

Positive class compromise in globalized production? The Freedom of Association Protocol in the Indonesian sportswear industry

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Abstract. *This article investigates the role of voluntary initiatives (VIs) as non-governmental systems of labour regulation in global value chains (GVCs). To identify the conditions conducive to a more active role for labour in VIs, the authors apply Wright's (2000) theory of the factors enabling positive class compromise to a VI implemented in the Indonesian sportswear industry and extend it to the more complex realities of GVCs. They conclude that if VIs are to create conditions under which decent work can be strengthened, the involvement of strong local labour organizations is required while producers' and/or buyers' dependence on workers' cooperation acts as a catalyst.*

The past two decades have seen exponential growth in the volumes of world merchandise exports and international foreign investment flows (WTO, 2012, p. 19; UNCTAD, 2012, p. 24). This increase in the quantity of international trade and investment volumes has been the consequence of a qualitative shift in the global economy, namely, the increased fragmentation of production and its relocation across international borders. This shift has been underpinned by market-driven politics, from the economic liberalization of formerly socialist countries of Eastern Europe and Asia, via the establishment of the World Trade Organization to the financialization of multinational enterprises.

The governance of this process has been conceptualized in the scholarly literature on global value chains (GVCs) and related concepts (for a critical

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overview, see Newman, 2012).¹ Yet, while the globalization of production in GVCs has been accompanied by a rise of informal and insecure work across different regions of the world, the role of labour – even in formal establishments (ILO, 2016, pp. 7–8; ILO, 2002, pp. 35–37) – has received scant attention in the GVC literature.

Early exceptions cautiously conclude that the process of upgrading among supplier firms in developing countries, which is central to many GVC studies, is not necessarily paralleled by improvements in labour conditions (Knorringer and Pegler, 2006, p. 475). More recently, scholars have addressed the “labour blindness” of the concept of upgrading by distinguishing between firms’ economic upgrading and their social upgrading – i.e. improvements in workers’ labour conditions – and by investigating the relationship between the two (e.g. Barrientos, Gereffi and Rossi, 2011; Milberg and Winkler, 2011). Going beyond the upgrading hypothesis and informed by a labour process perspective, Pegler, Siegmann and Vellema (2011, p. 116) argue that “the marginalized position of the rural workforce [in agricultural value chains] and the resulting low labour costs have been instrumental in securing companies’ and macro-economic competitiveness”. Taking a Marxian view, Selwyn (2013, pp. 87–88) therefore pleads for a shift in attention towards engagement with labour movements to identify what he terms “labour-led” social upgrading.

This turn in the academic debate has followed the refocusing of labour activists’ demands. Trade unions, NGOs and other labour rights advocates have long criticized poor and insecure labour conditions in GVCs as a result of the “race to the bottom” in globalized competition since the 1990s. Lead firms in such value chains, in particular, have responded to this critique by developing and implementing different types of private-sector voluntary initiatives (VIs) for corporate social responsibility, which have gradually involved a wider range of stakeholders (Newitt, 2012). The widespread failure of these initiatives to effectively improve labour conditions in GVCs has led activists and scholars to call for reconceptualizing corporate social accountability as a more hybrid combination of demands for “hard” and “soft” law targeting corporations, involving a more representative cross-section of civil society actors and coalitions, especially workers’ voices (Utting, 2008, pp. 968–972).

The operational shortcomings of VIs, aptly summarized in Utting (*ibid.*, pp. 963–966) and Brown (2013), are caused by the common dominance of a commercial logic in their design (*ibid.*, p. 4). Taylor points out that:

the implementation of labour codes appears to clash with one of the fundamental driving forces of the internationalisation of production: namely, the relocation of capital to access labour forces that are both shorn of basic rights and that can be subjected to intense work routines in poor labouring conditions over an extended working week for low wages (2011, p. 449).

¹ For the purpose of this article, we use the term GVCs – rather than related concepts, such as global commodity chains, global production networks or global supply chains – in keeping with the prominence that this term has gained since the late 1990s in policy and academic circles (Newman, 2012, p. 155).

Addressing the abovementioned weaknesses will therefore be contingent on a different role for labour in the next generation of VIs. So far, an instrumental and passive role is commonly allocated to labour in GVCs (Selwyn, 2013, pp. 76–79). Labour is indeed an instrumental production factor for accumulation strategies of multinationals. If covered by VIs, workers often become mere passive objects for social auditing. Even when trade unions or other labour organizations are represented in multi-stakeholder initiatives, their role is commonly marginal. According to Brown (2013, p. 5), a “sea-change in the international business model and the active participation of informed and empowered workers” is therefore required. In order to identify promising avenues for the progressive governance of labour relations in globalized production, an analytical framework is needed that puts workers’ agency at the centre.

This article engages with Selwyn’s plea for an analysis of “labour-led” social upgrading by investigating the role of VIs as non-governmental systems of labour regulation in GVCs (O’Rourke, 2003, p. 2). It is based on a review of relevant academic literature and media reports, as well as on participant observation² and qualitative interviews with trade unionists and other actors. The question we ask is: under which conditions can VIs with a more active role for labour emerge in GVCs? In order to answer this question, we apply Wright’s (2000) theory of the factors enabling positive class compromise to a VI that has been implemented in the Indonesian sportswear industry since 2011, namely, the Freedom of Association Protocol (FoAP). Freedom of association and collective bargaining are two key labour rights that are enshrined in international law. They are often referred to as “enabling rights”, implying that, when these rights are respected, workers can use them to ensure that other labour standards are upheld. While VIs in labour-intensive industries such as the sportswear industry often formally acknowledge the relevance of freedom of association and collective bargaining, they have a notoriously poor record of implementing and monitoring these collective labour rights (e.g. Bartley and Egels-Zandén, 2015; Egels-Zandén and Merk, 2014; Frenkel, 2001; Mamic, 2003; Maquila Solidarity Network, 2008). In this context, the Indonesian FoAP represents a significant structural commitment to strengthening labour. Its study might yield lessons for forms of non-governmental labour regulation that are less generous in their concessions in favour of labour (Patton, 1990, pp. 169–171).

The remainder of this article is organized into five sections. The first outlines Wright’s (2000) theory of positive class compromise, while the second introduces the background of union repression and workers’ struggles in

² Jeroen Merk was involved in the negotiation of the Freedom of Association Protocol in the Indonesian sportswear industry as a research coordinator at the International Secretariat of the Clean Clothes Campaign (CCC), a European network of labour rights organizations active in the apparel and sportswear industries. In this capacity, he was closely involved in preparatory meetings with campaign partners (including Indonesian trade unions), roundtable discussions with sportswear companies, and several field trips to Indonesia related to the Protocol. The full text of the Protocol (hereinafter FoAP) is available at: http://www.play-fair.org/media/wp-content/uploads/FOA-Protocol_7-June-2011_English-translation1.pdf [accessed 24 October 2017].

Indonesia's export industries, which led to the emergence of the FoAP. The features and scope of this VI are presented in the third section and subsequently discussed in the light of the theoretical framework in the fourth section. In our conclusion, we then derive elements for labour-led GVC governance from our analysis of the Indonesian case and provide an outlook for GVC-related research and intervention.

How positive class compromise emerges

Wright's (2000) theory of the factors enabling positive class compromise puts workers' collective agency at the centre of the analysis. Traditional Marxian assumptions are his point of departure: he sees antagonism between capitalists' commercial logic and workers' interest in decent labour conditions as the key feature of capitalist societies. Yet he shows that, despite opposing class interests, coalitions implying benefits for labour may be possible. Indeed, VIs can potentially benefit from the identification of such possibilities of positive class compromise.

Wright (*op. cit.*, p. 962) distinguishes workers' "associational power" – forms of power resulting from the formation of workers' collective organizations – from their "structural power", i.e. "power that results simply from the location of workers within the economic system". He defines positive class compromise as "mutual cooperation between opposing classes" that leads to improved outcomes for both workers and capitalists (*ibid.*, p. 958). This involves concessions in favour of the interests of people in the opposing class (*ibid.*, p. 964). His central argument is that the possibilities for stable, positive class compromise hinge on the relationship between the associational power of the working class and the material interests of capitalists. While orthodox Marxists and neoclassical economists assume an inverse relationship between these two variables, he postulates a curvilinear "reverse-J" relationship: capitalist-class interests are initially adversely affected by rising working-class power, but once the latter crosses some threshold, it begins to have positive effects on capitalists' interests (*ibid.*, pp. 958–959). This happens when workers' associational power helps capitalists to solve certain kinds of collective action and coordination problems (*ibid.*, p. 978).

Wright differentiates these interests of capital – threatened or facilitated by increasing working-class power – in the spheres of exchange, production, and politics (*ibid.*, pp. 978–985). In the sphere of exchange, the collective action or coordination problems that well-organized workers' associations may help to solve refer, *inter alia*, to demand generation or wage restraint under conditions of tight labour markets. In the sphere of production, stronger works councils enhance the possibility of more effective involvement of workers in various forms of creative problem solving. In the political sphere, organizational links between the labour movement and leftist parties may be critical for stability, paving the way to high rates of capacity utilization, low levels of unemployment, and relatively high productivity growth.

While his game-theory model assumes a closed economy, Wright (2000, pp. 995–999) also explores the impact of globalization on the prospects for the emergence of positive class compromise. He concludes that, in a globalized context, there will be a tendency for positive class compromise to be more heavily concentrated within the sphere of production (*ibid.*, pp. 998–999). The above inventory of capitalists' interests in cooperation with the working class in the spheres of exchange and politics is indeed unlikely to apply to GVCs. In contrast, capitalists' interest "in being able to reliably elicit cooperation, initiative, and responsibility from employees" at the shop-floor level might even increase under the conditions of intensified competition that result from increased globalization (*ibid.*, pp. 981 and 996). The downside of these new opportunities might be an intensification of labour market dualism, with privileged segments of the labour force in a position to forge class compromises while others are not (*ibid.*, p. 999).

We argue that Wright's theory contains lessons for labour-led social upgrading in globalized production. In the following section, we therefore apply his analytical lens to gain a deeper understanding of the processes that have led to the emergence of the FoAP in the athletic footwear industry in Indonesia.

Union repression and workers' struggles in Indonesia's export industries

Labour-intensive industries like garment and footwear manufacturing arrived in Indonesia at the end of the 1980s when the Suharto regime (1967–98) shifted the country's economic policy towards an export-driven industrial strategy. Republic of Korea manufacturers, in particular, started to relocate factories to Indonesia. At home, they were confronted with intense working class struggles due to the 1987 democratization movement and increasingly powerful unions capable of negotiating higher wages (Merk, 2011).

Since the 1970s, sportswear had changed from a small, specialist market into a mainstream fashion product. Its market is now highly concentrated, dominated by a few well-known brands, such as Nike, Adidas, Puma, New Balance and Asics; the 20 largest companies represent over 92 per cent of the global wholesale market (SGI, 2003). Practically all of the brand-named corporations have long disassociated themselves from direct strategic control over labour-intensive production and large workforces, despite maintaining operational control over production processes through conceptualization, design, quality control, etc. (Ietto-Gillies, 2002, p. 54). Manufacturers operating in low-wage countries now perform the actual production. The search for lower labour costs has brought about two major shifts in the spatial organization of athletic footwear production. In the 1960s, Western corporations started outsourcing production to Taiwan (China) and the Republic of Korea. Production then moved to a second tier of developing countries, namely, mainland China, Indonesia and Viet Nam, at the end of the 1980s. These three countries still account for over 90 per cent of global athletic footwear production (Merk, 2011, pp. 81–87; UBS Warburg, 2003).

All of the main producer countries have a history of severely curtailed collective labour rights. In China, there are legal restrictions on the establishment of independent trade unions. Unions have to be approved by the state-controlled All-China Federation of Trade Unions (ACFTU). As a result, workers are mostly represented by unelected state union officials who have been criticized for doing little to improve working conditions or protecting workers' rights. Similarly, in Viet Nam, workers are neither free to join unions nor free to form unions of their own choosing. Unions registered at workplaces must be affiliated with the Vietnam General Confederation of Labour (VGCL). Compared to the ACFTU, the VGCL has established a more independent position from governmental activities and approval in representing workers (Clarke, Lee and Chi, 2007), yet most workplace unions turn out to be "an arm of management, rather than representing workers' interests" (Wang, 2005, p. 49).

In Indonesia, the Suharto regime strongly restricted trade union activity and employee voice in the workplace. The only union that could legally operate was the All-Indonesia Workers' Union or *Serikat Pekerja Seluruh Indonesia* (SPSI), but like the unions operating in China and Viet Nam today, it was "primarily an instrument of control rather than a representative body" (Ford, 2005, p. 200). However, many of the newly recruited workers established their own associations, organizing strikes and mass demonstrations. The growing unrest was concentrated in large, multinational-owned firms geared to export production in the garment, textile and footwear industries (Silvey, 2003, p. 136).

Workers who set up new (underground/semi-illegal) trade unions or organized strikes were arrested and imprisoned. The army often intervened in these conflicts. In 1991, when strikes occurred at two Korean factories, the Indonesian daily *Media Indonesia* published a three-day report on shoe factories. The second-day headline read: "World Shoe Giants Rape Worker Rights". The subsequent stories detailed a range of labour rights abuses, poor conditions and abusive management practices. These workers' struggles had an impact beyond the local level when Western media began to pick up the reports. This resulted in a first wave of publications on poor working conditions at Nike suppliers in media outside Indonesia. Around this time, contacts intensified between local labour NGOs and transnational anti-sweatshop networks such as Oxfam Australia, the European CCC, the US-American United Students Against Sweatshops, the global union federation IndustriALL and others. Anti-Nike campaigns were launched in Germany, the Netherlands and Italy. Meanwhile, dozens of strikes at sportswear factories were reported throughout the 1990s, often followed by dismissals, arrests and violence.

This international collaboration was continued in the post-Suharto era. For example, the Play Fair campaign, launched in connection with the 2004 Olympic Games held in Athens, sought to push sportswear and athletic footwear companies, the International Olympic Committee and its national organizing committees, as well as national governments, to take concrete measures to address violations of workers' rights in supply chains. The campaign was

based on an alliance of Oxfam, Global Unions, the CCC and their constituent organizations worldwide.³ In the six-month run-up to the 2004 Olympic Games, the campaign organizers estimated that 500 local events had taken place (e.g. demonstrations, protest actions, picket lines, etc.). More than 500,000 people had signed a petition in support of the campaign; and various Indonesian unions involved were affiliated to partners abroad.⁴

Following the end of the Suharto regime in 1998, the new Government lifted the restrictions on trade unionism when it ratified eight ILO Conventions, including those guaranteeing freedom of association and collective bargaining. These standards were transposed into the domestic Trade Union Law (No. 21/2000), which permitted multiple union structures in the form of national federations and larger confederations (Manning, 2010). With these political barriers lifted, Indonesia witnessed a steep rise in the number of its trade unions. By August 2000, 24 national trade unions and over 10,000 enterprise unions had registered with the Department of Manpower (Ford, 2009, p. 161). This meant increased pressure for compliance with labour rights and standards. Indeed, after long negotiations, the passage of Law No. 13/2003 not only consolidated a wide range of provisions for labour protection that were previously scattered across various decrees and laws, but also set new standards regarding, *inter alia*, the protection of female workers and procedures and compensation for lay-offs and dismissals (Manning, 2010). Importantly, this Law embodied a more strongly worded commitment to the right to strike than did earlier legislation (Ford, 2009, p. 160). The Industrial Relations Dispute Settlement Act (No. 2/2004) established a new system for labour dispute settlement under the judiciary, thereby limiting the role formerly played by the Government in handling disputes (Tjandra, 2010, pp. 3–4).

Yet these political and legal changes did not end the violence, intimidation and imprisonment of outspoken workers or union officials (Connor and Dent, 2006; ICFTU, 2003; ITGLWF, 2011; Quinn, 2003). The process of democratization or *Reformasi* heralded a shift from union repression by the State to (state-tolerated) repression by private firms (Ford, 2013). Employers often resort to acts of discrimination against union members or workers suspected of engaging in organizing activities. This can range from withholding promotions to intimidation and outright violence. In other cases, factory management seeks to interfere with union activities, say, by denying access to office space, preventing trade union representatives from carrying out union duties, or simply refusing to engage in social dialogue and collective bargaining

³ Including the then International Confederation of Free Trade Unions (today International Trade Union Confederation) and the International Textile, Garment and Leather Workers' Federation (ITGLWF, today IndustriALL).

⁴ For instance, *Garteks - Serikat Buruh Sejahtera Indonesia* (GARTEKS-SBSI, Federation of Garment, Crafting, Textile, Leather and Shoes) and *Serikat Pekerja Nasional* (SPN, National Labor Union) are affiliated to the ITGLWF. *Kongres Aliansi Serikat Buruh Indonesia* (KASBI, the Indonesian Workers' Alliance Congress) and *Gabungan Serikat Buruh Indonesia* (GSBI, the Federation of Independent Trade Unions) have had a long-standing relationship with Oxfam and Oxfam Australia.

(ITGLWF, 2011; Tjandra, 2010). Employers often mobilize local criminal gangs, so-called *preman*, as “industrial instruments” to constrain labour activism, intimidate union activists and to break-up strike actions (Warouw, 2006, p. 203; see also Merk, 2014).

As a result, few opportunities exist for trade unions to engage in (meaningful) collective bargaining, leading Tjandra (2010, p. 6) to describe Indonesia’s legal provisions for the protection of trade union rights as being “generally no more than paper tigers”. The increased use of short-term contracts is another problem Indonesian unions are facing (Ford, 2013, pp. 236–238). In some sportswear factories, up to 80 per cent of workers are employed on a temporary basis (ITGLWF, 2011, p. 2; World Solidarity, 2009). And employers often refuse to renew the contracts of union members. A “flexibility regime” that undermines trade union activities has thus been created, centred on short-term contracts. Tjandraningsih and Nugroho (2008, p. 9) conclude that “[i]n the current labour climate, joining a union is considered to be a threat to ongoing job security, rather than a viable way of defending one’s rights”. This is reflected in union density trends during the decade after *Reformasi*. In the last year of Suharto’s rule in 1997, union density – i.e. union membership as a proportion of total wage employment – stood at 5 per cent. It then rose and peaked around the year 2001 only to decline again to 12 per cent in 2007. Union membership numbers followed a similar pattern (Visser, 2013).

Yet despite continued repression, Indonesian trade unions are among the most militant in the region. Large-scale protests by workers have been made possible by the sharp increase in the number of trade unions and their ability to organize workers without government interference (Ford, 2009, p. 161). Mass action or strikes also seem more appealing than are cumbersome and ineffective appeals to the Industrial Relations Courts (Ford, 2013, p. 233; Tjandra, 2010).

More specifically related to sportswear production, factory-level conflicts often escalated to pressure international buyers (Den Hond, Stolwijk and Merk, 2014; Merk, 2009). Most of these disputes have been related to violations of trade union rights. Such cases of union repression have often followed a similar pattern: typically protracted acts of discrimination against union members or workers suspected of engaging in organizing activity eventually spiralled into more active forms of harassment, followed by wildcat strikes, at which point the unions often filed complaints with local authorities.

When these labour conflicts became overly exacerbated, the unions mobilized international support. For instance, the CCC worked on 31 requests for solidarity support from Indonesia between 1998 and 2009. Nike and Adidas alone were the targets of cross-border campaign pressure in eight and 11 cases, respectively. Both companies are affiliates of the Fair Labor Association (FLA), a VI that aims to guarantee labour rights in line with ILO standards. The FLA Workplace Code of Conduct includes commitments to workers’ rights to freedom of association and collective bargaining, compensation of overtime work at a premium rate, and treatment with respect and dignity (FLA, 2012).

PT Panarub, one of Adidas' key suppliers located in Tangerang, had been the site of intense labour unrest for almost a decade (Connor and Dent, 2006). In 2000, several thousand workers went on strike for four days. They demanded, among other things, overtime pay at the legally established rate and a more respectful process for claiming menstrual leave, to which female workers are entitled under Indonesian law. After the conflict had been escalated by the imprisonment of a union leader, the German chapter of the CCC, acting within the framework of international support for the Indonesian unions, filed a complaint with the German Government under the OECD Guidelines for Multinational Corporations about the conditions in this factory. Consumers in Europe were also mobilized to approach the company with questions.

This example illustrates how Indonesian workers' struggles have often escalated even before any attempt is made at finding a resolution within the context of existing VIs. While brands are concerned about their reputation, especially if industrial conflict extends to their main consumer markets, strikes have also endangered the investment climate, with foreign manufacturers threatening to leave Indonesia (Ford, 2013, p. 232). The FoAP, described in the following section, addresses this situation by paving the way to a more effective guarantee of collective labour rights at the firm level and beyond.

Negotiating an alternative model: The Freedom of Association Protocol

The FoAP was signed on 6 June 2011 by Indonesian trade unions, large Indonesian sportswear manufacturers and multinational sportswear brands, including Adidas, Nike, Puma, Pentland, New Balance and Asics (Gardener, 2012). Adidas, the world's second-largest sportswear manufacturer, took on a leading role in the negotiations. Connor and Phelan (2015, p. 159) assume that this leadership was motivated by the strong representation of employees in Adidas' supervisory board, as these trade union officials and elected works council members took a very active interest in Adidas' labour rights compliance initiatives in Asia. Four manufacturers, all of them major suppliers of leading sportswear brands, took part in the negotiation process: PT Adis, PT Tungex, PT Nikomas and PT Panarub. Representatives from five different Indonesian unions led the negotiations – GSBI, SPN, GARTEKS-SBSI, KASBI and *Serikat Pekerja Tekstil, Sandang dan Kulit* (SPTSK, Textile, Clothing and Footwear Workers Union). Except for SPTSK, these were all unions that had been involved in the Play Fair campaign and had been working with Oxfam Australia, ITGLWF and the CCC on solidarity actions around individual factory disputes. These allies played an important role in the background of the negotiation process.

The signing of the FoAP was one of the outcomes of the sportswear campaigns organized around the 2008 Beijing Olympic Games. A report released by the Play Fair campaign just before the Olympics had identified lack of respect for freedom of association and the right to bargain collectively as a major

hurdle that had to be overcome in order to improve conditions for manufacturing workers in supply chains (Maquila Solidarity Network, 2008). This report and the detailed targets it formulated formed the basis of a three-day conference held in Hong Kong in June 2008, in which both the Play Fair Alliance and the main brands driving the sports industry participated to discuss workers' wages and working conditions. At this meeting, it was agreed that, in order to find solutions to workplace issues, the discussion needed to move from the global level to the national level. A joint working group was therefore set up to advance work at the national level. Indonesia was chosen as a good starting point, not only because of its significance for sportswear manufacturing but also because of the independence of its trade unions. This led to a process of negotiations around a protocol that would provide companies with a set of guidelines on how to uphold and respect trade union rights, on the assumption that this would provide a basis for the negotiation of wages and contracts at a later stage (Gardener, 2012, pp. 54–55; Jakobsson, 2013, p. 11).

An important difference between these negotiations and other VIs is that it was Indonesian unions which led the process up to the ratification of the FoAP (Jakobsson, 2013, p. 14). Based on their members' actual experiences of collective labour rights' violations, they drafted clauses in a participatory process (Gardener, 2012, pp. 57–58). In addition, they drew on the power of their coalition partners in the brands' main consumer markets to advance the negotiations. For instance, union leader Lilis Mahmudah from SPN argued that the Indonesian unions relied on the pressure exerted by their network partners Oxfam, CCC and ITGLWF to keep the negotiations on track (Connor and Phelan, 2015, pp. 157–158).

Another significant achievement is that the FoAP was the result of inter-union collaboration – an uncommon occurrence in the Indonesian context. In some factories where multiple unions operate, there have been intense conflicts among unions with different ideological visions.⁵ The negotiation of the FoAP, in contrast, provided a framework in which the different unions recognized the importance of collaboration and unity in the face of the brand-name firms and suppliers involved in the process. The resulting greater associational strength of the Indonesian labour movement is echoed in SBSI President Elly Rosita Silaban's comment: "previously we didn't know one another, we weren't close with other trade unions like SPN, GSBI, KASBI and SPTSK, but during this process, we no longer would say that I come from this particular union: we sat down together and our demands were the same" (Gardener, 2012, p. 55).

The FoAP establishes practical guidelines to ensure that factory workers in Indonesia are able to organize and collectively bargain for better conditions in their workplace (see box 1). The agreement also covers aspects of the non-victimization of trade union officers and members as well as a pledge on the part of employers regarding non-interference in trade union activities. In addition, the FoAP describes in much more detail than does national law

⁵ Based on an interview with Hari Nugroho, University of Jakarta, held in Jakarta in June 2011.

Box 1.**Trade union rights under the Freedom of Association Protocol, 2011***

Release of union representatives from their work duties to undertake union organizational activities (art. 4.5 and 4.6);

- Use of company meeting space for union activities (art. 5.1a);
- Use of communication facilities (telephones, fax, internet) (art. 5.1b);
- Use of company vehicles (art. 5.1c);
- Display of union organization's flag (art. 5.1d);
- Display of a union signboard (art. 5.1e);
- Hosting of visitors from union organizations outside the company (art. 5.1f);
- Company assistance in deducting union dues (art. 5.1g);
- Access to a furnished for use as a union secretariat (art. 5.2a);
- Negotiation of a collective bargaining agreement (art. 6);
- Distribution of union information to workers (art. 7.1);
- Posting of information on public notice boards without prior permission (art. 7.2a); and
- Support and facilitation of union activities during working hours, by allowing routine scheduled meetings, ad hoc meetings, and union education activities (art. 5.3).

Note: * These rights can be subject to certain conditions such as availability or the regulations and procedures applicable to other users within the company. For the precise formulation, see the full text of the Protocol referenced in footnote 2 above.

Source: Freedom of Association Protocol, 2011 (see footnote 2 above).

(let alone multinationals' VIs) what rights unions can claim at the factory level (Jakobsson, 2013, pp. 13–14). Indonesian union representatives find the FoAP to be more detailed than the law, giving more space for workers to organize as a result.⁶

The coverage of the FoAP is wide: a total of 90 brand suppliers had signed it by October 2015 (Ceustermans, 2015). This allows for progress on trade union rights at the industry level, rather than merely at the enterprise level, thereby meeting a long-standing demand of the trade unions and their allies (Oxfam and CCC, 2009).

The FoAP also includes key power holders in the sportswear chain beyond the national level. The leading sportswear brands have signed on to it. Since the global sportswear industry is highly consolidated, unlike garment production, the participating brands together represent over 80 per cent of the global wholesale market for sportswear. Union representatives see this as a significant step towards addressing the gap in accountability for labour rights in GVCs generally and in VIs more specifically. Parto, KASBI's coordinator of the Department of Education and Publicity, explains:

This is something new which incorporates the brands, whereas the brands used to be beyond the reach of the trade unions, even beyond the reach of Indonesian law. Because then [before] when there were problems, the brands were usually

⁶ Based on an interview with Emelia Yanti, GSBI, held in Jakarta in October 2011.

free [from responsibility] – these were only workplace matters – between Indonesian legal entities. Meanwhile workers were making products for the benefit of the brands. Now, in this Protocol, whether they like it or not the brands must join in taking responsibility for freedom of association (Gardener, 2012, p. 59).

The unions' ability to engage in direct dialogue with sportswear brands has been highlighted as a key achievement of the ratification of the FoAP. More specifically, this has been considered a crucial factor in reducing the need for strikes and international campaigns as leverage for better labour conditions (Jakobsson, 2013, pp. 21 and 26).

Unlike most VIs, the FoAP is a negotiated, signed agreement that is binding on all parties at all first-tier factories producing merchandise for the signatory sportswear brands in Indonesia. Suppliers are also obliged to disseminate the provisions of the FoAP and information on its implementation to their subcontractors. Pursuant to Article 8 of the FoAP, further support for its implementation was negotiated in November 2012 in the form of "standard operational procedures" (SOP) for Supervision and Dispute Settlement Committees to be established at the company and national levels. The (bipartite) company Committees are to oversee and report on the implementation of the FoAP at the factory level, whereas the national Committee – composed of representatives of national-level trade unions, non-governmental organizations, manufacturers and brands – must provide mechanisms for resolving conflicts that cannot be settled at the factory level; conduct and report on investigations; and make recommendations for the resolution of issues arising at the factory level. Together, the SOP and the company and national Committees represent an important step in the further implementation of the FoAP.

The legal enforceability of the FoAP is disputed, however. On one union's insistence, a clause was included which states that cases that cannot be resolved by the above Committees may be taken to court (Article 9(2)). Yet it is doubtful whether prosecution for offences relating to provisions of the FoAP not covered by legislation would be admissible in a court of law (Jakobsson, 2013, p. 14). According to Resta Hutabarat from the Jakarta Legal Aid Institute (LBH), the FoAP is binding upon the parties thereto on the argument that it has all the characteristics of a legal agreement. Should the internal dispute settlement mechanism fail, parties could therefore decide to go to court.⁷ Others, however, point out that the document relies on consensus-based decision-making and does not include provisions on how to proceed in legal terms.⁸

The FoAP as positive class compromise?

The initial industrial relations situation in Indonesia's export industries, as outlined above, resembled the stalemate of non-cooperative class relations predicted by orthodox Marxian theory. While it might be too early to assess

⁷ Based on an interview with Resta Hutabarat, Legal Adviser, *Lembaga Bantuan Hukum* (LBH), Jakarta, held in Jakarta in June 2011.

⁸ Based on an interview with Tim Connor, University of Newcastle, held in Hong Kong in November 2014.

the effectiveness of the FoAP, its very ratification is a significant achievement against that backdrop. Yet it raises a question: why have capitalists submitted to the unattractive option of structural collaboration with labour through a VI?

As noted above, from Wright's (2000) perspective, progress towards decent work as a result of positive class compromise hinges on the strength of labour organizations and on capitalists' dependence on workers' cooperation for solving crucial coordination problems. In this section, we relate the Indonesian case to these factors and extend Wright's model to specific features of GVCs. A first, key extension is that, in GVCs, both the working class and capitalist class are more differentiated than in Wright's stylized model. In the case of the Indonesian sportswear industry, capitalists include not only sportswear manufacturers in Indonesia, but also global buyers. As a result, it is not just the interests of capitalists and the working class that are conflicting. Buyers and manufacturers' concerns are often opposed to each other, too. For instance, while manufacturers are likely to be more interested in stable, long-term contractual relations, multinational brands appreciate greater contractual flexibility. Why were these sportswear brands and manufacturers interested in ratifying the FoAP? And what determined the strength of workers' associations and their allies in the negotiations?

The Indonesian unions' associational power was clearly enhanced by their collaboration in international trade union and labour solidarity networks. This process took place in two stages. In the first stage, collaboration in the international Play Fair campaign helped to bridge the Indonesian union movement's internal divisions and move it towards a situation of greater inter-union collaboration. This can be understood as a form of "boomerang advocacy" (Keck and Sikkink, 1999), which achieves unity and consolidation of aims at the national level via the "detour" of international lobbying. In this case, however, it was not state actors that were successfully lobbied, but the labour movement's internal divisions that were overcome. As a result of Indonesian unions working together as a more unified force, the negotiations over the FoAP were rooted in the workings of sportswear production in Indonesia. It was local trade unions which thus defined priorities, goals and targets.

In the second stage, the leverage of cross-border anti-sweatshop campaigns upon sportswear brands was crucial in shifting the power balance between capital and labour, since Indonesian unions alone had little capacity to put pressure on distant power holders. The organization of sportswear production in GVCs has catalysed networks between labour activists in producing countries, such as Indonesia, and in major export destinations, like Europe and Australia. These networks, in turn, enable strategies that can overcome the spatial asymmetry between transnationally organized companies and place-bound labour (Franz, 2010, p. 281). As a result, they provide workers with an additional source of power that Brookes (2013) calls "coalitional power". Coalitional power enables workers to "leverage the influence of actors outside the direct employment relationship" (*ibid.*, p. 191). This resource enabled Indonesian unions to mobilize critical consumer groups in international campaigns

and individual company actions, as in the case of PT Panarub, and to keep the FoAP negotiations on track. The resulting “glocal bargaining” provides a new example of how workers’ associational power can be strengthened.

Although Wright’s model focuses on the role of workers’ associations in the emergence of positive class compromise, he concedes that their power is influenced by the location of labour within the economic system, i.e. their structural power. Globalized just-in-time production, for instance, creates new vulnerabilities for local capitalists, such as adherence to stipulated lead times. Such vulnerabilities are the flipside of the working classes’ increased structural power to stop production and to jeopardize the fulfilment of contractual obligations, producers’ reputation and future orders as a result. In this context, the protection of producers’ interests represents a collective action problem because export orders are affected by industrial relations in the country as a whole, rather than in an individual manufacturer’s factory alone. As predicted in Wright’s model of positive class compromise, a new area of interest in the co-operation of the working class therefore emerges, especially for producers (e.g. Selwyn, 2013, p. 78; Silver, 2003, p. 6). Yet, these “power potentials” can only be realized through the existence of workers’ associations at the level of the firm.

The present study illustrates these dynamics with the case of labour relations in the sportswear chain. In this particular case, while capitalists’ material interests generally relate to the capture of the value of production, those interests might differ between sportswear brands and producers, and even within these two groups. Frictions within capital, of course, weaken its position in class-based conflict.

On the whole, producers were less interested than buyers in the far-reaching concessions made under the FoAP. They argued, *inter alia*, “that the Protocol [does not bring] anything new to their current routines” (Jakobssen, 2013, p. 22). Yet, given their market power, branded lead firms were in a position to pressure manufacturers into participating. The latter’s material interests in buyers placing stable orders might indeed have had a role to play. This is reflected in the fact that brands have used their ability to threaten their suppliers with reduced orders as a means of strengthening compliance with the FoAP (Ceustermans, 2015).

Besides, as discussed above, given the vigilance of Indonesian trade unions, manufacturers have an interest in a proactive regime that prevents the escalation of industrial struggles and creates the right conditions for productivity increases. Strong and united unions oriented towards social dialogue rather than industrial action have a key role to play here. This operational argument in favour of an effective mechanism to reduce worker-management conflict was also highlighted by buyers, such as Adidas (Connor and Phelan, 2015, p. 159; Jakobsson, 2013, p. 22), who are indirectly affected by conflict through delays in orders.

The multinationals ordering sportswear from Indonesia have been directly affected by industrial conflict when their reputation was at risk, as it was as a result of the Play Fair campaign. Concerns regarding public percep-

tion, especially in their main consumer markets, represented a major motive for their involvement in the FoAP negotiations. In the context of GVCs, such reputational capital is of special significance for branded companies in terms of creating and capturing value, especially in strongly consumer-oriented industries, such as retail, garments and footwear (Franz, 2010, p. 283; Knorrington, 2014, pp. 364–368). The large number of strikes in post-Suharto Indonesia as well as the Play Fair campaign more broadly represented a major threat to that reputation. The visibility inherent in international sports events makes branded sportswear companies very sensitive to publicity that associates their products with exploitation and poor working conditions.

Damage to one brand's reputation is likely to have external effects on other buyers in the same industry. For instance, media reports of union repression in one major brand's suppliers are likely to influence public opinion about sportswear firms more generally. An industry-wide standard on collective labour rights such as the FoAP may be able to address and internalize these negative effects on reputational capital.⁹ Motivating other sportswear companies to set up and comply with such a standard jointly, however, is a typical collective action problem that can be addressed more effectively with strong support from working-class organizations, as emphasized by Wright (2000). It is a complex problem in that it involves getting on board not only producers at the location from which threats to reputation emerge, but also competing brands. Here, strong unions cooperating at the industry level and lobbying for industry-wide standards can act as catalysts to solve this coordination problem. Given the structure of the athletic footwear chain and, particularly, the lack of independence of Chinese and Vietnamese trade unions, Indonesia is the only producing country where such an effort could credibly be made. This may explain why multinationals sourcing sportswear from Indonesia committed to the structural strengthening of workers' associational power. The negative externalities of bad media reports in terms of brand reputation might have motivated an industry leader such as Adidas to urge other multinationals to come on board and sign the FoAP.

Firm size – for brands, but also for producers – probably had a catalysing effect. The fact that sportswear producers in Indonesia are large in comparison with, say, garment manufacturers in the region facilitated negotiations as fewer people needed to be brought around the table.

Conclusion and outlook

Our analysis of the FoAP in the Indonesian sportswear industry from the perspective of Wright's (2000) theory of positive class compromise has shed light on conditions that may enable the emergence of non-governmental forms of labour regulation in GVCs which put workers' agency at the centre.

⁹ Potoski and Prakash (2005) demonstrate this in regard to private environmental standards.

While Indonesian workers' associational power was strengthened by coalitions with transnational labour solidarity networks, it was five local unions that were at the forefront of the FoAP negotiations. This is reflected in the Protocol's provisions, which cater to the practical needs of local unions rather than referring to abstract principles. On the one hand, coordination between the Indonesian unions and their allies abroad increased pressure on producers and brands, which had a less united and clear agenda. On the other hand, the unions' greater unity also allowed capitalists to solve their respective collective action problems. For producers, the FoAP addresses concerns over the choking of production through fierce labour struggles. For sportswear brands, the Protocol offers a unique opportunity to protect and increase their reputational capital as a business community that is "playing fair" with regard to collective labour rights. Overall, it allows actors in the sportswear industry in Indonesia to move from a situation of confrontation to one that has the potential to catalyse cooperation and improved outcomes for workers, manufacturers and brands. We therefore consider the Protocol as an instance of labour-led social upgrading in GVCs as it "prioritizes workers' struggles to ameliorate their conditions through collective action" (Selwyn, 2013, p. 88).

Wright's (2000) simplified concept of class has helped to identify key factors leading to the emergence of VIs with a more active role for labour. As shown above, however, it was necessary to extend his analysis in order to capture the realities of GVCs. A first extension relates to the fractured class structures in GVCs and the role of coalitional power in addressing them. Recognition of the more diverse set of actors involved in globalized production has allowed us to explain the strengthening of workers' associational power through the support of transnational labour solidarity networks, a potential specific to the realities of globalized production.

A second extension addresses the sphere in which positive class compromise takes place. While Wright (2000, p. 996) predicts that under conditions of globalization, the most likely sphere for positive class compromise is production, our case study shows that negotiations between unions and sportswear producers were enmeshed in the negotiations with brands. This means that new collective action problems specific to trade relations in GVCs do in fact offer new possibilities for negotiating positive class compromise. One of these possibilities is the challenge for highly visible brands to protect their reputational capital. As shown above, this may offer new opportunities for compromise between capitalists and workers.

Lastly, a separate, but related extension of Wright's analysis concerns the role of structural power. While his model focuses on associational power, acknowledging its contingency on workers' structural location within the economic system may be crucial for identifying possibilities for labour-led social upgrading. In the case of the FoAP, the position of Indonesian sportswear workers in a strongly consumer-oriented industry with relatively fast fashion cycles clearly augmented their power.

However, critical questions also arise regarding the effectiveness and scope of the Protocol as well as the role of the State. Firstly, we concentrated on the question of which factors catalysed the emergence of the Protocol as a VI with the potential to enable labour-led social upgrading. Yet, the litmus test for the Protocol's effectiveness – and for our rather optimistic analysis – is its actual impact in guaranteeing Indonesian sportswear workers' collective rights. For instance, with the exception of New Balance, none of the participating brands has so far included implementation of the Protocol as a mandatory part of contracts with suppliers (Play Fair, n.d.). Indeed, signing the Protocol does not immediately guarantee respect for trade union rights. In many factories, the domination of so-called legacy unions (Caraway, 2008) with a questionable reputation regarding the independent representation of workers' interests is one factor that may turn this document into a "paper tiger". Finally, while some steps towards effective implementation of the Protocol were reported in an early evaluation (Jakobsson, 2013), the extent to which this has helped to improve unions' bargaining position with regard to wages or insecure contracts remains doubtful. At the time of writing this article, negotiations on two other planned agreements on wages and contractual security had not yet been initiated.

Secondly, we implicitly defined workers in the Indonesian sportswear industry as those directly employed in manufacturers' plants – though a significant number of workers are employed by second-tier suppliers. Overall, 12 per cent of all non-agricultural workers in Indonesia's formal sector were on precarious contracts in 2009 (ILO and WIEGO, 2013, p. 11). Despite attempts by trade unions and their partners to extend the coverage of the Protocol to second-tier producers, their efforts were met with resistance. If we extended the boundaries of our analysis beyond the category of directly employed workers, it may become questionable whether this VI could truly be seen as contributing to strengthening labour. The Protocol might indeed be conducive to the dualist tendencies that Wright (2000, p. 999) anticipated as a result of positive class compromise, dividing the labour force between those workers with privileged access to guaranteed labour rights and those without.

Thirdly, the sphere of politics deserves more attention. What role did the Indonesian political class play in the emergence of the Protocol? One can hypothesize that Indonesian bureaucrats' relative detachment from foreign-owned export producers might have had a role to play. As indicated above, the headquarters of many of the (large) sportswear producers in Indonesia are located in Taiwan (China) or the Republic of Korea. While the Indonesian political class earns significant amounts of money from them (through taxation, but also through bribes), it remains more detached from productive capital in this industry than are its counterparts in, say, India or Sri Lanka, whose developmentalist strategies entail a greater degree of state support for manufacturers, making capitalists far more hesitant to sit around the table with unionists. Thus, while the ratification of the FoAP can be seen as signalling a move towards greater corporate social accountability, characterized by a higher degree

of enforceability and inclusiveness regarding the actors involved, it is unrelated to any stronger commitment of the Indonesian State to enforce legally guaranteed collective labour rights.

Overall, we have shown that, while the spatial dispersion of production in GVCs has weakened state mechanisms for enforcing labour rights, new pressure points for labour have also emerged, such as brand reputation or just-in-time production. Besides, new possibilities for transnational labour networks have opened that strengthen workers' associational power. Moreover, GVCs fragment capital into different factions – e.g. producers vs brands – whose material concerns are not necessarily congruent. Workers' movements might be able to benefit from such divergent interests, especially if they are in a position to help solving producers' and buyers' collective action problems. We conclude that if VIs are to create conditions under which decent work can be strengthened, the involvement of strong local labour organizations is required, while producers' and/or buyers' dependence on workers' cooperation may act as a catalyst.

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