GOVERNING ECONOMIC GLOBALIZATION:
GLOBAL LEGAL PLURALISM AND EUROPEAN UNION LAW

Francis Snyder∗

Abstract: How is globalization governed? Focussing on economic globalization, the article tries to answer this question. It presents a case study of the international commodity chain in toys, identifies the various segments or boxes in this international commodity chain, and then gives examples to illustrate how each of them is governed. The article argues that economic globalization is governed by the totality of strategically determined, situationally specific, and often episodic conjunctions of a multiplicity of sites throughout the world. These sites, for example, include EU law, United States law, Chinese law, multinational corporation and trade association codes of conduct, international customs conventions, and WTO law. Each of these sites has institutional, normative, and processual characteristics. Though the sites are not isolated from each other, each has its own history, internal dynamics, and distinctive features. Taken together, they represent a new form of global legal pluralism.

∗ Professor of European Community Law, European University Institute, Florence: Co-Director, Academy of European Law, Florence; Professor of Law, College of Europe, Bruges: Honorary Visiting Professor of Law, University College London. US Attorney (Bar of Massachusetts).
I INTRODUCTION
A How is globalization governed?
How is globalization governed?¹ I suggest that it is governed by the totality of strategically determined, situationally specific, and often episodic conjunctions of a multiplicity of sites throughout the world. These sites have institutional, normative, and processual characteristics. The totality of these sites represents a new global form of legal pluralism. This paper aims to explore and, within limits, to substantiate this claim. It invites us to think systematically about how globalization is governed by global legal pluralism.

The paper forms part of a broader research project on the governance of globalization. The project analyses the resolution of trade disputes between the European Union (EU) and China.² It focuses on a series of case studies, one of which

¹ Early versions of parts of this paper were presented at the Institute of International Studies, Stanford University, 2 April 1999, while I was Visiting Senior Fellow at the Stanford Law School Program in International Legal Studies; the Conference on ‘Transatlantic Regulatory Cooperation’, Inaugural Conference of the European Studies Center of New York, held at Columbia Law School, 16-17 April 1999; the Conference on ‘The Regional and Global Regulation of International Trade’, Institute of European Studies of Macau, 10-11 May 1999; the Guandong International Research Institute for Technology and Economy, 13 May 1999, Guangzhou, China; the Workshop on ‘Governance and Globalisation in Theory and Practice’, European University Institute and the Danish Research Project on ‘Globalisation, Statehood and World Order’, Florence, 1-2 October 1999; and as the Inaugural Lecture for the 1999-2000 Academic Year, European Academy of Legal Theory, Brussels, 4 October 1999. I wish to thank in particular George Bermann, Coit Blacker, Maria do Ceu Esteves, Jill Cottrell, Chen Yong Quan, Cao Ge Feng, Candido Garcia Molyneux, Tom Heller, David Holloway, Hans Henrik Holm, Emir Lawless, Cosimo Monda, Jens Ladefoged Mortensen, Francois Ost, Georg Sorensen, Anne-Lise Strahtmann, Mark van Hoecke, Yang Zugong, the Hong Kong Trade Development Council, staff of the European Commission in Brussels, and several government and toy industry representatives in the Shenzhen, China, Special Economic Zone, for their contributions to the paper. Jill Cottrell kindly provided helpful material on Hong Kong law. An earlier, shorter version of the theoretical argument of the paper will be published as ‘Global Economic Networks and Global Legal Pluralism’, in G. Bermann, M. Hedeger, and P. Lindseth (eds), Transatlantic Regulatory Cooperation, (Oxford University P 2000).

concerns the international trade in toys between the EU and China. Here I draw on this case study selectively for the purpose of my theoretical argument.

The paper aims to increase our understanding of how globalization is governed and to improve our capacity to analyse these new forms of governance. It is not intended to promote law reform or advance a specific political or institutional agenda. Consequently, its perspective is more sociological than normative. It adopts, as a useful starting point, the standpoint of strategic actors. Relations among strategic actors can be envisaged as involving different types of organisations, whether firms, states, or regional or international organisations. Alternatively, we can see them as implicating different structures of governance, whether market-based structures or polity-based structures. From a third perspective, these relationships put into play global economic networks and various sites of global legal pluralism. The paper is intended to highlight all of these perspectives.

B The Meaning of Globalization

Thinking about how global economic networks are governed requires a concept of globalization. By globalization, I refer to an aggregate of multifaceted, uneven, often contradictory economic, political, social and cultural processes which are characteristic of our time. This paper concentrates primarily on the economic aspects, but these need to be set within a more general framework.

In economic terms, the most salient features of globalization, driven by multinational firms, are for the present purposes the development of international production networks (IPNs), dispersion of production facilities among different countries, the technical and functional fragmentation of production, the fragmentation of ownership, the flexibility of the production process, worldwide sourcing, an increase in intra-firm trade, the interpenetration of international financial markets, the possibility of virtually instantaneous worldwide flows of information, changes in the nature of employment, and the emergence of new forms of work.

Viewed from a political standpoint, globalization has witnessed the rise of new political actors such as multinational firms, non-governmental organisations and social movements. It has tended to weaken, fragment, and sometimes even restructure the state, but has not by any means destroyed or replaced it. Globalization has also altered radically the relationship to which we have become accustomed in recent history between governance and territory. It thus has blurred and splintered the boundaries between the domestic and external spheres of nation-states and of regional integration organisations; fostered the articulation of systems of multi-level governance, interlocking politics and policy networks; and helped to render universal


the discourse of and claims for human rights. In many political and legal settings, such as the European Union, it has raised serious questions about the nature and appropriate form of contemporary governance.

Among the manifold social processes involved in globalization are the spread of certain models of production and patterns of consumption from specific geographic/political/national contexts to others. Contradictory tendencies have developed towards internationalisation and localisation within as well as among different regions and countries. We have also witnessed the uneven development of new social movements based on different, if not alternative, forms of community.

Seen as a cultural phenomenon, globalization has implied the emergence of a new global culture, which is shared to some extent by virtually all elite groups. This has enhanced the globalization of the imagination and of the imaginable. At the same time it has contributed both to the transformation of many local cultures, sometimes strengthening them, sometimes marginalising them, sometimes having both consequences simultaneously. Consequently, it has sometimes increased the range and depth of international and infranational cultural conflicts, as well as resistance to new forms of cultural imperialism.

C An analytical strategy
The remainder of the paper is divided into four main parts. The next part (Part II) introduces the global commodity chain in toys, an empirical anchor for my theoretical argument. Part III then sketches what I consider to be the basic elements of global legal pluralism. Part IV presents in more detail the shape of global legal pluralism, bringing together examples of institutional, normative, and processual sites and the segments of the global commodity chain in toys which they govern. The conclusion briefly summarises the argument and proposes hypotheses for further research.

II A GLOBAL ECONOMIC NETWORK: THE GLOBAL COMMODITY CHAIN IN TOYS

Global economic networks take various forms. I focus here on the international toy industry. The toy industry’s global reach and domestic impact can be illustrated clearly by the Barbie doll. In European countries, imports of toys from Asia have sometimes provoked reactions bordering on xenophobia. In the United States they have triggered outrage against cheap Chinese labour and trade deficits with China, which in the case of the toy trade between China and the USA was claimed by the US to amount to US $5.4 billion. This has not, however, been true by and large of the

---

4 For this expression, I am indebted to Prof. Pietro Barcellona, oral intervention at the Conference on ‘Quelle culture pour l’Europe? Ordres juridiques et cultures dans le processus de globalisation’, Réseau Européen de Droit et Société (REDS) and Istituto di Ricerca sui Problemi dello Stato e delle Istituzioni (IRSI), Rome, 2-3 November 1998.

The Barbie doll is quintessentially American in origin, style and culture, and of course is the result of a global commodity chain powered by a US buyer. But Barbie is a global product, if by ‘global’ we refer to the fragmentation of the production process, the dispersion of production facilities among different countries, and the organisation of production within international production networks.

We can understand this industry most easily by conceiving of it as a global commodity chain. By ‘commodity chain’, I mean ‘a network of labor and production processes whose end result is a finished commodity’. 7 Global commodity chains tend to be strongly connected to specific systems of production and to involve particular patterns of coordinated trade. 8

Each global commodity chain, if we follow Gereffi’s widely accepted schema, has three main dimensions. The first refers to the structure of inputs and outputs: products and services are linked together in a sequence in which each activity adds value to its predecessor. The second concerns territoriality; networks of enterprises may be spatially dispersed or concentrated. The third dimension is the structure of governance: relationships of power and authority determine the flow and allocation of resources (financial, material, human) within the chain. 9

---

9 Gereffi, ‘The Organization…’, op cit n 8, at 96-97.
Here we are interested especially in the third dimension, the structure of governance which is internal to the chain. Gereffi distinguishes two distinct types of governance structures within global commodity chains. On the one hand are producer-driven commodity chains, in which the system of production is controlled by large integrated industrial enterprises. On the other hand are buyer-driven commodity chains, in which production networks are typically decentralised and power rests with large retailers, brand-name merchandisers and trading companies. This distinction provides a useful point of departure for analysing the global commodity chain in the EU-China toy trade.

The international toy industry is a prime example of an international commodity chain dominated by the buyers. It is hierarchically organised. At the top of the hierarchy are large buyers as well as large retailers. The buyers include several US manufacturers, two Japanese manufacturers, and one European company. The most important buyers are two American companies, Mattel and Hasbro. The key elements in the power of buyers are designs and brands. The large buyers are the node in various networks of inventors and creators of toys. Through contract, they control the access of inventors, intermediaries, and factories to the market. The most important retailers include large specialist stores such as Toys “R” Us, discount houses such as Wal-Mart in the US, and hypermarkets or catalogue stores in the EU. Taking buyers and retailers together, the power of this group lies in its control of design, brands, and marketing.

Buyers and retailers compete, however, with regard to access to retail markets. The powerful buyers are dependent to some degree on large retailers, such as Toys “R” Us and discount stores such as Wal-Mart. As economic downturns reveal, however, the two groups have conflicting interests with regard to the retail market. To maintain market share, and to enhance their dominant position in the global commodity chain, buyers have tried recently to lessen their dependence on retailers. Their strategies for doing so include increased direct-to-consumer sales, including catalogs and Internet sales, either from their own website or from online retailers.

The US firms have regional headquarters and a significant share of the toy market in Europe. The European Union toy market is supplied mainly through importer-wholesalers. As of 1995, the EU toy industry comprised about 2600 firms, producing a great variety of toys, and employing just under 100,000 workers, with only 15 firms having more than 500 employees. Each country has its own distinctive retail sector, varying from catalogue stores through hypermarkets to independent retailers. Except for Leggo, established in Denmark in 1932 and now one of the world’s ten largest toy manufacturers, there are no large manufacturers or specialist retailers based in Europe similar to those based in the USA. Together with LEGO

10 Gereffi, ‘The Organization…’, op cit n 8, at 97.
12 Commission of the European Communities, 'Report from the Commission to the Council on the surveillance measures and quantitative quotas applicable to certain non-textile products originating in the People's Republic of China', COM(95)614 final, Brussels, 6.12.95, 41.
13 See Hong Kong Trade Development Council, Practical Guide to Exporting Toys for Hong Kong Traders (Hong Kong Trade Development Council, Research Department, March 1999), pp 34-58.
and the Japanese firm Bandai, the US firms dominated the first main peak trade association, Toy Manufacturers of Europe, formed in the early 1990s, and are now the principal players in the current EU peak association, Toy Industries of Europe (TIE).

Further down the hierarchy come the Hong Kong companies which act as intermediaries between these multinationals and the toy factories. In East Asia, Hong Kong has been of signal importance in the development of the toy industry. Its role first started in the 1940s as an export platform, then developed in the 1980s as original equipment manufacturers (OEM) for overseas importers or as intermediaries between local manufacturers and overseas buyers until, starting in the 1990s, Hong Kong became a re-exporter of toys made in China. In 1998, licensing and contract manufacturing for overseas manufacturers, usually to production specifications and product designs provided by the buyers, accounted for an estimated 70% of total domestic toy exports.14 US buyers accounted for 51% of Hong Kong’s toy exports in the first ten months of 1995.15 Today Hong Kong is the location of management, design, R&D, marketing, quality control, finance and usually shipping.16

At the bottom of the hierarchy are the factories, most of which are located in China. By 1995 toy production in China involved about 3,000 factories employing more than 1.3 million people.17 Such factories usually occupy the structural position of original equipment manufacturer (OEM) producing to other companies’ specifications with machinery provided by the buyer. However, some now operate on the basis of original design manufacturer (ODM), producing to designs supplied by the buyer but sharing the cost of machinery and investment as well as markets according to an agreement with the buyer.18 Today China and Hong Kong account for nearly 60% of world's toy trade.19

III ELEMENTS OF GLOBAL LEGAL PLURALISM

We usually view the legal arrangements which are relevant to such global economic networks in one of two ways. Often we see them essentially in terms of contracts between nominally equal parties, such as individuals, companies, or states, whose agreement is consecrated either in bilateral or multilateral form. Alternatively, we conceive of them in hierarchical terms, for example as constituting various regional or international forms of multi-level governance. I wish to suggest, however, that both of these conceptions, regardless of their force in normative terms, are descriptively inaccurate and analytically incomplete. There is a fundamental and growing

---

16 See the statement by Dennis Ting, who as of January 1995 was chairman of Kader Industrial Co. Ltd., a leading Hong Kong toy firm, as well as of the Hong Kong trading agency’s toy advisory committee and of the Hong Kong Toy Council: Journal of Commerce, Friday, January 13, 1995.
18 Interviews in Hong Kong, Guangzhou, and the Shenzhen Special Economic Zone, China.
disjunction between our traditional, normative and hierarchical conceptions of the law governing international trade and the shape of the economic networks which are an integral part of economic globalization. We should not necessarily expect the law and economic relations to be isomorphic. But in order to understand how global economic networks are governed in practice, we need to revise many of our basic ideas about the shape of the global legal order. Global economic networks are the product of and a form of strategic behaviour, and they usually have a particular locus of power and a specific hierarchy. Their dramatic growth has placed in question the credibility of lawyers’ claims about the hierarchical nature of global economic governance. At the same time it has provoked demands for the constitutionalisation of global governance and debates about its feasibility and desirability.

I suggest that the most adequate concept for understanding the global legal order is global legal pluralism. In order to explore and develop this concept, it is useful to build upon previous research. I focus here on Teubner’s theory of lex mercatoria as a paradigm of global law. My purpose is not to analyse this work for its own sake, but rather to use it to address two questions. First, what is the author’s conception of the law relevant to the global economy? Second, what does this conception contribute to our understanding of global legal pluralism?

Teubner’s principal thesis is that global law develops mainly outside the political structures of nation-states and international organisations. The basic device is contract, and the paradigm is lex mercatoria. From Teubner’s perspective, global law has several important characteristics. First, its boundaries are not territorial but consist of ‘invisible’ markets, branches, specialised professional communities, or highly technical social networks, all of which transcend territorial boundaries. Second, its sources are not a legislature, but rather, according to his theory of autopoiesis, ‘self-organizing processes of “structural coupling” of law with ongoing globalized processes of a highly specialized and technical nature’. Third, global law depends closely on various other social fields, instead of being relatively autonomous from political institutions in particular, hence it is subject to economic pressures and so is not strongly

---


21 See G. Teubner (ed), Global Law without a State, (Dartmouth 1997).


23 Ibid, at 15.

24 Ibid, at 8, 12.

25 Ibid, at 7, 8.


27 Ibid, at 8.
institutionalised in the sense of due process or the rule of law. Fourth, it consists mainly of broad principles, which though not legally binding have the great correlative advantages of flexibility and adaptability. Fifth, at first it is not politicised, but the gradual juridification of economic relations through contract will lead eventually to the interference of political processes. Sixth, it is not unified, whether nationally, regionally or on a world scale; instead, due to its dependence on other social processes and its lack of political and institutional support, global law is decentred and non-hierarchical.

This perspective makes several important contributions to advancing our understanding of global legal pluralism. First, it takes seriously the idea that, apart from nation-states, there are other sources of economically and socially significant norms that operate across national borders and to a large extent independently of states. Second, it recognises that bundles of these norms may be aggregated in the form of a system, and that there are a plurality of such systems, including norm-generating processes. Indeed, in addition to drawing on the literature on legal pluralism, Teubner expressly uses the term global legal pluralism, though in a different way from that being advanced here. Third, it tries to analyse the organisation of these norms and the systems in which they are embedded as part of distinct networks rather than in terms of hierarchy. Fourth, it gives due weight and attention to the significance of soft law, ‘rules of conduct which, in principle, have no legally binding force but which nevertheless may have practical effects’.

For the present purposes, however, this useful formulation has several shortcomings. First, its starting point, lex mercatoria, leads inevitably to an almost exclusive emphasis on contract. It may be true that, in lex mercatoria, contract is not only the central legal device but also the primary source of law and means of self-legitimation. Viewed however from a different perspective, for example that of strategic actors in a global commodity chain, such as multinational firms, contract is only one among several legal devices, sources of law and forms of legitimation. Second, Teubner focuses exclusively on non-state actors; he intentionally neglects the state. For his purposes this methodological choice is useful, if not essential. It is an

---

28 Ibid, at 8, 19.
31 Ibid, at 8.
integral part of his argument that political theories of law are of little relevance to global law. This methodological choice, however, is based on a traditional conception of constitutions, as being associated always with the nation state. It also has the necessary, and for the present purposes unfortunate, consequence that it reveals only part of the picture of global legal pluralism. In particular with regard to international trade, nation-states, regional organisations such as the European Union, and international organisations such as the World Trade Organisation, as well as other organisations and networks, play a fundamental role.

Third, a consequence of focusing on lex mercatoria and omitting the state and other political structures is an over-emphasis on soft law. In the governance of global economic networks, however, both soft law and legally binding norms, or ‘hard law’, are important. Indeed, the relationship between hard law and soft law has long been controversial, and today it is one of the most interesting – and difficult – questions currently raised by the governance of globalization. Fourth, Teubner’s analysis is based a specific conception of legal pluralism. He asks the question, ‘where are concrete norms actually produced?’ Answering it, he defines legal pluralism in terms of discourse, of communicative processes that interpret the world by means of a binary code of legal/illegal. This definition, however, accords relatively little weight to institutions, and it assumes that alternative conceptions of legal pluralism imply ‘a set of conflicting social norms’ and require ‘an implied delegation of state power’. None of these assumptions, as I hope to show, are necessary or indeed helpful in the context of this paper.

Global legal pluralism, as I use the term, comprises two different aspects. The first is structural, the second relational.

First, global legal pluralism involves a variety of institutions, norms, and dispute resolution processes located, and produced, at different structured sites around the world. Legal scholarship has traditionally paid most attention to understanding state, regional, and international legal institutions, legally binding norms, and dispute resolution processes involving law. Much of the most interesting recent work concerns the ‘constitutionalisation’ of international trade regulation. In addition, international

---

37 Ibid, at 7.
38 Ibid, at 6. In fact, Teubner (ibid, at 6) quotes Niklas Luhmann, *Das Recht der Gesellschaft* (Suhrkamp 1993), 582, to the effect that ‘the structural coupling between law and politics via constitutions has no correspondence on the level of world society.’ Compare the different conception of Jean-Philippe Robé, that the world constitutional structure consists of a global legal order comprised of various territorial and functional legal orders, with different goals and hence problems of coordination: see J. P Robé, ‘Multinational Enterprises: The Constitution of a Pluralistic Legal Order’, in G. Teubner (ed), *Global Law Without a State* (Dartmouth 1997) 45-77 at 70
39 Ibid, at 12.
40 Ibid, at 12, 14.
41 Ibid, at 14.
43 Cf, especially J. H. Jackson, *The World Trade Organization: Constitution and Jurisprudence*, (The Royal Institute of International Affairs 1998); E.U. Petersmann,
lawyers and related specialists in international relations have also studied international negotiations, norms that at least in principle are not legally binding, global regulatory networks, and intergovernmental networks. The analysis of international regimes, multi-level governance, and other types of institutional arrangements, such as credit rating agencies, has largely been the province of political scientists and specialists in international relations. Examples in the field of EU legal and political science scholarship concern multi-level governance, committees, and different types of settings, whether highly institutionalised with specified norms, rules and procedures or non-hierarchical and decentralised. While it is possible to generalise to some extent from this previous work, no one has tried to unite these different elements. Some basic questions remain therefore to be answered. What is a site? States and regional and international organisations are included, but so are a diversity of other institutional, normative, and processual sites, such as commercial arbitration, trade associations, and so on. How are sites created, and how do they grow, survive or die? How are they structured? What does it mean to say that different structured sites are the anchors of contemporary legal pluralism?

Second, the relations among these sites are of many different types, in terms of both structure and process. For example, in terms of structural relationships, sites may be autonomous and even independent, part of the same or different regimes, part of a

---


46 An recent example is M. Zacher (with Brent A. Sutton), *Governing Global Networks: International Regimes for Transportation and Communications* (Cambridge University P 1996).


single system of multi-level governance, or otherwise interconnected. In terms of process, they may be distinct and discrete, competing, overlapping, or feed into each other, for example in the sense of comprising a ‘structural set’, ‘formed through the mutual convertibility of rules and resources in one domain of action into those pertaining to another’. These relations of structure and process constitute the global legal playing field. They determine the basic characteristics of global legal pluralism, such as equality or hierarchy, dominance or submission, creativity or imitation, convergence or divergence, and so on. They influence profoundly the growth, development, and survival of the different sites.

Global legal pluralism is not merely an important part of the context in which global economic networks are constructed, in the sense that it is a factor to be taken into account by strategic actors. It is an integral part of these global economic networks themselves. In other words, global economic networks are constructed on a global playing field, which is organised or structured partly by global legal pluralism. Global legal pluralism does more, however, than simply provide the rules of the game. It also constitutes the game itself, including the players.

IV THE SHAPE OF GLOBAL LEGAL PLURALISM

A Outline

We are now in a position to consider in more detail the interconnection between global legal pluralism and the global commodity chain in toys. Instead starting with normative systems, I propose to start with social and economic relations. Let us, following Hopkins and Wallerstein, use the term ‘boxes’ to refer to the separable processes involved in any global commodity chain. The separable processes or boxes may include, for example, invention, production, marketing, distribution, and consumption. The boundaries of each box are socially defined, and so may be redefined. Technological and social organisational changes play a role in these processes. So too does law, conceived broadly to encompass the sites of global legal pluralism, with each site comprising its specific institutions, norms and processes, law. Law helps to construct and to define the boxes which make up the global commodity chain in toys.

We can ask a series of questions about the social organisation of the constituent elements of any single box in the chain. They refer, according to Hopkins and Wallerstein, to:

- The number of components units in each box (monopoly or competition)
- Their geographic concentration or dispersal
- Membership in one or more chains
- Property arrangements

---

54 Hopkins and Wallerstein, ‘Commodity Chains…’, op cit n 53, at 18.
• Modes of labour control
• Links within a chain
I add two further issues:
• Connection between economic relations and specific sites
• Relations between sites and the chain as a whole

Thus here I rephrase, elaborate, and add to Hopkins’ and Wallerstein’s questions. I give special emphasis to the institutional, normative, and processual components of the sites of global legal pluralism. In the following paragraphs I offer selected examples of the interconnections between these sites and the international commodity chain. The discussion is meant to be illustrative, not exhaustive. It is designed to outline the shape of global legal pluralism.

B Monopoly or Competition
First, the number of component units in the box. To what degree is a box monopolised by a small number of production units? What are the main factors determining this structure? What incentives for a particular structure are provided by legal and other institutions, norms, and processes? For example, to what extent and how does the law provide or permit barriers to entry? To what extent does it facilitate or require market access, for instance with regard to production and/or distribution? Do different sites of global legal pluralism provide conflicting incentives, and if so, how are these conflicts managed, if not neutralised? If demonopolisation of any highly profitable box is an important process in the contemporary world economy, as Hopkins and Wallerstein suggest, what role do the sites of global legal pluralism play with regard to this process, for example by encouraging it, by countering it by redefining the boundaries of the box or by other means, or by creating incentives for shifting capital investment to other boxes, or even other chains?

Several sites of global legal pluralism play a role in shaping or determining the number of component units in any given box in the international commodity chain in toys. Consider some examples.

First, with regard to the invention, production, and marketing, United States intellectual property law is of crucial significance in determining the number of buyers and maintaining their market power. The highest barriers to entry in buyer-driven commodity chains typically concern product conception, design and marketing. Intellectual property law creates or consolidates barriers to entry.

Second, antitrust law has an important impact on production, marketing, and distribution. In the United States, Europe, or Japan, it helps to define the number of key buyers or manufacturers in the international toy industry. American antitrust law in particular affects the possibility of mergers among buyers. When market leader Mattel Inc acquired the third largest toy manufacturer, Tyco Toys Inc., in 1996, Mattel was quoted in the American media as expressing confidence that the deal would not be blocked by US antitrust law, even though the companies’ combined sales represented 19% of the US toy market.

Third, the lack of binding legal regulation of Internet retailing lowers barriers to entry into the retail market in toys. Consequently, when buyers are squeezed by

56 Hopkins and Wallerstein, ‘Commodity Chains…’, op cit n 53, at 18.
57 Madore, ‘Mattel confident Tyco deal will pass antitrust scrutiny’, The Buffalo News, Tuesday, November 19, 1996.
traditional retailers, they turn without great difficulty to the Internet in order to enter the retail sector themselves, either through specialist Internet retailers or by means of the buyers’ own websites.

A fourth example, explored in more detail here, concerns EC international trade and customs law concerning the access of importers to the EU toy market. It illustrates clearly the role played by EU legislation and the European Court of Justice in restructuring the EU toy industry. In 1994 the Council of the European Union adopted two major complementary legislative reforms. The first was Council Regulation 519/94 on common rules for imports from certain third countries. It was the general regulation governing imports from non-market economy countries, except for textile products. The second was Council Regulation 520/94 establishing a Community procedure for administrative quantitative quotas. It established a new way of administering quotas, based on a system of licenses issued by the Member States according to quantitative criteria established at Community level. Both were part of a package deal, designed to secure acceptance of the Uruguay Round multilateral trade negotiations, to reinforce existing trade policy instruments, and to complete the EC’s Common Commercial Policy.

Both the new quota regime and provisions for administering it exemplified the Europeanisation of law. They involved the total or partial replacement of the law of the Member States by EC law. EC quotas on seven categories of Chinese products, including toys, replaced approximately 6417 national quantitative restrictions, including 4700 on more than thirty Chinese products. Council Regulation 519/94 introduced quotas on seven categories of Chinese products, ranging from gloves, footwear, porcelain tableware, ceramic tableware, glassware, car radios, and toys. It imposed separate quotas on product categories SH/NC 9503 41 (stuffed toys, such as teddy bears), SH/NC 9503 49 (non-human toys, such as Ninja Turtles), and SH/NC 9503 90 (other toys, such as die-cast minatures). It did not cover, however, certain other toys such as Barbie dolls.

The adoption of Council Regulation 519/94 inaugurated four years of continuous lobbying, negotiation, litigation, law reform, further litigation, and further

58 Such importers include both EU and foreign companies, for example in joint ventures in foreign countries, outward processing arrangements, or other increasingly complex forms of cooperation which are characteristic of – and indeed create - economic globalization. See Snyder, ‘Friends and Rivals’, op cit n 2.

59 O.J. 10.3.94 L67/89.

60 Imports of textiles were governed by one of two other regulations. Council Regulation 3030/93, on common rules for imports of certain textile products from third countries (O.J. 8.11.93 L275/1) covered imports of textile products from countries with which the EC has concluded bilateral agreements, protocols, or other arrangements. Council Regulation 517/94 on common rules for imports of textile products from certain third countries not covered by bilateral agreements, protocols or other arrangements, or by other specific Community import rules (O.J. 10.3.94 L67/1), covered imports of textile products from non-market economy countries with which the Community had not concluded specific arrangements.


law reform. The new EC quota regime for toys from China pleased no one, except perhaps the Commission, which had brokered the compromise. The United Kingdom, which had opposed the measure in the vote in the Council of Ministers, brought an Article 173 action in the European Court of Justice to annul the Chinese toys quota. It argued that the new Regulation introduced quotas on imports of Chinese toys into the UK market which previously was free of quotas. Subsequently the Council amended the challenged regulation. However, this compromise itself was challenged in the ECJ by Spain, one of the main initial proponents of quotas on imports of toys from China. Then the European subsidiary of Tyco Toys, Inc. brought an action in the Court of First Instance to annul the toy quota and to obtain compensation for injury.

The challenge by the United Kingdom to the Chinese toys quota has been ascribed to pressure brought on the UK government by the largest umbrella trade association, Toy Manufacturers of Europe (TME). Hong Kong firms accounted for the majority of those affected by the quota, but they could not seek the help of the Hong Kong Government, at least directly, because their factories were located in China. Toy multinationals thus lobbied in Europe through the trade association. The TME was formed as a political lobbying group in the early 1990s. It brought together European toy manufacturers, except those in France and Spain, together with German producers of plastic toys, which were grouped instead in the Asociacion Espanola de Juguetes (AEFJ), established in 1967. The members of TME accounted for approximately 80% of toy manufacturers and distributors operating in Europe. It was dominated by American toy multinationals, together with the Danish firm Lego and the Japanese firm Bandai. Its members did not manufacture toys in Europe. Their

---

64 For further details, see F. Snyder, ‘Chinese Toys’, op cit n 2, on which the following paragraphs draw.
67 Case C-284/94, Kingdom of Spain v Council of the European Union, [1998] ECR I-7309. The Council was supported by the Commission.
68 Tyco’s trade names include Dr Dreadful, Fashion Magic, Kitchen Littles Cookware, Magna Doodle, Matchbox and View-Master. See its Internet website http://www.matchboxtoys.com. As of February 1999, Tyco Preschool was a Mattel company. See the Internet website of Toy Manufacturers of America at http://www.toy-tma.com/MEMBER/.
69 Case T-268/94, Tyco Toys (UK) Ltd and Others v Commission and Council, O.J. 1994, C254/14; see also Agence Europe, no. 6317, Saturday 17 September 1994, p. 13. As of 20 April 1999, this case was still pending, but a hearing was expected to be held soon, according to the services of the European Court of Justice. I am grateful to Emir Lawless of the EUI Library for this information. By May 1999, however, the case had been abandoned: interviews in the European Commission.
71 Cf, Newton and Tse, ‘Kids’ Stuff, op cit n 17, at 159.
72 I am grateful to Mr Salvador Miro Sanjuan, President of the AEFJ, for this information.
main interest lay in maintaining open markets throughout the world, including the EU, for their main source of production, namely China. They were also concerned to use the EU market and EU law effectively in their strategies for restructuring the international toy sector and ensuring the integration of the EU market into the global commodity chain. The TME had opposed the imposition of quotas from the outset. Its chair, Peter Waterman, considered that the toy industry was being used as a pawn in the debate concerning the accession of China to the World Trade Organization.

Lobbying and litigation were two facets of the same political strategy. They paid off in a series of continual legislative reforms, six in total during a brief four-year period. The first occurred when, five weeks after the UK brought its case, the Commission proposed an increase in the quota, largely because of pressure from the TME. The Member States, however, did not agree. Germany, the UK, the Netherlands and Ireland, sought a global solution to the Chinese quota problem, embracing not only toys but also textiles and other products. France, Spain, Portugal and Greece rejected the Commission proposal, both in itself and as a dangerous precedent; they claimed that it favoured traders as against manufacturers. This split between northern and southern countries, between free trade and protectionism, reflected the different Member States' domestic institutional and economic structures. To break the logjam, the Council adopted a compromise solution. It embraced only the toy sector, but it raised the quota for certain toys from China by almost 30% for the period from 15 March to 31 December 1994. This compromise itself, however, provoked further litigation by Spain and the European subsidiary of Tyco Toys, Inc.

The second legislative reform occurred in March 1995, when the Council agreed to raise the toy quota for the year starting 1 January 1995. This was part of a more general revision of quotas on imports from China, in which quotas for some goods were abolished, others increased, and others maintained at the then existing level. The quotas for toys were increased by 36.8% for stuffed toys (ECU 274 764 243 for HS/CN code 9503 41), 58.3% for animals (ECU 132 767 177 for HS/CN 9503 49), and 27.8% for

---

73 Newton and Tse, 'Kids' Stuff', op cit n 14, at 156.
74 Agence Europe, no 6824, 3 October, 1996, at 5.
79 Ibid, art. 1. The toys in question were those falling within Code HS/CN 9503 41 (stuffed toys representing animals or non-human creatures), such as Furbies.
80 Case C-284/94, Kingdom of Spain v Council of the European Union [1998], ECR I-7309. The Council was supported by the Commission.
82 Council Regulation 538/95 amending Regulation 519/94 on common rules for imports from certain third countries, article 1, Annex II, O.J. 11.3.95 L55/1.
other toys (ECU 649,465,212 for HS/CN 90). This included the amounts required to take account of the accession to the EU of Austria, Finland, and Sweden. Note that dolls were still free of quota.

The legislative tinkering continued. In April 1996 the Council adopted a third revision, to take effect as of 1 January 1996. This measure was part of a more general revision of imports on goods from China. Like its predecessor, it benefited importers, distributors and processors of Chinese products, met to some extent the demands of the Chinese government, and conferred new advantages on firms by removing quotas in certain markets. While it did not increase the total quota amount for toys, it fused the three existing quotas into one. This introduced greater flexibility in the implementation of the quotas. Hence it empowered certain firms, notably importers, and increased the free play of the market, while maintaining the overall quota. Arguably, it helped industry to meet changes in consumer demand. As of October 1996 the Tyco Preschool company factory in China was operating six days a week to meet weekly shipments of Tickle Me Elmo, producing 50,000 Elmos a week to sell one million by Christmas Eve. It planned to ship one million dolls from its five factories in China. In 1997 it imported a supply of 300,000 Sing & Snore Earnie dolls from China by plane instead of container ship to get them into stores more quickly for the Christmas season.

Fusion of the three quotas into one also created a greater space for restructuring of the toy sector. The EU toy industry at the time was concentrated geographically in the Jura (France), Milan (Italy), Attica (Greece), and Alicante (Spain). These regions accounted for 50%-60% of toy production in their respective countries and included both manufacturers and auxiliary industries. The industry comprised about 2600 firms, producing a great variety of toys, and employing just under 100,000 workers, with only 15 firms having more than 500 employees. Their prices were higher than those of toys from China, quite apart from the possibility of producing counterfeit toys anywhere with computer-assigned design programmes. These small EU firms thus were faced from international competition from other producers, as well as being squeezed by the dominant international buyers who controlled the major brands and had easy access to large retailers. They were gradually regrouping and restructuring. The Commission’s original proposal for fusing the three quotas was intended partly to encourage these economic and social processes, even though the Commission recognised that its

---

83 Percentage increases are taken from Newton and Tse, ‘Kids' Stuff’, op cit n 17, at 161.
84 Council Regulation 752/96 amending Annexes II and III of Regulation 519/94 on common rules for imports from certain third countries, article 1, O.J. 26.4.96 L103/1.
85 See ibid, preamble, sixth recital.
86 USA Today, December 11, 1996.
89 Commission of the European Communities, 'Report from the Commission to the Council on the surveillance measures and quantitative quotas applicable to certain non-textile products originating in the People's Republic of China', COM(95)614 final, Brussels, 6.12.95, 41.
90 Ibid, at 44-45.
legislative proposals were based on very incomplete information. As a result, the large trade associations in the sector supported the Commission’s proposals.

The Commission took a further step towards an open market in May 1996, when it revised the procedures for allocating quota amounts. It reduced the allocations under import licenses for traditional importers by specified percentages, applied to a base equal to average imports for 1992 and 1994. License applications by non-traditional importers were to be met in full within the overall quota limits. In addition, a license issued for a certain category of toys could also be used for the other categories. This revision, as the previous reforms, moved EC law closer to meeting the interests of multinational toy buyers and manufacturers, thus gradually undoing the 1994 compromise. It did so, however, not by increasing or otherwise modifying the quotas themselves, but rather by changing the way they were administered. In particular, it opened more space for new entrants to the import market, while at the same time it increased the flexibility of the administration of licences. In other words, it lowered barriers to entry and the costs of importation, notably for large firms.

In September 1996, litigation in the European Court of Justice bore its first fruit. The Advocate-General gave his Opinion jointly in the two cases brought separately by the UK and Spain. He proposed that the ECJ should uphold the policy-making and legislative discretion of the Council, and thus reject the claims by the UK and Spain for the annulment of EC legislation. This Opinion was taken by many in the toy sector as a clear signal that the actions brought by the two governments against the Community legislator would ultimately be rejected. At least some academic commentators shared this view. Such a perception neglected the fact that the Advocate-General’s Opinion does not state the law, nor is it legally binding on the Court. It captures nicely, however, the real political and symbolic significance of such Opinions, in which, rightly or wrongly, the Advocate-General is often seen to be speaking not merely for the public but also for the Court.

Despite its lack of legal force, the Advocate-General’s Opinion would seem to have had a decisive impact on further reform of the quota legislation. It encouraged, if

\[91\] Ibid, at 47. In preparing the report, the Commission solicited information from a wide variety of producers, importers, and traders, either directly or through their trade associations. The response, however, was 'incomplete and rather unsatisfactory': ibid, at 3. Nearly all the investigated sectors were composed of numerous small and medium-sized enterprises, 'of which a significant proportion are not even known by the relevant national federations': ibid, at 3. Of the importers, the Toy Manufacturers of Europe (TME), Toys Traders of Europe (TTE), the Hong Kong Toys Council, the Japan Toy Association, and John Lewis Partnership (UK) submitted remarks: see ibid, 45-46.

\[92\] Commission Regulation 899/96 establishing the quantities to be allocated to importers from the Community quantitative quotas redistributed by Regulation 612/96, O.J. 21.5.96 L121/8.

\[93\] Ibid, article 1 and Annex I.

\[94\] Ibid, article 3 and Annex III.


\[96\] Newton and Tse, op cit n 17, at 161. Doubtless the plaintiff governments and the large trade associations were more aware of the legal status of such an opinion and its relation to the eventual judgment by the European Court of Justice. Small businesses, however, are often much less aware of these crucial legal and institutional distinctions
not stimulated, the Member States to adjust further the basic 1994 legislation. The Council, the Community legislator, enacted a subsequent reform in mid-1997. While maintaining the same overall quota amount for toys, it excluded toy parts and accessories from the quota. It placed these parts and accessories, as well as certain other categories of toys, under Community surveillance, first for the period from publication of the measure on 14 May 1997 until 31 December 1997, and then for the period from 1 January 1998. These changes followed the main conclusions of the Commission's 1996 annual report. The latter, in turn, presented a somewhat simplified version of the recommendations of what were then the two main trade associations, the TME acting on behalf of importers and the Fédération Européenne des Industries du Jouet on behalf of producers. Together these trade associations represented, in the Commission's view, 'almost the entire European toy industry'. The legislative reforms testified to the close coordination between firms, both independently and through trade associations, and Member States and EC institutions, on the other hand. This coordination, in turn, ensured that the adjustments in the law were in step with the changing interests of the EU toy sector, which was then in the process of restructuring within the EU market and of adapting to the new challenges posed by the international market.

The major trade associations had in fact proposed the liberalisation of imports of only 'the components of toys which were meant to be subject to further industrial transformation'. Articulated for political and other reasons in terms of stimulating employment by local assembly and similar processes, this proposal embodied a very clear recognition of the internationalisation of the toy industry and the role of the EU producers in these increasingly global networks. EU producers were to occupy a place in these new networks that was very similar to that of producers in China, except that Chinese factories were engaged in original equipment manufacturing whereas EU producers would involved merely in the final (though industrial) transformation of the toys, albeit with the possibility in some instances of moving into own brand manufacturing. This proposal signaled the eventual transformation of many small- and medium-sized EU firms, and to that extent the nation-states in which they were situated, into flexible, more precarious world factory sites: dependent, as were Chinese toy factories and their Hong Kong owners, on the multinational firms that occupied the dominant positions and were the key players in the global toy commodity chain. It also implied potentially a shift in legal position. The law governing imports would no longer be the EC quota regulations, but rather EC customs regulations on inward processing and potentially (if China were to accept the relevant annexes) the 1973 Kyoto International

Council Regulation 847/97 amending Annexes II and III to Regulation 519/94 on common rules for imports from certain third countries, O.J. 14.5.97 L122/1

HS/CN code 9503 30 (Other construction sets and construction toys of wood, plastic or other materials).

Ibid, art. 1, Annexes I and II.

Ibid, art. 2, Annexes III and IV.

Commission of the European Communities, '2nd Report from the Commission to the Council on the surveillance measures and quantitative quotas applicable to certain non-textile products originating in the People's Republic of China', COM(97)11 final, Brussels, 29.1.97, at 45.

Ibid, at 38.

Quoted in ibid, p 38.
To return to our model of the international toy commodity chain, the legal reforms thus fostered a transformation of the number of production units, an increase in their geographic dispersal, and potentially changes in the property and other arrangements linking various parts of the chain.

A sixth reform followed soon afterwards. Less than a month after the 1997 reform took effect, the Council once again adopted a further regulation. It abolished entirely, with effect as of 1 January 1998, the quotas of toys falling within HS/CN codes 9503 41, 9503 49, and 9503 90. It subjected these products (and continued to subject toys of HS/CN code 9503 30) to prior Community surveillance to ensure adequate monitoring of the volume and prices of imports.

This final step in our saga of legislative reform occurred in the context of – and contributed to – the transformation of the EU toy industry. By definition, therefore, it also affected the gradual restructuring of the global toy commodity chain, including factories in China. By 1996 the EU toy industry had already adapted its production structures and improved production quality to such an extent that, at least from the standpoint of the Commission and most if not all national governments, import quotas were no longer necessary. The EU’s restructured toy enterprises imported items that were no longer produced in Europe. As the Commission noted, ‘most manufacturers in Europe are also becoming importers of some items which may be necessary for them to keep their market share both in the EU and on export markers.’ EU producers were able to compete in foreign markets: exports of European toys outside the EU grew by a record 16.8% in 1996 while imports in the same year rose by only 3%. The European Commission ascribed this successful adaptation to law. In its view, the temporary protection assured to EU industry by Community quotas permitted the necessary restructuring. It thus also facilitated the redefinition of the role of these EU firms in the global commodity chain.

Changes in the organisation of political representation in the EU toy sector reflected these changes in the organisation of production and marketing. The first major peak association in the EU toy sector was the European Federation of Toy

---


105 It took effect on the date of publication, 14 May 1997: ibid, article 3.


107 Ibid, article 1 and Annex I.

108 Ibid, article 1 and Annex II.


110 Ibid, at 28.


Industries,\textsuperscript{113} founded in 1967. It comprised the national associations of the UK, France, the Netherlands, Germany, Italy, Greece, and Spain. In the early 1990s the UK association, together with the major multinational toy companies (Hasbro, Mattel, Lego, Tomy, Bandai, etc.) founded the Toy Manufacturers of Europe (TME). Greece and Italy also joined the TME, as did the German national association composed of larger companies. German producers of plastic toys, France, and Spain remained in a separate association, known as the Fédération Européenne des Industries du Jouet (FEIJ). The French and Spanish associations, however, began negotiations with the TME to form a single peak association. These negotiations culminated in 1997 with the merger of the TME and the FEIJ\textsuperscript{114} to form a new peak association, Toy Industry in Europe (TIE). It had essentially the same structure as the TME, with large firms having a major role, but also with representation of industrial unions, except for those of Germany which remained divided. Subsequently, the Greek association and the small associations of the Nordic countries also joined the TIE.\textsuperscript{115} As of February 1999, the co-presidency of TIE was held by the United Kingdom and Spain. The economic changes in the EU toy sector viewed as part of the global commodity chain thus were mirrored, more or less directly, in terms of industrial associations and political representation.

Since its formation TIE supported strongly the immediate and total abolition of quotas on toys. In its view, quotas represented an administrative burden, especially for small businesses,\textsuperscript{116} and in any event failed to restrict toy imports from China. Rephrasing this view, one might say that quotas were an obstacle to EU firms which sourced partly finished products from abroad, and thus prevented the successful operation of newly articulated global networks. In summary, both the European Commission and the main European trade association agreed by 1997 that toys from China should not be subject any longer to quotas. Instead they should be subjected merely to surveillance, requiring only an import license.\textsuperscript{117}

The abolition of quotas was, according to the preamble of the 1998 Regulation, neither inconsistent with the objective of taking account of the various interests in play nor liable to disrupt the Community market.\textsuperscript{118} In fact, it was the

\textsuperscript{113} Known in French as the Fédération Européenne des industries du Jouet (FEIJ) and in Spanish as the Federacion Europea del Juguete.

\textsuperscript{114} According to the Commission report, it represented national producers, not international buyers. The precise reasons for the merger of FEIJ and TME remain unclear to me. One possibility was that, despite quotas, it was too weak to be effective. Another is that Spanish and French producers went international: they linked up successfully with China, HK or other producer firms. A third possibility is that its members were integrated in the global commodity chain on some other terms. A fourth, not inconsistent possibility is that the merger resulted from increased US FDI in the toy sector in Spain and France.

\textsuperscript{115} I am grateful to Mr Salvador Miro Sanjuan, President of the AEFJ, for this information.

\textsuperscript{116} As to 1996, the EU had 2,000 companies in the toys and games sectors, employing over 100,000 people, of which 55,000 worked in indirect employment: \textit{ibid}, at 27.

\textsuperscript{117} On surveillance, see F. Snyder, \textit{‘International Trade’}, \textit{op cit} n 2, 154, 157.

\textsuperscript{118} Cf, preamble, second and third recitals of Council Regulation 1138/98 amending Annexes II and III of Regulation 519/94 on common rules for imports from certain third countries, O.J. 3.6.98 L159/1.
culmination of more than a decade of conflict between Member States and between competing firms. It also represented the temporary conclusion of diverse attempts by EU institutions to manage conflicting interests. These conflicts were inherent in the process of market building and market management in the European Union, partly because of the changes in the way in which the EU market was integrated into the international toy commodity chain. They began with the Chinese opening-up in 1979, the subsequent restructuring of the international toy industry, and the creation of new economic networks and the thin globalization\(^{119}\) of this sector of the Chinese economy. Changes occurred in the domestic and international interests in the sector, and the lines between the domestic and the international were not merely blurred but actually reconfigured. These changes were in turn expressed to some extent in legislative form. Just as the 1994 compromise legislation expressed the balance of interests at the time, changes in the structure of interests led to demands for changes in the law. The gradual legal reforms not only represented these new, changing configurations of interests; they also helped to crystallise and perhaps even to create new interests, especially with regard to the number and nature of units of production.\(^{120}\)

\(^{119}\) I am grateful to David Trubek for the expression 'thin globalization'.

\(^{120}\) Such a transformation is not unique to the EU. Chinese producers of traditional wooden and other toys are being ousted by international toy companies, such as Lego: cf, Turner, ‘The Fading Tradition of Tang the Toymaker’, *International Herald Tribune*, Friday, January 8, 1999, at 8. For an account of the heterogeneity of toy producers in China, see also the short story by Z. Xin, ‘Where Angels Dare to Tread’ [translated by Josephine A. Mathews], in *Contemporary Chinese Women Writers VI: Four Novellas by Zhang Xin*, (Panda Books and Chinese Literature Press 1998), 97-231.

\(^{121}\) On EU law, see F. Snyder, *International Trade*, *op cit* n 2, 83-103.
the existence and increased use of these customs rules as the legal basis for what has been called ‘the new international division of labour’.\(^{122}\)

The overarching international legal framework is provided by the International Convention on the Simplification and Harmonization of Customs Procedures, a veritable international customs code. It was first signed at Kyoto on 18 May 1973 and entered in force on 25 September 1974.\(^{123}\) An updated version was adopted on 25 June 1999 but has not yet been ratified by all parties.\(^{124}\) The Kyoto Convention is the fruit of the Customs Cooperation Council (CCC), founded in 1952.\(^{125}\) Since 1994, the CCC has been known since 1994 as the World Customs Organization (WCO). The WCO now oversees the implementation of the Kyoto Convention.\(^{126}\) Its supervisory functions began with the establishment of the CCC, whose initial raison d’être was partly to supervise the application and interpretation of the customs classification system known as either the Brussels Tariff Nomenclature (BTN) or the Customs Cooperation Council Nomenclature.\(^{127}\)

The WCO as of 1999 has 150 members. The EC Member States have participated since the beginning. However, membership is limited to states, and as a customs union, the EC formally has only observer status, even though the European Court of Justice has taken the view that the Community has replaced the Member States in commitments arising from the Convention.\(^{128}\) The US joined the CCC in 1970.\(^{129}\) Hong Kong and China are also members.

\(^{122}\) For case studies from an economic standpoint, see F. Froebel, J. Heinrichs, and O. Kreye, *The New International Division of Labour: Structural Unemployment in Industrialised Countries and Industrialisation in Developing Countries*, (trans. Pete Burgess) (Cambridge University Press; Editions de la Maison des Sciences de l’Homme 1980).

\(^{123}\) O.J. EC 1975 L100/2; Cmnd 5938.

\(^{124}\) The full text is available on the internet homepage of the World Customs Organization at [http://www.wcoomd.org](http://www.wcoomd.org).

\(^{125}\) 22 UST 320, TIAS No. 7063, 157 UNTS 129. After World War II various European governments, drawing on work previously accomplished under the auspices of the League of Nations, formed in Brussels a European Customs Union Study Group, including a Customs Committee. This led in turn to the Convention establishing a Customs Co-operation Council; the Convention was signed in Brussels on 15 December 1950 and entered into force on 4 November 1952.


\(^{127}\) The Nomenclature was adopted by the EC Member States and all other major GATT members except the United States and Canada.

\(^{128}\) Case 38/75, *Nederlandse Spoorwegen v Inspecteur der Invoerrechten en Accijnzen*, [1975] ECR 1439. The Community view is expressed either by the Commission or the Member State holding the Presidency of the Council of Ministers.

\(^{129}\) Though without adopting the Nomenclature. Together with the EC Member States and other countries, the US participated in the development by the CCC of a new classification system, the Harmonized Commodity Description and Coding System (the Harmonized System), which entered into
The WCO, which is based in Brussels, is virtually the sole international body concerned with the harmonisation of technical customs rules and practices. As currently constituted, its highest body is a Council, composed of the Directors-General of Customs from all Members. The Council is assisted by a Finance Committee of 17 Members and a Policy Commission of 24 Members. In addition, Technical Committees work in the areas of nomenclature and classification, valuation, customs technique, and origin. Council bodies at all levels are helped by a General Secretariat, headed by a Secretary-General, assisted by a Deputy Secretary-General and three Directors.\textsuperscript{130}

The tasks of the WCO are four-fold.\textsuperscript{131} First, it drafts and promotes new agreements, mainly concerning customs techniques. Second, it makes recommendations to ensure uniform interpretation and application of its existing conventions, notably with regard to the Convention establishing a Customs Cooperation Council,\textsuperscript{132} the Nomenclature Convention,\textsuperscript{133} and the Valuation Convention.\textsuperscript{134} These legal status of these recommendations is ambiguous, and probably not very important from the practical standpoint, but it has been suggested that their acceptance by contracting parties 'carries with it an obligation not to arbitrarily resile from the recommendations'.\textsuperscript{135} Third, the WCO acts as a conciliator in disputes between contracting parties. Fourth, it provides information and advice to governments in its fields of activity.

The Kyoto Convention is an unusual international agreement. Here I am concerned with the 1973 Convention, since the 1999 revised Convention has not yet been ratified by all Members.\textsuperscript{136} One commentator has described it as 'the equivalent

\textsuperscript{130} For further details, including a description of the committees, see the WCO website at \url{http://www.wcoomd.org}.

\textsuperscript{131} This paragraph is based on the WCO website at \url{http://www.wcoomd.org} and E McGovern, \textit{op cit} n 126, at 45-48.


\textsuperscript{135} McGovern, \textit{op cit} n 126, at 48.

\textsuperscript{136} References to the Kyoto Convention in the following paragraphs are therefore made to the 1973 Convention. The 1999 revised Convention is broadly similar in
of a whole series of agreements.\textsuperscript{137} The Convention consists of two Parts. Part I contains the Convention itself, including (a) text and commentary, (b) provisions concerning entry into force, (c) obligations of the contracting parties as regards notification, and (d) provisions concerning extensions. Part II comprises numerous annexes, including for example Annex E.6 concerning temporary admission for inward processing, Annex E.8 concerning temporary exportation for outward processing, and Annex F.1 concerning free zones. The number of annexes is not fixed once-and-for-all. Existing annexes may be amended, and new annexes may be added; this was the work of the Council's Permanent Technical Committee.\textsuperscript{138} These annexes contain the basic substantive rules. Each annex usually consists of an introductory summary, definitions of terms, standards, recommended practices, and notes. According to the terms of the Convention,\textsuperscript{139} standards are those provisions the general application of which is recognised as necessary for the achievement of harmonisation and simplification of customs procedures. Recommended practices are those provisions which are recognised as constituting progress toward the harmonisation and the simplification of customs procedures, the widest possible application of which is considered to be desirable. Notes indicate some of the possible courses of action to be followed in applying the standard or recommended practice concerned.

The Convention is open to signature by any State Member of the Council and any State Member of the United Nations or its specialised agencies.\textsuperscript{140} A State may become a contracting party by signing the Convention without instrument of ratification, by depositing an instrument of ratification after signing it subject to ratification, or by acceding to it.\textsuperscript{141} A State which does so must specify which annexes it accepts, and is required to accept at least one annex.\textsuperscript{142} A contracting party which accepts an annex is deemed to accept all the standards and recommended practices in it unless it enters reservations in respect of particular standards or recommended practices, stating the differences between its national legislative provisions and the provisions of the standards or recommended practices in question.\textsuperscript{143} States are not permitted to enter reservations against definitions. The Convention does not preclude the application of prohibitions or restrictions imposed under national legislation.\textsuperscript{144} At least once every three years, each contracting party bound by an annex is required to review the standards and recommended practices against which it has entered structure but not identical. The 1999 Convention contains slightly different annexes and adds a new Specific Annex H on Offences.

\begin{itemize}
\item \textsuperscript{137} McGovern, \textit{op cit} n 126, at 47.
\item \textsuperscript{138} Kyoto Convention, art. 6.
\item \textsuperscript{139} Kyoto Convention, art. 4.
\item \textsuperscript{140} Kyoto Convention, art. 11(1).
\item \textsuperscript{141} Kyoto Convention, art. 11(2).
\item \textsuperscript{142} Kyoto Convention, art. 11(4).
\item \textsuperscript{143} Kyoto Convention, art. 5(1).
\item \textsuperscript{144} Kyoto Convention, art. 3. This refers only to provisions of general application enacted either by the legislature or the executive and effective at the national level. However, it includes not only the standard exceptions but also restrictions imposed on economic or any other grounds: see the Commentary on Chapter II, Art. 3.
\end{itemize}
reservations and notify the Secretary General of the Customs Cooperation Council of the results of the review.  

The 1973 Kyoto Convention on the Simplification and Harmonisation of Customs Procedures had approximately 30 contracting parties; the number has increased to 114 for the 1999 revised Convention. For the present purposes, let us focus on the EC, its Member States, the USA, and China in relation to the 1973 Convention, Annex E.6 on inward processing, Annex E.8 on outward processing, and Annex F.1 on free zones. As of 1 January 1993, all fifteen EC Member States had ratified the Convention, but not all have accepted all of these three annexes. The EC was a contracting party, since a customs union was entitled to be a contracting party if its member states are also parties. The EC had taken advantage of this provision; but it does not have the right to vote. The EC had accepted Annexes E.6, E.8, and F.1, which entered into force for the EC on 26 September 1974. The United States had ratified the Convention and had accepted Annex E.8 on outward processing and Annex F.1 on free zones but not Annex E.6 on inward processing. China had ratified the Convention but had not accepted any of these three annexes. Chinese specialists considered Chinese legislation concerning the SEZs as not to be recognised under international law, and the European Commission considered it to be incompatible with the GATT. It remains to be seen how the 1999 revised Convention will develop after it has been fully ratified.

These legal provisions have encouraged and facilitated the geographical separation from production from invention, distribution, and marketing in the international commodity chain in toys. Since the early 1980s, however, Chinese legislation, both central and local, on Special Economic Zones has also had a direct

---

145 Kyoto Convention, art. 5(2).
146 Annex E.6 of the Convention concerns temporary admission for inward processing. It was adopted by the Permanent Technical Committee at its 81st/82nd sessions in October 1973. Subsequently, at its 83rd/84th sessions in March 1974 the Committee added a Note to Recommended Practice 43 (compensating products, or setting-off with equivalent goods). This Annex was incorporated into the Kyoto Convention by decision of the Council at its 43rd/44th Sessions held in Brussels on 10 June 1974. It entered into force on 6 December 1977, and, subject to certain reservations, it entered into force for the EEC on the same date.
147 Annex E.8 deals with temporary exportation for outward processing. It entered into force for the EEC, with certain reservations, on 20 April 1978.
148 Annex F.1 concerning free zones.
149 Annex E.6 on inward processing has been accepted by all EC Member States except Greece, Luxembourg, Portugal and Sweden. Annex E.8 on outward processing has been accepted by Denmark, France, Germany, Ireland, Italy, Netherlands, Spain, and the United Kingdom, but not by Austria, Belgium, Finland, Greece, Luxembourg, Portugal and Sweden. Annex F.1 on free zones has been accepted by Austria, Denmark, Finland, France, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, and the United Kingdom, but not by Belgium, Germany, Greece, and Sweden.
150 See Kyoto Convention, art. 11(7).
151 See S. Xiuping, C. Wen and L. Xiansheng, New Progress in China’s Special Economic Zones, (Foreign Languages P 1997), 54.
152 See European Commission, market access database available at (http://mkaccdb.eu.int/mkdb/chks).
influence on the concentration of production facilities. Chinese laws on foreign direct investment (FDI) and labour are of special importance. Most toy factories in China are located in the Shenzhen SEZ. Shenzhen rules on foreign direct investment (FDI) provide for Chinese-foreign joint ventures, Chinese-foreign contractual joint ventures, wholly foreign-owned enterprises, international leasing, compensation trade, and processing and assembling with materials and parts from foreign suppliers. Recently, however, the fact that labour costs in Shenzhen are higher than in the rest of Guandong Province, due partly to law, has encouraged toy companies to establish outside the SEZ, though still in Guandong.

In fact, however, this part of south China belongs a wider economic area which includes Hong Kong. Toy factories enjoy very close links with entrepreneurs in Hong Kong and often are part of Hong Kong companies. Production, distribution, quasi-political activities such as participation in trade associations, and often personal or family relations are closely intertwined. Chinese companies, such as Early Light in the Shenzhen Special Economic Zone, produce toys on outsourcing contracts for the world's biggest toy companies, not only Mattel but also Hasbro, Fisher-Price, and Ertl from the United States and Bandai and Tomy from Japan. These contracts are

---

155 Interview, Guangzhou and Shenzhen. It was reported that, as of 1996 the Barbie doll factories in China were the Meitei factory in Dongguan and the Zongmei toy factory in Nanhai, both in Guandong Province but outside the Shenzhen SEZ: cf, Tempest, ‘Barbie and the World Economy’, *Los Angeles Times World Report* [A Special Section Produced in Cooperation with *The Korea Times*], Sunday, October 13, 1996, at 3. In 1998, 800 small toy factories closed in Dongguan: ‘Chinese Toy Making’, *The Economist*, December 19, 1998, 95-99 at 98. This did not include Barbie doll factories.
156 See Willem van Kemenade, *China, Hong Kong, Taiwan, Inc.: The Dynamics of a New Empire*, (Alfred A. Knopf, Inc. 1997).
158 For a brief historical sketch, see ‘The tycoon’, *The Economist*, December 19, 1998, at 99. As of 1993, most of the 2500 registered foreign-funded businesses in the Shenzhen SEZ were small processing and assembly operators from Hong Kong: see G. T. Crane, ‘Reform and Retrenchment in China’s Special Economic Zones’, in Joint Economic Committee, Congress of the United States (ed), *China’s Dilemma’s in the 1990s: The Problems of Reforms, Modernization, and Interdependence*, (M.E. Sharpe 1993), 841-857 at 845.
often arranged and managed by Hong Kong-based entrepreneurs, who in addition to their role as middlemen sometimes run their own toy manufacturing company in China and are also prominent in the main Hong Kong sectoral trade association, Hong Kong Toys Council.\footnote{As of October 1996, the chairman of the Hong Kong Toys Council was Edmund K.S. Young, executive vice-president of Perfekta Enterprises Ltd., a leading Hong Kong toy: 'Barbie and the World Economy', \textit{Los Angeles Times World Report}, Sunday, October 13, 1996, 3. In January 1995 Mr Young was described as chairman of Perfekta and vice-chairman of the Hong Kong Toy Council: see \textit{Journal of Commerce}, Friday, January 1995. As of December 1998, the chairman was T.S. Wong, head of Jetta, a large toy maker in China: see 'Chinese Toy Making: Where the Furbies come from', \textit{The Economist}, December 19, 1998, 95-99 at 99. See also Hong Kong Toys Council, Federation of Hong Kong Industries, Members Director 1999 (Hong Kong Toys Council 1999).}

More than half of China's toy production is re-exported through Hong Kong.\footnote{BBC Monitoring Service: Asia Pacific, 14 June 1995, cited in Newton and Tse, 'Kids' Stuff', \textit{op cit} n 17, at 154. See also Hong Kong Trade Development Council, \textit{Practical Guide to Exporting Toys for Hong Kong Traders}, (Hong Kong Trade Development Council, Research Department March 1999).}

To the extent that power in the toy chain lies in Asia, it is based in Hong Kong.\footnote{In particular because of the location of branch offices, ownership of local intermediaries and the provision of services.}

For this reason, as well as to preserve maximum flexibility in a highly innovative and rapidly changing market, the production of toys for the export market usually takes place in wholly owned subsidiaries rather than joint ventures.\footnote{See Newton and Tse, 'Kids' Stuff', \textit{op cit} n 17, at 149-156; E. Tsui, 'Marketing Strategies of the Toy Industry in Hong Kong', unpublished MBA dissertation, University of Hong Kong, Hong Kong, 1988. As of 1995, OEM, including products made in mainland China, accounted for 75% - 80% of Hong Kong toy sales: see \textit{Journal of Commerce}, Friday, January 13, 1995.}

\section*{D Multiple Memberships}

Third, membership of one or more chains. Is a box located in more than one commodity chain? If so, how many? Do specific sites, including institutions, norms, and processes, create a structure of incentives so that a particular box tends to be inserted in more than one commodity chain? To what extent, and how, is this insertion of a particular box in different commodity chains encouraged or facilitated by the law? What role do law and other types of norms play in the management of relations between the different commodity chains in which a particular box is located?

Multiple memberships or the arrival into a box of a new entrant from another commodity chain may often lead to conflicts. For example, Mantua, the celebrated maker of collectors' model electric trains, stemmed from a small manufacturer of electric motors for model boats founded in 1926 by John Tyler, the namesake of Tyco Toys Inc. Mantua later merged with the Tyler Manufacturing Company, which was established by John Tyler to sell a new line of electric trains under the name of Tyco Toys. Subsequently it underwent two dramatic changes. First, in 1977, it split off from Tyco when new executives brought in by the company's largest shareholder, the Sara Lee Corporation, imported less expensive, less detailed model trains from
Asia. This followed the election of a new president and director of Consolidated Foods, the parent company of Sara Lee, who starting in the mid-1970s oversaw the globalisation of the company and its early diversification.\(^{163}\) Second, Mantua continued to produce very detailed historical model trains, but by 1997 much of its own manufacturing was also done in China. The number of its employees had shrunk from 400 during World War II to 25 in 1997.\(^{164}\) The internationalisation of Mantua’s own production and changes in its labour force reflected changes in toy production in Hong Kong and China.

A striking contemporary example of multiple memberships is the expansion of major toy companies into other related but potentially or actually distinct sectors, such as television, cinema, and the Internet. Mattel, for instance, started in 1945 as a small California toy manufacturer. Its great success, the Barbie doll, was launched in 1959. By 1998 the Barbie doll accounted for 33% of its sales, or a projected $1.5 billion; preschool and infant toys, such as Fisher Price and Sesame Street, accounted for 33%; and ‘Wheels’, including Hot Wheels, Matchbox, and Disney Entertainment, accounted for another 33%. Recently Mattel has expanded to more high tech toys and e-commerce.\(^{165}\) Another example is Tickle Me Elmo, heavily marketed during the 1996 Christmas season by Tyco Toys (since acquired by Mattel). This toy was invented by Ron Dubren of New York and Greg Hyman of Florida. Tyco, according to the inventors, recognised the key ingredient and packaging and marketing their product. For their work, the inventors obtained royalties of somewhat less than 5% of the manufacturer’s revenue. The largest share of the royalties went to Children’s Television Workshop, which owned the licence.\(^{166}\) Indeed the major toy companies spread like a web and onto the Web. To lesson its dependence on a few powerful traditional retailers, Mattel linked up with the Internet retailer eToys Inc\(^{167}\), from Santa Monica, California. It announced a goal of direct-to-consumer sales of $1 billion per year, including catalogs and Internet sales, some from Mattel’s own web site and some from online retailers such as eToys. In 1998 total toy retail sales were $23 bn, with eToys accounting for only $23.9 million. Now Toys “R” Us is also developing Internet sales.\(^{168}\) Sony recently unveiled robotic dogs, which can be trained either through remote control or through a computer programme.\(^{169}\)

\(E\) \hspace{1em} Property

Fourth, property arrangements. What property-like arrangements (such as use, ownership, management, control) are associated with the units of a specific box?


\(^{165}\) See the outline history of Mattel, in Leibovich and Stoughton, ‘When keeping us isn’t child’s play; Mattel to acquire Learning Co. as industry pursues digitally savvy children’, *The Washington Post*, Tuesday, December 1998, at D01.

\(^{166}\) Balog, ‘The untold toy success story: Elmo’s evolution is a surprise to those involved’, *USA Today*, Wednesday, December 11, 1996, at 1B.

\(^{167}\) The web page of eToys Inc is available at [http://www.etoys.com](http://www.etoys.com).


\(^{169}\) See Agence France-Presse, ‘No end of a dog’s life for robot pets’, *South China Morning Post*, Wednesday May 12, 1999, at 10.
Which sites of global legal pluralism are the most relevant to these arrangements? Which specific institutions, norms, and processes are determinative with regard to the arrangements in a particular site? Why? If different property-like arrangements prevail among the various units in a box, what institutions, norms, and processes encourage or tolerate diversity? How is such diversity managed?

Intellectual property is crucial to the international toy industry. The importance of brand marketing in the global commodity chain in toys is illustrated by two recent acquisitions by the leading buyer, Mattel. The first occurred in 1997, when Mattel bought Tyco Toys in the US for $755 million. According to Mattel, its sales mainly to girls could be complemented by Tyco’s ‘boy-oriented’ products. Previously Mattel led the toy industry in overall sales, and its acquisition of Tyco, previously in third place, gave it a comfortable margin. Mattel considered that its strength lay in brand-building, and that Tyco was under-marketed around the world. Only a quarter of Tyco’s sales were then generated outside the United States. As Mattel’s then chairman John W. Amerman stated, "The main attraction is Tyco has brands that we can take around the world." Tyco’s Matchbox toys were weaker in the USA than elsewhere, and its Sesame Street toys were beginning to be strong in China. Mattel’s aim, according to its then president-to-be Jill Bared, was to turn these products into global power brands. Mattel’s second important recent acquisition occurred in 1998, when it announced its plan to buy Pleasant Co., the USA’s second largest doll maker, for US$700 million. Mattel’s then and current President and Chief Executive Jill Bared announced that ‘We have acquired probably one of the blue-chip girls’ toy brands of all time’. Both purchases, as well as its earlier acquisition of Fisher-Price, were consistent with Mattel’s strategy of buying companies that were strong in the US domestic market but weak elsewhere. As securities analyst Margaret Whitfield of Tucker Anthony Inc. in New York said, "Mattel has always been looking for strong domestic brands that it can leverage through its global distribution network.’

It is not surprising, therefore, that a number of intellectual property cases have been brought by international buyers in Hong Kong courts. For example, Mattel, the manufacturer of Barbie dolls, sued Tonka Corporation in the Hong Kong High Court in 1991 for infringement of copyright. It alleged that the defendant’s Miss America dolls copied the Barbie dolls’ head sculpture and that its packaging infringed

---

170 See the Mattel internet home page at (http://www.snc.edu/bsad/bs485/apr1998/group8/history.htm).
171 Madore, ‘Mattel confident Tyco deal with pass antitrust scrutiny’, The Buffalo News, Tuesday, November 19, 1996, at 3D.
173 Gregory, ‘Mattel plans to buy Pleasant for $700 million: El Segundo firm would acquire the nation’s no. 2 doll marker as part of a strategy to cash in on foreign markets’ Los Angeles Times, Tuesday, June 16, 1998, at D.1.
174 Gregory, ‘Mattel plans to buy Pleasant for $700 million: El Segundo firm would acquire the nation’s no. 2 doll marker as part of a strategy to cash in on foreign markets’, Los Angeles Times, Tuesday, June 16, 1998, at D.1.
registered trade marks by stating that the Miss America doll’s clothes also fit the Barbie doll.\textsuperscript{175} Lego brought an action in 1995 against a small Hong Kong company that used the word ‘Lego’ in its business of publishing entertainment and football magazines. The defendant deleted the word ‘Lego’ from its name during the course of the the court hearing.\textsuperscript{176} On the whole, the Hong Kong courts have been favourable to such claims.\textsuperscript{177}

\textbf{F Labour}

Fifth, modes of labour control. What modes of labour control are found in each box? Which sites of global legal pluralism are most relevant, and why? Which specific institutions, norms, and processes are significant, and why? To what extent are different modes of labour control encouraged or facilitated by legal or other institutions, norms, and processes? Are there conflicts among different sites with regard to modes of labour control? If so, how are these conflicts resolved in institutional, normative, and processual terms?

So far as production is concerned, the labour law of nation-states is not the only relevant law, or in the case of China even the most important. For example, when Mattel acquired Tyco, analysts said that most of the layoffs would come from outside the United States, where Tyco had most of its operations.\textsuperscript{178} The externalities of the acquisition by one US company of another thus occurred mainly in China, where the applicable labour laws for such factories differed radically from those in the US. In fact, one empirical study of factory regimes in Shenzhen and Hong Kong, albeit in the electronics rather than the toy sector, concluded that the state was much

\textsuperscript{175} Mattel Inc v Tonka Corp, [1991] 2 HKC 411.
\textsuperscript{176} Interlego AG v Lego New Enterprises Ltd, [1995] 3 HKC 186.
\textsuperscript{177} See also Attorney General v Hondar Plastic Industries Ltd, [1976] HKLR 7630 (holding that drawings on which plaintiff’s production of toys was based do not need to have an element of artistry to qualify for copyright protection); Video Technology Ltd v Ors & AtariIncorporated & Ors, [1982] HKC 504 (allowing an appeal against interlocutory injunction to restrain defendants from dealing in any way with certain electronic games similar to Pac-man); Core Resources (Far East) Ltd v Sky Finders, [1992] 1 HKLR 193 (dismissing appeals against summary judgment for the plaintiff for a sum due in respect of a cheque dishonoured by the defendant after the plaintiff refused to respond to a request regarding its trade mark); Ocean Plastic Manufactory Ltd v TCA (Hong Kong) Ltd & Anor, [1993] 1 HKC 23 (refusing an application to introduce fresh evidence against a order restraining defendants from infringing plaintiff’s copyright in a ‘baby doll’ toy); Navystar (Nagai Shing) Industrial Co Ltd v Fairing Industrial Ltd, [1994] 3 HKC 670 (dismissing an application to strike out plaintiff’s statement of claim that it owned copyright in drawings of a toy compact disc player and that defendant had infringed the copyright); Lanard Toys Ltd v Winner Toys Manufactury Ltd, unrep., HCA No. A11340 of 1994, 18 November 1994, Cheung J (granting an interlocutory injunction requested by the plaintiff, who after acquiring the US trade mark from the original owner about 1982, marketed toy airplanes and helicopters worldwide under the name ‘Prop Shots’, to prevent the defendant from marketing identical toys bearing the brand name ‘Hot Shots’);
\textsuperscript{178} Madore, ‘Mattel confident Tyco deal will pass antitrust scrutiny’, The Buffalo News, Tuesday, November 19, 1996.
less significant than the social organisation of the labour market as a factor of control of labour and constraint on management.\textsuperscript{179}

The codes of conduct elaborated under the aegis of multinational companies and sector-specific trade associations may be much more important in practice than formal national or local legislation. The large toy companies, retailers, and trade associations have all adopted sector-specific codes of conduct which are imposed upon or recommended to their factories. Such codes of conduct have been described as 'typically book-sized documents that specify working conditions down to the dimensions of the medical boxes on the wall', and as 'changing China's toy industry more than anything else'.\textsuperscript{180}

One example is the Code of Business Practices of the International Council of Toy Industries (ICTI). ICTI was established in 1974 and incorporated under the law of New York. It is an association of toy associations, embracing manufacturerers and marketers. Its members, as of February 1999, comprised the toy associations of Hong Kong, China, the United States, Japan, Denmark, France, Italy, Spain, Sweden, and the United Kingdom, as well as Argentina, Australia, Brazil, Canada, Hungary, Korea, Mexico, Philippines, Taiwan, and Thailand. The general management functions of ICTI are performed by a president and a secretary, both currently held by Toy Manufacturers of America. English is ICTI's official language.

The ICTI Code of Business Practices, which was revised and approved on 1 June 1998, is a voluntary code of conduct containing specific operating conditions which members are expected to meet, for which members are expected to obtain contractor adherence in advance, and to which supply agreements with firms manufacturing on behalf of ICTI members are expected to provide for adherence. The operating conditions refer to labour practices and the workplace. As with other codes, it borrows from core labour rights set out in International Labour Organization (ILO) conventions, though it omits certain other rights from other ILO conventions, such as the right to organise and collective bargaining and freedom of association.\textsuperscript{181} The purpose of the Code is to establish a standard of performance, to educate and to encourage commitment, not to punish. The ICTI code of conduct makes elaborate provision for enforcement by the companies through contract. ICTI member companies are expected to evaluate their own facilities, as well as those of their contractors, and request that the latter follow the same with subcontractors. An annual statement of compliance with the Code must be signed by an officer of each manufacturing company or contractor. According to the Code, contracts for toy manufacture should provide that a material failure to comply with the Code, or to implement a corrective action plan on a timely basis, is a breach of contract for which

\begin{itemize}
\item The Economist, December 19, 1998, 95-99 at 99.
\item For a comparison of provisions in four major codes of labour practice with the provisions of ILO conventions, see ‘A Comparison of Provisions in Base Codes of Labour Practice’, available on the website of the Maquiladora Solidarity Network at http://www.www.web.net/~msn/3codeslg.htm. The four codes in question are the Code of Labour Practices for the Apparel Industry Including Sportswear (the Netherlands), the Ethical Trading Initiative (UK), SA8000 (US & UK), and the Fair Labor Association Workplace Code of Conduct (US).
\end{itemize}
the contract may be cancelled. Annexes to the Code provide guidelines for determining compliance; their applicability is to be determined by a rule of reason.\(^{182}\)

These codes have been adopted mainly as a result of pressure from non-governmental organisations (NGOs). For example, the Coalition for the Safe Production of Toys (Toy Coalition) has been instrumental in getting codes of conduct on labour practices adopted by associations of toy manufacturers and companies. The Toy Coalition was started by several Thai and Hong Kong groups in 1994.\(^{183}\) It was established in response to fires at a Kader toy factory in Thailand and at a doll factory in Zhili, China, and three other factory accidents in Shenzhen and the nearby area in 1993: 188 people died in the Kader fire, 87 people died and 51 were injured in the Zhili fire, and a total of 71 people died in the Shenzhen accidents.\(^{184}\) Various officials were sent to prison, and following an inspection tour by President Jiang Zemin and Foreign Minister Qian Qichen measures were taken to improve working conditions, such as monitoring the payment of the minimum wage. This concerned mainly small- and medium-sized Japanese, Taiwanese, Hong Kong, and South Korean factories. The workers in Western joint-ventures are reported to have had better conditions.\(^{185}\) In its campaign The Toy Coalition campaign was joined by other such groups, including the World Development Movement (UK), ICFTU, AFL-CIO (US), Trocaire (Ireland), Italian organisations, Workers Party (France), Asia Pacific Workers Solidarity Links, PSPD (Korea), Japan Citizens' Liaison Committee for the Safe Production of Toys (Japan), Indonesian groups, and the Maquila Solidarity Network (Canada).\(^{186}\) These NGOs thus constitute worldwide networks linking NGOs in Europe, the United States, Asia and other parts of the world, thus mirroring, to some extent, multinational corporations and affecting, conditioning, and helping to create the norms which are imposed by them.\(^{187}\)

182 This description is based on the ICTI Internet home page at http://www.toy-icti.org. The ICTI Code of Business Practices can be found at http://www.toy-icti.org/mission/bizpractice.htm.


184 In the Zhili case, workers choked to death because all exits were locked to prevent theft by workers. Safety regulations had been ignored, the electrician was not qualified, and the factory permit had been issued in exchange for a bribe: see W. van Kemenade, China, Hong Kong, Taiwan, Inc., (trans. by Diane Webb) (Alfred A. Knopf 1997) p. 179.

185 Ibid.

186 Asian Labour Update, 19.2.99, home page (http://www.freeway.org.hk/amrc/alu.html). For example, the Maquila Solidarity Network, based in Toronto, Canada, promotes solidarity with groups in Mexico, Central America, and Asia organising in maquiladora factories and export processing zones to improve working conditions. Its campaigns include The International Toy Campaign. See its website at http://www.web.net/~msn.

Despite their political origins, these codes of conduct reflect the organisation of power in the global toy commodity chain in three different respects. First, precisely because the dominant buyers are few in number, they are unusually susceptible to political pressure. Non-governmental organisations from various countries have successfully put pressure on the small number of powerful American buyers, and the national and international trade associations they control, to elaborate codes of conduct with regard to their mainly Asian workforce. Second, the dominant buyers, whose power rests on their control of brands and marketing, are able in effect to determine the content of industry-wide codes of conduct and then to impose them on their suppliers, at least contractually if not always in practice. Codes of conduct thus are analogous to multilaterally negotiated treaties which then are applied as standard-form contracts laid down by the leading firms in a particular market.\footnote{188} Third, power struggles within the chain occur latently and sometimes overtly between buyers and original equipment manufacturers. The main US buyers use soft law codes, essentially outside the legal system, as a way of ensuring their dominance over Hong Kong OEM and Chinese producers, while the latter struggle to develop their own ideas and designs in order to break out of their dependence on foreign buyers and foreign market niches.\footnote{189}

Based partly on the ICTI example, the Hong Kong Toys Council (HKTC) introduced a Code of Practice for the Toy Industry in July 1997. Although not legally binding, it serves as a reference, educational and promotional device for its members.\footnote{190} In fact, however, it is not clear whether it (or another such code) is widely adopted; if adopted, whether it is enforced; or even what enforcement and compliance might mean given that the Code is not legally binding and sanctions for non-compliance are inadequate. It may be hypothesised that such codes have been adopted by and apply more effectively in practice in joint venture between Chinese and western companies or in factories which produce for multinational buyers. It may also be hypothesised that codes of conduct may have little, if any, effect in factories which are wholly locally owned or produce entirely for local markets. But such a simple hypothesis, that the market for norms reflects the market for toys, is given the lie by the fact that even some companies which produce for multinational buyers


\footnote{189} Cf, *Journal of Commerce*, Friday, January 13, 1995. Conflicts are inherent in this relationship: see *Kader Industrial Co Ltd v Galco International Toys NV*, [1992] 1 HKC 36; *Galco International Toys NV v Kader Industrial Co Ltd*, [1996] HKLY 260. Nor is the relationship free from abuse: in 1996 a senior manager with Mattel Toy Vendor Operations Ltd was convicted in Hong Kong for soliciting and accepting rewards based on the value of turnover between his employer and a Taiwan textile manufacturer: see *Attorney General v Leung Kin Wai*, [1996] HKC 588. Even apparently straightforward international transactions are not free from risk: see *Toymax (HK) Ltd v Redsmith International Ltd*, [1994] 1 HKC 714 (holding that signing an order form by adding the words ‘as agent for overseas buyer’ was sufficient to indicate that no personal liability was assumed by the agent and dismissing plaintiff’s claim that defendant was liable for the contractual default by an associated company).

evaluate the code of conduct recommended by the HKTC and the U.S. buyer as a cost of doing business and decide not to adopt it. They consider that the items specified in a code of conduct are already dealt with by the U.S. buyer in its specifications to the extent that they are required for marketing the product in the United States.\(^{191}\)

Even if a factory has a code of conduct, effective implementation and monitoring thus remain crucial issues.\(^{192}\) At least in certain industries, pressure from critics and labour rights groups for effective enforcement of codes of conduct can prove effective. The Nike case is instructive. A Vietnam factory of Nike Inc. was criticised in 1997 for unsafe working conditions. By 1998 the company had improved its working conditions, and its earlier critic issued a report noting substantial improvements. In March 1999 the chairman of Nike announced that the company, based in Beaverton, Oregon, USA, would disclose the location of all its foreign factories and open them to independent monitors if competitors would agree to do the same. He also sent letters to universities with Nike contracts to enlist them to ‘ensure that licensed products bearing the names and logos of schools are manufactured under fair conditions’.\(^{193}\) Even the structure of the athletic footwear industry differs somewhat from that of the toy sector, both are buyer-driven commodity chains so this example may be instructive in demonstrating that action by independent researchers or labour rights groups can have an effect.\(^{194}\)

\(^{191}\) Interviews, Guangzhou and Shenzhen.


\(^{194}\) See also HKSAR v Wong Ying Yu & Ors, [1997] 3 HKC 452 (dismissing an appeal against conviction of disorderly conduct while staging a protest against the poor working conditions of labourers in the toy industry).
It also illustrates the way in which codes of conduct can be enforced through two complementary mechanisms. The first is the market, in which competing firms cooperate in mutually enforcing norms which impose costs on them all, even though one might expect these costs not to be equal and thus not to bear equally on all the affected firms. The second refers to institutions, such as universities, which are linked to manufacturers, by contract or otherwise, thus spreading the costs of effective enforcement to bodies outside the specific economic sector in question. Both of these devices transform an intra-firm code of conduct into multi-lateral sets of norms. Whether such a transformation is necessary depends in part on the structure of the sector concerned, including the buyers as well as the producers. In the toy sector, a similar multilateralisation may result from the adoption of codes of conduct by international (ICTI) and local (Hong Kong) trade associations together with effective economic and legal constraints imposed by the buyers on their factories. A third method of enforcement, which might potentially be used in conjunction with the others, is by means of international institutions such as the ILO. The ILO has been quite critical of privately negotiated codes of conduct and promoted the complementarity of private initiatives and international labour standards.

\[G\] Links within a chain

Sixth, links between the boxes within a commodity chain. How are the boxes within a particular commodity chain linked to each other? Which specific institutions, norms,
and processes create, sustain, or transform these links? What role do different sites of global legal pluralism play in linking different boxes? Is there any overall coordination of the boxes, for example by means of vertical integration, ownership of intellectual property, or control of distribution or retail markets? How is the discreteness of a particular commodity chain maintained, and what role does global legal pluralism play in this respect?

In buyer-driven commodity chains, such as that for toys, it is the downstream service activities of marketing and distribution which coordinate and drive the chain as a whole.\(^{198}\) Hence the importance of the internet, both as a tool for managing and coordinating the different sites and also as a form of retailing. Invention, design, and marketing tend to be more easily integrated in buyer-driven commodity chains than in producer-driven commodity chains.\(^{199}\) The conception of toys, intellectual property in brands, and control of marketing and distribution, now particularly via the internet, are therefore boxes of the chain in which competition is most fierce and attention to law most acute.\(^{200}\) In other words, the international commodity chain in toys, as with other goods, now depends fundamentally on intellectual property, contract, and the provision of services, including legal services.

**H Connections between economic relations and specific sites**

A seventh set of questions concerns specifically the connections between particular sets of economic relations (boxes) and specific sites of global legal pluralism. Do specific sites concern particular aspects of specific boxes? For example, do certain sites deal with labour control, others with financial arrangements, others with marketing, others with dispute resolution, and so on? How, and why? To what extent are particular sites important in governing the social organisation of the constituent units of a box even when the sites are not geographically proximate to the box, in other words when governance, economic processes, and territory are not congruent?

The lack of congruence between governance, economic processes, and territory can be illustrated by two examples. The first concerns EC environmental and health legislation. Greenpeace put pressure on EU institutions and national governments to ban all toys containing phthalates, an additive used to soften PVC products. As yet, however, no such EU legislation has been enacted. Nevertheless, the risk that such legislation might be enacted in the future has already changed the practices of some toy factories in China. Some factories consider it the major issue confronting Chinese exports of toys to the EU. Their international buyers instructed

---


\(^{199}\) Ibid.

them to substitute hard plastic for PVC. Some individual EU Member States have already banned imports of toys containing PVC or certain other substances, and these measures have affected toy production in Hong Kong and China. In the United States, the main buyers stopped using phthalates in certain baby products in early 1999, even though, as in the EU, there is no legislation prohibiting it; these business decisions will inevitably affect toy production in China.

A second example refers to toy safety. It exemplifies the interaction and potential incompatibility of norms, institutions and processes from two geographically discrete sites. The EC ‘toys directive’ provides that all toys sold in the EU must meet essential safety requirements and bear a ‘CE’ mark indicating conformity. It was revised in 1996 to be similar to current U.S. requirements, perhaps indicating progress towards mutual recognition and standardisation on toy safety requirements. Such requirements condition Chinese production of toys for export to Europe and the conduct of inspections in Hong Kong. But EU and US safety standards are not the only ones which apply to the marketing of toys produced in Hong Kong and China. In May 1998 the Swedish company Ikea was reported to be facing prosecution in Hong Kong for selling in Hong Kong a toy that caused the death of a boy in Europe; the toy met EU safety requirements but did not meet the more stringent specifications of the Hong Kong Toys and Children’s Products Safety Ordinance.

A third example concerns the European Court of Justice. In 1998 the European Court of Justice decided the cases brought by the UK and Spain in 1994 against quotas on imports of toys from China. I focus here on the United Kingdom case. The point of departure of the ECJ’s analysis was the principle of liberalisation of trade; the introduction of quotas was in its view an exception. The ECJ noted, however, that the abolition of quotas on imports was ‘not a rule of law which the Council is required in principle to observe, but rather the result of a decision made by that institution in the

---

201 Interviews in Guangzhou and Shenzhen Special Economic Zone, China.
202 See Hong Kong Trade Development Council, Practical Guide to Exporting Toys for Hong Kong Traders, (Hong Kong Trade Development Council, Research Department, March 1999), 51.
203 See Hong Kong Trade Development Council, Research Department, ‘Review and Outlook of Hong Kong’s Toy Exports’, Trade Watch, April 1999, at 6.
206 See Hong Kong Trade Development Council, loc cit n 203, at 7.
exercise of its discretion’. It remarked that more than 98% of the imports in question were liberalised before the contested Regulation was adopted, and that the quotas introduced by the Regulation reduced the level of Community trade by almost 50% for some of the toys in question. It followed its previous case law, however, in concluding that when assessing complex economic situations the Council enjoyed substantial discretion, including making findings of fact, and that the exercise of this discretion was subject only to limited judicial review. Similarly, in adopting new Community rules the Council was required to take account only of the general interests of the Community as a whole. The Court also held, following its Advocate-General on this point also, that the Council was entitled to do so by basing its evaluation on ‘the mere risk of disturbance’, and this could be deduced from the increase in Chinese toy imports. In other words, the judiciary will not substitute its evaluation of the facts for that of the legislator unless the legislator’s assessment appears manifestly incorrect in the light of the information available to it at the time of the adoption of the rules. The ECJ therefore dismissed the UK’s application for annulment.

This decision and that in the case brought by Spain were taken more than four years after the cases were brought, and more than two years after the Advocate-General’s opinion in both cases. In accordance with ECJ practice, the judgment was unanimous, but the length of time taken to reach it suggests that the form of unanimity masked the substance of deep disagreement. The ECJ judgment was a delicate compromise, as was the Council Regulation which had provoked the litigation.

The judgment represented a judicial compromise, articulated in the form of a unanimous judgment, which protected the integrity of a prior legislative compromise that was expressed in the form of a complex regulation. The compromise in this second-order sense, achieved by judicial deliberation, served to ensure the discreteness and integrity of the EC political process and to insulate it to some extent from the judicial process. A Member State, or other strategic actor, could not use litigation to upset or revise a complex political compromise.

This double-order compromise was intimately bound up with the definition of EU rules for the globalization game. These rules potentially concerned relations between market actors, relations between market actors and governance structures, and relations between different governance structures. But the ECJ did not address these issues directly. Instead, its judgment dealt with them indirectly, by emphasising the importance of judicial restraint in the face of politically sensitive Council legislation.

209 Ibid, paragraph 34.
210 Ibid, paragraph 44.
211 Ibid., paragraph 40.
212 Ibid, paragraph 55.
213 See ibid, paragraph 54.
214 Ibid, paragraph 62.
215 Ibid, paragraph 65.
216 Ibid, paragraph 87.
217 Case C-284/94, Kingdom of Spain v Council of the European Union, [1998] ECR I-7309. The Council was supported by the Commission.
Nevertheless, it had wider consequences. It ensured to some extent the integrity of the EU political process, insulating it from collateral attack by means of judicial review. It maintained a political space, structured to some extent by objective interests, populated by conflicts among subjective interests, and involving Member States, firms, trade associations, and EU institutions. This space was a political market, in which the EU economic market for toys, structured by the global toy commodity chain, was interpenetrated with the EU political market, with a supply of and demand for economic regulation and regulatory law. Both of these markets, at least in the United Kingdom case, were characterised by what Weber called the factual ‘autonomy’ of the propertied classes, that is, an asymmetry of property, information, power, and influence upon the Member States and thus the EU legislator. The double-order compromise of the ECJ judgment tended to insulate and enhance the integrity of this political space and strengthen its market-oriented normative order.

The ECJ judgment thus occurred in a highly political context, and was in fact highly political. Its main importance did not lie in a short-term economic impact. A judgment either way would probably have had only marginal financial effects on the distribution of resources among EU importers, producers, retailers or others that lost or gained as a result of the existence of quotas between the adoption of the Regulation and the date of the judgment. The primary significance of the judgment lay in articulating legal principles for the future and in its broader implications for the relationship between EU law and other institutional, normative, and processual sites.

The legal principles concerned the role of the EC legislator in dealing with foreign trade and inter-institutional relations within the EU, in particular between the Council and the European Court of Justice. Their broader implications referred to how much impact the international commodity chain could have in influencing EC legislation, both by means of its structural position and by direct and indirect pressure on national governments, the Commission and the Council. They also concerned the role played by EU law as part of global legal pluralism. The ECJ judgment sanctioned the integrity of the EU political process and thus the political and law-creating salience of market structure. It thus inserted global legal pluralism into EU law and EU law into global legal pluralism. On the one hand, it imported into EU law the institutions, norms, and processes of other global sites, for example regarding US intellectual property law or the organisation of toy production in the Chinese SEZ of Shenzhen. The latter were incorporated into EU economic, political and legal relations, not just as costs of international or local firms in the EU toy sector, but also as elements which contribute to create, consolidate or structure these relations and thus are an integral part of them. The ECJ judgment incorporated into the realm of EU law the norms produced by institutions and processes in other sites of global legal pluralism, in the manner of invisible legal transplants. On the other hand, the norms produced by the Council and the ECJ in EU legislative and judicial processes became part of the structure of the global commodity chain in toys. They conditioned, shaped and were integral to the decision-making calculus of strategic actors, including governments and firms, in this specific global economic network.

I Relations between sites and the chain as a whole

Eighth, relations between sites and the chain as a whole. What types of relationships, for example horizontal or vertical, competitive or cooperative, marked-based or state-based or convention-based, exist between the different sites that are relevant to a specific global commodity chain? Does any specific site concern the global commodity chain as a whole? To what extent does the plurality of sites provide an effective way of managing the chain as a whole? Would a single site or a small number of sites be more effective? What does ‘effective’ mean in this context? In other words, what are our criteria for evaluating the effectiveness of specific sites, and of the totality of sites which we call global legal pluralism, in the organisation and management of the chain as a whole?

Certain sites concern several parts of the chain or the chain as a whole. The most well-known example is the Uruguay Round agreements associated with the World Trade Organization (WTO). This includes the General Agreement on Tariffs and Trade (GATT), the General Agreement on Trade in Services (GATS), and the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS). For some time they have been important in regard to the international commodity chain in toys, even though the main producer, China, is not yet a WTO member.219

The GATT/WTO was a crucial conditioning element in the negotiation of the EU quota on toys from China in 1993-94 and the related litigation between 1994-1998.220 It also cast a long shadow with regard to future disputes, notably by holding out, to China and multinational companies ‘located’ there, the promise of new institutions, norms, and processes which would be available on eventual Chinese accession. When China joins the GATT, the firms located there will benefit from Article XI GATT concerning the general elimination of quantitative restrictions. The provision of services and the protection of intellectual property in brand names are likely to be affected by the eventual application of GATS and TRIPS. It may also be argued that the impact of the GATT on China is already real, even if China has not yet acceded to the WTO. Companies are already positioning themselves in anticipating of further opening up of China’s domestic market to imported toys and foreign toy retailers. One has only to note that in 1997, the same year it purchased a major competitor Tyco, Mattel launched Barbie in China.221

These examples do not of course mean that the WTO is the only site governing international trade. Nor does it necessarily mean that, from a sociological as distinct from a positivist law standpoint, international trade law norms are arranged in a hierarchical fashion, or that the WTO stands at the apex of an institutional and normative hierarchy. The examples do indicate, however, that the WTO affects many aspects of the global commodity chain in toys, perhaps more aspects than any other site. This, in turn, provides a social, economic, political, and cultural basis for the WTO’s claim qua institution to have a dominant position in international trade law, though not necessarily global law generally. It also tends to aliment institutional and


220 For detailed analysis, see F. Snyder, ‘Chinese Toys…’, *op cit* n 2.

221 See the history of Mattel on the company internet homepage at (http://www.snc.edu/baad/ba485/spr1998/group8/history.htm).
often individual support for the argument that international trade law is hierarchical in nature, with the WTO site at the top. Seen sociologically, such developments are processes, not yet acquired positions or states of affairs.

VI CONCLUSION

I have argued here that global economic networks are governed by the totality of strategically determined, situationally specific, and often episodic conjunctions of a multiplicity of institutional, normative, and processual sites throughout the world. The totality of such sites represents a new global form of legal pluralism.

The development of the global economic relations involved in the international toy industry owes much to corporate strategies. Such a view is consistent with the approach taken here, which privileges the perspective of strategic actors. But these strategies themselves have been pursued taking account of the framework of the law and other normative frameworks and have been elaborated by using them. They take place, are conditioned by, and have contributed to the development of global legal pluralism. To put it more accurately, the development of global networks in the toy industry has occurred in conjunction with the development of a variety of structural sites throughout the world, each of which comprises institutions, norms, and dispute resolution processes.

One facet of this argument deserves special emphasis. Not only have strategic actors used the law and been shaped by it. They have also been absolutely fundamental in determining which institutional, normative, and processual sites have seen the light of day, which have flourished and developed, and which have withered and even died for lack of clients. They have also influenced profoundly the development of sites, so that some have taken on more or less judicial and legal characteristics, while others have not. These strategic actors include governments, businesses, and other organisations and sometimes even individuals. It is surprising, therefore that the standpoint of strategic actors is often given such short shrift. Legal scholarship often focuses exclusively on institutions and seeks to reconstruct the system, if any, in which these institutions are, or are assumed to be, embedded. Such a perspective is useful in tracing the elaboration of legal doctrine. I would argue, however, that, it is not the most fruitful if our aim is to understand how legal institutions and other institutional, normative, and processual sites are created, develop, and operate in practice.

This scenario embraces but is not limited to EU law. Using the example of the international toy industry, I have tried to show how the EU site, with its own specific characteristics, fits into this broader picture, drawing on and contributing to the life of the other sites of global legal pluralism. Before the more detailed analysis, I sketched the relationship between global legal pluralism and legal economic networks. This order of presentation was intentional: it was intended to jolt us out of our usual way of seeing the EU institutions, including the ECJ, solely in their own terms, in the EU

\[222\] Though of course these strategic actors are not the only cause of judicialisation and legalisation.

framework, and without placing them in any wider context. Our preconceptions, based on previous knowledge and limited experience, frequently prevent us from seeing precisely how the EU fits into this broader picture, or from grasping the implications of EU institutions, norms, and processes for other parts of a complex system of global legal pluralism. I have tried to use the organisation as well as the content of this paper to some extent to correct our otherwise limited vision. Viewed from the standpoint of economic actors, that is from the standpoint of decision-makers in economic organisations, EU law appears not as a discrete, bounded, and isolated legal system, but rather as a bunch of elements in (or on) the global legal playing field. Consequently, it is not possible any more to grasp how it operates in practice, or to understand it theoretically, without situating it within the sets of relationships that constitute this broader arena.  

Taken together, these different but interwoven sets of norms which comprise global legal pluralism amount to a novel regime for governing global economic networks. They are, however, less a structure of multi-level governance than a conjunction of distinctive institutional and normative sites for the production, implementation and sanctioning of rules. In the specific case of the toy industry, they testify, in part, to the structure of authority and power within these inter-firm and intra-firm networks, which are characterised by a buyer-driven, rather than a producer-driven, governance structure. These new normative forms for governing global economic networks are among the reasons why the United States, EU, and Chinese firms and economies are so intimately linked in the internationalised production and distribution relations which are characteristic of globalization.

From this discussion we can derive several more specific hypotheses.

First, global legal pluralism is a way of describing the structure of the sites taken as a whole. Seen from the perspective on a specific global commodity chain, global legal pluralism may be described as a network, even if some segments of the network may be occupied alternatively by two or more possible sites.

Second, the sites of global legal pluralism may be classified provisionally into two rough categories. Some sites are market-based, being generated by economic actors as part of economic processes. Some are polity-based, in that they form a part of established political structures; this includes sites which are convention-based, deriving from agreements between governments. This classification scheme distinguishes between different types of sites according to their mode of creation.

Third, the various sites differ in decision-making structure, that is, in their institutions, norms and processes. They vary in the extent to which their institutions, norms, and processes are inserted in a hierarchy. They may differ in their reliance on case law, the use of precedent, and the binding force of norms and decisions: in other words, in in respect of those characteristics which are often associated with law. These factors affect the outcomes of the various sites, including the different ways in which they allocate risk. At the same time, however, it is important not to overlook the extent to which sites are interrelated, for example in relation to institutional arrangements such as jurisdiction, copying or borrowing of norms, and the interconnection of their dispute-resolution processes.

Fourth, the sites are not all equally vulnerable to economic or political pressures. It is going too far to say that the network of global legal pluralism which is put into play by the economic processes of any specific global commodity chain reflects the structure of authority and power in the global commodity chain in question. Some types of institutions, some types of processes, and some types of norms are more permeable to economic processes than others. It should also be noted that in cases of political conflict, for example between NGOs and multinational buyers in the international commodity chain in toys, the struggle between the competing groups is not limited to a single site. Each of the groups may invoke institutions, norms, and processes of different sites. This may lead to a wider conflicts between different sites, including conflicts of effectiveness and even of legitimacy.

Fifth, it has been argued recently that the world economic system is entering a new polycentric phase, and that there is no reason to assume Western business practices and Western law, for example concepts of rule of law, will remain dominant. This contrasts with Garth and Dezalay’s view that, while guanxi still flourishes, formal law is playing an increasingly important role in Hong Kong and throughout China, especially because trade has fostered more relations between Chinese and non-Chinese. The material presented in the present paper does not really support Appelbaum’s thesis. It suggests instead that different sites may involve different legal cultures and sets of social relations, sometimes in relative isolation from historically different ones, but sometimes in complex hybrid forms.

Sixth, specific sites are affected by conflicts between economic organisations occupying the same box in a global commodity chain. For example, conflicts over markets may pit foreign producers, exporters and importers, on one hand, against domestic producers, on the other hand. Conflicts over markets also occur between companies occupying similar positions in the chain. The occupants of each of these segments try to enlist the norms, institutions and processes of the various sites of

---


226 Dezalay and Garth, op cit n 51, at 261-266.

global legal pluralism to improve their position, not only vis-à-vis their direct competitors but also in relation to the occupants of other segments of the global commodity chain. These conflicts involve and have important implications for sites. The most well-known example is the production of case law and the development of legal doctrine. We need to pay more attention to how such conflicts arise, unfold, and are resolved because they are often crucial determinants of the developmental paths of the institutions, norms, and processes of various sites.

Seventh, these sites are not always, or even usually, alternatives in dispute resolution, as might be expected if one presumes that the norms governing global economic networks are ordered in a hierarchical arrangement. Instead, each site deals with, governs, or seeks to govern a discrete part of the global commodity chain. Once a chain is established, its activities are governed by a given set of rules, emanating from a variety of linked sites, except to the extent that normal conflicts of law rules, that is, private international law, allows firms a choice of governing legislation or a choice of dispute resolution.

Eighth, taken as a whole, the various sites are not all necessarily hierarchically ordered in relation to each other. Instead, they demonstrate many other types of interrelationships, sometimes hierarchical, sometimes not, sometimes competing, sometimes collaborative. In other words, even when viewed very broadly, they do not make up a legal system. This contrasts strongly with the usual lawyer’s view of the multi-level governance of international economic relations. The latter is a normative view. Here I have tried to develop a more sociological perspective.

These broad hypotheses need to be tested. In addition, numerous questions remain to be addressed by future research. For example, how are sites created? How are they constituted, developed, and legitimated as sites? Which sites have a specific geographical location, and if so, why? What determines the modes and organisation of dispute resolution? What decision processes are involved? Do sites vary in their resemblance to state law (insertion in a hierarchy, reliance on case law, binding decisions, use of precedent, etc.), and why? To what extent do the norms of a particular site combine hard law and soft law? To what extent are sites interconnected, and how are they connected? How are groups, hierarchies and networks of sites created, and how if at all are such processes connected to economic and political relations? Do certain sites tend to converge or become more uniform in their institutional characteristics, norms, or dispute settlement processes, and why? How do conflicts between sites arise, what are the consequences of such competition, and how are conflicting institutional, normative, and processual claims handled? The answers to these questions will help us to understand further how economic globalization is governed.

---

228 For example, it has been argued that ‘the construction of international issue networks and global policy arenas does not constitute a reduction of the scope of interstate politics but rather its pursuit by other means’: Picciotto, ‘Networks in International Economic Integration: Fragmented States and the Dilemmas of Neo-Liberalism’, (1996-97) 17 Northwestern Journal of International Law and Business 1014 at 1037.