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DISCUSSION
PAPER

The Jordanian Garment Industry and Better Work

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Kevin Kolben



International
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Kevin Kolben

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The Jordanian Garment Industry and Better Work

Kevin Kolben*

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* Associate Professor, Rutgers Business School.

Introduction

This report traces the rise, near fall, and then rise again of the garment industry in Jordan, and how a joint program developed by the World Bank's International Finance Corporation and the International Labor Organization (ILO) called Better Work helped stabilize the industry and help ensure its success. The land now known as The Hashemite Kingdom of Jordan has long stood at a vital political and economic crossroads in the Middle East. As far back as the reign of the Nabotean Kingdom, from 4th Century BCE to 2nd Century CE, the land comprising Jordan has occupied a central economic and political role in the Middle East despite its lack of natural resources.

Sitting at an economic and political crossroads, Jordan has struggled to develop an indigenous investor class and grow its economy; and since its founding it has utilized its medial role to extract aid and trade benefits for its economy. The growth of the garment industry is an unusual success story for Jordan's manufacturing sector. Indeed, Jordan is not a country that would typically be considered a likely destination for investment for the globally fleet footed garment industry. It has a low female labor rate, relatively high wages, no local capacity for growing cotton or providing other textile inputs, and has little indigenous experience in garment and apparel manufacture. Nevertheless, garment production has become an important component of Jordan's export economy. The reason for this growth has everything to do with a preferential trade arrangement implemented by the United States, and a subsequent free trade agreement (FTA) that together gave Jordan significant tariff advantages in certain product categories over more competitive countries that did not benefit from such preferences.¹

But the rapid expansion of Jordan's garment industry came with significant growing pains. Bereft of an indigenous labor force that was willing or able to meet the expectations and demand of the new garment investors, migrant workers were brought in to fill the gap – a common practice in Middle East labor markets. The result was a human rights and public relations disaster for the Jordanian government, for the brands sourcing from Jordan, and for the investors who had set up factories there. What resulted was the establishment of an experimental supply chain labor governance project called Better Work Jordan that stepped in to help save the Jordanian garment sector from itself.

¹ For a discussion see Kevin Kolben, *Trade, Development and Migrant Workers in Jordan*, 5 J. Middle East Law and Governance 195 (2013).

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What follows is an examination of the political, economic, and legal context that gave rise to the industry, the events that nearly felled it, and how an alternative form of supply chain governance spearheaded by the ILO and IFC was developed to sustainably build an important economic sector for Jordan, and help maintain stability in a politically volatile country and region. It examines the ways that Better Work Jordan has evolved through three phases, and proposes that BWJ and other Better Work and similar programs should think about how developing strategic, networked, and hybrid forms of labor regulation will be the best way to hand over the reins when it and similar programs eventually wind down.

I. Evolution of Garment Industry in Jordan

The garment industry plays an unexpectedly important role in Jordan's economy. Garments and related exports in 2017 were valued at more than \$1.60 billion, accounting for some 22% of Jordan's total exports.² Nearly all of these garment exports were destined for the United States. To understand how Jordan's industry came to be, and why its traits are somewhat exceptional, we need to first examine the macro-economic context that has given rise to the global garment industry.

A. The De-Evolution and Disaggregation of the Global Garment Industry: The Great Unbundling

To understand the rise of Jordan's garment industry, it is necessary to understand the larger macro context in which the apparel industry, as well as global production more generally, has evolved. In the U.S and Europe, garment production for domestic consumption had largely been domestically produced. But the decrease in transportation costs driven by technology, the decrease of trade tariffs driven by politics, and again the rise in information and communication technology has led to a new economic model of production. This can be called what Baldwin has termed, the "Great Unbundling."³

The Great Unbundling has two stages according to Baldwin. The first unbundling took place with the advent of the steam engine and railroads in the 1800s.⁴ Indeed, the effect of these transportation technologies on the rise in trade dwarfed anything that followed World War II.⁵ Yet the period following WWII up to 1990 also witnessed a dramatic decrease in transportation costs, as well as trading costs due to sharp reductions in global tariffs rates.⁶ Tariff costs came down dramatically post WW II due to the realization that the pre-war protectionist policies were disastrous. As a result, as part of the post-world war deal of embedded liberalism,⁷ the Western

² See World Bank, WITS. Jordan World Total Textile and Clothing Exports, 2017 https://wits.worldbank.org/CountryProfile/en/Country/JOR/Year/2017/TradeFlow/Export/Partner/all/Product/50-63_TextCloth.

³ RICHARD BALDWIN, *THE GREAT CONVERGENCE* (2016).

⁴ *Id.* at 50-1.

⁵ *Id.* at 49.

⁶ *Id.* at 71.

⁷ John Gerard Ruggie, *International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order*, 36 *INTERNATIONAL ORGANIZATION* 379 (1982).

powers formed the GATT, which provided a forum to reduce tariffs and create global rules of the trade. A second significant factor in the first unbundling was the rise of containerization. This innovation made it possible to ship goods by sea in a much more efficient manner by standardizing shipping methods, thus dramatically lowering shipping costs.⁸

Following the first unbundling, a second unbundling occurred, according to Baldwin, with the dramatic rise in communication and information technologies. This resulted in an increase of lead firms outsourcing many complex activities and manufacturing processes that were once done in house. What this has all led to is a dramatic increase in trade. In fact, since 1980 where there was \$2.3 trillion in trade, in 2014 it rose to a high of about \$24 trillion.⁹ Much of this trade has consisted of trade along global supply chains. According to UNCTAD, some 80% of global trade is linked to MNE's international supply chains.¹⁰

While many firms are importing intermediate goods for manufacture or assembly in their home country, other firms have completely outsourced production. Nike and Apple are but two examples of firms that maintain their design and marketing in their home countries, but outsource all the manufacturing to their suppliers, mostly in countries outside the United States. The great unbundling facilitated the growth of supply chains and what scholar Gerald Davis has termed, Nikefication. That is, the disaggregation of firms and the outsourcing of the functions that don't constitute a core competency.¹¹ The garment industry was particularly prone to these trends in part because of the low labor skills necessary to cut and sew garments.

B. The Jordanian Garment Industry in Economic and Social Context

While the development of the Jordanian garment industry took place in the larger economic context of the growth of garment supply chains, its own peculiar history is tightly entwined with the political and economic history of Jordan itself. The region that is now known as the nation state of Hashemite Kingdom of Jordan sits at a geographic and economic crossroads that has made it

⁸ BALDWIN, *supra* note 3, at 75.

⁹ The World Bank, Export of Goods and Services, *available at* <https://data.worldbank.org/indicator/NE.EXP.GNFS.CD>.

¹⁰ UNCTAD World Investment Report 2013, at 135, http://unctad.org/en/PublicationsLibrary/wir2013_en.pdf.

¹¹ Gerald F. Davis, *After the Corporation*, 41 *POLITICS & SOCIETY* 283 (2013).

economically and politically invaluable for centuries. However, its value has not derived from its natural resources or from other factors of production. Rather, since ancient times until today, when the great Nabotean Kingdom that ruled from the days of Alexander the Great until the beginning of the Second century CE when it was defeated by the Romans, the land now known as Jordan has occupied a central point along trading routes. The Naboteans were greatly enriched by, and derived much of their power from, controlling the lucrative trans-Arabian trade routes that extended from India to the Mediterranean,¹² and as a result many empires and kingdoms have long fought over influence and control of the region.¹³

Today's modern Jordan still sits at a vital crossroads in the global economy, and more importantly global politics. Bordered by Syria, Iraq, Saudi Arabia, and Israel, it is difficult to name another country that shares borders so many conflict zones and vital global economic interests. It is partly for that reason, much like in days past, that Jordan is and remains an important player in global politics.

The Rentier Economy

Jordan's strategic importance has meant that it has been a target of monetary and other forms of support, creating what has been described by some as a rentier economy. As Katherine Blue Carroll has noted, "Jordan has always relied on the kindness of strangers,"¹⁴ although of course that kindness has always carried with it strategic interests. Indeed, Jordan has been the recipient of various forms of aid and external funding, or "rents," since the state was founded in 1921. The beginnings of these rents can be traced to the annual subsidies provided by the British government to the founding ruler, Amir Abdullah, with its "Grant-In-Aid program."¹⁵ More recently, Saudi Arabia has been a prominent donor, along with the UAE and Kuwait. In 2018, the three countries together committed \$2.5 billion in aid to Jordan to stabilize the country given its high debt and high unemployment levels.¹⁶

¹² KAMAL S SALIBI, *THE MODERN HISTORY OF JORDAN* (London: I.B. Tauris, 1998), 7-11.

¹³ KEVIN BUTCHER, *ROMAN SYRIA AND THE NEAR EAST 96* (Los Angeles: Getty Publications, 2003).

¹⁴ KATHERINE BLUE CARROLL, *BUSINESS AS USUAL?: ECONOMIC REFORM IN JORDAN 1* (2003).

¹⁵ PHILIP ROBINS, *A HISTORY OF JORDAN 29* (ILLUSTRATED ED. 2004).

¹⁶ See Taylor Luck, UAE, Saudi Arabia and Kuwait sign over \$2.5bn to help Jordan, *The National*, <https://www.thenational.ae/world/mena/uae-saudi-arabia-and-kuwait-sign-over-2-5bn-to-help-jordan-1.777112>.

One significant economic handicap that has differentiated Jordan from its neighboring states, such as Iran and Syria, has been its insufficient indigenous business community.¹⁷ Indeed, at the turn of the 20th century it consisted of little more than a number of agricultural communities with little manufacturing to speak of.¹⁸ Merchants mostly saw Jordan as a place to pay tribute to the Bedouin tribes that lived there so that they could move their goods through without harassment.¹⁹ Following the establishment of the British mandate, business and businessmen, particularly from Syria and Palestine, began to gravitate towards Jordan because the British established infrastructure and political stability; and doing business in the British territory provided access to other markets under British authority.²⁰ But British colonial control hindered the ability of these merchants to expand beyond being middlemen and traders and establishing an industrial base in Jordan. The years of the second world war saw the creation by the British of import quotas, which led to the creation of certain elite families that had access to them.²¹ Following independence in 1946, those merchants, some 31 according to one historian, and their families become the economic elite of Jordanian society.²²

By time the political situation had stabilized in Jordan in the 1960s after the rocky accession of King Hussein in 1951 and the rise of a new generation of Jordanian politicians and bureaucrats in the late 1950s and early 1960s, attention focused on economic development as a means of state building.²³ Economic growth had already been fairly robust during those decades. GDP growth averaged 7 to 8% per year between 1949-1966, and by 1966 it had the highest per capita GDP of all the Arab states. The primary goals were 1) increase GDP, 2) reduce unemployment, which was estimated to include 1/3 of the population; and 3) increase exports. Indeed, the lack of indigenous manufacturing and resources meant that one third of the goods used in Jordan at the time were imported, and 75% of those goods were paid for by foreign assistance. Reformers such as Wasfi al-Tall, who was appointed prime minister in 1962, wanted to get out of the cycle of dependence and develop more of an export based economy with an industrial base.

The aftermath of Jordan's defeat in the 1967 war posed an economic challenge for Jordan. As a result, Jordan gained some 300,000 Palestinians, lost 40% of its GDP, including half of its industrial

¹⁷ CARROLL, *supra* note 14, at 25.

¹⁸ *See* ROBBINS, *supra* note 15 at 7.

¹⁹ CARROLL, *supra* note 14, at 25.

²⁰ *Id.* at 26.

²¹ ROBBINS, at 55.

²² *Id.*

²³ *See id.* at 106-111

capacity, lost 25% of its arable land, and some 90% of its tourism business.²⁴ Economic growth slowed and even reversed itself in some years.²⁵ After the war, King Hussein developed lines of communication with Israel, and largely stayed out of the 1973 war.²⁶ Nevertheless, the war still impacted Jordan's recovery and it wasn't until 1976 that GDP began to grow again. The economic situation also resulted in an oversupply of working age Jordanians, and by end of 1970s about one third of the Jordanian workforce was working outside the kingdom.²⁷

C. The Beginnings: Peace Treaty

It is in this context that Jordan began the process of reconciling politically and economically with Israel, which saw its materialization in the Israel Jordan Peace Treaty (Treaty).²⁸ The fruition of seven years of negotiations at the behest of King Hussein and Israeli Foreign Minister Shimon Peres, the treaty was signed by Israeli Prime Minister Yitzhak Rabin and King Hussein on October 26, 1994. The Treaty established borders between the two countries, established diplomatic relations, called for the creation of a free trade zone, and provided for agreements about water supply, among other provisions.²⁹ Indeed, economic cooperation was explicitly envisioned in the Treaty, which reads “economic development and prosperity as pillars of peace, security and harmonious relations between states, peoples and individual human beings, the Parties, taking note of understandings reached between them, affirm their mutual desire to promote economic co-operation between them, as well as within the framework of wider regional economic co-operation.”³⁰ The creation of the free trade zone that was called for in the Treaty, along with other forms of economic cooperation, had the aim “of promoting beneficial economic relations... as well as on human development considerations on a regional basis.”³¹ “

Some in the Israeli and Jordanian governments, as well as the private sector, saw this as an opportunity to both develop the spirit of “cooperation” and “mutuality” that was referred to in the

²⁴ Id. 124-5.

²⁵ See [Countryeconomy.com](https://countryeconomy.com), Jordan GDP – Gross Domestic Product, *available at* <https://countryeconomy.com/gdp/jordan?year=1967>

²⁶ ROBBINS, *supra* note 15, at 140-141.

²⁷ Id. at 143

²⁸ This is formally known as the Treaty of Peace Between the State of Israel and the Hashemite Kingdom of Jordan, UN Treaty Series Vol 2042, 1-35325 (Oct 26, 1994).

²⁹ Id.

³⁰ Treaty, at Article 7(1).

³¹ Treaty, at Art 7(2)(b).

treaty text.³² In practice, few of the economic projects and cooperation activities envisioned came to fruition. But recently, after two decades, the first free trade zone was established which in English is called the Jordan Gateway Free Zone Industrial Park (JGFZ).³³ The JGFZ, which was originally created in 2002, but is now expanding to incorporate Israel as envisioned in the treaty, creates a bridge linking Jordan and Israel in a so called “enclave” that is effectively a free trade zone envisioned in the original peace treaty.³⁴ One main benefit of the enclave is that goods produced there can be designated as made in Israel, Jordan, or receive a neutral designation that it is made in the JGFZ. Perhaps most beneficially it will allow Jordanians to access jobs, and Israeli investors to access cheap Jordanian labor. By some estimates, 12,000 Jordanians and 3,000 Israelis will be employed in the enclave,³⁵ which provides land access to and from Europe to the Middle East through Israel instead of Syria or Egypt, as well as many tax incentives.³⁶

D. The QIZ Law

But although the free trade zones envisioned by the Treaty took longer than anticipated to see to fruition, there was another legislative channel being pursued in the United States to encourage economic cooperation between Israel and Jordan, and to give some preferential trade benefits to Jordan as an economic and political benefit for entering into the agreement. The passage of the qualifying industrial zone (QIZ) law by the United States Congress was a pivotal moment for the development of the Jordanian garment industry. Prior to the law, Jordan exported a small quantity of garment production. Some forward looking entrepreneurs and policy makers, however, had a vision of greater economic cooperation between countries in the region as a means of economic development and geopolitical peace.³⁷ A harbinger of the QIZ law was an effort by a Palestinian businessman, Omar Salah, and Dov Lautman, the Israeli founder of Delta Galil, the largest Israeli

³² Tamar Arieli & Nissim Cohen, *Policy Entrepreneurs and Post-Conflict Cross-Border Cooperation: A Conceptual Framework and the Israeli-Jordanian Case*, 46 *Policy Sciences* 237, 246 (2013).

³³ See Jordan Gateway Free Industrial Zone Park, available at <http://jgip.net/>; MARKUS E. BOUILLON, *THE PEACE BUSINESS: MONEY AND POWER IN THE PALESTINE-ISRAEL CONFLICT* (2004).

³⁴ Dror Feuer, *Israel, Jordan Begin Building Free Trade Zone*, *Globes* (Jan 15, 2017) available at, <https://en.globes.co.il/en/article-israel-jordan-begin-building-free-trade-zone-1001172104>

³⁵ *Id.*

³⁶ Ari Roabinovitch & Tova Cohen, *Truck by Truck, Israel Builds Trade Gateway to Arab World*, *Reuters* (Jul 1, 2014), available at <https://www.reuters.com/article/us-israel-trade-insight/truck-by-truck-israel-builds-trade-gateway-to-arab-world-idUSKBN0F63DF20140701>

³⁷ See Shamel Azmeh, *Trade Regimes and Global Production Networks: The Case of the Qualifying Industrial Zones (QIZs) in Egypt and Jordan*, 57 *Geoforum* 57 (2014), at 61.

underwear manufacturer, to open a joint manufacturing venture in Jordan following the signing of the Treaty.³⁸ In 1996 the venture was started in Northern Jordan, with Lautmann transferring some of his production to there from England.³⁹

Supported by the Israeli and Jordanian governments, these and other businessmen, as well as policy makers in Israel, Jordan, and the United States lobbied for the United States to extend tariff benefits to Jordanian manufactured goods, just as the Israel US Free Trade Agreement (IUSFTA) did for goods between Israel and the U.S. What resulted was a law granting authority to the President to extend trade benefits to the West Bank and Gaza Strip provided that certain conditions were met. Unlike most trade preference laws, which are attachments to the United States Trade Act, the law amended the IUSFTA to grant authority to the President to extend duty free treatment to certain specified products that were manufactured in QIZs in Jordan and Egypt, provided that certain content requirements were met.⁴⁰ Thus the linkage between the trade benefits and Middle East politics were clear.

The law basically required that for a product to receive duty free treatment, it has to be manufactured in a designated QIZ that the U.S. recognizes and it must contain at least 35% content from the countries that are party to the agreement. Of that 35%, 20% would have come from Israel and Jordan.⁴¹ The parties were to work out the exact percentages of how that 20% would be allocated. Eventually in 1997, the U.S., Israel, and Jordan, in a secret and fraught negotiation that took place in Qatar, partly because of staunch opposition to normalization of relations with Israel, agreed to establish an initial QIZ in Northern Jordan.⁴² In November 1997, the first QIZ was indeed established in Irbid, and it was agreed among the parties that of the 35% required to obtain tariff benefits, Israeli content would be 8%, Jordanian would be 11.7%, and the remaining US content could not exceed 15.3% in order to make up the minimum 35% content requirement.⁴³

³⁸ Id. at 61.

³⁹ Austin Carter et al., *Measuring Trade Advantages of the Qualifying Industrial Zones Program of Jordan and Egypt Offered by the United States for Having Signed Peace Treaties with Israel*, 17 *Topics in Middle Eastern and African Economies* 192, 197 (2015).

⁴⁰ An act to amend the United States-Israel Free Trade Area Implementation Act of 1985 to provide the President with additional proclamation authority with respect to articles of the West Bank or Gaza Strip or a qualifying industrial zone. United States Public Law 104-234 (Sect 9(a)(1))(104th Congress).

⁴¹ Technically, the content must have emanated from the West Bank, Gaza Strip, Israel, or a QIZ. But this effectively meant from Israel or Jordan.

⁴² Carter et al, *supra* note 39, at 198. Indeed, the final agreement was ratified by Royal decree, and not legislatively by parliament. Id.

⁴³ Friderich Ebert Stiftung & Royal Scientific Society, *The Future of Jordan's Qualified Industrial Zones (QIZs)*, at 10 (2013), available at <https://library.fes.de/pdf-files/bueros/amman/10677.pdf>; *Qualifying Industrial Zones (QIZs) in Jordan*

Despite the opposition from certain groups within Jordan, the Jordanian government was keen to benefit from such an arrangement because of the poor economic situation. The government hoped that the QIZ tariff benefits would help develop the manufacturing sector, raise the low rates of female labor participation, and help preserve political and economic stability.⁴⁴ And these were the goals that the United States hoped to achieve through the passage of the QIZ legislation. The content restrictions served as a means, in part, to encourage the economic cooperation envisioned in the original QIZ legislation. These goals, as well as a desire to end the Arab boycott of Israel, were primary motivations behind passage of the legislation.⁴⁵

Indeed, the QIZs proved to be a success, and Jordan saw a steady and rapid increase in foreign investment, as well as readymade garment production and exports to the U.S.⁴⁶ For example, according to the World Bank, in 1997, Jordan exported \$1.308 million in textiles and clothing to the U.S. By 2001, that number was over \$210.525 million⁴⁷, and by 2005 it had reached close to one billion dollars. Most of this was through the QIZs, and much of it initially linked to cooperation with Israeli firms.⁴⁸ Notably, almost all the production was concentrated in several garment categories that were subject to high quota constraints as allowed for in the Multifibre Arrangement, which expired in 2005.⁴⁹

According to Azmeh, there are several factors that accounted for this increased production after the QIZ law. First, there were already some producers in Jordan that benefited from the new tariffs; second, some Israeli companies that had previously been subcontracting in Jordan decided to relocate there; but third and by far the most important factor was the flow of investment by Asian producers into Jordan who wanted to take advantage of the duty free access to the U.S. market, which were tariff benefits that their Asian exports did not enjoy.⁵⁰ Indeed, about 62% of the investors in Jordan were Asian, with Indians constituting the 22% of the investors, and 40% of the

and Egypt: Background and Issues for Congress (Congressional Research Service Report at 4 (2013). The minimum content for Jordan was lowered to 8% in 2004.

⁴⁴ Carter et al., *supra* note 39 at 198.

⁴⁵ Extension Of Free Trade Benefits To The West Bank And Gaza Strip; OECD Shipbuilding Agreement Act; And Reauthorization Of The Generalized System Of Preferences Program, S. REP. 104-270 (1996), at II(C)(3).

⁴⁶ Bouillon, *supra* note 33, at 80-82.

⁴⁷ World Integrated Trade Solution, *available at* https://wits.worldbank.org/CountryProfile/en/Country/JOR/Year/2001/TradeFlow/Export/Partner/all/Product/50-63_TextCloth

⁴⁸ See Bouillon, *supra* note 33, at 81-82.

⁴⁹ See I. SAIF, *The Socio-Economic Implications Of The Qualified Industrial Zones In Jordan* 23 (2006).

⁵⁰ Azmeh, *supra* note 37, at 62.

other investors coming from other countries in Asia. Only 17% of the investment came from Jordan.⁵¹

E. Trade and US Jordan FTA

In addition to the QIZs, and partly as a result of their success and reception in Jordan, the United States also moved to conclude a free trade agreement with Jordan in which both parties signed in 2001. The FTA was contemplated already since the mid-1990s when a number of representatives from Congress sent a letter to President Bill Clinton asking him to extend FTAs to countries that signed peace agreements with Israel.⁵² Their hope was that the agreement, like the QIZ initiative but even more expansively, would reward Jordan for its peace efforts with Israel, promote economic and political stability, and encourage further reform and liberalization in Jordan.⁵³ The idea didn't really blossom, however, until the accession of King Abdullah II to the Jordanian throne, who embraced the economic possibilities of increased trade liberalization and economic reform.⁵⁴ The FTA created a second channel of trade liberalization, although this one gradually phased in tariff reductions through 2010, depending on the product.⁵⁵ It still contained a requirement that the goods contain 35% Jordanian content,⁵⁶ but there were no requirements for co-production with Israel, meaning Jordan now had to meet the 35% content requirement itself or in conjunction with the United States.

F. Rapid Industry Growth

The results of the QIZ, first on its own, and then coupled with the FTA were very positive and achieved their intended economic, if not political, purpose. QIZ exports to the United States, for example, reached \$1 billion by 2006, and Jordan's overall exports to the United States substantially

⁵¹ Congressional Research Service [hereinafter CRS], *Qualifying Industrial Zones (QIZs) in Jordan and Egypt: Background and Issues for Congress*, CRS Report R43202 5-6 (2013). For more information about the dominant role of Asian investors in Jordan, see Shamel Azmeh & Khalid Nadvi, *Asian Firms and the Restructuring of Global Value Chains*, 23 INTERNATIONAL BUSINESS REVIEW 708 (2014).

⁵² CRS, U.S. – Jordan Free Trade Agreement, CRS Report RL30652, 5 (2001).

⁵³ Id.

⁵⁴ Id.

⁵⁵ Id. at 18.

⁵⁶ See US-Jordan FTA, Annex 2.2, Para 5.

increased from \$26 million to \$1.5 billion.⁵⁷ In the years immediately following the signing of the FTA, from 2001-2004, QIZ exports constituted more than 80% of Jordan's total exports to the U.S., nearly all of which were textiles and garments.⁵⁸ As predicted by some observers, the products that would most likely be affected by the QIZ tariff incentives in Jordan would be those that a) were labor intensive, and b) suffered from high tariffs if originated in another country.⁵⁹ In Jordan, this led to concentration in the production of t-shirts and other kinds of cotton garments as well as some synthetics.⁶⁰ Currently there are 13 QIZs in Jordan, but since 2006 much of the garment production has moved to being covered under the FTA now that agreement is fully implemented and tariff benefits do not require Israeli inputs.⁶¹ The reshuffling of garment production in the region was staggering. According to Azmeh and Nadvi, in 1993 Jordanian garment exports constituted about 1% of the total exports to the US from the MENA countries. By 2006 that number had reached 48%.⁶²

The creation of the QIZs also had other dynamic effects on Jordan's export economy, as its exports to the rest of the world have increased and diversified thanks in part to its use of the already existing zones.⁶³ While garments are by far the largest export to the United States, Jordan's primary overall exports are calcium phosphates, which are used in fertilizers, followed second by knit sweaters.⁶⁴ Nevertheless, garments continue to play an extremely important overall all role in Jordan's economy, and exports have been increasing rapidly.

While the rise since the late 1990s until 2005 was rapid and unidirectional, exports hit a plateau in 2005. Exports largely held steady in 2006 – 2007, and then a crisis struck the industry. The first crisis was a labor rights exposé that is discussed in the next section. But this was then coupled a year later with the worst global recession since the great depression, leading to an extremely sharp drop in exports, with the industry almost halving its exports to about \$900 million at its trough.⁶⁵ The sharp drop in exports preceded the establishment of the Better Work Jordan program, and exports

⁵⁷ CRS Report R43202, *supra* note 51, at 6.

⁵⁸ *Id.*

⁵⁹ Carter et al, *supra* note 39 at 199.

⁶⁰ CRS Report RL 30652, *supra* note 52, at 18.

⁶¹ CRS Report R 43202, *supra* note 51, at 6.

⁶² See Shamel Azmeh and Khalid Nadvi, 'Greater Chinese' Global Production Networks in the Middle East: The Rise of the Jordanian Garment Industry, 44 *Development and Change* 1317, 1326 (2014).

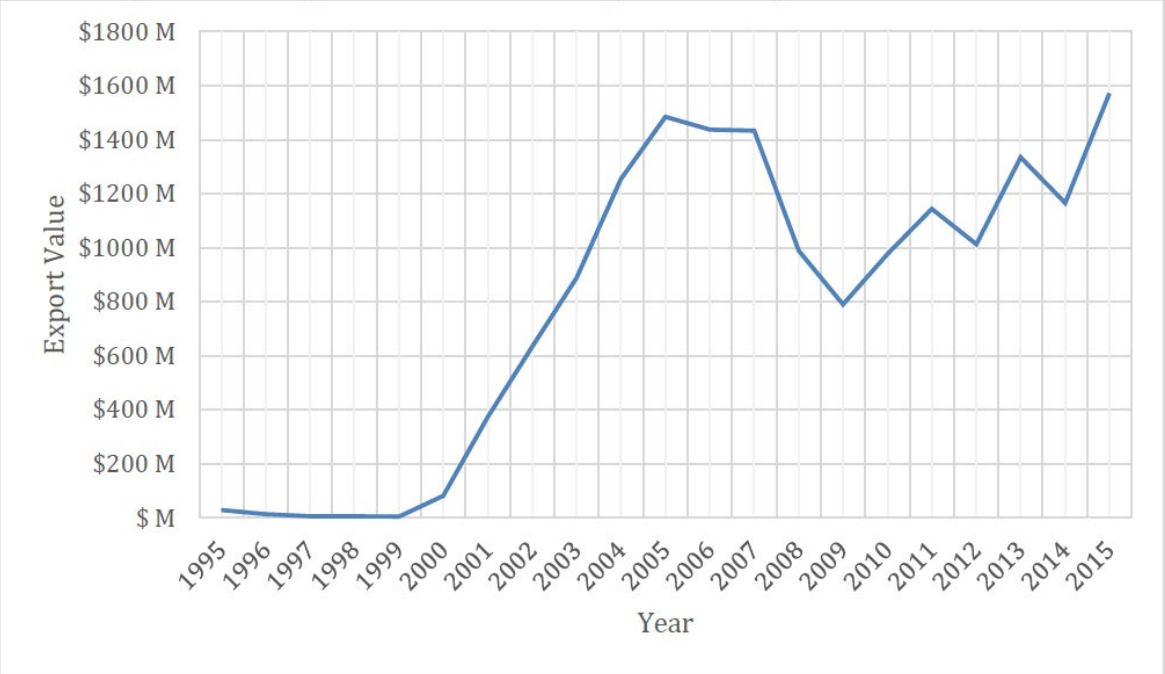
⁶³ CRS Report R43202, *supra* note 51, at 7.

⁶⁴ Observatory of Economic Complexity, What Does Jordan Export?, *available at* http://atlas.media.mit.edu/en/visualize/tree_map/hs92/export/jor/all/show/2017/.

⁶⁵ See World Bank, WITS. Jordan World Total Textile and Clothing Exports, 2009, https://wits.worldbank.org/CountryProfile/en/Country/JOR/Year/2009/TradeFlow/Export/Partner/all/Product/50-63_TextCloth

began to increase again in 2009. By 2017 textile and garment exports to the world were valued at over \$1.6 billion,⁶⁶ garment and related exports accounted for about 22 percent of Jordan’s total exports.⁶⁷ While about 94 percent of those garments were exported to the United States, in 2016 and then revised in 2018, the EU and Jordan concluded an agreement liberalizing the rules of origin requirements found in the EU-Jordan Association Agreement for a range of manufactured goods so long as at least 15% of the workforce in the producing factories employ Syrian refugees.⁶⁸

Chart 1: Jordanian garment sector’s export value, 1995-2015³²



Source: Better Work Jordan: Phase 2 Final Evaluation (2018)

G. Investment and Investors

The reduced tariffs, combined with a range of tax breaks and other incentives for investors, led to a significant inflow of investment from abroad, much of it from Asia, and particularly China and India.⁶⁹ Some reports claimed that some investors moved production from other UAE states to

⁶⁶ See World Bank, WITS. Jordan World Total Textile and Clothing Exports, 2017, *supra* note 2.
⁶⁷ Id.
⁶⁸ See European Commission, Jordan, available at <http://ec.europa.eu/trade/policy/countries-and-regions/countries/jordan/>.
⁶⁹ Azmeh & Nadvi, Greater Chinese Global Production Networks, *supra* note 62 at 1326.

Jordan to take advantage of the new economic incentives.⁷⁰ Other manufacturers that had production facilities in garment producing countries such as India and Sri Lanka also took advantage of the tariff and financial incentives by setting up facilities in Jordan. As one Sri Lankan garment manager noted, his company came to Jordan in the mid 2000s because of the US Jordan FTA. The significant factor was that at the time, a number of product categories produced in Sri Lanka were subject to 30% duties from the United States.⁷¹

An additional factor for transferring production to Jordan from countries such as Sri Lanka and India was the existence of the Multifiber Arrangement, which allowed for the United States and other signatories to impose quotas on garment imports as an exception to the general WTO rules. In 2005 the MFA was finally phased out, which might have contributed to the exodus from some production sites such as the UAE that specifically saw garment production grow as a way for importers and exporters to manage quota limits.⁷² In any event, the Jordan 2001 FTA ensured that those quotas would not be applied to imports from Jordan so long as the rules of origin requirements were satisfied. As the investors poured in, the buyers followed as well. The Gap, Walmart, Jones, and other companies began sourcing from Jordan, fueling the growth of an industry that had gone from negligible in the mid-90s to significant in the course of a decade.

H. The Workforce

As noted, a strong motivation behind the United States' passage of the QIZ law, as well as entering into the Free Trade Agreement with Jordan, was to increase Jordanian employment as a means of stabilizing Jordan, both economically and politically. The growth of the Jordanian garment sector should have been a significant means of achieving that goal. Indeed, Jordanian officials initially believed and hoped that there would be a significant proportion of Jordanians making up the garment sector workforce. Factory managers also apparently anticipated having at least a more

⁷⁰ Jeffrey Nugent and Abla Abdel-Latif, *A Quiz on the Net Benefits of Trade Creation and Trade Diversion in the QIZs of Jordan and Egypt* (working paper, 2009).

⁷¹ Interview with Athulla Edirisinghe in Jordan, Jun 21, 2010.

⁷² Interview with Tareq Abu Qaoud, Country Director, Better Work Jordan, Dec 13, 2018.; see Jamila Qadir, *UAE Garments Industry Badly Hit by WTO Rules*, Khaleeja Times, June 1, 2005, available at <https://www.khaleejtimes.com/article/20050601/ARTICLE/306019988/1036>.

balanced proportion of Jordanian and foreign workers.⁷³ While at first the proportion of Jordanian workers was by some accounts up to 70%,⁷⁴ eventually it became apparent to the managers that this wasn't feasible.⁷⁵

According to Bouillion, a pioneer in growing the number of migrant workers was the Hong Kong based Boscan International.⁷⁶ Boscan was one of the first firms to set up in in the al-Hassan QIZ, which was the first designated QIZ under the QIZ law. Boscan employed Chinese workers as well as Jordanians, but quickly began to lobby the Jordanian government to allow companies to recruit up to 50% of their workforce from abroad.⁷⁷ This limit was eventually raised, and now approximately 75% of the industry is composed of migrant workers.⁷⁸

Thus the hopes of employing a large number of Jordanians did not bear fruit. As one Sri Lankan manager put it, “we prefer to have more Jordanian workers, but were compelled to have more foreign workers.” According to the manager, the reasons for turning to foreign workers were because 1) the lack of availability of Jordanian workers, 2) low desire to work in the apparel industry; and 3) a lack of skills among workers.⁷⁹ Researchers have often been told by managers that they believe that foreign workers have better work discipline, better motivation, and are not in need of the levels of training that Jordanian workers would require.⁸⁰

Researchers have identified additional reasons for the low Jordanian labor participation rate and the managerial preference for migrant workers, some of which reflect employer preference over necessity. One reason is cultural, in that companies that originate in a given country and have production facilities in those countries are used to and comfortable with those workers.⁸¹ A second reason is that the productivity of migrant workers is perceived to be higher than Jordanian workers, perhaps due in part to the skill gap described by the Sri Lankan manager.⁸² A third reason for the lack of labor force participation relates to the particular context of the low female participation rates in Jordan. Garment work across the globe is predominantly female, and Jordan has a female participation rate of about 14%, which is the second lowest in the world. A fourth possible reason

⁷³ Interview with Athulla Edirisinghe, Jun 21, 2010.

⁷⁴ Interview with Phil Fishman, Jun 20, 2010.

⁷⁵ Interview with Athulla Edirisinghe, Jun 21, 2010.

⁷⁶ Bouillion, at 80.

⁷⁷ Id. at 81.

⁷⁸ Better Work Jordan Annual Report 2019.

⁷⁹ Interview with Athulla Edirisinghe, Jun 21, 2010.

⁸⁰ See Azmeh, supra note 37 at 63.

⁸¹ Interview with Phil Fishman, supra note 74.

⁸² Interview with Human Resources Manager, 2011, Amman Jordan.

proffered for the struggle to recruit Jordanian workers in the QIZ factories is the geographical locations of the QIZs, and their undesirability as places to live and work for a number of Jordanians. A 2012 report used focus groups to examine these issues in depth and reported similar findings, reporting that interviewees believed that garment jobs were associated with both low job status and low job satisfaction.⁸³

Due to these labor market constraints and expressed preferences, factory owners turned to hiring foreign workers to fill the available positions. Indeed, soon approximately 75% of the workforce was constituted by foreign workers, and it remains so. In January 2019, there were over 68,300 workers employed in the exporting garment factories, with about 16,700 Jordanians and 51,500 migrant workers.⁸⁴ The high utilization of migrant workers in the garment sector is consistent with a strategy that Jordan has used of importing labor since the early 1970s.⁸⁵ This labor regime is, like other countries in the region, a Kafala system of labor in which workers can only enter the country with a sponsorship from a specific employer, and can only their job and the country with an employer's permission.⁸⁶ Residence permits are granted for one year once the work visa is issued, and renewal is the burden of the employer, yet the worker can be fined if the employer fails to renew it.⁸⁷ Moreover, if an employee wishes to cut short a fixed term labor contract, the employer has the right to obtain compensation from the worker with the proviso that it not exceed one half month wages for every month that remains in the contract.⁸⁸ While there are some exceptions to this generalized right to compensation if the employee can show certain changes in the employment situation, it is exceedingly difficult for a worker to change employers to complete the contract term even in the event that she can demonstrate that she has been subject to abusive labor conditions.⁸⁹ Thus these exceptions are more theoretical than practical. As a result, employers can legally maintain a high degree of control over migrant workers.

Garment employers are banned by law from using Jordanian labor brokers to source foreign workers, although by some accounts some employers still do so.⁹⁰ Instead, employers hire workers

⁸³ Employment of Jordanians in the Garment Industry: Challenges and Prospects (2012).

⁸⁴ Better Work Annual Report 2019, at 10.

⁸⁵ ILO, Migrant Domestic Workers, at 3. The law governing migrant workers, Law No. 24 of 1973 on Residence and Foreigners Affairs and the By-Law No.3 of 1997 that regulates visa requirements forms the foundation of regulation of migrant laborers in Jordan.

⁸⁶ Id.; ILO, Migrant Domestic Workers, at 3.

⁸⁷ Id at 4. (citing Article 34(a) of Law No. 24 on Residence and Foreigners Affairs of 1973.)

⁸⁸ Id. (citing Article 26(b) of the Labour Code).

⁸⁹ Id.

⁹⁰ Id. at 8.

directly or work through employment agencies in the workers' countries of origin.⁹¹ For a migrant to obtain a job in a garment factory, she has to generally work with either a private recruitment agency in her home country, or work with a state run agency that is dedicated to helping its nationals find jobs abroad. Bangladesh and Sri Lanka are particularly developed in this domain.⁹² In 2012 the Jordanian Ministry of Labour (MoL) issued regulations specifying the documents that employers have to submit to help ensure that the recruitment process has been conducted properly, including a certificate by the worker's embassy attesting a licensed private agency reunited her and that there were no other fees associated with her recruitment; that there was an advertisement published in the workers' country of origin describing the job and the conditions.⁹³ As the ILO notes, however, workers still are liable to pay any fees that their home county might permit. Better Work Jordan reports in its 2018 annual report that non-factory compliance on this issue is improving. The payment of recruitment fees by workers was reported to have dramatically fallen from 31% of factories in 2016 to 7% in 2017.⁹⁴

I. Economics of the Garment Industry: What Does it Add?

The hopes for the garment industry as a means of contributing to Jordanian employment and the Jordanian economy were thus high. By creating conditions amenable to garment production, policy makers hoped to create employment opportunities for Jordanians, particularly less educated ones, in the newly created industry. But this has not yet come to pass. Jordan's economy is largely composed of services, which in 2018 constituted almost 63% of its economy.⁹⁵ It struggles with a high unemployment rate, with an official unemployment rate over 18%.⁹⁶ Indeed, some 600,000 Jordanians have migrated abroad for employment, which makes up about a half of the Jordanian

⁹¹ Id..

⁹² Id.

⁹³ See Instructions for the conditions and procedures of bringing and employing non-Jordanian workers in the QIZs, art 3, available at <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/77877/82895/F581125567/JOR77877.pdf>

⁹⁴ ILO Annual Report 2018, at 20. Interestingly, of those workers paying fees, men were found to be paying higher fees than females. This might be due to the fact that men tend to occupy higher paying jobs, such as cutting.⁹⁷

⁹⁵ See Central Bank of Jordan. Numbers for 2018 are preliminary.

⁹⁶ See Jordan Department of Statistics.

workforce. The funds they send home constitute about 11% of Jordan's GDP, which in 2016 would have equaled about \$4 billion.⁹⁷

But a challenge facing the industry is that Jordan's comparative advantage in garment production is questionable. Its female labor participation rate is low, wage rates are relatively high compared to many garment producing countries, transportation costs are high, water and other inputs are expensive, and it possesses little experience in garment production.⁹⁸ This creates a question as to whether the Jordanian advantage is completely tariff based, or what might be termed 'artificial' or 'political'.⁹⁹ Thus as Domat *et al.* frame the question, it is not clear if Jordan has "the factor endowments that provide a comparative advantage in apparel."¹⁰⁰

However, Domat *et al* argue that in fact Jordan would have a comparative advantage *if* female participation rates were higher and could replace migrant workers, then Jordan has a latent comparative advantage in garment production absent the presence of migrant workers and the Jordan US Free Trade agreement.¹⁰¹ Of course even if true, this is a strong counterfactual, as the Jordanian female labor participation rate is about 14%, and there are substantial barriers to increasing that rate that are attributed to factors beyond reserve wage rates.¹⁰²

Domat et al are challenging, or at least complicating, the story most typically told about the rise of Jordan's industry, and the one emphasized here, which is that it is largely attributable to the tariff preferences from the United States because of the QIZ law and the free trade agreement. As one Sri Lankan employer explained, the main reason they are in Jordan is because of the fact that synthetics are given tariff free access from Jordan, but are subject to a very high tariff if they were

⁹⁷ <https://data.worldbank.org/country/jordan?view=chart>;
<https://data.worldbank.org/indicator/bx.trf.pwkr.dt.gd.zs>

⁹⁸ See e.g. IBRAHIM SAIF, *THE SOCIO-ECONOMIC IMPLICATIONS OF THE QUALIFIED INDUSTRIAL ZONES IN JORDAN*, AT 47 - 48 (Center for Strategic Studies, University of Jordan, 2006).(discussing the high input costs compared to competitor countries).

⁹⁹ Azmeh, *Trade Regimes*, supra note 37, at 63.
at 64.

¹⁰⁰ George Domat, Benjamin Glass & Drusilla Brown, *The Apparel Industry: Jordan's Comparative Advantage in International Trade*, Dec 12, 2012 (Working Paper); Interview with Drusilla Brown, Oct 23, 2018; See Kevin Kolben, *Trade, Development, and Migrant Garment Workers in Jordan*, 5 *Middle East Law and Governance* (2013)(arguing that Jordan's advantage is a creation of trade politics).

¹⁰¹ See Domat et al, supra note 100, at 4.

¹⁰² For example, Groh et al. find in randomized experiments that the perceived prestige of a job has a significant impact on the willingness of Jordanian youth to interview for or accept jobs. See David Testing the Importance of Search Frictions, Matching, and Reservation Prestige Through Randomized Experiments in Jordan (IZA Discussion Paper 8518, Oct 2014), available at <http://ftp.iza.org/dp8518.pdf>.

manufactured in Sri Lanka.¹⁰³ Other researchers have documented similar responses from other investors.¹⁰⁴

Another question is to what degree the garment industry actually benefits the Jordanian economy. The low participation rates of Jordanian women presents a challenge that has been questioned by members of civil society and others that were skeptical of the merits of an industry that relied heavily on migrant workers toiling in problematic conditions.¹⁰⁵ If Jordanians are not the prime wage beneficiaries, then what is the point of maintaining this industry in Jordan? Factory owners sought to build an economic case for maintaining the industry in Jordan. According to Brown and Deardorff, civil society was estimating that the industry had a relatively low 7% value added, while industry was estimating about 22%.¹⁰⁶ But to their surprise, Brown and Deardorff estimated 36.9% of the garment industry's value was added to the Jordanian economy when one takes into account labor, capital, materials, and tax revenue tax revenue generated by the industry.¹⁰⁷

J. The Future of Garment Industry

Evaluating the future prospects of the garment industry in Jordan is thus difficult given the various complicated political as well as economic factors that come into play. One present and future challenge is competition from Egypt and African countries such as Kenya and Ethiopia, which continue to attract investors.¹⁰⁸ Yet there are a number of reasons, as Azmeh argues, that factory owners have not shifted production from Jordan to its neighbor, Egypt, which also benefits from the QIZ law, but not from an FTA. These include costs of relocation, the business environment, and the economic and tariff stability provided by the JUSFTA, much of the reason why investors have chosen not to shift production is because of Jordan's foreign worker regime, or what Azmeh refers to as a "production and labor control regime."¹⁰⁹ Specifically, given Jordan's place in the global value chain producing garments that are somewhat low value, the ability to freely

¹⁰³ Interview with Shakir Ismail, MAS, Oct 18, 2018. According to the US Harmonized Tariff Schedule, the tariff on synthetic garments can be 28.2% for members of the WTO, but it is free from Jordan and other countries that enjoy tariff free privileges. See, HTS, 6101.30.20, (2018 HTSA Revision 14).

¹⁰⁴ See Shamel Azmeh and Khalid Nadvi, *Chinese Global Production Networks*, supra note 62, at 1329.

¹⁰⁵ Interview with Brown, supra note 100.

¹⁰⁶ Id.; Drusilla Brown & Alan Deardorff, *The Apparel Industry and the Jordanian Economy Calculating the Domestic Share of Sector Value Added*, at 10-11 (Nov 2011).

¹⁰⁷ Brown & Deardorff, supra note 106, at 10-11.

¹⁰⁸ Interview with Tareq Abu Qaoud, supra note 72.

¹⁰⁹ Azmeh, supra note 37, at 64.

move in workers and managers to Jordan from the countries where the Asian investors are located is a clear advantage over other countries with stricter labor controls. As factory managers have argued, but for the preferential trade arrangements and the free trade agreement, Jordan would not be competitive.

Given this context, some analysts see a great deal of potential of upside for the industry. In a Fall 2017 report by the World Bank, for example, it was estimated that Jordan could have the potential of increasing its garment exports in five years to the E.U. given the new trade agreement from what was \$63 million in 2011, and could increase net export value of \$227 million to the EU by 2022.¹¹⁰ A 2018 report by the International Trade Commission claims that the greatest potential lies with increased trade within the MENA region, and claims that the garment industry stands to add the most employment of any sector, with 22,097 jobs.¹¹¹

II. The Evolution of Better Work Jordan

But the industry growth that Jordan has experienced in the last two decades nearly came to a crashing halt in 2006 when the labor model upon which much of the industry was built was called into question by global consumers and transnational labor activist groups. In this section, we turn to a discussion of that expose, the conditions that workers were toiling under, and the stakeholder response that resulted in the creation of Better Work Jordan.

A. The Expose

As the Jordanian industry was rapidly expanding and increasing the number of foreign workers in its factories, in 2006 the nascent industry faced its first major crisis. While the AFL-CIO's Solidarity Center had already exposed some of the problems in Jordan and the QIZs in a short 2005 report,¹¹² in 2006 a small American labor rights organization dropped what seemed like a bomb on Jordan and its fledgling garment industry. In May 2006, the National Labor Committee (later called

¹¹⁰ World Bank, Jordan Economic Monitor, Towards Stronger External Trade Performance, at 29 (Fall 2017).

¹¹¹ International Trade Centre, Turning Export Potential into Employment: A Case Study for Jordan (2018).

¹¹² The Solidarity Center, The Struggle for Worker Rights in Jordan (2005), available at <https://www.solidaritycenter.org/wp-content/uploads/2014/12/Jordan-JFA.pdf>.

the Institute for Global Labour and Human Rights), published a 162-page report based on a year of field research.¹¹³ It documented a series of labor rights and labor law violations in some 26 Jordanian factories, some of which rose to the level of serious human rights abuses. The structure of the labor market in the Jordanian garment industry, and the labor market that it was relying on which was relying heavily on foreign workers through the Kafala system, finally was called to account.

One of the most serious and pervasive allegations was the withholding of workers' passports by employers despite the fact that doing so was forbidden by Jordanian law, and that workers were not issued required identification cards.¹¹⁴ This would leave workers beholden to employers who could control their freedom to leave the country, making them in effect a kind of indentured servant. This practice constituted a form of forced labor according to international labor law, and the practice would also leave workers in a kind of legal limbo if an employer shut down and didn't return passports to the workers.¹¹⁵ In fact it was only in 2016 that the United States finally removed Jordan's garment industry from its forced labor list, which the US Department of Labor attributed in significant part to the work of BWJ.¹¹⁶

Other workers reported violations including mandatory work shifts that ranged from 38 to even 72 hours.¹¹⁷ Interviewees also reported to the NLC that workers in some factories were subject to "torture and beatings,"¹¹⁸ as well as rape by factory managers.¹¹⁹ One group of workers told the NLC's investigators of being locked nearly naked in a freezing room when they complained of being sick.¹²⁰ Wages, like in many developing country garment factories, reportedly were routinely unpaid or underpaid, and workers told of factory dormitories that were disgusting to a degree that they constituted inhumane living conditions. IGLHR provided photos that documented these claims, including a photo of a large rat running around a dirty squat toilet, and photos of the substandard dormitories that would have ten to twelve people crowded into a 10 x 15 foot room.¹²¹ At the time,

¹¹³ National Labor Committee, U.S.-Jordan Free Trade Agreement Descends into Human Trafficking & Involuntary Servitude [hereinafter NLC Report] (March, 2006).

¹¹⁴ Tamkeen, Addressing Migrant Workers In Jordan, The Legal Framework to Protect Migrant Workers, Labour Law Art 77 (B, C)(undated), available at <http://www.solidar.org/system/downloads/attachments/000/000/457/original/PDF3.pdf?1469200423>.

¹¹⁵ See, NLC Report (2006), *supra* note 113, at 124.

¹¹⁶ Jordan's garment sector removed from US forced labour listing, https://www.ilo.org/beirut/media-centre/news/WCMS_531596/lang-en/index.htm, Notice of Publication of 2016 Update to the Department of Labor's List of Goods Produced by Child Labor or Forced Labor 81 FR 67393, <https://www.federalregister.gov/a/2016-23479>

¹¹⁷ Kernaghan, at 2.

¹¹⁸ *Id.* at 6.

¹¹⁹ *Id.* at 11, 20.

¹²⁰ *Id.* at 6.

¹²¹ *Id.* at 24.

migrant workers were not allowed to join the Jordanian garment workers union, the General Trade Union of Workers in Textile, Garment, and Clothing Industries.¹²²

B. The Jordanian Response

The NLC coordinated the report's release with the publication of an article by the New York Times, which ran a concurrent piece about the report and the allegations therein. The Times conducted its own interviews with workers to confirm the NLC's allegations.¹²³ To maximize impact, the NLC report specifically named brands that were sourcing from the factories described in the report. These included major companies such as Wal-Mart, Disney, Jones Apparel, K-Mart, Gloria Vanderbilt, Kohl's, JC Penney, Liz Clairborne, Victoria's Secret, Perry Ellis, and Mossimo, which was sold through Target retail stores.

The Jordanian Government's response was swift and intense. Panicked about the prospect of losing market share or even the entire industry, it acted quickly to publicly address the allegations. One of its first steps was to send the Jordanian ambassador, Fahrif Ali Zu'bi, to Washington D.C. to meet with US government officials, lawmakers and business leaders. Ali Zu'bi told his counterparts that the Jordanian government had shut down a number of factories in response to the NLC report, and admitted that there were significant problems in some of the factories.¹²⁴ As he put it, while “[o]ur labor regulations are pretty much up to par with international best practices, with [International Labor Organization] standards,”...¹²⁵ “[o]ur verification and inspection regimes may have failed us and in some cases failed us miserably. This is where we will require a lot of action and a lot of rectification.”¹²⁶ He also acknowledged that the Ministry of Labour was under resourced, and noted that with only 88 inspectors covering the whole of Jordan at the time, that it would be impossible to expect them to do the job properly.¹²⁷

While it is not surprising that Jordan would directly respond to the allegations, it was notable for a government that is a target of such a report to be quite so responsive to the allegations and to take aggressive action to remedy the problem. Accordingly, the Jordanian MoL soon publicly

¹²² Better Work, Case Study: Collective Bargaining Agreement In Jordan's Garment Industry (

¹²³ [An Ugly Side of Free Trade: Sweatshops in Jordan](#), NYT May 3, 2006

¹²⁴ Inside U.S. Trade, *Jordan Shuts Down Plants In Response To Critical Labor Report*, Inside U.S. Trade 24, no. 25 (June 23, 2006).

¹²⁵ Evan Clark, Jordan's Minister Addresses Labor Abuse, *Women's Wear Daily*, June 20, 2006, at 10.

¹²⁶ Jeffrey Sparshott, *Jordan shutting abusive factories; Official: Labor laws not upheld*, The Washington Times (June 17, 2006).

¹²⁷ Clark, Jordan's Minister Addresses Labor Abuse, supra note 125.

announced that it had undertaken investigations of all 28 factories highlighted in the NLC report, and that it found violations in 17 factories, six of which were no longer operating.¹²⁸ Five factories were reportedly closed by the government within three months of the report's release, as suggested by Ali Zu'Bi in his public statements. The Jordanian embassy also claimed that by September 2006 the government had relocated over 1,000 foreign workers from 14 factories that were found by the MoL to be in violation of the labor laws.¹²⁹ The Ministry of Labor also set up a hotline staffed by multilingual representatives for foreign workers to call with complaints.¹³⁰ In addition, USAID and the Jordanian government commissioned a third party report to verify the NLC report's allegations. The report confirmed many of the NLC's allegations, but perhaps "not on a scale as sweeping as had been claimed," and that the sexual harassment allegations could not be confirmed.¹³¹

The government also released a series of public documents that described a series of actions that it would undertake to improve its labor law enforcement, and that responded to specific allegations raised in the NLC report. These steps included facilitating stakeholder meetings; factory inspections,¹³² raising the minimum wage in the QIZs;¹³³ bringing criminal cases against some employers; bringing the labor law in line with international standards; creating a joint industry-government code of practice and certification called the "Golden List," highlighting a special group of factories that were certified by the government as being compliant to a higher standard than even the Jordanian law;¹³⁴ granting funding to Jordanian trade unions to establish offices in the industrial parks to assist guest workers;¹³⁵ and initiating a Decent Work Country Program (DWCP) with the ILO to promote ILO standards.¹³⁶ It significantly increased its budget for the Ministry of Labor from 2006 to 2007.¹³⁷ In addition to these announcements of reforms, the MoL released reports on

¹²⁸ Sparshott, *Jordan Shuts Down Plants*, supra note 126.

¹²⁹ Emad Mekay, *Labor: U.S. Union, Business Group Slam Jordan Sweatshops*, Inter Press Service, September 28, 2006, <http://www.ipsnews.net/2006/09/labour-us-union-business-group-slam-jordan-sweatshops/>.

¹³⁰ Labour Administration and Compliance in Jordan: A Multistakeholder Collaboration (Feb 2008), at 6.

¹³¹ Lejo Sibbel, *The Labour Provisions in the U.S. – Jordan Free Trade Agreement: Impact and Lessons Learned, Apr 26, 2010*, at 4 (*Unpublished document*). The report was written by an auditing company called Elevate, see <https://www.elevatelimited.com/services/programs/international-development/>. One notable finding of the report was that there was no sexual harassment.

¹³² Ministry of Labor, Hashemite Kingdom Of Jordan, *Labor Compliance In Jordan's Apparel Sector: Actions To Date And Next Steps*, (March 2007), <http://www.mol.gov.jo/Portals/1/Action%20Plan%20-%20FINAL%20March%2030.pdf>, at 2.

¹³³ Jordanian Ministry of Labour, Labour Administration And Compliance In Jordan: A Multi-Stakeholder Collaboration, at 14. At the time the minimum wage was 95 Dinars and was raised to 110 Dinars.

¹³⁴ Labour Administration and Compliance in Jordan: A Multistakeholder Collaboration (Feb 2008), at 14.

¹³⁵ *Id.*

¹³⁶ *Id.* at 21.

¹³⁷ Government of the Kingdom of Jordan, *Labor Compliance In Jordan's Apparel Sector: First Report On Inspection Issues*, June

follow-up inspections that it made of factories highlighted in the IGLHR reports, and of other factories operating in the apparel sector. The government also created a Core Inspection Force, composed of eight inspectors, which was charged with focusing on the apparel sector factories, and took a number of other steps to improve monitoring and compliance as well as improve institutional capacity.¹³⁸

These short term measures were solidified through more extensive steps by the government to improve its core regulatory institutions. One step was to develop a Labour Inspection Reform Project to which Jordan allocated several million Jordanian dinars to make a number of improvements. These included increasing the number of inspectors from 85 to 135 by 2010, providing training in conjunction with the ILO, improving compensation structures, and other infrastructure improvements.¹³⁹ Jordan also focused in particular on increasing its institutional capacity. It established new procedures for inter-ministerial coordination and cooperation between the ministries of labor, justice, interior, trade, as well as the Intelligence Department.¹⁴⁰ For its part, the MoL made changes to its administrative structure, and established a Forced Labour and Trafficking Project to deal with the myriad issues faced by migrant workers who faced forced-labour-like working conditions.¹⁴¹

C. The US Response

But Jordan was not the only government that was implicated in the situation. Because almost all Jordanian garment exports were destined for the U.S., and because the NLC was an American NGO, the fallout in the United States was significant. Congressional leaders that were skeptical to begin with of US trade policy, pressured Bush administration officials to take action. The AFL-CIO filed a petition to the US government to initiate dispute settlement procedures for violations of the labor chapter of the Jordan FTA.¹⁴²

30, 2007, at 6.

¹³⁸ See Labor Compliance In Jordan's Apparel Sector Actions To Date And Next Steps March 2007; Labor Compliance In Jordan's Apparel Sector Actions To Date And Next Steps, Update 2 June – October 2007

¹³⁹ Sibbel, at 6.

¹⁴⁰ Labour Administration and Compliance in Jordan: A Multistakeholder Collaboration, at 18.

¹⁴¹ Id. at 21.

¹⁴² Request By The American Federation Of Labor And Congress Of Industrial Organizations (AFL-CIO) And The National Textile Association (NTA) To The United States To Invoke Consultations Under The United States-Jordan Free Trade Agreement To Address Jordan's Violations Of The Agreement's Labor Rights Provisions September 21, 2006. The JUSFTA was the first and only free trade agreement up to that point that had trade

Because of this pressure, the U.S. took several steps. First, it made several aid commitments to Jordan, including funding the verification report described above. Second, in one of the most significant interventions, the US government funded a full-time external advisor, Lejo Sibbel, who was posted to the Jordanian Ministry of Labor from 2007 - 2010. Notably, and surely not coincidentally, Sibbel had previously worked for the ILO as the first Chief Technical Advisor in Cambodia for Better Factories, which was the spark to create the global Better Work program. But the third and most notable commitment by the U.S. to Jordan was to fund a country program of Better Work – one of the first that Better Work would develop outside of Cambodia.

D. Buyers Response

The other critical reaction came from buyers in the United States that had been increasingly vulnerable to and sensitive to accusations of labor rights abuses in their supply chains. The reaction was severe. The NLC report named a number of major American retailers in its expose which, as noted, was disseminated widely by the New York Times article, which included additional interviews that it conducted with Bangladeshi workers, some of whom still worked in Jordan and some who had since returned home. The interviewees confirmed reports of passport confiscation, working 90-120 hours a week, not getting paid overtime as mandated by law, and sleeping 10-20 to a room in the dormitories.¹⁴³

Especially for brands that were reputation sensitive, this was highly concerning. Loay Tolba, who at the time was a compliance officer for the Gap and is currently a compliance manager for New Balance, recounts that although The Gap wasn't named in the report as sourcing from one of the problematic factories, there was a lot of concern among a number of its stakeholders, who according to Tolba, "freaked out."¹⁴⁴ While The Gap continued its sourcing from Jordan, it decided

remedy provisions that were the same as the commercial chapters. Subsequent FTAs' labor chapters, until 2008, provided for different dispute settlement procedures that could only result in fines up to a certain amount. This was later changed in May 2007 in an agreement between Congress and the executive branch it is often referred to as the May 10, 2007 agreement. See USTR, Trade Facts, May 2007, found at, https://ustr.gov/sites/default/files/uploads/factsheets/2007/asset_upload_file127_11319.pdf; IM. (Mac) Destler, Peterson Institute for International Economics, *American Trade Politics in 2007, Building Partisan Compromise*, May 2007, <https://piie.com/sites/default/files/publications/pb/pb07-5.pdf>

¹⁴³ Steven Greenhouse and Michael Barbaro, *An Ugly Side of Free Trade: Sweatshops in Jordan*, New York Times, May 3, 2006, http://www.nytimes.com/2006/05/03/business/worldbusiness/03clothing.html?_r=1&pagewanted=2.

¹⁴⁴ Interview with Loay Tolba, Compliance Manager, New Balance, Oct 4, 2018.

to reduce its quantities in order to mitigate risk.¹⁴⁵ Other brands, such as Nike, decided to cease production all together.¹⁴⁶ This even though just a few years before, according to a US State Department report, Nike compliance officers seemed to find the working conditions of its supply chain workers “tolerable.”¹⁴⁷ According to Tolba, there was generally a great deal of confusion on the part of the brands on how to respond.¹⁴⁸ Retaining the brands by building up trust was one of the key ways that the entry and creation of Better Work Jordan played an important role in protecting the Jordanian industry.

III. Better Work Jordan - The Evolution 2008 – 2018

The crisis of 2006 was thus a catalyst for the Jordanian government and several stakeholders, including the United States, to ensure that Jordan remained a viable garment manufacturing center not only economically, but also in the social market place where consumers were increasingly attentive to how their goods were made. Perhaps the most important response was the creation of a country program of Better Work, a newly created entity that was co-governed by the ILO and IFC, and based at the ILO’s headquarters in Geneva.

A. Better Work – Background and History

The genesis of the Better Work project can be traced to the Cambodian Better Factories program, which was and remains an innovative program developed in conjunction with a bilateral textile agreement (Agreement) that was entered into by Cambodia and the United States.¹⁴⁹ While the U.S. made it a condition of the Agreement that there would be a third party entity, which ultimately – and significantly – was operated by the ILO. The Better Factories program in its initial

¹⁴⁵ Interview with Tareq Abu Qaoud, *supra* note 72.

¹⁴⁶ Interview with Tareq Abu Qaoud, *supra* note 72.

¹⁴⁷ E.O. 12958: N/A TAGS: ETRD EINV ELAB EAID IS IZ JO SUBJECT: JORDAN QIZ UPDATE - BUFFETED BUT UNBOWED, THE DOUGHTY QIZS KEEP ON GROWING, 2003-11-06, available at

¹⁴⁸ See Tolba, *supra* note 144.

¹⁴⁹ See Generally, Kevin Kolben, *Trade, Monitoring, and the ILO: Working to Improve Conditions in Cambodia’s Garment Factories*, 7 YALE HUMAN RIGHTS AND DEVELOPMENT LAW JOURNAL 79 (2004); Sandra Polaski, *Combining Global and Local Forces: The Case of Labor Rights in Cambodia*, 34 WORLD DEVELOPMENT 919 (2006).

iteration was primarily an auditing program that was intended to generate information for the United States Trade Representative in order to determine if it would raise quota levels on Cambodian garment exports to the U.S. as provided for by the terms of the Agreement.¹⁵⁰ The auditing function concerned a number of ILO officials who were apprehensive about the ILO being put into the role of gatekeeper for market access, which was not a role they thought the ILO should have. Employers were also wary of the ILO being directly involved in factory monitoring, and even some workers groups had concerns.¹⁵¹ The concerns were possibly due to the general skepticism that unions had about the auditing and compliance model, which was often viewed to act against, or in contrast to, a worker driven model that is grounded in freedom of association and trade unionism. But perhaps because of the very limited scope of the Agreement and the strong support for it from the U.S. Government, the experiment was allowed to proceed.

The Cambodian program garnered a great deal of attention, and a number of commentators have argued that it was a rare success in a field where successes were few and far between,¹⁵² even though significant labor problems continued to exist.¹⁵³ One of the most innovative and controversial characteristics of the program was its radical transparency – early on it initially named factories and made the results, if not the details, of the factory audits public.¹⁵⁴ Working conditions in Cambodia improved over time, poverty decreased, and the program remained operative and supported even when the quota incentive eventually was phased out. This led some to believe, including Nigel Tuse of the Foreign Investment Advisory Services (FIAS), and Ros Harvey, a subsequent Chief Technical Advisor (CTA) of the Cambodia program, that the BFC could be expanded to operate in a number of countries, even without the trade incentives that existed in Cambodia.¹⁵⁵

FIAS and the World Bank were becoming increasingly interested in the Cambodia experiment as an example of how demand for improved labor standards in the supply chain might drive improved supplier labor standards compliance. In 2004, FIAS and the IFC conducted a survey

¹⁵⁰ At the time, Cambodia was not a member of the WTO, and in any event the Multifibre Arrangement was in effect, thus allowing countries such as the U.S. to impose quotas on garment and textile imports.

¹⁵¹ Interview with Sandra Polaski, Oct 4, 2018.

¹⁵² See Sandra Polaski, *Harnessing Global Forces to Create Decent Work in Cambodia* (ILO 2009).

Ann Wetterberg, *Public-Private Partnership in Labor Standards Governance: Better Factories Cambodia*, 31 PUBLIC ADMINISTRATION AND DEVELOPMENT 64, 70 (2011).

¹⁵³ Chikako Oka, *Improving Working Conditions in Garment Supply Chains: The Role of Unions in Cambodia*, BRITISH JOURNAL OF INDUSTRIAL RELATIONS 401, 415 (2015)(questioning whether Cambodia is taking the high road in labor standards).

¹⁵⁴ See Kolben, *Trade, Monitoring, and the ILO*, supra note 149 at 102-105.

¹⁵⁵ Interview with Sandra Polaski, Oct 4, 2018.

of Western garment buyers to assess the degree to which labor standards played a role in their sourcing decisions. The findings were significant – 93.2% of the companies surveyed reported that labor standards were of critical importance to their sourcing decisions.¹⁵⁶ FIAS and the IFC were particularly interested in how labor standards compliance could play a role in improving competitiveness at both the firm and country levels. It believed that a program that helped supplier factories improve working conditions, and that also helped generate data for buyers and lead firms, could help improve working conditions *and* global competitiveness. Competitiveness would improve because buyers could depend on adherence to global labor standards in the factories, and because one of the ways of achieving improved labor standard compliance was to improve management and production processes.

Opposition among the ILO constituents to establishing an ILO based program remained, but supporters of the program won the day. Then ILO Director-General Juan Samovia decided to support the expansion of the program into what became Better Work, which is a program jointly governed by the ILO and IFC. An office was established in the ILO building in Geneva, and Ros Harvey was named the first executive director in 2006.

Better Work's mission is to improve labor standards compliance in global supply chains by working at the factory level to improve labor law compliance and market competitiveness. The core assumption is that improvements in the labor standards of a factory can lead to improved competitiveness in the market through reputation protection of lead firms, as well as through improved productivity in factories. The global Better Work template is grounded in providing three kinds of services to participating factories that pay an annual fee: assessment, advisory services, and training. In the assessment function, Enterprise Advisors (EAs) undertake an initial advisory visit with the factory to establish a Performance Improvement Consultative Committee (PICC), which is a bipartite committee composed of management and workers to discuss issues. These PICCS are central to the Better Work method as a means of generating social dialogue. The EAs also coach the factories to evaluate for themselves where they are falling short of international and domestic labor regulation. Then, the EAs conduct an unannounced two day long baseline assessment of participating factories to provide them with an overall analysis of where they are out of compliance with international and domestic law, and what they need to do to bring themselves into compliance. Based on these evaluations, the EAs then create improvement plans for individual factories, and the

¹⁵⁶ FIAS, Cambodia: Corporate Social Responsibility & the Apparel Sector 4 (2004).

EAs help the factories implement the recommendations in order to improve factory performance by the time of the next assessment. Assessments are to take place at least once a year.

A key objective and strategy of Better Work is to leverage the influence and financing of buyers to improve working conditions in factories. First, in return for a subscription fee, MNCs that source from participating countries are granted access to factory monitoring data generated by the Better Work programs. These MNCs look to Better Work as a means of providing an institutional mechanism to achieve what Better Work calls “sustainable improvement” in the supply chain, thus a) mitigating the risk of negative publicity events from labor rights exposés and b) consolidating and making consistent the disparate private monitoring regimes that exist along their supply chains. The program thus seeks to provide a market-based solution to weak regulatory regimes that is replicable and scalable, and that is consistent with both the ILO’s objectives of social dialogue and improved labor rights protections, and with the IFC’s objectives of promoting economic and sustainable development.

A second goal of Better Work has been to promote transparency and public reporting as a tool to create further incentives for factories to improve their labor standards. This has been a controversial and challenging issue for Better Work. While transparency was a central element of the Cambodian Better Factories program in the beginning and has been also implemented in Haiti, not surprisingly many factory owners in the different Better Work programs and governments have resisted public reporting for fear of harming their companies or the domestic industry. When Better Work in Cambodia restarted disclosing labor standard compliance of individual factories in 2014, Better Work reports that there was a 57% increase in labor standard compliance.¹⁵⁷ Currently, Better Work has developed a transparency portal that covers factories in Haiti, Indonesia, Vietnam, and Jordan, while Cambodia has its own database.¹⁵⁸ The intention of the program is to expand transparency reporting to all of its programs to the extent possible given some stakeholder hesitation.¹⁵⁹

¹⁵⁷ See Better Work, Transparency Portal, at <https://portal.betterwork.org/transparency>.

¹⁵⁸ Transparency Database, at <http://betterfactories.org/transparency/>.

¹⁵⁹ Email from Jeffrey Eisenbraun, Technical Officer Research and Impact, Better Work, April 1, 2019.

B. Better Work Jordan Phase One: Beginnings (2008-2013)

After securing funding by USAID, and selecting a former U.S. union official, Phil Fishman, to serve as the first Chief Technical Advisor, Phase I of BWJ began in 2008. The initial five year plan was released in October 2007 by USAID, and the plan noted what economists had been observing about the problems with the Jordanian labour market, and why the increased employment objectives of the QIZ law and the JUSFTA had not been realized. Jordanian workers, despite high levels of unemployment and out-migration, were not interested in taking jobs in the QIZs in part because of the perception that they were not good jobs.¹⁶⁰ Accordingly, the primary goal of BWJ as described by the project document, was to

reduce poverty in Jordan by expanding decent work opportunities in global supply chains. It will do this by improving competitiveness of enterprises in Jordan which are part of global supply chains by promoting economic and social performance, the principles of the ILO Declaration and compliance with Jordanian labour law.

It would achieve this goal by being

an industry-based scheme that works at the enterprise level. It uses transparent public reporting to promote accountability and measure progress over time. Local factories can use the project reporting to demonstrate compliance performance and remediation plans to their international buyers. The project includes training opportunities for workers and supervisors. It will be advised by a tripartite committee and international buyers, provide for broader stakeholder engagement, and be rigorously evaluated.¹⁶¹

To achieve these goals, there were three main components of improving competitiveness. These were: enterprise assessments, training and remediation, and stakeholder engagement and sustainability. Consistent with the Better Work model, the enterprise assessments would be made public in synthesis reports. While the first assessments would be made public on an aggregate basis, after the second report factories would be explicitly named with their results made public. This

¹⁶⁰ Better Work Jordan , Ministry of Labour USAID , Project Document, October 2007, at 4.

¹⁶¹ Id. at 8-9.

would give the factories an opportunity to improve between the first and second reports.¹⁶² As the project documents emphasized, “[t]ransparency is very important to building industry reputation and credibility for the project.”¹⁶³ In practice, getting the factories to agree to transparency was a major struggle,¹⁶⁴ and the transparency protocols only lasted until 2011 and were published in the second synthesis report, after which they quietly disappeared and individual factories were no longer reported on.

Assessments

The core services began in 2009-2010 with about twenty factories that enrolled largely at the behest of buyers that wanted them to participate.¹⁶⁵ An assessment would last two full days, which was more intensive than most third-party or Jordanian MoL audits. They would consist of visits, document reviews, factory observations, and interviews with managers, workers, and supervisors. The assessments were based on a set of 240 questions that were centered on eight compliance clusters that were related to either broadly applicable core international labour standards, or on “working conditions” that are country specific and based on Jordanian labor law. The information gleaned from these audits would then be used to inform and help target the advisory and training legs of the program.¹⁶⁶ Another important leg of the assessment process was for buyers to have access to factory specific information through a subscription service. One of the goals of the subscription service was to limit “code and audit fatigue” experienced by suppliers and buyers. This was a win-win situation which would reduce the audit burden on suppliers, as well as consolidate efforts by buyers and reduce their own compliance expenses while increasing reliability.

Training and Remediation

While assessments were an important leg of the strategy, the stakeholders also understood that improved labor standards and competitiveness required training and remediation of problems and conflicts. The objective according to the original project document was to “make sustained progress

¹⁶² Id. 10-11.

¹⁶³ Id. at 11.

¹⁶⁴ Interview with Phil Fishman, Nov 11, 2018.

¹⁶⁵ See 2018 Annual report, at 12; Phil Fishman, *supra* note 164.

¹⁶⁶ Annual report 2018, *supra* note 165, at 13.

in improving enterprise compliance with labour standards and economic performance.”¹⁶⁷ The main goal was to enable managers to resolve disputes with workers in a peaceful and productive way without recourse to strikes and other disruptions.¹⁶⁸ Enterprise advisors are thus called “advisors” and not “auditors” because their primary function is viewed as consultants that can help factory clients achieve better management practices to achieve improved competitiveness and labor standards.

Sustainability

The last component of the program was stakeholder engagement and sustainability, and indeed this aspect of the program was noted by some buyers to be particularly notable.¹⁶⁹ The original goal was to establish an independent organization that after three years could operate on its own with appropriate stakeholder engagement. Part of that process was to immediately establish a tripartite Project Advisory Committee (PAC) that would advise the ILO on BWJ’s operation. The PAC was comprised of three representatives from the government (two from the Ministry of Labour and one from the Ministry of Industry and Trade), three from the employers (one from the Jordan Garments, Accessories, & Textiles Exporters’ Association, one from the Foreign Investors Association, and one from the Chamber of Industry), and three from worker organizations (two from the General Trade Union of Workers in Textile, Garment & Clothing Industries, and one from the General Federation of Jordanian Trade Unions).¹⁷⁰ In addition, a Buyer’s Forum was established that would bring together buyers with members of the PAC to discuss BWJ’s functioning. The purpose of the Buyer’s Forum was to provide for even broader stakeholder input, and BWJ makes a point of maintaining consistent communication with buyers to make sure that they are part of the process. Components one and three of the project were primarily funded by USAID, while component two, the training and remediation would be funded primarily by the MoL, with the balance funded by the fees charged to the buyers.¹⁷¹

¹⁶⁷ Project Document 2007, *supra* note 160 at 11.

¹⁶⁸ *See id.* at 11-12.

¹⁶⁹ Loay Tolba, *supra* note 144.

¹⁷⁰ Better Work Jordan, 1st Synthesis Report, at 2.

¹⁷¹ *Id.* at 19.

The progress in getting the stakeholders to engage with other was palpable. Loay Tolba, who as a compliance described an early meeting of stakeholders. At the time, tensions were high, and there was a fair amount of skepticism of BWJ on the part of the employers. As he put it, at the

first Better Work meeting, everybody was defensive. [Union representatives were] complaining that nobody wanted [them] to talk. Each stakeholder was barking on each side. Back then that was the biggest challenge. Now all the stakeholders are sitting with each other and all discussing. So this has been a huge step and development. It took a lot of work from the BWJ team to get stakeholders to come together without compromising on ILO requirements.¹⁷²

Dialogue and Interaction

Another important element of sustainability foreshadowed by the project document was BWJ's engagement with the MoL.¹⁷³ The early project document called for a range of collaborative activities, including MoL participation in BWJ trainings; development of common assessment tools; information sharing with the inspectorate to enable enforcement actions against factories in the event of human rights abuses; providing feedback to the MoL on labour law implementation; promoting participation of factories in the program; and collaborating on developing a common software platform, which was to be done in conjunction with a separately funded IFC inspection reform project.¹⁷⁴

By the end of 2010, the program's pace was accelerating, as was its acceptance by the government and the employers. The MoL made it mandatory that all exporting factories join the BWJ program, and participation swelled accordingly to some 80 factories that were then in the industry.¹⁷⁵ In addition, a MoU was signed with the MoL to further the sustainability goals foreshadowed in the project document. The MOU provided that selected labour inspectors would

¹⁷² Interview with Loay Tolba, *supra* note 144.

¹⁷³ For a more detailed discussion of interaction between Better Work and the Ministry of Labor and Jordanian government see Kevin Kolben, *Dialogic Labor Regulation in the Global Supply Chain*, 36 MICHIGAN JOURNAL OF INTERNATIONAL LAW 425 (2015).

¹⁷⁴ Project Document, *supra* note 160, at 15.

¹⁷⁵ Better Work Jordan, Better Work Jordan 2d Synthesis Report, March 24th 2011, at 7; see, Instructions No. For The Year 2010 Instructions Concerning Mandatory Participation In The Better Work Jordan Project Of The International Labour Organisation and The International Finance Corporation For Selected Garment Production Enterprises, Issued in Accordance with Article No. 11 of The Regulation of Labour Inspectors No. 56 for the year 1996.

receive supplementary class room training, as well as on the job training in which inspectors would join enterprise advisors on assessments and some advisory service meetings.¹⁷⁶ There would also be quarterly meetings between the Better Work Jordan enterprise advisor team and the MoL's labour inspectorate.¹⁷⁷ Perhaps most notably, the plan included a protocol that BW fundamental human rights violations that were found in visits would be reported to the MoL.

Industry Growth

Also important during this time of the program was the rapid increase in size of the Jordanian garment industry. According to Better Work, the industry grew 40% from 2008 at the time of the global recession and when the program initiated, to the end of phase one of the program in 2013, reaching a level of \$1.3 billion. That is a remarkable growth rate that can be attributed to several factors. While it is hard to correlate the degree to which the growth rate is attributable to the achievements of Better Work Jordan, the program recorded remarkable progress in factory improvement levels. By the end of 2013, 59% of participating factories demonstrated improvements by the second time that they were assessed. This number increases to 90% if the singular but important issue of discrimination against the disabled were not counted, indicating high compliance in many of the benchmarks.¹⁷⁸

Collective Bargaining Agreement

But for Fishman and others, perhaps the signal achievement of phase one was the completion in 2013 of a collective bargaining agreement between the union and the employers, which has been renewed every two years since. The qualified legalization of migrant worker membership in trade unions in 2010 was an important step in the path towards creating a CBA.¹⁷⁹ The benefits of the CBA were clear not only to Fishman, but also to employers. Farhan Ifran, the country director of MAS in Jordan touted the benefits, noting that

¹⁷⁶ Collaboration Plan Between the Ministry of Labor and Better Work Jordan, July 20, 2010, at para. 2. Collaboration Plan BWJ MOL.pdf

¹⁷⁷ Id. at Para. 4.

¹⁷⁸ Better Work Jordan – Phase II, at 4.

¹⁷⁹ The legalization is qualified in part because it is unclear whether migrant workers will be allowed to vote for union leadership.

we [now] have a mature union and sector... We have had fewer strikes and this has been a benefit. As an employer and employee, when things are clear and fair then there is nothing to worry about. Things go on and work flows. Things are calmer now it seems to me.¹⁸⁰

The CBA, which was officially entered into between J-GATE and the Association of Owners of Factories, Workshops, and Garments (AOFWG), with the General Trade Union of Workers in Textiles, Garment, and Clothing Industries (GTUW) contained provisions that guaranteed a number of rights and standards, even if it meant simply reinforcing what was already guaranteed by law. It provided for regulated working hours, wages and bonuses, and improved occupational safety and health in factories. It also provided workers with the right to join unions and for union access to factories;¹⁸¹ for rules on timely payment of wages and hours of work;¹⁸² for the provision of automatic deduction of monthly membership dues to sustain the union;¹⁸³ and the creation of Joint Labor-Management Occupational Safety and Health committees.¹⁸⁴ Finally, it provided for a clearly defined dispute resolution process that calls for a process of resolution prior to the ultimate stage of filing a lawsuit in the Amman court.¹⁸⁵

While facilitating a CBA was not a direct mandate of BW, nor is a lack of a CBA an indicator of factory non-compliance, the achievement of negotiating a CBA across the industry was a central foundation for sustainably improving labor rights and improving dialogue in factories and between the unions and employers through their representative, JGATE.

Unions

The CBA was a culmination of an important transition for the garment workers' union, as well. The GTUW is a member, as are all unions in Jordan, of the government subsidized and supported General Federation of Jordanian Trade Unions. The federation is constituted by 17 unions and has existed since 1954, but its impact and influence is limited because of limitations on the union's

¹⁸⁰ Interview with Farhan Ifran, Country Director, MAS, Oct 24, 2018.

¹⁸¹ See Collective Agreement Under the Provisions of the Jordanian Labour Law No. 8 of 1996 as Amended (2013, 2015, 2017), Art. 3.

¹⁸² Id. Art. 6

¹⁸³ Id. Art 9

¹⁸⁴ Id. Art 11(B).

¹⁸⁵ Id. Art 18.

independence and power under Jordanian law.¹⁸⁶ Jordan has not ratified ILO Convention 87 on the Right to Freedom of Association, and there are several legal limitations on unions freedom to organize and self-govern. While migrant workers were granted the right to be members of the union, they still do not have the right to form their own unions or to vote or have a say in union governance or run for office.

Yet the inclusion of migrant workers was still a vital step in moving the union movement towards greater inclusivity and relevance. The importance of strong industrial relations system that allows for collective representation is important not only for protecting the rights and interests of workers, but also for achieving stability and industrial peace. In 2011, there were 89 protests by workers in the garment industries in the QIZs, which constituted 18.5% of those in total, which was the highest percentage of strikes in all sectors.¹⁸⁷ By 2016 those actions fell to 42 despite an increased number of workers and factories, suggesting some success by BWJ, the union, the government, and other labor institutions in resolving disputes by less disruptive means.¹⁸⁸

International unions and other stakeholders have also recognized the importance of a dynamic union movement that can organize workers. After the NLC report, USAID funded the GTUW for two years, but the external governmental funding didn't necessarily help the union develop a more sustainable governance and financial model.¹⁸⁹ The CBA provides that all garment workers are to be members of the union and pay a monthly dues amount of JD 0.5.¹⁹⁰ While on one hand this is beneficial for the union, a potential challenge of this model is that it decreases the incentives and motivation for unions to organize and ensure that their members are active and engaged.

The union had generally been supportive of BWJ when the program began, and according to Dan Cork, industrial relations specialist at BWJ, the president of the union Fathallah Al Omrani, felt invested in making the program work.¹⁹¹ But there were originally tensions. Not surprisingly, Al Omrani wanted BWJ to focus its efforts initially on factories in which there was already a union presence, but that was not BWJ's method or mandate. Additionally, the union was concerned that the PICCS, which are a cornerstone of the BW methodology, would potentially undermine the union

¹⁸⁶ For a discussion, see *Freedom of Association in Jordan*, Jordan Labor Watch, Issue 2 (May, 2012).

¹⁸⁷ See Jordan Labor Watch, *Labor Protests in Jordan 2011*, at 15.

¹⁸⁸ See Jordan Labor Watch, *Labor Protests in Jordan 2016*, at 14.

¹⁸⁹ Interview with Dan Cork, Industrial Relations Specialist, Better Work, Dec 13, 2018.

¹⁹⁰ See Collective Agreement, *supra* note 181, 2013, Art 9.

¹⁹¹ Dan Cork, *supra* note 189.

because the PICCS do not require that there be union members on the committees. This problem was eventually resolved by the CBA and its requirement that all workers be union members. But that requirement has potential costs, as well. Dan Cork argues that when union membership is mandatory, it decreases the impetus for unions to continue organizing and building up grass roots power.¹⁹² In addition to the PICCS that are part of BW, the CBA also provided for the presence of an enterprise union-management committee, as well as a joint labor-management occupational safety and health committee made up of union members either appointed by the union or elected by the members.¹⁹³

A final challenge for BW was forging trust between the EAs and the union officials and employees. Part of the problem was a difference in methodology. Again, the union was suspicious of the PICCS because there was no requirement of union presence. While the EAs thought that they were helping forge dialogue between management and labor, there perhaps wasn't enough understanding of the role that workers serving as shop stewards or union representatives should play in that process, and the EAs perhaps believed that the union was in competition with Better Work rather than working towards the same goals.¹⁹⁴ Many of these tensions resolved themselves when the CBA came into effect.

But the Jordan experience holds some lessons for future Better Work and similar programs that attempt to institute workplace committees to facilitate employer employee dialogue, but where the presence and role of unions is either undefined or weak. The question of representativeness and the need for Better Work to avoid the appearance to be a union replacement is vital if it is to succeed in highly politicized and complex industrial relations systems. The idea of management worker committees is a popular one in Europe, but is viewed with deep suspicion in the United States, and is prone to employer capture. So how BW continues to navigate those challenges will be important to watch.

C. Phase Two: Sustainability and Transition (2013-2018)

The first phase of BWJ completed at the end of 2013, and its successes were palpable. The next five-year plan recognized that for Better Work to be a viable supply chain solution

¹⁹² Id.

¹⁹³ CBA 2013, *supra* note, 181, Art 11(c).

¹⁹⁴ Id.

not only in Jordan but in other countries, it would need to be financially and structurally independent. Its five-year goal starting in 2013 therefore focused on transitioning the program into a self-sustaining, Jordanian run entity that would be funded in large part by self-generating revenues.¹⁹⁵ In addition, the Phase II plan called for new model of compliance assessment by which the assessment examined not just compliance issues, which were rapidly improving, but also management systems.¹⁹⁶ One new item that would be introduced was a self-assessment tool. In this process, self-assessments by workers and management would be used to supplement or even replace the assessments of EAs.¹⁹⁷ A third area of focus was to improve the PICCS. PICCS are a central component of the BW method and have proved effective in improving a number of workplace issues.¹⁹⁸ BWJ had recognized that the PICCS were not working in the way that was hoped, including in the interaction with the union noted above. One of the challenges is the diversity of the PICCS themselves.¹⁹⁹ The committees require that there be representation of all the represented nationalities among the workers. So according to Ana Aslan, it could be difficult to get a good flow of conversation going, for example, when everything needs to be translated.²⁰⁰ So building the capacity for dialogue and engagement between management and the worker committees was to be a priority. However, it was clear that this goal would be a significant challenge.

Dialogic Regulation - Increased Collaboration

The second phase also saw the further development of the cooperation and collaboration between the MoL and BWJ that was already in place and systematized. One of the key components for the long term sustainability of supply chain governance programs is to

¹⁹⁵ Better Work Jordan, Country Strategy 2017-2022, Phase III, at 8.

¹⁹⁶ Better Work Jordan – Phase II, supra note 174, at 9.

¹⁹⁷ Id.

¹⁹⁸ See Brown et al The Impact of Better Work: A Joint Program of the International Labour Organization and the International Finance Corporation 252-254 (Sep 26, 2016)

¹⁹⁹ Interview with Ana Aslan, Oct 5, 2018.

²⁰⁰ Id; Basma Ammari & Shereen Abbadi, Final Independent Evaluation of Better Work Jordan-Phase 1, at 22 (2013).

develop the capacity of the relevant regulatory agencies to adequately regulate the industry.²⁰¹ For it is governments that are best situated to sustainably engage with and oversee an industry, and that governments are most embedded in society and, in democratic societies, are responsive to the will of citizens.

Most of the places where programs such as Better Work and other private supply chain monitoring programs function have experienced some form of regulatory breakdown. Better Work, as a hybrid form of private governance program is particularly well situated to engage with the state. And this is one of the places where Better Work Jordan has arguably excelled and been a leader, even among the other Better Work country programs.²⁰² In 2016 BWJ concluded an MoU with the MoL whereby it increased its collaborative and training activities from the previous levels. In addition to classroom and on the job training on assessment and advisory services, two MoL inspectors would join the BWJ team for a term of one year provided the inspectors satisfied certain requirements.²⁰³ As Ana Aslan who oversees the Better Work programs for the United States Department of Labor described it,

There is a bridge between the MoL and BWJ. I haven't seen that kind of agreement anywhere else. There is no such closeness between the MoL and BW in other countries. [Perhaps] at most a couple of trainees, but I never saw MoL inspectors work as secondees with Better Work Enterprise Advisors.²⁰⁴

Migrants Worker Center

Another achievement that was conceptualized during Phase I but realized in the beginning of Phase II was the creation of a Migrant Workers Center. The ILO established the workers center in February 2014. It was conceived as a place that could provide a place for workers to congregate and socialize outside of the dormitories and factories, which is

²⁰¹ See Kevin Kolben, *Dialogic Regulation*, supra note 173.

²⁰² See Interview with Ana Aslan, Oct 5, Global Coordinator, Better Work Program, ILAB, 2018.

²⁰³ See, 2018 MOU on Cooperation for Protection Human Rights of Workers, Annex III, Para 3.

²⁰⁴ Aslan, supra note 202.

where they spend almost all of their time. From Phil Fishman's perspective, the center had three important functions: recreation, training, and a place for workers to express concerns and receive services.²⁰⁵ While Fishman was initially skeptical of the recreation function of the center, he came to believe that it was vitally important. Workers "had the opportunity to talk to their families, dance, have coffee, meet workers at other factories, and celebrate festivals together."²⁰⁶ In addition, workers could take classes such as computer literacy or English. The workers paid for classes and were imbued with hope that they had the power to change their life situations. Lastly, Fishman, a former U.S. trade union official, realized that having an outside place where workers could discuss problems with union officials and grievances was invaluable. And the worker center provided that. Union officials would spend time at the center and work with the workers to resolve issues and handle grievances. Fishman reported that through the center, union officials were notified of sexual and physical assaults that took place in the factories, or debt problems that workers faced. As Better Work was not set up to address grievances in the same way, this centralized gathering spot served an important function for the union and workers, although the unions are still working to make use of this opportunity.

Syrian Refugees

But world events took place during Phase II that significantly affected Jordan and its garment industry, and that could not have been foreseen. Civil war broke out in Syria, leading to a humanitarian crisis. Over 650,000 Syrian refugees have fled to Jordan since 2011, severely straining a country whose population is about 9.7 million, constituting 7% of the population. This is a higher percentage than any Western country has had to cope with.²⁰⁷ The challenges of integrating hundreds of thousands of Syrians into the Jordanian economy were immense. According to surveys, most Jordanians, who are experiencing an

²⁰⁵ Interview with Phil Fishman, Nov 13, 2018.

²⁰⁶ Id.

²⁰⁷ Ala' Alrababa'h & Scott Williamson, Jordan Shut Out Out 60,000 Syrian Refugees — And Then Saw A Backlash. This Is Why (July 20, 2018) *available at* https://www.washingtonpost.com/news/monkey-cage/wp/2018/07/20/when-jordan-closed-its-border-to-refugees-the-public-protested-heres-why/?utm_term=.5adec020ae56

18% unemployment rate, believe that the Syrian influx has had a negative impact on the economy, housing, public services, and crime.²⁰⁸ Yet nevertheless, according to at least one academic analysis, Jordanians have welcomed the refugees and sympathize with their plight.²⁰⁹ Thus when Jordan blocked 30,000 Syrians in 2018 from entering the country after a new outbreak of hostilities, there was a public backlash against the government's decision.²¹⁰ Yet according to Adnan Rababa, a government official and head of the MoL's labor inspectorate, there remain tensions and significant strains on the government and on Jordanians who believe to some extent that Syrians are adversely affecting the job market.²¹¹

The extent of the crisis and how it would affect the industry, whether it be in perception or reality, gradually became clear to BWJ, as well as to various foreign governments.²¹² One of the most significant efforts to address the issue was through a trade agreement signed between the EU and Jordan. As of 2002, the EU and Jordan had entered into an "association agreement" between the EU and Jordan which fell short of a full-fledged Free Trade Agreement. In 2016 the parties had revised the agreement in order to create incentives to increase Syrian employment and integration into the Jordanian labor market. To achieve this, the agreement amended the rules of origin in the existing agreement as applied to a large number of product categories, and made them consistent with the ones used by the EU in relation to its Least Developing Country partners in the EU's Everything But Arms (EBA) initiative.²¹³ However, the rules of origin changes are conditioned on several components. First, the products exported under the agreements were required to be produced in one of the a set of enumerated industrial and development zones.²¹⁴ Second, Syrian refugees were to comprise at least 15% of the employees in the benefited production facilities, and would rise to a requirement of 25% by the third year of the agreement in 2019.²¹⁵ Once 200,000

²⁰⁸ Id.

²⁰⁹ Id.

²¹⁰ Id.

²¹¹ Interview with Adnan Rababa, Jordanian Ministry of Labour, Oct 17, 2018.

²¹² Fishman, *supra* note 205

²¹³ European Commission - Press release, EU-Jordan: towards a stronger partnership, Brussels, 20 July 2016, available at http://europa.eu/rapid/press-release_IP-16-2570_en.htm.

²¹⁴ See 30.8.2016 DECISION No 1/2016 OF THE EU-JORDAN ASSOCIATION COMMITTEE of 19 July 2016 L233/9 Annex II(a) Art. 1(A)(1)(a)

²¹⁵ Id at Art. 1(B)

Syrian refugees were employed, the rules of origin could be further amended to facilitate trade,²¹⁶ and the regime will be expanded beyond the special economic zones.²¹⁷ The agreement allowed Jordanian products to enter tariff free with up to 70% of inputs originating from non-Jordanian sources.²¹⁸ Third, as per an agreement between the EU and the ILO that would potentially expand Better Work's monitoring outside of the garment sector to cover the covered factories, and the jobs created for Syrian refugees were to be full-time formal jobs that promote decent work principles.²¹⁹

But because these goals were so ambitious, Jordan reached an understanding with the EU in November 2018 to ease the rules of origin and lower the Syrian worker employment levels from 25% to 15%. Moreover, when the total number of Syrians working in various sectors throughout Jordan, not just the SEZs, reached 60,000, all factories and industries would benefit from the EU-Jordan Association Agreement. Finally, the agreement was extended to 2030 from the original end date of 2026.²²⁰ Accordingly, the ILO has agreed to promote these objectives, and BWJ currently plays an integral part in this by its plans to expand its program from the garment industry into other Jordanian sectors that are covered by the agreement and are intended to employ Syrian refugees.²²¹

The inclusion of Syrians into the garment sector poses its own challenges, however. One of the challenges is that the Jordanian government has already placed requirements on Jordanian garment manufacturers to hire Jordanian workers in place of migrant workers. In 2017, the Jordanian government decreed that Jordanians had to comprise 30% of factory workforces by 2018, and 50% by 2021, or face higher work permit fees for migrant workers.²²² This Jordanian employment requirement makes it more difficult for employers to

²¹⁶ Id. at Art 8.

²¹⁷ EU-ILO Collaboration in the monitoring of labour aspects in the implementation of the EU's rules of origin initiative for Jordan, at 3.

²¹⁸ 30.8.2016 Official Journal of the European Union L 233/11, Annex II; Better Work Jordan Country Strategy 2017 - 2022, Phase III, supra note 195, at 3 (2017).

²¹⁹ EU-ILO Collaboration in the monitoring of labour aspects in the implementation of the EU's rules of origin initiative for Jordan (copy on file with author), at 1-4.

²²⁰ See Mohammad Ghazal, 'Understanding' reached with EU to ease origin-rules deal requirements, The Jordan Times, Nov 26, 2018, available at, <http://jordantimes.com/news/local/'understanding'-reached-eu-ease-origin-rules-deal-requirements>.

²²¹ Id.

²²² Better Work, Advancing Jordan's satellite garment factories, at 4 (updated April 2019).

meet the Syrian requirement as stipulated in the agreement. There are a number of additional obstacles to employing greater numbers of Syrian workers, as well, some of which apply to the challenges facing employers in meeting the Jordanian government's goals of employing Jordanians. For example, Syrian women do not participate in the labor market at the same rate as men,²²³ and garment manufacturers have struggled to attract workers. Another issue has been matching jobs with Syrian job seekers that would be suitable for the garment sector.²²⁴ For example, refugees who had been agricultural workers in Syria would find it difficult to adjust to manufacturing and require training. Syrians also face similar issues as to Jordanians as regards commuting times,²²⁵ the work environment, and the safety of women.²²⁶ Syrian women might also be less tolerant of a default 10 hour work day, which is the standard for migrant workers, and often informal work can pay better than the formal work in the factories.²²⁷

One way to address these issues that faced was the creation by Better Work of a standard unified contract for refugees working in the textile and garment industry, which was initially negotiated for migrant workers in 2015, and then adapted to refugees in 2016.²²⁸ This agreement was an extension and modification of a 2013 unified employment contract for migrant workers that was agreed to by the union and the employers. A purpose of the contract was to ensure that there would not be multiple contracts signed by migrant workers, sometimes in both the home country and in Jordan. The standard contracts reduce the risk of workers paying recruitment fees in the home country, which are not allowed, and ensure that the working conditions and terms are clearly laid out to migrant workers and refugees before they arrive.²²⁹ The contracts also include an application form at the end of the

²²³ Susan Razzaz, *A Challenging Market Becomes More Challenging: Jordanian Workers, Migrant Workers and Refugees in the Jordanian Labour Market*, at 103 (ILO, 2017); *see also* Better Work Discussion Paper (No. 21), *Examining Barriers to Workforce Inclusion of Syrian Refugees in Jordan* (Jul 2017).

²²⁴ Razzaz, *A Challenging Market*, *supra* note, 223, at 104.

²²⁵ Victoria Kelberer, *The Work Permit Initiative for Syrian Refugees in Jordan: Implications for Policy and Practice 29* (The Boston Consortium for Arab Region Studies, Feb 2017).

²²⁶ *Id.* at 104-5.

²²⁷ *Id.* at 105-6.

²²⁸ *See* A standard contract for Refugees' workers in Textile, Garment and Clothing Industry, <https://betterwork.org/jordan/wp-content/uploads/Unified-contract-English-amended-H.docx>. The contract was translated into several languages and shared with workers in their countries of origin.

²²⁹ *See* Better Work Jordan Country Strategy 2017-2022, Phase III, *supra* note 195 at 4.

contract that provides the opportunity to join the union through an application form.²³⁰ The ability of Syrian refugees and migrant workers to join the union is a unique characteristic of Jordan's labor laws as compared to its neighbors in the Middle East and Gulf Region, which generally do not allow migrant workers to be union members.

Jordanian Employment and Satellite Factories

A final issue that has been central to BW's mission is the ongoing struggle to employ more Jordanians in the garment industry. As discussed earlier, there have been a number of obstacles, both economic and cultural, that make recruitment of Jordanians difficult. Subsequent interviews and research by the ILO has confirmed that deep seated issues remain in getting Jordanians, and particularly Jordanian women, to enter the workforce.²³¹ Jordanian women, for example, continue to harbor serious concerns that working conditions and factory managers are harsh and that they will be harassed.²³² And the original exposes in 2006 only contributed to the general perception that these factories were poor places to work. Families express concerns that factories are inappropriate places for women,²³³ and traveling long distances to factories, they fear, could impede on the expectations of women in traditional family structures as mothers and caregivers. Others report that the wage levels in the garment sector are just too low.²³⁴

As also reviewed earlier, a core justification and objective of the original QIZ laws and US Jordan FTA was to stimulate Jordanian employment. But this objective remains underrealized. To address the barriers to labor supply like those expressed above, the Jordanian government and manufacturers sought to open factories outside of the QIZs that were specifically designed to attract Jordanian female workers. They were to be smaller in scale, and located in rural and smaller urban centers that are accessible to women. The first

²³⁰ Id.

²³¹ See, Susan Razzaz A Challenging Market, *supra* note 223.

²³² Id. at 99.

²³³ See Better Work, Advancing Jordan's Satellite Garment Factories, *supra* note 222 at 4 (2018).

²³⁴ Interview with Adnan Rababa, Oct 17, 2018.

of these so called satellite factories was opened in 2009, and by 2018 the number of satellite factories had grown to 16 facilities that employ about 5500 Jordanians of which 4700 are women.²³⁵ The decision in 2017 by the Prime Minister's office to encourage minimum Jordanian employment levels in garment factories through financial incentives also has spurred further growth of these factories.²³⁶

But achieving profitability on the satellite factories have been a significant challenge for owners. For example, even though he supports the effort, factory manager Farhan Ifran believes that it is not a profitable business model. His company, Sri Lankan based MAS, has a satellite factory because it's a cost of doing business in Jordan. But in MAS's factory there is high rate of absenteeism and turnover, which is typical in these factories. As Drusilla Brown *et al.* point out, the general separation rate for Jordanians in the garment industry is 4-5 percent per month, which is higher than the migrant rate of 1-2% per month, but is not high by global standards.²³⁷ In fact, some factories had separation rates as high as 20%, but managed to bring them down due to better HR practices such as offering more flexible working hours and developing better relationships with workers' families to build trust. Absenteeism is also high given that workers are guaranteed a minimum of 14 medical and 14 annual days of leave per year. But even controlling for this, absenteeism rates of Jordanians are inevitably higher than those of migrants who have no family or other community obligations. A final challenge is developing the skills of Jordanian workers, who have neither specific garment production skills, nor well-developed cultures of wage employment.²³⁸ Brown et al report that some factory owners were able to address these problems by allocating production of less demanding garments to the satellite factories; producing for the local market; and using simpler woven materials instead of knits.²³⁹

²³⁵ See Better Work, *Advancing Jordan's Satellite Garment Factories*, supra note 222, at 4 (2018).

²³⁶ See Letter from Prime Ministry to Ministry of Labor dated June 18, 2017. Incentives and subsidies include wage supports for Jordanian workers, transportation benefits, social security subscription supports, and land and rental costs support for employers.

²³⁷ Drusilla Brown, Jeff Eisenbraun & Jonas Bausch, *Understanding Business Challenges to Success of Satellite Factories in Jordan's Garment Industry: Insights From Key Informant Interviews With Factory Managers*, at 3 (2016).

²³⁸ *Id.*

²³⁹ *Id.* at 5.

Indeed, the producer MAS's solution has been to address the low productivity in the factories has been to make them extremely lean, and only to do cut and sew operations, which are the lowest skill work and generally done by women, although he has some men doing security and some cutting work.²⁴⁰

With these challenges in mind, BWJ undertook a project in 2017 that was funded by several European development agencies to better understand the roots of the challenges in the satellite factories, and how to address them. BWJ found that a central problem is a lack of sound central management systems and workforce development compared to the main factory units.²⁴¹ Some factories have begun hiring more Jordanian managers, which they believe helps build trust with workers and communities, and instituting incentive systems to improve productivity and reduce absenteeism.²⁴² Nevertheless, given the core challenges facing the industry to hire Jordanians, the government's goal of achieving 50% Jordanian employment is ambitious at best. At present, BWJ is providing services to 16 of those factories, and it hopes to be working with 19 factories by the end of 2019.²⁴³

Transparency

An issue that has been controversial in Jordan and other countries has been Better Work's efforts to name specific factories in its synthesis reports in different countries and report their compliance levels. Cambodia's Better Factories project was lauded and emulated in part for its early aggressive approach to transparency.²⁴⁴ Thus in Jordan, the original CTA Phil Fishman and Better Work had pushed for similar transparency in the Jordan program. But Jordan's employers were very skeptical of the transparency methods that had been

²⁴⁰ See Farhan Ifran, *supra* note 180.

²⁴¹ Brown et al., *supra* note 237, at 8.

²⁴² *Id.* at 9.

²⁴³ See, Better Work Jordan Country Strategy – Phase III, *supra* note 195, at 2; Better Work, Advancing Jordan's Satellite Garment Factories, *supra* note 222 (Updated April, 2019), available at <https://betterwork.org/blog/portfolio/policy-brief-advancing-jordans-satellite-garment-factories/>

²⁴⁴ See Better Work, Case Study: Transparency in Cambodia's Garment Sector Working Conditions 7 (Undated), available at https://betterwork.org/global/wp-content/uploads/2014/09/Transparency-in-Cambodia_V2_FA_Lowres.pdf; Better Factory Cambodia Transparency Database, <http://betterfactories.org/transparency/>.

utilized in Cambodia, and as Fishman recounted, “[i]n the beginning transparency was a big fight. Factories were dead set against [it]. There were a series of meetings and it got emotional.” BWJ managed to incorporate transparency starting around 2010, and the second synthesis report in 2011 had included the names and results of factories that had received two assessments.²⁴⁵ But by the third synthesis report, reporting became a “snapshot” of industry trends and averages.

In the meantime, Cambodia’s Better Factories program had reinstated transparency in 2014 after moving away from it, and other Better Work programs were instituting it.²⁴⁶ But it was the World Bank that finally pushed the industry’s and the Jordanian Government’s hand. In 2016, the World Bank included a requirement for public reporting of factory compliance assessments in its \$300 million loan package.²⁴⁷ The World Bank’s loan conditionality is particularly interesting because it makes a business case for transparent reporting. Specifically, the WB was concerned about the degree to which Jordanian factories were improving their compliance levels over time, which it believed to be rather slow.²⁴⁸ One of the key weaknesses the WB highlighted in achieving greater compliance rates was the lack of transparency in its reporting, in contrast to programs in other Better Work programs, such as in Haiti, Vietnam, Indonesia and as forecast in Bangladesh. The World Bank highlighted the a number of benefits of transparency for the competitiveness of the garment industry, as the World Bank wrote,

Specifically, experience shows that public reporting facilitates the following: (a) Raises the compliance levels across the sector. Research on Better Factories Cambodia has shown that transparent reporting significantly lowered the probability of noncompliance. (b) Helps high-compliance factories distinguish themselves from those with a weaker compliance commitment. (c) Spurs changes in factories with

²⁴⁵ Better Work Jordan, 2d Synthesis Report, *supra* note 175, at 24.

²⁴⁶ See Raymond Robertson, Lights On: Transparency and Compliance Evidence from Cambodia 1 (Better Work, Discussion Paper 29).

²⁴⁷ See World Bank, pg 11, <http://documents.worldbank.org/curated/en/802781476219833115/pdf/Jordan-PforR-PAD-P159522-FINAL-DISCLOSURE-10052016.pdf>.

²⁴⁸ International Bank For Reconstruction And Development (IBRD) and International Development Association Program Appraisal Document On Proposed Loan And Credit, at 27 (Report No. 108201-Jo, Sept. 2, 2016).

chronically low compliance. Even suppliers without reputation-sensitive buyers improved their levels of compliance upon transparent reporting. (d) Protects the reputation of the country's industry. In the past, entire industries have had their reputations damaged because of a few low-compliance factories. Transparent reporting projects a true picture of a country's industry. Furthermore, it strengthens the competitive advantage deriving from participation in Better Work, as participating countries reinforce their commitment to labor compliance.²⁴⁹

While the true effectiveness of transparency might be more nuanced,²⁵⁰ the WB made transparency a condition of the loan, or what it calls a Disbursement Linked Indicator, effectively forcing the hand of the Jordanian government and resistant employers.²⁵¹ What resulted is what Fishman has described as "limited transparency." In Jordan, there are 29 compliance questions that are reported on publicly.²⁵² Former CTA Phil Fishman, for one, is concerned that limited transparency might allow factories and brands to focus primarily only on those issues that are subject to public reporting, but ignore the rest.²⁵³

D. Phase Three: New Challenges (2017-2022)

As Better Work enters the third phase of its program, it seeks to build on its successes, as well as to address the challenges that are before both the program and the garment industry in Jordan. By the end of Phase Two, BWJ was operating in 72 factories, including 35 direct exporters, 25 subcontracting factories, and 12 satellite units. It is fair to say that it is deeply embedded in Jordan's garment industry, and in some ways will potentially be even more so as the European Union has required that in the future, exporting factories participate with BWJ as a condition of receiving tariff benefits. As BWJ works through Phase Three, one

²⁴⁹ Id. at 26-27

²⁵⁰Robertson, supra note 246, at 10-11 (finding that while transparency increased compliance in many factories in Cambodia, it did not do so in the factories that were least compliant prior to transparency).

²⁵¹ IBRD, supra note 248, at 20.

²⁵² Better Work Jordan, Annual Report 2019: An Industry and Compliance Review, Jordan 37 (2019).

²⁵³ Phil Fishman, supra note 205.

achievement had been to hand over management of BWJ to a fully local staff. In 2015 the CTA position was occupied by a Jordanian National, Tareq Abu Qaoud. This is a step towards one of the central stated goals of the Phase Two planning, which is to make BWJ a genuinely local program.

The next step in transition is even more ambitious, which is to phase out the BWJ program as it currently exists and to ensure that its current functions can be largely carried out by both government and private stakeholders. But at the same time there is an internal tension. While BWJ seeks to phase out of the garment sector, 1) the EU trade agreement requires exporting factories to participate in BWJ, and 2) BWJ is potentially expanding both through the auspices of the EU agreement and otherwise to expand into non-garment sectors. This tension will need to be resolved during phase III. As Abu Qaoud, the current CTA director explains it, the goal is not to create firm deadlines, but rather to set milestones for BWJ's changing role.²⁵⁴

There are three main outcome areas that BWJ is focusing on in the third phase of its program from 2017-2022. The first of these is to expand and optimize the program's offering of core services. In the garment sector it seeks to continue to build a culture of learning in the factories, focus on migrant rights, prioritize gender equity in all its operations and tools, and increase the sustainability and productivity of satellite and subcontracting factories in order to improve the plight of Jordanian rural women.²⁵⁵

A central challenge that BWJ will face, however, as it expands to other industries such as plastics, chemicals, and machine parts in small and medium size enterprises (SMEs), is that these goods are not subject to the degree of consumer demand for social compliance as are garments. While public reporting is made mandatory by the World Bank loan condition, it remains to be seen whether this will be an effective motivator for companies in these industries to improve working conditions.

Furthermore, Abu Qaoud says that BWJ is examining new kinds of consumers and pressure points, such as financial institutions that might make compliance with certain social

²⁵⁴ Tareq Abu Qaoud, *supra* note 72.

²⁵⁵ Better Work Jordan – Phase III, *supra* note 195, at 9.

standards a subject of loan conditionality. Abu Qaoud believes that the way forward in these industries is not necessarily through buyer or consumer demand, but through a requirement that importing countries require that export factories participate in BW-like programs.²⁵⁶ Or alternatively, we see that countries are instituting mandatory supply chain transparency or due diligence regimes on their own multinationals.²⁵⁷

The second outcome in Phase Three is to help strengthen national institutions. BWJ will seek to continue its efforts to strengthen the labor inspectorate, which is key to its goal of handing over its assessment and compliance function wholly to the Ministry of Labor. At the same time, BWJ understands that a dynamically functioning and well-regulated labor market requires more than just an effective labor inspectorate. Specifically, BWJ wants to apply and promote the strategic compliance framework (SCF) that has been a core program goal, and that has been developed by the ILO's Labour Administration, Labour Inspection and Occupational Safety and Health Branch (LABADMIN/OSH).²⁵⁸

Strategic compliance goes beyond traditional enforcement, relying on education, communication, political, and systemic methods.²⁵⁹ The SCF draws on the influence of multiple stakeholders and relies on data driven targeting to best allocate inspectors resources and energies. It also encourages better understanding of why and how firms comply, rather than just assuming that all firms engage in a straight forward costs benefit analysis. In important ways, the SCF approach reflects elements of the "Latin model" described by Piore and Schranck in their seminal paper on labor regulation models.²⁶⁰ Here, the authors describe a flexible approach to labor regulation that gives discretion to inspectors to regulate based on the economic and local conditions that they encounter with the flexibility to use various methods to achieve the regulatory outcomes.²⁶¹ Such an approach requires a broader

²⁵⁶ Tareq Abu Qaoud, *supra* note 72.

²⁵⁷ See California Transparency in Supply Chains Act (2010); UK Modern Slavery Act (2015); Law on the Duty of Vigilance (France, 2017).

²⁵⁸ For more see Strategic Compliance Resource Page, *available at*, https://www.ilo.org/labadmin/info/WCMS_620987/lang-en/index.htm.

²⁵⁹ ILO, ILO Approach to Strategic Compliance Planning for Labour Inspectorates 3 (Dec 2017).

²⁶⁰ Michael J. PIORE & Andrew SCHRANK, *Toward Managed Flexibility: The Revival of Labour Inspection in the Latin World*, 147 International Labour Review 1 (2008).

²⁶¹ *Id* at 5-8.

knowledge base than a strict compliance model of regulation would require. BWJ's own strategic approach combines traditional assessment with advising on human resource and other management issues. Thus, training of the labor inspectors and the secondment program transfers this knowledge to labor inspectors through a five year collaboration plan, and by continuing the program.

In addition, BWJ wants to strengthen the capacity of the employers' associations and the unions, and to promote processes of social dialogue at the factories to address problems, improve working conditions, and potentially improve productivity and competitiveness. One way in which BWJ is working towards building union capacity, for example, is to second a staff member to work with the Trade Union to help build union capacity for handling worker grievances. The hope is that these efforts at capacity building will facilitate opportunities for investment and attract investment based on compliance with labour law.²⁶² Finally, BWJ wants to also train other government agencies in its advisory and training services. This might include the Jordanian Chamber of Industry, as well as even the Social Security Corporation, which is responsible for monitoring compensation and OSH standards.²⁶³

The third and final outcome priority is to develop sustainable mechanisms for policy reform in the garment sector. Here, BWJ envisions itself less as a factory level actor, and more of a policy advisor and advocate. It seeks to develop and promote the link between working conditions and competitiveness, and to facilitate the inspectorate, factories and buyers to "jointly tackle endemic non-compliance in a strategic and systematic manner." In fact, it envisions a transformation of its primary function from being an assessment and advisory service, to becoming a facilitator and taking a "strong role in oversight, quality assurance, coating, and delivery support as needed, as well as the articulation of stakeholders in country."²⁶⁴ Tellingly, this functionality would be more in keeping with a traditional role of an NGO and of the ILO.

²⁶² Better Work Jordan – Phase III, *supra* note 195, at 11.

²⁶³ *Id.* at 12.

²⁶⁴ *Id.* at 16.

In sum, BWJ envisions a very different role for itself by 2022. It sees itself as a local facilitator and advocate for the core services it has been providing factories and buyers. The vision of regulation that is presented in the phase three document is a governance rather than traditional command and control approach. That is, it proposes a hybrid form of labor market governance, and one that creates exciting possibilities for experimentation in how a labor regime can be created to address the unique problems of garment and other manufacturing and service industries that are part of the global supply chain.

Conclusion

This report has traced the creation and ups and downs of the Jordanian garment industry, and how a crisis that threatened to bring down an industry was turned into an opportunity. By inviting in Better Work to establish a factory improvement program, Jordan was able to create a production environment that mitigated risk for brands of being exposed for bad working conditions in suppliers factories, and created helped improve factories human resources, dialogue, and improve the overall industrial relations environment in Jordan.

But we have also seen that Jordan's garment industry rests on two pillars that have shaky foundations. First, it heavily relies on the tariff preferences that it first received from the US government through the QIZ law and the USJFTA, and subsequently from Canada and the EU. The vast majority of exports, however, go to the United States, and thus Jordan is highly dependent on a set of tariff preferences that could be taken away by executive or legislative decree. Second, Jordan's garment industry is predicated on a labor regime that poses several threats. For example, while there might be insufficient supply of labor by Jordanians who for several reasons discussed above are reluctant to take jobs in the garment sector, resentment of foreign workers is always a possibility that can bubble up and take the form of political pressure on the government. Additionally, if the industry is made to shift too quickly by governmental fiat to using less productive Jordanian or Syrian workers, then there is always a risk that the investors will revisit the value proposition of remaining in Jordan. Lastly, while Better Work and the Jordanian government have been instrumental in improving working conditions in the garment factories, the industry is currently dependent on a system that relies on squeezing out productivity from precarious and vulnerable migrant workers to produce garments that are primarily low on the value chain. This is a recipe that as we have seen can create serious risks for labor rights violations, and Jordan is at risk for labor standard backsliding.

Fortunately, BWJ seems to have willing partners in the Jordanian government, the employers, and the unions in trying to avoid this situation. As the program enters its current

phase, it seeks to re-envision what a sustainable labor regulatory regime might look like in countries that have industries upstream in the global supply chain that are prone to abusive working conditions. The new regime that BWJ is trying to transition to incorporates a networked, hybrid form of governance that aims to steer the MoL away from a policing model of labor inspection towards a strategic model. Using this approach, BWJ, the ILO, and the IFC are looking to draw on a range of tools and stakeholders, both public and private, to engage in activities in which they have expertise and a comparative advantage to help improve the overall business environment and industrial relations systems. BWJ is seeking a new model of collaborative governance and regulatory embeddedness, whereby many institutions both public and private are involved in improving the labor market and labor conditions in an industry.

This approach might be particularly relevant for the garment industry in Jordan, which already has in place a set of institutions and drivers that incentivize compliance by the employers. Better Work's model has been particularly successful in bringing the pressure of buyers and lead firms to bear on their suppliers. This is due to the subscription service that provides firms with accurate and reliable information about the suppliers that they utilize. And now that Jordan is moving back to a limited system of public reporting, this should provide another driver to help sustain the improvements in the industry.

BWJ's transition from core service delivery to a greater focus on capacity building and stakeholder engagement in the garment industry poses risks for Jordan's industry, for the government of Jordan, for the brands, and for the workers. Perhaps chief among those risks is that the stakeholders will simply revert to the old normal of private compliance auditing by third parties or the brands in order to ensure that factories are compliant with brands' codes of conduct. This is why the transition to a new governance regime that is sustainable and that draws on multiple stakeholders, both private and public, while still ensuring that core freedoms and rights are protected is essential. No matter how successful the shift to an SCF approach of the labor inspectorate is, it is very difficult for any labor inspectorate to be able to address the complex labor standards issues. If the transition succeeds, it can serve as a blueprint not only for other Better Work programs in other countries that struggle with

balancing their role in relation the state, but also for supply chain labour governance regimes more generally.

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