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Minding their own business? Firms and activists in the making of private labour regulation

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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 ineffectiveness 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.

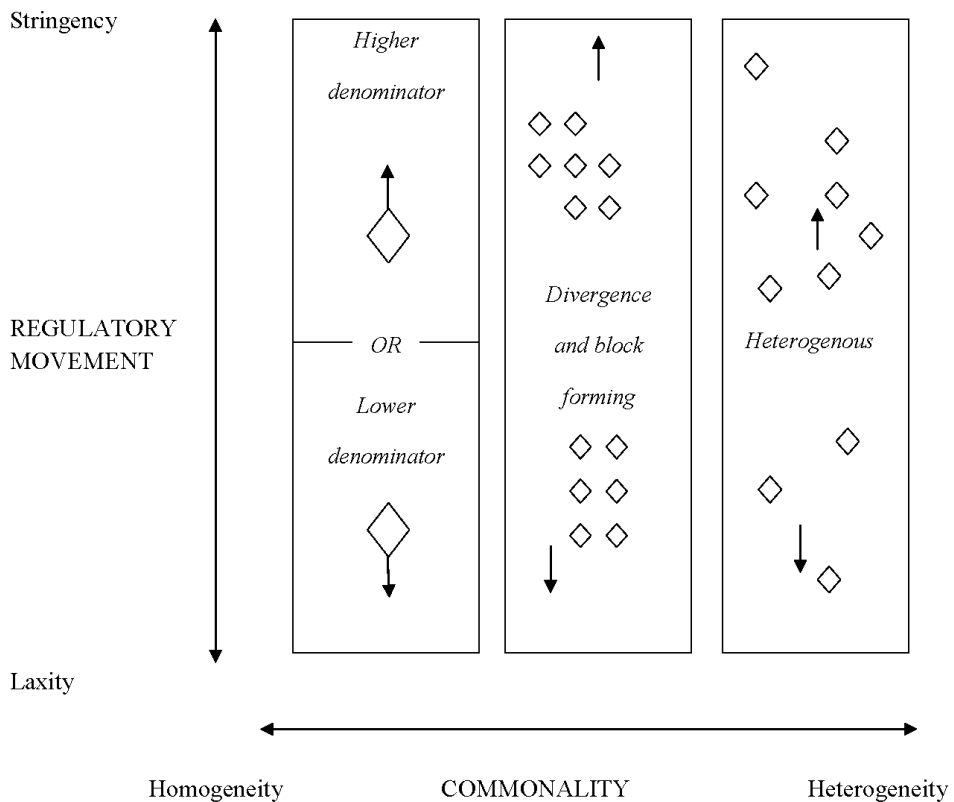


Figure 1. Stringency and commonality in regulatory competition. Adapted from Murphy (2004).

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 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 Esbenschade, 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 a 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 Espresso 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 smoothed 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 entrepreneurship 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-stakeholderhood. 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-stakeholderhood 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

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-wware/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.sai-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-stakeholderhood 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>.

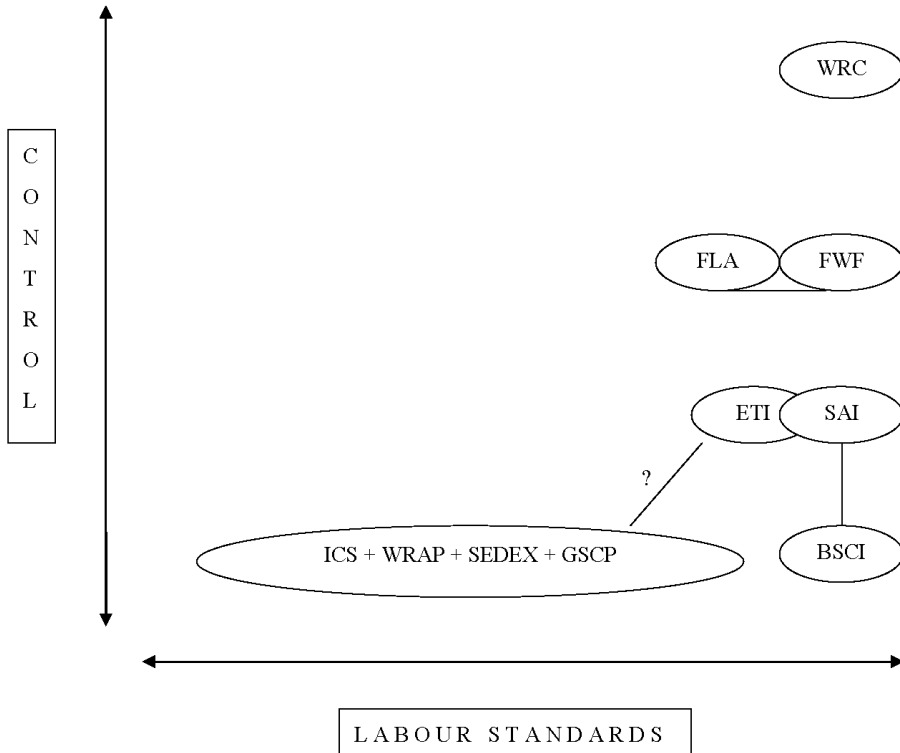


Figure 3. Emerging alliances and positions on a scale of control and labour standards

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.