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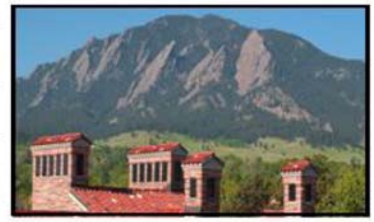

WORKING PAPER

Buyer Power, Pricing Practices, and Labor Outcomes in Global Supply Chains

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Buyer Power, Pricing Practices, and Labor Outcomes in Global Supply Chains

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Abstract

There is widespread consensus that twenty years of efforts to address poor working conditions and violations of workers' rights in global supply chains for apparel products have been mostly unsuccessful. Labor rights clauses in trade agreements, efforts to improve domestic labor laws and enforcement, and the ubiquitous use of codes of conduct and factory monitoring all appear to have failed to address this problem. We argue that this is because these efforts tend to focus on the practices of suppliers and the countries in which they reside while ignoring the larger supply chain dynamics affecting apparel manufacturers. Our argument is that any initiative to rein in sweatshop conditions in clothing factories worldwide must recognize that the dynamics of the buyer-driven apparel chain result in systematic cost pressures on suppliers that are conducive to violations of workers' rights. This paper examines the relationship between supply chain dynamics and labor outcomes by first exploring the relationship between the price lead firms pay for imported apparel and respect for global workers' rights in today's apparel industry. We then turn our attention to a historical analysis of how the pricing practices of lead firms, and the unequal bargaining relations between buyers and suppliers that underlie them, were addressed in the United States by a system of "jobbers agreements" throughout much of the twentieth century. Jobbers agreements, which were the driving force behind a dramatic improvement in wages and working conditions for domestic garment workers, constrained buyer power in three key ways: 1) by insuring that lead firms paid the contractors a fair price; 2) by stabilizing and regulating subcontracting relationships; and 3) by providing protection for workers by making lead firms directly liable for some labor costs. We conclude by asking how these same principles might be applied in the context of today's global apparel supply chains.

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To date, efforts to secure labor standards and workers' rights in the global apparel industry have focused on the development, implementation, and evaluation of various corporate codes of conduct and factory auditing regimes in global supply chains for apparel and footwear products (Bartley 2005; Esbenshade 2004). There is now a growing consensus, based on abundant evidence of pervasive labor abuses and sweatshop practices throughout the industry, that the code of conduct/auditing model has failed (O'Rourke 1997; Locke, Qin and Brause 2007; IDS 2006). Given this consensus, two questions follow. First, why are working conditions and labor practices essentially unchanged after a decade and a half of workplace monitoring to eliminate sweatshops? Second, what alternative approaches might prove more effective in realizing this objective?

Most scholars assume that labor abuses occur due to poorly enforced regulation, managerial ignorance or incompetence, a misguidedly punitive as opposed to educative approach on the part of labor inspectors and/or company auditors, or a failure to effectively mobilize informed consumers who care about labor standards. Given these various diagnoses of the problem, proposed solutions include strengthening domestic labor regulation in producing countries (Seidman 2007); educating and empowering labor inspectors and/or lead firm auditors to support, rather than punish, struggling suppliers (Frenken and Scott 2002; Locke, Amengual and Mankla 2009; Schrank 2009); incorporating labor rights clauses into trade agreements (Polaski 2003); and, relying on ethical consumers, either to reward responsible corporations with their purchases or to organize publicity campaigns to name and shame poor performers (O'Rourke 2011; Hainmueller, Hiscox and Sequeira 2011; Harrison and Scorse 2004).

While there may be a role for each of these approaches in improving labor (and possibly environmental) standards in global supply chains, we argue in this paper that none satisfactorily address the root cause of poor working conditions and labor rights violations in global supply chains for textile products—the power dynamics of the chains themselves Apparel production is, for the most part, organized through subcontracting networks that are coordinated by brands and retailers based in the global North. The buying practices of these lead firms frequently create downward cost pressures on contractors—a tendency exacerbated by the phase-out of the Multi-Fiber Arrangement in 2005, which expanded the sourcing opportunities for global buyers. Under these conditions, contractors often end up trying to compete on the basis of one of the few factors of production they control: the cost of labor.

If we are correct that the pricing practices of powerful buyers are a source of poor labor performance, then what kind of regulatory approaches can effectively address this root cause? To better situate the contemporary struggle against sweatshops, we revisit the solution that was developed to this problem over the course of the twentieth century by the International Ladies Garment Workers' Union, which represented workers in the women's wear segment of the garment industry. The tool that the union developed—the jobbers agreement—was effective because it addressed the very same dynamic that we argue is the root cause of sub-poverty wages and poor working conditions in today's global supply chains. We conclude by asking how the lessons of the jobbers agreements might be applied in the context of global supply chains.

1. The Sweatshop Resurgence: Debating causes and proposed solutions

Ever since the mid-1990s, when police found seventy-two Thai garment workers locked inside a factory in El Monte, California making branded apparel for major department stores (Su 1997), and labor rights activists documented under-aged girls making Kathie Lee Gifford garments in Honduras (Krupat 1997), there has been a lively debate about how to eradicate sweatshop practices. Major brands developed corporate codes of conduct, requiring supplier compliance through the purported risk of losing production contracts (Esbenshade 2004). Individual codes coalesced into associational and multi-stakeholder programs with varying degrees of stringency (Fransen 2012; Jenkins 2002). Early proponents of this form of voluntary governance asserted that private monitoring, when accompanied by public disclosure of factory audit reports, would allow consumers to reward good firms with more purchases and punish bad firms by taking their business elsewhere (Elliott and Freeman 2003). The result would be a "ratcheting up" of labor standards (Fung, O'Rourke, and Sabel 2001).

Critics countered that the global apparel supply chain was simply too dispersed for private monitors to provide any meaningful inspection (Wells 2007), and that such private initiatives were a poor substitute for state regulation (Seidman 2007). Labor activists were particularly concerned that corporate-controlled private initiatives would seek to substitute for labor unions and democratically elected states (Justice 2006). And there has also been growing concern that such efforts place too much burden on individual consumers, thus taking pressure off brands and the state, while also displacing collective activism (O'Rourke et al. 2011).

Richard Locke and his collaborators observe that these monitoring programs have only produced modest results. For Locke et al., the problem is not the reliance on a private, voluntary compliance mechanism such as a corporate code of conduct, but rather the assumption that lead firms in buyer-driven supply chains have the economic leverage to ensure compliance with such code (Locke, Amengual, and Mangla 2009: 323). They argue that the typical description of globally dispersed, light manufacturing industries as "buyer-driven chains" is incorrect (Gereffi 1994), and that power relations, between say, a retailer and its offshore subcontractor, are not unambiguously asymmetrical. Lead firms therefore have less ability to force compliance than is commonly assumed (Locke, Amengual, and Mangla 2009: 35). Furthermore, when improved compliance does occur, it comes about not because of more thorough auditing or more punitive sanctioning, but rather because suppliers have been "assisted and/or educated to comply with regulations and standards by high-performing compliance officers and auditors" (Locke, Amengual, and Mangla 2009: 327). They conclude that what is needed to address sweatshop practices is a "commitment model" based on a collaborative relationship between the global brand or retailer and the local supplier, in which "joint problem solving, information sharing, and the diffusion of best practices" produces mutually beneficial outcomes for both buyer and supplier.

Andrew Schrank and Michael Piore take a similar approach when they examine state labor regulation practices in Latin America (Piore and Schrank 2008; Piore and Schrank 2006). They argue that labor inspectors, instead of acting like policemen when violations are detected, are more effective when they disseminate best practices because this increases worker productivity and lessens the cost of worker protection. In countries such as the Dominican Republic, workplace inspectors are empowered to develop plans with factories owners that achieve respect for labor standards over time. When violations result from attempts to remain competitive, "the inspector operates more as an advisor or consultant" who can help factory managers reconcile competitiveness and compliance (Piore and Schrank 2006: 3).

Schrank also argues that professional, state workplace inspectors can provide an alternative to "traditional collective bargaining practices," which have "never been the norm in the Caribbean Basin" (Schrank 2009: 91-92). Schrank thus concurs with Locket et. al. that training and commitment are better approaches than expecting brands or states to use their power to force compliance. Yet, where Locke sees private sector collaboration filling the gap left by weak states, Schrank envisions professional and flexible workplace inspectors filling the gap left by weak unions and the lack of collective bargaining.

Our understanding of the apparel global supply chains and the mechanisms needed to address sweatshop practices differs from theirs. We argue that it is precisely the role of labor bargaining and buyer responsibility that provides the greatest hope for a sustained mechanism to address sweatshop practices. In fact, a great deal is known about how to eliminate sweatshops, because it has already been done once. The history of how this was accomplished in the U.S. holds lessons for crafting an effective approach today. Most centrally, this history reflects the crucial role played by the regulation of buyer-supplier contracting relationships and the importance of buyer purchasing/sourcing practices as a root cause of labor rights violations in garment factories, whether those factories are located in India, Honduras, or New York.

2. From the Sweatshop to the Supply Chain: The Apparel Pricing Mechanism and Labor (Non)Compliance

It is our contention that a principal cause for the persistent violation of workers' rights in the global apparel supply chain is the pricing mechanism between buyers and their suppliers.[4] In this section, we examine trends in the price paid by American importers for apparel from 1989 to 2010. We also consider the status of workers' rights in the top twenty apparel exporting countries to the United States during that same time period. What we expect to find is that American retailers and manufacturers have been paying less for the apparel they import as a result of two inter-related factors: the consolidation of lead firm power and changes in trade dynamics, particularly since the late 1990s as the World Trade Organization began the ten year phase out of the Multi-Fiber Arrangement (1995-2005) and after China's accession to the World Trade Organization in 2001.

Beginning in the 1960s, multilateral agreements established production-quota limits that had the effect of restricting exports from major Asian suppliers such as South Korea, Taiwan, Hong Kong, and China to developed-country markets. At the same time, U.S. trade rules encouraged smaller and poorer countries (who were also political allies of the United States) to gain an increased share of the U.S. apparel market. In this context, countries such as Honduras, the Dominican Republic, and El Salvador saw their apparel export sectors grow at a rapid rate in

[4] Data analysis in this section draws on Anner 2012 (LERA paper).

the 1990s. In effect, apparel manufacturers had to source their products not only in the most cost-competitive countries, but also in those that had an adequate quota cap to allow export growth (Abernathy et al. 1999; Bonacich and Appelbaum 2000; Gereffi and Frederick 2010).

The combined effect of phasing out the MFA while also granting China entry into the WTO meant a considerable shift in the geography of production. In 1989, China accounted for 13.55% of all apparel (measured in square meters) imported to the United States. In 2010, it accounted for 41.97% of U.S. imports.[5] Other expected winners in the phase out of the MFA include Bangladesh, Indonesia, and Vietnam, which have even lower labor costs than China. Yet, Latin American producers were not entirely displaced. Nicaragua, El Salvador, and especially Honduras have remained strong exporters to the U.S. To achieve this, they need to keep production costs low. In sum, we expect that changing trade rules beginning in the mid-1990s have resulted in U.S. manufacturers and retailers paying an increasingly lower price for the apparel they import. What do the data tell us?

The U.S. Department of Commerce, Office of Textile and Apparel records all apparel imports by volume and by dollar values. Dividing the value of imports by imports measured in square meters gives us the price per square meter of imported apparel to the United States from 1989 through 2010. In nominal terms, we see that the unit price increased from $3.48 in 1989 to $3.77 in 1997. The value then declined to $2.89 in 2010. This is a drop of 23%. If we take into consideration inflation, we find that the real dollar price per square meter of apparel entering the U.S. declined by 48% from 1989 to 2010.[6]

The drop in the price paid per square meter of imported apparel coincides with the phase out of the MFA, which began in 1995. A part of the decline can be attributed to a shift away from suppliers located in relatively higher paying countries (e.g., Mexico and the Dominican Republic), to countries with much lower labor costs (e.g. China, Vietnam) whose exports to the U.S. had been quota-constrained. Yet, it also reflects a growing concentration of retailer power vis-à-vis suppliers, where, as a result of monopsonistic supply chain structures, retailers and major brand manufacturers are increasingly able to squeeze lower prices from their ranks of

[5] Data from OTEXA (U.S. Department of Commerce, Office of Textile and Apparel), http://otexa.ita.doc.gov/.
[6] In order to take into consideration inflation, we used the GDP deflator provided by the U.S. Department of Commerce, Bureau of Economic Analysis, http://www.bea.gov/index.htm.

global suppliers (Abernathy et al. 1999; Gereffi and Frederick 2010).[7] Thus, producers in countries like Honduras, Bangladesh, and Indonesia are under pressure to maintain market share by keeping production costs low. Given that labor is the largest component of a contractor's cost, one principal avenue for achieving this is through minimizing labor costs in ways that suppress or violate workers' rights (Anner 2011). What this suggests is that the decline in the price paid for imported garments into the United States will coincide with a decline in respect for workers' rights in the countries that produce apparel for the U.S. market.

Testing this argument presents a challenge due to data considerations. One of the most complete measures of labor rights was established by David Kucera of the International Labour Organization. Kucera developed a 37 point measure that covered everything from right to strike and bargain collectively, to the right to democratically elect union leaders (Kucera 2004). The limitation of Kucera's measure is that he made the calculation for only one period in the mid-1990s. Layna Mosley has made an important contribution to the study of workers' rights by expanding Kucera's measure for a seventeen year period, 1985-2002 (Mosley 2011). However, the value of Mosley's data is limited for our purposes, since we need data into the 2000s to evaluate our hypothesis that respect for workers' rights declined during this decade as a result of price pressures associated with trade liberalization.

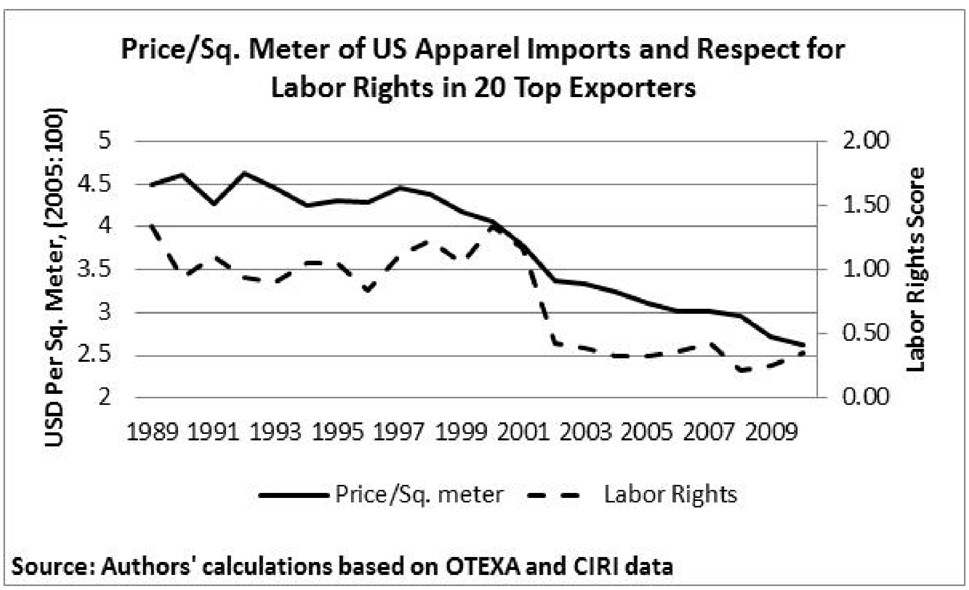
David Cingranelli of Binghamton University and David Richards of the University of Connecticut have developed the Cingranelli and Richards Human Rights Dataset (CIRI), which contains standards-based quantitative information on government respect for internationally-recognized human rights in approximately 195 countries for the years 1981 to 2010. Using a simple three point scale, one of their categories of human rights is workers' rights, which examines freedom of association at the workplace and the right to bargain collectively. According to CIRI, the Workers' Rights variable, "indicates the extent to which workers enjoy these and other internationally recognized rights at work, including a prohibition on the use of any form of forced or compulsory labor; a minimum age for the employment of children; and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health."[8] On their three point scale, a score of 0 indicates that workers' rights were severely restricted; a score of 1 indicates that workers' rights were somewhat restricted; and a

[7] In volume terms, the two largest mass discount retailers, Wal-Mart and K-Mart, controlled 25% of the U.S. apparel market in 2000 (Gereffi 2001).
[8] http://ciri.binghamton.edu/documentation/ciri_variables_short_descriptions.pdf (accessed February 14, 2012).

score of 2 indicates that workers' rights were fully protected. To arrive at these scores, CIRI does a text analysis of the U.S. State Department's *Country Reports on Human Rights Practices*, International Labour Organization's *Report of the Committee on Freedom of Association*, and the International Confederation of Free Trade Union's *Annual Survey of Trade Union Rights*.

To build our dataset, we first identified the 20 top apparel exporters to the United States by volume for each year from 1989 to 2010. This changing group of countries represents between 83% and 95% of U.S. imports. The CIRI Workers' Rights score was recorded for each year and averaged, giving us an indicator of the status of workers' rights during the same period covered by our unit price of imports measure, 1989-2010. We expect to see the status of workers' rights in these top apparel exporters decline in tandem with the declining unit price. That is, as suppliers are increasingly pressured to produce their goods at a lower price by retailers and manufacturers, we are expecting they will come under greater pressure to violate internationally recognized workers' rights, since labor is the most significant production cost in apparel assembly, and violating these rights likely reduces union strength and thus weakens an important mechanism for increasing wages and benefits. What we find are some ebbs and flows in the 1990s, and then a dramatic decline in the workers' rights measure over the course of the early 2000s. When we combine these data with our price paid for imported apparel, we see how closely correlated these factors are.

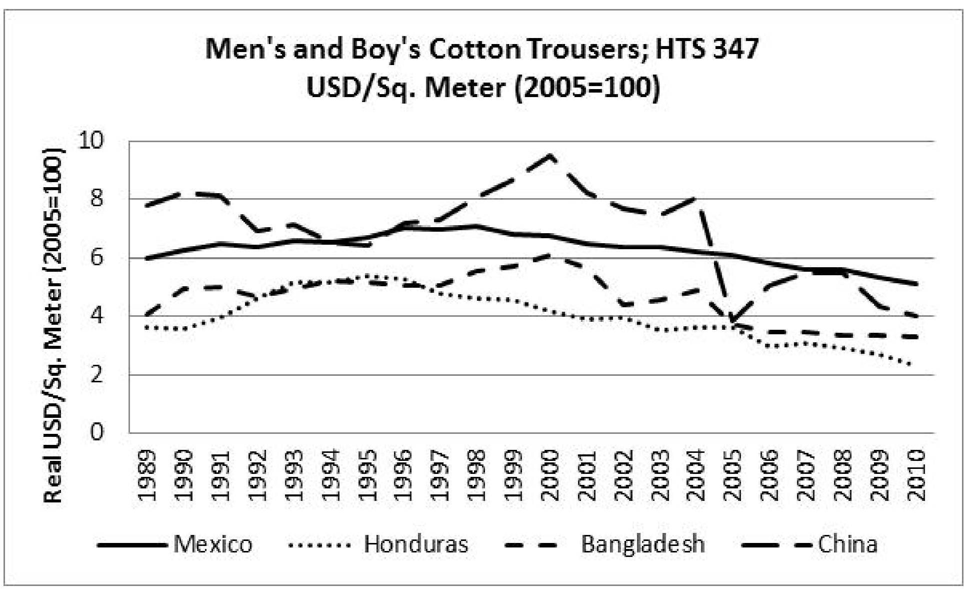
Figure 1



It is important to note that these are unweighted figures. That is, China, which represented 41.97% of apparel imports to the United States in 2010 and scores a 0 in the CIRI dataset, is weighted the same as a country like the Dominican Republic, which now represents less than 1% of U.S. apparel imports and scores a 2. If we were to use a weighted scale, the decline in respect for workers' rights would be much more dramatic. However, since we are using an unweighted scale, the decline in the average score for workers' rights (from 1.33 in 1989 to 0.33 in 2010) is not principally a result of importers shifting from labor compliant countries to labor violators. China, after all, was already exporting to the United States in 1989 and thus was included in the 1989 score.

To further explore the pricing dynamics, we examined unit price data for one apparel category, men's and boy's cotton trousers (HTS 347) from four top exporting countries: China, Mexico, Honduras, and Bangladesh. Controlling for inflation, we see that in all four countries the price per square meter has declined since 2000. And notably, in 2010, the price per square meter remained the highest in Mexico, the country that has faced the greatest decline in market share among the top exporters of men's pants. (See Appendix 1 for changes in market share.)

Figure 2



Notably, we are finding that those countries that remain within the list of the top 20 exporters to the United States are increasingly likely to violate internationally recognized workers' rights in order to stay competitive. Thus, we see countries like Mexico, Honduras, Bangladesh, and Indonesia scoring lower over time, suggesting that declining performance may be linked to efforts by firms to maintain their position in export markets. In contrast, the Dominican Republic, which has worked hard to improve respect for workers' rights (Piore and Schrank 2006) and saw its CIRI score increase from 1 in 2000 to 2 in 2010, has experienced a precipitous decline in its share of U.S. apparel imports over the same period from 5.22% to 0.95% (see Appendix 1).

These data suggest that countries that are increasing their share of apparel exports to the United States at a time that the average price paid per square meter of imported apparel is declining may be becoming more likely to violate core labor standards. In contrast, those countries that have increased respect for workers' rights are finding their share of exports to the United States decline. This decline in respect for workers' rights is occurring at precisely the same time that codes of conduct are proliferating and at a time that trade agreements like CAFTA have incorporated labor rights clauses that aim to curtail labor abuses.

We believe that these data are consistent with our claim that any sustained effort to address workers' rights abuses in the apparel global supply chain must address the pricing dynamics between suppliers and buyers, as well as the broader need for buyers to take greater responsibility for the terms and conditions of labor at supplier factories. The best code of conduct and monitoring mechanism will continue to come up short if the trend toward paying ever lower costs for apparel is not reversed. Compliance with internationally recognized labor standards and workers' rights entails costs. And retailers and manufacturers are going to have to share that cost. The question that remains is: How do we arrive at this fair pricing mechanism? We believe the answer lies in negotiations between labor, suppliers, and buyers. There is an historical precedent for achieving such a mechanism—jobbers agreements brought stability to subcontracting relations within the domestic apparel industry and went a long way towards eradicating sweatshop conditions in those regions where workers were organized.

3. Regulating Buyer Power: Jobbers agreements and the domestic struggle against sweatshops

Large-scale industrial apparel production developed in the United States in the 1870s, fueled by the increasing affordability of sewing machines. New York, with its swelling ranks of immigrant workers, was the epicenter of the industry's development. Given the minimal levels of start-up capital required to become an apparel contractor, some of these same newcomers, particularly Jewish immigrants from Eastern Europe, became small-scale businessmen. The entry of immigrant entrepreneurs into garment manufacturing fueled the development of the "outside model" of production, which emerged alongside and eventually largely displaced the so-called "inside" shop in which manufacturers employed their own production workers to make the garments they designed and/or marketed. Under the outside system, manufacturers came to rely increasingly on subcontracting arrangements with independent shops that would produce the apparel they designed and marketed.

An 1893 report written by an inspector for the New York State Bureau of Labor gives some sense of how pervasive subcontracting relations were at the time. The inspector noted that while "there were probably one hundred wholesale cloak houses" in the garment district, "not over half a dozen provide their own factories and workshops" (Levine 1924: 17), meaning the vast majority were dependent on independent sewing shops. Subcontracting arrangements not only enabled manufacturers to better manage the volatility and fluctuating demand typical of the highly seasonal apparel industry, but in many cases it also allowed them to avoid the union contracts that were becoming common in larger factories, thanks to a wave of historic strikes that were increasing the clout of the rapidly-growing International Ladies Garment Workers Union.[9] Indeed, the "jobber"—a category of apparel firms that designed and sold, but did not manufacture any clothing—managed to avoid both the union and its workers by relying almost entirely on the so-called outside system of production (Schlesinger 1951). The result of this modern putting-out system was a decline in the average size of garment factories and an increase in the number of non-union shops (Esbenshade 2004).

The union's response was to insist that the ultimate responsibility for labor conditions in sewing factories resided with the companies that provided the orders, not with the contractors who were the official employers of garment workers in the outside shops. As early as 1923, the ILGWU defined jobbers and contractors as "joint employers" in an "integrated process of production" (Quan 2007). In a study on the outside system of production conducted by an ILGWU attorney in 1951, the author emphasized that the apparel contractor does "not conduct a business or undertake business risks in the usual sense of the word…. Their sole task is to

[9] Founded in 1900, the ILGWU claimed 100,000 members in 1910. By 1913, membership surpassed a quarter million by 1913, making it the largest union in the state of New York (Dubofsky 1968: 4).

provide a service function, i.e. to supervise the productive process in the same way as the foreman or the production man employed by an inside manufacturer does in the inside shop (Schlesinger 1951: 5-6).

Although the union argued that under the joint system of production, the jobber was largely responsible for the wages and working conditions in the contractor's shop because these depended to a significant extent on the price paid to the contractor by the jobber, the challenge confronting the union was how to get the jobber to accept this responsibility. The answer the union eventually seized upon was a specific kind of collective bargaining agreement called a jobbers agreement, which was a contract between the union representing the garment workers in a contractor's shop and the buyer whose apparel was being made in that shop. Although the first jobbers agreement was signed as early as 1922, the union had difficulty enforcing such agreements—in part, because the process of negotiating contracts with individual buyers was time-consuming, but also because by the late 1920s the union confronted the problem of "run-away" shops, as jobbers shifted their orders from unionized contactors in the city to non-organized shops in lower-cost regions such as Pennsylvania and New Jersey.

In the context of ongoing labor conflict, the Governor of New York, Alfred Smith, appointed a Commission in 1926 to report on the status of the industry. In its final report, the Governor's Advisory Commission observed that in determining the relationship between a jobber, sub-manufacturer (the term used to refer to contractors), and workers

> we should be concerned not so much with the form as with the substance. By whatever name he may call himself, the jobber controls working conditions; he controls employment, and that element of control imposes upon him the responsibility that he shall so conduct his business that proper working standards may be upheld instead of undermined (cited in Stein 1977: 280).

The Report went on to recommend changes to the structure of contracting relations as would "tend to regularize the flow of work into sub-manufacturing shops, raise the level of competition between sub-manufacturers, cause closer relations between jobbers and manufacturers, and stabilize working conditions in the shop" (ibid: 281).

It was not until the 1930s, however, that the structural changes to the industry recommended by the Smith Commission were made. First, the basic principles of the jobbers agreements were incorporated into the "Codes of Fair Competition" that were created as part of the National Industrial Recovery Act. Two separate but similar codes were negotiated and approved by President Roosevelt, one covering the men’s segment of the industry and another pertaining to ladies’ wear. Both recognized the principle of manufacturer/jobber-contractor joint liability:

> All members of the Industry who cause their garments to be made by contractors and submanufacturers shall designate the contractors actually required, shall confine and distribute their work equitably to and among them, and shall adhere to the payment of rates for such production in an amount sufficient to enable the contractor or submanufacturer to pay the employees the wage and earnings provided for in this Code, together with an allowance for the contractor’s overhead (cited in Schlesinger 1951: 37).

Although the U.S. Supreme Court later ruled the National Industrial Recovery Act unconstitutional, thereby invalidating and suspending the operation of all Codes of Fair Competition then in effect, the union was nevertheless able to secure some of the key provisions of the Code into new collective agreements that it was negotiating with employers. The union was able to do this because the position of organized labor had been substantially strengthened by key developments in national law, including the passage of the National Labor Relations (Wagner) Act in 1935 and the Fair Labor Standards Act of 1938.

As the union grew more powerful, companies in the garment district responded by organizing themselves into employers’ associations that could bargain collectively with the union on behalf of their members. Employers’ associations for both jobbers and contractors were formed, usually organized around a particular product and market niche. For example in the dress segment of the industry, the National Dress Manufacturers represented jobbers of higher-priced dresses, the Affiliated Dress Manufacturers included mid-market jobbers, and the Popular Price Manufacturers was comprised of jobbers whose dresses were sold at lower prices. This structure was more or less reflected in the organization of the contractors; the employers’ associations for dress contractors included United Better Dress (up- to mid-market) and United Popular Dress (low- to mid-market) (Melman 1994). Agreements signed with these associations provided more coverage than the early agreements that were signed with individual firms since they applied to all the companies that were members of the signatory association.

The jobbers agreement served as the lynchpin of a system that was sometimes called triangular collective bargaining—so named because the goal was to regulate, via a set of paired contactors and jobbers agreements, relations between the three "sides" of the production triangle: the workers as represented by the union, and the jobbers and contactors, each represented by their own employers association. Yet among these three parties to the agreement, the jobber was clearly recognized to be the most powerful industry actor and the only one capable of safeguarding the wages and working conditions of garment workers in contracting shops. As one union official explained to us, "[t]he ILGWU recognized that the jobber was the lynchpin of the industry. Contactors couldn't pay anything unless the jobber paid it to him or for him. The trick was to get as much as you could in the contract to protect the workers and the union" (author interview, 2008).

For several decades, triangular bargaining and more specifically the jobbers agreement at the heart of this this system succeeded in stabilizing and eradicating abuses in the domestic apparel industry. It is difficult to overstate the transformation that was achieved. Through the first decades of the twentieth century, the garment industry was notorious for long hours at very little pay in cramped and dangerous factories. These condition were etched into American consciousness by the fire at the Triangle Shirtwaist factory in 1911, in which, trapped by locked factory doors, 146 young workers died, many of them leaping to the sidewalk below. Supported by the public outrage the fire provoked, the ILGWU embarked on a campaign that by the late 1930's had transformed an industry which had birthed the term "sweatshop" into one that provided safe, secure jobs with reasonable hours at wages that afforded a decent quality of life.

By 1959, the success of the jobber agreement model in eradicating sweatshops was so universally recognized that that no less a conservative than Senator Barry Goldwater would speak out in defense of the agreements on the Senate floor:

> We conferees are in the very peculiar position of every one of us agreeing that we do not intend to upset the status quo of the garment or apparel industries. I am one who is probably closer to this situation than anyone except my friend from New York [Sen. Javitz]. I have been engaged in the retail end of this business all my life. I have watched what has happened in the garment section of New York and the garment section of Philadelphia and St. Louis and Chicago and on the west coast, and I have seen sweatshops disappear. I have seen order come out of chaos. I have seen unions create profits for businesses which were unable to produce profits, and Mr. President, none of us wants to disturb for one second the status that the garment trade now occupies under the present law.[10]

[10] *See* 95 Cong.Rec. 8709 (1949).

Goldwater's statements were made in the context of lengthy debate over the then-proposed Landrum-Griffin revisions to the National Labor Relations Act (NLRA). It was feared that the jobbers agreements would be rendered illegal by a proposed amendment prohibiting "any labor organization and any employer to enter into any contract or agreement … to cease doing business with any other person."[11] The jobbers agreement did just that: it required jobbers to contract only with registered unionized contractors.

Supporters of the jobbers agreements insisted that the provision, like the ban on secondary boycotts included in the Taft-Hartley amendments a decade before[12], should not apply where the companies involved have a unity of interest through an integrated process of production, as in apparel, and that jobbers agreements were essential for keeping sweatshops at bay. Senator Jacob Javits of New York noted that "it is readily felt that the elimination of sweatshops in [the garment and clothing] industries is heavily attributable to this method of proceeding to unionization through the fact that there is an integrated production process."[13] Senator and future president John F. Kennedy argued that doing away with the right to negotiate jobbers agreements "would be to invite chaos in the industry."[14] Ultimately, the amendment was passed, but a Garment Industry Proviso was added to the NLRA specifically exempting companies in the apparel industry from the hot cargo and secondary boycott prohibitions of the Act. In preserving the jobbers agreements as an effective tool against sweatshops, Congress explicitly adopted the theory of the garment supply chain as an "integrated process of production" into federal law.[15]

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[11] Pub. L. 86-257, 73 Stat. 543-544, 29 U.S.C. 158(e).
[12] In 1947, it was feared that the ban on secondary boycotts in the then-proposed Taft-Hartley amendments to the NLRA would threaten the jobbers agreement framework. To prevent this outcome, Senator Taft stated in a carefully orchestrated colloquy with Senator Ives that the amendments were not intended to prevent unions from applying economic pressure on garment industry jobbers to cease doing business with non-union contractors. Taft agreed that the ban on secondary boycotts was intended to apply only to neutral third parties, not allied companies engaged in an integrated process of production. *See* 95 Cong.Rec. 8709 (1949). The debate over the Landrum-Griffin amendments provided an occasion to codify this understanding in statute and protect against further proposed threats to the legality of the jobbers agreement framework.
[13] 105 Cong.Rec. 17381 (1959).
[14] See 105 Cong.Rec. 17327 (1959)
[15] 29 U.S.C. Sec. 158(e) ("Provided further, That for the purposes of this subsection (e) [otherwise banning "hot cargo" agreements] and section 8(b)(4)(B) [otherwise banning secondary boycotts] the terms 'any employer,' 'any person engaged in commerce or an industry affecting commerce,' and 'any person' when used in relation to the terms 'any other producer, processor, or manufacturer,' 'any other employer,' or 'any other person' shall not include persons in the relation of a jobber, manufacturer, contractor, or subcontractor working on the goods or premises of the jobber or manufacturer or performing parts of an integrated process of production in the apparel and clothing industry")

Despite surmounting legal challenges, over time the system was undermined as jobbers shifted production to non-union contractors throughout the North East. For a time, the union was able to follow the work, organizing contractors in Pennsylvania, Maryland, and even Puerto Rico, but contractors in the Southern states of the U.S. and then eventually those producing in Mexico and the Caribbean Basin proved out of reach. The system limped along despite declining union density into the 1990s. During the last quarter of the twentieth century it ultimately fell apart in the face of increasing global competition, as the outside system of domestic production gave way to subcontracting networks with offshore suppliers. By placing orders with independent sewing factories located in developing countries, today's jobbers—mostly brands like Levi's or Adidas, or retailers sourcing "private label" (store-brand apparel)—circumvent labor standards that the union had, to a large degree, succeeded in imposing on the domestic industry. It was in this context that the issue of sweatshops reemerged as an issue both at home and abroad, giving way to the current debate about how best to regulate wages and working conditions in today's apparel supply chain.

4. Learning from the Past? Modern-day Jobbers and the Pursuit of Buyer Liability

For our purposes, what is critical to underscore about the jobbers agreements is that they harnessed the power dynamics within the apparel supply chain in such a way as to make the lead firms in the industry, the jobber, responsible for wages and working conditions at the bottom of the chain. This principle of buyer liability was institutionalized in three specific ways. First, jobbers agreements sought to prevent competition among contractors on the basis of labor cost. Second, these agreements sought to stabilize subcontracting relationships by requiring jobbers to register their designated contractors with the union and limiting eligible contractors to those that were also covered by a collective bargaining agreement with the union. Third, jobbers had limited liability for wages that were unpaid by the contractor and the jobber was fully responsible for paying certain labor costs, such as pension contributions, health insurance, and vacation pay, which were paid not to the contractor as the formal employer of the workers, but rather directly into union-administered funds. We argue that these same three principles—ensuring contractors receive a price consistent with decent employment, regulating and stabilizing buyer-supplier relationships, and protecting workers by making buyers liable for labor costs—can usefully illuminate the current debate about labor standards in global supply chains.

Lesson One: Paying for Decent Labor Conditions

As suggested above, a key lesson of the story of the U.S. garment industry in the twentieth century was that decent working conditions were not established until competition among contractors on the basis of labor price was arrested. The ILGWU accomplished this by reaching up to the top of the supply chain and negotiating the cost of labor directly with jobbers. The jobbers agreements included numerous provisions detailing the jobber's obligations for wages and working conditions in contracting shops. These included:

- minimum wages by occupational category (sewer, cutter, presser etc.), both for "week workers" (cutters, samplemakers, etc.) and "piece rate workers" (primarily, sewing machine operators)
- a process for setting piece rates sufficient to yield the minimum wage for a sewer of average efficiency, as well as a process for resolving any disputes that might arise in the negotiation of these rates.
- provisions triggering wage increases in the case of inflation or increases to the statutory minimum wage
- hours of work, including provisions regarding maximum permissible overtime and the compensation rules for overtime work
- guaranteed paid holidays

To be sure, such provisions are hardly atypical of collective bargaining agreements, but what we want to underscore is that these provisions were included in the union's contracts with the *jobber*. Thus, even though the jobber was not the formal employer of the contractor's workers, and had no ownership relation to the factories producing his garments, he was nevertheless party to an agreement that regulated aspects of the employment relation in some detail. The jobber's obligations towards the contractor's workers were a concrete manifestation of the joint liability concept developed by the union, and institutionalized in the garment industry proviso discussed in the previous section. The union also had a matching agreement with the employers' association representing the apparel contractors, but this contract, which was signed after the jobbers agreement was finalized, simply repeated the language regarding wages and working conditions that had already been negotiated between the union and the jobbers' association. The sequencing of these negotiations reflected the fact that what the contractors was able to pay to his workers depended largely on what the contractor was, in turn, being paid by the jobber.

Thus, the jobbers agreement also contained language regarding the price negotiation between the jobber and the contractor, which was necessary in order to ensure that the latter would be in a financial position to pay the workers the wages specified in the union contract:

> A member of the Affiliated whose garments are made in contracting shops shall pay to such contractors at least an amount sufficient to enable the contractor to pay the workers the wages and earnings provided for in this agreement, and in addition a reasonable amount to the contractor to cover his overhead and profit (Affiliated Dress and ILGWU 1936: 14; Affiliated Dress and ILGWU 1954: 27)

Like other provisions, this requirement was subject to binding arbitration by an independent chairperson designated to resolve disputes in the industry.

Importantly, because these terms were negotiated with jobber and contractor associations covering the breadth of the industry, the jobbers agreements essentially took labor costs out of competition between contractors. Since production workers were required to be paid the wage levels spelled out in the contract regardless of where they worked, and jobbers were required to pay all their contractors prices sufficient for these wages to be paid, contractors could no longer compete for a jobber's business by offering a lower assembly price achieved on the backs of sweated workers. These provisions, combined with those discussed in the following sections, eliminated the key dynamic that created sweatshops. Competition among contractors could no longer be driven by downward pressure on wages, but would rather be driven by differences among contractors on the basis of quality and efficiency.

The initiative that most fully embodies the fair pricing principle underlying the jobbers agreements is the Designated Suppliers Program (DSP), proposed by the Worker Rights Consortium (WRC) and United Students Against Sweatshops. Under the proposed program, universities would impose on all of their licensees – including major sportswear companies like Nike, Adidas, and Russell – two key obligations in the area of wages and pricing: that the workers manufacturing collegiate licensed products are paid a living wage, and that contractors employing these workers are paid a price sufficient for this to occur. Just as the jobbers agreements specified a dispute resolution mechanism for adjudicating conflicts about what constitutes a price sufficient to meet the contractor's wage obligations, so too does the DSP establish an arbitration process for settling price disagreements between the contractor and its client about what constitutes a price sufficient to meet the program's living wage requirement.

While the DSP has yet to be implemented, many of the initiative's key elements have been incorporated into a project involving the WRC, the Dominican labor federation FEDOTRAZONAS, and Knights Apparel, the country's largest supplier of university-licensed clothing such as t-shirts and sweatshirts displaying collegiate logos. In 2010, Knights Apparel launched a new line of university licensed apparel, Alta Gracia, manufactured at a factory in the Dominican Republic observing labor standards that far exceed the industry norm, including payment of a living wage and full respect for the right to organize and bargain collectively (Greenhouse 2010; Kline 2011). Critically, in order to enable these conditions Knights committed to[16]:

- Pay prices to the factory for its products that fully reflect the cost of complying with the living wage requirement and all other applicable labor standards.
- Provide orders to the factory of such a volume, and on such a schedule, that the factory can employ workers and pay the living wage on a year-round basis, without any temporary layoffs or shifts to part-time work.
- Participate directly in collective bargaining with any duly constituted union representing a majority of the workforce at the factory.

Per a living wage market basket study carried out by the WRC, Knights Apparel is paying workers 3.5 times the prevailing wage in the Dominican Republic's export-oriented apparel sector (WRC 2011: 4). And the factory has a comprehensive collective bargaining agreement which Knights negotiated directly with a union organized by workers shortly after the factory's opening (WRC 2011: 13). Independent research has documented dramatic improvements in the health and wellbeing of workers and their children as a result of the factory's labor standards (Kline 2011: 13). The Alta Gracia brand has garnered strong consumer

[16] The obligations that the factory making *Alta Gracia* apparel – the Altagracia Project factory – and the brand buying that apparel and bringing it to consumers – Knights Apparel/*Alta Gracia* – have agreed to meet are outlined on the following site: http://www.workersrights.org/verification/Obligations.asp. Note that Knights is at present effectively operating the factory, though it does not own it, something that distinguishes the arrangement from a typical buyer-contractor relationship in the apparel industry. Knights is, nonetheless, a typical buyer in a general sense – this is the only production facility at which Knights has any ongoing oversight role, something it says it chose to have in this case to help ensure the high stakes project's success.

response and Knights has succeeded in recovering some of the increased cost through low turnover and operating efficiencies. Nevertheless, Alta Gracia has thus far struggled to achieve profitability because the volume of the product stocked by university bookstores has not met expectations, leaving the factory underutilized (Kline 2011: 22). In this sense, Alta Gracia's challenges are owed in large measure to an aspect of the project that distinguishes it from the jobbers agreements: whereas under the jobbers agreements higher standards were imposed across-the-board, placing no jobber at a competitive disadvantage for agreeing to raise worker wages, until the DSP or something like it is implemented, Alta Gracia must compete with brands that are not paying a living wage or anything close to it.[17]

While the DSP and Alta Gracia are the most elaborate efforts to impose a wage floor and pricing requirements in buyer-driven chains—that is, on the companies that we are arguing that today's equivalent of the jobbers—it is important to note that twin principles on which the DSP is based, a living wage and fair pricing standards, are well established concepts, at least on paper. Indeed, living wage provisions are included in the codes of conduct of the Ethical Trading Initiative[18] and Social Accountability International[19], two leading multi-stakeholder initiatives to which dozens of leading brands belong, although neither organization's living wage provision has been implemented.[20] Many of the codes of conduct that universities have developed also include a commitment to source their collegiate-licensed apparel from suppliers that pay a living

[17] In a development somewhat analogous to the Alta Gracia project, a Honduran labor federation, Central General de Trabajores (CGT), recently concluded a series of major agreements with Fruit of the Loom, the parent company of Russell Corporation, which owns several apparel factories in Honduras, where it is the country's largest private sector employer. The agreements guarantee associational rights for all workers in Russell's Honduran plants, require Russell to observe a collective bargaining agreement providing for significant wage increases in a unionized facility, and outline a mechanism for third-party dispute resolution should future conflicts between the union and the company arise (Greenhouse 2009; WRC 2009). This agreement is not strictly analogous to a jobber's agreement because it is between a union and the direct employer as opposed to a buyer. However, insofar as Russell designs and markets its own brand, it is much more like a jobber than a traditional subcontractor.

[18] The Ethical Trading Initiative Base Code states that "[w]ages and benefits paid for a standard working week meet, at a minimum, national legal standards or industry benchmark standards, whichever is higher. In any event wages should always be enough to meet basic needs and to provide some discretionary income.") Available at http://www.ethicaltrade.org/sites/default/files/resources/ETI%20Base%20Code%20-%20English_0.pdf

[19] The SA8000 Code of Conduct states that "[t]he company shall respect the right of personnel to a living wage and ensure that wages paid for a normal work week shall always meet at least legal or industry minimum standards and shall be sufficient to meet the basic needs of personnel and to provide some discretionary income." Available at http://www.sa-intl.org/_data/n_0001/resources/live/2008StdEnglishFinal.pdf

[20] Ethical Trading Initiative acknowledges that its member company's have not implemented living wages at their contractors (ETI 2008). Social Accountability International has declined requests by various organizations to disclose the wage rates it considers a living wage.

wage, though implementation has been limited to the Alta Gracia project.[21] Likewise, a number of cities, including Los Angeles, San Francisco, and Milwaukee, have included living wage or non-poverty wage standards in anti-sweatshop procurement laws which apply to apparel and other goods procured by the cities, though there has yet to be implementation.

What was unique about the jobbers agreement structure was precisely that it was seeking to ensure that buyers paid a price sufficient to cover the cost to the contractor of paying adequate wages and working conditions. As explained above, this was achieved via a provision specifying that piece rates had to be set in such a way as to yield minimum hourly earnings for production workers, and an additional provision requiring the jobber to pay to the contractor a price per garment that included the labor costs specified in the contract plus an additional amount for overhead and profit. The intent of this pricing structure was precisely to "ring fence" labor cost in the price negotiation between the jobber and the contractor, thus restricting the content of their business negotiation to the overhead and profit component of the price. While disputes sometimes arose between the jobber, the contractor, and the union regarding the specific piece rate to be paid on a particular garment, there was general agreement among all the parties regarding the methodology to be used in setting the piece rate, and in negotiations over the piece rates, the parties were more or less evenly matched in terms of experience and expertise. If anything, the union's representative enjoyed an edge in this process, since he or she was able to rely on support from industrial engineers employed by the ILGWU's rate-setting department.

It is difficult to overemphasize the degree to which this model of pricing varies from that used in most negotiations today between brands and suppliers, in which labor cost is not necessarily itemized as a specific element of the supplier's price. Under the jobbers agreement model, it was assumed that the jobber, even if he relied entirely on the "outside model" of production, would at least employ a few seamstresses in a small sample room, and would generally possess sufficient knowledge and experience on the manufacturing side to meaningfully participate in the negotiation of piece rates. In contrast, the jobbers of today are often brands or retailers that have an "underdeveloped/in some cases non-existent knowledge of production management and engineering principles," and consequently many neither conduct independent labor costing nor include production engineers or other technical personnel on the

[21] For example, see University of California Code of Conduct for Trademark Licensees; Available at www.ucop.edu/ucophome/coordrev/policy/1-05-00**code**.pdf.

factory side in price negotiations (Miller 2011: 9). The consequence of these pricing practices in the global supply chain is that labor costs, particularly workers' wages, have become "the residual variable at the micro level" (Vaighan-Whitehead 2010: 22)—an outcome that is precisely opposite to the one secured by the ring fencing of labor costs in the jobbers agreements.

In the absence of a contractual agreement requiring that the cost of labor compliance be built into standard price negotiations between buyers and suppliers, there are some voluntary initiatives that call on companies at the top of supply chains to augment the income of production workers in the form of small premiums on top of standard prices, which are then "passed through" to workers. This is similar to the above- market price premium that differentiates fair trade products, such as coffee, from their conventional counterparts. In fact, Fair Trade USA has recently launched a project to market "fair trade" apparel and linens,[22] although this initiative has been criticized for failing to ensure that the "fair trade" premium brands pay translates into wages for workers above the industry norm. The most fully developed "pass through" model has been established not in apparel, but rather in agriculture. The Coalition of Immokalee Workers, an organization of farm workers in Florida, has successfully won agreements with McDonalds, Taco Bell, Burger King, and Pizza Hut, as well as major supermarkets and food service companies, requiring the companies to contribute a "penny per pound" of each tomato they purchase to go towards workers' income, an initiative which has begun to improve farm worker wages.[23]

Any attempt to ensure that buyers bear at least some of the cost of insuring labor compliance throughout their supply chain will require a departure from current pricing practices. While it is unclear what precise form an alternative pricing mechanism will take, trends in public regulation suggest a growing recognition that wages and working conditions at the factory level

[22] *See* Fair Trade USA, Apparel & Linens (last visited Apr. 19, 2012), http://www.fairtradeusa.org/products-partners/apparel-linens

[23] Similar to the apparel industry, over the past 20 to 30 years, there has been a significant consolidation at the top of the produce industry. Supermarket retailers like Wal-Mart and fast food chain restaurants like McDonalds and Taco Bell have used their increased leverage over growers to demand major price concessions for tomatoes and other products (Food Production Daily 2004; Fox 2004). As a result, growers have been forced to accept a consistently shrinking portion the value of their goods: in the case of tomatoes, the grower share of the retail price fell from 41% in 1990 to 30% in 2009 (Hitov 2011). The price pressure on growers has in turn led to the squeezing of farm worker labor. As of 2008, the nominal piece rate for Immokalee's workers – 40-50 cents for each 32-pound bucket – had not changed significantly over the past thirty years, meaning that, adjusted for inflation, worker wages declined by as much as 75% during this period (Schlosser 2008:6). In response, very much like the jobbers agreements, farm worker organizations have sought to compel the companies at the top of the supply chain to contribute directly toward workers' compensation. Through its penny-per-pound pass-through, the Campaign for Fair Food aims in the near term to raise pay from $10,000-$12,000 to $17,0000 per year (Rios 2011).

are related to supply chain dynamics. California's Labor Code, for example, holds buyers liable as a guarantor for unpaid wages in circumstances where it "unreasonably reduc[ed] payment to its contractor where it is established that the guarantor knew or reasonably should have known that the price set for the work was insufficient to cover the minimum wage and overtime pay owed by the contractor." [24] Similarly, in an initiative active in the late 1990s and early 2000s, the Department of Labor (DoL) used the "hot goods" provision of the Fair Labor Standards Act (FLSA) to compel apparel companies caught violating FLSA to participate in a DoL program in which the company agreed to monitor and assure compliance at its contract facilities. The initial agreement underlying the program required signatory companies to ensure the "economic feasibility of the price terms that are involved [in each purchase of apparel goods from the contractor], in light of the compliance with the [Fair Labor Standards Act] and the [Employer Compliance Program] required of the Contractor and in light of the calculations and expectations of the parties to the purchase."[25] The program proved effective in reducing minimum wage violations in California and New York (Weil 2010: 32; Esbenshade 2004: 85). Relevantly, although there is no evidence showing that the pricing aspect of the agreement was responsible for improvements, data gathered by the DoL during the course of the program demonstrated the critical role played by price in setting working conditions. The data "indicate[ed] that contractors' ability to negotiate—and, particularly, to renegotiate when circumstances change—is the most important factor in compliance, more important than the most effective monitoring" (Esbenshade 2004: 107).

Lesson Two: Regulating and Stabilizing Contracting Relations in the Supply Chain

A second major component of the system created through triangular bargaining was a regime for regulating and stabilizing the relationships between jobber and contractors. As was also the case with the regulation of wages and working conditions in contractor's shops, the jobbers agreement included several specific provisions designed to achieve this objective. These included:

- Requiring jobbers to designate, at the outset of an agreement, all contractors that it intended to use during the course of the (typically three year) agreement, and to register the

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[24] *See* California Labor Code Section 2673.1(e).
[25] Augmented Compliance Program Agreement (ACPA) § 3(a)(iii); also Esbenshade 2004: 105.

names of designated contractor with an Administrative Board comprised of representatives from the union and the employers' association representing the jobbers;

- Restricting the supply of contractors that could be so designated to those contactors belonging to an employers' association that was a party to a collective bargaining agreement with the union;
- Permitting a jobber to register only the number of contractors actually required to manufacture his garments;
- Requiring jobbers to distribute work evenly across all designated contractors and prohibiting the use of temporary contractors or the designation of a new contractor except in the event that all registered contractors were fully supplied with work and additional capacity was needed;
- Prohibiting the discharge of a designated contractor for any reasons other than poor quality and/or late delivery
- Specifying that contactors could work only for the jobber that designated him.

The intent of these provisions was to promote long-term, stable relationships between jobbers and contractors. Just as the inclusion in jobbers agreements of language regarding wages and working conditions in contracting shops was intended to prevent contractors from competing for jobbers' orders on the basis of labor cost, so too were the detailed clauses regulating the nature of contracting relations between jobbers their suppliers meant to further preclude jobbers from constantly switching between contractors to secure a short-term gain. The jobbers agreements were premised on the belief that the system of contractor registration and the additional provisions regulating the jobber-contractor relationship were necessary to stabilize

> the conditions of employment in the industry; to protect the employment and work opportunities and standards of all the workers…covered by this agreement; to assure the elimination of substandard wages, long hours of work, irregularity of employment, inequality of treatment, and other inferior labor standards (Affiliated Dress and ILGWU 1936: 10).

This system had a number of important consequences. First, it caused the buyer to consolidate his orders with a smaller number of contractors whose factories were then filled up with that jobber's work, or perhaps with orders from a small number of other clients that were party to the same master jobbers agreement. This guaranteed that the contractor produced under prices that allowed it to pay its workers the wage levels established by the agreement. Second, it created a powerful incentive for contractors to accept unionization and to agree to the higher labor standards that the union negotiated with the employers' association representing the contractors because, by doing so, contractors gained the opportunity to become a designated supplier of one or more jobbers and consequently to gain access to steady orders at fair prices.

Additionally, the close regulation of the contracting relationship (e.g. the requirement that orders be distributed evenly among contractors), the prohibition of discharge without cause, and the availability of a dispute resolution mechanism in the event of a disagreement between the buyer and the supplier gave all of the parties confidence in the bargain they had struck. Cheating on the part of jobbers, through the placement of orders in non-registered or non-unionized shops not subject to the agreement, tended to be detected and sanctioned, including by the weapon of the so-called jobbers' strike. Finally, because the registration period lasted for the life of the agreement (typically three years), and because designated contractors in good standing were assured steady business as long as the jobber had orders to give, the system enabled economic security for contractors and job security for workers. In short, the contractor registration system ensured that decent wages and conditions were feasible, incentivized contractors to agree to such conditions, and brought stability to inter-industry relations that had been chaotic and chronically insecure.[26]

It is worth considering how markedly contemporary sourcing practices differ from the structure of subcontracting relations that prevailed in the domestic apparel industry during the era of the jobbers agreements. Buyers today not only place orders with contractors located in multiple countries, but additionally they frequently disperse this business among many more suppliers than would be necessary to produce the volume of production in question. It is true that the MFA's quota system created a strong incentive structure for buyers to source their apparel from multiple countries. However the phase-out of the MFA and the inauguration of quota-free trade eliminate this justification for far-flung networks. While buyers may well want

[26] The provisions of the jobbers agreements regulating contracting relationships produced buyer-supplier relationships that were similar to the ones that Locke et al. suggest are a precondition of the "commitment" approach to labor compliance they propose as an alternative to the conventional code of conduct/auditing model. Indeed, the authors acknowledge that "a commitment approach is possible only if buyers work with factories for more than just a few months" and if both buyer and supplier share a strong desire to "cultivate long-term business relationships" (2009: 345). Yet in the current environment and in the absence of any regulatory tool capable of institutionalizing more stable contracting relations, it is unclear how the current incentive structure would produce this longer-term orientation on the part of buyers.

to spread production across multiple geographic locations to protect them from the disruptions that can occur to supply chains from unanticipated events (e.g. political instability in an exporting country, natural disasters that affect raw material sourcing or shipping, etc.), this objective is not incompatible with a rationalized and consolidated supply base.

In our own research, we have been struck by the frequency with which buyers claim that they do not have the leverage at a given factory to correct violations. Brands, upon learning of problems with a supplier factory, often claim that "there is nothing we can do because we are such a bit player in the facility."[27] But the use of vast numbers of suppliers is not inevitable and the history of the domestic apparel industry suggests that it is incompatible with the achievement of decent working conditions. When a buyer's commitment to a supplier does not extend beyond the most recent order that is placed, and when buyers can choose among a virtually limitless supply of factories in making the next sourcing decision, the likely result is insecurity on the part of the supplier, which the buyer may attempt to leverage into concessions, such as shorter lead times or lower prices, that result in a deterioration of working conditions and/or violations of labor rights.

When a positive record of labor compliance is not included among the criteria used by buyers to make sourcing decisions, or when this aspect of contactor performance is valued far less than price, there is little to no incentive for the supplier to improve on this measure, particularly since most contractors are aware that it is relatively rare for an otherwise cost competitive contractor to lose a client's business on the grounds of non-compliance; typically, this requires a record of either consistent or particularly egregious (e.g. child labor) violations (Locke et al 2009). In reflecting proudly on his company's positive record of compliance, one contractor in Central America nevertheless acknowledged that

> No customer has ever come in here and paid a premium price because of that, or pushed to get in the door [because of it], or said 'we know you cost a little more because of what you do, and that's okay.' It's all about Vietnam. Seven

[27] Locke et al. appear to accept this argument when they observe that "[f]or most apparel suppliers, individual global brands constitute but a small fraction of their total business (and thus of dedicated factory capacity), and even this is usually for only part of the year, for a season or two, and with no guarantee that orders will be repeated in the future. In this context, it is not at all clear that global buyers have the ability or leverage (let alone credibility) to pressure these suppliers to raise wages, reduce working hours, or even invest in costly improvements to their production systems to improve working conditions" (2009: 326). While we agree with this observation about the volatile nature of subcontracting relationships in the apparel industry, we disagree with the author's interpretation that these indicate a *lack* of buyer power vis-à-vis their suppliers since, in our view, this volatility reveals the buyer's strategic preference for a short-term orientation towards sourcing.

> cents [the differential between his price and what the client would pay to have the same product made in Vietnam]. 'What can you do about that?' It's no added value to them. They say they care, but the incentive system is set up to care more about price (Author interview 2010).

Furthermore, consolidation may be a precondition for changes in the pricing practices of buyers to translate into meaningful change at the factory level. This is certainly the case for any program that does not include a mandatory non-poverty or living wage standard and instead relies on the pass-through of price premiums, as in "fair trade" models. Where such premiums are paid for only a small portion of the apparel produced in a factory, the amount of additional funds going to workers can be negligible and a perverse situation is created where a brand's buying practices may be lauded as an example of socially responsible or ethical sourcing, even as the contractor continues to pay poverty wages to its workers.

In today's environment, as with wage and pricing standards, the initiative that most closely resembles this principle of the jobbers agreement is the Designated Suppliers Program for university licensed apparel. As suggested by the name of this initiative, a central element of the DSP is the designation by licensees of the contractor factories they intend to use to fulfill the licensing contract. Under the program, licensees would be required to sign long-term production agreements of no less than three years. The theory behind the program is that these commitments, along with the fair pricing and wage standard elements of the DSP model, will provide contractors both the incentive and the capacity to provide decent conditions and job security for their workers.

Lesson Three: Guaranteeing Payment to Workers

A third crucial element of an effective labor enforcement regime is a means to ensure that workers are made whole when – as happens with great frequency in the apparel industry – their bankrupt employers abscond without paying them. This is a particularly grave problem in the developing world, where accrued benefits serve the function of unemployment insurance. It is typical for fly-by-night contractors to shut down owing workers six months to a year in terminal compensation, leaving them with no means of supporting themselves or their families. Three general approaches have been developed to solve this problem.

The first is to set aside funds for accrued benefits in accounts that are safe from raiding. Under the jobbers agreement regime, the ILGWU managed benefit accounts funded by the jobbers for workers' pensions, healthcare, and accrued vacation. The fact that these benefits were administered by the union, not the contractor, gave the benefits a highly desirable trait of portability in an industry with high turnover among contractors and workers and, of relevance here, ensured that significant liabilities did not accrue upon poorly capitalized contractors. As a result, workers did not lose their benefits if their direct employer went under.

In the current landscape, the perhaps most comparable analogue is the Brazilian Guarantee Fund for Time of Service (FGTS) system through which every month the employer is required to deposit eight percent of the employee's monthly salary into an account managed by the Federal Savings Bank on behalf of the employee. Employees are entitled to withdraw the balance of the account in several situations, including dismissal without cause. Under such a system, workers are guaranteed their severance pay because the money sits in an account that the firm does not control. The creation of funds along these lines in major apparel exporting countries are sometimes suggested by labor advocates in corporate social responsibility gatherings, but no brands or governments have agreed to create such a system. A legislative proposal along these lines put forward by the Honduran labor movement was killed in the early 2000's by the apparel manufacturers association. Of course, since this would imply a greater production cost, we believe this is another example of a cost that buyers should cover in a fair pricing mechanism.

A second approach is to hold brands jointly liable for unpaid wages owed to workers by their contractors. Although the portable benefit accounts, overall stability provided by the system, and the existence of unemployment insurance made the provision less crucial, the jobbers agreements included a provision for limited jobber liability for unpaid wages in the case of an abrupt contractor closure. Typically, the provision held jobbers liable for up to two weeks of compensation left unpaid by a bankrupting contractor. In the contemporary context, as a result of a decade-long campaign by worker advocates, California law now holds apparel brands strictly liable as guarantor for wages owed by their contractors.[28] A study conducted six years after this landmark law was passed revealed that although it led to progress in workers obtaining owed wages, its full promise was undermined by inadequacies in the state labor department's enforcement process (APALC and Sweatshop Watch 2005). New York state law also holds garment manufactures liable for wages owed by contractors, although only where the

[28] California Labor Code § 2673.1

manufacturer knew or should have known of the contractor's violations, a standard much more difficult for workers to meet than the strict liability provision in the California law.[29]

A powerful case has also been made that the broad definition of "employ" under the federal Fair Labor Standards Act (FLSA) – to "suffer or permit to work" – was written specifically to address the problem of garment sweatshops and, read properly, imposes joint employment obligations on manufacturers who knowingly contract out their work to contractors who violate worker rights (Goldstein et al 1999).[30] In the international context, many university codes of conduct include guarantor provisions, holding licensees liable for unpaid wages of contractors. Over the past several years, these policies have been used to compel Nike (and in one case its agent) to contribute more than $3 million to workers denied legally mandated pay in four factory closure cases Honduras and Indonesia, among other recent cases (Greenhouse 2010; WRC 2011).

A final approach for ensuring workers are paid the compensation due to them are statutory methods to embargo goods made by workers who have not been paid fully for their labor – so-called "hot goods." The hot goods provision of the FLSA empowers the Department of Labor to object to the shipping of hot goods and require the contractor or manufacturer to correct the violations in order for the goods to be shipped. The DoL has used the hot goods provision has a highly effective stick to compel brands to remediate violations not only at the contract shop in question but more comprehensively in their supply chains (Weil 2010: 29). The Decent Working Conditions and Fair Compensation Act, was first proposed in Congress in 2006 to effectively create a hot goods provision for goods imported into the United States. The act would "prohibit the import, export, and sale of goods made with sweatshop labor."[31] At its maximum support, the version introduced in 2007 was cosponsored by 167 Democrats and 7 Republicans, but died in committee and has not been re-introduced since 2009.

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[29] N.Y. Labor Law § 345-a(1)

[30] Drawing on extensive historical research, the authors argue that under the "suffer or permit" standard, a company is to be held liable if it knew or should have known, for example, that its subcontractor employed children or failed to appropriately pay workers who performed work for its benefit, and it could have prevented this from occurring; the standard should not require day-to-day control over the contractor, as courts have often interpreted the provision to require.

[31] See, e.g., S. 3485, 109th Cong. (1996).

Conclusion

In recent years, the sweatshop debate has become characterized by a new consensus about the failure of the dominant code of conduct plus auditing model to effectively address the problem of labor compliance in global supply chains for apparel products, and a series of new proposals about what alternative strategies may be more effective. These suggestions range from from a deeper commitment on the part of lead firms (Locke et al 2009) to empowering labor inspectors (Piore and Schrank 2006) to mobilizing enlightened consumers (O'Rourke 2011). But while different answers to the question of how to improve labor compliance in contemporary supply chains have been given, we find it surprising that so few contributors to this debate have asked what we believe is a more fundamental question: what is it about this industry that has tended, across a wide swathe to time and place, to produce sweatshop conditions? Our argument is that the root cause of sweatshops must be sought at the level of industry dynamics. Pressure on labor standards and workers' rights is created when a large and increasingly global set of suppliers compete, primarily on the basis of labor cost, for the orders of a much smaller set of powerful buyers. Therefore any effective solution to this problem has to recognize this cost competition, and the way in which it intersects with buyers' pricing practices.

We have revisited the history of jobbers agreements in this paper because we believe that a system that explicitly recognizes the role of buyers in setting standards for wages and working conditions for garment workers is the best route to improving labor compliance. We identified three specific elements of the jobbers agreement that were largely effective in eradicating sweatshop conditions in unionized apparel factories in the United States for much of the twentieth century. This system was undermined by the shift towards global sourcing on the part of lead firms, led by large brands and retailers that are far more profitable than the jobbers of yesteryear, and, to be sure, we acknowledge that globalization does indeed complicate the search for effective forms of labor regulation in the modern apparel industry. However, the point we want to make is that the jobber agreements not only managed to put a floor under competition on the price of labor, they also ensured that the higher costs of production were absorbed by the industry actors that were most capable of doing so. There are clear parallels between the jobber-contractor dynamics that the jobbers agreements sought to regulate and the relationship between global suppliers and offshore apparel manufacturers in today's supply chains. Our goal has been to draw out these parallels and suggest what kinds of regulations might serve as analogues to the jobbers agreement in this newest front against the century old scourge of sweatshops.

Appendix 1

1989			2000			2010		
	Share of Imports	CIRI Workers' Right Score		Share of Imports	CIRI Workers' Right Score		Share of Imports	CIRI Workers' Right Score
China	13.55%	0	Mexico	15.76%	1	China	41.98%	0
Taiwan	13.22%	2	Honduras	6.41%	2	Vietnam	7.72%	0
Hong Kong	12.88%	n.a.	Bangladesh	6.03%	1	Bangladesh	6.49%	1
Korea, South	10.42%	0	China	5.79%	0	Honduras	5.14%	0
Philippines	4.95%	2	Hong Kong	5.71%	n.a.	Indonesia	5.10%	0
Dominican R.	3.87%	1	Dominican R.	5.22%	1	India	3.92%	1
Indonesia	3.31%	1	El Salvador	4.49%	1	Mexico	3.85%	0
Mexico	2.92%	2	Taiwan	4.18%	2	Cambodia	3.83%	0
Bangladesh	2.89%	2	Korea, South	3.66%	1	El Salvador	3.31%	1
Singapore	2.68%	1	Philippines	3.30%	2	Pakistan	2.82%	0
India	2.59%	1	Indonesia	3.26%	1	Thailand	1.87%	0
Sri Lanka	1.98%	2	Thailand	2.93%	1	Nicaragua	1.46%	1
Malaysia	1.96%	1	Sri Lanka	2.55%	2	Philippines	1.41%	1
Thailand	1.76%	2	India	2.49%	1	Sri Lanka	1.28%	0
Haiti	1.73%	1	Guatemala	2.24%	1	Guatemala	1.26%	0
Costa Rica	1.66%	2	Costa Rica	2.19%	2	Haiti	1.02%	0
Jamaica	1.63%	2	Pakistan	2.06%	1	Dominican R.	0.95%	2
Turkey	1.55%	2	Canada	1.87%	2	Egypt	0.93%	0
Pakistan	1.46%	0	Turkey	1.86%	2	Jordan	0.78%	0
Macau	1.13%	n.a.	Macau	1.60%	n.a.	Taiwan	0.69%	0
Total/Average	**88.14%**	**1.33**		**83.60%**	**1.33**		**95.83%**	**0.35**

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