

## A strategic approach to labour inspection

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**Abstract.** *In a report released in 2006, the ILO highlighted the difficulties of labour inspection in its member States and advocated a number of measures to strengthen its effectiveness. The author argues that inspectorates must go beyond calls for more inspectors by adopting a clear strategic framework for reacting to incoming complaints and targeting programmed investigations in order to maximize effectiveness in the use of their overstretched resources. To do so, he proposes, their work must be guided by the principles of prioritization, deterrence, sustainability and achieving systemic effects. The article concludes with an outline of the requirements of a coherent regulatory strategy.*

The problem facing national governments in regulating conditions in the workplace is daunting. Public policies on health and safety, discrimination and basic labour conditions often cover millions of workers, located in hundreds of thousands of workplaces across dispersed geographic settings. Conditions within those workplaces vary enormously – even within a single industry – and employers often have an incentive to make those conditions as opaque as possible. Trade unions, which have been the traditional allies of government regulators in targeting and conducting inspections, are in sharp decline in many developed and developing countries. And, most challenging of all, government labour inspectorates face diminishing budgets, shrinking staff, and a more complicated and difficult regulatory environment.

Recently, the International Labour Organization acknowledged the crisis in labour inspection nationally and internationally. In late 2006, the ILO called upon its member States to adopt a series of policies to strengthen and modernize labour inspectorates as a means of assuring implementation of fundamental workplace policies. In pursuing its broad “Decent Work Agenda” the ILO’s Governing Body Committee on Employment and Social Policy noted:

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The main overarching strategic issue is that the quality of governance of the labour market is a major factor in distinguishing whether countries are successful or not in finding a development trajectory that leads to a sustainable reduction in poverty. Improved labour inspections and safe work management, as well as underpinning social protection at work, lead to a better quality product, higher productivity, a decline in the number of accidents and an increase in the motivation of the labour force (ILO, 2006, p. 3).

The challenges facing labour inspectorates, however, transcend the number of inspectors available to enforce laws. Changes in the workplace, from the growth of the informal sector and the fissuring of the traditional employment relationship to the decline of trade unions and emergence of new forms of workplace risk make the task facing labour inspectors far more complicated. In addition, expectations and demands on the public sector and their consequent effects on how government agencies are overseen and managed have created intensified pressure and scrutiny.

Along with calling for additional resources, the ILO approach stresses the need for improved training for labour inspectors, better regulatory infrastructure to support inspectorates in their activities, and reforms to ensure that labour inspectors are protected from the vagaries of the political process. As will be argued below, while these steps are necessary, they are not sufficient. What is required is a more strategic approach to labour inspection, measured against a different set of criteria from those by which workplace agencies are normally judged.

In order to explore this approach, I begin by discussing the factors that have made the workplace a more difficult place to regulate in many countries. Indeed, the changing workplace environment presents a major challenge, in response to which I go on to discuss four principles that labour inspectorates need to integrate in framing their policies for the complex regulatory environment they face. I then apply these principles to the evaluation of interventions in the primary domains of enforcement, namely, responding to worker complaints and conducting programmatic investigations. Worker-initiated inspections can lead regulators to where major problems may reside, but relying entirely on complaints does not ensure that inspections are conducted where the most prevalent problems occur. This is because the incidence of complaints is only imperfectly related to underlying workplace conditions. For this reason, programmatic investigations – i.e. those conducted at the initiative of labour inspectorates – represent precious resources that must be guided by careful strategic choices. While arguing that inspectorates often fail to meet this requirement, I also offer examples demonstrating how this can be done more effectively. The article concludes by outlining the key features of a coherent enforcement strategy.

## The challenge facing labour inspectorates

The fundamental problem facing labour inspectorates arises from resource limitations. In its 2006 report on labour inspection, the ILO's Governing Body Com-

mittee on Employment and Social Policy stated that “[t]here is widespread concern that labour inspection services in many countries are not able to carry out their roles and functions. They are often understaffed, underequipped, under-trained and underpaid” (ILO, 2006, p. 4). National-level comparisons illustrate the extent to which this number is dwarfed by the global working population. The ILO benchmarks, set on the basis of stage of economic development, are one inspector per 10,000 workers in developed market economies, one inspector per 20,000 in transition economies, and one inspector per 40,000 in less developed countries (ILO, 2006, p. 4).

In most countries, the number of workers per inspector exceed these benchmarks (see figure 1). For example, Viet Nam’s ratio is one inspector for about 140,000 workers (more than three times its benchmark level of 40,000), while the Philippines’ ratio is one inspector for over 180,000 workers. Among the developed countries, the United States is far off the 10,000 benchmark, with one inspector for 75,000 workers. In the United States and many other countries, such ratios arise from the stagnation of funding for labour inspectorates throughout much of the past decade, coupled with the continued growth of the workforce and number of employers over the same period. In the United States, real spending on enforcement by major federal workplace agencies has remained virtually unchanged for 25 years, despite the fact that the number of workplaces has grown by 112 per cent and the number of workers by 55 per cent over the same period (Bernhardt and McGrath, 2005; Weil, 2007).<sup>1</sup>

The ratios shown in figure 1 – and, perhaps even more strikingly, the absolute numbers of inspectors indicated for each country at the bottom of the figure – provide a stark illustration of the resource problem facing labour inspectorates. Yet they also mask complexities that make the limited number of inspectors even more troubling. Indeed, changes in external conditions surrounding the workplace have made the basic structure of employment relationships more complicated for a number of reasons.

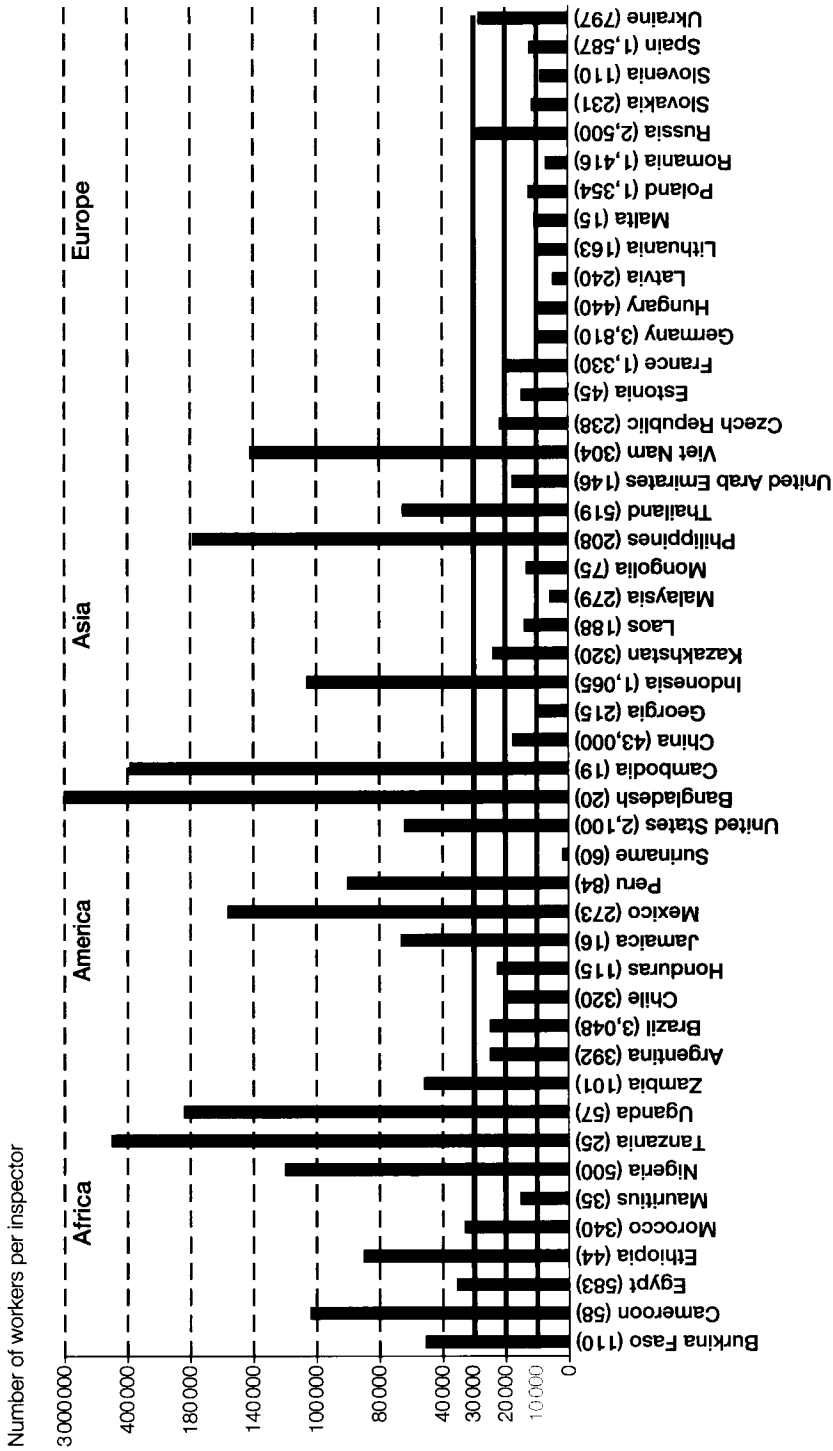
First, the growth of subcontracting and independent contracting, the use of temporary employment agencies, the rise in the developing world of the “informal sector” and in general the fissuring of the basic employment relationship that formed the basis of many workplace regulations (Ruckelshaus, 2008). Second, the secular decline of trade union representation has reduced the presence of a workplace agent that plays important roles in implementing workplace policies (see Weil, 1991 and 2005a).<sup>2</sup> Declining union membership has

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<sup>1</sup> For example, real spending on enforcement by the Occupational Safety and Health Administration and the Mine Safety and Health Administration (MSHA) – the United States’ main health and safety agencies – actually declined from US\$182 million in 1983 to US\$172.6 million in 2007 (calculations by the author in 1982–84 dollars based on data reported in the Budget of the United States Government).

<sup>2</sup> For example, between 1995 and 2004, private-sector union density declined from 10.4 to 7.9 per cent in the United States; from 22.2 to 18.0 per cent in Canada; from 21.6 to 17.2 per cent in the United Kingdom; from 45 to 28.2 per cent (2003) in Ireland; from 25.1 to 16.8 per cent in Australia; and from 19.8 (1996) to 12 per cent in New Zealand (see Boxall, Haynes and Freeman, 2007, pp. 208–209).

Figure 1. Estimated active working population per labour inspector, 2003-06



Notes: Country (x): x inspectors in country. Numbers based on ILO information (annual report, ILO questionnaires, countries' information) between 2003 and 2006. Source: ILO, 2006, p. 15.

decreased the political leverage of labour in many countries, reducing legislative support for workplace-related policies while also reducing the ability of trade unions to play crucial roles in assisting workers exercise statutory rights at the workplace.

Third, changes in industry composition and the structure of industries in many countries have reduced the fit between the factory-centric model around which many workplace policies developed and the typical workplace in practice (e.g. health care institution or fast food outlet). In a related vein, employment often takes place in smaller, more decentralized units than typically envisioned in workplace laws. Finally, a variety of new and emerging technologies give rise to new workplace risks – especially in regard to health and safety concerns. Particularly distinctive of the present wave of technological change (and associated work design) is that it makes duties and responsibilities more fluid and creates a range of workplace problems less amenable to clearly defined mechanical safeguards or straightforward changes in work design.<sup>3</sup>

As a result, traditional approaches relying on the impact of direct inspections, workplace surveillance and civil penalties may no longer provide sufficient incentives or have broad enough scope. The ILO calls for a number of changes in addition to increasing the number of inspectors in response to these challenges. These include structural changes, like centralizing supervision and control of inspectorates and increasing collaboration between labour inspectorates and other institutions with overlapping mandates (e.g. the police, tax authorities and human rights institutions). The changes advocated by the ILO also extend to upgrading the qualifications, screening and training of labour inspectors so that they have the capabilities to undertake their increasingly complicated tasks, and a series of measures relating to investigation, prosecution and penalty procedures aimed at improving impact (ILO, 2006).

These are all necessary steps. Yet they are not sufficient to address the above challenges in that they do not emphasize the need for more strategic approaches to where, when and how labour inspectors choose to intervene. The confluence of growing and changing demands on labour inspectorates requires different approaches to inspection and enforcement itself. Without a change in basic approach, key questions of how to use highly limited resources across multiple, equally plausible workplace situations are not adequately addressed. Nor does a call for more resources, additional training or better information technology address the question of how to assure that beleaguered inspectorates achieve the greatest impact by using the different tools available to them. Fully addressing the challenges of modern labour inspection requires a strategic approach to enforcement itself.

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<sup>3</sup> These include a growth in stress-related, musculoskeletal and repetitive-motion hazards (ILO, 1998). In addition, occupational and public health studies have revealed a growing list of dangers associated with relatively low levels of exposure to a long list of well-known chemicals used at the workplace and risks associated with newer compounds, solvents and other substances (see, for example, Cherry, 1999) as well as new technologies about which there is significant uncertainty regarding the nature of risks, such as nanotechnologies (see, for example, Nel et al., 2006; Maynard et al., 2006; Schulte and Salamanca-Buentello, 2007).

## The central regulatory task and four principles of strategic enforcement

The central regulatory task facing labour inspectorates can be said to consist in improving workplace conditions in an ongoing way by drawing on constrained organizational resources.<sup>4</sup> This central task cuts across the different ways that national systems are structured. For example, Piore and Schrank (2006 and 2008) describe the difference between “deterrence-based” and “Latin models” of workplace regulation. While the former systems seek to change employer behaviour by raising the expected penalties for non-compliance, the Latin model (which, they argue, is rooted in France’s *inspection du travail*) allows inspectors to take a more flexible approach to compliance that involves helping employers adapt work systems better to meet production demands at the same time as redressing compliance problems. This approach to inspection is far more collaborative and adaptive to local conditions than the deterrence approach. Yet both systems – as well as those that are hybrids of the two (Pires, 2008) – can usefully be evaluated by their capacity to achieve lasting improvements in workplace conditions given constrained organizational resources.

The central task faced by all inspectorates regardless of the underlying regulatory model, then, is how to deploy those resources most effectively. Four central principles should guide policies in this respect.

### Prioritization

Ranking industries and workplaces from worst to best is perhaps the most straightforward principle for managing inspectorates in a world of limited resources. The idea of prioritization is embodied in formal inspection procedures as well as in the triage that many inspectorates follow implicitly. But it needs to become a core part of planning in part because, as we will see, codified procedures for ranking workplaces as well as rules of thumb for triage drawn on by inspectorates are often misaligned with underlying workplace problems. Prioritization gains particular salience when wedded to other core principles. For example, priorities need to be based not only on the probable severity of the problems facing an industry or workplace, but also on the likelihood that an intervention can actually affect behaviour (deterrence) or have lasting effects on conditions (sustainability).

### Deterrence

Evaluations of labour inspectorates typically focus on the direct effects of workplace inspections. Yet the greatest potential impact of their activities arises through deterrence: the threat of inspection spurring on changes in compliance

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<sup>4</sup> This description relates to the primary function of labour inspection as described in Article 3 of the ILO’s Labour Inspection Convention, 1947 (No. 81), namely: “... to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work ... in so far as such provisions are enforceable by labour inspectors”.

or practices prospectively. Deterrence is related to the perception that the expected costs of investigation (in the most simple case the probability of inspection multiplied by the penalties associated with violations) are significant enough to lead firms to comply voluntarily. Through deterrence, an inspectorate's potential impact on workplaces can be magnified significantly. In addition to its beneficial effect of achieving greater impact from limited resources, deterrence addresses some of the other aspects of the labour inspection problem. Given the increasing complexity of employment relationships, labour inspectorates must find ways of influencing the behaviour of employers they might not directly inspect. This is also true in industries where typical employers (or the employers where the greatest problems arise) are much smaller than envisioned in traditional regulatory models.<sup>5</sup>

### **Sustainability**

Workplace inspectors – like law enforcement officials – often lament the problem of recidivism – that is, the fact that a significant number of those who violate the law once tend to do so again in the future. Sustainability is the mirror image of recidivism: it represents a measure of whether past interventions produce continuing compliance in the long run. Sustainability matters both in gauging the direct impact of inspections – e.g. did the inspection lead the employer to continue to use scaffolding protections on the job site after the investigation was completed? – and in assessing deterrence effects (e.g. does the threat of investigations create an ongoing spur to better job-site practices among local employers over time?). Like the problem of “teaching to the test”, enforcement strategies are flawed if they focus employers on narrow compliance at the time of inspection. Enforcement effects can be judged as having greater sustainability if they lead both to lasting compliance and, more generally, to the adoption of measures consistent with broader policy objectives, such as internal health and safety policies that both satisfy specific standards and foster a preventive culture at the workplace. This is becoming increasingly important because of the greater complexity of workplace risks.

### **Systemic effects**

Deterrence-based regulatory systems are often criticized because their focus on sanctioning specific violations undermines correction of more fundamental problems driving those violations. One criticism of the Latin model is that collaborative action to arrive at employer-specific compliance plans leads to a lack of consistency that may, in turn, undermine broader compliance within a given

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<sup>5</sup> Deterrence is obviously a more central principle in deterrence-based systems than in the Latin model. However, the latter must still be concerned with the effects of activities in one workplace or firm on other employers not directly engaged by labour inspectors. Although such deterrence effects may be driven by less punitive considerations (i.e. it might be better characterized as a “spillover” impact of regulatory intervention), it still can be usefully considered under this heading.

sector. Both critiques therefore raise the question of these models' systemic impacts. Increasingly complex workplace settings require inspectorates to consider how to achieve geographic, industrial and/or product-market effects. Employer practices in the workplace are an outgrowth of broader organizational policies and practices, often driven (implicitly or explicitly) by competitive strategies or forces. Bringing an understanding of the impact of these larger factors into the regulatory scheme potentially allows enforcement to have systemic rather than local effects.

In practice, the above principles require very different approaches to two central activities: how inspectorates respond to worker complaints and how they plan and undertake programmatic inspection programmes. The following two sections evaluate complaint response and programmatic investigation in light of these criteria. The final section turns to the feasibility of implementing these principles given that they cut against the grain in terms of how many inspectorates are managed internally and evaluated externally.

## **The dilemma of complaints and enforcement**

Worker-initiated complaint investigations make up a significant portion of inspections undertaken by labour inspectorates in most countries. In the United States, in 2007 about 75 per cent of all investigations undertaken by the Wage and Hour Division of the Department of Labor arose from complaints, as did 30 per cent of the investigations undertaken by the Occupational Safety and Health Administration (author's calculation). Complaint-based investigations may arise from anonymous complaints to government agencies or via a trade union or some other worker representation body, such as a health and safety committee or worker centre. Such worker-driven initiatives play a critical role in bringing immediate problems to the attention of public authorities (a particularly critical role in areas where workers face imminent danger requiring prompt action).

The flip side of complaint investigations, however, is that an agency largely driven by them risks becoming reactive to events shaping the workplace. This can have several negative repercussions. First, in some cases, complaints come long after critical events have been set in motion (workplace fatalities clearly represent the worst case of this). Waiting for the complaint may indeed delay the intervention from the time when it could have had its greatest impact or protected the most workers. Second, although most complaints relate to real problems, there is nothing to say that they represent problems of the highest order if compared to the "dog that doesn't bark" – that is, those workplace problems which may exist but which, for one reason or another, are not reported via complaint processes. Third, complaints are often driven by specific problems facing particular workers. They may or may not be related to more systemic issues. And even if they are, investigations arising from a complaint process may not be perceived as part of a wider systemic problem. This compounds their reactive nature.

### *Are complaint-based investigations aligned with underlying problems in the workplace?*

Since most labour inspectorates rely heavily on complaints to guide their enforcement activities, investigators will be led to workplaces that need regulatory attention only to the extent that complaints accurately reflect underlying conditions. Ideally, therefore, regulators would like to assume (1) that workers who complain are voicing legitimate grievances and representing them accurately (in other words, that employees working under lawful conditions are *not* complaining) and (2) that workers who are experiencing violations will complain.<sup>6</sup>

Studies by the author of complaints and compliance under the Fair Labor Standards Act (FLSA) regulating minimum wage, overtime and child labour, and under the Occupational Safety and Health Act (OSHA), reveal the limited overlap between industries with the highest complaint rates and underlying compliance. For the FLSA, in only one instance does an industry appear among the top ten in terms of both complaint rates and actual violations of overtime provisions. Under the OSHA, the industries with highest complaint rates are found mostly in the manufacturing sector. However, only in two instances is there overlap between the top ten in terms of complaints and the top ten in terms of injury rates.<sup>7</sup>

Figure 2 plots industry-level complaints against the underlying measures of compliance for all industries under the OSHA and FLSA. The upper panel indicates a somewhat positive relationship between the lost-workday injury (LWDI) rate and the OSHA complaint rates. However, the lower panel depicting this relationship under the FLSA indicates little association between these variables. Figure 2 thus suggests a very limited relationship between FLSA complaint rates and underlying levels of compliance (as does the more detailed statistical evaluation in Weil and Pyles, 2007). Besides, although there is a stronger and significant relationship between complaints and compliance under the OSHA, there remains a significant number of instances where industries have either a high level of injuries yet low complaint rates (potentially leading regulators to pay too little attention to those industries relative to others) or relatively low injury rates yet high complaint rates (leading to relative overemphasis by regulators).

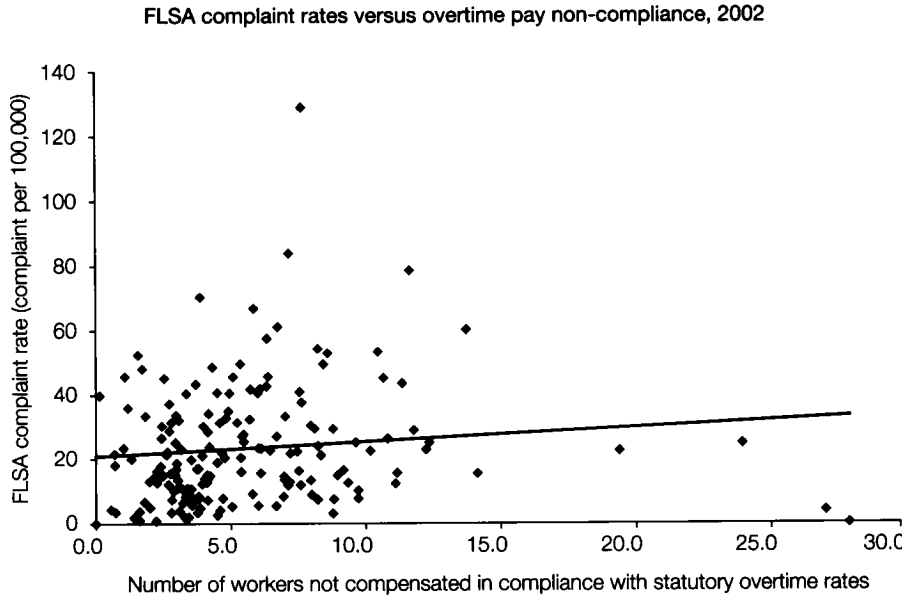
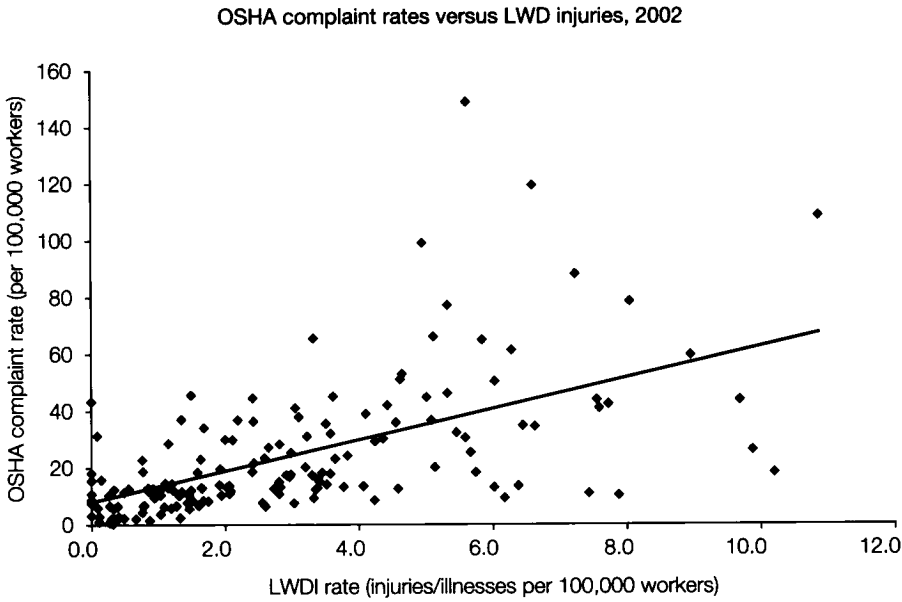
When evaluated against the four principles of strategic enforcement, the problem of relying on complaint-based investigations becomes clear. This evaluation is summarized in the upper row of table 1.

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<sup>6</sup> An extended analysis of this issue can be found in Weil and Pyles (2006 and 2007). See also Ruckelshaus (2008), General Accounting Office (2004) and Yaniv (1994).

<sup>7</sup> There is greater overlap between those industries with the *lowest* levels of complaints and those with good underlying conditions. Four of the industries with the lowest complaint rates under the FLSA also have some of the lowest estimated levels of non-compliance. For the OSHA, five of those industries with the lowest levels of complaints also have lowest injury rates (banking; accounting, auditing and bookkeeping; security and commodity companies; legal services; and religious organizations). Industries with relatively fewer problems tend to have lower complaint rates (see Weil and Pyles, 2006 and 2007; General Accounting Office, 2004).

Figure 2. Complaints and compliance under the OSHA and FLSA, 2002



Source: Weil and Pyles, 2007.

Table 1. Evaluation of complaint and programmed investigation protocols

Inspection type	Prioritization	Deterrence	Sustainability	Systemic effects
<i>Complaint</i>				
Traditional approach	Inter/intra-industry: Mixed effect – Dependent on relation of complaint likelihood to underlying conditions.	Limited to none: Information about complaint investigation usually limited to employer.	Limited: Based on the degree of follow-up and level of penalties associated with continuing violation.	Limited: No systemic effects unless explicitly tied to other interventions or third-party organizations.
<i>Programmed</i>				
OSHA Construction example	Inter-industry: High – Construction has relatively high injury rates; large number of workers. Intra-industry: Mixed – Focus on project size rather than risk/safety outcomes.	Limited: Targeting criteria creates a pool of employers that are collectively less affected by intervention; other segments do not perceive these interventions as relevant.	Limited: Compliance decision by major contractors set by considerations distinct from inspections.	Limited: Key factor in affecting injury rate outcomes is overall project management and role of owner/developer/end-user.
DOL-WHD Garment-industry example	Inter-industry: High – Focus on industry with significant number of low-wage workers; high violation rates. Intra-industry: High – Increasing focus on contractors with significant compliance issues.	High: Implicit penalties arising from product embargoes increase compliance incentives generally.	High: Manufacturer focus of inspection leads to ongoing incentives to maintain private monitoring of lower levels.	High: Incentives push subcontractors with poor compliance out of industry and create incentives for higher average compliance for incoming subcontractors.

Prioritization

The data on the OSHA and FLSA presented above indicate that complaint-based investigations are at best imperfectly related to underlying problems (OSHA) and, at worst, unrelated to industry-level conditions (FLSA). Ultimately, the pattern of complaints and resulting investigation activity is an expression of both underlying conditions and factors affecting worker voice.

Agencies have attempted to improve complaint response, but often in order to reduce large caseloads (a laudable goal) as opposed to addressing the problem of prioritization explicitly. For example, prior to 1996, the Occupational Safety and Health Administration responded to almost all complaints through workplace investigations.<sup>8</sup> Not surprisingly, this required significant staff resources and led to long delays between the lodging of a complaint and its actual investigation. Beginning in 1996, in response to a growing backlog of cases,

<sup>8</sup> The procedure grew out of the Complaint Process Improvement Project, part of Vice-President Al Gore’s “reinventing government” initiative.

the Administration's offices began to evaluate whether or not each incoming complaint represented a serious violation or hazard. If a case was deemed serious, inspectors would conduct on-site investigations (focused on the specific violation or hazard). If the complaint was considered to be of a non-serious nature, the Administration would follow up with a phone or fax inquiry with the employer.<sup>9</sup> The system would thus shift resources to the most pressing problems, while allowing quick resolution of other cases. To be effective, the system requires accurate initial evaluations of incoming complaints as hazardous or non-hazardous. However, even then, it does not assure that incoming complaints (regardless of their severity) accurately reflect the landscape of problems – that is, the system may still exclude workplaces where obstacles prevent complaints from being voiced. Nor does it ensure that the profile of complaints that do arise accurately maps the relative severity of problems across industries.

### **Deterrence**

Perceptions play an important role in deterrence: employers' perceptions of the likelihood of investigation and the consequences of non-compliance motivate their behaviour. Empirical studies indicate that, in some instances, employers are overly sensitive to the threat of regulation, while in other cases they are far less responsive than one would predict (Weil, 1996 and 2001). Because they are inherently reactive, complaint-based investigations do not send clear deterrence signals in this respect, particularly because they often focus on the resolution of a particular problem rather than signalling regulatory intentions to other employers, industry segments or geographical areas. The typical approach to prioritization, aimed at decreasing caseloads, reinforces this effect. This need not be the case. As will be discussed below, the integration of complaint response into a larger strategic framework can increase deterrence impacts where they may be particularly important.

### **Sustainability**

The degree to which complaint-driven investigations affect employer behaviour beyond the particular problem being addressed or in the longer term depends on the quality and scope of review. Complaint-based investigations can have limited and transient effects (i.e. low sustainability) when they are used as a narrowly focused means to resolve specific problems. Sustainability rests importantly on the judgement and capabilities of inspectors to gauge whether a problem is truly contained or actually represents the tip of an iceberg – whether in the initial screening process or once at the workplace in cases where a complaint leads to intervention at that level. One consequence of the diminished capacity of many labour inspectorates is the loss of this kind of experience and the difficulty of rebuilding it with a new generation of inspectors operating with

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<sup>9</sup> A related system is employed by the Wage and Hour Division of the Department of Labor in determining whether incoming cases should be investigated or handled through telephone "conciliations" focused on resolving the specific labour-standard issue (Weil and Pyles, 2006).

fewer resources. But, once again, outcomes also depend on the degree to which the inspectorate marries complaint-based policies into larger strategic efforts.

### Systemic effects

As with deterrence, complaint-based investigations do poorly in this regard because of their inherently reactive nature. The literature on regulator behaviour indicates that some investigators use a variety of rules of thumb to pick up larger patterns of non-compliance based on multiple complaints; and there is also limited evidence that inspectors do use the presence of multiple complaints to help them see larger patterns (Lofgren, 1989; Piore and Schrank, 2008). However, other analysts cite standard operating procedures and dysfunctional organizational routines as blocking a more systemic approach to problem-driven regulatory routines (Bardach and Kagan, 1982; Ayers and Braithwaite, 1992; Sparrow, 2000). Taken together, this literature underscores that volitional action is required to steer complaint processes towards more systemic impacts.<sup>10</sup>

### A strategic complaint-based policy

#### Overcoming barriers to complaints

In the United States, a large number of federal and state-level workplace policies depend on worker complaints as a trigger for enforcement action. Yet, the very nature of the complaint process precludes many workers from exercising their rights in the first place, resulting in a modest level of complaint activity; as argued above, therefore, silence should not be confused with compliance (Weil and Pyles, 2006).

The critical role that trade unions play as agents of enforcement of workplace policies therefore needs to be factored into wider debates regarding labour law reform. This aspect of the union voice effect is too often overlooked in labour law discussions (Weil, 2005a; Erikson and Graham, 2005). However, given the absence of unions from the majority of workplaces in many countries, policy attention must also focus on the important role that other third-party representatives play (or can potentially play) in the exercise of employee rights. One example is the growing number of “worker centres” and worker rights advocacy organizations that have arisen, often built around immigrant groups and communities. In her groundbreaking study of the growth and role of worker centres in the United States, Fine (2006) demonstrates the central role those organizations play in the exercise of rights. Osterman (2006) and Heckscher and Carré (2006) also provide examples of new workplace institutions playing a role in this respect through network activities, education and representation. Legal organizations – non-profit, advocacy and the plaintiff bar – also

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<sup>10</sup> Bardach and Kagan (1982), in their widely cited work, express pessimism about the likelihood that regulatory agencies in general can overcome the barriers to what I am calling a more strategic approach. However, Sparrow (2000) is more optimistic about the feasibility of changing organizational systems within government agencies to improve their operations along a variety of strategic dimensions.

play an increasingly decisive role in this regard (Ruckelshaus, 2008). A more robust set of workplace institutions could indeed play a particularly important role in focusing attention on industries and workplaces where conditions might be worse, but where voice is stifled due to immigration status, poor information about employment rights, or fear of reprisal.

Of course, success in this regard would potentially create an even greater investigation burden for overtaxed labour inspectorates. A strategic complaint-based policy therefore requires that the labour inspectorate work closely with third-party groups and unions in creating more proactive response mechanisms. This would begin with explicit discussions of the resource constraints facing agencies (as well as advocacy groups) and the resulting need to reach broad consensus on industry and workplace priorities. In addition, a strategic complaint-based policy requires creatively drawing on the strengths and abilities of different institutions to respond to workplace problems: that is, rely on collective bargaining arrangements (where present) to assure compliance; work with worker centres or similar organizations to establish effective floors where such institutions are present and rely on government enforcement where no other institutions can perform this function. This is not to minimize the inter-organizational tensions and mistrust that sometimes exist between governmental and non-governmental organizations in the pursuit of goals that are not completely aligned, or the tensions existing between trade unions and newer workplace institutions (see Fine, 2007; and, on this last point, Heckscher and Carré, 2006).

### Rethinking complaint response approaches

Labour inspectorates must respond to incoming complaints in a more strategic manner. This requires not only taking into account the relative priority of different complaints (the kind of triage approach currently used by labour agencies), but nesting incoming complaints within the larger universe of workplace problems faced by the agency. One means of doing so at the industry level is to array workplaces according to two dimensions discussed above, namely, the likelihood of complaints (as measured by past complaint activity) and underlying compliance in the industry. Conceptually, the two dimensions can be captured in the two-by-two matrix depicted in table 2. Industries are located in the matrix based on whether they have an above- or below-average level of complaints or compliance (where the former is measured by something like the rate of complaints per workers employed in an industry and the latter by measures of underlying conditions in the industry, such as the estimated number of labour-standard violations per worker or – for health and safety – injury or fatality rates).

Complaints arising in industries that lie in quadrants 1 and 4 will tend to point inspectors in the correct direction. The industries in quadrant 1 have higher-than-average complaint rates but also higher-than-average underlying rates of labour-standard violations or health and safety problems, appropriately leading inspectors to spend more time in those industries. In contrast, the industries in quadrant 4 have below-average rates in both respects, thereby leading to lesser attention by regulators, which is also desirable since there are fewer prob-

Table 2. Strategic complaint response: Labour standards example

	High non-compliance	Low non-compliance
High complaint rates	<b>Quadrant 1</b> High complaints High violations  <i>Examples:</i> Eating and drinking Hotels/motels Gas stations Janitorial Construction	<b>Quadrant 3</b> High complaints Low violations  <i>Examples:</i> Auto parking and car washes Credit agencies Furniture stores
Low complaint rates	<b>Quadrant 2</b> Low complaints High violations  <i>Examples:</i> Hospitals Grocery stores Department stores Banking Social services	<b>Quadrant 4</b> Low complaints Low violations  <i>Examples:</i> Meat products manufacturing Beauty and barber shops Drug stores
Source: Author's evaluation of complaint and compliance rates under the FLSA (see Weil and Pyles, 2006, for additional detail).		

lems in those industries (at least relative to others). However, to the extent that significant numbers of workplaces fall into the other two quadrants, complaint-based policies will tend either to under-investigate problematic industries (quadrant 2) or to over-investigate relatively less problematic ones (quadrant 3).

A strategic approach to complaint response would consider the quadrant in which a complaint-case arises in deciding how to respond and therefore how much time and resources to allocate. For example, one might seek to use fewer resources (e.g. undertake complaint resolution on the phone) in responding to incoming complaints from quadrants 3 and 4, given what is known about underlying conditions in those industries. Conversely, inspectors should be more responsive to complaints arising in quadrant 2, and perhaps engage in more comprehensive inspections than might characterize a typical complaint investigation. Similarly, given the underlying compliance problems in quadrants 1 and 2 investigators should link complaint investigations in these quadrants to larger-scale industry or geographic initiatives that use programmed or targeted investigations in order to enhance the deterrence and systemic impacts of their efforts. This entails explicitly linking all tools available to the inspectorate – programmatic and complaint-based investigations, education and industry outreach initiatives, etc. – for priority areas of activity.

The approach illustrated in table 2 could also be applied (given the availability of data) on an intra-industry basis. For example, work sites in a given

industry or geographical area of concern could be categorized on the basis of their characteristics (location, size, union status, or relationship to larger corporate entities) and ranked in terms of complaint rates and underlying compliance status. Response to incoming complaints could then be prioritized in a manner similar to that described above. Similarly, a broad industry category like construction could be broken down into important sub-categories (residential construction; highway; small commercial; rehabilitation; etc.) and arrayed by quadrants.

Complaint investigations can therefore be handled in a manner that enhances their impact on the four principles of strategic enforcement. Nonetheless, the above discussion also underscores the importance of discretionary investigations – i.e. investigations not triggered by complaints – to the overall efforts of workplace agencies. I turn to that issue next.

## Using programmatic investigations for strategic enforcement

The four principles for strategic enforcement are also useful in evaluating the different approaches to undertaking programmatic investigations. Overall, workplace agencies in the United States tend to perform well on only a few of the four dimensions.

### Prioritization

Most labour inspectorates use formal systems to prioritize industries for enforcement. In the area of workplace health and safety, industry-level injury rates are often used for this purpose. Prioritizing industries on the basis of other labour standards is less common because outcome measures analogous to injury rates are more difficult to find. In the United States, industries with significant numbers of low-wage workers have been used as one means of prioritization. In recent years, the Wage and Hour Division has adopted more refined measures using household surveys to measure industry-level compliance and then ranking low-wage industries on the basis of the prevalence, severity and absolute numbers of workers exposed to violations.

Less common are methods that allow inspectorates to prioritize across workplaces *within* an industry. The most widespread means of doing so is to target according to employer size: large-scale employers are often targeted disproportionately within industries. Although there is an intuitive logic to this (after all, that is where the workers are), there is significant evidence that large-scale employers display above-average compliance (e.g. Mendeloff et al., 2006, in regard to health and safety).

### Deterrence

Although deterrence is frequently mentioned in discussions of enforcement, labour inspectorates rarely use it as an explicit component of their strategy or in programmatic evaluation. This stems, in part, from the difficulty of measuring deterrence since it is not directly observable (and in fact requires assessing a

counterfactual: what would this employer have done in the absence of inspections elsewhere?). Deterrence effects are also related to employer perceptions and, therefore, to the degree to which enforcement agencies explicitly tie investigation strategies to activities that change targeted employers' views about the likelihood and consequences of being investigated.

### **Sustainability**

Programmatic investigations are usually more broadly focused than complaint-triggered investigations. For example, most programmed investigations of labour standards in the United States are "full investigations" requiring multi-year reviews of payroll records, interviews with multiple employees, and significant investment of time. Similarly, the Occupational Safety and Health Administration has historically used "wall-to-wall" investigations for its programmed inspections. However, such inspections are often criticized both internally and externally because they tend to yield fewer findings than do complaint-based investigations. This is not particularly surprising at one level because they are not triggered by a specific problem and therefore do not provide the inspector with a particular angle to pursue, at least in starting the inspection. As with deterrence, programmed investigations may have limited sustainability if they are seen as transitory (e.g. an area spot-lighted today means that the pressure will be off next year) rather than part of a sustained effort to change compliance.

### **Systemic effects**

The focus of regulatory attention tends to be on the individual workplace. Even where prioritization is embraced as an enforcement principle, it tends to be used as a basis for selecting individual employers or workplaces. Similarly, industry initiatives – a common feature of many regulatory interventions – still frequently mean focusing industry-level attention on a workplace-by-workplace basis. Although this may have deterrence effects, it does not inherently lead to systemic change on an industry-wide scale. This is illustrated by the ongoing difficulty many countries face in improving conditions in problematic industries. Agriculture is a case in point: despite repeated, high-profile and earnest efforts to address problems like child labour or pesticide exposure in this sector, practices quickly relapse after attention ends (i.e. improvements are not sustained). Interventions fail to have systemic effects on the behaviour of employers.

The challenges facing agencies in applying strategic enforcement principles can be further illustrated by contrasting two programmatic investigation systems, one that fails to meet the above criteria and another that succeeds in applying them. The lower portion of table 1 summarizes the performance of the following two cases across the four principles of strategic enforcement.

### ***Example 1: Programmed investigations by the Occupational Safety and Health Administration in construction***

There are millions of active construction projects at any given time. The United States' Occupational Safety and Health Administration has some 1,100 inspectors

at the federal level, devoting roughly 40 per cent of their time to monitoring safety and health conditions in the construction sector. Given its limited number of inspectors, selecting sites for inspection is an enormously difficult task, but it remains critical to the agency's ability to carry out its mandate to improve workplace safety and health in accordance with the Occupational Safety and Health Act.

Ideally, the Administration would focus its resources on those projects that subject the largest number of workers to the most severe safety and health risks. However, with limited information about schedules for construction activity in a given region and about safety and health conditions in particular construction projects, scheduling inspections remains a major problem. Worker complaints and referral inspections can provide some information about risks on current work sites, but for the reasons discussed in the previous section this information is not systematic. Inspections triggered by a workplace death or serious accident can provide information on major problems that may have value for targeting, but such information is not often used for this purpose.

When the Occupational Safety and Health Administration was created in the early 1970s, area offices used a variety of formal and informal methods for targeting inspections, ranging from reliance on complaints, to use of information available from local permitting and public agencies regarding construction activity, and drawing on the knowledge of area-office compliance officers about upcoming construction. These varying methods were replaced, however, by a targeting system developed in response to a 1977 United States Supreme Court ruling in *Marshall v. Barlow's Inc.* (429 U.S. 1347, 97 S. Ct. 776). In that decision, the Supreme Court required that the Occupational Safety and Health Administration create an objective and documented basis for targeting inspections. Specifically, in selecting workplaces for planned inspections, the Administration needed to demonstrate use of "specific neutral criteria" to prevent arbitrary or abusive behaviour by its personnel. Though the definition of "specific neutral criteria" is complicated, it rests on the idea that all establishments within a defined universe of employers covered by the Administration bear similar chances of being inspected. As a result, the definition of the relevant universe of employers becomes critical to the targeting mechanism.

The resulting targeting procedure uses construction-permitting data and statistical models that predict construction starts and estimated durations to establish the universe of active construction projects in the particular geographical area covered by each of the Administration's area offices. For each office, a list of projects is randomly selected from the estimated universe of active construction projects. The area office must then inspect contractors and subcontractors on all of the sites on the list during the course of the month (or carried over to the next month if there is insufficient time for completion). In this way *employers* (contractors and subcontractors) are identified on the basis of *project-level* activity. As a by-product of the unique structure of construction, this procedure of employer identification therefore differs markedly from the fixed-site/fixed-

employer model that the Occupational Safety and Health Administration generally uses.

This system appears to provide the Administration with a reasonable cross-section of active sites that would seem to meet the criteria described above. In practice, however, the system fails to meet the key criteria for successful strategic enforcement. Its performance results are summarized in the middle section of table 1.

First, the data on construction starts comes from a source that focuses on major private and public construction projects (projects planned to cost more than US\$1 million). This means that a significant proportion of smaller projects never make it into the targeting system, leading the Administration to over-sample large contractors. Although investigations thus target sites with larger numbers of workers, large-scale contractors tend on average to have better safety performance. The over-sampling of large enterprises undermines the principle of prioritization: in effect, by using project costs rather than risk-related outcomes to select sites, the Administration may be systematically targeting the wrong end of the spectrum in terms of where major health and safety problems reside.

A second problem – related to the first – is that large-scale contractors typically have pre-existing health and safety programmes and procedures that are difficult to change. As a result, their compliance behaviour changes little despite repeated inspections at the same site or across multiple sites controlled by the same contractor. For example, earlier research indicates that the typical contractor starts on a construction site at high rates of compliance (74 per cent in compliance at the time of the first site inspection) and changes little, even after repeated inspections of the site (Weil, 2001 and 2004). Even after *eight* inspections of a contractor at the same site, predicted compliance rose only to 80.5 per cent. Contractors responded more, but still modestly, to the effects of inspections conducted on any of their project sites, with predicted compliance rising from 61 per cent on any site at the time of the first inspection to 76.6 per cent at the time of the eighth inspection on any site within the time period.<sup>11</sup> Because of its focus on larger contractors with well entrenched practices, the deterrence effect of the system is modest.

A third problem arises from the focus of the system on the *contractor* rather than the *project*. In general, the Occupational Safety and Health Administration's investigation strategy is employer-focused. But health and safety outcomes in construction – particularly significant problems – tend to be determined by project-level factors such as the management of the project as a whole, the time pressures placed on contractors, the degree of coordination across

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<sup>11</sup> These insights are drawn from a study by the author regarding the effects of OSHA enforcement on safety and health among large-scale contractors. Using a panel of data on OSHA enforcement activity for the 2,060 largest contractors in the United States in 1987–1993, the study revealed that large-scale contractors typically exhibit higher levels of compliance with safety and health standards than other segments of the industry that receive far less regulatory attention (Weil, 2001 and 2004).

working groups, and the nature of project insurance. The contractor/employer focus provides few incentives for project-level change by, say, adjustment of project management practices, such as scheduling, that might have profound impacts on the likelihood of fatalities. By focusing on the contractor rather than the project, the system also fails to tap into potentially systemic factors related to the type of project. For example, construction work for public buildings must be open to bidding through formal and usually transparent procedures in contrast to a comparable private undertaking, which can affect the set of contractors involved in such a project. To take another example, a casino resort developer may push for a very compressed construction schedule (and therefore tolerate greater job risk) because of the significant profits to be made upon completion, whereas a private hospital or pharmaceutical facility would tend to have highly specified quality standards that may translate into better coordination and safer worksite conditions. Two studies, in fact, indicate strong correlation between end-use and the prevalence of health and safety risks (Schriver, 2003; Weil, 2004). As a result, the Administration's construction enforcement scheme fails to generate systemic effects; nor does it lead to the kind of sustainable impacts on project safety that might otherwise be attainable.

The targeting procedure developed in response to *Marshall v. Barlow's Inc.*, with its bias towards large sites, made sense in the Administration's first few decades of operation when it was reasonable for this agency to try to move as many contractors as possible towards compliance in a world of widespread non-compliance with newly promulgated safety and health standards. Studies of the effects of OSHA inspections in the early period of regulation show a high level of responsiveness to enforcement – hence the rationality of an approach focused on larger-scale employers (Bartel and Thomas, 1985; Scholz and Gray, 1990; Gray and Mendeloff, 2005; Gray and Jones, 1991; Weil, 1996).<sup>12</sup> But 35 years on, a predominant focus on scale no longer serves strategic enforcement objectives.

### *Example 2: Using industry leverage to improve garment industry compliance*

A highly effective use of programmed investigation is illustrated by a recent programme developed by the Wage and Hour Division of the United States Department of Labor. This initiative combines many of the elements of a progressive strategy, as described above, in order to pursue the fundamental goals of assuring basic labour standards in the United States apparel industry.

Basic characteristics of product and labour markets in the apparel industry would lead one to predict high rates of employer non-compliance. Garment production is splintered among different enterprises that carry out the design,

<sup>12</sup> Ringen (1999) aptly summarizes the central problem of OSHA enforcement in construction: "There is a tradeoff between neutrality and inspection effectiveness as measured in terms of violations and penalties. The planned programmed inspections, based on neutral selection of inspection targets, are bound to produce 'less inspection bang' than the un-programmed inspections that are based on cause" (pp. iii–iv).

cutting, and sewing and pressing/packaging of apparel products. Contractors compete to preassemble bundles of cut garment pieces in a market where there is little ability to differentiate services (i.e. sewing and associated assembly). Sewing contractors compete in a market with large numbers of small companies, low barriers to entry, limited opportunities for product differentiation, and intense price-based competition. Because labour costs represent the vast majority of total costs for a sewing contractor, there is significant pressure on these contractors to strike deals in the short run with jobbers and manufacturers that would not be economically sustainable if the contractor were to comply with wage and hour laws. As a result, non-compliance is predominately a problem among the large number of contractors and subcontractors that assemble apparel products. About one-half of all contractors in Los Angeles in 1998, and one-third of those in New York in 1999, failed to comply with minimum wage laws.

Regulatory activity historically focused on that contractor/subcontractor level of the apparel industry. The primary means of inducing compliance was through direct inspection and the effects of deterrence based on the imposition of civil penalties on those repeatedly found in violation.<sup>13</sup> This led to a seemingly endless cat-and-mouse game between the Wage and Hour Division and small-scale contractors, whereby efforts to reduce sweatshop conditions in the garment industry were thwarted by companies constantly going into and out of business, either because of the harsh competitive conditions in the industry or as a means of evading penalties for past violations.

This regulatory model was altered substantially in the mid-1990s, partly in response to wider changes in the apparel industry. New forms of “lean retailing” (with Wal-Mart being the leader in developing this model) take advantage of information technology to use real-time information to reduce exposure to changing consumer tastes. Lean retailing reduces the need for retailers to stock-pile large inventories of a growing range of products, thereby reducing their risks of stock-outs, markdowns and inventory-carrying costs. Apparel suppliers, in turn, must operate with far greater responsiveness and accept a great deal more risk than in the past. Suppliers must replenish products within a selling season, with retailers now requiring replenishment of orders in as little as three days. Any disruptions in the weekly replenishment of retail orders by apparel suppliers become a major problem – one that can lead retailers to assess penalties, cancel orders, and even drop “unreliable” suppliers (Abernathy et al., 1999). This increasing importance of time translates into a potential tool of regulatory enforcement.

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<sup>13</sup> The basic remedy under the FLSA is payment of back wages to compensate workers for underpayment (pay below minimum wage or non-payment of overtime rates for work beyond 40 hours per week). First-time violators are only required to pay back pay (what should have been paid all along). Employers owe civil penalties only if found in continued violation of minimum wage provisions in subsequent inspections. However, some features of enforcement make penalties for first-time offenders potentially higher than back pay alone (Lott and Roberts, 1989).

Through an initiative begun in 1996, the Wage and Hour Division, which is responsible for enforcing minimum wage and overtime regulations, dramatically shifted the focus of enforcement efforts by exerting regulatory pressure on manufacturers in the apparel supply chain rather than on individual small-scale contractors. Invoking a long ignored provision of the Fair Labor Standards Act, Section 15(a) (the “hot cargo” provision), it embargoed goods that were found to have been manufactured in violation of the Act. Although this provision had limited impact in the traditional retail-apparel supply chain, when long delays in shipments and large retail inventories were expected, invocation of the hot goods provision today can raise the costs to retailers and their manufacturers of lost shipments and lost contracts (given the short lead times of retailers). Indeed, this provision potentially creates significant penalties arising from FLSA violations that quickly exceed those arising from back wages owed and civil penalties.

The Wage and Hour Division’s new policy uses the hot cargo provision to persuade manufacturers to step up regulatory action by making the release of embargoed goods contingent upon *the manufacturer’s* agreement to create a compliance programme for its subcontractors. The manufacturer must agree to sign two types of agreement: an agreement between the manufacturer and the Department of Labor, and an agreement between the manufacturer and its contractors (see United States Department of Labor, 1998 and 1999). The agreements stipulate basic components of a monitoring system to be operated by the manufacturer.<sup>14</sup>

Statistical analyses of these monitoring arrangements demonstrate that they have led to very significant improvements in minimum wage compliance among apparel contractors in southern California (Weil, 2005b) and New York City (Weil and Mallo, 2007).<sup>15</sup> Stringent contractor monitoring is associated with reductions in the incidence of minimum wage underpayments by as much as 17 violations per 100 workers and in the extent of underpayments by an average of US\$4.85 per worker per week. These represent far higher reductions in non-compliance than those achieved through the use of traditional regulatory tools in this industry.

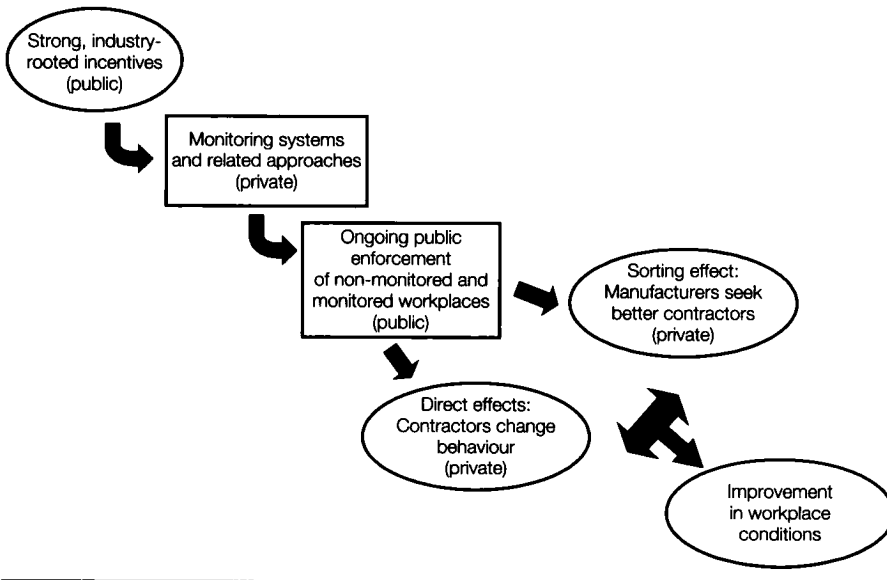
This garment-industry initiative has proved successful across all four dimensions of strategic enforcement (see table 1 for a summary). It performs well in

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<sup>14</sup> These agreements, however, are entered into voluntarily by the manufacturer and their terms are therefore negotiated out between the Government and the manufacturer/jobber. The terms described here are taken from the Department of Labor’s model agreement language specified in formal policy documents (see Wage and Hour Division, 1998).

<sup>15</sup> These evaluations were possible because of another innovation of the Wage and Hour Division. In order to gauge the impact of the new strategy, it undertook random, inspection-based monitoring of contractors in the major garment producing markets. It did so to be able to estimate the geographical impacts of the initiatives in a way that would be impossible using administrative records, which are in part reflective of the initiatives. Later on, it also developed new performance benchmarks from the random surveys.

Figure 3. Impacts of garment industry initiative on compliance outcomes



terms of inter- and intra-industry prioritization in that the programme focuses on an industry that has long been at the top of labour standards problems in the United States, and on the level of the industry (contractors) where those problems are the most significant. However, rather than the endless cat-and-mouse games that have historically characterized enforcement in this industry, the focus on higher levels of the supply chain – i.e. the manufacturer – creates greater incentive effects on those companies that drive subcontracting compliance. As a result, the strategy of using public enforcement power (the embargo) to create private monitoring systems has powerful deterrence effects which, in turn, create a platform for sustainable improvements in compliance.

The results from Los Angeles for 1998–2000 and, particularly, those from New York for 1999–2001 indicate system-wide improvement in compliance (Weil and Mallo, 2007). What is more, the incentives for manufacturers to find partners who are less likely to cause their goods to be embargoed seems to raise average levels of compliance among new garment contractors entering into the system. This is captured in figure 3, which portrays the systemic effects of the programme achieved through the direct effects of monitoring as well as “sorting” effects that raise manufacturer incentives to find subcontractors that are more likely to comply with labour standards. Weil and Mallo (2007) provide evidence that sorting effects led to better compliance among new contractors (those in business for less than two years) than overall average compliance. Given the high rate of business turnover, this effect leads to systemic compliance improvement over time.

## Conclusion: Creating coherent regulatory strategies

Workplaces and employers vary enormously in their scale, nature and factors affecting their activities. A labour inspectorate seeking to achieve the ILO's objective "to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work" must build its policies and deploy its resources centrally upon an understanding of the consequences of the variation in company and industry characteristics.

A strategic enforcement policy based on the principles discussed in the previous sections would have five major components. First, it requires careful mapping of the regulatory terrain in terms of where the major problems reside, particularly those that can be addressed through government intervention. Second, it requires that the inspectorate work closely with key third parties (trade unions, third-party advocates and other labour market intermediaries) whose activities at the workplace- and industry-level are natural complements to government efforts. Third, it requires adjusting the way inspectorates respond to complaints so that they remain responsive to worker problems yet actively use those investigations to help achieve broader regulatory priorities rather than being forced into a purely reactive role. Fourth, it requires developing integrated approaches to specific industries that allow agencies to leverage industry forces (such as supply-chain dynamics in the garment example) to achieve wider regulatory goals. This approach represents a kind of "regulatory jujitsu" that uses private incentives to achieve public ends more effectively.<sup>16</sup> Finally, it requires combining decentralized planning and implementation so strategies reflect conditions on the ground, on the one hand, with centralized evaluation and deployment of overall resources based on overall compliance impacts, on the other.

Strategic enforcement does not occur in a vacuum, of course. Regulatory agencies – like many private and public organizations – are well known to be resistant to change, as the classic work of Bardach and Kagan (1982) and others well attest. But agency recalcitrance requires a careful assessment of how to build alternative approaches into existing regulatory institutions rather than either throwing up one's hands at the enterprise at one extreme or creating unrealistic "wish list" scenarios on the other.<sup>17</sup>

A number of emerging factors could create an atmosphere more conducive to changing traditional regulatory approaches. One set arises from within the national regulatory system. The negative consequence of two decades of deregulation has become a topic of political debate in many countries. Workplace agencies in the developing world are increasingly being asked to demonstrate their contribution (in measurable terms) to broader economic development goals. These requirements, often introduced as part of larger civil

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<sup>16</sup> I am grateful to Janice Fine for coming up with this description of the approach that I have discussed – but not adequately dubbed – in prior work.

<sup>17</sup> Sparrow (2000) and Ayers and Braithwaite (1992) offer important insights on this issue.

service reforms, are frequently accompanied by the threat of downsizing of programmes that are unable to demonstrate these connections (von Richthofen, 2002).<sup>18</sup> Information technologies and related tools lower the cost of creating systems to support more sophisticated intervention approaches.<sup>19</sup> Changes in public sector management philosophies and practices and the attitudes of an incoming generation of public sector employees may also favour moving in new directions.

Pressure to move towards more strategic modes of enforcement also arises from the intersection of national systems with the growing number and variety of international workplace monitoring arrangements.<sup>20</sup> One possibility is that voluntary monitoring systems created to enforce codes of conduct and related arrangements may complement national systems, with the latter serving traditional compliance roles and voluntary systems allowing for more creative problem-solving between parties that goes beyond mandated standards or practices (Locke, Amengual and Mangla, 2008). Alternatively, the interaction could take on the characteristics of the garment-industry programme described above, with national public enforcement agents providing the teeth to strengthen private monitoring efforts. In any case, the proliferation of voluntary monitoring is likely to spur regulatory innovation.

While these factors may increase the likelihood that inspectorates will adopt more strategic approaches to inspection, one cannot underestimate the resistance that major changes in regulatory approaches will come up against in many agencies, a topic that deserves separate treatment. Still, the challenges posed by limited resources and the complexity of the task facing labour inspectorates will not diminish in the foreseeable future. It therefore becomes incumbent upon all parties seeking to improve workplace conditions to rethink long-standing approaches to labour inspection.

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<sup>18</sup> For example, the United States Congress explicitly built performance into its appropriations process via the Government Performance and Results Act (GPRA) of 1993. GPRA's legislative purpose is "... to provide for the establishment of strategic planning and performance measurement in the Federal Government, and for other purposes". With its ultimate objective stated to be "to change agency and managerial behavior – not to create another bureaucratic system", the Act required all federal agencies to submit a five-year strategic plan in 1997 and every three years thereafter, as well as annual performance plans.

<sup>19</sup> For example, the author has developed prototype Google-based maps portraying regulatory compliance in several priority industries ultimately to augment strategic enforcement efforts.

<sup>20</sup> See Locke, Qin and Brause (2007) for a systematic analysis of the impact of Nike's voluntary monitoring mechanism, perhaps the best known case of international monitoring efforts.

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