, and campaigns waged by labour advocates in their wake, have arguably contributed to the emergence of a new norm whereby apparel brands are expected to provide compensation for the loss of income and/or medical care for victims of workplace disasters at supplier facilities.

The largest such fund—the Rana Plaza Arrangement—was created following the April 2013 collapse of Rana Plaza in Bangladesh. The framework for the compensation fund was reached in November 2013, via an agreement signed by the government of Bangladesh, the BGMEA, IndustriALL Global Union and the IndustriALL Bangladesh Council, Clean Clothes Campaign, and the Bangladesh Institute of Labour Studies. The agreement envisioned a single process, overseen by a Coordinating Committee comprised of the signatories’ representatives and chaired by the ILO, to develop a formula for victim compensation and oversee collection and dispersal of funds.⁶⁴

The Coordinating Committee initially estimated that USD \$40 million would be necessary to satisfy all expected claims, though this target was subsequently reduced to \$30 million. However, even as the claims process continued, the Fund remained short of this revised target. Labour advocates—coordinated by the Clean Clothes Campaign—launched public campaigns to press brands that sourced from Bangladesh generally and Rana Plaza in particular to make contributions. These efforts included, among other actions, a petition that garnered a million signatures directed at the brand Benneton, which sourced from Rana Plaza factories.

In June 2015, the ILO announced that, following a significant anonymous contribution, the Rana Plaza Trust Fund had met its \$30 million target and thus had gathered the funds required to enable full payments to all victims.⁶⁵ Final disbursements were carried out in the ensuing months. Because the payments to beneficiaries were specifically limited to loss of income, medical costs and allied care, the arrangement left open the opportunity for victims to pursue legal claims for other damages such as pain and suffering and punitive damages.

As reviewed in more detail in our background study, similar funds have been established to provide compensation for other workplace disasters in Bangladesh and Pakistan:

- In April 2005, the Spectrum Sweater factory in Savar, Bangladesh collapsed, killing at least 64 workers and injuring many others. The ITGLWF (a predecessor of IndustriALL Global Union) and Inditex (owner of the Zara brand amongst others) subsequently reached an agreement to create the Spectrum Relief Scheme.⁶⁶ The Scheme was initially envisioned to total 533,000 Euros, which would provide monthly pensions for the survivors of the disaster and families of workers who died, although

⁶⁴ Understanding for a practical arrangement on payments to the victims of the Rana Plaza accident and their families and dependents for their losses (as amended Nov. 20, 2013), available at: http://ranaplaza-arrangement.org/mou/full-text/mou_practical_arrangement_final-ranaplaza.pdf. For a comprehensive and insightful review of the origins and implementation of the agreement, see Bangladesh: Rana Plaza compensation scheme: technical report on the scheme design and operationalization, and lessons learnt, ILO public finance, actuarial and statistics services branch, social protection department country office for Bangladesh (2015), available at: <http://www.social-protection.org/gimi/gess/ressourcepdf.action?Ressource.ressourceid=50557>

⁶⁵ "Rana Plaza victims' compensation scheme secures funds needed to make final payments," international labour organization (June 8, 2015), available at: http://www.ilo.org/global/about-the-ilo/newsroom/news/wcms_374239/lang--en/index.htm; Tansy Hoskins, "after two years, the Rana Plaza fund finally reaches its \$30m target," the guardian (June 10, 2015), available at: <https://www.theguardian.com/sustainable-business/2015/jun/10/rana-plaza-fund-reaches-target-compensate-victims>.

⁶⁶ For a detailed case study of the disaster and its root causes, as well as the domestic and international efforts to establish the relief fund and addressed broader health and safety issues in Bangladesh's RMG sector, see Doug Miller, last nightshift in Savar: the story of the spectrum sweater factory collapse (2013).

the total amount given was not ascertained. Final payouts were made in September 2011.⁶⁷ The Clean Clothes Campaign, along with the ITGLWF and multiple Bangladeshi unions including the National Garment Workers Federation, organized a public campaign to establish the agreement and ensure its eventual implementation.⁶⁸

- In September 2013, the Tazreen Claims Administration Trust was established to provide compensation to victims of the November 2012 fire at Tazreen Fashions in Bangladesh, which killed 113 workers and injured scores more. The Clean Clothes Campaign and International Labor Rights Forum, which led efforts to establish the Fund and persuade companies to contribute to it, announced in July 2016 that the Fund had completed its work of providing payments to all injured workers and to the dependents of those who were killed. Recipients included 482 family members of 103 deceased workers and 10 missing workers, and 174 survivors who suffered continuing injuries from the fire.⁶⁹ Major contributions of \$1 million were made by C&A Foundation and the Li & Fung Foundation (Li & Fung had placed orders at Tazreen on behalf of Sean John's Enyce brand). KiK, El Corte Ingles, and Walmart, made smaller contributions, with the last providing \$250,000.⁷⁰
- In September 2016, an agreement was reached to provide compensation for income lost by victims of the September 2012 fire at the Ali Enterprises factory in Baldia, Karachi, Pakistan. The deadliest apparel factory fire on record, the Ali Enterprises tragedy claimed the lives of 225 workers and left at least 57 workers injured. Under the agreement, which was signed by the German brand Kik, IndustriALL Global Union, the Clean Clothes Campaign, and the ILO, Kik agreed to contribute \$5.15 million to fund the compensation scheme. Kik, which was the factory's largest customer, previously provided \$1 million in emergency funding in December 2012. These funds, plus additional contributions from the government of Pakistan, were determined to be sufficient to meet the requirements for loss of income and medical care for victims and dependents under the ILO's Employment Injury Benefits Convention (ILO Convention 121), using a proxy wage proposed by the ILO in the absence of direct records of wage rates.⁷¹

Making Workers Whole Upon Supplier Closures

There are numerous instances in which lead firms have agreed to contribute funds to help make workers whole where the lead firm's contractors have closed without paying legally due compensation. Key examples are in the apparel and construction sectors.

In apparel, the historical jobbers agreements established limited liability on a jobber to pay several weeks of wages where its contractor failed to pay workers upon closure. In a number of more recent cases, brands have contributed to make employees of its contracted suppliers whole, with contributions reaching into the millions. Such cases have been most common in the sphere of university licensed apparel where universities have imposed labour codes of conduct as part of licensing agreements that allow brands to produce apparel bearing their logos, and created an independent non-profit organization, the Worker Rights Consortium, to monitor for compliance. Two notable examples, reviewed in further detail along with other cases in the background study, include:

⁶⁷ "Spectrum relief scheme finally completed," clean clothes campaign (May 1, 2015), available at: <https://cleanclothes.org/news/2011/05/01/spectrum-relief-scheme-finally-completed>.

⁶⁸ "Action for safe factories in Bangladesh on 5th anniversary of spectrum disaster," clean clothes campaign (Apr. 11, 2010, modified Apr. 24, 2013), available at: <https://cleanclothes.org/news/2010/04/11/action-for-safe-factories-in-bangladesh-on-5th-anniversary-of-spectrum-disaster>.

⁶⁹ *id.*

⁷⁰ "Payment on claims from survivors of Tazreen factory fire completed," clean clothes campaign and international labor rights forum (July 8, 2016), available at: <http://www.laborrights.org/releases/payment-claims-survivors-tazreen-factory-fire-completed>.

⁷¹ "Compensation arrangement agreed for victims of the Ali enterprise factory fire in Pakistan," International Labour Organization (Sept. 10, 2016), available at: http://www.ilo.org/global/about-the-ilo/newsroom/news/wcms_521510/lang-en/index.htm (hereinafter ILO, "Ali enterprises compensation arrangement"); compensation arrangement agreed for victims of the Ali enterprise factory fire in Pakistan," clean clothes campaign (sept. 12, 2016), available at: <https://cleanclothes.org/news/2016/09/12/statement-ali-enterprises>.

- An agreement between the Honduran union confederation CGT and Nike reached in July 2010 under which Nike agreed to contribute \$1.54 million to a worker relief fund to be distributed to the former employees of two factories, Hugger and Vision Tex, which closed without paying them severance and back wages. Nike also agreed to pay for all 1,600 workers to be enrolled for one year in Honduras' national health program. The agreement made Nike's commitments enforceable subject to binding arbitration.⁷²
- An agreement reached in April 2013 between an Indonesian union, DPC SPSI TSK Tangerang, and the brand Adidas under which the latter reportedly agreed to contribute more than \$1 million to help make whole more than 2,000 former employees of a factory, PT Kizone, which closed without paying them severance obligations equivalent on average to a year's salary. The agreement with Adidas was reached after a U.S. university brought legal action against the brand to enforce its labour code of conduct and the Indonesian union successfully intervened in the suit. In the period immediately following the closure, Nike had voluntarily contributed more than a half million dollars (and convinced an intermediary firm to contribute an additional \$1 million), and a smaller firm, the Dallas Cowboys, contributed \$55,000.⁷³

The background study reviews nine similar cases, where brands or intermediaries acting on their behalf contributed funds to make workers formerly employed by insolvent contract factories whole. Garment workers and their advocates in California have successfully campaigned to establish a duty on the part of brands to guarantee payment by their contractors as a matter of state law.⁷⁴

The concept of lead firm liability for debts to workers owed by contractors is well established in the developed world construction sector. A notable model exists in recent revisions to collective bargaining agreements negotiated between the Swedish building trades union federation, Byggnads and the Swedish employer's association in construction, BI.⁷⁵ As discussed in the background study, recently added provisions to "Annex D" of the agreement allows the union to seek redress from the main contractor in the event of an unresolved wage dispute between a worker and a subcontractor firm, and potentially to obtain relief to make workers whole from a special fund established by the BI for this purpose. In the event that the Board finds in favour of the union, awards are paid out from a special fund established by the BI. This funding mechanism includes a right of recourse towards the responsible employer or any party to the dispute that has not fulfilled its obligations under Annex D.

Existing law in many states allows for construction trades workers to use "mechanic's liens" to obtain redress for owed wages from higher levels in the chain, up to and including the owner of the property which they have worked to improve.⁷⁶

Observations

The cases reviewed above appear to reflect growing acceptance of the principle that lead firms have an obligation to take steps to remedy labour violations experienced by their suppliers' employees, even where doing so requires use of their own financial resources. Labour advocates argue that lead firms have a moral responsibility to do so because they tend to benefit, in the form of low prices, from the low wages and flexibility that are made possible, in part, because the suppliers operate without sufficient capital to meet accrued debts owed to workers.

⁷² Worker rights consortium, WRC update: positive resolution of Nike/Honduras case (July 26, 2010), available at: <http://www.workersrights.org/university/memo/072610.html>.

⁷³ Worker rights consortium, assessment re Pt Kizone (Indonesia) 2 (Jan. 8, 2012), available at: [http://www.workersrights.org/reports/wrc%20assessment%20re%20pt%20kizone%20\(indonesia\)%201-18-12.pdf](http://www.workersrights.org/reports/wrc%20assessment%20re%20pt%20kizone%20(indonesia)%201-18-12.pdf); worker rights consortium, memorandum, distribution of funds to Pt Kizone workers as per the union's agreement with adidas (Aug 9, 2013), <https://www.workersrights.org/wp-content/uploads/2016/09/pt-kizone-distribution-update-8.9.13.pdf>.

⁷⁴ See California labor code § 2673.1.

⁷⁵ Petra Herzfeld Olsson & Erik Sjödinff, "the fissured workplace: some responses to contemporary challenges in Sweden," 37 comparative labor law and policy journal 143 (2015).

⁷⁶ See, e.g., California civil code § 8000; New York consolidated laws, lien laws article 2, § 3.

In the context of the disaster relief schemes and some cases involving wages due upon factory closures, lead firms have described their contributions as voluntary humanitarian acts, rather than the fulfilment of any legal or contractual obligation. Nonetheless, over time, the accumulation of instances in which lead firms have been compelled to make financial contributions of this sort creates emerging norms whereby such action is expected by stakeholders and the media, at least among firms that hold themselves out as responsible corporate actors.

D) Reversing or Eliminating Incentives for Outsourcing

A final approach labour groups have advocated to address the negative consequences of subcontracting is for the lead firm to bring outsourced workers back “in-house” or to acknowledge an employment relationship it previously denied.

Homecare Workers in California

Instances of “in-sourcing” have occurred most commonly in industries tied to public financing. An example reviewed in more detail in the background study is labour’s response to poor conditions in the California homecare industry. In California, as elsewhere in the United States and around the world, hundreds of thousands of workers are employed as personal attendants to provide essential services, such as bathing and cooking, to the elderly and persons with disabilities. The workers are technically employed by the individual clients for whom they work, but they receive their paychecks from a government entity, the California Department of Social Services, which administers the California In-Home Supportive Services (IHSS) program. Historically, this system made unionization impossible because each employee had a separate employer and their individual employers were not in a position to increase wages and benefits, which were effectively set by the state.⁷⁷

In the late 1990s and early 2000s, SEIU managed to unionize the IHSS workforce by waging a multiyear campaign to win state-level legislation requiring counties, which administer the IHSS system, to either assume the role of “employer of record” of homecare workers or to create public authorities to serve as an “employer of record” with whom the workers could collectively bargain. The union then successfully waged legislative campaigns in counties across the state to create such authorities, a process that required significant grassroots organizing and a political alliance with consumers, and eventually won union elections and collective bargaining agreements in counties across the state, resulting in the largest increase in union membership in the United States in more than fifty years.

Subcontracted Autoworkers in Korea

In the private sector as well, unions have sometimes been able to compel a lead firm to hire subcontracted workers directly or otherwise negotiate over their labour conditions, as illustrated by the cases involving Kia and Hyundai in South Korea included in our background study. In the South Korean automotive manufacturing sector, the last two decades have seen a proliferation of “in-company” subcontracting, whereby workers are hired by a subcontracted company to perform work on assembly lines and in other areas alongside regularly employed workers. The subcontracted workers may be paid substantially lower wages and have less job security even when performing the same work.

Subcontracted workers at several enterprises have sought to organize their own unions, working in concert (and sometimes, in tension) with unions representing regularly employed workers.⁷⁸ In the case of Kia Motors, in 2002, following the company’s doubling of its use of subcontracted workers and a surge of activism by these subcontracted workers, the Kia Motors Trade Union negotiated a collective bargaining

⁷⁷ Linda Delp and Katie Quan, “Homecare worker organizing in California: an analysis of a successful strategy,” *Labor studies journal* (2002, vol. 27:1), pp.1- 23.

⁷⁸ Aelim Yun, “Building collective identity: trade union representation of precarious workers in South Korean auto companies,” *Labour, capital and society* (2011, vol. 44:1), pp.154-178.

agreement with Kia Motors at its plant in Hwasung, Korea. The contract required the company to obtain the consent of the union when it outsources work or deploys subcontracted workers on primary assembly lines. It also required the company to hire from among the pool of subcontracted workers whenever it hired a worker on a regular-term contract. Several years later, subcontracted workers at the same plant formed their own union, the Kia Motors Precarious Workers Union, and ultimately negotiated not only collective bargaining agreements with the subcontractor firms, but also a tripartite agreement with Kia Motors Trade Union and Kia management, ensuring that the company would hire subcontracted workers preferentially for open permanent positions. The two unions ultimately merged.⁷⁹

Other Examples

Collective bargaining agreements in the U.S. and elsewhere frequently include provisions prohibiting subcontracting altogether or requiring that subcontracted workers are provided with equivalent wages and benefits to unionized workers. A similar logic underlies Britain's Two Tier Code, which aims to safeguard the conditions of former public sector employees by standardizing the terms of employment offered to "transferred workers" and new hires employed by government contractors. These efforts largely eliminate the employer's incentive to subcontract, at least to the extent that subcontracting is driven by a desire to cut labour costs.

V. Enforcing Labour Standards in Supply Chains

Because voluntary social responsibility schemes have largely failed to eliminate pervasive labour violations and raise standards in many global supply chains, the question of how to enforce lead firms' labour commitments has attracted increasing attention in recent years. Below we review several enforcement strategies.

Co-Governance

Many of the more sophisticated negotiated agreements reviewed in this report follow an approach that has been called "co-governance." As described by the Global Works Foundation, which advocates for the model and participates in several initiatives, "[s]uch agreements set ground rules for labour-management relations and place governing authority for administering these rules in the hands of a body with balanced representation of management and worker representatives, sometimes called an Oversight Committee or 'OC.'"⁸⁰ Depending on the initiative, the committee oversees staff or an ombudsperson to help carry out capacity building, inspections, or other activities whose authority and autonomy vary from case to case.

In these initiatives, there is generally a hope or expectation on the part of labour and company signatories that most disputes will be resolved directly between the parties at the enterprise level. Where direct dialogue fails to resolve the dispute, however, the parties may bring the issue to the OC. Typically, the OC's dispute resolution efforts are limited to mediation. This stems from the structure of the body: Because the committee is typically comprised of equal parts of appointees from management and labour, disputes on contentious issues may reach deadlock. Some of the instruments described below provide for binding arbitration to resolve such disputes; at least one (the Indonesia FOA Protocol) refers to adjudication of disputes in domestic courts.

⁷⁹ *id.* at 169.

⁸⁰ Global works foundation, co-governance in global supply chains: a roadmap for sustainable labor-management relations (Feb. 2017).

The governance structures and dispute resolution procedures of several key cases are summarized in Table 3 below:

Table 3. Approaches to Governance and Enforcement	
Instrument	Governance and Dispute Resolution
Historical ILGWU Jobbers Agreements	Disputes were to be jointly investigated and mediated by labour and jobber representatives. Unresolved disputes were to be submitted to an “Independent Chairman” who was empowered to issue final and binding arbitral awards.
Bangladesh Accord	Governed by a 12-member Steering Committee (SC), with equal representation from labour and company signatories, plus 2 NGO witnesses. SC oversees staff, including Chief Safety Inspector with the power to halt production at worksites to ensure safety. SC mediates disputes. If impasse is reached, parties may refer cases to final and binding arbitration.
Fruit of the Loom Agreements with CGT (Honduras) and Sitracosol/International Union Education League (El Salvador)	Governed by 4-member Oversight Committee (OC) with equal representation from labour and company, plus two alternates. OC oversees capacity building and mediates disputes, with assistance of ombudsperson. In the El Salvador agreement, OC appointees are to act independent of party appointing them in best interest of labour-management relationship. Disputes may be referred to binding arbitration.
Freedom of Association Protocol (Indonesia)	Envisions mixed Supervision and Dispute Resolution Committees at factory and national levels. Factory-level committees are to be comprised of company-level unions and company management. National-level committee, which includes national level unions, NGOs, brands, and suppliers, operates by consensus. Unresolved disputes may be referred to court of law.
Inditex-IndustriALL Global Framework Agreement	Governed by 6-member committee comprised of labour and company representatives. Questions regarding interpretation of the agreement to be resolved by consultation between the parties, with expert advice from ILO where necessary.
H&M-IndustriALL Global Framework Agreement	Envisions nested national and global oversight committee structure. At national level, National Monitoring Committees (NMC), comprised of H&M and IndustriALL representatives (at least 2 each), provides guidance and aids in dispute resolution. Disputes not resolved at NMC level or requests for guidance may be submitted to global Joint Industrial Relations Development Committee, comprised of representatives of H&M, IndustriALL, and IF Metall. Unresolved disputes at this level may be referred to mediation.
Rana Plaza Arrangement	Governed in all respects by Coordination Committee, comprised of representatives from Bangladesh Ministry of Labour, two Bangladesh industry associations, IndustriALL and two national union bodies, three brands, and two NGOs, with ILO as neutral chair
Tazreen Claims Administration Trust	Incorporates two layers of governance: Signatories IndustriALL, C&A, and Clean Clothes Campaign participate in Coordination Committee, which oversees implementation. At national level, Bangladeshi groups who work with families participate in Tazreen Steering Committee, which advises Coordination Committee.
CIW Fair Food Agreements	Lead firm and participating grower commitments monitored by Fair Factory Standards Council (FFSC), a non-profit organization governed by a board comprised of worker representatives, experts and company representatives. FFSC is empowered to place participating growers on suspension or probation, thereby prohibiting lead firms from sourcing from them. Growers may appeal FFSC-imposed resolution to arbitrator, but FFSC position must be upheld unless its factual findings are “clearly erroneous,” using “final offer” arbitration model. Fair Food Agreements are enforceable by CIW in courts of law.
FLOC Agreements with Campbell and Mt. Olive Pickles and growers	Mixed labour and management working groups negotiate policy on particular issues (e.g. health and safety, child labour). Disputes are mediated and, where necessary, arbitrated by Dunlop Commission, a private enforcement board initially headed by former U.S. Secretary of Labor John Dunlop.

Mediation and Arbitration

As noted above, in co-governance agreements, mixed labour-company governance bodies at the national or global level typically mediate disputes at particular worksites. In at least two cases, the Bangladesh Accord and the Rana Plaza Arrangement, the ILO serves as a neutral chair. Several global framework agreements provide for the parties to participate in mediation of disputes not resolved through the agreement's governance structure, including those between IUF and the French food services firm Sodexo and between UNI Global Union and the Netherlands-based ABN AMRO Bank.⁸¹

Mediation is by its nature a voluntary process; mediators can only help parties dialogue and offer what are essentially nonbinding suggestions. Because of these limitations, unions and labour NGOs are increasingly seeking to include in agreements with lead firms dispute resolution mechanisms in which a neutral arbitrator can issue decisions that are final and binding. Arbitration is, of course, the dominant dispute resolution mechanism incorporated into commercial contracts between firms, and is a standard component of collective bargaining agreements in the U.S. In the U.S. context, arbitration has often proven to be cheaper and faster than resolving the merits of commercial and labour relations disputes in court, while providing neutral expert adjudication that can be backed up by enforcement of arbitral awards in courts of law.⁸²

There are some relatively old precedents for binding arbitration in supply chain agreements with lead firms in the United States. The ILGWU's historical jobbers agreements, dating to the 1930s, included binding arbitration, empowering a neutral, mutually designated chairperson to resolve disputes between the union and the contractor or jobber signatories, including the power to determine whether the price a jobber paid a contractor was consistent with contractual obligations. Similarly, as reviewed above, FLOC's agreements with Campbell and Mt. Olive Pickles include a mediation and arbitration procedure overseen by a body called the Dunlop Commission to resolve disputes between the parties to the agreement. Because agricultural workers are excluded from the United States' core piece of labor legislation, the National Labor Relations Act, the Dunlop Commission is a particularly important innovation, functioning as a "private labour relations board, whose authority is guaranteed in legal contracts," thereby sidestepping "lack of legislation and regulation as well as legal differences across boundaries."⁸³

Until quite recently, however, binding arbitration clauses were not included in international labour agreements, at least in the supply chain context. The past several years have seen significant innovation. An agreement reached in 2010 to end a labour dispute between the Honduran union CGT and the U.S.-based apparel firm Fruit of the Loom was, to our knowledge, the first agreement between a Western brand and a U.S. union that includes a binding arbitration clause. Thus far, the provision has not been invoked, as the parties have been able to resolve their differences through dialogue mediated by a bilateral oversight committee. A recently signed parallel agreement between Fruit of the Loom and a Salvadoran labour union Sitrasacosi, together with a non-profit called the International Union Education League, likewise provides for arbitration to resolve disputes, as does the Honduran CGT's agreement with Nike to resolve the Hugger and Vision Tex factory closures.⁸⁴

As the first agreement to include binding enforcement provisions involving multiple brands and multiple labour signatories in the global apparel sector, the Bangladesh Accord was a significant breakthrough. When the Accord was signed in 2013, the enforcement provision was highlighted by advocates celebrating the agreement as well as by corporate entities that cited the agreement's dispute resolution

⁸¹ See Hadwiger, *supra*, n. 12 at 59-60.

⁸² Arbitration is often criticized as a dispute resolution procedure when imposed on individual workers or consumers with inferior bargaining power as components of adhesion ("take or leave it") contracts, eliminating the opportunity to bring claims before courts of law where due process protections are stronger. Such contracts also frequently forbid class claims, even where individual claims are impracticable. However, unions tend to prefer arbitration as a dispute resolution procedure for collective agreements. As repeat players with expertise in the process, they are able to select arbitrators they trust and provide effective representation in the process, while saving the time and expense associated with traditional litigation.

⁸³ See Berger and Raza, *supra*, n. 16 at 97.

⁸⁴ See Anner et al., *supra*, n. 4 at 34-35.

provision as the reason they were unwilling to sign. For example, the Brussels European Employees Relations Group (an affiliate of the Washington, D.C.-based HR Policy Association, an organization that represents major U.S. corporations on labour policy issues) and Morgan Lewis (an American law firm that represent employers in labour disputes and litigation) commented:

*The Accord is a development of some significance. For the first time, a number of multinational companies have signed with global trade union federations what looks like a legally binding agreement, enforceable through the courts, under which these companies commit to a range of measures aimed at transforming the working conditions at the premises of offshore suppliers who manufacture ready-made garments for them.*⁸⁵

Under the Accord's procedure, a party can appeal the decision of the steering committee to a process of binding arbitration, governed by the rules of the United Nations Commission on International Trade Law, which is the standard procedure for international arbitrations. As set out in the Accord, an arbitrator's award may be enforced in a court of law of the domicile of the signatory party against whom enforcement is sought (e.g., an award against a German company may be enforced in a German court). Under the New York Convention, an international agreement that has been signed by the home country of every Accord signatory company, domestic courts have a broad obligation to enforce foreign arbitration awards.⁸⁶

The Accord's labour signatories have reportedly resolved a number of cases involving Bangladeshi suppliers by invoking the threat of arbitration and, in two cases, formally initiating arbitral proceedings against brand signatories. The two cases in which arbitral proceedings were initiated "hinged on whether the global brands involved met the Accord requirements to require their suppliers to remediate facilities within the mandatory deadlines imposed by the Accord and to negotiate commercial terms to make it financially feasible for their suppliers to cover the costs of remediation."⁸⁷

In both cases, the global union and brand signatories agreed that cases would be heard at the Hague by a three-member tribunal established by the Permanent Court of Arbitration ("PCA"), with the Secretary-General of the PCA holding appointing authority. In October 2017, the PCA announced it had resolved several procedural issues applicable to both cases. Most important, according to a redacted version of its decision, the panel denied a challenge by the brands asserting that the case was not ripe to be arbitrated since the members of the Steering Committee had reached a deadlock on the case (with the ILO representative on the Committee declining to cast a vote). The arbitral panel concluded that the Accord's text and structure make clear that a union can appeal even such a "non-decision" by the Steering Committee to arbitration.⁸⁸ The decision clarified any remaining doubt that the Accord is a legally enforceable instrument.

Shortly thereafter, with a merits trial looming for May 2018, the global unions reached agreements to resolve both cases. Because the PCA rejected a petition by the unions to disclose the names of the brands involved, their identities remain unknown. In the first case, IndustriALL reported in December 2017 that the agreement would "ensure that the supplier factories associated with this leading fashion brand are remediated and that substantial funds are available for that remediation work consistent with the 2013 Bangladesh Accord."⁸⁹ In the second case, it was reported in January 2018 that the unnamed brand agreed to pay \$2 million to help fix safety issues at more than 150 suppliers in Bangladesh, and to contribute an

⁸⁵ Brussels European employees relations group and Morgan Lewis, "The accord on fire and building safety in Bangladesh: an analysis" (undated).

⁸⁶ The New York convention (formally the convention on the recognition and enforcement of foreign arbitral awards) places the burden of establishing the invalidity of an arbitral award on the party challenging enforcement. Under the New York convention, an arbitrator's award may only be vacated for one of several narrow grounds, such as the incapacity of the parties at the time of the underlying agreement to submit disputes to arbitration, the violation of a party's fundamental right to participate in a proceeding, or the irregular composition of the arbitration tribunal. For more information on the New York convention, including a list of signatory states, visit:

<http://www.newyorkconvention.org>.

⁸⁷ IndustriALL global union, "settlement reached with global fashion brand in Bangladesh accord arbitration" (Dec. 15, 2017),

<http://www.industriall-union.org/settlement-reached-with-global-fashion-brand-in-bangladesh-accord-arbitration>

⁸⁸ Information about and orders issued in the cases is available on the permanent court of arbitration website: <https://pca-cpa.org/en/cases/152/>

⁸⁹ See, *supra*, n. 87.

addition \$300,000 to a “supply chain worker support fund” run jointly by UNI and IndustriALL.⁹⁰ The resolution of both cases following the PCA’s decision to let the cases proceed illustrates that the threat of a binding adverse order in arbitration can drive major corporations to take steps to ensure decent work among suppliers that they may not take in the absence of such pressure.

There is also nascent movement toward including binding arbitration in global framework agreements. At least three GFAs include a reference to arbitration: agreements between IndustriALL and the Swedish construction conglomerate Skanska AB, and the Norwegian construction and engineering holding company Aker ASA; and an agreement between UNI Global Union and Danish building services firm ISS.⁹¹ IndustriALL has issued guidelines providing that future GFAs it negotiates must “contain an effective mechanism for implementation, enforcement and a procedure for binding dispute resolution.”⁹²

One perennial challenge that parties face in making use of arbitration clauses is mutually agreeing upon a qualified arbitrator. As the Accord cases illustrate, the Permanent Court of Arbitration at The Hague is one option for international labour disputes. Parties may also consider including in the underlying agreement a standing panel of arbitrators from which the parties’ can choose (usually by taking turns striking names from the list). Given how new arbitration is to international labour instruments, the ILO or other bodies might consider assisting unions and firms by offering to provide a pool of qualified and interested arbitrators for this purpose.

Enforcement Action in Court

If an agreement or understanding does not specify a dispute resolution mechanism, the question becomes whether the agreement may be enforced as a contract in court. Whether an agreement is legally enforceable depends on a variety of factors, which vary by jurisdiction. An agreement is more likely to be enforceable if it contains specific commitments as opposed to vague or aspirational language, and the parties’ make clear their intentions to be legally bound. Questions concerning what nation’s courts have jurisdiction over disputes under the agreement and what law applies can also be addressed in the agreement, though these issues may also be subject to existing law.

Whether global framework agreements, which in most instances do not specify a dispute resolution mechanism, might be enforceable in court remains an untested question.⁹³ Their general and often aspirational language may pose a significant obstacle.⁹⁴ The Indonesia FOA Protocol, which includes much more specifically defined obligations, particularly on supplier signatories, appears to provide a stronger basis for an enforcement action in court.

Whether parties prefer arbitration or civil litigation in court, parties are best able to avoid disputes altogether or amicably resolve them when they arise where contractual obligations and the means of compliance monitoring and dispute resolution are articulated as clearly as possible. Among other key areas, agreements can specify the powers and degree of independence of a mutually selected ombudsperson or entity assigned to monitor for compliance with the agreement (e.g. what decisions by the monitor are reviewable and, if so, under what standard of review). The Coalition of Immokalee Workers’ approach, in which an arbitrator may only overturn a finding of the Fair Foods Standards Council that was “clearly erroneous,” is a noteworthy and demonstrably effective model. Agreements may also specify, in regard to assessments by monitors or adjudicators, which party bears the burden of

⁹⁰ Dominic Rushee, “Unions reach \$2.3m settlement on Bangladesh textile factory safety,” *The Guardian* (Jan. 22, 2018), <https://www.theguardian.com/business/2018/jan/22/bangladesh-textile-factory-safety-unions-settlement>

⁹¹ See Hadwiger, *supra*, n. 12 at 59-60.

⁹² “IndustriALL global union’s guidelines for global framework agreements (GFAS)” (2014), available at: http://www.industrial-union.org/sites/default/files/uploads/documents/gfas/industrial_gfa_guidelines_final_version_exco_12-2014_english.pdf

⁹³ See, e.g., Alvin I. Goldman, “enforcement of international framework agreements under U.S. law,” *comparative labor law and policy journal* (2012, vol. 33), pp. 605-634; Rüdiger Krause, “International framework agreements as instrument for the legal enforcement of freedom of association and collective bargaining? The German case,” *comparative labor law and policy journal* (2012, vol. 33), pp. 749-773); Christopher D. Pigott, “Freedom of association in private transnational law: how enforceable are the commitments of European companies in north America?,” *comparative labor law and policy journal* (2012, vol. 33), pp. 775-780.

⁹⁴ See *id.* At 6.

proof as to key issues that may arise. An agreement might indicate, for instance, that if a question arises as to whether a lead firm has fulfilled its obligation to undertake a particular sourcing or pricing practice vis-à-vis a supplier, the lead firm will bear the burden of demonstrating through documentary evidence that it has done so. Developing model language for enforcement schemes that unions and firms may consider in their negotiations for future instruments, whether drawn from the instruments reviewed in this study and others, may be a worthwhile occasion for further research.

Transparency

A final approach to holding lead firms accountable for their labour rights commitments is supply chain transparency. Transparency policies have generally fallen into two categories.

A first approach is the disclosure of the names and locations of a firm's suppliers. Such information can advance labour rights in a variety of ways. Workers and unions can use the information to hold the brand or retailer sourcing from a particular supplier accountable for labour violations. Without such information, for example, labour advocates might only be able to identify the brands that sourced from a supplier destroyed by a fire or building collapse by searching through the rubble for labels. Unions can also use this information to focus their organizing activities on factories or farms supplying lead firms who are likely to be responsive to requests for intervention to remedy labour violations or even participate in bargaining. Labour NGOs and journalists can use supply chain transparency to investigate and report on labour conditions; such activities may spur lead firms to improve their own internal monitoring.

The modern movement for transparency took root in the late 1990s. Spurred by student labour activism, universities led the way by requiring that their licensees publicly disclose the names and locations of all facilities manufacturing collegiate licensed apparel. Over time, several leading brands—including Nike, Adidas, Levis, and H&M—agreed to move beyond university suppliers by voluntarily disclosing their entire supplier base. Inditex agreed as an element of a global framework agreement to disclose its supplier list, along with volume information, on a confidential basis to IndustriALL.⁹⁵

Recently, progress in this area has accelerated rapidly. At the urging of global unions and labour and human rights NGOs, with Human Rights Watch playing a leading role, at least 30 major brands have agreed to disclose their entire supply chains and do so in a common format.⁹⁶ This progress represents the remarkably rapid emergence of what appears to have become a new norm for responsible business conduct, at least in the apparel sector.

The second form of transparency is the disclosure of compliance assessments describing labour conditions at particular worksites. The disclosure of such information can serve to inform workers, unions, and other stakeholders of potentially serious safety hazards or other labour violations. Transparency in labour compliance reporting has also been shown to incentivize compliance among suppliers by enabling or encouraging lead firms to source from compliant facilities and avoid noncompliant ones.⁹⁷ However, with several notable exceptions (e.g. Worker Rights Consortium assessment reports), until recently factory inspection initiatives have generally omitted the names of factories from published audit reports.

The Bangladesh Accord broke new ground in this area. The initiative publishes not only the names and locations of factories covered by the program but detailed corrective action plans and inspection reports

⁹⁵ Global framework agreement between Inditex and IndustriALL (July 8, 2014), annex ii, paras 1, 3.

⁹⁶ Human Rights Watch et al., follow the thread: the need for supply chain transparency in the apparel and footwear industries 3 (Apr. 2017), available at: https://www.hrw.org/sites/default/files/report_pdf/wrdtransparency0417_brochure_web_spreads_3.pdf. Companies that agreed to the disclosure protocol include several brands that previously signed global framework agreements with IndustriALL (H&M, Tchibo, and Mizuno).

⁹⁷ See, e.g., Raymond Robertson, Rajeev Dehejia, Drusilla Brown & Debra Ang, "Labour law compliance and human resource management innovation: better factories Cambodia" 19-20 (better work discussion paper series: no.1, 2011), available at: <http://betterwork.org/global/?P=663>; David Weil, improving workplace conditions through strategic enforcement: a report to the wage and hour division (2010), p. 83, available at: <https://www.dol.gov/whd/resources/strategicEnforcement.pdf>; Jeremy Blasi, "Using compliance transparency to combat wage theft," Georgetown journal on poverty law and policy (2012, vol. 95), pp. 108-111.

identifying the factories as well as the degree of progress the factory has made on remediating each identified hazard, and providing a summary indicator of overall progress relative to remediation timelines at the facility.⁹⁸ The Accord's NGO witness signatories have made use of this data to press signatory brands to accelerate remedial action by releasing a series of reports calling attention to fire hazards at H&M suppliers whose correction was overdue.⁹⁹ However, because the Accord's reporting does not link specific factories to brands, this NGO analysis and advocacy was only possible because H&M agreed to make public its list of supplier factories, which could then be cross-checked with the Accord's detailed public reports. The NGOs have called for the Accord to strengthen its transparency policies further by indicating the brands or retailers linked to particular worksites.¹⁰⁰

VI. Conclusions

Our primary research objective was to document cases of multiparty bargaining in supply chain contexts, and to begin to develop an analytical framework for examining the elements common among the most successful of these initiatives. In this final section, we conclude by offering some general insights gleaned from this exercise, which we believe have relevance for the broader conversation about decent work and labour standards in the era of global supply chains.

- *Successful multiparty instruments compel lead firms to incentivize and financially support decent labour standards*

A common thread among the most successful agreements we analysed was that they ensure providing decent labour standards is in the economic interest of suppliers. The instruments do so by, among other measures, requiring that lead firms contract exclusively (or preferentially) with suppliers that demonstrate an ongoing commitment to decent work, whether by accepting unionization or complying with certain negotiated labour standards. This arrangement both incentivizes the expansion of decent work by creating a market for suppliers willing to improve their labour practices, and discourages backsliding among suppliers by imposing economic sanctions—such as the mandatory withdrawal of orders from lead firm signatories—for noncompliance. Critical to this model is a requirement that a supplier's compliance and therefore its eligibility to receive orders is not left to the discretion of the lead firm itself, but is instead assessed by a third party that is overseen or approved by the labour signatories.

Additionally, successful instruments require lead firms to help fund the costs associated with improved labour standards—either by requiring payment of sufficient prices or making other adjustments to commercial terms to enable compliance, or by requiring lead firms to supplement worker earnings through payment of a premium that the supplier “passes through” to workers. Together, these measures can reverse or at least mitigate the downward pressures on labour standards that suppliers often face when they compete for business in buyer-driven supply chains, especially when agreements include robust enforcement provisions to ensure follow-through.

- *Broad coverage makes for stronger instruments, but commitments from key lead firms can be a critical first step*

In several of the cases we reviewed, multiparty bargaining was carried out with groups of lead firms and/or suppliers organized into industry associations. In addition to saving unions or labour advocates

⁹⁸ See <http://accord.fairfactories.org/ffcweb/web/managesuppliers/inspectionreportsenglish.aspx>.

⁹⁹ Clean Clothes campaign, et al., evaluation of H&M compliance with safety action plans for strategic suppliers in Bangladesh (sept. 2015), available at: http://www.workersrights.org/freports/dangerous_delays_nov2016.pdf; Clean Clothes campaign, et al., ongoing safety delays at H&M suppliers in Bangladesh (Jan. 28, 2016), available at: http://laborrights.org/sites/default/files/publications/memo_on_hm_caps_1-28-2016.pdf. The same group of NGOs made use of the more limited disclosure practices of the alliance for Bangladesh worker safety to call attention to unremediated hazards at suppliers of Gap, Walmart, Vanity Fair corporation, target, and Hudson's bay. International labor rights forum et al., dangerous delays on worker safety (Nov. 2016), available at: <https://cleanclothes.org/resources/publications/dangerous-delays-on-worker-safety>

¹⁰⁰ Clean clothes campaign et al., Bangladesh accord: brief progress report and proposals for enhancement execution (Apr. 2017), available at: http://www.workersrights.org/accord_witness_signatory_progress_report_24april2017.pdf.

from the time-consuming process of employer-by-employer campaigning and negotiation, this approach also helps ensure broader coverage. Lead firms and direct employers are more likely to make commitments when they do not fear being undercut by “low-road” competitors. Broad commitments around labour standards can serve to take the cost of labour out of competition, transforming it into an assumed cost of doing business, like electricity, rather than the basis for a competitive edge. Similarly, once a critical mass of firms is reached, they have an incentive to ensure that everyone is playing by the rules, thus making lead firms and employers allies in enforcement. The “trigger agreements” negotiated by the SEU as part of its Justice for Janitors campaign are one explicit recognition of this principle.¹⁰¹

The associations of jobbers and contractors that negotiated triangularly bargained contracts with the apparel industry union is the classic case here. Although the signatory brands of the Bangladesh Accord do not belong to a jobbers-type association, they agreed to share the cost of creating and staffing a single inspection and remediation program, and because the signatories include numerous brands, the Accord achieves considerable coverage of the Bangladeshi supplier base.

Unions or labour groups often seek to build broad coverage by first securing a commitment from a single, industry leader, which then opens the door to agreements with other lead firms. For example, the Bangladesh Accord had no company signatories until H&M agreed to sign. Inditex quickly followed suit, and in the days and weeks that followed, dozens of companies joined the agreement, which now includes more than 200 brands and retailers. Similarly, it took four years for the Coalition of Immokalee Workers to obtain its first Fair Food Agreement, but once leading fast food conglomerate Yum Brands joined, and a follow-up agreement with McDonald’s was signed, the CIW was able to win further agreements and ultimately very broad lead firm coverage at an increasingly rapid pace. It likewise now enjoys broad industry representation. Once an industry leader signs an instrument, the prospect of doing the same may seem less onerous to competitor firms, particularly when they observe that the agreement resulted no significant negative consequences for the initial signatories, and when they perceive that there may be a risk assigned with not signing in terms of being perceived as a laggard on social responsibility. Labour groups also develop credibility by demonstrating their capacity to wage intensive or lengthy campaigns, which may lead non-signatories to prefer negotiation to conflict.

We also found cases where substantial coverage was achieved by securing a commitment from a major public sector client. These examples include the Israeli government’s agreement with Histadrut for cleaning and security services and Britain’s National Health Service as the main client for the service providers targeted by the Two Tier Code. Similarly, both UNISON’s Ethical Care Charter and SEIU’s California homecare agreements target the procurement policies of public authorities as critical supply chain actors.

- *Mutually beneficial outcomes are possible*

Several of the cases that we analysed suggest that multiparty bargaining can benefit lead firms and employers, as well as workers. In many cases, lead firms and their suppliers were initially resistant or even hostile toward the initiative. Over time, however, both lead firms and suppliers came to see benefits.

Suppliers can benefit when unions or worker organizations sign agreements with lead firms that enable them to acquire, retain, or increase business with clients. For example, FLOC targeted food brands because they were the ones sensitive to the negative publicity caused by boycotts. But while the lead firms played an important role in getting their suppliers to the table, growers eventually came to see some benefits from the agreements as well (e.g. longer-term orders and increased volumes). This is just one of several cases we reviewed where supply chain bargaining can align the interests of workers and their direct employers insofar as both groups can benefit from changes in lead firm behaviour, such as increased prices or improved commercial terms.

¹⁰¹ Another notable example is the maintenance cooperative trust fund, a watchdog organization jointly funded by unionized janitorial contractors and SEIU that investigates allegations of illegal labour practices in the janitorial sector in California and partners with law enforcement agencies to hold lawbreakers accountable. See <https://www.janitorialwatch.org>.

More generally, lead firms, suppliers and workers all stand to gain from strategies that stabilize what are often highly volatile supply chains, and encourage competition based on factors other than labour costs, such as quality and productivity. For their part, lead firms can use supply chain agreements to either avoid or end negative reputational damage, or, especially in the case of “first movers” that are pushing the boundaries of such initiatives, to generate positive reputational effects.

- *Precedents are important*

Our research reveals that multiparty bargaining can evolve over time via formalization, expansion or strengthening of instruments. While initial agreements may be weak in terms of substance or enforcement opportunities, they nevertheless provide a foundation that can be built upon, both in terms of creating new norms regarding lead firm responsibility, or in terms of building concrete relationships that can be deepened over time. For example, we documented many site-specific cases whereby lead firms were pressured to address violations in the area of freedom of association and compensation of victims of industrial disaster. Those individual cases were necessary precedents both for the relatively quick resolution of subsequent single-site cases and for more comprehensive or ambitious initiatives, such as Indonesia’s Freedom of Association Protocol or the Rana Plaza Compensation Fund. In the case of agreements with Fruit of the Loom in Honduras and El Salvador, factory-specific cases evolved into national-level multi-site agreements. Finally, it was possible for the Bangladesh Accord to be negotiated so quickly following the Rana Plaza disaster in part because it was modelled on an agreement that was developed several years earlier in the wake of another factory disaster, but which never went into effect.

Norms developed through negotiated agreements can also become codified in statute. The concept of fair pricing in supply chains is a case in point. We identified cases where voluntary initiatives to advance the concept of a fair price evolved into statutory obligations. Two discussed in the background report on which this analysis is based include an agreement between Histadrut and the Israeli government concerning workers employed by contract security and cleaning firms; and, an effort to improve labour standards for outworkers in Australia’s textile and apparel industry. The Australian initiative evolved over time from a voluntary program to a set of regulations that require lead firms to provide detailed information about their contracting arrangements with all suppliers to both the government and the main union in the sector.

- *Civil society plays a role in setting supply chain standards*

Our final and related observation underscores the important role that civil society actors, such as NGOs and advocacy groups, play both in shaping the broader normative discussion around lead firm responsibility in global supply chains, and, in many cases, helping achieve specific agreements. Alliances between unions or other labour groups and civil society organizations, such as student activists, consumer groups, and faith-based communities, were a central feature in a number of the cases we reviewed, including FLOC, CIW, the Accord, Histadrut, and the Fruit of the Loom agreements. Advocacy campaigns that seek to educate, engage and mobilize civil society can be critical, especially where labour is weak de facto or de jure.

It is routinely observed that the fragmentation of production and the fissuring of employment in global industries is creating unprecedented challenges for workers and worker organizations. And yet, as the history of the jobbers agreement in the U.S. apparel industry reminds us, neither supply chains, nor the pressure that they put on wages and working conditions are new. While full-fledged collective bargaining between lead firms, direct employers, and unions remains a rarity, recent years have witnessed a proliferation of agreements and initiatives that recognize the centrality of supply chain dynamics for ensuring decent work and labour standards. This recognition, in and of itself, is the most important finding to emerge from our study, and we hope the cases we have documented herein inspire future efforts to deepen and extend it.

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