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

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Citation for published version (APA):

Fransen, L. W. (2010). *Minding their own business? Firms and activists in the making of private labour regulation*.

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Chapter Seven. Conclusions and prospects

During a recent professional conference on implementation of private labour standards in the supply chain, the attendants are seated at small tables. They are asked to make a list per table of the biggest challenges they currently see in improving working conditions. At one table, a union representative, a director of an NGO and three CSR managers of different firms are seated. One of the CSR managers kicks off by stating that he finds it difficult that his suppliers are also audited for labour standards by many other buying firms, which leads to confusion, contradictory demands and high investments and time and energy for supplier management. The second CSR manager chimes in and says that for him the biggest issues is the difference in commitment from buying firms: “I can talk to the supplier all I want about the changes he needs to make, but I am only one out of ten clients he has. When the other nine keep cutting him slack on the issue of wages and overtime, despite the claims they make in their CSR reports, there is little I can do.”

The NGO director states that for her it is also a major concern that there is this group of companies supporting some lax form of private regulation but not supporting real improvements. The union representative voices his worries about the lack of involvement of workers in auditing processes: “They are supposed to be the beneficiaries, yet they are neglected every step of the way. These professional auditors are not at all equipped to work with them.” Finally, the last CSR managers notes that consumers seem to get confused. “In our store, we are able to provide eco-labels and Fair Trade certificates for many products, but for our biggest segment, clothing, we still do not know what to say to customers when they ask what concern there has been about workers. We can hardly tell them about all the problems we just raised here, can we?”

1. Introduction

Previous chapters discussed that three issues drive most of the discussion on Corporate Social Responsibility in contemporary Western societies: first, the degree to which CSR can be considered an actual policy, instead of a corporate communication exercise; second, the degree to which CSR can actually contribute to more equitable and sustainable production processes; and third, the degree to which it might be a lasting phenomenon supported by a critical mass of firms. These issues inspired the research questions of this study, leading to an inquiry into the development of different approaches to private labour regulation, the development of business support for private regulation, and the consequences of competition between private regulatory organizations.

This study identified patterns of evolving relationships between political actors that shape the policies of private regulatory organizations and their business membership, leading to private regulatory approaches that are more or less stringent and more or less popular with firms. It was shown how stringency of regulation can be addressed not only by focusing on the content of standards or types of policies, but by gauging the degree to which different interest groups are involved in implementation and review of rules. The study revealed that more and less stringent approaches emerged as a result of negotiations between interest groups that were more or less fluid according to the timing of their establishment. It was shown that differences in national environments and specific positions within the industry, together with managerial perspectives, inform the firm's response to societal pressure and the decision of what form of private regulation to support. Regarding competition and convergence, two converging groups of private regulatory organizations were identified and the resulting split within the realm of private regulation explained by historical paths, interactions and emerging differences between organizations. The field of private labour regulation for clothing production is therefore split in two, with support for lower and higher stringency regulation, the former from firms with a focus on production and design next to retail, together with a group of activist organizations claiming some form of concern for or representation of workers in developing countries; and the latter from firms with predominantly retail strategies and NGOs more focused on consumer attitudes.

The three issues driving the debate on CSR can now be revisited with the lessons of this research in mind.

The first issue is perhaps the simplest: CSR, real or PR? For clothing production, both are true to some extent. For some firms private labour regulation is about re-assuring texts on websites and in reports—nothing more. For others it means an array of actual activities. Regardless of this, it is clear that for the corporations studied in this research, CSR has become a practice in the multinational corporation that extends beyond the PR department. A movement of professionals with a vested interest in the topic has emerged within business organizations, supported by a blooming service industry, a set of societal interest groups, and a variety of regulatory organizations. Notions of corporate reputation, risk management, and sometimes business ethics among managers at the top of the corporate organization support and protect this movement. The efforts of this CSR movement are also making small but definitive inroads into 'hard-line' business practice: creating adjusted criteria for sourcing decisions, shrinking the size of the supply chain, extending the duration of contracts between buyers and suppliers, and helping to change the overall management of buyer-supplier relations.

CSR is therefore slowly becoming an institutionally settled ingredient of the Western European industries analyzed in this study in so far as the people professing it succeed in sustaining

their positions, and can see that their work on CSR affects business operations. This answers the question whether CSR might be a lasting phenomenon employed by a mass of firms. On the basis of this study, this seems likely.

But this 'success' says nothing about the actual impact of private efforts, the remaining and perhaps most salient of the three CSR issues raised here. What is the extent of current corporate commitment to labour standards in supply chains? Activists, by organizing and mediating societal pressure on corporations, have given the CSR movement the kiss of life. However, the regulatory market that evolved from their efforts has not been to the liking of most activists, as internal divisions and 'breaches' in the industry have fragmented regulation. Competition between regulatory approaches is not leading to a best practice model supported by everyone, which would otherwise be the basis for the legitimacy of private regulation. In most regulatory setups, the position of workers remains fragile while an industry of auditors and consultants check and train suppliers towards increased performance. Despite the popularity of the stakeholder concept and the continuous interaction between activists and companies, most companies prefer to control private regulatory organizations and exclude societal peer review of the kinds that may empower workers. Most stringent forms of private regulation remain a niche in the regulatory market.

This outcome reveals the capacities and limitations of business actors and activists and the consequences of their dynamic interaction in a political field that is becoming increasingly institutionalized. Outcomes are also affected by the way that structural conditions impinge on the field. The introductory chapter identified three so-called 'structural contexts' to the emergence of political interaction studied in this dissertation: the fragmentation and geographical dispersion of production; a neo-liberal regulatory environment on national and international levels; and increased societal attention for social and environmental issues related to consumer products in Europe and the US.

From the previous chapters it can be concluded that the shape that these structural contexts have taken on due to the analyzed actions and interactions has not helped to further the cause of stringent regulation for the industry. First, the fragmentation of production has taken such a form that effectively Western buyers govern production chains, provided that they act similarly or in concert with their suppliers. Collective action in promoting labour standards is therefore required, but very difficult given the competitive nature of interaction in the industry. Moreover, the geographical concentration of production in one of the more authoritarian societies in the world (China) greatly complicates efforts promoting worker rights. Second, the neo-liberal regulatory environment on national and international levels has not led to (inter-)governmental pressure for specific private solutions, but to support for private solutions in general, whatever their specific content may be, thereby stimulating a fragmentation of regulatory efforts. And when pushing for

convergence, public regulatory functionaries have refrained from offering criteria for the direction this convergence should take, failing to identify a baseline or best practice for corporate voluntary action. Third, regarding societal pressure, activists (unsurprisingly) have not succeeded in engaging larger audiences with the intricacies of what they consider fair and unfair private labour regulation. The result is that policy discussion about legitimate private solutions takes place between expert professionals (activists, business representatives, consultants) at a large distance from consumers. The sole claim of the critical consumer audience remains that corporations should deal ethically with labour conditions. But consumers do not know how. This creates space for all kinds of voluntary action that may to some extent claim to benefit social goals—including half-decent and even cynical efforts.

The politics of private labour regulation in the clothing market and production chain have an unfinished nature. This is because as the development of private regulatory organizations goes on, regulatory organizations can rethink their policies, and policy discussion about what constitutes good regulation in turn evolves. While this process is ongoing, of course the world keeps turning. Developments in national and international politics and economy gradually create new challenges and opportunities for the actors involved in this field of politics. This has two implications for this work of research.

First, there are obvious limitations to what this study can say about its main topic. In section 3 of this chapter, these limitations will be identified, and some suggestions are made about how future research may fill the lacunae that this work leaves. Second, in order to grasp the significance of the empirical findings of this study, it is important to look at what developments in the global political economy, either ongoing or on the horizon, may affect the trends as portrayed in previous chapters. This brings us back to the three identified structural contexts. What would happen if these contexts were to stay similar? And what would happen if they were to change in several ways? In order to understand this, this chapter will present several scenarios describing possible futures for private labour regulation. These scenarios could then also invite new research endeavours.

However, before moving to the issues for further research, first the contributions of this study should clearly be restated.

2. Contributions

First, this study advances a particular understanding of the qualities of private labour regulation. Focusing on differences in the stringency of private regulatory organizations, it uses common tools of policy analysis such as the measurement of degrees of standards and specificity of implementation procedures to show how labour conditions are an essentially *political* issue, determined by power relations between business and societal groups. The implication of *private*

regulatory arrangements for labour standards, in which these groups participate, is that policy analysis of standards and procedures may be used to evaluate the extent to which private regulation advances the potential for raising labour standards by countering existing asymmetries of power. Analysis shows that stringent forms of private regulation exist alongside less stringent approaches. Moreover, the development of different types of private regulation and the evolving character of regulatory organizations show that the emergence of more stringent private labour regulation, and the harmonious set-up of multi-stakeholder governed regulation allowing equal input for business and societal voices, may very well have been a short historical circumstance that will not recur. Increasingly, recent developments in the regulatory fields are following the direction of either business groups or activist groups going it alone, or businesses pursuing new multi-stakeholder set-ups that decrease the actual influence of societal interest groups on regulation.

Second, this study shows that activists have a crucial role in initiating stringent private regulatory organizations and pushing firms to participate in them. At the same time, it shows that there are limits to what activism may achieve given the private and voluntary nature of regulatory arrangements, which opens up space for corporations to reject, compete with, or transform efforts at stringent private regulation. Moreover, a divide within the movement for private labour regulation is identified that may affect the impact of future activist efforts in general.

Third, the results demonstrate the significance of both an *industrial* and, in the case of business preferences for existing regulation, a *national environment* in understanding the interaction between firms and activists. In particular, this study emphasizes the importance of *the position of both business and activist groups in the transnational production chain*. The distance of these groups from both the point of consumption and the point of production, in terms of market strategy or political constituency, is crucial for strategic action with regard to private labour regulation. Closer engagement with the point of production is then an indicator of a preference for higher stringency. Since the buying firms that fall in this category increasingly form a minority, both in the industry and within the field of private labour regulation, a general preference for less stringent forms of regulation is coming about. In addition, national institutional environments mediate the contentious interaction between firms and their 'stakeholders' once private regulatory options have come into existence. Despite the transnational organization of production and activism, national embeddedness is still a key element to consider in understanding relationships between activists and business.

Fourth, notwithstanding the previous point, the importance of persons and organizational dynamics are testament to the fact that the developments in the politics of private labour regulation are affected by *agency*. This study in particular argues that within certain social and temporal settings, political interaction is characterized by substantial ambiguity. It is then that the actions of

persons within profit and not-for-profit organizations are influential for events evolving in the political field.

Fifth, this study reveals that private regulatory competition is a process that on the whole may stimulate persistent heterogeneity and divergence in the policy approaches of regulatory organizations, despite political efforts to induce a shared understanding of what constitutes legitimate private regulation among parties. Economic and social interaction may work differently to expectations about progressive convergence between regulators, also because the limited convergence that does take place does not lead a majority of organizations and firms towards a *ratcheted up* version of private labour regulation.

3. The need for further research

This research has been executed using methodology that is primarily inductive in nature, a methodology that bring with it both opportunities and constraints. The opportunities are that the research design was sufficiently flexible to allow findings in earlier stages to inform strategies of data gathering in later stages. And the constraints are that the wider applicability of findings is far from settled. All results have the status of findings only in relation to the examined cases. Beyond these cases the results have the status of propositions, with the partial exception of the survey material in Chapter Five.

Choosing a single industrial production chain (that of clothing) and a corresponding limited set of sectors (clothing brands, sportswear, retailers selling clothing) as the main focus of study also creates limits. To what extent do lessons about private labour regulation for clothing production say something about the politics of private regulation in the coffee, fresh produce, or toy industry? Obviously, the relevance of the current findings for other sectors needs to be tested empirically. Actual attempts to confirm or reject presented propositions will for the time being probably fail given a lack of events (in terms of the number of existing private regulatory organizations) in proportional relation to the different variables that need to be teased out (such as, for instance, the different institutional factors identified with regard to industries, countries, and activist groups).

This means that cross-industry comparison is very much welcomed, but for now these kinds of comparisons will have a similar function to this study's single industry cross-case comparison: to tease out specific mechanisms, and *propose* rather than *establish* their relevance for a larger category of private regulatory activities. It might, for instance, be an interesting option to hold one category of institutional variables constant by looking at geographically similar yet organizationally and technologically different production chains. Comparing clothing to toys or consumer electronics for one specific consumer market might then be a worthwhile exercise. Conversely, more insight could be generated by looking for the *most dissimilar* case study opportunities, where

identical mechanisms seem to be at play, regardless of geographical, organizational, and issue differences. This way, for instance, it may be studied in more detail how different or similar political dynamics within the private regulation of labour standards can be compared to the private regulation of environmental conservation. Are other fields of private regulation as fragmented as the labour field? Does the discussion on monitoring evolve in an equally politicized manner? Do businesses diverge as much in their preferences towards private labour regulation? Does interaction between activists and businesses work similarly?

As mentioned in Chapter Two, the immediate relevance beyond the clothing market of the political patterns revealed in this study is that they may be a source of inspiration for actors in other fields dealing with private labour regulation, or that the actors engaging in the clothing market transfer elements from the approach to clothing (in whatever form) to other fields they are involved in. In the social science sense of the term, cases of efforts at private regulation not studied in this dissertation are probably *not independent* from the private regulatory organizations and different political actors described here. Because of this, the findings of this study are of significance in numerous indirect ways, especially given the pioneer status that the activities in the clothing production chain, with regard to private labour regulation, seem to have. Issues subject to policy transfer may include the different elements in the discussion about what constitutes good monitoring (as discussed in Chapter Three), the shifts in the meaning of multi-stakeholder governance (see for instance Fransen & Kolk, 2007), or the pressure for convergence as a response to possibly overlapping monitoring efforts (for both see Chapter Six). Probably the biggest source of diffusion of practices and policies is through the adoption of private labour regulation by large multi-product retailers beyond their clothing segment into wider mass consumer goods segments.

An additional constraint in the planning of this research was its focus on the Western-European clothing market as the target for private regulatory organizations, rather than the full set of clothing firms engaging in private regulation. Obviously it would be equally relevant to look at the strategic behaviour towards private regulation in other regions of the world (for the US, for instance, see Wetterberg, 2007), and in case of significant differences in patterns, to think more carefully about how to explain these.

In terms of data gathering, a focus on research questions addressing macro-patterns on the industrial level has meant that relatively less time was available to explore dynamics on the intra-organizational level. This study has emphasized, based on a predominantly comparative logic, that it may sometimes be the persons that matter rather than their organizations when it comes to unitary actors in certain political settings, and has as best as possible explained why this is so and illustrated how it works in practice. A next step would be to try to understand these processes more deeply from within the organization. This would probably have to be achieved through a much more

limited company-level case study design, using an embedded approach of data gathering inside organizations. This would require access to sensitive political data and one might be sceptical about the possibility of revealing all intra-organizational dynamics relevant to the private regulation of labour standards. Nonetheless, in the field of environmental studies, some successful attempts at intra-organizational participant observation have been made, which shed more light on the relationship between policies, organizations, and persons (see for instance Crane, 2000; for further discussion of methodology, see the relevant Appendix).

4. Prospects for labour regulation and further research

In the following sections some scenarios will be elaborated, showing different possible futures for private labour regulation in the clothing production chain, and which could form the basis for new empirical research endeavours. The first scenario assumes that the structural contexts for the interaction between actors in the making of private labour regulation will remain similar for some years to come: few changes in the organization of production across borders, the same neo-liberal regulatory regime, and stable societal interest in sustainable production. The three sections after that will identify trends that have been signalled by practitioners and analysts and which point to a transformation of one or more of these structural contexts, and will therefore very likely change the development of private labour regulation.

The macro trends elaborated in the following sections are influenced and sometimes even initiated by the actions of actors in the field of private labour regulation, as identified in the previous chapters. In line with the theoretical notion of ‘structuration’, these changes are not forces beyond the reach of these actors. As will be elaborated, in some cases it is possible that particular players are actively seeking to steer a form of structural change, so that private labour regulation (or the adoption of labour standards across borders in general) will be affected in a particular way that is preferred by them.

a. Ceteris paribus

With regard to regulatory competition, Chapter Six revealed the beginnings of a division of the regulatory market on the basis of regulatory product differentiation. Possibly this product differentiation will continue between, on the one hand, the higher stringency regulatory block catering to high street brands, retailers, and manufacturers, and on the other hand, the lower stringency block catering to lower street retailers. This might result in both blocks reducing efforts at luring in ‘other types’ of firms, and overall competition would then lessen.

Following this prospect, an increased division of labour can be envisioned with regard to the regulation of specific groups of suppliers. Business controlled regulation would take hold of most

short-term arm's length buyer-supplier contracts, and a large bulk of long-term full package supplier complexes, while higher stringency regulation would be confined to more long-term buyer-manufacturing supplier relations and some high street full package supplier complexes. In the long run this may mean that some factories become exclusively subject to more lax regulation, while others are only subject to stringent regulation. This could happen in particular if companies that are signatories to one type of private regulation were allowed to accept the regulatory efforts of companies that are signatories to another type of private regulation. Private regulatory organizations may be inclined to accept this when their participant companies are confronted with other companies using different types of private regulation, and through their buying power were therefore exercising a much greater pressure on the supplier to adopt their version of labour standards. Another dynamic stimulating a similar outcome would be if supplier management actively catered to a group of buying companies because of their similar private regulatory demands, which would match with the preferences of the supplier itself (for the first traces of this dynamic in Turkey, see Kocer & Fransen, 2009).

From the perspective of the point of production, the sum of these trends would firstly be a reduction in overlapping monitoring efforts, as preferred by the proponents of regulatory convergence. However, on a second level private labour regulation would then lead to further asymmetries between factories and workers within developing countries. Already, we can distinguish between factories that are or are not subject to enforced national public labour regulation, and between factories that are or are not subject to private labour regulation. A new distinction could be made between factories subject to lax or stringent private regulation. Those committed to raising labour standards worldwide may hope that labour advocates and union representatives inside and outside developing countries will devote equal attention across these groups of factories. But organizational pressures might also lead them to focus on the advanced groups subject to stringent regulation instead (for this typical Industrial Relations insider-outsider dilemma, see among many others, Dahrendorf, 1959).

From the perspective of the point of consumption, rough calculations can be made about the contribution we are making to fair working conditions through our spending habits. If we pass through the shopping street we can distinguish between stores and brands with lax and stringent private labour regulation. If we want to we can reward the latter for being more stringent than the former by shopping at that store or brand. If we do so, we can then distinguish further between products within companies that are more or less likely to be actually subject to the stringent type of regulation: less likely product categories consist of the fashion accessories and short-term season-

sensitive offers; most likely categories are the designer and the longer term or permanent offerings.¹⁹¹

Granted, it is not as easy as a Fair Trade label driven form of ethically minded shopping. But it is difficult to foresee any inroads towards clear messages for consumers on the fairness of products on the clothing market. As much as consumer-minded sustainability NGOs would appreciate such moves, labour advocates would argue against it based on their knowledge of the inconsistency between the private regulatory promise and actual practice in factories. And as explained in the previous chapter, an emerging breach between consumerist and labourist approaches makes it less likely that the latter would grant to the former the flexibility to adopt consumer labelling in cases where fair working conditions cannot be fully guaranteed—as is the case with all private regulatory approaches currently in existence.¹⁹²

Activists sometimes propose an alternative scenario leading to synthesis between existing approaches—and ultimately a victory for the advocates of higher stringency. In this scenario, the participatory mode of FLA 3.0 and the FWF verification system would be *added* as an additional required step in the implementation programmes for all companies participating in a private regulatory organization. Business-controlled programmes such as WRAP, BSCI, and SAI, as well as the contributors to the SEDEX and ICS databases, would then continue to exist but only function as the organizers of the first step of implementation.¹⁹³ This scenario would require a high degree of organizational flexibility among the existing organizations, and a conviction among supporters of the business-controlled private regulatory organizations that their approach as a stand-alone version would be ineffective or lacking in operational legitimacy. But as previous chapters have shown, the dynamic seems to be in the complete opposite direction and it would require great efforts to align what are currently competitive players with rival perspectives. If there is any sign of further convergence around the FWF model of verification or the FLA 3.0 model, it is more likely that initiatives such as GSCP and BSCI would try to create a business-controlled version of roundtable discussion with societal actors in developing countries, allowing them to select the time, place, speakers, and terms of discussion. It is reasonable to expect that activists would need a very sophisticated campaign to turn these developments around. Alternatively, they would have to try to

¹⁹¹ One further distinction can be imagined inside the store, based on the “Made in ...” label of the clothing. If it is made in a country with a relatively more stable regulatory framework and relatively less hostility to worker organization (think for instance of Romania compared to China), we can make one more decision: if we are looking for *clothing least likely to involve unfair working conditions* we can steer clear of certain developing countries. On the other hand, if we want our shopping to be *most likely to contribute positively to workers under globally speaking worst conditions* we may prefer clothing from exactly those ‘challenging regions’ by companies that adhere to stringent regulation.

¹⁹² Chapter Six however presented the exceptional case of Made-By, focusing on a shadow-label based on a process instead of an outcome standard.

¹⁹³ Interviews N4; N5.

reshape some of the structural conditions of private labour regulation, as the following scenarios discussed below show that this may change to their advantage.

Addressing the validity of these scenarios through future empirical research would first mean a continuing focus on the shifts in policies and procedures of the existing private regulatory organizations, and the evolving patterns of business support; and second, a focus on implementation matters in the supply chain, in particular on the impact for workers, the strategic repertoire for supplier managers, and the consequences of multiple private regulatory requirements.

b. The rise of China and India

Analysts of international political and economic developments have concerned themselves for the last couple of years with the degree and consequences of the economic growth of India and China, and the rise of multinational corporations and investment funds from these countries (see for instance Khanna, 2009).¹⁹⁴ Observers argue that great changes are on their way because of the increased power that Indian and Chinese state and non-state actors can exercise in the negotiation of economic and political transactions. This may have three sorts of immediate implications for the field of private labour regulation in particular: for the organization of production chains, the organization and impact of private labour regulation, and the labour conditions themselves.

Researchers have started to focus their attention on the upgrading of Indian and Chinese firms in transnational production chains. These take on more complex, technologically intensive, and higher value added functions, or increasingly concentrate horizontal and vertical supplier functions to change prevailing 'buyer driven' power relations in production chains (Merk, 2008). In addition, observers have noted the development of branding functions among firms that used to be manufacturing suppliers or organizers for Western firms (VK, 2007). This process has been ongoing, in particular in the sport shoe industry with the Chinese giant Yue Yuen. A similar dynamic is anticipated in the clothing industry, where conglomerates of Asian full package suppliers, such as Hong Kong's TAL or Esquel, might increasingly succeed in penetrating both newly emerging Asian clothing markets as well as Western markets with new end products.

Increased supplier power through concentration means that the current form of private labour regulation is in need of revision, since it relies on the idea that buying firms could force labour standards on their suppliers by coordination of their buying power. This may in the near future become harder as suppliers may successfully resist. Implementation of private labour regulation would then have to be reformed to create space for more equitable relations with more powerful Asian clothing supplier companies. For in the past, these suppliers only functioned as the

¹⁹⁴ Brazil is often mentioned as the third former developing country with significant growth rates but is not discussed explicitly here because it is far less involved in the production chains relevant to this dissertation. The same goes for Russia.

subjects of disciplinary measures in most regulatory arrangements—arguably even those schemes that claimed to support *supplier ownership*, since in the case of clothing chains this ownership model went hand in hand with ‘force from above’ by retailers.

Chapter Six noted that most private regulatory organizations have recently tried to create a situation of dialogue with suppliers, to learn from supplier perspectives and stimulate an environment beneficial to compliance through discussion (see also Locke et al, 2008). In terms of governance of both production chains and private regulation, however, process control has remained with Northern parties. With increased power of supplier parties, dialogue would no longer be sufficient; rather, the private regulation of labour standards would become increasingly subject to *bargaining* between suppliers and Northern parties. This may also have repercussions for the governance structure of private regulatory organizations, as suppliers may claim more influence on regulatory proceedings than they currently have. In previous chapters, supplier management has generally been identified as the most union- and worker-hostile actor in the production chain, since ingrained in its business model is an institutionally supported disregard for worker positions. One may question to what extent these managers would promote worker rights if they increased their voice inside private regulatory organizations. Of course it should be asked how static their perspectives on worker rights would be, once drawn into a group of business professionals emphasizing the advantages of complying with ILO standards. But it is reasonable to expect suppliers to staunchly defend their right to comparative advantage through competition on production costs, in similar ways to buying firms during the beginnings of discussions on sweatshops and codes of conduct in the 1980s and 1990s.

Conversely, the ambition to move to the status of competitive end producer for Western markets would mean that the new Asian brand/manufacturers, like their Japanese predecessors (for example Asics, Mizuno), would also become subject to pressure to adopt similar private labour regulation as their Western competitors. Because of this they might have to adjust their efforts towards better working conditions.

Increased power of Asian suppliers also means changing terms of contract with buyers. Policymakers have emphasized how the uneven terms of sourcing contracts from Western buyers contribute to the pressure of supplier managers on their workers in mass consumer goods production (ACONA, 2005; CCC, 2005). This pressure could perhaps lessen, at least in the case of large supplier complexes.

This dovetails with an observation also prominent in current political and economic analyses: the rise of wages (and the cost of labour) in China, and to some extent India (for discussion see *NYT*, 2008). The Chinese government in 2006 revised its labour law, aimed at strengthening worker positions, and was announced as a tool especially to alleviate the

circumstances of Chinese in export oriented industries. Although most commentators would agree that a lack of enforcement of this law has meant that many workers do not profit, there are also concerns in the industry about its inflationary effects (*FT*, 2006; *NYT*, 2008). Added to that, observers fear that the Chinese government's financial support for farmers in the past years has helped to magnify the shortage of labour supply in manufacturing, because young farmer workers are less inclined to leave rural regions for jobs in export processing zones.¹⁹⁵ This adds to an upward push for wages. Do all these things mean that Chinese labour conditions are improving? And will it endanger the Chinese model of low road growth?

Sourcing patterns are sensitive to shifts in labour costs, and because of this it may be anticipated that some buyers would place increasing orders in countries like Cambodia and Bangladesh where labour costs are decidedly lower than in China (that is, if these buyers are willing to swallow relatively lower level infrastructure). Similarly, certain regional competitors may come back into the game, as Chinese production cost levels approach theirs (think here of Indonesia). But a sudden mass move 'out of China' is not realistic, since China's competitors cannot be expected to absorb so quickly the potential of orders that in the past years have been held by Chinese suppliers (as an illustration, 26.9% of world clothing export over 2005; in comparison, Bangladesh held 2.3% for the same period, Saviolo & Ravasi, 2007:16). This means that some of the increases in Chinese worker positions may be more or less permanent. This also bodes well for private labour regulation, as in production powerhouse China its measures may function in a more favourable institutional environment.¹⁹⁶

Finally, the growing assurance of Indian and Chinese players goes hand in hand with the development of a middle class in both countries that have money to spend on leisure items such as an extended wardrobe. Estimations are that consumer demand in India will quadruple by 2025 (IBEF, 2008). Similarly, Chinese middle class demand for clothing rose 25% between 1997 and 2004 and is expected to increase further (Deloitte, 2005). Will these consumers care about the working conditions in the factories in which their clothes were made sufficiently to put pressure on Indian and Chinese brands to also adopt private labour regulation, or increase the pressure on other global brands and retailers? Here it is only possible to guess, based on hunches that are, it must be admitted, bordering on ethnic stereotyping. On the pessimist side, Indian society currently shows signs of a cultural acceptance of deep inequality, meaning one cannot so easily assume solidarity among middle class Indians for poor workers. Similarly, Chinese urban middle class disdain for rural migrant workers might be a poor starting ground for progressive consumer action.¹⁹⁷ On the

¹⁹⁵ Interview B2.

¹⁹⁶ And for European and American customers it will probably mean inflation, since buying firms will be eager to raise prices because of it.

¹⁹⁷ The documentary film *China Blue* (2007) by Micha X. Peled offers some clear examples.

optimist side, Chinese government's desire for societal stability and harmony and the communist egalitarian legacy could be fertile soil for a Chinese desire for CSR, while similar positive effects could be expected regarding Hindu and Muslim traditions of sobriety and philanthropy in India.

The least that can be said is that multinational companies are increasingly likely to be sensitive to varied value demands from customers—not merely in their design and marketing of products, but also in their CSR policies. Multinationals have over the past few years become increasingly accustomed to being treated as the personification of transnational religious and political divides.¹⁹⁸ Moreover, the example of French retailer Carrefour experiencing a boycott by Chinese customers because of French pro-Tibet human rights rhetoric signifies that in the future, consumer demands on multinationals might even become conflicting across world regions (*NYT*, April 2008). It is an open question how CSR departments should cater to that.

Meanwhile, a growing Asian consumer market for clothing may also increase sourcing options for suppliers. Whereas it was previously the case that Western export orientation meant the key to success for mass consumer goods manufacturers, now managers of these firms may also decide to dedicate their goods to this Asian market. Ultimately, the choice may be between connecting to leading Western production chains where all kinds of private regulatory requirements (environment, labour) may come into play, or to Eastern leading production chains where, up until now at least, private regulatory pressures seem less intense. This also means that Western buying companies can no longer use their buying power with such influence to force suppliers into compliance with these private regulatory requirements, since suppliers are in a less monopsonic and therefore less dependent situation than before (see also Kocer & Fransen, 2009).¹⁹⁹

Research could contribute to more insight into these scenarios, first by focusing on the presence, absence, and consequence of upgrading in the production chain, as well as on sourcing strategies of buying firms; second, by offering continuing macro- and micro-analyses of socio-economic circumstances in mentioned regions; and third, by probing the developments in consumer attitudes in emerging markets. Of course the key for an overall assessment of the impact on private labour regulation is to weigh the relative force of the different mentioned trends and to create models that shed light on the offsetting or enhancing effects of the interaction between these trends.

¹⁹⁸ Danish and Dutch firms, for instance, are pressured in Middle Eastern and Southeast Asian countries with a majority Muslim population to explicitly declare their respect for religion, as a response to the standpoint of conservative Danish and Dutch politicians (*Vk*, 2008).

¹⁹⁹ I thank Jennifer Bair for elaborating on this point in discussion.

c. The rise of retail

Previous chapters addressed the competitive and interdependent relationship between retailers and (brand) manufacturers and noted that retailers seem to be gaining ground in the clothing industry. It was also established that the differences between retailers and brands are relevant for an understanding of different types of private labour regulation and patterns of business support. It is therefore relevant for the future of private labour regulation to establish how these trends could proceed further.

Recent data for the European clothing market illustrate that the horizontal and vertical market power of large multi-product retailers, mass clothing retailers, and specialty chain retailers is increasing. These three categories of retailers together are taking hold of larger chunks of the consumer market, to the detriment of smaller clothing shops. For instance in Germany, France, and the UK, the top ten retailers of clothing now have a market share above 40% (Saviolo & Ravasi, 2007:39). Retailers have also adopted private label clothing lines that are in increasing competition with original brand clothing (*NYT*, 2008; Saviolo & Ravasi, 2007:30). These retailers therefore stand in an increasingly strong relationship to those brands that are less established and lack their own venues to deal directly with consumers. This is reason for concern about what brands dub “unfair trade practices”, such as the imposition of extra fees and the returns of unsold goods. What is more, retailer influence in transnational production chains is increasing as well, in comparison to brand influence (Saviolo & Ravasi, 2007:25-27).

On the surface of things, large international retailers therefore hold the key to the future of private labour regulation, both in their own private label production chains and in the chains of smaller brands relying on them for their sales. The question that then follows is what approach they might prefer and how much influence they will exercise upon dependent brands to copy this approach.

Previous chapters noted that the mass and discount segment of (multi-product) retail holds a long distance relationship to the production chain and seeks to complement this with low stringency private labour regulation. An increasing role for these retailers in markets and chains very probably means an extension of this model, *ceteris paribus*. The move of these retailers towards in-store higher street private label clothing offerings means that these companies are gaining more access points to direct manufacturing positions in transnational production chains, which in this study was considered a relevant factor for the preference for higher stringency regulation. It is questionable, however, whether this increased engagement with manufacturing chains for a specific minority segment of products might make a difference regarding private regulatory preference on the organizational level.

High street department store retailers, which in this study were proponents of medium-level stringency (at least engaging in multi-stakeholder governed regulation), are according to studies on the retreat in comparison to lower street mass retail concepts, losing about 5% in market share over the past five years in, amongst others, France and the UK. Specialty chains are increasing their grip on European markets, with increases of around 8% in most Western European countries (Saviolo & Ravasi, 2007:33-34). In this study this category forms a mixed bag with regard to their private regulatory preferences, also influenced by their core market of operation and their managerial commitment.

In sum, an advance in clothing retail generally offers mixed hopes for the stringency of labour regulation adopted. Nevertheless, the increase in mass and price-fighting retail and the decrease of brand manufacturing may be cause for concern for labour advocates. Can lower street retailers be ratcheted upwards in their commitment to labour standards, given that they feel less pressured by societal actors and are at a larger distance from manufacturing positions in their production chains? Can smaller brands resist the pressure to adhere to private retail standards and pursue higher stringency regulation?

The pessimist scenario would hold that increased retail power will lead to increased confidence in advancing the agenda of private labour regulation. This may mean that mass and price-fighting multi-product retail, because of its sheer size, could lead the way in promoting business-controlled regulation as the key solution to sweatshops, probably supported increasingly by some specialty chains and brands relying on both retail categories. Higher stringency labour regulation would then remain the niche that it already is: a solution for some high street specialty retailers, some big brands, and smaller branded manufacturers that are not dependent on retailers, such as government procurement and promotion firms. Probably some brands would shift allegiances to the retail camp because of its increased prominence.

An adapted pessimist scenario might be that specifically multi-product retail managers will recognize the niche for higher stringency labour regulation and will aim to exploit it for what it is: a small segment of the consumer market. This would mean that they might make room for a selection of product types that fit the need for organic, biologically sustainable qualities (such as organic cotton clothing), with possible reference to fair working conditions (“We are working on improvements using an ILO inspired code of conduct”). Efforts at enforcing private labour regulation for the complete collection of products can then slowly be reduced with reference to consumer sovereignty: if customers want good labour conditions they can buy them in the designated section of the store, if customers want cheap clothes, they can also buy them in the rest of the store! Note the difference with the current situation, where activists use the fear of what probably is a consumer market niche to turn around working conditions of products in *all* sections

of a store. In this pessimist perspective, the mainstreaming and growth of Fair Trade product sales may then mean bad news for the proponents of industry-wide adoption of labour standards.

The optimist scenario would be based on a coordinated effort by activists to put campaigns on brands second to increasing pressure on retailers specifically by active tactics focussed on consumer information and collaboration with forerunners from the high stringency brand camp (compare Cashore et al, 2007). Increased sensitivity to societal pressure on the part of retailers might then in turn be induced because of growing retail and private label prominence in the marketplace, and more sustainability minded customers shopping at these retailers. And this may then lead these retailers to adapt to higher stringency models.

Future research should shed more light on these developments by more detailed production chain research; comparative research of business-to-business dynamics across countries and chains; and continuing research on developments in corporate and activist strategy.

d. Public regulation and (inter-)governmental intervention in private regulation

The issue of *private* labour regulation is on the table in the absence of enforced public labour regulation. Reviewing contemporary governmental and inter-governmental policies, two impacts on labour regulation can be identified: first, the degree to which public labour regulation may become more or less enforced and make private regulation redundant; second, the degree to which public policies may change the balance of forces in the field of private labour regulation by (willingly or unwillingly) frustrating or enhancing particular efforts or parties.

First, the question is whether governments of developing countries will continue to fail to uphold labour regulation as in previous decades. The question for India and China in particular is whether their governments, given increased growth and prosperity, will continue to see un-enforced labour regulation as a successful part of an export strategy. Section 4b noted the revised Chinese labour law, which points to rising concerns with the plight of workers. Poorer countries such as Cambodia and Vietnam obviously face a different bargain. Notable is the development of private tools by developing country governments that seem to mimic the efforts of Western private labour regulators. Chinese product quality authorities have, for instance, launched a private labour standard certificate programme CSC9000T in 2006, and invited Chinese factories (both export and home market focused) to seek certification. The Thai government initiated a similar programme for its industries. One may infer from this that certain export country governments, like most developed countries, are moving to *publicly* support global labour standards, through *private* means and on a *voluntary* basis. This dovetails with the increased presence of government officials at discussion roundtables and multi-stakeholder forums, such as the Multi-Fiber Arrangement Forum, and the positive statements of politicians on the need to take into account certain social and environmental

norms in economic transactions. Policy rhetoric concerning CSR seems to align with that of Western politicians. So far these efforts do not seem to have had much impact on the field of private labour regulation for clothing production, since the focus of most export suppliers seems to remain on compliance with the standards developed by Western retailers and brands.

Will Western European developed countries seek enforced public labour regulation abroad? They can promote this cause, either through lobbying developing countries and Inter-Governmental Organizations or through negotiation of trade policies, at least to the degree that they are not bound by WTO and EU agreements on trade policy. One way or another it seems likely that the subject of child labour will stay on the diplomatic radar in the coming years, since its ethical ramifications make it a suitable ideological issue for Christian democrats and social democrats alike, which means substantial clout in most Western European democracies. But business lobbies will do their best to keep the efforts of politicians away from trade-interfering policy proposals.

So far, the basic European governmental position regarding private labour regulation has been to encourage voluntary and private common solutions and facilitate discussion. There are no clear signs of governmental policies promoting or denouncing a specific version of private regulation. The preference for multi-stakeholder types of policy instruments is often declared, but never made so explicit as to not create sufficient leeway for flexible usage of the term ‘multi-stakeholder’, as elaborated in Chapter Six. Active government CSR policies have been geared at more transparency, for instance in sustainability reporting requirements (in the Netherlands, France, and Sweden).

Institutions of the European Union are formally better equipped than individual governments to make a difference both to public regulation and in terms of influencing the shape of private labour regulation. The Commission could, for instance, include social clauses as a prerequisite for world trade agreements—it is questionable, however, whether governments and interest groups would allow it to do so. Regarding the regulation of the behaviour of its own multinationals, all efforts of the Commission up to now have gone for the private regulatory option. The EU's policy towards CSR, evolved through rounds of consultation with both business and societal stakeholder groups, may be characterized as lax. Its institutional outcome, the CSR alliance, is an open learning forum in which only businesses participate, after calls by unions and NGOs, in consultation rounds for more pressing requirements to private regulation, faced opposition from the business camp. As such the EU supports virtually every different kind of CSR policy (*reference to website*).

Meanwhile, the recent tone of the EU parliament has been different. In spring 2007 it voted with a majority for the Commission to have a more specific stance on CSR, arguing, amongst other things, for mandatory transparency for corporations on their social and environmental activities and

a role for the European Court in bringing to justice corporate misdoings outside Europe. The vote was the result of a successful lobby of the united NGOs and union spokesmen in Brussels, together with the long time CSR expert in the European parliament, the British social democrat Michael Howitt (SOMO, 2007). It has yet to be seen what the Commission will do with this call and how the Brussels circle of stakeholders may interfere with its possible realization.

As governments of developing and developed countries meet at the roundtable of International Organizations it should be clear what the direction of policies negotiated between these parties might be. The following paragraphs briefly review in brief the possible different issue arenas impinging on private labour regulation, and the room for manoeuvre for these organizations' secretariats and bureaucracies.

The United Nations as an institution has systematically ignored its own internal effort at binding rules for multinationals, the UN Norms on Human Rights for Multinational Corporations, promoted by a small maverick group of human rights lawyers. John Gerrard Ruggie, special secretary to Business at the UN, emphasizes the voluntary route through the UN Global Compact. The Compact is still a loose assembly of businesses and societal actors geared towards setting exemplary best practice, and as such does not have a direct impact on the much more specified private regulatory field of clothing production. More interesting is Ruggie's assignment to propose to the UN a new philosophy for the division of responsibilities between states, IGOs, businesses, and civil society in global justice problems. It remains to be seen what Ruggie's view will be and how members of the UN will respond to it, but its declaration alone may affect discussion in the wider field of private regulation, given the strong norm-setting status of the UN.²⁰⁰

The International Labour Organization has as many proponents as opponents of private labour regulation among both its members (business, unions, governments) and its staff. In the past it has supported applied private-public policy tools towards improved labour regulation enforcement in specific industries of certain countries, such as the clothing industry in Cambodia. For consistent improvements in enforcement it is of course dependent on the effort of its members. ILO Conventions and the ILO model code of conduct of course serve as an important inspiration for private regulation, and any revisions would have repercussions for discussions about labour standards in private regulatory organizations. Absent (and not very likely) so far is overt ILO support for specific private regulatory organizations or processes.

At the World Trade Organization negotiation table, the debate on the social clause as a possible route towards the advancement of labour standards has ended given deadlock between negotiating parties. The question for the future is how strongly its member states will uphold the rules agreed to under the WTO and how far its agenda of free trade can be realized further. As

²⁰⁰ I thank Jonathan Mijs for discussing Ruggie's ongoing efforts with me.

noted, patterns of trade agreements greatly influence the structure of production chains (Bair, 2003; compare Underhill, 1998). Any future fall-out between a group of producing countries and a group of buying countries leading to a cycle of protectionist retaliation might affect the clothing production chain, which up until now has had a quite liberalized trade regime. This would have repercussions for private regulatory arrangements too. From a rational economic point of view it currently makes no sense for buying countries to quarrel over the trade regime of mass consumer goods production chains. But international politics does not always make sense.

Research could contribute to understanding these governmental and inter-governmental developments by analyses of both policy-making in and policy implementation of these organizations. Ideally, policy research should then be sensitive to the fundamental interdependence of policymaking between mentioned organizations, by applying multi-level and multi-forum perspectives to a particular policy issue.

e. Changing European and American consumer preferences?

This study established that the growth of efforts at regulating labour standards privately has had to do with increased societal pressure on corporations. This was based on the assumption that a group of citizens in the US and Europe cared sufficiently for this issue to form a danger to corporations' reputation, sales, or shareholder value.

Sceptics have always doubted whether consumers would really take such a hard line position when it comes to ethical shopping—or whether they would do so consistently. For this reason it has often been proposed that CSR is a hype that may pass over quickly, as the attention of the masses turns to other issues and enthusiasm about slogans such as *Sustainable Business* and *Ethical Trade* fade away (Ec, 2005). As this research illustrates, the interest in CSR over the past decade has not faded away and is consistently fed new energy by a growing group of CSR practitioners in private, public, profit, and non-profit organizations (see for instance Ec, 2007).

A specific category of scepticism is the claim that the demand of consumers for fair and sustainable production may be influenced by the business cycle and is basically a luxury item, a sign of a period of prosperity. Such demand will not last in times of economic hardship (see for instance Govekar et al, 2002). Obviously, the development of private labour regulation has moved on since the early 1990s, as some general economic upswings and downswings in both Europe and the US took place, with no noticeable influence on the behaviour of or support for key actors in the CSR field. But the 'support for CSR as a luxury' hypothesis should not be dismissed too easily, given specific challenges awaiting European and American consumer audiences in the coming years. There is the spectre of global inflation. Economic 'catch-up' growth in Asia, Latin America, and Eastern Europe means rising demand for natural resources and food. Particular resources with a

finite supply (especially gas and oil) are becoming increasingly scarce. Because of this many food and non-food consumer products have become substantially more expensive in the recent years. Will consumer pressure for social and environmentally sound production persist, grow, or decline given these challenges? Analysts already note slowing growth in British Fair Trade product spending and attribute it to inflation, while in the Netherlands, Fair Trade sales still grow despite of it (*Vk*, 2009). It may meanwhile be questioned whether consumer concern with higher prices competes with consumer sensitivity to ethical issues. If it does and the sombre forecasts about price developments are right, CSR proponents face tough challenges in the coming years. The notion of fairness with regard to affordable prices might then negatively affect other notions of fairness that deal with global solidarity issues.

The issue of consumer salience to critical consumership can also be discussed decoupled from the question of economic circumstances. The question then concerns the patience of the consumer mass committed to sustainable production when it comes to private regulatory arrangements, and the issue of whether such arrangements are providing solutions for their concerns. In the case of labour standards in the clothing industry, discussion has been ongoing for about twenty years and collaborative private regulatory solutions have been in the making for thirteen years. How much longer can consumers await improvement in working conditions for clothing producers if the message from companies is that it is a ‘work in progress’ and activists and journalist keep revealing instances of worker abuse and even child labour? Is there a turning point where cynicism will take hold and support for both businesses and activists working on private labour regulation will decrease? Both questions are, of course, difficult to answer through research. Activists catering specifically to sustainable consumer audiences of course sense this and would therefore prefer to work with some form of consumer labelling sooner rather than later. As has been mentioned above, however, this is a path fraught with difficulties. The danger of the whole endeavour is increased cynicism on the part of consumers disappointed with the content of the promise delivered by such labels, recognizing that they cannot guarantee good working conditions for the product they buy.

The optimist thesis on future consumer attitudes could first focus on the beneficial effects of ongoing globalization: increased contact between people through travel, mass communication, and the efforts of transnational advocacy networks could mean rising awareness of global injustice, and a rising sense of solidarity, which would lead to increased pressure for CSR policies. Add to that increased concern about environmental degradation, influenced also by the mentioned scarcity in energy resources, which may further push consumer demand for sustainable production (for figures supporting this trend in the Netherlands, see *MVO Nederland*, 2009). Demands for global labour standards from activists may easily piggyback on this trend, since the concept of sustainability is

broad enough to encompass social and environmental concerns. This may then lead to increased consumer pressure for improving working conditions in clothing factories.

In order to test the validity of these scenarios, increased research efforts into consumer behaviour and attitudes are necessary. Recent innovative efforts (see Hiscox, 2006) have managed to analyze consumers in quasi-experimental settings in shops. This type of research needs to be applied in multiple settings in order to understand concretely the possible variation in consumer attitudes between people of different ages, from different countries, with different economic positions, and different lifestyles. Essential here is the cooperation of companies who permit researchers access to their shops.

5. Conclusion to a conclusion

This chapter has restated the main lessons of this study and identified trends in the structural contexts of the field of private labour regulation. A majority of the issues at hand seem to reflect developments in and the repercussions of shifts in the political and economic capabilities of actors from the developed to the developing world, both from West to East and from North to South. Further research may show the exact nature of these shifts and their consequences for private labour regulation in clothing production chains.

The insights of this study, judged solely from the perspective of its empirical cases, form mere snapshots of the evolving politics of private regulation. This may make the reader sceptical about whether the lessons that can be drawn from the text may be applied to other times and other political arenas. However, the limitations in scope do not render the currently presented insights about private regulation useless; far from it. This is because institutionalizing patterns of competition and cooperation between businesses, activists, and regulatory organizations will continue to form a key part of discussion on how to tackle global sustainability issues, also under changed structural conditions. Further, these dynamics can contribute to an enhanced understanding of the nature of international private regulation, the power of activism, and corporate strategies in contemporary global politics.