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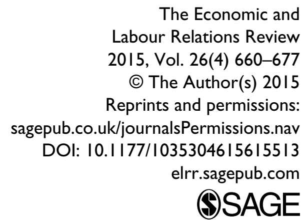

The Economic and
Labour Relations Review
2015, Vol. 26(4) 660–677
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sagepub.co.uk/journalsPermissions.nav
DOI: 10.1177/1035304615615513
elrr.sagepub.com

Legislative regulation of global value chains to protect workers: A preliminary assessment

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Abstract
This article argues for domestic legislative regulation of global value chains to protect offshore workers. First, it outlines the policy reasons necessitating such legislation. Empirical evidence confirms that global value chains are a dominant feature of the global economy. It is contended that lead firms wield influence in global value chains in a manner which leads to poor outcomes for offshore workers. Second, the article sets out the minimum steps necessary for a domestic state to attribute the responsibility for transparency of global value chains to lead firms. Then, it proceeds to explore the possibilities and limits of the proposed scheme of regulation. Despite some complexities with implementing the scheme, it is argued that if domestic legislative regulation of global value chains strengthens even to a small extent the monitoring of global labour issues, it is worth pursuing.

JEL Codes: K5, L1, L5

Keywords
Globalisation, industrial/employment relations policy, labour rights, non-standard employment, occupational health, occupational safety, precarious work, supply chain, vulnerable workers

Introduction

Although much of the literature on global value chains (GVCs) is focussed on the global competitiveness of countries, there is increasing interest from governments, investors, consumers and activists on regulating GVCs to promote better outcomes for workers

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https://doi.org/10.1177/1035304615615513 Published online by Cambridge University Press

(see ABC News Online, 2013; The Organisation for Economic Co-operation and Development (OECD et al., 2013: 21).

Recent empirical evidence reveals that more than half the value of all world exports involves products traded using GVCs (Backer and Miroudot, 2013: 16), but despite the vast scale of such chains, most developed countries including Australia have not legislated to protect workers within these chains, although, as this article argues, it is feasible to do so. Consequently, powerful, multinational lead firms continue to co-ordinate many such chains mainly for their own private interest in sourcing quality goods and services at the lowest cost, leading to exploitation of workers at the base of those value chains (see Gereffi and Luo, 2014). The analysis of GVCs and global production networks (GPNs) in this article indicates that improved public regulation of value chains is needed to protect and empower value chain labour.

This article suggests that one method of improved public regulation is by way of a pro-active system of domestic legislative regulation which harnesses the power of lead firms to render GVCs transparent and ultimately improve the conditions of offshore workers. However, this article, rather than suggesting that the implementation of this type of regulation would be unproblematic, explores the possibilities and limits of domestic legislative regulation of GVCs. Although some shortcomings and complexities with implementing the scheme are identified, it is argued that the influence of 'lead firms' (Gereffi, 1994) or 'effective business controllers' (Nossar, 2007) – typically exercised for their own benefit – could also be used to make GVCs transparent, thus enabling improvements in the working conditions of value chain labour. The first part of this article outlines the policy reasons for the introduction of domestic legislative regulation of GVCs, with a special focus on recent empirical evidence on GVCs, the specifics of how multinational lead firms co-ordinate many of these chains and the role of labour in GVCs/GPNs. The next section then sets out the key features of the proposed domestic regulation, namely, obligations to obtain, and disclosure of, information about working conditions, publication of information and oversight of commercial sanctions. The final section of the article explores the possibilities and limitations of domestic legislative regulation of GVCs.

The rise of GVCs/GPNs

A value chain describes an interconnected series of business transactions organised to produce and sell goods and/or services at a profit for lead firms (see Quinlan, 2011: 1). A value chain consists of all of the activities that firms undertake to bring a product or service from its conception to its end-use by consumers (Backer and Miroudot, 2013: 5). The GPN framework incorporates the concept of a value chain but emphasises all of the social actors who influence value chains, including public institutions such as governments, private actors such as firms and labour as the ultimate source of 'value' in the chain. Although major international organisations including the World Bank, the World Trade Organisation (WTO) and the OECD have adopted the term 'value chains', in the literature there is still no agreement as to whether the GVC framework or the GPN framework is the most appropriate (Taylor et al., 2013: 5). However, Selwyn (2013: 79)

https://doi.org/10.1177/1035304615615513 Published online by Cambridge University Press

suggests that the two may be compatible with the narrower analysis of vertical, inter-firm relations in the GVC framework fitting into the broader, GPN framework.

There is now widespread outsourcing of work to other businesses that indirectly and cost-effectively provide labour to profitable firms. To a substantial degree, manufacturing is carried out in developing or emerging economies (Coe and Hess, 2013: 4) as lead firms progressively outsource their peripheral and frequently low-value productive functions while maintaining control over core business functions, creating value to be retained in their home countries (Neilson et al., 2014: 2). Thus, many powerful, profit-making entities now effectively control a value chain of suppliers, distributors and other businesses providing indirect labour.

A principal reason value chains are used is to relieve the parties up the chain from some costs of production of goods and services, including such matters as factory ownership and responsibilities for workers at the base of the chain (Wise, 2013: 442). This is unacceptable given that GVCs frequently involve the production of goods and services in poor host states who are least able to protect their workers and where costs are low due to weak labour regulation. Yet, the geographic distance between home and host country provides a basis for lead firms to deny responsibility for working conditions at the bottom of their international value chains (Robinson and Rainbird, 2013: 103).

Clearly, value chains have emerged because of the pursuit of lower labour costs and international risk outsourcing (Robinson and Rainbird, 2013: 103). However, the favourable conditions allowing multinational companies to outsource their production to developing countries was also facilitated by structural adjustment policies in many developing countries which reduced state programmes, established incentives for foreign direct investment and liberalised factor markets including winding back labour market regulation (Barrientos et al., 2011: 301–302). In turn, these policies were driven by the dominant neo-liberal agenda of international governmental bodies focussed on removing trade and investment protectionism (see OECD et al., 2013: 3).

Empirical evidence of GVCs

Until recently, GVCs were largely discussed from a theoretical or isolated case study viewpoint (Backer and Miroudot, 2013: 5; De Backer and Yamano, 2012). Now, aggregate empirical data on trade and output confirm the widespread existence and overall scale of GVCs (Backer and Miroudot, 2013: 5).

The OECD has a relatively new database (the TiVA database) which records 'trade flow in value-added terms based on a global model of international production and trade networks' (Backer and Miroudot, 2013: 10 – see http://oe.cd/tiva). The 'trade in value-added' approach traces the value by each industry in each country in the production chain and apportions the value added to the relevant source industries and countries (OECD et al., 2013: 11). The OECD's Inter-Country Input-Output (ICIO) model then links internationally input-output tables from 58 countries (one of these countries being the 'rest of the world') accounting for more than 95% of world output. The OECD ICIO model provides a truly global analysis of value chains by capturing all transactions between industries and countries across 37 industries (Backer and Miroudot, 2013: 11). The 'Bilateral Trade Database by Industry and End-Use Category (BTDIxE)', also developed

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by the OECD, measures flows of intermediate inputs across countries and industries (Backer and Miroudot, 2013: 10–11).

The first aspect measured by this OECD data is the extent of vertically fragmented production. The OECD data calculate this by determining what it terms the vertical specialisation share (the input content of exports of a country) and the VS1 share (the percentage of exported goods and services used as imported inputs to produce other countries' exports). By combining the VS and VS1 shares, a comprehensive assessment of the participation of a country in value chains can be ascertained, 'both as a user of foreign inputs (upstream links i.e. backward participation) and supplier of intermediate goods and services used in other countries' exports (downstream links i.e. forward participation)' (Backer and Miroudot, 2013: 11). From this data, Backer and Miroudot (2013: 12) have developed a GVC Participation Index in OECD countries for 2009. This index indicates that, for all OECD countries, the combined percentage of foreign inputs in a country's exports and domestically produced inputs used in other countries' exports is between 30% and over 60% of gross exports (OECD et al., 2013: 7). This means that 'on average more than half of the value of exports is made up of products traded in the context of GVCs' (Backer and Miroudot, 2013: 16). Furthermore, '… the income from trade flows within GVCs, measured as the domestic value added embodied in foreign final demand (that is, "exports of value added") has increased by 106% between 1995 and 2009 (in real terms)' (OECD et al., 2013: 14).

GVCs are now clearly an 'empirical phenomena' (World Trade Organization (WTO), 2008: 81) with the TiVA database providing 'clear evidence of the increasing international fragmentation of production' (OECD et al., 2013: 11). GVCs are not limited to manufacturing industries. They also apply to the agri-food industry (Backer and Miroudot, 2013: 16–17) and the energy industry (Gereffi, 2014: 10). GVCs also increasingly encompass all kinds of services (OECD, 2010: 220; see also WTO, 2008: 89) with the WTO reporting that the outsourcing of services has 'been widespread across sectors and type of inputs' (WTO, 2008: xx). GVCs apply to financial services and the business services sector which covers computer services, legal, accounting, management consulting and public relations services (Backer and Miroudot, 2013: 31). An example of the rapid increase in services outsourcing is that in 2006 over 75% of major financial institutions had offshore activities compared with less than 10% in 2001 (WTO, 2008: 114).

Lead firm influence over GVCs

In a value chain, the lead firm is the most commercially influential party in the chain; usually, but not always, located at its apex. For some time, the literature has asserted that lead firms regulate or co-ordinate GVCs (see Gereffi, 1994). More recent research drawing on aggregated empirical data now refers to 'firms … that control … activities in production networks' (Backer and Miroudot, 2013: 7). The OECD also states that multinational firms play a 'prominent role' within transnational value chains that allows them to 'co-ordinate production and distribution across many countries' (OECD, 2007: 15). Moreover, empirical evidence confirms the close connection between GVCs and multinational enterprises (MNEs). De Backer and Yamano (2012) state that 'the results of the VS1 measure suggest that the import content of exports is closely related to the presence

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of MNEs. The increase in vertical specialisation comes most clear in countries with a high multinational presence' (p. 17). In their view, 'multinational enterprises (MNEs) play a prominent role in global value chains …' (De Backer and Yamano, 2012: 7). The OECD et al. (2013: 9–10) have also been able to ascertain the involvement of MNEs in GVCs by finding a close correlation between foreign direct investment stocks in countries and their GVC participation. According to the OECD et al. (2013), 'Multinational Enterprise (MNE) coordinated GVCs account for 80% of global trade' (p. 7). These striking empirical findings – which indicate that MNEs co-ordinate value chains on a vast scale – simultaneously identify these enterprises as the appropriate subject of public regulation precisely because of their co-ordination capabilities.

Private governance analysis (which was originally used by Gereffi (1994) but later applied to GVCs in general) (see Barrientos et al., 2011: 32; Quinlan, 2011: 10) provides information about the precise manner in which lead firms control GVCs that is also useful when considering what form of public regulation would be effective. Lead firms 'govern' other value chain participants by dictating the terms of trade and parameters of value chain participation (Bair, 2005: 164–165; Mayer and Milberg, 2013: 4; Neilson et al., 2014: 1–2). In particular, lead firms specify to suppliers matters such as the price and quality of products and services, delivery time and volume of orders (Barrientos et al., 2011: 302; Johnstone et al., 2012: 66; Nathan, 2013: 30). In so doing, lead firms influence the production process, working conditions and quality control of their affiliates or suppliers (Bair, 2005: 164–165; see also Nathan, 2013: 30–31). In some circumstances, lead firms may also directly monitor, or intervene into, the work practices of their indirect labour force (Rubery et al., 2005: 76). This is especially the case today because rapid advances in information and communications technology have dramatically reduced the cost of co-ordinating complex activities over long distances, allowing widespread co-ordination of distant activities (Backer and Miroudot, 2013: 8; De Backer and Yamano, 2012: 6).

The private governance activities of lead firms not only results in influence over suppliers' labour practices, but it also sets economic limits to what suppliers earn (Nathan, 2013: 30–31). The distribution of the value produced depends on power relationships within GVCs and so is unequally captured at the various levels (Mayer and Milberg, 2013: 5). Competition between numerous, sometimes hundreds or thousands of manufacturing suppliers near the bottom of GVCs, induces intense competition between suppliers. A standard strategy for lead firms has become working with multiple suppliers, playing one supplier off another and creating new suppliers as a major method of keeping prices low. At the same time, lead firms typically attempt to reduce the competition they face using branding to create barriers to market entry (Mayer and Milberg, 2013: 6). As a result, in many GVCs including those in the apparel sector, lead firms capture most of the surplus profits (Mayer and Milberg, 2013: 5) while manufacturing suppliers just get competitive profits (Nathan, 2013: 30).

GVCs, GPNs and labour

At first blush, this type of GVC framework analysis immediately above in this article would appear to lead to some obvious conclusions for value chain labour. The net

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revenue of suppliers who are under significant pressure from lead firms mean that the horizontal bargain between the suppliers and their workers is constrained by the vertical relations between the lead firms and suppliers. That is, the lead firms' business practices and monopolisation of GVC rents 'affect the possible labour market outcomes in supplier firms' (Nathan, 2013: 31). While inter-firm linkages in the GVC are crucial in determining outcomes for value chain labour (Coe and Hess, 2013: 6), the GPN frameworks demonstrates in two key ways that the situation in reality is more complex than simply outcomes arising from the relationship between lead firms and their suppliers.

First, the GPN framework highlights that governance modes within a value chain are shaped by meta-governance structures which include the power and authority of private actors such as firms *and* public actors such as governments (Coe and Hess, 2013: 6). GPNs are conceived of as embedded within broader multi-scalar structures and institutions (Selwyn, 2013: 78). Thus, the GPN framework goes beyond analysis of linkages in the GVC by examining how lead firms are locked into organisations, institutions and governance structures at the regional, national and local levels. Highlighting that the nodes of value chains are geographically located within distinct national territories (Selwyn, 2013: 83) has enabled GPN scholars to reveal more of the 'multiple modalities of governance' (Coe and Hess, 2013: 5) including the significance of governance structures such as local labour regimes (Taylor et al., 2013: 2). So GVCs are mediated by local or national labour regimes rather than solely determined by lead firm requirements (Coe and Hess, 2013: 7; Selwyn, 2013: 83).

Second, the GVC framework has focussed on inter-firm linkages mainly between lead firms and suppliers, leaving the intra-firm relations between capital and labour (as the ultimate source of value) concealed (Selwyn, 2013: 78; Taylor et al., 2013: 1). Instead of neglecting to consider the position of workers or depicting them as passive victims at the bottom of the chain, the GPN approach explicitly argues that workers, their collective organisations and their civil society partners are an integral part of GPNs (Coe and Hess, 2013; Selwyn, 2013: 75–77; Taylor et al., 2013: 2; see also Rainnie et al., 2011). In particular, this allows for the *agency* of workers and their organisations to be accounted for, and for the possibility that worker action can rework and sometimes resist prevailing governance regimes within GPNs (Coe, 2015: 172; Coe and Hess, 2013: 5). A key point is how workers transform their pivotal position in the production process and their ability to disrupt it – or their structural power – into associational power, which is based on collective organisation (Coe and Hess, 2013: 5; Selwyn, 2013: 78). If workers are able to organise to combat capitalist management systems designed to increase productivity (i.e. the rate of exploitation), this can lead to improvements in workers' pay and conditions (Selwyn, 2013: 84, 86). This associational power is able to achieve concessions from the state and/or capital (Coe and Hess, 2013: 5; Selwyn, 2013: 83). However, the focus on labour agency does not necessarily lead to naïve conclusions about its transformative power. It may be able to identify solidarity between different groups of workers at different locations in GPNs but also lead to realistic conclusions about the limits of worker action in the contemporary global system (Coe, 2015: 178; Coe and Hess, 2013: 6). Also built into the GPN framework is transnational labour formations such as international union confederations, as well as the concept of the multiple scales of worker campaigns. Worker agency is seen in terms of its vertical dimensions up and down GPN structures

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and also in its horizontal dimension; as embedded in local places and institutional settings (Coe, 2015: 181; Coe and Hess, 2013: 6). While inter-firm linkages in the GVC are crucial in setting the scene for labour, they are always mediated by capital–labour relations and local or national labour regimes (Coe and Hess, 2013: 7).

What have the outcomes of GVCs/GPNs been for workers? A range of GPN/GVCs scholars have pointed out that economic upgrading (i.e. firm-level competitiveness and profitability) does not necessarily lead to social upgrading (i.e. improvements in working conditions) (Bair and Werner, 2015: 124; Coe and Hess, 2013: 5; Selwyn, 2013: 76, 79; Taylor et al., 2013: 2). Economic upgrading in the value chain may be linked to worsening work conditions (Barrientos et al., 2011: 305; Gereffi and Luo, 2014: 18; United Nations Conference on Trade and Development (UNCTAD), 2014: 105). Despite some successful cases of worker collectives improving pay and conditions (see Anner, 2015: 164–166; Miller and Williams, 2009: 100), many workers in developing countries who produce goods and services for rich consumers experience poor – in many cases appalling – working conditions. Research has reported that the conditions of value chain labour in developing countries can be insecure and unprotected, and labour safety regulations can be non-existent (Gereffi and Luo, 2014: 16). Many supply chain workers do not earn a wage sufficient to meet their basic living needs, especially in host countries where the minimum wage rate is so low that it will not cover basic needs (Baptist World Australia, 2015: 5). There is also evidence of continuation of acceptance of child labour, forced labour, enforced overtime and over-long normal working days, high intensity work and an absence of freedom of association and the right to collective bargaining (Anner, 2015: 160–164; Baptist World Australia, 2015: 10–14; Klein, 2000: 195–229). Even where they are permitted to collectively bargain, workers are almost invariably denied access to the real decision-makers further up the value chain – the lead firms (Justice, 2002: 93). Furthermore, UNCTAD (2014: 105) reports there is strong pressure from lead firms to keep wages low. Yet, the GPN framework shows how outcomes for labour are not inevitable but contestable, and able to be resisted and reworked through countervailing worker power and national regulatory regimes and institutional structures.

The need for better regulation

In relation to GVCs, there is regulatory failure or a regulatory deficit (Barrientos et al., 2011: 306; Miller et al., 2011: 5; Quinlan, 2011: 1). Labour standards are almost always excluded from trade and commercial agreements (Quinlan, 2011: 11) and, although there are some exceptions, such as the California Transparency in Supply Chains Act 2010 designed to address slavery and human trafficking, most national governments have not established mandatory schemes of regulating GVCs for employment policy purposes. Neither is there a binding international treaty or International Labour Organisation (ILO) Convention which might regulate GVCs for the protection of workers. There is an initiative under the UN Guiding Principles on Business and Human Rights (2011) which involves the responsibility of business to respect human rights including labour rights. The reference to the linking of business relationships in guiding principle 13b refers to value chains. But these UN guiding principles leave out the question of home state responsibility and have problems with enforceability against corporations.

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There is also a growing body of evidence on the limitations of voluntary regulation by corporations. At least among social scientists, there is almost consensus that voluntary codes of conduct have failed to eliminate or reduce labour violations in GVCs (Anner et al., 2013: 5). Voluntary codes of conduct only cover a particular firm and do not have broader coverage; monitoring, auditing and enforcement are often inadequate (Quinlan, 2011: 10). Moreover, voluntary codes of conduct rely on the 'fickle sympathies' (Estlund, 2005: 369–370) of consumers rather than on state regulation. Therefore, voluntary codes of conduct are 'temporary and contingent' (Cooney, 2004: 311) regulation which can be easily abandoned.

A proposal for domestic legislative regulation of GVCs

There needs to be a much better system of making lead firms accountable for what happens at their affiliates or suppliers around the globe, even when those firms have no equity relation to the companies supplying them (Bair, 2005: 161). Research has shown that the best instances of value chains being used to positively influence health and safety involved external pressures from wider social, political and regulatory sources (Quinlan, 2011: 3–4). It is becoming much more broadly accepted that strengthened regulation of GVCs is needed (see, for example, Barrientos et al., 2011: 306; OECD et al., 2013: 7), especially considering that protection of workers is currently left to poor home states which have been chosen as production locations precisely because they have the weakest labour regulation.

The above analysis of lead firms demonstrates that they already regulate value chains for their own commercial interests. At the same time, these very observations also imply that the governance structures created by lead firms in their value chains may equally be capable of being used for public purposes as well. Specifically, effective public regulation could harness the contracting practices of lead firms for employment policy purposes (Nossar, 2007: 9; see also OECD et al., 2013: 21).

How might a domestic legislature exercise jurisdiction over GVCs? From the beginnings of commercial activities, commercial parties have conducted business deals which stretch across national boundaries. This is how GVCs are formed. Commercial parties within one jurisdiction have arrangements with commercial parties in another, overseas jurisdiction. It is these very commercial arrangements which enable a national government to regulate GVCs. Specifically, the exercise of national government powers to extend regulation beyond national borders rests upon the business dealings between a regulated lead firm (with sufficient geographical nexus to the relevant state in order to invoke the exercise of legislative jurisdiction) and an affiliate or supplier having commercial dealings with such a regulated firm. That is, the jurisdictional basis for this form of regulating GVCs arises from the fact that the regulated firm which contracts with an outside affiliate or supplier must conduct retail or other business within the geographical borders of the relevant home-state jurisdiction. Therefore, domestic legislation could be used to regulate the actual arrangements between such a regulated firm and its suppliers or affiliates located around the globe (Rawling, 2014: 213).

A prior example of a national regulator extending their reach in this way is when European competition regulators blocked the merger of Honeywell and General Electric

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(two putatively US firms) although US regulators said they could merge. This shows that global firms can be governed by any of the countries or regions in which they do business.

The three components of the reform proposal

What is needed is a pro-active regime which systematically makes *all* value chains travelling through a domestic jurisdiction transparent (rather than a reactive, complaint-based model of regulation which is dependent on a litigant undertaking legal proceedings for any transparency or other outcome to occur). Based on this preliminary assessment of the issues, the type of pro-active model of legislative regulation being proposed here would have three main components: (a) pro-active collection and disclosure of information by lead firms; (b) publication of that information and (c) targeted triggering of commercial sanctions.

Under the proposal, lead firms located in the developed world such as retailers of products and services should be required to obtain information from their overseas affiliates or suppliers. The information they should obtain would include the location of all workers in their GVCs and conditions of work in those chains.

An integral element of this reform proposal is disclosure of information to an industrial inspectorate (such as the Fair Work Ombudsman). A regulated business would fill out a form produced by the relevant governmental regulator and provide a completed form to the regulator on a periodic but on-going basis. Each form would provide a list of the overseas affiliates and suppliers of the business. For each overseas supplier and affiliate, the regulated business would list the name of workplace; location of the workplace; number of workers in foreign locations who are engaged to produce goods or services supplied to the regulated business; age range of those workers (for child labour transparency); wage rate profiles for workers; what the occupational health and safety measures at the workplace are; whether or not worker representatives can access the workplace (see Anner et al., 2013: 28) and a list of locations of supplier's contractors and subcontractors and so on, where all of the work is undertaken to produce goods or services ultimately supplied to the regulated business. This is a tentative initial list for inclusion in a guideline that the regulator can regularly revise. The information garnered should be specific enough to enable mapping of GVCs and working conditions, but not so loose that it would produce vague and meaningless company statements (Cooney, 2004: 335). The legislation should also include penalties for either failing to report in accordance with the legislative guidelines or engaging in false, misleading or deceptive reporting (Cooney, 2004: 336). It is proposed that the regulator should publish *a summary* of *all* of the information that has been disclosed to it by a regulated business on the regulator's website.

Previous activist campaigns regarding affiliates' or suppliers' non-compliance with corporate codes focussed on pressuring lead firms to threaten to terminate or not renew those arrangements. Building upon these campaigns, the third limb of the proposal is that *mandatory* laws provide for controls over the use of commercial sanctions by lead firms in instances where labour abuses at the base of value chains controlled by those businesses are verified. The mechanism would involve mandatory additions to arrangements

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between lead firms and their affiliates or suppliers, detailing action that the lead firm will take if they become aware of exploitation. This would include termination of contract. The lead firm could then be requested to use commercial sanctions against a supplier or affiliate where working conditions are unsatisfactory (Anner et al., 2013: 28; Johnstone, 2012: 80; Nossar, 2007).

The legislative scheme might be trialled in the apparel industry where almost all of the published research has found that there are buyer-driven chains within which retailers and brand names exert influence (see, for example, Anner et al., 2013; Bair, 2005: 160; Gereffi, 1994). Another alternative would be to limit the application of the scheme on a trial basis to stock exchange listed companies mainly consisting of MNEs with significant power and influence in the market.

The possibilities and limits of domestic legislative regulation

In this section of the article, the possibilities and limits of implementing domestic legislative regulation of GVCs are discussed. Lead firms resist demands to disclose the identity and location of their suppliers, let alone the conditions and wages of workers who produce the good and services ultimately supplied to the lead firm. Accordingly, transparency of transnational value chains is a key concern (Rodriguez-Garavito, 2005: 70–71). Therefore, the proposed regulatory scheme is designed to make GVCs ending at a particular domestic jurisdiction transparent. The obligation of lead firms to obtain information from overseas suppliers is a requirement for lead firms to know their own value chains and, because it would be a legislative requirement, regulators and unions would have confidence that those lead firms did know their own chain. That, combined with publication of information discussed above, would be a powerful regulatory measure decreasing the prospects of business ignoring inadequate labour conditions in their own value chains.

Lead firms would have a clear incentive to undertake audits to verify labour conditions in their own value chains before disclosing information about them in case the information is found to be incorrect. Thus, mandatory regulation might operate to empower those business controllers to police their value chains for ethical as well as commercial reasons; if mandatory regulation can encourage business controllers to become the most ethical or responsible parties in the value chain, the role of addressing value chain labour issues might be partially assumed by the business controllers themselves (Rawling, 2014: 211).

On the other hand, it is unclear in practice whether the increase in auditing will increase the involvement of unions. Little is known about the extent of union involvement in factory audits (Miller et al., 2011: 10). Auditing could be a disenfranchising process where corrective points are raised by workers without any union involvement. Or it could ultimately lead to a system whereby the audit is endorsed by worker collectives so that this can be used by lead firms to legitimise the use of a particular supplier (see Miller et al., 2011: 11).

An objection to the proposed information disclosure mechanism may be that it would be too onerous and costly to require lead firms to disclose detailed information about

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their suppliers and affiliates around the globe. But, the first point in response to such an objection is that the legislative scheme being proposed here is 'light touch' regulation given that it merely involves transparency or process obligations. Process obligations are less costly than substantive, external liabilities (such as wage recovery claims). Second, many lead firms would already keep records about the GVCs which they effectively control. Many lead firms employ dedicated 'supply chain managers' who are already charged with responsibilities which require knowledge about suppliers. Therefore, gathering information about suppliers' working conditions would be an extension of business systems already in place. Third, lead firms usually have the bargaining power to require suppliers or affiliates to provide this information (Doorey, 2005b: 385).

Like information disclosure, publication would provide a strong incentive for lead firms to verify the accuracy of the information before it is disclosed. The information made available to the public would also allow consumers to make informed purchases as well as let unions go to overseas locations and verify the published working conditions within a particular business's GVCs. In this way, the legislative scheme would not abandon enforcement. Informal enforcement measures would operate in the 'shadow' of the legislative scheme.

Some time ago, David Doorey (2005b: 394–404) argued that the information published should be limited to the names and addresses of suppliers, contractors and subcontractors in order to avoid unintended consequences. However, a number of changes in the context have occurred since then. Much more information on the labour practices within GVCs has already become available, including information about wages rates and child labour (e.g. Baptist World Australia, 2015) without Doorey's unintended consequences being realised. There has also been a considerable uplifting in expectations for robust regulation needed to address labour abuses in GVCs since the Rana Plaza factory collapse in Bangladesh (which killed 1100 factory workers) and the subsequent establishment of the Bangladeshi accord (see Anner et al., 2013).

Previously, Doorey (2005b) expressed fears that the role of value chain labour might be overlooked in a domestic scheme regulating GVCs. The proposed scheme could be seen as a 'top down' form of social upgrading where workers are secondary, and elite bodies, including firms, states and international organisations, are seen to be the method of improving workers' conditions. Thus, there is a danger that the agenda to improve working conditions is co-opted by elites. As Selwyn (2013) states 'by … prioritizing institutional arrangements over workers' self-activity, advocates of social upgrading risk demobilizing the very actors that can bring about the kinds of improvements that they wish to see' (p. 80). For these reasons, some GPN analysts prefer 'bottom up' forms of social upgrading where changes to workers conditions are determined by 'the balance of power between labour and capital and how this balance is institutionalized by states' (Selwyn, 2013: 76).

Yet, Coe and Hess (2013) state transnational worker campaigns may be 'facilitated or mandated by governments'(p. 7). In addition, persistent low levels of union organisation and collective bargaining at manufacturing suppliers in developing countries (see Miller, 2008: 161–162) have led to persistent calls from civil society to involve lead firms in determining workplace outcomes (Miller et al., 2011: 14). The proposed scheme could be seen as a public mechanism which regulates lead firms in a manner which could boost

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transnational worker campaigns. The publication of information in the proposed scheme would not reduce the need for unions to be active on labour rights; they could collaborate with the government regulator by interviewing workers who produce the relevant goods or services to test the accuracy of the information disclosed by the lead firm (see Doorey, 2005b: 394). The regulator could then receive information from unions about working conditions at the overseas location. If the information received from unions is reliable and contradicts the information received from the regulated business, the governmental regulator could then contact the regulated business and, at first, provide them with the time and opportunity to provide more accurate information. If this information was not forthcoming, the governmental regulator could remind the regulated business that they are required to disclose accurate information and that there are penalties for providing misleading information, to persuade the regulated business to provide more accurate information. The threat of prosecution for providing misleading information to the regulator could be used to pressure businesses to disclose accurate information or to change labour practices in their GVCs so that the business can then disclose more acceptable information about working conditions.

Moreover, worker struggles can influence the form and content of national governance structures, and labour must work towards securing the legal, social and political conditions to assist workers and their organisations to improve working conditions (Selwyn, 2013: 82, 87). What would be crucial for this to occur is that the labour movement take ownership of measures such as the proposed scheme so that it becomes 'labour led social upgrading' (Selwyn, 2013: 88). In any case, without a major union-led campaign, there is little prospect that the proposed scheme will be introduced.

Objections may be raised by businesses to be covered by the regulation that the information required to be disclosed is confidential. Moreover, suppliers might argue that they will be sued for breach of contractual arrangements they have entered into with other commercial operations to ensure the secrecy of the very information that suppliers are required to disclose under the proposed scheme. Yet, a range of major retailers and brands in the Australian apparel industry have already disclosed exactly the same sort of information about their suppliers that would be required under the proposed scheme (See Baptist World Australia, 2015). This disclosure was voluntary, so these retailers apparently encountered nothing such as secrecy laws which prevented suppliers disclosing to them the requisite information. Furthermore, we live in a surveillance society where large businesses compile significant amounts of information about consumers. In comparison to the level of private business surveillance of the public, this reform proposal only involves a relatively small amount of information about GVCs to be made public. In any case, mandatory transparency would apply equally to all lead firms in a given category (such as retailers of a particular good or service) operating in the relevant domestic market. This would neutralise corporate resistance to disclosure based on assertions that disclosure would result in a competitive disadvantage. Indeed, many lead firms have indicated that they would be willing to disclose information about GVCs which they control, as long as competing firms are also required to disclose similar information (Doorey, 2005a: 8). Moreover, this transparency would perform a crucial function of informing consumers about working arrangements used to make the products or services they purchase.

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In relation to the proposed commercial sanctions, the decision to cancel or not renew an arrangement (rather than merely threatening to do so) must be carefully considered before it is actually implemented. The loss of a business arrangement may lead to the loss of jobs. In other words, workers' interests may be jeopardised by the very measures which are ostensibly aimed at improving those workers' plight (Jenkins, 2002: 17). An important component of strategies to improve labour practices at the base of GVCs is to encourage corporations to establish long-term investments (Doorey, 2005a: 8). However, state regulators could judiciously influence the exercise of commercial sanctions so that they are only triggered in certain rare, 'symbolic' circumstances. In other circumstances, commercial contractual sanctions could be threatened (rather than actually invoked). Disclosure requirements might also assist to track 'cut and run' strategies by lead firms. Regulators might ascertain precisely what role labour practices played in decisions to terminate business arrangements and to grant replacement arrangements (Doorey, 2005b: 403). The information could then be used to negotiate with lead firms to remain in a particular jurisdiction or to reinstate a contractor.

The California Transparency in Supply Chains Act 2010 has been in force since 2012, and the experience of the implementation of this scheme will be instructive for those interested in domestic legislative regulation of GVCs. The Californian scheme, like the proposed scheme, was designed to ensure that companies operate with caution when selecting suppliers and making sourcing decisions (Pickles and Zhu, 2013: 1). This Act is an important initiative because sustainable improvements in workers' pay and conditions at overseas suppliers will only come when lead firms direct orders towards suppliers with better working conditions (Miller and Williams, 2009: 118). In requiring disclosure of a practice already common among big retailers and manufacturers, the Californian government has taken advantage of existing corporate knowledge, structures and personnel. However, it has been argued that the required disclosure increases the costs of new entrants to the market (Pickles and Zhu, 2013: 5).

The success of the Act also relies on consumer awareness of egregious labour abuses. It is difficult to imagine this initiative working in places such as Brazil, Russia, India, China and South Africa South Africa (BRICS) where such consumer awareness does not exist or is still developing (Pickles and Zhu, 2013: 5). This is a salient point because GPNs are now evolving to include more South–South and regional trade patterns, giving rise to a new set of questions about whether Southern governments and lead firms from BRICS countries will have the same attitudes about the necessity to govern GVCs. (Barrientos et al., 2011: 310–311). The rise of BRICS countries provides local economic regions in BRICS countries for firms from those regions to sell their products and services locally instead of to Western consumers. If firms in those countries are not satisfied with the terms of trade offered by Western multinationals, then they have greater scope to sell their products domestically, regionally or globally to buyers who are less concerned (or unconcerned) about the conditions under which their products are produced (Lund-Thomsen and Wad, 2014: 282).

The focus on firms at the top of the chain in the proposed scheme might be questioned, especially given that some manufacturers have emerged as highly profitable major players in their own right controlling production plants in several countries (Miller et al., 2011: 13). These manufacturers would already be subject to existing

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labour laws in the countries where they are located, and so an alternative avenue would be to pursue strengthened local labour laws applying to the direct work provider. But this strategy and the proposed scheme would not be mutually exclusive and, as was argued above, lead firms influence the parameters within which capital–labour relations take place at suppliers. Therefore, there is still a case for regulating lead firms especially given that there is evidence that those firms co-ordinate GVCs and that '[t]he emergence of large contract manufacturers, who produce multiple brands within the same plant has not cut significantly into the power of branding' (Mayer and Milberg, 2013: 7).

A related limitation of the proposed scheme is that lead firms may have the ability to influence some suppliers but not others. For example, Miller (2008: 167) states that outsourced apparel production results in multiple brands sourcing from the same supplier. In this situation, the ability of lead firms to gain compliance with transparency requirements by suppliers depends on the volume of production that lead firm orders from the supplier. As the order gets smaller, the ability of the lead firm to demand transparency diminishes.

Another problem for the proposed scheme is that first-tier suppliers outsource work to large numbers of subcontractors. It may be very difficult to obtain full disclosure of these subcontracting arrangements. For example, complex contracting chains in the Indian garment industry make it very difficult to trace the whole value chain (Lund-Thomsen and Wad, 2014: 285). In the apparel sector, outsourcing generally occurs below the level of the first-tier supplier to such an extent that there is a 'vast informal underbelly' of subcontracted manufacturing and outwork (Miller, 2008: 167). Despite this potentially significant problem, Miller (2008) states that the transparency in the apparel sector is a 'key prerequisite' for serious efforts by global unions to organise in the apparel sector (p. 168). Organising efforts in that sector have been hampered by an absence of disclosure of factory locations, and the potential for organising workers can improve if it is preceded by disclosure of locations (Miller, 2008: 175). By providing a mechanism for obtaining factory locations, the proposed scheme could significantly assist with the attainment of what Miller (2008) describes as a 'major policy objective' of the international apparel sector union (p. 184).

Ultimately, domestic legislative regulation is a precursory measure. In the longer term, the exploitation of value chain labour needs to be addressed by strengthening regulation at the international level. If capital's power is transnational, then workers' rights should also be transnational (Gaícia-Muñoz Alhambra et al., 2014: 15). However, this presents a very significant challenge. Currently, there are major limitations in the ability of international organisations to regulate and monitor transnational activities (Gaícia-Muñoz Alhambra et al., 2014: 3). In particular, the ILO is seen fundamentally weak as it has no powers of enforcement apart from naming and shaming those in breach of conventions (Selwyn, 2013: 81). A prior effort in the 1990s to expand the ILO's powers in the form of a global social label backed up by ILO inspections in the 1990s was criticised by developing countries as a protectionist measure (Miller et al., 2011: 5–6). Although geopolitical realities may mean progress is slow (Barrientos et al., 2011: 313) what is a possibility in the medium term is that ILO conventions are updated to regulate GVCs and domestic legislation giving effect to those update conventions is enacted.

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Conclusion

OECD and other research now provide proof of the existence of GVCs and lead firm influence over chains. In light of this, it is unacceptable for lead firms to preside over GVCs involving the exploitation of workers. National governments can respond by introducing mandatory transparency schemes. This article has outlined the components of a legislative scheme which harnesses the existing governance capabilities of lead firms to make GVCs transparent. A preliminary assessment has identified some complexities and limitations with the scheme. Yet, as Gaícia-Muñoz Alhambra et al. (2014: 24) argue, no regulatory system monitoring GVCs can be perfect. If domestic legislative regulation of GVCs strengthens even to a small extent the monitoring of global labour issues, it is worth examining and pursuing. Although the issues to be addressed are complex and this proposal may need to be refined and reworked (see Cooney, 2004: 342), the tentative nature of the proposal within this article should not be an excuse for inaction. Given that GVCs are no longer merely a theoretical construct but empirically validated as a dominant feature of the world economy, national governments should implement mandatory regulation of GVCs for labour policy purposes.

Acknowledgements

Many thanks to Terry Carney, Paul Redmond and the anonymous referees for their comments on a prior draft of this article. Any errors are my own.

Funding

This article reports on research undertaken for an Australian Research Council funded project, Australian Supply Chain Regulation: Practical Operation and Regulatory Effectiveness, DP120103162.

References

Anner M (2015) Social downgrading and worker resistance in apparel global value chains. In: Newsome K, Taylor P, Bair J, et al. (eds) *Putting Labour in its Place: Labour Process Analysis and Global Value Chains*. Basingstoke: Palgrave Macmillan, pp. 152–170.

Anner M, Bair J and Blasi J (2013) Toward joint liability in global value chains: addressing the root causes of labor violations in international subcontracting networks. *Comparative Labor Law and Policy Journal* 35(1): 1–44.

Australian Broadcasting Corporation News Online (2013) Report calls for more transparency on rights of offshore workers, 24 June. Available at: http://www.abc.net.au/news/2013–0624/report-questions-offshore-supply-chains/4774318 (accessed 13 February 2015).

Backer KD and Miroudot S (2013) *Mapping global value chains*. OECD Trade policy papers no. 159, 19 December. Paris: OECD Publishing.

Bair J (2005) Global capitalism and commodity chains: looking back, going forward. *Competition and Change* 9(2): 153–180.

Bair J and Werner M (2015) Global production and uneven development: when bringing labour in isn't enough. In: Newsome K, Taylor P, Bair J, et al. (eds) *Putting Labour in Its Place: Labour Process Analysis and Global Value Chains*. Basingstoke: Palgrave Macmillan, pp. 119–134.

https://doi.org/10.1177/1035304615615513 Published online by Cambridge University Press

Baptist World Australia (2015) The truth behind the barcode. Australian fashion report 2015, Baptist World Australia, North Ryde, NSW, Australia, 16 April.

Barrientos S, Mayer F, Pickles J, et al. (2011) Decent work in global production networks. *International Labour Review* 150(3–4): 297–317.

Coe N (2015) Labour and global production networks: mapping variegated landscapes of agency. In: Newsome K, Taylor P, Bair J, et al. (eds) *Putting Labour in its Place: Labour Process Analysis and Global Value Chains*. Basingstoke: Palgrave Macmillan, pp. 171–192.

Coe N and Hess M (2013) Global production networks, labour and development. *Geoforum* 44: 4–9.

Cooney S (2004) A broader role for the commonwealth in eradicating foreign sweatshops? *Melbourne University Law Review* 28(2): 290–342.

De Backer K and Yamano N (2012) *International comparative evidence on global value chains*. OECD science, technology and industry working papers no. 2012/03, 23 April. Paris: OECD Publishing.

Doorey D (2005a) Codes of conduct and disclosure. *International Union Rights Journal* 12(1): 7–8.

Doorey D (2005b) Who made that? Influencing foreign labour practices through reflexive domestic disclosure regulation. *Osgoode Hall Law Journal* 43(4): 353–405.

Estlund C (2005) Rebuilding the law of the workplace in an era of self-regulation. *Columbia Law Review* 105(2): 319–404.

García-Muñoz Alhambra M, Ter Haar B and Kun A (2014) Independent monitoring of private transnational regulation of labour standards: a proposal for a 'transnational labour inspectorate' system. Labour Law Research Network Working Paper, August. Available at: http://www.labourlawresearch.net/sites/default/files/papers/TLI-final.pdf (accessed 9 November 2015).

Gereffi G (1994) The organisation of buyer-driven global commodity chains: how US retailers shape overseas production networks. In: Gereffi G and Korzeniewicz M (eds) *Commodity Chains and Global Capitalism*. Westport, CT: Praeger, pp. 95–122.

Gereffi G (2014) Global value chains in a post-Washington consensus world. *Review of International Political Economy* 21(1): 9–37.

Gereffi G and Luo X (2014) *Risks and opportunities of participation in global value chains – background paper to the 2014 world development report*. World Bank Policy Research Working Paper no. 6847, April. World Bank.

Jenkins R (2002) The political economy of codes of conduct. In: Jenkins R, Pearson R and Seyfang G (eds) *Corporate Responsibility and Labour Rights*. London: Earthscan, pp. 13–30.

Johnstone R (2012) Informal sectors and new industries: the complexities of regulating occupational health and safety in developing countries. In: Fudge J, McCrystal S and Sankaran K (eds) *Challenging the Legal Boundaries of Work Regulation*. Oxford: Hart Publishing, pp. 67–80.

Johnstone R, McCrystal S, Nossar I, et al. (2012) *Beyond Employment: The Legal Regulation of Work Relationships*. Sydney, NSW: Federation Press.

Justice D (2002) The international trade union movement and the new codes of conduct. In: Jenkins R, Pearson R and Seyfang G (eds) *Corporate Responsibility and Labour Rights: Codes of Conduct in the Global Economy*. London: Earthscan, pp. 90–100.

Klein N (2000) *No Logo*. London: Harper Collins.

Lund-Thomsen P and Wad P (2014) Global value chains, local economic organization and corporate social responsibility in the BRICS countries. *Competition and Change* 18(4): 281–290.

Mayer F and Milberg W (2013) *Aid for trade in a world of global value chains*. Capturing the Gains Working Paper no. 34, June. Available at: http://www.capturingthegains.org/pdf/ctg-wp-2013-34.pdf (accessed 9 November 2015).

https://doi.org/10.1177/1035304615615513 Published online by Cambridge University Press

Miller D (2008) The ITGLWF's policy on cross-border dialogue in the textiles, clothing and footwear sector. In: Papadakis K (ed.) *Cross-Border Social Dialogue and Agreements*. Geneva: International Institute for Labour Studies, pp. 161–189.

Miller D and Williams P (2009) What price a living wage? *Global Social Policy* 9(1): 99–125.

Miller D, Turner S and Grinter T (2011) *Back to the future? A critical reflection on Neil Kearney's mature systems of industrial relations perspective on the governance of outsourced apparel supply chains*. Capturing the Gains Working Paper no. 2011/08, November. Available at: http://www.capturingthegains.org/pdf/ctg-wp-2011-08.pdf (accessed 9 November 2015).

Nathan D (2013) Industrial relations in a global production network: what can be done. *Economic and Political Weekly*, 27 July, pp. 29–33.

Neilson J, Pritchard B and Wai-Chung Yeung H (2014) Global value chains and global production networks in the changing international political economy: an introduction. *Review of International Political Economy* 21(1): 1–8.

Nossar I (2007) *The scope for appropriate cross-jurisdictional regulation of international contract networks (such as value chains): recent developments in Australia and their supra-national implications*. Business outsourcing and restructuring regulatory research network working paper no. 1. Available at: http://www.borrrn.org/index.php?option=com_content&;view=article&id=3:first-working-paper&catid=1:working-paper-series&Itemid=8 (accessed 13 February 2015).

Pickles J and Zhu S (2013) *The California Transparency in Supply Chains Act*. Capturing the Gains Working Paper no. 15, February. Available at: http://www.capturingthegains.org/pdf/ctg-wp-2013-15.pdf (accessed 9 November 2015).

Quinlan M (2011) Supply chains and networks. Report, Safe Work Australia, Canberra, ACT, Australia, July.

Rainnie A, Herod A and McGrath-Champ S (2011) Review and positions: global production networks and labour. *Competition and Change* 15(2): 155–169.

Rawling M (2014) Cross-jurisdictional and other implications of mandatory clothing retailer obligations. *Australian Journal of Labour Law* 27(3): 191–215.

Robinson P and Rainbird H (2013) International value chains and the labour process. *Competition and Change* 17(1): 91–107.

Rodriguez-Garavito C (2005) Nike's law: the anti-sweatshop movement, transnational corporations, and the struggle over international labor rights in the Americas. In: De Sousa Santos B and Cesar Rodriguez-Garavito C (eds) *Law and Globalization from Below: Towards a Cosmopolitan Legality*. New York: Cambridge University Press, pp. 64–91.

Rubery J, Earnshaw J and Marchington M (2005) Blurring the boundaries to the employment relationship: from single to multi-employer relationships. In: Marchington M, Grimshaw D, Rubery J, et al. (eds) *Fragmenting Work: Blurring Organizational Boundaries and Disordering Hierarchies*. Oxford: Oxford University Press, pp. 63–87.

Selwyn B (2013) Social upgrading and labour in global production networks: a critique and an alternative conception. *Competition and Change* 17(1): 75–90.

Taylor P, Newsome K and Rannie A (2013) 'Putting labour in its place': global value chains and labour process analysis. *Competition and Change* 17(1): 1–5.

The Organisation for Economic Co-operation and Development (OECD) (2007) *Staying Competitive in the Global Economy: Moving up the Value Chain*. Paris: OECD.

The Organisation for Economic Co-operation and Development (OECD) (2010) *OECD Economic Globalisation Indicators 2010*. Paris: OECD.

The Organisation for Economic Co-operation and Development (OECD) the World Trade Organisation (WTO) and the United Nations Conference on Trade and Development (UNCTAD) (2013) Implications of Global Value Chains for Trade, Investment, Development and Jobs 6 August 2013. *Prepared for the G-20 Leaders Summit*, Saint Petersburg, September.

https://doi.org/10.1177/1035304615615513 Published online by Cambridge University Press

United Nations Conference on Trade and Development (UNCTAD) (2014) *Trade and Development Report 2014*. Geneva: United Nations.

Wise A (2013) Pyramid subcontracting and moral detachment: downsourcing risk and responsibility in the management of transnational labour in Asia. *Economic and Labour Relations Review* 24(3): 433–455.

World Trade Organization (WTO) (2008) *World Trade Report 2008: Trade in a Globalizing World*. Geneva: WTO.

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