

# Pitt and the Worker Rights Consortium: An Argument for Affiliation

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## Executive Summary

It is widely acknowledged that workers in the apparel industry—one of the largest employers in the world—often labor under conditions that are unsafe, illegal, and abusive. While many people and groups would like to change this state of affairs, only a few institutions have the buying power and influence to do so. As a large-scale buyer and seller of apparel bearing its well-respected name, Pitt is among this select group of institutions. In the past, Pitt has demonstrated its commitment to improving labor standards by affiliating with the Fair Labor Association (FLA), a group that monitors labor conditions in factories producing university apparel. It is the purpose of this paper, however, to demonstrate that Pitt can better fulfill this commitment by affiliating with another organization, the Worker Rights Consortium (WRC).

The WRC and FLA differ in subtle but significant ways. The majority of the paper is devoted to exploring these differences and their implications. After probing some of the general issues surrounding labor standards and monitoring, we consider the WRC and FLA's organizational features. The WRC only accepts funding from affiliate universities, NGOs, and government agencies. Though it has strong relationships with apparel brands, the WRC does not accept funding from these brands. The FLA does accept funding from the brands it monitors. The WRC includes labor rights experts, university representatives, and students on its Governing Board. Seats on the FLA Board of Directors are split evenly between brand, university, and NGO representatives.

Both organizations have codes of conduct but these are viewed differently by each. Though the FLA has reformed its code of conduct in recent years to bring it into line with the policies of the WRC and International Labor Organization, it still contains holes and is put into practice ineffectively. For example, the FLA has recently offered forceful arguments in favor of living wage provisions (a benchmark the WRC has always worked for). The FLA has yet to pressure its affiliated brands to implement living wages in their source factories, however. The FLA benchmarks on freedom of association fail to ensure that workers in countries with anti-union policies will be able to unionize. The WRC has always recognized and advocated for workers' right to unionize. The FLA's Code of Conduct is meant to serve as a checklist for monitors auditing a factory; a practice that has proved to be ineffective in remediating root cause issues causing labor standards violations. The WRC views codes of conducts as guidelines that must be reinterpreted in the context of local conditions.

Though the FLA commissions more factory audits than the WRC per year, this is an area where quality must be given precedent over quantity. The WRC focuses on long-term investigations that are meant to fix underlying problems and empower communities to fix labor rights issues on their own in the future. The FLA focuses on one- or two-day due diligence audits that are meant to check for compliance. Most WRC investigations arise from third-party complaints. The WRC only undertakes an investigation if it is desired by workers. The FLA mostly uses due diligence audits. It can accept outside complaints but brands are permitted to veto the investigation. WRC investigative teams are composed of a combination of locals, labor rights experts, and WRC staff. Because of their local connections, all investigative teams have appropriate language skills and knowledge of the community surrounding the factory. FLA auditors are generally not drawn from the surrounding community. Approximately two-thirds of FLA external audits were carried out by monitors from for-profit companies in 2011. Monitors are not required to know the language spoken in the area where the factory is located. The WRC stresses the importance of conducting worker interviews in places where workers feel comfortable to speak freely. The FLA does not require off-site interviews. The WRC provides

updates on the status of its ongoing investigations and maintains a database of the names and locations of factories where university apparel is produced. The FLA does make the results of its external monitors' factory audits public. It does not make public the name or location of the factory where the audit was carried out, however. It is, therefore, impossible to confirm the findings of FLA monitors. The results of internal audits carried out by brands are not disclosed.

Having considered the structure and policies of each organization, we then examine the relative effectiveness of the FLA and WRC in improving labor standards. Most of the available evidence points to the conclusion that the WRC has been and continues to be better at improving the workplace conditions. We argue that FLA's close connections with the brands it monitors is the main source of its inability—despite ample resources—to carry out its mission effectively. It should be emphasized that we do not argue that the FLA is the result of some sort of conspiracy. Rather, we argue that brands simply wish to maintain as much control over their operations as possible. While this is a rational business move, it may also mean that brands insulate themselves from ever making any of the changes that are necessary to improve labor standards. It has been the tendency of the FLA to enable this behavior. The WRC, on the other hand, prompts brands to think about and act to change the underlying factors that lead to labor standards violations.

A few recent cases involving FLA external monitors are considered. In June 2012, FLA external monitor Accordia Global Compliance Group carried out an audit of the C.J.'s Seafood factory in Louisiana for Wal-Mart. Accordia reported finding no labor violations at the factory while a coalition of groups that included the WRC found that laborers at the factory were subject to abuse and forced labor. The Justice Department concurred with the findings of the latter group and fined C.J.'s \$385,000 last July. FLA external monitors also carried out audits at Tazreen fashions in Dhaka, Bangladesh and Ali Enterprises in Karachi, Pakistan. In both cases the monitors found that the factories met code of conduct standards. Both factories caught fire in late 2012, killing several hundred workers.

Over the past ten years many brands have implemented extensive internal compliance programs. Evidence, however, is presented that demonstrates that these programs have, by and large, been ineffective in making lasting improvements in labor standards. Much of this ineffectiveness can be traced back to the fact that, while brands keep pushing factories to observe labor standards, their sourcing departments continue to push the same factories to cut costs and turn around orders faster.

The FLA also carries out investigations based on third-party complaints. While it is often several years before these investigations ever result in remediation recommendations, they rarely lead to substantive changes. Three of the cases examined are not reported on FLA website at all; their existence only came to light after other NGOs decided to air their frustrations with the investigations. These less well-known cases are then compared with the FLA's prompt and positive investigations at factories owned by the Apple supplier Foxconn.

Special attention is given to the Foxconn investigation because it was well-documented by outside groups. One might also venture to assume that, due to all of the publicity surrounding the investigation, the FLA put forth its best monitoring effort. The FLA investigation report and verification follow-up painted Apple and Foxconn as companies that are making substantive efforts to clean up a few minor labor standards issues. Several NGOs and journalists, however, found that the opposite was the case. The FLA investigation was carried out during a non-peak production period at a small subset of Foxconn factories. SACOM, a Chinese labor rights group, found that workers were subject to harassment from managers and forced to sign up to a company-run union. Overtime hours in factories producing the new iPhone were far in excess of

the Chinese legal limit. Only 10% of workers surveyed were aware of the FLA's investigation and some of those only knew because their managers had told them to prepare for it. We trace these problems—and Foxconn's high worker turnover rate—back to the extreme demands Apple makes of its suppliers. Rather than confronting these root cause issues, the FLA recommended that Foxconn fix a few of the code violations that arise from them.

Finally, we turn to the work of the WRC. Three cases are examined in detail. In 2007 the Russell Jerzees de Honduras factory in Honduras was closed after workers sought to create a union. The WRC investigative team uncovered and made public the facts of the case. Russell, facing substantive public and university pressure, agreed to enter into negotiations with the workers; the WRC acted as a mediator. The two sides were able to come to an agreement and a new factory was opened.

The WRC's investigation into the closings of the Hugger and Visiontex factories in Honduras offers an example of how the WRC stimulates brands to rethink their duties to workers. Both factories closed after their owners fled in early 2009—an all too common occurrence in apparel factories facing insolvency. In developing countries with little or no social insurance schemes, workers rely on legally-mandated severance payments when they lose their jobs. When factory owners flee, however, workers are unlikely to receive these payments. This was the case in the Hugger/Visiontex case. Initially the WRC asked Nike—the main buyer at the factories—to pressure its subcontractor to pay the severance owed. Nike balked and claimed that university-branded products were not made at the factory and, therefore, were not subject to university codes of conduct. WRC investigators, however, found that Nike was, indeed, manufacturing university-branded products at the factories. The work of the WRC and universities led Nike to take the unprecedented move of paying the workers' severance itself. The significance of the WRC's work on this case can perhaps only be fully appreciated in light of later events. When the PT Kizone factory in Indonesia closed under similar circumstance in 2011, it was Nike that alerted the WRC that the workers had not received any severance. Nike, moreover, paid a share of the severance right away. Cases like this show that the WRC's persistent efforts and close work with both universities and brands does lead to better labor conditions for workers.

With all of this in mind, we can make a fairly simple argument for why Pitt ought to affiliate with the WRC. Pitt cares about the conditions under which its branded apparel is made. One way to monitor and improve the conditions under which this apparel is produced is to affiliate with an labor rights monitoring organization like the FLA or WRC. In choosing to affiliate with one or more of these organizations, Pitt should at least affiliate with the most effective organization. The evidence presented above and within the paper demonstrates that the WRC is indeed the most effective labor rights monitoring organization among those with which Pitt can affiliate. Therefore, at the very least, Pitt ought to affiliate with the WRC.

WRC affiliation, it should be said, is not a cure-all. It is, however, an important step in the right direction. Pitt should take that step and affiliate with the WRC.

## 1. Introduction

Apparel sales reached \$1.66 trillion worldwide in 2011; second among all consumer industries behind only foodstuffs.<sup>1</sup> In several less developed countries the apparel industry dominates the manufacturing sector, accounting for the greatest (if not the majority) share of exports. Employment follows similar trends. Apparel accounts for 79% of manufacturing employment in Honduras, 40% in Bangladesh, 38% in Pakistan, and 31% in Morocco.<sup>2</sup> It is widely acknowledged that work in apparel factories is often unsafe, uncertain, and abusive. The recent garment factory fires in Bangladesh and Pakistan—in which several hundred workers died—are only the most visible and tragic cases of a widespread phenomenon; in Bangladesh alone more than 700 garment workers have died in the past decade.<sup>3</sup>

The recognition that most apparel worn in the Global North is sourced from countries and factories whose labor standards are uncertain has led, in the past two decades, to the development of an anti-sweatshop movement. From the beginning, universities and their students have been at the forefront of this movement. As licensors and merchants of branded apparel, universities are in an almost unique position to influence the practices of apparel manufacturers and labor conditions in apparel factories. Acknowledging as much, in the past decade hundreds of universities have formed and affiliated with two labor rights monitoring organizations (LRMOs)—the Fair Labor Association (FLA) and the Worker Rights Consortium (WRC)—in order to monitor and influence the conditions under which their branded goods are produced.

The University of Pittsburgh is one such university, having affiliated with the Fair Labor Association. In the summer of 2012 the Pitt #NoSweat Coalition Against Sweatshop Labor (#NoSweat) was formed with the intent of reforming the university's apparel monitoring and sourcing policies. #NoSweat's primary purpose is to have Pitt affiliate with the Worker Rights Consortium, which it considers to be a more effective labor rights monitoring organization. It should be stressed that NoSweat does not advocate *forcing* consumers to buy ethically made apparel.<sup>5</sup> Through affiliation with the WRC the coalition seeks merely to make more information available to consumers of Pitt apparel and to enhance labor standards in the factories where this apparel is produced.

The reasoning behind NoSweat is, admittedly, not apparent from a simple recitation of its goals. In direct and indirect communications, Pitt administrators have indicated that they are satisfied with the FLA and do not wish to affiliate with the WRC.<sup>6</sup> The purpose of this paper, then, is to make an argument as to why Pitt ought to become a WRC affiliate. This argument is simple:

Pitt's cares about the conditions under which its branded apparel is made. One way to monitor and improve the conditions under which this apparel is produced is to affiliate with an LRMO like the FLA or WRC. In choosing to affiliate with one or more LRMOs, Pitt should at least affiliate with the most effective organization. The WRC is the most effective labor rights monitoring organization among those with which Pitt can affiliate. Therefore, at the very least, Pitt ought to affiliate with the WRC.

We take the first three premises as given. Pitt's affiliation with the FLA shows that it cares about the conditions under which its apparel is made; the latter two premises follow from the first. Thus, while the evidence and reasoning behind the anti-sweatshop movement are considered in section 2, the majority of the paper is concerned with proving that the WRC is, in fact, a more effective labor rights monitoring organization than the FLA. As such, in section 3 we compare the institutional features and practices of the FLA and WRC. Section 4 considers these features and practices critically. Section 5 concludes.

## **2. The Apparel Industry, the Anti-Sweatshop Movement, and Labor Standards: An Overview**

Though the purpose of this paper is to consider Pitt's policies concerning labor standards, it is necessary to take into account certain general facts and arguments pertaining to the apparel industry, the anti-sweatshop movement, and labor standards. This section will provide a shared basis of knowledge for examining the FLA and WRC.

### **2.1. Some Structural Features of the Apparel Industry**

The apparel industry is a vast network of firms, interests, and supply chains that defies easy summary. We might try, however, to take note of some key features so as to better understand how labor rights monitoring groups like the FLA and WRC fit into the picture.

We first consider some of the structural features of the apparel industry, especially as it relates to university apparel. Consider the consumer of a Pitt t-shirt. For our purposes, this t-shirt has two important features. First, it bears the Pitt logo. Second, the underlying garment itself is branded by a company such as Nike, Gildan, or Adidas. In order for the brand to sell the t-shirt bearing the Pitt logo, it must be licensed by Pitt to do so. This, of course, is where Pitt's unique ability to influence labor standards arises.

The t-shirts that are branded and designed by a brand, however, are rarely manufactured in a facility owned by that brand. Most brands source their products from contracting factories located throughout the world. It is not uncommon for a single brand to source its goods from several hundred facilities. It is also not uncommon for a single factory to produce for several different brands concurrently.<sup>7</sup> Another common practice of brands is to hire subcontractors to act as middlemen to allocate orders or parts of orders to different factories. This can make it difficult for brands to keep track of all of the facilities where their goods are produced.

With this structure in mind, we define a few general terms that will be used to refer to specific actors in the rest of the paper. *Consumers* refer to the individuals—and not institutions—that buy merchandise. *Universities* refer to colleges and universities in their institutional capacity. That is, as actors with their own policies distinct from those of the groups of individuals from which they are composed. *Brands or companies* refer to the entities that sell products to consumers and source their products from a third party, even when single company is composed of several brands.<sup>8</sup> *Suppliers, facilities, or factories* refer to both the physical plant where products are manufactured and the companies that own and operate the plant, even when

several plants are owned by a single entity. *Subcontractors* are the middlemen that brands hire to allocate orders to suppliers.

## **2.2. The Anti-Sweatshop Movement and its Goals**

The term “sweatshop” first emerged in the first part of the twentieth century to describe the American factories where predominantly immigrant workers were “sweated” for profits. We mention this bit of history because, as Anner, Bair, and Blasi (2012) show, there have been times historically when employers and labor have worked out ways to maintain competitiveness while observing labor standards. The modern anti-sweatshop movement, however, is often traced to Jeffrey Ballinger’s 1992 *Harper’s Magazine* article, which described the poor labor conditions he observed in Indonesian factories producing Nike products.<sup>9</sup> This revelation, along with others like it, led consumers in the Global North—especially students—to pressure brands and governments to do something about labor conditions.

In 1996 President Clinton convened the Apparel Industry Partnership (AIP) to address the issue of sweatshops. Composed of apparel companies, NGOs, and two labor unions, the major outcome of the AIP was the founding, in 1999, of the Fair Labor Association. The initial policies of the FLA, however, were criticized by certain members of the AIP. Key among these criticisms were the lack of provisions for independent monitors, workers’ right to bargain collectively, and workers’ right to a living wage (Mandle 2000).<sup>10</sup> The Worker Rights Consortium was founded in 2000 by a group of labor rights experts, university administrators, and students. Though the founding of the WRC was, in some ways, a reaction to the perceived shortcomings of the FLA, the founding parties stressed that there was no official WRC position regarding the FLA.<sup>11</sup> Similar monitoring organizations were established in Europe. Among these were the Clean Clothes Campaign, the Ethical Trading Initiative, and the Fair Wear Foundation.

Concurrent with the founding of third-party labor rights monitoring organizations, many brands began to become aware that their profits would suffer if they were associated with sweatshops or other anti-social practices. Rodriguez-Garavito (2005) estimates that 98 percent of the world’s 500 largest companies have codes of conduct and that two-thirds of those codes were adopted in the nineties. Several large apparel brands established internal monitoring departments and joined the FLA or other industry-sponsored initiatives like WRAP.<sup>12</sup> The efficacy and, sometimes, sincerity of just about all of these industry initiatives have come under fire from academics, journalists, and activists.<sup>13</sup>

Foundational to all of these initiatives is the work of the International Labor Organization (ILO). The ILO predates the anti-sweatshop movement by several decades; the standards and precedents established by the Organization generally serve as the point of reference for all actors in the labor rights arena. These standards and precedents may be divided into general categories: “(1) freedom of association and the effective recognition of the rights to collective bargaining; (2) the elimination of forced or compulsory labor; (3) the elimination of exploitative, abusive, or demeaning forms of child labor; and (4) the elimination of workplace...discrimination” (Weisband 2000). As Weisband points out, however, the ILO works mostly at the country level



and has no enforcement powers other than to “shame” member countries into compliance. These limitations have led to what Dara O’Rourke has termed outsourced regulation. That is, privately-imposed, voluntary regulation that “attempts to create a network of regulators, involving multiple stakeholders along global supply chains” (O’Rourke 2003). At the center of outsourced regulation are multi-stakeholder initiatives like the FLA and WRC. We detail the policies, practices, and relative success of these organizations in sections 3 and 4. First, however, we consider several points related to the anti-sweatshop movement in general.

## **2.3. Critiques and Evidence of the Efficacy and Goals of the Anti-Sweatshop Movement**

### **2.3.1 Ethical and Macroeconomic Considerations**

While stances against sweatshops have substantial intuitive appeal, the movement for greater labor standards worldwide has not been without its critics. We take up the arguments of these critics here briefly in order to acknowledge their presence, take note of developments in the international trade and development literatures, and consider the question of protectionism.

There is an active literature on the ethics surrounding sweatshops and labor standards. A moral argument for a laissez-faire approach to sweatshops is that anti-sweatshop advocates fail to take into account the freely-entered contracts between laborers and employers. So long as a worker is not forced to enter an agreement, it must be in the worker’s best interest (cf. Powell and Zwolinski 2012). Arnold and Bowie (2003) offer a representative ethical argument for labor standards and against sweatshops. Basu (2005) reviews these arguments against labor standards and offers several cases where third-party intervention is merited. A review of these cases, however, would take us far afield from the purpose of this paper.<sup>15</sup> What might be said here, though, is that this objection emphasizes the importance of ensuring that any labor standards intervention is carried out in concert with the affected parties, namely, workers and management. It is not enough, in other words, for consumers in developed countries to demand goods produced in facilities with high labor standards; there must also be a demand on the part of workers for these standards. While the high incidence of worker-filed complaints suggests that this demand for high standards exists among workers, we must nonetheless tread carefully to ensure that monitoring interventions preserve the decision-making autonomy of workers. We return to this theme in discussing the monitoring policies of the FLA and WRC in section 3.

The most basic economic critique of the anti-sweatshop movement and labor standards in general can be summarized by the saying, “Either you believe that demand curves are downward sloping or you don’t.”<sup>16</sup> The implication of such a phrase as this is that, as the costs of production rise, the cost of the final good rises, leading to a lower demand for the good. Lower demand for the good generates a lower demand for labor. Thus, those in the global North who insist on raising labor standards (which is assumed to be a costly task) are, in fact, hurting the very people they are trying to help. Similar arguments have been made by Nicholas Kristof and Paul Krugman.<sup>17</sup> Other writers are apprehensive towards “social clauses” in trade agreements (Bhagwati [1995], Brown et al [2004]). Without a doubt, these writers are well-meaning and

seek only to ensure that the moral revulsion felt by people in the Global North towards laboring conditions in the Global South are channeled in productive directions.

Recent analysis and empirical evidence, however, has led to a refinement of these previous views. In an influential study, Elliot and Freeman (2003) emphasize the need for regulations to protect both capital and labor in the process of trade liberalization. They view the arguments commonly made in favor of intellectual property rights to be equally applicable to labor standards; while neither has the potential to increase net global welfare, both are necessary from the point of view of inadequate national laws and practices.

Empirical investigators have also failed to find evidence that labor standards have significant negative effects on workers. The evidence is reviewed by Freeman (2009) and Brown, Deardorff, and Stern (2011). With regard to minimum wage regulations the evidence suggests that (1) minimum wages are mostly binding (2) they have modest effects on employment (3) reservation wages may be based on minimum wages and (4) wage rates do not necessarily reflect worker productivity.<sup>19</sup> Mandated benefits (e.g. safety) are found to have similarly modest effects. Unions and other labor institutions are associated with higher wages and lower turnover but their effects on productivity and profits vary by country. There exists no conclusive evidence as to whether a relationship between labor market regulations and growth exists.<sup>20</sup>

There appears to be no great tradeoff, then, between labor standards and economic development. Indeed, as Brown Deardorff, and Stern (2011) write, “There is a variety of empirical evidence available that suggests that the implementation of labor standards in practice generally has a positive effect on international trade and investment.”

One of the initial concerns of economic commentators was that the drive for greater labor standards was, in fact, veiled protectionism.<sup>21</sup> For better or worse, the majority of the anti-sweatshop movement, especially students, are focused on ameliorating labor conditions in developing countries, not on helping domestic workers. In light of the evidence just presented, moreover, it is clear that advocating for labor standards would not return apparel jobs to developed countries. A second point to consider is that, relative to the skills of the U.S. labor force, apparel manufacturing jobs are low skilled. In the U.S., then, apparel manufacturing jobs fall into the subset of plentiful but relatively low paying jobs. The U.S. simply doesn't have a comparative advantage in apparel manufacturing. When labor standards are observed, however, apparel manufacturing can be an important source of income growth for both individual workers in and the economy of a developing country.

### **2.3.2. Microeconomic Considerations**

There also exists a micro-level literature that sheds light on questions such as the effectiveness of monitoring, the effectiveness of activist versus national reform of factories, and consumers' demand for ethically-made products. Though we will take back up the question of effective monitoring in greater detail when comparing the WRC and FLA, it is worth asking from the outset whether factory monitoring can ever lead to sustained changes in workplace

conditions. One can easily imagine a situation, for example, where a factory puts on a show of exhibiting good practices for monitors only to revert back to poor practices the minute the monitors are out the door. More than this, even if a factory does make real changes to its workplace policies, it would seem to be impossible to ensure that these would be maintained over the long term. Finally, a monitoring intervention may have a negative outcome if the wrong fixes are prescribed by the monitors. This may be the case if, for example, an observed safety violation leads the monitoring team to demand that the factory buy costly safety equipment without considering less-costly alternatives.

Without a doubt, all of the problems mentioned above do occur in the course of monitoring. The question that we must consider for now is whether there exist monitoring methods that avoid these problems. A 2006 report commissioned by the Ethical Trading Initiative, a UK group, found that monitoring alone positively affected labor standards relating to safety, child labor, working hours, and minimum wage. Monitoring was less effective in areas relating freedom of employment, freedom of association, discrimination, regularity of employment, and worker abuse (Barrientos and Smith 2006). Though these areas of improvement are important, the inability of monitoring alone to protect workers' freedom of association should be of special concern. Elliott and Freeman (2004) argue that freedom of association and collective bargaining is the key "enabling right" for workers; that is, the right that would allow workers "to decide for themselves what issues to pursue, trade-offs to make, and battles to conduct with their employers."

It is possible to monitor and improve all aspects of labor standards, including those covering enabling rights. The work of Richard Locke and his coauthors shows that, when the correct monitoring and remediation policies are pursued, positive and lasting change can be achieved. More specifically, they find that complementing a traditional monitoring program based on Code of Conduct compliance with long-term engagement, information-sharing, and a commitment to working with (rather than simply policing) facilities all led to better labor conditions (Locke, Amegual, and Mangal [2009], Locke and Romis [2010], Locke, Qin, and Brause [2006]). Thus, when done right, workplace monitoring can have positive effects for workers.<sup>23</sup>

A second, related question to take up is the effectiveness of changes in national policy towards labor standards—such as those enacted to satisfy trade agreements—relative to non-governmental factory-level monitoring. Harrison and Scorse (2006) compare the effect of changes to minimum wage laws and anti-sweatshop activism in Indonesia in the nineties. They find that both measures had the effect of increasing wages but that activist-triggered wage increases in the apparel industry resulted in steady employment while the minimum wage laws adversely affected employment. Though Harrison and Scorse are unable to identify a single cause for this differential impact, they suggest that the relatively low wages in the apparel industry before the changes, as well as exporting companies' higher margins and desire to protect brands, may be responsible.

From the perspective of actors in the developed world, these results suggest two conclusions. First, activism—especially in the form of direct pressure on brands—can play a constructive role in increasing labor standards in LDCs. Second (and more generally) they suggest that interventions at the level of international trade should, at the very least, be complemented by micro-level interventions that take into account local and factory-specific factors. The second conclusion illustrates the need for independent monitoring organizations, the first the need for vigilant and informed consumers.

This brings us to a final, crucial consideration: do consumers even care about labor rights? While the above discussion of worker autonomy clearly showed that consumer demand for labor standards is not a sufficient condition for labor standards, few would hold that they are not necessary. Recent field studies utilizing quasi-experimental methods find that consumers are, in fact, willing to “put their money where their mouth is” and pay a premium for ethically made goods.<sup>24</sup> In one experiment Hiscox et al (2011b) found that shirts labeled as being ethically made fetched a 45% premium on Ebay relative to their unlabeled counterparts. In-store labeling experiments find that apparel labeled as being ethically produced experiences higher sales, can be sold at a premium, and increases brand share (Hiscox and Smyth [2011a], Hainmueller and Hiscox [2012]).<sup>25</sup> These studies point to the same conclusions as surveys of large samples of consumers, namely, that there is a large, though latent, demand for labor standards among consumers in the Global North.<sup>26</sup> The absence (for the most part) of product differentiation along this parameter, however, makes it impossible for consumers to reveal those preferences.

Having considered some of the general facts and arguments surrounding the apparel industry, the anti-sweatshop movement, and labor standards, we might hope to establish and summarize a few conclusions to draw on later. Universities can influence apparel brands through their licensing agreements but supplier factories are rarely owned by the brand. Substantial evidence exists suggesting that trade liberalization can lead to poor labor standards and that higher labor standards need not necessarily conflict with the pace of development. Not all monitoring undertaken to enhance labor standards is created equal, however. Specifically, monitoring that is overly focused on policing for Code of Conduct compliance is sub-optimal at best and counterproductive at worst.<sup>27</sup> Activism can play a constructive role in furthering labor standards, especially by supplying information to consumers. Studies show, moreover, that consumers in developed countries do demand labor standards and are willing to pay a premium for them.

### **3. The Fair Labor Association and Worker Rights Consortium: A Comparison**

Here we narrow our focus to the FLA and WRC. This section compares the stated policies and practices of the two groups while the next focuses on evidence related to their effectiveness in improving labor standards. We structure the discussion to highlight organizational features, codes of conduct, factory monitoring, and remediation procedures.

### 3.1. Organizational Features

Founded in 1999 in response to public and governmental pressure, the Fair Labor Association is a 501(c)3 non-profit backed by companies, universities and civil society organizations. The Worker Rights Consortium, also a 501(c)3 non-profit, was founded in 2000 by a coalition led by the United Students Against Sweatshops (USAS), the Union of Needletrades, Industrial, and Textile Employees (UNITE) along with a group of universities, NGOs, and unions. Both organizations are members of the Jo-In project, a collaboration between LRMOs that began in 2003 to improve to improve monitoring efforts.<sup>28</sup>

The WRC seeks "to combat sweatshops and protect the rights of workers who make apparel and other products." Though, in the past, it has carried out investigations in factories producing a variety of goods, its "primary focus is the labor practices of factories that make university-related apparel."<sup>29</sup> The majority of the FLA's monitoring operations are in the apparel industry. More recently it has begun to do monitoring in the agriculture and consumer electronics sectors as brands that sell those types of goods have affiliated with the Association.<sup>30</sup>

The institutions affiliated with each organization vary accordingly. There are currently 180 colleges and universities affiliated with the WRC.<sup>31</sup> The FLA lists 172 member universities on its website. While the WRC accepts only university affiliates, thirty-seven corporations—mostly in the apparel industry—and five civil service organizations are affiliated with the FLA.<sup>32</sup> The governing bodies of each, then, vary in subtle but significant aspects. The WRC governing board has five representatives from affiliate schools, five independent labor rights experts, and five student representatives from USAS. The Board of Directors of the FLA is composed of a chair, six corporate representatives, six university representatives, six NGO representatives, and the Association's general counsel.<sup>33</sup>

The FLA derives its funding from its corporate and university affiliates. FLA university affiliates pay dues of 1% (up to \$50,000) of licensing fees per year. Member brands must pay minimum dues of \$5,000 per year and must fund the monitoring that occurs at their supplier facilities.<sup>34</sup> The WRC funds the majority of its operations with dues from affiliate universities and has the same fee structure as the FLA (1% or \$50,000 of licensing revenue). NGO and government grants provide all remaining revenues. The WRC does not accept funding from brands.<sup>35</sup>

Each organization sets out requirements for its university affiliates. The WRC requires affiliates to adopt a manufacturing Code of Conduct consistent with the guidelines that will be discussed in section 3.2. Additionally, universities must furnish the WRC with a list of names and locations of all factories that produce university goods.<sup>36</sup> FLA university affiliates, though not required to adopt a manufacturing Code of Conduct, are required to provide the FLA with a list of licensees. Each university licensee is, in turn, categorized based on its annual revenue. The FLA sets out different requirements for each licensee based on its categorization; the licensee must then adhere to these requirements when producing any good made under license for the university.<sup>37</sup>

### 3.2. Codes of Conduct

The Codes of Conduct adopted by each organization reflect the guidelines followed by monitors in the field. The discussion in 2.3.2, however, suggests that the letter of any given code is less important than the way it is operationalized. Thus, we consider both the features of the Codes of Conduct of the FLA and WRC as well as their use and interpretation.

The FLA's October 2011 revision to its *Code of Conduct and Benchmarks for Compliance* brings the policies of the organization closer in line with those of the ILO and the WRC. We begin by taking note of the broad areas where the WRC and FLA codes have always concurred before considering traditional differences. Both require that all employment voluntary and that workers be at least 15 years of age. Harassment and discrimination of all forms are prohibited and a healthy and safe working environment is required. A 48 hour standard work week is required. Any overtime work must be consensual and workers must be compensated at a premium. Women have the right to receive equal treatment; they may not be punished for taking maternity leave and may not be forced to use contraceptives. Both make allowances for local law (in cases where it is stricter than the minimum set out by the code) and for country-specific recommendations made by the ILO.<sup>38</sup>

Traditional policy differences between the FLA and WRC center on freedom of association and wages.<sup>39</sup> The FLA has made some progress in narrowing this gap to better reflect the recommendations of the ILO but it is still not as strong as the WRC code. The WRC model charter for affiliates<sup>40</sup> unambiguously states that the all employees have the right to associate and bargain collectively. Workers shall not be subjected to harassment, intimidation, or retaliation as a result of efforts to associate or bargain collectively. Suppliers are prohibited from cooperating with state agencies to prevent workers from freely organizing and may not block organizers' access to employees. If workers choose to associate with a union, the supplier must recognize it as the employees' choice.<sup>41</sup>

Amendments to the FLA charter in recent years have brought its *Compliance Benchmarks* into line with that of the WRC. A gap remains, however. No provision requires employers to recognize the association freely chosen by the workers. Rather, employers are only required to "bargain with any union that has been recognized by law or by agreement between the employer and that union."<sup>42</sup> That is, unless a union or employee association is recognized by the state, the employer is free to bargain with only those unions or associations with which it chooses to do so. In countries where official policy seeks to suppress free association, then, employers may disregard (though not suppress) union activity while maintaining FLA compliance. Thus, the recent amendment to the *Compliance Benchmarks* recognizing workers' right to organize by alternative means when freedom of association is legally restricted need not have any practical effect.

The FLA also changed its wage standards to bring them closer in line with those of the ILO and WRC. Both of these latter groups advocate forms of a living wage. The WRC defines a living wage as the

“take home” or “net” wage, earned during a country’s legal maximum work week, but not more than 48 hours. A living wage provides for the basic needs (housing, energy, nutrition, clothing, health care, education, potable water, childcare, transportation and savings) of an average family unit of employees in the garment manufacturing employment sector of the country divided by the average number of adult wage earners in the family unit of employees in the garment manufacturing employment sector of the country.<sup>43</sup>

From its founding to 2011, the FLA only required its affiliates to pay the greater of the local minimum wage or the prevailing industry wage.<sup>44</sup> As of 2011, however, the FLA reversed this policy, and called for the gradual adoption of wages that “meet workers’ basic needs and provide some discretionary income.”<sup>45</sup> In a press release the FLA stated, “Even if a factory pays workers the national minimum wage and meets other legal requirements...it may nevertheless have unfair wages because of undue disparities in wages within the enterprise or because wages may not reflect worker productivity.”<sup>46</sup> Though this is, no doubt, a promising development, it seems that the FLA regards living wages to be only a praiseworthy goal.<sup>47</sup> For example, a living wage recommendation was absent from the FLA’s investigation at Foxconn, the Apple supplier, which is discussed in section 4.3.3.

Having examined the letter of each Code, it remains to consider their uses. The *FLA Workplace Code of Conduct and Benchmarks of Compliance* is a substantial document that seeks to detail all aspects of FLA compliance. The preamble of the code makes clear the relation of affiliated brands and university licensees to the code:

Companies affiliated with the FLA are expected to comply with all relevant and applicable laws and regulations of the country in which workers are employed and to implement the Workplace Code in their applicable facilities... The FLA monitors compliance with the Workplace Code by carefully examining adherence to the Compliance Benchmarks and the *Principles of Monitoring*. The Compliance Benchmarks identify specific requirements for meeting each Code standard, while the *Principles of Monitoring* guide the assessment of compliance. The FLA expects affiliated companies to make improvements when Code standards are not met and to develop sustainable mechanisms to ensure ongoing compliance.<sup>48</sup>

This approach to the *Code* makes sense in light of the FLA's use of external (i.e. non-brand and non-FLA) monitors (discussed in section 3.3). It seeks, essentially, to set out standards for every aspect of the workplace so as to be able to determine the compliance status of a factory. Note, however, that this is the same monitoring approach Barrientos and Smith (2006) found was ineffective at promoting enabling rights.

Though the WRC requires each of its affiliate universities to adopt a Code of Conduct and publishes a model code of conduct, it allows each university to determine the contents of its Code. The lack of a unified Code of Conduct is explained in the WRC *Investigation Protocols*:

[The] WRC shall not promulgate “benchmarks” or “checklists” that purport to be applicable to highly variable local contexts and purport to yield comprehensive measures of compliance with the innumerable and complex rights and standards set forth in University Codes, the WRC [model] Code, domestic labor law, and international labor law.<sup>50</sup>

For guidance in compliance, the WRC recommends that interested parties consult the precedents established by the ILO, domestic and international law, and the compilation of “case-by-case interpretations and applications of the rights and standard set out in University Codes.”<sup>51</sup>

The WRC approach to codes of conduct, then, might be said to reflect the attitudes driving English-style legal codes while the FLA might be said to follow a more Roman model. The WRC uses codes as reference points that must be continually built on and interpreted in light of the input of local stakeholders and affiliates. The FLA *Code*, while not imalleable, is meant to be used as a measuring stick to determine the compliance status of a given factory.

The WRC and FLA do not formally certify brands. The FLA does, however, accredit the internal compliance programs of participating companies, a topic that is returned to in section 4.3.2. Moreover, it offers *de facto* certification to participating brands because they are allowed to advertise their affiliation with the FLA. One of the only sanctions the FLA can use against brands, in fact, is to deny them the right to identify themselves as being in compliance with the FLA standards.<sup>52</sup> The closest thing the WRC has to certification is its Designated Suppliers Program (DSP). Universities elect to be a part of the DSP *in addition* to affiliating with the WRC (that is, affiliate universities are not required to adopt the DSP). The intent of the DSP is to ensure that a progressively larger portion of a university’s apparel is sourced from factories that have been found to consistently uphold all labor standards. University licensees, in turn, are expected to adopt practices consistent with upholding labor rights such as responsible sourcing, fair pricing, and long-term production agreements.<sup>53</sup>

While codes of conduct may not be *the* determining factor of the success of a labor rights monitoring organization, they do play a major part in the operations of the WRC and FLA. The trend in codes of conduct over the past decade has been for the FLA to amend its code to make its standards progressively closer to those adopted by the WRC from its founding. The two organizations approach codes of conduct differently, however. The WRC uses its affiliates’ codes as points of reference in monitoring while the FLA uses its *Code* to determine brand compliance.



### 3.3. Monitoring, Remediation, and Reporting Practices

Factory monitoring is the central activity of both the FLA and WRC. Closely related to these factory audits are the remediation programs undertaken to remedy the areas where labor standards were found to have been breached. Public reporting also play an important role in alerting stakeholders—such as brands and universities—of labor conditions and remediation efforts in effected factories. Not all monitoring and remediation is created equal, however. Differences in choosing monitoring locations, teams, and objectives, as well as remediation policies and implementation, can lead to starkly different outcomes for workers and brands alike.

First, who monitors the factories? The FLA has no monitoring staff of its own. Rather, it depends on monitoring carried out by brands' internal monitors and independent external monitors. While the FLA has no formal requirements regarding a brand's internal monitors, it does require external monitors to have no financial relations with the brand and linguistic skills sufficient to carry out a factory audit.<sup>54</sup> Of the 55 independent external audits commissioned by the FLA in 2011, approximately 66% of those were carried out by monitors from for-profit firms while 18% were carried out by non-profits.<sup>55</sup> As of 2003 the FLA (and not the brand being monitored) chooses the external monitor.

The WRC, by contrast, assembles a new team for each of its investigations. The WRC *Investigation Protocols* stipulate that an investigative team must include on-site WRC staff and community members in the affected area.<sup>56</sup> Teams may also include local advocates, experts on various issues, and representatives from other organizations. In assembling an investigative team, the WRC follows a principal of maximum local participation. That is, the WRC seeks to include and use the skills of local community members and organizations as much as possible so as to both ensure the investigation reflects the goals and needs of the community and to build their capacity for reconciling future labor problems.<sup>57</sup> We will return to the significance of these differences in monitoring team composition after considering some of the other important aspects of monitoring.

How do these organizations determine the factories that will be monitored in any given year? There are thousands of factories manufacturing apparel; it is simply impossible to monitor them all. This is another area where the FLA and WRC's differing attitude on corporate participation in monitoring is important. The FLA sets out intricate rules classifying a brand's source facilities as either "applicable" or "de minimis." Factories classified as de minimis are not subject to internal or external monitoring.<sup>58</sup> Those factories that produce applicable products—other than de minimis factories—are classified as applicable. An applicable product is defined as "a. The Product or Brand that accounts for the greatest percentage of...revenues; b. Any product or brand that accounts for more than thirty percent (30%) of...revenues; c. Any product or brand which bears the Applicant's [i.e. firm's] name."<sup>59</sup> All factories that are classified as applicable must be examined by the brand's internal monitoring team within the first two years of affiliating with the FLA. Five percent of the brand's applicable factories will be chosen annually by the FLA to be monitored by external monitors. These factories are chosen based on their past record of labor standards compliance, the record of labor standards in the country where the factory is

located, and the size of factory (both in terms of employment and the percentage of the brand's products sourced from the factory).<sup>60</sup>

Besides these routine audits, the FLA also fields complaints from third parties and undertakes independent investigation on its own initiative.<sup>61</sup> With the exception of independent external monitors that have audited the factory in question within the past six months, anyone may file a complaint. In deciding whether to pursue a complaint, the FLA considers the past record of the complainant as well as the input of experts and independent external monitors. One feature of the complaint process worth noting is that the brand has the ability to terminate the complaint investigation process. If the brand agrees to field the complaint, it must implement a remediation plan. If the brand decides to terminate the complaint the FLA is not required to publicly disclose the existence or termination of the complaint.<sup>62</sup>

As the WRC does not affiliate with brands, it does not undertake due diligence audits. Instead, WRC investigations are either triggered by third-party complaints or undertaken proactively. Anyone may file a complaint with the WRC; it need only specify the facts of the situation, not the specific provisions of a code that have been breached. The WRC may undertake a spot investigation, a process that is similar to the factory audits the FLA commissions. Systematic investigations involving long-term engagement in the factory and community, however, are more common. The decision to proceed with an investigation rests with the WRC governing board and executive director. To trigger an investigation a complaint must, at minimum, “[constitute] a non-trivial violation of University Codes of Conduct...or there is good cause, based on the WRC’s objectives and principles, to investigate whether there is such reasonable cause in a particular facility or category of facilities.”<sup>63</sup> Further, evidence must exist that the affected workers desire an investigation. In deciding whether (and how) to investigate, the WRC will also take into account the severity, importance, and pervasiveness of the alleged violation. Other factors considered include the probability that an investigation will result in actual remediation and strengthen the ability of local actors to solve labor issues on their own in the future.<sup>64</sup>

What are the characteristics of the actual monitoring process of each organization? Both use a combination of interviews and workplace and records inspection to monitor a facility. Keys to the success of an audit are the monitors’ language skills, familiarity with local conditions, and ability to detect problems. Since WRC investigation teams are required to include local organizations, experts, and in-region staff, language barriers are not an issue. Though the FLA does attempt to employ monitors with language skills, it does not *mandate* that its external monitors have local language knowledge. It states that “it may be appropriate to engage interpreters for discrete tasks.”<sup>65</sup> The WRC’s partnerships with local groups also gives it an advantage in understanding local conditions and actors. The FLA requires that its external monitors engage at least two local groups in the course of an audit.<sup>66</sup> Because the FLA engages different external monitors for each individual audit, however, the monitor must both find reliable local groups and familiarize itself with local conditions at the outset of every audit. Given the time constraints of monitors, the often-complicated web of competing groups in any

given area, the possibility that locals keep quiet out of fear of retaliation, and potential language constraints, this is no small task. Finally, there is the challenge of broad issue detection. That is, it is important for monitors to detect general areas of potential problems so as to at least have a direction in monitoring. As the WRC works mostly on third party complaints (and local desire for an investigation is a necessary condition of an investigation) all investigations have a *raison d'être* from the outset. The majority of the FLA's audits, on the other hand, are carried out on a due diligence basis. It is mostly up to monitors, then, to identify potential issues. From the outset, therefore, FLA external monitors are at a disadvantage compared to WRC investigation teams, which have better language skills, local knowledge, and knowledge of potential problems. While this certainly does not mean that FLA external monitors are incapable of identifying areas of non-compliance, it would seem to reduce the probability that they will be able to identify the root cause issues that are at the bottom of individual infractions.

The tasks of monitoring for each organization are much the same with a few notable exceptions. Both review relevant company records for evidence of wage, workweek, and other standards. Facility inspections are also standard. Both emphasize the need for structured and unstructured interviews with workers. These interviews ought to be confidential and all efforts should be made to ensure that the interviewee suffers no retaliation. The sample of interviewees should be representative of the population of workers. One area of difference between the two is the importance they place on off-site formal interviews. While the WRC emphasizes the importance of finding areas where workers feel safe to speak freely—such as their home—the FLA leaves it to the discretion of monitors to decide whether off-site interviews are needed.<sup>67</sup> This is an important divergence in policy. Workers may only feel free to speak freely outside of the workplace. Off-site interviews, however, are time-consuming to arrange and conduct and, thus, may be foregone by a time-constrained monitor.

How does each organization go about remediating problems found in the course of monitoring? The FLA requires its monitors to provide a report of non-compliance subsequent to each audit. Within sixty days, the sourcing brand (and not the supplier) is required to provide a report detailing the steps taken to remedy areas of non-compliance. The FLA then analyzes the plan.<sup>68</sup> The FLA also undertakes verification audits at select facilities some years after the initial audit to determine the effectiveness of the remediation program.<sup>69</sup>

The WRC, by contrast, undertakes long-term investigations aimed at ensuring labor issues are fully resolved. In addition to offering remediation recommendations to the facility, the WRC also reports to the brands that source from the factory on issues that were found. It should be emphasized that, though the WRC does not accept funding from brands, it does have positive working relationships with them. The WRC will work with brands to remediate problems so long as the brand is willing to aid in bringing about necessary changes. If a brand will not cooperate with the WRC, it will still work with local stakeholders and other NGOs to ensure that the problems identified are remediated.<sup>70</sup>

If the facility does not make the recommended changes and sourcing brands are unwilling to press the facility to make the changes, the WRC will issue a special report to affiliated

universities detailing non-compliance. It is then up to each individual institution to decide whether and how they will take action.<sup>71</sup> The *WRC Investigation Protocols* leaves it up to the investigative team to continue the investigation, including additional workplace monitoring and interviews, as it sees fit throughout the process of remediating problems.<sup>72</sup> As such, WRC investigations continue so long as problems go unresolved. Thus, WRC investigations can last anywhere from a few months to several years.

The WRC issues reports to university affiliates whenever a licensee fails to remediate problems. In addition to these reports, the WRC maintains a database of factory investigations, available on its website, where all investigation updates are posted.<sup>73</sup> The content and timing of the updates are left to the discretion of the investigative team and the WRC Executive director. Both the WRC and FLA work to translate reports into the language spoken at the facility monitored.<sup>74</sup> For standard factory assessments, the FLA issues tracking charts indicating the compliance status of the facility. It also issues reports for investigations arising from third party complaints.<sup>75</sup>

The WRC requires all university licensees to report the name and location of the factories from which they source their goods. It publishes a database of these factories and their locations on its website.<sup>76</sup> The FLA charter prevents the Association from making any of this information public.<sup>77</sup> When the FLA publishes an auditing report, for example, only the country of the factory is reported. It is, therefore, impossible for any of the findings of FLA monitors to be independently verified by an outside organization.

We end this section by restating a few pertinent aspects of the monitoring processes of the FLA and WRC. The FLA relies on brands' internal monitors and hired external monitors—the majority of which are for-profit companies—to carry out monitoring while the WRC assembles monitoring teams composed of local stakeholders, experts, and WRC staff. The FLA focuses on due diligence monitoring of a subset of facilities from which affiliate brands source their products. WRC investigations mostly arise from third party complaints. The WRC's engagement with local stakeholders allows it to get around many of the language and information barriers faced by external FLA monitors. While the WRC stressed the importance of off-site worker interviews, the FLA leaves it to the discretion of the external monitors to decide if off-site interviews are necessary. The FLA's remediation process relies on updates from brands a few months after the fact and verification of select facilities several years after that. The WRC undertakes long-term investigations that end only when the labor problems observed are resolved. The WRC publicly discloses the names and locations of all facilities from which a university licensee sources its products. The FLA holds this information in strict confidentiality. Beyond resolving labor issues, WRC investigations also aim to empower local actors to resolve such issues in the future without WRC intervention. The FLA's monitoring procedures do not emphasize this principal of maximum local participation.

#### **4. The FLA and WRC: Evidence and Critiques**

Having examined the problem of labor standards, the anti-sweatshop movement in general and the policies and practices of the WRC and FLA in detail, we may now venture into the murky realm of theory and evidence. In doing so, we might hope to reach some conclusions on the relative merits of the FLA and WRC. The greatest barrier to such an investigation, no doubt, is the lack of verifiable empirical evidence on the effects of the activities of each organization. We do, after all, depend on these organizations to discover and distribute information on labor standards that would otherwise go unknown. Monitoring the monitors is no small task.

The primary concern of most critics of the FLA is that it relies on affiliated brands for funding and admits executives from those brands to its Board of Directors.<sup>78</sup> This, of course, generates a conflict of interest; the brands that were found to be sourcing their products from facilities with poor labor standards are now in charge of policing themselves. The counterclaim to this charge is that no progress can be made in improving labor standards without the cooperation of brands. Moreover, companies that rely on brand recognition cannot afford to be associated with poor labor practices—it's simply bad business.

It is undoubtedly true that brands must be involved. The interesting question, though, is not whether brands should be involved in improving labor standards but, rather, how and to what extent. It is also true that companies don't want their brands to be associated with poor labor standards. A distinction, however, should be drawn between protecting labor standards as a means and as an end. Inasmuch as a brand undertakes action with regard to labor standards to preserve its name, the brand views labor standards as a means.<sup>79</sup> It is possible that, viewing labor standards as a means, a brand could undertake actions that result in a net welfare gain for workers in source facilities. This is not a unique outcome, however. If a brand can find a less costly alternative to improving labor standards, then, assuming it is profit maximizing, it will undertake this alternative. When labor standards are a means rather than an end there is no guarantee that any improvement will result.

##### **4.1 Analogies and Models for Labor Rights Monitoring**

Set aside labor rights monitors for a minute. Consider accounting firms and credit ratings agencies.<sup>80</sup> Both are types of monitors that provide information to the public about a firm—just like labor rights monitors. Accountants are paid by the firms they audit and no one raises an eye. Why? The information provided by accountants can be shown to be false rather easily and, importantly, blame can be assigned accordingly. For the most part, no amount of money can convince an accountant to cook the books; it is simply too costly to be caught. Thus, one has good reason to trust the information provided by an accounting audit.

What about credit ratings agencies? Credit ratings differ from accounting audits in that they speak to the entity's ability to pay back its debt in the future rather than to its present financial condition. Thus, the realization that a credit rating was overly generous does not damage the reputation of a rater too much. That is, if an entity ends up being unable to pay off its

bonds despite an initial ‘A’ rating from the credit rating agency, the agency will not go out of business or face prosecution. There are, after all, hundreds of factors that could not be foreseen when the last rating update was issued. It would simply be wrong to assign all of the blame for a poor rating on the rating agency. This fact does, however, create an opening for credit raters to engage in less than honest conduct.

For our purposes we can divide bond ratings into two categories: those that are solicited (i.e. paid for by the entity being rated) and those that are unsolicited (i.e. not requested or paid for by the entity being rated). In the wake of the financial crisis it is perhaps less controversial to argue that firms that issue solicited ratings—such as Moody’s, S&P, and Fitch—are less dependable than those—like Egan-Jones—that do not.<sup>81</sup> Indeed, there is substantial empirical evidence pointing to the conclusion that (1) unsolicited ratings are lower relative to solicited ratings, (2) that unsolicited ratings are adjusted to reflect bad and good news more equally relative to unsolicited ratings, and (3) that unsolicited ratings adjust more quickly to new information (Poon [2003], Beaver et al [2006]). These observations do not imply by themselves that solicited ratings are the result of dishonest conduct. Bruno et al (2011), however, control for the expected use of ratings (i.e. for contracts as opposed to investment) and still find significant differences between unsolicited and solicited ratings. Fairchild et al (2009) analyze differences in ratings between agencies that use private firm information for their unsolicited ratings and agencies that only use public information for their unsolicited ratings. They find that unsolicited ratings are lower relative to solicited ratings regardless of whether they are based on private or public information. From this, they conclude that firms provide incomplete private information to ratings agencies that use that information to issue unsolicited ratings. Finally, Becker and Milbourn (2011) find that increased competition in the market for solicited ratings led to lower quality ratings, suggesting that agencies are willing to bend their ratings to suit their clients. From these results we conclude that there is substantial evidence pointing to the conclusion that solicited bond ratings are, for a variety of reasons, less reliable than unsolicited ratings.

Labor rights monitors are best likened to bond rating agencies, not accounting firms. Like a company’s balance sheets, labor standards in a company’s source facilities are, in principle, observable in the present. Unlike balance sheets, however, it is difficult for both consumers and labor rights monitors to holistically observe the status of labor rights in a brand’s source factories. It is just as difficult for a consumer to evaluate the quality, impact, and representativeness of labor rights monitoring. Thus, while uncertainty in credit ratings stems from one’s inability to see into the future, uncertainty in labor rights monitoring arises from one’s inability to holistically assess the claims of the monitors. That is, when it comes to light that a monitored and “okayed” factory actually has poor labor standards, it is all too easy for the monitor to claim that the factory represents an exception rather than the rule. Observers have no ability to evaluate the truth of the claim. This, in turn, creates the potential for persistently poor labor rights monitoring. It is, therefore, imperative that the *controlling entities* and *funding sources* of labor rights monitors be carefully accounted for.

It should be stressed that poor monitoring arising from corporate funding need not be the product of avaricious tycoons colluding in a smoke-filled room. We must allow for the fact that brands are not necessarily always profit-maximizing, that they are more likely than not staffed by people possessing moral intuitions indistinct from the population at large. Nevertheless, substantial evidence exists suggesting that the FLA has been and is unduly influenced by its corporate backers. It shall be the purpose of the remainder of this section to examine the effects of this influence while seeking to understand the channels through which it comes about.

#### **4.2. The Development of FLA Codes and Policies**

The formation of and revision to the FLA charter in 1998 and 2003 provide insights into the goals of all FLA stakeholders. During the negotiations that would eventually lead to the formation of the FLA, brands advocated for the use of private, for-profit monitors. NGO and union participants argued for the use of local monitors, which they believed had more credibility in local communities and could undertake ongoing, intensive investigations. Contrary to the analogy made between credit rating agencies and labor rights monitors described above, brands argued that private monitors acted as accountants. According to this argument, if private monitors failed to accurately report what they found, they put their business at risk.

PricewaterhouseCoopers' social compliance group (now spun off as Global Social Compliance) was the largest private monitor in the world when FLA negotiations were taking place. During negotiations, Nike issued a statement in favor of private monitoring saying, "Companies like PwC [PricewaterhouseCoopers] have one invaluable asset: integrity."<sup>82</sup> O'Rourke (2000),<sup>83</sup> however, found that PwC auditors failed to find major violations in workplace health, overtime laws, wage laws, falsified timecards, and barriers to freedom of association. Before the audits, PwC sent the supplier's management a questionnaire to prepare them for what the auditors would be looking for. When auditors did speak to workers, the workers were selected by management, who were then interviewed in the factory's offices with management's knowledge. PwC monitors were observed making verbal recommendations to factory managers on strategies to exceed national overtime laws. These observations were consistent across both factory visits O'Rourke accompanied PwC auditors on; the auditors knew they were under close scrutiny. O'Rourke (2000) is unique in his findings only because PwC factory inspections are confidential. At the very least, brands were misinformed about the nature of the audits carried out by PwC during FLA negotiations.

In the initial FLA charter, brands gained the right to choose who would monitor their source facilities; all audits would be pre-announced. Though the FLA had ultimate authority to decide which facilities would be monitored, brands were given the authority to issue a list of suggested facilities to be monitored and the FLA was directed to favor these facilities in making its ultimate decision.<sup>84</sup> The subsequent implementation of these provisions led the International Labor Rights Fund, a founding NGO, to withdraw from the FLA in 2001. Its executive director wrote, "The FLA was so concerned about offering companies an 'acceptable' monitoring regime to attract more companies that it was willing to sacrifice some pretty fundamental points."<sup>85</sup>

This discussion brings out two points. First, the FLA emerged from a high-profile initiative begun by President Clinton and led by Robert Reich, the Secretary of Labor. Pressure to come to some sort of agreement and then to see the FLA succeed was high, as evidenced by the ad-hoc inclusion of universities as a pathway to compelling more companies to join the Association. Second, brands are naturally (and rightly) weary of allowing outsiders to control and possibly expose parts of their operations. Their desire to use private monitors that they are familiar with from other aspects of their business, then, should come as no surprise. The result of these two factors—along with the superior resources of corporate negotiators relative to NGO and union negotiators—was an agreement that disproportionately reflected the goals of brands.<sup>86</sup>

Even if brands wish simply to maximize their control over monitoring (and labor rights monitoring groups in general) in order to maintain control over their operations, too much control can have significant downsides. In the absence of an exogenous shock, organizational inertia is a powerful perpetuator of the status quo. While brands may be willing to implement fairly painless changes (e.g. hiring PwC), they are less likely to undertake more significant changes such as working with local groups to ensure workers have a voice in their workplace. Brands' control over monitoring makes it more likely that the former will be undertaken while the latter will not. This framework seems to map well onto the negotiations that led to the founding of the FLA and to many subsequent episodes. For brands to undertake more substantive changes, it is necessary for outside groups—such as the WRC or universities—to push for these changes.

Following its founding, the FLA underwent substantial changes. While the Association initially kept all of its monitoring reports confidential, it did release public reports on three occasions. Importantly, all of these reports pertained to investigations that were carried out jointly with the WRC. The WRC also worked with the FLA on an investigation of conditions at the Primo S.A. factory in El Salvador from 2003-2004. The WRC recommended and the FLA agreed to help fund an ombudsman to monitor practices such as blacklisting in free trade zones in Central America.<sup>87</sup> FLA affiliate brands, however, objected to allowing the ombudsman to carry out his own investigations. Instead, the brands argued that the ombudsman should report infractions to the brands, which would handle the claim internally.<sup>88</sup>

In charter revisions approved in 2003, the FLA did manage to strengthen its policies on independent monitoring to a point closer to its present form. Again, however, the FLA was forced to make concessions to brands. In particular, the Association reduced the number of external audits per year from 30% for the first two years of brand membership and 10% thereafter to 5% at all times. Though the FLA attributed the reduced number of external audits to a lost U.S. AID grant, brands have always paid for external monitoring.<sup>89</sup> Thus, this weakening in monitoring coverage can be attributed to brands' unwillingness to fund external monitoring at an unsubsidized rate. A second major concession to brands was the quick accreditation of several private external monitors. In particular, the FLA accredited Global Social Compliance (formerly PricewaterhouseCoopers), whose application for accreditation had previously been rejected on several occasions. T-Group solutions, a monitoring subsidiary of the garment subcontracting



firm Triburg, was also accredited. Particularly troubling is the fact that, at the time agreement was reached, Triburg sourced garments for FLA affiliate brands Liz Claiborne and Phillips-Van Heusen.<sup>90</sup> While the FLA claims it took steps to mitigate any conflicts of interest arising from the accreditation of these monitors, we show below that, no matter the checks in place, the incentives of private monitors prevent them from ever being truly independent.

First, however, we summarize what has been said here. We set up a framework to understand why the FLA initially adopted policies and practices that, while conducive to brands, did not reflect best practices in monitoring. In particular, brands insisted on minimal monitoring coverage, the use of preferred private monitors, and low standards of transparency. These policies were not without consequence. At factories like Kukdong in Mexico, PT Victoria in Indonesia, Hana in Cambodia, and many others the FLA failed to take action, maintained that labor conditions were adequate (when, in fact, they were not), or missed serious violations. We refrain from considering these cases here, however, in order to devote more space to the FLA as it exists today.

#### **4.3. The FLA: Recent Evidence on Monitoring Effectiveness**

In 4.2 we only showed that the FLA has, throughout its history, been unduly influenced by its brand affiliates. Now, however, we consider how effective the FLA has been at carrying out its mission in the past few years. We first take up problems with the FLA's current external monitoring regime. Evidence on affiliate brands' internal monitoring programs and sourcing practices is then examined. We conclude with a few case studies. While transparency rules (or lack thereof) mean that evidence on all of these topics is scarce, there exist enough dependable sources to form what seems to be a fairly complete picture.

##### **4.3.1. External Monitors**

The FLA continues to use a mixture of for- and non-profit monitoring organizations for its external monitoring program. In 2011, approximately two-thirds of external audits commissioned by the FLA were carried out by private monitors.<sup>91</sup> Since private monitors usually compete for repeat business from brands, they face a similar—but arguably more acute—set of conflicts of interest. They generally have a monopoly on information pertaining to labor standards in a given factory and, thus, cannot be held accountable for what they do and do not report. Since these private monitors are hired to monitor rather than remediate problems and best practice dictates that no monitor should be hired to audit the same factory twice, they are not well-incentivized to be overly thorough in their audits.

Though much of the monitoring carried out by FLA private monitors is never made public or verified by a third party,<sup>92</sup> a few cases have come to light that speak to the stringency of the FLA's external monitors. Accordia Global Compliance Group is an accredited FLA external monitor. Accordia also does monitoring for Wal-Mart. In June 2012, the WRC and National Guestworkers Alliance released a report detailing abuse, below-minimum wages, excessive hours of work, and forced labor at CJ's seafood, a Wal-Mart supplier in Louisiana.<sup>93</sup> In response,

Wal-Mart dispatched Accordia to undertake an investigation. Wal-Mart says Accordia was “unable to substantiate claims of forced labor or human trafficking at CJ’s seafood.”<sup>94</sup> In July, however, the Labor Department fined CJ’s approximately \$385,000 for labor violations.<sup>95</sup>

Ali Enterprises, a Karachi ready-made garment factory, caught fire in September 2012, killing almost 300 workers.<sup>96</sup> Locked doors prevented workers from escaping the factory, windows were barred. The factory was officially registered as employing 250 workers but more than 1,000 were employed there at the time of the fire.<sup>97</sup> In principle, these are the kind of violations that an inspector with specialized knowledge of safety and records-keeping can spot and change in the course of a one or two day audit; certain experts think it is one of the high points of due diligence monitoring (cf. Amenguel [2009]; Barrientos and Smith [2006]). UL Responsible Sourcing, an accredited FLA monitor, audited Ali Enterprises three times. After finding some fire safety violations in 2007, UL verified that Ali Enterprises had taken necessary corrective actions in December 2011.<sup>98</sup>

Tazreen fashions, a Dhaka, Bangladesh factory caught fire in November 2012, killing 112 people. UL initially denied that it ever carried out an audit at Tazreen. A cover page of a December 2011 inspection report by UL (which was then called STR Responsible Sourcing), however, was found in the factory.<sup>99</sup> In a December *New York Times* article the company said that it had inspected the building but that it was not responsible for ensuring that the factory’s fire escapes and stairwells were adequate. Instead, it claimed that it was the job of the local building inspector to ensure that the building was safe.<sup>100</sup> This argument doesn’t hold up to scrutiny. It is technically the job of the government fire inspector to inspect and ensure the building is safe just as it is technically the job of the government to ensure that its laws—including those pertaining to labor—are enforced. If this ideal was achieved, there would be no need for factory audits at all. Since the reality of the situation in many countries is far from ideal, however, monitors exist to ensure that, at the very least, these basic safety requirements are met.

These instances of poor monitoring only came to light after public, catastrophic events. While they represent only a small sample of all audits, we have no reason to believe that Accordia or UL carried out these audits any differently than they would any other. At the least, they show that single day, due diligence factory audits are ineffective at preventing basic labor violations. At the worst, they speak to willful negligence on the part of private monitors. The FLA’s extensive use of these private monitors, therefore, should be a cause for concern.

#### **4.3.2. Internal Monitors**

While the FLA commissions external monitors to audit only 5% of brand affiliates’ source factories each year, the brand itself is expected to ensure compliance in all applicable (though not de minimis) facilities. Though these internal compliance programs are just as secretive as external private monitoring programs, a small batch of case studies provide illuminating glimpses into this area.

Locke, Qin, and Brause (2006) use a unique database of factory audit reports from over 800 of Nike’s suppliers. Nike is a curious—though by no means unique—case because, despite

having one of the largest internal monitoring infrastructures in the apparel industry, many of its source factories continue to be found to have poor labor standards. Locke et al (2006) confirm these casual observations, concluding that “analyses of Nike’s own data suggest that conditions in some of its suppliers have improved somewhat but that in many of them, things have either remained stable or deteriorated.” More generally, this suggests that due diligence monitoring of the type used by internal monitoring programs and the FLA ought to be replaced with different strategies.

In another study, Locke, Amengual, and Mangal (2009) examined the internal monitoring efforts of ABC, an unnamed, multi-billion dollar apparel firm. ABC is affiliated with the FLA and its internal monitoring program is accredited by the Association. They are considered to be a leader in corporate social responsibility. An examination of the compliance status of ABC source facilities, however, reveals that the firm sourced 53% of its products from facilities that were explicitly not approved by the company’s internal compliance monitors; only 24% were approved. The remaining 26% of facilities were either “in progress” towards compliance or “required follow-up” to assess compliance. If a factory is not approved by monitors, then some combination of “terminal,” “significant,” and/or “minor flaws” of ABC’s Code of Conduct were found by monitors. In principle, this means that orders to the factory should be placed on hold until compliance could be verified.

ABC’s monitoring staff was found to be stretched thin and lacking the training necessary to do audits. They carried out hurried, day-long audits and monitors recognized that they missed violations. One monitor was quoted as saying that he ended his audits after recording the first forty violations he encountered. Monitors were more likely to report safety and records-keeping violations than harassment, illegal firings, or problems with pay. Even though the monitoring team was putting in a good-faith effort, it was found that other parts of the company oftentimes made compliance difficult: “sourcing departments continue to squeeze factories on price, compress lead times, and demand high-quality standards.” As evidenced by the statistics presented above and confirmed qualitatively in the paper, sourcing departments placed orders with factories without regard to monitoring reports. Thus, while factories are told to comply with ABC’s Code of Conduct, ABC’s sourcing practices implicitly encourage suppliers to follow practices that commonly lead to code violations. ABC may have a legitimate concern for labor rights. It is not, however, willing to systematically change its operational practices to improve labor standards in its own source factories. Since the FLA considers ABC’s compliance program to be one of the best in the industry, one may infer that the programs of other brands are on par or worse than ABC’s.

Amengual (2009) investigates the internal monitoring program of another FLA brand in the Dominican Republic. This firm, which we’ll call XYZ,<sup>101</sup> also sources apparel from hundreds of factories across the world. Monitors for XYZ were stretched for time, spending the majority of their annual factory visit reviewing factory documents. While this may be an effective tool for finding hours and wage violations, the success of such a process depends on the honesty of factory management. Monitors also toured the factory, looking for safety violations. While XYZ

monitors did attempt to help managers with strategies for compliance, sometimes their recommendations paper over more serious problems in the work environment.<sup>102</sup> Monitors spent the least amount of time talking to workers. Workers, however, were often unwilling to talk to brand monitors, despite efforts by the monitors, out of fear of that they would be fired if they reported violations.<sup>103</sup> Workers' fear of losing their jobs from talking to XYZ monitors is not unfounded. One of XYZ's only courses of action to force a factory into compliance is to make a *credible* threat to cut off orders—XYZ has no program in place to reward compliant factories. The result of this, however, is that problems relating to harassment, bargaining, and days off are rarely detected.

These three examples of leading FLA affiliate brands shows that, despite implementing large internal compliance programs, brands have been unsuccessful in improving the conditions under which their products are made. The latter two cases suggest that two major factors contribute to this result. First, internal monitors are often unable to carry out in-depth factory audits. They focus on easily-observable violations but spend little time on problems related to enabling rights—those rights that would allow workers to bargain for a safe and equitable workplace on their own. Second, brands often send mixed messages to factories. On the one hand, they demand compliance with the Code of Conduct. On the other hand, they seek to squeeze the lowest prices and fastest production times out of factories. These demands, in turn, lead to codes violations; a factory cannot pay workers even the minimum wage, for example, if a brand isn't willing to pay a price consistent with it. The FLA, however, continues to depend on internal monitoring programs to carry out the majority of its monitoring work. It focuses on ensuring that brands have an infrastructure in place to monitor factories but does not require affiliate brands to consider the actions the brand takes—especially in sourcing decisions—that push factories towards labor standards violations.

#### **4.3.3. FLA Investigations**

We have shown that the FLA's routine external and internal monitoring programs suffer from a variety of deficiencies. Now, we consider a third type of investigation undertaken by the FLA: investigations based on third-party complaints. Four recent cases are presented here. The FLA's ongoing investigations into conditions at several apparel factories are considered first. Then, we examine the FLA's investigation into labor standards for Apple at Foxconn, the electronics manufacturer.

In early 2011, the FLA received a complaint from a Honduran women's organization. The complaint alleged that almost sixty workers had suffered debilitating injuries at Gildan factories due to long shifts, the intense pace of work, and high production targets. Though nearly two years have passed since the initiation of the complaint, the FLA has yet to issue a preliminary or final report of its findings. A summary of the draft, however, is provided by the Maquila Solidarity Network (MSN), a Canadian labor and women's rights organization. The FLA plans to recommend that Gildan increase worker participation in an already existing health and safety program. It makes no recommendations concerning root cause operational practices

such as the pace of work, the “4x4” work system (wherein workers work four 11.5 hour days and take four days off), or production targets. Lynda Yanz, MSN’s Executive Director, is quoted as saying, “It’s very unfortunate that the FLA has not undertaken a serious assessment of Gildan’s ergonomics program as well as the impacts of the company’s production methods on workers’ health.”<sup>104</sup> Yanz is a member of the FLA Board of Directors.

The FLA is carrying out a similar investigation at Honduran factories supplying FLA affiliate Hanesbrands. Though the complaint was filed at the same time as the Gildan complaint—March 2011—the investigation was not set to begin until August 2012. The same team of investigators used for the Gildan investigation was slated to undertake this investigation. The MSN believes it will come to the same conclusions.<sup>105</sup>

Another FLA investigation into Bratex, a supplier of FLA affiliate Russell Brands/Fruit of the Loom has yet to yield any results despite beginning in February 2011. In this case, thirty-one workers lost their jobs after raising concerns about wages, bonus payments, and their freedom to associate. While labor disputes can oftentimes stretch over a long period of time, these cases demonstrate that the FLA, after taking years to issue a report, is consistently failing to implement meaningful change in the factories it investigates. The Clean Clothes Campaign, a European anti-sweatshop initiative, only began to publicize the Bratex case because it no longer believed that the FLA and the brands involved could resolve the case in a fair and just manner.<sup>106</sup> The FLA makes no mention of the three cases presented here on its website.

We now turn to the FLA’s investigation into labor conditions at three Foxconn factories producing Apple products in China. Unlike most other labor rights investigations, the FLA’s work for Apple was followed closely by the media. Third-party documentation of the investigation, therefore, is plentiful. Moreover, since this was a high-stakes investigation both for Apple and the FLA, we can assume that the FLA’s investigation reflects its best effort.

After a new set of media reports on labor conditions at Apple’s suppliers in China led to large-scale public outcry against the company in early 2012, Apple affiliated with the FLA. Even before the affiliation was official, however, the FLA began an investigation. From February to August 2012, the FLA carried out both monitoring and verification investigations at three Foxconn factories, issuing widely publicized reports on both. The prompt and public actions taken by the FLA in this case stand in stark contrast to the slower and more opaque actions observed in the less-widely publicized apparel factory cases discussed above.

Two FLA external monitors carried out investigations at three Foxconn factories in February 2012. The process was closely followed and the FLA president, Aurret Van Heerden, gave interviews during the investigation, stating, for instance, that Foxconn’s “facilities are really world class.”<sup>107</sup> The *New York Times* registered the response of the founder of Verité, an FLA-accredited non-profit external monitor: “That he [van Heerden] would make any comments prior to workers being interviewed off-site in a confidential environment is really somewhat premature... He doesn’t speak Chinese and he is not a trained auditor qualified to make quick assessments.”<sup>108</sup>

FLA monitors got a sense of workers' attitudes through a survey. Monitors also interviewed a small sample of workers. Most of these interviews, however, occurred at the factory. Only 14%, 23%, and 9% of interviews were carried out off-site at the Chengdu, Longhuan, and Guanlan facilities, respectively.<sup>109</sup> Ordinarily, on-site interviews are not a best practice because workers are less willing to be frank with monitors that are hired by their employers. This is especially troubling in the Foxconn case, however, because of how tense employee-management relations are. The monitors found substantial violations relating to safety, overtime, overtime compensation, and worker-management relations. Though the FLA code now recommends a living wage, no such recommendation was made in this case. Apple and Foxconn pledged to implement a remediation plan immediately.

In late June, 2012, the FLA monitors returned to the factories to verify that these problems were being remediated. The quick turnaround—five months—on verification is curious in itself. The FLA states in its 2011 annual report that, “In our experience, a two- to three-year period should lapse between the development of a corrective action plan and verification in order to evaluate the impact of the more complex verification plans.”<sup>110</sup> Following these audits, the monitors reported that “steady progress has been made at the three facilities...and all remediation items due within the timeframe have been completed, with others ahead of schedule.”<sup>111</sup>

SACOM, a Chinese labor rights organization, also investigated conditions at six Foxconn facilities (including two facilities visited by the FLA) in the first half of 2012. They found that workers were forced to sign up to the company-controlled union by management and were unaware of the union's purpose. Workers reported that managers often used abusive disciplinary measures; these measures included, but were not limited to, forcing workers to write and then read aloud letters confessing their guilt. Overtime hours required by management were found to depend on the product produced in the factory. SACOM investigators found that workers producing what was then the newest version of the iPad were forced to work more than 80 hours of overtime per month—far in excess of the Chinese legal limit. Though Foxconn initially promised that it would cut down on overtime in early 2011, it now promises that it will comply with the Chinese legal limit by July 2013. Unpaid overtime work was also a problem. Workers had no information concerning the chemicals they use in production and complained that their injuries were rarely reported. Only 10% of interviewees were aware of the FLA or its report—some knew only because management had asked them to prepare for the inspections. In addition to not informing workers about the FLA's findings, managers warned interviewees not to talk to journalists or researchers. This directly contradicts the FLA president's claim that, “Workers are very outspoken, they're not intimidated at all.”<sup>112</sup> Though SACOM conducted its interviews outside the factory, they reported being obstructed in their investigation by men working for Foxconn.<sup>113</sup>

In September 2012, SACOM carried out an investigation at the Foxconn factory in Zhengzhou. Though the FLA did not investigate Zhengzhou, it produces 70% of all iPhone 5s.<sup>114</sup> SACOM found that none of the work improvements reported at the Shenzhen factories by the

FLA verification report had spread to Zhengzhou. There they found that required overtime rose to illegal levels in order to fill the demand for the new iPhone. Problems with abusive management practices, bathroom breaks, and lack of true collective bargaining were also found. In order to make up for high worker turnover, local governments have recruitment quotas that must be met and educational institutions had to supply students to work as “interns” on an assembly line.<sup>115</sup>

Though there has been much dispute as to whether or not these internships are forced on students, the FLA verification report stated that Foxconn had made “significant improvements” to its internship program. It added that this development would help workers at all factories, not just those directly monitored by the FLA.<sup>116</sup> A separate report by *Envoyé Spécial*, a French television program, confirmed SACOM’s findings from the Zhengzhou plant. They interviewed student interns who said that they didn’t desire to work at the factory but were told that they would lose their diploma if they did not. The report concluded that the high worker turnover and half-built (though inhabited) dormitories they observed were due to demand for the iPhone 5.<sup>117</sup> Other reports relating to the internship program’s use of forced labor and underaged workers have emerged in the past few months.<sup>118</sup>

Many argue that the internship program is a response to Foxconn’s inability to obtain employees for long periods of time—an indication of worker dissatisfaction. More explicit forms of dissatisfaction were expressed in late September 2012 at a Foxconn factory producing iPhone parts when workers rebelled against harsh treatment doled out by managers and security guards.<sup>119</sup> In October 2012, three to four thousand workers went on strike at the Zhengzhou iPhone after Apple issued new quality control standards that they could not meet.<sup>120</sup> On January 10, 2013, workers at one plant again went on strike, this time for higher wages.<sup>121</sup>

In its press releases, the FLA gave the impression that both Apple and Foxconn were committed to creating safe, equitable workplaces.<sup>122</sup> Its investigation, however, only covered three Foxconn factories during a non-peak production period. As the evidence presented above shows, labor conditions at Foxconn factories—not to mention other Apple suppliers<sup>123</sup>—are far from ideal. Many of these problems can be traced back to the demands placed on suppliers by Apple. Like the apparel companies already discussed, Apple says it wants to create better working conditions but is unwilling to reform its own pricing practices, excessive quality standards, and demand for quick deliveries of large quantities of goods. The FLA makes no mention of any these factors in either its initial monitoring or verification reports. Many of the problems found by the FLA, however, were observed to be directly correlated with Apple’s demand for products. Thus, while the FLA’s reports helped to placate consumer concerns about Apple products, they did little to address the issues at the bottom of the problems they sought to solve.

In this subsection, we examined evidence on the effectiveness of the FLA’s monitoring regime. In the past year alone, several private, for-profit monitors used by the FLA have been unable to detect major labor standards violations in a number of high profile cases. Internal brand monitors, though well-meaning, are stretched too thin. Their ability to make permanent, positive changes to the workplace is hampered by the practices of other parts of the company. Finally,

FLA complaint-based investigations go on for years without any updates from the FLA. When these reports are released, however, the changes they recommend fail to take into account the root cause factors that lead to these problems. The one recent exception to this pattern of slow monitoring was the high-profile investigation the FLA undertook at three Foxconn factories. Though these investigations were prompt they provided an incomplete picture of labor conditions at Foxconn facilities and Apple suppliers in general. Independent investigators found more pervasive violations than the FLA and, importantly, found that many of these violations were related to Apple's sourcing practices. Thus, despite recent changes to the letter of its charter and code, the FLA is still failing to implement meaningful, long-lasting changes at the factories it monitors.

#### **4.4. The WRC, Universities, and Labor Standards**

We now turn to the work of the WRC and its work with universities to improve labor standards. The three cases considered here demonstrate how the WRC is better able to provide accurate, timely information to universities about ongoing cases. Universities, in turn, have used this information to inform their apparel licensing policies and, ultimately, to influence the outcome of investigations. Though the actions taken by universities in these cases may seem extreme to some, they speak to how many universities view their relationship to labor standards. Finally—and perhaps most importantly—the cases presented here show how, through their work, the WRC and universities have helped to bring about new norms in labor standards.

In 2007, the WRC undertook an investigation of Jerzees de Honduras (JDH), a factory owned by Russell Athletic, an FLA affiliate.<sup>124</sup> The WRC found that managers at JDH had fired 145 workers for their involvement in forming a union at the factory.<sup>125</sup> In response to this initial report, Russell agreed to reinstate the workers and allow the union to form. In October 2008, however, Russell announced that it would close the factory; the announcement came less than a week after union negotiations had stalled. The WRC issued another report in early November which found that the closure was illegal and motivated by animus towards the union.<sup>126</sup> After the WRC released its report the FLA, which had received the same third-party complaint, undertook its own investigation.<sup>127</sup> Though the FLA-hired private monitors initially found no infractions, it commissioned Adrián Goldin, a widely-recognized labor rights expert to write a third report after ten labor rights organizations raised objections to the initial investigation. Goldin found that the private monitor's investigation suffered from serious flaws and concluded that: "the closure of the factory has been determined, at least to a significant extent, by the existence and activity of the union."<sup>128</sup>

During this time the WRC communicated extensively with its university affiliates, releasing regular updates on its initial findings and remediation with Russell. When it was announced that the factory was to be closed and that the closure was related to the formation of a union, the WRC contacted affiliate universities, pointing out that this action violated many of their codes of conduct. The WRC did not tell universities what they ought to do; it acted instead as a source of information and helped to outline the consequences of the case for workers in



Honduras.<sup>129</sup> It does not appear that the FLA ever publicly communicated with its affiliate universities on the matter. At this point several universities began to investigate the case, whether it violated their code of conduct, and their relationship with Russell. After deliberating, a few universities decided to sever their contracts with Russell. A University of Michigan spokesperson told the *New York Times* that its committee on labor standards “found that the company had not respected the employees’ right to association and had not adhered to the company’s own standards of conduct... We do not feel that continuing the license is appropriate.”<sup>130</sup> In all, almost one hundred schools severed their contracts with Russell from late 2008 to early 2009, costing the company an estimated \$50 million in revenue.<sup>131</sup> Just as importantly, university participating drew the attention of the media, which placed additional pressure on Russell.<sup>132</sup>

During this time, the WRC continued to work to report on actions taken by Russell and ensure that, if JDH did close down, that the closure was carried out in an orderly fashion and without violence. The FLA also began to change its tone on the issue, placing Russell on special review in June 2009.<sup>133</sup> Sometime in 2009, Russell contacted the WRC indicating that it was willing to once again negotiate with the union. In late 2009 the parties reached an agreement whereby a new factory was opened and workers were reinstated to their positions.<sup>134</sup> Russell’s decisions were undoubtedly influenced by the actions of universities. An FLA board member from the university caucus reported Russell’s situation after the resolution: “There was still about 30 percent [of universities] who had not reinstated their licenses and their [Russell’s] business is still suffering greatly. There is concern that they will never recapture the business to the level that they were prior to this incident.” While many universities were willing to reexamine their contracts with Russell, the same board member noted that its false promises of change in the past made them leery of the company’s statements.<sup>135</sup> Fortunately, in its latest verification report the WRC found that significant progress has been made in carrying out the agreement.<sup>136</sup>

A second precedent-setting case where universities played a key role dealt with the closing of the Visiontex and Hugger factories in Honduras. In response to a third-party complaint about the circumstances of the closure, the WRC undertook an investigation in 2009. The resulting report found that both factories were abruptly shut down in January 2009 after Nike—both factories’ largest client—declined to renew its contract. The owners fled the factory; failing to pay the workers the severance they were owed.<sup>137</sup> The importance of these payments was outlined by Scott Nova, the executive director of the WRC: “the reason why most of these countries mandate that employers pay severance is that there is no other form of social insurance to protect workers in the case of job loss. There’s no unemployment insurance, there’s no welfare, there’s no food stamps. So when people lose a job, this legally mandated severance is all they have to rely upon.”<sup>138</sup> In light of these findings, the WRC urged Nike to compel its subcontractors—which were still solvent and operating—to pay the amount legally owed to the workers. The FLA declined to take up the case.

Though Nike concurred with the WRC on the facts of the case, it declined to take action. Instead, it stated that it had erroneously included these factories in its list of suppliers that

produced university goods.<sup>139</sup> If this were the case, then Nike did not violate any university's code of conduct, which can only apply to apparel bearing the university logo. Constant pressure from university students and officials, however, caused Nike to take small actions to help the workers. In March 2010, however, the WRC reported that its investigators had found that Nike was, indeed, manufacturing university apparel at Hugger and Visiontex. As the WRC pointed out in its report, Nike had attempted to use a similar tactic in a 2008 case regarding a factory in Malaysia.<sup>140</sup> In the wake of this report, two universities ended their contract with Nike and several others threatened to follow suit.<sup>141</sup> As in the Russell case, the participation of universities made it costly for Nike to ignore the plight of the workers. The WRC kept universities up to date on what was happening in Honduras, finding information that otherwise would have never come to light. As a result of this pressure, in July 2010 Nike agreed to pay \$1.54 million in severance to workers, among other concessions.<sup>142</sup> This was the first case of its type. While companies had previously agreed to pressure their subcontractors to pay severance (the line of action that the Hugger and Visiontex workers and WRC were asking for), no brand had ever paid direct severance to workers.

The significance of the Hugger/Visiontex case is best understood in the context of later cases. Nike, at least, now understood that it was on the hook when its suppliers failed their workers. When the owners of the PT Kizone factory in Indonesia fled, it was Nike who reported to the WRC that none of the factory's 2,800 workers had received their severance payments. The brand, moreover, paid \$500,000 to the workers and compelled two other entities to pay \$1.055 million more.<sup>143</sup> Other brands, such as Adidas, however, refused to contribute, using many of the same tactics Nike used in the Hugger/Visiontex case.<sup>144</sup> As of February 2013, Adidas has yet to pay any severance.<sup>145</sup>

While, ideally, the owners of supplier factories would pay the severances legally owed to their workers, this rarely happens. Without the pressure universities placed on brands, workers in all three of the factories discussed would have never received any severance. In cases such as these, universities play the role of moral compass, insisting that brands take action even if they are not technically required to do so. For example, in his letter to Adidas announcing the university's decision to sever ties with the brand, Georgetown's Vice President for Public Affairs wrote:

As a Catholic and Jesuit university, deeply committed to the dignity of all persons and human labor, Georgetown University is steadfast in its commitment to improving the working conditions and lives of workers involved in the production of apparel that bears its name or logo.<sup>146</sup>

Robert L. Barchi, President of Rutgers, took a similar stance when he announced that the university had cut its contract with Adidas in November 2012: "Adidas' refusal to acknowledge its responsibilities...is not consistent with the values of this university."<sup>147</sup> Ethically-based decisions such as these can then force brands to reevaluate their operating practices. In the PT

Kizone case, Nike decided to pay workers directly. Brands can also keep track of factories that are likely to suddenly close (e.g. after a major client cuts its contract) and ensure that suppliers have enough funds set aside in the case of a closure. The ultimate goal of all of these efforts is to find ways to ensure that relations between workers and brands are firmly within the bounds of national and international law. Without outside prompting from well-respected, influential entities such as universities, however, it is doubtful that any progress would ever be made.

By discussing the actions of these other universities, we may have given the impression that WRC affiliation necessarily involves cutting contracts and the like. It should be stressed that this is not the case. The WRC merely provides information to university affiliates and allows them to act on that information in whatever manner they deem fitting. The point of discussing these cases was to consider how other universities understand their responsibilities with regard to labor standards and, more importantly, to show that the WRC is more than just a traditional monitoring organization. Instead of simply policing factories for infractions to a code of conduct, the WRC seeks to understand and fix the underlying factors within a given factory and the wider apparel industry that lead to these infractions. While some brands may be unwilling to confront these problems at first, the steady, constructive pressure the WRC and its university affiliates place on brands can cause these brands reconsider how they do business.

## **5. Conclusion: Labor Standards and Pitt**

At the outset of this paper, we set ourselves the task of showing that the Worker Rights Consortium was a more effective labor rights monitoring organization than the Fair Labor Association. What evidence has been presented to support this claim? First, we examined the policies and practices of the FLA and WRC. We found that, over the past ten years, the trend has been for the FLA to attempt to catch up to the standards adopted by the WRC from its founding. The FLA's *Code of Conduct* long lacked strong wage provisions and language protecting workers' freedom to associate. Though it recently amended its *Code* in a way that brought it closer in line with the policies of the WRC and other labor rights organizations, it is by no means watertight. For example, despite its own forceful arguments that workers' wages may not reflect productivity and, in general, be unfair, the FLA has yet to do anything to advocate living wages in the factories it monitors.

Of course, these standards mean nothing if the organization is not able to implement a successful monitoring program. The FLA continues to rely on internal and external monitors to carry out quick due diligence audits. These monitors often lack the time and skills necessary to diagnose labor issues in factories, let alone see to it that the remediation they mandate is permanent and actually helps workers. The WRC, on the other hand, undertakes longer investigations that focus on the underlying problems that lead to poor labor conditions. The WRC is better able to implement lasting change at a factory because it uses the skills and resources of the surrounding community to understand the situation and, more importantly, to build the community's capacity to solve labor problems on its own in the future.

Though these differences may seem paltry in the abstract, they lead to starkly different outcomes. The cases examined in section 4 showed that FLA monitoring model has failed to help workers in the factories it audits. Part of this, no doubt, has to do with the inability of monitors to find and report all violations during their short visits. Even if these monitors could catch every violation in the course of an audit and write up a comprehensive remediation plan, though, it is unlikely that this would lead to any lasting change. For, at the same time these demands to remediate are being made, the sourcing departments of the very same brands are demanding that the supplier deliver more products, faster, and at the lowest prices possible. When suppliers are squeezed like this, is it any surprise that they continue to violate their own Codes of Conduct?

We argued that the ineffectiveness of the FLA stems not from some sinister plot but, rather, from organizational inertia. Brands simply want to maintain control over their business. A negative side-effect of this desire, however, is that, by maintaining control, they fail to make the operational changes necessary to improve labor standards in the factories from which they source their goods. Unfortunately, the FLA has by and large played the role of enabler to these brands. The WRC, on the other hand, is an organization that has consistently stuck to its principles and successfully pushed brands to actually follow through on their stated values.

With this evidence in mind, we can confidently conclude that the WRC is, in fact, a more effective labor rights monitoring organization than the FLA. This, then, completes our argument. Pitt cares about the conditions under which its branded apparel is produced and, therefore, joins labor rights monitoring organizations. Given a choice between more and less effective organizations, Pitt should at least affiliate with the more effective one. The WRC is a more effective organization than the FLA. Pitt therefore, ought to affiliate with the WRC.

Of course, by affiliating with the WRC or any other organization, Pitt-branded apparel will not suddenly become sweat-free. At the same time, affiliating with the WRC is more than just a symbolic act. By becoming an affiliate university of the WRC, Pitt will have partnered with an organization that understands the challenges involved in improving labor standards and has a proven track record of doing so. An organization, moreover, that is attuned to the problems facing workers who produce as it is to the moral and operational dilemmas faced by the universities and consumers. No, WRC affiliation is not a cure-all; it is, however, one significant step. Pitt ought to take that step.

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## Notes

<sup>1</sup> Euromonitor. (2011). Apparel. Retrieved from <http://www.portal.euromonitor.com.pitt.idm.oclc.org/Portal/Pages/Magazine/IndustryPage.aspx>.

<sup>2</sup> World Bank (2012), p.73, table 3.8.

<sup>3</sup> Banyan, "Garment Factory Fires: A 'Distinctly South Asian Tragedy,'" *Economist Asia Blog*, *The Economist*, December 6, 2012, <http://www.economist.com/blogs/banyan/2012/12/garment-factory-fires>.

<sup>5</sup> For the purpose of this paper, we define "ethically made" products to be those products that are manufactured under certain minimum conditions and with certain materials, where the minimum conditions and materials are subjectively defined by the consumer. While this operational definition is, no doubt, relativistic, it is the goal of this paper and NoSweat to allow greater consumer sovereignty in the area of labor conditions rather than to impose ethical beliefs on consumers.

<sup>6</sup> Gideon Bradshaw, "Student Group Advocates Apparel Oversight," *The Pitt News*, October 24, 2012, [http://www.pittnews.com/index.php?option=com\\_content&view=article&id=70200:student-group-advocates-apparel-oversight&catid=32:news&Itemid=321](http://www.pittnews.com/index.php?option=com_content&view=article&id=70200:student-group-advocates-apparel-oversight&catid=32:news&Itemid=321).

<sup>7</sup> Cf. Locke et al. (2012) O'Rourke (2003)

<sup>8</sup> E.g. Gap Inc. owns the Gap, Old Navy, and Banana Republic brands, among others.

<sup>9</sup> Jeffrey Ballinger, "The New Free-trade Heel.," *Harper's Magazine*, August 1992, 1707, <http://web.ebscohost.com/ehost/detail?sid=e1f01e5e-b464-4d1b-a2d7-d722eb1d5ffa%40sessionmgr10&vid=1&hid=19&bdata=JnNpdGU9ZWZwhvc3QtbGl2ZQ%3d%3d#db=aph&AN=9209072006>.

<sup>10</sup> FLA policies have undergone substantive revision since the Association's founding. These policies and concept of a living wage will be detailed in section 3.1.

<sup>11</sup> "Minutes from the Worker Rights Consortium Founding Meeting" (Judson Memorial Church, New York, Friday, April 7, 2000), [http://www.workersrights.org/about/meeting\\_040700.pdf](http://www.workersrights.org/about/meeting_040700.pdf).

<sup>12</sup> Worldwide Responsible Apparel Production Certification Program

<sup>13</sup> The primary concern of just about every commentator is that the practices used by these firm-led initiatives succeed in depicting the brand as "socially responsible" without actually doing anything to help the workers who produce their products. For academic and NGO evaluations see O'Rourke (2003), Wink (2003), Rodriguez-Garavito (2005). We take this issue up in detail in section 4.

<sup>15</sup> The arguments are: 1. Irrational or non-optimum behavior 2. The presence of multiple equilibria 3. The large numbers problem (i.e. fallacies arising from mapping valid reasoning applied to a single case to the aggregate case)

<sup>16</sup> Miller (2003) quoted in Powell and Zwolinski (2012)

<sup>17</sup> Nicholas Kristof, "Where Sweatshops are a Dream," *The New York Times*, January 14, 2009, <http://www.nytimes.com/2009/01/15/opinion/15kristof.html>; Paul Krugman, "In Praise of Cheap Labor," *Slate*, March 21, 1997, [http://www.slate.com/articles/business/the\\_dismal\\_science/1997/03/in\\_praise\\_of\\_cheap\\_labor.html](http://www.slate.com/articles/business/the_dismal_science/1997/03/in_praise_of_cheap_labor.html).

<sup>19</sup> Point 3 is somewhat technical but a rather interesting interpretation of the evidence. The reservation wage is the lowest wage one must be paid to be induced to enter the labor market. A reservation wage may be based on the minimum wage if workers have little guidance on what wage they should expect. This idea may be extended to non-monetary forms of compensation or mandated benefits, such as safety, and provide another rationale for labor standards.

<sup>20</sup> Most of this inconclusiveness stems from the inability of cross-country studies to control for confounding factors.

<sup>21</sup> Cf. Nicholas Kristof, "Let Them Sweat," *The New York Times*, June 25, 2002. More than other organizations, the WRC is prone to this criticism because of its association with North American labor unions. The WRC, however, does not take any stance on questions of international trade. The United Students Against Sweatshops (USAS), which holds five positions on the WRC board, emphasizes that its own stance is not anti-trade. USAS's work with UNITE, a union, has helped to soften protectionist positions in the anti-sweatshop movement: "UNITE's Ginny Coughlin [said] 'USAS has inspired us to think more globally'" (Featherstone 2002, p. 18). No union holds permanent seats on the WRC board: "Governance," 2007, <http://www.workersrights.org/about/govern.asp>.

<sup>23</sup> It is also commonly recognized that higher labor standards can lead to lower worker turnover, benefitting employers. cf. Kleiner and Yee (1997) cited in Freeman (2009), and "Examining the Impact of Long hours on

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Factory Workers,” The Fair Labor Association, <http://www.fairlabor.org/blog/entry/examining-impact-long-hours-factory-workers>.

<sup>24</sup> It should be stressed that consumers’ willingness to pay a premium for ethically made goods is not the same thing as saying that ethically made goods cost more to produce. To the contrary, it is not uncommon that better labor conditions can be achieved by making changes to existing operating practices. Strategies such as this are at the heart of the commitment model proposed by Locke et al. (2009).

<sup>25</sup> Ethical labeling initiatives come with their own share of problems. As already noted, the factories that recently burned in Pakistan and Bangladesh were certified by several of these labeling initiatives. See also Brown et al (2011).

<sup>26</sup> Survey evidence is presented in Elliot and Freeman (2003), table 2.1.

<sup>27</sup> e.g. by propagating information indicating that a factory is in compliance with a Code when it is not.

<sup>28</sup> Wick (2003); “History,” Fair Labor Association, 2012, [www.fairlabor.org/history](http://www.fairlabor.org/history). Joint Initiative on Corporate Accountability and Workers Rights. 2006, <http://www.jo-in.org/english/index.html>.

<sup>29</sup> “Mission,” Worker Rights Consortium, 2007, <http://www.workersrights.org/about/>.

<sup>30</sup> e.g. Fair Labor Association, “Apple Joins FLA,” January 13, 2012, <http://www.fairlabor.org/blog/entry/apple-joins-fla>.

<sup>31</sup> Worker Rights Consortium, “WRC Affiliated Colleges and Universities,” 2013, <http://www.workersrights.org/about/as.asp>.

<sup>32</sup> Fair Labor Association, “Colleges & Universities,” 2012, <http://www.fairlabor.org/affiliates/colleges-universities>. Fair Labor Association, “Civil Society Organizations,” 2012, <http://www.fairlabor.org/affiliates/civil-society-organizations>. Fair Labor Association, “Participating Companies,” 2012, <http://www.fairlabor.org/affiliates/participating-companies>.

<sup>33</sup> Worker Rights Consortium, “Governance,” 2007, <http://www.workersrights.org/about/govern.asp>. “Board of Directors,” Fair Labor Association, 2012, <http://www.fairlabor.org/about-us/board-directors>.

<sup>34</sup> Wick (2005). For the sake of brevity we only detail the dues menus of the FLA and WRC that are applicable to a large university like Pitt.

<sup>35</sup> Worker Rights Consortium, “WRC Bylaws,” 2007, [http://www.workersrights.org/about/wrc\\_bylaws.asp](http://www.workersrights.org/about/wrc_bylaws.asp). Worker Rights Consortium, “2007-2008 Report to Affiliate Universities and Colleges,” 2008, [http://www.workersrights.org/linkedddocs/WRCReportToAffiliates\\_20072008.pdf](http://www.workersrights.org/linkedddocs/WRCReportToAffiliates_20072008.pdf); The FLA distinguishes between participating companies (firms that join the FLA on their own accord) and university licensees (firms that become involved with the FLA because they produce University-branded merchandise). As FLA compliance and monitoring rules apply equally to both types of firms, we make no distinction between the two in our discussion.

<sup>36</sup> Worker Rights Consortium, “Obligation and Benefits of Affiliation,” 2007, <http://www.workersrights.org/howto/cost-benefit.asp>.

<sup>37</sup> Fair Labor Association, “FLA Charter”, last amended June 20, 2012, [http://www.fairlabor.org/sites/default/files/fla\\_charter\\_as\\_amended\\_6-20-12.pdf](http://www.fairlabor.org/sites/default/files/fla_charter_as_amended_6-20-12.pdf), part IV.

<sup>38</sup> Fair Labor Association, *FLA Workplace Code of Conduct and Compliance Benchmarks*, revised October 5, 2011, [http://www.fairlabor.org/sites/default/files/fla\\_complete\\_code\\_and\\_benchmarks.pdf](http://www.fairlabor.org/sites/default/files/fla_complete_code_and_benchmarks.pdf). Worker Rights Consortium, “Model Code of Conduct,” 2007, <http://www.workersrights.org/university/coc.asp>.

<sup>39</sup> Maquila Solidarity Network “Codes Memo 23: Who’s Got the Universal Code?” 2008, <http://en.maquilasolidarity.org/sites/maquilasolidarity.org/files/MSN-CodesMemo23-ENG.pdf>, 9-10.

<sup>40</sup> The WRC has no official code, only a set of best practices. WRC officials view the model code as a basic statement of the organization’s policies.

<sup>41</sup> WRC, “Model Code,” 9.

<sup>42</sup> FLA, “Compliance Benchmarks,” FOA.17.

<sup>43</sup> WRC, “Model Code,” 1. For discussions of living wage provisions see, Worker Rights Consortium, “Living Wage Analysis for the Dominican Republic,” 2008, <http://www.workersrights.org/linkedddocs/WRC%20Living%20Wage%20Analysis%20for%20the%20Dominican%20Republic.pdf>. Daniel Vaughn-Whitehead, *Fair Wages: Strengthening Corporate Social Responsibility* (Cheltenham Glos, UK: Edgar-Elgar, 2010).

<sup>44</sup> MSN, “Codes Memo 23,” 16.

<sup>45</sup> FLA, “Compliance Benchmarks,” p. 34, C.1.3.

<sup>46</sup> FLA, “Wage Fairness, It’s Not Just About the Money,” March 9, 2011, <http://www.fairlabor.org/blog/entry/wage-fairness-it%E2%80%99s-not-just-about-money>.



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<sup>47</sup> Though the FLA's commitment to a living wage appears its Code of conduct as something that the Association will work towards, it has also states that \the FLA has created a self-assessment tool that companies and factories can use to assess whether their wage practices are fair and sustainable." Ibid.

<sup>48</sup> FLA, "Compliance Benchmarks," 1.

<sup>50</sup> Worker Rights Consortium, "WRC Investigative Protocols," 2007, [http://www.workersrights.org/Freports/investigative\\_protocols.asp](http://www.workersrights.org/Freports/investigative_protocols.asp), VI.E.3.

<sup>51</sup> Ibid.

<sup>52</sup> Fair Labor Association, *FLA Charter*, 27.

<sup>53</sup> Worker Rights Consortium, "The Designated Suppliers Program—Revised," February 17, 2012, <http://www.workersrights.org/dsp/DSP%20Program%20Description,%202012.pdf>.

<sup>54</sup> The FLA does have a program for accrediting firms' internal monitoring programs. Fair Labor Association, *FLA Charter*, 26.

<sup>55</sup> Individuals were listed as monitors for the remaining 14%, it was not possible to determine their status. Statistics computed by author. Fair Labor Association, "Tracking Charts," 2012, <http://www.fairlabor.org/transparency/tracking-charts>. Data available upon request.

<sup>56</sup> To ensure objectivity, neither current employees of the workplace nor the originator of the complaint that led to the investigation may be included on the team.

<sup>57</sup> WRC, "WRC Investigation Protocols," 6-7.

<sup>58</sup> These include facilities where the firm contracts for six months or less in a twenty-four month period *or* where the firm accounts for less than 10% of output. A firm can classify up to 15% of its facilities as de minimis with FLA approval. FLA, "FLA Charter," 6.

<sup>59</sup> The charter also stipulates for alternative criteria if none of those listed are met by the firm. Note that the definitions of de minimis and applicable facilities set out here are not complementary. That is, though the definition of de minimis defines auditable factories in negative terms and the definition of applicable products in positive, it seems possible to construct an example factory that would not necessarily fall into either category. We give the FLA the benefit of the doubt and assume that these difficulties are worked out in the application phase of firm affiliation. FLA, "FLA Charter," 21.

<sup>60</sup> Fair Labor Association, *FLA Charter*, 23.

<sup>61</sup> Fair Labor Association, "Complaints and Investigations," 2012, <http://www.fairlabor.org/transparency/complaints-investigations>.

<sup>62</sup> Fair Labor Association, "FLA Charter," 30.

<sup>63</sup> WRC, "WRC Investigation Protocols," 5.

<sup>64</sup> Ibid. 5-6.

<sup>65</sup> FLA, "Compliance Benchmarks," 3.

<sup>66</sup> FLA, "Compliance Benchmarks," 2.

<sup>67</sup> WRC, "WRC Investigation Protocols," 14; FLA, "Compliance Benchmarks," 9.

<sup>68</sup> FLA, "FLA Charter," 24-25.

<sup>69</sup> Fair Labor Association, "2011 Annual Report," 2012, [http://www.fairlabor.org/sites/default/files/documents/reports/2011\\_annual\\_report.pdf](http://www.fairlabor.org/sites/default/files/documents/reports/2011_annual_report.pdf), 20.

<sup>70</sup> For a few recent examples see: Worker Rights Consortium, "PT Kizone," 2012, <http://www.workersrights.org/Freports/PT%20Kizone.asp>; Worker Rights Consortium, "Eagle Speed Marketing," 2011, <http://www.workersrights.org/Freports/Eagle%20Speed%20Marketing.asp>; and Worker Rights Consortium, "Genesis, S.A.," 2012, <http://www.workersrights.org/Freports/Genesis%20SA.asp>.

<sup>71</sup> Worker Rights Consortium, "Factory Assessment Program," 2007, <http://www.workersrights.org/Freports/monitoring.asp>.

<sup>72</sup> WRC, "WRC Investigation Protocols," p. 13. VI.B.5.

<sup>73</sup> See Worker Rights Consortium, "Factory Investigations," 2007, <http://www.workersrights.org/Freports/index.asp#freports>.

<sup>74</sup> WRC, "WRC Investigation Protocols," p. 13, VI.B.6.

<sup>75</sup> FLA, "FLA Charter," p. 24, IX.E and pp. 20-22 XI.A, XI.B.

<sup>76</sup> Worker Rights Consortium, "Factory Database," 2007, <http://www.workersrights.org/search/>.

<sup>77</sup> FLA, "FLA Charter," p. 22 IX.A.

<sup>78</sup> Cf. United Students Against Sweatshops, "What's Wrong With the FLA?" <http://usas.org/campaigns-old/sweat-free-campus/dont-pay-the-fla/about-the-fla/>.

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<sup>79</sup> This statement is not intended to imply that employees of apparel firms are incapable of viewing labor standards as an end and, thus, deny their humanity. Here we speak only from the point of view of preserving the reputation of a brand.

<sup>80</sup> Elliot and Freeman (2003) make a similar point.

<sup>81</sup> Moody's, S&P, and Fitch issue both solicited and unsolicited ratings.

<sup>82</sup> quoted in Esbenshade (2004), p. 179-180.

<sup>83</sup> This report was based off of the work O'Rourke undertook for the Independent University Initiative (IUI). The IUI was an information gathering initiative "To understand better the conditions under which university-licensed apparel is manufactured" (IUI 2). The universities that commissioned the report were: the University of California, Harvard, the University of Michigan, Notre Dame, and Ohio State.

<sup>84</sup> FLA, "FLA Charter," VIII, quoted in Esbenshade (2004), p. 181.

<sup>85</sup> Terry Collingsworth, ILRF Executive Director, quoted in Esbenshade (2004), p. 193.

<sup>86</sup> Esbenshade (2004), pp. 183, 193.

<sup>87</sup> WRC Primo Preliminary findings p. 20.

<sup>88</sup> Esbenshade (2004), pp. 194-195.

<sup>89</sup> Firms initially paid for external monitoring directly but now pay for it by depositing funds in the account of a wholly-owned subsidiary of the FLA. See: FLA charter IX D. MSN Code update 12: [http://en.maquilasolidarity.org/sites/maquilasolidarity.org/files/codesmemo12\\_0.PDF](http://en.maquilasolidarity.org/sites/maquilasolidarity.org/files/codesmemo12_0.PDF)

<sup>90</sup> Maquila Solidarity Network, "Memo: Codes Update Number 12," November 2002, [http://en.maquilasolidarity.org/sites/maquilasolidarity.org/files/codesmemo12\\_0.PDF](http://en.maquilasolidarity.org/sites/maquilasolidarity.org/files/codesmemo12_0.PDF).

<sup>91</sup> See note 55.

<sup>92</sup> The FLA's internal verification system is not applicable in this case as verification audits are, by design, carried out several years after the fact.

<sup>93</sup> Worker Rights Consortium, "Worker Rights Consortium Assessment C.J.'s Seafood/Wal-Mart Stores, Inc. (Breaux Bridge, LA): Findings and Recommendations," June 20, 2012, <http://www.workersrights.org/Freports/WRC%20Assessment%20re%20CJ's%20Seafood,%206-20-12.pdf>.

<sup>94</sup> Adama Roston, "Wal-Mart 'Unable to Substantiate' Forced Labor Claims at Seafood Supplier," *The Daily Beast*, June 14, 2012, <http://www.thedailybeast.com/articles/2012/06/14/walmart-unable-to-substantiate-forced-labor-claims-at-seafood-supplier.html>. Maria Rodriguez and Sarah Newell, "The Link Between USC and Garment Worker Factory Fires," *The Nation*, December 19, 2012, <http://www.thenation.com/blog/171694/link-between-usc-and-garment-worker-factory-fires>. Wal-Mart makes no mention of the monitoring group it hired for Cj's or CJ's itself on its website. All Wal-Mart monitors, however, are FLA accredited external monitors. See "Audit Program Results," Wal-Mart, [http://www.walmartstores.com/sites/sustainabilityreport/2009/s\\_rs\\_auditProgramResults.html](http://www.walmartstores.com/sites/sustainabilityreport/2009/s_rs_auditProgramResults.html).

<sup>95</sup> Steven Greenhouse, "C.J.'s Seafood Fined for Labor Rights Abuses," *The New York Times*, July 24, 2012, [http://www.nytimes.com/2012/07/25/business/cjs-seafood-fined-for-labor-abuses.html?\\_r=0](http://www.nytimes.com/2012/07/25/business/cjs-seafood-fined-for-labor-abuses.html?_r=0).

<sup>96</sup> Declan Walsh and Steven Greenhouse, "Inspectors Certified Pakistani Factory as Safe Before Disaster," *The New York Times*, September 19, 2012, <http://www.nytimes.com/2012/09/20/world/asia/pakistan-factory-passed-inspection-before-fire.html?pagewanted=all>.

<sup>97</sup> Ibid. See also: Zia Ur-Rehman, Declan Walsh, and Salman Masood, "More than 300 Killed in Pakistani Factory Fires," *The New York Times*, September 12, 2012, <http://www.nytimes.com/2012/09/13/world/asia/hundreds-die-in-factory-fires-in-pakistan.html>.

<sup>98</sup> Kristi Ellis, Melissa Drier, and John Zarocostas, "Fashion's Safety Rules Attract Global Focus. (Ali Enterprises, Inc.)," *WWD*, September 21, 2012, <http://www.accessmylibrary.com/article-1G1-303854814/fashion-safety-rules-attract.html>.

<sup>99</sup> Syed Zain Al-Mahmood, Tripti Lahiri, Dana Mattioli, "Bangladesh Factory Fire: What Wal-Mart's Supplier Network Missed," December 10, 2012, <http://online.wsj.com/article/SB10001424127887324024004578169400995615618.html>.

<sup>100</sup> Steven Greenhouse, "As Walmart Makes Safety Vows, It's Seen as an Obstacle to Change," December 28, 2012, [http://www.nytimes.com/2012/12/29/world/asia/despite-vows-for-safety-walmart-seen-as-obstacle-to-change.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2012/12/29/world/asia/despite-vows-for-safety-walmart-seen-as-obstacle-to-change.html?pagewanted=all&_r=0).

<sup>101</sup> Amengual calls the firm ABC. We rename it XYZ to avoid confusion.

<sup>102</sup> Amengual (2009) notes that an XYZ monitor showed factories how to weld needle guards to sewing machines. Needle guards, though important for safety, are oftentimes removed by workers so that they can sew faster. Workers sew faster for one of two reasons: the pace of work at the factory is too fast or they are working on a

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piece rate that justifies risking a serious injury. Thus, instead of attempting to change possible underlying problems—work pace or deficient wages—XYZ monitors instead helped factory management meet the letter of the Code of Conduct.

<sup>103</sup> Luckily, in the Dominican Republic a government agency does exist that can field a small subset of these complaints. Elsewhere in the world, however, such agencies are rare.

<sup>104</sup> Yanz quoted in MSN update v17n2, sept 2012

<sup>105</sup> quoted in Maquila Solidarity Network, “FLA investigation ignores root causes of workplace injuries,” *Maquila Solidarity Update*, September 2012, 3.

<sup>106</sup> Clean Clothes Campaign, “Brands and management fail to resolve Bratex dispute,” last modified 22 October, 2012. <http://www.cleanclothes.org/news/brands-and-management-fail-to-resolve-bratex-dispute>.

<sup>107</sup> Terril Yue Jones, “Apple iPad plant conditions better than the norm: agency,” February 15, 2012. <http://www.reuters.com/article/2012/02/15/us-china-apple-idUSTRE81E1FQ20120215>.

<sup>108</sup> Steven Greenhouse, “Early Praise in Inspection at Foxconn Brings Doubt,” *New York Times*. February 16, 2012. [http://www.nytimes.com/2012/02/17/business/early-praise-in-foxconn-inspection-brings-doubt.html?\\_r=0](http://www.nytimes.com/2012/02/17/business/early-praise-in-foxconn-inspection-brings-doubt.html?_r=0).

<sup>109</sup> Fair Labor Association, “Fu Tai Hua Industrial (Shenzen) Co. Ltd.,” Appendix 1, Part 1 in “Foxconn Investigation Report,” March 29, 2012,

[http://www.fairlabor.org/sites/default/files/documents/reports/appendix\\_1.1\\_sci\\_findings\\_guanlan.pdf.pdf](http://www.fairlabor.org/sites/default/files/documents/reports/appendix_1.1_sci_findings_guanlan.pdf.pdf); Fair Labor Association, “Fu Tai Hua Industrial (Shenzen) Co. Ltd.,” Appendix 1, Part 2 in “Foxconn Investigation Report,” March 29, 2012,

[http://www.fairlabor.org/sites/default/files/documents/reports/appendix\\_1.2\\_sci\\_findings\\_longhua.pdf.pdf](http://www.fairlabor.org/sites/default/files/documents/reports/appendix_1.2_sci_findings_longhua.pdf.pdf); Fair Labor Association, “Fu Tai Hua Industrial (Shenzen) Co. Ltd.,” Appendix 1, Part 2 in “Foxconn Investigation Report,” March 29, 2012,

[http://www.fairlabor.org/sites/default/files/documents/reports/appendix\\_1.3\\_sci\\_findings\\_chengdu.pdf.pdf](http://www.fairlabor.org/sites/default/files/documents/reports/appendix_1.3_sci_findings_chengdu.pdf.pdf).

<sup>110</sup> Fair Labor Association, “2011 Annual Report,” June 2012, [http://www.fairlabor.org/sites/default/files/documents/reports/2011\\_annual\\_report.pdf](http://www.fairlabor.org/sites/default/files/documents/reports/2011_annual_report.pdf). p. 20.

<sup>111</sup> “Foxconn Verification Status Report,” August 2012.

[http://www.fairlabor.org/sites/default/files/documents/reports/foxconn\\_verification\\_report\\_final.pdf](http://www.fairlabor.org/sites/default/files/documents/reports/foxconn_verification_report_final.pdf). 3.

<sup>112</sup> Greenhouse, “Early Praise,” *New York Times*.

<sup>113</sup> Yi Yi Debby, “Sweatshops Are Good for Apple and Foxconn, But Not for Workers,” *Students & Scholars Against Corporate Misbehavior*, May 31, 2012. <http://www.scribd.com/doc/95395223/Sweatshops-Are-Good-for-Apple-and-Foxconn-But-Not-for-Workers>.

<sup>114</sup> Chris Chang, “70% of iPhone Production Now Comes From Foxconn’s Zhengzhou Plant,” *M.I.C. Gadget*, 24 May, 2012. <http://micgadget.com/26325/70-of-iphone-production-now-comes-from-foxconns-zhengzhou-plant/>.

<sup>115</sup> Yi Yi Debby, “New iPhone, Old Abuses,” *Students & Scholars Against Corporate Misbehavior*, September 20, 2012. <http://www.scribd.com/doc/106445655/New-iPhone-Old-Abuses>.

<sup>116</sup> Fair Labor Association, “Verification Status Report,” 3. [http://www.fairlabor.org/sites/default/files/documents/reports/foxconn\\_verification\\_report\\_final.pdf](http://www.fairlabor.org/sites/default/files/documents/reports/foxconn_verification_report_final.pdf)

<sup>117</sup> Steve Dent, “French reporters infiltrate Foxconn iPhone 5 factory, find few of the vaunted changes (updated),” *Engadget*, December 14, 2012. <http://www.engadget.com/2012/12/14/french-reporters-infiltrate-zhengzhou-foxconn-iphone-5-factory>.

<sup>118</sup> Bloomberg News, “Foxconn Defends Internships After Reports of Forced Work,” September 7 2012. <http://www.bloomberg.com/news/2012-09-07/foxconn-defends-internships-after-reports-of-forced-work.html>; Kevin Voigt, “Foxconn admits using underage interns in China,” *CNN*. 17 October 2012. <http://edition.cnn.com/2012/10/17/business/china-foxconn-interns/index.html>.

<sup>119</sup> Michael Martina, “China factory unrest a fresh headache for Foxconn,” September 25, 2012. <http://www.reuters.com/article/2012/09/25/us-honhai-idUSBRE88O03120120925>.

<sup>120</sup> China Labor Watch, “Update: 3000 to 4000 workers strike at Foxconn’s China factory,” October 5, 2012, <http://www.chinalaborwatch.org/news/new-433.html>.

<sup>121</sup> China Labor Watch, “Foxconn Faces Another Strike,” January 11, 2013, <http://www.chinalaborwatch.org/news/new-451.html>.

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- <sup>127</sup> Worker Rights Consortium, “Assessment re Jerzees Choloma”; FLA statement on report: “FLA to Investigate Closure at Jerzees de Honduras,” Fair Labor Association, November 7, 2008, [http://www.fairlabor.org/sites/default/files/documents/reports/fla\\_statement\\_jdh\\_11.07.08.pdf](http://www.fairlabor.org/sites/default/files/documents/reports/fla_statement_jdh_11.07.08.pdf).
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- <sup>141</sup> Greenleaf, Lake, and Levi (2013), p. 21.
- <sup>142</sup> Scott Nova, “WRC Update: Positive Resolution of Nike/Honduras Case: Memo,” July 26, 2010. <http://www.workersrights.org/university/memo/072610.html>.
- <sup>143</sup> Nike agreed to pay severance to proportion to the share of sales they accounted for in the factory. This policy has both an upside and a downside, however. The upside is that, by forcing other brands to pay their share of severance, no brand is able to free ride off of others. If brands are forced to pay in one case, moreover, they may be willing to pay in other cases. This politicking, however, means that workers suffer for longer. Perhaps in a future a scheme could be worked out whereby brands who respond pay their share of the severance and loan the rest of that is due. This would allow workers to collect the payment legally due to them quickly and incentivize the loaning brand to place additional pressure on the non-paying brand. Scott Nova, “Workers Owed \$2.3 Million by Supplier

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