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Why do corporate codes of conduct fail? Women workers and clothing supply chains in Vietnam¹

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Abstract

Despite criticisms of their derivation and implementation, corporate codes of conduct (CoCs) continue to dominate debates on Corporate Social Responsibility and the informal regulation of worker exploitation and abuse by ‘sweatshops’ supplying northern multinational corporations (MNCs). Through analytical interrogation of existing literature and empirical evidence from Vietnamese case studies, two propositions are made to clarify the poor performance of CoCs. It is argued, firstly, that the extent of the control of MNCs over their subcontracting suppliers is misconceived and overestimated because supply chains function more like networks than the hierarchies assumed by ‘principal-agent’ preconceptions. Conceptualizing such relationships instead as networks of conflicting political and economic imperatives amongst various sets of actors generates a second proposition derived from our case studies. The factory workers, their subcontractor employers, intermediary vendors and even the MNCs seeking CoC commitments, have convergent interests in violating key aspects of the codes and deceiving their auditors. The analysis evaluates the residual value of CoCs in light of these constraints and the options for improving labour regulation, with particular reference to the plight of disadvantaged women workers.

Keywords

Sweatshop labour, codes of conduct, corporate social responsibility, supply chains, women workers

Corporate codes of conduct (CoCs) have become a critical aspect of debates over business responsibilities to reduce abuse and exploitation of workers by suppliers in developing societies. Attention has focused particularly on high-profile, ‘brand’ corporations sourcing goods such as footwear and clothing for retailers and consumers in the global ‘north’. The public aims of CoCs are to improve the material welfare of workers in contract suppliers’ factories, to curb or remove arbitrary and coercive exercises of managerial power and authority, and to substantiate workers’ human rights, such as freedom of association and gender rights.

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A snap verdict of CoC effectiveness in these areas would be largely negative (Hale and Wills, 2007; Raworth and Coryndon, 2004; War On Want, 2008). With ineffective monitoring and unauthorized subcontracting, brands and retailers often fail to track their producers and hence enforce CoCs – not only at factories in developing countries (Level Works, 2009), but even in the heartland of some brands' headquarters, such as the UK (Dispatches, 2010). Through new evidence from garment factories in Vietnam, we challenge and investigate a key assumption of both CoC supporters and some critics: the feasibility of a unilinear corporate chain of command through supply firms' managements into local workplaces.

We focus, first, on oversimplifications of corporate power and control presupposing an underlying principal-agent conception in many – especially prescriptive accounts – of corporate responsibility via CoCs. This part of the analysis derives from existing accounts that point to the importance of a wider complex of institutional relationships within which multinational corporations' (MNC) transactions operate: both the globalized industrial and market structures of the clothing industry and the varying socio-political and cultural contexts affecting sweatshop supplier enterprises. The second focus links this 'macro' analysis with new micro-level data on CoC changes and the political economy of labour relations among clothing workers and firms in Vietnam. This data informs our second and more distinctive argument: powerful explanation for CoC's ineffectiveness than those based on deficiencies in the application of codes.

These arguments are developed in four sections. The first outlines the general debates over the purposes and role of CoCs in supply relationships between western MNCs and contractors in developing societies. The second section examines the complications posed for these arrangements by the complex economic and social institutions governing supply chains. The third section presents the evidence on work, employment and CoC implementation from case studies of clothing firms in Vietnam. Fourthly, based on the same data, we assess the implications of convergent interests in the violation of CoCs and of dysfunctional labour regulation for the wider weaknesses of codes and Vietnamese employment relationships. The conclusion offers suggestions for more effective regulation of employee welfare in Vietnamese private sector workplaces.

Seller–supplier relationships and codes of conduct

The globalization of industrial production was soon accompanied by civil society campaigns against MNCs' exploitative and environmentally regressive 'offshoring' of operations to lower their product prices. These ethical campaigns interacted with the spread of philosophies of corporate social responsibility (CSR) among western industries, governments and the media (Jones, 2007; Kindermann, 2009; Vogel, 2006). Responding to such Hoang and Jones 69 campaigns, MNCs began building standard-setting rules from newly adopted (or adapted) CoCs into their contracts with suppliers, in the cheap-labour economies of southern and central America and East Asia.

Despite persistent anti-sweatshop campaigns by NGOs and proliferating labour auditing activities by MNCs, CoC effectiveness remains problematic. Recent studies (such as Berik

and Rodgers, 2010) still find glaring inadequacies such as the MNCs' failure to pay minimum wage standards, low rates of union participation, and unions' failure to protect workers' rights. Explanations for continued shortcomings range from suggestions that patchy compliance with CoCs reflects inadequacies in the legal regulations of the host country (Locke et al., 2007), to arguments that suppliers' management styles influence the quality of firms' social performance (Frenkel and Scott, 2002). Investigating suppliers' commitment, Jiang (Jiang, 2009: 97) claims that even the 'promise' of long-term contracts with suppliers is insufficient to obtain compliance. Closer to the action, MNC critics focus on the poor implementation and enforcement of CoCs, citing the unsuitability of profit-prioritizing auditors, their limited understanding of human rights and labour issues (LARIC, 1999), and their focus on measurable standards, such as working hours and wages, rather than rights-based elements, such as freedom of association and collective bargaining, harassment and discrimination (MSN, 2004; Wells, 2007). As we shall see later, it is also questionable why suppliers should improve their compliance when they have less to gain from the codes than the MNCs initiating them.

There are, however, two under-examined aspects of global supply chains in existing commentaries and campaigns for more ethical sourcing and CoCs. Firstly, implications of the complexity of the economic relationships and transactions, while documented, may not be fully considered. Supply chains are not unidirectional and mono-causal channels of communication and authority. Secondly, despite some sincerity in CoC promotion (Hartman, Arnold and Wokutch, 2003; Hurst, Murdoch and Gould, 2005; LBL, 2009), MNCs and others fail to acknowledge contradictions between the logic of the codes and the economic priorities that MNCs and their markets dictate. These contradictions produce a convergence of interests among various actors in the chains, which we examine below.

As far as the complexity aspect is concerned, other actors' roles and positions in the chain, especially middle-tier suppliers, are insufficiently addressed. Acting as bridges between the sweatshops, the MNCs and the high street retailers, these suppliers can either enhance or hinder the ethical practices initiated by the brands. Without full consideration of their influence and moral stance, the ethical supply chain may remain at the top and be less likely to filter down to the 'bottom'. Relevant ethical supply-chain analysis, however, often tends to simplify the connections, treating them as direct buyer-supplier relationships, although the latter may only partially exist in practice. It might be more accurate to refer to the complexes of transactions involved not as chains, but as networks with bi-directional and simultaneous flows (Lamming et al., 2000; Nassimbeni, 2004). Explicit or indirect assumptions of the relationships as the 'principal-agent' conception of economic theory might be more accurately replaced by treating the actors in the supply network as 'legally independent but economically interdependent' (Nassimbeni, 2004: 46).

Supply network governance

Economic complexity

If clothing production suppliers were organizationally integrated or closely affiliated with the brand retailers of the global north, CoC imposition and management would be relatively unproblematic. But suppliers in the south have varying degrees of independence and organizational separation from buying corporations by location and geographic distance, which is increased by varying relational and contractual links such as intermediary ‘middlemen’ firms. So the first dimension of complexity concerns the range of customers supplied by producers in lower tiers of production chains. CoC debates and advocacy argue as though suppliers are direct dependants of their western buyers, but suppliers may depend not on a single buyer but on a number of traders or middle-tier suppliers having limited or no responsibility for ethical sourcing (Chan and Wang, 2004). The middle tier often supplies in large volumes from many factories together. The results of Dong Hoang’s interviews show that some garment factories in Vietnam are supplying more than thirty customers and brands without direct contracts with brands and retailers, only with their middle-tier suppliers. Among buying firms, there were approximately twenty requests for compliance with clients’ CoCs, but no requirements from the remaining ten ‘middlemen’ (Hoang, 2008).

From one side, apparent increases in the size and scope of many MNCs through mergers and acquisitions result in higher levels of hierarchy, business control and concentration of corporate power, but from the other, these also contribute to the addition of hundreds of thousands of contractors and, often small, developing country subcontractors in their supply chains. In industries such as clothing, production chains can descend as far as the informal sector and homework (Moody, 1997). Such proliferation encourages the growth of middle-tier suppliers as bridges between buyers and small producers. In clothing and footwear, in particular, multiple tiers may specialize in different processes in the ‘chain’ (Hurley, 2005); MNC controls within this proliferation are uncertain. The assumption of MNC dominance is particularly problematic in light of the emergence of giant transnational East Asian contractors (Appelbaum, 2008) in powerful positions in the global supply chains. Consider, for example, Hong Kong-based clothing supplier Li and Fung, which sources about 25 percent of clothing exports from Vietnam (Meredith, 2006), and Taiwanese athletic footwear manufacturer Pou Chen. Li and Fung’s growth over the last 15 years appears to exceed that of many western brands and retailers who struggle with rising production costs (Chen, 2011; Meredith, 2006). Yue Yuen Company, which provides about 17 percent of the global supplies of athletic shoes of more than 30 well-known brands including Nike, Adidas and Reebok, enjoyed significant growth with net profits in 2002 higher than Adidas and Reebok (Merk, 2008). Such large, yet almost unknown, suppliers are thus unlikely to be dependent on a single brand. Moreover, small subcontractors’ attitudes to CoC injunctions will depend more on their relationships with giant contractors or their direct buyers rather than on the (usually northern) brand firms initiating such codes.

Economic ‘value chain’ governance has usually been viewed as ‘an organization’s ability to define and enforce production parameters and product attributes, including the control of decision-making processes, forms of horizontal coordination and performance verification that ‘influence[s] the distribution of revenues along the chain’(von Hagen and Alvarez, 2011: 21). But the increasing infiltration of private standards of employment and environmental

scope has, implicitly, broadened governance to the much more diffuse sphere of social responsibilities (Von Hagen and Alvarez, 2011: 17). Naturally, these levels and forms of production and product control may confer detailed MNC control over supply chains. However, it does not follow that there will be comparable controls over the social dimensions of governance relations. Gereffi, Humphrey and Sturgeon (2005) distinguish a continuum of economic authority, ranging from high control in ‘captive’ subcontractors and ‘hierarchical governance’ of subsidiaries and affiliates, through more medium-control levels, in ‘relational’ and ‘modular’ value chains, to the extremely loose relationships of market transactions between MNCs and independent suppliers. But the model acknowledges the above-mentioned complications from the rise of intermediary firms that distribute MNC contracts to second and third tiers in the supply chain (Gereffi, Humphrey and Sturgeon, 2005: 83–7; 91–2). If, in the one-dimensional sphere of production control, the economic governance of MNCs is so complicated and diluted, it follows that an equally or more complex (and likely weakened) sociopolitical governance of employment relationships will also result.

Gereffi, Humphrey and Sturgeon (2005) indirectly flag a different analysis for the social aspects of governance when they point out that even the technical practicalities of product and production control may be subject to ‘institutional’ shaping by national politics, customs and regulations. Moreover, it is one thing to increase business control by ‘codifying’, as they put it, the technicalities of products and production processes, it is quite another to expect social relationships and institutions to be as amenable to effective social control through the implementation of codes of conduct. Yet, such similarity of control for social aspects seems to be assumed by some advocates of CoC enforcement (Arnold and Bowie, 2003, 2007; Pedersen and Andersen, 2006). Gereffi, Humphrey and Sturgeon’s (2005) classification also includes ‘innovative’ measures: shifting from an auditing and compliance mentality to a more collaborative approach with suppliers (Hartman, Arnold and Wokutch, 2003; Mamic, 2005; Yu, 2009). However, these are best suited to small and direct-supply contracting, while most clothing MNCs today manage the sources of thousands of suppliers worldwide through various forms of indirect relationships (Gereffi and Frederick, 2010), with multilevel intermediaries and their subcontractors’ networks operating in various national socio-political environments. This complexity not only hinders the top-down governance in the chain, but further, as the next section shows, it fosters the convergence of interest amongst these actors to act against western brands’ and retailers’ social agendas.

Economic contradictions

Vogel (2006, 2010) claims that CSR still leaves room for unethical players and suggests that ‘ethical’ reputation has little influence on total sales. Indeed, brands shamed by anti-sweatshop campaigns have experienced significant expansion of retail outlets and sales. Primark’s EU and UK stores have increased from 66 locations in 1994 to 220 as of May 2011, while Tesco’s clothing sales have increased by 14 percent between 2009 and 2010 (Primark, 2011; Tesco, 2010: 21–22; War On Want, 2008). The dynamics of final consumers’ purchasing needs appear to trump ethics, especially in western and northern countries, which require MNCs to provide consumers with more styles at unchanged or cheaper prices.

Moreover, priorities in the chain of economic governance conflict with those in social governance chains for CoCs. Wearing their efficiency-management hats, MNCs try to balance low transaction costs/direct control with degrees of flexibility in commissioning and controlling supplies. The economic tactics of MNCs also involve spreading supply risks by stretching the supply base to many countries, thereby maintaining supply flexibility and a quick response to their orders. Multi-tier supply chains are, up to a point, able to meet these economic demands. But as we show later, they create significant difficulties for social governance of chains through CoCs.

Any reputational gains from ‘doing good’ lie with the brands (Pedersen and Andersen, 2006), whereas most of the cost of compliance is borne by suppliers with less to gain (Welford and Frost, 2006). To a large extent, the contradiction of imposing CoCs by MNCs – yet being unwilling to share the cost with suppliers – hinders CoC implementation (Jenkins, 2001; MSN, 2004; Yu, 2008). Suppliers are unconvinced of a business case for ethical practices and tend to evade code rules (Egels-Zanden, 2007; Roberts, Engardio and Bernstein, 2006). Egels-Zanden’s study of several Chinese toy factories found retailers and suppliers having shared economic incentives to decrease levels of compliance because costs are thereby lowered, while workers are compensated for accepting these reductions by keeping their jobs.

However, such worker obedience and quiescence is called into question by the overwhelming evidence of the increasing number of worker strikes and labour shortages in Chinese and Vietnamese manufacturing sectors (Cai and Wang, 2010; Chan, 2009; Kam Wing, 2010; Clarke, 2006; Sunoo, 2007). In Vietnam, 90 percent of rural-urban migrant workers find a job within one month of arrival, and almost a quarter get a job within the first week (GSO & UNFPA, 2006: 26). This evidence of ‘loose’ labour markets limits the claim that workers ignore codes because they fear dismissal. Our evidence from several cases in Vietnam, presented in ‘Obstacles to more authentic workplace bargaining’ below, offers a more complex explanation for workers’ collusive silence about their working conditions.

Institutional contradictions

Most strikes in Vietnam since 2000 are wildcat strikes, often in foreign-invested enterprises (Clarke, 2006; Sunoo, 2007) although such enterprises accounted for less than three percent of Vietnamese enterprises in 2008 (GSO, 2009). This militancy suggests that Vietnamese workers might be sufficiently empowered to demand better working conditions, although not through official and legal industrial relations procedures. Despite compliance with international labour standards often being a condition of supply to western buyers, evidence of southern governments’ positive enforcement of those standards is scarce, even where labour law stipulations are comprehensive (Chan and Wang, 2004). These states seem to prioritize increased exports and employment above improved labour standards. Unlike China, garment sectors are strategic priorities in Vietnam as the second largest export industry (Schaumburg-Muller, 2009; VITAS, 2010. In January 2009 the minimum wage level in Vietnam was less than half that of China and Indonesia and about one-third of the minimum wage in Thailand (ILO, 2009)

The MNC codes' key provision of a right to freedom of association clashes with the restriction to officially recognized bodies in Vietnam and China (Clarke, Lee and Chi, 2007; Josephs, 1995). Any anomalous, independent workplace unions are effectively non-adversarial and pro-management, yet such entities can still appear as a panacea to supersede and facilitate other unenforceable standards. Stronger, independent workplace trade unions could themselves press for the improvements in working conditions for which the complex apparatus of CoC strives. The experience of MNC-fostered unionization by Reebok in China (Yu, 2008) illustrates the potential for – and problems with – such a strategy.

Obstacles to more authentic workplace bargaining

It is tempting to draw parallels between Vietnam and the similar upsurge of 'unofficial' worker militancy in China, especially as the onslaught in China has led some western MNCs to attempt to complement their CoCs with worker organizations in their suppliers' plants (Yu, 2008). Clarke, Lee and Chi (2007: 565) suggest two possible solutions to Vietnam's systemic problems with industrial relations: (1) enforcing existing legal rights through more direct control of collective bargaining and conflict resolution in the workplace by the official union hierarchy – the Vietnam General Confederation of Labour (VGCL) – without a separate role for workplace union organizations; or (2) the state delegating terms and conditions of employment to VGCL to negotiate directly with employers – potentially increasing the role of workplace trade union organizations. In either case, resolving the wildcat militancy stemming from official workplace union ineffectiveness would need both increased accountability to members and appropriate skills and resources for representatives to bargain effectively with managements.

MNCs could promote the second of Clarke, Lee and Chi's solutions, as western 'brand' firms in China have shown the potential for (and problems with) such a strategy. As commentators on the Reebok Chinese experiment observe, local and internal monitoring and problem resolution could be more economical than the present system of hiring expensive auditors to report code violations, which then require MNC intervention. However, with Reebok's 2001 international 'worker representation initiatives', the first democratically elected workers committee at the Reebok plant in Fuzhou soon declined into the more conventional and subservient role that typifies Chinese unions: formally recognizing employees' legal rights and interests, but 'respecting investor's interests and promoting enterprise development' (Yu, 2008: 523). Similar to the official unions, the Reebok union's perspective and elected representatives became dominated by the management and its role reduced to 'boosting employee loyalty, morale and productive efficiency' (Yu, 2008: 524). In one interpretation, the new union became little more than a way of relieving Reebok from 'expensive monitoring of its labour-related 'codes' (Yu, 2008: 523–4), but Adidas's takeover of Reebok removed the MNC's human rights representative, who might have monitored plant relationships to prevent the union's degeneration (Anonymous, n.d.). The need to gain the support of the official union organization meant that the latter coached the new union's officers and oversaw its policies (Yu, 2008). After describing the realities of plant-level industrial relations in the Vietnamese cases studied here, we will return to the policy options for strengthening workplace unions through, or instead of, CoCs in our conclusion.

Apparel industry and Vietnamese case study firms

Cases and methodology

In the apparel industry, south-east Asian contracting businesses are less interested in vertically integrated supply chains than in competitive outsourcing of orders to many ‘independent’ entities. These owners each have their own policies and interests. Between 2008 and 2010, Dong Hoang investigated the implementation and impacts of buyer-firms’ CoCs at three apparel companies, representing the three dominant types of garment companies in Vietnam: a foreign (Korean)-owned subsidiary (FOE), a state-owned firm (SOE), and one domestic, privately owned enterprise (DPE). Each had CoC agreements, specified by large international brands and retailers. Such larger-than-average garment firms are more likely to have the resources to conform to CoCs. While the DPE was fully privatized, the SOE is still in the privatization process, with the state owning almost one-third of its shares.

To establish rationales for CoC non-compliance more precisely than some other studies, twenty semi-structured interviews of senior managers and union representatives, as well as between five and six production workers, were completed at each of the three companies on the first visit in 2008. In 2010, the information from these interviews was cross-checked against three interviews with vendors sourcing from the SOE and DPE, but not the FOE, which is dedicated to production for its overseas mother company. The SOE and FOE, identified from the signatories to the Social Accountability Initiative (SA8000), produce garments for many different product brands and comply with multiple codes of conduct. CoCs and other documentation provided by the companies were examined and observations of the factory workplaces were made. A representative from a Vietnamese NGO working with international NGOs to promote CSR was also interviewed. Half of the interviewed workers were identified through social networks, friends or relatives, and half through snowball sampling from previously interviewed workers. These methods appear to provide reliability, as selected workers from both methods provided similar views on CoC implementation. Long working days for these workers made telephone, rather than face-to-face, interviews necessary.

These companies share similar sets of CoCs as the suppliers of almost identical western customers including Gap, Wal-Mart, American Eagle Outfitters (AEO), Kohl’s, Sears, Target, C&A, Zara (Inditex), Columbia, Timberland, Levi Strauss and Perry Ellis International. Each customer has its own CoC, so more customers means a higher number of codes to be observed. The SOE and DPE supply thirty or so brands each, while the FOE only supplies three major US customers: Gap, Wal-Mart and AEO. While they supply the same brands, the three Vietnamese companies differ in their supply-chain position. The FOE is a first-tier supplier, headquartered in South Korea, with a long-term contract with its brands and retailers, while the two Vietnamese-owned companies – the SOE and DPE – are both 100 percent subcontracted through vendors and operate in the second, or sometimes third, tier of the supply chain. These differences significantly influence their compliance with buyers’ codes.

Gains and limitations for women workers from corporate codes

Workers at all three companies recognized some positive changes resulting from the implementation of CoCs: the abolition of maternity registration and of restricted access to toilets, plus improvements in safety and a better physical work environment. Substantial investment in upgrading the infrastructure of workshops and health and safety measures were evident in the SOE and DPE to attract foreign customers. While the FOE is only five years old, it is well equipped with modern workplace facilities. Workers at the FOE claim that previously they had to apply for a ‘toilet card’ from supervisors in order to go to the toilets, but CoC audits by clients helped end this inhumane practice. As one worker expressed with relief, ‘now we can go freely’ (FOE line worker interview). Previously, the SOE and DPE required women workers to apply for a ‘maternity card’ one year before pregnancy. An SOE manager reported that the company’s first audit drew the fact to management’s attention that such a policy violates human rights; the company has since removed the regulation. Such improvements and the implementation of women workers’ rights can be attributed to the codes and are appreciated by employees: ‘Things are now nicer and cleaner’ (FOE line worker interview). However, pregnant workers and workers with small children have to work hours as long as other employees, but report that they have insufficient time for childcare. Moreover, CoCs seem to focus primarily on shop-floor workers, to the exclusion of those working outside production chain operations. Each operation will have a sampling workshop with between 20 and 50 workers. Workers at sampling workshops claimed they had to work harder and even longer hours than their production-line colleagues, and have never encountered CoC auditors. As one claimed: ‘CoC is only applied for production line workers’ (DPE sampling worker). There has been no sign of improvement in these trades for years.

The overtime burden on employees was hardly affected, remaining obligatory – and at twice the national legal level – at the two Vietnamese firms, but not paid at higher overtime rates. These workers, however, do earn higher wages than their FOE counterparts, who only earn just above minimum wage and, moreover, suffer strict work discipline and high-tension relationships with their line managers. Young and pregnant workers have to work overtime in the same way as other workers. Workers’ experiences influence their trust in CoCs, thus they perceive only limited gains from them. Child labour, forced labour and minimum wage compliance remain sensitive issues for their employers’ MNC clients. The latter would not compromise if suppliers violated these standards, but overtime work is regarded as being ‘in the nature of this industry’, so excessive working hours are viewed more flexibly.

Compliance and evasion

Of the three firms studied, only the FOE complied with most of the key standards in the labour law and buyers’ codes, such as working hours, overtime wages (150–200 percent of basic wage) and various maternity benefits for women workers (reduced working time, paid leave for medical check-ups and maternity leave). One FOE worker acknowledged that neither she nor other workers experienced problems claiming maternity benefits. Workers regularly work eight hours a day, six days per week, with every Sunday off. Required overtime is often only for a short period in order to complete orders, with overtime payments

conforming to the national law. Workers are paid at least the minimum wage, rather than the piece-rate wage at SOE and DPE, as their monthly salaries.

An FOE manager linked the company's strong commitment to clients' labour standards requirements to the dedication of its production to only three large brands. This direct buyer-supplier relationship strengthens the supplier's commitment to social responsibility, as the manager said: 'We have a long-term relationship with our clients. They often visit the factory here and we are not going to betray them... If we have problems, we can always discuss' (HR and Compliance Manager, FOE).

The other two companies – the SOE and the DPE – supply the same brands, but through contracts with vendors. These companies cheat on the compliance requirements in order to pass buyers' audits and satisfy certification organizations. Their apparent success has even led to CSR awards from both a local NGO and the industry itself, including a certificate of merit for social performance, which confirms that the methods developed to deceive monitoring organizations have become systematic, institutionalized and invisible.

At the SOE, line managers operate with a two-book system. One is for actual attendance and work hours for management purposes. Another set contains fake attendance and work hours for the benefit of the auditors. Workers are expected to give positive information about the company in their interviews with auditors. Most workers will tell the auditors that they don't have to work overtime very often, and that weekly overtime is not more than 12 hours: 'Sometimes when auditors stay back late [at factories], we are even allowed to go home at 5 pm. When auditors are not there, everything is as usual' (SOE production worker). At the DPE, there is a more sophisticated way of cheating on work hours, through an automatic timing system for checking attendance. The company asks workers to check out at the approved times, e.g. 5 pm or 6 pm every day, and then return to work as normal.

CoC violations in these two factories include the use of casual child labour, worker discrimination, excessive and mandatory overtime, and failure to pay overtime premiums, as found in previous studies of compliance (Egels-Zanden, 2007: 52; Smith, Nguyen and Tran, 2006: 17; Welford and Frost, 2006: 169). However, our cases confirm that effective enforcement is particularly difficult without a direct channel of command between the (western) buying firm and a network of suppliers at various stages of the production chain. Greater monitoring of CoC performance seems to make little improvement where contracts are made between subcontractors and vendors, not brands. Often, subcontractors can only be qualified as suppliers once they pass brands' audits, but western brands rely to a large extent on vendors declaring their subcontractors' identities. While on some levels this occurs, the monitoring of subcontractors' social performance during production remains problematic, as most audits are singular events.

Interviews with three vending companies, one based in Hong Kong and the other two in South Korea (SK1 and SK2), also show that code monitoring is predominantly the brand firms' business, not the vendors. By disclosing subcontractors' identities to the brands, the vendors disengage themselves from monitoring CoCs. All three vendors obtained approval

for their selected subcontractors from their MNC clients. Once approved, vendors can source products from the subcontractors. Occasionally, if subcontractor X fails client A's audit and is disqualified, the vendors will just submit subcontractor Y to client A as a replacement. In the meantime, the vendors still use the failed subcontractor X to submit to client B, hoping the subcontractor will pass client B's audit. This process is repeated for each client and each subcontractor, creating a complication of overlapping audits and monitoring sometimes – as a manager complained – up to 10 audits a week, with almost 40 different type of document submitted to auditors.

Among the three vendors, the Hong Kong firm has combined product quality control (QC) and CoC monitoring in the daily job of QC staff. But completing a CoC checklist is clearly not their priority:

'If in a peak period the factories have to meet many delivery deadlines, they increase overtime work, hire workers without signing contracts... that is what we can ignore. If we feel it is not too serious we will just disregard it. We are not too difficult on everything because it also affects our business'. (QC inspector, HK vending company).

The two SK firms show no interest in CoC monitoring and ignore labour practices on shop floors. One inspector from SK2 said: 'We've got to make sure they do it correctly as per our samples and complete the order on time. The other things [labour standards] ... we don't have to do anything about it. It has been approved' (QC inspector, SK2 vending company). The complexity of supply networks with multiple buyers and subcontractors enables the intermediaries to act as coordinators without being subjected to any obligations other than identifying their subcontractors. Even the initial audits by MNCs can be pre-empted by the collusion of Vietnamese subcontractors and vendors, as the next section explains.

Convergent interests and trade union dysfunctions in CoC avoidance

Subcontractors' non-compliance cannot succeed without substantial support and ineffective regulation from other economic and social actors in the supply chains, including vendor-suppliers and worker–manager collusion. Ineffective regulation also stems from dysfunctional trade unionism in the workplace. We now describe the incidence of these factors in the companies investigated. Third parties hired by western customer firms conduct most audits, but intermediary vendors also engage them to carry out 'prior-audit preparations' of the factories. Vendor firms prepare the suppliers for official CoC procedures by taking them through dummy audits. As one manager said, 'vendors are usually "supportive" as they are also afraid of not being able to sell products to their clients (retailers)'(Deputy Director, SOE). Subcontractor–vendor collusion aims to promote 'mutual interest', as a factory manager put it, between the two supplying firms with the powers of MNCs limited to an often-ineffective initial 'approval process'.

According to a DPE manager, vendors help to cover up for subcontractors because vendors themselves sometimes create delays. For example, vendors procure fabric and materials, often from abroad, then deliver to the subcontractors to cut, sew and pack finished products. Delays in delivering these materials shorten the time subcontractors have for implementing

production, as delivery deadlines to western buyers are usually unalterable. At the top, MNCs also deliberately postpone orders to the last minute to capture as much market information as possible (Chopra and Meindl, 2007; Insight Investment, 2004). Our investigation highlights how other economic actors also transmit burdens down the supply chain to subcontractors.

In pursuing their economic interests, subcontractors often take ‘more orders than they can actually do’ (SK2 vendor). Companies such as the SOE and DPE then force workers into excessive overtime to cope with resulting ‘over-capacity’ workloads and with short lead-times from their direct (vendors) and indirect (MNC) buyers. So some sweatshop conditions are not simply generated by a single dominant actor in the supply chain, for example MNCs, but rather by a convergence of interests among various economic actors throughout the chains. On the one hand, supply firm managements expect workers to give positive information, as one DPE worker reported: ‘The company teaches us what to say to auditors’. Yet, on the other hand, workers support their companies in cheating auditors because they are frightened the buyers might terminate production contracts, and because they want their companies to be competitive to get orders from large buyers.

Workers see themselves and managers as on the same side: ‘we’, as they say, ‘try to win orders from big brands’. An SOE worker explains that ‘[o]ur job[s] rely on signing long-lasting orders so that we can have higher income... [A f]ew years ago we were inexperienced as we just started to produce branded products but now we kind of “know how” so we manage to sign larger orders’. Payment systems have a big influence on this tacit collusion. At the DPE, workers get competitive pay as the company manages to pass the audits done for large buyers such as Gap, Levi Strauss, Columbia and AEO. Large orders mean longer periods for workers to get to know the job, increase their speeds and, through piece-work, raise their earnings, increasing workers’ level of commitment and loyalty to the company.

Smarter auditors sometimes select younger, more naïve workers and, on occasion, other employees, who are tired of lying, may tell the truth. However, most employees are well-schooled by their companies in what to say – and what not to say – to outsiders: ‘If we tell auditors the truth, the company will soon run out of business and we are out of job’ (DPE worker). At both the SOE and DPE, workers are well informed about audit results, awards and sanctions and feel obliged to say positive things about the company for the ‘collective good’:

‘We all know who have been asked by auditors. If the result is bad and if the client stops a contract with us, those workers would feel as if they had taken away other workers’ opportunity for a good income’ (SOE line supervisor).

A DPE manager summarized the commercial motivations behind CoC compliance: ‘We invest in facilities and infrastructure to give a good impression to our customers when they visit factories ... to get orders and charge them higher price’. In a mirror image of more powerful western MNC counterparts, these supplier firms see manipulation of their CSR credentials as tactics to improve their competitive prospects. Paradoxically, however, although the FOE complies with more CoC and labour law requirements, its workers are less

content than those at the other two firms because of levels of take-home pay and severe work-time regulations, including earlier attendance and exclusions for lateness. The apparently ‘unholy alliance’ between workers and the managements who, in other respects, exploit them is also due to the absence of other social actors with whom they could collaborate. Social stakeholders such as the government, NGOs, trade unions and labour activists have negligible influence on suppliers’ social performance. Labour law enforcement by government bodies is almost non-existent in the three companies, and in fact, Vietnamese labour law is considered as strong and protective of workers (Smith, Nguyen and Tran, 2006). It incorporates seventeen ILO conventions, covering most key labour standards, except the right to freedom of association. The establishment of a company’s trade union is mandatory in both Vietnamese and foreign-invested enterprises. Formal mechanisms for handling employee grievances are stipulated via either a ‘conciliation council’ at the enterprise, or district or city level bodies. Legislation allows strikes on a majority vote of employees if these actions fail. However other reports (Clarke, Lee and Chi, 2007; Dang Lan, 1995) and our own interviews suggest that these procedures have little or no credibility with workers. At the DPE, the union chairman is a deputy director of the company; at the SOE, the chairwoman is the deputy head of the business department; the FOE management simply appointed a company nurse to that position. Most interviewed workers in the three companies regard their companies’ unions as useless.

Workers at the FOE organized wildcat strikes through informal and, often secretive, leaders, but such ad hoc collective actions do not always succeed. As an FOE worker explained: ‘Sometimes we get increase [pay], but sometimes we get nothing and have to come back to work’. This worker’s experience exemplifies Clarke, Lee and Chi’s (2007) finding that informal-worker organization does not seem to secure wider or more permanent grievance representation. Officials blame worker ignorance of proper procedures and in 2008, the government passed decree 11/2008/NĐ-CP, making individuals and groups committing illegal strikes responsible for compensating employers for resulting losses. This regulation checked the growth in wildcat strikes and assured employers and investors of a stable economic environment, but it has had little influence on workers’ motivations for deciding whether or not to strike, although it may have affected the success of such ‘illegal’ actions.

Unlike the FOE, the DPE and SOE have never experienced strikes, even though these companies violate standards in both national laws and clients’ codes. However, workplace unionism is potentially important in combating firms’ non-compliance with standards, as indicated by attitudes at the more militant FOE. Repeated strikes and worker-management disputes there led one worker to say that there was ‘no way’ they would cooperate with managers to hide breaches of labour standards.

Conclusions and proposals

The evidence from these three Vietnamese companies confirms that criticisms of weaknesses in codes derive partly from assumptions that principal-agent relationships govern, or could govern, their implementation. Instead, hierarchical transmission of MNC principles and policies is restricted and subverted by the network character of supply chains, inducing

convergent interests in the multi-lateral relationships between suppliers, workers, managements and by the tacit influence of the dysfunctional labour relations system. Multi-level contracting means orders and supplying contractors proliferate beneath the immediate vendor– buyer transactions into second and third levels of the supply chain, preventing unilateral, ‘top-down’ code management. Any code implementation is further complicated by convergent interests leading to the avoidance of compliance among vendors, subcontractors and, often, workers themselves. Avoidance of CoCs and potentially relevant national labour codes is further facilitated by management control of workplace unions.

These considerations change the focus from the roles usually depicted, i.e. superior MNC powers and capacities with workers cast as either beneficiaries of CoCs, or of their inadequate implementation. At least in the Vietnamese context, the roles of vendors, factory managers, unions, state bureaucracies and the workers themselves, create competition, conflict and collusion, which subvert CoCs’ regulation and operation. Consistent with Murray (2004), however, our evidence suggests that CoCs may be a potentially influential variable in a wider process of development, if accompanied by fuller recognition and strengthening of workers’ collective voice in the workplace.

One initiative, the Better Work programme of the ILO and International Finance Corporation, aims to go one step beyond CoC auditing. Approved by Vietnam’s labour and government bodies, it offers post-inspection training of workers and managers on freedom of association/bargaining, health and safety, compensation, discrimination and working hours, with reports sent to factories’ MNC customers. On working hours, Better Work reports admit that combating almost universal illegal overtime depends on structural changes, general productivity improvement and changes in MNC buyers’ requirements. It refers the even thornier issue of workplace union bargaining to separate initiatives involving the Vietnam General Confederation of Labour (VGCL). As of December 2010, 64 of 3174 apparel factories, covering between 5 percent and 13 percent of the industry labour force, had volunteered to participate in Better Work (ILO, 2011: 6, 19).

Progress on these fronts, for example Wang’s (2005) proposal to replace formulaic ‘compliance and evasion’ rituals and ethics of MNC’s CoCs with ‘organizational integrity’ – requiring that supplying enterprises take on direct responsibilities – would require a raft of both major and minor reforms involving various actors and institutions in economic and social governance. In the economic sphere, buyers would need to cooperate – as in the IDS recommendation to the Ethical Trading Initiative – for joint coordination by retailers and MNC brands. More effective social governance would require VGCL cooperation, at least to publicize workers’ statutory rights (Smith, Nguyen and Tran, 2006). Vietnamese officialdom already recognizes a more explicit role for CoCs in labour regulations. At the ‘Stakeholder Roundtable meeting on CSR initiatives’ held in Hanoi on 6 September 2010, a government official supported CSR regulation because: ‘It fills the gaps in governments’ enforcement capacity: human and financial resources for inspecting and enforcing the implementation of the national law are limited’ (Nguyen and Ngo, 2010: 26). Making further use of this tolerance would mean persuading the VGCL that reforming their negligible role in the strike-torn private sector should involve semiautonomous union organization and regulation in the

private and foreign-invested firms, complementing the rights-compliance culture in the state-owned sector with more of an interest-bargaining ethos (Clark, Lee and Chi, 2007). Support would also be needed from western MNCs (together with their east-Asian intermediaries) to pressure state authorities and violators of CoC provisions and state labour standards. MNC auditors would need to notify both western paymasters and local ministry of labour (MoLISA) or official union authorities of glaring violations. MNCs could further the independence of workplace union organizations from their suppliers' managements. Human rights advisers of the kind attempted briefly by Reebok in China could act as quasi-ombudsmen. The integrity of workplace union elections could be improved by making external bodies, such as MoLISA and the MNCs rather than the official union hierarchy, responsible for their proper conduct and independence from managements.

These sociopolitical reforms would be futile without addressing the economic causes of CoC and labour law violations, that is, changing the economic governance of supply chains. Lower- and middle-tier suppliers would need to be engaged in the social agenda by comprehensively incorporating the most significant labour standards checks into the more frequent and rigorous quality control inspections. Equally important are inter-business agreements, to help reduce those economic pressures on supplier firms, which currently induce cheating and deception of auditors. Western MNCs, plus the giant retailers that they supply, could agree a compact, similar to Fairtrade principles, for relatively minor reductions in profit margins and delivery times to finance the small wage increases sought by workers to reduce the need for overtime work. Reducing these pressures should allow more 'organizational integrity' in the supply chain and savings in the monitoring costs of the present complex (but erratic) CoC system. Savings could – via small levies or transaction charges on garment exports paid by all suppliers or vendors – create a fund to cover the costs of the genuine, private sector, new collective bargaining institutions, or to compensate suppliers whose intransigent MNC customers refuse to raise contracted prices.

Such changes would clearly require considerable time, political momentum and activism. Not all may be achievable together. But the Better Work initiative shows there is scope for reforms. Western firms, NGOs and campaigners could lobby for, or agree to, those changes in which Vietnamese state agencies are already showing interest. By demonstrating their commitment, western business interests and advocacy groups could encourage local actors to attempt the other, more demanding, reforms required.

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