Policy note – Roundtable International Corporate Responsibility Agreements

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Summary

This policy note puts the Dutch international corporate responsibility agreements into a broader context. It provides a brief description of economic trends and discusses the challenge of regulating social and environmental standards in global supply chains. This is followed by a description of the emerging transnational governance regime. It is argued that governments can (and should) play an active role in facilitating and managing the fast-growing number of private regulatory initiatives. Then, the Dutch international corporate responsibility agreements are described as a leading example of a proactive corporate responsibility policy, and comparisons are drawn to similar initiatives in other countries. In conclusion, two major challenges to the Dutch sector agreements are identified and policy recommendations are formulated. These are:

- *The parties to the international corporate responsibility agreements should elaborate their engagement strategy for Southern stakeholders and communicate it clearly.*
- *The Dutch government in collaboration with like-minded governments should lobby to establish EU level frameworks for responsible business conduct.*

Economic globalization and social and environmental standards

A few weeks ago, *The Economist* proclaimed the retreat of global corporations in an era of protectionism. According to the newspaper, the Trump administration's openly protectionist agenda is only the latest development in a broader trend towards a re-regionalization of production, trade, and investment. Whether or not this trend will persist and lead to a slowdown or even roll-back of economic globalization, will be interesting to follow in the years to come. Notwithstanding these recent developments, the global economy today is more integrated than ever. Beginning in the 1970s, the world has seen an unprecedented growth in international trade and capital flows. Between 1990 and 2014 the volume of world merchandise exports more than tripled. Much of this growth is linked to the expansion of global supply chains. Today, nearly 60 percent of world trade consists of trade in intermediate goods and services that are incorporated as production inputs and outputs in global supply chains.[1] A similar growth story can be told about global capital flows. Having recovered after the financial crisis, foreign direct investments reached an eight-year high of $1.7 trillion in 2015 – with over $750 million flowing to developing countries.[2]

[1] WTO. 2015. *International Trade Statistics 2015*.
[2] UNCTAD. 2016. *Global Investments Trend Monitor, No.22.*

The rapid internationalization of production and finance over the last three decades has created opportunities but also many challenges. One major challenge is the regulation of transnational production. While economic activities increasingly cross international borders, the regulatory authority of states remains territorially bound. Political scientists have long argued that these processes could lead to a "mismatch between markets and politics", raising concerns that social and environmental standards could fall victim to neoliberal globalization.[3] A widely discussed scenario in the globalization debate of the early 2000s was that footloose multinational corporations could trigger regulatory competition between states and put downward pressure on social and environmental standards worldwide. While such gloomy predictions about a global "race to the bottom" proofed overblown, regulating transnational supply chains – in particular their social and environmental impact – remains a major challenge.

Private regulation and the role of the state

From a regulatory perspective, the challenges are enormous. How can it be ensured that the products we trade and consume do not harm human rights and the environment in developing countries, where much production takes place? Clear is that traditional command-and-control regulation cannot provide an answer. At the same time, however, the state can (and should) continue to play an important role in the transnational regulation of social and environmental conditions.

One way to do this is to act through international organizations. Over the last decades, states have created various international frameworks to re-embed transnational production in normative and legal structures. The most important are: the Guidelines for Multinational Enterprises of the Organization for Economic Co-operation and Development (OCED), the Core Labour Standards of the International Labour Organization (ILO), the UN Global Compact, and the United Nations' Guiding Principles on Business and Human Rights (UNGP).

In addition, the private actors have become an important source of regulation. Over the last two decades, a large variety of Corporate Social Responsibility (CSR) and sustainability initiatives have been created by business and civil society actors. Today, most multinational companies engage in CSR initiatives in one way or the other. In addition, companies, NGOs, and trade unions have intensified their collaboration on the issue of responsible business conduct. This has resulted in a great number of multi-stakeholder initiatives. One example is the Netherlands-based Fair Wear Foundation, which has developed standards and a monitoring system for responsible garment production. Initiatives like this have grown strongly in numbers in recent years. According to the International Trade Centre, a specialized agency of the United Nations, there are now more than 230 voluntary initiatives that address sustainability issues in global supply chains.[4]

Hence, transnational production has not become an unregulated space as some have feared. However, many problems remain unaddressed. Overall, enforcement mechanisms in transnational regulation remain weak and there are many gaps and overlaps between standards and initiatives. In

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[3] Haufler, Virginia. 2001. *A Public Role for the Private Sector: Industry Self-Regulation in a Global Economy*. Washington, DC: Carnegie Endowment for International Peace.

[4] ITC. 2015. *Standards Map*, Available at: http://www.standardsmap.org/

particular, this is true for the large number of private initiatives that have been developed in recent years. To give an example, there are now more than 40 private standards targeting sustainability in the coffee trade between South America and Europe.[5] Existing studies show that high levels fragmentation and a lack of coherence can undermine the efficiency and effectiveness of transnational sustainability governance.[6]

To mitigate these problems, political scientists have called upon the state and its agents to adopt more proactive policies on corporate responsibility. According to Kenneth Abbott and Duncan Sindal, the state can play an important background role in facilitating and managing transnational private regulation.[7] In particular, states can use binding legislation but also “soft” governance techniques such as agenda-setting, convening, assistance, endorsement, and coordination to increase the coherence and effectiveness of private sustainability and CSR initiatives (see Table 1).

Table 1: Orchestration techniques[8]

Agenda-setting	Convening	Assistance	Endorsement	Coordination
Through agenda-setting states can mobilize business and civil society actors and shape their goals and activities.	States can empower actors and organizations by bringing them into contact with other influential actors, and to steer them by selecting which actors and organizations to convene.	States can offer provide material assistance to private initiatives, using their own financial, technical, and organizational resources.	State can empower private initiatives by endorsing them as competent and legitimate and by formally recognizing their activities.	State can increase the impact of private initiatives by synchronizing their activities.

The Dutch international corporate responsibility agreements

The recently concluded international corporate responsibility agreements in the Netherlands need to be seen in this context. The Ministry of Foreign Trade and Development Cooperation, the Ministry of Economic Affairs, and the Social and Economic Council of the Netherlands played a key role in initiating, facilitating, and managing this process – using many of the governance techniques outlined above.

Aiming to implement existing international norm such as the OECD Guidelines on Multinational Enterprises, the ILO Core Labour Standards, and the UNGP, the agreements bring together key stakeholders from the private sector and civil society to make binding commitments on responsible business conduct. Last year, two such agreements have been concluded: one for the garment/textile industry and one for the banking industry. Further agreements are planned for other industry

[5] Ibid.
[6] Fransen, Luc, and Thomas Conzelmann. 2015. Fragmented or Cohesive Transnational Private Regulation of Sustainability Standards? A Comparative Study. *Regulation & Governance, 9* (3): 259-275.
[7] Abbott, Kenneth W., and Duncan Snidal. 2009. The Governance Triangle: Regulatory Standards Institutions and the Shadow of the State. In *The Politics of Global Regulation*, edited by Walter Mattli andNgaire Woodss, 44-88. Princeton, NJ: Princeton University Press.
[8] Adapted from Abbott, Kenneth W., Philipp Genschel, Duncan Snidal, et al. 2015. Orchestration: Global Governance through Intermediaries. In *International Organizations as Orchestrators*, edited by Kenneth W. Abbott, Philipp Genschel, Duncan Snidal andBernhard Zangls, 3-37. Cambridge: Cambridge University Press.

sectors, identified in a risk analysis carried out by KPMG.[9] Overall, the Dutch government plans up to 10 such agreements. Following a similar structure, the agreements require the participating companies to practice due diligence with regard to human rights and environmental impacts in their global supply chains. To this end the agreements specify priority areas, establish reporting requirements, define targets, and set clear timeframes for their attainment. For example, the agreement for the garment/textile industry lists nine priority areas of responsible business conduct: (1) discrimination and gender; (2) child labor; (3) forced labor; (4) freedom of association; (5) living wage; (6) safety and health in the workplace; (7) raw materials; (8) water pollution and the use of chemicals; (9) and animal welfare. To support the implementation of the agreement, a secretariat and a dispute settlement procedure have been put in place.

In international comparison, the Dutch sector agreements stand out – although there are several other countries that have implemented and experimented with initiatives and legislation on responsible business conduct. One important initiative is the 2015 Modern Slavery Act in the United Kingdom, which requires companies of a certain size to report on their efforts to address slavery in their global supply chains. Policy initiatives on responsible business conduct have also been launched in France and Switzerland. At the European level, Directive 2014/95/EU (the non-financial reporting directive) entered into force in December 2014. It requires EU-based companies of a certain size to report on their due diligence activities in the areas of environmental impacts and human rights. However, the scope and depth of the sector agreements in the Netherlands is unparalleled. While it is too early to evaluate their effectiveness, the mechanisms put in place hold great potential to increase the coherence and effectiveness of responsible business conduct of Dutch firms – making the Netherlands an international leader and potentially role model in this area.

Challenges and policy recommendations

The Dutch international corporate responsibility agreements are not without shortcomings and challenges. One shortcoming is the low involvement of stakeholders from the Global South. While the importance of consultations with stakeholders in production countries is mentioned, they are not a formal party to the agreements. They seem not to have been actively involved in the negotiation process nor do they participate in the governance of the agreements. There may be good reasons for that. Involving more actors with potentially very different interests is difficult. There are trade-offs and a good balance needs to be established between inclusiveness of participation on the one hand and process efficiency on the other. However, lacking a clear strategy for stakeholder involvement from production countries is risky. Resistance against Western-led CSR and sustainability initiatives in the Global South has grown in recent years. Increasingly, transnational initiatives are perceived and framed as an infringement in the national sovereignty of developing countries. In some cases, like in the palm oil industry in Indonesia, this has led to open resistance from the governments in major production countries and the creation of competing standards and organizations. This can greatly impede the effectiveness of transnational sustainability governance. Therefore:

[9] KPMG. 2014. *MVO Sector Risico Analyse. Aandachtspunten voor Dialoog.*

- *The parties to the international corporate responsibility agreements should elaborate their engagement strategy for Southern stakeholders and communicate it clearly.*

A second challenge is the size of the Dutch economy and the limited leverage of its companies to significantly improve the human rights conditions and prevent environmental degradation in production countries. While the sectoral agreements and the active involvement of the Dutch government can greatly increase the existing leverage compared to the status quo, it remains limited nonetheless. This means that the sectoral agreements may be an important step to promote responsible business conduct in Dutch industries and thus to comply with international agreements such as the UNGP and the OCED Guidelines. In addition, there is the possibility that Dutch leadership will inspire similar arrangements in other countries. However, by themselves the international corporate responsibly agreements are insufficient in inducing significant and lasting change in the garment/textile sector or other global industries. To achieve this, more leverage in form of market power and political power is required. This leverage exists at the EU level, with its more than 500 million consumers. Achieving Dutch-style sectoral agreement for the entire EU will not be easy. At the same time, however, recent policy initiatives such as the 2014 non-financial reporting directive show that there is political momentum behind these issues. Therefore:

- *The Dutch government in collaboration with like-minded governments should lobby to establish EU level frameworks for responsible business conduct.*