

**The Limits of Voluntary Governance Programs:
Auditing Labor Rights in the Global Apparel Industry**

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The Limits of Voluntary Governance Programs: Auditing Labor Rights in the Global Apparel Industry

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Abstract

Corporations have increasingly turned to voluntary, multi-stakeholder governance programs to monitor workers' rights and standards in the global apparel industry. While much has been written on whether, in general terms, these Corporate Social Responsibility (CSR) programs are or are not effective, the literature has not fully explored under what conditions these programs fail and succeed. This paper argues that CSR effectiveness varies significantly depending on stakeholder involvement and issue areas under examination. Corporate-influenced programs can be effective in detecting and remediating minimum wage, hour, and occupational safety and health violations because addressing these issues provides corporations with legitimacy and reduces the risks of uncertainty created by activist campaigns. Corporate-influenced programs, however, are less effective in ensuring workers' right to form unions, bargain, and strike because these rights are perceived as lessening managerial control. I explore this argument by first contrasting corporate and labor-influenced programs, and then analyzing 730 factory audits of the Fair Labor Association between 2002 and 2009. This analysis is complemented with a case study of Russell Athletic in Honduras.

Since the 1990s, there has been a considerable shift toward voluntary, multi-stakeholder governance mechanisms to monitor compliance with labor standards and rights in the global economy (Fung et al. 2001; 2007; Rodríguez-Garavito 2005; Seidman 2007). These "Corporate Social Responsibility" (CSR) initiatives are a response to new challenges presented by economic globalization, notably corporate efforts to oversee the operations of increasingly-complex global supply chains. As media exposés and social movement activists highlight extreme labor abuses in factories producing for well-known global brands, corporations have been pushed to monitor their employment relations practices through multi-stakeholder programs.

¹ The author thanks Dong Fang and Katherine Cornejo for their research assistance in coding FLA factory audits. Research for this paper was supported by an Alfred P. Sloan Industry Studies Fellowship.

Yet, the debate remains whether Corporate Social Responsibility is a step forward or a step backward for labor rights in the global economy. Some scholars argue that CSR contributes to greater respect for labor standards by providing a flexible way for corporations to take greater responsibility for the conduct of their subcontractors (Fung, O'Rourke, and Sabel 2001). CSR has also been seen as a mechanism to expand MNC best practices to global operations (Mosley 2011), and an effective response by corporations to a perceived market for standards (Elliott and Freeman 2003). Critics counter that CSR is, at best, a public relations ploy by corporations and, at worst, part of a larger effort to weaken state regulation and displace labor unions (Justice 2006; Levinson 2001; Wells 2007).

This paper suggests that CSR effectiveness is partly dependent on how and whether different social actors participate in the establishment and implementation of the program.² In some CSR programs, corporations are excluded while more progressive NGOs and labor unions maintain influence. In most CSR programs, however, corporations play a significant role in program design and oversight. This paper argues that corporate influenced programs may effectively monitor minimum labor standards in order to gain legitimacy and reduce the risks of media exposés and activists campaigns. However, they fall short when it comes to monitoring the right of workers to form independent trade unions, bargain collectively and strike --what I will refer to as Freedom of Association (FoA) rights—because these rights potentially weaken managerial control.

The distinction between FoA and other issue areas is fundamentally a difference between rights and standards. A working age of 16, a minimum wage of USD 1 per hour, and an overtime wage of 1.5 times the base wage are *standards* and can be modified at any time as a result of government decisions or stakeholder negotiations. The formation of a union, good faith collective bargaining, and withholding ones labor in order to improve terms and conditions of employment are *rights*. They do not dictate outcomes but guarantee procedures that mitigate the inherent power imbalance in the employment relationship.³ The attempt by CSR programs to

² Research has shown that effectiveness is also dependent on state enforcement capabilities or, more generally, the quality of governance. Where governance is strong, CSR works better. And where governance is weak, CSR – instead of filling the void—is also weak. See (Locke, Qin, and Brause 2007).

³ For the International Labour Organization (ILO), freedom of association conventions are considered so integral to proper employment relations that all member states are obliged to comply with them regardless of whether they ratified the corresponding conventions, C87 and C98.

monitor not only standards but also rights raises questions about the interests of CSR program participants, the power relations among the participants, and the sources of their authority.

Precisely because FoA is a right and not a standard, its lack of enforcement is perhaps the most noteworthy. No doubt, there are technical reasons that complicate FoA detection and remediation. Verification of FoA rights cannot be ascertained by auditing payroll and employee records or by using the equivalent of a hand-held device that measures air quality or noise levels.⁴ There are countless ways for employers to prevent unionization, ranging from the harassment and intimidation of union activists to the offering of promotions and generous pay increases to would-be union leaders. Detecting and documenting such actions are complex tasks. Short “social audits” are particularly ineffective since the challenge is to determine if there has been a history of employer actions which, taken together, have been used to create an anti-union climate in the factory.⁵ And worker trust in the people monitoring factories is crucial and takes time to acquire.

CSR programs can remedy this problem by turning to FoA experts who employ a more appropriate verification system. Yet, it is argued here that corporate members of CSR programs will not give their full support to more effective FoA monitoring out of concern that greater compliance of FoA will lessen managerial control over supply chain operations. It is not necessary that such blockage be direct or forceful. These CSR programs depend financially on their dues-paying corporate members. And just like there is an emerging market for ethically-produced goods, so too is there a market for CSR programs. Corporations are able to quit CSR programs that are too rigorous and go elsewhere, which puts pressure on the executive staff of CSR programs to avoid actions or procedures that might lead to corporate defection. This *threat-of-defection* dynamic is present, by definition, in all voluntary governance programs, and is the cause for their limited effectiveness in certain issue areas.

CSR programs are thus vulnerable to “regulatory capture,” a term used by public choice theorists to describe the process by which interest groups “capture” the agencies designed to regulate them. The theory observes that this is possible because their stakes in the policy

⁴ Of course, unscrupulous companies can alter their books complicating the auditing of wages and hours, but this can be verified through worker interviews.

⁵ Respect for freedom of association and trade union rights is also largely dependent upon governments and states. Governments decide whether independent unions are allowed to exist, how much resources can be dedicated to workplace inspections, etc. CSR programs, however, are largely set up to monitor the conduct of factories and not governments and states.

outcome are strong while the general public's concern is more dispersed, especially over time, as the supportive constituency focuses its energy elsewhere. The possibility for regulatory capture is even greater in CSR programs because: 1) They lack the authority of the state to mitigate powerful corporate interests, which sit directly on the executive boards of these programs; 2) Systematic social audits depend on corporate participation since this guarantees access to the factories to conduct the audits; 3) The proliferation of private CSR governance schemes allows corporations to threaten to leave a given program and go elsewhere if the program is not to its liking; and 4) While there was some initial interest on the part of labor unions in participating in CSR programs, this interest declined in the apparel sector, thus removing a major countervailing force to corporate influence.

This does not mean that corporations do whatever they please. NGO stakeholders, activist pressure, and media exposés are mitigating factors, as are corporations' desire to increase their legitimacy and reduce the risks of reputational damage. Corporations have a strong interest in preventing embarrassing violations of minimum wage laws and basic health and safety standards. Compliance with minimal standards provides legitimacy and lessens the potential for reputational damage. Yet, a different logic holds sway when corporations face the perceived loss of control over the cost structure and operation of their supply chain as a result of strikes and pressures to increase wages and benefits via the mechanism of collective bargaining. What this suggests is that corporate-influenced programs will be more likely to effectively monitor minimal labor standards (minimum wages, hours of work, health and safety) in order to increase their legitimacy, but will be less likely to effectively monitor and remedy FoA rights since they are perceived as lessening managerial control.

In the sections that follow, I develop and probe this argument via an exploration of CSR programs and their stakeholder participation. A labor-influenced program, the Workers' Rights Consortium (WRC), is contrasted with the corporate-influenced program, the Fair Labor Association (FLA). The paper then analyzes the FLA in greater detail by coding and examining 730 factory audits conducted by the FLA between 2002 and 2009. This quantitative analysis is complemented with a case-study of an FLA member, Russell Athletic, which draws on the author's field research in Honduras.

The Evolution of CSR

The idea that businesses should take responsibility for the social impact of their operations goes back centuries. For long periods of time, corporate “social responsibility” was understood as business philanthropy and good community relations.⁶ Today’s concept of social responsibility began to develop after World War II at a time when business executives increasingly accepted that they were responsible for the consequences of their actions beyond their economic obligations to their shareholders (Carroll 1999).

Keith Davis, an early scholar of the phenomenon, argued “social responsibility begins where the law ends” (Davis 1973:313, cited in Carroll 1999: 277). That is, for Davis, the point was not to supplant the law, but rather to go beyond it. He writes: “A firm is not being socially responsible if it merely complies with the minimum requirements of the law” (Ibid.). By building on the foundation set by law and providing additional benefits, CSR should result in improvements for workers over time. Of course, this assumes that state protections of labor rights at least will remain constant. Yet, state protections via resources dedicated to enforcement have been in flux in many countries of the world. Indeed, as Robert Reich observed while he was the U.S. Secretary of Labor, the same corporations that were promoting social responsibility were also the ones that had aggressively lobbied to weaken labor regulation.⁷

Data on the resources that the U.S. government dedicates to basic wage and hour enforcement when compared to the boom in the corporate social responsibility phenomenon reveal contrasting trends. As the budget for enforcement declined, interest in CSR escalated. Indeed, in the early 2000s, as some 1,000 multinational firms had established their own codes of conduct stipulating human rights, and social and ethical standards (Smith and Feldman 2003: 2), the number of U.S. labor inspectors declined by 26 percent.⁸ The lack of effective labor law enforcement in developing regions like Latin America remains uneven. Indeed, the single most common argument used by corporations when explaining their participation in CSR programs is that they are simply filling a gap left by weak government enforcement agencies.

In 1992, Levi Strauss adopted one of the first voluntary codes of conduct for international sourcing in apparel after activists revealed that some workers making Levi Strauss products were

⁶ It is still understood this way by many corporations. For example, when Hershey is asked about its CSR program, it refers to its support for an orphanage in Mexico.

⁷ Presentation by Robert Reich at the annual meeting of the Labor and Employment Relations Association (LERA), San Francisco, January 2-5, 2009.

⁸ United States General Accounts Office, GOA-09-962T.

treated as indentured servants (Jenkins 2002). More and more apparel companies began adopting their own codes as the U.S. anti-sweatshop movement gained momentum and increasingly exposed labor rights abuses in the apparel supply chain (Anner 2011). At the time, many of these codes did not include monitoring or enforcement mechanisms, and often they made no reference to labor union rights, preferring to focus instead on issues like the environment, discrimination, child labor, and forced labor (Jenkins 2002). Yet, as activist pressure and media exposés escalated, codes increasingly included FoA rights in their framework. To gain greater legitimacy, some corporations began participating in multi-stakeholder CSR programs to emphasize that the programs were not wholly designed and implemented by corporate interests.

One group of scholars observing this trend referred to the benefits of a “market-based solution.” They envisioned CSR as developing into a system in which corporations are required to inform the public about their labor practices, and consumers use their purchasing power to punish bad corporations and reward good corporations (Fung, O'Rourke, and Sabel 2001: 6). The end result would be a “ratcheting up of labor standards” (Ibid.). Similarly, Elliott and Freeman suggest that firms could improve their labor standards in the global economy because there is a ‘market for standards,’ meaning that there is a consumer market for goods made while respecting basic labor standards. They write: “Increasing trade with LDCs [Least Developed Countries] naturally highlights these countries’ labor conditions and thus creates consumer pressures in advanced countries for higher standards” (Elliott and Freeman 2003: 2).

Labor unions are highly critical of most CSR initiatives, arguing that the real goal is to replace not only the state but also the union’s role in defending workers’ interests (Justice 2006). Mark Levinson notes the limits of ethical consumerism by referencing the high product demand elasticity for worker-friendly products. Consumers may buy ethically-made products, yet they will do so as long as the price does not increase too much. When prices go up, the market-based model for labor standards quickly unravels (Levinson 2001). For Don Wells, the global supply chain is simply too large and geographically dispersed for any private scheme to adequately monitor and provide meaningful information to consumers (Wells 2007). Similarly, Gay Seidman argues that there is no substitute for strong, democratic states and effective national labor laws for improving labor standards (Seidman 2007).

Of course, not all CSR programs are the same. Most notably, there is a significant difference between initiatives with active labor participation versus those with strong corporate

participation. Relatedly, there are dramatic variations in effectiveness depending on issue areas. Put simply, labor influenced programs are more likely to emphasize and effectively monitor FoA rights than corporate-influenced programs since strong enforcement of FoA rights will increase the likelihood of unionization and thus labor’s power. Where labor-influenced programs are potentially less effective is in the area of monitoring labor standards since the lack of corporate involvement in labor influenced programs could result in a lack of access to factories and thus payroll documents and direct inspection of occupational safety and health conditions.

Figure 1
Anticipated Stakeholders’ Impact on Issue Area Detection

		Issue Areas	
		Minimal Wage, Hours, and Health & Safety Standards	Freedom of Association Rights
Dominant Stakeholders	Labor/NGOs	I. Weak	II. Strong
	Corporations	III. Strong	IV. Weak

In contrast, corporate-influenced programs will have full access to their suppliers and have an incentive to monitor minimal standards in order to increase their legitimacy, but they will be less enthusiastic about FoA rights since this is perceived to strengthen trade unions and lessen managerial control. This leads to the following expectations: 1) Labor-influenced programs will be strong in the area of FoA rights and weak in the area of labor standards. 2) Corporate-

influenced programs will be stronger in the area of minimum wages⁹, hours, and conditions of work and weak in the area of FoA rights. [See Figure 1.]

The FLA and the WRC

One of the largest and most known CSR programs in the global apparel industry is the Fair Labor Association (FLA). The formation of what is now the FLA began in 1996 with a very broad array of stakeholders convened by the Clinton administration. This group of corporations, labor unions, and nongovernmental organizations began discussions on mechanisms to end sweatshop practices in apparel supply chains. Yet, they soon reached an impasse as labor pushed for a living wage, monitoring that would be independent of corporate influence, and mechanisms that would push not only suppliers, but also states to ensure enforcement of labor rights. The impasse ended when corporations pursued a deal with moderate NGOs that excluded labor. The FLA is not a corporate *controlled* organization. Important NGOs remain active in the FLA's board. But corporate *influence* in the FLA has remained strong. The FLA has posted on its website 730 factory audits for the period 2002-2009.¹⁰ This allowed us to code violations by issue area for this period of time.

The most note-worthy CSR program in which labor, progressive NGOs and activist students have had sway is the Worker Rights Consortium (WRC). These groups developed a model for verifying labor rights violations in the global economy in which workers and their allies play a strong role. The model excludes corporations from the governance structure while maintaining strong social movement alliances. The WRC was founded with the support of labor unions like UNITE that had left the FLA prior to its formation, and progressive NGOs and student groups. The most important support for the WRC has come from United Students Against Sweatshops, and the WRC has focused on collegiate apparel. The WRC strategy is to invite workers to present complaints, investigate those complaints, and then post the contents of its reports on its website. Unlike the FLA, the WRC posts the names of the factories it investigates. Public posting of WRC reports allowed us to code WRC findings for the period

⁹ The ability to monitor wages does not mean a desire to implement a living wage. Most corporate-influenced programs monitor only payment of the legally-established minimum (or perhaps the prevailing wage) in the sector. They do not adhere to, much less monitor, a living wage criterion.

¹⁰ Further information of the data and coding process are detailed ahead.

2002-2009, the same time period we examined for the FLA audits. During this time, there were 56 reports.

How does the WRC detection pattern compare to the FLA’s pattern? Do they reflect the predictions at the beginning of the paper that corporate-influenced CSR programs would perform poorly on FoA detection but well on wage, hour and occupational safety and health violations, while the pattern for labor-influenced programs would be the opposite? My findings for the FLA and the WRC are summarized in Figure 2. [See Figure 2.]

Figure 2
WRC and FLA Issue Violation Detection Rates, 2002-2009

	Minimum Wage; Hours; Health and Safety Standards	Freedom of Association Rights
WRC (n=56)	44%	29%
FLA (n=730)	69%	5%

What we see is that the FLA was indeed strongest in the area of minimal wages, hours, and occupational safety and health violation detection (69 percent of all the violations it detected) and much weaker in the area of FoA violation detection (5 percent of detections). This provides evidence for my argument that when issue-areas provide greater legitimacy in corporate-influenced programs, their detection rate would be high. In contrast, where issue-areas are perceived to reduce corporate-control, detection would lag. WRC detection rates of labor standards violations was unexpected strong, perhaps because it was able to use interviews with workers to document violations in cases where it was denied access to a factory. What was expected was that the labor-influenced WRC-program would have a significant rate of FoA

violation detections. They accounted for 29 percent of all violations detected, which is almost six times the detection rate of FoA violations of the FLA. What these data suggest is that stakeholder participation does matter in CSR detection rates according to issue areas.

What also is noticeable is that corporate-influenced programs are far more likely than labor-influenced programs to inspect factories, conducting 730 factory inspections compared to 56 conducted by the WRC. That is, this corporate-influenced program is over thirteen times more likely to affect the wellbeing of workers than the labor-influenced program. This suggests that corporate-influenced programs are worth a closer look, particularly in regards to the fourth quadrant, which represents fundamental workers' rights and where detection rates are so low.

Corporate-Influenced CSR Programs

When we look at the vast array of CSR programs in the global apparel industry, we see that corporate-influenced programs are most common, especially in the United States.¹¹ For example, one prominent program is the Worldwide Responsible Apparel Production (WRAP). WRAP was established in 2000 with the strong influence of apparel corporations. Today, it has the support of 25 international trade associations and over 150,000 individual companies. The American Apparel & Footwear Association (AAFA) contributed USD 1.3 million to help start WRAP.¹²

WRAP is a more extreme case. However, CSR programs are more likely to be influenced by corporations than by labor unions. Indeed, as scholars have long noted, regulatory mechanisms are often captured by the corporations they are designed to oversee (Dal Bó 2006; Majone 1994; Martínez Lucio and MacKenzie 2004). This is partly a result of a collective action problem. Since corporations are relatively few in numbers and consumers are large in number and dispersed, corporations are more likely to capture the processes that were established to control them.

In the apparel sector—especially given the withdrawal of labor unions from most CSR initiatives and the increased participation of corporations-- CSR programs are particularly vulnerable to corporate capture. As noted above, this does not mean that they are ineffective. Rather, their effectiveness is uneven. Where corporations stand the most to gain from

¹¹ European-based programs are more likely to include a few labor representatives on their boards of directors, but corporate participation remains strong.

¹² <http://www.wrapcompliance.org/> (accessed September 12, 2011).

effectiveness –notably where effectiveness increases corporate legitimacy and reduces the risks of reputational damage—CSR is more likely to detect and remediate violations of labor standards. Where effective monitoring and remediation will hinder corporate interests –notably via the rigorous enforcement of workers’ rights to organize, disrupt production (right to strike) and systematically leverage for increased wages and benefits (i.e., the institutionalization of collective bargaining) CSR programs will be less effective.

To test my argument, I will examine the Fair Labor Association (FLA) in greater detail. There are three reasons for selecting the FLA as my case study: 1) The FLA is one of the largest of the CSR programs in the apparel industry and thus its success or failure has greater relevance than smaller programs 2) The FLA was started with a broad range of civil society and government engagement, which should make it a harder test case for my argument than corporate-dominated programs such as WRAP 3) The FLA has perhaps the most developed system of benchmarks for freedom of association violations (Hunter and Urminsky 2003), which should further make it a hard test case for my argument. Moreover, the FLA posts all of its factory audits online, which makes an empirical analysis of its effectiveness possible. In the sections that follow, I will examine in detail the process by which the FLA was formed and its resulting governance structure. Second, I will examine the outcome of its monitoring and remediation processes. Third, I will use case study approach to explore and analyze the dynamics of FoA detection and remediation that draws on field research in Honduras.

FLA: Foundation and Governance

Major corporate participants in the initial discussions to form the FLA included Nike, Liz Claiborne, Reebok, Patagonia, Phillips-Van Heusen, and L.L. Bean. Labor was represented by the Union of Needletrades, Industrial, and Textile Employees (UNITE) and the Retail Wholesale Department Store Union (RWDSU). A range of labor and human rights NGOs also participated.¹³ Labor and several NGOs, as noted above, demanded that any industry code and monitoring scheme include a living wage, transparency of factory locations, a strict cap on working hours, and monitoring that was independent of corporate influence.

¹³ NGO participation included the Interfaith Center on Corporate Responsibility (ICCR), the Lawyers Committee for Human Rights, the National Consumers League, the International Labor Rights Fund and the Robert F. Kennedy Memorial Center for Human Rights

The corporate response was that for any proposal to work, more brands and major retailers (such as Wal-Mart) would have to participate. And, while they (the brands at the table) were not necessarily opposed to these labor and the NGO proposals, they would not be acceptable to the rest of the industry and would have to be rejected for that reason. In this instance, corporations did not use the direct threat of their defection, but rather the threat that the initiative would not grow by attracting new corporate members.

Labor and NGOs also proposed that employers be prohibited from cooperating with state authorities to prevent workers from exercising their FoA right. Labor and more left-oriented NGOs did not propose prohibitions on production in places like China, but they proposed that, if FoA rights were being systematically violated due state action or inaction, then the companies should make contact with governments and indicate ways in which they could come into compliance with international standards. The companies opposed this proposal and argued against any initiative that would oblige them to lobby government to change laws or practices that restricted freedom of association rights. Here, the corporate participants threatened with direct defection should labor insist on such a provision.

Labor unions and the corporations soon reached an impasse. This was the critical juncture in the formation of the FLA, the moment in which it would be decided which social actor would hold sway over the future direction of this new CSR program. Corporations made the next move. They began talks with more moderate NGOs in the civil society group. This smaller group reached an agreement on an industry-wide code of conduct and monitoring scheme on April 14, 1997. The code excluded the more contentious labor union demands by allowing for corporate monitoring and not requiring any mechanism that would encourage states to come into compliance with international labor standards. As might be expected, the labor union representatives were furious with the agreement, quickly denounced it, and made clear that they wanted nothing to do with the new program. Several NGOs took the same position and walked out.

The corporations and the moderate NGOs moved forward, and in 1999, established the Fair Labor Association (FLA). The original governing board of the FLA consisted of six corporate representatives, six NGO representatives, and one mutually-agreed upon chair. Changes to the code of conduct, sourcing rules, or monitoring system would require a super-majority vote, which gives the parties veto power over any attempt to change the code or to re-

visit some of the proposals of the labor movement. To sustain itself, the FLA has relied on grants and the financial support of its corporate members via annual membership dues.

President and CEO of the FLA, Auret van Heerden, makes it clear that MNCs are playing a major role in the CSR program and also emphasizes that it is precisely their role in the program that makes the FLA work. This is because they use their contractual relationship with their suppliers to impose the FLA's code of conduct. For van Heerden, "That was a stroke of absolute genius, because what they did was they harnessed the power of the contract –private power—to deliver public goods." Van Heerden emphasizes the benefits of CSR over state mechanisms by noting: "Let's face it, the contract of a multinational supplier, a major brand, has much more persuasive value than the local labor law, environmental regulation, the local human rights standards." The FLA's CEO concludes by noting:

I hate the idea that governments are not protecting human rights around the world. [...] I've been at this for 30 years, and during that time I've seen the ability, the will, the commitment of governments to do this decline. And I don't see them making a comeback right now. So we started out thinking this was a stopgap measure. We are now thinking that in fact this is probably the start of a new way of regulating and addressing international challenges. Call it networked governance, call it what you will. The private actors –companies and NGOs—are going to have to get together to face the major challenges.¹⁴

Thus, in the view of the FLA's CEO the FLA's efforts at employment regulation is indeed strongly influenced by corporations –indeed, corporate participation is crucial to making it work. The governance structure of the FLA has, in fact, broadened over the years. As attention to sweatshop conditions in factories making collegiate apparel increased with growing student activism, the FLA expanded its Board of Directors to include university administrators, and the FLA also has received income from collegiate members seeking to ensure that apparel sold bearing their school logo was not made under sweatshop conditions. By 2011, the FLA Board of Directors had six members each from industry, colleges and universities, and non-governmental organizations (plus one general counsel).

The FLA refers to this as a "tripartite" structure (FLA 2009a: 6), in that there are three parties in the governing body. But this is not tripartism as defined by the International Labour Organization, which consists of workers, employers, and government representatives. On the

¹⁴ Auret van Heerden, President and CEO of the Fair Labor Association, "Making global labor fair." July 2010; http://www.ted.com/talks/auret_van_heerden_making_global_labor_fair.html. (Accessed August 9, 2011).

FLA board, corporations do indeed represent employers. Some 65 companies are dues-paying members of the FLA. In 2008, these FLA-member companies had 4,532 supplier factories in 83 countries with 4.2 million workers (FLA 2009a). Collegiate board members represent over 200 colleges and universities, but they clearly do not represent or act like governments. Rather, they have a financial stake in the system and, like the employers' group, they participate in order to protect their “brand” name by ensuring their products bearing school logos are made without violating internationally-recognized labor standards.

The NGO (civil society) segment is the weakest of the three. NGO board members do not represent a larger group of NGOs (they have no constituency outside themselves) because all six NGO participants in the FLA are on the FLA board. The NGOs also do not directly represent workers nor are they themselves membership organizations. However, NGO participants at times are able to impact FLA policy and conduct in manner that is disproportionate to their size and voting rights. For example, Lynda Yanz of the Canadian Maquila Solidarity (MSN) Network joined the FLA Board of Directors in October 2009 and has worked to improve the quality of the FLA system particularly in the area of FoA rights. The MSN has a long, activist history of campaigning for labor rights in the global apparel industry. Nonetheless, the lack of more NGO participants with a history of labour rights activism and, most especially, the lack of trade union participation remains a major limitation of the FLA.

In sum, while the FLA is not a corporate-controlled organization, it is more corporate-influenced than labor-influenced. Corporations need effective monitoring and remediation in order to address problems before they become embarrassing media exposés. The exception is where compliance may increase other sorts of risks, such as threat of workplace disruption or the loss of managerial control from stronger union representation. Corporations prefer top-down solutions, rather than those resulting from strong workplace organization. They use their influence in CSR programs to this end. It is a delicate balancing act for corporations: If there is too much perceived corporate influence, the program loses legitimacy. If there is too little corporate influence, the program may run the risk of incurring real costs on enterprises and excessively empowering the workforce, which could result in disruptive strikes.

The FLA in many ways is one of the better corporate-influenced programs. Its corporate participants included some of the more recognized corporate citizens, such as Patagonia. Its NGO members have increased and some have taken a tough line in pushing corporations to do

more (e.g., the Maquila Solidarity Network). Indeed, as a result of years of strong external and internal pressure, the FLA is considered to have the most developed guidelines for detecting freedom of association violations (Hunter and Urminsky 2003).

What this suggests is that, if FoA violations are poorly addressed in one of the more thorough CSR programs, then they are even more likely to be poorly addressed in other corporate-influenced CSR initiatives. Thus, the FLA is a good hard case on which to test my argument. The FLA also is a good case because it provides public records and reporting of its auditing activity over a significant period of time. The FLA has been posting on its website its reports of factory audits starting in 2002. These audits, or “tracking charts,” provide data on issues of noncompliance detected by its monitors. The data allow me to test my argument that corporate-influenced CSR initiatives do a poor job detecting and remediating FoA violations relative to minimal employment standards.

Data

When a corporation joins the FLA, it is required to monitor its suppliers to ensure that they are in compliance with the FLA’s code of conduct. In addition, the FLA pays for the services of social auditing firms to inspect a random sample of FLA member suppliers. In a given year, the FLA may audit 120 factories, which amount to approximately 3 percent of the total number of factories producing apparel for FLA corporate members. These audits list the violations detected and remediation measures taken. Audits do not provide the factory’s name or its exact location. They do indicate the brand for which the factory was producing and the country in which it was producing.¹⁵

To gather our data, we coded every FLA audit for code violations from 2002 through 2009.¹⁶ In many audits, there was often more than one violation in an issue area. For example, a Nike factory in Honduras in one year might have three health and safety violations, two wage and hour violations, and no child labor violations. These data were then compiled into one dataset that summarized and grouped violations by issue areas. The data also allow me to

¹⁵ See <https://www.fairlabor.org/fla/go.asp?u=/pub/zTr4>.

¹⁶ The author thanks graduate student research assistants Dong Fang and Katherine Cornejo for the work in coding these audits. The coding took place between September 2009 and April 2011. It is important to note that the FLA is constantly revising audits, removing some and adding new ones, sometimes going back several years. The data presented here reflect the audits that were posted online at the time of the coding.

compile a country-level score based on average number of FoA violations per factory during the time period under study.

Findings

We have already established that the vast majority of FLA's noncompliance detections were in two general issue areas: health and safety (40 percent of violations detected); and wages, benefits and hours of work (29 percent of violations). In contrast, Freedom of Association (FoA) violations make up only 5 percent of violations detected. This indicates that violations of labor standards are indeed much more frequently detected than violations FoA rights. Indeed, the FLA is 5.8 times more likely to detect wage, hour, and benefit violations than FoA violations, and 8 times more likely to detect health and safety violations than FoA violations.

Yet, this is not conclusive evidence that the FLA is doing a poor job in the area of FoA. The question is whether the FLA missed FoA violations that it should have detected. Perhaps FoA violations are relatively rare? As noted above, the FLA's list of FoA benchmarks is fairly complete (see appendix), and in fact is longer than the list of benchmarks for many other issue areas. So the lack of good benchmarks cannot be the cause of the lower number of detected violations. However, a closer inspection of the data reveals that many FoA benchmark violations are never detected. To take one example, in 2004, FLA auditors did not detect a single violation of the union blacklisting benchmark in all the factories that they audited in the world. In that same year, the U.S. State Department found strong evidence of union blacklisting in apparel export zones in regions such as Central America (U.S. Department of State 2004a, 2004b).

Taking a more systematic approach, we can compare FLA FoA findings with independent sources of country-level labor rights practices. To do this, I first organized my FLA's FoA detection scores by country-years. For each year, countries were given a score that indicates the average number of FoA violations per factory audited by the FLA. I then compared this scoring with country-year level scoring by FoA experts. David Kucera of the International Labor Organization (ILO) and David Cingranelli and David Richards of Binghamton University have compiled country-specific rankings of labor practices that provide a good means of

comparison.¹⁷ This allows me to calculate the correlation of my FLA country scores with country-level scores compiled by Kucera and Cingranelli-Richards (CIRI dataset).¹⁸

If the FLA audits adequately reflect the general context of labor rights violations in a given country, then the FLA country scores should correlate with other labor rights country scores. However, we find that the FLA country scores are weakly correlated with the Kucera and CIRI scores at well below the 0.5 level. In contrast, the Kucera and CIRI scores are more strongly correlated with each other (0.63). [See Table 1.] This provides a more systematic indication that the FLA might not be properly documenting FoA violations.

Table 1
Correlations of Country-Level Indicators of Labor Rights Practices

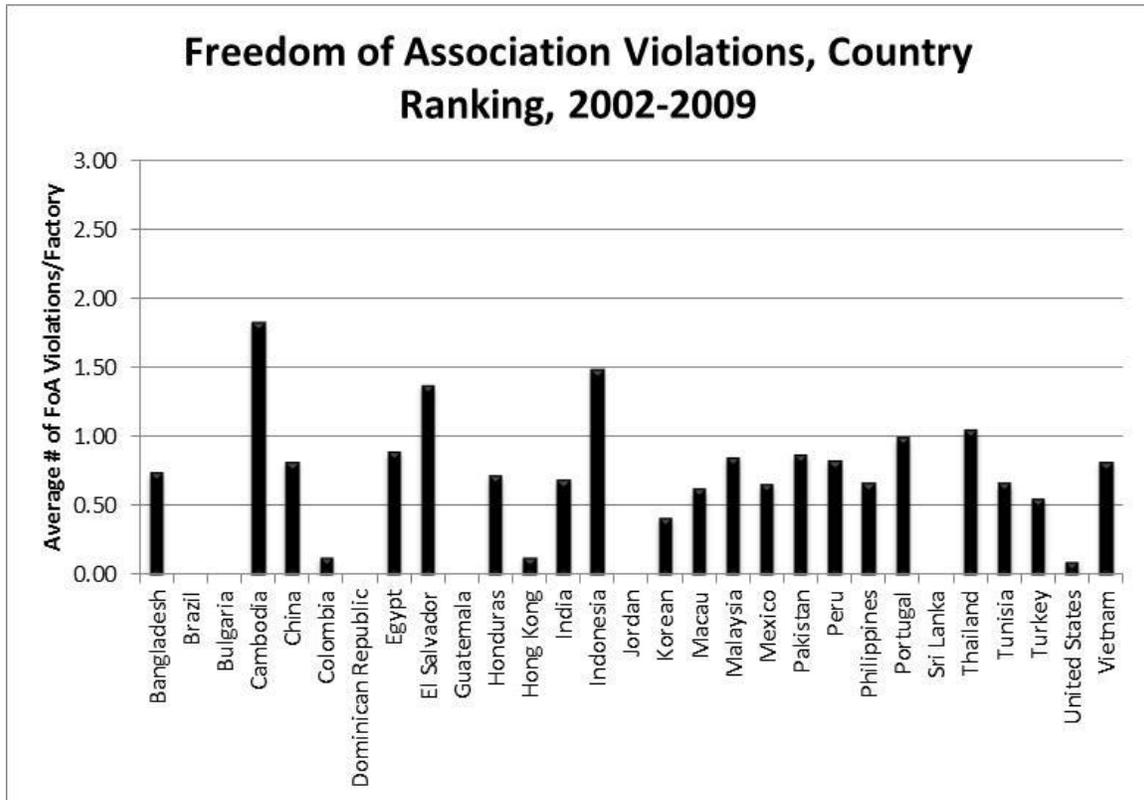
	FLA (2002-09)	Kucera (ILO)
Kucera (ILO)	0.16	
CIRI (2002-09)	0.31	0.63

To provide a specific example, while both the Kucera and Cingranelli/Richards (CIRI) scores put Guatemala among the most egregious labor rights violators, the FLA audit system did not detect a single FoA violation in Guatemala from 2002 to 2009. In contrast, Portugal scores as one of the higher violators of FoA rights. [See Figure 3.] In sum, the FLA findings do not reflect the findings of labor rights experts and suggest that the FLA auditing system for detecting FoA violations may be problematic. Indeed, the FLA system appears to both under-detect and unevenly detect FoA violations. Most likely, the unevenness in detection is a reflection of the FLA’s subcontracting out of the monitoring function to a broad array of private social auditing firms that have distinct experiences and criteria. European-based auditors might, for example, conduct more stringent social audits than auditors based in Colombia. A full examination of

¹⁷ David Kucera codes thirty-seven evaluation criteria of trade union rights by country (Kucera 2004). The Kucera scores do not correspond to the exact period of FLA data, but the calculation is very detailed, ranging from 0.00 (worst violators) to 10.00 (best cases), and it can be expected that countries do not radically alter their freedom of association practices in a relatively short period of time. However, to control for the possibility of annual changes, I use a second dataset, the Cingranelli-Richards (CIRI) Human Rights Dataset (<http://www.humanrightsdata.org>), which are available for matching years with my FLA data (2002-2009). This dataset employs a simpler three level “workers’ rights” scale --0 (worst), 1 (medium), and 2 (best). The CIRI definition of “workers’ rights” focuses on freedom of association and right to collective bargaining. See: http://ciri.binghamton.edu/myciri/my_ciri_variable_definition.asp.

¹⁸ Since Kucera and CIRI rank countries with a high level of respect for labor standards with higher scores, I inverted my FLA scores so that my high scores reflected countries with low levels of FoA violations per factory.

auditing firms is beyond the scope of this paper, but our preliminary research indicates that there is wide variation among auditing firms in recording FoA violations.



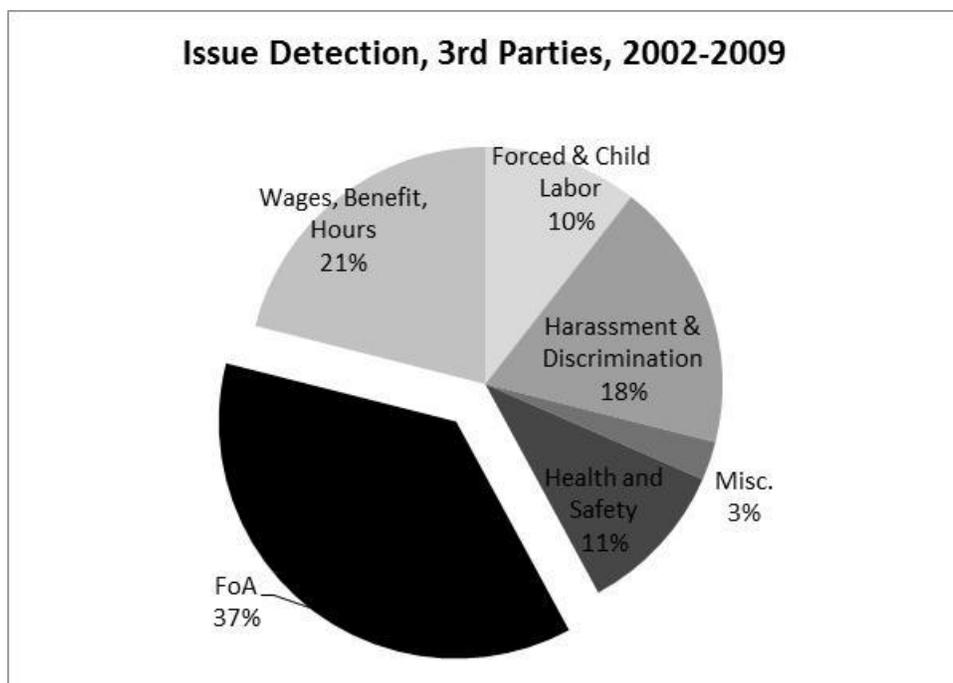
FLA Third Party Complaint Mechanism

In theory, it is possible that the FLA selection process results in factories that are less likely to violate FoA rights than the average apparel factory in a given country. Kucera, and Cingranelli and Richards, after all, provide average country scores; they do not provide scores for the subset of FLA suppliers. To address this possibility and get an alternative look at FLA-approved factories, we examined FLA Third Party Complaints.

The FLA allows persons, organizations, and companies to file third party complaints in cases where there are “persistent or serious noncompliance with the FLA Workplace Code of Conduct in a production facility used by any FLA-affiliated company” (FLA 2009a: 28). After receiving a complaint, the FLA then decides whether it merits moving forward with an investigation and may assign a commission of independent monitors to investigate allegations. These Third Party Complaints allow another means to test the quality of the FLA findings, since these are two different mechanisms for evaluating factories *within* the FLA system.

The FLA has investigated 19 third party complaints between 2002 and 2009. As with the factory audits, we have coded each one of these complaints to detect patterns of violations according to issue areas. The results of this coding exercise indicate that the single greatest issue-area in these Third Party Complaints is freedom of association, which represent 37 percent of all violations documented. This contrasts sharply with FLA audits in which only 5 percent of violations detected were FoA violations. Third Party Complaints were also far more likely to document harassment and discrimination (18 percent of violations), which was almost double the rate of FLA audits. In contrast, while occupational safety and health violations accounted for 40 percent of violations documented in FLA audits, they only represented 11 percent of violations in Third Party Complaints. [See Figure 4 below.]

Figure 4



The high rate of FoA violations documented in Third Party Complaints suggests that when worker representatives and their activist allies take the initiative, they are more likely to detect violations of the empowering rights embodied in FoA. Third Party Complaints are over nine times more likely to document FoA violations than FLA audits. Of course, it is likely that the high rate of FoA violations is a reflection of worker representatives' desire to focus on this empowering right. That is, just as corporations would like to underemphasize enforcement of

FoA, worker representatives and their allies most likely overemphasize it. Thus, perhaps the Third Party Complaint system balances the limitations of the audit system. Yet, the relatively few complaints have been accepted for review over time, 19 Third Party Complaints versus 730 audits, suggests that this balancing process is limited. Moreover, what is not clear from the FLA reporting system is how many Third Party Complaints are presented each year, what percentage of them are accepted, and what are the criteria for selection.

It is also true that Third Party Complaints come disproportionately from countries where there has been a long history of transnational activism, notably Central America and the Caribbean. These countries account for 58 percent of the total number of complaints that have been selected for review by the FLA. In contrast, there have been only two complaints from China and Vietnam over the last decade, despite the fact that these countries account for over 50 percent of FLA sourcing and have notable problems in the area of FoA rights. This suggests that there are serious limitations to the Third Party Complaint system as a stand-alone mechanism for addressing FoA violations. When the Third Party Complaint system is combined with transnational activism, it is more likely to prove beneficial to workers. That is, the Third Party Complaint system presupposes some degree of worker empowerment and transnational activist ties.

Remediation

Beginning in 2007, the FLA began calculating its remediation success rate. To do this, it revisited factories where the previous year violations had been detected to determine if they were successfully resolved. This is a crucial new measure of effectiveness. Detection rates, after all, do not indicate if anything was done to address violations once they are documented. Remediation rates are thus a more direct indicator of the ultimate effectiveness of a CSR program. What we find from the FLA data is that the remediation success rate for freedom of association is the lowest remediation rate of all issue areas. In the period for which data are available, 2007-2009, some 30.67 percent of FoA violations were fully remediated.¹⁹ In contrast,

¹⁹ In 2007 and 2008, the "success rate" for remediation of FoA violations was extremely low (10%) and in 2009 it was comparable to other issue areas at 72%. It will take data from additional years before we know if this is a trend. It is also important to note that the FLA counts as "successful" remediation cases that are pending or for which there is only partial remediation.

the remediation success rate for all other issue areas ranged from 50.33 percent to 80.67 percent, with an average remediation rate of non-FoA violations of 69.27 percent. [See Table 2.]

Table 2

Remediation Success, FLA 2007-2009		
	n	Full Success + Partial Success Rate
Code Awareness	112	59.00%
Forced Labor	45	74.67%
Child Labor	35	82.67%
Harassment/Abuse	175	71.00%
Discrimination	34	59.67%
Health & Safety	503	77.67%
Freedom of Association	55	30.67%
Wages & Benefits	184	63.33%
Hours of Work	154	50.33%
Overtime Compensation	48	78.33%
Miscellaneous	18	76.00%
Sources: FLA (2008) and FLA (2009)		

Why is there such a low level of remediation with FoA violations? According to the FLA, this is because FoA violations are especially complex and take a longer time to fix. There is no doubt some truth to this observation. Issue areas that have a straight-forward, “technical” solution, such as occupational safety and health violations, have a much higher remediation rate. And occupational safety and health violations are probably the most conducive to what Locke, Amengual, and Mangla (2009) refer to as the “commitment model” in which joint problem solving, coaching and capacity building contribute to remediation.

Yet, as Locke and his collaborators suggest, the commitment model does not work well for all issue areas. Indeed, it is important to note that issue areas with a relatively high remediation rates –forced labor and child labor— reflect violations that result in the strictest penalties, if not directly by the FLA, then by the FLA corporate members through their internal policies. Many corporations have “zero tolerance” compliance policies for these violations; suppliers that are found to use child or forced labor will face the immediate termination of their contract (FLA 2003).

FoA violations are not subject to “zero tolerance” policies. Most often, under the FLA system, the auditor’s remediation proposal involves policy development or training. Examining

the remediation proposals from FLA audit reports between 2007 and 2009, we found that of the proposals for fixing the FoA violation, the remediation plan was:

Remediation Proposals for FoA Violations		
A.	Write a policy	47%
B.	Complete a training	27%
C.	Retain records	14%
D.	Create a committee	12%

From our reading of the tracking charts, not once was there any penalty or disciplinary action taken based on a FoA violation in the history of the FLA. Policy development and training only work, however, when the violation is a result of a lack of understanding of the law or international standards. Training is not likely to work when a violation is a result of deliberate and repeated actions by the employer designed to eliminate or weaken a union. Moreover, policy development and training employers in FoA rights will not address problems resulting from state laws that curtail FoA rights. Some 52 percent of the production of FLA corporation members (measured in employment levels) is done in China and Vietnam, and this rate has been steadily increasing.²⁰ The FLA, as noted earlier, opposes actively encouraging states to come into compliances with international FoA standards.

In sum, just like detection of violations shows considerable variation by issue area, reflecting stakeholder influence and power, so too do remediation patterns. Not only are FoA violations less likely to be detected in corporate-influenced programs, but they are also less likely to be remediated. And, as with detection, the problem appears not to be due to the lack of effective mechanisms for addressing FoA violations, but rather an apparent unwillingness to pursue alternative approaches.

The Case of Russell Athletic in Honduras

While the quantitative analysis presented above points to general trends in the area of detection and remediation, a case study approach allows for a more careful exploration of the

²⁰ In 2005, sourcing from China and Vietnam accounted for 47% of FLA production, 5% less than in 2009. The subject of sourcing dynamics and monitoring FoA rights in authoritarian states is an important and related topic. But it is also beyond the scope of this paper.

causal mechanisms behind such trends. Russell Athletic in Honduras provides an ideal case study because so much has been written about it that we are able to understand not only what steps were taken, but also the justification for each step. This case study analysis draws on primary documents—notably audit reports and factory inspection reports—and on field research in Honduras in May 2010.

Russell Athletic is a subdivision of Fruit of the Loom and part of Warren Buffett’s Berkshire Hathaway enterprise. In July 2008, the union and management at a Russell apparel factory in Honduras entered into a collective bargaining process. During that time, workers claimed they were subjected to harassment and threats of plant closure due to unionization (WRC 2008). By October 2008, bargaining had reached an impasse, and Russell announced it would close the plant for “economic reasons.”²¹ The union, however, claimed the plant closure was due to the company’s attempt to prevent collective bargaining and rid itself of the union. That is, they argued the plant closing was a violation of their freedom of association rights.

Russell is a member of the FLA, and the FLA was asked to examine the Russell case. In October 2008, the FLA hired the Cahn Group to travel to Russell’s parent company, the Fruit of the Loom headquarters in Bowling Green, Kentucky to evaluate the rationale for closing the factory. The Cahn Group concluded, based on documents examined in Kentucky, that the plant was closed due to a decline in demand for fleece products. Cahn reached this conclusion in part because it was not able to find any written documentation at corporate headquarters that Russell closed the plant to rid itself of a union. Yet the Cahn Report also noted: “Additional investigation in Honduras will be required to provide more complete conclusions concerning allegations made against the company” (Cahn 2008: 7).

The FLA turned to A. & L. Group Inc. (ALGI), one of its accredited external monitors, to examine the Jerzees case in Honduras. According to the FLA: “[ALGI] monitors did not detect or gather any tangible evidence to show *beyond a shadow of doubt* that JDH has performed or encouraged actions that can be regarded as discriminatory or hostile against SITRAJERZEESH union delegates, the union federation (CGT) or any union or non-union employees.” (FLA 2009b: 12, emphasis mine).²² That is, the FLA’s auditors did not find evidence of a FoA

²¹ The plant ceased operations on January 30, 2009.

²² In fact, the original ALGI report noted that its monitors “did not gather any tangible evidence to show *without the benefit of a doubt* that JDH has performed or encouraged actions that can be regarded as discriminatory,” (ALGI

violation. What this statement also indicates is that, in the FLA's system for detecting FoA violations, the burden of proof is placed on the workers and their union. The company was not required to show beyond a shadow of a doubt that the plant closing was for economic reasons. Rather, workers had to show beyond a shadow of a doubt that anti-union discrimination was the main factor motivating the closing of the plant. Yet, International Labour Organization (ILO) experts argue that, once employees provide a reasonable indication of a violation, the burden of proof should shift to the employer.²³ Thus, the FLA's decision to place the burden of proof for FoA violations on workers and not the employer goes against international standards and provides further evidence as to why FoA detection rates are low in the FLA system.

International labor activists and Honduran union representatives did not accept the ALGI finding and the FLA's endorsement of those findings. Indeed, according to the FLA, it received ten procedural challenges from labor rights organizations and the CGT labor center in Honduras regarding the impartiality of the ALGI report (FLA 2009b). This activist pressure led the FLA to contract an ILO consultant, Adrian Goldin, to examine the case. Goldin not only verified violations of freedom of association but also harshly critiqued the methodology used by the ALGI for detecting freedom of association violations. Goldin writes: "ALGI's report gives insufficient—almost nil—consideration to and evaluation of testimony by workers and their representatives" (Goldin 2009: 2). The ALGI focused on written documentation, not worker testimony. But Goldin emphasizes that workers, unlike employers, have neither the means nor the legal obligation to provide such documentation. Rather, worker testimonies are crucial forms of evidence.

According to Goldin, the manner in which the ALGI conducted interviews also goes against standard practices for monitoring FoA violations. Many of the workers were interviewed inside the factory, and thus not in an independent location. Interviews were conducted in groups, raising the fear that a pro-management co-worker could report and negative comments to management, and, for at least a period of time, a plant manager was present outside the door of the office where interviews were being conducted (Goldin 2009).

2009: 17, emphasis mine). The FLA report appears to have added the "beyond a shadow of a doubt" language. That is, the FLA added a higher burden of proof than the original text of the ALGI report.

²³ For example, Philip Hunter and Michael Urminsky of the ILO Multinational Enterprise Programme suggest that a realistic approach would be for organizations auditing violations of freedom of association, "to obtain indicators that this may be happening—through interviews with workers or stakeholders—and then to place *upon the employer the burden* of proving that this is not the case" (Hunter and Urminsky 2003: 49, emphasis mine).

Goldin concludes that the ALGI report “has deficiencies and methodological wants. Thus, its conclusions lack rigor, are not based on adequately-gathered evidence and lack aptness to convince” (Goldin 2009: 20). Goldin, in direct contrast to the ALGI, finds: “The closure of the factory has been determined, at least to a significant extent, by the existence and activity of the union” (Ibid.). The FLA received the Goldin Report and reviewed it together with the Cahn Group report and the ALGI report. The FLA then concluded: “Upon review of the three third-party reports and other information at our disposal, the FLA found the economic factors to be persuasive and accepts that the decision to close JDH was principally a business matter” (FLA 2009b: 15).

In this case, it cannot be argued that the FLA system has a low detection rate of FoA violations because these are complex issues that are hard to uncover. The FLA had a report by a representative of the most established authority on labor rights, the International Labour Organization, which asserted FoA rights had been violated. The FLA chose to dismiss the findings of this top FoA authority and endorse the findings of a private, corporate social auditing firm that the FLA regularly relies on for its audits throughout the world. Moreover, the FLA chose to place the burden of proof on the workers, not the employers, which goes against accepted international practices for detecting FoA violations.

Eventually, as a result of student activist pressure, some 110 universities cut or failed to renew their contracts with Russell because they were convinced workers’ rights to organize and bargain had been violated (Anner forthcoming). This economic pressure forced the FLA to eventually rule that FoA rights had been violated. Internally, the Maquila Solidarity Network worked with NGO and university board members to pressure the FLA to adopt a strong corrective action plan. Finally, the FLA placed Russell under review, which contributed to Russell changing its conduct, opening a new factory, promising to rehire the displaced workers, recognizing the union, and bargaining in good faith. What this suggests is that FoA violations were ultimately addressed, but it took a massive student-led boycott and considerable other forms of external and internal pressure to arrive at this outcome.

Conclusions

Since the 1990s, a range of private governance --or Corporate Social Responsibility (CSR) programs-- have emerged to monitor, investigate, audit, and remediate respect for labor standards and rights in the global apparel industry. This paper has argued that who participates in

the formation and governance structures of CSR programs affects their effectiveness. Due to the concentrated power of corporations and the decision of trade unions to withdraw from the CSR initiative, many CSR programs have been influenced by corporate interests. This does not mean they are ineffective. Corporations desire legitimacy and protection from the risks of reputational damage caused by activist campaigns and media exposés. Multi-stakeholder initiatives are seen as providing more legitimacy than wholly corporate-controlled programs. And adequately addressing egregious wage, hour, and health and safety standards protects against damaging exposés. At the same time, the costs of compliance are largely shifted on to the suppliers who are encouraged to cover these costs by increasing their productivity.

Yet, the desire for legitimacy and reputational protection are mitigated by another corporate motivator: control. Corporations, to adequately plan their activities and pursue their goals, desire a strong degree of control over the dynamics of their global supply chains. The tension between legitimacy and control plays out in CSR programs. This paper argued that corporations will favor programs that enhance their legitimacy but do not hamper their control. Strong unions that are empowered to organize strikes are perceived to be disruptive to supply chains and thus debilitating to corporate control. For this reason, I expected that corporate-influenced CSR initiatives would be more effective in detecting wage, and occupational safety and health violations than freedom of association violations.

This paper focused on one of the largest corporate-influenced CSR programs in the apparel sector, the Fair Labor Association (FLA). An exhaustive coding and examination of all 730 FLA factory audits between 2002 and 2009 revealed that the FLA was far more likely to detect and remedy wage, hour, and occupational safety and health violations relative to the right to form a union, strike, and bargaining collectively. Moreover, the FLA process was significantly more likely to remediate non-FoA violations than FoA violations.

Process tracing of one of the FLA's most important FoA cases, that of Russell Athletic in Honduras, revealed that the failure to certify a FoA rights violation was not the result of the complexity of the issue or the lack of access to FoA experts. Rather, it was the result of the FLA's decision to: 1) Put the burden of proof of FoA violations on workers; 2) Use the highest standard for burden of proof (*beyond a shadow of a doubt* criterion); and 3) Give preference to written over verbal evidence.

As anticipated, when labor participates more directly in the CSR process, the results are significantly different. In both the FLA's Third Party Complaint system (in which worker representatives and their allies present complaints) and the labor-influenced WRC, the detection rate of FoA violations is dramatically higher than the FLA's auditing system. In the case of the WRC, it was almost six times higher, and in the case of Third Party Complaints, it was over seven times higher. This is because labor-influenced processes have both an interest in defending FoA rights and have the trust of the workers needed to detect violations. The limitation of labor-influenced initiatives is their scope. While the FLA conducted 730 factory audits between 2002 and 2009, it only accepted 19 third party complaints. During this same period, the WRC conducted 56 inspections. Thus, workplaces were 9.73 times more likely to be inspected by an auditing program than a labor-influenced mechanism.

These findings suggest several policy recommendations. Increasing workers' ability to present Third Party Complaints and the FLA's willingness to accept these complaints would do much to provide greater FoA protection. This would also entail greater transparency by the FLA in how and why it accepts some complaints and rejects others. Enhancing the size and influence of large, representative NGOs and labor groups in the CSR governance structures and daily operations would rectify imbalances in the governance board. Using an auditing system in which worker testimony is taken as legitimate evidence and where, after a *prima facie* case for a FoA violation is established by workers, the burden of proof shifts to the employer. Finally, no long-term solution of FoA violations can be found without the involvement of the state. This is because states regulate who can form unions, who can bargain collectively, and when, how, and if strikes can take place.

If CSR programs with strong corporate participation and states remain unwilling to more effectively monitor and remediate FoA violations, then labor and its allies will be more likely to seek solutions outside formal institutional processes. The campaign that targeted Russell and resulted in its boycott by over 100 universities provides one example of what that might look like. The irony is that one of the main impetuses for corporations to join CSR initiatives was precisely to avoid such unsavory activist campaigns. It seems that, in order to circumvent such campaigns in the future and achieve greater legitimacy, corporations will have to relinquish some of their control by ensuring that workers' rights to organize are more fully realized.

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Appendix

FLA Freedom of Association benchmarks (March 2011)

FOA.1 General Compliance Freedom of Association

FOA.2 Right to Freely Associate

FOA.3 Employer Interference and Control

FOA.4 Deduction of Union Dues and Other Fees

FOA.5 Employer Interference/Constitution, Elections, Administration, Activities and Programs

FOA.6 Employer Interference/Registration

FOA.7 Employer Interference/Favoritism

FOA.8 Employer Interference/Formation of Alternative Organizations

FOA.9 Production Shift/Factory Closure to Prevent Exercise of Freedom of Association

FOA.10 Anti-Union Violence/Harassment/Abuse

FOA.11 Employer Interference/Police and Military Forces

FOA.12 Anti-Union Discrimination/Dismissal, Other Loss of Rights, and Blacklisting

FOA.13 Protection of Union Officials

FOA.14 Severance Pay

FOA.15 Right to Strike

FOA.16 Right to Strike/Sanction for Organizing or Participating in Legal Strikes

FOA.17 Right to Strike/Replacement Workers

FOA.18 Right to Collective Bargaining

FOA.19 Right to Collective Bargaining/Good Faith

FOA.20 Right to Collective Bargaining/Exclusive Bargaining and Other Recognized Unions

FOA.21 Right to Collective Bargaining/Unorganized Workers

FOA.22 Right to Collective Bargaining/Compliance with Collective Bargaining Agreement

FOA.23 Right to Collective Bargaining/Validity of Collective Bargaining Agreement

FOA.24 Rights of Minority Unions and their Members

FOA.25 Facilities for Worker Representatives

FOA.26 Grievance Procedure

FOA.27 Restoration of Worker Rights/Reinstatement