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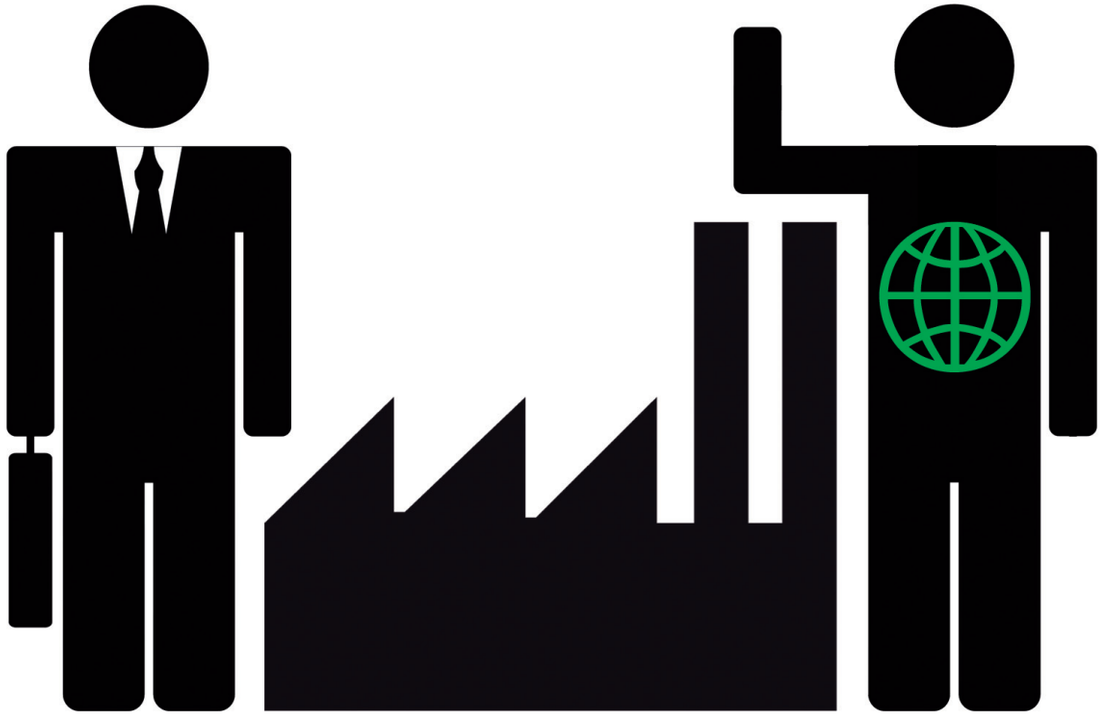

Luc Fransen

Luc Fransen

MINDING THEIR OWN BUSINESS?

Firms and activists in the making of private labour regulation

ACADEMISCH PROEFSCHRIFT

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aan de Universiteit van Amsterdam
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in het openbaar te verdedigen in de Agnietenkapel
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Lucas Willem Fransen

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Contents

Acknowledgements vii
List of frequently used abbreviations xi
Introduction. Private labour regulation: why, and what is it good for? 1
Chapter Two. Understanding developments in private labour regulation. A framework for research 15
Chapter Three. Labour standards, implementation, and degrees of control. A power based analysis of private regulatory approaches 45
Chapter Four. How to dress up a code. The politics of developing approaches to private labour regulation 75
Chapter Five. Choosing a code. Understanding business support for private labour regulation. 109
Chapter Six. Competing codes. Understanding the dynamics of private regulatory competition 151
Chapter Seven. Conclusions and prospects 183
References 205
Appendix I: The eight private regulatory organizations 215
Appendix II: Methodology 219
English summary 229
Nederlandse samenvatting 233
About the author 237

Acknowledgements

[Ring] [Ring]
"Hello? This is Luc speaking."
"Luc, hi, it's me. Can I ask you a quick question? You're studying Corporate Responsibility for clothing production right?"
"Yes, that's right."
"OK, it's like this: I'm with my boyfriend in the Kalverstraat, and he needs new jeans and I want it to be ethically produced, you know, no labour abuse, no child labour. At what shop should we buy it?"
"Ermm…geeze. It's not that I can give you a list of shops where I can guarantee you ethically produced clothes. I can give you some hints though of companies that are doing a lot. Company X for instance, or Company Y.
"Is Company Z also among them? That would really be helpful because we already found a nice pair in their shop. I don't like Company Y and I don't think we will find anything his size at Company X."
"No, Company Z is not among them. I wouldn't say that their approach is state of the art."
"Well… can you maybe say that there is…well, something positive about their activities anyway? We don't have all day for shopping you know…"
[sigh] "If you put it like that…No, Company Z is not the worst of the worst in terms of Corporate Responsibility policy."
"Thanks, that's all we needed to hear. We'll buy their jeans then. Bye bye."
[Click]

Over the past years this research endeavour has benefited from the encouragement I received from a large group of people taking an interest in its topic and in me as a person. I have often rejoiced over the fact that Corporate Social Responsibility provokes so many different responses in discussion: curiosity, enthusiasm, aggravation, skepticism. This has decidedly inspired me to define and answer the research questions that form the basis of this study. Five years after starting my research I want to thank here the people who I most vividly remember to have made a major contribution to the successful finishing of my PhD trajectory.

I became academically interested in globalization, governance and Global Justice issues during my undergraduate studies through the teaching of Gerd Junne and Jos de Beus at the University of Amsterdam and of Ronen Palan and Kees van der Pijl at the University of Sussex.

After finishing my MA thesis, notably Gerd and Brian Burgoon encouraged me to think about developing a PhD research plan.

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During these travels I was present at seminars, conferences, sourcing fairs and I visited offices of firms, non-governmental organizations and government agencies. I am thankful to all representatives of these organizations who were willing to act as respondent or otherwise assist me in collecting data for this research.

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The Political Economy PhD club of the ASSR was usually the first place where I presented work in progress. Comments were always useful and I learned a lot from the work of others as well. The list of people that have inspired me is too large to mention here, but I take the liberty of mentioning in particular VU-comrades Laura Horn and James Perry for their generosity.

Beyond the Club, I have been inspired and motivated by many friendly colleagues in the School. Whether during seminars, workshops, drinks, lunches or chance meetings in the hallway, the ASSR was always a warm place for me largely due to Jasper, Corina, Sjoukje, Hester, Katharina, Eelke, Michiel, Alex, Victor, Mihai, Mafe, Malini, Tjerk Jan, Mara…and many others.

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Daar aan de boorden van de Waal, ligt de oude Keizerstad. I feel honoured to have known Joost, Marijn and Jasper for over thirteen years now. In the last couple of years, as in many before, talking about and enjoying life, football and music with them has been a great pleasure.

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From start to finish of this research, my favourite person has been and is Marleen Termeer. I thank her for standing by me, supporting me, occasionally offering practical advice and help, and very often providing the much needed distractions. Now that mine is finished, I wish her all the best of luck with her recently started PhD research!

During this research period, my grandmother Riek Siebum-Ter Bogt passed away. As a young girl she worked in the ateliers of the the East Dutch clothing industry. To relieve boredom while sewing, she and her colleagues would teach each other songs. Because of this, she was later able to humour her grandchildren by showing she had a fitting song for almost every occasion in life. This dissertation is dedicated to her loving memory.

Amsterdam \ Groningen
November 2009

List of frequently used abbreviations

AIP: Apparel Industry Partnership
BSCI: Business Social Compliance Initiative
CEO: Chief Executive Officer
CEP: Council on Economic Priorities
CCC: Clean Clothes Campaign
CIES: *Comité International d'Entreprises à Succursales*
CSR: Corporate Social Responsibility
EPZ: Export Processing Zone
ETI: Ethical Trading Initiative
EU: European Union
FNV: *Federatie Nederlandse Vakbeweging*
FLA: Fair Labor Association
FTA: Free Trade Association
FWF: Fair Wear Foundation
GSCP: Global Social Compliance Program
ICFTU: International Confederation of Free Trade Unions
ICS: *Initiative Clause Sociale*
IGO: Inter-Governmental Organization
ILO: International Labour Organization
IPE: International Political Economy
ISO: International Standard Organization
ITGLWF: International Textile, Garments and Leather Workers' Federation
JO-IN: Joint initiative on accountability and worker's rights
MNC: Multi-National Corporation
MSI: Multi-Stakeholder Initiative
NGO: Non-Governmental Organization
OECD: Organization for Economic Cooperation and Development
PR: Public Relations
SA 8000: Social Accountability 8000
SAI: Social Accountability International
SEDEX: Supplier Ethical Data Exchange
UN: United Nations
WRC: Worker Rights Consortium
WTO: World Trade Organization

Introduction. Private labour regulation: why, and what is it good for?

Stefan, Corporate Social Responsibility (CSR) manager at a German clothing firm, sits at his desk. He reviews the latest results from the monitoring of labour conditions in factories in Indonesia that supply clothes to his company. The results are encouraging in most instances: suppliers are improving on their compliance with the code of conduct on labour standards that his firm adopted, and changes are being implemented in the production chain. But Stefan has a problem with one factory that supplies sport shirts to Germany. The monitoring report devised by his colleague had shown good results there regarding wage levels and mechanisms for dialogue between workers and management. But now he has received a letter from European activists that provides a totally different account of the situation: workers are being underpaid and bullied into long hours of overtime by management, at the threat of dismissal. Stefan will have a discussion with the activists on their findings later today. He is very much hoping that there is a misunderstanding. He does not want the word to get out that his company is involved in labour abuse; that would be bad for the company. Inside the company he has lobbied extensively for the current labour monitoring system with the buying department and the CEO. It would not look good if the efforts of the CSR managers had yielded such negative results. Perhaps the activists will be able to give him some time to remedy the situation before they go public with the issue on their website.[1]

1. Introduction

Corporate Social Responsibility is a phenomenon of contemporary global capitalism that raises eyebrows and arouses suspicion. We expect companies to be interested in profit and share prices, so why then the focus on social issues? And what may we expect from the efforts of people like Stefan to implement private rules? Both are vital questions. Academic literature has a satisfactory answer to the first question, while the second question for now remains open. This dissertation seeks to deliver more insight into the potential of a specific type of Corporate Social Responsibility, namely the private and voluntary rules that companies adopt to improve working conditions in transnational production chains.

Specifically, this study seeks to describe and explain the developments within the clothing industry to organize private rules for improvement of labour conditions in transnational production chains. It focuses in particular on answering the following three questions: first, how and why do

[1] In this dissertation all chapters are introduced with a short story printed in Italics that illustrates how the theme of the chapter is related to issues that actors in the field of private regulation politics are dealing with. All stories are based on material gathered through interviews and observations during the field work. In most cases, names are changed or made anonymous to protect the sources. Throughout the chapters data that supports particular arguments is presented within the text using more specific quotation and annotation.

private regulatory organizations focused on improving labour conditions develop more or less stringent policies to improve labour conditions in supplier factories?; second, how and why do businesses come to support specific approaches to private regulation of labour conditions?; and third, how, why and to what effect do competition, cooperation and convergence emerge between the existing regulatory organizations focused on labour standards in the clothing industry?

This study argues that answering all of these questions requires attention to evolving relationships between political actors that shape the policies of private regulatory organizations and their business membership. It shows how private regulation can be more or less stringent on a range of dimensions, including the degree to which interest groups are involved in implementation and review of rules. It explains the difference in approaches emerging from private regulatory organizations by showing how fluid, unpredictable group dynamics matter more in earlier phases of negotiation, while actor positions and agendas matter more in later stages. It shows how managers of firms choose to support specific forms of private regulation mainly as a response to societal pressure, which itself is affected by the position of these managers in national environments and towards other industrial actors. And it explains competition, cooperation and convergence between private regulatory organizations by showing how past events, evolving rivalries, vested interests and organizational differences within the industry and activist realms encourage splits in the regulatory effort. These findings add up to the study's general conclusion that the approach to private labour regulation for clothing production is diverging in more and less stringent forms of regulation -- the former supported by firms and activists whose organizational concern is relatively closer to the point of production (brands, designers, labour advocates), and the latter by firms and activists more directed towards the point of consumption (retail firms, consumer action groups).

This introductory Chapter will first review how such *private labour regulation*, as it will be called hereon, has emerged. It will then position the research as an endeavour to understand the contribution of private labour regulation to governing global labour standards.[2] And the Chapter will conclude with a presentation of the structure of this book.

2. Why private labour regulation? Globalization, neo-liberalism, and societal pressure

Private labour regulation is, first and foremost, a response to developments in the globalization of production. For many mass consumer goods, and in particular for clothing which will be the focus of this dissertation, the organization of production has become geographically dispersed and

[2] This study applies the term *private regulation*, which is understood to mean the steering of behaviour of private actors through rules laid down by private actors. The issue could also be discussed alternatively as *private governance* (compare Nölke & Graz, 2007), *private authority* (Cutler, Haufler & Porter, 1999), or *private regimes* (Haufler, 2001) since private regulation forms a sub-category of these broader concepts (compare Braithwaite, Coglianese and Levi-Faur, 2007:3). Because of the specific emphasis on *rules* for corporations in this institutional form of *governance/regime/authority*, *regulation* is the most appropriate term.

functionally disintegrated. Transnational production chains have come into existence that connect formally independent companies, running from Northern America and Europe into Central and South America, Eastern Europe, and South and Southeast Asia.[3] Labour-intensive manufacturing increasingly takes place in regions of the world characterized by relatively low wage levels and an abundant non-skilled labour supply. Studies point to an overall asymmetry in power relations, advantaging Northern buyer firms *vis à vis* Southern supplier firms in these chains. In practice, mass consumer good manufacturing suppliers positions may vary in their positions from a complete dependence on Northern firms to a situation of interdependence, most often in cases where suppliers are in control of important parts of the production process. Analysts also note a deflationary pressure running downward through the chains (Kaplinsky & Morris, 2001; Gereffi & Memedovic, 2004; Dicken, 2006).

A specific overall characteristic of the clothing industry in particular is its dependence on seasonal and fashion change, creating constant pressure for brands and retailers to adapt their offers (Abernathy, 1999). This stimulates reliance on the part of buying firms on a large and differentiated set of suppliers who regularly receive large orders with tight deadlines. Suppliers taking in orders are mostly run by a small group of managers heading factories in which a large group of low-skilled manufacturing workers, most often females and migrants, work for long hours at a time, often putting in overtime to meet deadlines. Studies emphasize that these specific industrial characteristics could stimulate excessive overtime, abuse, and suppression of labour representation . For instance, labour abuse has been identified at the bottom of the clothing chain in cases where part of the manufacturing process takes place in small informal workplaces in India, often involving sewing work by whole families, including children (Ascoly & Finney, 2005). In China, factories supplying global clothing brands have been known to apply harsh quasi-military management techniques in order to push workers towards higher production levels (Ngai, 2005).

Mass consumer good production, and clothing in particular, are thus a manifestation of a fragmented and, from the perspective of power, unequal form of global economic integration, which potentially puts workers in a vulnerable position. But this alone does not suffice as an explanation for the emergence of private labour regulation, for this situation could easily remain the domain of public regulatory efforts by governments, or, alternatively, not become subject to any form of political action at all, if it were not resisted by any of the parties involved. Neither is the case, and

[3] Throughout this dissertation, the links connecting different elements of the production process will be referred to as *production chains* and where these links traverse borders they will be named *transnational*. This term has a similar meaning to *commodity chains* (Gereffi et al., 1994), *value chains* (Bair, 2005), and *production networks* (Dicken, 2006) but lacks the contested aspects of these three: commodity chain, because the usage of the term 'primary commodities' leads some to wonder whether only agricultural products are implied; value chain is criticized for its absence of an inherent theory of value; and production network unnecessarily implies a network form as the prominent type of organization.

this reveals two further aspects of what Tim Bartley calls the contemporary '*institutions of globalization*': a neo-liberal regulatory framework on the global level coupled with increased societal pressure for responsible social and environmental conditions of production in developed countries (2003:441).

Regulating globally organized production has been subject to discussion since the rise of the multinational corporation in the 1960s. Kees van der Pijl (1993) describes how in the 1960s and 1970s the adoption of binding rules for multinationals slowly stalled, after initial enthusiasm. Western social democrats and the increasingly confident coalition of developing countries committed to growth through state-led capitalism contributed to a flurry of activity on rules for business in the United Nations (UN) and the Organization for Economic Cooperation and Development (OECD). This coalition dissolved, however, during and after the economic crises of the 1970s. Slowly, developing countries shifted their attention to a strategy of export orientation, while in Europe and the United States notions of de-regulation and freedom for markets gained prominence. This is often understood as the starting point of what both popular and academic publications refer to as the *neo-liberal* perspective on global production: global (rather than domestic) markets are understood as the source of growth on the domestic level, and trade across borders is therefore the key to development (compare Harvey, 2005). From this it follows that barriers and impediments to world trade should be reduced.

Increasingly, national regimes in the Global South have followed this call and labour regulation has subsequently been affected. States with governments as different in political character as China, Indonesia, and Mexico nowadays all have (more or less elaborated) legal frameworks that ostensibly protect workers' rights. But low standard working conditions persist in export industries (and elsewhere) because of a lack of implementation and enforcement of these legal frameworks, through purposeful neglect, lack of monitoring capacity, or otherwise. Generally, the neglect of working conditions is attributed to the focus of government policy on production for export, which does not leave much room for a sensibility for the worker's plight, especially when countries seek to compete as providers of non-skilled mass manufacturing. In some countries, the shift towards export orientation has been paralleled by legal adjustments reducing worker rights (see for instance Kocer, 2007). Moreover, legal fictions have been created for production areas, zones within countries where companies can perform at different tax rates and with different local rules than the rest of the country. Public attention has at times focused on the deplorable working circumstances and limited worker rights in these so-called Export Processing Zones (for a popular account see Klein, 1999).

On the inter-governmental level, the neo-liberal regulatory framework is supported by UN policies that favour international voluntary action by businesses over binding rules for economic

transactions (Hummel, 2005). Similarly, Tim Bartley describes how attempts to introduce labour requirements in World Trade Organization discussions, as well as developing new International Labour Organization instruments inspired by consumer labelling, have failed due to governmental and non-state actor opposition (2003: 449-451; compare Van Roozendaal, 2002).

But these failures do not mean that the call for improved working conditions in export industries has been silenced. It is, however, redirected away from governmental and inter-governmental bodies of decision making. From the second half of the 1980s onward, Northern multinational corporations immersed in transnational production chains more often come under pressure once they are revealed to have sourced from supplier factories where instances of labour abuse take place. Pressure is exercised by labour and gender activist networks, national trade unions, developmental NGOs, and consumer and/or shareholder movements in Northern America and Western Europe. Most of these groups have ties with worker organizations in producer countries and act on their behalf. These activist networks vary in significant ways in the depth and width of their ties with workers on the ground, as well as with regard to overall advocacy goals, organizational agendas, and the support base that these groups are accountable to. Individually or collectively, activist organizations campaign for better working conditions in the Global South, using multinational corporations (and their brands) as levers. Amplified by reports in the global media and assisted by critical investigative journalism, they increase sensitivity among the consumer audience in Europe and Northern America for global justice issues, a political force first tapped into by the Fair Trade consumer label movement in the 1980s. Public campaigns are followed up by face-to-face interactions with firm representatives – such as with Stefan above – sometimes contentious, often more cooperative. With the support of Northern governments, the option of voluntary action by firms on the labour issue then begins to take shape and evolves through further interactions between businesses and activists.[4]

[4] The words 'activists', 'NGOs', 'civil society groups', and 'pressure group' are often taken to mean similar things, but defining them in a satisfactory way is quite challenging (see Vakil, 1997). This study uses the word activism to denote the activities of non-state actors towards the development of global labour standards, and refer to the actors practicing these activities as activists. For a definition, it takes the Oxford English Dictionary description of activism as "intentional action to bring about social or political change. This action is in support of, or opposition to, one side of a controversial argument." Empirically these concepts allow for an analysis of both trade unions and so-called NGOs as they are, in fact, intertwined in activist networks. Using this term also solves the problem that CSR professionals themselves sometimes distinguish between NGOs and unions, and sometimes not, depending on the role of these organizations that they address. 'Activism' and 'activist' as words stress objective and role over organizational membership and characteristics and therefore are suited for the purpose. Where differences between activist organizations are relevant, the descriptions become more specific, e.g. 'trade union' versus 'labour activist network'. The term *NGO* is used for the established not-for profit political organizations with professional standing organizations, such as Oxfam, but in most cases is specified, f. i. 'Developmental NGO', 'Environmental NGO', etc. The broader term *interest group* is used to denote all groups claiming to represent a larger political stake within the field of private regulation politics: unions, NGOs, activist networks and business support groups. Sometimes here this group is broken up in *societal (interest) groups and business (interest) groups*. Finally, when societal interest groups are addressed within the institutional logic of a membership of or governance of a private regulatory organization, the term *stakeholder group* is used, in line with the term of *multi-stakeholder governance.*

Private labour regulation thus came into existence because of the long term coincidence of a global dispersion and fragmentation of production, a neo-liberal public regulatory framework, and increased societal pressure on companies. In the language of social theory, these three phenomena form the *structural contexts of action* that facilitate private regulatory action for working conditions. Chapter Two will elaborate on how these contexts give shape to the politics of private labour regulation.

3. What to expect from CSR and private regulation

The debate on the private regulation of labour conditions in export producing countries focusing on production of mass consumer goods for export is connected to two sets of concerns about the impact of globalization, both articulated on the left side of the political spectrum in Northern countries. The first set of concerns is about the social consequences of the global re-organization of production. Europeans and Northern Americans worry about job loss and economic downturn through the outsourcing of production to emerging economies. As consumers, many also worry about the fact that the shifting of production across borders may lead to their products being made in undesirable working conditions in sweatshop factories. The second concern refers to an observation by left wing critics that the current wave of globalization encourages the breakdown of regulation protecting the rights of workers worldwide, simultaneous to the development of regulation protecting the interests of capital. This leads to concerns about global business dictating political agendas.

Many people are pessimistic about voluntary business action through so-called Corporate Social Responsibility as a tool to alleviate working conditions. Businesses deliberately choose for cheap labour in the lower parts of their production chain, both left wing and right wing critics argue. They therefore should not be expected to work towards the improvement of workers' lives. That would be like a fox guarding a henhouse. CSR is most likely to remain an easy corporate communication exercise without real substance, and might easily pass over, as do many business hypes. If it does not, it is highly questionable whether it will spread throughout and across industries. More likely it will be confined to a small minority of 'evangelical entrepreneurs' (a term from Hertz, 2001:156; for CSR pessimism see Lubbers, 2002; Klein, 1999; *Ec*, 2005). In addition, left wing critics fear that corporations will use CSR only to further their own business, instead of contributing positively to social and environmental issues (see Sum, 2005). By contrast, right wing critics fear that addressing CSR issues will deflect managerial attention from what should be the core objective of corporations: the interest of shareholders (Jensen, 2001; Friedman, 1970). Next to this pessimist school there is also a pragmatic interpretation of CSR. The pursuit of private regulation by, for instance, unionists and NGO representatives should not be read as an ideological

preference on their part, but as a form of strategic calculation. According to them, public regulation as it is now insufficiently protects workers in export factories, and any foreseeable public regulatory change or development in the near future is not likely to change that situation. Pragmatists hold that if companies respond to societal critique, this can provide fast leverage points for labour advocates in alleviating labour crises. As an activist notes jokingly, "Every time we publish a research report about working conditions, the next day several airplanes embark bringing the CSR managers of firms to the factory sites in question to address the problems mentioned".[5] CSR then is a strategy to turn those exact qualities of Western big business that frighten left wing critics towards societal ends: their power in and flexible management capacity of the supply chain, and their overall economic and organizational resources.

CSR also has its optimist supporters, or 'believers'. A first strand of believers is convinced that business organizations have a lasting responsibility towards society that extends beyond legal compliance, irrespective of the enforcement capacity of public governance. These believers therefore welcome voluntary business action towards societal goals in general (see for instance Carroll, 1991; Davis, 1973). A second strand focuses more on how CSR notions might foster new private governance mechanisms engaging businesses in cross-border issues on a voluntary basis. These new mechanisms might be more flexible, adaptive, and efficient for solving global injustice problems than the current inter-governmental governance architecture (see Ruggie & Kell, 1999; Rischard, 2002).

In general, pessimists, pragmatists, and believers all agree that one important precondition needs to be fulfilled in order for CSR to have beneficial and lasting effects: it needs to have substance, and be more than mere words or short-term incidental action. What is required is structured and sustained policy in line with norms established in international organizations. As observers hold, it is not yet certain that the Corporate Social Responsibility policies, as adopted by such famous firms as Nike, Levi's, or H & M, will all develop in the same progressive direction; and indeed it is uncertain whether the critical mass of companies in industries sourcing from labour-intensive production zones will follow their lead (see for instance Kolk & Van Tulder, 2005). Believers seem to be confident that things will work out well. Pragmatists seem less sure. Left wing critics are convinced (and right wing critics hope) that the worst case scenario for private regulation will prevail.

So what does private labour regulation nowadays look like? To what extent are business organizations supporting it? How do they do that and why? How does competition between firms and regulatory agencies in the making of private rules affect the quality of regulation? And what is

[5] Interview N5.

the role of activist organizations in all this? To this research agenda the present study of private labour regulation in transnational clothing production chains will contribute.

4. Research questions

With company material on CSR policies reflecting cautious optimism, and activist research emphasizing a lack of progress with companies and appalling circumstances of production, the questions raised above open up space for academics to contribute to a political debate about the fruits of CSR. Specifically, scholars might analyze contemporary private regulatory efforts that aim to deal with CSR issues. Over the last couple of years, it has been predominantly business management scholars, but also political scientists, sociologists, and geographers, who have heard the call.

But how should one go about such research? Unsurprisingly, there are many different approaches and more are coming into existence, aiming to say something about the state of CSR and private regulation today. Predominantly, these attempts are prescriptive and descriptive-evaluative, although some also aim to explain. Scholars make assessments of the private policies of a specific company (see for Nike Zadek, 2001; Locke et al, 2007); propose tools to evaluate and compare company policies (Scherer, Baumann & Palazzo, 2006); analyze and compare specific private regulatory tools for their content (O'Rourke, 2003; Kolk et al, 1999; Merk, 2007a); describe and evaluate private regulatory monitoring processes (O'Rourke, 2002; Esbenshade, 2004); or broadly evaluate particular private regulatory organizations through single or dual case studies (Rieth, 2005; Pattberg, 2005; Espach, 2005; Hughes et al, 2007) or CSR practices in a particular country (Goebel, 2007; Kocer & Fransen, 2009).

General findings are sobering. CSR in most accounts is presented as incomplete and unfinished work in progress. Companies have only just begun adopting policies, private regulatory organizations have only recently been established, and much of the activity seems directed at gathering knowledge on problems rather than actions to address them. Most authors adopt the process perspective and on the way find either some factors to take issue with, or some phenomena signifying progress, depending on their prescriptive commitments. Three relevant issues stand out in most accounts: first, the diversity in approaches to private regulation that have emerged (see for instance Kolk et al, 1999; Rieth, 2005); second, differences in enthusiasm about adopting CSR measures among business actors with varying organizational attributes, with some companies seemingly engaging more than others with issues such as labour and environmental standards (Cashore et al, 2004; Espach, 2006; Sasser et al, 2006); and third, the emergence of a scene of actors engaging in political discussion on private regulation with evolving policy disagreements

about the appropriate way to regulate corporate responsibilities (see amongst others Utting, 2004; Jenkins, 2002; Bendell, 2004; Ross, 2004).

These three dimensions of variation in approaches to private regulation, business positions, and policy positions are all crucial to the credibility, reach and influence of CSR private regulation. Specifically, these variations point to the dynamic between the qualities of rule (how credible are different approaches to private regulation to improve labour, environmental, and human rights standards?), and actor support (specifically business support) for private regulation (how widely are different types of rule adopted voluntarily by companies?). If we want to understand the workings and consequences of this dynamic better, three different political processes should be understood more deeply: the development of different types of private regulation, the development of business support for specific types of private regulation, and the consequences of competition between different institutional types of private regulation.

While in principle these three processes can be studied separately, it makes more sense to take them together, as their outcomes affect each other. First, the quality of rule is dependent on the institutional politics in which different actors bargain for their favoured form of private regulation when developing new private regulatory organizations. In this phase, however, actors also respond to notions of future business support and competition or cooperation with existing regulatory organizations. Once in existence, patterns of business support within an industry affect the impact that private regulation has on an industry. And competition between regulatory approaches for business support may once again affect the quality of rule at the same time as it affects the total impact of specific types of private regulatory policy. This requires a comprehensive, systematic industry-level and issue-focused approach towards analyzing political interactions between actors and rules.

This study will follow such an approach in the analysis of private labour regulation in transnational production chains. Labour abuse, child labour, and low wages in supplier factories are key issues in anti-corporate critique and have been subject to efforts at private regulation from both industry and activist camps for over a decade now. Private policies for global labour are also a specific category in the repertoire being developed by labour advocates to counter the vagaries of economic globalization, though unionists discuss whether it will be a revitalization strategy or a threat to worker organizations (Justice, 2002; Van Roozendaal, 2002; Burgoon & Jacoby, 2004).

The ambition of this study is both descriptive and explanatory. Accordingly, the main research question is formulated as follows: *What describes and explains developments in private regulatory organizations covering labour conditions in transnational production chains?* In line with the three political processes identified, this question is then divided into three sub-questions.

The first sub-question asks: *What describes and explains the development of private regulatory organizations in terms of stringency of rule?* The study follows the format of a specific single-issue assessment of private labour regulation, focusing on the level of the regulatory organization. With regard to the specific characteristics of regulation, it does not apply a learning-based (Zadek, 2001) nor a legitimacy-based approach of academic assessment (Wolf, 2004), but instead focuses on stringency (compare Murphy, 2004; Rodriguez-Garavito, 2005).

The study then sets out to explain the development of different types of private regulation by focusing on actors and interactive processes, through an approach that allows for general findings by comparison between cases, while stressing the ultimate interdependence of the processes of regulatory development within an emerging regulatory issue field. By doing so the ambition is to build upon approaches looking only at a small selection of similar regulatory organizations, upon those that compare dynamics in formally independent cases, as well as on approaches that only focus on the content of policies without asking how these came about (Hughes, 2007; Esbenshade, 2004; O'Rourke, 2003; Kolk et al, 1999).

The second sub-question asks: *What describes and explains the preferred commitment by a company to a particular private regulatory organization over others?* In line with recent studies, this research analyzes the choices which corporations make for specific forms of private labour regulation (Sasser et al, 2006; Cashore, Auld & Newsom, 2004; Wetterberg, 2007; Marx, 2008a). It seeks to extend this literature by not only evaluating policy outcomes and fixed actor attributes, but also by illuminating relevant process dynamics and interactions between different actors, and their relation to internal corporate developments.

The third sub-question asks: *What describes and explains the direction of processes of convergence and competition between international private regulatory organizations?* It aims not only at a description of the evolution of private regulatory fragmentation (compare Cashore, 2002; Pattberg, 2005), but also at an assessment and explanation of specific competitive dynamics and their results. Empirically, it thereby seeks to scrutinize and refine the perspective in the literature on the beneficial effects of private regulatory competition (Sabel et al, 2000; Elliott & Freeman, 2003; Cashore & Bernstein, 2007).

Figure 1 summarizes the main research question as it is made up of three intertwined descriptive and explanatory sub-questions.

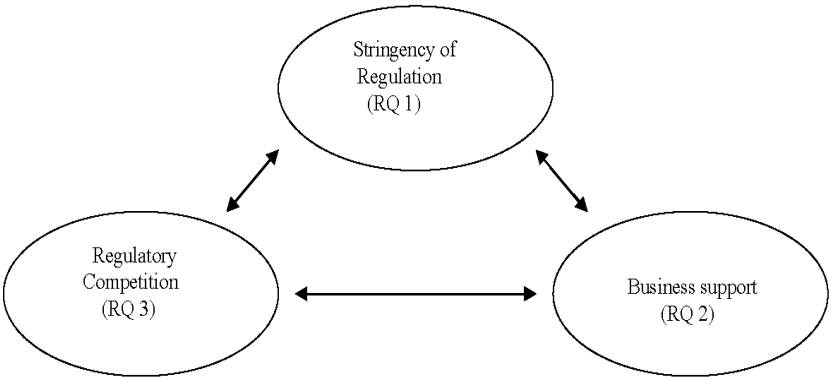

Figure 1. Research questions

5. Outline

This work is submitted as a PhD thesis and as such conforms to a specific structure of academic writing. First, the plan of the research is presented, followed by chapters which present empirical material to answer separate sub-research questions. In the conclusion, general contributions are re-stated, limitations are identified, and ideas for further research are shared. This outline will summarize the analysis and findings of all following chapters.

Chapter Two presents the research design. The methodological approach is laid out, focusing on an inductive strategy of data gathering, which results in findings for the realm of private labour regulation of clothing production and propositions for a wider field of cases of private regulation. Then it will present the theoretical approach of the study, which is influenced by sociological institutionalism but takes a particular perspective with regard to the significance of agency in the political process, focusing in particular on timing and interactive dynamics. Finally the chapter will elaborate on the overall argument of this book, presenting descriptive and explanatory parts of the argument separately.

Chapter Three as the first of four empirical chapters presents the description of eight private regulatory instruments for the clothing production chain. It will introduce the different forms of regulation that exist and the expectations that are attached to them in policy and academic literature. A comparison is made between both business and multi-stakeholder governed regulatory organizations for the clothing chain on the basis of three criteria. First, a distinction is made in the

degrees of labour standards that are adopted. Second, different degrees of specificity of implementation policies included in private regulation are identified. Third, private regulatory organizations have different answers to the question of who controls enforcement and implementation of private standards: society or business? These three criteria together form the measure of *stringency* for regulatory approaches. When measured this way, the eight private regulatory approaches score from lower to higher degrees of stringency, affected most by the issues of control and to a lesser degree specificity. Business governed organizations are then less stringent, while multi-stakeholder governed organizations have medium to high stringency scores. These distinctions are then linked to discussions in the CSR policy field, to show that the question of which group controls regulation informs many current policy debates about the right way to develop and implement private regulation.

Chapter Four explains how the different private regulatory organizations have developed and how their specific policies towards the regulation of labour standards have evolved. Regulatory fragmentation in the field has come about firstly because actors in different countries have preferred to build private regulation with each other in national settings with local groups. Second, fragmentation has arisen because of policy disagreements, leading groups dissatisfied with the development of an initiative to leave and build their own organization with likeminded actors.

It will be argued that for an understanding of the different outcomes of negotiation, three categories of factors need to be taken into account: the significance of timing (when the organization is developed), a priori characteristics of the groups involved (which groups are bargaining and what are their agendas), and internal bargaining processes (specifically focused on interaction dynamics in the forging of a minimal sufficient consensus). In the building of private regulation the study shows that at later stages of regulatory development in the field, initiators of regulation have a more specific view of what regulation should look like and select allies close to their agenda to negotiate with. Stringent regulation is in this way built by activist groups coming together, while business-controlled, less stringent regulation is built by groups of business actors. In contrast, during earlier stages of regulatory development, negotiations are more fluid and interactive, with personal dynamics influencing the direction of regulatory development. Different multi-stakeholder gatherings thus lead to different types of private regulation and different levels of stringency.

Chapter Five deals with the question of how companies develop preferences for supporting particular forms of private regulation, given the differences identified in Chapter Three. It does so by combining the case study and interview material informing all of the chapters with quantitative analysis of a survey of firm representatives compiled for this study. The Chapter traces the development of the CSR policies of European firms and comparatively identifies drivers to strategic

choices being made. It will be argued that companies predominantly develop CSR policies out of protective concerns. Activists are important in this respect since they raise the salience of the labour conditions issue and orchestrate societal pressure on companies. But activists have only a limited impact on the type of private regulation that companies choose.

In order to understand business support for private labour regulation this study first of all takes into account variations in national and industrial institutional pressures between firms, and secondly the managerial room for manoeuvre. Finally, the chapter shows that preference formation by firms in the future can be more and more affected by the choices of other firms exercising power in the industry or production chain. The net macro result of firm preferences is a predominance of lower levels of stringency in the implementation of private labour regulation.

The *Conclusion* chapter returns to all these issues in brief and establishes the main contributions of the research in terms of theory and approach. Finally, it will address points for future research, inspired by the notion that the structural contexts of action urging research in this field are in the process of change. The chapter will deal with changes in power relations between developed and emerging economies, relations between companies in the clothing and wider retail sector, developments in public regulation and trends in consumer behaviour.

For review, *Appendix I* summarizes the characteristics of all private regulatory organizations discussed in this study. In the *Methodology Appendix (Appendix II)* more detailed information can be found about the specific planning and operation of data gathering.[6]

[6] This book contains detailed information about different political processes leading to specific assessments about the state of private labour regulation today. Although cover-to-cover reading is welcomed, it is not required for an understanding of the contribution of this study. The next chapter presents the overall research design and theoretical approach. Readers who are initially interested merely in the general argument of the book may read in particular section 2.4 of this chapter, followed by the conclusion chapter, which reiterates the general message and embeds it in considerations for the future concerning politics and research. The specific gist of the different parts of the general argument can then be reviewed in the empirical chapters, 3, 4, 5, and 6, which are packed with specific information on corporate and activist strategies in the making of private labour regulation.

Chapter Two. Understanding developments in private labour regulation. A framework for research.

A researcher of private labour regulation is reviewing data, trying to make sense of his findings. He leafs through the interview transcripts. In an interview with a firm representative he reads: 'We did not know what to expect from interaction with NGOs, we had little experience with them'. In an interview with an activist his eyes remain fixed on this line: 'At that time we had no idea what was going on at those companies.' From another firm representative he reads: 'We talked about implementing codes of conduct, but we did not know yet what that would mean.' And another one says: 'We did not understand what all the fuzz was about. Why were activists so angry about the system we proposed to check labour standards?'

The researcher picks up his notebook, writes the word 'UNCERTAINTY', puts question marks behind it and underlines it a few times.

1. Introduction

Social scientists studying CSR are in an academic field that is still in the process of gaining maturity, in terms of body of knowledge, established methods, schools of thought and theoretical controversies. The researcher is therefore faced with a degree of uncertainty in designing and executing his or her work. To a considerable extent, as this study will argue, this uncertainty is mirrored within the empirical domain of study, where actors concerned with private regulatory policies are sometimes unsure of what position to take and not completely aware of what allies and opponents are doing- nor who exactly the allies and opponents may be. This chapter is concerned with addressing the approach to understanding private labour regulation: its policies, political dynamics and the behaviour of the actors involved.

To reiterate, the study seeks to answer the question of *what describes and explains developments in private regulatory organizations covering labour conditions in transnational production chains*. This question is made up of three sub-questions: first, *what describes and explains the development of private regulatory organizations in terms of stringency of rule?* Second, *what describes and explains the preferred commitment by a company to a particular private regulatory organization over others?* And third, *what describes and explains the direction of processes of convergence and competition between international private regulatory organizations?* As seen in the previous chapter, these questions reflect prominent issues in the discussion on Corporate Social Responsibility in contemporary Western societies: whether CSR is an actual 'real' policy or merely an empty PR exercise; whether CSR is making a positive

difference to the issues it aims to address or not; and whether CSR is hype destined to remain a niche practice in most industries, or whether it will become mainstream.

In this chapter, first the general design of the study will be discussed, followed by an elaboration of the theoretical approach. Finally, the general argument will be laid out, focusing on the descriptive and explanatory element of each sub-question.

2. Research design

As said, most research on private regulation and CSR is as much a work in progress as the policies under study. Given the analytical ambitions of this study, what is lacking is prior grounded empirical work by scholars, with specific lessons for the questions raised. Similarly, up until now, studies of CSR and private regulation have not yet fully expressed the substantial controversies existing between groups of scholars that may inform research strategies. This means that the researcher is working *alongside* emerging understandings of private regulation, rather than *on the basis of* established literature on private regulation. This research will therefore analyze developments in private regulatory organizations in a manner that is as much *inductive* as deductive. The specific focus will be on developments in all the private regulatory organizations of the clothing production chain because arguably it is the first production chain for which such a wide range of private labour regulatory organizations have been developed. This facilitates the identification of variance in dependent variables and possible independent variables in different cases, while holding industrial characteristics constant in order to identify relevant patterns. To guide the research into these cases, a range of expectations can be drawn from existing research into CSR and into broader social interaction in the international political economy. But much of the empirical work will develop inductively. This means, firstly, that the key findings of the study only apply fully as description and explanation for the selected field of cases, and secondly, with regard to a wider field of cases, the study's findings have the status of propositions, and will be formulated as such.

The clothing production chain is also perceived among CSR practitioners and analysts as being the most advanced in terms of producing private regulation for labour standards. In terms of case design, this implies that there is a danger of overstretching the argument on the possibilities for private regulation across industries, by only focusing on the quite unrepresentative *best practice case*. But, at the same time, by studying the most advanced industries the political limits of private regulatory experiments are most clearly identified. Second, it provides the circumstances for fruitful comparison of the findings from the clothing chain with developments in other, not too dissimilar but less CSR-active, production chains. Third, it is important to note that the diffusion of lessons on private regulation across industries takes place among field practitioners, where the proceedings in

the clothing chain can act as exempla. This means that on a qualitative basis, findings in this study may also resonate with the politics of private regulation in other industries, indicative of the relevance of findings well beyond the field of clothing production.

Spill-over of lessons derived from private labour regulation for clothing to other issue areas, such as environmental policy, are also possible. Similarities in approaches to private regulation of both social and environmental issues have already been recognized (Bartley, 2003; Fransen & Kolk, 2007). Increasingly, newly emerging private regulatory organizations focus on broad *sustainability* issues, including both social and environmental guidelines. And, finally, many company representatives involved in strategizing on private regulatory policy have both environmental and social issues in supply chains on their plate. It can therefore be questioned whether the level of generalization in this study on the propositions on policy and actor behaviour should stop at the border between social and environmental policy.[7]

In order to answer the first applied research question (describing and explaining private regulatory approaches) the study focuses on the eight existing private organizations as separate cases to understand the different constellations of actors negotiating the development of different forms of private regulation, using comparison between the cases to identify possible mechanisms. These cases are the Fair Labor Association (FLA), Worker Rights Consortium (WRC), Social Accountability International (SAI), Ethical Trading Initiative (ETI), Fair Wear Foundation (FWF), Initiative Clause Sociale (ICS), Worldwide Responsible Apparel Production (WRAP), and Business Social Compliance Initiative (BSCI).

For the second research question (describing and explaining patterns of business support for private regulatory organizations) the development of the CSR strategies of European clothing firms on the issue of labour and ethical sourcing is studied comparatively, predominantly analyzing firms that have, and some firms that have not, joined different sets of private regulatory organizations. The analysis will focus on all European companies currently involved in private regulation for labour circumstances, checking for economic and political characteristics. For interviews, firms are selected from Western European countries: the United Kingdom, Germany, Switzerland, the Netherlands, Sweden, and Finland. In the first instance, variation between firms is sought within these countries to identify differences in choices for or against specific private regulation. Qualitative patterns found between company characteristics and private regulation strategy are then tested quantitatively for a larger group of firms using a survey instrument designed and implemented as part of the present study. Focusing on European companies means allowing for possibly relevant institutional variables (home country government, political culture, socio-

[7] Of course this influence goes both ways and this study is therefore also sensitive to the adoption of ideas from beyond the private labour policy arena.

economic configuration) while holding certain possibly-relevant factors constant (such as EU policies with regard to CSR, social and environmental issues, the trade regime, as well as the general geography of European production chains).[8] Such a setup eases inductive inference. Focusing predominantly on companies that have become private regulatory participants highlights patterns of divergence in particular kind of private regulatory preference rather than divergence between companies that have and companies that have not (yet) joined private regulatory organizations.

For the third applied research question (describing and explaining regulatory competition and convergence dynamics) the analysis focuses on private regulatory organizations on the macro-level as belonging to one field (regulation for the clothing production chain), where the development of regulation is intimately connected, regulatory organizations respond to each other, and involvement and exclusion patterns influence fragmentation and/or harmonization of the regulatory field. In addition, purposive attempts at cooperation and convergence are studied, such as the Joint Initiative on Corporate Accountability and Worker Rights (JO-IN), the Supplier Ethical Data Exchange (SEDEX), and emerging alliances between existing regulatory organizations.

Seven different forms of data gathering are used for this research (for more details see the Methodology Appendix): policy analysis of private regulatory programs; analysis of other policy documents relevant to actor strategies; interviews with representatives of relevant organizations; study of documents provided by these people; presence at discussions between these people; analysis of a survey questionnaire distributed among firm representatives; and analysis of industry economic data.

3. The approach

The theoretical approach of this study can be categorized as *Sociological Institutionalism*. Many studies on topics concerning CSR and private regulation in political science, policy, and management disciplines make use of sociological institutionalist insights (for example Ruggie & Kell, 1999; Bernstein & Cashore, 2007; Delmas & Toffel, 2000; Wetterberg, 2007). Investigating corporate behaviour that seems at first sight to go beyond short-term profit motivations clearly goes well with the core assumptions of sociological institutionalism, which regards firms' embeddedness in social interaction and the influence of norms and discourse (Leander, 2000). What is more, the prescriptive call by leading management scholars regarding CSR (Davis, 1970; Carroll, 1991) is that firm managers *should* reflect more on their organization's embeddedness in society and its interactions with different societal groups. Apart from an analytical approach, sociological

[8] Switzerland and Norway of course are not EU members, but are substantially affected by these policies due to their economic and political ties with surrounding EU member country neighbours.

institutionalism therefore also seems to inform a normative perspective on business. On three points this study seeks to specify the sociological institutionalist understanding of private regulation. In particular, it deviates from some of the general elements in this emerging body of literature by emphasizing agency *in* and heterogeneity *as a result of* processes of social interaction in the politics of private regulation, and then by questioning the value of policy consensus as a product of social interaction between antagonistic actors in the policy field.

First, this study proposes an explicit theory of how, in certain contexts, actors' agency may matter more than in others, in an effort to counter the implicit determinism in theories emphasizing common rules and scripts as explanations for action (for discussion see DiMaggio, 1988). This is a fallacy that institutionalist CSR studies could easily become subject to when emphasizing how societal expectations structure corporate policies. The concept of isomorphism, for instance, figures prominently in studies as an explanation for corporate strategies towards CSR (see for an example Wright & Rwabizambuga, 2006). What is unclear is whether it is so easily applicable given that it is rooted in assumptions about evolved and relatively stable organizational field dynamics. These assumptions may not fit in all empirical circumstances. In particular, the time at which the interactions between actors are analyzed may have an influence on the degree and form of institutional pressures on them. This study is therefore sensitive to the temporal aspect of institutionalization processes in empirical analyses. Institutional patterns do not emerge out of thin air. It may therefore be wise to take into account the possibility that CSR is taking place in a field of politics *in the making* rather than an organizational field already *in existence*. Depending on the specific empirical field, the interactions between the actors under study can be of a more contingent, improvised, and unfinished nature than the concept of isomorphism allows for. This is specifically so given the relatively new status of CSR as a policy topic. This opens up space for agency in particular.

Second, sociological institutionalism focuses on the evolving nature and results of social interaction. Sociological institutionalist analyses of private regulation and CSR seem predominantly interested in the harmonizing effect that social interaction has. It is not an exaggeration to state that many CSR studies emphasizing the influence of social interactions and norms tend to conflate routines in social interaction and institutionalization on the one hand, and increasing common understanding about policies and agreement among business and societal actors in the field on the other (Ruggie & Kell, 1999; Bernstein & Cashore, 2007).[9] Intellectual godfathers March and Olsen (1998: 959-960), however, in their summary of institutional logics in politics, distinguish two general effects of the patterns of engagement between actors, which are a source of malleability of

[9] This conflation may possibly correspond with an implicit or explicit Habermasian notion of ideal communicative action. For discussion on Habermasian versus post-Habermasian perspectives on interaction, see for instance Hillier (2003).

those actors: one leading to convergence, mutual confidence, and positive trust spirals between actors, and the other leading to heightened differences and possible conflict. Any study of institutional patterns in the field of CSR politics should be open to both options, not merely to the former. In the end, empirics should inform which of the two scenarios is more suitable. Sociological institutionalist analyses of private regulation can therefore be as much about understanding evolving *heterogeneity* as about *homogeneity* in actors' perspectives and actions concerning private regulation.

Third, some scholars conflating institutionalization with the emergence of common understandings on private regulation also add to this a degree of optimism about the content of this understanding. The concepts of *learning* and *best practice* all denote that the substance of the policy agreement on how to perform private rules among actors is progressive. This study is explicitly agnostic *a priori* about the general political consequences of social interaction as it evolves in the field of CSR issues. It does not propose that the effect of prevailing norms and routines on an emerging policy consensus is necessarily progressive, in the sense that the result conforms to general pre-established notions of fairness, or the quality of rule and policy. It may very well be that if a consensus were to emerge among actors about what constitutes legitimate private regulation, it would fall short of any of these pre-established notions, or would fare worse in comparison to one or more of the policy positions previously held by a minority group of actors in the policy field. In addition, the study seeks to leave room for a less optimistic position regarding the consequences of a possibly emerging common understanding of appropriate private regulation as a result of institutionalization. This follows Zald et al (2004), who discuss the possibility of *symbolic compliance* by actors as a response to institutional pressures, meaning that lip service is paid to a rule raised by an external environment, but no actual organizational change takes place. Similarly, Meyer & Rowan (1977) describe the *de-coupling* of organizational purposes when pursued by different departments of one organization as a response to a multitude of (possibly conflicting) institutional pressures. The question is then whether learning processes towards common understandings on private regulation can actually reach the operation of organizations 'deep down'.[10]

Below, this theoretical approach is introduced in more detail. The discussion will start from an elaboration of structure and agency in social theory, introducing an approach that may best be

[10] By adopting an institutional approach to private regulation this study has much in common with the research agenda of Tim Bartley (see for instance his 2003; 2007) regarding the development of private governance for the American forestry and apparel industries. This study and his can principally be seen as complementary. The present study however extends on Bartley's work in three ways: first, by focusing empirically on American *an*d European cases, creating a more complete and diverse picture of institutional mechanisms; second, by focusing more extensively on the processes of institutional convergence between private regulatory bodies and corporate preferences for institutions; third by theoretically emphasizing the social-relational aspect of of institutional mechanisms, next to temporal aspects also highlighted by Bartley.

called *situated agency*. Following that, the resulting repercussions for an understanding of levels of analysis, rationality, ideas and interests, power, and regulation-market dynamics will be discussed.[11]

a. Structure, agency, institutions, change

Questions of structure and agency are frequently debated in the context of political science theorizing. This study starts off with structuration theoretical assumptions (Giddens, 1984; for application in International Relations see Arts, 2000; Wendt, 1987). This means that the duality of structure is emphasized: 'the structural properties of social systems are both medium and outcome of the practices they recursively organize' (Giddens, 1984:25; for discussion see Arts, 2000). Structures are here understood as rules and resources. Actions are taken by actors that are able to reflexively monitor their course of action. At the same time, however, actors are constrained by rules and resources, bounded to routines, in need of predictable social practice, and not always able to view the consequences of their actions. Transformation through conscious action is therefore possible, yet structured and constrained.

Following Emirbayer and Mische (1998), this study holds that structuration (like its French cousin, Bourdieu's Theory of Practice, 1977) has two important deficiencies that need to be addressed. First, structuration theory's emphasis on the interrelatedness of structure and agency discourages an effort to analytically separate the two in studies of social (and political) processes. This stance is also called *analytical dualism* (Arts, 2000:536). Second, Emirbayer and Mische hold that structuration theory is too silent on the conditions that make for transformation and change, and the particular structural contexts of action that allow for agency to come into play to a greater or lesser extent. The authors thereby touch on a matter also discussed in a different language, namely that of institutions, regarding the possibility of institutional transformation and the significance of institutional entrepreneurship (see for instance Barley & Tolbert, 1997; DiMaggio, 1988).

Emirbayer and Mische distinguish between action (understood as an expression of the synthesis between structuring forces and agency dynamics), actors (entities whose actions require explanation), structural contexts of action (those forces constraining and enabling actors' actions), agency (the potential element within every action of acting out purposive change to structural conditions of action), agentic orientations (the scale of possible actions that may be deliberated by an actor), and agentic capacities (the extent to which actors can act more or less agentically). Two insights then are crucial. First, structural contexts may determine courses of action, but they do not always do so to the same degree in every circumstance. Second and following, structural contexts of

[11] Because of the inductive character of this study, understanding of more specific mechanisms elaborated in the approach has developed more or less alongside the understanding of what is happening in the field. Wider applicability of the approach should become manifest in studies of fresh, yet to be grazed empirical fields (on a similar note see Oye, 1992:4-13).

action determine the degree of agentic capacity that actors have, *but not what actors actually do with this capacity*.

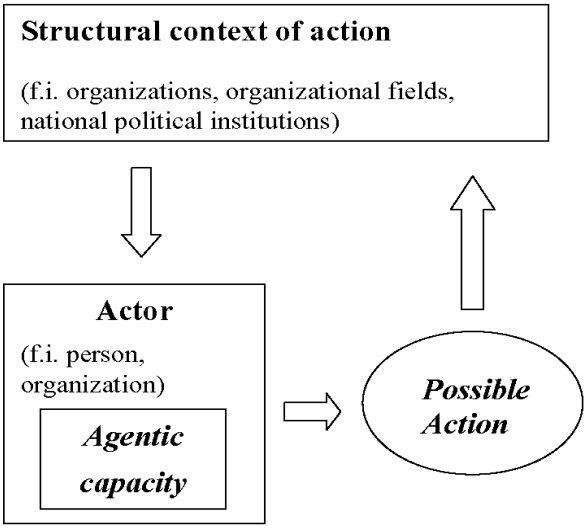

Figure 2. Structure and agency under conditions of temporal-relational stability

Accordingly, actors' positions are portrayed as in Figure 2. Agentic capacity is small, so that actor's behaviour can be understood on the basis of structural conditions enabling and constraining his or her actions. Conditions can then be established that render his or her actions to be structured in such a way. Most notably, action is structured under conditions of institutional stability and predictability. These, as anthropologists argue, can be found in certain temporal and relational qualities of social life that reduce uncertainty (Swidler, 1986; Mead, 1932). Experience of time affects agency, since knowing what tomorrow will bring affects greatly what you will do today. Stable expectations of present and future stimulate structurally predictable action. Think for instance of a person working inside an organization in a position that has a specifically described script of continuous actions per month. These actions may be explained by these scripts that are ultimately set according to the purpose of the organization; the consequence of these actions will mostly be a replication and solidification of the organizational purpose, as a structural context of action. Similarly, relational qualities of social life, understood as the degree to which actors are embedded in multiple cultural, social-structural, and social-psychological contexts, affect uncertainty and induce degrees of stability and predictability. Low degrees of multiple embeddedness then means higher stability. Think for instance of a firm that operates in a market with a clear division of segments, a stable hierarchy of firms, and predictable relations between

industry and government agencies. The activities of this firm may be understood using respective relevant structural contexts as explanatory factors.

Most institutionalist approaches recognize that in a situation of higher uncertainty, such as in the case of external shocks and unforeseen events, transformations of structured patterns of actions are possible, and agency or *entrepreneurship* therefore matters (see for instance Dimaggio & Powell, 1991; North, 1990; Thelen, 1999). In the current approach, as Figure 3 shows, agentic capacity then rises and different courses of action can be foreseen as a result (A, B, C, D).

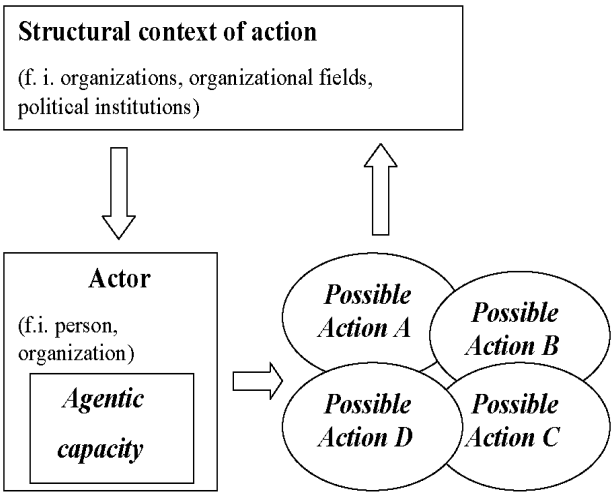

Figure 3. Structure and agency under conditions of temporal-relational instability

From a temporal perspective, it can be noted that different stages of a process of change may induce different degrees of agentic capacity, and may also involve specific types. Emirbayer and Mische (1998:1006), paraphrasing the work of Mead, hold that '[a]ctors engaged in emergent events find themselves positioned between the old and the new and are thus forced to develop new ways of integrating past and future perspectives.' An example may be the development of a business strategy by a manager for a new company that engages with an innovative field of economic activity, for instance applying new technology.

From the perspective of embeddedness in multiple contexts one can think of a person inside an organization holding different responsibilities towards different groups, having to manage different expectations and roles at the same time. According to sociologists, this may lead to more autonomous personal and occupational identities and more reflective engagement with structural

contexts of action (Emirbayer & Mische, 1998; Coser, 1975). Both perspectives may lead to agentic action transforming structural contexts of action.

Applying this to private regulation settings, it is possible to see how structure and agency go together to make for specific forms of interactions and outcomes. The actors interacting in the making of private regulation are organizations and their representatives. From the perspective of the organizations, different structural contexts constrain and enable action. For firms, these may be their position in the market, position in the organization of the value chain, and home country. For activist groups, these may be constituent groups, home country, networks of affiliation, donors, and organizational purpose. From the perspective of the persons inside organizations, corporate strategy, organizational hierarchy, culture, and job descriptions may structure activities.

By engaging in political interaction at the beginning stages of the development of private regulation, these groups are faced with an uncertain environment that allows for projective behaviour. This is because, in terms of Maarten Hajer (2003:175), this field of political interaction at its inception is *an institutional void*:

> there are no clear [generally accepted] rules and norms according to which politics is to be conducted and policy measures are to be agreed upon …we can observe that there are important policy problems for which political action either takes place next to or across [existing and established political] orders, thus challenging the rules and norms of the respective participants.

This is similar to the identification of a 'veil of uncertainty' identified by some regime theorists (see Young, 1991; compare Junne, 1992) in international public negotiations, that make it difficult for negotiators to see how agreements will affect them in the long run. However, the void stimulates more uncertainties, since actors involved may also lack information on the content of the problem to be addressed, the governance product to be negotiated, the process through which this must be done, and what actors to involve. The implication of this is that the political process towards the development of private regulation for most actors takes place, to some extent, alongside an internal but interactive process of development of preference, strategy, and strategic repertoire.

Taking a simplified figure (Figure 4, left side) of policy choice under conditions of an institutional void, it is clear that actors cannot reason back their actions and preferences on the basis of the present possibilities or on trajectories travelled by those they relate to, such as their inspiration models, their peers, their opponents, or otherwise. There is thus little room for iteration or structurally set action. The actors have to create those institutions and set the example for action themselves. This is a specific situation of uncertainty that stimulates the significance of particularly projective, forward-looking forms of agentic capacity. And it may also allow for persons within organizations to make a significant difference, given the lack of clear strategies that organizations at

this point in time can offer to individuals. Both on an organizational and personal level, agency contributes to the formation of new structural contexts of action (the field of private regulation) and possibly also to structural transformations of existing contexts of action, such as the organization a person is working for, or in the case of firms, its strategies towards production or competition.

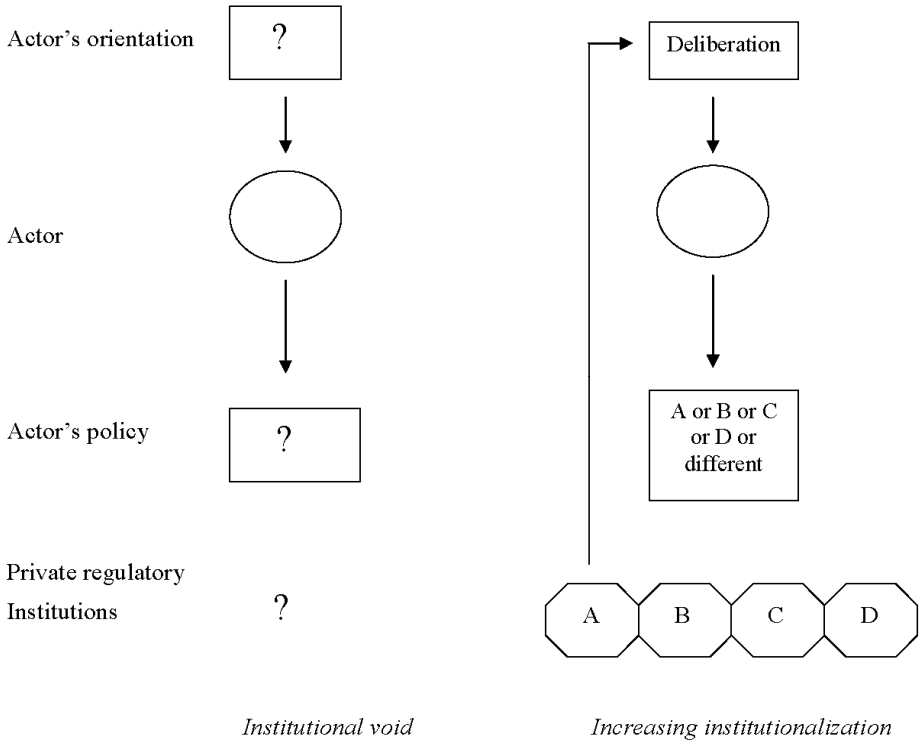

Figure 4. Actors' orientations under the condition of an institutional void and under the condition of increasing institutionalization: the temporal dimension in the duality of the institutional void

With the passing of time and the development of private regulation, particular choices become clearer (Figure 4, right side). With the emergence of political institutions the void starts to be filled up, so to speak, and the field of private regulation itself slowly becomes a structural context of action with particular available routines and scripts. Put in organizational theory terms: the field slowly becomes institutionalized. Uncertainty withers away somewhat for most actors, since regulatory options are now available, which may form the basis of deliberation on the particular orientation and preference of an organization. Furthermore, the choices of other actors in the recent past can inform further strategizing about one's own trajectory.

However, one element of uncertainty still allows for the significance of agency on both the organizational and inter-organizational level, and that is the multiplicity of identities and organizational expectations. This is the case, primarily, because of the peculiar nature of CSR. CSR means a private strategy for public goals and a not-for-profit end pursued by predominantly for-profit organizations. This is a situation to which both for-profit and not-for-profit organizations involved have to adjust, with some representatives inside organizations balancing different institutional pressures and different organizational purposes at the same time (compare Meyer & Rowan, 1977). Second, ongoing globalization (Dicken, 2006), financialization (Palpacuer, 2005; Nolke & Perry, 2007), state restructuring (Palan & Abbott, 1996), and governance shifts (Kohler-Koch, 1996) challenge corporations to develop multiple strategies to answer to different institutional pressures (compare Van Tulder & Van der Zwart, 2006; Muller, 2004). Agentic capacities on the managerial level may therefore remain an important matter, especially in the case of companies or industries going through processes of transformation, or balancing different purposes at the same time. These can be depicted in a simplified dual ideal type model (Figure 5).

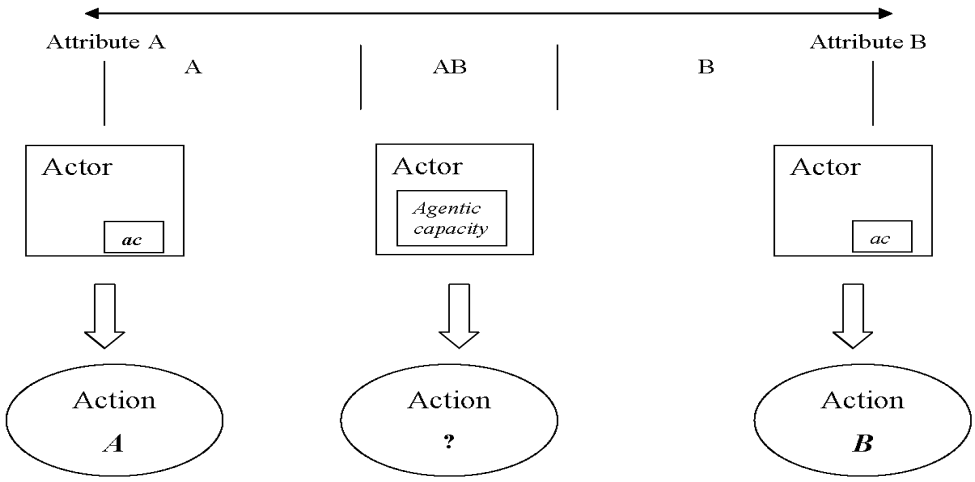

Figure 5. Instances of increasing and decreasing agentic capacity due to different degrees of unified or multiple attributes of the corporate identity of organizations

If an organization, for instance, has a clear embedded strategy (ideal typical attribute A or B), its actions and policies will be easily explained by this strategy, which functions as a structuring context. For instance, a private corporate organization committed to raising shareholder value (A)

will take action to achieve that effect, and policies will be elaborated on that basis. Its policies may be distinguished easily from an organization committed to delivering a public service without a profit motive (B). If, on the other hand, the strategy is mixed or layered (as in situation AB) and the organization fulfils different purposes–think for instance of a public service organization that has recently been privatized but is still legally committed by government to certain types of products and prices–it becomes less clear what particular part of the overall strategy will inform decision making on policies. This form of uncertainty, stimulated by either ambiguity or ambivalence in an organization's strategy (Bartley & Schneiberg, 2002), may induce a greater significance for personal agency inside the organization. Or, compared to other companies with more stable organizational identities, it may render the prediction of a company's actions more difficult.[12] Through this heuristic device, variations in the significance of agency under conditions of increasing institutionalization of the field can be understood.

In short, structure and agency both matter, being in a mutually constitutive relationship. However, sometimes the one may matter more than the other, subject to conditions that have to do with the degree of certainty of actors, related to the social experience of time and identity. The implication of this is that explanations of the outcome of studied political processes are also 'structurated', in the sense that they require the portrayal of these multiple (inter)actions of actors in specific temporal and social-relational settings. This will be done in more detail in the Argument section that addresses the specific research questions, as well as in the following empirical chapters.

b. Levels of analysis

It becomes clear from the previous section that in terms of *levels of analysis*, this study goes beyond macro-elaborations of the development of regulation. It first follows the cue from organizational and management theory, that firms should be understood as actors with specific agency and preferences instead of as a class of agents whose individual behaviour can be deduced from industrial or market patterns. It therefore aligns itself with a body of thought bridging IPE and management studies (Murphy, 2004; Ruigrok & Van Tulder, 1995; Stopford & Strange, 1991). It approaches other categories of actors, such as activists, in a similar fashion. This way, relevant differences as well as relevant interaction dynamics between organizations may be identified.

Second, the individual actions and attributes of persons and interpersonal relations may, as argued above, under certain conditions be relevant for understanding the macro-outcomes of political processes that principally involve interest-representing bodies such as companies, trade unions, and NGOs. In order to understand the significance of these actions, intra-organizational

[12] A parallel comparison from the activist field would be a transnational labour group (attribute A), a Christian consumer organization (attribute B), and a broad developmental umbrella NGO with many advocacy points (AB).

interactions sometimes need to be taken into account as well (compare Fligstein, 1996; Amoore, 2000; Zald et al, 2004). In line with Oran Young (1991), this study emphasizes in certain contexts capabilities such as personal entrepreneurship or intellectual leadership as necessary variables when understanding the outcomes of political interactions between aggregate groups. These persons themselves are not, of course, atomized autonomous actors. Having established their ability to 'swing free' from a particular organizational purpose in political interaction, it is clear that their actions are still shaped by all kinds of social contexts (upbringing, social circle, professional background). The point here, however, is that they bring in something extra next to their functional role as representative of a particular organization, and that their multiple embeddedness in different social contexts thus offers them opportunities for agentic action.

c. Rationality

What are the repercussions of the usage of (a situated agentic type of) structuration and the chosen levels of analysis for the assumptions about the character of actors' behaviour (*rational*, *non-rational, irrational*)? Structuration theory understands individuals to be gifted with not only the ability to act rationally and intentionally. In Giddens' terms, *practical consciousness*, related to tacit knowledge and routines as well as unconscious motives, also plays a role. Similarly, Bourdieu (1977) speaks of a *habitus* as a collection of dispositions and inclinations driving human behaviour, some of which the individual does not consider actively while driven by them to act (compare also John Dewey, 1922, on the relationship between thought and action). Recent insights from neuroscience and psychology seem to confirm these notions of 'half consciousness', practice, and thought after action (Bechara et al, 2000; Damasio, 2005; Miller & Cohen, 2001).[13] While such an understanding of action itself plays down the rationality of human behaviour, it does not need to flatly contradict rational choice theory. After all, thinner forms of rational choice (see Ferejohn & Satz, 1994) already sidestep the question of whether humans identify their preferences rationally, instead of focusing on the rational element in action itself. What is more, because practical consciousness (or *habitus* for that matter) on the macro-level may very well resemble patterns of action conforming to notions of rationality, the identification of a specific pattern of action to which practical consciousness possibly contributes may then be meaningful for theoretical purposes.

It is first important to acknowledge that what is considered *rational* may vary because it is socially structured by the field one focuses on. We need to understand which 'rules of the game' are predominant in different relevant institutional settings of policy making. Second, in line with the

[13] This insight also seems to have raised the interest in the study of *emotions* in political action, both with sociologists (f. i. Jasper, 1998) and political scientists (f. i. Hymans, 2006). While it is possible to describe some of the mechanisms in this study using the terminology of feelings, the approach for now sidesteps this issue, since it would require the very complex task of establishing conceptual boundaries between the realm of emotional and rational stimuli to behaviour. The advantage of referring to practical consciousness is that it is agnostic about this distinction.

previous account of agency, it is important to see that a rational account of political behaviour is subject to scope conditions (Bartley & Schneiberg, 2002). It is well suited for explanations in situations where assumptions of rational desire are in line with empirically identified fixed ideas and identities, as expressed by actors, as well as those situations where rational behaviour can hardly be distinguished empirically from action-structuring mechanisms, such as ritual and routines. Under these conditions behaviour may be successfully subject to statistical tests on the basis of fixed actor attributes, leading to specific outcomes. However, its suitability is only plausible as long as it is taken into account that what is measured may be as much the result of socialization processes among interdependent actors, as it may be an aggregate of independent individual rational strategic choices.

Notions of rational choice are thus less suited for situations marked by higher uncertainty and unstable identities. Once agentic capacities include multiple possible outcomes, and personal capacities as well as interpersonal relations become more significant, as elaborated above, structured patterns of explanation are more difficult to assemble. Ironically, this may also be at the same moment that deliberation on different options of agentic action takes place in actors' minds.[14]

d. Ideas and interests, subjectivism-objectivism, material-ideational

The preceding treatments of structure, agency, and rationality makes clear that ideational, cognitive, and subjective elements matter for an understanding of the type of politics studied in this dissertation. The question is, of course, in what way and to what extent? And, in particular, given the hegemonic status of explaining political action through actors' given 'interests' within the realm of both IPE and IR studies, what is the relationship of identities and ideas to these?

This study holds that it is possible to identify a core interest of persons and organizations (comparable to a 'rump materialism' in IR, Wendt, 1999; in critical realist philosophy, Bhaskar, 1978; and in neuroscience, Damasio, 2005). This interest is in self-preservation. How this interest is actually understood and applied depends on processes of socialization and identification. These processes are structurated as well, with routines and scripts structuring actions of identification, which may transform identities.

[14] The status of *rationality* should also be reflexively taken into account for the fields of social interaction studied. Obviously, the aim of this study is not to fully prove the empirical validity of human action driven by practical consciousness, or, for that matter, rational choice. This study however focuses on political interaction in societies where the predominantly desirable fashion of structuring political action is with reference to rationally informed action and goals. The implication of this is that actors in their own accounts may want to emphasize the rationality of their thoughts and actions, while their original thoughts and actions may at the time have been less rational. This is particularly so for those persons representing organizations that have officially identifiable stakes. Because of this it is important to apply a layered approach to the analysis of people's accounts of their role in policy developments: looking at one level at fact finding, and at another at discourse.

A first step then is to recognize that personal and organizational perceptions matter for an understanding of political processes. Structuration theorists emphasize the importance of seeing, experiencing, and understanding as a phase in human action. This may also be through intersubjective understandings that shape perceptions for groups of individuals (as in organizations). This phase may both enable agentic capacity (as actors envision all kinds of alternatives) as well as constrain it (if perception reduces available options). Understandings of interest then drive human agency, rather than a core innate material interest.

Second, identities matter for an understanding of actors' involvement in political processes. Identities are social constructs that may be constantly re-evaluated, internally and externally, through social processes of interaction. Who you are or what an organization stands for affects perceptions of what is at stake. Who a person is depends on his or her weighing and ordering of ideas and commitments, in constant dialogue with the structural contexts of action he or she is involved in. Accordingly, a person may then also identify a corresponding interest influencing his/her actions and interactions with the world outside him/her.

Within organizations, identity formation and transformation take place between persons and collectives of persons that identify themselves as groups inside the organization. These interactions may take different forms: either conflicting or cooperative, through 'vertical' authoritative imposition or through 'horizontal' 'deliberative' negotiation. In any case, it may be understood as a political struggle for the control of the purpose of the organization (Fligstein, 1996). A stable identity emerges once a conception of control is established that settles what the organization stands for, what it should aim for, and what it should do to accomplish that. An organizational identity is further shaped by an organization's interactions with the outside world, responding to other organizations and external accounts of its own identity (DiMaggio & Powell, 1991; Zald et al, 2004). The overall result of internal-external dynamics of identification is a more or less stable form of organizational identity, with corresponding organizational interest.

Both personal and organizational identity might be very stable, and structure thought and action according to a set of purposes, in relation to which a personal and organizational interest may be formulated. And, as argued above, temporal and social-relational qualities of structural contexts of action may cause identities to be unstable, multiple, or unclear, prone to either ambiguity or ambivalence. At such a point, there are multiple possible purposes and corresponding interests. If, for instance, an NGO is committed to reducing poverty, creating more sustainable development, and raising labour standards, and it advocates for many regional affiliates while receiving money from governments and private donors, how does an NGO representative best serve the organization? How does the NGO structure its preference in certain negotiations about development goals? Or if its advocacy goals cause it to venture into unknown political territory, how can it find out which

political contacts, which regional goals, and what strategic instruments in the end will best conform to its organizational interest? This might be a matter of perspective. It is at this point that the acts of such a representative are difficult to predict on the basis of fixed organizational or personal interest.

In sum, in many settings, organizational and personal identities are stable enough to study them as fixed interests driving the purpose of actor behaviour. The difference between calling something an 'interest' or an 'idea' is then almost reduced to semantics. But, like rationality, interest-based explanations are subject to scope conditions. It is in the situation where identities are unstable that interests become less easy to construct as explanatory devices and their analytical value decreases. Emphasis on perception, understanding, and processes of identification then are crucial for understanding political processes.

e. Power

Assumptions about power are made in every study of politics. Political theorists lament that political science researchers rarely attempt to provide their readers with a consistent view of how power is understood to produce certain effects in their studies (see for instance Guzzini, 2000). Nothing would be more tempting than to follow that bad example in this work. However, the political theorist plea is too forceful to neglect.

In line with the logic of structuration, this study follows David Baldwin (1989) who holds that power should be understood as socially situated within specific political fields, meaning that specific power relations evolve through contexts of action that structure dynamics in a field of political action, and to some extent also possible outcomes. Baldwin suggests that lessons from analyses of power relations between political actors may therefore not be so easily generalizable across different policy fields (for critique see Guzzini, 1993). This study is generally in agreement with that perspective, though it at least offers the opportunity for comparison of power relations across fields of political interaction that have somewhat similar structural contexts of action, which means for instance other political fields revolving around private regulatory arrangements. Additionally, through pointing at the relationship between structuration and situated agency, it offers a framework for thinking about why certain comparisons between different issue fields may be more fruitful than others.

Power is understood, first, as relational, but within the contexts set by structures. These structures enable and constrain actors and may unevenly benefit certain categories of actors more than others. In the field of private regulation, for instance, firms are structurally in a beneficial position since private regulation requires their participation, depending on the voluntary decision of firms. This hands firms capacities for manipulation, while it stimulates anticipatory action on the side of societal actors and private regulatory organizations aimed at luring firms in.

Second, some IPE authors (Strange, 1988; Gill & Law, 1988) would hold that these structural effects themselves may be defined as power, namely structural power. Indeed, structuration also holds that structures may be transformed and thus could have effects through the action of actors as power exercisers. Following Guzzini (1993; 2000) this study holds that the term structural power should be privileged for specific empirically identifiable actions at structuring. Establishing that structures favour some groups of actors' positions over others' is something other than establishing that such a group of actors has exercised power with the favourable situation as a result.[15] Empirically identifiable actions of structuring politics may, for instance, be attempts at influencing discourse and norms, or attempts at influencing rules that apply to markets. The general trait is that their effects are more indirect and impersonal when compared to relational power.

In line with structurational assumptions on actor behaviour (praxis, practical consciousness), power is not only studied as the capacity to influence intentionally, but also the capacity to influence unintentionally (Guzzini, 1993). Power capacities applied by actors both in relational and structural influencing are, following Mann (1986) and Scott (2001), first divided in economic, ideological, and political forms. An example of relational economic power is the imposition of management systems by buyers who have a monopsonic relationship with their suppliers. An example of structural economic power is the establishment through corporate lobby of more favourable economic circumstances for particular sections of an industry. Ideological power in its relational vein can be exercised by one actor 'framing' another actor's actions or identity in such a way as to hurt their reputation or operational legitimacy. In the structural sense, ideological power is exercised once actors strive to establish a particular norm predominance or dominant discourse that sets the terms of discussion in their favour. Political power can be identified for this study by authority and representation capacities. Relationally, this may work as one actor pushes another actor towards other behaviour with reference to the actor's position as spokesmen of a much larger mass of actors. Structurally, authority may be used by regulatory organizations towards their participants, and representation dynamics by leading actors inside organizations to steer the behaviour of their representatives.

Apart from the separation of ideological, economic, and political power, the study also reserves a position for power on a personal level, since it is established that the level of analysis should extend to personal dynamics. Following Weber (1991:245-253), personal power is understood as the possibility to put certain individual characteristics (charisma, social skills, expertise) to use in order to acquire authority on the interpersonal level. Social power then also becomes a significant capacity, as powerful persons influence other persons in their thoughts and

[15] After all, structures may come into existence through many different types of activities, by different actors, and at different times. Structures constraining action are therefore not always manifestations of structural power.

actions through tactics of persuasion and developing emotional relations that stimulate feelings of trust or distrust, compliance or conflict. This may, for instance, be through the stimulation of identification, and interactive social versions of punishments and rewards.

Finally, this study holds that certain structures are more easily within the reach of actors than others as levers for exercising power. Actors, for instance, will attempt to transform the organization of production, the terms of global competition, different kinds of international and national public regulation, global discourses of economic efficiency, or global norms of justice, so as to benefit their own situation. These structures are, however, less malleable by individual actors concerned here, since they stand in a structurated relation to a much larger category of activities by different types of actors. In contrast, the structures specific to the field of private regulation are more easily malleable than the same structures that have to be built up in the institutional void. These structures are, for instance, the private regulation itself and the emerging norms and discourse on what constitutes right, efficient, and equitable private regulation.

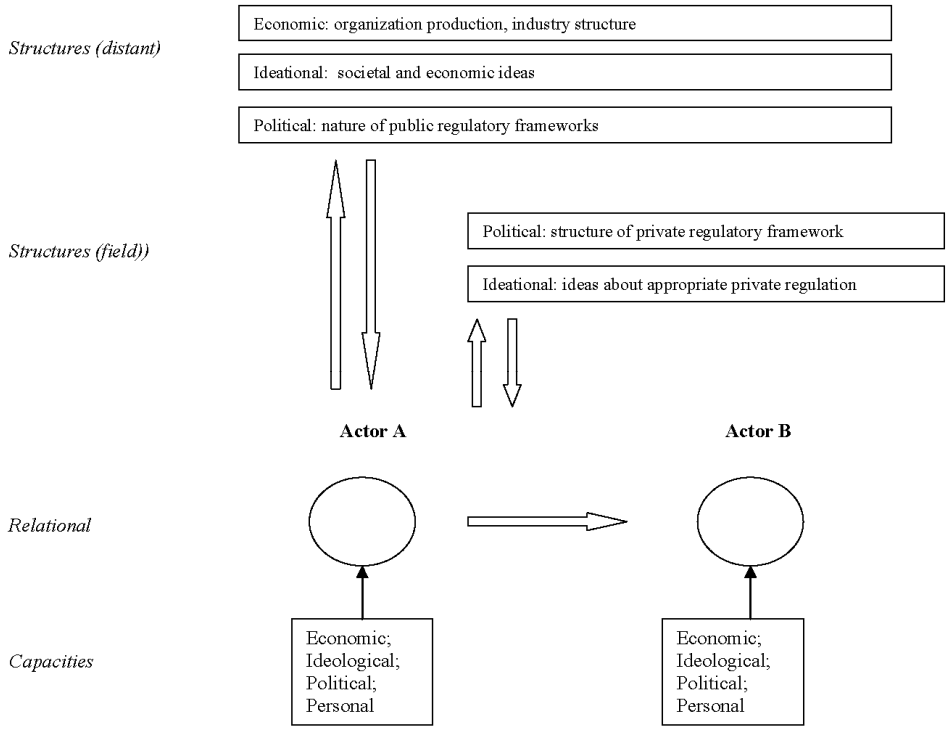

Figure 6. Power capacities, relational power, structural power, and structural constraint in private regulation, from the perspective of actor A influencing actor B

The resulting understanding of power relations for this study is illustrated in Figure 6, using the example of an actor A trying to get an actor B to do what it would not otherwise do.[16] Relational power dynamics are structured by more near and more distant structures, which may in turn be affected by attempts at structural power, that may change the terms of relational power dynamics in favour of actor A.

f. A market for rules and rules for the market

The understanding of power and structures informs two premises about the relationship between rules and power in the context of a domain of regulation, and leads to a specific focus when analyzing business regulation.

First, philosophers of law (for instance Dworkin, 1977) hold that regulation in general should reflect common norms of justice, and for that reason regulation may be used to address the distribution of wealth and resources in a society so that they become in accordance with those norms.[17] Regulation of labour in this sense is most often viewed as an intervention in the inequality between capital and labour, seeking to strengthen the weakest party in order to bring about a situation where interaction between the two conforms to the common norms of justice in society (compare Bakels, 1973).[18] Applying this line of thinking to the subject of study, private labour regulation across borders should conform to those common norms of justice available (in this context the UN conventions on human rights and the ILO conventions on labour rights, and their application in the local labour regulation of producer countries), and take from them the cue to strengthen the position of the worker in relationship to management in business.

Second, sociologists of law influenced by *legal realism* (see Llewellyn, 1951) hold that in practice regulation may be indeterminate and not always predictable on the basis of expected references to common norms of justice. Specifically, the school of *Critical Legal Studies* (see Kennedy, 1976) holds that regulatory outcomes may be the product of power asymmetries, therefore preserving the status quo in terms of strong and weak parties in society. This observation fits nicely with a variety of political economy approaches problematizing the relation between rules and the ruled in the global economy (both 'leftist' in Marxism, see Cox, 1986; and as 'right wing' in the Chicago School, see Stigler, 1988). From such a perspective, the powerful have an innate tendency to influence regulation to their own perceived advantage, and as such there is, from the perspective of the political process, no clear-cut empirical distinction between the actors in the field being regulated and the development of regulation (compare Underhill, 2007).

[16] In the famous words of Weber.
[17] There is disagreement of course about whether any of these norms are undisputable, but they may be a principle at work nevertheless.
[18] Other examples of regulation compensating inequality *vis à vis* owners of capital are consumer protection regulation and tenancy laws.

These starting premises are relevant in particular for private regulation analysis, since it is in private regulatory development and practice that rule takers can be rule makers, implementers, and enforcers at the same time. Specifically here the risk is apparent of the most powerful using their resources to directly capture regulation, establishing and operating rules and systems to their own liking, with disregard for the weak. Private regulation, for instance, is therefore prone to the *fox guarding the henhouse* problem, in particular with reference to the actual operation of regulation and the assigned responsibilities of the parties involved. Can we trust the powerful to uphold common norms of justice?

A power based analysis of regulation should therefore not only ask what standards are put forward in private regulation and what systems are provided. It should also ask who does what in regulation. From the perspective of law as the corrector of inequality, it is necessary to identify those elements that compensate the power asymmetry between the actors regulated; second, from the perspective of the tendency for the powerful to control regulation, it is necessary to identify those elements in regulation where regulatory capture leaves the powerful with the possibility to advance an agenda not in line with the object of regulation, as reflected by common norms of justice.

4. The argument

Understanding developments within private labour regulation requires looking at interactions between professionals linked across organizations, divided over organizational purpose (business or activist, or different types of activist groups and different kinds of firms), as well as over policy issues (preferring specific forms of regulation, denouncing others). These divisions play out in different types of social interaction between different types of organizations and policy coalitions. First, it plays out at the negotiation table when new private regulation is being developed. There, activists and company representatives, depending on their organizational and personal agendas, decide on how labour should be regulated, resulting in the design of both more and less stringent forms of private regulation. Second, the divisions play out in the more or less contentious forms of pressure and bargaining towards business support for existing private regulatory organizations, where differences between (managerial expectations of) organizations play out maximally. Third, divisions play out in the 'marketplace for private rules', where businesses and activists compete for the predominance of their favoured approach to private regulation, and the market is slowly divided into two broad coalitions favouring more and less stringent regulation.

Focused on these dynamics, this study's broad argument can be summarized in a nut-shell as an answer to the overarching question about what drives developments in private labour regulation. Such developments can be explained by the rival and competitive interaction between more and less

stringent private regulatory organizations and their business and activist supporters, which results from the orchestration of societal pressure on the industry by activists. Interaction between groups is at first influenced by uncertainty, meaning that actor positions are more fluid and interaction dynamics inform regulatory outcomes, in particular in the making of a first generation of private regulatory organizations that produce different degrees of stringency. Routines and expectations then slowly develop that increasingly inform actors' pursuit of newly developed private regulation, business support for existing private regulation, and evolving competition and cooperation between private regulatory organizations and their supporters. A key variable informing both activist group and business strategies is their relative organizational proximity to either the point of production or the point of consumption, leading to preferences for higher or lower degrees of stringency.

This answer to the general research question, of course, needs to be broken down into several, more detailed answers. First the descriptive parts to the three sub-questions are elaborated, followed by the explanatory parts. This will be done using headings in which the main sub-findings, in line with the inductive nature of this study, are presented as propositions.

a. Descriptive argument

Putting the descriptive argument into the interrelated framework presented in Chapter 1, see Figure 7, this section answers the sub-research question's descriptive part clockwise, starting from the top.

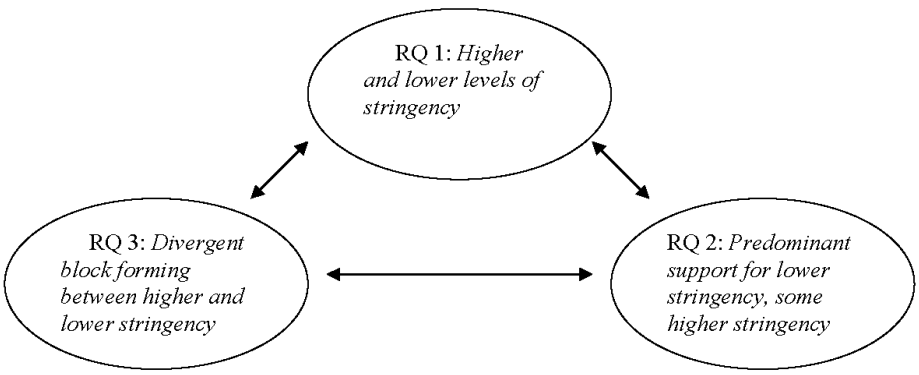

Figure 7. Descriptive answers to sub-research questions

RQ 1: Describing differences in the content of private regulation: standards and control

Differences between private regulatory approaches can be organized around the level of stringency, however this notion of stringency should not merely apply to the level of standards adopted, but also look at what actors do with these standards, since private regulation involves actors whose

behaviour needs to be regulated acting as regulators themselves. The understanding of stringency is therefore extended to also involve the diversity of policy instruments and, most significantly, the division of tasks within private regulatory organizations. This division of tasks affects stringency to the degree in which it counters or strengthens the existing balance of power in the production chain that makes for labour abuse. More business control of procedures, decisions, and information strengthens the capacity of businesses to keep *business as usual*. More societal control counters business power and institutionalizes watchdog and fire alarm elements that push regulatory performance more in line with set aims. This elementary decision in the institutional setup of private regulation is also the subject of policy debates between activists and businesses in the CSR movement. Accordingly, different positions on a scale of laxity and stringency can be identified for industry initiatives, differences that go beyond the usual division between multi-stakeholder governed and business governed organizations. As it turns out, most organizations can be placed on the left hand and in the middle of the scale, towards lower and medium stringency, while a minority of organizations have higher stringency scores. In short, *differences in private labour regulation can be understood as varying degrees of stringency, measured on the basis of the degree of labour standards, degree of policy specificity, and degree of control of procedures by different types of actors.*

RQ 2: Describing firm preferences for private regulation: high roads and low roads

Companies predominantly develop CSR policies out of protective concerns. Activists are important in this respect since they raise the salience of the labour conditions issue and orchestrate societal pressure against companies. Companies generally display their preference for a particular type of private regulation after choosing multi-stakeholder or business governed regulation; the nationality of the regulatory organization; and the type of policy, specifically the choice between taking responsibility for the implementation of standards, or leaving this responsibility largely with the suppliers.

The overall result of these choices is a predominant preference for less stringent private regulatory organizations that are governed by businesses only, and have business controlled regulatory procedures. Notable members of this group are large retailer companies, and specifically companies catering to lower ends of the consumer market, competing on cost. A minority group of companies prefers higher levels of stringency, governed by multi-stakeholder assemblies and with regulatory procedures divided among business and societal actors. Among them are high street market brand firms and some retailers, as well as global sporting goods brands. In sum, patterns of business participation show *predominant preferences for less stringent private regulation and minority preferences for more stringent regulation.*

RQ 3: Describing interaction between private regulatory organizations: rival block forming

The field of private labour regulation for the clothing production chain has become fragmented with firms applying different approaches to private
regulation.

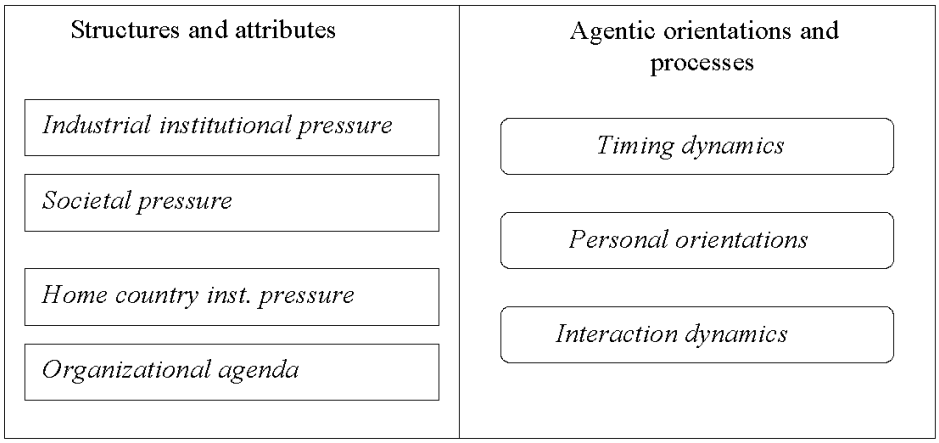

Figure 8. Explanatory toolkit

A clear division of the regulatory 'market' into different private regulatory organizations catering to specific segments of industries has not yet emerged. Currently, regulatory organizations often aim for similar membership goals, and the development of political rivalry as well as policy disagreements on the right way to regulate stimulate a more or less open form of regulatory competition. This competition is both for business support, in terms of participation in a particular regulatory organization, as well for operational legitimacy in general among 'audiences' of both activists as well as, more distantly, consumers. In this competition for legitimacy, the crucial factor has become the question of adherence to notions of multi-stakeholder governance of a regulatory organization – what can be termed 'multi-stakeholderness'.

However, the contours of a division are visible in the development of both arm's length policy adjustments and emerging institutional connections between different existing private regulatory organizations, managed through different cooperation efforts. What emerges is a divergence between private regulation with higher levels of stringency and those with lower levels of stringency. In the process, notions of multi-stakeholderness are being adapted to apply to governance procedures that increasingly put societal groups at a distance from decision-making.

Concluding, *private regulatory competition for operational legitimacy results in a division between a more and less stringent type of regulation.*

b. Explanatory argument

All descriptive findings to the research questions (the 'balloons' in Figure 7) in turn may be connected to specific causal chains. This section depicts the different elements of these causal chains as belonging to an explanatory toolkit made up of the different elements of the general theoretical approach elaborated in section 3 (see Figure 8). Structural and fixed attribute factors are juxtaposed here with agentic and process factors. Different sets of factors then collide to make for different mechanisms (see next page), which are further elaborated below. The time line on the right of the page shows that as time goes by, structural patterns acquire predominance in driving political interaction, as a result of the increasing institutionalization of the field: 'sharp corner squares' are increasingly crowding out 'round corner squares'.

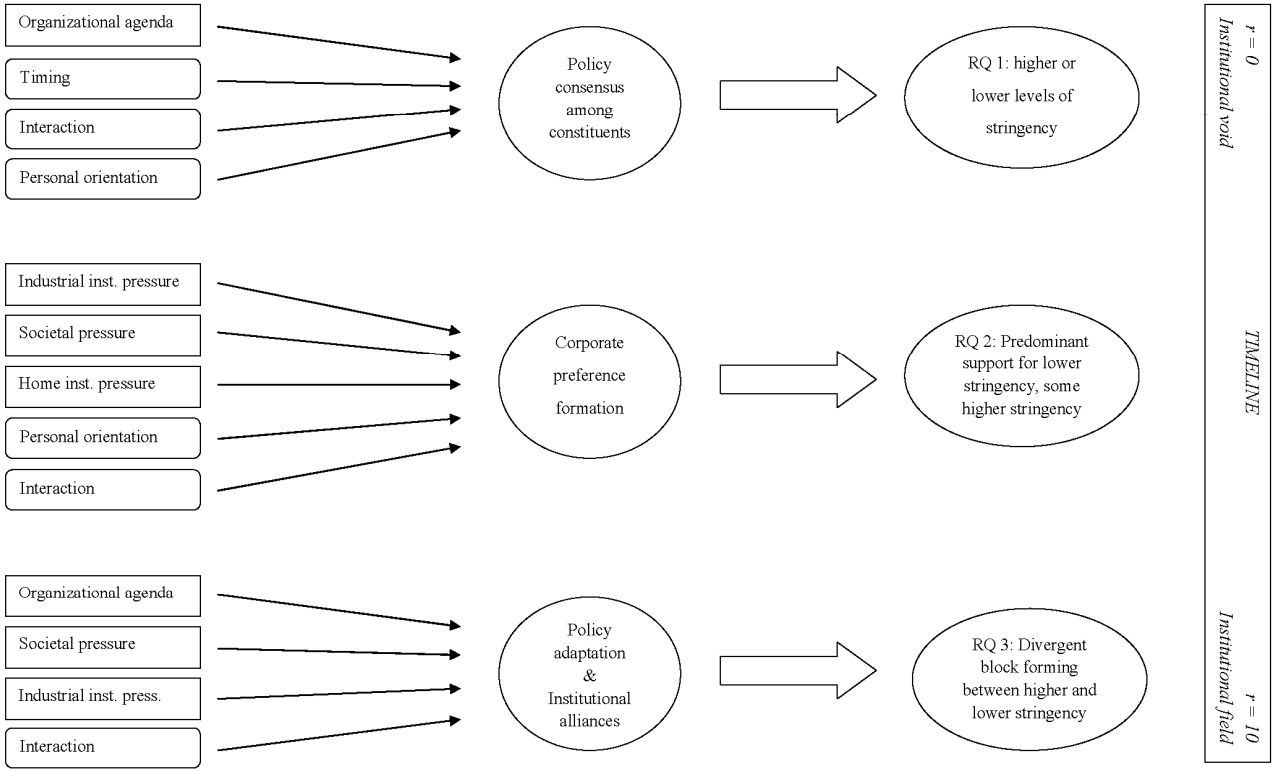

Figure 9. Explanatory factors

RQ 1: Explaining stringency differences in the development of private regulation: phases, dynamics and agendas

The reason why certain private regulatory organizations are more stringent than others firstly lies in the historical process of the development of private regulation. In the negotiation phase of a new private regulatory organization, several aspects are relevant in understanding what policies are adopted.

First, there is the matter of *timing*. As noted, the institutional void of private regulatory design makes for high levels of uncertainty among negotiating actors. This creates slightly different negotiation dynamics in comparison with private regulatory design at a later stage, when several regulatory organizations have been established. The difference is that actors may be more or less knowledgeable about the topic of regulation, the regulatory approaches available themselves, the policies of other actors involved in negotiation, and the possible repercussions of different regulatory options for their organizational goals. Accordingly, one should distinguish between two broad phases in private regulatory development. The first has a longer phase of experimentation, changes in membership, and a highly significant role played by dynamic factors in the establishment of consensus. The second phase is marked by more limited members, shorter phases of negotiation, high levels of imitation and adaptation of already existing approaches, and a lesser significance for personal orientations and interpersonal relations in bargaining.

Accordingly, the *organizational agendas* and *agenda setting* of actors negotiating private regulation matter, to a higher or lower degree. Important in the process of negotiation is the moment at which ideas are being launched that frame further discussion. Most often these ideas come from the group initiating the negotiation for a new regulatory organization, and reflect the position this group has on the topic. If the frame, put into a policy proposal, manages to capture minimally sufficient support among available groups, it will form the basis of a new private regulatory organization. Groups in negotiation that are not happy with the terms of discussion then leave the table and may re-appear in negotiations for a different regulatory organization. In first phase negotiations, this may be a somewhat chaotic process of trial and error. In later phases, the selection of negotiation partners is likely to already steer the consensus in advance, with likeminded groups seeking each other out.

Accordingly, regulation of higher level stringency is designed in the first phase when labour activist groups successfully structure frames of discussion, receiving sufficient support from their negotiating partners; lower stringency results when business or consumer groups do so, or when the absence of predominant frames steers the discussion towards a lower common denominator. In the second phase, in a more straightforward manner, higher stringency is designed by groups of likeminded labour activists, while lower stringency is designed by likeminded business or consumer

groups. In sum, *differences in private regulation evolve because of time-specific articulation between negotiating actors' agendas and process dynamics in negotiating private regulation.*

RQ 2: Explaining firm preferences towards private regulation: institutional attributes and interpersonal relations

Increasingly, firms are confronted with critique from societal actors about possible misdoings in their supply chains. The reception of this critique varies in the industry across firms, according to the position firms occupy in the *market* (branding, high street or retailing, cost competing) and in the *production chain* (more or less involvement in productive circumstances). Moreover, variation can also be found in the *home country market* in which companies reside, where variations in the strength of local subsidiaries of activist networks, and the concomitant resonance of both global justice issues and private solutions to these issues among a wider audience of citizen-consumers and politicians, may be crucial. These institutional variations say something about the likelihood that (a) firms will respond constructively to the critique of, most significantly, activists, and (b) whether firms will develop a preference for higher or lower level forms of stringency. The dynamic between societal pressure and firm response is thus dependent on the multiple institutional embedding of companies.

Furthermore, this study once more identifies in the process dynamics of interaction the significance of *personal orientations* and interpersonal relations in the elaboration of corporate strategy towards private regulation. The significance of persons is likely to be higher in the case of firms treading the middle ground on the scales of commitment to high street and cost competition market focus, as well as the scale for branding and retailing strategies.

It is therefore possible to expect higher sensitivity to societal pressure from high street and brand firms, who perceive themselves as more easily confronted by scrutiny from their consumers. Moreover, their residual involvement in supply chain productive practices through the efforts of design and quality standard measures makes them more inclined to take responsibility for labour conditions as well. By contrast, mass retailers and discount firms sit at a much larger distance from the point of production and have less to fear from their immediate economic stakeholders at the point of consumption. Firms treading the middle ground rely on managerial preferences for their selection of private regulation. Activists then are key in steering higher levels of participation in private regulation by firms, but they do not always get what they want, since firms may prefer other solutions than those proposed by activists. In short, *firms develop different private regulatory strategies due to variation in responses to societal critique mediated by industrial and national institutional attributes and personal orientations*.

RQ 3: Explaining the direction of regulatory competition: institutional attributes and new policy coalitions

The division that emerges between two blocks of regulatory organizations can be explained, first, through general pressures towards convergence, from governments, suppliers, and activists, and by keeping in mind the interests of (increasingly confused) consumers and investors. These efforts at convergence are, however, not leading to a comprehensive harmonization of the field of regulation, but to a division between harmonization efforts. This is, secondly, because of emerging understandings between clusters of regulatory organizations and the businesses and activist groups that support them.

Generally, the lower stringency group of organizations is supported by activist groups dedicated more to advocacy agendas at the point of consumption, striving for clear consumer choice in sustainability. Business support for this group comes predominantly from mass retailer and/or discount companies with little involvement in production supply chains. This cluster of groups is called the *Post-Productionist* coalition, relatively unconcerned with circumstances of production and with hardly any contacts with clothing manufacturing workers. By contrast, the group committed to higher levels of stringency consists generally of activists who advocate more directly for workers in producing countries, and companies with higher stakes in the production within supply chains (because of design and brand quality demands and a more sustainability-minded consumer base). This cluster is called the *Productionist* coalition, focusing relatively more on production, workers' positions, and the politics of industrial relations within the context of global value chains.

While the Post-Productionist coalition predominantly focuses on the mainstreaming of private regulation and the increase of business support for private regulation, the Productionists seem more concerned with the quality of rules and procedures that, according to them, set the term for better working conditions. This divide signifies that the broad coalition of consumer groups and labour groups, so successful in initiating debates on private labour regulation and raising societal pressure on companies, may be in the process of falling apart. Therefore, *evolving block divergence is influenced by disagreements on the regulatory aim between supporters, exemplified by an emerging divide between a stringency focused Productionist and a mass support focused Post-Productionist business-activist coalition.*

Chapter Three. Labour standards, implementation, and degrees of control. A power based analysis of private regulatory approaches

'Sure, we receive papers from our buyers with codes of conduct on how to treat workers,' says the manager of a factory to a consultant. The consultant is visiting some South Asian and Northern African production sites to investigate clothing producer practices regarding labour standards on behalf of a European business association. 'What do you do about these codes?' asks the consultant. 'Very little. We have never received additional questions on this, nor have buyers visited us to check proceedings. I do not take them seriously, also because these firms ask us to deliver the products so quickly at such a low price. You cannot expect us to abide by these standards under such buying conditions.'

A couple of miles down the road the consultant visits another group of factory plants. The owner there is much more appreciative of labour codes of conduct. 'We had managers from a buyer visit us and they had all kinds of comments about our factories. We noticed that among our group of buyers more and more wanted to visit us and check up on our working conditions. We took that into account when we built a new factory hall, making sure that it was in line with the requirements in the standards regarding health and safety. Generally, we now seek to abide by the highest standard asked from us, so that we are in agreement with all the buyer codes on labour standards submitted to us. I cannot prove this yet, but I like to believe that our reputation is growing because of this, and we are attracting more orders from buyers engaging with working conditions.'

1. Introduction

For over a decade, private regulatory instruments have received attention as a way of achieving Corporate Social Responsibility (CSR) in social and environmental matters related to production. That business could have a positive contribution in these matters through private regulation has, since the beginning of the debate in the 1990s about the potentially adverse consequences of globalization, consistently been defended and celebrated by enthusiasts of private initiatives as a way to humanize production processes. This claim, meanwhile, has been fiercely challenged by those who believe these private efforts to be a cheap trick on the part of big business.

Looking back at the developments in the past decade, it is now possible to counter these critics on at least two points. First, the private regulation phenomenon has been criticized for being a hype that would quickly pass over. Speaking from 2009, with activities still proliferating, it is reasonable to conclude that this is not the case. Second, private regulatory instruments have been seen as an empty business fad, destined to remain a public relations trick on the part of companies. While the PR-effect is arguably a strong catalyzing factor for CSR activities, a category of activities

can be distinguished that does seem to make some difference to aspects of the social and environmental issues they address. [19]

However, private regulation on many accounts can still be said to be far from delivering the goods which the enthusiasts envisioned. The promise of CSR company policy has always been that it could complement insufficient public governance and that it could lead to new political synergies between state and non-state actors in the solving of global issues, where regular established arrangements were failing (see for instance Rischard, 2003). While efforts have certainly been presented with such aims, one can doubt whether real progress has been made.[20] Meanwhile, for a substantial field of activities under the 'private regulation' banner, it is becoming harder to clearly assess progress. For concerned citizens, activists, employees, consumers, investors, or otherwise, discussions over these CSR policies are becoming very confusing because of the proliferation of different activities and policies, the uncertain relations between them, as well as the difficult terminology used to qualify and quantify the issues at hand.

This chapter aims to alleviate some of the confusion over the state of CSR by analyzing the private regulatory instruments that regulate labour conditions in clothing production chains. Specifically, the eight collaborative private regulatory organizations applying codes of conduct and which aim to raise labour conditions in the clothing production chain will be assessed. These are the Fair Labour Association (FLA), Worker Rights Consortium (WRC), Social Accountability International (SAI), Ethical Trading Initiative (ETI), Fair Wear Foundation (FWF), Initiative Clause Sociale (ICS), Worldwide Responsible Apparel Production (WRAP), and Business Social Compliance Initiative (BSCI). Firms involved in the clothing production chain have been among the long-time targets for societal pressure and critique, and the initiatives for this industry belong to the group of most advanced private regulatory organizations in the global arena of voluntary business efforts. These initiatives can be understood as litmus tests for what is currently possible and not possible in the field of private regulation.[21]

With only a cursory glance, substantial differences can be found in the programmes put forward by these organizations, but it is not clear what these differences exactly amount to. Some of these organizations have been described in scholarly work (O'Rourke, 2003; Esbenshade, 2004; Rodriguez-Garavito, 2005; Hughes et al, 2007; Merk, 2007a), but never has a systematic comparison been put forward of all of these organizations. This chapter will propose and apply a

[19] For discussion and concrete examples see Van Tulder and Van der Zwart (2006).
[20] For the chocolate industry, for instance, initiatives have come to a halt (http://www.cocoainitiative.org). It is also hard to see any progress in the initiatives for working conditions for tobacco growers.
[21] These have progressed relatively further than 'second-in line' initiatives aimed at progressing labour conditions in agricultural chains (see for instance ETI, Eurepgap, and SASA). Of the eight analyzed initiatives named above, four focus exclusively on clothing (FLA, WRC, FWF, WRAP), while the other four have clothing as their most important focus.

specific approach towards assessment of these CSR instruments. The focus will be *power based*, arguing for a measure of *stringency*.

By focusing on stringency on the basis of considerations about power, this study aims to cover a middle ground between liberal CSR enthusiasm and critical political economy cynicism. In agreement with critical political economists (Brühl, 2005; Nölke & Graz, 2007), this study starts with the assumption that the spread of private business governance in itself is a manifestation of neo-liberalism on a global scale, signalling the rising power of transnational business, escaping binding and enforced public regulation. Two further assumptions are then often implied in critical thinking: neo-liberalism in private business governance means that business, first, will dominate or control governance procedures and decision making; second, through that control or domination, business will advance its own agenda, which is directed towards the commodification and exploitation of labour and natural resources. These two assumptions, however, may likely but not *necessarily* follow from the first one, and therefore require separate empirical assessment. After all, in private regulation business may be the actor holding most power, but it does not necessarily have to be the only, nor the dominant, *private* party at work, as other non-state actors representing societal concerns are engaged in private governance as well. Moreover, business engagement with private regulation does not automatically mean that in all cases companies pursue a hardcore neo-liberal agenda. Stringency analysis of private regulation can serve as an appropriate tool to establish this. This is because it illuminates the characteristics of regulation, bearing in mind how regulation and the domain of regulation are in many ways related. Therefore, contrary to most existing critical approaches, this work opens up the possibility for the empirical identification of private regulation not dominated by business agendas. And contrary to liberal approaches to CSR, it warns against the uncritical promotion of every form of CSR private regulation in which businesses engage (see for instance Cramer, 2006).

Stringency analysis reveals that most of these eight private regulatory organizations are similar in the setting of their standards but differ in their efforts to build systems to implement and enforce standards. The initiatives are distinct in the ways that they organize the potential for different types of actors to control the procedure of implementation and enforcement. Specifically, the extent to which businesses or societal groups control regulatory procedures is revealed.

A brief review of policy discussions within the CSR professional field will then show that the control issue has become a dominant factor within the political debate between activist and business representatives about the most appropriate form of private regulation.

For purposes of clarity it should be emphasized that all measures of private regulation discussed in this chapter are based on the policy information provided *at the time of the establishment of the analyzed private regulatory organizations*. This means that some of the scores

for specific private regulation may not be up to date. However, given this study's interest in policy shifts and possible patterns of convergence and divergence, Chapter Six covers the most significant changes to private regulatory approaches. Where these shifts have repercussions for the degree of stringency, these will be elaborated further there.

2. Private regulation: variation

Codes of conduct come in different forms. Having been described as 'encompassing guidelines, recommendations or rules issued by entities within society with the intent to affect the behaviour of business entities within society…' (Kolk *et al*, 1999: 151), they have been drawn up by firms individually; by NGOs, trade unions, governments or international organizations that aim to stimulate firms towards actions; by groups of firms; or by groups of different societal and economic actors.

Codes of conduct that are drafted as a collaboration of a range of different parties are considered to be attractive, since they can facilitate the pooling of resources and knowledge for firms. In fields of CSR activities, most firms have to figure out which options they have for *effective* and possibly *credible* ways of action. Organizations with collaborative code approaches in principle can facilitate interaction, and as a consequence, these organizations can prevent firms *going it alone*, and industries ending up with hundreds of different individual firm standards and implementation programmes. From a production chain perspective, buying firms adhering to a collaborative code of conduct can furthermore more easily exercise pressure on suppliers to adhere with a common standard.

The literature speaks of a *multi-stakeholder code* as a specific category of such collaborative codes once the group of code-makers represents different economic and societal interests. Multi-stakeholder codes are most often part of a *Multi-Stakeholder Initiative (MSI)*, a concerted effort at interaction between different private groups to address societal issues.[22] The term *stakeholder* has become the regular way of addressing those groups that want to pressure firms toward action and can do so on the basis of a claim to a certain stake in the activities of the firm: trade unions and a range of different NGOs and interest groups (compare Van Tulder *et al*, 2004).

Codes of conduct can be understood narrowly to only consist of the (labour) standards firms should apply. This chapter follows the broader approach, understanding the code also to involve the policies to implement and enforce such standards. Code of conduct analysts consider MSI-codes as belonging to the group of more promising efforts at aligning business towards social goals (Jenkins, 2002; World Bank, 2003). Individual firm codes of conduct have for long been dubbed 'PR-tools',

[22] Many multi-stakeholder initiatives are initiatives without codes of conduct, aiming for consultation, discussion and perhaps negotiation between different parties.

because they have often lacked substantiation and clear statements on implementation and enforcement. Codes written up by business groups often reflect a lowest common denominator for the rules presented (Kolk *et al*, 1999), while the codes for business written by international organizations, governments and NGOs can, for their current lack of direct implementation possibilities, be seen at the most as *models*: sources of inspiration for business codes and practice, delivering frames of reference or benchmarks.

Most MSIs, on the other hand, offer a code of conduct that is an integrated set of standards, implementation systems and private forms of enforcement mechanisms. Three lines of reasoning are used to argue that multi-stakeholder codes of conduct might have a specific quality other types of codes of conduct lack. These refer to normative, cognitive and interest-based aspects of the arrangement of groups coming together to develop the code.

In the normative line of reasoning, Boström (2006) for instance argues that when standards are developed in multi-stakeholder settings with involvement of various interest groups, this has the benefit of 'inclusiveness', meaning that all parties relevant to a specific issue have a say in matters, thus increasing authority of decision making and establishing good governance (see also Ruggie and Kell, 1999). In a view focusing on cognitive aspects, meetings with groups of various backgrounds can be justified with reference to notions of 'learning' between, among and inside different organizational actors (Zadek, 2001). Stakeholders and companies have different sorts of expertise, which, when brought together, can lead to synergies and change organizational behaviour for the good with respect to the issue at hand. Including different parties then implies higher credibility and better quality of the rules. From a political interest-based perspective, the reasoning is that if companies get together with NGO (and/or trade union) representatives, they engage critics of business behaviour in their attempts at improvements, thus letting them perform the function of watchdog. The basic idea is if company adversaries can agree with companies on rules, there may be a strong basis and broad support that satisfies a larger critical mass in and around the company. In addition, the fact that societal representatives participate in these organizations arguably adds a ring of credibility to the MSI phenomenon, since groups representing relevant societal interests can be expected to act as guards against firm leniency towards actual implementation and enforcement (Fransen & Kolk, 2007; compare Cashore, 2002).

It should be noted that the boundaries of what constitutes the *multi-stakeholderness* of a regulatory organization have not been completely delineated in regular CSR lingo by participants in organizations. Moreover, some private regulatory organizations and their supporters might have an interest in applying the term *MSI* to their code effort, or imply the *stakeholderness* of their initiative because of the benevolent credible ring to it. For the sake of clarity, this study describes an organization as a *multi-stakeholder* initiative if it has participants from both business and society

interest groups as initiators and members, and if its governance structure allows for an equal possibility of input among the different partners in steering the organization (compare Utting, 2001; Oldenziel, 2003). This chapter therefore focuses on both business and multi-stakeholder governed private regulatory organizations.

3. Problems and pitfalls of assessing private labour regulation

How does one assess whether codes of conduct live up to expectations? Intuitively, the easiest way to go about this would be to study the impact of policies in factories and see whether improvements can be found in worker rights. This would be a test of private regulatory effectiveness. However, the inside of supplier factories are a politically very sensitive area for researchers to roam and buying as well as supplying firms have not been keen to let outsiders in, or if admitted, to let them report on what was found. Given the culture of distrust between supplier managers, buying firm agents, auditors, CSR managers, and workers, one should furthermore question whether the empirical analysis produced from such a study would be valid, and provide the basis for solid inference. For instance, many examples exist of suppliers hosting 'showroom factories' among their productive facilities for outside visitors, or adopting multi-tier chain strategies, only admitting outsiders to the first-tier of factories, that are, it goes without saying, more or less compliant with regulations and standards set by buying firms. Finally, there is the problem of workers not opening up to outside researchers out of fear of repercussions by management. In short, there is a system of fraud and uncertainty surrounding the actual improvement of labour conditions in clothing factories, and there is a high risk of the researcher becoming caught up in it, or if not, being stopped from further enquiry into specifics (see also Kocer & Fransen, 2009). Despite these challenges a small group of scholars has nevertheless succeeded remarkably well in studying private regulatory implementation inside factories, often making use of the institutional support from buying firms (Frenkel, 2001; ETI, 2006; Locke et al, 2007). But these efforts predominantly remain confined to assessments of one specific regulatory approach, begging the question of how to systematically compare findings across different efforts by different private regulatory organizations.

Most assessments of private labour regulation are therefore directed at their content as policy instruments. This means that the analysis moves away from the everyday experiences of workers to policy analysis. With this move, a research strategy towards thick description is traded in for a strategy leading to more abstract predictions. However, by doing so, the scope for wider inference is gained, as the private regulatory approaches apply to thousands of factory sites.

Parallel to the reasons for differing expectations of multi-stakeholder initiative performance, three lines of enquiry can be distinguished to compare and assess private regulation, focused on legitimacy, learning, or power issues. After discussing the first two, the decision to choose the third

as the most fruitful starting point for an assessment will be elaborated.

a. Why legitimacy is a problematic criterion for assessing private labour regulation

Some scholars pursue an assessment of private labour regulation which proposes an analysis of the legitimacy of private regulatory organizations. Following Scharpf (1999), Wolf (2004) for instance reviews the input (who decides?), output (does the code do what it purports to do, and are there specific qualities to decisions made?), and *throughput* (legitimate operation subject to transparency) legitimacy of a regulatory organization.

Through the concept of output legitimacy, this approach is faced with similar problems as the measure of effectiveness of private regulation, discussed above. Studying output legitimacy amounts to studying impacts, for which in the final instance factory-level research of worker conditions is needed. Without it, legitimacy assessments *à la* Scharpf are incomplete. Output legitimacy is difficult to establish unless one wants to make intermediate judgements on the basis of other people's policy evaluations about progress, which is of course a slippery road to go down.

Input and throughput legitimacy assessment raise a different set of problems. As they are based on ideas of the appropriate groups obtaining access to decision making and being able to review the progress of these decisions, it is important to establish which groups should be involved in this form of politics. Most commonly, the idea of *stakeholdership* is used to identify such groups. A broad review, however, shows that most private regulatory organizations that have come into existence in the past decade allow for stakeholder input predominantly from Northern groups, whereas the problems addressed have a distinct Southern impact (Fransen & Kolk, 2007; Utting, 2001). In other words, it seems as though most stakeholder groups involved are related to stakeholders of the lead firms under scrutiny, rather than stakeholders to the specific problem at hand. Intuitively, one would meanwhile expect input and throughput legitimacy of private labour regulation to hinge on the possibilities of stakeholder input 'on the ground', most notably workers. Several reasons can be put forward why input in private regulation is a predominantly Northern affair, all having to do with asymmetries in power resources: availability of money, institutional contacts and expertise in Northern countries, and the absence of these in Southern countries.

It is therefore no exaggeration to state that what is equal from the perspective of throughput legitimacy in terms of dividing tasks among the presently *available* stakeholder groups does not necessarily constitute an equitable form of regulation. This is because the subject field of regulation is already fraught with inequalities, which are related to the problem to be solved. Regulation that is procedurally equitable, in the sense of allowing for different checks and balances among groups that govern regulation, is unlikely to remedy this. In other words, any reasonable assessment of the input and throughput legitimacy of private labour regulation can only describe relatively marginal

differences between regulatory instruments that all fail when it comes to involving intuitively identified key stakeholder groups (from the perspective of the problem at hand). While this is a significant finding in itself, it fails to catch the qualitative nature of observable policy differences between existing private regulatory approaches.

Second and related, private labour regulation applied to mass consumer goods production chains is caught up in a tautology of some sort. Equal participation and high levels of input and/or throughput legitimacy for private governance instruments would, in the case of labour standards, require what can only be seen as the end state of the aims of private labour regulation: the fully fledged organization of workers. Workers in export-oriented industries currently face an impressive amount of obstacles when it comes to organizing themselves. One can think of, amongst many other factors, political and cultural opposition to unions, anti-union legal frameworks, spatial fragmentation of production, and the footloose nature of sourcing practices. Private labour regulation is a tool to counter some of these very tendencies (Merk, 2007b; Kocer & Fransen, 2009). Higher levels of input and throughput legitimacy through local group involvement in these tools would therefore only be possible, if at all, after the event.

An alternative route towards legitimacy is to follow the descriptive empirical assessment of how organizations seek legitimacy for their operations, for instance in the work of DiMaggio (1988). Scholars such as Cashore (2002), following Suchman (1995), hold that external audiences may attribute different forms of legitimacy to private regulatory organizations. It is very interesting to analyze empirically the dynamics of legitimacy seeking, awarding, and receiving among private regulatory organizations, their stakeholder groups, and a wider audience. Serious problems arise, however, when this operational legitimacy is proposed as an evaluative tool directly for the scholar (see for instance Scherer et al, 2006). Operational legitimacy in the end depends on stakeholder appreciation of what an organization does. The understanding of legitimacy is therefore contextual, relational, and interactive. How the scholar as an outside assessor is supposed to account for the order in which different tokens of appreciation by different relevant stakeholder groups matter, or how to deal with the fact that organizations can actively manipulate stakeholder perceptions and expectation, is unclear (Cashore, 2002; Kolk & Pinkse, 2006).

Summing up, establishing legitimacy as a way of assessing private labour regulation, both through input\output\throughput legitimacy approaches as well as through analyses of operational legitimacy, probably obscures more than it reveals. Due to asymmetries of power and the political dynamics between groups, it cannot provide reliable assessments, and if it does, it cannot in any way make sense of observable differences between private regulatory approaches. For these reasons, the analysis of legitimacy is not pursued further here as a tool.

Legitimacy is rarely used by practitioners in the field with reference to characteristics of private regulation. When asked about this, activists hold that they consider legitimacy to be a word exclusively belonging to the domain of enforced democratically established state regulation. Most CSR managers also seem to subscribe to this point.[23]

b. Why learning is not an appropriate criterion for assessing private labour regulation

The term learning, by contrast, is used quite often in the CSR field when discussing interaction between groups on labour standards and regulation. It is also emphasized by scholars of CSR as a key process in company adaptation to a CSR agenda (Zadek, 2001). Private regulatory organizations are understood as institutions that facilitate learning processes (Utting, 2001; Bostrom, 2006). They may therefore also be assessed as such.

Practitioners use the term *learning* to denote two different things: first, becoming informed on a specific topic, acquiring knowledge (for instance on labour issues, legislation, circumstances of outsourced production); second, adapting a certain strategy on the basis of insights. The second aspect is also the dominant point of focus for the learning literature in policy sciences. What is striking about this literature (see for example Hall, 1993; James & Lodge, 2003) is that its descriptions of different elements within a process of learning fit so easily with theoretical descriptions of rational calculation, coercion, consequences of structural power, and the influence of expert communities—in short, various mechanisms that have been studied in policy processes for decades already.

This begs the question of why these mechanisms are now called *learning*. What is the added value? While that question awaits answering, the regular reservations that are voiced against the conceptual implications of the term learning can be summed up, namely that it portrays policy change as a fundamentally good thing and emphasizes progress from the point of departure; it seems to imply that this progress is irreversible (or can you *unlearn*? Is there an Alzheimer theory of policy change?); and it overstates rational-cognitive aspects of policy change and understates rational-opportunism, insincerity, or chance (compare Hendriks, 2007).

It could be hypothesized here that these ideological overtones are actually the reason why the term learning is popular within the particular field of CSR policymaking in the first place, for practitioners in the CSR field may have an interest in portraying policy adaptation as first, policy *adjustment*; second, a change that is lasting; third, one not based on political bargaining; and fourth, well thought through and sincere.

[23] Meanwhile, one may expect differences of opinion between these groups on what the scope of state regulation should be.

In any case, in assessing learning as a decisive characteristic of private regulation, what is needed is examples of policy adaptation on the part of participants that does or does not go in the direction of the stated regulatory aims, on the basis of the interaction that is going on inside private regulatory organizations (for an example of the use of learning as a signifier for company CSR policy change, see Westerwinter, 2007). With regard to private labour regulation, what results is a similar problem as in the case of an assessment based on output legitimacy and effectiveness: in the final instance, evaluations of improvements in factories are needed, which, as already noted, is difficult for academics to do reliably and on a wide scale. Or, alternatively, studies should identify forms of policy adaptation that rely solely on the company policy level, in other words, focusing on plans as expressed in policy documents and put into internal company instruments, without knowing about the impact of these on the issue at hand. The obvious thing that most people are interested in with regard to an assessment of CSR is whether it is either 'substantial' or 'cosmetic', in other words, seeing the plan into action. To quote an activist in this matter: 'Sometimes I go a little crazy about all this 'learning' talk. It's all very good that as a company you are learning by doing. But when are you going to do what you have learned?' [24]

An illustration of the difficulties that learning assessment runs into when it looks only at the level of company policy plans is the famous application of learning on CSR by Simon Zadek (2001). Some of the steps he identifies on the learning ladder of companies are distinguished through differences in the intentions of the company (*strategic* or *defensive* or *civil*). How one is to operationalize, empirically measure, and distinguish these stages while preventing outright wishful thinking is not clear. And in the case of an assessment of different private regulatory organizations there is of course the additional challenge of proving that this shifting in the intentions of policies is somehow a product of the interaction inside the organization.

In sum, using *learning* as an assessment of private regulation causes conceptual confusion and leads to measurement problems, ending up with an undesirable focus on intentions.

c. Towards a power based assessment of private labour regulation

Like the approaches focusing on learning and legitimacy, this current assessment focuses on the significance of interaction between groups, and its implication for established policies in private regulatory organizations. Contrary to the abovementioned approaches, it does not look at particular qualities of interaction on the basis of notions of democracy or ideas exchange. Instead, it embeds interaction in a political view of the relationship between rules, the purpose of rules, and the relevant actors in the domain of regulation. This perspective is in line with previous efforts at describing private regulatory approaches (Esbenshade, 2004; Rodriguez-Garavito, 2005; Merk

[24] Interview N4.

2007a), but arguably the first to be explicit, systematic, and comprehensive in its assessment of the existing private regulatory organizations for the clothing production chain.

The previous chapter discussed the understanding of the relationship between rules and the market, and posited first that rules are often used to correct power inequalities in the market, and second that powerful parties seek to influence rules to their own advantage. It was concluded that a power based analysis of regulation should not only ask what standards are put forward in private labour regulation and what systems are provided; it should also ask who does what in regulation—similar to input legitimacy analyses—but for different reasons. From the perspective of law as the corrector of inequality, it is necessary to identify those elements that compensate the power asymmetry between the actors regulated; second, because of the tendency for the powerful to control regulation, it is necessary to identify those elements in regulation where regulatory capture leaves the powerful with the possibility to advance an agenda not in line with the object of regulation, as reflected by common norms of justice.

This leads us to two questions: which actors are 'the powerful' in this specific domain of regulatory action? And what could be their agenda?

In the context of clothing production chains as the domain of regulation, the literature on production networks and value chains offers a decisive answer to the first question: buying companies or so-called lead firms are the most powerful actors. Lead firms are governors of the value chain, to a large extent setting prices, volumes, and designs of products as well as influencing productive practices in factories and shaping the structure of cross border trade between different supplying firms (Gereffi & Memedovic, 2004; McCormick & Schmitz, 2001). Gereffi et al (1995) therefore even coin the term *buyer driven chains* to denote the influence of lead firms. Some also hold that lead firm chain governance affects labour conditions and the position of workers, as purchasing practices can substantially strengthen or weaken the suppressive character of supplier management's labour regimes (ACONA, 2004; Maignan, 2003). Finally, these firms also exercise structural power as the constant relocation (or, more precisely, re-sourcing) threat stimulates local governments to lead 'firm-friendly' public regulation exercises.[25] Societal actors then emerge as weaker parties in the equation.

It was already noted that manufacturing workers are in a vulnerable position, in terms of the obstacles they face in organizing for the purpose of pressuring and bargaining. In the structural sense, the position of workers is further weakened by the situation of large labour supply in many

[25] One should note that buying power is at its height if lead firm performance is taken together as a group within the organization of a chain and the aggregate impact of their individual decisions is reviewed. Seen separately, some lead firms, especially if they control a smaller segment of the market, may find themselves in a more constrained relationship to other parties in the chain than others. It is therefore important to recognize that private regulation treats lead firms purposively as groups acting in concert to extend the impact of regulation in an attempt to turn buying power towards a just goal.

countries. Union organizations in producer countries, if existent, therefore suffer from weak bargaining positions and few resources. Northern NGOs and international trade union organizations such as the global unions suffer less from these constraints and therefore organize transnational networks with local groups to use resources and political opportunities to pressure companies on behalf of workers. This undoubtedly makes them significant actors holding power (see Keck & Sikkink, 1998). But it is important to note that their power is completely relationally dependent on lead firms. For lead firms in the end have to respond to pressure from activists by taking the action desired by activists in the supply chain. At least, this is the case as long as Northern governments and regional and international organizations stick to their policy of stimulating CSR and treating global labour standards as a domain for private regulatory solutions, instead of pursuing binding and enforced public regulation.

In between lead firms and societal groups sit the supplier firms whose factories are subject to the private regulation. Towards lead firms (acting in concert, as in the case of the collaborative private regulatory efforts analyzed here) they exercise very little power.[26] Towards single buying firms their influence may rise substantially. But towards societal groups on the ground they form the actual manifestation of coercive power towards workers, since factory management employs the labour regimes that lead to worker abuse.

What could be the agenda of the most powerful actor in the domain of regulation, and who might become dominant unless institutionally kept in check? Most studies of regulatory capture quite easily identify the regulatory preferences of business on the basis of their market strategies (Stigler, 1988; Ayres & Braithwaite, 1991). For CSR regulation this is a more difficult thing to do, since companies involved are pursuing issues where the implications for the ordering of the market are less clear. The consequences of private voluntary CSR standards for the competitive position of firms within an industry, or the industry as a whole, are less straightforward than the consequences of taxes or competition laws. However, this study identifies a CSR agenda consistent with assumptions in the regulatory capture literature. This is the *aesthetical* or *cosmetic* version of Corporate Social Responsibility. In this version companies do not have to change anything about their sourcing policies and can devote only very small resources to resolving labour issues in their supply chain, which is then enough to release them from the risk of reputation damage through public campaigns by activists, and hands them opportunities to publish positively about their accomplishments. Put simply: this is maximum positive exposure for minimal effort. Or put cynically: all talk, no action. This may be viewed as quite a rational business strategy since it

[26] Does industrial upgrading take place inside the clothing production chain? Can suppliers somehow pull themselves up, acquire a larger mass of supply horizontally or vertically and therefore a better strategic position towards lead firms, as the large MNC Yue Yuen has done for footwear (Merk, 2008a)? Current value chain research has not found such companies yet, but one could expect them in the future. See also Chapter Seven, section 4b.

combines a decrease of reputational risk and an increase in the positive effects on reputation, while keeping in check costs and not requiring major organizational change. Some critics actually fear that this is an accurate portrayal of what CSR policy currently amounts to (see for instance Sum, 2005; Bruno & Karliner, 2002).

Particular emphasis when analyzing private labour regulation should therefore be put on how strict an approach is towards the participating actors, most notably the powerful. *Stringency* is a measure that is sometimes used in private regulation literature (see for instance Rodriguez-Garavito, 2005) to determine the weight of obligations which regulations put on the regulated. While most of these studies only focus on the scope of the rules themselves, this endeavour extends the approach to the implementation and enforcement mechanisms of the rules. To what extent can the powerful party determine what happens in a private regulatory instrument and steer that organization towards its own agenda? Different institutional setups of implementation and enforcement may, to differing degrees, make it easier or more difficult for powerful groups to capture private regulation. More stringent regulation may institutionalize and externalize self-restraint on the part of lead firms, as implementation mechanisms allow for the critical scrutiny of implementation processes by societal groups (the *watchdog* function). Less stringent regulation sees lead firms dominating implementation procedures to the extent that critical scrutiny and outside review become impossible.

A degree of stringency therefore says three things about power relations in the articulation of private labour regulation and the clothing production chain as a domain of regulation. First, the extent to which the influence of the most powerful category of actors towards societal groups is *kept in check* to prevent regulatory capture. Second, the extent to which the influence of the most powerful category of actors in value chains is *used* to promote the aim of regulation. Third, the extent to which available regulatory mechanisms can *empower* weaker societal groups in relation to the most powerful business actors (compare Esbenshade, 2004; Merk, 2007b).[27]

[27] An important aspect of power is that it may corrupt. In that sense critics may argue that those critical watchdogs that join in private labour groups to keep companies in check may not remain critical watchdogs for long. As a process of cooptation evolves, the vested interest of societal groups may become to keep the peace with companies, and this may make them more lenient when it comes to assessing company behaviour. In the presented approach, this can become empirically observable if it leads to adjusted policies. This would then affect the stringency scores, for instance in the case of changes in information dissemination and verification procedures. Cooptation may also become manifest through outright fraud, i.e. all groups involved collectively not following the rules as they are set out in private regulation. Of course this is something stringency cannot measure or predict. In the final instance, the likelihood of such a practice occurring is dependent on an available audience behind the interest groups keeping regulatory groups involved in check. Higher stringency makes this check more likely as it leads to more transparency in decision making.

4. Operationalizing stringency of private regulatory organizations for the clothing production chain

It is possible to operationalize the *stringency* of private labour regulation in degrees for three different aspects. First, the scope of the labour standards needs to be established; second, the degree of elaboration of available regulatory mechanisms; third, the degree of control that can be exercised by any type of actor in establishing, governing or managing these mechanisms is determined.

Below the eight private regulatory organizations are examined that aim to regulate labour circumstances in the clothing production chain, and integrate standards, implementation systems and private forms of enforcement mechanisms. In fact, only four of these organizations (Ethical Trading Initiative (ETI), Fair Labour Association (FLA), Social Accountability International (SAI), and Fair Wear Foundation (FWF)) do actually deserve the term multi-stakeholder initiative, if applied as proposed, although all eight organizations discursively flirt with *multi-stakeholderness* as an aspect of their effort. Apart from many similarities, these initiatives offer very different views on the right way of action. The next sections elaborate on these differences by explaining and then applying the operationalization of degrees of labour standards, implementation procedures and control. Then the overall degree of stringency will be elaborated for the mentioned private regulatory organizations.

a. Labour standards

Starting off with an assessment of the labour standards to be applied, which relies also on previous comparative work (O' Rourke, 2003; Rodriguez-Garavito, 2005, JO-IN, 2006), a measure of rules is created that includes four components: the comprehensiveness of the standard, the degree to which a standard is discretionary, the specificity of the standard and the degree of reference to existing labour standards.

The comprehensiveness of the standard is measured by the degree to which the standard covers worker rights in five categories: employment, training, working conditions, industrial relations and force (following Kolk *et al*, 1999). Coverage of these issue is scored as 1 point per category, except the industrial relations one, which is measured as 2 points. Reason is that this category, following Rodriguez-Garavito (2005: 214-220) arguably forms the core enabling right to worker organization and may be the basis for the advance of the other mentioned rights.

The degree to which a standard is discretionary reveals how much leeway regulated actors are granted in applying a standard: can they, should they try to or must they abide by a standard (compare McDermott et al 2007; McDermott and Cashore, 2008)? This is scored from 1 (most discretionary) to 5 (least discretionary and therefore most strict).

The specificity of the standard is measured as the degree to which it delivers precise information requiring minimal interpretation on the part of the regulated actor, i. e. through threshold conditions and quantification (McDermott and Cashore, 2008; Kolk *et al*, 1999). This is scored from 1 (least specific) to 3 (most specific). Under 3, actors are offered most clear information about what they have to adhere to. Under 1, standard formulation may lead to insecurity, flexibility or opportunism on the part of the regulated actor.

The degree of reference of existing labour standards measures to what level of standards the described standard adheres in its coverage of particular categories of worker rights: below national standards (1 point), on the national law (2 points), on the industry level if it exceeds national law (3) or on the level of ILO conventions (4 points). Large differences may ensue because of the reference used in the standard, since descriptions of for instance working hours and Freedom of Association may vary considerably.

In the overall measurement of the standard, adding up these four assessments, proportionally extra emphasis is laid on levels of standards, specificity and worker organization, with scores possible from 0 up until 33 (see table 1). This is in line with the stringency notion based on considerations of power asymmetries, as elaborated above.

	ICS	WRAP	BSCI	FLA	ETI	WRC	FWF	SAI	
MIN	18	21	30	31	33	33	33	33	MAX

Table 1. Degree of labour standards of private regulatory organizations from low to high.

The scope of the different labour standards applied is quite similar: directed at issues such as freedom of association and right to collective bargaining, health and safety, forced labour and child labour, and discrimination. There is little disagreement as to which issues the standards should cover. Two major differences however distinguish the private regulatory organizations. First, they differ in terms of the public arrangements to which the standards relate as a reference for the substance of worker rights. Most analyzed organizations use ILO core conventions and UN conventions as the standards to adhere to. But WRAP uses standards referring to national and local laws. For most of the labour laws of developing countries in which clothing-supplying factories are active goes that it leads to less protection of worker's positions than in the case of actual implementation of international standards. Second, to what extent do the standards apply the issue of a 'living wage': the possibility for the workers to receive wages for their working hours that enable subsistence. Initiatives like ETI, WRC, SAI and FWF include the promise of a 'living wage', FLA and WRAP do not, while BSCI's mentioning of it has more discretionary prose as to the

required action on the part of firms.[28] Generally, six out of eight regulatory organizations score quite similarly on their labour standards, and four organizations even score equally high.

b. Implementation specificity

Specificity of implementation and enforcement rules of private regulatory organizations are key in addressing the critique that private labour regulation is 'mere words and no action'. A transparent elaboration of what firms should be doing to put the standards into actual effect can make clear to outsiders and insiders what can be expected. The assessment of the degree of implementation specificity is made up of four parts. Firstly, the appearance of ten categories of policy tools guiding implementation are reviewed: a standing organization with governance structure; a management implementation system that companies can use; a monitoring programme; a system for selection of monitoring parties; a system for evaluating performance of monitoring parties; a procedure for deciding on admittance of companies; a procedure for deciding on discontinuation of company membership; a procedure for evaluation of membership company performance; a complaints process; a system for remediation and corrective action.

Secondly, the scope of requirements is investigated, as applicable to only the factory level (1 point), a specific supplier (2 points) or up to the whole supply chain (3 points). In case an organization offers both supplier and buying firm membership, the scope is understood to consist of the whole chain.

Similar to labour standards measurement, the degree to which implementation requirements are discretionary are reviewed, scored from 1 (most discretionary) to 5 (least discretionary and therefore most strict).

And finally also here the specificity of implementation is scored, measured as the degree to which organizations deliver precise information requiring minimal interpretation on the part of the regulated actor, in this case also looking at the existence of time horizons, specific deadlines for achieving certain requirements (McDermott and Cashore, 2008; Kolk *et al*, 1999). This is scored from 1 (least specific) to 3 (most specific).

The overall measurement of these four indicators leads to the degree of implementation specificity, with relative proportional weight for the degree of elaboratedness of implementation policy tools, with scores possible from 0 up until 21 (see table 2). This is considered a justifiable form of weighing from the perspective of the elaborated understanding of stringency, given the expectation that more institutionalized and codified implementation policies shape the behaviour of regulated actors to a higher degree than less specific policies.

[28] For a discussion see Clean Clothes Campaign (2005) 'The Business Social Compliance Initiative: a critical perspective'

	ICS	WRAP	ETI	WRC	BSCI	SAI	FLA	FWF	
UNSPECIFIC	11	11	11	12	18	19	21	21	SPECIFIC

Table 2. Degree of implementation specificity.

Contrary to many company codes of conduct, all the organizations analyzed here have explicitly stated implementation measures in place. Some, however, more than others. There is a definitive break between more dressed up and more dressed down versions of private regulation. FLA, FWF (and to a lesser extent SAI and BSCI) supply the full works. Marginal differences here are largely due to the degree to which the organization is more or less discretionary towards the performance of business members. In the group of more dressed down versions of private regulation, WRAP and ICS do not have a management implementation system, nor a complaints system or a system for corrective action; WRC excludes business membership from its organization, which leads to a much smaller scale of implementation policies; and ETI adopts an 'experimental approach' to implementation which means that it does not choose for certain specific types of implementation or implementation policy tools. The background of these policy differences will be discussed in more detail in the next chapter.

c. Control

The third measure of stringency is the degree to which parties can control the regulatory effort. This is an indicator less frequently used than the two previous ones. It is also the one most directly related to the discussion of power asymmetries in the development and practice of regulation. Here, the assessment focuses on four fields of regulatory design: decision making and governance; monitoring of performance; review and revision and information dissemination.[29]

Participation in decision-making and governance refers to the structure of decision making and planning inside the private regulatory organization. It is scored as 1 if only businesses participate, 5 if tasks are divided equally between business and societal interest groups and 10 if only societal interest groups are participating.

Monitoring of performance refers to the division of labour in the operation of compliance checks at factories. It is scored as 1 if only business groups participate, 5 if tasks are divided between business and societal interest groups and 10 if only societal interest groups perform monitoring.

[29] Note that the control procedure encompasses and goes beyond the governing board of an initiative, where the *meta*-discussion takes place on what procedure is developed and what types of actors do what.

Review and revision is understood as the policies dealing with complaints and remediation as a result of compliance checks at factories. If only business groups perform these tasks, it is scored as 1; if societal interests group are engaged too it is scored as 5; and finally if only societal groups deal with these issues it is scored as 10.

Finally, information dissemination refers to what groups get to view what information regarding the actual performance of members of private regulatory organizations. If this information stays with business groups, it is scored as 1; if societal groups receive it too it is scored as 5; finally if it is publicly disseminated, it is scored as 10.

Combined measurement of these four indicators leads to the degree of control, with relative proportional weight on all four indicators for the role of societal actors. Possible scores range from 4 up until 40 (see table 3). The primacy of societal actor engagement, in this operationalization, as elaborated in section 4, is based on both the notion of regulation as a corrector of inequality and the notion of critical review of regulated actors by stakeholders.

	WRAP	BSCI	ICS	ETI	FLA	SAI	FWF	WRC	
BUSINESS	4	4	4	16	16	16	20	40	SOCIETAL

Table 3. Degree of control of regulation by actors.

For instance for the Worker Rights Consortium (WRC) the process is controlled solely by societal interest groups: complaints and grievances are largely dealt with by NGO and trade union representatives; monitoring is conducted by trade unionists, involving workers and communities; and information is widely shared. On the other side of the scale the Worldwide Responsible Apparel Production (WRAP), the Business Social Compliance Initiative (BSCI) and Initiative Clause Sociale (ICS) are predominantly business controlled, in the sense that primarily profit-seeking professionally run organizations decide and operate: businesses select the auditors; auditing is performed by professional auditing firms; information on factories and workers stays with firms; and in BSCI, complaints and grievances are largely dealt with by firm representatives. The actual multi-stakeholder governed organizations are in between these two poles, with differences between ETI, FLA, SAI and FWF in the control of amongst others factory information, selecting targets for audits and selecting auditors. Accordingly, FWF scores higher on this count since it engages societal actors in these processes, contrary to the other organizations.

d. Stringency

As a final step of assessment, the three mentioned degrees of labour standards, implementation specificity and control are added up to settle the degree of overall stringency of the private regulatory organizations. Sceptics may wonder whether this is a good idea. The different elements at first sight seem to relate to each other like apples and oranges. What is the point of blending them? Some scholars applying similar assessments of private policies explicitly shy away from lumping together the different components of their assessment (see for instance Kolk et al, 1999; McDermott & Cashore, 2008).

It is argued that no matter how different measured degrees may be, it is in their combined working that stringency becomes apparent. The specific quality of regulation thus measured may, following the literature, be called its configurational design (f. i. Marx, 2008b). Examples of this logic can be viewed pairing two elements of the stringency measure together.

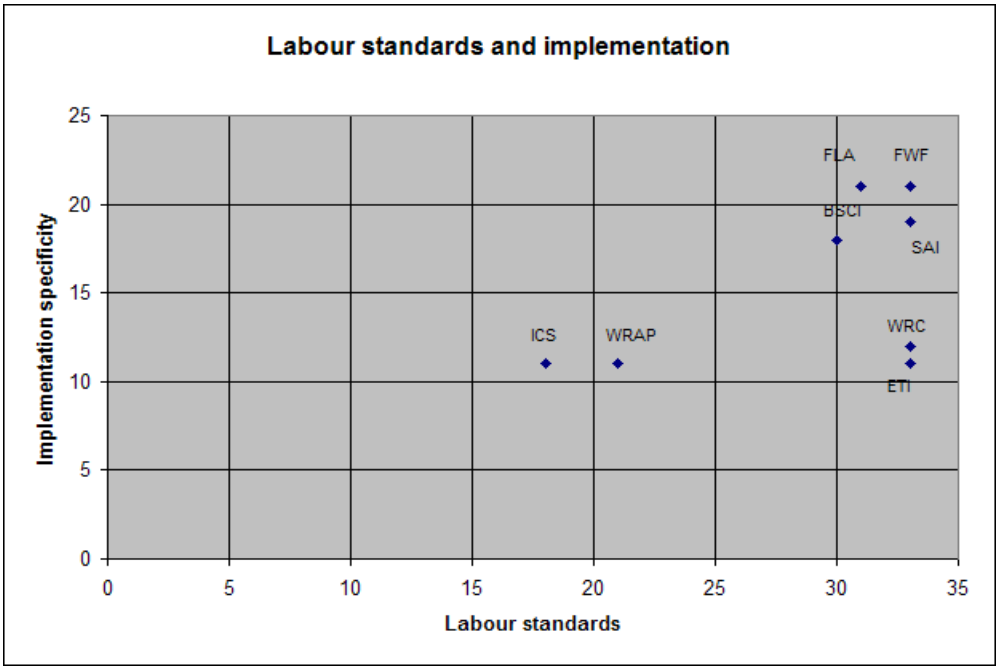

Figure 1. Pairing labour standards and implementation.

Figure 1 depicts pairs of organizations with high standards and varying implementation specificity. No matter how high the labour standards employed by a private regulatory organization may be, without the implementation requirements and the review of performance it does not yet constitute strict private regulation before knowing to what degree and through what trajectory firms will keep their commitment with these standards. The private regulatory organizations scored in the middle-

right quadrant therefore are less stringent than those in the upper right quadrant. Conversely, a private regulatory organization may exist with very specific implementation policies but lower labour standards (an example not existing in this group of cases) that would end up in the higher quadrant to the left. Here as well regulation is less strict, because despite its specificity of policies the applied standards are lower.

Figure 2. Pairing labour standards and degree of control.

Similar considerations apply when high labour standards and degree of control of regulation are paired. Also here high variation can be seen on the second indicator compared to the first. For the private regulatory organizations placed in the lower right quadrant the critical review necessary to speak of strict regulation is missing, despite their commitment to high labour standards. Again, the converse imaginary example of high degree of societal control with low labour standards (upper left quadrant) would also be less strict, since it means lower standards.

The notion of configurational design does not yet inform us how the different elements should be weighed relatively in the final measurement of stringency. The decision to add extra proportional weight to one or more of the three elements of stringency ideally has a basis in theoretical views of the performance of private labour regulation. This leads to a conundrum. For it was established that, first, comparative work on the performance of private regulation so far is scarce; second, that if this research were more evolved we probably would have less use for a policy-based stringency assessment anyway. Lending insights from public regulation measures of

stringency is also of little use here since the whole point of the assessment of private labour regulation relies on the essential difference between private and public regulation with regard to the notion of strictness. This study therefore follows the pragmatic option and chooses to weigh all three degrees equally in its assessment, underscoring that all three measured elements are of equal importance for an understanding of stringency. The logical basis for this operationalization is already implied in the different examples just described and illustrated. The results are presented in table 4, with possible scores ranging from 4 (least strict) to 94 (most strict).

	ICS	WRAP	BSCI	ETI	FLA	SAI	FWF	WRC	
MIN	33	36	52	60	68	68	74	85	MAX

Table 4. Degree of stringency

In this measurement, main differences between multi-stakeholder governed organizations versus business-governed organizations arise because of differences in labour standards and control. Differences within the cohort of multi-stakeholder governed organizations stem from different degrees of implementation specificity and the control issue regarding monitoring. Table 5 one more time summarizes some key characteristics of the organizations measured as they relate to the degree of stringency and also for the purposes of clarity identifies the governance of private regulatory organizations to show the variation of policies across this category. The next section then relates these findings to the emerging policy debate on appropriate private labour regulation.

	Labour standards	***Implementation***	***Governance***	***Control***
ICS	ILO Conventions, unspecific about content	Less specific: audit & report	Business	Business controlled
WRAP	Local laws, except discrimination, forced and child labour	Less specific: audit & report	Business	Business controlled
BSCI	ILO conventions, discretion on living Wage	More specific: management implementation; audit; complaints; remediation	Business	Business controlled
ETI	ILO conventions, including living wage issue	Less specific: complaints; experimental on monitor; verification; remediation	Multi-stakeholder	Business > Societal
FLA	ILO conventions, excluding living wage issue	More specific: management implementation; monitor; verification; complaints; remediation	Multi-stakeholder	Business > Societal
SAI	ILO conventions, including living wage issue	More specific: management implementation; auditing; complaints	Multi-stakeholder	Business > Societal
FWF	ILO conventions, including living wage issue	More specific: management implementation; monitor; verification; complaint; remediation	Multi-stakeholder	Business - Societal
WRC	ILO conventions, including living wage issue	Less specific: external monitor and report	Societal	Societally controlled

Table 5. An overview of eight private regulatory organizations.

5. Stringency, control and policy debates

Especially the indicators of the degree of labour standards and the degree of control in the measurement of stringency figure prominently in policy debates on the credibility of different types of private labour regulation.

Generally, most specific policy discussion with regard to labour standards is on the issue of including the provision for a *living wage* in a private regulatory approach. This discussion has received ample attention elsewhere (MSN, 2008; Esbenshade, 2004; Rodriguez-Garavito, 2005) and can be summarized shortly as follows. The provision of a living wage for workers in clothing manufacturing is a major precondition for the credibility of private regulation for both unionists and labour activists. According to an opinion poll among readers of the authoritative Maquila Solidarity Network (2007) private labour regulation news review, the living wage nowadays is still nr.1 concern with regard to private labour regulation. The main reason why some companies state that they hesitate to abide by private regulation with this clause, is what they see as the seeming inoperability of the concept.[30] What constitutes a living wage, for whom and under what conditions? These companies and private regulatory organizations do not adopt the living wage in their standards as long as they find that these questions cannot be answered satisfactorily. Proponents of inclusion of the living wage acknowledge the difficulties in the operationalization of the concept but insist on corporate commitment to it. In their view, the problem of understanding what a living wage is and applying it can be solved practically with some effort. In recent discussion for instance, the tool of comparative wage ladders has been proposed to make the application more specific (JO-IN, 2007). Sceptics however hold that the ladder itself if applied laxly may be a step back from the commitment to a living wage (Bulut, 2008).

Arguably most remaining controversies revolve around the idea of control in the measurement. The following sections will illustrate shortly how the issue of control becomes manifest in contemporary debates about the virtues and vices of different private regulatory organizations. First, it summarizes the contrasting views on predominantly business controlled and societally controlled regulatory organizations. Second, it analyzes two key issues of implementation for which the control issue runs through discussions for all organizations concerned: audits and supply chain responsibility.

a. Business controlled organizations versus societally controlled organizations

The predominantly business controlled organizations in the analysis are the American WRAP (promoted by Wal-Mart), the French ICS (promoted by the big French retailers such as Carrefour

[30] Interview P6.

and Casino) and the pan-European BSCI (which has amongst others Metro, Otto and Esprit as members). Proponents of a business-controlled approach to private labour regulation dismiss the idea that businesses need to be kept in check by societal groups in private regulation. The problem of labour abuse is seen as something that can be effectively managed by business using the help of commercial experts, without the assistance of unions or NGOs. Business controlled private regulation limits unnecessary debates and increases the potential for swift progressive action. [31]An additional advantage mentioned is that in the experience of some companies, suppliers are happier to comply with business-controlled private regulation when compared to other private regulatory organizations.[32]

Critics from advocacy groups meanwhile hold that business controlled regulation is *not credible*. It has limited entrance points for outsiders to judge the progress of companies, or what has been done to improve circumstances in factories. It excludes closer scrutiny of the implementation process by critical groups. And it leaves out possibilities for more inclusion of marginalized groups through business control of such functions as verification and complaints procedures (see MSN, 2004; Merk & Zeldenrust, 2005):

> All these new business initiatives... They are a sham, in no way a real effort towards improving the lives of workers. We should stop them.[33]

Some of these critics instead advocate societally controlled approaches to private labour regulation, such as, most prominently, the Dutch Fair Wear Foundation (which has amongst others O'Neill, Gsus and MEXX as its members). The advantage of societal control according to these advocates, by contrast, would be closer public scrutiny of progress, more information on circumstances of production and more room for the voice of marginalized groups.[34]

Critics of the societally controlled approach come from business backgrounds and question the credibility of these forms of regulation. The key issue here is one of trust: critics do not believe that societal groups have appropriate intentions in scrutinizing companies or involving marginalized groups in implementation. As a company representative notes:

> Of course we want our suppliers to abide by labour standards. Managers need to treat their workers well. But that is something different from going out there and encouraging worker organization. Because that is what such an initiative essentially does. They act as a Trojan Horse for local unions. That is not fair. I can't do that to my suppliers.[35]

[31] Interviews F3; F7.
[32] Interviews F9; P11.
[33] Neil Kearney, representative Global Union ITGLWF during speech in Brussels for CSR business community, November 2006.
[34] InterviewsP2; P3; B1.
[35] Interview F17.

b. Monitoring, auditing and control

When private labour regulation came into fashion in the 1990s, attention first focused on how implementation efforts by companies might be checked. Quickly, the idea spread that a degree of outside review would be necessary to judge whether suppliers were really abiding by codes of conduct. CSR managers of lead firms, who performed review in the first instance, were not seen as credible for the task, due to role conflicts. Gradually, the role of outside reporters for increasing amount of lead firms was taken up by commercial service firms such as accountants and quality standard firms, who performed so-called social audits in factories. Audits for labour standards in supplier factories in that sense resembled financial audits, with a first, second and third party logic of verification (Esbenshade, 2004).[36]

However, activists and academics soon questioned whether auditors could be viewed as real outsiders. The debate kicked off as an enquiry into a possible lack of quality of social audits. Dara O'Rourke (2002) in an empirical study criticized the capacities of accountancy audits on labour. Others questioned how suitable quality standards and environmental standard auditors might be for the analysis of labour standards, since they did not have any experience with analysis of social phenomena. Methods such as pre-announced audits and short on-site inspections were deemed insufficient or ineffective (see also Esbenshade, 2004). The discussion touched on a deeper political dimension with the publication of the Clean Clothes Campaign report on audit practices, *Looking for a quick fix* (2005). This report questioned the credibility of business audits in itself. Commercial interest ties business audit companies too closely to either lead or supplying firms and their respective agendas. First, since it encourages too lenient audits of factories, out of a desire on the part of the auditor to gain a stable group of clients (see also Mamic, 2004: 54). Second, because it inhibits sharing of information on worker and factory conditions across business and societal groups, complicating efforts towards redeeming of crises situations. Third, because workers tend to view commercial auditors in the factories as an extension of management, which is a reason for them not to trust them and not to be open about labour issues. The researchers therefore conclude that

> [u]ntil audits are used intelligently…they will achieve little more than superficial change for workers. And until workers, the intended beneficiaries in the process, are placed at the centre of the efforts to improve workplace conditions—from conception to implementation of those efforts—they will continue to be the losers (Clean Clothes Campaign 2005: 74).

[36] Originally, this means first party is someone from the firm that is to be audited, second party meaning a firm hired by the firm to be audited, and third party meaning an actor outside, often an auditor hired by an association looking over the industry.

The CCC report alluded to monitoring and verification processes that would involve marginalized groups as a necessary step towards improved code implementation. Proponents of these so-called participatory approaches to social audits hold that these are not so much preferable because these groups are real outsiders (Barrientos & Auret, 2005). Rather, these groups are real but unheard *insiders* with regard to the issue at hand, holding *opposite* stakes from the company under audit. A credible audit procedure therefore would not so much be structured by measures of impartiality (compare Bendell, 2004: 25), but rather by acknowledging that conflicts of interests tie observations to particular political positions, therefore aiming for an inclusion of underrepresented voices of those for which regulation is meant.

Business audits, nonetheless, are nowadays still the predominant tool of verification in current private labour regulation (even across industries, see Fransen & Kolk, 2007). Both business governed and multi-stakeholder governed regulatory organizations like SAI, BSCI, ICS, WRAP and company participants inside ETI make use of it. As far as business auditors and their clients are willing to take up the critique of opponents to business audits, they shun the deeper 'control' aspect to business audits, which, after all, would require a search for alternative modes of implementation and undercut their business. Instead they emphasize efforts to improve the quality of business audits.[37]

c. Supply chain responsibility and control

The supply chain responsibility debate is closely linked up with the business audit debate but adds a different spin on the issue of control with respect to power inequalities between different actors in the domain of regulation.

In the beginning of anti-sweatshop activism, supply chain responsibility was mostly a matter of discussing moral and political responsibility: should Nike be held responsible for wrongdoings in factories that it only has a trading relationship with, or not? Many companies held that this was not their concern, since it was not a matter of wrongdoing inside their corporate organization. Next up, the issue became whether there was a legal responsibility for companies as to working circumstances in supply chains. Could companies be sued for labour abuse at suppliers? The OECD Guidelines for Multinational Corporations for instance for long has not included the situation at supplier factories as something the multinationals could be held responsible for. Since then, various CSR regulatory instruments have been designed that deal differently with this issue.

Taking a formal approach to the issue, all eight private regulatory organizations in the clothing industry have some degree of *supply chain responsibility*, in the sense that they bring together companies that admit problems with labour conditions in their supply chains and commit

[37] Interviews P9; C2; C3.

to doing something about it. But there is a difference in *what* that something is that they want to do about it. And it is at the level of implementation of regulation that an important difference between the organizations can be identified in their understanding of taking responsibility. Companies involved in brand certification schemes like Fair Labour Association and Fair Wear Foundation are responsible for monitoring, monitoring costs and costs of reviewing progress through audits and\or verification by societal groups. Meanwhile companies involved in supplier certification schemes like Social Accountability International, Business Social Compliance Initiative and Worldwide Responsible Apparel Production are not required to monitor suppliers. Instead they are asked to let audit firms monitor suppliers. These buying companies then leave the selection of and cost for external professional audits and compliance programmes with the suppliers themselves. [38]

Supplier certification and responsibility is often defended as a method to actively involve the supplier in labour standards. The philosophy is that 'ownership' of the issue will lead the supplier management to care for the issue and handle it seriously. If a solution is merely pushed from buyers implementing and paying for it, supplier response will be evasive.[39] Activist and corporate opponents of this philosophy hold that this account is hypocritical:

> I am not aware of suppliers choosing for supplier certification [on labour] out of free will. They do it because their buyer wants them to and if they don't, they loose the orders. This thing is only about supplier choice and ownership in the formal sense, not if you look at it from a perspective of buying power.[40]

Labour advocates hold that supplier certification is a too easy way out for lead firms: neglecting responsibility, pushing cost down the chain, yet remaining in control of the procedure. By pursuing it, from a value chain perspective they leave the problem to a weaker party in the equation. From the perspective of the factory and management-worker relations, responsibility is however with the stronger party in the equation, the one most openly and visibly exercising power over the labour regime.

What is more, all supplier certification schemes are embedded in implementation on the basis of business audits, excluding the option of societal group involvement. This is not surprising, first, since it relies on business-to-business information flows regarding standards implementation: from supplier to buyer. Second, supplier certification means that workers are faced with what is from a functional and cultural perspective probably the most societal group-hostile actor in the value chain as the formally responsible party in private regulation. This means there are no direct

[38] ICS is an interesting anomaly in this regard. It also forces business supporters to pay for audits, while otherwise being business-controlled and retailer focused, like BSCI and WRAP.
[39] Interviews P8; F1.
[40] Interview F19.

incentives to involve these groups in implementation there, as buying firms may also easily recognize. Supplier certification is therefore prone to the same types of criticisms as business audits.

6. Final note

The observant reader may have noticed that the measurement results for degrees of stringency sit comfortably with labour advocates' emphasis on participatory approaches as the right way to pursue private regulatory implementation (see for instance Merk & Zeldenrust, 2005). This is not surprising since in the first place these advocates are themselves trained analysts of power, and their reasoning may therefore overlap in some ways with the present one. Secondly, it is undeniable that outcomes of the stringency approach can act as a justification for contemporary NGOs and unions to play a more prominent role in private regulatory instruments. This of course suits the organizational interest of these groups.

However, it is not the aim of this study to directly validate this political agenda, and the way this is currently being advanced through advocacy and private regulation. After all, there are many different ways we can think of stringent regulation being put into practice. Current private regulatory organizations that score high on degrees of stringency may not necessarily be the most effective, efficient, or equitable forms. This study is therefore not a direct policy evaluation.

In addition, some readers may wonder whether it is indeed preferable to have very stringent private regulatory organizations. Some policy analysts emphasize how less prescriptive regulation may improve performance, given the space that participants have to act innovatively or with regard for contextual understandings of rules (for discussion see McDermott & Cashore, 2008: 22-23). The present analysis in principle allows these readers to identify the organizations scoring 'medium levels' of stringency as *best practice*. Meanwhile, these readers should recognize that the implications of a power-based approach to private regulation are at odds with a desire for flexibility in regulation, given the elements on which the assessment of private regulation is based. In line with the philosophy of labour law, the study holds that private regulatory frameworks *assist in the creation of* instead of *settling an already existing* balance of power between economic actors. This means that workers have a better chance of furthering their position under conditions of *stringent rules* applied to multinational corporations. Flexible, less prescriptive regulation in this view may leave too much room for discretion in the hands of the powerful. They may use this power to the advantage of weaker parties, but if they do not then this will sustain a relationship of dependence.

With regard to the different degrees of stringency already some preliminary inferences about the political implications of existing private regulatory approaches can be made, before proceeding with analyses of further political interactions in the field of private labour regulation. First, the majority of organizations seem to conform or come close to conforming with ILO Core

Conventions in the elaboration of their labour standards. This may be seen as a boost for these Conventions from the realm of private and voluntary efforts. Second, the majority of private regulatory organizations offer a role for service firms in their implementation process, which means that the service industry is also a political presence to be dealt with in the field of regulation. Third and related, a minority of private regulatory organizations include societal interest groups in the monitoring or verification processes. This is a policy tool that may in principle help to strengthen worker organization and stimulate deliberation between factory management and societal interest groups in developing countries. Arguably, most private regulatory organizations do not contribute in direct ways to this option because of their reliance on business audits in the review process.

The following chapters will proceed to explain how and why these private regulatory organizations have developed, and following that, how and why, once in existence, businesses choose to participate in them. Finally, it will explain how and why competition and convergence evolves between the competing models of private labour regulation, and what consequences this has for the stringency of private regulation.

Chapter Four. How to dress up a code. The politics of developing approaches to private labour regulation

Ben sits in his office, turns off his computer screen and starts packing his suitcase. This afternoon he is again going to meet with some competing firms and groups of activists to talk about a compliance programme for labour standards in supply chains. The talks have been a rough ride so far. Perspectives on solutions are often miles apart, while he is also struggling to get by on the language used to denote labour issues. Due to the negative attention his company has suffered through activists' campaigns, his superiors feel that he needs to negotiate this common approach to labour standards with them. But he is in doubt as to whether the meetings are going to get them anywhere.

A couple of miles from Ben, Sophie sits in the common room of the NGO she works for and studies a memo Ben has sent out as a preparation for the meeting, in which he describes in general terms the structure of his company's value chain. Sophie is shocked by the complexity of the picture. For a minute she wonders whether she can negotiate a common approach with this company. Where to start with so many suppliers, so far apart from each other? What regulatory tool can ever reach so far?

1. Introduction

The previous chapter has shown that private regulatory organizations address the regulation of labour conditions in different ways. Having established the significance of these differences with respect to overall *stringency*, this chapter seeks to explain why some regulatory approaches have turned out to be more stringent than others. It will do so through a comparative historical analysis of the development of these initiatives, focusing on different groups developing different policies to negotiate different regulation. Few accounts so far have concerned themselves systematically with the question of why these differences are there in the first place, and when they do, they confine themselves to limited sets of cases for comparison (Hughes et al, 2007; Bartley, 2003; Esbenshade, 2004).

The regulation to be analyzed is specifically private, voluntary, and international in scope. The private character of regulation implies that those setting the rules can also be subject to them, and furthermore, be the ones implementing them. In addition, the voluntary character of private regulation means that actors can pick and choose between involvement in a certain process of regulation, they can leave it for others to do, or can start a new one with like-minded actors. This makes the field of international regulatory development very dynamic, and the events in initiatives

themselves interdependent. Interdependencies become manifest between groups who are, at different points, involved in different processes of regulatory development, but also through contacts between groups in separate trajectories (through NGO networks or business networks), and through intermediary actors (CSR consultants). Policies that are part of proposals for a private regulatory organization therefore cannot be studied as the exclusive product of closed negotiations between a fixed group of actors.

A logical step would then be to treat the negotiations over private regulation as belonging to some form of political organizational field (Powell & Dimaggio, 1991) in which predominant patterns of action and interaction that explain specific outcomes are identified. But that would not be completely correct. Instead, this chapter argues that *negotiations over new forms of private labour regulation take place while such an organizational field slowly emerges.* Actors' actions are *constitutive*, and *enactive* of this field: in creating new types of private regulation they are also helping to create a field of political interaction over regulation.

Studying the development of private labour regulation then means focusing on processes and outcomes on both the micro (negotiations between people in specific settings or time) and macro (interactions between different negotiations and outcomes) level of interaction. In addition, it is important to take into account the exact time at which specific regulation has come into being, in order to understand how specific negotiations over private regulation have fared. Different negotiation dynamics can be expected earlier on (when it is possible to speak of a so-called *institutional void*, Hajer, 2003) compared with a later time (when dynamics more closely resembling an *organizational field* can be expected). As much as the void stimulates predominant patterns of interaction, it does not structure specific outcomes to these patterns due to the increased agency on the organizational and sometimes personal level. By contrast, in later stages predominant patterns may be identified that structure outcomes and make the development of new forms of private labour regulation more predictable.

The implication of this approach is that the question of why organizations turn out differently in terms of stringency cannot be considered separately from the issue of why the regulatory field has become fragmented into different organizations. This chapter argues that three general factors have encouraged this fragmentation: first, the fact that in Europe the negotiations leading to international private regulation between international firms and international societal groups were in the first stages orchestrated in national settings, and alongside private regulatory development in the US, reflecting a local context to negotiation between groups in so-called stakeholder dialogues. Second, during the first generation of negotiations over private regulation, differences arose in perspectives through internal negotiation dynamics between groups on what the right course of action should be. And third, the second generation of negotiations brought together

likeminded groups to flesh out specific approaches that were different from the ones already in existence. This explains why specific societal and business groups have ended up in different regulatory initiatives.

The text will be organized as follows: first, the development of a field of private regulatory political activity is elaborated; second, the relevant groups of actors involved in negotiating private labour regulation are introduced; third, the emergence and fragmentation of the private regulatory effort in eight organizations is discussed.

2. Welcome to the institutional void

Maarten Hajer (2003) argues that the politics taking place in new forms of governance that include non-state actors happen in what can be called an institutional void: no clear rules and norms according to which politics is to be conducted and policy measures can be agreed upon. This means that rules and norms of participants are also challenged. These new forms of governance emerge in so-called 'backstage sites of politics' (Van Tatenhove, 2003) where actor agree on new rules of conducting politics and may develop new policies, as opposed to 'frontstage politics' that may be characterized by the formal institutionalized types of governmental and intergovernmental rule.

In literature so far, the institutional void is mainly used to satisfy the curiosity of policy scholars in the emergence of new styles of governance, rather than to question how the void affects actor positions with regard to specific content of policies. However, the understanding of institutional void can be extended to apply to these actor perspectives and dynamics, using the situated agentic understanding of structuration elaborated in the theoretical chapter. In these backstage institutional voids, many actors cannot concretely answer the question 'what is in it for me' at every step of the process, and have an indeterminate view of both the process and the actual outcome of the process. Cost-benefit analyses are difficult to make. Actor preferences can be understood as plagued by uncertainty. Because of this, political interactions become more fluid, as they rely less on calculations about fixed organizational agendas (compare Young, 1991). The process of development of private regulation may move parallel to the development of private regulatory preferences of actors involved in negotiation. The institutional void thus functions as a structural context of action enabling and constraining certain patterns of action and interaction, instead of patterns of outcomes. This means that it can be discussed as a general context of political action, identifying common patterns among the negotiations under study.

But has there ever been an institutional void with regard to the development of specifically the private regulation of labour standards? This is an empirical question deserving some elaboration. Analytically, Hajer proposed that the void would be most likely to occur when actors were dealing with new political themes: 'After all, if political institutions emerge as a historical

product of particular struggles, it is only natural that these institutions are designed to help resolve precisely those conflicts' (2003: 177). In this line of reasoning, global labour standards does not emerge as an appropriate topic for institutional void-like interactions. After all, many political institutions and established forms of labour advocacy already exist to promote the enforcement of labour standards across borders: ILO conventions, Framework Agreements, trade clauses (for an overview, see Van Roozendaal, 2002; Burgoon & Jacoby, 2004).[41] And yet, the backstage type of private regulatory politics evolves and displays the fluid characteristics described above. This is because of two procedural and three policy-substantial consequences of uncertainty and ignorance among negotiating actors.

First, most actors, when meeting to develop private regulation, have little experience with each other as negotiation or discussion partners. Granted, all of them to some degree have routines, repertoires and agendas for political action: firms, NGOs, trade union organizations. However, now they are faced with new actors as partners\opponents and therefore cannot always rely on their established practices and thoughts in engaging with them. Firms have only recently started bargaining with other non-state actors as *stakeholders* and may not know what to expect from NGOs and activist networks (Van Tulder et al, 2004). Parts of the NGO community only recently have taken the turn to approach the (former?) ideological enemy and engage with firms and may also be insecure about what to ask for, what to propose and whom to approach in what way. As one of the negotiating activists recollects

> We were constantly asking for all kinds of things from companies, we proposed all kinds of things that they should do, tried out all sorts of ideas. And it was sort of surprising for us that every time they kept returning to the table and come back with something and say "OK, let's think of this in the following way"[42]

Trade union organizations are also only slowly developing their role working with advocacy organizations such as those in NGOs and labour activist networks and may doubt whether they are dealing with rivals or partners (for illustrations see Eade & Leather, 2005; Justice, 2002).

Second, there is relative ignorance about the way these different types of actors should interact with each other in the process of negotiating new rules. The reason these groups come together has to do with "frontstage actors" (in the form of governments) inviting them to discuss and take responsibility for global issues. Enforcement limits and negotiation deadlocks within international public institutions and the lack of efficient scope, capacity or willingness of governments to enforce certain standards led to strategies of engaging non-state actors with each other. Authors most often refer to the Rio United Nations Conference on the Environment and

[41] I thank Bas Arts for emphasizing this point in discussion.
[42] Interview N4.

Development in 1992 as the mainstream breakthrough of a *stakeholder* based thinking of global governance (Van Tulder & Van der Zwart, 2006: 232). This invitation to engage backstage is supported by three related policy innovations on the rise in the 1990s. First, the discourse of sustainable development, which in the course of the 1980s acquires a new meaning, implicitly reconciling economic, environmental and social concerns in thinking about solutions for a better world and thereby paving the way for interaction between actors representing these concerns in the creation of global solutions (as proposed by the Brundtland commission). Second, there is the creation of public-private partnerships as practices to deal with specific problems (Boerzel & Risse, 2002). Third, there is the conceptual language of Corporate Social Responsibility management theory, which emphasizes the importance for corporations to take into account stakeholders as representatives of relevant societal concerns (for an overview see Carroll, 1999). Key point here is that all these innovations at first of course lack practical operationalization that actors actually engaged in discussion with each other can use. It is no surprise then that a large knowledge industry emerges that aims to provide more specific lessons and models assisting companies as well as NGOs in elaborating strategies (for illustrations of the lessons of these commercial experts, see for example Bendell, 2000). However, the organizations sitting together for negotiation for the first time cannot yet profit so much from the products of this industry. For this reason, as CSR consultants in their case studies are apt to show, terms of interaction between the interest groups are quite unclear and actors have to muddle through.

Then, with regard to the specific issue of labour standards, three further sources of uncertainty can be identified. First, this is ignorance among some parties at the table about the specific labour conditions to be regulated. Companies that are pressured to contribute to private labour regulation have mostly outsourced their production process to supplier factories, most of the times aiming to reduce costs. This, in Anna Pollert's (1988) terms, stimulates 'dual labour markets'. The company can only be expected at first to take responsibility and be knowledgeable of its in-house labour circumstances. When companies do start to engage on the issue of labour conditions with suppliers, they have to catch up on the circumstances within their supply chain.[43] Paradoxically, some union organizations may face this challenge too. The clothing industry in many developing countries has low levels of unionization and therefore unions may lack direct contacts with the circumstances of production. Moreover, Western European or Northern American unions asked at the discussion table may predominantly have knowledge about industrial relations regarding their members in developed countries.

Second, ignorance of global labour standards can be expected as an issue, at least among companies. Intricacies of formulations like 'living wage' and 'freedom of association' may be

[43] Interview P6.

unclear to some as basis for implementation. Certain NGOs may not be too familiar with this body of policy and regulation either.

Third, the question of how specifically *private* rules for labour issues may function and how implementation and enforcement may be organized. Who is going to do what? Who has what information? How are decisions taken? To some extent all parties will be ignorant here, although some companies may be able to translate their experience with quality standards and certification into certain policy frames with regard to private regulation.[44]

All these uncertainties thus create the institutional void-like conditions of political interaction that policy scholars were inclined to reserve for new policy fields. As a response to these uncertainties, particular forms of interaction that are similar across different negotiations within the void can be expected. Because of this it can be argued theoretically that the institutional void is a specific structural context of action constraining and enabling the activities of actors. It does however not structure patterns of action towards specific policy outcomes. Rather the institutional peculiarities of the void stimulate the significance of agentic orientations and inter-agent dynamics in the making of specific outcomes. Information, frames of discussion and personal characteristics all contribute to a quite fluid type of political interaction.

However, this is likely to shift somewhat moving in time towards the moment that these fluid forms of politics have led to the emergence of the first generation of private regulatory organizations. The void fills up as regulation is put into practice, knowledge spreads, and strategies are advanced, copied and countered. Accordingly, there is a different situation as a next generation of efforts tries to build new private regulatory approaches. Here tactical and strategic considerations towards a certain policy outcome may come into play much earlier, even at the point of selecting prospective partners in the making of private regulation, as will be shown below. This is because the five uncertainties steering the institutional void-like qualities of rulemaking have all decreased to some extent.

Finally, as elaborated in the theoretical chapter, some of the ambiguity or ambivalence surrounding actor's perspectives on policies may not go away as the field becomes increasingly institutionalized, because it stems, to use the language of social theory, not so much from temporal-relational as from social-relational aspects of action. This means that it is still difficult to predict specific actions for certain actors, also when private labour regulation, practices of negotiation and strategic routines are in place. This is because in terms of purposes certain organizations are at a crossroads. Due to the characteristics of their organization and the problem structure of the topic of private labour regulation, choosing a strategy is never going to be a straightforward thing for their representatives. Their organization may continuously display some ambivalence or ambiguity

[44] Interviews F6; P8.

towards the topic that representatives may have to solve on their own, or with a small group of people surrounding them.

There is another reason why the increased closing of the institutional void may not mean that CSR managers revert to the simple objectives of their corporate organizations (profit, shareholder value). Because the issues of the CSR agenda are quite alien to many of the daily proceedings within a corporate organization, CSR managers may more or less permanently be in a relatively isolated position from their colleagues at other departments, causing them to rely also on the outside interactions within the emerging field of CSR practitioners. Andrew Crane (2000) has proposed that this field may be as significant as a social sphere that structures actions of CSR managers as the internal corporate organization is. It may increasingly function as a professional sphere in which norms and expectations about appropriate CSR management are further shaped. This of course does not mean that the people in this sphere share similar ideas about private regulation. The relevance of this dynamic for CSR managers will be elaborated in more detail in the next chapter.

In this understanding of organizational action it is therefore important to recognize the moment that the person acts rather than the organization, or the person acts as a manifestation of a social circle across organizations, rather than the organization it formally belongs to. Below, in the discussion of different policy positions of groups involved in negotiating, this will be taken into account.

3. Groups, representatives and development of policy positions

The implication of the logic of the institutional void is that empirically developments can be seen over time in the policy positions of different groups. In addition, different policy positions can be predicted to emerge as preferences of representatives within one category of interest groups (like firms or unions). This then reflects the ambiguity or ambivalence of this interest group's approach to private labour regulation, meaning that an individual (the negotiator) or a group of individuals will in the end make a mark on preference formation within that group.

The following sections will group the actors that are in some way involved in discussing regulation: business groups, societal groups, government and service intermediaries. It will shortly discuss their organization, the ways in which they are linked to the debate on private regulation, their power capabilities and their possible policy positions, bearing in mind ambiguity and ambivalence in stated preferences.

a. Business representatives

Global value chains scholars have analyzed the dynamics in global clothing production and trade.

Gereffi and Memedovic (2004) and Dicken (2006) hold that the concentration of market power in the hands of large retail chains in US and EU is rising and more retailers are developing strong ties with producers overseas, in order to secure constant supply in stores. Moreover, many retailers have developed private label or brand-store clothing lines which they source directly from manufacturing suppliers in developing countries. This means that retailers are no longer only in a buying relationship to manufacturers or former manufacturers such as brands; they are now also competing with them. Clothing manufacturers in the EU seem to respond to this in various ways. Either they fail to compete and they disappear or their position in the chain decreases to that of an importer. Alternatively, manufacturers shift their competitive edge by outsourcing and focusing on marketing and branding, copying the strategy of firms such as Nike that were 'born global' and have had their sourcing strategies embedded in their original core business strategy. An added or an alternative strategy is to push the development of own retail outlets.

The market for clothing in the EU nowadays consists of various forms of businesses, many of them combining different functions in the value chain to different degrees: buying, marketing, designing and retailing. Because of this economic power relations between these players are becoming more complex. Gereffi (1994) distinguishes three types of lead firms within the industry, according to their insertion in commodity chains: branded marketers (purely outsourcing companies such as Nike, Liz Claiborne), retailers and branded manufacturers (which used to produce themselves but increasingly rely on sourcing, see Levi's). McCormick and Schmitz (2001: 24-29) break the industry up in smaller parts and distinguish ordering from high street to low street profiled products: Fashion-Oriented Companies (Prada, Armani), Department Stores\Branded Merchandisers\Specialty Chains (Marks & Spencer, Liz Claiborne), Mass Merchandisers (C & A) and Discount Stores (Asda, Scapino).

The horizontal organization of the industry is also fragmented across countries and regions, and often within countries as well, with different business associations tailoring to the needs of different types of companies. As a source of further complexity, clothing is also a key field for companies originally engaged in other lines of commerce (for example sporting shoes and goods and multi-product retailing) (compare Underhill, 1998: 211-221).

Firms engaging with the clothing production chain can make two significant decisions in the matter of private regulation for labour conditions: adopting a certain established form of private regulation (or not) once it is there; and (co-)developing a new form of private regulation. The former is subject of the next chapter, which maps the development of corporate CSR policies and the development of strategies of business support for private regulation and as such addresses the activities of a mass of over one hundred companies engaging with private regulation. The latter is discussed here and deals with only two dozens of firms engaging in original rulemaking (called

CSR norm entrepreneurs by Flohr et al, 2007). Firms that become involved in private regulatory development seek cooperative solutions with other firms and\or societal groups in an effort to tackle the potential problem of being held accountable by critics for labour circumstances in their supply chain, either individually or as an industry. Dealing with this issue is the main responsibility of Corporate Social Responsibility managers in these firms. Firms that become involved in the making of new private regulatory approaches predominantly are dominant players within the sectors of sportswear, clothing branding and retail and mass multi-product retail. Most if not all of these firms have been subject more than once to public scrutiny by campaigners and media on their labour circumstances at the moment they enter the phase of negotiation (Bartley, 2003; Frenkel, 2001; Esbenshade, 2004). Most firms are asked to join by other prospective negotiators or the organization hosting the negotiation. Often, their selection reflects their degree of involvement with the issue, meaning that in the past they to some extent have made a beginning in dealing with the issue of ethical supply chain policies: they have hired staff responsible for a code of conduct and created some policy to promote compliance with the code. In most instances, these policies are in an infant stage and companies seek collaborations to further progress. Firms can therefore not try to 'upload' their elaborated and preferred policies to the common approach they are negotiating. Different firms shop around, getting a feel for different discussions.[45] Many opinions that corporate representatives have on policy particularities cannot be predicted on the basis of fixed company attributes. As said, it is largely in the dynamic of negotiation and in deliberation within the corporate organization, corporate representatives are going to determine whether they want to adhere to a living wage labour standard or not, or what specific type of division of regulatory responsibilities is going to work to manage compliance with standards.

Similarly, through the experience with negotiating in multi-stakeholder settings, firms are developing preferences to continue regulation of labour standards in multi-stakeholder settings or not. Once again, personal experiences, orientations and the consequences of the development of specific interpersonal relations within negotiation may contribute decisively to corporate perspectives on this matter.

However, one group of companies that in practice is going to choose the development of multi-stakeholder types over other forms of private regulation, regardless of how representatives personally assess the proceedings in negotiations. These are the largest, most visible brand and high street companies within the sectors: sport brands such as Nike and Reebok, and clothing brands

[45] However, in the rare occasion a firm is already wedded to some form of ethical supply chain policy, it may be a problem to have it work towards a common solution with other parties that bring in different ideas. One may hypothesize that this is the reason why Levi Strauss, as an early adopter, was such a "promiscuous" party, shopping around several negotiation tables. It has also become one of the rare examples of a company switching participation in private regulatory organizations. For Europe, C & A with its SOCAM monitoring system is a good example of a difficult discussion partner for collaborative approaches to private regulation.

such as Levi's and Liz Claiborne. These companies are believed to be in most frequent interaction with activists and are most likely to be prominent targets of campaigns (Bullert, 2000; Knight & Greenberg, 2002; Merk & Fransen, 2008). Cooperation for solutions may appease critique and diminish risk of media scandal, reputation scandal, and loss of consumer and\or shareholder confidence.[46] Note that for both policymakers as well as researchers the jury is still out on the question whether unethical supply chain policies can have such a negative economic effect. But companies tend to manage their risk according to scenarios, and this is one that frequently surfaces and stimulates company action.

High street and prominent brand firms are also not opposed to taking a degree of responsibility for compliance with labour standards in their supply chains. After all, if they are the ones who will be receiving the heat for misdoings, they might just as well promote systems that allow them to review and influence progress as much as possible, and possibly receive some degree of reward for their efforts. Note that this does not mean that these companies resist setups that allow for some peer-review of their performance by stakeholder groups. They need that in order to guard off public societal critique. Rather, these companies are less likely to support approaches that lend more choice to suppliers (as Chapter Five will show).

Not all companies within the industry promote such a 'hands-on' approach. Some might consider it a too costly affair, requiring a too high degree of managerial commitment. Instead, companies with smaller budgets and larger distances to their supplier are going to be in favour of looking for some form of solution that is cheaper and easier. For this reason, these companies may be better off in negotiating different private regulatory organizations than the big brands. And given the possibility that these companies may feel relatively less pressured by societal critique than the big brands do, they may be less frightened to pursue this regulatory approach without consent of stakeholder groups, if needed. On the other hand, not all smaller brands or retailers shun the perspective of larger brands, reason why personal perspectives and interpersonal dynamics are going to influence in certain cases whether the one or the other perspective arises.

The main source of corporate power is of course the fact that without company participation, most private regulatory initiative set-ups are useless. This means that activists may sometimes have to accommodate company demands. This power increases if the firm is larger and better known. On the other hand some of these firms might need to accommodate societal critics in order to keep them at the table, if they want to achieve multi-stakeholder regulation. In addition, groups negotiating with firms may also expect firms to be able to invest more resources into negotiation than societal groups.

[46] Interviews F13; U2.

Representatives of business associations form a specific category of business negotiators. As with firms, the CSR topic is also inside business associations a new topic on which the experts can work with some degree of autonomy, perhaps more so due to further detachment from direct economic incentives when compared to company managers. These associations may to some extent mimic specific preferences of member firms, depending of course on their relation to specific firms, internal decision-making procedures, and position and prominence in the sector. Two routes for some deviation from company preferences may occur for these associations. First, associations may aim to play a role as a frontrunner for the industry and push for higher standards and more elaborate policies than their members at that moment do. Second, the association may act as the voice of the lowest common denominator, only promoting policies that act as the baseline all members reasonably can agree on. Accordingly, its positioning in the regulatory discussion may turn out different. Frontrunner associations are more likely to become involved with early discussions on private regulation. Lowest common denominator will either stay out of discussion or aim to act as a brake on too ambitious schemes affecting its industry members.

b. Activists

In the field of private regulation on labour conditions, NGOs and trade unions function as promoters of certain forms of private regulation, critics of others (or: of all forms of private regulation), and general advocates of labour issues in supply chains, often putting direct pressure on companies. Here their policy positions are summarized under the label of *activists*.[47] Empirically this concept allow for an analysis of both trade unions and so-called NGOs as they are, in fact, intertwined in activist networks. The usage of this term also solves the problem that CSR professionals themselves sometimes distinguish between NGOs and unions, and sometimes not, depending on the role of organizations that they address, in any case without clarifying what it is exactly they mean by an "NGO". "Activism" and "activist" as words stress objective and role over organizational membership and characteristics and therefore are suited for the purpose.[48] The term "interest group"

[47] This study takes as a definition the Oxford Dictionary description of activism as "intentional action to bring about social or political change. This action is in support of, or opposition to, one side of a controversial argument."]

[48] In this sense, the analysis is also in line with the expectation of O'Brien (2002) who both politically and analytically argues for a conception of trade unions as functioning like a social movement when it comes to global solidarity issues, while acknowledging that unions are different organisations than other activist units. Arguably the next step would be to also include activities *inside* corporate organisations for advocacy goals into the conception of the social movement for CSR, following Davis and Zald (2004). This conceptual step is however fraught with so many additional analytical and political problems that it is not attempted here. Using 'activism' as a term does raise a problem however: it is usually applied to less-institutionalised forms of politics for marginalised groups and many observers would add to that a degree of militancy in the objectives and actions of actors (compare "contentious politics" in Tarrow, 1998). And here some would argue that there is a difficulty regarding the strategic repertoire of movements and unions in influencing companies, since it involves activist engagements with representatives of companies that, first, one could argue to become institutionalised and, second, are not that militant. Does rubbing shoulders with big business still count as activism? Does building regulation with big business still count as activism? One can argue that it does, first, since it still embodies the important element of working on behalf of marginalized and disenfranchised minorities with no voice

will be used as the label for NGOs, unions *and* business support groups as a category of political actors representing different stakes.

Union and NGO activists are caught in a particular dilemma regarding their preference for private labour regulation, one that is most likely to be solved through personal preferences and interpersonal interactions in both negotiations and intra-organizational deliberation. This dilemma concerns their view of private regulation in comparison to (public) institutional alternatives of promoting global labour standards, and in relation to both their broad advocacy goals and their organizational interests.

First, unions are basically the core private organization that addresses worker circumstances and are as such expected to play a key role in any of the schemes to address global labour standards that are currently proposed or in existence. This includes multi-stakeholder private labour regulation, where trade unions are perceived to be a key stakeholder group to be engaged in governance.

From the crude perspective of organizational interest, promoting all or any of the policy instruments available will be beneficial for unions, whether that be International Framework Agreements with individual companies, trade clauses or enforcement of ILO core conventions and national regulatory frameworks of labour law.[49] However, in multi-stakeholder private labour regulation, unions are likely to have to share power and responsibilities with NGOs. Alternatively, they are in danger of being out-competed by NGOs as key stakeholders, in case companies prefer to broker a deal with NGOs and without unions. By contrast, in Framework Agreements and in national forms of labour law and corporatist negotiation, unions are monopolist players as organizations advocating societal concerns.

From a policy perspective, union representatives debate the merits of these different political instruments in comparison. International Framework Agreements politically speaking are considered as strong instruments in promoting worker organizations and the respect for labour standards globally. As an implementation instrument, however, they are only 'as strong as their weakest tie', meaning that it is dependent on the scope of the agreement, the degree of commitment

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in the policy process (i. e. workers in export-oriented industries of the developing world). Second, given the new status and experimental character of CSR policies and their private regulation, there is still a difference with the understanding of "institutionalised politics" by contemporary social movement research, namely the politics of national government(s).

[49] International Framework Agreements (IFAs) are negotiated between an international firm and a global union. These agreements concern the international activities of that company. The purpose of this framework is to establish an ongoing relationship between the firm and the union organization which can solve problems and work in the interest of both parties. These agreements can, but do not always include, a code of conduct. International Framework Agreements have always received substantial support on the part of trade unionists worried about the consequences of globalization, because of the central role for ongoing bipartite negotiation with the ITS. In any event, the beneficial effect for workers in factories depends on a set of factors. At best, IFAs are indeed a tool for improvement of worker rights. At worst, they are as much a dead letter as corporate codes of conduct that are never put into action. See also Justice (2002).

from the signatory firm and, finally, the qualities of unions and the links between unions whether advances in working conditions can be made. This may be a problematic issue in industries and countries with low unionization levels.[50] Advocating a labour clause in international trade agreements is an explosive topic as it threatens the solidarity between Northern and Southern worker organizations. Politically speaking, it is presently resisted by a too large coalition to stand a reasonable chance, at least within the arena of multilateral negotiations. Implementation of ILO conventions meanwhile has to rely on national government enforcement, given the lack of resources the ILO has to monitor proceedings in developing countries. This means that private labour regulation emerges as at least a possible tool to deal with labour crises fast and effectively. Trouble is here, that many of the private approaches may lack teeth as well. In addition, unionists fear that support for private labour regulation may still undercut efforts at promoting public regulation.

Union representatives thus face ambivalence in their organization about the preference for either higher stringency private regulation or lower stringency private regulation. Generally, if unions are to engage with private labour regulation they can try to create private labour regulation that most closely resembles labour law, and push for high labour standards and involvement of worker organizations on different levels of implementation and enforcement. By contrast, if they prefer alternative instruments to global labour standards, they might push for a private approach that emphasizes flexibility, functions as an exemplary model and a source of inspiration, while leading to some incremental improvements— nothing more. By avoiding advocacy of elements within a private approach that would grant it too much of a 'regulatory' quality, they re-confirm the status of national law and international conventions, together with the desirability of alternative policy instruments.

As a result, union presence at the negotiation table is a necessary but not a sufficient condition for the creation of high stringency private regulation for the clothing production chain. Two regulatory organizations (FWF and WRC) that engage with trade unions in negotiation and governance are in the "higher" segment of stringency measurements and the other two (SAI and ETI) are in the middle and lower range.

The situation with NGOs and labour activist networks is slightly different, but also creates a dilemma. Unlike unions, there is no formal institutional role for NGOs and activist networks in the enforcement of labour standards through available public regulatory and corporatist policy instruments. By contrast, private approaches to labour standards may award NGOs and networks roles as rule-makers, governors and monitors. From an organizational interest perspective, this means that private solutions are preferable for NGOs, offering more for avenues for influence and in the process also possibilities for funding and organizational growth.

[50] Interviews U1; U2.

However, from the perspective of policy preferences, NGO stated aims are mostly towards enforcement of binding public regulation. Some NGOs, while endorsing private regulation, also devote resources to lobbying binding rules for multinational corporate behaviour (for instance Oxfam). Meanwhile, private labour regulation is a policy solution for improvement of labour conditions as long as public enforcement is absent. Their engagement with it is a sign of their lack of trust in quick and substantial advancements in the public regulatory domain.[51] Both from an organizational and a policy perspective, NGOs would like to push for a robust approach to private regulation. Private regulation needs to have teeth, if it is to make a change for workers on the ground and if it is going to suit the NGO reputation of serving a common good. NGO affiliation with a weak private regulatory model may threaten its reputation, arguably one of the core sources of its organization's power. Of course there can be all kinds of interpretations of what constitutes private regulation "with teeth".

Most activists within unions, NGOs and activist networks discussed here work across borders of different countries, or have solidarity ties with like-minded groups in other countries, most importantly those groups in clothing-exporting regions. The depth and width of these transnational ties vary across different groups. To point out more specific differences in organization and outlook between these groups, it can be illuminating to discuss them in the order of groups with closest proximity to worker conditions in exporting regions as a pure advocacy and representation issue to groups with further distance from it, so from global unions and labour activists-union networks to developmental NGOs and consumer movements.

"Global unions" is the new name for the former International Trade Secretariats (ITS) established around globalizing industries. They deal with transnational industry specific labour issues and claim representation of millions of workers in different countries who are aligned through their own national union organizations. In addition they advocate issues for those workers who are not unionized (which is the predominant share of the workforce in export mass consumer goods manufacturing industries in developing countries, see Merk, 2007b; on workers in informal workspaces see Chen, Sebstad and O'Connell, 1999). Representatives of global unions are involved in private regulatory development and governance since it can be a tool for improving labour conditions and raising workers rights awareness. Concurrent with the strategic dilemma described above, inside global union organizations one finds both enthusiasm and skepticism on the private regulatory option. In private regulation, global unions prefer at least high labour standards. Their power capabilities are based on their expertise on labour conditions, often very specific about the industry at hand. In addition, they can bring negotiation skills to the table, as well as claim authority due to their indirect representation of workers.

[51] Interviews N1; N13.

Labour activist-union networks bring together both labour advocates and unions from Europe and US with unions and other forms of workers organizations and NGOs in exporting regions. Networks like the Clean Clothes Campaign and the Maquila Solidarity Network use research and campaigns to inform the public in Europe and North America and to mobilize it around pressure campaigns towards companies. The strength of these networks lies firstly in their relatively close ties to workers on the ground, and the high degree of expertise on topics of working conditions that they build on because of that. Secondly, these networks very swiftly can turn an advocacy issue into a public campaign specifically targeted against companies on a certain issue of worker mistreatment. For this reason, many companies are wary of their actions. Like the global unions, these networks demand high labour standards. In addition they strongly advocate worker and union participation in private regulatory implementation, while in the long run preferring binding and enforced public regulation.

National trade unions in Europe and US only have indirect links with workers in exporting regions through global unions and the unions from developing regions in the International Confederation of Free Trade Unions. Depending on their organization's history of maintaining solidarity ties with Southern groups, some unions may have more expertise on global labour topics than others, illustrated by the size of their global justice department. They can enter discussions on private regulation with stakeholders as general labour advocates because of their expertise and possibly the common ties they have on the national bargaining level with companies or business associations involved in the initiative. Their standpoint will be inspired predominantly by a broader political view on workers rights in general, but could in some cases be subject to issue linkage with on-going national debates about labour conditions.[52] Their policy preference is similar to that of global unions. The work of national trade union leaders on global issues, however, is not so strongly attached to representation structures or tight advocacy networks, granting them the possibility of more freedom in negotiating policies.

Developmental NGOs in Europe, the US and Australia have a broad agenda of advocacy, focusing on the plight of developing countries in general, plus that of indigenous communities,

[52] One consideration could be maintaining or enhancing good relations with business negotiators in national or sectoral settings of labour negotiations. It can also be asked whether protectionism is a motivation for specific policies towards private labour regulation, where stringent private labour regulation might save jobs at home. Obviously, union respondents would never concede on the record to such motivations for supporting private labour regulation. In the case of Western-European unions, there are increasingly less jobs left to save, given the small share of national clothing production in their countries (with the exception of haute couture powerhouse Italy, Saviolo & Ravasi, 2007: 19-21). Furthermore, a background check of textile and garment production levels in Western-European countries did not lead to a significant connection between diverging union strategies and concern for different sizes of the national clothing manufacturing workforce. In the American case, one may be more tempted to see a connection between protectionist concerns and stringent private regulatory preferences, given, first, the mainstream status of calls for protectionism as an instrument for social purposes (see Burgoon & Jacoby, 2004); and, second, compared to Europe, a larger remaining clothing workforce. Ironically, some of this workforce is now subject to similar private monitoring of American labour law, specifically targeting the problem of informal workspaces (Weil & Mallo, 2007).

farmers, workers, women and children. They advocate policy change for governments, international organizations and corporations while managing all kinds of private developmental projects themselves. Whether they have strong ties with the labour issue and the theme of worker organization in exporting regions differs, and is very much dependent on the existence of expertise inside the organization and past decisions about specific advocacy goals. This then could influence either a more labour-emancipatory focus on private regulation, akin to labour activists, or a more general fairness-based approach focusing on embeddedness of regulation in local communities and possibly accommodation of different preferences around the table. Apart from possible degrees of expertise on the topic, developmental NGOs can have their specific brand (think of Oxfam) as a source of power because of the trust that consumers attribute to it.

Consumer and shareholder movements such as the Council on Economic Priorities advocate global justice issues through market mechanisms. Of all societal groups discussed here these NGOs tend to be most enthusiastic about the private and voluntary form of dealing with social and environmental agendas. Instead of focusing on the issue of working conditions as such, they are more committed to transparent and accountable forms of corporate policy for consumers and shareholders. This is also what they advocate in private regulation keeping an eye on what companies could bring to and get out of the process at well. Their power capabilities are mainly based on different degrees of expertise, and the claim to represent consumer interests.

c. Governmental representatives

Governments do not have a direct role in bargaining for private regulation, but they are important in establishing a political climate in which private regulation is seen as a beneficial solution for certain political issues. The new policy line on development assistance in Europe (and the US) is focused on insertion of the developing country in the global economy and restriction of all kinds of barriers to international trade with developing countries (for an overview see Simon & Dodds, 1998). Private regulation of environment and labour conditions fits well with this policy because it addresses these problems in such a way that they are less likely to become stumbling blocks to trade liberalization and the globalization of production.

In the case of labour conditions in supply chains, government bodies such as development agencies and ministries in amongst others the UK and Germany work as donors of research projects and NGOs, as convenor of discussions and conferences and, most importantly, as the chair bringing stakeholders round the table for actual negotiation of an approach to private regulation. The specificities of the discussion over private regulation are left to the non-state negotiators. Government representatives only bear responsibility for the process and sometimes a part of the funding. They do not push for specific solutions. Focusing on an impartial role ‘above parties’,

they play key roles in bringing different groups with different views around the table to negotiate. By doing so, they also establish a national character of negotiation, and indirectly contribute to fragmentation of private regulatory efforts in general.

d. Professional service intermediaries

Many professionals involved in CSR issues earn their money by advising, researching or assisting in implementation issues. As in many areas of the global economy nowadays, the service industry is a presence not to be neglected. For the CSR field, the most important categories of service workers are consultants and auditors\quality controllers (see also Fransen and Merk, 2007). Consultants advise companies, NGOs and private regulatory organizations on policies and strategies, and make wider contributions to professional CSR knowledge, offering both evidence and proposals for framing CSR inside companies and communities. Auditors and controllers offer their services as professional 'external' checks to private regulatory implementation systems. Neither of these groups is significantly involved in negotiating and developing specific regulations or policies. But their existence is of indirect significance for the discussion on private regulation. First, because consultants serve as sources of inspiration and agents of diffusion of thought and experience on CSR issues and regulatory models in general; second, because the auditors and controllers form a policy option to be included when discussing monitoring systems. To the best of their ability, audit and quality controllers from firms such as Intertek and SGS use their lobbying skills to keep that option on the table. They can do so through political rather than economic reasoning with firm representatives, arguing that private regulatory implementation can only be done fairly and effectively with the use of outside expertise, i. e. them. But rarely has one of these firms developed or actively put forward a strategic vision on the specific place and scope of their activities inside private regulatory models.

e. Overview

The groups actually involved in negotiating private regulation can now be depicted as in table 1. The specific dynamics in negotiation between the groups on the left end of the scale, the right end of the scale and the middle groups will now be discussed below. Emphasis on phases of negotiation will be necessary to understand why, given the dynamic and volatile nature of private voluntary regulation, societal groups committed to worker empowerment have agreed on systems with lower levels of stringency. And why some businesses committed to business-friendly regulatory solutions have subscribed to a more stringent version of private regulation.

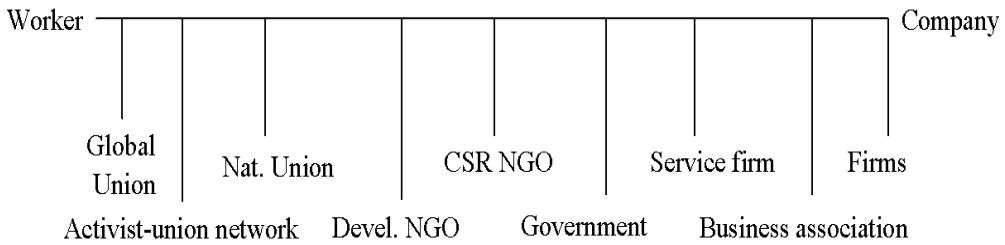

Table 1. A scale of representation and advocacy of groups negotiating private regulation on labour conditions

4. Negotiating private regulation

Following the process of institutionalization described in section 2, the different private regulatory organizations and their approaches are put on a scale depicting both stringency and the time of their conception. Notable is that the next generation (presented here as starting from 1998 onwards) shows a much greater disparity of stringency levels then the first ones (1995 to 1996). This probably has something to do with the set of groups committed to negotiations, which, in the first generation were more diverse and may have worked towards a common consensus, while in the second generation were more likeminded and committing to a more pronounced higher or lower approach. Again, this "like-mindedness" in itself is a result of institutionalization, in the sense that strategizing became possible because groups in this phase actually knew roughly on forehand what they wanted to get out of private regulation and with whom they could get it. In any case, what is required is an explanation for the differences in policy outcomes as a result of the negotiations in both generations of rulemaking. This will be done below in four steps: one for both generations of rulemaking, an intermediate step devoted to failed attempts at developing private regulation and a single step focusing on an outlier case.

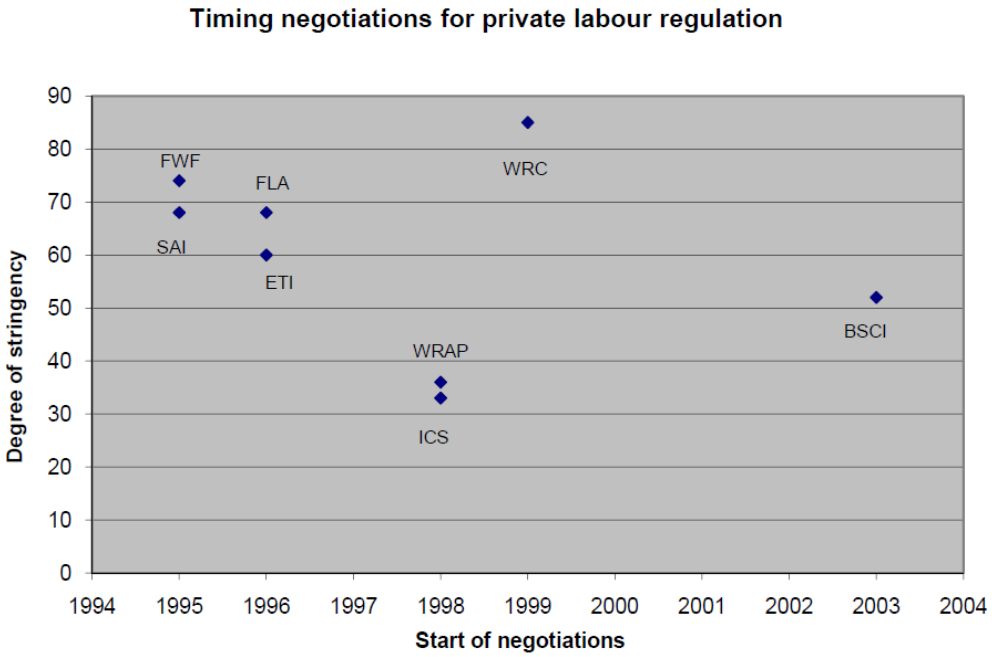

Figure 1. Timing negotiations.

a. The first generation of rulemakers: experimenting in the void

The following initiatives were developed in the first generation:

- The *Fair Labour Association (FLA, www.fairlabor.org)* started as the Apparel Industry Partnership (AIP) in 1996, including at first American apparel and sporting goods firms including Nike, Reebok and Liz Claiborne, trade unions and NGOs in the discussion on development of a code of conduct and an implementation scheme;
- *Social Accountability 8000* by the Council on Economic Priorities Accreditation Agency (CEPAA, later renamed *Social Accountability International, SAI, www.sa-intl.org*), which was established by the US social research institute Council on Economic Priorities and included brand and retail firms, as well as NGOs and unions in development, from 1996 onward;
- The *Ethical Trading Initiative (ETI, www.ethicaltrade.org)* was negotiated in the UK from 1996 onwards, as a result of the engagement of NGOs and trade unions with company representatives, of mainly multi-product retailers, which are the biggest players in the UK market for consumer products;
- The *Fair Wear Foundation (FWF, www.fairwear.nl)* was the result of negotiations starting 1995 in the Netherlands. FWF is a collaboration of two clothing industry related trade associations, Modint and Mitex, Dutch trade unions, and Dutch labour and developmental NGOs.

Section 2 elaborated the uncertainties plaguing actors who have to negotiate under conditions of an institutional void. In general, five specific traits of interaction between negotiators can be identified that arise as a response to these uncertainties, as long as the institutional void is not yet filled up: public institutional support at the moment of initiation, phases of experimentation and information, broad negotiations and shifts in negotiation membership, personal orientations and interpersonal dynamics, and finally frames of discussion. The different ways in which negotiation dynamics then play out determines the particular institutional outcome, namely the approach to private labour regulation that is adopted.

All four private labour regulatory organizations of the first generation have been pushed forward as a result of governmental or intergovernmental activity. The groups developing ETI in the UK were supported by the British Department of International Development, then occupied by the freshly instated New Labour government, eager to develop *Third Way* approaches to social issues.[53] The groups developing FLA were drawn together through the intervention of the Clinton administration's labour department (Esbenshade, 2004). Development of SAI resulted from an ILO initiated study into the child labour issue (Leipziger, 2000). And the groups initiating FWF too were supported by Dutch government to start looking for a private approach to the labour conditions issue in the Netherlands.[54] Governments were all responding to a period of public discussion of labour issues in clothing supply chains in their countries, often inspired by campaign activities from NGOs and activist networks.[55] Arguably government intervention, as the legitimate rulemaking body, allowed for engagement of a much wider realm of interest groups, compared to a situation where one of the private groups would make a call for negotiation of a private standard.

Broad invitations to engage in discussion in all instances led to a sizable group of discussion partners at some time involved with negotiations. However, in all negotiations groups appear and disappear from the negotiation table, after they have had the chance to have a feel of the discussion and the people involved in them. In the process of negotiation, a minimum consensus emerges among negotiators that are willing to continue the development of private regulation with each other. This consensus should at least include business and activist members, as a result of the broad, inclusive set-up of the project through governmental intervention.

[53] Interview P1.
[54] Interviews U2; B1.
[55] In Britain for instance the most famous campaign was initiated by Christian Aid campaigners, who encouraged consumers to collect their receipts and offer them symbolically to supermarkets, asking for ethical consideration of the production of the goods that were sold (Interview P1; F6). In the US, media coverage of labour misdoings in Wal-Mart's supply chain, exemplified by a crying Kathie Lee Gifford, who had promoted her own clothing line in the Wal-Mart Stores, led to public debate (Klein, 2000; Bartley, 2003).

But they need not include *all* groups at some point engaged in negotiation. After all, the regulation to be negotiated is private and voluntary, meaning that groups do not exclusively need to deal with the approach presently on the table. They can choose to not adopt it or try to create a different one. In the AIP process leading to FLA, the company representatives of Karen Kane and Warnaco left feeling that they did not want NGO involvement in regulation. And in a later phase, two trade unions, among which the US garment and textile union UNITE, and a group of NGOs, including the Interfaith Centre on Corporate Responsibility (ICCR), also turned their backs on the initiative. These groups thought that the FLA would be too lax on public disclosure and transparency of monitoring and complaints and have a too lenient labour standard excluding demands on living wage. In the case of FWF, big Dutch retail representatives organized in the VGT (*Vereniging Grootbedrijf Textiel*) business organization left, declaring that the effort at stringent private regulation did not fit with their perspective on the weight of the problem.[56] In the case of SAI, brand companies such as Levi's and Liz Claiborne felt their perspective was not in sync with the plans that were on the table and left.[57] The forging of such a minimal consensus, causing these parties to drop out, arguably takes place through three specific processes.

First, the negotiators rely heavily on strategies of information as ways to push the discussion forward. This means that outside expertise (from consultants, or representatives of specific interests) may be used as a way of moving forward. Negotiations leading to SAI and FWF made use of this, in particular with regard to the question of the possible merits of certification.[58] In addition, different forms of experimentation and research projects are used to create clearer understandings of specific perspectives on problems under discussion. Most significantly the discussion leading up to ETI pursued such a structure of discussion.[59] At the negotiations leading to FWF, test audits of factories were also used as an illustration of policy possibilities.[60]

In the process, interpersonal relations may become a stronger factor in the emergence of consensus. For in absence of experience with the topic of discussion, the way to discuss it and the organizational perspectives of actors round the table, negotiators may lack established reference points for the creation of a common ground. Personal aspects and interactions then can act as the focus of mutual commitment necessary for the development of policies (compare McDermott, 2003). Charisma, social skill and even the intangible, fuzzy factor of interpersonal *chemistry* are noted as relevant by actors involved as factors contributing to a commonly supported outcome.[61]

[56] Interview B1.
[57] Interview P8.
[58] Interviews U2; P8.
[59] Interview P1.
[60] Interview N4.
[61] Interviews N1; N11; N14.

This especially goes for the creation of commitment across the divide between businesses and activists. In the words of a CSR manager reflecting on this issue:

> If you do not know that much about a certain topic such as labour conditions, you are as a corporate manager inclined to rely on your experience with a group or a person who claims to represent this cause, such as an NGO. You use that experience then to weigh the importance of certain issues, and if you feel that the conduct of the persons you are interacting with is not up to certain standards, for instance, in terms of clear and timely communication, then this might just as well be the reason why you defect from taking responsibility for a certain policy.[62]

Take for interest the respect of a company representative for a trade union representative:

> A very smart man, we all admire him for his expertise. We were very glad to have him with us and discuss issues with him.[63]

And of a trade union representative praising a business association representative in negotiation:

> He made a difference for his organization because he is so much personally engaged with this topic…he approaches people one on one to talk about these topics and promote specific policies.[64]

Implication of the relative importance of personal traits and information politics is that persons having a higher command and an earlier grasp of or a clearer perspective on a topic amongst the negotiators are very likely to strongly influence the negotiating proceedings and may act as *leaders* (Young, 1991) towards the bringing about of a specific outcome. CEPAA for instance entered the discussion with other groups with already a clear philosophy of certification and supplier responsibility as a system conforming to International Standard Organization (ISO) requirements for certification, which then steered the discussion.[65] Negotiators inside the FWF also recount how the commitment of CCC negotiators within the FWF towards the philosophy of verification, an outside review of business performance, influenced the discussion, as the CCC was the first to elaborate on its approach to certification:

[62] Interview N5.
[63] Interview F10.
[64] Interview U2. The FLA negotiations on the other hand show how lack of bridging led to a divide. Jill Esbenshade (2004: 177-183) recounts how the garments union UNITE, while in a process of organizational restructuring, became stuck between a rock and a hard place, as it had doubts about the direction of negotiations towards business-controlled monitoring systems, but was pressured by the US Department of Labor to stay on board. After negotiations between all present parties were dropped, a group of companies and NGOs proceeded to reach a final agreement without the unions and two other NGOs. The negotiations themselves were described as a "long, tortured process" by a business representative up until that point.
[65] Interviews F10; P8.

> We negotiated the labour standard, how it should be reviewed, how transparent it should be. CCC was most knowledgeable on all these things, although we as the union had a specific view about what labour standards should look like. But CCC had most specific views about certification issues.[66]

Within FLA, the strongest push for a brand certification system that would allow for business controlled monitoring came from the companies, who pointed to their positive experience with ISO quality standards and managed to take along some of the present NGOs in that view (compare Esbenshade, 2004; Hughes et al, 2007).[67]

The result of these four negotiation processes, with all their similarities in dynamics, are four different multi-stakeholder approaches to private regulation with four different degrees of stringency. Three of them (FLA, SAI and FWF) result from the emergence of minimal consensus after experimentation, development of interpersonal relations and influence of the frame of discussion by a leading party.

The AIP negotiations led to FLA, an organization issuing certificates to brands that manage labour conditions in their supply chain according to the FLA standard. This would mean brands taking responsibility for implementation costs, and in return, communication to consumers about the fair status of the company's supply chain policies. It is also involved in university-branded logos clothing. The conflict in the AIP negotiations had as a consequence that to this day no unions are involved in FLA. The FLA standard excluded provisions on living wage and kept the monitoring process and review of supplier performance under tight business control.[68] Accordingly, FLA's approach had a medium degree of stringency.

FWF made the strongest demands on its member firms of all mentioned multi-stakeholder initiatives and developed a high stringency approach: social actor involvement in complaints and remediation, monitoring and public reporting of progress, with specific emphasis on the concept of *verification*, introduced by the Clean Clothes Campaign. Verification means that societal actors should be involved in checking for the firm's performance in managing the supply chain according to labour standards, in order to credibly assess the firm's progress (see Ascoly and Zeldenrust, 2003).[69]

CEPAA developed its approach into SAI, an ILO standards based system of supplier certification, aiming at efficient integration of different standard concerns for suppliers. Suppliers in this scheme would pay for implementation costs and be checked by accredited audit firms. CEPAA initiated an advisory board involving NGOs and the global union ITGLWF. Later on, SAI also

[66] Interview U2.
[67] Interview P6.
[68] Interview P6.
[69] Interviews P2; B1.

developed a larger Corporate Involvement Programme in which brand and retailer firms could participate that aimed to manage their supply chain according to the SAI standards.[70] SAI, because of its commitment to ILO inspired labour standards with a reliance on business-controlled implementation, is posited in between FLA and FWF in terms of degree of stringency.

Which leaves the fourth initiative, ETI, whose route of development arguably diverges from the other three after the stage of experimentation and whose approach to private regulation is also much less specific than the other three. Compared to FLA, FWF and SAI, fewer fluctuations of or decrease in discussion partners take place in ETI negotiations, and it is difficult to point to a particular perspective emerging out of the negotiation process. Nor is it possible to see evidence of a group or a set of individuals decisively shaping a frame of discussion towards a particular outcome.

It is therefore argued that the absence of a specific perspective proposed by a specific person taking the lead may cause negotiations to continue along the set lines. In the case of ETI, the choice for a learning and experimentation perspective in negotiation then spilled over to become a path dependent trajectory towards a learning and experimentation approach to private regulation. ETI thus stuck to the philosophy that as long as there is no evidence of what is the best way of implementation and enforcement, ETI should not force a specific kind of programme (including a division of tasks, control and cost) on its members, but let firms and social groups pursue their own paths, studying the outcomes. This means that ETI left the issue of the degree of control of the initiative by either business or societal groups unanswered. Spoken more coldly from a regulatory perspective: ETI leaves both decisions on implementation and implementation itself in the hands of business actors. Firms are expected to discuss their experiences with societal groups in ETI forums, but nothing forces them to actively engage in discussions, nor adjust their approach to labour standards implementation according to certain lessons.[71] The ETI experimental approach was later on copied by the Norwegian roundtable of unions, retailers and NGOs into ETI Norway, and by the same Danish groups into ETI Denmark.

b. Interlude: rulemaking gone wrong

Not all attempts at creating private labour regulation were successful. This section shortly summarizes specifically two attempts at creating multi-stakeholder regulation that failed. Their failure informed the development of the next generation of private labour regulation arguably as much as the first generation of successful development of regulation did.

[70] Interviews F10; U1; P8.
[71] Interviews F6; U3; P1.

The Clean Clothes Campaign, as a European activist network with its coordination office in the Netherlands, wanted FWF to have a European scope. It however adopted the point of view that national bargaining in different national settings between activists and businesses was preferable over creating a common approach based on the Dutch discussions, given differences in viewpoints among European civil society groups and different circumstances of industry across countries. Up until now, the Dutch FWF is the only operational regulatory organization in existence as a consequence of these negotiations. Bargaining, experimentation and pilot tests also took place but failed to produce lasting commitments between activists and companies in among others Germany and France (SOMO, 2001).[72] Some of the German companies preferred other private regulatory organizations already in existence, or in the process of development, and kept the German CCC on a distance.[73] From 1996 onwards the French CCC pursued a pilot project with Auchan that did not lead to any concrete further steps, while most other French clothing retailers tried to pursue a business-only approach to private labour regulation.[74]

The Swiss CCC found a committed partner in the retail market leader Migros, and developed the ISCOM system together with it, which was very similar to the Dutch FWF system, due to its similar basis in the CCC philosophy of *verification*. Swiss unions were initially interested in supporting ISCOM, but a change in staff also meant a change of hearts, causing them to withdraw and prefer alternative instruments to global labour standards instead.[75]

The future of ISCOM is now quite uncertain, since Migros, as the single member, all through the inception and first steps of implementation of the ISCOM system kept its eye on developments in private regulation by its peers in the mass retail sector, and in the end decided to join a different rival regulatory organization with them (see below).[76]

Without a doubt the private regulatory failure most traumatic to all parties concerned, is the Swedish sister-to-be to the FWF, *Dresscode*. Negotiations within Dresscode took place between the Swedish unions, consumer movements, the Swedish CCC and the Swedish clothing retail sector, most prominently H & M, Lindex and Kappahl. The CCC perspective on *verification* also influenced discussions here. Research pilots fleshed out the approach, and all parties were in agreement to create the private regulatory organization, which would, in comparison to FWF, emphasize certification as a feasible end goal, also for suppliers. In the last phase of negotiation, however, the Swedish unions withdrew support because of late second thoughts about the desirability of private labour regulation. Here, as in the Swiss case, personal orientations

[72] Interviews N4; N10.
[73] Interview N10.
[74] Interview N15.
[75] Interview N11.
[76] Interview F9.

notoriously influenced a bad ending of union commitment, as, witnesses hold, nothing in the further development of policy itself could have caused union representatives to change their mind:

> So this is how Dresscode ran into the wall, you can say, and we are still picking up the pieces, and I think it takes a few years to do that. Because Swedish stakeholder dialogue from NGO and trade union side is about small organizations with only a couple of individuals active in the field. And individual conflicts can make things run badly.[77]

Instead, the unions now offered the retailers the possibility of bi-partite negotiation towards a global framework agreement with global unions. The retailers declined the offer. H & M joined FLA instead. Lindex and Kappahl stayed on the look out for alternatives, which were soon to arise. The Swedish CCC and the consumer movements did not want to pursue Dresscode without union support and the initiative collapsed (SOMO, 2001).[78]

Perhaps not so much an outright failure in achieving private regulatory organization, but nonetheless another example of a multi-stakeholder gathering not fulfilling its promise, is the Code of Conduct roundtable in Germany. The German government development technology agency GTZ had started it up in 2001 as a pilot project on monitoring codes of conduct together with the German retail association AVE and a set of German NGOs and unions. Discussions took place among interest groups at the table about findings, and attempts were made to learn about desirable private regulatory approaches. The German CCC's position in the Roundtable became increasingly difficult. Its dedication to its own pilot projects intervened with the interactions at the Roundtable and its elaborated perspective on what appropriate private labour regulation should look like clashed with the more relaxed approach of in particular the mass retail representatives. GTZ meanwhile was in the process of succeeding to get actors together in developing an international Common Code for the Coffee Industry through a similar set-up. However the efforts towards clothing and mass retail regulation did not continue in a similar fashion within the German context, since the Roundtable formally kept meeting over the next years only as a discussion and consultation venue. The German CCC representatives left and mass retailers focused their efforts at private regulation elsewhere.[79]

Of course, this section does not aspire to present a fully convincing diagnosis of why these initiatives failed where others succeeded in developing private regulation. Specifically, because recollections of actors present in negotiations are prone to tautological reasoning. Nonetheless, in the narratives offered, two generalizable elements stand out across cases, in comparison to the four successfully established initiatives that inform failure to achieve a minimal consensus among

[77] Interview N14.
[78] Interviews N14; F3.
[79] Interviews F8; N13; N10; N9.

interest groups: first, increasing strategic behaviour of actors that in negotiation are also taking explicit note of outside alternatives to private regulation; second, a mixture of personal orientations and organizational ambivalence as well as interpersonal dynamics undercutting efforts at consensus.

c. The next generation of rulemaking: strategic choices in an institutional field

The next generation of private regulatory development consists of three private regulatory organizations:

- *Worker Rights Consortium (WRC www.workersrights.org)* was developed from 1999 onwards as an initiative by the US United Students Against Sweatshops, the American trade union federation AFL-CIO, together with a group of American NGOs as well as garments union UNITE
- *Worldwide Responsible Apparel Production programme (WRAP, www.wrapapparel.org)* initiated by the American Apparel Manufacturers Association (nowadays American Apparel and Footwear Association, AAFA) from 1998 onwards, with input from consultants and US university staff.
- *Business Social Compliance Initiative (BSCI, www.bsci-eu.org)*, negotiated from 2003 onwards in the European business association for retailers, the Foreign Trade Association (FTA).

This generation benefits from knowledge on and some experience with established competing regulatory organizations and their development trajectory, and in some cases takes with it experiences from failed attempts at private regulatory development. This implies that for these later organizations, discussions can earlier on be more focused on the possible models already in existence, offering directions of thought. And with the field of private regulatory development running for already some years, interest group positions and repertoires on CSR are further developed and more concrete.

This creates different dynamics from the first generation of negotiation. No large groups of negotiators, few changes in discussion partners, less experimentation and research. Instead, a faster process of private regulatory development, focused on, first the selection of a limited set of partners believed to share a common approach, and second the elaboration of an approach in the face of existing approaches.

The selection of likeminded partners is a key characteristic of all three organizations: none of these three is multi-stakeholder developed, in the sense of having both businesses and societal actors at the table. WRC excluded business members in its approach, instead focusing on labour experts, as well as unionists and NGO members. This has great repercussions for the kind of private

regulatory approach WRC would be able to develop. Without business members, brand certification, mutual learning, or gradual compliance improvement processes were out of the question. Likewise, business associations bringing together likeminded companies were at the basis of BSCI and WRAP, also creating a path dependent trajectory towards business control of governance and procedures.

It might be tempting to attribute the "one-sidedness" of these attempts in terms of participants to fixed ideological perspectives. WRC would then be a left-wing labour community with its established mistrust of corporations, and BSCI and WRAP typical of corporate approaches excluding hated anti-corporate critics as well as unions. However the preference of like-minded partners at least to some extent was informed by recent historical experience and in that sense, if there was an ideological perspective, it was at least partially informed by experience. Some of WRC's members had been involved in the AIP negotiations leading to FLA and had been greatly disappointed in the stance and performance of American corporate representatives, which had effectively excluded them from key moments in negotiation (Esbenshade, 2004). Similarly, BSCI members, meeting under the umbrella of their European business association, had loads of stories to share about their bad feelings about NGOs as discussion partners, or the unreliability of trade unions as members of private labour regulation: the Dutch retailers could draw from their experience with the stringency committed Dutch CCC; the German retailers had their share in the GTZ Roundtable; the Swiss could relate on the basis of the ISCOM negotiations; and the Swedish had their bad memories of the Dresscode drama. Although some of the parties within the discussion leading to BSCI were not averse to a multi-stakeholder set up of negotiating a new private regulatory approach (including Otto), majority consensus soon decided for a business-only approach:

> This happened once we broadened the scope from the German discussants connected to AVE to the wider group of FTA members. I personally would have preferred the multi-stakeholder set up, but it was clear that the non-German companies did not want that, so we went along with that.[80]

The negotiators then drew inspiration from existing approaches to dress up their particular approach, as something similar, or something decidedly different. BSCI for instance used the experience of Otto (and WE) with SAI compliance as a model in setting up a business controlled supplier certification approach that would be based on ILO conventions, albeit under business-only governance, with indefinite prose on the living wage issue and a lower baseline level of company requirements as a first hurdle towards compliance.[81] BSCI's approach accordingly has a lower

[80] Interview F8.
[81] Interviews F7; F8.

degree of stringency than SAI, but has the highest degree of the business governed regulatory organizations in the field.

Because WRAP, inspired by consultancy research on the private regulatory field from PriceWaterhouseCoopers, and informed by the distaste of some companies licensing university apparel and university staff for the AIP proceedings also used business controlled supplier certification as a model towards labour standards compliance that looked just like SAI.[82] Its labour standards however were predominantly formulated on the level of local laws. WRAP now strives to be the private regulatory organization most favourable to supplier business, reason why supplier business associations also got to formally endorse WRAP as a labour solution on its website.[83] WRAP, unsurprisingly, scores a lower degree of stringency.

WRC's approach became an oppositional model to FLA (with which it then started competing for university apparel licensee membership) and the other existing approaches. It does not organize implementation and enforcement together with corporate representatives, nor does it seek to reward a certificate to brands, labels or suppliers. Instead, it opted for the function of independent assistant in implementation and enforcement through a 'fire-alarm system': in case of a breach suspected or found in the standards applied by member universities, WRC would go out and investigate together with labour representatives on the site, and suggest corrective action and remediation that should be followed up by the university, if it wants to remain a WRC-affiliate. WRC is thereby the regulatory organization with highest degrees of stringency.[84]

d. The outlier

At first sight, the development of *Initiative Clause Sociale (ICS)* by a group of French retailers, including Carrefour and Casino, from 1998 onwards, fits with the characteristics of the previously mentioned next generation of regulatory development. ICS is a product of negotiations among one type of interest groups, its inception date corresponds with the dates that discussions about WRAP and WRC began and thus follows the first generation of rule-making in multi-stakeholder settings. Its development was also a relatively quick affair compared to the first generation, lasting a year. And among its initiators were companies who in the past had been engaging in dialogue with activists on possible cooperation, most prominently Auchan, the representatives of which had set up a pilot with French CCC affiliate *L'ethique sur de l'etiquette*.[85] But the information on ICS's development also shows that the businesses negotiating the approach were quite ignorant about what was happening elsewhere in European and American private regulatory organizations. Their

[82] Interview P6.
[83] Interview P11.
[84] Interviews N7; N8; P4.
[85] Interview N15

behaviour cannot be attributed to knowledge about policies and perspectives of a wider field of private labour regulation efforts. It may perhaps even be argued that ICS and its business members were not engaging in this field, particularly also since most representatives of the other private regulatory organizations and their supporters interviewed for this study hardly seem to recognize the existence, content and impact of the ICS effort. While it is difficult to judge on a single case basis why something like contact with likeminded efforts across borders does not occur, it is posed here that the crucial factor probably is the French language and the delimitation of the regulatory effort to the French market that impaired links to the predominantly English-spoken debates in other places of the world. Two interesting policy deviations compared to other cases of private regulation may arguably result from this situation of isolation: ICS is the only organization that has never explicitly published its labour standard policy. It only broadly describes its content and the references to ILO Conventions and labour law on the website. Second, it is the only business governed organization that requires buying firms to pay for the costs of audits, contrary to BSCI and WRAP. This requirement may in the end prove to be not too costly, since requirements for monitoring of a set amount of suppliers (or a percentage of the supplier base) are absent. Apart from this it is a system pretty much similar to BSCI, focusing on sharing audits performed by service firms.

5. Final reflections

This chapter has shown how different approaches to private labour regulation emerge, and has paid attention to circumstances, actor attributes and perspectives, as well as patterns of interaction to explain emerging differences between private regulatory organizations. From the analysis it has become clear that it is not easy to predict specific regulatory approaches on the basis of the groups initiating them and their prior objectives (in Palan & Abbot's terms "Agency + Power = Outcome", 1996). It however is possible to create formulaic descriptions for the likelihood of the emergence of specific types of private labour regulation, while remaining sensitive to the historical dynamics discussed in this chapter. Below, seven statements that have the status of propositions are presented as the result of the empirical story.

First, *labour activist movements' leadership in establishing private regulation leads to higher degrees of stringency for regulation.* Leadership is understood here as the activity of initiating a specific perspective on private regulation and pushing for it in discussion with other negotiating actors. This has been the case for FWF and WRC.

Second, *achieving higher degrees of stringency in a multi-stakeholder setting of negotiation is more likely in earlier phases of regulatory development than in later phases*. The history of the clothing production chain shows that in later phases of private regulatory negotiation businesses are

not so easily led into a multi-stakeholder setting. The latest generation of private regulatory organizations does not include societal interest groups.

Third, *consumer focused activist leadership in establishing private regulation leads to a medium degree of stringency*, as the example of SAI and CEPAA shows.

Fourth, *business-only private regulation development leads to lower degrees of stringency due to business controlled supplier certification systems*. This is evident in the cases of WRAP and BSCI.

Fifth, *union participation in private governance leads to labour standards conforming to ILO conventions*, as the standards of ETI, SAI, FWF, and WRC conform to this norm, while the non-union backed FLA, BSCI, and WRAP do not.

However, sixth, *trade union participation is not a sufficient condition for higher degrees of stringency because of variation in perspectives on implementation and compliance.* ETI and SAI are supported by trade unions and score medium levels of stringency, particularly due to the business controlled nature of implementation and enforcement.

Seventh, and finally, *multi-stakeholder negotiation of private labour regulation is neither a necessary nor a sufficient condition for high stringency for private labour regulation*. WRC as a non-multi-stakeholder organization promotes high stringency regulation, while SAI, FLA, and ETI offer medium levels of regulatory stringency.

If these claims have the status of propositions for other industrial fields in which private labour regulation evolves, how likely is it that in these industries actors will go through the same phase of relative innocence regarding the knowledge and experience of actors when they first start negotiating private labour regulation? In principle, one could expect some form of institutional void in other industries as well, as long as the inexperience of the actors involved creates a similar situation of uncertainty. After all, as this chapter has shown, the debate on global labour standards had been ongoing for some time before 1995, and yet many of the actors engaging in discussion were still new to the topic of private labour regulation. Granted, knowledge from outside the void, for instance about ISO certification and ILO conventions, was used to structure the discussion, but this is something other than a full policy repertoire at their disposal to help develop clear prior preferences for negotiators.

However, there are also some grounds for scepticism about a replication of the situation where an institutional void has such an influence on private labour regulation. It is likely that in newly emerging discussions about private labour regulation in other industries, routines and repertoires will be available that structure preferences and negotiations. This is because diversification strategies, mergers, buyouts, and the concentration and expansion of retail in many consumer markets lead to a spread of knowledge on CSR and private regulation across companies

and industries. Further, the development of CSR management as a job market in itself has led to a diffusion of CSR managers across companies and industries, many of them taking their experience from one field with them to another.[86] The growth of the CSR service firm market also gives a strong push to the spread (and harmonization) of knowledge and skills in CSR management of different industries, and moreover, nowadays a set of NGOs and unions work on several industries at the same time, and use lessons from several campaign fields to inform their strategies.

This chapter has argued that how and what type of private regulatory approach evolves is dependent on the temporal embedding of negotiations, together with negotiation dynamics and actor perspectives. This in particular reveals why variation in different multi-stakeholder negotiation settings arises, and why the presence of NGOs and unions in some settings leads to pressures towards higher stringency, but not in others. One may meanwhile wonder why differences in regulatory outcomes are not attributed to the local, geographic embedding of different negotiations. Does nationality matter for the development of private labour regulation? Some suggest that it does (Hughes et al, 2007; Christopherson & Lillie, 2005). This study, however, is agnostic in this matter. In the current case selection, offered to us because of the specific historical development of regulation, arguments for a 'nationality' factor would have the shaky basis of single case representations of a national approach through ETI (for the UK) and FWF (for the Netherlands); second, there would be strikingly different approaches coming from one nation, in the American case of WRC, FLA, WRAP, and SAI; and, third, there would be the analytical difficulty of SAI and BSCI being regulatory approaches agreed upon by cross-national groups of actors.

What is more, attempts at reasoning from national institutional variables leads to as many intuitive as counter-intuitive empirical patterns. Granted, WRC and FLA are typical of the adversarial type of industrial relations in the US. And FWF might be the representation of Dutch *polder* corporatism leading to worker-friendly policies. But why do Dutch retailers not join in on this corporatism? And why do Nordic countries such as Sweden and Finland, whose version of the welfare state is as consensual and generous as the Dutch case, not breed such types of regulation, instead having companies predominantly support business controlled regulation? Similarly, the drive for certification inside FLA, SAI, and WRAP may be viewed as a typical result of an American emphasis on consumer sovereignty. But consumer sovereignty is not alien to Europe, as the UK and Switzerland amongst others show (reflected in the success of Fair Trade movements and products in these countries as well as the continuing presence of the cooperative business form, Raynolds & Long, 2007: 15-24). Why then have these countries bred explicit non-certification private regulatory approaches (ETI and ISCOM)?

[86] In this research, five out of twenty one CSR management respondents were either former CSR managers for another product field or became CSR managers for a new product field sometime after the interview.

In sum, there is ample reason to leave country generalizations for this particular phase of policy making aside and emphasize the importance of the mentioned dynamic factors, in combination with the organizational agendas and institutional differences of fundamentally cross-border civil society and business organizations—at least in the making of private regulation. Empirical material supports these interpretations.

Overseeing the institutionalization of the field, it is striking to see how interest groups have 'gone it alone' in the creation of next generation regulatory organizations, after an initial phase of multi-stakeholder discussion, experimentation, and negotiation. It seems almost as though businesses and activists are 'learning' not to work with each other. This does not mean, however, that multi-stakeholder forms of negotiation have run their course (for discussion see Egels-Zanden & Wahlqvist, 2007). As later chapters will show, paradoxically, multi-stakeholder qualities of negotiation and interaction are becoming a dominant criterion to judge the legitimacy of private regulatory approaches within this field of political action. But before elaborating on this, it is important to understand how businesses responded to the supply of different regulatory approaches to labour standards in supply chains. Which approaches were businesses willing to support, and why? This is a question as crucial to the understanding of how private labour regulation is evolving for the clothing production chain as is the issue of private regulatory design. It will be the subject of the next chapter.

Chapter Five. Choosing a code. Understanding business support for private labour regulation.

During a recent gathering on Corporate Social Responsibility (CSR) in London a speech is planned by the Social Compliance Manager of a British retail chain. The manager misses his flight back from South Asia, but he has sent his Powerpoint presentation in advance. The moderator of the debate, a representative of a trade union, is willing to go through the slides of the show for the audience. The presentation deals with some dilemmas the manager was facing in the management of labour standards in the production chain of his company. It proposes schemes to get workers involved in talks on wages, presses for trainings on labour standards and worker's rights in factories, and discusses cultural misunderstandings that might inhibit the formation of legitimate worker representation arrangements. As he closes the presentation after the last slide, the union representative smiled wryly, and said: 'You know what, I could have written this myself. Who would have thought that a decade ago?'

1. Introduction

Many European companies sourcing products from developing countries nowadays engage with private standards to regulate working conditions in their manufacturing supply chain. A range of different private regulatory organizations have been developed that provide different models for applying labour standards in these chains, adding up to different degrees of stringency. CSR managers of these companies show increasing knowledge of labour issues, but policy and academic discussion reveals that differences in approaches to the private regulation of labour standards have a distinct political value and may affect the success of private regulation in addressing workers' plight (CCC, 2005; O'Rourke, 2005). Patterns of business support for specific private regulatory approaches are therefore significant for the broader question of the potential of private regulation as an effective and legitimate tool for raising working conditions in export industries (compare Cashore et al, 2004; Espach, 2005). While research so far has addressed the background of firms' preference for private regulation in general (Wetterberg, 2007; Wright & Rwazimbanga, 2005), or their interest for one particular regulatory programme (Marx, 2008a), what is lacking is an analysis of firm preferences for private regulatory policies in a dynamic situation of competition between different regulatory organizations. This chapter will deal with this question, comparatively identifying drivers to strategic choices being made by Western European firms and discussing the overall political implications of these choices.

The amount of firms that support private regulatory organizations for improvement of labour conditions in clothing production is steadily rising in Western Europe up to 117 companies

(both brand and retailer, from sporting goods, clothing and multi-product retail sectors).[87] Specific information on the actual spread of these policies over transnational production chains is missing. Keeping in mind the large companies involved in these organizations, including key players such as the sport brands Adidas and Puma and the retail giants Metro, Tesco, Karstadt Quelle, Carrefour and Migros, the scope of these policies should be estimated as considerable. The regulatory activities of these private organizations now extend to thousands of suppliers in Latin America, South and East Asia, North Africa and Eastern Europe.

In terms of firm membership and estimated reach in global supply chains, BSCI is the biggest player in the EU field, supported by about 60 firms, among which most of the retail giants. FWF is the smallest, with about 25 firm members, many of which are medium-sized and have only marginal international sales. The other organizations lie in between these two poles in terms of industry membership.

The chapter's analysis of the firms participating in private regulation is based on qualitative and quantitative analysis of a cross section of European companies that have developed CSR policies on labour standards, using results from interviews and questionnaires. The interviews included extensive discussion of a company's production and sales profile, its history and experience with CSR, and its relations with other firms and other actors. Based on theoretical expectation and the conclusions drawn from the in-depth interviews, a survey was developed and administered on more than 100 respondent firms' production characteristics, CSR activities and relations with other firms and activists.

The quantitative and qualitative analysis overlap very strongly, perhaps surprisingly, in the various descriptive and analytical conclusions they support. To explain the nature of CSR activity among firms choosing to join private regulatory organizations, this chapter will argue, first, that companies predominantly develop private regulatory policies as a response to external pressures. Activists are important in this respect since they raise the salience of the labour conditions issue and orchestrate societal pressure against companies. But activists have only moderate influence on what type of private regulation companies choose. Companies prefer their private regulation after choosing between multi-stakeholder or business governed regulation; pondering over the consequences of the nationality of the organization; and deciding on the type of policy, specifically the choice between taking responsibility for implementation of standards, or leaving this responsibility largely with the suppliers. A preference for multi-stakeholder or business regulation is explained by a lower or higher degree of sensitivity to societal critique. To a degree the agency of the corporate organization and CSR staff is also of significance here. The locality issue is of

[87] Own research, until July 2007. Data on the spread over the European industry are missing due to the absence of information on the EU level.

importance to companies that want to be involved with (stakeholder) groups politically most relevant to them, which are often locally based. And the type of policy with regard to responsibility for implementation is largely affected by the company's (or: management's) attitude towards the supply chain and its degree of involvement in the production process.

From these findings it is gathered that in order to understand the preference of firms regarding private regulation of labour standards, national and industrial institutional factors matter, with some room for mediation through corporate perception and managerial agency. Such consideration yields two paradoxes. First, although the private regulatory initiatives lie at the intersection of *globalization* of production and the *transnationalization* of social advocacy, firm choices of initiatives tend to be embedded in locality of politics among businesses and activists in Western European countries. Second, although the analysis considers the regulation of the social dimension to *outsourcing of production*, the company's residual *interventions in the production process* are significant for the understanding of policy preferences. The net industry result of choices made by European companies is a predominance of a business governed and outsourced responsibility type of compliance in clothing supply chains.

The next section will first reiterate the approach along the lines set out in Chapter Two. The sections after that will discuss the development of CSR policies within corporations, followed by the role that activist efforts play in this effort. After that, initial findings on patterns of business support based on qualitative data gathering are presented, which form propositions for a larger N-test. This test and its findings are then elaborated in subsequent sections, followed by conclusions.

2. Institutions, agency and company preferences for private regulation

Political science and management literature emphasizes the significance of institutional pressures for an understanding of company CSR strategy (Campbell, 2006; Cashore et al, 2004). In this chapter strategies of companies are explained in particular from a temporal-relational and a social-relational perspective in keeping with a sociological institutionalist approach to understanding the politics of private labour regulation (see Emirbayer & Mische, 1998).

This means, first, that corporate strategies are affected by their positioning in the specific historical development of the private regulatory field. Strategizing is conditioned by the available information, the evolving character of interactions between organizations and the existing private regulatory institutions. Some variation may therefore be found in early adopting and late adopting companies as they face different conditions of strategizing: more or less options to choose from, more or less experience with activist campaigning, more or less significant choices made by competitors or other strategically significant companies.

Second, private regulatory preferences are conditioned by sets of institutional pressures informing corporate identity, as it is embedded in different spheres of interaction (Leander, 2000). In line with institutional literature on CSR (Delmas & Toffel, 2004; Wright and Rwabizambuga, 2006), two most significant spheres in this respect are first, the embedding of the firm within the industry, and in particular, its positioning in the transnational production chain; second, the embedding of the firm in its home country political context.[88]

Both of these sets of institutional pressures inform what may be the key variable in explaining corporate strategy towards Corporate Social Responsibility policies: the sensitivity to societal pressure on the corporate organization with regard to ethical trade policies (compare Delmas & Toffel, 2004; Levy & Rothenberg, 2002).

The framework in this respect necessarily elaborates on situations of increased agentic possibilities for organizations and persons within organizations, under conditions of higher uncertainty. From a temporal-relational perspective, this agency is more significant in earlier than in later stages of private regulatory development. From a social-relational perspective, agency matters because of the peculiar (perhaps *business alien*) nature of CSR policies and the uncertain environment firms face in an age of globalization, multiple governance layers and state restructuring. This agency can either be identified on the level of the organization as an actor, where it is understood as *organizational commitment* (Zald *et al*, 2004), or on the level of specific *managers* if they control the process of strategy development for a company. This means that industrial and home country institutional pressures cannot account for all outcomes and agency is going to mediate residual outcomes specifically in cases where organizations, at the crossroads of multiple or conflicting institutional commitments, face ambiguity or ambivalence.

How this plays out will be elaborated in the remainder of this chapter. Given the above characteristics of production chain, industry and regulation, it identifies a range of hypotheses about the conditions under which firms will choose to pursue more or less stringent private regulatory approaches. Based on interviews and the interpretation of the secondary literature, these hypotheses fall into the following three categories: societal pressure; national institutional environment and industrial institutional environment. These factors will determine the preference for private regulatory stringency in indirect ways, as they influence preferences that inform the stringency of private regulation, regarding the governance, the nationality and the implementation policy of private regulatory organizations.

[88] These variables are also identified as significant for business support patterns in research on competing private environmental governance programmes in the forestry sector (Cashore et al, 2004; Sasser, 2006). Some caution is warranted in translating these findings as hypotheses for labour conditions in the clothing production chain. Apart from the differences in the issue under regulation, many private environmental programmes also address local environmental circumstances in the firm's home country, creating a much more intimate fit between private governance and home country institutional frameworks than in the case of the outsourced labour circumstances for clothing.

3. Business: companies developing Corporate Social Responsibility policies

This section provides for a short descriptive analysis of what happens if companies are faced by societal demand for CSR policies, illuminating similarities in strategic pathways among interviewed representatives of firms.

Why do companies develop CSR policies? The literature suggests several explanations, which for the current purposes can be divided into three strands: the *positive incentive reasoning*, the *protective reasoning*, and the *normative reasoning* (see for instance Crane & Matten, 2005; Van Tulder & Van der Zwart, 2006).

a. Positive incentives: the benefit of CSR

Positive incentives are the economic benefits that companies may reap from the application of CSR policies. Since most of us expect companies to be self-interested organizations seeking to increase profits, shareholder value, market, for many observers this is intuitively the first source of explanations to the development of CSR. Firms may develop CSR policies because they find out that ethical trading and sourcing strategies are rewarded by ethically minded consumers. Furthermore, stock-listed firms may benefit from CSR because it creates interest from sustainable investors, funds and could mean inclusion in sustainability indexes such as FTSE4Good. In addition CSR measures on labour standards might improve overall supply chain management, because it stimulates the streamlining and deepening of supplier-buyer relations, while improving the performance by suppliers through enhanced management systems and increasing labour productivity (Acona, 2004; Maignan, 2003).

The empirical support for the existence of economic incentives for CSR policies on labour standards in supply chains is meagre. Studies on better supply chain management through CSR still work on the level of developing hypotheses. Positive consumer effects are sketchy too (Iwanow et al, 2005; Hiscox, 2006). Main reason is that the issue of labour standards in supply chains is a complex one to manage, so companies cannot easily communicate that they are doing the right thing in this matter. If they do so in order to attract consumers with an ethical conscience, they run the risk of being named and shamed as liars.[89] A few companies in the industry have benefited from sustainable investors, funds and indexes due to their CSR efforts, but adequate comparative data is lacking to suppose that this has made them perform better financially than they otherwise would have. Going back a few years, say the period between 1995 and 2000 when many companies made first steps in CSR territory, it becomes even harder to imagine that data would be available that could ground the position that CSR was profitable to the company.

[89] Chapter Six will discuss a recent attempt to circumvent this problem.

Second, the accounts of managers of firms and their peers in interviews confirm that many firm representatives have not had positive incentives on their minds when developing CSR. Representative for a larger group of managers is the observation by a respondent that

> I actually don't believe in the whole consumer pushing for CSR thing. The business case and such. Consumers in itself do not reward it. You should not be doing it for them.[90]

Predominantly, respondents point to other forces at play in the development of CSR policies. Nonetheless, the search for evidence to an economic benefit to CSR policies, the so-called *business case for CSR* goes on for many CSR managers in companies and consultants. Acquiring it, they believe, would truly make CSR mainstream, first in the sense that the majority of international firms would then start practicing it as a response, and second in the sense that the activities of CSR managers inside firms would easier become accepted as core practices of the organization, instead of a loose add-on. If worst comes to worst, the business case for CSR could save the jobs for many practitioners in the CSR field (Fransen, 2006).

b. Protective reasoning: uncertainty and risk

Protective reasoning is used when CSR is developed because it is believed to prevent future (or further) negative impacts on the position of the company. First, companies may start CSR policies because they want to dissuade other actors from pushing for public regulation of their activities (Kolk et al, 1999). Second, company representatives generally are concerned about the reputation of their firm (for examples see Van Tulder & Van der Zwart, 2006). The reputation of a firm (or its brand) affects customer satisfaction; attractiveness to prospective customers; investor positions; and employee satisfaction. CSR issues are normative, and the prospect that people would associate what they consider wrongdoings with the image of a company or a product worries firm representatives. Hard convincing proof of the damage that attacks on reputation might have are lacking. Anecdotal evidence points to short drops in share prices in times of societal pressure (with Nike and Adidas, see Van Tulder & Van der Zwart, 2006; Umbro in Merk & Fransen, 2008). Buycotts are rarely used in this field. The precise impact of damage to reputation because of CSR crises on the mentioned variables is therefore uncertain. It is undeniable however that the reputation of some corporations is forever linked to some wrongdoings. Many people think of pollution and human rights issues when they think of Shell. Others think of child labour when they hear the names of Ikea or Levi's. It can be argued that managers therefore do need to take into account the risk of reputation damage as a possible threat to their organization and this is why they could consider CSR measures as a part of their strategy.

[90] Interview F20.

Empirically, public regulation does not seem to have been the concern of the companies under study when they developed CSR on labour conditions in supply chains. Most of them are quite certain that public and binding rules for supply chain policies were not and are not pending. This does not mean that firms nowadays do not invest time to monitor and lobby the efforts at CSR regulation that develop at national and EU levels. Because companies generally prefer private rules to stay private rules so they take an effort in consistently putting that message out to the policymakers (compare Rieth, 2005).[91]

A much larger driver for companies to develop CSR has been the perceived reputation damage due to campaigns and public attention to wrongdoings in their supply chain. As noted, these did not lead to substantial economic damage in most cases. But negative public attention for the company did trigger worries that led to the development of CSR policies.

Marks and Spencer is a case in point. Criticized through a documentary on British TV covering child labour at a Moroccan supplier factory, the company started litigation because of dishonest portrayal of the account of the case that Marks and Spencer managers had given to the journalist.

> We did win [the lawsuit], but that news ended somewhere down on a backpage of the paper. And during the process at different times there was MS in the paper, in connection to all kinds of negative issues. So there was damage to the MS brand, for 2 years after the documentary(…) You know, it is hard to get rewarded for this thing, but if companies don't do anything, they will get damaged.[92]

Worries on Marks and Spencer's policies spread as social movements addressed their policies and customers wrote letters of concern. After litigation Marks and Spencer published its CSR code of conduct and started its systematic policies on it.

Not every company receives focused negative attention for its supply chain policies, but the pressure is on the clothing industry in general, and therefore companies fear that they might be next in line to be scrutinized. Many companies have therefore anticipated pressure and concede that they started CSR policies to pre-empt critique.[93]

Finally, some firm representatives express their motivation to start with the development of CSR policies not so much as a response to a threat to reputation or a pre-emption of threat to reputation. The protective reasoning they have to start with CSR policy development is that they see many of their competitors in the industry working on it, and do not want to be left out on an issue of concern to the others, because it could threaten their position in the future. One respondent for instances notes that '…[E]veryone in the industry, retailer or brand, is doing something now. So we

[91] Interview F7.
[92] Interview F6.
[93] Interview F7.

have to do something too, whether we want to or not.' [94]

c. Normative reasoning

A third strand that can be distinguished analytically is the situation in which companies do not move on positive economic incentives, nor on motivation to protect the firm, but are steered by particular ideas of the good life in their motivation to develop CSR, motivations that are relatively autonomous from societal pressure. Crane and Matten (2005) discuss the complexity of talking about morality in the actions of firms as organizations and conclude that it is possible to talk of morality and moral responsibilities through corporate cultures and internal decision making structures. This implies that morality for an organization can be influenced inside organizations by individuals or groups of individuals with ethical ambitions, whose impact logically increases when they exercise powerful positions in the decision making structure, such as CEOs, board members and owners (see also Heemskerk, 2007).

Research-wise, this category of reasoning leads to difficulties. It is hard to empirically distinguish between normative reasoning and the previous category of protective pre-emptive application of CSR anticipating societal pressure, especially when, next to the account of firm managers, little data from other sources is available for triangulation.[95] The most that can be said on this point is that some companies hold that they have protective inspirations to start CSR while a small group of companies holds that development of CSR is in line with their organizational ethics. These are two categories of discursive accounts then. Fine examples of accounts by firms of their normative drive to CSR development are for instance Martijn Vermin of Gsus, who holds that in his company…

> (…) there was a pretty strong philosophy from the start on the social responsibility of our business. These were pioneered by the two designers that started Gsus, they felt strongly about it. They think that every company should take its responsibility, and that is not something you should advertise on in particular, because it should be common sense to do it.[96]

Similarly, another respondent notes the normative agency of company owners led to the

[94] Interview F21.

[95] The distinction between both categories can in empirical research be endangered first by the potential for respondents to give desirable answers, emphasizing organizational ethics in discourse ('We are doing the right thing because we are a good company') over actions taken that were motivated by organizational risk ('We are doing this because we fear repercussions'). Second, the political science or political economy bias of the interviewer might lead him to be an organizational ethics sceptic, instead being oversensitive to every sign, no matter how small, of exogenous pressure and organizational interests as the possible key to understanding company actions. Deciding on these categories then becomes a question of assessing intentionality in human beings, which in this case is impossible to do in a social scientific way.

[96] Interview F15.

development of CSR, independent of risk assessments or economic reasoning.[97]

d. From CSR policy to support for private regulatory organizations

Chapter Three discussed policy experts and academics who hold that codes of conduct that are drafted as a private regulatory collaboration of a range of different parties are considered to be attractive, since they can first facilitate the pooling of resources and knowledge for firms. In fields of CSR activities, most firms in the beginning have to figure out which options they have for *effective* and possibly *credible* ways of action. Private regulatory organizations in principle can facilitate interaction, and as a consequence, these organizations can prevent firms *going it alone*, and industries ending up with hundreds of different individual firm standards and implementation programmes. A common approach seems specifically necessary in the light of the structure of transnational clothing production chains nowadays. With many buying companies only exerting little buying power over their suppliers, and many buyers sharing the same or similar suppliers, moving together creates more leverage (O'Rourke, 2003).

Companies that prefer private regulation over self-regulation appreciate the exchange of information and the possibility to exercise more pressure on suppliers. Respondents meanwhile hold that private regulation can also be interesting from a strategic perspective. Some companies may want to join private regulatory organizations because it gets them around the table or in the same boat with parties they want to affiliate with. If these parties are activist groups stimulating a form of private regulation, membership of private regulation can be helpful for companies that want to have direct interaction with their critics, perhaps to buy peace from them. If these parties are businesses, they can be attractive for companies because a united front on CSR is beneficial, or in the case of an alliance with a specific company with a good reputation.[98]

By contrast, representatives of firms *going it alone* emphasize that their method of checking labour standards is appropriate and they do not need the regulatory oversight, nor the discussion with or leverage of others to move forward.[99]

e. In the seat of the Corporate Responsibility manager

So what happens when companies adopt CSR as a policy? They recruit someone (or a few people) to become CSR staff. These people come from different backgrounds. Some of them are used to dealing with supply chain issues on the basis of quality or technology expertise, but have no experience yet with the CSR implications of supply chain policies.[100] Others are taken in with good

[97] Interview F20.
[98] Interviews F13; F17; F20.
[99] Interviews F1; F18.
[100] Interview F6.

communications and PR skills. A notable development is that in particular some companies with high brand visibility recruit their CSR staff from NGO circles, investing in both societal and strategic expertise.[101] These CSR managers have a dual task: on the one hand they need to develop activities to deal with issues. On the other hand they need to defend and promote the company line on CSR both internally and externally, through reports, presentations and contacts with journalists and critics. Many of them see it as a core task to create awareness on CSR among their staff.

Case study evidence shows that many CSR managers are in danger of doing their work in organizational isolation, due to the peculiar nature of their activities in comparison to the tasks of their colleagues in the firm (Crane, 2000; Mamic, 2004; Gjolberg & Ruud, 2005). It is hard to convince colleagues with hard-line bottom line attitudes to their jobs that what CSR staff does is actually worthwhile. Strategically, CSR managers need to invest in good relations with two segments of their business. First, with the powers that be in the organization, whether that is the CEO or the owner(s). Interviews show that the attitude towards CSR of those high up in the organizational ranks can make or break the career of the CSR staff.[102] Secondly, CSR staff if they are serious about alleviating labour conditions in their supply chains, need an entrance to the people at the buying department that are in power when it comes to the development of the supply chain. Many CSR managers try to sensitize buyers to take into account the CSR perspective when "shopping around" for new factories for their clothes.[103]

The consequence of the situation of relative isolation that many CSR managers are in, is that they also have relative autonomy in decision making on strategies, when it comes to the details of CSR policies. Their personal preferences, characteristics and professional or social background can come into play when it comes to issues such as attitudes towards press, NGOs, consumers and unions, forging links with colleagues in the company, reaching out to other companies in pursuit of common goals, and so on.

Meanwhile their practices are also shaped by the evolving professional field of CSR practitioners that they belong to. This field consists of their fellow CSR managers at other companies, CSR consultants, NGO and union representatives and academics. These people meet regularly in workshops, conference halls and seminars to discuss issues of importance to the profession. Amongst others private regulatory organizations, governments and international organizations stimulate the gathering of parties on different sites of the debate on private regulation.

Among each other they are at the same time agents and clients, critics and subjects of critique, allies and competitors. A host of different types of strategies therefore play out in the conference rooms and the corridors. But, fundamentally, grouped together, these people share the

[101] Interview F12
[102] Interview F18; F20.
[103] Interviews F2; P2.

identity of CSR professionals, which is what they commonly seek to advance inside their organizations and to the wider public. Doing that strengthens the position of all of them individually.

Some firm representatives would therefore easily concede that being targeted for a public campaign by activists, while from an organizational view a burden, for them personally is a blessing, since it creates a sense of urgency in the corporate organization that they can use to expand their agenda.[104] Some activists furthermore emphasize their continuous interaction and information exchange with certain persons working for corporate organizations, while remaining skeptic of the institutional affiliation or specific policies that these firms provide for (compare Bulut, 2008).[105]

4. Activism and societal pressure on companies

As in the previous chapter, activists are also significant actors when describing the politics of business support for private labour regulation. Activists function as orchestrators and/or mediators of societal pressure on firms and influence firm strategic trajectories towards preference for particular types of private regulation.

Empirically, this study identifies the most significant activist cluster of organizations in the field of pressuring the clothing industry, a cluster of groups that are in regular contact with each other and over the years arguably broadly have created a common agenda with respect to the pressuring of companies on labour conditions in their supply chains. This cluster consists of the labour activist networks in Europe and the US such as the Clean Clothes Campaign and Maquila Solidarity Network, the global union ITGLWF, several national union affiliates and the developmental network of Oxfam. Irrespective of their organizational and ideological differences these organizations in this particular field arguably present a reasonably coherent view on what to expect from a company, and discuss and organize common approaches to pressuring companies.

What do these groups want as policies for companies? First of all, they demand the application of ILO core conventions for labour standards inside the supply chains of companies. These include all the rights to freedom of association and collective bargaining, plus provisions on wages, health and safety, benefits and so on. In terms of private regulation of these norms they push for application of these standards through organizations that are multi-stakeholder governed and also include trade union representatives. Moreover, these groups prefer versions of regulatory

[104] Interview F20.
[105] Interview N4.

implementation that allow worker voices to be heard and societal groups can be involved in verification, complaints procedures and redeeming cases.[106]

The moment that all these groups most prominently marched together was when they coordinated the campaigns on the sporting goods industry during the Olympic Games in Athens and Beijing in 2004 and 2008 (Merk & Fransen, 2008).

A common denominator can be identified of frequently used approaches to pressuring companies by these activist groups: public campaigns, direct engagement between activists and company representatives, and private regulatory development. These will be discussed below, bearing in mind that these strategies are often used in parallel.

First, most visible are public campaigns on individual companies or sets of companies. These campaigns can emerge as part of longer term strategic planning, or develop *ad hoc.* In the first instance, a careful assessment is made about what companies to target, how to inform, involve or push other groups towards action at the company and when to perform what form of pressure. Most often the campaign is accompanied by a research report on current circumstances in production zones where targeted companies are sourcing from. These campaigns also bring with them a set of demands that mix claims for remediation with policy change at sets of companies, or a part of the industry in general. The Oxfam research report *Offside* for instance provided information on proceedings in labour conditions in Southeast Asian production facilities and connected it to a set of companies, including Puma and New Balance. The report also presented demands for policy change by companies, including support for unionized factories and unionization processes in general.

Ad hoc campaigns are the result of outside events or of the advocacy of interest groups at the point of production. Press events or news coverage on companies are opportunities for activists to make their voices heard on issues. The German Christian initiative Romero for example in the past has spoken at shareholder meetings of German companies like Adidas to talk about sweatshop conditions through an intermediate NGO that offers its speaking time to activists with ethical messages. Similarly, the Dutch Clean Clothes Campaign responds to economic news on companies it aims to target. In the case of the retailer HEMA for instance it linked the labour conditions issue to the rumours of a takeover of HEMA, threatening the company to raise enough money with consumers to buy it and force better labour standard policies that way.[107]

The Clean Clothes Campaign network is also well known for its urgent appeal system that can set into motion campaigns on companies that are through their buying activities connected to

[106] These policy views are summarized on the basis of the interviews N1; N4; U1; U2; U3. It is easy to review them in policy documents by the mentioned organizations. Important to note is that ideas may diverge about which currently existing multi-stakeholder initiative best applies these implementation norms.
[107] See www.schonekleren.nl, accessed April 2007.

problems in factories such as mass lay-offs, anti-union scare tactics, and health and safety dangers. Pressure is put on companies on request of interest groups urging both for concrete action in the form of remediation plans, as well as general policy changes such as Multi-Stakeholder Initiative membership or dialogue with interest groups at the point of production. In these instances it is also an established tactic to facilitate as much as possible consumer pressure through pre-printed complaint letters, complaint e-mails, and postcards. In the recent past, the network has asked attention for several cases of violence and obstruction against garments unions in Turkey, Cambodia, Philippines and India, identifying brands and retailers sourcing from these factories.

A second category of activism consists of direct engagement with company representatives either through meetings or through interaction at public events. This interaction is furthered by governmental and intergovernmental institutions that facilitate and finance conferences and workshops encouraging debate and dialogue between "stakeholders", as mentioned in the previous section. In these situations, activists and managers meet and policy preferences can be exchanged, collaborations can be negotiated and pressing causes of advocacy, such as crises in factories, can be put on the corporate agenda. In discussion activists can implicitly or explicitly bring across the message to managers that dealing with activists in these settings and working with the issues that they bring forward is reducing the danger of being subject to public campaigns. The objective is for managers to respond to requests on research and action in specific cases of crises in factories, inform on the possibilities of joining private regulatory organizations and persuade towards specific forms of action in the production chain. Remarkable about the European circle of activists and firms working on clothing production chain issues is that, despite all the political disagreements between actors in the field, every member of the CSR community seems to be in contact or to have the opportunity to make contact with one another. Campaigners may for instance stand outside an office in Brussels to protest the meeting going on inside between European firms, and while inside harsh words are uttered on the activist stance, at some point some firm representatives may pop outside to chat and catch up with the activists on current affairs.[108]

The third category of leverage is development of private regulation that checks and tracks the steps of companies towards the development of their policies on labour standards, as elaborated in the previous chapter (compare Winston, 2002).

Coherent as they are on the general policy line, these activist groups can disagree about the appropriate strategies needed to accomplish these policies. The differences are in organization,

[108] Observation, EU BSCI Conference, Brussels, November 2005. Thanks to Jeroen Merk for pointing this out to me specifically at the time.

culture, advocacy goals, with even the possibility of some competition and rivalry resulting from it. These differences lead to diverging strategies in pushing companies, translating first in varying views on when to go out on a campaign against a company and when to engage in dialogue with its representatives. Second, the differences lead to different styles of public (and non-public) campaigns in terms of ranging from more to less confrontational. Third, there are differences in what issues to focus on when it comes to labour conditions. Some activists prefer to stress worker's rights to organize, while others may be tempted to focus on child labour or gender dimensions. Fourth, one can find differences on what to demand from a company in a campaign, ranging from small to big steps: immediate redeeming of the workers in a case of crisis, invitation to dialogue or pressing for overall change of policy. Fifth, there are differences in organizational resources of activists across countries, when it comes to orchestrating pressure. Large variation for instance exists in organizational capacity across different national nodes of specific transnational activist networks. The British section of Oxfam and the Dutch branch of CCC are sizable organizations, while their German counterparts have to make do with the activities of a couple of individuals.[109] Activists do of course organize campaigns across borders, but in practice multinational companies are most often subject to a transnational campaign specified to the local circumstances in their home country or core market, with the national affiliate of the transnational advocacy network as an opponent, making use of national language, media channels and local allies. In this respect, transnationally organized activism still has a distinct national (or local) dimension.[110]

Because of these differences, coordination between activist groups and networks can be a costly and risky affair. Outcomes of coordination have not gone into the direction of a division of labour among different activist groups as to the attempts at influencing different segments of industry. Instead, cooperative efforts tend to push limited numbers of companies (see however Merk & Fransen, 2008). The result of this situation is what can be called an uneven playing field of activist pressure on companies. First, some industrial players are considerably more addressed by societal groups on their supply chain policies than others. Campaigners of several organizations are quite frank on their strategies in this respect: the preference is on companies that are most visible in the value chains in the sense of being recognized by consumers and having leverage in the value chain.[111] A German NGO representative for instance notes:

[109] Interviews N1; N5.
[110] The Play Fair Olympics campaign for instance was organized by three essentially transnational bodies: the Oxfam network, the Clean Clothes Campaign network and the global union network. But a division of labour was made that allowed national groups to set national targets. Next to the national context affecting the influence of campaign activities, it is also possible to hypothesize about the differences in skills existing across different parts of the network as a determinant for the differences in political outcome. See also Merk & Fransen, 2008.
[111] A different story is if activists or unions respond to a bottom up call for action from a factory after a certain incident. In that case, the particular company or companies buying from this factory specifically need to be addressed , since they

> We target companies that are easily recognized by the public so that we get support for the campaign. These are often bigger companies that can also put pressure on their suppliers. This way we can accomplish improvements.[112]

It thus makes sense to expect more activist pressure on, first, all the dominant players (*market leaders*) within the different sectors engaging with the clothing production chain; and second, on companies investing in high public visibility and brand image (for activist reflection on this bias see Connor, 2005; for company reflection on this see Nike, 2004; Otto, 2004).

5. Qualitative findings and propositions on the development of private regulatory preference

This section will present patterns based on qualitative data gathering and analysis to give a preliminary answer to the question of whether firms, given available options, will prefer more or less stringent private regulatory approaches. Added with relevant secondary literature, these findings are used to construct propositions which will then be tested for a larger group of cases in the next section. Based on the choices made by firms in the initial interview sample, this study identifies a set of factors that influence corporate decision making, to be discussed in turn: societal pressure; national institutional environment and industrial institutional environment.

a. Societal pressure

Recent literature has shown that firms faced by public campaigns on their labour policies are more likely to support higher stringency private regulation, mostly because they seem to develop a preference for multi-stakeholder governed private regulatory organizations (Marx, 2008a; Wetterberg, 2007). This perspective is corroborated by the qualitative evidence of this study. Out of fear for their reputation, companies seek to confront activist demands.

Multi-Stakeholder Initiatives in the CSR field are believed to have the moral higher ground over business governed organizations. In the literature, they are also expected to lead to more positive results in the supply chain (Utting, 2001; Fransen & Kolk, 2007). For companies, being in an organization with possible adversaries may therefore have strategic benefits. In the sample for instance Puma holds that

> We wanted to join a multi-stakeholder programme only. Any other set-up would not have made much sense to us. We wanted to deal with these issues together with these groups, including our critics.[113]

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might be able to do something about the incident. For this routine equally goes that it does not specifically contribute to a spread of orchestration of societal pressure across the industry, due to its ad hoc character.

[112] Interview N10

[113] Interview F13.

It is therefore posed that

> *(H1) Public activist pressure on a company leads to support for multi-stakeholder governed private regulation and for higher stringency private regulation*

Respondent answers also show that apart from public campaigns there are many more ways in which activists attempt to influence corporate preferences. The previous section showed a range of strategies available to activists in order to speak to firms on labour issues, both formal and informal, both publicly and privately. It can be hypothesized that variations in the degree to which firms have been in contact with activists and receiving pressure on their supply chain policies matters for private regulatory preference.[114] Therefore,

> *(H2) A higher frequency of contact with activists leads to support for multi-stakeholder governed private regulation and for higher stringency private regulation*

Literature also proposes that pressure from consumers and negative attention in the media for firm policies could affect their CSR policies and stimulate more progressive action (Van Tulder & Van der Zwart, 2006; Wetterberg, 2007). Moreover, firms targeted in this way may see collaboration with activists in a multi-stakeholder setting as the way to manage future risks to reputation. It is therefore posed that

> *(H3) A higher amount of requests from consumers leads to support for multi-stakeholder governed private regulation and for more stringent regulation*

> *(H4) Negative media attention for the company leads to support for multi-stakeholder governed private regulation and for more stringent private regulation*

Among the respondents there is a variation in a company's attitude on interacting with activists on the labour conditions issue. Take for instance the following quote

> They always uncritically repeat what local groups in developing countries say, whether it is in line with the facts or not. It is a typical protest organization. They are not interested in the truth. I don't want to be in that initiative with them.[115]

And compare it to this account of a respondent talking about the exact same group:

[114] Interviews F8; N4; N5.
[115] Interview F17.

> They have a lot of expertise, good contacts, good insights. It is important to continue dialogue with them and work with them. Many of my colleagues at other companies do not understand that if you work with them, you have to accept one thing: campaigning is their business, and they have a right to campaign. I accept that.[116]

Some firm managers afford a more relaxed attitude to the strategic issue of stakeholder interaction in regulation, and their attitude becomes more means-ends focused:

> [W]e already got our share of stakeholder dialogue outside regulatory organizations. And it is much better to be able to speak freely. If you need to be aware all the time of what you say, and there is more quarreling than constructive dialogue, it does not work. Stakeholders should be involved in some way, yes, but we have no time to quarrel. So it is better to talk to stakeholders somewhere else.[117]

This quote illuminates that companies preferring business controlled private regulation do have contact with activists and that they may appreciate opportunities to interact with them to a certain extent.[118] When it however comes to actually being subject to regulation, doing things, reviewing actions and planning improvements, these companies prefer a business-only approach, excluding societal groups. If company representatives feel there is a reward to interacting with activist groups, they might be more interested in regulation with these groups.

Finally, one should look at what possible influence societal pressure has on particular regulatory policies of the different organizations. On the basis of the interviews it is possible to identify different opinions on the question whether firms should take Supply Chain Responsibility (SCR). The most important division here is between companies on the one hand that adopt *buying firm* certification schemes, and companies on the other hand that adopt *supplier* certification schemes. Formally speaking all private regulatory organizations focusing on clothing production have some degree of SCR, in the sense that they bring together companies that admit problems with labour conditions in their supply chains and commit to doing something about it. But companies involved in buying firm certification schemes like FLA and FWF are responsible for monitoring, monitoring costs and costs of reviewing progress through audits and\or verification by societal groups and have the responsibility to share results in the process with stakeholder groups in the initiative. Meanwhile companies involved in supplier certification schemes like SAI and BSCI organizations are not required to monitor suppliers. Instead they are asked to let audit firms monitor suppliers. These buying companies then leave the cost for external professional audits and

[116] Interview F8.
[117] Interview F3
[118] Many companies stating a preference for business governed regulation are or have been involved in stakeholder dialogue with activists on several issues. Interviews F3; F7; F11; N10; N11.

compliance programs with the suppliers themselves.[119] This means that in buying firm certification schemes, outsourcing clothing company members have more assigned formal and financial responsibilities. Stakeholder group members in these initiatives check this performance through their roles in implementation and information reviewing processes. Supplier certification schemes push the cost and responsibility for compliance to labour standards down the supply chain, assigning less formal roles on their outsourcing clothing company members, while keeping the control of implementation procedures and information flows in business hands, between accredited auditors, buying companies and supplier companies.

On the basis of the interview results there is reason to be agnostic about the possibility of societal pressure to lead to a preference for SCR. Therefore,

> *(H5) Public activist pressure, frequent activist contact, requests from customers and negative media attention do not lead to support for SCR*

Question is now what explains these differences in attitudes between companies being pressured by activists. For this explanations need to be added on top of the significance of activist pressure.

b. National institutional variation

Both interviews and existing literature hint at variation in business demand for particular types of private regulation across countries forming the core market for firms—in most cases their country of origin. It can be hypothesized that these countries form institutional environments that are more or less conducive to firms supporting stringent private regulation (compare Wetterberg, 2007). These environments may or may not enhance the efforts of transnational activist networks at pressuring companies as well as provide for particular pressures on firms towards adoption of more or less stringent forms of private regulation, or forms that may or may not include other interest groups.

Literature on CSR identifies differences in institutional environments on a systemic level: American society, European societies and Asian societies form different ensembles of formal and informal rules influencing corporate CSR strategy, comparable to the literature on *Varieties of Capitalism* (Matten & Moon, 2008; Van Tulder & Van der Zwart, 2006). More specific differences across national contexts can be identified with regard to the degree of consumer sensitivity (Hughes *et al*, 2007), different degrees to which government policies enhance CSR (Albareda *et al*, 2007) and national discourses on business and sustainability (Paul, 2008). Recent empirical and conceptual work on variation in CSR salience across Western-European economies establishes

[119] As in the previous chapter WRC falls outside this category. The WRC does not allow companies to be members.

forerunning (UK, Switzerland, the Netherlands, the Nordic region), following (the other continental Economy) and lagging (Mediterranean economies) regions (Albareda *et al*, 2007; compare Habisch *et al*, 2005; compare Gjolberg, 2009). Accordingly, it can be posed that

> *(H6) Firms from European countries with an institutional environment more supportive of CSR prefer CSR with multi-stakeholder governance and with higher stringency*

An issue closely related to national institutional variables is whether companies support private regulation based in the country where they have their core market or elsewhere. In particular businesses preferring multi-stakeholder organizations may have practical and strategic considerations here. One the one hand, most companies want to be involved in a regulatory organization that is close to their working ground, for obvious practical reasons. Strategically, companies also want to be a part of a multi-stakeholder organization in their home base because they can then interact with their most important (national) stakeholder groups, as well as some of their national competitors. A British clothing brand representative for instance notes on the possibility of joining an American regulatory organization:

> We gave it some thought but never seriously considered it. In the end it is American, and we are a British retailer, a British brand, so to go with an American one would not have made much sense, nobody in the US knows us, not consumers, not other groups.[120]

Similarly, a Dutch brand representative says

> …it is very practical to work in the Netherlands with an initiative. Real improvements should be made in developing countries of course, in the factories. But here it is just the easiest to do the checks, the deals and the feedback in your home country with the relevant groups. We never considered becoming part of a Multi-Stakeholder Initiative outside the Netherlands.[121]

It is therefore posed that

> *(H7) Firms preferring multi-stakeholder governed regulation prefer local multi-stakeholder organization*

If there is no local multi-stakeholder organization available, companies choose an organization abroad. Companies with international sales and stores across the globe like H&M, Adidas and Puma may then choose for the American organization FLA. Others stay in Europe and decide on the basis

[120] Interview F2
[121] Interview F15.

of policy preferences.[122]

Finally, regarding Supply Chain Responsibility it can also be asked what the consequences of national-institutional variables are for this policy preference. On the basis of the interviews one cannot state that national environments affect a preference for SCR policies. Therefore

(H8) National institutional environments do not affect preference for SCR

c. Industrial institutional variables

Differences in the way firms are positioned towards other economic actors may also affect the support for particular private regulatory approaches. Previous literature first poses as a relevant factor the question whether a firm is publicly or privately owned. Stock-listed firms are considered more sensitive to CSR demands, for fear of reputational damage through public campaigns (Wetterberg, 2007; Marx, 2008a). It is therefore posed that

(H9)Stock-listed firms prefer multi-stakeholder governed regulation and more stringent regulation

On the basis of interviews there is no reason to expect a relationship between firm ownership and the policy of Supply Chain Responsibility. Accordingly, it is posed that

(H10) Firm ownership does not affect preference for SCR

Second, market share may also affect sensitivity to societal pressure. Since larger firms may be more visible to an audience of critical consumers, they may also be more likely candidates for negative media attention and activist campaigns. From interview respondents a difference can be gathered between larger and smaller firms in their experience of societal demand for CSR policies.[123] Therefore

(H11) Firms with a larger market share prefer multi-stakeholder governed regulation; and *more stringent regulation*

[122] It only very rarely happens that companies bypass the possibility of a multi-stakeholder initiative in their home country to join a multi-stakeholder initiative abroad. Two known examples within the overall group of 120 European supporters for private regulation did so: WE International and Continental Clothing, resp. Dutch and English. WE went to the American SAI, Continental went to the Dutch FWF.

[123] Interviews F4; F20; P2.

The qualitative study does not find a relationship between policy preference for Supply Chain Responsibility and market share. It is therefore posed that

(H12) Market share does not affect firm preference for SCR

Third, the likelihood of supporting more stringent private regulation may be influenced by the specific consumer market segment that a company caters to. Fashion-Oriented Companies, Specialty Chains, Mass Merchandisers and Discount Stores face different consumer audiences who may care more or less about sustainability issues. The general assumption is that the more a firm is competing on cost (as in the case of "low street profiled products") the less sensitive its consumer base will be for social messages regarding circumstances of production. An interviewee representing a mass merchandise firm supporting lower stringency regulation for instance confirms this by noting that

> We hardly receive questions about the sustainability of our clothing in our shops. It has to do with the audience we reach, I think. Our customers are mostly older ladies, with, how do I put that, a lower budget. They want as much quality they can get for the lowest price. No, that is not really an audience that asks about labour conditions and such.[124]

Therefore

(H13) Firms focusing on lower consumer market segments prefer lower stringency private regulation

Because of less interest among consumers of these firms in CSR, firm's likelihood of wanting to work with activist groups in regulation may equally be affected, since these activists have less of a constituency among the firm's stakeholders. It is therefore posed that

(H14) Firms focusing on lower consumer market segments do not prefer multi-stakeholder governance

Respondents note that firms with a lower consumer market segment also have a larger and more unstable supplier base, as their sourcing practices are heavily informed by cutting costs.[125] For this reason it can also be proposed with regard to policy preference for Supply Chain Responsibility that

[124] Interview F21.
[125] Interviews U2; P2.

(H15) Firms focusing on lower consumer market segments do not prefer SCR

The interviews also lead us to the inference that companies relying more on a retail strategy are less interested in stringent regulation. A representative of a retailing company for instance holds that

> The retailer perspective is different from brands, brings with it all kinds of different complications. We actually have common problems as retailers with different suppliers and products and the like. Also given the size of our supplier base and our distance to some of them.[126]

This is recognized by stringent private regulatory organizations and activists, who admit the challenge of pushing retailer firms.[127] Therefore,

(H16) Firms focusing on retail strategies prefer lower stringency private regulation

And, related, since many of the statements quoted above denouncing multi-stakeholder governance of regulation actually come from retailing focused firms, it can be posed that

(H17) Firms focusing on retail strategies do not prefer multi-stakeholder governance

Retail strategy may also affect the preference for particular regulatory policy, such as Supply Chain Responsibility. All companies involved in private regulatory organizations source their clothes predominantly from outside Western Europe. The strategic issue of *Make or Buy* in that sense has predominantly been answered. Yet there is an organizational distinction between companies that still have functions operative that qualify them more as *Makers*, and others that are predominantly *Buyers*. Fashion oriented and brand clothing companies like Expresso and Gsus and big brands such as Adidas design clothes, build brands and fashion lines, and are therefore involved in research, testing, quality control and production technology. This requires more contact with different parts of the supply chain and more frequent intervention in the productive process. Other companies like Tesco and Metro predominantly order particular sets of clothes or choose from available ranges to be offered in their stores, dealing mainly with full package suppliers from Asia or with trade agents. As an organization they are far more at a distance of the production process. Their interaction with suppliers often remains limited to contracts with mediating trade agents and overseas buying offices. A Dutch multi-product retailer for instances notes that

[126] Interview F20.
[127] Interviews N4; P2.

> We work with a set of suppliers, most of them through the agent Li & Fung. This agent also does audits for us in the factories on quality and safety (…) We have a couple of longer term suppliers, where it is necessary to spend more time and money on quality of the product. But how many suppliers we have that are routinely changing, I don't know.[128]

The argument here is that the *Makers* more easily adopt supply chain responsibility for labour conditions, because they are already taking some responsibility for the development of their product as it is. The *Buyers* on the other hand do not, and therefore prefer arm's length solutions for problems that are at more than an arm's length distance from them as it is.

The significance of this difference between these types of companies is passionately defended by a spokesperson of a clothing trade association, whose account pulls the contrast even into the sphere of culture:

> In this industry you have salesmen and producers, in this case producers at a distance. The main distinction is this: if there is a problem in the supply chain with a producer at a distance, he will analyze it, try to understand it and solve it. A salesman on the other hand, sees the problem, does not have time to solve it and will look for the shortcut past it. The salesman wants to sell, he wants happy customers and nice stores. He does not want to be involved with problems at the level of production. These need to be solved by his suppliers.[129]

As noted previously, precisely empirically distinguishing between these types of companies within the industry is difficult because a large amount of companies combine buying, designing and retailing functions in their business strategy. Nevertheless, it is possible to imagine a continuum where particular companies definitely are closer to the *Maker* ideal type, and others closer to the *Buyer* type, again drawing on the categorization of McCormick and Schmitz (2001).

It is possible that organizational self-perception is a factor here as well, specifically when it comes to company that in terms of policies are empirically in between these ideal types (in McCormick's terms these would be predominantly specialty retail chains and mass merchandisers). In other words, whether one sources directly from suppliers or not, or whether one has regular contact with supplier factory managers about production might not be the decisive factor. What matters is if one regards oneself organizationally as involved primarily in production or primarily involved in buying and selling. This perception may form a cognitive link to perceiving labour conditions as an issue to take responsibility for.[130]

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[128] Interview F11.
[129] Interview B1.
[130] A different take on the differences in company preferences for private regulation according to position in the value chain has been put forward on the basis of studying the forestry sector by Sasser et al (2006). They convincingly argue that firms more distant from consumer pressure in the chain are less likely to follow the preferences of activists exerting pressure.

It can therefore be posed that

(H18) Firms focusing more on sale of products than on manufacturing and design prefer private regulation without Supply Chain Responsibility

d. Choice trajectories

Two examples can illustrate how companies decide on support for a private regulatory organization, taking into account the factors identified in previous sections.

First, the British company Pentland produces sporting clothes with its own brand, mainly for the UK Market. It also owns the brands of Lacoste shoes and Speedo swimsuits that are also well known across Europe. As the pressure on sporting good companies rises from activist campaigns, Pentland decides to hire staff for CSR activities, recruiting a former NGO representative as head. The Pentland CSR staff seeks to deal with the labour conditions in cooperation with other companies to have more clout, but looks for activist participation as well, specifically from trade unions. Once the development of British multi-stakeholder ETI is finished, Pentland is one of the first to subscribe.[131]

Second, HEMA is a mass merchandise multi-product retailer, among the largest in the Netherlands, holding an excellent reputation among Dutch consumers as a provider of quality products for a bargain price. HEMA receives few questions about the sustainability of its clothing products. Nevertheless, the HEMA CSR team devises a sustainability report to inform stakeholders on its policies. HEMA is approached several times by activists on its policies regarding its sourcing of clothing, mostly in informal settings. Representatives of HEMA engage shortly in the discussion of the development of the high stringency multi-stakeholder governed FWF. Representatives opt out as they do not see a value added for their company. Instead, HEMA experiments with SAI requirements for its suppliers, without actual participation in SAI's programme. When the BSCI is developed, HEMA joins along with its fellow members in the Dutch *Vereniging Grootbedrijf Textiel* retail association. The HEMA representative emphasizes the similarities among retailers in dealing with this issue and the need to move on the issue in concert in order to develop improvements. HEMA shares most of its suppliers with the German retailer Karstadt and Karstadt's membership for BSCI is therefore also beneficial.[132]

[131] Interview F12.
[132] Interview F11.

e. Dynamic and intersubjective factors: Time, Agency and Buy vs Make

Before moving on to the testing of mentioned propositions for a larger group of cases, three categories of factors deserve some elaboration that seem significant based on the qualitative material but are harder to test in a quantitative format using survey material and are therefore not pursued further.

First category focuses on temporal institutional factors. The development of new private regulatory organizations goes on as companies choose to support private regulation. Accordingly, at later stages companies face more choices in private regulatory approaches than in earlier stages. Likewise, as time passes, general information about private regulation and labour standards becomes more readily available and is disseminated across the field of CSR professional practitioners, as early adopters share stories about their experience in implementing private labour regulation during conferences and workshops. For all these reasons, the character of decision making on business support for private regulation slowly changes over the years for companies and strategic action of companies should be judged from specific moments in time.

Reviewing the history of development of private regulatory organizations, it is notable that one thing is absent in the first phase of business support for private regulation, roughly between 1999 and 2003: a pan-European type of business governed private regulation. Data cannot show whether companies that started supporting a private regulatory organization before 2003 would have preferred business governed instead of multi-stakeholder governed regulation had they had that choice instead, since we cannot rely on *as if* reasoning. But undeniably the large increase in European business support for private regulatory organizations since 2004 can be attributed to the introduction of European business governed private regulation with BSCI, signifying the demand for such a type of regulation within the industry. One can assume that many companies have in fact been waiting for such a type of private regulation to come into existence in order for them to start supporting it, rather than engaging with another type of private regulation already in existence.[133] History is also significant in the ways that past experience informs present action for actors. Reluctance to join multi-stakeholder regulation may equally have been informed by past experience with activists outside regulatory settings. This may have caused some companies to await business regulation.

This temporal dimension mediates how certain industrial institutional pressures are going to play out. The outlook is different for companies that are among the first to join a regulatory organization, than for those firms that join later on, since the late adopters can make judgements on the basis of the choices of competitors, or other industrial players they have kinship with. Similarly,

[133] So far, three European companies have shifted their support for private regulation, from a multi-stakeholder to a business support model: Otto, Migros and WE.

strategic considerations based on vertical relations can shift. If brands strategically aim to align or dissociate with retailers (or the other way around), they first have to see what private regulation these organizations are willing to support. If that is clear, private regulatory preference will be easier to settle. If that is unclear, patterns of business support may turn out differently.

The strategic behaviour of small Dutch high street clothing brands such as Imps & Elfs and Bart's is a case in point. Until 2005, these companies are unaware of the preference of the dominant Dutch retailers in private labour regulation, because these retailers have not joined a private regulatory organization yet. This type of brands depends heavily on these retailers, as they themselves do not have venues to get their products to the Dutch end consumer. The most logical option in private regulation for these companies is the Fair Wear Foundation (FWF), since it is Dutch and multi-stakeholder governed. Moreover, the branding and high street position of many of these small firms is not incompatible with FWF's commitment to brand supplier responsibility. FWF indeed attracts a few players from this market segment, but not many, probably due also to the strained relation between the association representing Dutch large retail VGT and FWF. When Dutch large retailers start supporting the business governed Business Social Compliance Initiative (BSCI) in 2005, many small Dutch high streets brands move to support a system similar to BSCI, without supply chain responsibility requirements, thereby securing their business relations with retailers. Furthermore, one of the distinguishing character traits of the growing population of FWF business supporters, besides their focus on the high street consumer segment and government procurement market, is the absence of a relation of structural dependence on Dutch retail.[134]

As time goes by, the nature of strategic deliberation of business support may also change within companies and the industry. As was predicted above, some companies decide on private regulation based on behaviour of other industrial players. In line with the temporal dimension, in the sample, respondents who were early adopters generally did provide an account of strategic steps raised in decision making, with managers pondering on consequences of different governance arrangements and policies of regulatory organizations. By contrast, in the population of late adopters, there are a couple of company representatives delivering accounts on their strategic view of support for private regulation that resemble herd behaviour:

> I have heard that BSCI is joined by Migros and Otto. They are really frontrunners in the CSR field, I respect what they have done with sourcing in the last few years. An initiative with such retailers in it is always of interest for us (…) As a company we are more of a follower.[135]

Other companies noted that their membership of a private regulatory organization followed from

[134] Interview N4; U2.
[135] Interview F20.

the membership of an association of similar businesses. Interesting to note is that although the processes are different, both herd behaviour and intentional strategic preference setting yield similar results. This is because herd companies do not follow just any company, but a specific type of company they find to have similar characteristics as them. In other words, different strategically conscious CSR managers of companies have different ideas about what the right form of private regulation is. And CSR managers of companies that imagine themselves as *followers* have different ideas about what *forerunners* are, and different ideas therefore about whom to follow. For a company like Puma, Nike is a forerunner. But a mass merchandise clothing retailer representative does not see him\herself in the same boat with Nike. This company will tend to look at a company like C & A. Patterns of strategizing thus may increasingly conform to routines within an organizational field and isomorphism takes place with regard to business support for private regulation, in clusters of companies that regard each other as similar in other ways.

A second factor difficult to grasp in larger-N settings is the subject of agency. This study identifies institutional differences mediating the response of firms to societal pressure. But the interviews also leave room for a degree of agency on the part of either firms as corporate agents or on the part of the CSR managers that mainly decide private regulatory preference. Especially in comparing firms with very similar institutional environments there is some variation that seems attributable to the specific historical experience with activist pressure as well as managerial perceptions of societal pressure and the labour issue. These managerial perceptions may be influenced for instance by the personal background of the persons in charge, as reflected in the answer of a CSR representative, when asked during a workshop by another business representative whether his company did not dread cooperation with unions in projects to improve working conditions at their suppliers:

> What do you mean? I do not have a problem with unions at all. Some of my friends work in the trade union. My colleague used to work there as well. We do not have a negative attitude towards that and why should we.[136]

The interview results also lead us to hypothesize that it is more likely that this factor of individual agency contributes significantly more weight if the more 'exogenous' factors to this decision (such as industrial-institutional and national-institutional factors) paint a more ambiguous picture. In other words, in a national environment with neither high nor low institutional pressures regarding CSR policy development, and in a medium sized firm catering to a broad consumer market, Manager A of firm X might go for higher stringency regulation. But in a similar situation, Manager B could prefer lower stringency.

[136] Observation during the ETI 2009 Conference, October 15 in London.

Finally, regarding Supply Chain Responsibility, it was posited that involvement with the point of production was essential to understand policy preference. For a larger N-analysis, as a test for this, firms may be placed in a continuum regarding their reliance on sales or manufacturing and design of products using corporate information. But more specific operationalization of their buying policies, as the effective explanatory factor, is very difficult using the survey method. Of course, questions can be formulated looking at usage of trade agents, full package supplying, short or long term supplier contracts and so on. But these issues are soon too complicated to expect satisfactory and internally consistent answers from survey participants. Response rates drop once the degree of detail rises, severely limiting the degree of inference using quantitative methods. Moreover, the subjective element of responsibility and involvement with regard to production is easily missed in the survey method and would in effect require much smaller N-case research inside organizations.

6. A large-N exploration of institutional patterns of business support for private labour regulation

This section tests the propositions introduced in the previous sections as they relate to the more static institutional factors explaining corporate preferences for private regulatory approaches. It first elaborates on the design of the survey which is the basis for the larger-N exploration. Then it describes the operationalization of the dependent and independent variables used, followed by the application of specific models.

a. The survey

The survey was distributed as a link to an on-line questionnaire to 178 company representatives from 15 Western European countries. The questions covered aspects relevant for the answering of the second research question concerning the strategies of firms in supporting specific forms of private labour regulation. The received survey data were combined with further primary document data and interview data to create a database on the Western European clothing market. Analysis of the resulting database was conducted using 50 answer sheets by firms involved in a private regulatory organization. The respondents were all participating in one of the following six organizations: FLA, FWF, ETI, SAI, BSCI and ICS. WRC and WRAP did not emerge as private regulatory organizations, since WRC focuses solely on American universities and WRAP focuses on suppliers for the North American market. An additional control group of 10 surveys of firms not supporting private regulatory organizations was also collected. These were combined with public material of the remaining 67 firms adopting private regulation at the date of July 1st 2007. For a complete overview of the statistics summary, see the Methodology Appendix.

At the outset a possible bias can be identified regarding responses from particular countries, with higher response rates from the Netherlands and the Nordic countries and a lower response rate from Spain, Portugal, Italy, Austria, Belgium and Ireland. This might be indicative of the variation in first, a propensity to respond to surveys of these companies; second, a propensity to respond to information requests regarding CSR issues in general; third, a propensity to respond to requests from a Dutch academic institute; or, fourth, a propensity to respond to a request to a survey in the English language (since only the request to participation was put in the relevant national language and the survey questionnaire itself was in English). The consequences of such bias for the analysis are important to flag. Most obviously, they seriously complicate any analysis of why firms do or do not participate in private regulatory organizations, because the sample strongly selects for those most likely to care about and support private regulation. These provide further reasons not to focus on whether or not firms participate, though estimation of such has been considered using this survey's data.[137] From the present analysis, the bias is likely less severe but still in the direction of over-sampling those most committed to stringent private regulation. But the sample harbors substantial variation in the regulation chosen, including firms at the lowest and highest scores on various measures of stringency of regulation. Any sampling skew, further, should not clearly bias inferences about how societal pressure and other conditions affect preference for quality of regulation, except for national-level factors relevant to such firm choices – where the firms more likely to respond resided in higher-standard national settings. The selection bias, hence, might be relevant for estimates of such national CSR-conditions but not for the company-specific conditions where the variation is more substantial and less biased relevant to the universe of firms to which the present analysis is addressed.

b. Dependent variables: Stringency, Multi-stakeholder governance, Supply Chain responsibility

The survey data provide a range of questions that allow judgments about the nature of private regulatory participation, including features relevant to the nationality of private regulation to their stringency.[138] *Stringency* is operationalized for the specific private regulatory organizations, focusing on degree of labour standards, specificity of implementation and degree of control. For this analysis, the coding from Chapter Three is simplified by categorizing participation in a more or less stringent private regulatory organization of the six relevant organizations as an ordinal variable of

[137] The sample only includes ten surveyed companies not participating in private regulation, where most of the sampled non-participants (in CSR) came from the Netherlands and the UK. Still analysis of whether or not firms join one or another type of regulation, with a sample of roughly 100 firms, suggests that market share and private ownership have significantly negative effects on participation, while various measures of societal pressure (e.g. frequency of contact with activists) have positive but insignificant effects on participation. Results not shown but available from authors.

[138] Finally, statistics also confirm general firm preference for homegrown private regulatory organizations if available. A test for selection of national private regulation shows that for all companies having the option 76% chooses home based organizations.

ascending levels of private regulation. This has the advantage of not making strong assumptions about the very specific positioning on the nuanced scale in Chapter Three, but also taking into account most of the information in that scale rather than a still-simpler distinction between high and low stringency. The stringency measure, ranging, thus, from 1 to 6 (lowest to highest stringency), has a sample mean of 3.15 and a standard deviation of 1.55.[139] As robustness tests, in any event, two other specifications are considered: a more nuanced continuous measures (the same measure discussed in Chapter Three); and a dummy variable with 0=lower stringency and 1=higher stringency, coding the six organizations as having either low or high stringency. The analysis of stringency is checked for policy shifts in the approach for private regulatory organizations. The degree of stringency of an organization is used that matches with the time that the analyzed firms started to support these organizations, predominantly after 2001.

Two other dependent variables were constructed which were of strategic relevance for firms in the qualitative sample and indirectly contribute to more or less stringent regulation. One is a dummy variable for *multi-stakeholder governed* (=1) or business governed (=0) regulation. Chapter Three provided a definition for multi-stakeholder governance, based on inclusion of both business and societal interest groups in decision-making procedures and concluded that SAI, ETI, FLA and FWF were multi-stakeholder governed. 54 percent of the respondent firms participated in private regulatory organizations with multi-stakeholder governance.

Finally, two dummy-variable versions of *Supply Chain Responsibility* (SCR) were considered, the existence of a requirement for participating buying firms to handle the costs of monitoring, the preference for which also influences higher or lower stringency.[140] The first version included all firms supporting private regulatory organizations that explicitly leave out SCR (SAI and BSCI) as 0, with all firms supporting organizations including SCR (FLA, FWF, ICS) as 1. The second version of the dummy measured SCR as an explicit regulatory requirement which meant that firms supporting ETI, where there is no explicit commitment to SCR, also were included under score 0.

The analysis of the data treats each of the above characteristics – stringency, multi-stakeholder governance, and supply-chain responsibility – as related but distinct measures of the quality of private regulation chosen. But not surprisingly, these characteristics are strongly positively interrelated in the data as well as theory. In theory and interviews, it is clear that activist contact may follow from public campaigns, and a well known activist strategy is to stimulate consumers to ask questions to firms on supply chain policies. In the survey, for instance, firm representatives were asked to estimate the amount of consumer requests directly resulting from

[139] See Appendix Table A1 of this chapter for all summary statistics.
[140] *As chapter Three* as argued, the practical consequence of buying firms not adopting SCR is a business-controlled system of implementation.

activist campaign material, such as postcards and forwarded protest e-mails. More than 50 % of the respondents thought at least 25% of the requests or more were instigated directly by activists. More generally in the data, in any event, the correlation among stringency, multi-stakeholder governance and supply-chain responsibility is high. For instance, the three features have coefficients of correlation of between .82 (multi-stakeholder governance and supply-chain responsibility) and .92 (stringency and multi-stakeholder governance).[141]

c. Independent variables: Societal, National and Industrial Pressures

Independent variables were constructed for three categories: societal pressure, national-institutional pressures and industrial-institutional pressures. For societal pressure, following both literature and interview results, four distinct measures of various kinds of contact or pressure were considered. First *Target of attack* was considered: the amount of time a firm was targeted by public campaigns was operationalized in an ordinal variable ranging from 0 to 3 (0=never; 1=once; 2=2-3 times; 3=often). Second, *Frequency of contact* was measured: in an ordinal variable *the times a firm had been in contact with activists,* ranging from 1 to 4: (1=never; 2=once; 3=a few times; 4=more than five times). Third, *Negative attention* was considered: reception of negative media attention on labor conditions, ranging from 1 to 4: 1=never; 2=once; 3=a few times; 4=a lot. And fourth, *Consumer requests*: an ordinal measure of amount of consumer requests on CSR issues ranging from 1 to 8: 1=0-10; 2=10-20; 3=20-40; 4=40-60; 5=60-80; 6=80-100; 7= more than100; 8= more than 200.

As a national-institutional variable the work of Albareda et al (2007), distinguishing between Western-European countries on their CSR institutional environment, was used. Applying Albareda's indicators on degree and scope of government effort towards promoting CSR and the maturity of a national public sustainability debate, Switzerland was added on the basis of interviews in the sample and public material analysis. Then an ordinal variable was constructed called *Country CSR* of low to high CSR institutional environment based on the categories 'Low' (Mediterranean countries in the sample), 'Medium' (Continental economies minus the Netherlands and Switzerland) and 'High' (UK, the Nordic economies plus the Netherlands and Switzerland).

For industrial variables, the study distinguishes between consumer market segment, retail strategy, market share and ownership. For *consumer market segment* the previously mentioned categories of McCormick and Schmitz (2001) were followed. Their categorization of different consumer marketing types of course cannot be completely parsimonious since in practice many firms, while emphasizing a particular section of the market, target a broader consumer audience. Specifically the two most obvious and clear cut price-sensitive categories of consumer marketing

[141] See correlation matrix in Appendix Table A2 as an appendix to this chapter.

were separated: the discount stores and mass merchandisers as a dummy variable called *Discount market segment*. For retail strategy an ordinal variable, *Retail*, was used, based on corporate documentation separating in ascending levels the degree of importance of retail in corporate strategy from none to retail-only. For *market share* an ordinal variable was constructed, *Market share* based on categories, since corporate documentation regarding this variable was insufficient or imprecise. The order was constructed through a weighed comparison between firms in different sub-sections of the industry (using both sectoral and high-street low-street distinctions). Extra weight was then added for firms in ascending levels of market section size (such as the multi-product mass merchandise retail and branded sporting goods). Comparison within sections between firms was based on sales. For ownership a dummy variable *Public* was used, distinguishing between public (=1) and private (=0).

d. Control variables

Also a range of factors were considered that are plausibly relevant to private regulatory choice and the above explanatory factors – and hence worth considering as controls. For industrial variables an ordinal variable was added of *Internationalization,* internationalization strategy of a firm, using categories from UNCTAD studies on globalization of production and ranging from domestically-oriented (1) to global, inter-regional (5) (see Van Tulder *et al*, 1999). For timing effects and measuring differences between 'early bird' and 'late-comer' firms, an ordinal control variable *Party since* was added, marking the time at which a firm started participating in a private regulatory organization. Finally, where degrees of freedom allowed, for some estimations country dummies were considered, to control for any feature of a country in which a firm is headquartered that should capture unmeasured effects on private regulatory preference.

d. Estimation strategy

With these variables a range of models are fitted to estimate how societal pressure, industrial conditions and national conditions influenced *Stringency,* or *Multi-stakeholder governance,* or *Supply-chain responsibility.* The reported models of *stringency,* a categorical variable with values ranging from 1 to 6, are based on ordered probit analysis, while models for *Multi-stakeholder governance* and for *Supply-chain responsibility,* being both binary variables (0 or 1), are based on simple probit analysis.[142] To take account of possible heteroskedasticity in measures of qualities of regulation across firms in the sample, the models calculate robust standard errors.[143] This section reports models with the full complement of controls for all measures, though the results are very

[142] As robustness tests, however, ordered logit or logits were also considered, with no substantive change in results.
[143] As robustness tests, Huber-White robust cluster estimation of standard errors were also considered, assuming clustering by country or sub-sector, yielding very similar results to those reported.

similar with no or different controls. In any event, the study also reports for each dependent variable the results of estimating the effects of all economic conditions without inclusion of one or another of the societal pressure parameters (*Frequency of contact, Multi-stakeholder governance, Consumer requests,* or *Negative attention),* because these all substantially lower the sample available for estimation. And in measures of stringency, the degrees of freedom were sufficient to fit models where country dummies are included instead of the country-specific *Country CSR,* as a further test of the unmeasured effects of a firm's country of headquarters.

7. Results

Table 1 reviews the results of the model looking at the relationships between mentioned variables and the outcome of corporate preference for multi-stakeholder governance. Without societal pressure indicators, Model 1 shows that market share is positive and significant, but this significance disappears as soon as any of the societal pressure parameters are added (Models 2-5). This reduction in the correlation reflects the collinearity between market share and the societal pressure indicators, rather than the simple reduction in sample size caused by inclusion of the latter. For instance, frequency of contact and market share have a .46 coefficient of correlation. Such collinearity fits with the expectation from the interviews showing that activists tend to focus their pressure efforts on particular firms, amongst others based on size. In any event, net of societal pressure measures, market share does not seem to have any independent effect on multi-stakeholder governance.

Across virtually all of the models, there are significantly negative coefficients for *Retail* and, especially, *Discount market segment,* indicating that retailers and companies catering to lower ends of the consumer market tend not to choose regulation with multi-stakeholder governance. Firms supporting private regulatory organizations at a later date do not prefer multi-stakeholder governance, based on this sample. This result should not be surprising, as most retailers and discount and mass merchandise firms have joined private regulatory organizations at a later date, specifically with the introduction of business governed BSCI in 2004. Participation dates and retail as well as consumer market variables are thus correlated. In any event, internationalization strategy and firm ownership do not lead to significant results with regard to preference for multi-stakeholder governance. Finally, *Country CSR,* how much national environments are conducive to CSR experimentation, is positive and significant across most of the models (significant except for Model 5). Although this might be an artifact of sampling bias – oversampling, for instance, of firms based in the Netherlands (as discussed above) – it is also consistent with expectations that broad national conditions might well condition firm managers to follow particular kinds of CSR activity.

Table 1. Multi-stakeholder governance and Societal Pressure

Dependent variable: 1=multi-stakeholder; 0=business governance

	1	2	3	4	5
Frequency of contact		1.024***			
		(0.378)			
Target of attack			1.528***		
			(0.492)		
Consumer requests				0.537***	
				(0.164)	
Negative attention					0.522*
					(0.271)
Market share	0.371***	0.0827	-0.193	0.107	0.0484
	(0.138)	(0.154)	(0.270)	(0.214)	(0.198)
Retail	-0.545***	-0.504**	-0.338	-0.708***	-0.356*
	(0.134)	(0.225)	(0.226)	(0.219)	(0.182)
Discount market segment	-1.541***	-1.828***	-2.503***	-2.134***	-1.930***
	(0.356)	(0.542)	(0.655)	(0.716)	(0.508)
Internationalization	-0.128	0.239	0.0697	-0.0722	-0.0130
	(0.130)	(0.194)	(0.266)	(0.230)	(0.230)
Public	0.189	-0.519	-0.429	-0.228	-0.257
	(0.418)	(0.515)	(0.655)	(0.828)	(0.690)
Party since	-0.275***	-0.253**	-0.309**	-0.339***	-0.237**
	(0.0992)	(0.106)	(0.120)	(0.116)	(0.118)
Country CSR	1.237***	1.492***	1.300**	1.375**	0.814
	(0.457)	(0.520)	(0.573)	(0.563)	(0.526)
Constant	-0.388	-4.496**	-0.562	-0.969	0.0289
	(1.509)	(2.153)	(2.574)	(1.949)	(2.205)
Observations	100	64	48	48	48
Log pseudolikelihood	-35,333	-23,3773	-15,1214	-13,8222	-18,7281

Probit coefficients with robust standard errors in parentheses

*** p<0.01, ** p<0.05, * p<0.1

Models 2-5 show the results for the various measures of societal contact. And there the pattern is quite clear: all selected indicators of societal pressure (frequency of contact with activists, public campaigns, consumer requests, negative media attention) have coefficients that are positively signed and statistically significant. To give some sense of the substantive size of these effects, it is possible to counterfactually estimate what the increase might be in the probability of choosing for multi-stakeholder governance if one moves from a low (10^{th} percentile in the sample distribution) to a high value (90^{th} percentile in the sample distribution) of each of these measures of societal pressure or contact – while holding all other parameters at their mean or median. For example, such modelling based on Model 2 suggests that, all other things equal, firms with no contact with activists have only a 1.1 percent chance of joining multi-stakeholder organizations, while those with frequent contact with activists (score of 4) have a 78.9 percent chance (with the confidence interval ranging between a 59 and 98 percent chance of multi-stakeholder governance). Firms not being targeted for activist attack have a 11 percent chance of joining multi-stakeholder organizations, those that have been 2-to-3 times the target of activist attacks are almost certainly likely to have choose such organizations (mean chance of 96.5 percent, ranging from 87.3 and 100 percent chance). And having no or virtually no consumer CSR requests yields a 6.5 percent chance of multi-stakeholder governance, while quite extensive requests (more than 100 but less than 200) yields a chance of 95.6 percent chance (from 84 to a 100 percent range). Finally, *Negative media attention* has the weakest of the significant effects: firms having no negative attention have a 34.7 percent chance of multi-stakeholder regulatory organizations (from 13.9 to 55.4 percent), while those with "a few" incidents of negative attention have a 74 percent chance of multi-stakeholder governance (from 48.5 to 99 percent chance).

Moving on to the preference for Supply Chain Responsibility, Table 2 shows again that market share is significant without insertion of the campaign, consumer requests and media attention variable. This again might be indicative of the correlation between both variables. Lower consumer market segments are negatively and significantly related to support for SCR. A focus on retail strategy is also negative and significant in most versions of the model, although not in combination with the public campaign variable. Participation date is positive and significant in two runs of the model, combined with the public campaign and the negative media attention variable. Perhaps the first is again a sign of the interrelatedness between retail strategy and participation date. Firm ownership is significant for one of the ten runs, combined with negative media attention. Control for country effects again is not possible because of collinearity with national environment, which is not significantly related to either measure of SCR. Overall, most robust results come from combinations between retail strategy and consumer market segment on the one hand and both narrow and broad measurements of SCR. Retailers as well as discount and mass merchandise firms

Table 2. Supply Chain Responsibility and Societal Pressure

Dependent variable (models 1-4): 1=yes responsibility; 0=explicit statement of no responsibility

Dependent variable (models 5-8): 1=yes responsibility; 0=explicit statement of no responsibility; or no statement of either

	1	2	3	4	5	6	7	8	9	10
Frequency of contact		0.575					0.336			
		(0.420)					(0.309)			
Target of attack			1.310***					0.371		
			(0.468)					(0.271)		
Consumer requests				0.412**					0.127	
				(0.190)					(0.114)	
Negative attention					1.897*					0.0926
					(0.993)					(0.255)
Market share	0.554***	0.573**	0.332	0.568	0.603	0.524***	0.314*	0.136	0.212	0.277
	(0.200)	(0.237)	(0.396)	(0.435)	(0.372)	(0.170)	(0.190)	(0.212)	(0.206)	(0.209)
Retail	-0.483***	-0.458*	-0.385	-0.745**	-0.516**	-0.430***	-0.290*	-0.271	-0.362**	-0.327*
	(0.156)	(0.237)	(0.263)	(0.305)	(0.234)	(0.119)	(0.165)	(0.171)	(0.172)	(0.174)
Discount market segment	-1.65***	-1.97***	-2.49***	-2.03***	-3.26***	-1.263***	-1.281**	-1.230**	-1.228**	-1.249**
	(0.440)	(0.551)	(0.696)	(0.647)	(1.186)	(0.471)	(0.535)	(0.597)	(0.615)	(0.611)
Internationalization	-0.0906	-0.125	-0.227	-0.435	-0.391	-0.255	-0.0665	-0.179	-0.255	-0.272
	(0.196)	(0.312)	(0.411)	(0.470)	(0.372)	(0.156)	(0.241)	(0.257)	(0.249)	(0.258)
Public	-0.280	-0.670	-1.035	-0.437	-3.389*	-0.489	-0.614	-0.248	-0.139	-0.163
	(0.494)	(0.579)	(0.663)	(0.819)	(1.947)	(0.473)	(0.571)	(0.599)	(0.581)	(0.632)
Party since	-0.115	0.206	0.140	-0.0153	0.144	-0.0529	0.200	0.227*	0.167	0.220*
	(0.112)	(0.162)	(0.233)	(0.196)	(0.252)	(0.0930)	(0.123)	(0.129)	(0.113)	(0.128)
Country CSR	1.205	0.932	1.418	1.524	0.401	0.649	0.275	0.117	0.194	0.108
	(0.747)	(0.657)	(0.974)	(0.939)	(0.821)	(0.473)	(0.412)	(0.457)	(0.458)	(0.451)
Constant	-2.665	-5.518**	-4.408	-3.573	-2.830	-1.382	-3.334*	-1.550	-1.308	-1.244
	(2.218)	(2.541)	(3.267)	(2.775)	(2.867)	(1.575)	(1.960)	(2.053)	(1.990)	(1.977)
Observations	83	49	36	36	36	100	64	48	48	48
Pseudo R-squared	0.4850	0.4345	0.4643	0.4801	0.4714	0.3882	0.2971	0.2754	0.2735	0.2565
Log pseudolikelihood	-25,7052	-14,7567	-11,3955	-11,0589	-11,2445	-33,7174	-20,6413	-17,7988	-17,8453	-18,2625

Probit coefficients with robust standard errors in parentheses: *** p<0.01, ** p<0.05, * p<0.1

thus overall seem to prefer their private regulation without SCR. Societal pressure in the form of most specifically public campaigns contributes to firms preferring regulation with SCR, bearing in mind possible bias given activist preference for specific company targets.

In terms of societal pressure, estimates of *Supply Chain Responsibility* yield more mixed results. Frequency of activist contact is not significantly related, and campaigns, consumer requests and media attention are significantly positively related only in the narrower, conservative measurement of SCR (columns 1 to 5) but not in the definition that measures on the basis of availability of specific requirements for SCR in the private regulatory approach. From this it can be inferred that the societal pressure measures tend to have more modestly or less consistently positive influence on Supply Chain Responsibility than on multi-stakeholder governance.

This brings us to what is perhaps the most important measure, *Stringency,* the results for which are summarized in Table 3. The Table reports results from models with the national-level *Country CSR* parameter and, as a check, also with country dummies as a substitute for that parameter, providing a harder test for the role of the other factors. As far as the firm-specific industrial and national-level measures, in any event, several patterns do emerge that are familiar from Tables 1 and 2. Lower consumer market segments are negative and significantly related to degree of stringency and in 8 out of 10 runs of the model a strategy focused on retail also does not bode well for the level of stringency.[144] Market share and internationalization strategy are significant only without inclusion of societal pressure variables, again an indication of their relation to campaign strategies. And national environment contributes positively and significantly to higher stringency, as expected, though again the effects of selection bias cannot be ruled out here. Contrary to expectations, firm ownership does not relate significantly to higher degrees of stringency. It might be that in this case two opposite logics are at work. Stock-listed firms may be subject to greater concerns about reputation risks. But privately owned firms may be driven towards higher degrees of stringency in case individual or family owners identify strongly with their corporation and its ethical agenda, as indicated in section 2c of this chapter. In any event, in most of the estimates of *stringency,* those firms being earlier converts to private regulatory membership are more likely to have chosen more stringent regulation – significantly so in the case of some of the estimates including country dummies (models 6 and 8).

Most importantly, the results for societal pressure clearly fit the interview results and the patterns emerging from Tables 1 and 2. The measures of societal pressure tend to be positive and significantly related to *Stringency,* except for negative media attention where the effect is insignificant in both specifications. The effects of the other measures of societal pressure, however,

[144] The model was also attempted using sectoral differences between multi-product retail, sporting goods and clothing industry. There was high collinearity here with the degree of retail as a market strategy, as could be expected, but patterns were similar.

Table 3. Stringency and Societal Pressure

Dependent variable: stringency (1-6)

	1	2	3	4	5	6	7	8	9
Frequency of contact		0.364**				0.547**			
		(0.152)				(0.255)			
Target of attack			0.635***				0.580*		
			(0.237)				(0.296)		
Consumer requests				0.205**				0.459***	
				(0.0884)				(0.127)	
Negative attention					-0.0291				0.247
					(0.189)				(0.211)
Market share	0.241**	0.0504	-0.158	-0.0232	0.0831	0.213	0.0852	0.199	0.247
	(0.102)	(0.120)	(0.165)	(0.142)	(0.153)	(0.147)	(0.266)	(0.213)	(0.207)
Retail	-0.422***	-0.280***	-0.271**	-0.366***	-0.289**	-0.276**	-0.194	-0.431***	-0.233
	(0.0786)	(0.101)	(0.126)	(0.120)	(0.119)	(0.131)	(0.149)	(0.164)	(0.148)
Discount market segment	-1.279***	-1.357***	-1.674***	-1.632***	-1.552***	-1.099***	-1.557***	-1.664***	-1.425***
	(0.273)	(0.348)	(0.475)	(0.475)	(0.483)	(0.418)	(0.570)	(0.589)	(0.543)
Internationalization	-0.230**	-0.0473	-0.217	-0.288	-0.292	0.0850	-0.00671	-0.0695	-0.0591
	(0.0907)	(0.133)	(0.197)	(0.177)	(0.178)	(0.181)	(0.251)	(0.256)	(0.260)
Public	0.176	0.0854	0.352	0.360	0.541	-0.901	-0.756	-1.131	-0.848
	(0.313)	(0.391)	(0.454)	(0.477)	(0.447)	(0.739)	(0.835)	(0.967)	(0.922)
Party since	-0.0153	0.0806	0.123	0.0756	0.121	-0.222**	-0.191	-0.375***	-0.260
	(0.0727)	(0.0878)	(0.0853)	(0.0842)	(0.0907)	(0.111)	(0.140)	(0.124)	(0.160)
Country CSR	1.071***	0.971***	0.643*	0.705**	0.631*				
	(0.283)	(0.353)	(0.329)	(0.333)	(0.354)				
Country effects	No	No	No	No	No	Yes	Yes	Yes	Yes
Observations	100	64	48	48	48	64	48	48	48
Pseudo R-squared	0.2403	0.1744	0.2206	0.2170	0.1823	0.3565	0.3614	0.4189	0.3493
Log pseudolikelihood	-113, 857	-80.0665	-60,7536	-61,0339	-63,7359	-62,4098	-49,7773	--45,3	-50,7234

Ordered probit coefficients wiith robust standard errors in parentheses. Results for country dummies and cuts not shown.

*** p<0.01, ** p<0.05, * p<0.1

are substantial. Basing judgments on the models 2-4 (with the single national-level parameter instead of the country controls), it is possible to counterfactually estimate the predicted probabilities of supporting a high level of stringency (4-6, at or above the 75th percentile in the sample distribution of *stringency)* among firms at a low (10th percentile) versus firms at a high (90th percentile) level of either *frequency of contact, consumer requests, or target of attack.* Firms with a low frequency of contact, for instance, have a 26.4 percent chance (between 4.8 and 48 percent chance) of having relatively high stringency (4 or higher on the 1-6 scale of stringency).[145] Similarly, firms not having been targets of activist attack were only 6.3 percent (from 3.3 percent to 13.6 percent) likely to have relatively high stringency, while firms having been 2-3 times the target of activist attacks have a 43 percent chance (between 4 and 81 percent chance) of having a a high stringency score (between 4-6 on the 6-point scale). Finally, firms with little or no *Consumer requests* for CSR have only a 6.9 percent chance (from 3.4 to 13 percent) of high stringency, while those with between 100 and 200 requests have a 40 percent chance (between 5 and 76 percent chance) of high stringency. In short, for all the measures of quality of private regulation the measures of societal contact appear to stimulate those firms choosing to join one or another regulatory organization to choose for more stringent regulation, marked by multi-stakeholder governance and supply-chain-oversight. These effects are strongest and most consistently so in shaping firm choice of stringency and multi-stakeholder governance, but the broad pattern is consistent throughout. It is important that these patterns hold up to a range of sensitivity and robustness tests not shown in Table One through Three. The results are very much the same, for instance, with alternative measures of stringency – such as probits on binary measures of stringency, or Ordinary Least Squares (OLS) regression of the more nuanced measures of stringency. The results are also very similar with alternative mixes of controls (or to no controls), including for instance excluding market share or any other control from estimates of the role of the various societal contact parameters. It may therefore not be possible to know from this data what predicts whether or not a firm will support private regulatory organizations, but a lot more is revealed about what predicts the quality of that choice, including how stringent regulation is in actually monitoring and protecting labour standards. And it can be concluded that not only a range of economic and national conditions matter to that choice, but so do a range of societal pressures.

[145] For frequency of contact, respondents could also indicate on what basis interaction took place. In the tests all of the mentioned reasons for interaction in some degree were positive and significant for higher stringency. The exception was contacts on the basis of an urgent appeal at supplier factories. Arguably this is the type of contact between activists and firms least influenced by prior considerations of activists about the likelihood of positive impact, since it is 'bottom up' demand driven by its affiliates in producer countries.

8. Final reflections and the activist dilemma

This chapter has investigated firm's preference for more or less stringent private regulation using both qualitative and quantitative data material and methods, and pointing to both static and dynamic as well as micro- and macro-factors to corporate strategy. Focusing on macro-factors based on qualitative and quantitative material, this chapter argues that corporate preference for more or less stringent private regulation is explained by the interplay of societal pressure, a national environment supporting CSR policies and particular industrial characteristics. For societal pressure in particular, it is shown that activist efforts in promoting more stringent regulation are relevant beyond the actual exercise of the tool of public campaigning. Their influence is also attributable to the degree of contact with firm representatives in different settings. As far as industrial institutional pressures are concerned, the identified significant variables all relate to the firm's strategic relationship towards the point of consumption and the point of production. Firms catering to a price-sensitive consumer market segment prefer business-governed and less stringent private regulation. Firms relying on retail strategies prefer private regulation without Supply Chain Responsibility and less stringent regulation. Specific ownership type and type of internationalization strategy do not lead to significant effects on private regulatory preference. And a national environment stimulating CSR contributes to firms choosing for a higher degree of stringency, while firms in general show a preference for home based regulatory organizations.

With regard to dynamic factors and micro-level events, the qualitative material leads to the observation that one should not disregard the possibility of managerial agency as decisive in steering corporate preference in cases where institutional pressures are ambiguous. Furthermore, it is possible that, first, the evolution of the field of private regulation may turn certain institutional patterns around. Emergence of preference for private regulation from certain firms exercising power on others in the production chain, may lead dependent firms to review their preference. Second, as the field evolves patterns of isomorphism may predominate where herd behaviour instead of strategic deliberation determines private regulatory preference (compare Wetterberg, 2007).

It is thereby also important to note that there are limits to what activists can achieve in influencing the development of CSR policies by companies. This goes specifically for their ability to influence the decisions that companies make on what private regulation to support. The campaigners that devote most attention to pressuring companies on this subject, such as the Clean Clothes Campaign network, the Global Union and the Oxfam network, are all in favour of multi-stakeholder governed regulation for companies that take responsibility for compliance in the supply chain. But they are all too often faced with companies that have a mind of their own. Such is the situation in a field where regulation is private, and regulatory participation is voluntary.

The dilemma that activists are specifically faced with, given these results is that they now more often have to confront companies that are no longer *not* taking any responsibility, but are taking it in a way that is not in line with what activists consider effective or fair. Trying to address this through public campaigns is much more challenging than simple campaign messages about abuse in factories. More specific campaigns on policy details reach a smaller audience. This means less hope for putting societal pressure on companies in this respect. But obviously activists will go on and try anyway. Their attempt will be to pull the regulatory field up as a whole by introducing frames that shame the approaches of companies in *low road* regulatory organizations. Whether this attempt is successful will be considered in the next chapter, which addresses policy adjustments of private regulatory organizations in a review of private regulatory competition patterns and convergence efforts.

Chapter Six. Competing codes. Understanding the dynamics of private regulatory competition

In the beginning of 2006, United Students Against Sweatshops (USAS) launched a new website dubbed FLAWatch.org. It copied meticulously the house-style of the multi-stakeholder private regulatory organization the Fair Labour Association's website, and announced that it would reveal the ineffectivenesss of FLA's approach to private labour regulation on the site. At the same time, USAS began campaigning for a new programme of the Worker Rights Consortium at university campuses. Half a year earlier, representatives of the Clean Clothes Campaign stood in front of the European Commission's Press Centre in Brussels, campaigning against business audits, and in particular the business-driven Business Social Compliance Initiative, which was being launched at that moment inside the press centre. As an alternative, the CCC advocated multi-stakeholder approaches such as the Fair Wear Foundation, of which it is a board member. What drives this rivalry among organizations, all committed to the same goal of advancing working conditions in developing countries? And what are the effects of these interactions?

1. Introduction

This chapter discussed the relationships between existing private regulatory organizations governing labour standards in transnational production chains (and their supporters) as they are evolving, as well as examining the developing content of the policies of these organizations. The aim is to shed light on the significance of interactions, and the evolving similarities and differences, between regulatory organizations. The nature of interactions can differ, from cooperation to competition, and policies may become more or less similar because of it. The aim, as in the previous chapters, is to show the significance of these political dynamics for the stringency of regulation, this time weighed overall for efforts towards clothing production chains. Are patterns directed towards an upward movement or a downward movement in regulatory stringency? And in either case, why is this so?

In an early account of this emerging regulatory field by Charles Sabel, Dara O' Rourke and Archon Fung (2000), it is posited that the competition between organizations may promote an upward shift in better regulation, more stringent corporate policies, and better working conditions. The authors hold that this is possible because of a trend towards rising public transparency in the field, the commitment to continuous improvement, and the practice of comparison and evaluation by parties involved. In line with current sociological understandings of the field of private governance for social and environmental issues, it is suggested that the emergence of policy

communities, increasingly sharing understandings of legitimate governance, will stimulate developments of private regulation towards an 'upward' direction of policy adjustment, or in regulatory competition terms, a California effect (Vogel, 1995).

This chapter argues both on theoretical and empirical grounds that this contention is too optimistic. Regulatory competition may take different shapes and have different results. Sociological approaches focusing on a social structure, embedding and connecting policy makers in regulatory fields, are rooted in a theoretical tradition that may just as likely be used to deductively predict long lasting patterns of policy divergence, rivalry among policy makers, or the absence of or mere symbolic adherence to common understandings of legitimate private governance.

This chapter discusses convergence and divergence patterns that show that the field is subject to a divergent form of dual block forming, with the largest block of aligned regulatory organizations and their business members opting for lower stringency regulation. A smaller and more loosely linked block of regulatory organizations aims for higher stringency. General upward trends can be found in the adoption of higher labour standards. Downward trends are embodied in the growing industry preference for business controlled implementation procedures. These blocks arise through a combination of emerging cooperative efforts between selected groups of organizations and continuing regulatory competition overall. Growing divisions between different interest groups then stimulate new indirect forms of multi-stakeholder governance practices that help maintain the comprehensive character of private governance. The placing and size of the blocks, as will be argued, can be seen as a reflection of macro-structural trends in the clothing industry and in the field of CSR politics.

The Chapter starts out with a discussion of the literature on regulatory competition, standard development, and policy convergence, drawing out significant lessons relevant for the argument. Second, it will describe and explain the development of regulatory competition in this field and its consequences for regulatory policies. Thirdly, the Chapter will describe institutional attempts at convergence between existing private regulatory organizations. And finally, the Chapter identifies the structural trends that underlie these patterns, and concludes by considering what the interaction between regulatory approaches tells us about the prospects for the field.

2. Understanding private regulatory competition

Regulatory competition is understood as competition on the basis of adjustments in rules between regulatory bodies for business entry (in the case of countries) or membership (in the case of private regulatory organizations). Dale Murphy (2004: 5-9) identifies three outcomes to this competition. The first is a movement toward lower common denominator via competition-in-laxity (also known as *race to the bottom* or the *Delaware effect*). The second is a movement toward a higher common

denominator via more stringent regulation (*race to the top* or *California effect*). And the third is a persistence of diverse regulations allowing for a heterogeneous regulatory climate. Extending on this, it is also possible to identify *block forming* in the case of heterogeneity, which means a persistence of divergence between mutually converging camps. Within and between those blocks, further dynamics of upward or downward adjustments can then be identified (see figure 1). These adjustments can be because of series of unilateral policy shifts or because of multi-lateral cooperation. The first will be called *arm's length convergence*, and these can be understood as possibly resulting from the actions of others in the field of regulation. The second is called *cooperative convergence* and involves the creation of an institution that somehow binds the converging groups together: a contract, a covenant, a partnership, or a new organization.

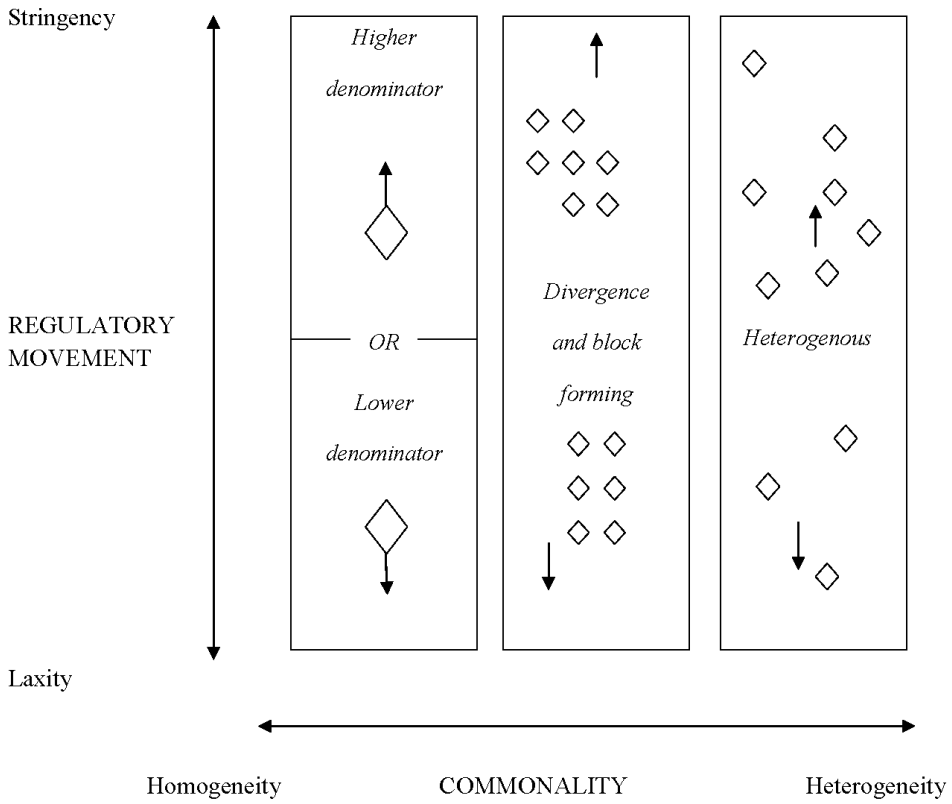

Figure 1. Stringency and commonality in regulatory competition. Adapted from Murphy (2004).

Two categories of reasoning can be identified to explain California and Delaware effects. They can roughly be typified as economic and sociological.

The economic interpretation to the Delaware effect holds that that strategic thinking on the part of some firm managers might lead them to prefer lower standards and business-governed organizations. Regulatory organization representatives, anticipating this position, might be tempted to make regulation less stringent to lure in more companies. An economic defense of the California effect would state that competitive forces may lead to a higher overall stringency of private regulatory adoption. Incentives might be the expectation that in time the majority of the industry might be subject to similar demands as those put at the company. In that case, it might be preferable to step on board at the highest possible level, so that at as regulatory participation advances, learning and efficiency gains for the forerunner companies and the organizations that they participate in lead to competitive advantage. An alternative explanation for a race to the top dynamic is that companies may pre-empt rising consumer pressure for higher stringency private regulation, by adopting high stringency private regulation or adjusting existing systems 'upward' (compare Elliott & Freeman, 2003: 63-69).

The sociological understanding of a California effect as put forward by private governance analysts (Bernstein & Cashore, 2007; Sabel et al, 2000; Rieth, 2005; Ruggie & Kell, 1999) emphasizes the beneficial effects of social interaction between private rule-makers in the formation of a policy community which then develops shared understandings of legitimate private authority. Sabel et al (2000) argue that private regulatory policy makers may begin to share a commitment towards continuous improvement of their policies and through competition will aim for best practice status of their organizations. Rieth (2005) and Ruggie & Kell (1999) implicitly promote learning-based types of private regulation that leave ultimate decision making on CSR policies with companies, and instead provide for an institutional set-up facilitating information exchange with other companies and stakeholder groups, thereby stimulating a best practice race among the participating companies. Dingwerth & Pattberg (2007) show that interaction among policy peers and transmission through consultancy increases processes of isomorphism among private governance arrangements, which seek to conform to prevailing rules of operational legitimacy. Bernstein & Cashore (2007) concur with these views, and extend on them by proposing a three-stage model of policy interaction among regulatory organization and their supporters, arguing that a rational interest-based logic of consequences can increasingly be supplanted by a rule-based logic of appropriateness, through the beneficial effect of social interaction among policy actors. This may stimulate processes of learning and common understandings of legitimate private authority. In sum, all mentioned authors express a degree of optimism about upward directions of private regulatory competition, employing approaches that borrow from organization theory and sociological institutionalism in the elaboration of their argument.

As noted in Chapter Two, this study is sympathetic to the sociological interpretation of private governance competition, given the breadth of empirical evidence showing how interaction and exchange of ideas between proponents of different types of private regulation may affect private regulatory policies (see also Esbenshade, 2004; Bendell, 2004). However, it does question whether optimism about upward directions of competition and convergence might be justified on the basis of these theories.

First, theoretically speaking it is not entirely certain that learning, imitation and information exchange would lead to *one* common consensus about what constitutes legitimate private governance. We may just as well expect *several* separate learning processes to take place within a set of clusters of organizations in the private governance field. Following theorists such as Pierre Bourdieu and Anthony Giddens, it can be posited that organizations are embedded in multiple fields and subject to different forms of institutional pressures. Organizations that enter the field of private governance policy making may therefore have more things in common with certain categories of organizations in the field than others, because they already share certain identity attributes caused by institutional pressures outside of the policy field (in the case of firms this may for instance be an industrial association, production chain pressures or certain competitive patterns). These similarities may induce different processes of idea circulation and exchange. The result may be different ideas about what constitutes best practice and continuous improvement.

There are certain implications for the possible forms of regulatory competition that result. Most literature on regulatory competition does not ponder on the nature or character of *competition* in regulatory competition. It seems that most authors have a parallel in the back of their mind of a market with conditions of perfect or near-perfect competition between firms when writing on the topic. This while micro-economics identifies many different types of markets that may be used as reference points for different forms of regulatory competition. For instance, there are oligopolistic conditions of regulatory competition, markets with high degrees of regulatory product differentiation and cartelized regulatory markets. These might then be the result of several learning processes within a private governance policy field, stimulating different emerging understandings of legitimate private authority and in the end different private regulatory organizations.

Second, organization theory also provides a view of organizations adhering to common norms only on the surface, while actually pursuing *business as usual*. Zald et al (2004) discuss the possibility of *symbolic compliance* as a response to institutional pressures, meaning that lip service is paid to a rule raised by an external environment, but no actual organizational change is taking place. Similarly, Meyer & Rowan (1977) describe the *de-coupling* between organization purposes pursued by different departments of an organization as a response to a multitude of (possibly conflicting) institutional pressures. The question is then whether learning processes towards

common understandings on private governance actually reach the operation of organizations 'deep down'. This question is as relevant for private regulatory organizations as it is for companies.

Finally, it is not theoretically apparent that if a common process of learning, consensus formation on legitimacy and transformation of actor perspectives would take place, that it would be more likely *at later stages* of social interaction among regulatory organizations, as Bernstein & Cashore posit. Following Maarten Hajer's *institutional void* (2003), as discussed in Chapters Two and Four, actor positions would be more fluid and malleable by interactive processes *in the beginning stages* of a new policy field, when rules and routines structure expectations, interpretations and actions of organizations to a lesser degree. This position dovetails with institutionalist approaches maintaining that under conditions of uncertainty, fixed actor attributes say less about action and strategizing (DiMaggio & Powell, 1983). In contrast, in later stages of policy discussion, differences in perspectives on policy have become more engrained in policy repertoire and/or vested in particular private regulatory organizations and their approaches. This is all part of a process of *institutionalization* of the field. This would make alteration of actor perspectives through interaction and exchange actually less likely as actors involved in these kind of exchanges would constantly interpret 'lessons' through the lens of their organization's acquired routines and repertoire, rather than facing the process of idea exchange with a more 'open mind'.[146] What is more, interactive processes of identity formation may then even lead policy exchanges to solidify perceptions of divergence among groups (compare Wendt, 1992: 403-407).[147]

In sum, this study first sets out as an empirical task the identification of a particular form of regulatory competition and its possible effects on policies and actor behaviour. Second, it seeks to explain both the competition itself as well as actor strategies to cope with competition. For this, the importance of interactions and exchange within a socially structured field in which private regulatory markets are embedded is recognized. But this study leaves it explicitly subject to

[146] Ultimately, these two conflicting applications of understandings of processes of social structuration could be argued to represent two sides of a fundamental controversy in the social sciences: whether to understand (individually assessed) interests and (socially constructed) ideas as essentially *different drivers to human action* whose significance may be studied empirically or whether to assume that *interests are based on social constructions* and embedded in structural contexts of action (such as organizational fields). While it may depend entirely on one's ontological perspective where one stands on this issue, it is possible to assess whether the one or the other would inform a more convincing applied mid-level theoretical argument interpreting empirical patterns, such as in the case of private regulatory competition and convergence dynamics.

[147] Graeme Auld (2008) offers a convincing analysis of why cooperation and convergence become harder at later stages of private governance development, predominantly using historical and rational institutionalist (instead of sociological) arguments, arguing that once organizations have set up shop and are catering to their consumer niches, they find it harder to embrace higher scale cooperation. His cases however are confined to initiatives leading to certificates and labels that result in competition between organizations for consumer preference. As described, the majority of the private regulatory organizations analyzed in this study do not use certificates, and the minority that does, issues supplier certificates while themselves being the members of regulatory organizations. This substantially reduces the impetus to compete for an outside consumer audience and arguably raises the significance of interactions between interest groups surrounding private regulatory organizations. What is more, given the fragmentation of the clothing production chain, the rationality for convergence is actually much stronger in this field of private regulation (see also Elliott & Freeman, 2003: 62-69), creating the puzzle of why this convergence does not appear.

empirical study how interaction may play out, which institutional dynamics may prevail and what this implies for the direction of patterns of competition and convergence (upward or downward).

3. Describing and explaining regulatory competition and its possible effects

a. Describing and explaining competition

Previous chapters introduced eight private organizations aiming at regulation of labour conditions, supported by eight different coalitions of interest groups from business and societal circles. Seven of them (excluding WRC with its university-focused independent fire-alarm approach) effectively compete for participation from the same pool of global business: clothing brands and clothing retailers. Four of them are US based, four are European. Four of them meet the criteria to be called a *multi-stakeholder initiative*, the others are business governed. And the actors initiating them disagree about the right way of action and the best way of organizing private regulation, specifically when it comes to the degree of control in private regulatory implementation.

Chapter Four discussed that for some of the groups behind these organizations disagreement with the already existing private regulation has catalyzed efforts to create a new organization (in particular in the case of WRC, WRAP and BSCI). Political strife over regulatory implementation seems to have motivated fragmentation of regulatory competition to an extent for these cases. In the cases of FLA, ETI, FWF and SAI the groups spurring their development worked out their particular preferred approaches knowing very well about the development of other organizations, but believing their organization to have definitive value added. This value added was believed to be because of the specific national setting of the organization, the specific policy of implementation chosen and the specific groups present to negotiate private regulation.

In sum, regulatory fragmentation does not need to have been a consciously planned goal of all actors involved but it is the macro result of actions and interactions. Since all these organizations claim an international scope for their membership they now have turned into competitors for regulation and this has repercussions for all of the efforts individually as well as for the state of private regulation in clothing chains in general. What type of competition is emerging?

In terms of their search for business membership, policy makers themselves refer to three arguments that aim to explain the field as not cut-throat competitive due to mutually agreed product differentiation types of regulatory market division: the national division of labour story, the company division of labour story and the story about policy complementarity.

First, some policymakers hold that regulatory organizations largely have a national focus in assigning companies as participants.[148] Judging from the company membership patterns analyzed in the previous chapter, this is undoubtedly true to some extent. But fact remains that many companies prefer foreign regulatory organizations over national organizations and some companies face several options inside their home country. Moreover, some organizations actively invest their capacity to take in members from abroad such as FWF, BSCI and FLA.[149]

Second, some organization representatives hold that in effect most private regulatory organizations focus on specific kinds of companies, and that there is a division of company types across organizations, with for instance FLA doing the large and global (sport) brands, FWF the small clothing brands and government procurement firms, BSCI and SAI for the big retailers, and so on.[150] Evidence from the previous chapter shows that this pattern is relevant. But these patterns should not be mistaken for the original purpose of the organization, nor should it be assumed that organizations are content catering for the specific category they now have a predominant share of membership of. FWF for instance has extensively discussed clothing and multi-product retailer membership in its organization and has recently been able to get one on board (MEXX). Likewise, BSCI and SAI promote their policies also with brand companies.[151]

Third, some practitioners hold that the different models of private regulatory implementation directed at clothing chains make for complementary forms of governance, creating an efficient overall system.[152] In this system, organizations such as FLA, FWF and SAI are certifiers of factories and brands, while WRC works as a fire alarm system in factories and ETI as the knowledge and best practice-generating laboratory for everyone. A very sophisticated picture, to be sure, but not one in line with reality, since many companies in fact engage with only one or two facets of this institutional complementarity model.

All three story lines are *ex post* rationalizations of the situation in the field that have some ground in reality but do not correctly portray the situation. Instead this study holds that the private labour regulatory field for the clothing production chain is still an emerging market in which actors seek to control competition (for reasons elaborated below), but due to splits in different coalitions of regulatory organizations and interest groups, not yet a stable conception of control has emerged that governs the market. Because of this, relationships between regulatory organizations are fragile, competition is often for the same companies or types of companies, and support by societal groups for certain private regulatory approaches may also be subject to change.

[148] Interview P6.
[149] Interviews N4; P7; P9.
[150] Interview P2.
[151] Interviews P9; B1.
[152] Interview N5. See also Scott Nova in MSN, 2004.

But why is this the case? Has there not been room for coordination or cartelization? To address this question, it is relevant to look at the culture of political rivalry evolving between some of the organizations in the first years of their development. This rivalry can best be understood as the combined result of a set of different yet connected processes.

First, political disagreement at the start between groups on the right way of organizing regulation. Chapter Four described specifically the different stakes with which some labour activist groups and some more moderate unions and NGOs entered the bargaining process for a regulatory organization. In addition there is the watershed between those organization including, and those excluding activist groups in governance.

Second, and related, bargaining processes that did not go well, as evidenced in Chapter Four, led to souring relations between different interest groups. This established a culture of rivalry between most significantly supporters of FLA and supporters of WRC as well as those of FWF and BSCI. This rivalry is expressed on personal and organizational level, as the opening of the chapter shows.

Third, there is the slow development of organizational rivalry between the regulatory organizations themselves as they develop organizational purpose, hire permanent staff, establish common routines and start competing for similar resources.[153]

Once these processes establish a culture of mistrust and rivalry, they can set into motion a self-reinforcing process of deteriorating trust and increasing rivalry. And this stimulates an open, competitive form of regulatory fragmentation, instead of a more coordinated, differentiated form. Note that the organizations representatives themselves mostly do not display rivalry publicly. At least among the Multi-Stakeholder Initiatives it is a tacit norm not to criticize each other and to emphasize that it is good there is a variety of multi-stakeholder approaches (although this 'rule' has been broken by FLA and WRC representatives). In more specialized discussions, political disagreement and organizational rivalry are more likely to reveal themselves, for instance in expert meetings at conferences and workshops. Meanwhile, activists in favour of a certain regulatory organization do publicly criticize organizations they do not like. In this way, United Students Against Sweatshops, promoter of WRC, criticizes FLA in action and report, as does the Clean Clothes Campaign, promoter of FWF, with BSCI (see for instance Merk & Zeldenrust, 2005).

b. The effects of regulatory fragmentation and competition

Regulatory fragmentation and competition has a host of effects that seem undesirable for some of the parties involved in regulation. Factories supplying to members of different organizations can become the site of a set of different implementation systems for different labour standards, leading

[153] Interview P1; P4; P8.

to confusion and mismanagement. Consumers have trouble understanding what different names of private regulatory approaches mean, and what the actual impact is of regulatory efforts on the production process of the goods they buy. Governments and other major donors funding private organizations do not like the proliferation of different organizations and prefer a common approach for the sake of clarity and efficiency.[154]

Of course the staff of private regulatory organizations and their supporters do not like the situation either. They have to compete for members and deal with the confusion and annoyance of the mentioned parties. In addition, there might be policy consequences to the state of regulatory competition for their organizations. For the strategic implication of this form of regulatory fragmentation is, as noted, the competitive pursuit for business participation between private regulatory organizations.

Chapter Five discussed that not all companies support a specific form of private regulation on the basis of policy content. What is more, some companies prefer high stringency. But it is not unlikely that strategic thinking on the part of some firm managers might lead them to prefer business-controlled organizations, possibly with less elaborated standards and systems. Private regulatory organization representatives, anticipating this position and possibly unaware of the precise motivations of firms to join regulation, might be tempted to make regulation less stringent.[155]

An alternative perspective is that competitive forces may lead to a higher overall stringency of private regulatory adoption. Incentives might be the expectation that in time the majority of the industry might be subject to similar demands as those put at the company. In that case, it might be preferable to step on board at the highest possible level, so that at as regulatory participation advances, learning and efficiency gains for the forerunner companies and the private regulatory organizations that they participate in lead to competitive advantage. An alternative explanation for a race to the top dynamic is that increased knowledge on the part of an outside audience leads to more structural societal pressure for higher stringency, through for instance consumer and shareholder politics (either activism through voice, or exit strategies). This pressure may then be transferred to or pre-empted by regulatory organizations adjusting their systems 'upward'.

In general it can be established that most of the parties involved hold two possibly conflicting stakes with respect to the issue of regulatory competition. First, the survival of the organization they work for in the regulatory field. Second, an interest in decreasing fragmentation and competition, instead opting for more coordinated and cooperative forms of co-existence in the

[154] Interview P1.
[155] Interview U2.

regulatory market (see among many others JO-IN, 2006).[156] Question is now what model would be produced by such forms of coordination and cooperation. Will convergence go up or down?

The next sections discuss patterns of policy adjustment that lead to convergence and divergence among regulatory organizations. As best as possible it will be identified to what extent these patterns can be explained by either forces of competition, dynamics of rivalry or other factors. Both upward and downward patterns will be identified, caused by upward and downward pressures. The result is an emerging split between regulatory approaches.

4. Describing and explaining policy convergence "at arm's length"

Klaus Dingwerth and Philipp Pattberg (2007) have studied similarities between private regulatory organizations in the field of Corporate Responsibility in general. They identify specifically emerging similarities in governance design, policy rhetoric and repertoire. Most private organizations divide governance in three organs: a board of directors, a permanent secretariat and a stakeholder group board. In terms of rhetoric, most organizations emphasize process elements over substance and in terms of governance repertoire recurring instruments are roundtables and public comments periods to documents. Dingwerth and Pattberg attribute these similarities to an emerging organizational field of private governance, with increasing isomorphic processes.

Specific similarities in policy adjustments in the field of private labour regulation for clothing production include a relative shift in focus with regard to the value chain, the adoption of similar new policy tools and the downward adjustment of performance requirements towards businesses. These have direct consequences for the stringency of regulation as measured in Chapter Four.

The first topic of notable policy convergence is the position of suppliers within the private regulatory organizations. In one way or another, all organizations have adjusted some of their policies to allow for more focus on the role of suppliers in implementation. Organizations without supply chain responsibility such as SAI, WRAP and BSCI of course originally already focused on the performance of the supplier as the key part of compliance in their schemes. Other organizations now follow suit, however without adjusting their division of implementation tasks or the cost of implementation. The general idea is that focus on buyers is not sufficient to understand reasons for lack of compliance with private regulation. Accordingly, working groups and research have been devoted to understanding the complexity of supplier management strategy *vis a vis* buyers, workers, local communities and government (see for instance Barrientos & Auret, 2005).

An example of a policy shift in accordance with this increased focus is the scrapping of unannounced factory inspections by FWF monitors. Originally, unannounced factory inspections

[156] Interviews P9; P11.

were seen as a litmus test for fair monitoring, as the supplier could not 'stage' good factory conditions for the day the inspector came by, leaving for instance unregistered or child workers out of the factory and unsafe factory halls closed. Increasingly inspectors have learned that visiting a factory without prior notification does not get them very far. If they are admitted on the premises at all, they often cannot speak to management because of obligations on their part, nor do they have readily access to bookkeepers. Most organizations now rely on announced visits that are designed in such as way as to counter fraud on the part of supply management (for instance by selecting workers for interview on the spot, without management intervention). This arguably grants suppliers a more equitable role as partners in the monitoring process itself.[157] FLA meanwhile has created a new supplier membership programme and has presented a new approach to regulatory implementation called FLA 3.0, which seeks to bring both societal and business actors at the point of production more explicitly into the discussion. It invites buying firms to engage with these actors in identification of challenges to compliance prior to external verification of compliance. For the firms that want to engage with this programme, an alternative track of membership has been created.[158]

Closely related to the question of the position of the supplier is the issue of what effect contemporary sourcing practices of buying firms have on the capacity of suppliers to comply with private regulation. Increasingly, regulatory organizations are taking note of the fact that the price, timing, speed and flexibility requirements of buying orders are affecting suppliers in negative ways. For now, none of the organizations has announced direct revisions of its labour standard that may reflect the issue, for instance, requirements on timing, size and price of buying orders. This is undoubtedly a difficult topic, as it would extend the directly enforceable implications of private regulatory implementation to buying departments of lead firms. Notable exception to the lack of concrete programmes on this topic is the societally controlled WRC with its Designated Supplier Programme. This has been floated as a plan and is now under discussion among American university members who have signed up as members of WRC. WRC wants to create a pool of suppliers capable of sufficiently good labour conditions that may receive stable buying orders under set prices from companies supplying to WRC signatory universities. This way, WRC is making the radical step of moving away from free trade conditions of value chain organization, where buyers get to choose the suppliers and terms of supply freely, to conditions similar to Fair Trade Labelling Organizations where supply chain organization itself is part of the requirements in a certification scheme. This extension moves WRC upward in the stringency measurement, since it is extending on its implementation requirements and thereby becomes more specific (see Figure 2 on page 178).

[157] Presentation by Olga Barnova of Fair Wear at University of Amsterdam CSR Seminar, December 2007.
[158] Interview P7.

The last general line of convergence at arm's length to be identified is an increasing leniency towards companies in aspects beyond their commitment toward specific labour standards and the specific procedure of implementation. Most organizations for instance started with much stricter time lines for company compliance compared to the ones they apply currently. Implementing standards has become a more long-term task than originally envisioned by the board members of the organizations. Accordingly, an organization like FLA, which grants certification to its members has also become much slower in awarding certificates. Secondly, companies are granted more breathing space by delimiting the scope of their supply chains. Increasingly, companies are allowed to focus on specific segments of their suppliers as a first target for improvements of labour conditions. FWF for instance has allowed fashion firm members to maximize their effort with longer term suppliers and minimize the effort with factories that receive one-off orders for products in store only once for a short while, such as particular fashion accessories.[159] FLA has allowed H & M to focus its monitoring efforts on its suppliers in China, where it has most problems achieving improvements with its own in-house monitoring team. Perhaps this increasing leniency should not be overestimated as a first sign of downward convergence. Most organizations at the same time in the recent past have shown that they were willing to cancel participation of companies that were not making the desired progress in terms of adoption of standards or implementation efforts. Levi Strauss for instance departed the ETI. FWF said goodbye to Falcon. But this leniency does incur downward shifts in the stringency measurement of SAI, FWF and FLA compared to their original programme (see Figure 2 on page 178).

Unlike cooperative efforts at convergence, convergence "at arm's length" does not have a specific empirical focal point that may be identified as a possible driver of the process. Accordingly the process of organizations becoming more similar may be driven by different factors, both internal and external to the organization. It may be hard, if possible at all, to tease out these factors as clearly contributing to a specific outcome.

To some extent the paths progressed by the organizations can be seen as processes of policy adjustment through internal revisions based on performance so far. After all, these private regulatory organizations are trying to address similar topics and therefore face similar problems. Their growing similarities therefore could be because of multiple independent causes. Respondents are furthermore not very keen to admit that they copied something from another organization and prefer to emphasize their own internal learning process. The least that can be said about the external influence of other organizations on these adjustments, is that the organization's board members must have been aware of progress made in other organizations towards private regulatory

[159] Presentation by Nynke Steen of Expresso Fashion, Clean Clothes Campaign Meeting, November 2005.

implementation. Certain policy shifts may therefore have become more or less credible as more private regulatory organizations published them, such as the decision to allow more leniency in interpreting company performance. This said, it is possible to identify institutions, arenas and actors that have promoted communication and hence possible policy transfer between different private regulatory organizations. First, there is the conference and workshop scene as an arena for the Corporate Responsibility movement. As elaborated in Chapter Five, continuous opportunities for meetings between business and activist members of regulatory organizations, as well as between staff of these organizations, allow for a spread of ideas and information on who is doing what and why. This stimulates a situation of interdependence in policy development.

Second, there is ETI as an organization emphasizing experimentation and learning. Section 5b below will address its internal functioning more specifically in relation to the development of the convergence project of SEDEX. For now it is important to note that ETI, because of its focus on experimentation and research, has become a renowned source for empirical information about CSR implementation, supply chain policies and labour issues through the publication of research reports and notes. Undoubtedly, ETI has offered other organizations a chance to reflect on its findings.

Third, the work of campaigning activist networks that use research and advocacy to put topics on the agenda of private regulatory organizations. Specifically research reports from Oxfam (2002), Clean Clothes Campaign (2005), and the publications of the Maquila Solidarity Network have informed discussion in CSR professional circles on amongst others purchasing practices, quality of business audits and CSR reporting.[160]

Fourth, the work of coordination service firms. As also noted in Chapter Five, the work of service providers such as consultants is of increasing importance for understanding the politics of private regulation. CSR consultants serve as knowledge intermediaries, spreading practices and models across the CSR arena. A particular branch, focusing on advice and coordination of multi-stakeholder partnership development and maintenance, such as the German Collective Leadership Institute and the British Sustainability Lab especially can influence the increasing isomorphism of private regulatory organizations (Fransen & Merk, 2007; Dingwerth & Pattberg, 2007).

5. Describing and explaining institutional convergence and its effects

a. JO-IN: learning how not to converge

The *Joint Initiative on Corporate Accountability and Workers' Rights (JO-IN)* (JO-IN 2006) started in London in 2004, bringing together the following organizations: FLA, WRC, SAI, ETI, and FWF together with NGO Clean Clothes Campaign. This collaboration explicitly aimed to take the first

[160] Interviews P9; C2; C3.

step towards a common labour standard for worker circumstances in the clothing industry. In doing so, the initiative strived for policy convergence towards the highest possible standards through a research project in Turkey.

The actors involved identify three events that have driven the move towards this form of cooperation. First, a European tour for American private labour regulation experts, initiated by two scholars, Dara O'Rourke and Charles Sabel in 2002, brought a set of key players together to review similarities and differences in approaches to private labour regulation on both sides of the ocean. The idea of a better matching of and mutual learning between regulatory organizations was then raised (MSN, 2004). Second, from the side of the labour department of US government, the concern was raised towards the American organizations SAI, WRC, FLA and WRAP that it was undesirable to fund four organizations aiming for similar goals at the same time. Convergence and more cooperation was then suggested as a solution. Third, the ETI sought to address the problems of competition and the potential for cooperation by a learning exercise of the kind it often initiates within its own programme with participating companies, NGOs and unions. It therefore plugged the idea with other organizations and together the groups raised the necessary funding for a project.[161]

The ETI staff also made the list of invitees for the project. Two things are remarkable about their selection: the exclusion of business governed organizations and the inclusion of the Clean Clothes Campaign (CCC), which is not a regulatory organization, but an activist network. With only the multi-stakeholder governed organizations on board, JO-IN would, in the words of a labour advocate, 'draw a line in the sand' between 'credible' and 'not credible' approaches to private governance.[162]

The inclusion of the CCC, according to the organizers, had to do with their 'expertise as labour advocates'.[163] Inside the CCC, the involvement in JO-IN of course was also welcomed for its potential to structurally influence the proceedings of private regulation with regard to the position of workers and local partners in developing countries. At first sight, it is less clear what the incentive was for groups with more business controlled implementation systems, to let CCC play such a big role in the process. Activists inside the CCC network have been known to continue public criticism of companies already participating in multi-stakeholder regulation (see for instance CCC affiliate Labour Behind the Label's critical reports of ETI members, LBL 2007). Implicitly and explicitly, the CCC has also continued to scrutinize the policies of some of these organizations in conference and workshop circles. Yet, for the representatives of most Multi-Stakeholder Initiatives it was better to let the activists in than to leave them out. As noted by an SAI representative, a regular target for CCC critique,

[161] Interview P1; P3; P8.
[162] Interview N4.
[163] Interview P1.

> There is a tension here, yes. Well, the CCC are an activist group, that is the way they work. But JO-IN is supposed to work as a form of peacekeeping, as well as a way of confidence building in all the systems applied. We have to work with a co-operative approach, instead of a name and shame game.[164]

In other words, the inclusion of CCC is seen by some as a tool to keep the activist side of the network in check. Some speculate that the tactic turned out successful. In 2006, the CCC issued a report with devastating critique of the business audit method, targeting predominantly the business governed BSCI and WRAP initiatives. This might easily also have been an attack on the system of its JO-IN partner SAI, since SAI relies heavily on business audits of a similar type from similar service firms. The report however hardly mentioned SAI.[165]

The move by JO-IN resembles what Genschel & Plumper (1997) have called a *cooperative turnaround* in their analysis of interstate regulatory competition. They hold that the art of establishing interstate cooperation to fight a regulatory race to the bottom is to strike a balance between solving a collective action problem by including sufficient competitors, while limiting the amount of participants to prevent too much interest heterogeneity.

Interest heterogeneity, understood as divergence of policy positions between groups, is indeed a pressing problem for this field of private regulation. As discussed in Chapter Four, different clusters of businesses and societal groups have developed different sets of preferences regarding the content of private regulatory policy both in Europe and in the US. In addition, recent events show that groups organizing private regulatory organizations out of discord, have gone so far as to openly *name and shame* rival organizations as bad for labour conditions. Organizational rivalry seems to have teamed up with political struggle.

The meetings inside the JO-IN project could potentially have smoothened out controversial issues, as well as possible misunderstandings. But the truth is that they did not. The JO-IN project was a tough ride for most people involved from the start and the substance of the proceedings are evidence of the not coming about of common consensus on convergence in any direction. The first tough nut to crack was the establishment of a common labour standard for the clothing industry. As noted in Chapter Three, the biggest, politically most significant difference in terms of labour standards is that all the multi-stakeholder governed organizations except for FLA aim to provide a living wage. In addition, different formulations to such qualitative phenomena as freedom of association and collective bargaining needed to be agreed on. After almost a year of discussion the standard was ready, and scaled up to a living wage while determining the references to Freedom of Association. However, the parties only signed up to the labour standard for the purpose of the

[164] Interview P8.
[165] Interview C4.

research undertaken in the project itself and some of them did not make any explicit commitments to continue its usage after the project had finished for their own systems (notably FLA).[166]

Second, the issue of the pilot research and its function within the negotiating process. In line with the political culture of the CSR scene, JO-IN was set up explicitly as a *learning* process with research on approaches to monitoring and auditing. Selected factories in Turkey were approached for this, along with the brands that they source for and representatives of different Turkish interest groups and communities.

JO-IN is a possible tool, first, in the adjustment and convergence of less politically contested, but more technical and managerial matters, such as the question of how to develop a faster complaints and grievance process. Second, more politically sensitive issues may also be discussed. Some representatives for instance envisioned discussions of mutual recognition of standards and implementation systems.[167] Others thought it possible that the outcome would be further institutional convergence in larger umbrella organizations or regulatory networks.[168] Accounts of JO-IN's plans in 2005 also explicitly mentioned the possibility of the research project being used as a tool to establish what approaches to private regulatory implementation work best.[169] In that sense, the research would be a test justifying a preference for a certain approach. As such, JO-IN can be seen as promoting a covert institutional form of broader upward policy convergence. Undeniably, to achieve these forms of convergence, *politically contested* decisions would have to be made about roles in implementation of different parties. An important moment would then be the establishment of what lessons were to be learned by the parties on the basis the research findings of the project.

However, the project never reached that moment. Already in 2006, representatives of private regulatory organizations began to downplay the kinds of lessons that were to be reached from the project's research. A representative of FWF for instance emphasized that 'The trials are not meant to be a beauty contest. We are not going to say in the end who the winner is, who has got the best system. It is not meant like that'.[170] At the end of that year, JO-IN's policy documents showed that for the research 'trial' phase of the project every notion of a comparison between existing implementation approaches of regulatory organizations had been dropped. What remained is a close study of the relationship between the issues of Freedom of Association and wages on the one hand and private regulation on the other in a set of Turkish factories. Final outcomes of the event were planned for the summer of 2008. Material from the conference finalizing the trial project in Turkey

[166] Interview P5.
[167] Interview P8.
[168] Interview N4.
[169] Presentation by Susan Hayter of JO-IN, ETI Conference, London, May 2005.
[170] Interview P3.

in December 2007, left feedback on further steps of convergence explicitly open to the audience of regulators, suppliers, brands and activists.

In short, JO-IN failed what it set out to do in terms of political convergence, but public failure was averted by redirecting the expectations and purposes of the research and learning process halfway through. What the proceedings inside JO-IN show is the straining effects of regulatory competition and organizational rivalry in a setting of negotiation between a (too?) large number of organizations. Interpersonal trust nor personal entrepeneurship were sufficient to smoothen the interactions between the parties, which had two political conflicts between parties in its midst: first, between FLA and WRC on progress within FLA and the new supplier programme of WRC; and second, between SAI and the CCC on business auditing. External pressures through competition from notably BSCI did not have a beneficial effect, especially since BSCI started reaching out to one of the negotiating parties. Both of these conflicts are elaborated further below. In contrast to negotiations on the development of multi-stakeholder programmes, ten years earlier, the groups coming together here did have far more fixed agendas and preferences concerning private regulation. Organizational strategies and viewpoints were clear for all concerned and it was relatively easy to envision benefits and drawbacks of certain plans for each negotiating member individually. Recognition of the heterogeneity of demands resulted in procedural adjustments and toning down of convergence ambitions.

Indirectly, the JO-IN process did contribute to direct patterns of convergence and divergence. First, it facilitated the strengthening of ties between some organizations. Second, it led to the manifestation of, for the short and medium term, seemingly irreconcilable differences between other private regulatory organizations. Both of these trends will be discussed in the next subsections.

b. British retail, SEDEX, ETI and GSCP: learning and sharing data towards the strengthening of business control

In 2004, the British consultancy Impactt, specializing in CSR labour standards services, presented the Supplier Ethical Data Exchange (SEDEX). Discussions had been ongoing between Impactt and several British retailers since 2001. What the field of private regulation needed according to these parties was a solution to the problem of suppliers being audited multiple times by different actors for different labour standards. SEDEX provided a system for sharing audit results between companies that either adopted their own code of conduct or were involved in private regulatory organizations. Among the founders were also participants in Ethical Trading Initiative, the British Multi-Stakeholder Initiative for labour conditions in supply chains. ETI, as explained in Chapter Four, sported an experimental learning approach to implementation. This meant that each company

in principle was free to follow its own approach of implementation. Implication of this was that on the whole for the British clothing manufacture and retail market there was not yet any sharing of audit results or collective monitoring schemes for labour standards in supply chains.

SEDEX sets out to fill this niche for principally clothing, food products and low skill produced mass consumer goods. It provides a smart solution to trade objections to sharing of factory information by creating a system that only connects supplier information to existing buyers and leaves the choice of providing factory information with supplier management. One can meanwhile question how much choice these suppliers really have when confronted with a set of retailers demanding the publication of information about their factories. In practice, SEDEX is a confirmation of retail and brand power in supply chains dominating products, production processes and concomitant ethical and quality standards. Three years after its start, it is now joined by many retailers from the UK but also from Continental Europe, and also by food and clothing brands including Levi's and Chiquita. It is supported by all the large auditor companies and its database contains over 6000 suppliers.[171]

Undoubtedly, the initiative of SEDEX can be heralded as an advance compared to a situation where all kinds of companies adopt self-regulation through their own company codes of conduct. SEDEX as such is, like BSCI, an example of industry cooperation on CSR issues (Merk, 2007a). SEDEX, however is not a private regulatory organization, as it does not promote a particular labour standard, nor a particular system to implement and monitor labour standards. Nonetheless, the effort of SEDEX affects the proceedings in actual private regulatory organizations in certain ways, creating both upward and downward pressures on convergence patterns in the field of private labour regulation.

First, as management and some participants in SEDEX themselves note, recognition of other auditing efforts, makes for a slow convergence to the top of the content of labour standards, as most of the largest participants inside SEDEX all use codes based on ILO standards, the result of which can then be shared by smaller buying firms. It then makes sense for the smaller buying firms inside SEDEX to adhere to that standard, although for now it is also still possible for an ILO standard adopting firm to accept another firm's audits based on local labour laws (such as the WRAP standard). Nonetheless, the amount of companies having supplying companies checked based on ILO standard inspired codes may be expected to rise because of the SEDEX system.[172]

A different matter is SEDEX's influence on the control of private regulatory implementation by companies. In general, SEDEX, through the offering of a tool to share audit results, boosts the existing business controlled audit system as promoted by organizations such as BSCI and SAI. It

[171] See www.sedex.org.uk
[172] Interviews F1; C1.

promotes and legitimates the already advanced position that business audit systems have in this field of regulation. In principle, SEDEX does not disapprove of societally controlled audit systems, but in practice none of the members makes use of such a system. And by keeping the information on factories confidential, except for its business members, it also contributes to a system of business control of information that decreases options of worker advocacy across borders by activists. As such, SEDEX has a downward influence on the convergence patterns in this field of regulation.

As noted, SEDEX does not present itself as a private regulatory organization, nor as a Multi-Stakeholder Initiative. SEDEX, through the announcement of a multi-stakeholder board, does hint at notions of multi-stakeholderness. It seems that there have been some political problems with the gathering of relevant people for this board, as the SEDEX website does not announce what groups are involved in advice towards SEDEX. Probably, the existence of ETI as a Multi-Stakeholder Initiative next to SEDEX has made societal groups shy to take a seat in the organization's advisory board. Now, SEDEX has taken the alternative, parallel to WRAP, of announcing multi-stakeholderness as the advice of people *involved in* stakeholder groups to the organization (SEDEX, 2007). In other words, stakeholder advice is personalized and the membership of the SEDEX advisory board does not mean that stakeholder groups officially support SEDEX's purposes. In sum, SEDEX may opportunistically be viewed by companies as a regulatory alternative that will keep them performing their ethical supply chain policies in largely the same way as they did before, without interventions or critique of societal groups, while having as an added advantage the membership of a large organization that claims some form of societal support and access to supplier data collected by others.

It is in particular noteworthy to shortly take a closer look at the relationship between SEDEX and the multi-stakeholder organization ETI. ETI's model, as said, requires companies to make progress on their labour standard implementation through a 'learning by doing' process. For this to come about, the ETI system provides a framework for workshops and research projects that focus on specific dilemmas in supply chains and aim for knowledge sharing and improved implementation practices. As noted, the ETI is a respected source for applied research on private labour regulation. There seems to be emerging an overall consensus from ETI publications, notably through the consultancy work of Sally Smith and Stephanie Barrientos that assembles many of the lessons. This is that any serious attempt in addressing labour circumstances through private regulatory implementation requires a good view of the local context of production, participatory forms of implementation, involving local communities and societal interest groups (see Auret & Barrientos; IDS, 2006; Barrientos & Smith). The question now is whether this message is also hitting home with the participants inside ETI. As SEDEX happily supports business audit sharing among ETI participants, one may wonder whether the gap between ideas and practice inside the ETI

system is not rapidly widening. Evidence of this can be found in the accounts of companies who have hardly engaged in any specific ETI workshops since entering as participants and whose likelihood to 'learn' have decreased accordingly.[173] ETI's standing organization has recognized this and during the ETI Conference in 2008 every effort was made to invite non-committing business members to future learning projects and workshops. ETI Director Dan Rees even went to so far as to use the term "laggard companies" in a speech to all attendants of the conference, denoting some of the business members *inside* his organization that so far were doing far too little in his view.[174] Meanwhile, ETI's reputation itself has been stained by two scandals: the usage of child labour in the supply chain of long time participants GAP and Tesco.[175]

Institutionally, the managers of ETI and SEDEX have publicly recognized each other as organizations contributing to the progress towards labour standards regulation.[176] No specific partnership has been agreed on, nor is SEDEX presented as an official spin-off of the ETI organization. Meanwhile one may wonder whether its origins do in fact indirectly lie in meetings organized between companies and consultants within the ETI programme. Could SEDEX in fact be the product of learning between business and consultants within ETI?

Meanwhile, in 2006 the initiative has been taken by CIES (*Comité International d'Entreprises à Succursales*) the global association of multi-product retailers including food products and services, to discuss the development of a new private regulatory organization. As far as known, Wal-Mart has been included in the discussion, together with Carrefour, an ICS signatory. Tesco, participating in ETI has also joined, as has BSCI signatory Migros. Discussions led to the announcement in 2007 of the Global Social Compliance Programme (GSCP), a system with a new set of labour standards to be applied by retailers that would like to solve the problem of multiple labour standards audits performed by service firms at their suppliers. SEDEX has been consulted by CIES because of its system and its retailer membership. Expectations for now on the side of SEDEX are that any GSCP system as it would emerge would at least borrow, extend, copy or align the philosophy of SEDEX's approach.[177]

GSCP so far has negotiated the development of its system excluding unions and NGOs. It however has announced on its website to run its proposed polices by an advisory board that includes a representative of the European retail union UNI-Commerce and a representative of the human rights NGO International Federation of Human Rights.[178] The exact content of its labour standard

[173] Interviews F16; F20.
[174] Observation during the ETI Conference, October 15 2008, London.
[175] ETI decided to address the ramifications of these scandals for the credibility of its organization and its members on its website, see www.ethicaltrade.org.
[176] Interview C1.
[177] Interview C1.
[178] IFHR is a first-timer with regard to participation in discussions on private regulatory organizations. In a public statement on its involvement with GSCP it emphasizes that it feels free to keep on criticizing companies on their

so far has not been announced but criticism of activists on these standards has been published. Based on this second-hand information it is to be expected at the time of writing that GSCP's standards will fall in between the content of WRAP and BSCI's degree of labour standards, not surprising given that it is a cooperation between European and American retailers. In other words: GSCP's standards are far from *best practice* (CCC, 2008; compare MSN 2008). In terms of implementation of the labour standards all signs are in the direction of a business-controlled approaches similar to WRAP and BSCI.

In sum, SEDEX has contributed to an upward convergence of the standards of codes of conduct in the field, while adding downward pressure through the strengthening of the practice of business audits. Its relationship with ETI is, despite good intentions on both parts, becoming competitive, with a widening gap between theory and practice inside ETI. The development of GSCP meanwhile promises to lead to more business-controlled and lower labour standard regulatory practice by British, American and other multi-product retailers in their clothing supply chain.

c. Institutional transatlantic partnerships: emerging ties and widening divisions

Another form of institutional convergence are partnerships between regulatory organizations in which the parties settle the sharing of a certain part of an implementation programme, agree to develop a new policy together, or in which a new regulatory organization is, similar to a business franchise, granted the imitation of a certain part of an existing regulatory implementation programme. This happened to the American organization SAI, which welcomed two new 'sister' organizations during its involvement in the JO-IN programme. Given that one of them was the business controlled retailer vehicle of BSCI, this franchise effort could no go without political implications.

As noted in Chapter Four, the founders of BSCI had already taken inspiration from SAI's approach. One of the companies driving the BSCI process, Otto, had been involved in SAI's development and been one of the first signatories of SAI's Corporate Involvement Programme (CIP), the system that required its members to completely certify their supply chains to the SAI standard. Three elements of BSCI's policy were notably different from the SAI CIP approach: first, the commitment to a living wage in the labour standard was described as an aspiration more than a requirement; second, BSCI members were first to conform to a base line set of requirements, after which the next step would be the complete requirements; third, BSCI's programme had been created and is managed without stakeholder group involvement. BSCI had been courting interest

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performance regarding the programme. In a somewhat tautological move, it announces that it prefers to be on an advisory board instead of a governance board, since it does not want to join "a *business initiative*". See http://www.ciesnet.com/1-wweare/1.4-committees/gscpboards.asp.

groups for a position in a new advisory board after its programme was finalized. Advisory board influence however was to remain limited. The refusal of unions, and the networks of Oxfam and Clean Clothes Campaign to join BSCI had the effect of a successful overall European civil society *cordon sanitaire* around BSCI.[179] No advocacy group was to join its advisory board and grant it a sense of credibility.

BSCI then sought alignment with SAI's organization, the idea being that if BSCI would adjust its programmes to SAI standards, it would be granted the status of an SAI project. BSCI members would then be able to refer to SAI's multi-stakeholder board as a source of authority and the labour standard they used may then also be referred to as a code that was designed through multi-stakeholder negotiation. This would mean an undeniable credibility boost for BSCI members, without them having to engage their organization and their operations in systematic societal group scrutiny. This attempt at injecting notions of credibility post-hoc through institutional alignment rather than organization restructuring will be called *outsourced multi-stakeholderness*.

SAI was not insensitive to BSCI's courting. SAI faced the risk of losing its European clientele in the CIP programme if it would deny BSCI's offer and would undoubtedly then be much less attractive as a regulatory organization for prospective European retailer participants, in comparison to BSCI. It was, therefore, in SAI's organizational interest to take the offer seriously, also given, relatively speaking, the slower growth of supplier and buyer participation rates since 2004.[180] Given that SAI had sprung from a critical consumer movement (CEEPA), of which some of the original initiators were still involved in board governance it could hardly be expected to settle for a niche status in the regulatory market. Main problem, of course, was SAI's status as a multi-stakeholder organization and BSCI's disputed reputation as a business driven exercise. SAI was formally supported by the global union ITGLWF and the labour activist Maquila Solidarity Network and these groups cannot have been happy with SAI helping BSCI to be stamped "multi-stakeholder approved". And, as noted, SAI at this time was involved in the JO-IN programme, meeting a roundtable packed with groups opposed to the BSCI effort.

In the end, SAI and BSCI came to an agreement, announced Autumn 2006. Two upward policy shifts and an exercise in musical chairs with regard to organization board positions resulted. BSCI would upgrade its labour standard, and most notably, adjust its commitment to a living wage from an aspiration to a requirement. The lower first step base line requirement would disappear and from now on BSCI members had to shoot for SAI certification of their suppliers.

With SAI's decision to adhere to BSCI, the Maquila Solidarity Network and the global union ITGLWF stepped down from the SAI board. Neil Kearney, representative of ITGLWF, for

[179] Interviews N4; N5.
[180] Statistics are available on http://www.sa-intl.org/index.cfm?fuseaction=Page.viewPage&pageId=710&grandparentID=473&parentID=540&nodeID=1.

some time continued involvement in SAI governance as a person, rather than as a worker's organization representative—another example of *personalized stakeholderness.* SAI's loss of union support was seen as especially painful, since unions are considered to have a special status as a stakeholder group in labour standard arrangements. However, SAI did not remain without union support for long. BSCI had unsuccessfully tried to court the European commerce union as an advisory board member. A sensible choice, since many of BSCI's retailer members engaged directly with this union in industrial relations bargaining and its own agenda was miles away from the workers and factories actually concerned in BSCI's efforts. The union, however respected the consensus within European civil society that stakeholder groups should not support a regulatory organization negotiated without their input.[181] This position opened up the possibility of the union being catapulted into the SAI board, an organization that did conform to the credibility criteria set out by the union. This way, the union saved SAI's credibility and indirectly contributed to BSCI's credibility through BSCI's agreement with SAI, without compromising its own position and credibility too much.

Another organization to seek alignment with SAI at roughly the same time was the Dutch organization of Made-By, founded in 2004. Made-By was initiated by Solidaridad, a Dutch Christian development organization which had acted as one of the pioneer movements to build Fair Trade production chains for primary commodities in the 1980s and 1990s. Gradually, Solidaridad leaders had concluded that changing the world through Fair Trade means was a difficult thing to do, given the niche status that Fair Trade products and retail had in primary commodity market.[182] The strategic objective became to engage more with mainstream producers in order to create sustainable solutions. The Made-By approach is one of the results of this policy shift. It is promoted as a 'shadow-label' for clothing brands, which means that consumers become interested first in a product because of its quality and fashion sense, thereafter recognizing that it is created in line with sustainability requirements. Apart from environmental rules for the production of cotton, this meant implementation of labour standards in clothing factories. Made-By did not create a new labour standard or implementation system for its prospective members, but instead looked for a multi-stakeholder standard and approach to adopt. This became SAI. A remarkable choice, especially from a Dutch (or even an Amsterdam) NGO perspective, since FWF sported a standard and an implementation approach supported by Dutch trade unions, Dutch Oxfam and the Clean Clothes Campaign.

Two things then may have especially ticked off the crowd of participants in the FWF. First, Made-By claimed to use the highest available standards in its adoption of SAI. This at a time when

[181] Presentations Jan Fuerstenborg at GTZ Conference Berlin, 2006 and SAI Conference, Helsinki, 2006.
[182] Interviews P12; P13.

activist reports were criticizing the undesirable effect of business audit implementation of the sort SAI was using as well, instead sporting societal approaches to implementation. Second, Made-By, as said, used a label on clothes to signify fairness in production to consumers. This while, as Made-By documents mentioned, the status of labour standards adoption was a sign of aspiration to work towards better working conditions, instead of evidence of fulfilment. Critics were afraid consumers would not see the difference between aspiration and fulfilment. They might be confused by statements in promotional material such as 'Made By is an organization for fashion brands that want to show their consumers that their products are OK, which means: produced in a sustainable way'.[183] No other private regulatory organization in the clothing field uses labels to communicate notions of fairness to consumers, because the complexity of most supply chains renders hard guarantees too difficult.

Made By established itself as a labelling organization for the Dutch market, adopting the multi-stakeholder negotiated SAI approach, itself being governed through a multi-stakeholder board, albeit without union participation. Plans for European partnerships and Made-By labels across Europe were indicated. As a response to critique on its choice for SAI, Made-By then announced that company members that would like to implement labour standards through FWF, were welcome to do this together with the environmental requirements and the usage of the shadow-label of Made-By as well.

Why would BSCI and Made-By be interested in aligning with specifically SAI as a multi-stakeholder programme partner? Respondents from both camps seem to agree why:

> We consider SA8000 of SAI to be a highly respectable multi-stakeholder standard and it is considered best practice in the industry as well.[184]

> SA8000 is widely used… It is a multi-stakeholder standard with a good process focused approach… And it is most widely used already.[185]

As a purely empirical statement from the perspective of private labour regulation this assertion is false. FLA may claim much higher industry backing. Were one to conceive of best standard as the degree of backing from stakeholder groups then ETI and FWF would qualify best because of the support they receive from within industry, NGO and union world. And, as noted in Chapter Four, on the basis of pure stringency of labour standards, FWF and WRC would emerge victorious. However, from the perspective of European multi-product retail, taking the lessons from Chapter Five, it is understandable what drives them to assess SAI as best practice. Statements of 'best in class' would then be evidence of the frame of mind of the European retailer businessman, who does

[183] See http://www.made-by.nl/. Translation by the author.
[184] Speech by Jouko Kuisma of Kesko, SAI Conference, Helsinki, November 2006.
[185] Interview P13.

not consider himself to be in the same game or field as Nike or Liz Claiborne and is perhaps also less concerned about the sympathies of the NGO world. First, SAI leaves ultimate responsibility with suppliers, including implementation costs, which is an attractive option for retailers with large pools of suppliers. Second, SAI involves the option to use similar systems for other products in store as well. SAI may therefore be most flexible for European multi-product mass retail needs.

But why then would Made-By consider these standards to be best practice as well? The reason can only be because Dutch retailers do. In the adjusted philosophy of Solidaridad, conquering the mainstream is essential for raising livelihoods in the developing world. It would then make no sense to trade in a niche Fair Trade position for a niche 'best practice' private regulatory approach adopted by only a couple of fashion companies. Instead, adjustment towards SAI prepares the way for Made-By clothing in large retail stores in Dutch shopping streets. Made-By is therefore attempting to pre-empt a possible predominance of the SAI standard. In the words of the Made By director:

> The ideological difference between FWF and SAI, as competitors, is not relevant to us… You have to look at it in the following way: when a new standard for video systems was adopted we all knew that Betamax and V2000 were superior to VHS. Yet, the end of it all was that everyone started using VHS. If something like this is happening for SAI, then we choose SAI, then that is the best system.[186]

SAI's liaisons with BSCI and Made-By meant, in terms of labour standards, upward convergence. In terms of implementation, they served to strengthen the hegemony of business control and therefore downward convergence. In terms of governance, the liaisons promoted new forms of understanding of what multi-stakeholderness is supposed to mean. Effectively it provided for a solution in which companies that were sourcing their production and outsourcing the responsibility for its working conditions, were allowed to source multi-stakeholder requirements from outside as well.

Meanwhile, there were also developments in relations between FLA, WRC and FWF. As noted, a split in the original AIP development in the US had produced two rivalling organizations: FLA, business-involved, and according to critics, business-controlled; and WRC, societal actors-controlled, and according to critics, biased (see discussion in O' Rourke, 2003). American universities then became the foremost battleground for these organizations as both organizations focused on sweatshop-produced apparel with university-logos. Within a few years the organizations managed to divide among themselves a large arena of universities as members. The importance of

[186] Interview P13.

membership of one or the other organization became the focus of heated on-campus discussion between activist students and university.[187]

However, FLA adjusted its policies in 2002, substantially moving in the direction of WRC, after a period of sustained activism from the student movement USAS that supported WRC and a series of published scandals around suppliers of FLA members (Esbenshade, 2004). The policy change was preceded by a change in the Board and the appointment of a new director, Auret van Heerden. Van Heerden, a former human rights activist in South Africa, was well respected in NGO and union circles. Around the time of Van Heerden's appointment, FLA also engaged in a policy of involving independent labour experts, as a way of compensating for the lack of union support for the organization (see Chapter Five). This, again, is a form of personalized multi-stakeholderness also de-coupling societal expertise from societal representation. Notable is that some of the new staff entering office before, with or after Van Heerden's appointment, had a past as supporters of WRC.[188] FLA then re-focused its implementation and enforcement system in 2002, shifting big decisions on monitoring away from the companies to the multi-stakeholder organization, and presenting more information in public reports on the proceedings of firms. As the graphs in Chapter Four note, FLA was becoming less business controlled and more societally controlled. According to Esbenshade (2004) FLA and WRC began to approach each other more, FLA-director Auret van Heerden admitting that

> [t]he WRC has great connections on the ground and an early warning system that is invaluable at times. There is an obvious synergy emerging [between FLA and WRC]. They can uncover problems. We can get the brands to get us both into the factory (2004: 286).

This convergence process was interrupted however as from the side of WRC further plans were installed that would set WRC more apart from FLA, and indeed, from all other private regulatory organizations. This was the Designated Supplier Programme, discussed above. A sign of the two organizations approaching was the fact that FLA representatives were regular discussion partners in events centred around the new plans of WRC. A sign of their divergence was the heavy critique expressed (see Van Heerden, 2006). As also noted, the campaign of USAS to name and shame FLA as a hoax was further evidence of both organizations growing apart again.

FLA's governance and policy shift however did lead to more contacts with the European FWF. With Van Heerden's appointment, personal contacts between board members of both organizations were improving. Staff of both organizations were beginning to note the similarities between the organizations as well, as they realized that both were in the game of working mostly

[187] See for instance the documented discussion of the choice between FLA and WRC at DePaul University (http://www.depaul.edu/licensing-recommend.htm) and Columbia University (http://www.columbia.edu/cu/senate/resolutions/99-00/er9900.html)
[188] Interview P6.

with brands and more expensive retailers, focused on a process approach that had led firms taking responsibility for implementation, kept in check by outside review. The JO-IN process helped to push these relationships of trust further.[189] Complications for further partnership however were present. First, there were obvious remaining policy differences, as FWF was decidedly more societally controlled than FLA and FLA still had not adopted the living wage as a labour standard. Second, there was the matter of FLA's increasing European clientele, and subsequent opening of offices in Geneva, Switzerland, signalling increasing competition with FWF's regulatory membership target market. H & M, notably, long courted by FWF, had decided to work with FLA. It is remarkable that the evident grounds for rivalry and open competition were not matched by naming and shaming exercises between groups supporting the different organizations. Inside the CSR professional arenas as well, both camps upheld a truce and spoke about each other in terms of respect, at a time that FLA was campaigned by WRC supporters and FWF's supporting activist network CCC might have joined in naming and shaming FLA signatory companies. This is a sign of the relevance of a certain culture of competition that is not cut-throat but based on increasing contacts between organizations and supporting groups and mutual respect and understanding.

Evidence of this is the agreement between FLA and FWF on the membership of MEXX in FWF. MEXX is not an independent company, as it is formally owned by the US firm Liz Claiborne, an FLA signatory. Both companies and regulatory organizations however agreed to split obligations in private regulation of supply chains and recognize each other's efforts accordingly. MEXX's membership is a victory for FWF, as it is the first large European clothing retailer to join, and helps FWF get rid of the stigma of being the small organization only attractive to small idealistic firms because it is upholding the strictest policies of all available regulatory organizations. It is quite remarkable that FLA led MEXX slip as a prospective member and allowed for FWF's success. Owned by Liz Claiborne, it would have made perfect sense to approach MEXX from FLA's Swiss liaison office.

FLA and FWF's agreement on Mexx and Liz Claiborne opens up possibilities for further cooperation and mutual acceptance of the results of each other's regulatory efforts, as indicated in the officially signed document accompanying the membership of MEXX.[190] Whether this proves an upward or downward shift in convergence is dependent on the details of the possible alliance. If FLA keeps business audits as the core of monitoring efforts, FWF's acceptance of that would be a sign of downward convergence. However, if FLA starts to adopt FWF's approach, for instance by 'lending' FWF's monitoring teams\ structure in certain regions, peacemeal upward convergence may be achieved. FLA 's presentation of "FLA 3.0", focusing on engagement with parties at the

[189] Interviews N4; P2; P6.
[190] See http://www.fairwear.nl/tmp/Persbericht%20Mexx%20NL.pdf).

point of production, indicates that the upward road may be expected. In any case, downward convergence is to be expected in terms of labour standards, as FLA remains unwilling to adopt the living wage provision.

6. Trends and conclusions

This chapter has described interactions between regulatory efforts in the emerging regulatory market for labour conditions in clothing supply chains as a competition for both business and societal support. It has identified the emergence of block forming between different forms of private labour regulation as a result of various convergence processes and projects. Accordingly, one block focuses on big brands and high street fashion, using brand responsibility regulation with relatively more societal control mechanisms. The other block focuses on cost competing and multi-product retailers, leaving responsibility with suppliers and relying on business controlled implementation. Figure 2 shows the results of policy shifts for the measure of the degree of stringency. Figure 3 offers a graphic depiction of the emerging alliances between and clusters of private regulatory activity, roughly placed in a diagram combining the degree of labour standards and degree of control (as in Chapter Three) as indicators of stringency. Accordingly, alliances may be identified. In this picture, for the purposes of parsimony, all organizations with low, medium, or indefinite labour standards controlled by business, with no or few implementation programmes, are put into one category. This also reflects the implicit ties between these organizations, as WRAP and ICS supporters are engaging with GSCP, as do the experts running SEDEX. The relationship with ETI is put as a question mark, given the involvement of ETI business members in GSCP development as well as SEDEX, but the absence of public endorsement by ETI staff of any of these organizations.

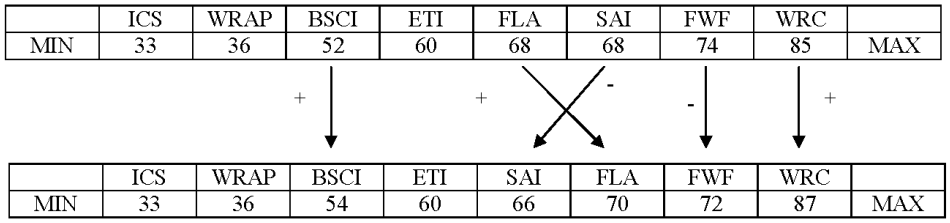

Figure 2. Policy shifts and consequences for stringency measures.

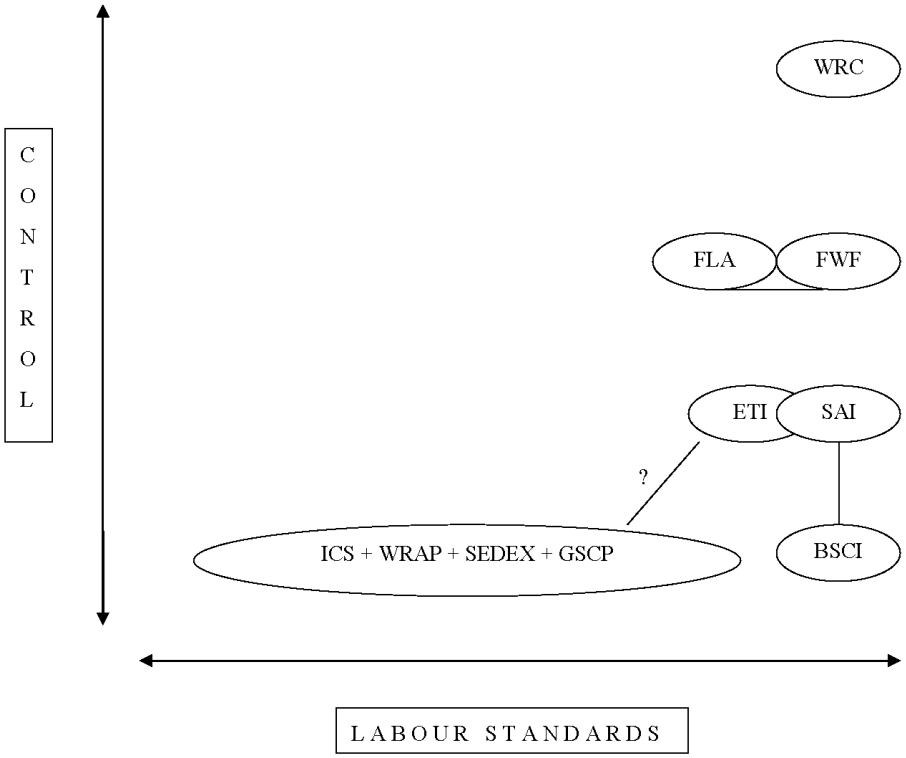

Figure 3. Emerging alliances and positions on a scale of control and labour standards

Two predominant trends of private regulatory policies have been identified in the process, as a result of regulatory competition and the increasing adoption of private labour regulation by newcomers. The first is an upward trend towards the adoption of ILO labour standard-inspired codes by a growing number of firms, while the second is a downward trend due to an increasing reliance by private regulatory organizations and firms on business controlled systems of implementation. In their ambition to conform to norms that may lead to societal support for the organization, some regulatory organizations relying largely on business controlled procedures have now stimulated new arrangements of indirect multi-stakeholder representation in organizations, which in most instances put regulatory oversight actually at a greater distance from societal stakeholder groups.

These developments arguably reflect three trends in both the clothing production chain and the arena of CSR politics described in earlier chapters. First, the blocks and the mutations in multi-stakeholder governance arrangements signify an emerging disconnection between both Northern consumer advocacy and Southern worker advocacy within European and American activism. The

Northern consumer segment is choosing to mainstream its approach in cooperation with businesses so as to contribute to a market for sustainable clothing and sustainable clothing suppliers, and in the process is willing to adhere to a private regulatory approach deemed most suitable to prospective business members, as long as this approach can be backed in some way by multi-stakeholder support. The Southern labour advocacy segment maintains a commitment to specific policy preferences as a result of its obligations to workers and unions in producing countries, and is, relatively speaking, willing to accept a relative niche position in the regulatory market as a result of these requirements. There has of course always been tension between these two types of activism. The combination of the two was very successful in the first decade of CSR private regulatory politics, when different consumer-labour coalitions successfully pushed companies towards more ethical policies. With differences in positions solidifying in different existing private regulatory approaches, some of these coalitions are now falling apart.

Second, the blocks also signify the tensions within the clothing chain and the market between branded high street clothing businesses and discount retail businesses. As noted in earlier chapters, these camps reflect different positions towards both consumers and suppliers, which as such have repercussions for their private regulatory preferences. What is more, the relationship between these two economic positions makes for tensions, as retailers, according to value chain research, are establishing themselves more prominently as the lead firms in garment chain organizations. Increasingly, retail is promoting private label clothing in competition with original brand clothing. Some high street brands may meanwhile be dependent on these retailers to reach consumers sufficiently. The question is whether this competition and dependence will affect convergence and divergence patterns. With further rising retail power, some brands may be inclined to adjust labour standard approaches for the shops in which their clothes will be hanging, or the shops they want them to be in. By contrast, other brands, depending on the degree of their value added, might have a stake in promoting different types of labour standards approaches for the retailers they cater to. For if these brands, increasingly faced with monopsonic-like circumstances due to the alignment of retail stores with similar private labour regulation approaches, would join the same private regulatory organization as retailers, shared monitoring efforts could lead to them be cut out as unwanted middle men, with the retailers seizing control of their supply chain.

The emerging clusters of business and activist groups supporting these blocks can be called the *Productionist* and the *Post-Productionist* coalition. The former focuses relatively more on production, the workers' position, and the politics of industrial relations within the context of global value chains. It consists generally of activists with more points of advocacy with workers in producing countries and companies with higher stakes in the production within supply chains (because of design and brand quality demands). The latter is relatively unconcerned with

circumstances of production and hardly has any contacts with manufacturing industry workers. It consists of activist groups dedicated more to advocacy agendas at the point of consumption, striving for clear consumer choice in sustainability and lacking direct constituents in Southern manufacturing regions. Business support for this group comes predominantly from retailer and/or cost-competing companies, with little involvement in production in supply chains.

Third and finally is the rising significance of a CSR service industry within most fields of CSR private regulation. The political impact of these service firms can be assessed from an output and input perspective (Fransen & Merk, 2007). In terms of output, service firms may have a progressive impact on the field of CSR activities, in the sense that they spread information and practices and offer coordinated instruments for the implementation of human rights and environmental standards. Whether the activities that CSR firms develop, support, and assist in are in line with what is considered to be substantial CSR policy or whether they contribute to a hollow PR exercise is another question, to some extent dependent on the agency of the CSR firm as service provider and the lead firm as client. From an input perspective, the presence of service firms in this policy field means that commercial relations between service firms and buying firms predominate in standard implementation and knowledge exchange, marginalizing the efforts to involve societal groups in standardization. The activities of CSR firms also tend to exclude certain aspects of the politics of CSR on the basis of their not being commercially viable or not in line with a situation where knowledge, practice, and technology are treated as products. The activities of CSR firms therefore tend to have a narrowing effect on the CSR agenda and a crowding out effect on its participants in the regulatory field.

With regard to the theoretical issue of the consequences of social interaction and learning for the emergence of common notions of legitimate private regulation, the empirics clearly show that the formation of common understandings is incomplete. Looking at patterns of policy convergence, it is notable that upward trends remain limited, arguably to the adoption of labour standards. While a process of mutation of multi-stakeholder types of governance is taking place, it is hard to assess it as an ‘upward’ or ‘downward’ phenomenon, as it seems to signify a form of symbolic adherence rather than an effort towards actual compliance with a common understanding of legitimate private regulation. The re-organization of responsibilities in private regulatory organizations has only taken place in one instance (FLA). What is more, the most explicit long-term effort at a learning process, the JO-IN initiative, failed to produce any results with regard to the most heatedly debated elements of disagreement. This supports the interpretation that social interaction in later stages of private regulatory policy making may not contribute to an emerging common understanding among policy makers, nor help to stimulate more legitimate private regulation, and thereby may not reduce policy divergence. Rather, one can hypothesize that it could also strengthen and solidify difference.

Chapter Seven. Conclusions and prospects

During a recent professional conference on implementation of private labour standards in the supply chain, the attendants are seated at small tables. They are asked to make a list per table of the biggest challenges they currently see in improving working conditions. At one table, a union representative, a director of an NGO and three CSR managers of different firms are seated. One of the CSR managers kicks off by stating that he finds it difficult that his suppliers are also audited for labour standards by many other buying firms, which leads to confusion, contradictory demands and high investments and time and energy for supplier management. The second CSR manager chimes in and says that for him the biggest issues is the difference in commitment from buying firms: "I can talk to the supplier all I want about the changes he needs to make, but I am only one out of ten clients he has. When the other nine keep cutting him slack on the issue of wages and overtime, despite the claims they make in their CSR reports, there is little I can do."

The NGO director states that for her it is also a major concern that there is this group of companies supporting some lax form of private regulation but not supporting real improvements. The union representative voices his worries about the lack of involvement of workers in auditing processes: "They are supposed to be the beneficiaries, yet they are neglected every step of the way. These professional auditors are not at all equipped to work with them." Finally, the last CSR managers notes that consumers seem to get confused. "In our store, we are able to provide eco-labels and Fair Trade certificates for many products, but for our biggest segment, clothing, we still do not know what to say to customers when they ask what concern there has been about workers. We can hardly tell them about all the problems we just raised here, can we?"

1. Introduction

Previous chapters discussed that three issues drive most of the discussion on Corporate Social Responsibility in contemporary Western societies: first, the degree to which CSR can be considered an actual policy, instead of a corporate communication exercise; second, the degree to which CSR can actually contribute to more equitable and sustainable production processes; and third, the degree to which it might be a lasting phenomenon supported by a critical mass of firms. These issues inspired the research questions of this study, leading to an inquiry into the development of different approaches to private labour regulation, the development of business support for private regulation, and the consequences of competition between private regulatory organizations.

This study identified patterns of evolving relationships between political actors that shape the policies of private regulatory organizations and their business membership, leading to private regulatory approaches that are more or less stringent and more or less popular with firms. It was shown how stringency of regulation can be addressed not only by focusing on the content of standards or types of policies, but by gauging the degree to which different interest groups are involved in implementation and review of rules. The study revealed that more and less stringent approaches emerged as a result of negotiations between interest groups that were more or less fluid according to the timing of their establishment. It was shown that differences in national environments and specific positions within the industry, together with managerial perspectives, inform the firm's response to societal pressure and the decision of what form of private regulation to support. Regarding competition and convergence, two converging groups of private regulatory organizations were identified and the resulting split within the realm of private regulation explained by historical paths, interactions and emerging differences between organizations. The field of private labour regulation for clothing production is therefore split in two, with support for lower and higher stringency regulation, the former from firms with a focus on production and design next to retail, together with a group of activist organizations claiming some form of concern for or representation of workers in developing countries; and the latter from firms with predominantly retail strategies and NGOs more focused on consumer attitudes.

The three issues driving the debate on CSR can now be revisited with the lessons of this research in mind.

The first issue is perhaps the simplest: CSR, real or PR? For clothing production, both are true to some extent. For some firms private labour regulation is about re-assuring texts on websites and in reports—nothing more. For others it means an array of actual activities. Regardless of this, it is clear that for the corporations studied in this research, CSR has become a practice in the multinational corporation that extends beyond the PR department. A movement of professionals with a vested interest in the topic has emerged within business organizations, supported by a blooming service industry, a set of societal interest groups, and a variety of regulatory organizations. Notions of corporate reputation, risk management, and sometimes business ethics among managers at the top of the corporate organization support and protect this movement. The efforts of this CSR movement are also making small but definitive inroads into 'hard-line' business practice: creating adjusted criteria for sourcing decisions, shrinking the size of the supply chain, extending the duration of contracts between buyers and suppliers, and helping to change the overall management of buyer-supplier relations.

CSR is therefore slowly becoming an institutionally settled ingredient of the Western European industries analyzed in this study in so far as the people professing it succeed in sustaining

their positions, and can see that their work on CSR affects business operations. This answers the question whether CSR might be a lasting phenomenon employed by a mass of firms. On the basis of this study, this seems likely.

But this 'success' says nothing about the actual impact of private efforts, the remaining and perhaps most salient of the three CSR issues raised here. What is the extent of current corporate commitment to labour standards in supply chains? Activists, by organizing and mediating societal pressure on corporations, have given the CSR movement the kiss of life. However, the regulatory market that evolved from their efforts has not been to the liking of most activists, as internal divisions and 'breaches' in the industry have fragmented regulation. Competition between regulatory approaches is not leading to a best practice model supported by everyone, which would otherwise be the basis for the legitimacy of private regulation. In most regulatory setups, the position of workers remains fragile while an industry of auditors and consultants check and train suppliers towards increased performance. Despite the popularity of the stakeholder concept and the continuous interaction between activists and companies, most companies prefer to control private regulatory organizations and exclude societal peer review of the kinds that may empower workers. Most stringent forms of private regulation remain a niche in the regulatory market.

This outcome reveals the capacities and limitations of business actors and activists and the consequences of their dynamic interaction in a political field that is becoming increasingly institutionalized. Outcomes are also affected by the way that structural conditions impinge on the field. The introductory chapter identified three so-called 'structural contexts' to the emergence of political interaction studied in this dissertation: the fragmentation and geographical dispersion of production; a neo-liberal regulatory environment on national and international levels; and increased societal attention for social and environmental issues related to consumer products in Europe and the US.

From the previous chapters it can be concluded that the shape that these structural contexts have taken on due to the analyzed actions and interactions has not helped to further the cause of stringent regulation for the industry. First, the fragmentation of production has taken such a form that effectively Western buyers govern production chains, provided that they act similarly or in concert with their suppliers. Collective action in promoting labour standards is therefore required, but very difficult given the competitive nature of interaction in the industry. Moreover, the geographical concentration of production in one of the more authoritarian societies in the world (China) greatly complicates efforts promoting worker rights. Second, the neo-liberal regulatory environment on national and international levels has not led to (inter-)governmental pressure for specific private solutions, but to support for private solutions in general, whatever their specific content may be, thereby stimulating a fragmentation of regulatory efforts. And when pushing for

convergence, public regulatory functionaries have refrained from offering criteria for the direction this convergence should take, failing to identify a baseline or best practice for corporate voluntary action. Third, regarding societal pressure, activists (unsurprisingly) have not succeeded in engaging larger audiences with the intricacies of what they consider fair and unfair private labour regulation. The result is that policy discussion about legitimate private solutions takes place between expert professionals (activists, business representatives, consultants) at a large distance from consumers. The sole claim of the critical consumer audience remains that corporations should deal ethically with labour conditions. But consumers do not know how. This creates space for all kinds of voluntary action that may to some extent claim to benefit social goals—including half-decent and even cynical efforts.

The politics of private labour regulation in the clothing market and production chain have an unfinished nature. This is because as the development of private regulatory organizations goes on, regulatory organizations can rethink their policies, and policy discussion about what constitutes good regulation in turn evolves. While this process is ongoing, of course the world keeps turning. Developments in national and international politics and economy gradually create new challenges and opportunities for the actors involved in this field of politics. This has two implications for this work of research.

First, there are obvious limitations to what this study can say about its main topic. In section 3 of this chapter, these limitations will be identified, and some suggestions are made about how future research may fill the lacunae that this work leaves. Second, in order to grasp the significance of the empirical findings of this study, it is important to look at what developments in the global political economy, either ongoing or on the horizon, may affect the trends as portrayed in previous chapters. This brings us back to the three identified structural contexts. What would happen if these contexts were to stay similar? And what would happen if they were to change in several ways? In order to understand this, this chapter will present several scenarios describing possible futures for private labour regulation. These scenarios could then also invite new research endeavours.

However, before moving to the issues for further research, first the contributions of this study should clearly be restated.

2. Contributions

First, this study advances a particular understanding of the qualities of private labour regulation. Focusing on differences in the stringency of private regulatory organizations, it uses common tools of policy analysis such as the measurement of degrees of standards and specificity of implementation procedures to show how labour conditions are an essentially *political* issue, determined by power relations between business and societal groups. The implication of *private*

regulatory arrangements for labour standards, in which these groups participate, is that policy analysis of standards and procedures may be used to evaluate the extent to which private regulation advances the potential for raising labour standards by countering existing asymmetries of power. Analysis shows that stringent forms of private regulation exist alongside less stringent approaches. Moreover, the development of different types of private regulation and the evolving character of regulatory organizations show that the emergence of more stringent private labour regulation, and the harmonious set-up of multi-stakeholder governed regulation allowing equal input for business and societal voices, may very well have been a short historical circumstance that will not recur. Increasingly, recent developments in the regulatory fields are following the direction of either business groups or activist groups going it alone, or businesses pursuing new multi-stakeholder set-ups that decrease the actual influence of societal interest groups on regulation.

Second, this study shows that activists have a crucial role in initiating stringent private regulatory organizations and pushing firms to participate in them. At the same time, it shows that there are limits to what activism may achieve given the private and voluntary nature of regulatory arrangements, which opens up space for corporations to reject, compete with, or transform efforts at stringent private regulation. Moreover, a divide within the movement for private labour regulation is identified that may affect the impact of future activist efforts in general.

Third, the results demonstrate the significance of both an *industrial* and, in the case of business preferences for existing regulation, a *national environment* in understanding the interaction between firms and activists. In particular, this study emphasizes the importance of *the position of both business and activist groups in the transnational production chain*. The distance of these groups from both the point of consumption and the point of production, in terms of market strategy or political constituency, is crucial for strategic action with regard to private labour regulation. Closer engagement with the point of production is then an indicator of a preference for higher stringency. Since the buying firms that fall in this category increasingly form a minority, both in the industry and within the field of private labour regulation, a general preference for less stringent forms of regulation is coming about. In addition, national institutional environments mediate the contentious interaction between firms and their 'stakeholders' once private regulatory options have come into existence. Despite the transnational organization of production and activism, national embeddedness is still a key element to consider in understanding relationships between activists and business.

Fourth, notwithstanding the previous point, the importance of persons and organizational dynamics are testament to the fact that the developments in the politics of private labour regulation are affected by *agency.* This study in particular argues that within certain social and temporal settings, political interaction is characterized by substantial ambiguity. It is then that the actions of

persons within profit and not-for-profit organizations are influential for events evolving in the political field.

Fifth, this study reveals that private regulatory competition is a process that on the whole may stimulate persistent heterogeneity and divergence in the policy approaches of regulatory organizations, despite political efforts to induce a shared understanding of what constitutes legitimate private regulation among parties. Economic and social interaction may work differently to expectations about progressive convergence between regulators, also because the limited convergence that does take place does not lead a majority of organizations and firms towards a *ratcheted up* version of private labour regulation.

3. The need for further research

This research has been executed using methodology that is primarily inductive in nature, a methodology that bring with it both opportunities and constraints. The opportunities are that the research design was sufficiently flexible to allow findings in earlier stages to inform strategies of data gathering in later stages. And the constraints are that the wider applicability of findings is far from settled. All results have the status of findings only in relation to the examined cases. Beyond these cases the results have the status of propositions, with the partial exception of the survey material in Chapter Five.

Choosing a single industrial production chain (that of clothing) and a corresponding limited set of sectors (clothing brands, sportswear, retailers selling clothing) as the main focus of study also creates limits. To what extent do lessons about private labour regulation for clothing production say something about the politics of private regulation in the coffee, fresh produce, or toy industry? Obviously, the relevance of the current findings for other sectors needs to be tested empirically. Actual attempts to confirm or reject presented propositions will for the time being probably fail given a lack of events (in terms of the number of existing private regulatory organizations) in proportional relation to the different variables that need to be teased out (such as, for instance, the different institutional factors identified with regard to industries, countries, and activist groups).

This means that cross-industry comparison is very much welcomed, but for now these kinds of comparisons will have a similar function to this study's single industry cross-case comparison: to tease out specific mechanisms, and *propose* rather than *establish* their relevance for a larger category of private regulatory activities. It might, for instance, be an interesting option to hold one category of institutional variables constant by looking at geographically similar yet organizationally and technologically different production chains. Comparing clothing to toys or consumer electronics for one specific consumer market might then be a worthwhile exercise. Conversely, more insight could be generated by looking for the *most dissimilar* case study opportunities, where

identical mechanisms seem to be at play, regardless of geographical, organizational, and issue differences. This way, for instance, it may be studied in more detail how different or similar political dynamics within the private regulation of labour standards can be compared to the private regulation of environmental conservation. Are other fields of private regulation as fragmented as the labour field? Does the discussion on monitoring evolve in an equally politicized manner? Do businesses diverge as much in their preferences towards private labour regulation? Does interaction between activists and businesses work similarly?

As mentioned in Chapter Two, the immediate relevance beyond the clothing market of the political patterns revealed in this study is that they may be a source of inspiration for actors in other fields dealing with private labour regulation, or that the actors engaging in the clothing market transfer elements from the approach to clothing (in whatever form) to other fields they are involved in. In the social science sense of the term, cases of efforts at private regulation not studied in this dissertation are probably *not independent* from the private regulatory organizations and different political actors described here. Because of this, the findings of this study are of significance in numerous indirect ways, especially given the pioneer status that the activities in the clothing production chain, with regard to private labour regulation, seem to have. Issues subject to policy transfer may include the different elements in the discussion about what constitutes good monitoring (as discussed in Chapter Three), the shifts in the meaning of multi-stakeholder governance (see for instance Fransen & Kolk, 2007), or the pressure for convergence as a response to possibly overlapping monitoring efforts (for both see Chapter Six). Probably the biggest source of diffusion of practices and policies is through the adoption of private labour regulation by large multi-product retailers beyond their clothing segment into wider mass consumer goods segments.

An additional constraint in the planning of this research was its focus on the Western-European clothing market as the target for private regulatory organizations, rather than the full set of clothing firms engaging in private regulation. Obviously it would be equally relevant to look at the strategic behaviour towards private regulation in other regions of the world (for the US, for instance, see Wetterberg, 2007), and in case of significant differences in patterns, to think more carefully about how to explain these.

In terms of data gathering, a focus on research questions addressing macro-patterns on the industrial level has meant that relatively less time was available to explore dynamics on the intra-organizational level. This study has emphasized, based on a predominantly comparative logic, that it may sometimes be the persons that matter rather than their organizations when it comes to unitary actors in certain political settings, and has as best as possible explained why this is so and illustrated how it works in practice. A next step would be to try to understand these processes more deeply from within the organization. This would probably have to be achieved through a much more

limited company-level case study design, using an embedded approach of data gathering inside organizations. This would require access to sensitive political data and one might be sceptical about the possibility of revealing all intra-organizational dynamics relevant to the private regulation of labour standards. Nonetheless, in the field of environmental studies, some successful attempts at intra-organizational participant observation have been made, which shed more light on the relationship between policies, organizations, and persons (see for instance Crane, 2000; for further discussion of methodology, see the relevant Appendix).

4. Prospects for labour regulation and further research

In the following sections some scenarios will be elaborated, showing different possible futures for private labour regulation in the clothing production chain, and which could form the basis for new empirical research endeavours. The first scenario assumes that the structural contexts for the interaction between actors in the making of private labour regulation will remain similar for some years to come: few changes in the organization of production across borders, the same neo-liberal regulatory regime, and stable societal interest in sustainable production. The three sections after that will identify trends that have been signalled by practitioners and analysts and which point to a transformation of one or more of these structural contexts, and will therefore very likely change the development of private labour regulation.

The macro trends elaborated in the following sections are influenced and sometimes even initiated by the actions of actors in the field of private labour regulation, as identified in the previous chapters. In line with the theoretical notion of 'structuration', these changes are not forces beyond the reach of these actors. As will be elaborated, in some cases it is possible that particular players are actively seeking to steer a form of structural change, so that private labour regulation (or the adoption of labour standards across borders in general) will be affected in a particular way that is preferred by them.

a. Ceteris paribus

With regard to regulatory competition, Chapter Six revealed the beginnings of a division of the regulatory market on the basis of regulatory product differentiation. Possibly this product differentiation will continue between, on the one hand, the higher stringency regulatory block catering to high street brands, retailers, and manufacturers, and on the other hand, the lower stringency block catering to lower street retailers. This might result in both blocks reducing efforts at luring in 'other types' of firms, and overall competition would then lessen.

Following this prospect, an increased division of labour can be envisioned with regard to the regulation of specific groups of suppliers. Business controlled regulation would take hold of most

short-term arm's length buyer-supplier contracts, and a large bulk of long-term full package supplier complexes, while higher stringency regulation would be confined to more long-term buyer-manufacturing supplier relations and some high street full package supplier complexes. In the long run this may mean that some factories become exclusively subject to more lax regulation, while others are only subject to stringent regulation. This could happen in particular if companies that are signatories to one type of private regulation were allowed to accept the regulatory efforts of companies that are signatories to another type of private regulation. Private regulatory organizations may be inclined to accept this when their participant companies are confronted with other companies using different types of private regulation, and through their buying power were therefore exercising a much greater pressure on the supplier to adopt their version of labour standards. Another dynamic stimulating a similar outcome would be if supplier management actively catered to a group of buying companies because of their similar private regulatory demands, which would match with the preferences of the supplier itself (for the first traces of this dynamic in Turkey, see Kocer & Fransen, 2009).

From the perspective of the point of production, the sum of these trends would firstly be a reduction in overlapping monitoring efforts, as preferred by the proponents of regulatory convergence. However, on a second level private labour regulation would then lead to further asymmetries between factories and workers within developing countries. Already, we can distinguish between factories that are or are not subject to enforced national public labour regulation, and between factories that are or are not subject to private labour regulation. A new distinction could be made be between factories subject to lax or stringent private regulation. Those committed to raising labour standards worldwide may hope that labour advocates and union representatives inside and outside developing countries will devote equal attention across these groups of factories. But organizational pressures might also lead them to focus on the advanced groups subject to stringent regulation instead (for this typical Industrial Relations insider-outsider dilemma, see among many others, Dahrendorf, 1959).

From the perspective of the point of consumption, rough calculations can be made about the contribution we are making to fair working conditions through our spending habits. If we pass through the shopping street we can distinguish between stores and brands with lax and stringent private labour regulation. If we want to we can reward the latter for being more stringent than the former by shopping at that store or brand. If we do so, we can then distinguish further between products within companies that are more or less likely to be actually subject to the stringent type of regulation: less likely product categories consist of the fashion accessories and short-term season-

sensitive offers; most likely categories are the designer and the longer term or permanent offerings.[191]

Granted, it is not as easy as a Fair Trade label driven form of ethically minded shopping. But it is difficult to foresee any inroads towards clear messages for consumers on the fairness of products on the clothing market. As much as consumer-minded sustainability NGOs would appreciate such moves, labour advocates would argue against it based on their knowledge of the inconsistency between the private regulatory promise and actual practice in factories. And as explained in the previous chapter, an emerging breach between consumerist and labourist approaches makes it less likely that the latter would grant to the former the flexibility to adopt consumer labelling in cases where fair working conditions cannot be fully guaranteed—as is the case with all private regulatory approaches currently in existence.[192]

Activists sometimes propose an alternative scenario leading to synthesis between existing approaches—and ultimately a victory for the advocates of higher stringency. In this scenario, the participatory mode of FLA 3.0 and the FWF verification system would be *added* as an additional required step in the implementation programmes for all companies participating in a private regulatory organization. Business-controlled programmes such as WRAP, BSCI, and SAI, as well as the contributors to the SEDEX and ICS databases, would then continue to exist but only function as the organizers of the first step of implementation.[193] This scenario would require a high degree of organizational flexibility among the existing organizations, and a conviction among supporters of the business-controlled private regulatory organizations that their approach as a stand-alone version would be ineffective or lacking in operational legitimacy. But as previous chapters have shown, the dynamic seems to be in the complete opposite direction and it would require great efforts to align what are currently competitive players with rival perspectives. If there is any sign of further convergence around the FWF model of verification or the FLA 3.0 model, it is more likely that initiatives such as GSCP and BSCI would try to create a business-controlled version of roundtable discussion with societal actors in developing countries, allowing them to select the time, place, speakers, and terms of discussion. It is reasonable to expect that activists would need a very sophisticated campaign to turn these developments around. Alternatively, they would have to try to

[191] One further distinction can be imagined inside the store, based on the "Made in ..." label of the clothing. If it is made in a country with a relatively more stable regulatory framework and relatively less hostility to worker organization (think for instance of Romania compared to China),we can make one more decision: if we are looking for *clothing least likely to involve unfair working conditions* we can steer clear of certain developing countries. On the other hand, if we want our shopping to be *most likely to contribute positively to workers under globally speaking worst conditions* we may prefer clothing from exactly those 'challenging regions' by companies that adhere to stringent regulation.
[192] Chapter Six however presented the exceptional case of Made-By, focusing on a shadow-label based on a process instead of an outcome standard.
[193] Interviews N4; N5.

reshape some of the structural conditions of private labour regulation, as the following scenarios discussed below show that this may change to their advantage.

Addressing the validity of these scenarios through future empirical research would first mean a continuing focus on the shifts in policies and procedures of the existing private regulatory organizations, and the evolving patterns of business support; and second, a focus on implementation matters in the supply chain, in particular on the impact for workers, the strategic repertoire for supplier managers, and the consequences of multiple private regulatory requirements.

b. The rise of China and India

Analysts of international political and economic developments have concerned themselves for the last couple of years with the degree and consequences of the economic growth of India and China, and the rise of multinational corporations and investment funds from these countries (see for instance Khanna, 2009).[194] Observers argue that great changes are on their way because of the increased power that Indian and Chinese state and non-state actors can exercise in the negotiation of economic and political transactions. This may have three sorts of immediate implications for the field of private labour regulation in particular: for the organization of production chains, the organization and impact of private labour regulation, and the labour conditions themselves.

Researchers have started to focus their attention on the upgrading of Indian and Chinese firms in transnational production chains. These take on more complex, technologically intensive, and higher value added functions, or increasingly concentrate horizontal and vertical supplier functions to change prevailing 'buyer driven' power relations in production chains (Merk, 2008). In addition, observers have noted the development of branding functions among firms that used to be manufacturing suppliers or organizers for Western firms (*VK*, 2007). This process has been ongoing, in particular in the sport shoe industry with the Chinese giant Yue Yuen. A similar dynamic is anticipated in the clothing industry, where conglomerates of Asian full package suppliers, such as Hong Kong's TAL or Esquel, might increasingly succeed in penetrating both newly emerging Asian clothing markets as well as Western markets with new end products.

Increased supplier power through concentration means that the current form of private labour regulation is in need of revision, since it relies on the idea that buying firms could force labour standards on their suppliers by coordination of their buying power. This may in the near future become harder as suppliers may successfully resist. Implementation of private labour regulation would then have to be reformed to create space for more equitable relations with more powerful Asian clothing supplier companies. For in the past, these suppliers only functioned as the

[194] Brazil is often mentioned as the third former developing country with significant growth rates but is not discussed explicitly here because it is far less involved in the production chains relevant to this dissertation. The same goes for Russia.

subjects of disciplinary measures in most regulatory arrangements—arguably even those schemes that claimed to support *supplier ownership*, since in the case of clothing chains this ownership model went hand in hand with 'force from above' by retailers.

Chapter Six noted that most private regulatory organizations have recently tried to create a situation of dialogue with suppliers, to learn from supplier perspectives and stimulate an environment beneficial to compliance through discussion (see also Locke et al, 2008). In terms of governance of both production chains and private regulation, however, process control has remained with Northern parties. With increased power of supplier parties, dialogue would no longer be sufficient; rather, the private regulation of labour standards would become increasingly subject to *bargaining* between suppliers and Northern parties. This may also have repercussions for the governance structure of private regulatory organizations, as suppliers may claim more influence on regulatory proceedings than they currently have. In previous chapters, supplier management has generally been identified as the most union- and worker-hostile actor in the production chain, since ingrained in its business model is an institutionally supported disregard for worker positions. One may question to what extent these managers would promote worker rights if they increased their voice inside private regulatory organizations. Of course it should be asked how static their perspectives on worker rights would be, once drawn into a group of business professionals emphasizing the advantages of complying with ILO standards. But it is reasonable to expect suppliers to staunchly defend their right to comparative advantage through competition on production costs, in similar ways to buying firms during the beginnings of discussions on sweatshops and codes of conduct in the 1980s and 1990s.

Conversely, the ambition to move to the status of competitive end producer for Western markets would mean that the new Asian brand/manufacturers, like their Japanese predecessors (for example Asics, Mizuno), would also become subject to pressure to adopt similar private labour regulation as their Western competitors. Because of this they might have to adjust their efforts towards better working conditions.

Increased power of Asian suppliers also means changing terms of contract with buyers. Policymakers have emphasized how the uneven terms of sourcing contracts from Western buyers contribute to the pressure of supplier managers on their workers in mass consumer goods production (ACONA, 2005; CCC, 2005). This pressure could perhaps lessen, at least in the case of large supplier complexes.

This dovetails with an observation also prominent in current political and economic analyses: the rise of wages (and the cost of labour) in China, and to some extent India (for discussion see *NYT*, 2008). The Chinese government in 2006 revised its labour law, aimed at strengthening worker positions, and was announced as a tool especially to alleviate the

circumstances of Chinese in export oriented industries. Although most commentators would agree that a lack of enforcement of this law has meant that many workers do not profit, there are also concerns in the industry about its inflationary effects (*FT,* 2006; *NYT,* 2008). Added to that, observers fear that the Chinese government's financial support for farmers in the past years has helped to magnify the shortage of labour supply in manufacturing, because young farmer workers are less inclined to leave rural regions for jobs in export processing zones.[195] This adds to an upward push for wages. Do all these things mean that Chinese labour conditions are improving? And will it endanger the Chinese model of low road growth?

Sourcing patterns are sensitive to shifts in labour costs, and because of this it may be anticipated that some buyers would place increasing orders in countries like Cambodia and Bangladesh where labour costs are decidedly lower than in China (that is, if these buyers are willing to swallow relatively lower level infrastructure). Similarly, certain regional competitors may come back into the game, as Chinese production cost levels approach theirs (think here of Indonesia). But a sudden mass move 'out of China' is not realistic, since China's competitors cannot be expected to absorb so quickly the potential of orders that in the past years have been held by Chinese suppliers (as an illustration, 26.9% of world clothing export over 2005; in comparison, Bangladesh held 2.3% for the same period, Saviolo & Ravasi, 2007:16). This means that some of the increases in Chinese worker positions may be more or less permanent. This also bodes well for private labour regulation, as in production powerhouse China its measures may function in a more favourable institutional environment.[196]

Finally, the growing assurance of Indian and Chinese players goes hand in hand with the development of a middle class in both countries that have money to spend on leisure items such as an extended wardrobe. Estimations are that consumer demand in India will quadruple by 2025 (IBEF, 2008). Similarly, Chinese middle class demand for clothing rose 25% between 1997 and 2004 and is expected to increase further (Deloitte, 2005). Will these consumers care about the working conditions in the factories in which their clothes were made sufficiently to put pressure on Indian and Chinese brands to also adopt private labour regulation, or increase the pressure on other global brands and retailers? Here it is only possible to guess, based on hunches that are, it must be admitted, bordering on ethnic stereotyping. On the pessimist side, Indian society currently shows signs of a cultural acceptance of deep inequality, meaning one cannot so easily assume solidarity among middle class Indians for poor workers. Similarly, Chinese urban middle class disdain for rural migrant workers might be a poor starting ground for progressive consumer action.[197] On the

[195] Interview B2.
[196] And for European and American customers it will probably mean inflation, since buying firms will be eager to raise prices because of it.
[197] The documentary film *China Blue* (2007) by Micha X. Peled offers some clear examples.

optimist side, Chinese government's desire for societal stability and harmony and the communist egalitarian legacy could be fertile soil for a Chinese desire for CSR, while similar positive effects could be expected regarding Hindu and Muslim traditions of sobriety and philanthropy in India.

The least that can be said is that multinational companies are increasingly likely to be sensitive to varied value demands from customers—not merely in their design and marketing of products, but also in their CSR policies. Multinationals have over the past few years become increasingly accustomed to being treated as the personification of transnational religious and political divides.[198] Moreover, the example of French retailer Carrefour experiencing a boycott by Chinese customers because of French pro-Tibet human rights rhetoric signifies that in the future, consumer demands on multinationals might even become conflicting across world regions (*NYT*, April 2008). It is an open question how CSR departments should cater to that.

Meanwhile, a growing Asian consumer market for clothing may also increase sourcing options for suppliers. Whereas it was previously the case that Western export orientation meant the key to success for mass consumer goods manufacturers, now managers of these firms may also decide to dedicate their goods to this Asian market. Ultimately, the choice may be between connecting to leading Western production chains where all kinds of private regulatory requirements (environment, labour) may come into play, or to Eastern leading production chains where, up until now at least, private regulatory pressures seem less intense. This also means that Western buying companies can no longer use their buying power with such influence to force suppliers into compliance with these private regulatory requirements, since suppliers are in a less monopsonic and therefore less dependent situation than before (see also Kocer & Fransen, 2009).[199]

Research could contribute to more insight into these scenarios, first by focusing on the presence, absence, and consequence of upgrading in the production chain, as well as on sourcing strategies of buying firms; second, by offering continuing macro- and micro-analyses of socio-economic circumstances in mentioned regions; and third, by probing the developments in consumer attitudes in emerging markets. Of course the key for an overall assessment of the impact on private labour regulation is to weigh the relative force of the different mentioned trends and to create models that shed light on the offsetting or enhancing effects of the interaction between these trends.

[198] Danish and Dutch firms, for instance, are pressured in Middle Eastern and Southeast Asian countries with a majority Muslim population to explicitly declare their respect for religion, as a response to the standpoint of conservative Danish and Dutch politicians (*Vk,* 2008).
[199] I thank Jennifer Bair for elaborating on this point in discussion.

c. The rise of retail

Previous chapters addressed the competitive and interdependent relationship between retailers and (brand) manufacturers and noted that retailers seem to be gaining ground in the clothing industry. It was also established that the differences between retailers and brands are relevant for an understanding of different types of private labour regulation and patterns of business support. It is therefore relevant for the future of private labour regulation to establish how these trends could proceed further.

Recent data for the European clothing market illustrate that the horizontal and vertical market power of large multi-product retailers, mass clothing retailers, and specialty chain retailers is increasing. These three categories of retailers together are taking hold of larger chunks of the consumer market, to the detriment of smaller clothing shops. For instance in Germany, France, and the UK, the top ten retailers of clothing now have a market share above 40% (Saviolo & Ravasi, 2007:39). Retailers have also adopted private label clothing lines that are in increasing competition with original brand clothing (*NYT*, 2008; Saviolo & Ravasi, 2007:30). These retailers therefore stand in an increasingly strong relationship to those brands that are less established and lack their own venues to deal directly with consumers. This is reason for concern about what brands dub "unfair trade practices", such as the imposition of extra fees and the returns of unsold goods. What is more, retailer influence in transnational production chains is increasing as well, in comparison to brand influence (Saviolo & Ravasi, 2007:25-27).

On the surface of things, large international retailers therefore hold the key to the future of private labour regulation, both in their own private label production chains and in the chains of smaller brands relying on them for their sales. The question that then follows is what approach they might prefer and how much influence they will exercise upon dependent brands to copy this approach.

Previous chapters noted that the mass and discount segment of (multi-product) retail holds a long distance relationship to the production chain and seeks to complement this with low stringency private labour regulation. An increasing role for these retailers in markets and chains very probably means an extension of this model, ceteris paribus. The move of these retailers towards in-store higher street private label clothing offerings means that these companies are gaining more access points to direct manufacturing positions in transnational production chains, which in this study was considered a relevant factor for the preference for higher stringency regulation. It is questionable, however, whether this increased engagement with manufacturing chains for a specific minority segment of products might make a difference regarding private regulatory preference on the organizational level.

High street department store retailers, which in this study were proponents of medium-level stringency (at least engaging in multi-stakeholder governed regulation), are according to studies on the retreat in comparison to lower street mass retail concepts, losing about 5% in market share over the past five years in, amongst others, France and the UK. Specialty chains are increasing their grip on European markets, with increases of around 8% in most Western European countries (Saviolo & Ravasi, 2007:33-34). In this study this category forms a mixed bag with regard to their private regulatory preferences, also influenced by their core market of operation and their managerial commitment.

In sum, an advance in clothing retail generally offers mixed hopes for the stringency of labour regulation adopted. Nevertheless, the increase in mass and price-fighting retail and the decrease of brand manufacturing may be cause for concern for labour advocates. Can lower street retailers be ratcheted upwards in their commitment to labour standards, given that they feel less pressured by societal actors and are at a larger distance from manufacturing positions in their production chains? Can smaller brands resist the pressure to adhere to private retail standards and pursue higher stringency regulation?

The pessimist scenario would hold that increased retail power will lead to increased confidence in advancing the agenda of private labour regulation. This may mean that mass and price-fighting multi-product retail, because of its sheer size, could lead the way in promoting business-controlled regulation as the key solution to sweatshops, probably supported increasingly by some specialty chains and brands relying on both retail categories. Higher stringency labour regulation would then remain the niche that it already is: a solution for some high street specialty retailers, some big brands, and smaller branded manufacturers that are not dependent on retailers, such as government procurement and promotion firms. Probably some brands would shift allegiances to the retail camp because of its increased prominence.

An adapted pessimist scenario might be that specifically multi-product retail managers will recognize the niche for higher stringency labour regulation and will aim to exploit it for what it is: a small segment of the consumer market. This would mean that they might make room for a selection of product types that fit the need for organic, biologically sustainable qualities (such as organic cotton clothing), with possible reference to fair working conditions ("We are working on improvements using an ILO inspired code of conduct"). Efforts at enforcing private labour regulation for the complete collection of products can then slowly be reduced with reference to consumer sovereignty: if customers want good labour conditions they can buy them in the designated section of the store, if customers want cheap clothes, they can also buy them in the rest of the store! Note the difference with the current situation, where activists use the fear of what probably is a consumer market niche to turn around working conditions of products in *all* sections

of a store. In this pessimist perspective, the mainstreaming and growth of Fair Trade product sales may then mean bad news for the proponents of industry-wide adoption of labour standards.

The optimist scenario would be based on a coordinated effort by activists to put campaigns on brands second to increasing pressure on retailers specifically by active tactics focussed on consumer information and collaboration with forerunners from the high stringency brand camp (compare Cashore et al, 2007). Increased sensitivity to societal pressure on the part of retailers might then in turn be induced because of growing retail and private label prominence in the marketplace, and more sustainability minded customers shopping at these retailers. And this may then lead these retailers to adapt to higher stringency models.

Future research should shed more light on these developments by more detailed production chain research; comparative research of business-to-business dynamics across countries and chains; and continuing research on developments in corporate and activist strategy.

d. Public regulation and (inter-)governmental intervention in private regulation

The issue of *private* labour regulation is on the table in the absence of enforced public labour regulation. Reviewing contemporary governmental and inter-governmental policies, two impacts on labour regulation can be identified: first, the degree to which public labour regulation may become more or less enforced and make private regulation redundant; second, the degree to which public policies may change the balance of forces in the field of private labour regulation by (willingly or unwillingly) frustrating or enhancing particular efforts or parties.

First, the question is whether governments of developing countries will continue to fail to uphold labour regulation as in previous decades. The question for India and China in particular is whether their governments, given increased growth and prosperity, will continue to see un-enforced labour regulation as a successful part of an export strategy. Section 4b noted the revised Chinese labour law, which points to rising concerns with the plight of workers. Poorer countries such as Cambodia and Vietnam obviously face a different bargain. Notable is the development of private tools by developing country governments that seem to mimic the efforts of Western private labour regulators. Chinese product quality authorities have, for instance, launched a private labour standard certificate programme CSC9000T in 2006, and invited Chinese factories (both export and home market focused) to seek certification. The Thai government initiated a similar programme for its industries. One may infer from this that certain export country governments, like most developed countries, are moving to *publicly* support global labour standards, through *private* means and on a *voluntary* basis. This dovetails with the increased presence of government officials at discussion roundtables and multi-stakeholder forums, such as the Multi-Fiber Arrangement Forum, and the positive statements of politicians on the need to take into account certain social and environmental

norms in economic transactions. Policy rhetoric concerning CSR seems to align with that of Western politicians. So far these efforts do not seem to have had much impact on the field of private labour regulation for clothing production, since the focus of most export suppliers seems to remain on compliance with the standards developed by Western retailers and brands.

Will Western European developed countries seek enforced public labour regulation abroad? They can promote this cause, either through lobbying developing countries and Inter-Governmental Organizations or through negotiation of trade policies, at least to the degree that they are not bound by WTO and EU agreements on trade policy. One way or another it seems likely that the subject of child labour will stay on the diplomatic radar in the coming years, since its ethical ramifications make it a suitable ideological issue for Christian democrats and social democrats alike, which means substantial clout in most Western European democracies. But business lobbies will do their best to keep the efforts of politicians away from trade-interfering policy proposals.

So far, the basic European governmental position regarding private labour regulation has been to encourage voluntary and private common solutions and facilitate discussion. There are no clear signs of governmental policies promoting or denouncing a specific version of private regulation. The preference for multi-stakeholder types of policy instruments is often declared, but never made so explicit as to not create sufficient leeway for flexible usage of the term 'multi-stakeholder', as elaborated in Chapter Six. Active government CSR policies have been geared at more transparency, for instance in sustainability reporting requirements (in the Netherlands, France, and Sweden).

Institutions of the European Union are formally better equipped than individual governments to make a difference both to public regulation and in terms of influencing the shape of private labour regulation. The Commission could, for instance, include social clauses as a prerequisite for world trade agreements—it is questionable, however, whether governments and interest groups would allow it to do so. Regarding the regulation of the behaviour of its own multinationals, all efforts of the Commission up to now have gone for the private regulatory option. The EU's policy towards CSR, evolved through rounds of consultation with both business and societal stakeholder groups, may be characterized as lax. Its institutional outcome, the CSR alliance, is an open learning forum in which only businesses participate, after calls by unions and NGOs, in consultation rounds for more pressing requirements to private regulation, faced opposition from the business camp. As such the EU supports virtually every different kind of CSR policy *(reference to website).*

Meanwhile, the recent tone of the EU parliament has been different. In spring 2007 it voted with a majority for the Commission to have a more specific stance on CSR, arguing, amongst other things, for mandatory transparency for corporations on their social and environmental activities and

a role for the European Court in bringing to justice corporate misdoings outside Europe. The vote was the result of a successful lobby of the united NGOs and union spokesmen in Brussels, together with the long time CSR expert in the European parliament, the British social democrat Michael Howitt (SOMO, 2007). It has yet to be seen what the Commission will do with this call and how the Brussels circle of stakeholders may interfere with its possible realization.

As governments of developing and developed countries meet at the roundtable of International Organizations it should be clear what the direction of policies negotiated between these parties might be. The following paragraphs briefly review in brief the possible different issue arenas impinging on private labour regulation, and the room for manoeuvre for these organizations' secretariats and bureaucracies.

The United Nations as an institution has systematically ignored its own internal effort at binding rules for multinationals, the UN Norms on Human Rights for Multinational Corporations, promoted by a small maverick group of human rights lawyers. John Gerrard Ruggie, special secretary to Business at the UN, emphasizes the voluntary route through the UN Global Compact. The Compact is still a loose assembly of businesses and societal actors geared towards setting exemplary best practice, and as such does not have a direct impact on the much more specified private regulatory field of clothing production. More interesting is Ruggie's assignment to propose to the UN a new philosophy for the division of responsibilities between states, IGOs, businesses, and civil society in global justice problems. It remains to be seen what Ruggie's view will be and how members of the UN will respond to it, but its declaration alone may affect discussion in the wider field of private regulation, given the strong norm-setting status of the UN.[200]

The International Labour Organization has as many proponents as opponents of private labour regulation among both its members (business, unions, governments) and its staff. In the past it has supported applied private-public policy tools towards improved labour regulation enforcement in specific industries of certain countries, such as the clothing industry in Cambodia. For consistent improvements in enforcement it is of course dependent on the effort of its members. ILO Conventions and the ILO model code of conduct of course serve as an important inspiration for private regulation, and any revisions would have repercussions for discussions about labour standards in private regulatory organizations. Absent (and not very likely) so far is overt ILO support for specific private regulatory organizations or processes.

At the World Trade Organization negotiation table, the debate on the social clause as a possible route towards the advancement of labour standards has ended given deadlock between negotiating parties. The question for the future is how strongly its member states will uphold the rules agreed to under the WTO and how far its agenda of free trade can be realized further. As

[200] I thank Jonathan Mijs for discussing Ruggie's ongoing efforts with me.

noted, patterns of trade agreements greatly influence the structure of production chains (Bair, 2003; compare Underhill, 1998). Any future fall-out between a group of producing countries and a group of buying countries leading to a cycle of protectionist retaliation might affect the clothing production chain, which up until now has had a quite liberalized trade regime. This would have repercussions for private regulatory arrangements too. From a rational economic point of view it currently makes no sense for buying countries to quarrel over the trade regime of mass consumer goods production chains. But international politics does not always make sense.

Research could contribute to understanding these governmental and inter-governmental developments by analyses of both policy-making in and policy implementation of these organizations. Ideally, policy research should then be sensitive to the fundamental interdependence of policymaking between mentioned organizations, by applying multi-level and multi-forum perspectives to a particular policy issue.

e. Changing European and American consumer preferences?

This study established that the growth of efforts at regulating labour standards privately has had to do with increased societal pressure on corporations. This was based on the assumption that a group of citizens in the US and Europe cared sufficiently for this issue to form a danger to corporations' reputation, sales, or shareholder value.

Sceptics have always doubted whether consumers would really take such a hard line position when it comes to ethical shopping—or whether they would do so consistently. For this reason it has often been proposed that CSR is a hype that may pass over quickly, as the attention of the masses turns to other issues and enthusiasm about slogans such as *Sustainable Business* and *Ethical Trade* fade away (*Ec*, 2005). As this research illustrates, the interest in CSR over the past decade has not faded away and is consistently fed new energy by a growing group of CSR practitioners in private, public, profit, and non-profit organizations (see for instance *Ec*, 2007).

A specific category of scepticism is the claim that the demand of consumers for fair and sustainable production may be influenced by the business cycle and is basically a luxury item, a sign of a period of prosperity. Such demand will not last in times of economic hardship (see for instance Govekar et al, 2002). Obviously, the development of private labour regulation has moved on since the early 1990s, as some general economic upswings and downswings in both Europe and the US took place, with no noticeable influence on the behaviour of or support for key actors in the CSR field. But the 'support for CSR as a luxury' hypothesis should not be dismissed too easily, given specific challenges awaiting European and American consumer audiences in the coming years. There is the spectre of global inflation. Economic 'catch-up' growth in Asia, Latin America, and Eastern Europe means rising demand for natural resources and food. Particular resources with a

finite supply (especially gas and oil) are becoming increasingly scarce. Because of this many food and non-food consumer products have become substantially more expensive in the recent years. Will consumer pressure for social and environmentally sound production persist, grow, or decline given these challenges? Analysts already note slowing growth in British Fair Trade product spending and attribute it to inflation, while in the Netherlands, Fair Trade sales still grow despite of it (*Vk*, 2009). It may meanwhile be questioned whether consumer concern with higher prices competes with consumer sensitivity to ethical issues. If it does and the sombre forecasts about price developments are right, CSR proponents face tough challenges in the coming years. The notion of fairness with regard to affordable prices might then negatively affect other notions of fairness that deal with global solidarity issues.

The issue of consumer salience to critical consumership can also be discussed decoupled from the question of economic circumstances. The question then concerns the patience of the consumer mass committed to sustainable production when it comes to private regulatory arrangements, and the issue of whether such arrangements are providing solutions for their concerns. In the case of labour standards in the clothing industry, discussion has been ongoing for about twenty years and collaborative private regulatory solutions have been in the making for thirteen years. How much longer can consumers await improvement in working conditions for clothing producers if the message from companies is that it is a 'work in progress' and activists and journalist keep revealing instances of worker abuse and even child labour? Is there a turning point where cynicism will take hold and support for both businesses and activists working on private labour regulation will decrease? Both questions are, of course, difficult to answer through research. Activists catering specifically to sustainable consumer audiences of course sense this and would therefore prefer to work with some form of consumer labelling sooner rather than later. As has been mentioned above, however, this is a path fraught with difficulties. The danger of the whole endeavour is increased cynicism on the part of consumers disappointed with the content of the promise delivered by such labels, recognizing that they cannot guarantee good working conditions for the product they buy.

The optimist thesis on future consumer attitudes could first focus on the beneficial effects of ongoing globalization: increased contact between people through travel, mass communication, and the efforts of transnational advocacy networks could mean rising awareness of global injustice, and a rising sense of solidarity, which would lead to increased pressure for CSR policies. Add to that increased concern about environmental degradation, influenced also by the mentioned scarcity in energy resources, which may further push consumer demand for sustainable production (for figures supporting this trend in the Netherlands, see *MVO Nederland*, 2009). Demands for global labour standards from activists may easily piggyback on this trend, since the concept of sustainability is

broad enough to encompass social and environmental concerns. This may then lead to increased consumer pressure for improving working conditions in clothing factories.

In order to test the validity of these scenarios, increased research efforts into consumer behaviour and attitudes are necessary. Recent innovative efforts (see Hiscox, 2006) have managed to analyze consumers in quasi-experimental settings in shops. This type of research needs to be applied in multiple settings in order to understand concretely the possible variation in consumer attitudes between people of different ages, from different countries, with different economic positions, and different lifestyles. Essential here is the cooperation of companies who permit researchers access to their shops.

5. Conclusion to a conclusion

This chapter has restated the main lessons of this study and identified trends in the structural contexts of the field of private labour regulation. A majority of the issues at hand seem to reflect developments in and the repercussions of shifts in the political and economic capabilities of actors from the developed to the developing world, both from West to East and from North to South. Further research may show the exact nature of these shifts and their consequences for private labour regulation in clothing production chains.

The insights of this study, judged solely from the perspective of its empirical cases, form mere snapshots of the evolving politics of private regulation. This may make the reader sceptical about whether the lessons that can be drawn from the text may be applied to other times and other political arenas. However, the limitations in scope do not render the currently presented insights about private regulation useless; far from it. This is because institutionalizing patterns of competition and cooperation between businesses, activists, and regulatory organizations will continue to form a key part of discussion on how to tackle global sustainability issues, also under changed structural conditions. Further, these dynamics can contribute to an enhanced understanding of the nature of international private regulation, the power of activism, and corporate strategies in contemporary global politics.

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Appendix I: The eight private regulatory organizations

1. Introduction

This appendix summarizes some characteristics of the eight private regulatory organizations for labour conditions in the clothing production chain. The information presented here also features within the main text, but it is collected here in order to offer the reader the key points at a glance. First it summarizes the main points in the history of the development of the organizations (as discussed in Chapter Four); then it rehearses how stringent these organizations are (as established in Chapter Three); and finally it presents their main policy characteristics (as in Chapter Three).

2. History

The eight regulatory organizations were developed between 1996 and 2004 in the United States and Europe, through formally independent negotiations. However, some firms and activist groups were party at more negotiation tables and the research shows that information about developments diffused between different sets of negotiators.

- The *Fair Labour Association (FLA, www.fairlabor.org)* started as the Apparel Industry Partnership (AIP) in 1996, including at first American apparel and sporting goods firms including Nike, Reebok and Liz Claiborne, trade unions and NGOs in the discussion on development of a code of conduct and an implementation scheme;
- *Social Accountability 8000* by the Council on Economic Priorities Accreditation Agency (CEPAA, later renamed *Social Accountability International, SAI, www.sa-intl.org*), was established by the US social research institute Council on Economic Priorities and included brand and retail firms, as well as NGOs and unions in development, from 1996 onward;
- The *Ethical Trading Initiative (ETI, www.ethicaltrade.org)* was negotiated in the UK from 1996 onwards, as a result of the engagement of NGOs and trade unions with company representatives, of mainly multi-product retailers, which are the biggest players in the UK market for consumer products;
- The *Fair Wear Foundation (FWF, www.fairwear.nl)* was the result of negotiations starting 1995 in the Netherlands. FWF is a collaboration of two clothing industry related trade associations, Modint and Mitex, Dutch trade unions, and Dutch labour and developmental NGOs;
- *Worker Rights Consortium (WRC www.workersrights.org)* was developed from 1999 onwards as an initiative by the US United Students Against Sweatshops, the American trade union federation AFL-CIO, together with a group of American NGOs as well as garments union UNITE

- *Worldwide Responsible Apparel Production programme (WRAP, www.wrapapparel.org)* was initiated by the American Apparel Manufacturers Association (nowadays American Apparel and Footwear Association, AAFA) from 1998 onwards, with input from consultants and US university staff;
- *Business Social Compliance Initiative (BSCI, www.bsci-eu.org)* was negotiated from 2003 onwards in the European business association for retailers, the Foreign Trade Association (FTA);
- *Initiative Clause Sociale (ICS)* was developed by a group of French retailers, including Carrefour and Casino, from 1998 onwards.

3. Stringency

Figure 1 depicts how the organizations are more or less stringent, following measurement of different policy variables before policy adjustments commenced.

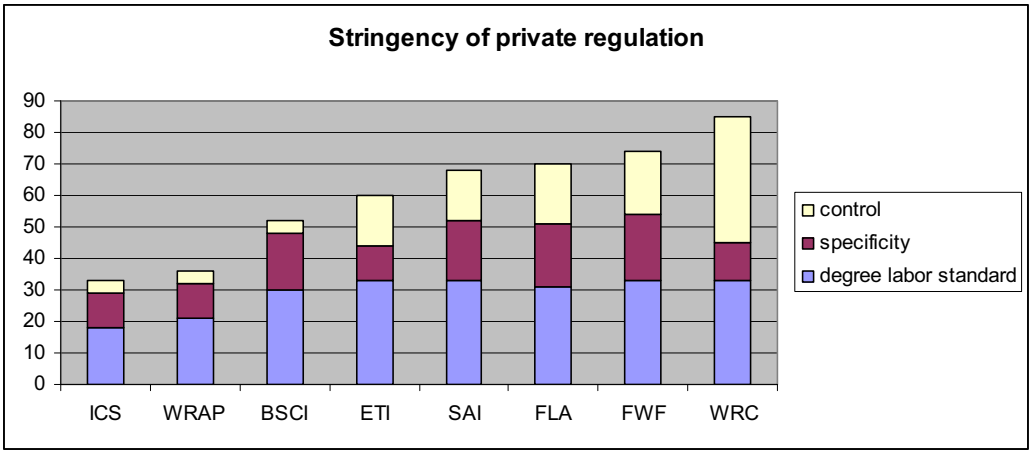

Figure 1. Stringency of private regulation

4. Policy characteristics

Central policy characteristics are summarized in Figure 2 below.

	Labour standards	***Implementation***	***Governance***	***Control***
ICS	ILO Conventions, unspecific about content	Less specific: audit & report	Business	Business controlled
WRAP	Local laws, except discrimination, forced and child labour	Less specific: audit & report	Business	Business controlled
BSCI	ILO conventions, discretion on living Wage	More specific: management implementation; audit; complaints; remediation	Business	Business controlled
ETI	ILO conventions, including living wage issue	Less specific: complaints; experimental on monitor; verification; remediation	Multi-stakeholder	Business > Societal
FLA	ILO conventions, excluding living wage issue	More specific: management implementation; monitor; verification; complaints; remediation	Multi-stakeholder	Business > Societal
SAI	ILO conventions, including living wage issue	More specific: management implementation; auditing; complaints	Multi-stakeholder	Business > Societal
FWF	ILO conventions, including living wage issue	More specific: management implementation; monitor; verification; complaint; remediation	Multi-stakeholder	Business - Societal
WRC	ILO conventions, including living wage issue	Less specific: external monitor and report	Societal	Societally controlled

Figure 2. Policy characteristics of private regulatory organizations

Appendix II: Methodology

1. Introduction

This appendix covers in more detail the methodological approach of the research. It discusses the advantages and challenges of an inductive strategy, elaborates the concerns with validity and reliability with regard to the different types of data gathering used, and discusses in more detail the activities with regard to interviews and survey questionnaires. Finally, it elaborates the ethical dimensions of the practice of empirical data gathering.

2. The logic of an inductive data gathering strategy

Inductive research means that the researcher is aiming in the first instance to understand. Keeping in mind different possibilities for the explanation of a phenomenon of interest, the researcher digs deeper into the topic, rather than testing the validity of an *ex ante* claim to an explanation. Induction also means a particular rhythm to the research, where different stages of data gathering exist with in-between evaluation of findings that could inform what happens in the next stage of field research. This study consisted of roughly seven of such periods of data gathering spread over four years between 2004 and 2008. Apart from material on the relevant research questions, each round of interviews and presence at gatherings also led to new ideas about respondents to be contacted and other material to be reviewed, until sufficient material was assembled to answer the research questions. Intermediate new ideas about possible answers to research questions led to new searches for data that might both bolster or destroy the possible validity of certain patterns believed to be present and relevant on the basis of earlier rounds of data gathering.

3. Data gathering, validity, reliability

I have used seven forms of data gathering which all have different implications for the validity and reliability of the findings.

First, I have studied the content of codes in order to establish the stringency of private regulatory approaches as elaborated in Chapter Three.

Second, I have studied publicly available material on codes of conduct and the actors involved in them, most of them taken from organization websites. These materials were used to reconstruct the history of private regulation and of specific policies as well as for identification of future respondents.

Third, I have spoken in an interview setting with representatives of firms, NGOs, trade unions, business associations, private regulatory organizations and governments. In general I have asked them to describe to me how certain political processes have evolved, what activities they have

taken, what goals they have pursued and what strategies they have followed to try and reach those goals. I have done so by applying what most commonly is called a procedure of semi-standardized interviewing, meaning that I have a list of general topics ready to be discussed, using freedom to pick up markers given by the respondent that seem of interest. The interviews covered issues across the different sub-questions.

Fourth, I have studied written material that became available through the help of respondents, including reports, accounts of meetings and letter exchanges.

Fifth, I have been present at some public occasions of stakeholder interaction such as workshops, seminars, discussion meetings and professional conferences. I have taken notes of the discussion between parties, observed interactions and participated in discussion in smaller settings of groups, predominantly by asking questions to speakers of panels. I have also used these venues to get in touch with several respondents.

Sixth, for the purposes of the second sub-question on company strategies, I have devised a questionnaire sent out to Western European and used the respondent answers

Seventh, I complemented the data with statistics describing region and industry economic development from both primary and secondary sources. These have been used to illustrate some of the developments related to by respondents or addressed in the primary literature.

Generally, in applying the seven mentioned methods of research, I have tried to steer clear from imposing my assumptions on the data, either through one sided interpretation while analyzing codes, texts, gatherings, or by rhetorically pushing respondents in the corner during interviews.

Above statement serves as a general benchmark for the *validity* of my research. The degree of *reliability* in the mentioned qualitative forms of research is dependent on two issues: first, the chance factor in the research formed by the availability of different respondents and different policy venues for the research, which might not so easily be replicable; second, the techniques applied in talking about policy.

A problem inherent with acquiring information from people representing social and policy positions is the problem of *in-speak* in the closer-to-data style methods (think of material provided by actors and interviews). There is a crowd of people very enthusiastic about CSR and more than willing to give their strategically convenient and very rosy picture of events and processes. Their accounts together may not add up to a *valid* story. How to go about this? First thing to do is to combine different methods of data gathering as mentioned (which basically means adding up different trade-offs between reliability and validity), but note that these can still come from similarly politically motivated sources, so the problem can be said to remain to some extent. Second strategy applied here in interviews and questionnaire settings, has been to make questions put out to respondents both as open and as specific as possible when it comes to reconstructing activities.

An additional approach to analyzing the actual content of interaction with actors that give policy views possibly tainted by a tendency towards socially desirable answering is firstly taking their answers as what they are: as both *accounts* of policy positions and *legitimizations* of policy positions, actions, and strategies. Whereas accounts have a degree of "factness" that can possibly be checked with other actors involved, legitimizations cannot be controlled for their "truth-factor" or frankness, and do not necessarily need to be so, since they can be analyzed as the way that the actor chooses to position him or herself publicly. These legitimizations of actions, positions and strategies can be compared to a list of other possible legitimizations for actions (either actual from other respondents or imagined and counterfactual), still showing important choices and trade-offs being made by the respondent in coming up with his or her legitimization. This position is inspired by the work of Murray Edelman (1964), who thought about ways of interpreting political language that is necessarily locked into certain discursive contexts. In addition, respondents can be confronted with alternative roads of legitimization not pursued by them. Their responses to that choice could also lead them to open up a bit more, and digress from a public relation story, as could do a confrontation of their position with a position taken by a different respondent during an interview.

In methodological terms, this leads to a reasonable spread of opportunities and risks in gathering data closer and further away from the subject of study, following Goldenberg (1992), who holds that the degree of proximity to data affects both reliability and validity, leading to inevitable trade-offs.

In general, three limitations can be identified in the gathering of data for this research. First, with regard to sub-research question 1 on the development of private regulatory organizations, it has to be noted that the "shelf life" of some of the required data was limited, or that some of the data did not become available to the researcher when it comes to records of discussions among parties. With regard to the material from interviews, it became apparent that interpretation of interview accounts from affairs longer than four or five years ago should be handled with care, since some interviewees lacked recollection or were inclined to reflect on processes, instead of offering their account of how things occurred. Lacunae in the material could fortunately partially be filled using secondary material, most prominently academic analyses focusing on the development of a private regulatory organization that was part of the case selection.

Second, with regard to sub-research questions 1 and 2, as research progressed it became clear that something significant was going on in the relationship between individuals and their organizations, in particular with regard to CSR managers and the companies they represent. Ideally, this dynamic would have been scrutinized by further study inside these organizations, including extra interviews with other organization representatives. With one exception, time and data access limits made this impossible, as an intra-organizational research strategy would require

a prior long-term process of trust building with organization representatives and not leave enough time for analysis of the developments on an industrial level alluded to in the research questions. Instead, the inferences made about this matter are the result of, first, a comparative logic, where the similarities in accounts of series of managers of comparable organizations are used to develop a picture; second, through triangulation outside of the particular organization, where well-informed outsiders that often deal with this person would reflect on the situation this particular person was in *vis à vis* his or her organization.

Third, with regard to sub-research question 3 on competition and convergence in particular, it was clear from the outset that the research subject would be a moving target, data gathering would be continuous, some information would be of too much strategic value to be shared with the researcher and research would have to stop at some artificial point while political developments might be going on. Because of this, planning of respondent interviews was spread across time, in some cases respondents were contacted again as time went by and policy documents were constantly monitored for reviews and additions. Personnel switches complicated this task in a few cases. Furthermore, respondents would sometimes allude to some significant issue but press the interviewer to keep it *off the record*. In most cases, these statements concerned on-going negotiations or policy developments. Most of these issues therefore at a later point became verifiable through the publication of new documents or *on the record* accounts by other respondents. Nonetheless, not all issues emerged from beneath the cover and not everything can therefore surface in this research. With regard to the possibility of an artificial ending to an on-going political process, the researcher was fortunate to witness a set of institutional results to on-going efforts at convergence near the end of his data-gathering period, which could very sensibly be used as an end point for the purposes of this study. This of course does not mean that political developments in convergence and competition would halt there, as hopefully the conclusion amply demonstrates.

4. Interviews and respondents

All people mentioned here have shared information, opinions and views with me that I am allowed to use for my dissertation research. All people are knowledgeable of my research aims. The manner of information exchange varies considerably however. Predominantly appointed face-to-face interviews were used as exchange. In rare occasions, telephone interviews and conversations during and in between public meetings were used. The list has a division between respondents agreeing to appear with full name, and respondents appearing anonymously upon their own request. In addition, a list of sites is mentioned where contact was established with most of these people, some interviews where undertaken and where further participant observation took place. Most

respondents were contacted as a representative of the particular organization they are currently working for, but in some cases their past experience with a different organization was also a matter of discussion. For this reason, all interview respondents are ranked using a letter corresponding with their current profession and a number. However, in an additional tick-box, all organizations the respondent has worked for and that were discussed in the interview are marked.

Occasion and site	*Date*
EU CSR conference, Maastricht	November 2004
Ethical Trading Initiative Conference, London	May 2005
Clean Clothes Campaign Discussion, Amsterdam	November 2005
EU Responsible Sourcing Conference, Brussels	November 2005
BSCI Conference, Brussels	November 2005
Research trip Washington and New York	March 2006
Research trip London and surroundings	April 2006
Research trip Shanghai, Ningbo and surroundings	July 2006
Social Accountability International Conference, Helsinki	September 2006
GTZ Shaping Globalization Conference, Berlin	October 2006
Research trip Istanbul and surroundings	April 2007
Ethical Trading Initiative Conference, London	October 2008

Table 1. Research sites

Code	*Name*	*Name organization*	*Firm*	*NGO*	*Union*	*PRO*	*Con*	*GVT*	*BA*
F1	A. Ashwani	John Lewis	X						
F2	S. Barlow	Monsoon, former Next	X						
F3	L. Bergendahl	Kappahl	X						
F4	A. Bjarland	Stockmann	X						
F5	D. Forterre	Asics Europe	X	X					
F6	M. Johnson	former Marks & Spencer	X				X		
F7	J. Kuisma	Kesko	X						
F8	A. Lohrie	Tchibo former Otto	X				X		X
F9	B. Moerri	MIGROS	X						
F10	F. Nagel	former WE	X			X	X		
F11	L. J. den Olde	HEMA	X						
F12	L. Roberts	Pentland	X	X					
F13	S. Seidel	PUMA	X						
F14	E. Spanier	Peek & Cloppenburg	X						
F15	M. Vermin	Gsus	X						
F16	K. Woordward	Quantum Clothing	X						
F17	Anonymous	Dutch clothing retailer	X						
F18	Anonymous	European clothing brand	X						
F19	Anonymous	British multi-product retailer	X						
F20	Anonymous	British multi-product retailer	X						
F21	Anonymous	Dutch clothing retailer	X						
N1	D. Pruett	Oxfam Netherlands		X	X				
N2	F. Humbert	Oxfam Germany		X					
N3	T. Connor	Oxfam Australia		X					
N4	I. Zeldenrust	Clean Clothes Campaign Intnl		X					
N5	J. Merk	Clean Clothes Campaign Intnl		X					
N6	F. de Graad	Clean Clothes Campaign NL		X					
N7	S. Stillman	Uni. Students Against Sweatshops		X					
N8	S. Kimmel	Uni. Students Against Sweatshops		X					
N9	I. Wick	Suedwind\CCC		X					
N10	M. Pflaum	Christliche Institut Romero\CCC		X					
N11	S. Indermuehle	Berne Declaration\CCC		X					
N12	M. Hearson	Labour behind the Label\CCC		X					
N13	E. Strohscheidt	Misereor		X					
N14	J. Thorsell	Fair Trade Centre Sweden		X			X		
N15	N. Ajaltouni	L'ethique sur de l'etiquette\CCC		X					
N16	Anonymous	Labour service centre China		X					
N17	Anonymous	Labour service centre China		X					
N18	Anonymous	Student labour organization China		X					
N19	Anonymous	Labour movement Bangladesh		X					
U1	D. Miller	Global Union ITGLWF			X				
U2	A. Kaag	Dutch Union FNV Mondiaal			X				
U3	S. Gurney	British Union TUC			X				
U4	S. Engin Kaya	Turkish Union			X				
U5	J. Fuerstenborg	UNI-Commerce			X				
P1	D. Rees	Ethical Trading Initiative				X			
P2	J. Meijer	Fair Wear Foundation				X			
P3	S. Stoop	Fair Wear Foundation				X			
P4	A. Schmaedick	Worker Rights Consortium		X		X			
P5	A. Lally	Fair Labour Association		X		X	X		
P6	R. Tufts	Fair Labour Association				X			
P7	D. Baumann	Fair Labour Association	X			X			
P8	D. Leipziger	Social Accountability International		X		X			

P9	L. Berzau	Business Social Compliance In.				X			X
P10	K. Bogaers	Business Social Compliance In.				X			
P11	K. Quigley	Worldw. Resp. Apparel Production		X		X			
P12	E. Verburg	Made-By				X			
P13	M. Huis in 't Veld	Made-By				X			
P14	M. F. Touron	Initiative Clause Sociale				X			X
P15	M. Murphy	Joint Initiative (JO-IN)			X	X			
C1	T. Norton	SEDEX					X		
C2	Anonymous	Audit company					X		
C3	Anonymous	Audit company					X		
C4	Anonymous	Audit company					X		
C5	Anonymous	Consultant					X		
G1	L. Rieth	German development agency GTZ					X	X	
G2	S. Zimmel	German development agency GTZ						X	
G3	M. Pondman	Dutch Ministry Economic Affairs						X	
B1	J. Wintermans	Modint							X
B2	Anonymous	American Chamber of Commerce							X

Table 2. Interview respondents. F=Firm, N=NGO, U=Union, P=Private regulatory organization, C=Consultant, G=governmental representative and B=Business association.

5. The survey

The survey was distributed as a link to an on-line questionnaire to company representatives through e-mails, letters and reminder phone calls in Spring\Summer 2008. The on-line format of the survey had as an advantage that respondents could make their contribution in a fast and easy way. Possible disadvantage of this method of survey gathering is a possible carelessness among respondents in answering questions. I have had to rely mostly on professional ethics and corporate reputation here to circumvent this problem. Additionally, in some cases I have used interview data and publicly available material to check some of the input delivered that seemed contradictory or very improbable. In cases where additional material was not in line with respondent's initial input, the input of respondents was disregarded.

The survey data were combined with further primary document data and interview data to create a database on the Western European clothing market. This database was then used for statistical tests using STATA software. Analyses were run using 50 answer sheets by firms involved in a private regulatory organization and an additional control group of 10 of firms that have not adopted private labour regulation. These were combined with public material of all the remaining 67 firms adopting private regulation at the date of July 1st 2007. Characteristics of operationalized variables can be viewed in tables 3 and 4 below.

Variable	Obs	Mean	Std. Dev.	Min	Max
Stringency	117	3.153846	1.545937	1	6
Multi-stakeholder	116	0.543103	0.5003	0	1
Supply-chain responsibility 1	86	0.27907	0.451173	0	1
Supply-chain responsibility 2	116	0.206897	0.406838	0	1
Frequency of contact	75	3.106667	0.938275	1	4
Target of attack	60	0.866667	0.891897	0	3
Consumer requests	60	3.9	2.229996	1	8
Negative attention	60	1.8	1.021796	1	4
Market share	114	2.149123	1.512382	0	6
Retail	123	2.219512	1.591662	0	4
Discount market segment	127	0.370079	0.484738	0	1
Internationalization	125	2.792	1.525567	1	5
Public	125	0.32	0.468353	0	1
Party since	117	5.794872	2.027987	1	8
Country CSR	127	2.771654	0.457547	1	3

Table 3. Summary statistics

	Stringency	Multi-stakeholder	Supp.chainResp1	Supp.chainResp2	Freq.contact	Target	Consumer req.	Neg.attent.	Market share	Retail	International.	Discount	Public	Party since	CountryCSR
Stringency	1														
Multi-stakeholder	0.92	1													
Supply-chain responsibility 1	0.89	0.82	1												
Supply-chain responsibility 2	0.89	0.82	1	1											
Frequency of contact	0.14	0.24	0.16	0.16	1										
Target of attack	0.19	0.23	0.29	0.29	0.62	1									
Consumer requests	0.15	0.20	0.24	0.24	0.47	0.45	1								
Negative attention	-0.11	-0.02	0.11	0.11	0.45	0.37	0.46	1							
Market share	-0.08	0.08	0.08	0.08	0.46	0.57	0.33	0.54	1						
Retail	-0.47	-0.48	-0.42	-0.42	0.07	-0.03	0.13	0.12	0.13	1					
Discount market segment	-0.55	-0.60	-0.46	-0.46	0.09	0.06	0.07	0.15	0.02	0.31	1				
Internationalization	-0.01	0.21	0.12	0.12	0.17	0.27	0.19	0.49	0.67	-0.10	-0.14	1			
Public	-0.17	-0.13	-0.09	-0.09	0.37	0.37	0.35	0.64	0.57	0.31	0.22	0.42	1		
Party since	0.21	0.04	0.11	0.11	-0.28	-0.15	0.17	-0.04	-0.35	-0.14	-0.04	-0.18	-0.09	1	
Country CSR	0.23	0.08	0.08	0.08	-0.30	-0.29	-0.22	-0.26	-0.52	-0.11	0.02	-0.35	-0.22	0.49	1

Table 4. Correlation matrix

6. Ethical considerations

What is my position as a researcher towards my research subject? This is the big question that all researchers have to face. As a person I am politically committed to the raising of labour standards around the world, and especially the empowerment of workers who can defend their own interests in unions. For this reason at the outset of this research I personally stood closer to representatives of trade unions and NGOs than to those of corporations (or governments). But I started this research as an independent researcher from a functional and institutional point of view, in the sense that I am not a participant in any of these groups. I have therefore approached all my respondents in the role of an independent researcher and made sure they were aware of it in settings of public interaction.

I have taken care to use an empirical strategy that would enable me to throw my possible initial political prejudices into doubt and this has, from a personal view, been a successful strategy in so far as my own views of organizations, people and policies have been transformed by it. Where possible, I have after the interview shared some of my ongoing views on the topic with my respondents (if they were interested), in order to give them an idea of where I stand personally. I have refrained from passing on sensitive information between interview and survey respondents. As best as I could I have also tried to protect the respondents from possibly being negatively affected in any way by their contribution to this research. In some cases this has led, after consultation with the respondent, to an anonymous account of the respondent's views. Information provided under the condition that it was *off the record* has not been used in this research.

English summary

Corporate Social Responsibility (CSR) has become the term that describes the efforts of firms to deal with human rights, labour and environmental problems. Nowadays most of us probably expect companies to mind their profits and share prices, so why then the focus on these ethical issues? And what may we expect from these voluntary activities of firms?

Both are vital questions. Academic literature has a satisfactory answer to the first question. CSR owes its popularity, first, to globalization, more specifically: the organization of production across borders, connecting developed and developing economies. Second, CSR is a response to what is called a *global neo-liberal framework*. This entails the failure or unwillingness of developing country governments to deal with labour, human rights and environmental standards (because their primary concern is with boosting exports); and the current weakness of efforts by international organizations and governments of developed countries to repair this (because they are focused on increasing global economic trade and see the mentioned standards as a barrier to this cause). Third, CSR comes into existence because of social pressure on firms, exercised by labour, environmental, human rights and gender activist networks, national trade unions, developmental NGOs, and consumer and/or shareholder movements in Northern America and Western Europe. A response to the critical demands of these groups leads to corporate efforts at being Socially Responsible.

The second question (What to expect from CSR?) for now remains open and has therefore invited this study. This dissertation seeks to deliver more insight into the potential of a particular type of Corporate Social Responsibility, namely the private and voluntary rules that companies adopt to improve working conditions in transnational production chains.

Specifically, this study seeks to describe and explain the developments within the clothing industry to organize private rules for improvement of labour conditions. It focuses in particular on answering the following three questions: first, how and why do private regulatory organizations focused on improving labour conditions develop more or less stringent policies to improve labour conditions in supplier factories?; second, how and why do businesses come to support specific approaches to private regulation of labour conditions?; and third, how, why and to what effect do competition, cooperation and convergence emerge between the existing regulatory organizations focused on labour standards in the clothing industry?

By asking these questions, the study focuses on a crucial dynamic in the politics of CSR, between the qualities of rule (how credible are different approaches to private regulation to improve labour, environmental, and human rights standards?), and actor support (specifically business support) for private regulation (how widely are different types of rule adopted voluntarily by

companies?). *Can CSR be significantly addressing ethical issues and be widely popular with firms at the same time?*

This study argues that answering all of these questions requires attention to evolving relationships between political actors that shape the policies of private regulatory organizations and their business membership. It shows how private regulation can be more or less stringent on a range of dimensions, including the degree to which interest groups are involved in implementation and review of rules. It explains the difference in approaches emerging from private regulatory organizations by showing how fluid, unpredictable group dynamics matter more in earlier phases of negotiation, while actor positions and agendas matter more in later stages. It shows how managers of firms choose to support specific forms of private regulation mainly as a response to societal pressure, which itself is affected by the position of these managers in national environments and towards other industrial actors. And it explains competition, cooperation and convergence between private regulatory organizations by showing how past events, evolving rivalries, vested interests and organizational differences within the industry and activist realms encourage splits in the regulatory effort. These findings add up to the study's general conclusion that the approach to private labour regulation for clothing production is diverging in more and less stringent forms of regulation -- the former supported by firms and activists whose organizational concern is relatively closer to the point of production (brands, designers, labour advocates), and the latter by firms and activists more directed towards the point of consumption (retail firms, consumer action groups).

The study therefore provides five contributions to the current academic debate on CSR and private regulation.

First, it advances a particular understanding of the qualities of private labour regulation. Focusing on differences in the stringency of private regulatory organizations, it uses common tools of policy analysis such as the measurement of degrees of standards and specificity of implementation procedures to show how labour conditions are an essentially *political* issue, determined by power relations between business and societal groups. Analysis shows that stringent forms of private regulation exist alongside less stringent approaches. Moreover, the development of different types of private regulation and the evolving character of regulatory organizations show that the emergence of more stringent private labour regulation, and the harmonious set-up of multi-stakeholder governed regulation allowing equal input for business and societal voices, may very well have been a short historical circumstance that will not recur. Increasingly, recent developments in the regulatory fields are following the direction of either business groups or activist groups going it alone, or businesses pursuing new multi-stakeholder set-ups that decrease the actual influence of societal interest groups on regulation.

Second, this study shows that activists have a crucial role in initiating stringent private regulatory organizations and pushing firms to participate in them. At the same time, it shows that there are limits to what activism may achieve given the private and voluntary nature of regulatory arrangements, which opens up space for corporations to reject, compete with, or transform efforts at stringent private regulation. Moreover, a divide within the movement for private labour regulation is identified that may affect the impact of future activist efforts in general.

Third, the results demonstrate the significance of both an *industrial* and, in the case of business preferences for existing regulation, a *national environment* in understanding the interaction between firms and activists. In particular, this study emphasizes the importance of *the position of both business and activist groups in the transnational production chain*. The distance of these groups from both the point of consumption and the point of production, in terms of market strategy or political constituency, is crucial for strategic action with regard to private labour regulation. Closer engagement with the point of production is then an indicator of a preference for higher stringency. Since the buying firms that fall in this category increasingly form a minority, both in the industry and within the field of private labour regulation, a general preference for less stringent forms of regulation is coming about.

Fourth, notwithstanding the previous point, the importance of persons and organizational dynamics are testament to the fact that the developments in the politics of private labour regulation are affected by *agency.* This study in particular argues that within certain social and temporal settings, political interaction is characterized by substantial ambiguity. It is then that the actions of persons within profit and not-for-profit organizations are influential for events evolving in the political field.

Fifth, the research reveals that private regulatory competition is a process that on the whole may stimulate persistent heterogeneity and divergence in the policy approaches of regulatory organizations, despite political efforts to induce a shared understanding of what constitutes legitimate private regulation among parties. Economic and social interaction may work differently to expectations about progressive convergence between regulators, also because the limited convergence that does take place does not lead a majority of organizations and firms towards a *ratcheted up* version of private labour regulation.

The study concludes with some observations on how future changes in the global political economy may affect the evolution of private labour regulation. By looking in particular at the rise of China and India, relations between companies in the clothing and wider retail sector, developments in public regulation and trends in consumer behaviour, it establishes new research avenues that contribute to the question of whether global clothing production in the future will adhere to fair labour standards.

Nederlandse samenvatting

Maatschappelijk Verantwoord Ondernemen (MVO) is tegenwoordig een populaire term waarmee de activiteiten worden omschreven die bedrijven ontwikkelen voor de bescherming van milieu, arbeidsomstandigheden en mensenrechten. Menigeen zal zich afvragen waarom bedrijven zich vrijwillig met dit soort onderwerpen bezighouden. Draait bedrijfsstrategie immers uiteindelijk niet om winstcijfers en aandeelhouderswaarde? En wat kunnen we van dit soort activiteiten verwachten?

Academische literatuur heeft tot nog toe een redelijk bevredigend antwoord op de vraag waarom MVO tegenwoordig populair is en waarom bedrijven zich met grensoverschrijdende, ethische vraagstukken bezighouden. Ten eerste komt dit doordat veel productieprocessen tegenwoordig mondiaal georganiseerd zijn. Producten die hier in Nederland in de winkel liggen kunnen bijvoorbeeld grondstoffen hebben uit Afrika en in elkaar zijn gezet in Azië voordat ze hier naartoe worden getransporteerd. Westerse bedrijven besteden steeds meer uit aan andere kleinere bedrijven en producten ontstaan dus in grensoverschrijdende interactie tussen verschillende, formeel onafhankelijke bedrijven.

Ten tweede komt het op veel plekken waar goederen voor Westerse markten geproduceerd worden voor dat nationale en internationale regels voor arbeid, milieu en mensenrechten niet in acht worden genomen. Meestal gebeurt dit moedwillig, soms uit noodzaak, omdat de overheden van ontwikkelingslanden beperkte mogelijkheden hebben om naleving van wetgeving te controleren. Academici (en sommige critici) spreken wel van een *neoliberaal raamwerk* dat deze veronachtzaming van regelgeving in stand houdt. Daarmee wordt bedoeld dat nationale en internationale instanties er vaak de voorkeur aan geven om grensoverschrijdende economische handel te stimuleren en regels ter bescherming van milieu en arbeid daarbij als hinderlijk ervaren.

De derde reden voor de populariteit van MVO is dat in veel Westerse landen consumenten niet accepteren dat goederen gemaakt worden zonder acht te slaan op mens en milieu. Omdat overheden en internationale instanties dus niet thuis geven, richten netwerken van activisten, ontwikkelingsorganisaties, vakbonden en soms ook religieuze groeperingen zich met hun kritiek direct op Westerse bedrijven. De reactie op die kritiek betekent vaak het begin van MVO-beleid binnen ondernemingen.

We begrijpen dus waarom MVO-activiteiten ontstaan, maar minder duidelijk is wat wij van MVO-activiteiten van bedrijven kunnen verwachten. Dit onderzoek probeert een bijdrage te leveren aan deze vraag en richt zich daarbij, ten eerste, op het mondiale probleem van slechte arbeidsomstandigheden en, ten tweede, op een specifiek productieproces waar vele bedrijven bij betrokken zijn, namelijk dat van kleding.

Het onderzoek werpt in het bijzonder licht op de spanning tussen de kwaliteit van regelgeving door MVO-initiatieven ter bescherming van mens en milieu enerzijds en de steun die deze initiatieven verwerven van bedrijven anderzijds. Kunnen MVO-regels zoals private arbeidsregulering tegelijkertijd streng zijn en ondersteund worden door de kledingindustrie?

Het korte antwoord op deze vraag is: ja en nee. Strenge private arbeidsregulering ontstaat wel degelijk en wordt ook gesteund door delen van de kledingindustrie. Maar naast strenge wordt ook minder strenge arbeidsregulering ontwikkeld en deze laatste krijgt vooralsnog meer steun van bedrijven. Het hoe en waarom van deze uitkomst wordt hieronder in vier stappen verder uit de doeken gedaan.

De studie onderzoekt ten eerste de inhoud van bestaande beleidsinstrumenten zoals die naar voren zijn gebracht door de acht reguleringsorganisaties ter verbetering van arbeidsomstandigheden waar kledingbedrijven zich bij hebben aangesloten. Deze organisaties bieden arbeidsregulering aan die kan variëren in strengheid. Strengheid kan het best gemeten worden door te kijken naar drie zaken: welke arbeidsstandaarden bedrijven precies moeten naleven; in hoeverre de instrumenten ter invoering en controle van arbeidsstandaarden die de organisatie aanbiedt specifiek zijn; en welke verdeling van verantwoordelijkheid binnen de arbeidsreguleringsorganisaties bestaat tussen vooral bedrijven en maatschappelijke belangengroeperingen. Dit laatste is van belang om, enerzijds, kritische controle uit te voeren op de voortgang van deelnemende bedrijven, en anderzijds, zwakke groeperingen (met name arbeidersorganisaties in ontwikkelingslanden) te steunen bij de ontwikkeling van capaciteit die benodigd is om arbeidsstandaarden te waarborgen. Op basis van deze drie criteria blijkt dat twee van de bestudeerde organisaties en hun arbeidsregulering zeer streng zijn, een groep van drie organisaties gemiddeld streng, en drie organisaties die bestuurd worden door enkel bedrijven weinig streng.

Ten tweede verklaart het onderzoek hoe het komt dat er verschillende soorten reguleringsorganisaties zijn ontstaan met verschillende benaderingen van het probleem van slechte arbeidsomstandigheden. Drie factoren helpen hier bij de verklaring: de tijd waarop de organisatie is ontwikkeld, de verschillen tussen belangengroeperingen die bij de oprichting betrokken waren, en de dynamiek van interactie tussen de onderhandelaars die moeten besluiten tot het te voeren beleid van de organisatie. Al naar gelang reguleringsorganisaties eerder of later ontstaan wordt het onderhandelingsproces meer of minder chaotisch en onvoorspelbaar, meer of minder geleid door dynamiek tussen onderhandelaars en meer of minder beïnvloed door een gebrek aan kennis van de partijen aan tafel. De eerste generatie van reguleringsorganisaties ontwikkelde dus strengere of minder strenge arbeidsregulering als gevolg van langere, meer 'vloeibare' onderhandelingen tussen bedrijven en maatschappelijke groeperingen, al naar gelang het voortouw werd genomen door hard-liners of rekkelijken. De meer recent ontwikkelde reguleringsorganisaties daarentegen ontstonden

uit een strakker onderhandelingsproces tussen een beperktere groep aanwezigen met een helder beeld voor ogen van de gewenste uitkomst. Op deze manier ontstond een strenge arbeidsreguleringsorganisatie uit onderhandelingen door een klein aantal activistische maatschappelijke groeperingen en minder strenge arbeidsreguleringorganisaties als gevolg van door voornamelijk bedrijven gedomineerde ontwikkelingsprocessen.

Ten derde laat het onderzoek zien hoe Europese bedrijven voorkeuren ontwikkelen voor meer of minder strenge arbeidsregulering. De belangrijkste factor hier is de druk die wordt uitgeoefend op bedrijven om Maatschappelijk Verantwoord te Ondernemen, met name door maatschappelijke groeperingen. Het blijkt dat bedrijven die veel en vaak blootstaan aan deze druk geneigd zijn zich aan te sluiten bij reguleringsorganisaties die strenge regelgeving voorstaan. De mate waarin bedrijven zich onder druk voelen gezet wordt ook beïnvloed door nationale en industriële verschillen. De studie toont vooral aan dat bedrijven met grote merknamen, duurdere kleding en meer betrokkenheid bij het productieproces vaker een voorkeur hebben voor strengere regulering, terwijl de grotere groep van bedrijven die zich richten op een retail-strategie, minder dure kleding en minder betrokkenheid bij het productieproces (bv. warenhuizen, grotere modewinkelketens), vaker minder strenge regulering kiezen.

Tenslotte beschrijft en verklaart het onderzoek in hoeverre de competitie tussen de acht organisaties met verschillende benaderingen van het probleem arbeidsomstandigheden gevolgen heeft voor de kwaliteit en geloofwaardigheid van de aanpak van arbeidsomstandigheden in de kledingindustrie als geheel. De studie toont aan dat door rivaliteit en competitie enerzijds en toenadering en samenwerking anderzijds langzaam twee clusters van arbeidsregulering ontstaan: de een streng, de ander minder streng. De strenge vorm wordt vooral bevorderd door bedrijven met grote merknamen en duurdere kleding, in alliantie met maatschappelijke organisaties die opkomen voor arbeidersbelangen. De minder strenge vorm wordt voornamelijk gesteund door retail-bedrijven en aanbieders van goedkopere kleding, samen met maatschappelijke organisaties die zich meer richten op de belangen van de ‘duurzame’ consument. De coalitie die de minder strenge vorm ondersteunt is het grootst.

De studie sluit af met een blik op de toekomst. Zij voorspelt welke mogelijke positieve en negatieve gevolgen een aantal waargenomen trends in de internationale politiek en economie kunnen hebben op de kwaliteit van private arbeidsregulering. In het bijzonder worden de opkomst van China en India, de veranderende verhoudingen tussen bedrijven in de Europese kledingindustrie, de ontwikkelingen in intergouvernementele organisaties en veranderingen in consumentenvoorkeuren besproken. Op deze manier worden nieuwe onderzoeksvragen geformuleerd die verder licht kunnen werpen op de vraag of mondiale productie van kleding in de toekomst kan voldoen aan eerlijke arbeidsstandaarden.

About the author

Luc Fransen (1979) was born in Grave, the Netherlands. After his secondary school in Nijmegen he moved to Amsterdam to study political science at the University of Amsterdam. During his study he was an exchange student at the University of Sussex in the UK.

Before starting his PhD research at the Amsterdam School for Social science Research (ASSR), he was a junior lecturer for the political science department. He has taught courses on globalization, governance, Corporate Social Responsibility, International Relations Theory, international organizations and global activism.

During his PhD research Luc has been a visiting researcher at the Policy and Governance Program of the Forestry School at Yale University, as well as at the Robert Schuman Centre for Advanced Studies of the European University Institute in Florence.

His work has been published in *European Journal of Industrial Relations*, *Organization* and *Comparative Sociology*.

Next to his PhD work, he has been involved in external research and expert assignments for Dutch developmental organizations.

Outside of the academic world, he enjoys rock music, football, running, television drama and novels.

Luc currently lives in Amsterdam.