

***Alternatives to Public Sector Inspections: Public-Private Partnerships and Corporate Social Responsibility (CSR)<sup>1</sup>***

**FINAL REPORT FOR FIAS**

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## 0. Summary

Properly structured public-private collaborative inspection initiatives (called here “alternative inspection” approaches or initiatives) hold promise as a way to supplement and/or complement existing public sector inspection and enforcement systems in many countries. In support of public policy objectives, this new type of inspection regime based on private (i.e. non-public sector) entities and individuals can increase the transparency, accountability, effectiveness and efficiency of regulatory enforcement functions as well as compliance rates by regulated firms. Implementation of such collaborative approaches can lead to public welfare improvements, and enhancements in government and market credibility and acceptance, as compared to conventional inspections delivered exclusively by the public sector or wholly privatized inspection models.

The central objective of this report is to explore how governments in developing countries can draw on examples of public-private inspection partnerships to develop effective and credible alternative inspection approaches for ensuring compliance with voluntary and mandatory standards, using the experience gained both from public-private sector corporate social responsibility experiences, as well as from innovative public-private inspection innovations taking place outside the CSR context.

### ***Why there is a need to consider alternatives to public sector inspections***

The report starts with an overview of why countries, and in particular developing ones, may embark on alternative inspection reforms involving the private sector. It stresses that key interconnected reasons for launching these reforms are:

- to minimize the compliance costs of inspections for businesses and the enforcement costs for governments;
- to reduce the opportunities for corruption in the inspection process;
- to draw on the expertise and capability residing outside of the public sector; and
- to facilitate the ability of the private sector to meet “beyond regulatory compliance” minimum standards.

To face these challenges, governments have launched reforms to refocus national compliance policies. In particular, policy makers have tried to structure government interventions more precisely, identifying:

- Areas where government will want ***to exclusively undertake*** its own inspections.
- Areas where government will want ***to formally oversee*** an inspection system that may be carried out primarily or partly by parties outside of government.
- Areas where the private sector wants to demonstrate compliance with higher than legally required standards, for market or other reasons, but where it is considered beneficial to have some kind of ***government blessing/backing*** for such “beyond regulatory compliance” approaches.

### ***Characteristics, strengths and weaknesses of alternative inspection models***

The first section looks at three alternative inspection models: self-assessment, assurance,

and accreditation/certification, drawing on examples as appropriate. For each of these models, a brief definition is followed by discussion of some of the key characteristics as well as strengths and challenges associated with each model. Table 1 in the text summarizes the key elements of each model.

### ***Drivers for alternative inspection initiatives***

This second section examines the drivers that have stimulated the adoption of alternative inspection reforms, differentiating those existing in developed and in developing countries, and those associated with the CSR phenomenon and those that are not. In particular, the report stresses how trade and investment imperatives encourage exporting firms to comply with CSR and other environmental and labor standards, using supply chain conformity assessment processes. However, the discussion underlines that CSR supply chain initiatives are externally driven, dynamic and changing rapidly, bringing their own unique set of challenges when compared with inspection reforms driven by internal factors and actors. Public-private collaborative inspection reform initiatives in developing countries that have developed as a result of internal pressures not associated with the CSR phenomenon, e.g., to implement environmental policy or to fight corruption in such administrative procedures as customs, may highlight insights concerning how local domestic drivers can be used to sustain collaborative inspection regimes over the long term.

### ***Some lessons learned***

This section sets forth some of the basic elements needed to achieve successful use of private parties in support of public inspection functions. It addresses in particular the need to ensure a proper overall governance structure within which the collaborative inspection approaches take place, including adequate quality control and oversight of inspection activities carried out by parties outside of government.

### ***Potential developments in scope and scale of inspection alternatives***

Alternative inspection initiatives are relatively new in many developing countries and sectors. Despite the challenges associated with implementing them and the limited fact base on which to evaluate them, early evidence suggests that they may represent sound responses to failures and drawbacks associated with conventional public sector approaches. The fourth section looks at overall trends and potentials for scaling up alternative inspection models and implementing them in specific contexts.

### ***Conclusions***

The last section sums up the basic lessons that have been learned so far. It highlights the key characteristics, features and drawbacks of the various models and the need to ensure from the beginning that key regulatory management principles are safeguarded, such as transparency, accessibility and accountability. The section also emphasizes that although alternative inspection approaches show promises as a way to increase compliance, improve enforcement and enhance trust, many of them require careful regulation of the participation by private parties and oftentimes involve establishing the public-private relationships in legal frameworks.

A possible diagnostic checklist is provided in an Annex to the report in order to assist policy makers, regulators and inspectorates in addressing some key issues associated with designing and implementing public-private inspection approaches.

## 1. Introduction

1. To a considerable extent, the proper functioning of a society and economy is dependent upon the existence of appropriate approaches for ensuring that businesses comply with legislation and regulations. If these approaches are not in place, the protection of the public welfare can be significantly jeopardized, and the ability of citizens and businesses to carry on their everyday activities in a normal fashion can be effectively undermined. Inspections conducted by public officials, when carried out in a fair, efficient and effective manner, with appropriate accountability, accessibility and transparency, play an important role in protecting the public interest.

### Box 1. Key Definitions<sup>2</sup>

**Public-private collaborative inspection initiatives**, or “*alternative inspection approaches*,” for short, are techniques in which governmental and non-public sector actors work together in a variety of different ways to increase the likelihood of compliance with standards of mutual concern.

**Inspections** are activities to ensure that legal requirements or standards set forth in laws and regulations are met and that prohibitions of or restrictions on certain conduct have not been violated. Inspections need not be carried out by government officials, although they often are.<sup>3</sup> Government inspections are commonly used to ensure compliance with standards required for consumer protection, worker health and safety, public sanitation and fire safety, environmental protection, construction, customs, and tax regimes, and are also used in less well-known contexts ranging from the inspection of nuclear power plants to the use of proper language. These standards can be included in laws, subordinated regulations, permits, licenses and other governmental requirements and rules.

**Conformity assessment** is documented verification that there is compliance with legal requirements or voluntary standards. As such, inspections are the activities to ensure that laws and standards are met, and conformity assessment is the documented reporting of whether there is compliance with laws or standards.

The World Bank defines **corporate social responsibility (CSR)** as “[t]he commitment of business to contribute to sustainable economic development working with employees, their families, the local community, and society at large to improve their quality of life, in ways that are both good for business and good for development.” When employing the term in connection with CSR supply chain codes, a more narrow interpretation focusing on social and environmental practices and standards is common and is adopted in this report.<sup>4</sup> The key distinguishing feature of CSR is its modality – giving a primary responsibility for

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<sup>2</sup> A major difficulty when analyzing and comparing initiatives for implementing CSR and for reforming traditional public inspection systems is the language barrier existing between the respective experts. This box sets out some key terms and their meanings as used in this report.

<sup>3</sup> Paraphrased from J. Clifford, *Inspection: A Case Study and Selected References* (Ottawa: Law Reform Commission of Canada study paper, 1988), at p. 2.

<sup>4</sup> Per H. B. Jorgensen and P.M.Pruzan-Jorgensen, M. Jungk and A. Cramer, *Strengthening Implementation of Corporate Social Responsibility in Global Supply Chains* (World Bank/IFC, 2003), at p. 1.

conformity assessment to firms and other non-governmental entities, rather than relying exclusively on governmental or inter-governmental entities.

**CSR supply chain assessment processes** are ways to ensure conformity with environmental and social standards stipulated by partners in the supply chain. They typically involve commercial, NGO, or other parties assessing conformity of a particular firm, activity, or product vis-à-vis voluntary standards.

A **standard** is a document approved by a recognized body that provides for common and repeated use, rules, guidelines or characteristics for activities or their results, aimed at the achievement of the optimum degree of order in a given context. Standards can be established in regulations, at which point they are mandatory, or they can be designed to be applied on a voluntary basis, such as those of the International Organization for Standardization (ISO).

***Inspection and enforcement are key to building trust in the legal system and marketplace***

2. The benefits to society, governments and businesses of having in place well-functioning approaches for ensuring compliance with regulations and standards are numerous. They serve to establish consumer, worker, citizen, and business confidence in the safety of products and services, workplaces, and communities. These include trust in the healthy nature of the surrounding environment and in the efficiency and fairness of the marketplace. This confidence translates into increased domestic and foreign investment in the economy, a competitive marketplace with fairly priced products, and lower insurance premiums, to name a few of the more significant benefits. Appropriate compliance with regulations and standards also translates into enhanced social credibility for a firm or economic sector. For the public it provides some assurance that problematic conduct is being addressed. For a firm or business sector, it helps them to better predict the business environment and thus maintain or increase investments and commitment to markets. In the long run, trust may also translate into less need for new regulations, triggering a virtuous circle in which government gives business and society the opportunity to demonstrate their capability to deliver optimal levels of public welfare with fewer public interventions, and thus lower taxpayer spending on inspection and enforcement efforts.

***But current inspection systems face many challenges...***

3. Research suggests that, when not undertaken in an appropriate manner, government inspections can impose significant burdens on business in terms of:

- frequent and uncoordinated inspections,
- inconsistent and discretionary implementation of laws and regulations,
- delays in completion of projects and commercial transactions,
- unpredictable imposition of fines and sanctions,
- ineffective appeal procedures, and

- excessive discretionary power for inspectors, leading to intimidating and aggressive behaviour.<sup>5</sup>

***...in particular in developing countries***

4. This is particularly true in transition and developing countries where governments as a whole and public administration bodies in particular face endemic and structural challenges such as very low salaries, inadequate operational budgets, widespread corruption, and low levels of accountability and transparency. In addition, inspections in developing countries tend in absolute and relative terms to be particularly costly, time-consuming and burdensome to business while at the same time fostering corruption and an erosion of business competitiveness.<sup>6</sup> The expensive, burdensome and ineffective nature of much government inspection activity can thus create a barrier to foreign and domestic investment in a particular economy.

5. Inspections for environmental and social regulations pose particular challenges in developing countries. On one hand, some standards are either too burdensome for business to comply with or too complex and costly for authorities to enforce, creating an endemic informal sector competing with the regulated sectors, reducing compliance rates even further.<sup>7</sup> In terms of the technical standards required for export, conformity assessment can be highly precise and require considerable expertise. Conformity assessment for exports may require subjective judgments (for example, is a particular worksite “safe”? Does a particular practice constitute harassment or discrimination?). Conformity assessment for exports can also conflict with the desire of many developing countries to attract investment and generate revenue for growth.

***The need for alternative inspection approaches***

6. In recognition of some of the limitations of conventional inspection approaches, public sector and non-public interests around the world are increasingly looking for alternatives. Some governments have focused on improving the quality of regulations from “cradle to grave” through better tools for regulatory governance, such as Regulatory Impact Analysis or improved consultations with the regulated/inspected firms. Some of these initiatives have also included radical reconsideration of the role and type of intervention of the national governments in the markets and have involved restructuring of

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<sup>5</sup> **A Diagnostic Checklist for Business Inspection**, Jackie Coolidge, FIAS, 2005; see also C. Coglianese and J. Nash, eds., **Regulating from the Inside: Can Environmental Management Systems Achieve Policy Goals?** (Washington: Resources for the Future, 2001); and E. Bardach and R. Kagan, **Going by the Book: The Problem of Regulatory Unreasonableness** (Philadelphia: Temple University Press, 1982).

<sup>6</sup> **Doing Business in 2005: Removing Obstacles to Growth**, The World Bank and the IFC, January 2005, p.3.

<sup>7</sup> On the relationship between the quality and level of the regulatory standard and the degree of compliance and enforcement see OECD, 2000, **Reducing the Risk of Policy Failure: Challenges for Regulatory Compliance**, Paris; on the relationship on regulatory standards and the size of the informal sector see World Bank, **Doing Business 2004**, Washington, p 37-38.

inspectorates, and efforts at deregulation and de-bureaucratization.<sup>8</sup>

7. Reforms have also involved refocusing national compliance policies. In particular, policy makers have tried to structure government interventions more precisely, identifying:<sup>9</sup>

- Mandatory inspections that government normally insists on doing on its own.
- Inspections concerning mandatory laws/regulations that can be undertaken through **a Public-Private Partnership effort**, which can be further broken down by "who" does most of the actual inspections. Government in this case always needs the possibility of some back-up oversight inspections to ensure the soundness of the system.
- Inspections concerning **voluntary** standards, which government might approve/make use of or not. In this case, the private sector typically wants to demonstrate compliance with standards (often higher than those required by law) for market or other reasons.

8. In particularly sensitive policy contexts such as protection of national security, or collecting taxes governments are likely to continue to rely exclusively on conventional regulatory approaches, with little opportunity for public-private inspection collaborations or "beyond regulatory compliance" innovations. This occurs despite the fact that there will always exist ways to improve the inspection regimes in the first category. But in other policy contexts, such as consumer, environmental, and health and safety protection, and customs, there may be considerable opportunity for public-private inspection collaborations and use of alternative inspection approaches (i.e. in the second and third categories).

### ***Objective of the report***

9. The report's main objective is to provide governments with a better understanding of the opportunities and challenges associated with use of public-private inspections in the last two categories. However, it should be noted that there is comparatively little evaluation with alternative inspection approaches in developing countries. Many potentially promising initiatives have only just begun or cannot be assessed properly because of lack of data and time to evaluate results. As a consequence, this report can only be considered to be an initial effort to demonstrate the potential for use of public-private collaborative inspection models.

## **2. Exploring the Characteristics, Strengths and Weaknesses of Alternative Inspection Approaches**

### ***What is an alternative inspection system***

10. Governments have relied on active private participation in regulatory implementation from many years. The International Labour Organization (ILO) in its 1947 Convention 81

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<sup>8</sup> See **Regulatory Policies in OECD Countries. From Interventionism to Regulatory Policies**, OECD, 2002, Paris. On reforms of inspectorates, see Jacqueline Coolidge, L. Grava and S. Putnina, **Case Study: Inspectorate Reform in Latvia 1999-2003**. Background paper prepared for the World Development Report 2005. December 23, 2003.

<sup>9</sup> **A Diagnostic Checklist for Business Inspection**, Jackie Coolidge, FIAS, 2005.

concerning inspections, has long recognized the role for public-private inspection cooperation. (See Box 2 below). Private participation in implementing, inspecting and enforcing regulations of professions (like auditing, architecture, law and accounting) or in the field of sports, advertising, insurance and the press is many centuries old. Governments have drawn for many years on co- or self-regulatory approaches where associations have been empowered to regulate some aspect of their own membership and activities.<sup>10</sup> The recent experiences with conformity assessment in CSR supply chains represent a new area where public-private inspection alternatives show considerable promise.

#### **Box 2: ILO Recommendation 81**

##### **1947 ILO Convention Recognizes Role for Public-Private Inspection Cooperation**

ILO Labour Inspection Convention 81, adopted in November 1947, and since ratified by 130 countries, stipulates that each member of the ILO for which this convention is in force shall maintain a system of labour inspection in industrial workplaces. The functions of the system of labour inspection shall be to secure the enforcement of the legal provisions concerning labour, to supply technical information and advice to employers and workers, and to bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions. Pursuant to article 5, the competent authority shall make appropriate arrangements “*to promote effective cooperation between the inspection services and other government services and public and private institutions engaged in similar activities*”; and “*to promote collaboration between officials of the labour inspectorate and employers and workers or their organizations*.” Pursuant to article 6, the **inspection staff** shall be composed of public officials whose status and conditions of service are such that they are assured of stability of employment and are independent of changes of government and improper external influences. Thus, the 1947 convention contemplates public-private collaborations within a framework that maintains an inspection staff of public officials.

11. Schematically, these alternative inspection approaches involve four key sets of stakeholders:

- **Authorities:** They represent the national or local government. They consist of the inspectors, enforcers, and police officials. They can also include rule-makers or members of the judiciary.
- **Firms:** They are the parties that need to comply with a regulatory or voluntary standard. They can be state-owned, domestic or multinational businesses.
- **Private sector evaluators:** They usually consist of specialized firms, or individuals operating under a basic private-public initiative. Sometimes, they are referred as third party auditors or certifiers. They may include laboratories and other metrology units. They can work for profit or not-for-profit.

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<sup>10</sup> Robert Baldwin and M. Cave, **Understanding Regulation. Theory, Strategy and Practice**, Oxford University Press, 1999, Chapter 10.

- **Workers, unions, national and international NGOs, citizens, community organizations, and other interested parties.** These parties can often play important supplemental roles in public-private inspection regimes. They are in particular key players of self-evaluation and assurance approaches.

12. Importantly, the main difference between the four categories concerns the involvement of non-public sector evaluators other than those of the authorities. In that sense, the fundamental distinction between the models is “who” rather than “how” the inspection is realized.

### ***Three Alternative Inspection Approaches***

13. This report identifies three different approaches to public-private inspection collaboration: self-evaluation, assurance, and accreditation/certification.<sup>11</sup> The three approaches can be viewed as a policy continuum, with self-evaluation representing a more modest approach to harnessing the capacity of non-state parties, while assurance and accreditation/certification tend to be more intensive and sophisticated approaches to public-private inspection collaborations. The three approaches are by no means the only possibilities, but they do represent models that have been used in a number of different contexts. They provide illustrations of their application in a variety of different circumstances. It should also be noted that governments might use the approaches in combination. For example, a self-evaluative approach could be used in conjunction with an accreditation/certification approach. There may also be evolution or transition from one approach to another over time. In short, the three approaches used here should be considered examples and prototypes of public-private collaborative inspection models, but not exclusive and watertight containers.

### ***Self-evaluation***

- *Definition*

14. Self-evaluation is the inspection approach under which parties with some direct connection to the firm (e.g., management, workers, affected communities) carry out some conformity assessment with a certain standard based on an explicit checklist. For example, a joint team comprising workers and management carries out self-evaluation inspections of worker standards in larger firms. The inclusion of external persons to the management and ownership of the firm assists in ensuring credible and balanced assessments.

15. The methodology for conducting the self-evaluation assessment may not necessarily have been agreed by the authorities and other stakeholders (e.g., governments, inter-governmental bodies, official conformity assessment bodies, supply chain partners). The self-evaluation approach does not prevent or replace the use of other type of inspections and enforcement actions, including the alternative approaches discussed below, as and when necessary. Importantly, the government authority maintains the right to carry out regular inspections. However, self-evaluation puts the initial responsibility on the firms

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<sup>11</sup> The definitions of self-evaluation, assurance, accreditation, and certification are based on the FIAS, Business for Social Responsibility and Pricewaterhousecoopers 2004 study – referred in this report as the FIAS/BSR/PWC study. For the description of the approaches see pp. 32-34.

subject to the code, standard or regulation to determine that they are in compliance, and to provide assurances of that compliance.

- *Specifics and implementation issues*

16. A key value of self-evaluations stems from the fact that the evaluators are normally intimately familiar with the operations and specifics of the firm. They can also act as frontline “eyes and ears” to detect incidents of non-compliance before serious problems arise. Most of the time, they conduct the evaluations at no cost to the public sector.

17. The fact that self-evaluations are being carried out does not in any way restrict the ability of authorities (i.e. government inspectors and auditors) to undertake their own conformity assessment activities. On the other hand, self-evaluations can act as a very useful supplement to more formal accreditation or certification inspections (see below). For example, a firm’s self-evaluation reports can lead to a formal inspection when a problem is revealed. Self-evaluation, in the short term, is unlikely to bring the assurance multinational corporations require in order to guarantee external credibility, but it can assist in identifying problems before they become unmanageable.

18. Governments can use various sets of incentives to stimulate sound self-evaluations. They range from the threat of significantly greater sanctions when noncompliance is not self-reported, to the use of positive incentives -- such as offering consulting services to assist in conducting effective self-evaluations, or giving companies that voluntarily disclose noncompliance a grace period to correct a problem. Self-evaluation efforts can be combined with public registers such as the **United States** Toxic Release Inventory to allow local communities, civil society, and business organizations to engage more effectively in workplace issues or exert greater pressure on poor performing businesses.

19. Self-evaluation in the form of worker health and safety committees has long been used in many countries;<sup>12</sup> for instance, the **Philippine** government is participating in an approach that draws on self-evaluation as part of a wider labor standards enforcement strategy. The recently adopted Labor Standards Enforcement Framework requires companies with 200 or more employees to carry out self-assessments. Assessments are to be carried out once a year by a joint team of workers and management on the basis of guidelines developed by the government. Workers can complain to the government if they disagree with the assessment submitted by management. The Bureau of Working Conditions will carry out random spot visits to check workplace conditions. The framework also uses financial incentives, such as lower labor taxes, to encourage compliance efforts. Instances of unreported noncompliance detected during random labor inspections will result in significant sanctions.<sup>13</sup>

20. In the **Netherlands**, in the context of ship safety, the government shifted to use of performance-based standards, leaving it to the firms to define how to meet such requirements as “safe navigation” in an effort to reduce administrative burden.<sup>14</sup> In this

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<sup>12</sup> See, J. Cohen and J. Rogers, **Associations and Democracy** (London: Verso, 1995).

<sup>13</sup> See Annex for summary.

<sup>14</sup> See Jacobs and Associates **Netherlands Study**, and annex summary of it attached to this study.

case too, the government maintained a significant oversight role to ensure its effective implementation.

21. With respect to the safety of products, some jurisdictions may accept suppliers' declarations of conformity (SDOC) with regulatory requirements in certain circumstances.<sup>15</sup> The actual approach to SDOC may vary, and could include registration of the declaration with authorities. The SDOC approach does not prevent the use of government inspections and enforcement actions as and when necessary, but puts the initial responsibility on the suppliers to determine that they are in compliance with government requirements, and to provide assurances.

- *Advantages and disadvantages of self-evaluation*

22. The main strength of self-evaluation schemes is the shifting of the initial obligation for determining compliance and reporting on compliance to the firm subject to the code, standard or regulation in question, leaving an inspection and oversight role with public authorities. The approach offers opportunities for quick detection of instances of non-conformity, and corrective action, possible cost-savings for authorities, and potential reduced inspections for firms.

23. However, there are risks of capture and failure. Evaluations may not necessarily be conducted in a professional manner (since a qualified, possibly more objective evaluator does not conduct them). Workers on a health and safety committee may be threatened or bribed to overlook particular problems. On the other hand, workers could falsely "detect" incidents of non-compliance as an indirect reprisal for other disagreements between workers and management. Management could purposely overlook or downplay particular problems hoping that the incidents of non-compliance never come to light.

24. Self-evaluation is best used in conjunction with public transparency of such programs and accessibility to the self-evaluation reports, a genuine and visible public sector inspection, enforcement and oversight presence, a clear compliance and enforcement policy, a complaints-reactive process for bringing incidents of non-compliance to the attention of regulators, and protections for "whistleblowers" (employees or others who bring incidents of non-compliance to the attention of public officials). If these elements are missing, the effectiveness, fairness and accountability of self-evaluation processes are likely to be diminished.

### **Assurance**

- *Definition*

25. Assurance inspections are usually undertaken by parties external to the firm. This system is referred also to Industry Self-Regulation. Most of the time the trade, industry or professional association or organization sends an evaluator to inspect the business, based on agreed standards. Government authorities formally approve the inspection process after considering the quality and soundness of their methodologies and practices.

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<sup>15</sup> See e.g., J. Urlman, "Suppliers Declaration of Conformity and the work of CASCO," in **ISO Bulletin**, October, 2002.

Government authorities help define specific criteria related to such areas as auditing methodology, auditor training, and independence of auditors. The approval of government authorities is essential to permit the public sector to formally recognize private, collaborative, and industry-wide monitoring or evaluations as a substitute for public inspections. Government authorities continue to carry out calibration visits and other activities that ensure that agreed standards are upheld.

- *Specifics and implementation issues*

26. Typically, a business association takes the lead in developing the standards and inspection process (called in this case conformity assessment) in conjunction with firms, government officials, and other interested stakeholders. Together they set the criteria for the conformity assessment. Because the private evaluators conducting the conformity assessments are normally intimately familiar with the operations and specifics of the businesses they are in a position to detect incidents of non-compliance before they lead to serious problems. In some cases, they can impose sanctions for non-compliance (as in the case of the **Ontario** DAAs, referred to below). The cost of the inspection is shared between the firms and its association. Public inspections are kept only for emergency measures, for overseeing the private auditors or as a fall back. For instance, the conformity assessments can lead to a formal public sector inspection when a problem is revealed.

27. The main incentive for business associations to develop an assurance system and convince its firms to participate is to prevent new or more rigorous regulation. The principle behind this approach is that business as a group assumes responsibility for their collective acts building trust between them and the authorities. This creates incentives for firms and their association to ensure that their conformity assessments are conducted in a rigorous manner so that governments do not intervene or withdraw support for the assurance regime. For governments, the attraction of the assurance approach is that it reduces the need for government inspections at first instance and allows them to set up more targeted enforcement systems for problematic actors. Governments continue to closely monitor the overall results and outcomes for the whole industry or sector.

28. The **Cambodian** "Garment Sector Working Conditions Improvement Project" provides an interesting example of an assurance program, where the evaluator is sponsored by the International Labour Organisation (see Box 3).

**Box 3: An international organization involved in assessing conformity with labor standards in Cambodia**

A unique Cambodian labour inspection program, involving cooperation between the government of Cambodia, the International Labour Organization, and the Cambodian garment industry demonstrates one way in which conformity assessment can be undertaken in a collaborative way with benefits for all parties. Pursuant to the Cambodian program, factories register to indicate their desire to participate in the project. The Cambodian Registration is voluntary but has been encouraged by a Cambodian Ministry of Commerce policy that stipulates that only registered factories are eligible to use allocated quotas (until the termination of the Multi Fiber Agreement in January, 2005). Registrants sign a Memorandum of Understanding under which they allow full access to ILO monitors to factory premises, to interact freely with shop stewards, union representatives and workers, both inside and outside factory premises, and to provide such access in both

announced and unannounced visits. For its part, ILO ensures that monitoring visits are undertaken in a fair and objective manner, that visits are no more disruptive than necessary, that basic information is kept confidential, and that any allegation of misconduct by an ILO monitor will be given full and fair consideration.

The ILO monitors conduct their visits pursuant to a checklist procedure prepared by a Chief Technical Advisor (CTA) and approved by a Project Advisory Committee which includes representatives from the Cambodian government, the Garment Manufacturer's Association in Cambodia, and the Cambodian trade union movement. The ILO monitors submit their reports to the CTA, which discusses the draft report with management in order to secure the agreement of management with the findings and suggestions in the report. In the absence of agreement from management, there is no ability on the part of the CTA to enforce findings: enforcement remains a responsibility of the Cambodian government.

29. A recent example of an evolving assurance model of alternative inspection comes from the **South African** wine industry. While it still involves only tacit cooperation, the South African government has recognized private monitoring as an effective substitute for public enforcement of labor standards in the wine industry. The ongoing Wine Industry Ethical Trade Association (WIETA) monitoring of the exporting part of the industry has effectively allowed the public inspectorates to focus their resources on those producing for the domestic market. The Ministry of Labor is represented at the governing body of WIETA, thereby endorsing the initiative as well as the establishment of the applicable standards and the monitoring methodology employed. Even though the Ministry of Labor has not stated that this private, independent monitoring formally substitutes for public inspections, such a move is being considered.<sup>16</sup>

30. In the **United Kingdom**, the Office of Fair Trading has put in place a program for recognition of voluntary code of conducts, such as those pertaining to car repairs, direct sellers and car dealers, offered by business associations.<sup>17</sup> OFT participates in setting the pre-determined criteria to be met. It has also set up a monitoring system to prevent the code of conduct from bringing about a cartelization in the sector. Member firms of a business association may indeed try to use a code of conduct and the conformity assessments as a way to preserve and protect the market from newcomers. For instance, OFT supervises the existence and operation of sound complaints handling, conformity assessment visits, and publicity of the assurance process. Although the program is still in its infancy, and hence there is not much evidence to draw on at this point, it is apparent that setting up a system like this entails considerable effort and investment of resources by OFT. The process of development and approving the code of conduct and the conformity assessment methods has typically taken many months.

31. In Ontario, **Canada**, as pointed out above, delegated administrative authorities (DAAs) enforce certain consumer protection and safety laws, pursuant to a legislative

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<sup>16</sup> FIAS BSR/PWC 2004 study

<sup>17</sup> As per provisions in the U.K. Enterprise Act, as discussed in K. Webb and A. Morrison, "The Law and Voluntary Codes: Untangling the 'Tangled Web,'" in K. Webb, ed., **Voluntary Codes: Private Governance, the Public Interest and Innovation, op cit.**

structure that leaves day-to-day administration in the hands of the DAA. The DAA is essentially a not-for-profit industry body with additional governmental and public sector representatives that reports to the Minister of Consumer and Business Services, but is self-sustaining through the revenue it obtains from licensing and enforcement actions.

- *Advantages and disadvantages of assurance systems*

32. The main strength of the assurance model is the harnessing of private sector business associations to take on front-line responsibilities for ensuring regulatory conformity by individual regulated firms. This shifts the initial obligation for inspections conformity assessment activities to business associations, operating pursuant to criteria and procedures set out by public sector authorities, leaving public sector inspection and oversight as a fallback.

33. As with the self-evaluation model, this approach offers opportunities for cost-savings in terms of a government's inspection services and has the potential to reduce bureaucratic hurdles for regulated firms.

34. The main differences from self-evaluations are that private industry groups outside the businesses conduct the conformity assessments. These inspection providers are subject to codes, standards or regulations, and explicit or implicit government approval of their approach to conformity assessment. This provides a level of assurance as to the quality of conformity assessment that is absent from self-evaluation. As a result, public inspection becomes a residual function arising in case of an emergency. Because authorities are in effect devoting most of their efforts on "regulating the conformity assessment providers" rather than regulating each of the businesses that are subject to the regulation, their job is less resource intensive than a conventional public sector inspection approach.

35. Perhaps in a more acute way than for other alternative models such as accreditation/certification, assurance systems present the risk of conflicts of interest arising between the business association and the controlled firm. The business association may be reluctant to bring sanctions against its owned members. To work effectively, safeguards must be put in place, such as public transparency and accessibility concerning the business association activities, a genuine and visible public sector oversight presence, a published and well-understood compliance policy, a complaints-reactive process for bringing incidents of potential nonconformity to the attention of regulators, and a properly functioning judicial system. The **Cambodian** program provides a good example of the valuable role that transparency plays in collaborative programs: with ILO making public its reports on the state of conformity of participating Cambodian factories. There also needs to be available enforcement sanctions, which the government authority is able to impose in the case problematic business association conformity assessment practices come to light. Hence, governments need to concentrate on oversight reviews (e.g., random inspections) of the industry group auditors, and the development of sanctions applicable to them, should problems arise.

36. As with any monopoly body, there is the potential that the industry associations will develop overly close relations with the businesses they are regulating. Such tight relationships may even breed cartelization. For instance, businesses may use their association to establish high standards in order to protect incumbent firms and fend off new entrants. With the assurance model, it is important for governments to ensure that

they maintain open and effective lines of communication with the industry group, with the regulated community, and with those stakeholders benefited by the regulation so that they can make objective and accurate assessments of the true “health” of the regulated sector.

### **Accreditation/Certification**

- *Definition*

37. Because accreditation and certification are often used in tandem, they are treated together here. A common arrangement is for individual private evaluators to be **accredited** by a third party (e.g., a non-governmental organization such as the International Accreditation Forum, or a particular government department, or both) to verify compliance with standards, and if a particular company or factory meets the terms of the standard, a **certificate** indicating that the company or factory is in compliance will be issued. Hence, the difference between accreditation and certification is that pursuant to certification programs, not only is the inspector approved by third party, so also is the conformity to a particular voluntary, market-driven standard (such as ISO 14001,<sup>18</sup> OSHA 18001,<sup>19</sup> FSC<sup>20</sup> and SA 8000<sup>21</sup>) for which the inspector will conduct its assessment services. Products and production facilities that meet the terms of the standard receive a certificate indicating that they have been inspected and certified. Frequently the standard that is approved by a particular government is international in origin, so that the product or production facilities meeting the terms of the program receive not only recognition of some sort at the domestic

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<sup>18</sup> ISO 14001 is a standard developed through the International Organization for Standardization (ISO) that provides organizations with a structure (an environmental management system, or EMS) to help them manage and minimize their environmental impacts, and achieve continual improvement.

<sup>19</sup> OHSAS 18001 (Occupational Health and Safety Assessment Series) is based on the British Standards Institution standard BS 8800, and was developed by 13 national standards organizations and international certification bodies. OHSAS documents are prepared to provide specifications and guidance for occupational health and safety management systems. It is said to be compatible with ISO 9001 and ISO 14001.

<sup>20</sup> The Forest Stewardship Council (FSC) is an international network to promote responsible management of the world's forests. FSC brings people together to find solutions to the problems created by bad forestry practices and to reward good forest management. FSC is a stakeholder owned system for promoting responsible management of the world's forests. Through consultative processes, it sets international standards for responsible forest management. It accredits independent third party organizations who can certify forest managers and forest product producers to FSC standards.

<sup>21</sup> SA 8000: Social Accountability International (SAI; [www.cepaa.org](http://www.cepaa.org)) is a U.S.-based charitable human rights organization dedicated to improving workplaces and communities by developing and implementing socially responsible standards. SAI developed a standard for workplace conditions and a system for independently verifying compliance. The standard, Social Accountability 8000 (SA8000), and its verification system, draw from established business strategies for ensuring quality (such as those used for ISO 9000) and add several elements that international human rights experts have identified as essential to social auditing. SA 8000 is based on the principles of international human rights norms as delineated in International Labour Organization conventions, the United Nations Convention on the Rights of the Child, and the Universal Declaration of Human Rights.

level, but also at the international level as well. At the domestic level, the benefits that might accrue to a firm that has obtained a certificate might include a reduction in inspections, subsidies, access to quotas or procurement programs, or expedited permitting. At the international level, benefits that might accrue to certificated product or production facilities include access to supply chain partners, and access to foreign markets.

- *Specifics and implementation issues*

38. For both accreditation and certification, the expertise and independence of those conducting the conformity assessments is essential for these inspection models to work. International approaches for accreditation and certification have been developed, through bodies such as the International Organization for Standardization<sup>22</sup> the International Accreditation Forum, and the International Social and Environmental Accreditation and Labeling Alliance.<sup>23</sup> It is difficult to ascertain if these international accreditation and certification initiatives, if used by governments, would pass scrutiny of the WTO (since there has not been a WTO challenge made concerning these requirements or bodies), but it is clear that these bodies are attempting to meet the requirements stipulated in the WTO Technical Barriers to Trade Agreement.

39. Governments may choose to adopt ISO, IAF and ISEAL programs with no change, or may make adjustments as they feel necessary. Governments may create rosters of authorized third party inspectors and certifiers that meet stipulated technical and financial criteria. As well, certification bodies require establishing complaints and appeal processes so that firms or stakeholders can bring potentially problematic behavior to the attention of public authorities.

40. Although there are many different international standards with associated certification programs that can be drawn on by developing countries as supplements to their inspection and enforcement regimes, it is worth pointing out that different international standards have different characteristics.

41. Some, such as ISO 14001 and OHSAS 18001 are process standards. This type of standard requires participating firms to put in place management systems to identify and diminish environmental or health and safety impacts. A 1995 World Bank survey found that industrial plants that institute environmental management systems, such as ISO 14001, had superior environmental performance.<sup>24</sup> These process standards stipulate that firms take steps towards complying with applicable laws but do not require compliance with the laws, nor do they set specific performance requirements. Developing countries may approve use of such standards because they support compliance with domestic laws, but do not conflict with domestic laws.

42. Other standards, such as those for Forest Stewardship Council Sustainable Forest

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<sup>22</sup> <http://www.iso.org/iso/en/comms-markets/conformity/iso+conformity.html>], the International Accreditation Forum : <http://www.iaf.nu/>

<sup>23</sup> <http://www.isealliance.org/>

<sup>24</sup> Per Dasgupta et al, *What Improves Environmental Performance? Evidence from Mexican Industry*, Development Research Group, World Bank, December, 1997.

Management and SA8000 contain substantive performance requirements. From a public policy standpoint, performance standards which stipulate certain levels of performance can be considered superior to process standards as they provide better assurance that firms complying with them have met certain externally observable outcomes. Thus, for example, while conformity with a process standard might mean that an organization has “consulted with workers” or “consulted with local communities”, it does not assure that a particular level of worker protection or community protection (e.g., “no harmful levels of asbestos can be used in the workplace or emitted into the community”) has been implemented, as could be stipulated in a performance standard. Conformity with performance standards may also be considered superior from the perspective of developed country consumers, communities, supply chain partners, and NGOs for the same reason.

43. On the other hand, substantive performance prescriptions contained in these standards may be perceived as non-tariff protectionist measures in conflict with domestic laws which can trigger consequences on the predictability of trading equivalent products or services produced with different methods and mix of productive factors. Some developing countries consider that performance stipulations related to a production method or process should only be related to local production functions.<sup>25</sup>

44. This is arguably the explanation for **China's** resistance to the SA8000 standard (which contains certain stipulations, derived from ILO conventions, concerning freedom of association).<sup>26</sup> For this reason, China has now launched its own social responsibility standard for the Chinese textile and garment industry, providing certification to its standards.<sup>27</sup> However, there is a question as to whether a domestic social responsibility standard developed by China will be considered sufficient in the eyes of the international community (consumers, supply chain partners, investors, and non-governmental organizations). As a result, developing countries need to consider very carefully which international certificates they will recognize, and whether domestically-developed standards will have the credibility needed for acceptance beyond the borders of the developing country.

45. A number of different examples of government-supported certification to standards initiatives are used around the world. Pursuant to **Bolivian** law, companies that have received an international forest certificate for the sustainable management of their forests will have their licenses renewed without public inspection. All the certified operations (which have been certified to be in conformity with the FSC standard, reported as being the most popular and credible system in Bolivia) have now been recognized by the Bolivian forestry authority and have had their concessions renewed. In 2005, some 14

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<sup>25</sup> In the 1990s, Colombia complained to the WTO Technical Barriers to Trade Committee that European cut flower certification programs concerning environmental, health and safety issues associated with the Colombian flower industry constituted a form of barrier to trade, imposing European standards on a domestic Colombian industry.

<sup>26</sup> See Kenan Institute news item, earlier. See also **Asian Labour News**, August 2, 2004, “China: Will SA8000 become another trade barrier for Chinese enterprises?”

<sup>27</sup> Per CSR Asia, “Chinese Social Responsibility Standard for Textile Industry Launched,” June 1, 2005, per <http://www.csr-asia.com/index.php?p=2224>

state forest enterprises in **Lithuania** were certified to a Forest Stewardship Council standard, through the FSC-accredited certification body, SmartWood.<sup>28</sup> In **Canada**, many forestry firms are getting certifications to more than one sustainable forestry standard, in an apparent desire to appeal to as wide a variety of stakeholders as possible.<sup>29</sup>

46. In **Brazil**, the government is making mandatory certain aspects of environmental management systems.<sup>30</sup> CONOMA (the Brazilian National Environmental Council) adopted a resolution in 2002 requiring independent environmental inspections in the petrochemical industry in Brazil. In the **United States**, the Connecticut Commissioner of Environmental Protection provides regulatory flexibility (in the form of expedited review of permit applications) to companies registered as adhering to ISO and other environmental management systems. Other states in the United States offer similar programs.<sup>31</sup> The Karnataka State Pollution Control Board in **India** gives a 35,000 rupee subsidy (about US \$1000) to certain categories of small medium size facilities adopting 14001 standards.<sup>32</sup>

47. **Denmark** rewards production facilities and companies that voluntarily adopt health and safety management systems.<sup>33</sup> In October 2001, the Danish government implemented a statutory order on the certification of company occupational management systems that provide a good working environment. The certificate is issued by a recognized body when a company meets the requirements. Certification is voluntary, but certified companies receive a subsidy and are exempted from inspections for which a fee is charged.

- *Advantages and disadvantages of accreditation/certification*

48. The advantage of an accreditation/certification approach for governments is the ability to delegate certain public sector inspection activities and, in the case of voluntary certificates, to reward apparent “good firms,” thus freeing up resources to pursue more problematic behaviors. The advantage for businesses is some form of regulatory relief that might not otherwise be forthcoming, such as the case with respect to use of international forestry certificates by **Bolivian** forestry interests, or use of OHSAS by **Danish** companies (although private sector parties wishing to be certified must pay for the privilege).

49. The second advantage of using international certificates is their acceptance in the international markets (if the certification is to a well-known and accepted standard). Thus, for example, Bolivian forestry operations that are certified to FSC standards may be able to sell their products to Western retailers such as Home Depot that have indicated they will

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<sup>28</sup> Per FSC News and Notes, April 29, 2005, Volume 3, Issue 4.

<sup>29</sup> Rhone et al., “Two Voluntary Approaches to Sustainable Forestry Practices,” in K. Webb, ed., *Voluntary Codes: Private Governance, the Public Interest, and Innovation* (op cit).

<sup>30</sup> Per “**ENHESA 2004 Global Forecast of Environmental, Health & Safety Policy and Regulatory Developments Impacting Industry**”, downloadable at [www.ehstrends.com](http://www.ehstrends.com)

<sup>31</sup> Per K. Webb and D. Clarke, “Voluntary Codes in the U.S., European Union and Developing Countries,” in K. Webb, ed., *Voluntary Codes: Private Governance, the Public Interest, and Innovation*, op cit.

<sup>32</sup> Per Karnataka State Pollution Control Board Citizen’s Charter, downloadable at: [http://kspcb.kar.nic.in/Citizen\\_Charter.htm](http://kspcb.kar.nic.in/Citizen_Charter.htm)

<sup>33</sup> Per “**ENHESA 2004 Global Forecast of Environmental, Health & Safety Policy and Regulatory Developments Impacting Industry**”, downloadable at [www.ehstrends.com](http://www.ehstrends.com)

only accept wood products that have been certified to FSC or equivalent standards.<sup>34</sup> This approach is predicated on governments making an accurate assessment of the commercial benefits of certification. It also provides a “plus” element to tailor it to the particular needs of the jurisdiction (that is, certification to ISO 14001, OHSAS 18001, SA 8000, or FSC standards), in effect creating an inducement for firms to strive for environmental or worker protection behavior that goes beyond that required by law.

50. But while certification may offer benefits, such initiatives may be vulnerable to the typical weaknesses and quality problems encountered by public sector inspections, such as inadequate training, oversight, and uniform procedures for carrying out an inspection. In particular, third party certification can create another layer of bureaucracy, and it is a bureaucracy one-step removed in terms of control and accountability from that of a conventional public sector inspectoral corps. An additional problem consists of the raising cost of compliance when multiple certifiers assess during separate visits different standards and codes.

51. As well, the prospect of competing “certificates” may drive firms and even governments to “shop around” for the most favorable certificate regime.

52. From a business perspective, and unless the new system clearly reduces the “free riders” hiding in the informal sector, accreditation/certification efforts may raise rather than lower costs. Through accreditation/certification, the cost of inspection is directly placed on the regulated firms. The authorities will have to create positive incentives for the firms. The **Mexican** environmental auditor program, which covers more than 3,500 facilities in June 2005, seems to go some distance towards this type of approach of balancing “carrots and sticks” (see Box 4).

**Box 4: The Mexican Environmental Auditor Program**

The Mexican environmental auditors (*Auditores Ambientales*, AA) program provides an example of an accreditation inspection model.<sup>35</sup> At the core of the program, private environmental inspectors (unaffiliated with the businesses which they are inspecting) perform inspections pursuant to a voluntary, contractual agreement with the Mexican environmental authority (PROFEPA). A firm can choose any accredited inspector listed by PROFEPA. To be listed, inspectors need to follow a specific process required under Mexican government standards. The inspectors have no ability to bring enforcement actions.

In terms of incentives, the inspectors are considered responsible for any environmental accidents or other incidents of noncompliance, facing civil and under certain circumstances penal liability. Once a firm meets the terms of the inspection, it receives a certificate. A confidential complaints procedure by citizens concerning inspector behavior is available to identify questionable inspector practices. To encourage private firms to use accredited inspectors, legislation authorizes PROFEPA to provide incentives in the form of access to export quotas and markets, subsidized loans to finance environmental investments related

<sup>34</sup> Per P. Kennedy, “Decision could harm lumber producers,” *Globe and Mail*, August 28, 1999.

<sup>35</sup> Pursuant to Jacobs and Associates study.

to the inspection, and a decreased in the frequency of government inspections.

53. As with other private-public alternative inspection efforts, the government's monitoring may consist of regulating fewer private third party inspectors and certifiers than all the firms of the sector. From a government perspective, although regulating a pool of private inspectors and certifiers is considerably more manageable than regulating all the firms in a particular sector it still presents challenges, particularly in terms of imbalances in access to information. For instance, while a public sector inspector would have no reason not to disclose to his or her superiors all good and bad information concerning a regulated entity, a private sector inspector and certifier may selectively present or withhold information as he or she sees fit.<sup>36</sup>

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<sup>36</sup> This is known in the literature as "information impactedness." It is described as a "derivative condition that arises mainly because of uncertainty and opportunism, though bounded rationality is involved as well. It exists when true underlying circumstances relevant to the transaction, or related set of transactions, are known to one or more parties but cannot be costlessly discerned by or displayed for others." Per O. Williamson, *Markets and Hierarchies* (New York: The Free Press, 1975), at p.31. It is difficult to locate examples of this behavior, perhaps because the information tends to be kept by the parties to the transaction.

**Table 1. Summary of Key Elements of the Alternative Inspection Approaches**

Approach	Type of private involvement	Non governmental entity in charge of the inspection	Other key characteristics	Advantages	Disadvantages
<b>Self-evaluation</b>	“Front end” conformity assessments carried out by a team directly associated/involved with the regulated firm	<ul style="list-style-type: none"> <li>Workers and managers</li> </ul>	<ul style="list-style-type: none"> <li>Authority may or may not specify conformity assessment methodology</li> <li>Authority can inspect if necessary</li> <li>Inducements: lowered frequency of public sector inspections, grace period to rectify if self-reported non-conformity, fines/sanctions increased if non-compliance not self-reported,</li> <li>may or may not be developed through a legislative framework</li> </ul>	<ul style="list-style-type: none"> <li>Build trust among stakeholders in the firm</li> <li>draws on internal capacity and expertise of organization subject to regulation (no public funding)</li> <li>Quickly implemented</li> <li>Detect minor discrepancies</li> <li>Inexpensive for firms</li> </ul>	<ul style="list-style-type: none"> <li>Danger of lack of objective and capture by firm’s evaluation committee.</li> <li>Cannot supplement government inspections</li> <li>Does not reduce the cost of public inspections</li> <li>Limited accountability for assessment errors</li> </ul>
<b>Assurance</b>	Industry associations, professional associations carry out the conformity assessment	<ul style="list-style-type: none"> <li>Industry association or their auditors</li> </ul>	<ul style="list-style-type: none"> <li>Authority usually approves private auditors and assessment methodologies</li> <li>Business associations may also undertake enforcement actions/impose sanctions</li> <li>Residual public sector inspections of firms, and oversight of business associations</li> <li>Inducements: business associations take on front-line inspection/enforcement responsibilities unless problems arise, business associations collect “pooled” revenues from businesses, fewer authority’s inspection/oversight , avoid further regulatory involvement</li> <li>Funding is “pooled” from businesses that are regulated by the association</li> </ul>	<ul style="list-style-type: none"> <li>lower risk of biased assessment than self-evaluation</li> <li>Business association evaluators know the industry</li> <li>The sector can avoid enforceable regulations</li> <li>Relationship built on trust between authorities and firms</li> </ul>	<ul style="list-style-type: none"> <li>Lack of objective assessment</li> <li>Requires governmental monitoring and soft pressure on the industry</li> <li>Lower the cost of public sector inspection</li> <li>Often requires legislative framework</li> </ul>

Approach	Type of private involvement	Non governmental entity in charge of the inspection	Other key characteristics	Advantages	Disadvantages
			<ul style="list-style-type: none"> <li>Limited liability of business association evaluators</li> </ul>		
<b>Accreditation/ Certification</b>	"Front-end" conformity /assessment carried out by specific auditors at arms' length from the firm and the sector.	<ul style="list-style-type: none"> <li>International organizations , NGOs</li> <li>Private firms</li> </ul>	<ul style="list-style-type: none"> <li>Third party auditors can be individual or bodies working with or without for profit specialized in conformity assessment</li> <li>Firms compensate third party auditors on a per use basis</li> <li>Third party auditor has no enforcement capacity</li> <li>Authority approves conformity assessment methodology and oversees third party auditors</li> <li>May be affiliated with a certification program</li> <li>Frequently certificates are linked to international standards with particular profile and credibility in the international marketplace</li> <li>Limited liabilities of third party auditors.</li> <li>May not need extensive legislative framework, especially if national standards/conformity assessment infrastructure in place</li> <li>Authority retains residual inspection and enforcement capacity</li> </ul>	<ul style="list-style-type: none"> <li>Inducement systems, such as: license renewal without public inspection, expedited permit review, exemption from inspections unless complaints/problems arise, external market inducements, access to special programs such as quotas, subsidies</li> <li>Lower risk of biased assessment than assurance</li> <li>A market for auditing is created reducing prices and improving services</li> <li>Reduction of public sector inspection costs</li> <li>International recognition that bring trade advantages for firms</li> </ul>	<ul style="list-style-type: none"> <li>For profit third party certifiers may lack expertise</li> <li>Possible conflict of interests for third party auditors</li> <li>Anti-competitive practices by third party auditors</li> <li>Firms require positive and negative incentives to participate</li> <li>Possibility of competing national and international accreditation systems</li> <li>Cost of accreditation/certification for firms</li> <li>Cost of the monitoring and oversight of third party certifiers</li> <li>Risk of failures in case of abuse</li> <li>Viewed by developing countries as non-tariff barrier to trade</li> <li>Frequent and uncoordinated private inspections</li> </ul>

### 3. Drivers for Alternative Inspection Initiatives

#### ***Harnessing an array of incentives***

54. Incentives for governments, businesses, and other interests to engage in public-private collaborative inspection initiatives vary, but overlap in important ways. However, though these schemes are heavily reliant on the proper management of the economic, institutional, administrative, and cultural differences of the region or country where they are deployed, drivers for developed and developing countries are rather similar.

55. The main differences may be that in developed countries the robust institutional capacities supporting law-making, implementation, and enforcement, provide the underlying basis upon which inspection reform initiatives can be designed and deployed. In developing countries, this type of essential capacity for governance may be missing or less well developed. As well, in developing countries the strength of external drivers, either directly through supply chains or embedded in international commitments, will tend to play a larger role.

56. Nonetheless, more than often their success will depend on the implementation and the proper development and permanence of the different incentives of the stakeholders. Thus, although there are important lessons to be learned from inspection reform experiences no matter where they have taken place, these differences have significant implications when considering the broader question of developing practical reform initiatives for developing countries.

#### ***Achieving greater effectiveness and efficiency in inspections and enforcement***

57. Governments become involved in alternative public-private inspection regimes to reduce enforcement costs. The reform efforts have tended to focus on approaches offering the possibility for enhancing public sector administrative efficiency and effectiveness in the face of fiscal constraints (and for businesses, the prospect of a decreased likelihood of legal liability, and less frequent inspections).<sup>37</sup> However, these initiatives have seldom involved a re-consideration or alteration by public authorities of the substantive standards businesses are expected to meet.<sup>38</sup>

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<sup>37</sup> See e.g., I. Ayres and J. Braithwaite, ***Responsive Regulation: Transcending the Deregulation Debate*** (NY: Oxford University Press, 1992); J. Braithwaite and P. Drahos, ***Global Business Regulation*** (Cambridge: Cambridge University Press, 2000); N. Gunningham and D. Sinclair, ***Leaders and Laggards: Next Generation Environmental Regulation*** (Sheffield, UK: Greenleaf); H. Kunreuther, P. McNulty and Y. Kang, "Improving Environmental Safety Through Third Party Inspection," Regulatory Policy Program Working Paper RPP-2002-11 (John F. Kennedy School of Government, Harvard University), and K. Webb, ed., ***Voluntary Codes: Private Governance, the Public Interest and Innovation*** (Ottawa: Carleton University, 2005).

<sup>38</sup> See, e.g., discussion later in this report of the rationalization of inspection services by the Canadian Food Inspection Agency, the Danish program recognizing and encouraging use of certified occupational health and safety management systems standards, the Netherlands reform of the regime for inspection of ships, the Connecticut program recognizing use of certified ISO 14001, government endorsed but privately funded and operated voluntary codes initiatives in the United

58. For example, a provincial government in **Canada** has developed a model in which the responsibility for administration and enforcement of consumer and safety legislation has been passed to non-governmental “delegated administrative authorities” (DAAs). These new bodies are allowed to retain the revenues from licensing and enforcement, but report to a government agency and can be re-structured or replaced if they do not appropriately protect the public interest.<sup>39</sup> The size of government bureaucracies has been reduced considerably as a result of the use of the DAAs. Available evidence suggests that the DAAs have been at least as effective in enforcing the laws as the previously existing conventional governmental agency, although there remain questions as to the long-term adequacy of public accountability under the DAA model,<sup>40</sup> and whether, by delegating enforcement expertise to non-governmental actors, the government will lose over the long run important policy development and oversight capacity.

***Competition among private evaluators increase the price-quality ratio of inspections***

59. As an extension of the previous reasons, governments have noticed that greater efficiency is provided when competition among private evaluators, auditors and third party certifiers will improve the quality and decrease the costs for taxpayers or consumers associated with enforcement. From the business side, firms are willing to participate in such initiatives if the formal and informal costs of public sector inspections are reduced.

60. For instance, car owners in many **United States** and **Mexican** states can select the evaluator who will undertake vehicle safety and emissions inspections. Through this market, competition between private inspection providers can reduce prices and improve the quality of their services. Overall, economic efficiency will thus be increased by adding to the budgetary savings for public enforcement a lower compliance cost for firms. However, for such results the entry of private inspection parties (for profit or not-for-profit) needs to be open and transparent, and supervised through the establishment of ex ante criteria and ex post monitoring by the regulatory authority.<sup>41</sup>

***Alternative inspection reforms as a mechanism to fight corruption***

61. For developing countries, an important driver to deploy alternative inspection is linked to the fight against corruption. When the public inspectorate system is too

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Kingdom, and an MOU between the federal government and the Canadian Chemical Producers' Association for reduction in use of toxic chemicals, using an auditing scheme.

<sup>39</sup> For more information concerning the DAA initiative, see K. Webb, “Sustainable Governance in the 21<sup>st</sup> Century: Moving Beyond Instrument Choice,” in P. Eliadis, M. Hill, M. Howlett, eds., ***Designing Government*** (McGill-Queen's Press, 2005); and Winfield et al., Public Administration Journal article.

<sup>40</sup> This concern is consistent for all public-private reform initiatives where non-public sector actors assume some roles in inspection and enforcement, whether they take place in developed or developing countries.

<sup>41</sup> This is the case of conformity assessments for many mandatory technical standards. Markets of third party conformity assess providers exist for other type of risks. For instance, in Australia Victoria State private registered building surveyors provide building permits - which are a written approval that building plans comply with the Building Regulations. A Building Commission registers and regulates the building surveyors. A similar system also exists in Mexico City.

dishonest, government may then rely on a fundamental change and set up a replacing system based on private evaluators. These are the cases in particular for customs reform initiatives that have taken place for custom procedures in **Philippines**<sup>42</sup> and **Mexico** (see Box 5). The initiatives were not only motivated by a desire to reduce the opportunities for bribery and corruption but also to improve efficiencies and effectiveness, reduce administrative burden on both the public and private sectors.

**Box 5: The Involvement of Third Party Inspectors in Mexican Custom Procedures**

Starting in the late 1980s, Mexico adopted a revamped and modernized approach to reduce lengthy waits in customs clearance and address widespread corruption. This initiative involved an electronic-based vetting and inspection program that selects shipments based on a number of risk categories. In 1997, a second round of random inspections was created to be performed by private firms acting as certified evaluators (*terceros acreditados*). This inspection/verification applies to all shipments, i.e. whether or not the electronic-based vetting identified the shipment as high or low risk in the first round. As in the case of the first approach, a specific electronic program (i.e. electronic “readers”) monitors the inspection process to eliminate all discretion. The inspection is performed by private firms (*dictaminadores aduaneros*) selected under strict public procurement rules. After this last round of random inspections, the shipment is cleared. Studies suggest that not only corruption has been greatly reduced but also that the delays for custom clearance have been greatly shortened, as has the government inspection corps.<sup>43</sup>

**Improving compliance with laws and regulations**

62. Governments may draw on public-private collaborative enforcement approaches to improve overall compliance with laws and regulations.<sup>44</sup> When incidents of regulatory failure occur, they tend to lead to calls for more regulation, with little assessment of the underlying reasons for failure in the first place. Increasingly, policy officials and inspectors recognize that establishment of compliance-friendly regulation requires an integrated strategy, including participation of affected parties:

- before regulatory reform takes place (consultation),
- during the implementation of new initiatives (where public-private collaborative initiatives may be used); and
- after regulatory enforcement (through creation of appeal and recourse mechanisms).

63. For example, the **Australian** government has endorsed a private sector program to

<sup>42</sup> See FIAS/Jacobs and Associate reports on Mexico and Philippines 2005.

<sup>43</sup> Per Jacobs & Associates **Mexican Inspection Reform** case study.

<sup>44</sup> See OECD, 2000, **Reducing the Risk of Policy Failure: Challenges for Regulatory Compliance**, Paris

ensure price accuracy at supermarket checkouts.<sup>45</sup> This program enhances compliance with government standards prohibiting deceptive marketing practices by drawing on the capacities of business associations to oversee a market-driven program in which consumers receive their products for free if they discover a price discrepancy between what is advertised and what is actually charged at the cash register.

64. **Indonesia** is another case where alternative inspections based on higher transparency on assessing pollution levels were used to foster compliance with environmental regulations (see Box 6). Similar public-private initiatives have also been used in other contexts by the **Pakistan** and **Chinese** governments to enhance their domestic standards development and certification capacity.<sup>46</sup>

#### **Box 6: Private Pollution Control Arbiters in Indonesia**

In 1995, Indonesia's environmental regulatory agency established PROPER (Program for Pollution Control Evaluation and Rating), with the objective of creating "incentives for compliance through honor and shame."<sup>47</sup> Under the PROPER program, government regulators, using data from inspections and other sources, rate individual emitters who participate in the program. A five star rating program has been put in place, that uses regulatory monitoring results, self-monitoring, and a survey questionnaire sent to polluters backed up by a government inspection program to verify the validity of the data. Then an advisory panel that includes environmental organizations vets the results based on various standardized evaluation criteria. The results are selectively made public through both a press conference and an Internet site. A recent study concerning the effectiveness of PROPER provides evidence that community pressure, negative media attention and other non-regulatory (market) factors are major stimuli for improved environmental performance, but that increased environmental information to plant managers is also a significant factor.<sup>48</sup> Thus, both domestic (community, media and market) and firm-level factors help explain why abatement activity is taking place. Similar programs are now in place in the Philippines, China, Mexico, India, Colombia, Bangladesh and Thailand.

<sup>45</sup> See N. Gunningham, "Codes of Practice: The Australian Experience," in K. Webb, ed., **Voluntary Codes: Private Governance and Innovation**, op cit. A similar program is in place in Canada.

<sup>46</sup> See: United Nations Industrial Development Organisation, **Project: Strengthening Standards, Metrology, Testing and Quality (SMTQ) Infrastructure in Pakistan**, <http://www.un.org.pk/unido/proj-future.htm>

<sup>47</sup> Per S. Afsah, A. Blackman and D. Ratanunanda, **How do Public Disclosure Pollution Control Programs Work? Evidence from Indonesia** (Washington: Resources for the Future, 2000). See also S. Afsah and D. Ratanunanda, "Environmental Performance Management and Reporting in Developing Countries: The Case of Indonesia's Program for Pollution Control Evaluation and Rating," in M. Bennett and P. James, eds., **Sustainable Measures: Evaluation and Reporting of Environmental and Social Performance** (Sheffield: Greenleaf Publishing, 1999), pp. 185 – 201.

<sup>48</sup> Per S. Afsah, A. Blackman and D. Ratanunanda, **How do Public Disclosure Pollution Control Programs Work? Evidence from Indonesia** (Washington: Resources for the Future, 2000). See also S. Afsah and D. Ratanunanda, "Environmental Performance Management and Reporting in Developing Countries: The Case of Indonesia's Program for Pollution Control Evaluation and Rating," in M. Bennett and P. James, eds., **Sustainable Measures: Evaluation and Reporting of Environmental and Social Performance** (Sheffield: Greenleaf Publishing, 1999), pp. 185 – 201.

***Encouraging businesses to move “beyond regulatory compliance”***

65. As a corollary to the previous driver, businesses are increasingly noticing the relationship between socially and environmentally responsible behavior and higher profits. Certification, accreditations and other labels and logos can also bring competitiveness advantages in reaching more discerning consumers. To attract consumers, many products and businesses now comply with environmental and consumer “good housekeeping seal of approval” programs.

66. Governments may put in place programs which encourage businesses to comply with substantive standards beyond those required by law. For example, in the **United States**, the Environmental Protection Agency (EPA) has established the National Environmental Performance Track program as a way of recognizing top environmental performers that have met a series of requirements demonstrating they have gone beyond what is mandated by law, including implementing an environmental management system. EPA has proposed that companies that are members of the Agency’s National Environmental Performance Track program should be subject to fewer reporting requirements, provided exemptions in certain circumstances, and given expedited reviews for notifications under toxics legislation.<sup>49</sup> The United States Occupational Health and Safety Agency has similar programs in place.<sup>50</sup>

***Trade and investment-driven initiatives (in search of export markets and FDI)***

67. A significant and growing motivation for the governments of developing countries, the private sector, and civil society to engage in public-private enforcement collaboration comes from trade and investment pressures. The demands may originate directly from Western consumers or multinational corporations and their requirements on supply chain partners; or indirectly from Western development agencies, international agreements or international non-governmental organizations.

68. Incentives for businesses to participate in public-private collaborative inspection initiatives include improving the credibility of conformity assessment activities undertaken without public sector involvement, decreasing the likelihood of incidents of non-compliance from occurring, and thus reducing exposure to liability and public opprobrium and increasing efficiencies. In many instances, importers, consumers (including businesses part of supply chain), NGOs, etc. have stopped trusting government inspections. In some case, a governmental guarantee of conformity assessment can actually mean even the contrary. Consumer may just assume that producers have captured the inspectorate. This situation happens in developed and developing countries and feeds the demand of a conformity assessment undertaken by a third party entity independent of the government and the producers.

69. Though alternative inspection systems offer important possibility for mandatory standards, it is in the realm of conformity assessment of voluntary CSR standards that an

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<sup>49</sup> Per “*ENHESA 2004 Global Forecast of Environmental, Health & Safety Policy and Regulatory Developments Impacting Industry*”, downloadable at [www.ehstrends.com](http://www.ehstrends.com)

<sup>50</sup> See, e.g., the OSHA Voluntary Protection Programs (VPP), at <http://www.osha.gov/dcsp/vpp/>

important wealth of experiences and innovations have been developed. In general, CSR-driven initiatives tend to focus on protection of workers and the environment, in order to attract or maintain an export market. The complexity of these issues and the growing demand by businesses to demonstrate compliance with these higher product and process standards tend to make public-private inspection partnership arrangements in developing countries, if properly structured, a workable possibility to bridge and build trust among the wide array of very different interests.

70. CSR-oriented public-private enforcement reform initiatives may well involve public authorities re-considering and altering the substantive social and environmental standards applied to the private sector. For example, the government of **Pakistan** has attracted a multi-million dollar technical assistance loan to assist the government in establishing the Pakistan National Accreditation Council, the National Physical Laboratories, and Pakistan Standards and Quality Control Authority. The loan follows a study urging new environmental and social standards to address demands from foreign buyers.<sup>51</sup>

71. In another case, the government of **Thailand** has put in place TLS 8001:2003, voluntary guidelines for worker protection, which supplement the Thai Labor laws. TLS 8001:2003 is a CSR-oriented standard based on SA 8000, and associated conformity assessment processes.<sup>52</sup> The Thai Labour Standard 8001:2003 has 12 elements covering the scope of forced labor, remuneration, working hours, discrimination, discipline and penalties, child labor, female employees, freedom of association, occupational safety, health and the environment, and welfare. In 2004, a total of 304 Thai companies had been certified to the standard, of which 241 were large companies with 200 or more employees.

72. Some public-private inspection reform initiatives have also been implemented at least in part to comply with trade agreements. For example, as noted earlier, in **Cambodia**, pursuant to a 1999 export quota trade agreement with the **United States**, a labor program was put in place under which the federal government and other donors financed the UN's International Labour Organization to monitor labor conditions in its apparel factories. In December 2004, a World Bank survey of 15 top buyers ranked the Cambodian garment industry first in terms of working conditions, when compared with **Thailand, China, Viet Nam** and **Bangladesh**.<sup>53</sup> The effectiveness of the program has

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<sup>51</sup> According to an UNIDO study, developing countries which have invested over the years in strong standardization and metrology bodies, can meet product standards, and are more able to participate in international trade and attract to foreign investment. Unfortunately, this capacity does not exist in many developing countries like Pakistan. As a result, Pakistan is facing limitations in its ability to export and consequently enforce an adverse on the competitiveness and growth potential of SMEs. United Nations Industrial Development Organization – **Pakistan, Strengthening Standards, Metrology, Testing and Quality (SMTQ) Infrastructure in Pakistan**, 2001 and Per: M. Farooqi, "Five industries under pressure for environmental compliance," **The Nation**, February 11, 2005.

<sup>52</sup> Per Dr. Chaiyuth Chavakitnitikul, Deputy Director General of the Department of Labour Protection and Welfare, as reported in **OSHEI 2004 Theme Conference, Executive Summary**, 1 - 3 Dec 2004, Bangkok, Thailand .

<sup>53</sup> **FIAS Public Sector Support for the implementation of Corporate Social Responsibility (CSR) in Global Supply Chains. Conclusions from Practical Experience**. Study prepared by

been credited with assisting Cambodia to compete against lower-cost jurisdictions, even though retailers are now free to buy any amounts they want from wherever they want. (In January 2005, the global Multi-Fiber Agreement quota regime that limited the amount retailers could buy from individual countries came to an end.). In the wake of the quota expiry, multi-lateral agencies and international buyers have lauded the Cambodian program. In 2005, the “Better Factories Cambodia” program was launched by ILO, the Royal Government of Cambodia, the Garment Manufacturers Association of Cambodia, and unions, aiming to bring labour standards monitoring under a tripartite local body by 2009.<sup>54</sup> The vice-president of Gap, Dan Henkle, is recently reported as saying “The reason that [the Cambodian program involving the ILO] has been so successful is you have an organization that really has the respect of all players – unions, employers, government, buyers – sitting down at the table.”<sup>55</sup> Gap is a major buyer in Cambodia, accounting for one-third of all its clothing exports.

***Alternative approaches to “formalize” the informal sector***

73. Other drivers for public-private inspection collaboration initiatives include the government desire to address the direct and indirect costs of large informal sectors (i.e., small firms operating outside the regulatory framework, and in particular not complying with key labor, environmental, health and safety, and tax requirements). The main challenge indeed, is that the large number of informal businesses in developing countries makes an extensive public inspection system particularly difficult, expensive and thus basically impossible. Moreover, the formal private sector is a vocal promoter of a “level playing field” under which all firms, especially in the informal sector, are controlled and inspected in a similar way and scope. Consequently, governments with support of the formal private sector have launched new initiatives to more efficient and effective alternatives to public sector inspections.

74. A recent study comparing use of conventional public sector-led and private sector-led environmental protection measures in **Mexico** suggests that in the pollution-intensive informal sectors, such as those involving leather tanning, brick and tile making and metalworking, monitoring by communities and local business associations under a mixture of self assessment and assurance approaches, has helped to supplement the traditional regulatory approaches.<sup>56</sup> Research examining the environmental impact of Mexico’s traditional brick-making kilns indicated that brick making is highly polluting, and yet for a variety of technical and political reasons, difficult to regulate and monitor. In these circumstances, industry-led monitoring initiatives may work well to buttress conventional approaches. Research on the government-supported peer-monitoring systems showed it to be a success in a number of ways:

“Private sector-led initiatives seem to enjoy a number of advantages over state-run

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Business for Social Responsibility and Pricewaterhousecoopers (Denmark). Washington, DC, December 2004. Case 4, Appendix

<sup>54</sup> Per Better Factories Cambodia website, <http://www.betterfactories.org/default.aspx>

<sup>55</sup> Per Better Factories Cambodia newsletter, May 2005.

<sup>56</sup> A. Blackman, 2000, **Informal Sector Pollution Control: What Policy Options Do We Have?** Washington: Resources for the Future,

programs. First, the willingness of the majority of the brick makers ... to cooperate with the project suggests that private sector-led projects may be best suited to engage firms that by their nature are bound to be wary of sustained contact with regulatory authorities. Second, the enthusiasm that the ... Project generated among founders, participants and the public at large suggests that private sector-led projects may be able to draw more freely on public sympathy for environmentalism than top-down bureaucratic initiatives. And finally, the Project's success at consensus building among a diverse set of stakeholders suggests that private sector-led initiatives may be better able to sidestep the politics and bureaucracy that often plague public sector-led initiatives.<sup>57</sup>

75. The program was credited for persuading many brick-making kiln-operators to reduce their use of particularly polluting fuel sources with a resultant lowering of air pollution levels. However, the research notes that the brick-making initiative would not have had as much success in promoting cleaner production methods without government support in the form of consistent enforcement of laws and technical assistance.

***Taking advantage of business or non governmental expertise***

76. Another important reason that has fostered the use of alternative inspections is to harness business or non-governmental expertise and capacities. Private sector, community, and non-governmental organizations often possess "front line" understanding regarding what works and what does not work, and can bring a sense of "internalized" responsibility to an inspection program that may be lacking with a conventional public sector inspection regime. This is evident in the **Cambodian** labour program, the **Philippines** labour initiative, the **Bolivian** forestry program, the **Mexican** cement industry initiative, the Indonesian PROPER program, and the **Canadian** experience with Delegated Administrative Authorities.

**4. Factors influencing success of public-private collaborative inspection efforts**

77. Several factors can help to explain the success of public-private collaborative inspection efforts, and the strategies needed to overcome obstacles when adapting and applying such approaches in developing countries.

***Alternative inspection approaches operate best when associated with a sound governance infrastructure***

78. Public-private collaborative inspection initiatives undertaken in developed countries are typically implemented on a foundation of well-functioning governance infrastructure, including accountable and transparent law-making, implementation and enforcement institutions and processes. For example, this was the case with the delegated administrative authority (DAA) model operating in **Canada**, discussed earlier. Although pursuant to the DAA program the private sector has assumed the lead responsibility for enforcing consumer laws, the government remains in charge of overseeing and ensuring the protection of the public interest.

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<sup>57</sup> Blackman, 2000, p. 16

79. Elements of a sound governance infrastructure may be less available in developing countries. For instance, weaknesses in the judiciary and political instability may reduce the benefits of alternative inspection schemes (see Box 7).

**Box 7: Challenges to Private Participation in Enforcement Activities in Ecuador**

In 1999, following an extensive participatory development process, Ecuador introduced an innovative Ecuadorian Outsourced Forest Control System (EOFCS) to address a significant problem with illegal logging.<sup>58</sup> The EOFCS was based on the delegation of several forest control functions to different specialized, independent but interlinked non-public sector bodies, including a private foreign verification company, independent forest regents, and several non-governmental organizations involved in surveillance, working with the police and army. Political support for the initiative was initially high, and the approach was proving to be highly effective at exposing illegal logging activities. However, powerful groups of the logging timber industry began putting pressure on government agencies to dismantle the program. In particular, these interests brought a legal challenge concerning the use of a private sector body to carry out a public sector function. Although the legal challenge process has been described as “tainted with obvious irregularities”, it resulted in a Constitutional Tribunal decision to suspend the program as an illegal delegation of government authority. The difficulties were compounded when a new party came into power, subsequently reducing the government support for the program.<sup>59</sup>

80. While the rocky early implementation of the EOFCS demonstrates how a weak and unstable governance infrastructure can undermine a public-private collaborative inspection initiative, some important positive lessons from the EOFCS scheme are also worth noting, as they probably will play an important role in ensuring the long-term sustainability of the initiative. Commentators have noted that “bottom up” support for EOFCS, well rooted in local society and with a strong base of support from environmental organizations, should give resilience to the program and a better chance to withstand the surrounding political and legal upheavals that were challenging its operation.

***A well regulated market for private evaluation services reduces the risk of collusion and monopolistic practices***

81. Failures for these public-private collaborative inspection efforts are often linked to badly managed authorization and control of private evaluators that can open possibilities for further corruption.<sup>60</sup> Four main causes of concern can develop.

<sup>58</sup> Forest Integrity Network (FIN), 2003, *FIN Newsletter*, Issue 6, October; *The Economist*, 2003, “Cut down,” *Economist*, October 2003; Overseas Development Institute (ODI), 2004, *ODI Forestry Briefing* Number 5, June 2004; and email communications with Hans Thiel (member of research team for Overseas Development Institute doing research on forest sector verification).

<sup>59</sup> However, after considerable political upheaval, a change of administration official in April 2005, a newly appointed Minister of Environment favorably disposed to EOFCS signaled that the surveillance program will be re-established.

<sup>60</sup> Corruption problems with badly regulated third party conformity assessment can also occur in OECD countries. See Clive Small, *Corruption control and the pursuit of integrity: Deserving the confidence and trust of the public must be the goal, merely appearing to be worthy is not*

1. Private evaluators may lack the expertise needed to undertake inspections effectively.
2. Private evaluators may not be able to manage conflicts of interest. The arms' length relationship and independence of the evaluator may be compromised since the inspected firms usually pay for their services.
3. Private evaluators can collude amongst themselves, for instance, restricting the ability for others to enter the sector and thus helping them to increase the price of their service.
4. Private evaluators can capture the regulator to raise the standards and alter the type and intensity of the inspection services they provide.

***Lack of clear accountability in case of failures encourages "morale hazard" problems***

82. In a public sector conventional inspection system, inspectors are ultimately held accountable for their actions through the public administrative law system and courts.<sup>61</sup> Thus, it is usually possible for those who are regulated, and those who are beneficiaries of that regulation, to bring actions to the courts when an inspection does not meet acceptable standards. There is also political accountability through legislative assemblies for the actions of public administration. When private inspectors are involved, accountability through courts and through legislative bodies may still be possible, but the sharing of responsibility is harder to assess; for instance, in case of an accident is it the private inspector or the firm that is mainly responsible for the failure to detect the problem beforehand?

83. Consequently, putting in place the necessary safeguards and clear accountability systems is crucial. These could include contractual stipulations that a private inspector meet pre-defined professional criteria, obligations of disclosure, and compliance with codes of ethical conduct, and that there exists a process to allow governments, regulated firms, or members of the public to challenge and hold the inspectors accountable. For certain higher risks, the government should also make private inspectors responsible administratively (e.g. revocation of their certification powers), but also through possible civil and penal sanctions.

***Overcoming suspicion about the involvement of foreign evaluators***

84. Developing countries may resist public-private collaborative inspection approaches that involve foreign conformity assessment processes or inspectors. The involvement of non-domestic elements may be perceived as challenging or conflicting with the domestic legal system or public interest priorities. In some cases, protectionist interests use complaints of foreign inspectors' involvement to hide their motivations for supporting

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**enough.** Presentation to Corruption Prevention Network Annual Conference Waters Edge, Pier One, Hickson Road, Sydney, September 2004.

<sup>61</sup> See discussion in K. Webb and A. Morrison, "The Law and Voluntary Codes: Examining the 'Tangled Web'," in K. Webb, ed. ***Voluntary Codes: Private Governance, the Public Interest and Innovation***, op cit., at p. 149 – 152.

higher standards as non-tariff barriers.

85. In the case of the **Ecuadorian** Outsourced Forest Control System described above, local opposition groups have emerged. Domestic logger interests apparently wishing to diminish the effectiveness of the system challenged the use of private foreign inspectors. Often, this is related to the rigid legal constraints on devolving enforcement powers to non-governmental stakeholders.

86. Western-based CSR supply chain initiatives can also create friction in the eyes of a particular developing country, leading to plans for the creation of a competing state-based initiative. The new standards and inspection/enforcement processes may or may not have the same public credibility or effectiveness. Recently the government of **China** announced plans to develop its own CSR standard, and to control and accredit any private evaluator involved in CSR conformity assessment. This announcement has raised concerns among trading partners and concerned parties. The Chinese approach has been perceived as an apparent response to concerns about the use of non-Chinese-based worker standards and conformity assessment processes considered to conflict with Chinese laws and approaches.<sup>62</sup> It is not clear at this point whether supply chain partners located in developed countries would consider a Chinese-based standard to be sufficiently credible to their customers (i.e., that the requirements in the standard are sufficiently rigorous).

87. In contrast, the involvement of the UN's International Labour Organization in monitoring of compliance with **Cambodian** labor laws and ILO labor standards (as discussed above) provides an example of a developing country recognizing the strategic value of involving non-domestic bodies in monitoring, and in using non-domestic international labor standards in domestic operations as a way of demonstrating good treatment of workers to external interests, and thereby gaining a competitive advantage over other jurisdictions.

***Proper coordination between schemes is required***

88. Though the development of some alternative inspection is recent, some stakeholders are starting to complain about "auditing fatigue". Two phenomena may be the cause.<sup>63</sup>

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<sup>62</sup> Per UNC Kenan-Flagler Business School, Kenan Institute of Private Enterprise **Corporate Responsibility in the Global Village** Newsletter, "Worldwide Developments" section, April 2005. According to the Kenan Institute, the Certification and Accreditation Administration of the People's Republic of China (CNCA) "may intend to use the regulatory process to limit the use of [SA 8000] in China, where workers lack the right to form independent unions. (Consistent with the International Labour Organization's core labor standards, the SA 8000 requires that workers enjoy the right to organize and bargain collectively.) The Kenan Institute reports that CNCA has required that organizations conducting SA8000 must report their activities to CNCA, including providing information on the organizations' certification status (e.g., government approval of their activities) and the certified companies, and no social responsibility certification (e.g., SA8000) may be conducted without approval from CNCA. Kenan states that if CNCA "fails to grant approval of accreditation audits to foreign certification bodies relatively liberally, [then it] may incite a significant backlash from foreign companies that want accreditation for their suppliers without delay."

<sup>63</sup> For the discussion on these topics see presentations by Toy Industry Association and by Marc Vandercammen from the Research and Information Center of the Consumer Organizations,

First, some firms are suffering an increased number of private inspections. For instance, in some producing countries, Disney, Mattel, Wal-Mart, etc. inspect fewer and fewer large toy firms. In such a case, the previous duplication of public inspections is just replaced by private ones.

89. As a second and connected issue, the proliferation of voluntary standards privately monitored is weakening transparency and accountability. Firms are disoriented in some cases. In other cases, they can “shop around” and choose according to a strategic perspective. For instance, some experts have estimated that around 700 labels on fair, environmental and other CSR issues exist.

### ***Building sustainable support for CSR-based alternative inspection initiatives***

90. To a significant extent, the rise to prominence of CSR as a global concern, and the attendant development of codes of conduct and standards, and compliance procedures, can be attributed to developed country perceptions of inadequacies in the labor and environmental standards used and enforced by the governments in developing countries. The new approaches can bring real benefits in the long run for individual firms, industry sectors, and developing countries -- for instance as catalysts for technical innovation and public participation. However, firms and governments in developing countries have resented some CSR alternative inspection systems. They can consider them as indirect ways to increase the costs of their products and by governments as non-tariff barriers.

91. Moreover, the supply chain initiatives are particularly dependent on constant engagement by firms, NGOs and consumers of importing countries. As the interest and pressure from the stakeholders in developed countries decline, the alternative inspection approaches lose credibility and support, and tend to be abandoned.

92. This may be particularly true during the initial phase of development, when the long-term value of complying with the standards may not be apparent. As initiatives build a constituency among local firms, workers, and communities, the new approaches may stabilize and expand. This may be the experience that is developing with respect to the **Cambodian** worker standards described earlier.

### ***Trade agreements as supportive mechanisms***

93. Certainly, trade agreements, which build-in minimum social and environmental protections, can help to lock in commitments if they clearly bring benefits to the partner's economy and society. The export and formal sectors are often the first to recognize the need for new ways to increase compliance across a whole business sector and the economy. NAFTA, for instance, established commitments for **Canada**, the **United States** and **Mexico** to enforce their own environmental and labor laws as side agreements to their trade agreements (See Box 4). Actually, as an indirect consequence of NAFTA, the **Mexican** government successfully implemented an environmental protection regime involving audits by private inspectors.<sup>64</sup> Pursuant to the *auditoria ambiental* (environmental

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Belgium at the FIAS World Bank Conference Alternatives to Public Sector Inspections: Public-Private Partnerships and Corporate Responsibility. Washington, DC 20 June 2005

<sup>64</sup> See FIAS/Jacobs and Associates, **Reform of Mexican Inspection Systems** 2005.

assessments) program, participating firms have reduced inspections, and have noted increased incomes and efficiencies, fewer penalties, and lower insurance premiums. Article V of the 1993 North American Environmental Cooperation Agreement (a side agreement to NAFTA) recognizes the *auditoria ambiental* program as a means to comply with the Agreement. This has reduced trade frictions and exporting problems for many Mexican firms.

94. The proposed “Export Success in **Central America**” partnership is another trade-related agreement involving the governments of several Central American countries as well as U.S. embassies and government officials, working with private sector and NGO partners, to develop a sustainable approach to compliance with international core labor standards and national labor laws.<sup>65</sup> This program aims to take a pro-active approach to capacity-building in Central American countries by the private sector through the formation of a multi-industry alliance, Business Coalition for Capacity Building. Activities involved including training of workers, suppliers, develop monitoring and reporting systems, and training labor inspectors.

95. More practically, a key to transforming CSR-based, externally driven alternative inspection initiatives into sustainable ones requires identifying and harnessing support from local private sector and civil society. For instance, the **Indonesian** PROPER program discussed earlier garnered local community support for good environmental behavior, as did the **Mexican** initiative to reduce air pollution from brick-making kilns. The association of Mexican environmental certified auditors has become an important advocate for higher standards and better compliance.

## 5. Scaling Up Alternative Inspection Approaches

96. It is still unclear to what degree the use of an alternative approach can prepare the field for moving to another category of approach: that is how a successful self-evaluation scheme can promote the development of an assurance or accreditation/certification for instance. However, it is clear that alternative approaches tend to enhance the level of trust between firms and authorities and thus predispose for a lighter regulatory touch. As well, transparency encourages feedback and this increasing efficiency. As other Private-Public partnerships schemes have proved, these new participative approaches in shared governance also lead to improved accountability, which helps also to ensure stakeholder acceptance and thus compliance.

97. The cost-effectiveness of the different type of initiatives seems also to vary mightily – though as indicated, no true evaluation of performance has yet been made. A key premise is that the new approaches tend to reduce the use of public inspection system for better results. However, they are not cost free. They mean time and investment by firms in term of self-evaluation teams, inspectors from business associations or private accreditation/certification programs. Certainly, the burdens can be compensated by higher

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<sup>65</sup> FIAS **Public Sector Support for the implementation of Corporate Social Responsibility (CSR) in Global Supply Chains. Conclusions from Practical Experience.** Study prepared by Business for Social Responsibility and Pricewaterhousecoopers (Denmark). Washington, DC, December 2004.

protection for workers, consumers, and the environment. But it is not clear if the firm's costs will be compensated by higher access to markets and productivity gains, or just passed to consumers through higher prices and lower competitiveness.

98. However and despite these unknowns, alternative inspections systems are gaining ground and a broader perspective of endorsement of alternative inspection is emerging.

99. Self-evaluation model probably shows the most promise for easy scale-up, because it can in many cases be developed and implemented without significant legal or public sector infrastructure changes. On the other hand, self-evaluation approaches tend to work well only where participants are willing to take on the self-evaluation roles. Self-evaluation is also more useful for industries where worker representation is sufficiently strong to balance the power of employers. As well, self-evaluations may not have the credibility of a clear arm's length independent conformity assessment, and self-evaluations still leave a considerable role for government inspections.

100. The assurance model requires for its success that an industry association is willing to take on the responsibilities associated with monitoring and possibly levying sanctions on non-compliant behavior. In many cases, the challenge will be finding an industry sector willing to assume monitoring and sanctioning functions, and that has sufficient profile, credibility and membership acceptance to take it on.

101. The threat of more burdensome regulations and sanctions, including the possibility to follow mandatory technical standards sanctioned internationally, can motivate a wider adoption of these industry-based systems. Even when an industry sector candidate can be found, there is the strong possibility that legislation will need to be changed to accommodate the new approach, particularly if some capacity to impose penalties and collect revenues is involved.

102. The accreditation/certification model for voluntary standards can draw on existing national standards infrastructures already in place in 145 countries. The existence of such national standards offices implies the functioning of an infrastructure for accreditation activities. However, as is the case for mandatory technical standards and regulations, the effective capacity of many existing national bodies in developing countries to develop effective standards in an accessible, transparent and accountable way continues to be persistently low. ISO has acknowledged the need to improve standards capacity in developing countries,<sup>66</sup> and the World Bank and regional development banks have

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<sup>66</sup> ISO has established a policy committee – DEVCO – specifically to address the needs of developing countries. Developing countries need to focus both on acquiring world-class technological competence and on achieving a good understanding of the technical requirements underlying global trade. For 40 years, ISO has been assisting in both these areas through ISO/DEVCO, the ISO Committee on developing country matters. DEVCO's membership comprises some 117 national standards institutes from industrialized as well as developing countries. A key objective of the DEVCO committee is to identify the needs and requirements of developing countries in the fields of standardization and related activities (i.e. conformity assessment including accreditation, quality and metrology) and to assist the developing countries, as necessary, in defining these needs and requirements. ISO has developed an action plan for developing countries. Building capacity is a key element of this action plan, working with UN bodies and national

provided funding to enhance the capacity of developing country standards and metrology systems.

103. Certification initiatives such as ISO 14001, OHSAS 18001, SA 8000 and FSC have an immediate attraction for developing countries because they are already up and running at an international level, they have comparatively high market recognition, regulators exist and are acknowledged, and the certification bodies have gained experience. Nonetheless, these certification initiatives might need to be tailored or adjusted in order to be made appropriate for a particular jurisdiction or context, to reduce the possibility of being transformed into an unnecessary non-tariff barrier.

104. A second aspect emerging from the wider use of alternative inspection reforms concern the type of industry sectors most likely to lend themselves to this type of approaches. As indicated, the picture is still unclear from lack of hard data, but some trends are appearing.

- Sectors that are the most highly organized (e.g., an industry association with broad membership, high credibility, and a good governance structure may be in a better position to enter into a public-private collaborative arrangement than an industry sector that lacks such an industry association);
- Sectors that, while highly organized, do not have large numbers of members and hence pose less of a challenge for governance. For example, in a particular sector, the flower sector or the wine sector may involve a comparatively small number of firms, and hence be easier to organize to participate in a public-private sector collaborative inspection arrangement;
- Sectors that are comparatively stable;
- Sectors whose problems have attracted the most critical attention (particularly Western attention). Candidates might include those products with a strong retail/consumer profile, such as the manufacturing of toys, athletic footwear, chocolate, bananas, coffee, and wood products;
- Sectors whose problems have already attracted internationally developed solutions which, with appropriate adjustments to address local conditions, could be adopted with minimal adjustments (e.g., ISO 14001, OHSAS 18001, SA 8000, FSC), and
- Sectors where the informal side and the presence of “free rider” firms are limited.

## **6. Lessons and Conclusions**

105. Governments in developed and developing countries are launching and supporting alternative initiatives for reasons that differ in intensity but also overlap in rationale. The most analogous ones include the need to:

- Respond to stretched and limited public sector budgets in general, and enforcement activities in particular;

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governments, and standards bodies. For more information, see: <http://www.iso.org/iso/en/comms-markets/developingcountries/iso+developingcountries-03.html>

- Bring the expertise and capacity from the non-public sector that governments may lack in order to enhance the effectiveness, efficiency, transparency and accountability of conventional inspection approaches;
- Obtain greater marketplace credibility than provided by conventional public sector inspections, and
- Reduce systemic failures in sector-based inspections due to compliance costs for firms and corruption.

106. Success in launching and sustaining alternative inspections initiatives also require extreme attention in harnessing these drivers. Three issues in particular merit attention.

- Drivers are overwhelmingly market-based. They replace or avoid command and control mechanisms. They require balancing positive and negative incentives of a large array of stakeholders ranging from consumers and producers, national and international. They are often linked to export or to secure success of an international treaty. Other time, they are based on competition between private evaluators and other third party certifiers. As well, they are responses to complains about the 'costs of doing business' and in particular to failures of burdensome and ineffective public inspections.
- Drivers tend to vary according to the type of scheme and the degree of development (though this later perhaps not as much thought from the outside). Certainly for developing countries, the "external dimension" will dominate at the beginning. However their sustainability will mean the need to develop an "internal" constituency.
- A major justification will be that these schemes bring productivity gains for the consumers, firms and the taxpayers. However, few initiatives include from the beginning a productivity measurement component and if the productivity promised fails to materialize, promoters require further public intervention in terms of mandatory regulations, explicit sanctions or subsidies.

107. The increasing use of public-private inspection arrangements indicate that though the rewards are high, they are also more complex to manage, they dependent on a degree of cooperation among participants that may vary over time, and they raise accountability and legality issues. In other words, they are not a substitute for deregulation or "privatization" of the inspection functions. For instance, proper quality control over third party certifiers implies that the authorities build skills to monitor the capabilities of the third party certifiers and that collusive activity is not taking place.

108. Alternative inspection initiatives also require a degree of flexibility to allow the inspection system to evolve as conditions change. It may take years to fine-tune the institutional, instrument and process elements of the program. As with any reform initiative, risks exist that alternative inspection initiatives can be misused, inadvertently contributing to regulatory failure and corruption.

109. Finally, as with any reform initiative, there are risks that alternative inspection initiatives can be misused, inadvertently contributing to regulatory failure and corruption.

110. The necessary adjustments to accommodate self-evaluation, assurance, and accreditation/certification approaches to public-private collaborative inspections vary considerably depending on the model being considered and the context within which their use is contemplated. As noted earlier, although the four alternative inspection approaches

were presented as unique and distinct techniques, there are instances where the approaches can be used in tandem.

111. For any public-private collaborative inspections initiative to work effectively and credibly, public transparency, accessibility, and accountability of the initiative and its ongoing operation should be nurtured from the beginning.

- **Public transparency** refers to the ability of members of the public, the private sector, and other interested stakeholders to obtain accurate and comprehensive information concerning how the program operates. Failure to provide such information leaves the program open to assertions that it is undermining public policy objectives, and that special arrangements are being made that favor some parties over others.
- **Accessibility** refers to the ability of firms who are subject to the program or potentially so, and those that are benefited by the program, to participate in program decision-making in a meaningful and appropriate manner, including establishing the level of the standard. If, for example, a particular factory cannot determine who is administering a program, and cannot obtain the appropriate information to obtain a certificate, then the program is not accessible to that factory. If a worker or community member is negatively affected by the program's operation, or wishes to bring a possible incident of non-conformity to the attention of those responsible for program administration, and cannot do so, then the program is not accessible to that stakeholder either.
- **Accountability** refers to the answerability for a program's operation, should problems arise. It is essential that the government and non-governmental parties responsible for program operation are clearly identified, the consequences for their failure to properly administer the program set out, and a process to ensure that the bodies responsible for program operation properly administer the program is provided. Whether based on a legislative framework or not, all alternative inspection approaches should also consider an effective and visible government oversight function, often coupled with additional specialized inspection and review powers, in order to properly carry out the oversight function.

112. Probably the most common method of ensuring that self-evaluative, assurance, accreditation and certification methods have the proper degree of transparency, accessibility and accountability is by embedding them in a clear legal and regulatory framework specifying the rights and obligations of each main actor (i.e. authorities, firms and auditors). This is true whether the program is compulsory or voluntary (i.e., there is no contradiction in having a voluntary program established and structured in legislation, as is the case with the **United Kingdom** voluntary code regime described earlier).

113. Systematic communication and evaluation of this system are necessary to sustain them. Stakeholders must be asked to indicate the benefits these alternatives have delivered as well as to identify costs. Serious evaluations can provide feedback for a national strategy, as well as for the design and implementation of subsequent individual projects.

114. Importantly, these principles have a crucial dynamic dimension. Transparency and accessibility encourage feedback and this increases efficiency. As they require efforts in

accountability and trust building between the private and public sectors, they also tend through time to improve the degree of compliance and reduce the level of regulatory intervention by authorities.

115. The process of developing a legislative framework also helps to ensure that a program's terms are discussed and reviewed publicly, and that the proper level of human and financial resources, integration with other programs, and broader marketplace and societal impacts are assessed. The resultant legislative framework can then structure and inform all subsequent activities, providing common guidance for program administrators, private sector participants, and other affected parties. For such an outcome, public consultation and regulatory impact assessment of voluntary standards, codes and other quasi-regulations should also be required. The danger is that CSR standards advocated by supply chain demands may impose such compliance burdens that they drive the developing country firms into the informal sector.

116. In new sectors and jurisdictions, a gradual implementation approach can reduce the risks of failure and backlash, and can raise the sense of ownership from stakeholders. As well, authorities may encourage or develop pilot versions before final deployment. A more modest start, through voluntary cooperation of a small but enthusiastic set of participants, can provide clearer information on the costs, benefits and risks of the developing inspection system. However, the value of a cautious incremental type of an approach should not become a pretext for procrastination when there is evidence that significant action is needed in the short term.

117. A published and well-understood compliance policy that clearly sets out through whom and how the program will operate and integrate with more conventional public inspection aspects is another important element. Provision of a complaints-reactive process for bringing incidents of potential non-compliance to the attention of regulators that might otherwise have escaped their attention should also be established at the beginning.

118. Ideally, all of this is accomplished against a backdrop of a well-respected and easily accessible judicial system, capable of responding, if needed, on both administrative and enforcement issues. Irregularities, capture, abuses from firms, third party auditors or certifiers or authorities associated with the inspection system can undermine the objectives pursued if there is no recourse to a credible and impartial judicial system. On the other hand, the fact that the programs are well publicized, consulted and locally supported can withstand such challenges.

119. Nonetheless all these lessons, important areas for further understanding and investigation exist. Some of the key issues to further explore are:

- *How to manage changing incentives*
  - Are there key incompatibilities and differences when managing a CSR versus a Non-CSR standards?
  - In the case of developing countries, to what level the external pressure can support or hinder the adoption of the new initiatives?
  - Are there specific tools and methods to build political constituencies for alternatives inspection approaches and sustain them through time? How to avoid that these lobbies continue to be justified and accountable?
  - What should be the role of the judiciary?
- *How to regulate private evaluators*
  - Are there specific competition issues when setting up schemes based on voluntary standards?
  - What is the minimum level of competition related capacities required by public officials to ensure a playing level field when private evaluators are involved?
- *How to ensure quality of standards & processes*
  - How to apply high quality ex ante evaluation criteria when designing and implementing quasi-regulations and other standards that are becoming de facto mandatory?
  - How to decide when a gradual implementation approach is better than a swift and radical one?
- *How to monitor and evaluate alternative approaches*
  - How to evaluate the financial and human resources needed by governments when launching alternative inspection initiative?
  - What type of performance indicators are required to supervise the implementation of initiatives and achievement of outcomes?

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### **Annex 1. Tentative recommendations/checklist**

- What are the risks of failure when using private based inspections?
  - Non-compliance by firms due to failures of private evaluators may result in serious and unacceptable risks to the public interest (e.g. serious safety health violations). This outcome will discredit the authorities but can also have impacts on other public-private systems.
- Will the initiative be perceived as credible to the marketplace, foreign governments and the public?
  - Alternative Inspections should be built on a solid basis of support from as wide a basis of affected stakeholders as possible, including firms to be assessed. If stakeholder support is missing, those who did not support at the outset are in an ideal position to undermine it in its later stages.
- Are the negative and positive incentives for the firms to comply with the new schemes the right ones?
  - Pressure points and levers should be identified and used. This may include financial incentives (e.g., short term aid from a development bank, procurement advantages, lowered insurance premiums); administrative benefits (e.g., in case of demonstrated good behavior, reduced frequency of government inspections, less intensive government inspections, expedited permits), public pressure (e.g., recognition through initiatives which signal a business is a “good corporate citizen”), and legal/liability aspects (e.g., compliance with an alternative inspections scheme will insulate from enforcement action or will be taken into account in a favorable way in sentencing, assuming evidence of good-faith efforts at compliance).
- Is there a constituency that can support in the long term the alternative inspection approach?
  - Identify and work closely with champions from each stakeholder group to “carry forward the message to the troops”.
  - Build in opportunities for and incentives for the public/workers/employees and competitors (where appropriate) to identify and expose non-compliance with the alternative inspection approach.
- Are private evaluators capable and well regulated?
  - Ensure the conformity assessment private evaluators have adequate technical capacity;
  - Ensure that the private evaluators are sufficiently independent from firms and other stakeholders to avoid claims of conflict of interest and real or perceived capture by industry or the other interest groups.
  - Ensure that competition abuses (collusion, cartels, etc) do not develop

among the private evaluators. In particular, provide for entry and exit of private evaluators either as firms or as individuals.

- Make sure that government can be held accountable for results of private evaluators, and has the residual enforcement and rule-making authority and expertise to properly and effectively carry out its oversight responsibilities.
- Are the standards and conformity assessment procedures efficient, transparent accessible and accountable?
  - Are the standards to be applied clear and objective and capable of being consistently applied;
  - Have the development and acceptance of mandatory or voluntary standards been developed according to best practice.<sup>67</sup>
- Do the authorities have a proper monitoring system in place?
  - Consultations, preliminary reports, evaluations of alternative inspections initiatives from other jurisdictions or sectors is time and money well spent, because it can assist in identifying challenges and solutions that might otherwise detract from successful Alternative Inspections.
  - Considerable financial and human resources over the short term are needed to reap longer-term dividends.
  - Transparency of the alternatives can supplement direct oversight. Ensure proper public reporting responsibilities through out the program.
- Is the inspection system properly evaluated?
  - Clearly set out objectives, options, critical success factors, performance indicators, contingency plans and get buy-in on these.

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<sup>67</sup> Standards and procedures should follow international quality best practice similar to the 1995 OECD reference checklist for regulatory decision-making consisting of the following tests:

1. Is the problem correctly defined?
2. Is government action justified?
3. Is regulation the best form of government action?
4. Is there a legal basis for regulation?
5. What is the appropriate level (or levels) of government for this action?
6. Do the benefits of regulation justify the costs?
7. Is the distribution of effects across society transparent?
8. Is the regulation clear, consistent, comprehensible and accessible to users?
9. Have all interested parties had the opportunity to present their views?
10. How will compliance be achieved?