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Author/s:

Hardy, T;LANDAU, I

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1 Transnational Labour Governance in Global Supply Chains: Asking Questions and Seeking Answers on Accountability

Ingrid Landau and Tess Hardy

► Introduction

Today, a panoply of public, private and hybrid actors and institutions engage at multiple levels in sustained and focused attempts to improve working conditions in global supply chains (GSCs). These actors exercise a range of regulatory functions, from the setting of rules to implementation, monitoring and the imposition of sanctions or other forms of enforcement. We have seen the development of a significant body of scholarship tracing the emergence of transnational labour governance as a polycentric regime and mapping its complex architecture (e.g. Hendrickx et al. 2016; Hassel 2008). There is also a rich interdisciplinary literature assessing the effectiveness of various regulatory initiatives (e.g. Fransen 2012; Locke 2013) and considering how actors, institutions and arrangements interact and what the effects of these interactions are (e.g. Meidinger 2008; Fransen, and Burgoon 2017; Bartley 2018).

The “language of accountability” (Koenig-Archibugi 2010, 1142) has featured prominently in transnational labour governance. For decades now, activists have called on brands and lead firms in the developed world to take more responsibility for working conditions in their supply chains. Private regulatory initiatives are implicitly premised on transparency and market and reputational mechanisms that ostensibly enable consumers, investors and civil society actors to hold companies to account for their labour practices. Yet, there continues to be much debate and uncertainty in international and national fora about the meaning and mechanisms of accountability in global governance (cf. Macdonald and Macdonald 2006; Macdonald 2014). In this chapter, we seek to explore the way in which conceptions of “accountability”

in transnational labour governance have shifted during the recent past. As part of this analysis, we consider how accountability has been constructed and contested across different initiatives and through distinct conceptual frameworks (Black 2008). In undertaking this analysis, we apply a set of critical questions, namely: Who is accountable to whom? For what should they be held accountable for? Through what mechanisms or processes is accountability to be assured? By what standards is the putatively accountable behaviour to be judged? What are the potential effects of finding that these standards have been breached? (Scott 2000; Mashaw 2006, 118). Adopting an explicit focus on the way in which accountability has been applied – both normatively and in practice – reveals new insights into the pluralistic and complex relationships between regulators, intermediaries, targets and beneficiaries.

The chapter is divided into four parts. Following this Introduction, Part 2 discusses what is meant by the term “accountability”, and it identifies some of the challenges that the concept presents in the transnational context. In doing so, it draws on interdisciplinary scholarship, including research in the fields of international relations and regulatory governance. Part 3 explores why accountability matters in transnational labour governance. In Part 4, we seek to trace how understandings of accountability in transnational labour governance have evolved over recent decades. We first look at the way in which accountability was initially conceived via international governance organizations before considering the embryonic emergence, and subsequent explosion, of private regulation in the form of voluntary codes and multi-stakeholder initiatives. In the latter sections of this part, we consider two critical developments on the accountability front: the increasing focus on fixing legal liability in GSCs; and the increasing influence of regulatory intermediaries. It could be argued that both legal sanctioning and independent monitoring are embedded features of many recent regulatory initiatives. However, in our view, their respective and growing importance merits greater attention from an accountability perspective. In Part 5, we summarize some of our key findings before identifying some outstanding issues that merit further reflection and future research in order to advance more durable, effective and accountable forms of transnational labour governance within GSCs (Diller 2020).

Before proceeding, it is important to clarify key terms and mark out the intention and scope of this chapter. First, we draw on Bartley’s definition of *public regulation* to refer to regulatory activities implicitly associated with activities of the state and *private regulation* to refer to “a structure of oversight in which non-state actors – whether for-profit companies, non-profit organizations, or a mix of the two – adopt and to some degree enforce rules for other organizations, such as their suppliers or clients” (Bartley 2018, 7). Second, our focus is squarely on GSCs; we do not consider, in any detail, accountability or governance of supply chains operating solely in the national or sub-national

sphere. At the same time, we recognize that international standards operate in, and are subject to, domestic rules and institutions and intergovernmental arrangements, which creates “a type of (imperfect and incomplete) multi-layered global governance.” (Trebilcock 2018, 57; Zumbansen 2011). In literature concerned with transnational labour governance, a distinction is often drawn between “hard” and “soft” law and between “substitutive” and “complementary” governance regimes (Locke, Rissing, and Pal 2013). One feature of a pluralistic analysis – which is at the core of this chapter – is a rejection of many of these binary classifications (Black 2001; Karassin and Perez 2018; Van der Heijden and Zandvliet 2014). Instead, we conceive transnational labour governance as consisting of a set of complex interplays that may “co-evolve, hybridize, compete, and reshape organizational behaviour” (Schneiberg and Bartley 2008, 51–52; Eberlein et al. 2014). While this broad definition is designed to capture the full range of regulatory interactions, this chapter does not purport to comprehensively survey the field or cover every possible initiative. Rather, we draw out salient examples to illustrate the diverse ways in which accountability has been defined, documented and determined in the context of transnational labour governance.

► 1. Defining and understanding accountability in transnational governance

The term accountability is used in many ways. It has been described as “one of those golden concepts that no one can be against”, but also as “elusive,” “evocative” and “contested” (Bovens 2010, 448). It also suffers from being a term that has become “a conceptual umbrella” for other distinct concepts, such as legitimacy, transparency, equity, democracy, efficiency, responsiveness, responsibility and integrity (Mulgan 2000). Nonetheless, it is commonly acknowledged that the concept retains a core meaning, whether it is being applied at the domestic or transnational level (Koenig-Archibugi 2010; Goodhart 2011; Scholte 2011; Macdonald 2014). Simply put, accountability can be understood as a moral or institutional relationship between different actors, in which one actor (or group of actors) (sometimes referred to as “power wielders”) has an obligation to explain and to justify its conduct, and another actor (sometimes referred to as “accountability holders”) has the power or authority to pose questions, pass judgement and impose consequences (Bovens 2007, 450; Black 2008; Macdonald 2014). Accountability mechanisms are ostensibly designed

for the protection and advancement of the interests of “beneficiaries”, a group which is often left undefined and may be contested. This simple and broad definition belies its complexity – particularly when one attempts to identify who is being held accountable, for what purpose and on whose behalf.

As we will discuss in greater detail, key categories and terms are fluid and do not neatly map onto the messy and complex relationships that arise in practice. This is partly because accountability relationships are not linear or binary and do not flow in one direction from a single accountability holder to a single power wielder (Black 2008, 150). For example, when considering how accountability is conceived in GSCs, are the relevant power wielders the direct employers, major suppliers, certified members, lead firms or all of these? To what extent are some of these actors simultaneously playing a role as accountability holders? Lead firms often have a dual identity in this respect: on the one hand, lead firms are quintessential power wielders in that they clearly owe an obligation to explain and justify their conduct in respect of the GSC; on the other hand, lead firms have the power and authority to pose questions and pass judgement on suppliers and manufacturers further down the chain (and, in this context, are more properly classified as accountability holders). Trying to identify exactly who is benefiting from the various accountability activities in transnational labour governance is not straightforward. In market-based forms of accountability, are the relevant beneficiaries in GSCs the workers producing the goods, the consumers purchasing those goods or the investors of the lead firms? In our view, teasing out the constitutive elements of key accountability concepts is not just a matter of semantics but may lead to a distinct normative and practical assessment of the relevant accountability regime. Many of the conceptual distinctions and tensions which are touched upon in this section underpin our later analysis of how accountability understandings and activities have evolved in the context of GSCs.

Accountability can be conceptualized as a *normative concept* and a *social mechanism* (Bovens 2010). The term can be used as a normative standard against which to evaluate actors’ behaviour. “Being accountable” is seen as a desirable quality, a virtue. Accountability in this broader sense is instrumental to maintaining legitimacy to actors and organizations, in that it can help legitimize or de-legitimize the exercise of public power (Bovens 2010, 954–955). However, it is also a highly contested concept, as there is rarely any general consensus as to what constitutes the substantive standards for accountable behaviour (Bovens 2010, 949).

Accountability as a social mechanism is a narrower and more descriptive conceptualization. The focus in this second use of accountability is on the institutional arrangements or mechanisms through which one actor is held accountable to other actors (Curtin and Senden 2011, 166). For Buchanan and Keohane (2006, 426), there are three basic components to the concept

of accountability (when conceptualized as a social mechanism). The first element are *standards* which “those who are held accountable [i.e. power wielders] are expected to meet.” The second component is *information* – which is required to be made available to accountability holders “who can then apply the standards in question to the performance of those who are held to account”. The third accountability component relates to “the ability of these accountability holders to impose *sanctions* – to attach costs to the failure to meet the standards”.

When conceived of as a social mechanism, accountability serves a number of specific functions. Accountability processes may serve as “platforms” for victims to voice their grievances and for perpetrators to account for their conduct (Braithwaite 2008, 35). Accountability also serves an important democratic function: as a form of institutional countervailing power that mitigate the risks of powerful actors (governments, international bureaucracies, companies, non-governmental organizations) abusing their power (Grant and Keohane 2005). Finally, accountability may serve as a tool for inducing reflection and learning. Here, it operates as a way of improving the effectiveness of policymaking and implementation, because it can enable external feedback as to shortcomings of policies and implementation processes and encourage processes of institutional learning by accountability holders. Where such information is made public, these processes of accountability can also “teach others in similar positions what is expected of them, what works and what does not” (Bovens 2010, 956).¹

Transnational governance gives rise to a number of important challenges when it comes to accountability mechanisms (Curtin and Senden 2011; Scott 2011; Black 2008; Bäckstrand, Zelli, and Scleifer 2018). First, the transnational realm lacks the conventional state-based mechanisms of accountability found in liberal democratic systems. Moreover, it is widely accepted that such structures cannot simply be replicated at the transnational level (Grant and Keohane 2005, 29; cf. Bartley 2018). Second is the presence of a significant “accountability gap”: put simply, the growth in influence of global governance processes has not been accompanied by a corresponding development of formal accountability mechanisms that directly link public and private actors to those they affect (Scholte 2011, 25; Curtin and Senden 2011, 172). A third challenge relates to the absence of a single authority or decision-maker. At the transnational level, authority and governance functions are dispersed, fragmented and shared among multiple, often non-state, actors. It can be difficult to determine the mandates of these various actors, or to establish on whose behalf they purport to act and to whom accountability should be

1 It is recognized that certain preconditions need to be met in order for accountability to produce institutional reflection and learning. See Bovens 2010, 956.

owed (Black 2008, 142). Finally, there is the problem of “many hands” (Bovens 2007; Black 2008). Governance roles and responsibilities (standard-setting, monitoring, enforcement, etc.) are often dispersed among different actors, rendering it challenging to determine who should be held accountable to whom and for what (e.g. for adverse impacts in supply chains) (Bäckstrand, Zelli, and Schleifer 2018, 341; Black 2008, 143; Macdonald and Macdonald 2006, 98). There are also challenges relating to *how* actors are to be held accountable. It is often the case that a number of different strategies are being used simultaneously or sequentially. This can lead to regulatory complexity, contestation and confusion (Black 2008, 140).

Two further distinctions between accountability at the domestic and transnational contexts are useful for the following discussion. The first concerns accountability mechanisms: that is, the *means* through which accountability is institutionalized. Similar types of accountable mechanisms operate at both levels. These include, for example, electoral, legal, market-based, civil society-based and administrative accountability. However, different types predominate at the different levels (Macdonald 2014, 430; Koenig-Archibugi 2010, 1144). For example, electoral and legal forms of accountability are more commonly found at the domestic level, whereas market-based forms of accountability (e.g. to investors or consumers) are particularly prominent at the transnational level (Macdonald 2014, 430–431). However, in recent developments in the transnational labour context, it is arguable that we are seeing a convergence of legal forms of accountability with market-based forms.

The second distinction concerns the role of intermediaries in accountability mechanisms. At the domestic level, accountability holders (those to whom an obligation is owed) generally play a significant role in sanctioning power wielders (those who are being held accountable), and this role is necessary for the sanctioning of the power wielder to be effective (Rubenstein 2007, 616). For example, workers who have had their legal rights violated may file a complaint against their employer with the relevant state agency. This type of accountability is referred to as “beneficiary accountability” or direct accountability.²

At the transnational level, direct accountability is less feasible due to a number of factors. These include significant power differentials between decision-makers and those who are affected by their decisions, social and physical distances between relevant actors and the absence of formal institutions mediating relations between these actors. As a consequence, transnational accountability mechanisms are far more likely to involve third parties who act as “proxies” for accountability holders (Koenig-Archibugi and Macdonald 2013; Rubenstein 2007). In these types of accountability arrangements,

² Other terms commonly used to describe this direct form of accountability include “direct” or “standard” accountability.

intermediaries can perform roles including endorsing standards, receiving information about compliance and sanctioning power wielders, nominally “on behalf” of the accountability holders (Macdonald 2014, 431; Koenig-Archibugi and Macdonald 2013, 500). This indirect form of accountability is referred to as “proxy accountability”.³ An important feature of accountability by proxy is that accountability-holders cannot sanction the proxy; that is, proxies are not “links in chains of accountability” (Koenig-Archibugi 2010, 1145). Examples include cases in which a lead firm may sanction one of its suppliers for non-compliance with the lead firm’s code of conduct “on behalf of” workers engaged by that supplier; or an investor may sanction a lead firm for failing to address poor working conditions in its supply chain. As Koenig-Archibugi points out, while the distinction between these two forms of accountability is important, it can be hard to apply in practice because of the difficulty of establishing whether an actor is genuinely acting on behalf of another less powerful actor, or whether it is simply promoting its own interests and values. (2010, 1145). As discussed in Section 4.5 below, it is often unclear as to whether auditing firms are acting on behalf of the lead firms who have engaged them, the workers on whom they are ostensibly checking, consumers or investors who rely on their audit reports, or whether they are ultimately acting in a way that promotes and protects their own commercial interests.

Before moving on, it is useful to briefly consider the relationship between *accountability* and *transparency* in transnational governance. While transparency is distinct from accountability, it is intimately related. If we consider accountability as including the three basic elements identified above (standards, information and sanctions), then transparency – making information available to accountability holders who can then determine whether the actor held to account is meeting the standards in question – is essential to any form of accountability. Given the general absence of conventional forms of political accountability from transnational governance, transparency is often identified as an important means by which to foster greater accountability (e.g. Hale 2008) or even (along with participation) as an institutional proxy for accountability in transnational governance (Meidinger 2006). Transparency may lead to soft forms of accountability through what Fung, Graham, and Weil (2007) describe as a “transparency action cycle” that can trigger constructive behavioral change. Salient information disclosed by a power wielder may be used by other actors (e.g. consumers, investors and NGOs) to hold that actor accountable by way of market pressures (e.g. changing consumption or investment behaviour or “naming and shaming”) (Fung, Graham, and Weil 2007; Hale 2008; Hess 2019). However, that transparency is insufficient on its own to secure accountability. The value of transparency is contingent upon

³ Other terms commonly used to describe this form of intermediated accountability include “indirect” and “surrogate” accountability.

factors such as the quality of information disclosed, the actors(s) to whom it is disclosed, the existence of standards against which to judge the information disclosed and the question of how effectively this information can be used by other actors to initiate sanctions (Grant and Keohane 2005, 39–40; Schleifer, Florini, and Auld 2019, 491; Van Zyl 2014; Buchanan and Keohane 2006, 427). We will discuss these considerations further in relation to specific forms of governance below.

► 2. Why does accountability matter in transnational labour governance?

First and foremost, we suggest that accountability matters (and should be the subject of increased attention) in transnational labour governance, because it is the political contestation over basic terms of accountability (e.g. who should be accountable, to whom and for what) that has driven many of the developments in the field. In the transnational context, traditional jurisdictional boundaries are often displaced, mandates are generally uncertain and hierarchical notions of accountability are not easily accommodated. It is exceedingly difficult to identify the relevant principal and agent, which makes it even more challenging to ascertain who has the right and the power to call actors to account when issues arise and dispute settlement procedures are invoked (Black 2008, 143). If we take the garment industry as an example, many private forms of governance in the industry have been driven by the contention that brands and lead firms in the Global North exercise extensive – albeit often indirect – power over workers in the Global South. On this basis, it is argued, workers within these production structures should be able to hold these power-wielding actors to account for the impacts of their decisions (Milanovic 2016). Contests in transnational labour governance more broadly – across multiple sectors – continue to be characterized by disagreements and associated uncertainty regarding the content and scope of what companies can properly be held responsible and accountable for.

Accountability also matters in transnational labour governance, because it is a key legitimizing (or de-legitimizing) mechanism for specific governance actors and initiatives (Macdonald 2014; Bovens 2010; Black 2008). As Koenig-Archibugi (2010, 1146) explains, “[a]ccountability is demanded, supplied and studied mainly because of the expectation that it will contribute to establishing, maintaining or enhancing legitimacy” of a specific actor, initiative or institution. Whether an actor is seen as legitimate (i.e. seen as having the right to govern) – both by those who have delegated it with power and those

who are affected by it – depends in whole or in part on whether or not the actor is seen as having appropriate accountability relationships with others (Koenig-Archibugi 2010, 1146; Black 2008). A perceived lack of accountability may also de-legitimize certain actors, at least among certain communities. An example of such dynamics is found in criticism of the United Nations (UN) Global Compact on the basis that it lacks sufficient accountability mechanisms and so permits corporations to claim social responsibility without having to meaningfully change their operations (Voegtlin and Pless 2014).

From a regulatory perspective, legitimacy at the transnational level is important for enabling non-state actors to promote behavioural change. In the absence of a state infrastructure capable of compelling compliance, transnational regulators (whether public, private or other) cannot directly derive authority and power from the law. Regulatory targets are often under no obligation to take any notice of the overtures or efforts of non-state actors in the transnational sphere. Instead, transnational regulators need to actively construct and maintain legitimacy in order to secure motivational responses from those whose behaviour they seek to influence (Black 2008 138–139; Alhambra, Ter Haar, and Kun 2020). Legitimacy is particularly important for non-state based governance systems that are often in competition with each other (Fransen 2012), and whose ultimate success may depend on moving beyond “static systems in which firms and social actors constantly evaluate and reevaluate whether to withdraw support based on short-term cost-benefit calculations” to becoming “deeply engrained as legitimate authorities” (Bernstein and Cashore 2007).

► 3. How have understandings of accountability evolved in transnational labour governance?

In this section, we draw on the concepts identified above to explore how understandings of accountability have evolved in transnational labour governance. Over the last several decades, we have seen a broadening of transnational labour governance from state-centred regulation focusing on individual employers to private and hybrid forms of governance focusing on brand and lead firms and on multiple actors in a production chain. We suggest that this process has challenged conventional understandings of accountability and led to new and reconfigured systems of accountability. While this process has generally entailed a convergence of standards (O’Rourke 2003, 7), it has

simultaneously involved a broadening of the actors in such accountability systems, from national governments and inter-governmental organizations (IGOs) to enterprises, non-governmental organizations (NGOs), consumers, investors, etc. We have also seen a shift in the relative importance of different accountability mechanisms: from an emphasis on soft legal mechanisms to a reliance largely on market forms. More recently, we have been witnessing not only a greater array of actors being enrolled to enhance accountability in GSCs, but also a turn towards mechanisms which seek to institutionalize worker voice, and a much greater focus on imposing sanctions against those who stray from their stated commitments.

3.1 Governmental accountability

Until the 1970s, much of the attention of scholarship on international labour governance focused on the role of nation-states – which were perceived as the dominant source of regulatory power (Trebilcock 2018). Emphasis was placed, albeit often implicitly, on accountability of nation-states for international commitments voluntarily assumed by way of the ratification of International Labour Organization (ILO) and UN human rights conventions.

The mid-1970s saw the emergence of the first international soft law instruments directed at multinational enterprises: the *Guidelines for Multinational Enterprises* by the Organisation for Economic Co-operation and Development (OECD) (1976) and the ILO's *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (MNE Declaration)* (1977). In their initial form, neither of these instruments included any means through which to directly hold multinational enterprises (MNEs) accountable for non-compliance.⁴ Rather, companies were simply encouraged to regulate their own conduct in line with national and/or international standards where effective governmental regulation was not present. During this early period, we suggest we can discern an overriding focus on the *setting of standards* (by way of international instruments) on the assumption that this would inevitably lead to compliance via the legal apparatus of each Member State. International soft law standards, such as the OECD Guidelines, also played a useful function in providing benchmarks of responsible conduct that could be used by civil society within and across countries to demand greater corporate

⁴ Both these instruments have been subject to significant revisions since their inception. The OECD Guidelines' "Implementation Mechanism", under which interested parties can bring complaints to National Contact Points (NCPs) concerning multinational non-compliance with the Guidelines, was introduced in 1984. However, it was not until 2000 that detailed Procedural Guidance on the role and functions of NCPs gave them a stronger role to deal with all matters relating to the Guidelines, including resolving issues related to the non-observance of the Guidelines by companies (OECD 2016, 11).

accountability (Keck and Sikkink 1998). Other core elements of an accountability system – such as information disclosure and sanctions – were less present in this early period. Accountability mechanisms also appeared rather rudimentary – confined to soft law, relying on “naming and shaming” and other self-regulatory mechanisms to encourage compliance.

Before moving on from this brief discussion of early approaches to accountability in transnational labour governance, two further points are worth noting. First, in recent decades, we have seen a broadening of attention paid to the ILO’s accountability relationships: that is, the question to whom the organization should be accountable. With its tripartite governance structures, the organization has generally been regarded as being accountable to a broader range of stakeholders than most IGOs. However, with the decline of trade unionism and the growing awareness of the significance of the informal economy, questions have been raised over the extent to which the organization should be accountable to broader affected groups, such as NGOs that represent workers in the informal economy (Cooney 1999; Standing 2008). The representativeness of employer groups has also been questioned, given the large numbers of companies not affiliated with their national employer groups, including multinational enterprises. (Rodgers et al. 2009, 17). Secondly, from the late 1990s onwards, we have also seen a growing interest in, and critique of, accountability structures within other intergovernmental organizations – such as international financial institutions (e.g. Woods 2001) and the OECD (e.g. Murray 2001; Ougaard 2011) – that bear upon the regulation of multinational enterprises and labour standards. Here, there are issues relating to the relevant standards or benchmarks that are being used to assess compliance commitment and questions to whom these organizations should be accountable. In other words, is the relevant regulatory beneficiary in these arrangements an NGO, a trade union, workers within the GSC, consumers in developed economies or broader communities affected by the decisions of the IGOs.

3.2 Initial steps to address “accountability gaps” through codes of conduct

The anti-sweatshop movement in the early 1990s heralded a significant broadening of understanding of accountability in transnational labour governance. Following the shift of production of goods such as garments, footwear and toys from North America and Europe to developing countries, activists and the media began exposing poor working conditions in supplier factories and demanding that brands and lead firms accept some responsibility for workers in their supply chains, despite the absence of direct ownership or direct legal responsibilities. This focus on multinational enterprises represented a shift

from seeing regulation of labour standards in global supply chains exclusively as the responsibility of governments, and to a growing recognition and desire for companies to be held directly accountable for their adverse social impacts.

Acceptance by brands and retailers of some degree of responsibility for working conditions was initially institutionalized by way of unilateral and voluntarily-assumed corporate codes of conduct. In response to ongoing demands by labour activists to ensure meaningful implementation of commitments, these codes were gradually accompanied by systemized efforts to monitor and secure compliance (Bartley 2018, 19). Brands and retailers adopted codes of conduct that set standards concerning issues such as working conditions, wages, working hours, and health and safety to which their suppliers were required to sign up. Monitoring of supplier compliance with these codes was undertaken by the lead firms' own employees (internal monitoring) or by third parties (external monitoring).⁵ Supply chain governance by way of codes of conduct, however, failed to meet demands for retailers and brands to be accountable for working conditions in their production processes. Activists and scholars continued to reveal instances of poor and repressive working conditions and to demand that firms improved both code standards (initial codes were often narrow in scope and selective in the labour standards they chose to promote) and monitoring and enforcement mechanisms (e.g. O'Rourke 2003; Blackett 2001; Esbenshade 2004). The perceived limitations of these audits are explored in more detail in Section 4.5 below.

The 1990s also saw an emerging focus on transparency as an important prerequisite to accountability in transnational labour governance. NGOs began to challenge lead firms and retailers in the garment industry to disclose detailed information about the factories in their supply chains, such as their names, locations and working conditions (see e.g. Esbenshade 2001). These demands were made on the basis that such information would facilitate the monitoring of those factories by labour and human rights actors and enable them to obtain information that could then be used to place further pressure on the lead firms to improve their labour practices. This focus on transparency continues to the present day.⁶

5 In this chapter, we adopt O'Rourke's terminology to distinguish between different forms of monitoring, with a third term – "verification" – referring to independent evaluations, i.e. not paid for by those being monitored. (O'Rourke 2003, 6).

6 In 2016, for example, nine labour and human rights organizations formed a coalition to demand that apparel companies agree to implement a simple Transparency Pledge, which constituted a minimum standard for supply chain disclosure (Human Rights Watch, 2017).

3.3 Strengthening accountability through MSIs?

Sustained concerns around both the content and accountability mechanisms associated with corporate codes of conduct led subsequently to the emergence of multi-stakeholder initiatives (MSIs). MSIs that focused on labour governance in transnational supply chains first emerged in the United States garment industry in the 1990s before rapidly spread to other industries (Bartley 2018). These arrangements are similar in that they all bring together a multiplicity of stakeholders to work together to achieve objectives collectively. However, they differ significantly with respect to their structure, membership, governance, transparency, monitoring and reporting procedures (Bartley 2003; Fransen 2011).

Most scholarship on MSIs that deal in whole or in part with labour standards has focused on the emergence and design of various initiatives, and on their potential and limitations in terms of driving improvements in working conditions. However, we can discern at least three distinct ways in which accountability concerns have featured. The first concerns the efficacy of MSIs as mechanisms through which to hold companies accountable for their social impacts. The second concerns to whom MSIs themselves are accountable and through what mechanisms. The third concerns the extent to which MSIs facilitate or impede the development of local accountability structures. We discuss each of these briefly below.

Regarding the governance of labour conditions in supply chains, MSIs continue to diverge significantly with respect to implementation and enforcement procedures, and the extent to which external review of company performance by external stakeholders is facilitated (Fransen and Burgoon 2012). Some MSIs focus on dialogue between stakeholders (e.g. the Ethical Trading Initiative or the UN Global Compact) and so operate more as learning platforms than accountability mechanisms. Some – such as the Fair Labor Association (FLA) or FairWear Foundation – involve monitoring and enforcement procedures. Others issue certifications or labels to those organizations that comply with the MSIs' standards (e.g. Fair Trade, Social Accountability International) (Fransen 2012). For those MSIs that purport to set standards and adopt some kind of system for monitoring and verification important questions concern the issue of how compliance is verified. As noted above, internal monitoring (self-monitoring) by participant firms has long been regarded as constituting weak accountability, as firms have possibilities to cheat and report falsely on compliance, while compliance cannot be verified (Marx 2008; O'Rourke 2006). External monitoring, involving the engagement of external third-party auditors, has also come under sustained criticism by activists and scholars for being flawed and lacking transparency and accountability (O'Rourke 2003, 11–12; Esbenshade 2006). Monitoring by independent third parties, such as

civil society or governmental organizations, is widely regarded in the literature as being capable of promoting more compliance than the other forms of monitoring (Marx and Wouters 2016; Marx 2008; O'Rourke 2006; Mena and Palazzo 2012, 543). We will discuss monitoring in Section 4.5 below.

With respect to sanctions, MSIs generally rely on peer pressure and the threat of exclusion from the MSI to address persistent non-compliance, and/or on market mechanisms to reward strong performers and sanction laggards. As Estlund (2012, 238) observes, relying on voluntary participation, many MSIs continue to suffer from an “accountability dilemma”, which constrains efforts to enforce commitments against participating companies. Efforts by the MSIs or other stakeholders to ratchet up the strength and efficacy of these arrangements are in constant tension with the need to gain and retain corporate membership. This tension is exacerbated by often intense competition between MSIs (Fransen 2012).

Over time, many MSIs have developed multiple mechanisms through which members are held to account for non-compliance with agreed standards. The FLA today, for example, has four “layers of accountability” (Van Heerden 2016, 132–133). Companies joining the FLA commit to implementing the Obligations of Companies set out in the FLA Charter over the course of an “implementation period” (normally one to two years). First, compliance within participants’ supply chains is assessed on an ongoing basis through independent monitoring organized by FLA staff. Second, company monitoring and assessment result – and third-party complaints – are published on the FLA website. A third level of accountability is exercised by the tripartite FLA Board of Directors, a governing body that receives reports on monitoring activities and third-party complaints and decides whether to accredit companies. A final level of accountability is to be found in the FLA third party complaint mechanism and the Special Review clause in the FLA Charter. The former allows any third party to lodge a complaint if it believes that an FLA-affiliated company does not adhere to its code of obligations. The latter enables the FLA board to place a company on 90-day notice of expulsion if it fails to remedy violations identified in monitoring or third-party complaint reports.

As this FLA example demonstrates, MSIs may complement proxy accountability with beneficiary accountability by way of worker complaint or dispute settlement procedures. It is argued that, where well-designed, these mechanisms may engage workers and other stakeholders in monitoring at the workplace level and enable workers to hold a supplier or lead firm accountable when a standard has been breached (Marx and Wouters 2016, 446–447; Barenberg 2008). However, many arrangements lack such procedures, and, among those that do, there is significant diversity in terms of design, eligibility and conditions for the lodgement of a complaint. There is also little empirical

evidence to suggest these mechanisms operate as effective accountability mechanisms (Marx and Wouters 2016).

A second and related but distinct set of accountability concerns with MSIs relate to who the decision-makers in collaborative governance arrangements are and to whom they should be accountable. As Black (2008, 143) observes, it is often “... not clear on whose behalf they purport to act and to whom accountability should be owed”. As noted above, many MSIs rely primarily on proxy accountability arrangements, whereby NGOs, consumers and others seek to hold MSI decision-makers accountable on behalf of the initiative’s putative beneficiaries (workers and their families) (Koenig-Archibugi and Macdonald 2013, 499–501). In this context, important questions arise concerning the extent and nature of stakeholder representation within MSI governance structures, the degree to which MSI procedures and decision-making are made transparent, and the capacity of stakeholders to effectively sanction poor performance. In an effort to enhance their legitimacy in the eyes of consumers and civil society stakeholders, many MSIs have gradually improved levels of transparency and external participation (Curtin and Senden 2011, 178; Meidinger 2006, 81; O’Rourke 2006, 908). However, while both are generally considered to be essential elements of accountability (as they facilitate the evaluation of the MSI’s performance by stakeholders), scholars have cautioned against an uncritical embrace of such claims by MSIs. Such claims often fail to recognize that the effects of transparency and participation are mediated by other features of decision-making processes (Auld and Gulbrandsen 2010, 101) and may indeed serve to limit accountability where used to provide “cover” to firms and/or to the MSI itself (Meidinger 2006, 82).

Based on an analysis of accountability relationships in three labour governance MSIs (Rugmark, Fair Trade, FLA), Koenig-Archibugi and Macdonald (2013) argue that accountability structures matter, because different combinations of proxy versus beneficiary accountability influence the choice of policy instruments used by MSIs. The authors draw a basic distinction between two types of policy instruments. Regulative instruments are directed at restricting the range of possible courses of action available to those being regulated. They include, for example, the formulation of rules that prescribe or proscribe certain courses of action, as well as monitoring compliance with those rules, certification of compliance, adjudication of disputes and application of sanctions for non-compliance. Allocative instruments are directed at expanding the range of possible courses of action by providing resources. They include, for example, credit, insurance, professional and technical training, and health care. While emphasizing that the mix of policy instruments used by an MSI is determined by “a complex configuration of conditions”, the authors suggest that an over-reliance on proxy accountability arrangements (particularly where consumers act as the primary proxy accountability holders) may lead

MSIs decision-makers to adopt regulative policy interventions, even though this approach deviates significantly from those preferred by the workers and their families.

The final way notions of accountability have featured (albeit implicitly) concerns the extent to which such arrangements facilitate or impede the development of local accountability structures. Labour activists and scholars have consistently expressed concern over the extent to which MSIs that rely on proxy accountability arrangements may operate to exclude workers from emerging accountability relationships and to detract from efforts to empower workers (e.g. Esbenschade 2001; O'Rourke 2006; Estlund 2012). In this context, MSIs that directly involve workers in monitoring and enforcement – such as the Workers' Rights Consortium (WRC) – may be regarded by some as more legitimate, as they have stronger accountability relationships between power wielders and workers as beneficiaries. Unlike many other MSIs, the WRC does not certify company compliance with a code of conduct or conduct systematic monitoring. Rather, its approach is based on inspection of factories from which the WRC has received worker complaints; proactive inspections in countries considered high risk; and information disclosure requirements. This approach, along with a focus on educating workers and assisting organizing efforts, has led some scholars to see the WRC as constituting a model of accountability that is more effective and responsive to workers (e.g. Barenberg 2008). Recent years have also seen growing scholarly interest in understanding the implications of various MSI configurations for local public labour law enforcement structures and institutions. A good example of this is found in the Bangladesh Accord on Fire and Building Safety. While the Accord is widely viewed as a significant advance in transnational labour governance (see further below), concerns have been voiced over the extent to which it has become a parallel private safety inspectorate, and has, in effect, established an accountability regime that bypasses, and fails to contribute to the improvement of, local labour law enforcement (Bartley 2018, 274–276). This tends to buttress existing concerns about the potentially substitutive capacity of transnational labour governance mechanisms: an issue which is critical but beyond the scope of this chapter (but see, Locke, Rissing, and Pal 2013).

3.4 Towards legal accountability

Ongoing frustrations with the limited nature of improvements to working conditions in global supply chains delivered by voluntary initiatives has long fueled interest by activists and scholars in strengthening national and international legal accountability mechanisms. Below, we briefly discuss three broad avenues that have featured in scholarship concerning legal accountability for working conditions in their transnational supply chains: (i) direct

liability by way of national tort, contract and consumer protection laws; (ii) mandatory disclosure and due diligence laws; and (iii) enforceable brand agreements, established by way of contract.

Since at least the 1990s, labour and human rights advocates and scholars have explored the extent to which extant laws within various jurisdictions may be used to establish the liability of multinational enterprises for labour rights violations in foreign subsidiaries or suppliers. Tort law has proven a subject of particular focus, however private action in contracts and the use of unfair competition and consumer protection laws to hold corporations accountable for their corporate social responsibility (CSR) reporting has also enjoyed attention. With respect to all these legal avenues, it is widely acknowledged that claimants face significant legal and practical obstacles to establishing lead firm liability for labour rights violations (whether by way of tort or contract), or for establishing liability of firms for misleading statements made to consumers (Brudney 2012; Estlund 2012, 255; Doorey 2018; Spitzer 2019; Cabrelli 2019). Over the years, the limitations of existing legal doctrines have inspired scholars to propose adaptations to existing approaches and/or to explore “new pathways to enforcement” (e.g. Brudney 2012; Cabrelli 2019). These have included, for example, the recognition of a common law duty of care to exercise human rights due diligence (Cassel 2016) or the establishment of a transnational labour inspectorate (Alhambra, Ter Haar, and Kun 2020).

A second and more recent set of legal accountability mechanisms involves national and international “due diligence” laws. These laws have emerged in the wake of the adoption by the UN Human Rights Council in 2011 of the UN’s *Guiding Principles on Business and Human Rights* (2011) and draw upon its concept of corporate “human rights due diligence”. We are now seeing the legalization of human rights due diligence in a number of national jurisdictions, and it is widely anticipated that this trend will continue. Legal due diligence initiatives can be grouped into two broad categories. The first category of laws – which we refer to as “mandatory disclosure laws” – are found in the Anglo-Saxon liberal economies and require companies to disclose certain information regarding specific human rights risks (e.g. modern slavery) in their operations and supply chains. Examples include s54 of the United Kingdom’s *Modern Slavery Act 2015*; California’s *Transparency in Supply Chains Act*; and Australia’s *Modern Slavery Act 2018*. This approach is also found in the *EU Directive 2014/95 on Disclosure of Non-Financial Information*. The second category of laws – which we refer to as “mandatory due diligence laws” – are found in Europe. These initiatives are broader in their scope (that is, with respect to the rights covered) and recognize the potential for civil liability in case of a company’s failure to act with due diligence. To date, only the French *Devoir de Vigilance* law embodies this approach, although

campaigns for similar mandatory due diligence laws are underway in a number of European jurisdictions.

Mandatory disclosure laws such as found in the UK and Australia do not secure corporate accountability for egregious working conditions within their domestic or transnational supply chains. They are predicated on the assumption that transparency will arm consumers, investors, activists and others with information that will enable them to demand better corporate performance by rewarding leaders and sanctioning laggards. Theoretical and empirical critiques of these laws suggest that this approach has significant limitations as a means of securing greater corporate accountability (e.g. Sarfaty 2015; Wen 2016; Landau and Marshall 2019). There is also a significant body of theoretical and empirical scholarship in regulatory governance to suggest that, to be effective, such disclosure-based laws need to be designed adequately and complemented by other regulatory measures (e.g. Weil et al. 2006). Scholars have also raised concerns over the potential for such transparency-based measures to militate *against* efforts to secure greater corporate accountability through bolstering corporate actors' arguments that any additional forms of regulation are unnecessary (LeBaron and Rühmkorf 2019).

The French *Devoir de Vigilance* law is widely regarded by civil society as constituting a more promising legal avenue for securing corporate accountability, including for labour rights violations (e.g. Cossart, Chaplier, and Beau de Loménie 2017). This law is described in detail in Chapter 5, and we make only a few observations on this law here, through an accountability lens. First, the law is narrowly confined in terms of the types of corporate actors on which it imposes accountability. Second, the law operates primarily (but not exclusively) as a mechanism through which a broad range of stakeholders may hold companies to account for the *process* of publishing a vigilance plan and for the effective implementation of this plan. Important questions remain concerning the adequacy of the standards against which actors will be held accountable. Analysis of vigilance plans published in the first year of the law's operation suggest that many companies are producing plans devoid of sufficient detail to be meaningful (ActionAid et al. 2019). The French High Court's decision to the effect that the interpretation of the law falls under the jurisdiction of the commercial courts suggests that a minimalist interpretation of the law may be forthcoming. Furthermore, while the *Devoir de Vigilance* law confirms the ability of victims to sue for damages in negligence, it does not address any of the conventional obstacles to establishing liability in tort (e.g. establishing breach, damages and causation). Overall, we suggest that the extent to which this novel law will significantly reconfigure accountability relationships remains unclear.

The third and final type of legal accountability mechanism we discuss briefly here is the "enforceable brand agreement" or "legally binding buyer

responsibility agreement.” (Anner, Bair, and Blasi 2013). The Accord on Fire and Building Safety in Bangladesh (the subject of Chapter 9) is the best example of this “new form of corporate accountability” at the transnational level, although similar models are found domestically (Anner, Bair, and Blasi 2013). Unlike many other MSIs, the Accord contains a binding arbitration clause that effectively renders the agreement enforceable. This arbitration clause has not been fully tested, as the two arbitrations that took place under the Accord in 2016–2018 (consolidated in a single proceeding) were settled before the issuance of an arbitral award on the merits. Nonetheless, inspired and informed by the Accord experience, we are now seeing labour rights organizations advocating for the wider use of such model arbitration clauses in enforceable brand agreements (Clean Clothes Campaign et al. 2020). This model clause is promoted to advance “a streamlined arbitration system that moves quickly, avoids excessive litigiousness, promotes more transparency, does not impose burdensome costs on parties and their representatives, and provides final and binding enforcement while ensuring impartiality and due process guarantees for all parties to the agreement (Clean Clothes Campaign et al. 2020, 10). We can anticipate these types of contractual approaches to constitute an important focus of experimentation and scholarship in transnational labour governance going forward.

3.5 The rise of intermediary accountability

Since the move towards private supply chain governance in the late 1990s and early 2000s, the system of transnational labour governance has become more highly intermediated. Mounting concerns about rule avoidance by private firms, the ensuing reputational risks and the need for investor reassurance have promoted market-based regulatory models which are heavily reliant on monitoring and certification by intermediaries such as auditors and credit agencies (Marx and Wouters 2017). The emphasis on ethical audit regimes as a way of measuring, tracking and enforcing standards in GSCs has been further reinforced by the advance of due diligence under the auspices of modern slavery and transparency legislation (LeBaron, Lister and Dauvergne 2017; Fransen and LeBaron 2019).

In the context of transnational governance, the term “intermediary” refers to any state or non-state actor that operates as a “go-between” concerning the regulator and the target (Abbott, Levi-Faur and Snidal 2017, 18; Levi-Faur 2011). Intermediaries may include: private sector actors (such as certification companies), auditors, advisors, management consultants, accounting firms, law firms and credit ratings agencies; they may also comprise civil society groups, such as NGOs, unions or worker groups; or they may consist of

governmental bodies, such as transgovernmental agency networks or international organizations.

Intermediaries are often perceived as possessing distinctive regulatory capacities and may perform a range of regulatory functions relevant to accountability. Such functions include shaping or endorsing standards, interpreting and constructing legal rules, monitoring compliance behaviour, facilitating information disclosure, fostering communities of trust and supporting enforcement efforts through sanctioning (MacDonald 2018 459; Abbott, Levi-Faur, and Snidal 2017, 20; Talesh 2015). Intermediaries have been identified as being especially influential where “normatively recognised principals of transnational accountability relationships lack sufficient information, power, or institutional access to enforce accountability obligations directly” (Macdonald 2018, 459).

The expansion of intermediaries in the transnational domain has generated a growing interest in the opportunities, risks and dilemmas presented by these types of accountability relationships (Short, Toffel, and Hugill 2016; Macdonald 2018). A number of activists and scholars have identified critical shortcomings of ethical audits by intermediaries, including a general failure to detect or correct labour violations in GSCs (O’Rourke 2003; Esbenshade 2004; Marx and Wouters 2017). The audit scope and methodology are often confined and selective – with a focus on outcome standards (such as health and safety and working hours) rather than process rights (such as freedom of association and non-discrimination) (Barrientos and Smith 2007). Auditors frequently adopt a checklist approach, which allows for quantification of conditions on a given day and makes for easier tracking and comparison. However, standardized audits can often miss crucial information which is essential for sustained compliance (e.g. whether workers are engaged via labour providers or contractors; whether there are collective forms of worker voice; and whether there are avenues for raising complaints and remediating breaches) (Esbenshade 2004; LeBaron, Lister, and Dauvergne 2017).

It is sometimes the case that audit results are kept confidential, which has the effect of undermining transparency mechanisms. The lack of any compulsive investigatory powers or direct sanctioning capacity beyond de-listing or de-certification may mean that auditors are unable to oversee improvements in labour standards (Locke 2013). A growing body of literature on audits within GSCs has been directed at addressing these functional challenges in a bid to enhance the effectiveness of ethical audits. While these inquiries are critical, there has been a tendency to overlook one of the most fundamental governance questions raised by intermediated arrangements – that is, “*who the audit regime is effective for*” (LeBaron, Lister, and Dauvergne 2017, 960). The rise of intermediaries has generated immense empirical and conceptual

confusion “around previously sacred notions such as independence and conflict of interest as measures of regulatory effectiveness” (Loconto 2017, 112).

More recent empirical research confirms that audit regimes are not technical or benign, but are often responsive to, and protective of, commercial interests. Rather than allowing for enforcement of private governance, the audit regime may be used by multinational corporations (MNCs) as a mechanism to legitimize their business models and construct an illusion of governance effectiveness. Firms commissioning the audits exercise power and control over the depth, timing and methodology of subsequent inspections and checks. While auditors are often perceived as independent arbiters, “in reality brands give them strict instructions about when, where, and how to audit” (LeBaron, Lister, and Dauvergne 2017, 968). The financial relationships between auditors and their clients can perpetuate conflicts of interest, creative incentives towards leniency, distort audit processes and lead to an underreporting of bad practices (Locke 2013; LeBaron, Lister, and Dauvergne 2017, 965).

The audit firms themselves have also been identified as thwarting accountability efforts. Rather than being engaged in a way that assists the putative regulator to curb worker exploitation in GSCs, audit firms may do the opposite (Hardy 2011). By leveraging their relationships with client firms, audit firms may promote themselves as experts and informal representatives of MNCs. In this capacity, they may seek to influence the policy position of many key stakeholders, including governmental regulators, private regulators, NGOs and consumer groups. The informal and covert influencing practices of big audit firms can lead to a privileging of soft-law governance over binding and concrete enforcement mechanisms (Fransen and LeBaron 2019, 261). Concerns about the regulatory influence of intermediaries, and their accountability (or otherwise) to principals, are even more pronounced “when such actors have not been explicitly authorized to act in such roles, and where their own organisational values or interests diverge from those of the people they claim to represent” (MacDonald 2018, 458–459).

While auditors have growing influence over transnational labour governance, and they continue to deepen and legitimize their role as governance actors, the audit firms themselves appear to be largely insulated from accountability demands. It is common for auditors to seek to minimize or avoid liability for poor quality audits through the insertion of disclaimers in engagement agreements (Marx and Wouters 2016). There have previously been calls for a level of oversight of auditors in order to distinguish credible auditors from the non-credible ones (Marx and Wouters 2016, 451, citing Sabel, O’Rourke, and Fung, 2000). There is growing interest in exploring legal channels through which to hold auditors accountable (Van Ho and Terwindt 2019), and cases have been initiated against audit firms which are challenging the accuracy and quality of social audits (Fransen and LeBaron 2019, 275). If auditors are

to be held liable for the way in which they perform their work, it is critical that research is undertaken to understand whether such litigation ultimately prompts any changes to the audit approach and the overall rigor of the accountability apparatus. It clearly remains a continuing challenge to ensure that “the interests of the most powerful stakeholders do not overshadow the voices of those most affected by an organization’s activities” (Curtin and Senden 2011, 187). Given that auditors are now actors with significant regulatory power, it is clear that they should also be held accountable for their conduct in GSCs – whether through formal legal mechanisms or otherwise.

► 4. Conclusion

While there has been much debate and discussion about the need for greater accountability in transnational labour governance, the complex, pluralistic and decentred nature of the regulatory system means that there is no single accountability narrative, structure or mechanism. Rather, accountability roles and responsibilities are fragmented, diverse, dynamic, contested and evolving. In this chapter, we underlined the importance of deepening our understanding of accountability beyond implicit or normative conceptions and we distilled a set of key questions through which to analyse key developments in relation to the regulation and oversight of GSCs. While questions, such as “Who is liable or accountable to whom?” appear simplistic at first glance, application of these questions to various case studies soon revealed the challenge of using linear or democratic conceptions of accountability to networks which are hierarchical and fluid. For instance, the lack of a clearly identifiable principal or stakeholder group to whom actors “should be accountable creates challenges of obscured responsibility and pervasive blame avoidance” (MacDonald 2018, 5).

The chapter has discussed the way in which conceptions of accountability have shifted in recent decades. Initially, accountability efforts were geared towards standard-setting, were largely overseen by IGOs and were overwhelmingly directed towards the status and commitment of nation states. Where accountability featured in transnational labour governance, it often did so on an implicit basis and in the sense of being a virtue or a normative standard. Accountability conceptions and demands shifted significantly with the rise of private labour governance, the proliferation of codes of conduct and the recent wave of MSIs. These developments prompted a greater focus on enhancing accountability through information disclosure and transparency. Direct accountability mechanisms were largely superseded by “accountability by

proxy” arrangements. The rise in intermediated arrangements was driven by a combination of few formal institutions to facilitate and supervise standard accountability mechanisms, significant power differentials and large social and physical distances between accountability-holders and power-wielders (Koenig-Archibugi 2010, 1150). To overcome these challenges, auditing and certification has emerged as a dominant accountability tool used to monitor labour rights. The deficiencies of auditing as an accountability process have been well documented. We surveyed many of the main problems, including the fact that audits may selectively focus on labour rights, which are easier to quantify and track; auditing firms may undertake a superficial audit and/or suppress adverse results. Some have also pointed out that audits are commonly thwarted through inherent conflicts of interest and a lack of clarity about the aims of the audit process and the question whom the auditor is actually serving (the client, the regulator or the beneficiary).

Activists and scholarly concerns with the “enforcement gap” in transnational labour governance and the absence of legal mechanisms by which to hold private actors to account (e.g. Estlund 2012; Ter Haar and Keune 2014; Vosko et al. 2020) has led to an increasing focus on enhancing accountability through formal enforcement mechanisms in public and private governance, including via bottom-up monitoring processes, improved complaint and dispute resolution procedures and stronger sanctioning powers (e.g. Bartley 2018; Marx and Wouters 2016). These developments inevitably provoke a new set of opportunities and challenges, which are ripe for further research, including how to involve and empower workers and local stakeholders in monitoring efforts; how to integrate private initiatives in a way that supports and reinforces public governance mechanisms at a local, national and transnational level; and how best to cultivate mechanisms of collective or horizontal accountability through courts, arbitration tribunals, ombudsmen, complaint processes, transparency requirements and sanctioning capabilities (MacDonald 2018, 5–6). These accountability mechanisms are applicable as much to lead firms, suppliers, manufacturers and others, as they are to key intermediaries, such as auditors and consultants. By way of a final reflection, we note that much of the rich theoretical and empirical work on accountability in GSCs has focused on Global North-South relationships. Given changing patterns of trade, it is clear that there is more work to be done in understanding whether, and to what extent, existing accountability models, mechanisms and metrics can be transposed to South-South relationships, where there may be fewer legal avenues and less reputational pressure but potentially alternative points of leverage and novel accountability mechanisms.

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