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Codes of conduct, a tool to regulate supply chain labor practices?

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Codes of conduct, a tool to regulate supply chain labor practices?

Sarah Vandenbroucke, May 2022

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1. Introduction: The difficult regulation of Global Supply Chains

With globalization in the 70s, corporations began outsourcing part of their production to factories located in less developed countries in the pursuit of cheaper labor force. This created global supply chains, defined as vertically coordinated networks of firms engaging in activities associated with the production and distribution of an end product.¹ As advocated by Friedman, the economic pattern of the global supply chain is, in theory, beneficial for all, it is the ‘win-win’ scenario where Northern countries profit from cheaper labor and southern countries gain in employment possibilities and foreign investments. To some extent, supply chains have indeed allowed emerging economies like India to attract foreign investors and gain competitiveness on the global market. However, another trend particularly discussed in the field of business and human rights is observed, inherent to the interconnected world and the large base of suppliers that multinational enterprises (MNEs) may choose from: the so called ‘race to the bottom’. This socio-economic expression describes the movement of deregulation of business environment and the reduction of taxes made to attract foreign investors. It occurs when competition increases between geographic areas over a particular sector of production and leads to lower labor costs and fewer labor regulations. Global production networks therefore have the effect of creating competition on a global scale, ultimately putting immense pressure on production costs and speed. These social and environmental consequences have provoked significant controversies over the role of multinationals, often accused of exploiting developing countries’ low wages and weak social regulation to produce low-cost goods at the expense of local workers’ welfare.² In fact, child labor, hazardous working conditions, excessive working hours, and poor wages plague many workplaces in the globalized world, creating scandal and embarrassment for the global companies that source from these factories. The power of national governments has proved insufficient to regulate labor conditions considering the complexity of global supply chains and the issues of territoriality. International cooperation and public international organizations bear the role to set international standards that are to be implemented globally, as done by ILO Conventions. However, the regulation by public organizations does not target private actors directly, as they have the primary objective of regulating States. As of today, no binding international treaty creates direct obligations for private actors.³

In the absence of multinationals’ legal accountability on their social impact beyond the national sphere, it remains in companies’ hands to make sure minimum labor standards are implemented throughout their supply chains. This so called “global governance gap” in business and human rights has led multinationals to acknowledge a certain degree of responsibility for workplace conditions in supplier factories and the labor standards in practice in their supply chains and

¹ Definition by Boyd, D. Eric, Robert E. Spekman, John W. Kamauff, et Patricia Werhane. « Corporate Social Responsibility in Global Supply Chains: A Procedural Justice Perspective ». *Long Range Planning* 40, n° 3 (June 2007): 341-56. <https://doi.org/10.1016/j.lrp.2006.12.007>.

² Locke, Richard M. *The Promise and Limits of Private Power: Promoting Labor Standards in a Global Economy*. Cambridge: Cambridge University Press, 2013. <https://doi.org/10.1017/CBO9781139381840>.

³ However, recent international and national laws show that there is a shift towards more accountability of non-State actors in social and environmental matters. The development of laws on corporate due diligence adopted in France, Germany and the Netherlands for instance are a good example of such shift.

self-regulate by adopting labor standards applying to their suppliers.⁴ Those standards are laid down in different Corporate Social Responsibility (CSR) policies, which are social and environmental standards voluntarily adopted *by* and *for* companies that acknowledge a sense of responsibility towards society in their commercial operations and in their relationships with interested parties.⁵ One of the most common forms of CSR policies are corporate codes of conduct (CoC), documents drafted by companies setting minimum labor standards to be implemented by companies' suppliers and third party contractors. This chapter assesses the adequacy of this regulatory pathway increasingly adopted by MNEs, to question whether CoC are suitable and effective to guarantee decent labor standards in global supply chains. We present the characteristics of CoCs and the implementation mechanism put in place, as well as their limitations and assumed impact on labor standards.

2. Codes of conduct characteristics

2.1. Objectives and definition of codes of conduct

The repetitive social and human rights scandals on the conditions of workers in the global supply chains feed NGOs and civil society in their claim towards an increased responsibility and accountability of MNEs. The collapse of the Rana Plaza building in 2013, killing 1133 workers in a garment factory in Bangladesh producing clothing for Western brands, brought worldwide attention to the plight of workers in the garment sector and raised a collective debate on corporate accountability.⁶ Fear of reputational damages, as well as pressure from major stakeholders like pension funds and civil societies, have dramatically changed MNEs behaviors regarding CSR, who are pushed to actively formulate policies in which they commit to respecting human rights.

According to Kaptain and Schwartz, a code of conduct is a formal document containing a set of prescriptions developed by and for a company to guide present and future behavior issues.⁷ A CoC is therefore a form of self-regulation, which is sometimes referred to as a code of ethics, business principles or codes of practice, that can usefully complement labor and employment law where there are gaps in public legislation. Today, we estimate that over 70% of companies

⁴ Eberlein, Burkard. « Who Fills the Global Governance Gap? Rethinking the Roles of Business and Government in Global Governance ». *Organization Studies* 40, n° 8 (August 2019): 1125-45.

⁵ Commission of the European Communities, 2001. Green Paper. Promoting a European Framework for Corporate Social Responsibility, COM. 366 Final. Commission of the European Communities, Brussels

⁶ Although the anti-sweatshop movement emerged in the early 1990s, the collapse of the Rana Plaza made the problem resurface and several multi-stakeholder initiatives were implemented to improve worker safety in supply chains. For more information on the impact of the Rana Plaza incident on the rise of private regulation, read: Alamgir, Fahreen, and Subhabrata Bobby Banerjee. "Contested Compliance Regimes in Global Production Networks: Insights from the Bangladesh Garment Industry." *Human Relations*, n.d., 26.

⁷ In the exact words « *A business code is a distinct and formal document containing a set of prescriptions developed by and for a company to guide present and future behavior on multiple issues of at least its managers and employees toward one another, the company, external stakeholders and/or society in general.* » Kaptain, Muel, et Mark S. Schwartz. « The Effectiveness of Business Codes: A Critical Examination of Existing Studies and the Development of an Integrated Research Model ». *Journal of Business Ethics* 77, n° 2 (28 November 2007): 111-27.

have adopted or adhere to voluntary codes of corporate conduct including labor standards regulating their supply chain, worldwide and in all industries.⁸

The quality of their content and the type of CoC developed varies substantially, as codes are entirely voluntarily drafted documents. Firstly, CoC may target different actors. Initially, CoC were only applicable to a company's direct employees within their national borders. Progressively, companies have also drafted CoC targeting external parties, especially their contractors and suppliers, which is why they are sometimes referred to as "supplier codes of conduct"; "purchasing policy" or "Human Rights statement". Some companies have adopted one single CoC applicable to all actors, while others have drafted two or more different CoC targeting different actors. Moreover, some supplier codes are only applicable to first tier suppliers (e.g. the direct sub-contractors), while others aim to regulate the whole supply chain involved in the production or service to the end good. This latter option shows higher standards and commitment by the company, as most human rights challenges arise at the bottom of the supply chain. Secondly, CoC have sometimes been developed by other stakeholders such as trade unions, multi-stakeholder sectoral initiatives, NGOs or even governments, who invite companies to adhere to their code and implement it in their supply chains. This is the case of the CoC developed by the Responsible Business Alliance (RBA), a coalition of companies dedicated to CSR in global supply chains mainly operating in the electronic industry.⁹ The RBA counts 400 member companies and intends on holding them accountable to core labor standards and provides training and assessment tools to make sure that their CoC is complied with. The Ethical Trading Initiative (ETI) and the Fair Wear Foundation (FWF) are other examples of collectively drafted CoC, and a community help to support their implementation. These initiatives are good practice examples of CoCs, as they have a generalized set of principles and social performance objectives involving a range of actors. The range of different types of CoC show us that codes can be adopted with different levels of commitment from MNEs.

2.2. Legal effect of codes of conduct

As a form of self-regulation, there is a wide consensus that voluntarily drafted or accepted CoC are not legally binding, and that companies cannot be held accountable if the provisions of the codes are not complied with by their suppliers. As of today, no judge has accepted CoC as a self-standing legal basis. This is why CoC are often criticized to lack "teeth", e.g. sanctioning mechanism to enforce provisions. However, codes may pertain legal consequences, despite their absence of globally recognized directly binding effect. Scholarly discussions around CoC legal effect explore possible ways forward. Vytopil for instance (2015) explores CoCs under the contract law lens, and argues that, when included in supplier contracts, CoC could have the effect of binding both parties under contractual terms and therefore pertain legal consequences under national civil law.¹⁰ This was the attempt of the applicants in the Wal-Mart case, in which

⁸ These statistics are based on the [Database of Business Ethics](#) and my own research, where we have analyzed the CSR documents on a sample of 1223 companies worldwide.

⁹ The website of the Responsible Business Alliance is accessible at: <http://www.responsiblebusiness.org/about/rba/>

¹⁰ Vytopil, Contractual control in the supply chain : on corporate social responsibility, codes of conduct, contracts and (avoiding) liability (2015), the Hague : Eleven International Publishing

workers from suppliers' factories claimed that the code of conduct set forth in Wal-Mart's contracts with its foreign suppliers was violated, and that Wal-Mart should be held accountable for a breach of a contractual duty to inspect its suppliers' foreign factories. The court considered that supplier workers did not have sufficient legal standing as "*the relationship between Wal-Mart and Plaintiffs is too attenuated to support restitution under an unjust enrichment theory.*"¹¹ Despite this judgement, the debate taking place in the aftermath of this lawsuit hints that the court implicitly interpreted the contractually incorporated CoC as an obligation to benefit third parties, yet an obligation pending on the side of the supplier.¹² Therefore, although the contract law pathway is not developed yet, the use of national courts to see CoC enforced is still under considerations by many.

By adopting CoC, enterprises may also engage their legal responsibility towards their consumers and be held accountable for deceptive advertising in case of violation of their CoC. The *Kasky v. Nike* case is here a good example: Nike was sued by a US citizen for disseminating false information claiming that its subcontractors complied with the company's code of ethics, while labor practices in Nike subcontracting factories did not match the factual assertions made notably in the CoC.¹³ The case was settled in 2003, with Nike agreeing to adopt a more transparent approach to its workers and subcontractors and making a payment of \$1.5 million to the Fair Labor Association.

Therefore, although CoC are not legally binding unlike other regulatory norms, different pathways can be explored to derive a legal effect from the adoption of CoC. One important limit to this statement lies in the formulation of CoC provisions: since CoC are voluntarily drafted, MNEs should themselves have the intention of creating legally binding provisions when adopting a code, or at least be aware that CoC leads to legal consequences. From the permissive and broad vocabulary adopted in some codes (see the box below), all enterprises do not appear to have the objective of strictly binding their suppliers to the labor standards. Some companies however mention that codes compliance is a "mandatory requirement", which questions the extent of that obligation.

Some examples of CoC phrasing

The phrasing of the following CoC supports the claim that CoC do not lead to any legal effect.

- **Nike:** "We expect all suppliers to share Nike's commitment to respecting the rights of workers (...)."
- **Amazon** "Amazon expects all products sold to be manufactured or produced in accordance with this Supplier Code of Conduct".
- **Coca Cola:** "The Supplier Guiding Principles communicate our values and expectations and emphasize the importance of responsible workplace policies and practices that comply, at a minimum, with applicable environmental laws and with local labor laws and regulations. The principles reflect the values we uphold in our own policies, and we expect our direct suppliers to follow the spirit and intent of these guiding principles to ensure respect for all human rights".

¹¹ Jane Doe I, et al v. Wal-Mart Stores, Inc, No. 08-55706 (9th Cir. 2009)

¹² Coleman (2009) 630 "Had the plaintiffs asserted standing as direct, rather than third-party, beneficiaries or sued the suppliers rather than Wal Mart, it is not clear that the court would have dismissed their claims".

¹³ Nike, INC., et al. v. Marc Kasky, 539 U.S. 654 (2003)

On the contrary, other CoC are much more authoritative in their phrasing, which shows the diversity of objectives and content of CoCs.

- **Samsung** “The Code is a mandatory requirement on the Supplier by Samsung.”

2.3. Content of codes of conduct

As mentioned previously, CoCs’ content may widely differ depending on companies’ objectives and commitments as they are developed voluntarily. However, it was noticed that CoCs’ phrasing has somewhat standardized overtime, and despite some divergences, the labor standards identified by the core ILO Conventions are largely included in CoC worldwide. Based on our quantitative study using a large sample of 893 codes of conduct, we observe that most CoC include the prohibition of forced labor (831 codes, thus 93%), child labor (810 codes, thus 90%) and discrimination (834 codes, thus 93%), and to some extent the right to collective bargaining (684 codes, thus 76%).

This standardization can partly be explained by the recommendations provided by public institutions and the development of global standards that non-state actors should implement and pursue. To some extent, public institutions have guided businesses in the development of their CSR policies and CoC, especially the Organization for Economic Co-operation and Development (OECD) and the United Nations. The OECD Guidelines for Multinational Enterprises, the UN Global Compact, the UN Guiding Principles for Business and Human Rights, and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy were adopted to lead MNE in taking measures on social policies to further social progress and decent work worldwide. These soft law instruments formulated as guidance or recommendations do not create binding obligations but have supported the adoption of global standards and indicated what is expected from Multinationals. Despite these public recommendations, it seems that few CoC explicitly refer to international texts, as our research proves that only 204 codes out of our sample of 893 (23%) include a reference to an international Convention on which their standards are based. This is a missed opportunity, as a reference to those texts would ensure that companies adhere to internationally accepted labor standards and ensure a level playing field in all supplier factories. The Code of Labour Practice developed by Fair Wear Foundation for instance is based entirely on ILO Conventions and the UN Declaration on Human Rights, and explicitly refers to the applicable text for each labor standards. This allows to depart from vague phrasing of labor rights in codes of conduct and make sure the standards included are specific and internationally recognized.

Good practice example

The Code of Labour Practice developed by Fair Wear Foundation¹⁴

1. **Forced labor:** There shall be no use of forced, including bonded or prison, labor (ILO Conventions 29 and 105).

¹⁴ The Code of Labour Practice by Fair Wear Foundation, accessible at: <https://www.fairwear.org/about-us/labour-standards/>

2. **Child labor:** The age for admission to employment shall not be less than the age of completion of compulsory schooling and, in any case, not less than 15 years (ILO Convention 138 and 182).
3. **Discrimination:** Practices shall be based on the principle of equal opportunities (ILO Conventions 100 and 111).
4. **Trade union rights and worker committees:** The right of all workers to form and join trade unions and bargain collectively shall be recognized (ILO Conventions 87 and 98). In situations with legal restrictions, companies shall facilitate parallel means of independent and free association and bargaining for all workers (ILO Convention 135 and Recommendation 143).
5. **Wages:** Wages and benefits paid for a standard working week shall meet at least legal or industry minimum standards and always be sufficient to meet basic needs of workers and their families and to provide some discretionary income (ILO Conventions 26 and 131).
6. **Working times:** Hours of work shall comply with applicable laws and industry standards. In any event, workers shall not on a regular basis be required to work in excess of 48 h per week and shall be provided with at least one day off for every seven-day period. Overtime shall be voluntary, shall not exceed 12 h per week, shall not be demanded on a regular basis and shall always be compensated at a premium rate (ILO Convention 1).
7. **Health and safety:** A safe and hygienic working environment shall be provided (following ILO Convention 155 among other standards).
8. **Legally binding employment relationships:** Obligations to employees under labor or social security laws and regulations shall be respected and there shall be no excessive use of contract workers or apprenticeship schemes.

3. Implementation and compliance

The successful implementation of CoC is a key concern in the debate questioning the effect of self-regulation. Since codes are not legally binding, no external party formally oversees the monitoring of CoC compliance at supplier level or its enforcement, leading to important differences in the way CoCs are implemented. It largely remains in the hands of companies themselves to assess CoC's compliance and track their implementation, even though NGOs and trade unions often act as whistleblowers if labor conditions at supplier level disproportionately affect human rights. While some MNEs decide to leave the task of monitoring aside due to its substantial budgetary cost, most global brands¹⁵ have developed monitoring programs and surveillance mechanisms, which are governance mechanisms designed to provide the buyer firm with information to mitigate supply chain risks.¹⁶ Monitoring programs often include announced or unannounced assessment visits of the supplier factory to assess the working conditions by means of a social audit rating suppliers' compliance with the code. Audits may be performed by the company itself or delegated to a third party, such as a social auditing company¹⁷. The compliance assessment often includes interviews with managers and workers, observation of pay rolls and management practices, as well as an on-site observation of suppliers' standards of labor, health and safety and environmental impact.

¹⁵ This is especially the case in highly sensitive sectors such as textile, which have been under intense reputational pressure with the sweatshop campaigns.

¹⁶ Short, Jodi L., Michael W. Toffel, and Andrea R. Hugill. "Monitoring Global Supply Chains: Monitoring Global Supply Chains." *Strategic Management Journal* 37, no. 9 (September 2016): 1878–97.

¹⁷ The largest auditing platform is Sedex, a company that developed their own social auditing methodology SMETA.

Scholars have largely questioned the reliability of audits and compliance checks, observing that suppliers may easily hide unethical practices during the social auditing. According to Egels-Zanden, social audits are inherently flawed in their rating, as it is common that suppliers hide violations of the code to pass the audit and avoid altering fundamentally their behavior.¹⁸ Inadequacies have been reported in the way code compliance is monitored by companies and by the burgeoning social auditing industry, which can be partly explained because audits rely predominantly on manager's information and opinions to verify compliance, with little active involvement of workers and their representative organizations. There also seem to be disproportionate attention given to the visible aspects of codes such as health and safety and working hours rather than embedded issues such as discrimination or trade union rights.

Under some conditions however, audits have proven to be more transparent and have increased reliability of the data collected during the compliance assessment. Compliance data and audits performed by public bodies, such as the *Better Factories Cambodia* (ILO monitoring program in Cambodia's garment sector), are likely to be superior to those compiled by private auditors, as they are externally financed and thus less likely to be biased by MNE's interests.¹⁹ It was empirically observed that properly trained compliance officers are also more likely to conduct neutral and informed audits.²⁰ This is why multi-stakeholder CoC initiatives such as those mentioned in section 2 are often more thorough and reliable in their compliance programs. The Responsible Business Alliance (RBA) for instance has set up the Validated Assessment Program which ensures effective onsite compliance verification, conducted by independent third-party audit firms trained in social and environmental auditing. By determining sector-wide standards and centralized monitoring, the RBA makes sure that all supplier factories are evaluated on the same basis, creating a level-playing field for the industry.

Following the monitoring of code compliance, sanctions and retaliations may be put in place by the company if suppliers are considered to violate the CoC. Those can take the form of a notification to the supplier at first, then be financial, and ultimately, the threat is that the purchasing company cut ties with their supplier, in case of recurrent violation of the CoC. While cutting ties may be an effective threat, it is a contested way forward as it does not allow to ultimately improve labor conditions. As mentioned earlier, the violation of a CoC is rarely used as a reason for companies to end the contractual relationship with their suppliers, which questions the importance of CoC in the contract. Therefore, scholars recommend companies to adopt the cooperation approach rather than a strict compliance check in their relationship with suppliers. As demonstrated by Locke *et. al.* (2007), monitoring and surveillance efforts are necessary, but will only truly trigger better labor conditions when combined with supplier empowerment. This means that the purchasing company should, for best results, develop a long-

¹⁸ Egels-Zandén, Niklas. « Suppliers' Compliance with MNCs' Codes of Conduct: Behind the Scenes at Chinese Toy Suppliers ». *Journal of Business Ethics* 75, n° 1 (27 August 2007): 45-62.

¹⁹ Oka, Chikako. « Improving Working Conditions in Garment Supply Chains: The Role of Unions in Cambodia: Improving Working Conditions in Garment Supply Chains ». *British Journal of Industrial Relations* 54, n° 3 (September 2016): 647-72.

²⁰ Short, Jodi L., Michael W. Toffel, et Andrea R. Hugill. « Improving Working Conditions in Global Supply Chains: The Role of Institutional Environments and Monitoring Program Design ». *ILR Review* 73, n° 4 (August 2020): 873-912.

term and trusting relationship with their suppliers in order to see positive results on labor practices. This cooperation approach promotes a mutual adaptation of the supplier and the buyer, for instance via investments made on the buyer's side to contribute to implementation costs. Collaborating with suppliers also means that companies should allow for flexible production schedule with less time pressure or in realistic quantities.²¹ Instead of implementing CoCs in a top-down fashion via the imposition of sanctions and monitoring mechanisms alone, it is important to align the interests of suppliers in improving labor conditions. Involving the supplier and workers in the planning and implementation of the codes and rewarding incremental improvements in labor practices instead of sanctioning have proven to reduce the risks of supplier opportunism and increase compliance.²² In order to adopt the cooperative approach and depart from a strict compliance approach, it is also important that worker's voices at different levels be heard in the design of the code implementation to ensure that priorities of local actors are ultimately the ones shaping private regulation instead of being driven by economic incentives.

Many scholars having studied CoC in the field observed that a trusting and long-term buyer-supplier relationship is key in making sure that CoC are properly implemented.²³ For this purpose, open communication in the relationship and long-term buyer-supplier relationships with long contracts (not piece-to-piece basis) helps to make sure that suppliers gradually *improve* labor conditions on the long term, rather than fake compliance during social audits. The CoC drafted by C&A appears, on paper, to follow this cooperation approach recommended by the literature. Under the section "*Ensuring Adherence to Code of Conduct*" specifically written to promote CoC's implementation, C&A lays down a detailed monitoring mechanism, by constantly acknowledging the shared responsibility of both the supplier and the buyer in improving labor practices. Since this code is identified as a good practice, some interesting phrasings are quoted in the box below.

Good practice example

Monitoring and enforcement mechanism in the C&A supplier code of conduct²⁴

"Adhering to the CoC is no less important than meeting our quality standards or delivery terms. C&A will make serious efforts to work with suppliers who are open, honest, and committed to continuous improvement, and will support them to achieve the requirements.

²¹ Locke, Richard, Thomas Kochan, Monica Romis, et Fei Qin. « Beyond Corporate Codes of Conduct: Work Organization and Labour Standards at Nike's Suppliers ». *International Labour Review* 146, n° 1-2 (March 2007): 21-40.

²² Amengual, Matthew, Greg Distelhorst, et Danny Tobin. « Global Purchasing as Labor Regulation: The Missing Middle ». *ILR Review* 73, n° 4 (August 2020): 817-40.

²³ Egels-Zandén, Niklas, et Jeroen Merk. « Private Regulation and Trade Union Rights: Why Codes of Conduct Have Limited Impact on Trade Union Rights ». *Journal of Business Ethics* 123, n° 3 (September 2014): 461-73. ; Locke, Richard M., et Monica Romis. « The Promise and Perils of Private Voluntary Regulation: Labor Standards and Work Organization in Two Mexican Garment Factories ». *Review of International Political Economy* 17, n° 1 (25 February 2010): 45-74.

²⁴ C&A code of conduct for the supply of Merchandise of April 2015, accessible at: https://www.c-and-a.com/uk/en/corporate/fileadmin/user_mediacenter/user_upload/CA_Code_of_Conduct_for_the_Supply_of_Merchandise_April_2015.pdf

Monitoring and Transparency

- Suppliers must allow C&A and/or its representatives to perform assessments, whether announced or unannounced.
- Suppliers must allow worker interviews to take place in a private setting and must not coach workers on how to respond to questions.
- Suppliers must maintain complete and accurate records so that compliance can be effectively assessed, and not manipulate information or misrepresent any aspects of its operations.
- Suppliers must allow C&A to disclose names and locations of suppliers and production units, as well as information on their performance under the CoC, to third parties.
- Suppliers must provide assistance to C&A and/or its representatives to perform audits at their own suppliers and subcontractors, upon the request of C&A.

Sanctions

- C&A has a confidential whistleblowing system in place called the Fairness Channel, through which all stakeholders, including suppliers, factory workers, and C&A employees, can report unethical behaviour and violations of the Code of Conduct to top management of C&A.
- In case of violations of the CoC, C&A will ask the supplier to develop an improvement plan, with C&A's support if necessary, and implement it within a certain time frame, which may vary depending on the nature of the violation.
- In case of egregious violations (...) C&A reserves the right to terminate the business relationship with the supplier, including cancellation of outstanding orders.
- C&A will hold suppliers liable for any damages and expenses incurred by C&A, including loss of revenues and/or profits, which may result from violations of the Code of Conduct by suppliers, including their subcontractor(s).

C&A wants to build long term relationships with suppliers who are genuinely committed to working together towards better labour conditions and environmental performance and will help them to overcome the difficulties they may face.”

4. Limitation of codes' impact

Despite enterprises' efforts to draft CoC, the path of CSR to regulate labor standards remains a widely contested one and is often criticized to constitute “window dressing” to protect companies from a bad reputation towards their consumers. Instead of being designed to protect labor rights and improve labor conditions, many argue that the adoption of CoC intends to limit MNEs' legal liability and satisfy institutional legitimacy.²⁵ To assess the actual impact of CoC on labor conditions in global supply chains, some scholars conducted studies measuring the improvement of labor practices following the adoption of CoC. The results are mixed: some studies have identified significant improvement of working conditions in the presence of codes (Distelhorst et al, 2015); others have not observed any improvement that can be attributed to CoC presence (Locke et al, 2008), and others have identified marginal improvements of labor conditions following the adoption of CoC (Egels-Zanden and Lindholm, 2015). These conflicting results show us that the mere existence of a code does not necessarily activate

²⁵ Esbenshade, Jill. “A Review of Private Regulation: Codes and Monitoring in the Apparel Industry: Review of Private Regulation.” *Sociology Compass* 6, no. 7 (July 2012): 541–56.

companies' ethical behavior,²⁶ which is confirmed by continuous events of forced and child labor, discrimination and lack of access to collective bargaining still arising in global supply chains. In fact, although suppliers commit to comply to CoC as a condition of doing business, codes are unlike core contractual terms such as the price, quantity and quality of products. While violations of the code may theoretically constitute a contractual breach that would justify terminating the business relationship, buyers rarely exercise this power.²⁷ From its field observation, Locke observes that few brands actually exit factories even when in case of non-compliance with CoC, and that most compliance officers investigating labor conditions have less influence than their purchasing or sourcing colleague when deciding to place an order in a supplier factory.²⁸ Therefore, the decision to engage in a contractual relationship with a supplier still largely remains an economic or managerial decision, rather than following the social commitment of the contract, proving that CoC do not create any legal effect in most cases.

CoC however prove to be useful under certain circumstances and appear promising when regarded as elements in a wider mix, which underscores the importance of a mixed approach to international regulation combining CSR initiatives with state-led reorganization efforts empowering workers.²⁹ Important conditions to make sure CoC have an impact include transparency and good communication. Baccaro and Mele show us that it is first and foremost the insufficient development of transparency and communication between buyers and suppliers.³⁰ Moreover, it appears that CoC often improve some labor conditions but are largely ineffective to improve others, as demonstrated notably by Barrientos and Schmidt.³¹ Their study from 2007 shows that companies focusing on the minimum compliance approach are more likely to focus on technocratic issues based on outcome standards, such as occupational health and safety. Since then, other studies confirmed this trend and showed that CoC often help to improve health and safety and formalize employment practices.³² However, self-regulation appears less effective to challenge embedded labor relations or social norms underlying the production process and are unlikely to help labor unions seriously challenge the prevailing governance structure of global supply chains.³³ This is also supported by scholars demonstrating that CoC are widely ineffective in promoting facilitating worker agency and

²⁶ Davidson, Bruce I., and Douglas E. Stevens. "Can a Code of Ethics Improve Manager Behavior and Investor Confidence? An Experimental Study." *The Accounting Review* 88, no. 1 (January 2013): 51–74.

²⁷ Bird, Yanhua, Jodi L. Short, et Michael W. Toffel. « Coupling Labor Codes of Conduct and Supplier Labor Practices: The Role of Internal Structural Conditions ». *Organization Science* 30, n° 4 (July 2019): 847-67.

²⁸ Locke, Richard M. *The Promise and Limits of Private Power: Promoting Labor Standards in a Global Economy*. Cambridge: Cambridge University Press, 2013.

²⁹ Amengual, Matthew, Greg Distelhorst, and Danny Tobin. "Global Purchasing as Labor Regulation: The Missing Middle." *ILR Review* 73, no. 4 (August 2020): 817–40.

³⁰ Baccaro, L., & Mele, V. (2011). « For lack of anything better? International organizations and global corporate codes. » *Public Administration*, 89(2), 451–470.

³¹ Barrientos, Stephanie, et Sally Smith. « Do Workers Benefit from Ethical Trade? Assessing Codes of Labour Practice in Global Production Systems ». *Third World Quarterly* 28, n° 4 (June 2007): 713-29.

³² Bartley, Tim, et Niklas Egels-Zandén. « Responsibility and Neglect in Global Production Networks: The Uneven Significance of Codes of Conduct in Indonesian Factories ». *Global Networks* 15, n° s1 (July 2015): S21-44.

³³ Barrientos, Stephanie, et Sally Smith. « Do Workers Benefit from Ethical Trade? Assessing Codes of Labour Practice in Global Production Systems ». *Third World Quarterly* 28, n° 4 (June 2007): 713-29.

helping trade unionism and collective bargaining.³⁴ This is an important issue worth questioning the adequacy of CoC to regulate the labor issues embedded in the complex production networks of global supply chains, arguably the root cause of labor abuses and malpractices.

5. Conclusion: A good regulatory pathway?

*“Private initiatives aimed at improving labor standards in global supply chains **can succeed** when global buyers and their suppliers establish **long-term, mutually beneficial relations** and when various **public (authoritative rule-making) institutions** help to both support these mutually beneficial buyer–supplier relations and resolve a set of collective action problems that private actors cannot overcome on their own.”*

Locke “The promise and Limits of Private power: Promoting Labor Standards in a Global Economy”, 2013

As highlighted by Locke in the above-cited quote, companies’ self-regulation should not so much entail sanctions binding suppliers and punishing them in case of non-compliance, but rather be a tool to develop long-term and trusting supplier-buyer relationship, based on labor protection and social upgrading. These so-called “mutually-beneficial relations” by Locke facilitate the establishment of good working practices. As demonstrated by Jill Esbenshad, the debate in the literature on CoC goes beyond questioning whether these regulatory mechanisms are simply an effective ploy that gives corporations reputational cover, or a good solution to global labor regulation.³⁵ This self-regulatory mechanism knows limitations to improve labor standards but can be effective in certain circumstances. Indeed, workers continue to not be paid living wages, are still widely unable to organize, and human rights and environmental disasters are still frequently reported in the press. On the other hand, good practice examples of CoC content, implementation mechanisms, and multi-stakeholder investment, including sectoral initiatives, have been highlighted in this chapter to mention the positive commitments taken by MNEs with the adoption of CoC. In this light, we consider that CoC are unevenly effective: even though they may support the improvement of labor conditions, especially when companies are engaging and investing in their monitoring and implementation mechanisms, limitations exist.

Given these limitations, it is often argued that firms and scholars should explore other forms of regulation including hybrid public-private configurations to address the root causes of difficult labor conditions in global production networks. It is paramount to find a solution to the economic, social and political crisis that global production networks face, which lead to unfair competition in supply chains generating the decrease of labor costs and extreme time pressure that factory managers face in some sectors.³⁶ States bear an important role in regulating these

³⁴ Bartley, Tim, et Niklas Egels-Zandén. « Responsibility and Neglect in Global Production Networks: The Uneven Significance of Codes of Conduct in Indonesian Factories ». *Global Networks* 15, n° s1 (July 2015): S21-44.

³⁵ Esbenshad, Jill. « A Review of Private Regulation: Codes and Monitoring in the Apparel Industry: Review of Private Regulation ». *Sociology Compass* 6, n° 7 (July 2012): 541-56.

³⁶ Bartley, Tim, et Niklas Egels-Zandén. « Responsibility and Neglect in Global Production Networks: The Uneven Significance of Codes of Conduct in Indonesian Factories ». *Global Networks* 15, n° s1 (July 2015): S21-44.

global markets. A balanced conclusion would be that governing cannot be abandoned to private forms of governance, States must insure a “level playing field” and fair competition obliging decent labor standards in all industries. On their end, companies can continue to adopt CoC to create cooperative relationships with their suppliers on social and labor matters, as this approach is proven to impact positively labor conditions in global supply chains. This means that, while self-regulation is not a *sufficient* tool to address labor malpractices, it can complement other initiatives in this regard. Since international institutions are lagging in regulating labor rights violation in practice,³⁷ improving self-regulation might be our best bet to change malpractices at supplier level. For CoC to be effective, companies need to make sure that monitoring mechanisms actively empowers workers and workers’ representatives, which is currently not the case. Often, stakeholders like workers have no formal role in private regulation but merely act as informants. Research shows that they are biased informants, fearing that production at their plant may be cut off and their jobs lost.³⁸ Supporting collective bargaining at supplier level and making sure that workers organize freely should, for this purpose, be on top of the self-regulatory agenda of multinationals.

³⁷ The difficult negotiation of the UN treaty to hold multinationals accountable in process since 2014 shows us that the mainstream political debate is hardly in favor of regulating companies at the supranational level. For more information on the negotiations on the elaboration of an international legally binding treaty to regulate the activities of transnational corporations of the UN Human Rights Council, check out the Business and Human Rights Resource Centre accessible at: <https://www.business-humanrights.org/en/big-issues/binding-treaty/>

³⁸ Esbenschade, Jill. « A Review of Private Regulation: Codes and Monitoring in the Apparel Industry: Review of Private Regulation ». *Sociology Compass* 6, n° 7 (July 2012): 541-56.

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