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**Does Transnational Private Governance Reduce or Displace Labor Abuses? Addressing  
Sorting Dynamics across Global Supply Chains**

Mathias Koenig-Archibugi

Abstract:

The attention of practitioners and scholars of private regulation of working conditions is focused on whether and how corporate buyers can help improve labor and safety standards in the factories that supply them by adopting codes of conduct, joining social certification schemes, participating in social audit processes, and financing safety improvements. In this Note, I argue that more attention should be paid to the possibility that private regulation schemes – whatever degree of compliance they achieve - mostly result in a displacement effect or sorting dynamic that leaves overall level of working conditions unchanged. The Note sketches a research agenda aimed at identifying the conditions under which a sorting dynamic can occur and at conceiving innovative private governance designs that could avoid it.

On April 24, 2013, a commercial building named Rana Plaza collapsed in Dhaka, Bangladesh, leaving over 1,100 people dead and a larger number injured. Most victims were workers employed in garment factories housed in the building. The news of the accident was followed by reports that the factory managers had ignored safety warnings and that the workers were producing garments for major Western brands, such as Benetton, Monsoon, Primark and Walmart. The “Accord for Fire and Building Safety in Bangladesh” was agreed in the aftermath of the disaster by over a hundred western brands and two global union federations, with the involvement of the Clean Clothes Campaign and the Workers Rights Consortium. The Accord is exceptional with respect to the legally binding nature of the commitment made by brands to finance a central inspection regime and safety upgrades in supplying factories, while maintaining purchasing volumes for a set period (Reinecke & Donaghey, 2015). Scholars have hailed it as “a new paradigm in the enforcement of global labor and human rights” (Anner, Bair, & Blasi, 2013, p. 2). At the very least, it shows that major corporations now appear to be willing to offer some limited material contribution to improve working conditions in their supply chains, rather than simply trying to unload the cost for doing so onto their suppliers.

For all its novelty, the Accord shares a crucial feature with most other nongovernmental regulatory initiatives aimed at improving labor standards in developing countries: it relies on combining the leverage that consumers have on big brands with the leverage that brands have on their suppliers. These initiatives usually emphasize a key mechanism that is expected to produce behavioral change at the factory level: factory owners and managers are interested in maintaining a business relationship with large corporate buyers and hence are receptive to the negative incentives (threats of contract termination) and positive incentives (financial inducements, social rewards) provided by those buyers, at least to some extent.

Given this expected mechanism, the attention of labor rights activists, corporations and the media has focused on whether and how buyers can help improve labor and safety standards in the factories that supply them by adopting codes of conduct, joining social certification schemes, participating in social audit processes, and – as in the case of the Accord – financing safety improvements and making purchasing commitments. Academic research on private labor regulation largely shares this focus and hence often studies to which extent and under which

conditions supplying factories actually comply with the standards and rules mandated in company or multi-stakeholder codes and auditing schemes.<sup>1</sup>

The fact that nongovernmental regulatory schemes may lead to improvements only in factories linked to participating brands is not necessarily a problem – it is certainly better to improve conditions in some factories than none. The assumption underlying most advocacy, practice and research in relation to nongovernmental regulatory programs is that an improvement in brand-supplying factories would translate, even if only by a modest amount, into an overall improvement of working conditions.

This Note aims to persuade practitioners and researchers that this assumption should not be treated as a given, and that policy design and research agendas should be reconsidered accordingly. It is possible that the decision by brands to source only from compliant factories, and to pay a premium for it, may fail to produce even a marginal improvement in the overall level of working conditions in an economy. In other words, even numerous *local* improvements do not necessarily aggregate to produce a *global* improvement. This is because private regulation may produce a displacement effect, or what can be called a sorting dynamic, that leaves overall level of working conditions unchanged. This possibility suggests that it would be fruitful to divert some of the scholarly attention and effort currently devoted to assess compliance within traditional social certification schemes towards two related research agendas. First, the sorting dynamic is predicted by plausible economic models, but does it happen in practice? Which contextual conditions allow the sorting process to unfold, and which conditions could inhibit it? Are there positive spillover effects that could neutralize displacement effects? As long as we lack reliable empirical knowledge on such questions, we do not know if it is worthwhile to run (and study) most traditional nongovernmental regulation programs, whatever level of compliance they may be able to attain. The second research agenda asks whether differently designed programs, which are still private but less focused on the suppliers of specific global buyers, might be more effective in avoiding the sorting dynamic. How would such programs work and what (intended and unintended) effects would they produce? I will first sketch the contours of the first agenda before moving on to the second. While the intended audience of the argument is scholars of transnational private regulation, the aim is to encourage research that can shape the future strategic choices of advocacy groups and policy-makers. The involvement of advocacy groups

and policy-makers in the discussion would be especially important with regard to the second bundle of questions identified in this Note, i.e. thinking about possible solutions.

### **The problem**

If all factories in a sector operate according to low standards, improving standards in some of them (notably, those that supply brands) will raise the average level of protection in the economy. However, if some factories in an industry already operate at higher standards, specifically as high as demanded by brands, then it is by no means guaranteed that the brands' demands would raise average protection in the industry. The following could happen instead: buyers interested high standards (the brands) would abandon low-standard factories and shift their orders to factories that already have high standards, whereas buyers uninterested in high standards would increasingly buy from suppliers who are, and remain, low-standards. In other words, a policy change by brands would trigger a *sorting dynamic* whereby brands are increasingly matched to high-standards suppliers and the rest of the buyers are increasingly matched to low-standards suppliers. In this scenario, the average level of labor standards protection in the economy does not change.

The emergence of such a sorting dynamic is predicted by several economic models based on plausible premises, especially in relation to the expected effects of labels that reassure consumers that goods are produced without child labor. In general, when a firm switches from child labor to adult labor, a niche for its product is created that allows it to charge a higher price. Ronald Davies shows that, "even when it is profitable for one firm to switch to adult labor, this does not imply that all firms will do so. When one firm creates a niche by using adult labor, this simultaneously creates a niche for its competitors who sell the product cheaply to highly price-sensitive (and production method-insensitive) consumers" (Davies, 2005, p. 252). While adult workers are hired by the high-price firms, child workers may move to firms that produce for consumers unwilling to pay the extra price. Similarly, Eric Edmonds (2003) finds that, if a firm is prevented from employing children, it hires more adults - but children move into the jobs previously held by adults.

In a similar vein, Jean-Marie Baland and Cédric Duprez develop a model with two countries, one which consumes and exports a product while the other imports it, and where consumers are concerned about child labor in the first country but not in the second. They examine the likely effect of a no-child labor label and conclude that, “as long as adult workers can easily replace child workers in the exporting industry, the label generates a displacement effect, whereby adult production is redirected towards label demanding consumers in the [importing country], while children produce exclusively for unconcerned consumers in the [exporting country]” (Baland & Duprez, 2009, p. 1125).

Such sorting or displacement effects depend on two main assumptions. The first is that, for the time being, a substantial proportion of consumers will remain indifferent to working conditions. This is supported by existing data. Even in countries with relatively high consumer concern for working conditions, a majority or large minority of consumers are *not* willing to pay a price premium. A recent meta-analysis of 80 studies indicates that “only” around 60 percent of people indicate that they are willing to pay a premium for products with socially responsible features (the premium is, on average, 16.8 percent) (Tully & Winer, 2014). Experiments, which may yield more reliable information on actual shopping decisions than consumer surveys, suggest that the percentage of “ethical” shoppers is, if anything, lower than that (Hainmueller, Hiscox, & Sequeira, 2015; Kimeldorf, Meyer, Prasad, & Robinson, 2006; Rode, Hogarth, & Le Menestrel, 2008). The second assumption is that some factories already have working conditions that the brands regard as good enough to prevent reputational damage, independently from the incentives created by the buyers themselves. Also this assumption is supported by evidence (Coslovsky, 2014; Knorrinda & Nadvi, 2016; Lund-Thomsen, Nadvi, Chan, Khara, & Xue, 2012; Posthuma & Bignami, 2014; Ruwanpura & Wrigley, 2011) .

The sorting dynamic is predicted by economic models based on plausible premises, but can it be observed in practice? Research on suppliers in developing countries shows that such firms respond to increased international competition by choosing either a “high road” or “low road” to retaining competitiveness. The “high road” may involve, amongst other things, improving the skills of the workforce, offering good employment and work conditions, and having them certified by transnational programmes. Ruwanpura and Wrigley (2011) note that Sri Lanka’s apparel industry has embraced ethical trading initiatives and social auditing practices as part of

an upgrading strategy. But “[s]uppliers may also adopt a low road to competitiveness that is based upon a downgrading strategy. Downgrading involves moving into lower value-added activities, squeezing labour by providing lower wages, and failing to abide by social and environmental laws that regulate production in export-oriented industries” (Lund-Thomsen et al., 2012, p. 221). An example is the restructuring of the Mauritian clothing industry in the second half of the 1990s, when some firms attempted to upgrade into own-brand manufacture while others chose to downgrade, either by employing migrant workers who were prepared to work twenty-five to thirty hours per week overtime, or by opening satellite plants in neighboring Madagascar, where labor cost were much lower, and which exported into lower market segments (Gibbon & Ponte, 2005).

While “high road” and “low road” strategies often target different buyers, this is not necessarily the case. Ruwanpura and Wrigley (2011), for instance, report that CSR-compliant Sri Lankan suppliers receive small orders from retailers who would place larger orders with non-compliant factories in Bangladesh, China, and Vietnam. This allows the retailers to protect themselves from negative publicity by claiming that they source from ethically safe countries such as Sri Lanka. This suggests that a sorting dynamic can take place also *within* the supply chain of global brands.<sup>2</sup>

While the divergence of supplier strategies is relatively well-documented, we lack sound empirical knowledge on the impact of transnational certification schemes on that divergence. Anecdotal evidence suggests that such schemes generate a displacement effect. For instance, owner-managers of small businesses in the knitwear export industry of Tirupur, India, reported that they had switched to less demanding buyers when buyers required social standards certifications and/or compliance with codes of conduct as a condition for placing orders (Soundararajan, Spence, & Rees, 2016). But more systematic research is needed. The remainder of this section points at some promising areas for further research.

An essential first step consists of examining shifting market incentives and establishing whether the introduction of certification programmes induces factory owners and managers to sort themselves into high-market/high-standard and low-market/low-standards suppliers. However, it is clear managerial decisions are influenced not only by narrowly defined market incentives, but

also by a broader range of social, institutional and political circumstances. Researchers could examine whether some contextual conditions facilitate the sorting process whereas others inhibit it. Importantly, they could investigate whether private governance schemes themselves have the ability to alter the social and/or political context to such an extent that the sorting dynamic is impeded. For instance, researchers could examine whether and where local industry associations are able to prevent defections by individual factories following a collective decision to join transnational schemes in response to external demands (Lund-Thomsen & Nadvi, 2010). While these and other social actors should be considered, in all likelihood the crucial issue is how governmental actors respond to private regulation. The relationship between transnational regulatory schemes and government officials attracts increasing interest in the literature.<sup>3</sup> Most investigations of the relationship explicitly or implicitly focus on its impact on the firms covered by private regulation. However, it deserves special attention also in relation to the firms that remain outside of the schemes and opt for a low-road strategy, in line with the sorting hypothesis. This raises a number of questions.

One question is whether transnational regulatory schemes influence the policies of government of *importing* countries, by providing authoritative benchmarks that are eventually incorporated into domestic legislation. A legislative restriction that applies to all importers in a country may be more effective in preventing displacement effects than the policies of individual brands. This dynamic can be observed in the management of forests and fisheries (Gulbrandsen, 2014). To the extent that labor standards play any role in the trade policies of richer countries, however, this is more likely to reflect the influence of the International Labor Organization than of private schemes (Orbie & Tortell, 2009).

The effect of transnational private governance on governmental authorities in *producing* countries is likely to be more relevant in terms of actual developments. The effect could be on rule-making as well as rule implementation. With regard to *rule-making*, TNAs might trigger a reaction by state bureaucracies, who reclaim regulatory authority and in the process extend mandatory standards to all suppliers in a country. This has occurred in Indonesia in the area of forestry and agricultural certification (Giessen, Burns, Sahide, & Wibowo, 2016). With regard to *rule enforcement*, well-resourced, honest and politically supported public labor inspectorates can improve compliance with labor legislation (Berliner, Greenleaf, Lake, & Noveck, 2015; Levine,



Toffel, & Johnson, 2012; Ronconi, 2012). Could transnational private schemes strengthen their ability to enforce labour regulations on *non*-certified firms? In relation to the Dominican Republic, Matthew Amengual argues that, “instead of displacing state labor regulation or causing state institutions to atrophy, private regulation relieves pressure on scarce state resources and complements state action within the factories in the EPZ [Export Processing Zone]. With fewer labor problems to address in EPZs that benefit from private regulation and the attention of international actors, state regulators are able to dedicate more resources to sectors of the economy that produce for the domestic market and have even poorer labor conditions” (Amengual, 2010, p. 406). The resources freed up for inspecting factories not covered by private regulation might be sufficient to prevent them to pursue a low-market/low-standard strategy, although this conjecture would need to be tested empirically with a dedicated research design. Even if this were the case, however, it is an open question whether the Dominican experience can be generalized. The country’s Labor Secretariat experienced a transformation and significant strengthening in the 1990s, and the political conditions that made that possible may well be absent elsewhere.

Another study conducted by Amengual and Chirot (2016) on the Better Work Indonesia (BWI) certification scheme suggests another way in which transnational regulatory schemes might help labor bureaucracies to counter “low road” strategies. Indonesian factories can opt into the BWI program in order to reassure global buyers. Between its introduction in 2011 and 2016, BWI enrolled more than 130 factories, which together employ about one third of all garment workers in Indonesia. Amengual and Chirot’s account reveals two ways in which BWI sometimes “reinforced” state labor regulatory institutions. First, BWI communicated to BWI-enrolled factories the rules on wage negotiations issued by the central government and instructed them to follow those rules, otherwise they would be marked as noncompliant in BWI reports to the buyers. Second, BWI facilitated information flows between central and local labor administrators, e.g. through training for local officials. The latter set of activities may have potentially affected also the two thirds of the sector that had not joined BWI, as local labor officials might have used the information acquired through BWI in their dealings with factories not covered by BWI. Amengual and Chirot do not discuss this possibility, as it is tangential to their research question, but whether initiatives such as BWI can inhibit sorting dynamics by

providing government agencies with resources that are then used vis-à-vis uncertified as well as certified factories deserves further examination.

But the possible limits of this mechanism should be kept in mind. Amengual and Chirot argue that in Indonesia the transnational initiative reinforced state regulation only under specific conditions. Bair (2017) examined the experience of the Better Work programme in Nicaragua (BWN), which just over half of the country's garment factories had joined between the programme's introduction in 2011 and 2015. She finds that the government reacted to BWN's findings of noncompliance by introducing a more flexible interpretation of the labor law under which practices were simply reclassified from non-compliant to compliant. She concludes that "[t]his interaction between Better Work's hybrid governance model and the fraught political environment resulted not in a 'reinforcing of the state' ..., but rather a weakening of the domestic regulatory context and a ratcheting down of the labour code" (Bair, 2017, p. 180). All things considered, empirical research may well find that the countervailing mechanisms considered so far are too weak to stop a sorting effect from taking place.

### **Potential solutions**

To reiterate an important point: according to the sorting logic, the problem with brand-focused initiatives is *not* that they improve working conditions just in *some* factories, but that they may have *no* impact on the *average* level of working conditions in the relevant economy. Let us assume that the sorting dynamic is not only plausible in theory but also that it can be observed in practice. This would represent a challenge for both practitioners and scholars of private labor regulation. Why? Some might react to the argument presented so far by denying that this scenario raises a genuine "ethical" or policy problem. Corporations should be responsible only for things that happen strictly within their supply chains, the argument might go, and if a sorting dynamic shifts abuses from their supply chains to other parts of the economy, this should be of no concern to them. While such an argument may be attractive to the brands themselves, and perhaps persuade some consumers, it should trouble labor rights activists, who usually worry about the welfare of workers in general, and not only those who happen to work in particular firms. For them, targeting the sourcing policies of major Western corporations is usually a *means*

to improve working conditions *tout court*. Most scholars of regulation and working conditions probably share this normative orientation, and choose to study the effectiveness of private regulation because they are interested in the overall level of labor protection and worker welfare, not because they want to know if prominent western brands are directly implicated in abuses or not. So it is important to consider the implications of the displacement problem for the way private governance is practiced and researched.

A different reaction to the possibility of displacement is to abandon the hope that transnational governance schemes can improve overall labor conditions, and instead refocus the attention on governmental action. While many analysts would consider public regulation and enforcement of labor rights the first-best option, the limitations of government mechanisms are precisely what triggered the expansion of private labor schemes in the first place. Public regulation is constrained by the overall strength of the state, which is difficult to change, and by strategic incentives to provide a low-cost regulatory environment for firms in a competitive global economy (Berliner et al., 2015; Palley, 2004). In theory, the International Labor Organization (ILO) should prevent regulatory races to the bottom as well as provide capacity-building to government agencies (Baccini & Koenig-Archibugi, 2014). In practice, the ILO's ability to improve labor conditions has been fairly limited so far (Boockmann, 2010; Neumayer & Soysa, 2006; Peksen & Blanton, 2017). It is telling that the ILO itself has been moving in the direction of establishing social certification mechanisms through its Better Work program, which – for all its distinctive features – shares crucial elements with the type of transnational private regulation considered in this Note. Most notably, factories participate voluntarily in national schemes, and so far a substantial proportion of firms remains outside of each country program, leaving open the possibility of sorting dynamics even within the country itself, let alone across countries.<sup>4</sup>

Given the problems with traditional private regulation and government regulation of labor conditions, the second strand of the research agenda outlined in this Note would aim at identifying institutional innovations that would still be based on the initiative of non-state actors but would be less susceptible to sorting effects. One such innovations could be the “Ratcheting Labor Standard” proposal developed by Sabel, O'Rourke, and Fung (2000). The proposal is distinctive because, on the one hand, it envisages a multiplicity of, and indeed competition between, labor standards monitors but, on the other hand, it expects that every firm will adopt

some certified mechanism for monitoring its labor standards performance. The published performance will then be assessed and, if necessary, punished not only by socially conscious consumers but also by a wide array of local community groups, labor organizations, official regulatory agencies, investors and other financial market actors. From the perspective of this Note, a key question is then how to ensure that participation in the monitoring system will be indeed universal, and prevent defecting firms from choosing the “low road”. Sabel et al. (2000, p.27-28) note that “[s]ome range of sanctions and incentives might motivate these firms to participate, including: national regulatory sanctions for firms that do not participate, support of consumer and advocacy campaigns to pressure firms to participate, national market-based mechanisms to incentivize participation, and international trade mechanisms that motivate participation.” To prevent governments from ignoring RLS, “consumer groups and unions may even advance campaigns or boycotts of production in countries that fail to meet RLS-style transparency requirements” (Sabel et al., 2000, p. 34-5).

Given that persuading all governments to mandate transparency requirements for all firms would be challenging, it is useful to think also about schemes that civil society groups could run independently from, or with the toleration of, governments. The remainder of this Note sketches an alternative approach that, similar to mainstream approaches, harnesses corporate willingness to pay for improved working conditions in factories in developing countries out of reputational concerns, but which may be less likely to be futile because of the sorting dynamic described above. Instead of funding their suppliers for improving safety conditions, brands could be asked to contribute to a global fund that helps workers fight for factory-level improvements *irrespective of whether the factory produces for the brands or not*. I will call this a “global industrial action fund”, or GIAF. I will first consider what the fund could be used for and then what criteria could guide the disbursement of the funds.

The GIAF would provide resources to unions or local workers’ organization for a variety of purposes, most importantly: (1) a strike fund that would replace workers’ incomes during the duration of a strike; (2) negotiators and other experts (e.g. health and safety specialists) who would support and advise the workers during a dispute with factory owners and management; (3) lawyers and other professionals who would press public authorities and courts to enforce local laws with regard to health and safety, minimum wages and working conditions, and other areas;

(4) more generally, a GIAF would provide training for current and prospective union organizers, especially in relation to linking initiatives across factories.

The provision of funds and other types of support would be triggered by requests from workers, local trade unions and local civil society groups. In this respect, it would be similar to the Urgent Appeals (UA) system that the Clean Clothes Campaign (CCC) has run since the mid-1990s (den Hond, Stolwijk, & Merk, 2014). Garment workers' representatives who are in a dispute with factory owners and employers can request the help of the CCC, the CCC decides whether to accept the request and, if it does, it employs a range of private and public strategies to make the outcome of the dispute more favorable to the workers. While in principle a GIAF could ensure a large and steady flow of resources towards a UA-type system, there are some important differences between the UA and the GIAF envisaged here. A key aspect of the UA system is that the CCC activities focus on what den Hond, Stolwijk and Merk call "proxy targets", i.e. Western brands and retailers. These proxy targets are expected to pressurize the "ultimate targets" to accept a solution to the dispute that is favorable to workers. In principle the UA is accessible to garment workers in all kind of factories. In practice, however, interventions involving brands as proxy targets tend to be the most effective, and that affects the selection of the requests for help. CCC campaigners note that "the likelihood of a request being adopted increases if a large, well-known brand or retailer is involved that is based in one of the countries where the CCC is established" (den Hond et al., 2014, p. 93). While the governors of a GIAF would need to establish rules about when and how funds could be disbursed, they could stipulate that demands for support coming from workers in factories producing for Western brands are not privileged over demands coming from other factories. This would represent a clear difference from the CCC's UA system.

I outlined the basic features of a GIAF scheme to show that the current approach to enlisting brands in the task of improving working conditions is not the only conceivable one. However, further reflection would need to be given to a number of important questions. Who would make decisions about the use of GIAF resources and how would those decisions be made, especially if stakeholders disagree about how the funds should be prioritized for distribution? Would a GIAF produce a sorting effect similar to the problem highlighted earlier in relation to initiatives focusing on brand suppliers? Factories targeted by GIAF-backed workers' campaigns might

improve working conditions and supply buyers willing to pay higher prices, while the others would specialize in supplying the lower end of the market. However, the risk of simply displacing bad working conditions without reducing them on average is probably lower under this alternative design than under traditional supplier-based strategies. This is for three reasons. First, factories with relatively good working conditions are unlikely to worsen them if other factories improve theirs. Second, if any factory can be targeted by the GIAF, rather than only those supplying brands, then improvement in one factory are more likely to trigger similar demands by the workers in other factories. Third, the owners and managers of the factories that are targeted have an interest in lobbying public authorities to enforce labor and health and safety legislation against other factories in order to restore a level playing field, since at least in the short and medium run they will be competing in the same markets. All these presumed direct and indirect effects deserve to be examined in depth.

Moreover, scholars of regulation and governance could also examine whether and how alternative designs would be not only economically effective but also “politically” sustainable, by carefully considering the incentives of brand managers, activists, consumers, and governments. Sovereignty concerns of governments would need to be assuaged, and here the experience of existing schemes (e.g. their choice to emphasize compliance with domestic legislation and/or ratified ILO conventions) would yield valuable insights. The interaction between activists and large brands would be equally, if not more, important. For instance, in exchange for contributions to a GIAF by corporations, activists might need to promise restraint in searching and using evidence of abuses in factories that specifically supply certain prominent brands, and instead try to direct the attention of the public on abuses that can occur in any factory. But this would require a redefinition and renegotiation of what Egels-Zandén (2015) calls “responsibility boundaries”, on which there needs to be some convergence between companies and activists. Over the past thirty years, anti-sweatshop activists have successfully promoted a specific understanding of corporate responsibility, which Bair and Palpacuer call “supply chain CSR”. “Like other forms of voluntary CSR, supply chain CSR is premised on the claim that powerful economic actors have obligations that extend beyond the boundaries of their own organization. What is unique about supply chain CSR, however, is the degree to which it highlights *inter-firm* dynamics and, specifically, the role that corporations play as lead firms in global production networks” (Bair & Palpacuer, 2015, p. 182, their emphasis; see also Segerlund,

2010). An initiative such as the GIAF would go hand in hand with a further shift in common understandings of corporate social responsibility: from inter-firm to systemic responsibility. In practice, activists should be prepared to attack companies for their failure to contribute financially to the “global public good” of improved working conditions across the board, rather than for their complicity in labor abuses committed specifically by their subcontractors.

Achieving this shift is, of course, not straightforward. Activists would need to reassure brands that they will be named and shamed for not contributing to the GIAF, rather than because rights violations are found in their supply chains. But a subgroup of activists could undermine this reassurance by continuing to focus on the brands’ suppliers. For the GIAF to be viable, at least two conditions would need to be met. First, the bulk of activists would need to come to the conclusion that current supplier-focused schemes have shortcomings that would persist even if perfect compliance were to be attained, whereas a GIAF-like mechanism might be more effective from a systemic perspective. Second, they would need to be willing to defend contributing companies from the attacks of minority activist groups that continue to highlight supply chain abuses, by invoking a systemic rather than inter-firm responsibility norm. Whether and how such conditions may emerge deserves a thorough debate.

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The possibility that transnational private regulation produces a sorting dynamic that displaces labor abuses rather than reducing them deserves more attention than it has received so far. There are compelling reasons for scholars and practitioners of regulation to take a step back from individual supply chains and reconsider the effect of traditional forms of nongovernmental labor regulation from the perspective of their effects on the wider economy. On the positive side, major corporations now appear to be willing to offer some limited material contributions for improving working conditions, as shown by the Accord. On the negative side, major initiatives trying to harness that willingness risk producing no overall improvement in working conditions, as progress somewhere may be balanced by deterioration elsewhere. While documenting this dynamic empirically is a challenging task, it is plausible enough to justify a rethink of the ways in which any corporate acceptance of financial responsibility can be put to good use by nongovernmental regulators and their allies. While the emphasis here has been on the regulation

of labor conditions, a sorting dynamic is also possible in other regulatory domains characterized by corporate buyer-supplier relationships, such as environmentally sustainable production, and sustained research on the phenomenon across multiple policy areas could eventually prompt a rethink of prevailing modes of private governance.



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<sup>1</sup> Outstanding studies in this vein include Anner (2012); Bartley and Egels-Zandén (2015); Distelhorst, Locke, Pal, and Samel (2015); Egels-Zandén (2007); Locke, Qin, and Brause (2007); Macdonald (2013); Nadvi and Raj-Reichert (2015); Oka (2010); Rodríguez-Garavito (2005); Short, Toffel, and Hugill (2015); Toffel, Short, and Ouellet (2015). Even studies such as Oka (2010), Bartley and Egels-Zandén (2015) and Amengual and Chirot (2016), which compare suppliers covered by transnational regulation with uncovered factories, provide a “static” comparison that cannot capture the sorting dynamic highlighted in this Note.

<sup>2</sup> I am grateful to an anonymous referee for alerting me to these sourcing strategies within brands. Subcontracting relationships between factories also raises the possibility of sorting dynamics within a supply chain. In her study of the garment industry in Dhaka, Bangladesh, Tighe (2016) finds that “top-tier” factories tend to be inside buyer-driven voluntary governance, whereas the smaller ‘sub-contracting’ factories appear to be outside. Perry, Wood, and Fernie (2015) find that in Sri Lanka first tier garment suppliers subject to CSR audit requirements were under no pressure to source raw materials ethically, which led them to expand their operations into lower labour-cost countries. See also Mezzadri (2014) and Soundararajan and Brown (2016).

<sup>3</sup> See, for instance, Bartley (2011); Coslovsky and Locke (2013); Eberlein, Abbott, Black, Meidinger, and Wood (2014); Kolben (2011).

<sup>4</sup> The Better Work program originated in Cambodia under the name “Better Factories Cambodia” (BFC). BFC was distinctive in that it was directly tied to a bilateral trade agreement with the United States, and the Cambodian government in effect made participation of all garment exporters mandatory by making access to an export licence contingent on being audited by BFC. Of the other seven Better Work country programmes currently in operation, five (Lesotho, Vietnam, Indonesia, Nicaragua and Bangladesh) are completely voluntary for apparel exporters, one (Jordan) is mandatory for exporters to the U.S. and Israel, and one (Haiti) for exporters to the U.S. (Bair, 2017).