

Mathews, Rohan Dominic

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## Trade unions, labour governance and economic upgradation in value chains: Framing intervention amidst emerging human rights due diligence frameworks

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# ► Trade Unions, Labour Governance and Economic Upgradation in Value Chains

Framing Intervention Amidst Emerging Human Rights Due Diligence Frameworks

Author / Rohan Dominic Mathews





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## Abstract

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The paper examines possible mechanisms for trade union engagement in global value chains, especially in the context of emerging human rights due diligence frameworks. By examining existing literature on value chain analysis, trade policy, and governance mechanisms, the paper tries to generate a discussion on possible methodologies and knowledge gaps on trade union intervention and decent work in global value chains. The paper examines economic and social upgradation pathways based on available knowledge on skills, labour processes, job profiles and wages. It seeks to open discussions on how global governance forms like national legislation, legal systems and courts, framework agreements, trade agreements, multilateral governance, international human rights and labour conventions can converge with a deeper understanding of economic processes and logics of production and value-addition in GVCs. The paper seeks to position trade unions as effective agents for knowledge-generation and compliance monitoring when it comes to due diligence.

## About the authors

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**Rohan Dominic Mathews** is an independent researcher based in Mumbai, India. His work extends to labour rights, international trade, energy policy and digitalisation. His email contact is: rohanmathews17@gmail.com

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## Acronyms

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ACFTA	ASEAN-China Free Trade Agreement
ADB-MRIO	Asian Development Bank Multi-Regional Input-Output
BWV	Better Work Vietnam
CEACR	Committee for Experts on the Application of Conventions and Recommendations
CSDDD	Corporate Sustainability Due Diligence Directive
CSR	Corporate Social Responsibility
DEPA	Digital Economic Partnership Agreements
EPZ	Export Processing Zones
EU	European Union
FTA	Free Trade Agreement
GFA	Global Framework Agreement
GSP	General System of Preferences
GVC	Global Value Chain
HRDD	Human Rights Due Diligence
IFC	International Finance Corporation
IFIs	International Financial Institutions
IoT	Internet of Things
IP	Intellectual Property
IPEF	Indo-Pacific economic framework
ISO	International Standards Organisation
IT/ITes	Information Technology/Information Technology Enabled Services
KPO	Knowledge Process Outsourcing
OBM	Original Brand Manufacturing
ODM	Original Design Manufacturing

OEM	Original Equipment Manufacturing
OECD	Organisation for Economic Co-operation and Development
OSH	Occupational Safety and Health
PICC	Performance Improvement Consultative Committee
PTA	Preferential Trade Agreements
SCM	Supply Chain Management
SEZ	Special Economic Zones
TiVA	Trade in Value Added
TTCU	Tamil Nadu Textile and Common Labour Union
UNCTAD	United Nations Conference on Trade and Development
USTR	United States Trade Representative
WTO	World Trade Organization

## ► Introduction

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The European Parliament recently approved the *Corporate Sustainability Due Diligence Directive* (CSDDD). The directive requires firms operating in the European Union (EU) "to prevent, end or mitigate their adverse impact on human rights" (European Parliament 2024). These requirements—containing binding provisions—extend to European and non-European firms operating in the EU as well as their partners and suppliers across supply chains spread across the world. The directive clearly aspires to "integrate due diligence" into corporate policies and business decisions in the coming years, building accountability around human rights and environmental standards. Similar due diligence requirements have gradually entered the legal lexicon in many countries in the global North in recent years<sup>1</sup>, recognising the global nature of production, distribution and consumption, especially the role of supply chains or Global Value Chains (GVCs)<sup>2</sup>. These elaborate networks consisting of multinational enterprises (MNEs), suppliers, subcontractors, and other intermediaries are crucial to enabling the conception, production, movement and consumption of raw materials, goods (both intermediate inputs and finished products) and services across national borders. They have become important entities in the global economy, with some estimates suggesting that they account for almost 70 percent of global trade (OECD 2022).

Moreover, several persons across the world find employment in supply chains, with estimates in 2013 indicating around 453 million jobs<sup>3</sup> (ILO 2015a) and recent estimates estimating 75 million jobs in Southeast Asia, alone (Viegelahn et al 2023). These jobs in sectors like agriculture and textile are characterised in many instances by low wages, precarious employment relationships and poor working conditions. However, the recent *World Employment and Social Outlook 2023* observed a tendency for jobs—in supply chains linked to foreign demand in particular non-agricultural sectors—to have a greater tendency of formal work arrangements (ILO 2023). The implication is that as countries integrate into global supply chains or global value chains, some level of social upgradation of workers is taking place in emerging economies. Meanwhile, women who form an important part of the workforce, quite often occupy the lower-skill functions in supply chains especially in the textile and apparel sector. In the apparel sector, estimates suggest that women constitute 75 per cent of the workforce in Ethiopia, 65 per cent in Haiti and 77 per cent in Sri Lanka (World Bank 2020). However, women's participation in the global supply chain workforce has mixed outcomes showing wage gaps and poor working conditions with some instances leading to improved education outcomes.

Operating in sectors like agricultural and allied food products, electronics, garments, automobiles, jewellery, IT services among others, global value chains (GVC) emerged when lead firms in the global North moved to offshore production sites with the intention of introducing flexibility in production, reduced costs and increasing profits. This flexibility includes their mobility and capacity to shift locations, change technologies, have temporary workforces, and cater to buyer demands in different parts of the world. An elaborate network of intermediaries, including logistics and transportation operators in different locations facilitate the movement of components and products at quick pace across geographical distances. Several layers of actors operate at different levels of technical complexity and labour productivity, whether those that procure raw materials, or those involved in low-tech and high-tech manufacturing, to those involved in brand

<sup>1</sup> Germany, France and the United Kingdom are among countries that have tried to bring in laws that deal with MNEs and their operations worldwide, from a labour and human rights perspective.

<sup>2</sup> The distinction or nuances of these terms will be discussed later, but for most of the paper they will be used interchangeably depending on the sources that are included.

<sup>3</sup> The estimate is for 40 countries where data was available.

design, or business operations like sales and marketing. Hence, there are different levels and processes in the GVC hierarchy. These levels are distinguished by the value added to the final product and provide different trajectories for economic upgradation. Hence, firms and countries are aware and aspire to economic upgradation and to having a higher level in the value chain.

Moreover, the expansion and operation of GVCs has a lot to do with a shift in the international trade regime. GVCs rely on the easy movement of goods and services across borders with clear rules and facilities. The creation of the World Trade Organizations (WTO) in 1994 and the proliferation of bilateral and multilateral free trade agreements (FTAs) contributed to the emergence of GVCs. Further, the trade agreements moved beyond merely engaging with tariff rates and included issues like investments, property rights, labour standards and competition policy (Azmeh 2019). Labour standards have consistently been one of the weaknesses of the GVC regimes, which has prompted their inclusion in FTAs by concerned parties. However, inclusion of labour provisions has not necessarily translated into mainstreaming social dialogue mechanisms that include workers organisations and representatives.

Hence, a conversation on GVC governance should address the uneven regulatory regimes at the national and regional levels, the emerging trade regimes, as well as the complex production pathways and economic upgradation trajectories firms and countries aspire to. Labour governance, specifically, is caught in the complexity of jurisdiction, but there exist several public, private, social and multilateral modes of governance that acknowledge and provide means to achieve decent work goals. These include a range of social partner initiatives like global framework agreements, international instruments like the ILO tripartite declaration on Multinational Enterprises (MNE declaration) or the United Nations Guiding Principles on Business and Human Rights (UNGPs) (ILO 2016). While these provide some sense of the national and multilateral arenas where labour standards are spelt out, discussed and implemented, the penetration of social dialogue and trade union penetration in many of these processes is limited.

The EU directive attempts to integrate due diligence into the business rationality of MNEs operating in GVCs. This fine line that links social upgrading and competitiveness needs closer scrutiny, especially through a lens that foregrounds social dialogue. How can decent work goals and international labour standards engage with existing patterns of economic upgradation. The ILO's centenary declaration for the future of work recognises the diversity of "work arrangements, production and business models" in supply chains (ILO 2019). Examining sustainability and economic value creation in supply chains requires disaggregating diverse economic practices and identifying structural locations of workers (and potentially the role of trade unions) within these practices. More importantly, how can trade unions and social dialogue mechanisms be an important part of this emerging due diligence infrastructure. As consciousness towards a green transition and the need to embed human rights due diligence into business operations gather momentum, trade unions are important actors because they represent a very crucial pivot in the global arena—workers. Corporate sustainability directives address the need to integrate human rights into the paradigm of market competitiveness. In simple words, there is an attempt at integrating non-market rationales into market behaviours. This cannot be achieved through regulatory bureaucracies alone but need a robust communication and dialogue strategy. Trade unions become essential actors to achieve this. They represent the essential link that has always historically attempted to embed market relations into social realities. This unique position needs to be harnessed in the current context. The paper is an attempt at engaging with the multiple facets of this.

## ► 1 What's in a Name? Situating Terminology and Concepts

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The academic literature contains a variety of terms that refer to supply chains operating in transnational contexts in the latter half of the 20<sup>th</sup> century. Dealing with the operations of Multinational Enterprises, terms range from global commodity chains (GCC), global production networks (GPN), global supply chains (GSC) or global value chains (GVC). Global commodity chains (GCC) theorists use the term when referring to the “network of labour and production processes” that ultimately result in a finished commodity (Ponte et al 2019). Their studies —based on long duration field-work in specific countries in the global south— examine different factors that influence production and how labour was deployed across countries. The focus is on understanding inter-firm behaviour while studying state incentives and policies that are used to attract and streamline investments. GCC researchers were interested in understanding the perception that MNEs were increasingly influencing national governments and becoming prominent actors in determining national economic and labour policy. Meanwhile, the term Global Production Networks (GPN) builds on discussions around GCCs and value chain research but moves beyond the MNE in the national context. It studies the broad range of stakeholders that are important to production processes, whether they include international agencies (UN Agencies), NGOs, trade unions, employer associations, governments and multi-stakeholder initiatives (Ponte et al 2019). This includes acknowledging that as globalisation becomes a more concrete reality, goods and services moving across borders are no more restricted to traditional commodity trade, but also very much redefining production on the ground in many countries. There are overlaps between GCC and GPN theorists in many ways, considering that they both acknowledge the sequence of processes that allow different inputs to eventually transform into a finished product. But there is a deeper engagement with transnational governance structures in the latter, as opposed to the former which tries to understand economic processes from the perspective of national institutions and inter-firm connections. While certain structures of supply and demand are explored in both these theorisations, their primary interest is to examine the different behaviours of actors when embedded in national, regional and global contexts.

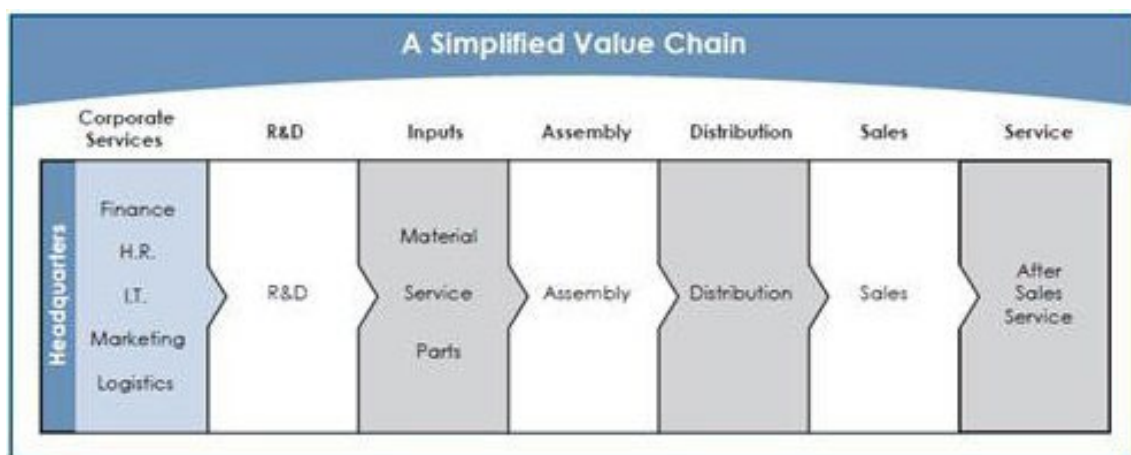
Another approach looks at how different parts of the value chain contribute to generating value that eventually gets realised in the price that a final consumer pays for the finished product. The distribution of value along the supply chain tells us the relative economic position of different actors. Michael Porter in his book *Competitive Advantage* (Porter 1985) discusses value chain analysis. He studied how activities of a firm can be broken down into the “building blocks by which a firm creates a product valuable to its buyer” (Porter 1985, 37-38). Different departments in a firm like logistics, operations, marketing and sales, and service, along with firm infrastructure, human resources, technology and procurement coordinate and add value at different points. The firm is operating in a competitive environment and has to sustain profitability. This profitability is consistent with lowering costs so that they are lesser than the value a consumer is willing to pay for a product. Therefore, several strategies of differentiation and cost-adjustment are important to sustain productivity. The idea that the lowest value product is necessarily the most likely to succeed is challenged, since a variety of core activities and support activities go into creating value for the consumer. As an example, effective promotion strategies and quality standards for a food marketing chain could add value and hence make it more competitive.

By breaking down the value chain activities into the specific economies (referring to a range of inter-firm and intra-firm processes) and technologies, one can make sense of the processes and

people involved—in terms of their value-addition—from conception to end-use by the final consumer. For example, when looking at a particular production activity, one studies how raw materials are procured, what is the nature of the workforce and resources deployed at each level of production, the level of technology, as well as the maintenance functions. All of these emerge from separate departments (and locations in the case of global value chains) with possibly distinct logics that may appear to converge in the final product. These different parts are then seen in terms of their relative contribution to the final price that a consumer pays. This helps in making sense of the relative hierarchy of production relations in terms of value.

To give an illustration, see figure 1. Several facets of a simplified value chain are shown<sup>4</sup>. This provides a linear sequential model, with those stages that follow being referred to as downstream activities and those prior as upstream activities. At each level, firms operate with particular resources as well as labour, within a regulatory environment. Each stage would have a particular logic of deploying these resources, utilising labour as well as engaging with regulatory frameworks that exist. However, what is important in this assessment is that when we get a sense of the value contributed by each stage to the final product, we can get a sense of what pathways for economic upgradation are possible, and what resources and structural changes could assist in this direction, as well as what avenues for social upgrading of workers in these segments can be realised. For example, in figure 1, assembly of the intermediate inputs may not require high-skilled labour with limited technology, while the inputs that are produced for assembly could generate higher value for the specialised skill required.

► Figure 1: Source: reproduced from (Trade Commissioner Service, 2010)



Likewise, if we assume that procuring raw materials, manufacturing, sales and marketing would show an increasing gradient in terms of value-added, we may see that the research & design of the product prior to raw material procurement, which is an upstream activity (as it occurs before procuring raw materials, manufacturing etc) may be contributing a major share to the value. In this case, we may realise that Intellectual property (IP) rights that are a source of value consisting of the design and the brand—and are largely concentrated in the global North countries—are an important factor in creating a value-addition unevenness. Based on this, exploring governance along these chains would lead us to the reality that trade agreements have stringent criteria regarding transfer or protection of IP, which could further ossify these uneven structures and

<sup>4</sup> (ILO 2016a, para 27) also provides an illustration on supply chains in manufacturing that include design, production, manufacture and coordination of components, followed by several stages of distribution, retailing and marketing.

place limits of economic upgradation. Therefore, value chain analysis gives us a realistic sense of relative pathways and locations in terms of economic and social upgradation.

In this context, the Global Value Chain (GVC) framework that emerges from the initial work by Gereffi and others tries to breakdown the complicated network of activities that go into making the end products, across a larger geographical area. By including a governance and regulation component when analysing complex value chains, one can get a realistic and grounded sense of the “process of value creation”. The link between the economic logic that underlies upgradation and competitiveness can be mapped along with regulatory requirements and possibilities. By creating maps across national boundaries of value chains, addressing key regulatory challenges that exist at each level— as well as the opportunities that emerge for different actors especially trade unions— we can explore ways in which global competitiveness can be integrated with the recent surge in due diligence requirements. For example, if small and medium enterprises are unable to upscale due to limited educational institutions providing skill development, then the regulatory environment is creating a bottleneck in economic value creation.

Combining Porter and Gereffi’s methodology, we can identify a wide variety of value-generating activities across different value chains spread across different locations. Furthermore, while Porter’s methodology gives us a sense of how is it that competitiveness can be generated at the firm level through cost-management and differentiation strategies within firms, Gereffi’s emphasis on engaging with modes of governance could generate specific goals and objectives for intervention. The framework the paper explores is that of the GVC as a composite set of value-adding activities that produce a finished good that is sold to a consumer. Through the paper, the use of terms like “value chains” and “supply chains” may take place interchangeably, but the framework is that of value-addition, and not the merely the logistics-centred movements (transport, storage and logistics networks) understood through classic notions like supply chain<sup>5</sup> management (SCM). SCM as an approach is more concerned with managing and facilitating the processes through which a product is physically brought to the buyer<sup>6</sup>.

The level at which a firm is situated in the value chain has a bearing on the employment prospects. At a more macro-policy level this can be identified through participation of firms/sectors within countries in backward and forward linkages. Backward participation or linkages refers to the range of imported inputs that are part of a country’s exports. In other words, the intermediary inputs used for exports come from an earlier stage in the value chain. Forward participation is the converse of this, where a country’s export feed into inputs for further export from a country downstream in the value chain. Most countries and firms are involved in complex backward and forward linkages (World Bank 2020,18). These terms are useful in terms of marking levels or stages in value chains and can sometimes be useful to make sense when we talk about economic upgradation (ILO 2015a, 140-141).

Mapping backward and forward linkages with micro-level or sector-wise job roles and functions gives us a sense of employment profiles and possible upgradation trajectories. Value chain analysis supplies us with “job descriptions, technologies, standards, regulations, products, processes, and markets in specific industries and places”, giving us a sense of the dynamics of value creation

<sup>5</sup> Supply chains understood as the movement of goods across borders is very much part of the discussion, but global value chains are a broader concept that include supply chains.

<sup>6</sup> This is an important factor in determining competitiveness geographically spread-out supply chains, where lowered logistics, storage and transport costs have a significant bearing on costs. However, SCM actors including logistics and transportation industries are quite often involved in elaborate transnational networks, which is outside the scope of this paper. This does not mean that their contribution in generating value in inter-firm linkages can be downplayed, but the current focus will try and look at these value-inputs through the firms, itself, and not through SCM linkages, alone. This would require a separate analysis.

across these import-export linkages (Fernandez-Stark and Gereffi 2019, 54). Hence, through this framework we can make sense of processes and products —both intermediate and finished— as they move through the supply chain across firms and borders, alike.

Discussions among Global Commodity Chain (GCC) theorists in the early part of the 21<sup>st</sup> century look at the different pathways industrial upgrading takes place and how this opens possibilities for firms. The core focus is on firms and their ability to improve or worsen their situation vis-à-vis the global value chain. Taking the example of the garment sector, (Bair and Gereffi 2003) refer to what they call the shift from assembly production to full production. At an earlier stage, lead firms place orders to offshore suppliers. The lead firm manages the assembly of final products, which limits the role of offshore suppliers. However, moving from this restrictive production setting to what is referred to as Original Equipment Manufacturing (OEM) and Original Brand Manufacturing (OBM), where the lead firm becomes a buyer, and the supplier is primarily responsible to meet the buyer's requirements. The lead firm becomes a buyer governing production through deadlines and prices, while the supplier hires workers, extracts resources (along with domestic raw material suppliers) to meet demand. In this basic setup, where assembly and manufacture operate in low-wage, low-skill settings, suppliers can upgrade by identifying different buyers. And, as suppliers become familiar with industry patterns, they can harness domestic and local resources to meet these global demands. This reflects a simple rendition of an economic upgradation pathway, but it would not necessarily imply an improved outcome for workers, as competing temporary and low-wage workforces could serve as a strategy to enhance competitiveness.

Gereffi outlines some stages of upgradation, whether it is the move from assembly of inputs to local production and sourcing of finished products (also referred to as original equipment manufacturing OEM), or full assembly level production towards selling one's own brand and marketing it and then moving towards original design manufacturing for high-level international brands (Gereffi 2019, 240-242). Bringing in these aspects of functional upgrading are useful. If firms remain stuck in this stage, they are prone to facing increasing competition, which further creates limits of social upgradation for workers, and becomes worse if institutional state support is lacking (Gereffi 2019, 241).

At the outset, the value chain approach suggests that we examine the whole value chain and the different ways in which different actors operate and what are the overall possibilities for labour. Hence, keeping this approach to value chains as a framing mechanism, we need to explore the different ways in which economic upgrading is important for trade unions and workers organisations.

## ► 2 Economic Upgrading

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Economic upgrading refers to the ways through which firms improve their position in the hierarchy of value-adding activities by participating in global value chains. A broad typology<sup>7</sup> used in the (ILO 2016a) refers to four broad categories or forms of economic upgrading in global supply chains: Process upgrading (changing production process or adopting technologies for increasing efficiency), product upgrading (advanced product types with enhanced features and higher skilled workforce), functional upgrading (integrating with different and quite often higher functions in the value chain) and chain upgrading (diversifying into other production chains) (ILO 2016, 27-28).

### 2.1 Upgradation Pathways

Mapping these different economic upgradation pathways is a complex task, and quite often firms indulge in a combination of these upgradation pathways. Moreover, locating worker functions and decent work deficits within these upgradation pathways requires empirical evidence. Some suggested typologies — in a scale moving from highly precarious to more secure and stable employment— are : “informal SME or household work” (agriculture and light industries such as apparel and textiles); “Low skilled labour-intensive work” (early offshoring in supply chains in textile); “Moderate skilled work” (automobiles and electronics); “High Skilled technology-intensive work” (automobiles and electronics); “Knowledge-intensive work” (finance, accounting, software, medical services and engineering) (Gereffi et al 2016, 21-22). The transitions that upgradation involve can lead to distinct outcomes for workers. For example, when China proceeded to shift from low-value goods to more high-value electronics and automobiles, it required a higher skilled workforce. Capacities in education were created to meet higher skill requirements, while providing some employment and social security to stabilise this higher skilled workforce (Gereffi et al 2022, 16).

Meanwhile, in the garment industry, this could mean moving from a firm where one’s job is in CMP (cutting, making, packing) to a firm where one is involved in OBM (original brand manufacturing). At the firm-level, this would mean product and process upgradation, resulting in a reorganised workforce requiring better skills, especially, with more technological innovation and capital-intensive industrial production (Atsuko 2020). Another formulation highlights a series of productive roles and potential upgrading trajectories that firms could adopt utilizing increasing firm-level capabilities: (1) the assembly of imported inputs, often in export-processing zones (EPZs); (2) the local production and sourcing of finished products (also known as original equipment manufacturing or OEM); (3) the sale of own-branded merchandise in domestic and external markets (OBM); and (4) the design of products sold under the brand of other firms (original design manufacturing – ODM) (Gereffi, 1999; Ernst and Ravenhill 2000; Schmitz 2004; Sturgeon and Lester 2004). However, this can also produce differentiated outcomes. For instance, in the garment industry in Morocco operating in the ‘fast fashion’ model with lead firms like Zara (Inditex), workers experience uneven outcomes with different instances of upgrading. For example, process upgradation through efficient shopfloor production organisation helped in reducing overtime and ensured formalised contracts. As firms upgraded to newer and higher quality

<sup>7</sup> This is taken from the following sources: Humphrey, J. and H. Schmitz. 2002. “How Does Insertion in Global Value Chains Affect Upgrading in Industrial Clusters?”. *Regional Studies* 36 (9): 1017–1027; Barrientos, S., G. Gereffi and A. Rossi. 2011. “Economic and Social Upgrading in Global Production Networks”. *International Labour Review*, 150 (3-4): 319-340.

products, upgrading meant skill upgrading for workers, and with a shift to ‘full-package supply’, this meant functional upgrading that also meant a shift to procuring raw materials and full control over value-addition (Rossi 2019, 280). However, as full package production was taken up, this meant absorbing the inherent flexibility that the sector demands. More temporary workers were taken on to meet the shifts in demand at different times. In this case these temporary unskilled workers hired in “finishing, packaging and loading merchandise” had negative outcomes with poor wages, long working hours and lack of contracts (Rossi 2019, 280), which stood in contrast to improved outcomes for regular workers. This gives us insights into employment strategies within a firm, which are an important marker to understand outcomes of economic upgradation. Different workers, from regular formal workers to informal workers with no contracts could be working at the same workplace and have different outcomes owing to upgradation strategies.

Meanwhile, limits to upgrading can also emerge with weak domestic policy structures. One study examines the emergence of the electronics industry in Vietnam. Samsung shifted smartphone production operations to Vietnam, but production was not entrusted to domestic private firms as capacities and skill levels were limited to produce a higher value product (Chi 2022). Further, limits to low-cost credit restricted private firms from entering upgradation pathways as they did not have enough capital to invest in technology, labour or transportation, instead finding themselves in the low-end of the value chain, still involved in assembly operations where workers remained poorly paid with excessively long working hours.

As firms upgrade within value chain, identifying both changing skill levels as well as uneven decent work outcomes is important. Possible skill-gaps could hinder upgrading within value chain, and some suggestions of creating national skill certification programmes— possibly ratified by trade unions or associated worker organisations— could help in standardising and creating measurable avenues for employment upgradation (Cattaneo et al 2013). Another study examined the data on jobs, skill levels and upgradation pathways (de Vries et al 2019). The premise of the study was to understand the range of jobs in certain Asian countries that go into final manufactures anywhere in the world. They identify these as ‘GVC jobs’. They use the ADBs multi-regional input-output (MRIO) tables that give a sense of how different sectoral outputs act as inputs in other sectors and are also an outcome of inputs from other sectors. This is then mapped with occupational roles and job functions within these sectors. As firms’ transition, the data evaluates the shares in value-added according to skill-level. This is done through a breakdown of labour processes within value chains and then adding associated skill and occupational roles with the analysis. Distinct functional roles within a specific manufacturing process are mapped with specific skill levels and associated operational role in the unit.

The IT/ITes sector in India provides another angle to economic upgrading. While workers operating in this sector have been lauded as the core of India’s tech revolution, a closer look at the evolution of the industry in light of IT GVCs gives a different picture. In the early stages of the industry, software consultancy required on-site support and technical solutions (referred to as ‘bodyshopping’), which centred knowledge and skills in one unit or person which were contracted out to clients with specific requirements (Noronha and D’Cruz 2022). The model meant a lean workforce on-site and a large skilled workforce off-site who could be contracted at any time. As GVCs evolved, the shift to more off-site services meant the IT sector diversified into different pathways. Call centres (business process outsourcing) hired low-skilled workers with soft skills to meet demands from global firms, while the next stage of knowledge process outsourcing (KPO) focused on more specific expertise in sectors like the legal and medical field (Noronha and D’Cruz 2022). Meanwhile, coding and programming solutions got more standardised, which meant that IT related work became more monotonous and mechanical. All of these may appear to be different stages or economic upgrading in terms of value-adding services, but the consequences for

labour were drastically different. While firms that entered into increasing offshore services are able to support larger number of clients, their primary comparative advantage is that they operate workforces that work with much lower wages than global industry standards. Moreover, these workers have little or no access to labour administration or social dialogue.

However, entry and movement in terms of upgradation pathways need to also account for geographic factors. While GVCs appear to give this space-lessness to their operations, geographic location is becoming more important in terms of harnessing upgradation pathways. Trade agreements and a post-COVID-19 world have meant increasing tendencies to look at nearby regions to build stable value chains. Moreover, while lead firms and suppliers may see relocation as an economically viable alternative to meet demand and ensure profits, there is a spatial infrastructure that emerges when suppliers operate in particular locations. This means labour is mobilised, either migrant or local, a local economy develops, and eventually some form of residence —either dormitory or local rental accommodation— becomes an important point of worker interaction. At moments of relocation, there are instances of worker protests, “heightened solidarity” as well as efforts to seek legal redressal wherever available (Cantin and Taylor 2008, 68-69). In the automotive industry, for instance, regional value chains are useful because of the nature of components that are bulky and prone to damage which could affect transport costs, as well as just-in-time production that is assisted by suppliers being closer to final assembly (World Bank 2020, 49-50). Locations, within the literature, generally are seen for their tactical superiority in providing cheap labour. However, many of the labour recruited in meso-level industries with some skill requirements come from local educational institutions. In some instances, engagement with educational institutions serves as a useful means towards training and building capacities for social dialogue. Moreover, sometimes during acute crisis or conflict situations, these student linkages (and associated political institutions) quite often end up being used for knowhow on how to deal with workplace disputes. The recent violence at the Wistron factor (Apple supplier) in South India saw a significant number of students, who had taken up work due to closure of college during the COVID-19 pandemic, reach out to student organisations for support during workplace conflict (Anien and DHNS 2020).

## 2.2 Competitiveness

While firms in developing countries aspire economic upgradation, this does not always happen. Competitiveness in value chains produces complex outcomes. In buyer-driven chains like the garment sector, the lead firms/MNEs lower prices which creates a ‘race to the bottom’ for suppliers who are competing to keep prices low in very short timeframes, undermining efforts to ensure decent work outcomes for workers (Anner 2018). Hence, competitiveness is defined by lead firms, who are continuously strategizing locations and number of suppliers, and unhesitatingly shifting suppliers to lower costs of production and increase profits. As per Porter’s examination of competitiveness, differentiation in production and process is always used as a means to gain advantage in the market. However, in this case, it appears the narrow window of opportunity that lead firms provide, especially in sectors like textile and apparel, makes competitiveness narrowed down to providing the best price at any cost. As we discuss the due diligence requirements later, it would be useful to see how these emerging requirements could be integrating social upgradation as currency to enhance competitiveness and economic upgradation.

## ► 3 Methodology and Value Chain Analysis

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Value chain analysis provides a better sense of local and international components and products, and their relative relevance within a country's imports and exports. Within this local/global division, global elements include: "input-output structures" (activities and segments within a GVC as well as dynamics of companies operating through sourcing practices and supplier choices); the "geographic scope" which refers to the ways in which regional demand fluctuates; and, then of course the structure of industrial and corporate governance that guides these processes through "lead firms, suppliers, products, components, specialised services and logistics, market standards and technologies" (Fernandez-Stark & Gereffi, 2019, pp. 55-61). Hence, value chain analysis can allow for a relative assessment of not only key sectors within a country, but also identifying relevant forward and backward linkages. This could provide understanding levels and upgradation pathways within GVCs. The different 'input-output' structures are important towards generating useful case studies towards more focused intervention. Several databases<sup>8</sup> provide data on input-output indicators relating to exports and imports, especially those relating to GVCs. For instance, the OECD's Trade in Value Added (TiVA) database provides valuable data regarding foreign value content in gross exports which gives us a sense of backward linkages. The database provides some insights into how countries in the Asia-Pacific are integrated with GVCs. Further, it gives a sense of the differentiated sectors where these linkages are stronger or weaker. It primarily uses import and export data. Broad datapoints in these flows are useful, but a more specific analysis of some of the 'country notes' could be useful to make better sense of strategies for engagement. We can also then see more clearly which trade agreements and products would facilitate certain processes within GVCs in the region. The following table has been collated using the TiVA input-output country highlights. The following exercise is only done to illustrate a possible methodology and complete analysis is outside the scope of the paper.

If we look at the table below, we get two clear indicators that allow us to make sense of GVC integration of the given countries. For example, Cambodia and Vietnam show high levels of GVC integration with high shares of total backward (as share of intermediate imports for exports) and forward (foreign demand in domestic value added) participation within total exports, while Indonesia shows an intermediate integration and Pakistan a low integration. Further, in the case of Pakistan the integration has declined between 2008 and 2020. Once we go to sectors with significant backward and forward participation, we can identify key components of GVC integration in these countries.

<sup>8</sup> For a fairly exhaustive list, see World Bank. 2020. *World Development Report 2020: Trading for Development in the Age of Global Value Chains*. Washington D.C.: World Bank Group, 259-263.

► Figure 2: Source: ICIO-TIVA Highlights for Cambodia, Vietnam, Pakistan and Indonesia (OECD, 2023)

	Cambodia		Indonesia		Vietnam		Pakistan	
<b>Backward Linkages (Foreign value — intermediate imports— added content in exports)</b>	Total:	Machinery and Equipment (60.3 %)	Total:	Other transport equipment (including shipbuilding ) (32.7 %)	Total:	Machinery and Equipment (70.4%)	Total:	Coke and refined Petroleum products (34.2%)
	2020 (58.7%)		2020 (19.4%)		2020 (60.8%)		2020 (9.8 %)	
	2008 (56.5%)	Rubber and Plastics Products (59.9%)	2008 (25.7%)	Machinery and Equipment ( 29.9%)	2008 (52.4%)	Basic Metals (63.4%)	2008 (13.7%)	Rubber and plastics products (27.4%)
		Coke and Refine Petroleum products (52.7%)		Fabricated Metal Products (28.5 %)		Electrical Equipment (60.7%)		Chemicals and Pharmaceuticals (24.5 %)
<b>Forward Linkages (Domestic value added in foreign demand)</b>	Total:	Textiles and Apparel (93.7 %)	Total:	Basic metals (56.4%)	Total:	Textile and Apparel (92.9%)	Total:	Textile and Apparel (43.7%)
	2020 (40.9%)	Wood and Paper Products (74.5%)	2020 (15.6%)	Mining and Quarrying (46.5%)	2020 (51.3%)	ICT and Electronics (90.8%)	2020 (8.5 %)	
	2008 (41.6%)	ICT and Electronics (10.5%)	2008 (24.7%)	Accomodati on and food services (3.2%)	2008 (41.6%)	Accomodati on and food services (15.2%)	2008 (10.8 %)	Basic Metals (16.2%)
								Accomodati on and Food Services (1.4 %)

The database provides information on which countries are recipients of exports and which countries contribute to imports according to specific sectors. This allows us to make sense of GVC linkages with respect to country and sector. Following this, the analysis should utilise existing empirical data as well as possibly consider commissioning research on addressing key job roles and functions within this value chains. Wherever existing trade unions can support this process, this will help in building capacities for intervention. This can give us a good sense of what specific locations need to be mapped and focused with respect to intervention. Now, the nature of intervention could vary. For example, social upgrading in some sectors could mean enhancing social dialogue institutions, like the textile and apparel sector or the machinery sector. But, in primary sectors like mining and agriculture, achieving basic labour standards could be the challenge.

Another facet that can be mapped with this data analysis is to note existing FTAs and PTAs, and whether GVC integration in sectors where trade was liberalised deepened. This could also provide lines of pitching specific sectors at national and regional levels for communication and advocacy material. In addition, we could use some of this information to build tailored due diligence protocols based on experiences.

This exercise is an attempt at including a value-chain methodology to generate evidence for trade union intervention. Several studies have used these datasets to give inputs into jobs, value generation activities and firm patterns; however, it would be novel to consider this data to build tailor made evidence-based reporting that sees value-generation as an important peg for trade union intervention and improved social dialogue outcomes.

## ► 4 Mapping Global Supply Chain Labour Governance

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Recognising the multiple, intersecting and often overlapping fields through which the movement of goods, people and services are regulated and monitored becomes important when addressing the impact of GVC governance. Specifically, labour governance is a subject that has been central to the ILO's interventions in supply chains across different contexts. (ILO 2016, 40) identifies key approaches to labour governance in supply chains: public governance (referring to national level laws and regulations), private governance (a combination of CSR programmes and private initiatives like corporate codes of conduct, auditing, private certification and standards), social partner initiatives (modes of social dialogue and global farmwork agreements propelled by global trade unions, NGOs and other social partners), and multilateral initiatives (international instruments and guiding principles of the ILO, UN and other multilateral organisations).

The application of international labour standards—rooted in the “fundamental conventions of the ILO” and the ILO Declaration on Fundamental Principles and Rights at Work (1998), as amended in 2022—serve as a key node for evaluating decent work goals across global supply chains as well as mobilising actors across tripartite forums. In addition, the framework of due diligence and human rights safeguards are operationalised in the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, as amended in 2022 (MNE Declaration) and the United Nations Guiding Principles on Business and Human Rights (UNGPs). The importance of these international instruments and guidelines is that their remit is international, and they serve as a guide for action across different states and transnational contexts. They provide a normative resolve for both enterprises and social partners to engage in safeguarding human rights and labour standards.

When examining levels and layers of governance, we need to acknowledge their specificity in terms of GVCs. The logics of value-addition, economic upgradation and locations provide specific challenges, which need to be interwoven with existing governance structures. The following sections provide some snapshots of how specific labour governance structures can be harnessed or transformed to achieve a decent work agenda. The ILO typology as part of the report to the 105<sup>th</sup> ILC is used to organise this section.

### 4.1 Public Governance

#### 4.1.1 Compliance and Labour Administration

**National Labour laws and labour administration** in countries are paramount towards achieving decent work outcomes. Different government policies and laws, as well as implementation mechanisms provide the scope for upholding labour standards. However, the transnational nature of production under GVCs has meant that firms within countries catering to international demand constantly negotiate between legal requirements at the national level and the economic compulsions of GVCs. This has implications towards securing labour rights and decent work for the millions employed in different arrangements within GVCs. The region presents an uneven picture when it comes to labour law coverage, with GVC penetration further weakening labour market institutions. The compulsion to meet buyer demands has meant a severe decline in working conditions, wages as well as the right to organise and freedom of association. Some sectors like the textile and apparel sector display severe working conditions, with international

incidents like the Rana Plaza tragedy casting a long shadow on labour standards. A fundamental concern with GVCs is their cross-border nature. As goods and services move across borders, with limited legal attachments between these firms, the application of domestic law is difficult. Some of these concerns are outlined (ILO 2016a), which states that extraterrestrial application of labour law either in the host country<sup>9</sup> where the violation has taken place or in the home country where the lead firm operates is a complex scenario, considering the limited legal liabilities that cross-border GVCs allow for.

Labour migration— within countries and across borders— has been a feature of workers in GVCs. Many national labour governance institutions and regulations discriminate against migrant workers and limit their access to decent work through adequate labour regulation and enforcement, which raises important concerns regarding public governance. In Thailand, many suppliers hire Burmese migrant workers, who face severe decent work deficits and operate in conditions where forming trade unions or accessing labour market institutions is near impossible. However, the recent case of TESCO and its suppliers in Mae Sot (Thailand) regarding unpaid wages— where a Thai labour court ruled in favour of paying back wages— gives an instance of both the precarity in which these workers operate but also the myriad ways in which international and domestic pressures can lead to some redressal (Dugan 2022). However, there has been criticism that these cases serve as exceptions and receive the requisite response from international lead firms, but, where such instances are not highlighted labour rights violations by suppliers persist. Information campaigns, at the transnational level are important to keep pressure on lead firms and suppliers.

At the one end, we have national legislations that focus on labour and workplaces within countries that are the sites of production, where the suppliers organise production. In this case, we can see a variety of different modes of operation. One location, where GVCs operate in developing countries are **Export Processing Zones or Special Economic Zones**. With the promotion of export-oriented growth in the region, many governments promoted Special Economic Zones (SEZs) that act as ‘duty free’ enclaves meant to focus on export-oriented production. In some countries, they have contributed to significant growth in exports. However, as a part of the package that these zones offer is a relaxation of labour regulations, industrial standards and taxation laws. If we take the perspective of value chains and levels in the production hierarchy, SEZs have a large number of firms that employ low-skilled labour involved in assembly functions in the value chain (Bair and Gereffi 2003, 148). In this context, the evidence regarding compliance of labour laws is weak. These zones remain a challenge towards upholding decent work. Institutions involved in governance in these zones are unable or unwilling to check labour rights violations. Sometimes by decree. Special laws have been created to outline the regulatory requirements in these enclaves. In Bangladesh, the Export Process Zones Act 2019 is one such instance. The Committee for Experts on the Application of Conventions and Recommendations (CEACR) observed that labour inspections (under Convention No. 81) are a serious concern especially when “the DIFE (Directorate of Factory Inspection and Establishments) is only empowered to carry out announced inspections in the EPZs, after the approval of the Executive Chairman” of the regulating authority for the EPZ<sup>10</sup>. Trade unions in the country have raised concerns in this regard, and a more serious concern has been the difficulties in registering unions (based on pre-set threshold requirements). In Pakistan, the EPZ (Employment and Service Conditions) Rules 2009 remain

<sup>9</sup> The terms, host country and home country, refer to the country (normally in the global South) where suppliers operate, and the country (normally in the global North) where MNEs are headquartered, respectively.

<sup>10</sup> ILO, *Observation of the Committee of Experts on the Application of Conventions and Recommendations*, International Labour Conference, 111th Session, 2023.

unavailable to the CEACR<sup>11</sup>, which is a matter of concern since this is a major regulation meant to cover workers in export processing zones. Export zones have been given legitimacy on account of their ability to generate jobs and in many instances providing improved wages, however, the evidence on whether there is an upward trajectory in terms of skilling is difficult to gauge (Cirera and Lakshman 2017). Considering the weakness of national jurisdiction in many instances for these SEZs or EPZs, it would appear that labour governance in these should shift towards more international instruments. Several suggestions in this directions have been made, whether they include the UNCTAD's proposal that EPZs offer services including labour inspection, conflict resolution and enhanced administrative assistance for social dialogue, or the proposal to reexamine the tax exemptions within EPZs to build accountability between the MNE and the host country (ILO 2016, 42-43). An additional suggestion within this paper is that cross-national labour standards like **Maritime Labour Convention 2006** could be a useful model to understand global industries where national jurisdictions are limited. This could be a specific instance, where the ILO is able to facilitate social dialogue on enhancing compliance and fulfilment of labour standards within SEZs. In this case, SEZs, EPZs or industrial free trade zones could be seen as a special entity requiring specific international legal instruments. The creation of such standards, and the coordination of compliance could be created through international legal instruments. This may need a more detailed engagement on the part of trade unions and member states with employers' organisations, with the help of the ILO. The convention<sup>12</sup> seeks to secure key aspects such as minimum requirements for seafarers to work on a ship; conditions of employment; accommodation, recreational facilities, food and catering; and health protection, medical care, welfare and social security provisions<sup>13</sup>. In terms of compliance and enforcement, the convention is an enabling instrument as it seeks to ensure minimum standards are established through model guidelines (ILO 2014) or wherever possible via national standards/legislations that meet the requirements of the convention. Further, an interesting provision in terms of compliance is the 'maritime labour certificate' which is required by ships that fly a country's flag. This is a concrete compliance initiative that acts as proof of compliance and concurrent corroboration by a competent authority. SEZs, as of now, are seen to be in a peculiar vacuum where they are exempt from existing labour laws or there is a weak institutional structure to ensure their implementation. And there is little obligation or oversight in terms of MNEs operating within them. Yet, SEZs benefit from their peculiar 'international' status as duty free enclaves, which allows for increasing competitiveness for firms operating within them, while sustaining restricted spaces for social dialogue and claim-making by trade unions or workers with respect to international labour standards. With emerging due diligence initiatives, is it possible to conceive of concrete 'certificates' or international recognised instruments that could be a benchmark for compliance within a SEZ.

#### 4.1.2 Litigation and Jurisprudence: Re-envisioning Jurisdiction

Meanwhile, if we examine the other facets of national labour legislations, we come across a recent spurt of national level legislations predominantly in developed countries that focus on building accountability among lead firms and their operations across the value chain. Countries like Germany, France and the United Kingdom, have brought out specific legislations dealing with supply chains or GVCs and their complex legal nature<sup>14</sup>. It is important to not treat these

<sup>11</sup> ILO, Observation of the Committee of Experts on the Application of Conventions and Recommendations: , International Labour Conference, 111th Session, 2023.

<sup>12</sup> It is important to note that the Maritime Labour Convention 2006 is recognised as among the four pillars by the International Maritime Organization, which is the regulatory agency responsible for setting standards for the shipping industry.

<sup>13</sup> Maritime Labour Convention, 2006, as amended (MLC, 2006)

<sup>14</sup> Earlier sub-national instances include the California Transparency in Supply Chains Act (2012) that mandated firms with an annual turnover over US\$100 million to take efforts to deal with slavery and human rights violations among their suppliers. See ILO , *Decent Work in Global Supply Chains*, ILC.105/IV, 2016a, para 123.

laws as standalone, but as a part of a consistent effort to bring legal accountability to the doorsteps of the judicial system in the global North. Earlier jurisprudence gives some sense of what came out of attempts at **litigation against MNEs in home countries**. These examples that attempt to build accountability have mixed outcomes. There is the case of a Delaware court (in the U.S.A.) using a legal technicality to dismiss a plea by victims in the Rana Plaza tragedy against JC Penney<sup>15</sup>. The court applied the statute of limitations to argue that the delay in making the plea according to the limitations on time period based on the host country's legal system mean that the case was inadmissible. However, if we wish to engage with the jurisprudence, there appears to be a distinction made between common law judicial systems (Anglo-American) and civil law (European) judicial systems that seem to produce different results in the case of litigation against firms in the developed countries. The former appear to focus on the location, and if the victim and the alleged perpetrator are in a different location from the court, the court is more likely to reject the petition (Kryvoi 2007, 374). Hence, the primary contention in cases that attempted to contest this situation was whether valid jurisdiction could be established. Several instances of British courts allowing for jurisdiction for prosecution exist where courts saw MNEs as liable to be prosecuted in the home country. In many instances, they used different aspects of existing legal instruments to bring the case into the courts in the home country of the MNE (Buggenhoudt and Colmant 2011). In one instance article 6 of the European Convention of Human Rights was deployed that ensures a right to a fair and public hearing<sup>16</sup>, which was seen as sufficient grounds for a petitioner's plea to be accepted. Meanwhile, litigation within civil law jurisdiction such as in Europe are far more rigid and do not exhibit the same flexibility in interpretation that common law systems operate with.

**Jurisdiction** is an important legal concern and has implications for labour governance. As new legislations as well as international instruments emerge, legal action spearheaded by workers and trade unions will bear fruit if the relationship between the MNE and the supplier or fragmented entities in the value chain can be established. Since several lead firms operate through subsidiaries and subcontractors across different spatial locations, legal challenges to enforcing government regulations are a serious concern. The principle of 'limited liability' and 'corporate separateness'—that entail that suppliers and lead firms are distinct entities—make it difficult for domestic labour inspection mechanism to hold multinational corporations liable in case of violations that occur with local suppliers. Traversing multiple jurisdictions, a certain level of legal impunity guides MNEs (both explicit and implicit), which was in evidence during the COVID-19 pandemic when several lead firms unilaterally cancelled orders leading to loss of jobs and incomes for workers in supplier firms across different locations.

However, recent developments in case law address this legal conundrum emerging from ownership and limited liability, as well limits to jurisdiction. They suggest possible avenues for future legal redressal in the absence of forthcoming institutional support. In *Vedanta and another v. Lungowe* (2021), the UK Supreme Court acknowledged that victims in Zambia could enforce the "duty to care" of a parent MNE in the home country. The case was referring to reduced agricultural yields owing to mining by a Vedanta subsidiary that had commenced in the vicinity. The court in a pre-trial examination recognised that the while Zambia— which was where the mine was located— was the ideal location for trial, substantive justice may not be achieved there since the parent company appeared to be the primary responsibly entity (van Damm 2021). The case was admitted to trial, and eventually an out-of-court settlement was reached. Meanwhile, in three different cases involving Royal Dutch Shell and their subsidiaries, Dutch courts used

<sup>15</sup> United States, Supreme Court of Delaware, *Abdur Rahman v. JC Penney Corp., Inc., et. al.*, CA No15C-07-14 (04 May 2016).

<sup>16</sup> High Court of Justice, Queen's Bench Division, *Lubbe & others v. Cape plc* ( 12th January 1998).

different instruments or guidelines to determine liability of the parent MNE in the home country, and their duty to care. The court considered UNGPs as “an authoritative and widely supported soft law instrument.”

Jurisprudence and litigation may give us a mixed bag result when it comes to corporate liability and responsible business practices. However, as newer due diligence legislations and directives find their way into the statute books, litigation could find renewed sustenance and become a more realistic avenue to ensure parent firm liability in the home countries.

#### 4.1.3 Due Diligence Legislation

In terms of context, the holding a corporation publicly accountable for its actions marks a shift from an early conception of corporate governance that focuses on the notion of ‘shareholder’ primacy. This notion envisaged the corporation’s primary purpose and responsibility as that of enhancing and maximising the investment of shareholders. Following the adoption of the UNGPs and a broader recognition of the direct complicity of MNEs in international human rights violations, there has been a move towards recognising stakeholders (customers, employees, suppliers, communities and shareholders) as participants in sustained value creation (Ruggie et al 2021). John Ruggie, the person instrumental in bringing about the UNGPs, refers to the new mission statement by the US Business Roundtable regarding the “purpose of the corporation” and how there is a recognition of taking all stakeholders together. However, there is some level of scepticism regarding these statements, and whether they represent a more media-stricken response to emerging criticism of MNEs in the United States (Ruggie 2020).

There is a limited spread of corporate responsibility when it comes to the protection and realization of human rights within the firm and its internal governance mechanisms. While broader statements by corporate bodies may suggest some shift, the deepening of these guidelines at the firm level has been found wanting. Further, there is also an interplay between due diligence requirements and private standards. Private standards are discussed later, but at the outset they quite often emerge or appear to gain legitimacy when national governance frameworks are said to be ineffective. In addition, due diligence is a challenging prospect.

As due diligence requirements emerge in the contemporary context, they provide some interesting opportunities, and at the same times refer to specific challenges. For example, at the outset, the new set of legislations in European home countries seek to address adverse impacts in foreign countries, through domestic accountability of MNEs headquartered there. However, one distinct issue that needs emphasis and understanding are human rights violations that specifically address sectors as well as categories of workers. For instance, extractive industries in many cases have distinct human rights violations that quite often require immediate action, with effective national level enforcement that may not be as forthcoming. This creates a complex scenario where a uniform due diligence framework may be ineffective, either if it derives its normative resolve from the most repressive regimes and extreme violation of human rights or from governments that are forthcoming in building effective accountability. In this case, we can see trade unions as useful and important institutions owing to their rooted position in sectoral and social contexts. They are able to provide a differentiated framework for due diligence that is bottom-up. Acknowledging these aspects, we examine some emerging due diligence frameworks at the national level.

In **France, the Duty of Vigilance Act** of 2017 was passed with several NGOs feeling that there was a need to provide more stricter regulations that move beyond existing voluntary soft law instruments at the international level. The legislation becomes an important component of French

companies (of a certain size<sup>17</sup>) and their due diligence practices, with companies required to monitor a “vigilance plan” among all subsidiaries and entities (including subcontractors and suppliers) with whom they have “an established commercial relationship”<sup>18</sup>. The obligations that emerge from this law include risk mapping, regular assessments with subsidiaries, a mechanism to collect reports as well as monitoring and evaluating progress. These requirements place a significant bureaucratic burden on French companies, which could be supplemented by efforts by social partners across different locations. The legislation, in itself, is a key component of due diligence that is inputted into hard law in the French context. While no convictions have emerged, the French postal trade union *Fédération des Syndicats Solidaires, Unitaires et Démocratiques des Activités Postales et de Télécommunications (SUD PTT)* has filed a case against *La Poste* regarding treatment of undocumented immigrant workers in its subsidiaries (Soilihi and Haranger 2024). The key aspect of the French legislation is that from 2024 onwards companies will be mandated to take out sustainability reports.

The **Act on Corporate Due Diligence Obligations in Supply Chains (*Gesetz über die unternehmerischen Sorgfaltspflichten in Lieferketten*) in Germany** came into force on 1 January 2023. It creates legally binding obligations and responsibility to respect human rights for German firms in GVCs. The Act sets out obligations to create a risk management system to identify, prevent or minimise risks of human rights violations and damage to the environment, making complaint procedures mandatory with regular reporting provisions. The legislation covers aspects such as prohibition of forced labour<sup>19</sup>, prohibition of slavery as well as “oppression in the workplace, such as extreme economic or sexual exploitation and humiliation”<sup>20</sup>, disregard of occupational health and safety<sup>21</sup>, non-discrimination in employment as well as “the prohibition of disregarding the freedom of association”<sup>22</sup> as well as recognising that “trade unions are free to operate” including the “right to strike” and the “right to collective bargaining”. In terms of penalties, firms with an annual turnover over 400 million euros would face an administrative fine amounting to 2 percent of the global turnover, if violation of the statute is proved<sup>23</sup>. Further, in what appears to be an important provision with reference to trade unions, Section 11 of the law states that any entity claiming violation or remedy can “authorise a domestic trade union or non-governmental organisation to bring proceedings to enforce his or her rights in its own capacity”.

We can see that the earlier concerns with national level legislations seem to be different now, with these new laws that are emerging in the context of home countries. The scope for intervention is evolving and needs to be understood according to different actors involved. The reporting platforms that these regulations generate need to be coordinated with subsidiaries across the GVCs. In this case, trade unions in host and home country contexts could be active agents in facilitating this reporting and also using this process to generate membership and possible avenues for social dialogue. Further, in the case of the German law, we can see an adequate avenue to work with trade unions and NGOs in Germany to build cases or even coordinate with reference to reporting mechanisms. This is an important requirement as it not only allows for transnational social dialogue opportunities, but also enables a more differentiated and nuanced perspective on due diligence requirements. Several NGOs and international thinktanks have been producing reports on finding accountability with MNEs across different platforms, but, in many

<sup>17</sup> This Act applies to companies and groups located in France that employ either more than 5,000 employees in France, or more than 10,000 in France and abroad for two consecutive years.

<sup>18</sup> Matthias DE JUVENEL, *Mission to monitor the implementation of the Duty of Vigilance Act*, 20 February 2020.

<sup>19</sup> Section 3, Act on Corporate Due Diligence Obligations in Supply Chains (Supply Chain Act of 2023)

<sup>20</sup> Section 4, Supply Chain Act of 2023

<sup>21</sup> Section 5, Supply Chain Act of 2023

<sup>22</sup> Section 6, Supply Chain Act of 2023

<sup>23</sup> Section 13, Supply Chain Act of 2023

cases, there is a distance that exists between the ground reality of host countries and what information is shared with trade unions working there. Trade unions, with support and capacity building through TUSOs<sup>24</sup> and other social partners could generate model reporting modules that can coordinate with firms. This serves in acting as a positive agent in ensuring proper reporting and adds value to the due diligence requirements.

Meanwhile, there is a need to map these developments with uneven legislative outcomes in host countries. For instance, as Vietnam enters newer value chains, there is a recognition that decent work outcomes and social dialogue are important factors in gaining legitimacy in the newer governance structures in GVCs. The revised Labour Code of 2019 that came into force in 2021 creating mechanisms for “workers’ representative organisations” at the enterprise level, as a means of upholding freedom of association (ILO et al 2023). However, in India the opposite effect seems to be taking place. The new labour codes, especially the industrial relations code place severe restrictions on trade union formation and organisation, as well as the labour inspection mechanisms (Cox and Singhvi 2020).

#### 4.1.4 Public Procurement and Industrial Policy

Moving beyond governments as lawmaking agents, we need to acknowledge the role states hold as buyers in GVCs. **Public procurement policies** can be seen very much in line with public governance strategies to achieve decent work outcomes. At the level of international instruments, the Labour Clauses (Public Contracts) Convention No. 94 of 1949 requires national governments to ensure conditions that stipulate labour rights protection in their tender process (ILO 2016, 45-46). Public procurement is an important facet of increasing global production, but little research has explored their role in GVCs. However, it is not too farfetched to assume that in many countries in the region, governments are among the largest purchasers. While traditional tendencies to purchase domestically originated goods may mean that their connection to GVCs may not be obvious. But, with increasingly fragmented GVCs, most domestic products could also source imported intermediate inputs, and therefore purchasing practices by governments could have significant bearing on economic upgrading of firms in countries. It has been shown that most of the key computer companies in the United States like IBM, HP benefited from the U.S. governments’ ‘buy American’ policy (Horner and Alford 2019). Several governments have directives that outline promotion of labour standards in public procurement tenders. The EU has clear directives that encourage inclusion of labour provisions (based on ILO conventions) in public procurement practices (European Council 2024).

**Industrial Policy** is another key facet of public governance and is receiving renewed attention these days. The neoliberal move towards market-led economic development had seen industrial policies being moved to the back-shelf of policy options. However, following the economic crises and flexible profiles of GVCs, industrial policy remains an important policy instrument for governments. Industrial policy measures are traditionally seen as investments, monetary and taxation policy and governance initiatives by governments to build domestic production capacities that compete in transnational markets or serve as import substitution initiatives to meet domestic demand. In some of the early emerging Asian economies like South Korea, Taipei, Hong Kong, industrial policy was deployed as a means to promote exports. However, with the proliferation of GVCs, undoubtedly industrial policy is very much about leveraging end-markets and ensuring economic upgradation pathways for domestic firms. Further, within the context of industrial policies and GVCs, trade agreements are a crucial space where governments are able to manoeuvre

<sup>24</sup> Trade Union Support and Solidarity Organisations

and mould market access, ensure investments by MNEs and build domestic capacities that fit into sustainable and successful economic upgradation pathways (Moritz and Staritz 2019).

#### 4.1.5 Trade Policy

With rising global trade tensions and the shift to more regional trade blocs, industrial policy discussions show renewed presence in policy discussions. However, in the GVC world, leveraging space for domestic production priorities (especially for economies already integrated into GVCs) makes **trade policy** a very important feature of public governance. **Trade agreements** have become an important peg in public governance initiatives, and more importantly to ensure economic upgradation of firms involved in GVCs but also as avenues to create mechanisms for better social upgrading possibilities. Free-trade agreements are proliferating globally—especially in the Asia-Pacific region—whether as bilateral, multilateral agreements and preferential trade instruments, with current estimates suggesting that 362 such agreements are in place<sup>25</sup>. When examining labour standards, trade union involvement and workers' rights in the context of trade agreements, the social clause<sup>26</sup>/labour clause (as part of the WTO setup) is an important facet. Further, 'labour provisions' within trade agreements<sup>27</sup> has been a common approach that integrates international labour standards. As trade agreements or multilateral trade partnerships expand, due diligence provisions within them serve as standards for compliance and implementation of core labour standards for MNEs as well as governments. They also need to interact with other multilateral initiatives to create a forcefield that allows for social upgrading and decent work outcomes.

The creation of the World Trade Organization (WTO) in 1994 witnessed a significant transformation in trade relations. Earlier trade agreements were primarily concerned with trade in commodities, where tariff rates were a major trade policy consideration. However, with the WTO emerging, international trade moved into key areas such as investment, intellectual property rights and services. This shift marked a new role for governments, as they negotiated with other governments to build competitive advantages for their own domestic industry as well as searching for market access in other economies. The proliferation of liberalised trade regimes cannot be separated from the emergence of GVCs. GVCs require movement of goods and services across borders, and trade agreements are an important and crucial governance mechanism that allow for this to take place. Two features of the post-1994 trade regime are important to understand the proliferation of GVCs. First, trade barriers, especially tariff barriers saw a decline, and second, trade agreements in their new avatar provided a clear set of rules through which the movement of goods and services could be secured (Azmeah 2019). Moreover, early GVCs benefited from global North economies providing market access to suppliers from lesser developed countries in the global South. This was an important factor in the growth of the textile and apparel industry, as well as the electronics industry in the region.

What is important for our discussion is to identify the ways in which free trade agreements help in generating improved economic upgradation pathways, but also build decent work outcomes. One important feature that trade agreements determine are backward and forward linkages with implications for economic upgradation. The list of goods and services that are negotiated and which allow for preferential market access go a long way in securing key positions in value chains. Regional trade agreements seem to be useful in this regard. As production locations and levels

<sup>25</sup> WTO RTA database

<sup>26</sup> Common criticism in the developing countries is that the social clause is an alibi for protectionism for workers in the developed world.

<sup>27</sup> See ILO Labour Provisions in Trade Agreements Hub (LP Hub).

in in GVCs shift within the Asia Pacific region, the need to address regional institutional frameworks and modes of communication becomes important. Moreover, as countries enter different economic upgradation pathways, trade relations have become important features of international competition. For instance, the Indo-Pacific Economic Framework (IPEF)<sup>28</sup> for Prosperity Agreement Relating to Supply Chain Resilience, operational since February 2024, is one instance of an emerging regional economic alliance. Similar agreements included the aborted Trans-Pacific partnership (TPP) and the eventual Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which seek to leverage regional and cross-regional value chains.

Meanwhile, China's focus on low-cost goods took a turn around the period of the 2011-2015 Strategic Five-Year Plan that chose to focus on transition to high-value industrial production and created a system of benefits and concessions to promote these industries. Such changes led to shifting markets and supplier networks, with Vietnam and Indonesia being among the players that have taken up some of this shifting market space in low-value segments within these industries and their value chains (Berliner et al 2015). As China developed strategic backward and forward linkages in these countries, it was able to upgrade to advanced manufacturing, dubbed as the "second wave" of factory locations. It is safe to say that many of these relocations emerged out of— as well as necessitated— an aggressive trade liberalisation policy in Vietnam that has allowed them to benefit from these new investments and relocations (ILO et al 2023). In this context, the ASEAN-China FTA (ACFTA) — that came into effect in 2010—is an important peg in this story of shifting factory locations and economic upgradation. Since the ACFTA came into force, it has seen a steady growth in trade in the region with both (China and ASEAN) becoming each other's largest trading partners, as China replaced the EU as the ASEAN's largest trading partner in 2020 (Marjani 2023). These shifts in trade mark an important point of contestation in the region, as the US and Europe become lesser partners in the ASEAN region compared to China, while South Korea and Japan stand as competitors with their own FTAs with ASEAN, inked in 2007 and 2008, respectively (Park 2014). Meanwhile India stands at another end, cooperating with the United States and West Asian countries, simultaneously tenuously engaging with China within the BRICS alignment, while evolving into an important hub supplier as well expanding its own domestic manufacturing base. These contestations and tendencies towards regionalism have a serious impact on GVC flows. For example, as firms in the global North contend with tariff wars with China in specific sectors, their choices for shifting locations could meet roadblocks as regional trade agreements proliferate.

However, what are the ways and means trade agreements are able to build conversations around improved labour standards and jobs. In terms of direct jobs, technicalities in trade agreements have direct implications. Tariff barriers impact jobs whether it is the primary exporter, or suppliers to an exporter, or even those who provide inputs across cross-country value chains (China Daily 2011). Calculations stipulated within FTAs regarding regional or domestic value content and accumulation rules are equally important to make strategic supply chain decisions for firms. **Regional or domestic value content requirements** refer to conditions that require a specific percentage of exports to originate from a region or country. They are included to ensure that domestic value-addition is maintained as countries operate through GVCs. Domestic content requirements could be an important demand for trade unions as a means of building momentum towards creating domestic jobs. However, this cannot be unilaterally determined for all sectors, since workers and firms could be in different value-adding positions within the GVC. For

<sup>28</sup> This includes United States, Australia, Brunei Darussalam, Fiji, India, Indonesia, South Korea, Malaysia, New Zealand, Philippines, Singapore, Thailand, Vietnam. An IPEF ministerial statement includes guidelines for labour rights, which include an intention "to promote labor rights based on the ILO Declaration on Fundamental Principles and Rights at Work, which the Partners have adopted, to ensure that workers and communities share in the benefits of increased supply chain resilience".

example, pushing for domestic content requirements in low-wage, low-skill occupations could potentially prevent economic upgradation. Or in other cases, market access in particular sectors could have benefits for a given period, like the case of Bangladesh or Vietnam, where rural-urban migration has allowed for millions to move out of poverty. However, the lead times and poor working conditions have demonstrated that the trade-off may not be sustainable. In such instance, market access that caters specifically to these sectors needs to be examined through a value-addition perspective.

The General System of Preferences (GSP) is another such trade instrument used by global North countries to provide market access eliminating duties on specific products for certain developing countries. The United States has a specific conditional requirement that determines country eligibility under its General System of Preferences (GSP), where it states that the “GSP beneficiary must have taken or is taking steps to afford internationally recognized worker rights, including 1) the right of association, 2) the right to organize and bargain collectively, 3) a prohibition on the use of any form of forced or compulsory labor, 4) a minimum age for the employment of children, and a prohibition on the worst forms of child labor, and 5) acceptable conditions of work with respect to minimum wages, hours of work and occupational safety and health” and work towards eliminating the worst forms of child labour (Office of the United States Trade Representative 2020, 17). An interagency committee, the GSP subcommittee of the Trade Policy Staff committee, invites petitions from interested parties on labour rights violations, and following a hearing process, they determine whether the petition should be accepted, and a review initiated, which ultimately collimates in a decision on suspension of eligibility and the nature of withdrawal of trade benefits. There is a trifecta of deliberation, which includes the elements of labour petitions, the nature of economic benefit and the foreign policy requirements that quite often lead towards determining the final outcome (Greven 2005). Likewise, the EU also follows a dual policy in its own GSP, with sanctions when violations occur, but also preferential treatment if labour rights are adequately implemented, referred to as GSP+<sup>29</sup>. An important distinction between the US GSP and the EU GSP is that while the former has a lesser focus on human rights preferences, instead focusing on labour rights, the latter normatively includes key tenets of the international human rights conventions.

In examining trade union intervention in GSP and the associated outcomes, we can make sense of the implications for actors within GVCs, especially workers organisations. Undoubtedly, where unilateral market access serves as a good bargaining point for countries being investigated to comply or at least take steps towards improving their record on labour standards. However, if we take the experience of the US GSP, the clear provision of labour rights in specific terms (despite some limitations) stands out. And, yet the procedure and the unilateral mode of functioning make it ambiguous, since in some cases the USTR may accept petitions and in some it may refuse, and reasons may not always be proportionate to the nature of violation at hand. Further, as experience suggests, the actual application of GSP measures has been less successful in Asia, whether we consider the case of child labour in Pakistan or suppression of trade unions in Indonesia (Compa and Vogt 2001).

Another consideration is important to evaluate the GSP mechanism. Is it amenable towards building flexibility for countries and workers’ organisations to secure labour rights? In other words, does market access necessarily allow for economic and social upgrading of workers. The slim evidence suggests that GSP’s appear to have a more unilateral approach which becomes difficult to manoeuvre around. In fact, in some ways, the evolving FTA and PTA infrastructure is a

means to circumvent or supplement benefits from U.S trade. And yet, despite this, the GSP is an important institution since it has a rich history of transnational labour coordination and activism (Compa and Vogt 2001), and the dispute resolution mechanism allows for gathering significant evidence which can build solidarity at different levels. Some of these have fed into more recent efforts relating to corporate codes of conduct as well as due diligence provisions applying to MNE's.

Hence, examining 'labour' provisions within trade agreements from a value chain perspective is not only limited to including adherence to international labour standards and national labour law. They need to be designed in ways that sometimes examine sectors within countries that are specifically integrated in GVCs. This focus must be informed by economic and social upgrading pathways, determined through empirical evidence gathered. This empirical evidence can be based on a macro identification through backward and forward linkages, as well as micro-level studies that look at firm size, origins as well as enforcement of labour standards. Conditional and promotional elements for labour standards within FTAs need to be deployed to situate possible strategies towards enhancing labour standards and trade union buy-in. While conditional elements consist of some form of sanction or in some cases incentives, promotional elements "combine (binding or non-binding) commitments relating to labour standards with cooperative activities, dialogue and monitoring" and foster an "institutional and procedural framework" towards implementation (International Institute for Labour Studies 2015, 21). The role of key actors like state regulators, workers and their organisations, and employers, as well as home country due diligence requirements need to be integrated into labour provisions within trade agreements.

Labour provisions may be included<sup>30</sup> directly into the trade instrument, placed as obligations, or in additional documents like side agreements or Memoranda of Understanding, which are generally not legally binding (International Institute for Labour Studies 2009). A common refrain among trade unions is that they are not parties to the negotiations, and hence their contribution to the inclusion of these standards is ambiguous. Mechanisms to institutionalise trade union participation in negotiations is an important peg in global diplomacy. Different points of entry need to be identified to secure some participation in this crucial process.

Interestingly, Digital Economic Partnership Agreements (DEPA) that include a wide range of trade-related aspects for the digital economy are included as side agreements and seen as 'living documents' (UN-ESCAP 2021). However, there are considerable implications for workers and trade unions within the digital economy and could have serious implications for workers across GVCs, especially in logistics that is increasingly integrating into digitalised platforms (ITUC 2020). As these new provisions evolve, with the increasing penetration of the digital economy in all spheres of work, trade unions need to evaluate these chapters and understand some of the key factors that have bearing on labour rights.

Many of the labour provisions contained in trade agreements may either normatively refer to Declaration on Fundamental Principles and Rights at Work (1998), as amended in 2022 or specific ILO conventions as guides to outline the forms of commitments being placed or in other instances point towards upholding national labour law or include political commitments to progressively raise national standards and prevent any further weakening of labour protections in light of investment or export possibilities. This may also include forms of technical assistance or cooperation as part of commitments among parties. Ratification of ILO Fundamental conventions and the 1998 declaration are part of negotiations that take place around FTAs. However, ratification has several layers depending on the party involved. For example, while the United

<sup>30</sup> Mentioning labour provisions in the preamble of trade agreements is not considered in this discussion, owing to its nominal role.

States was negotiating the Trans-Pacific Partnership (TPP), it did not put emphasis on ratification, but the EC during the recent EU-Viet Nam FTA has included ratification as an important peg in negotiations, which resulted in the Viet Nam government complying, eventually.

Trade agreements may also place labour provisions within the ambit of specific legal conditions, which could be promotional like permitting “additional trade concessions” or may “withhold certain trade advantages” in the case of breach of labour provisions— including tariff preferences, monetary fines or stop in “cooperative activities” (International Institute for Labour Studies 2009). Fines form another approach, which can sometimes be used to contribute to a labour rights fund. However, while a labour rights fund may appear as a favoured approach, sometimes fines may be miniscule sanctions in the face of violations, and countries would be willing to go ahead with them. Recently, the European Commission has pushed for a reorientation of its path towards enforcing key aspects within the ‘trade and sustainable development’ chapter in its future FTAs, which includes “the possibility to apply, as a last resort, trade sanctions for material breaches of the Paris Climate Agreement and the ILO fundamental labour principles” (European Commission 2022).

In some instances, “sanctions” may not emerge when breach of commitments take place, instead promotional efforts in the form of “regular monitoring by expert bodies, diplomatic consultations and/or cooperation activities (such as exchange of information or technical and financial assistance)” (International Institute for Labour Studies 2009). Labour rights violations can move into a dispute resolution mechanism where complaints are filed, and there is an internal adjudication mechanism that reviews and addresses violations. These could include elaborate processes that bring in tripartite constituents including trade unions.

Trade agreements could have a system of exchange of information and joint projects to build institutional capacities for labour standards compliance. There could be side agreements that promote projects and partnership to ensure standards are not lowered to increase exports and investment. A labour affairs committee in the Nicaragua-Taiwan Province of China FTA (2006) was setup with representatives from both parties to coordinate labour cooperation, capacity building as well as ‘submission, receipt, and consideration’ of communications from persons from a party. National contact points are another mechanism meant to build coordination between signatory parties.

While these initiatives are important, they represent specific cases that emerged out of negotiations. As discussed earlier, trade unions operating in countries signing trade agreements are crucial to ensuring scope for social dialogue. It would be useful to examine some emerging multilateral initiatives that provide scope to build global protocols for trade union interventions in free trade agreements.

## 4.2 Multi-lateral Governance and Due Diligence Initiatives

At the global and regional level, several instruments add value to the emerging and existing national level legislations. We can take a few of them together that appear to complement or operate in similar ways. The **MNE declaration** is rooted in tripartite principles, upholding collective bargaining, and ensuring that duplication with national and international social dialogue efforts does not take place. It recognises the positive contribution of MNEs to economic development and seeks to provide a platform that ensure decent work goals are achieved along with economic goals. They are rooted in the **United Nations’ Guiding Principles** (UNGPs) on Business and Human Rights that seeks to “outline the respective duties and responsibilities of

States and enterprises on human rights.” (Office of the High Commission on Human Rights 2011) The MNE declaration points to the need for enterprises to carry out due diligence to account for adverse impact relating to human rights understood, “at a minimum as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the ILO Declaration on Fundamental Principles and Rights at Work.” Further, it outlines risk assessment through “meaningful consultation with potentially affected groups and other relevant stakeholders including workers’ organizations” (ILO 2022). Further, the MNE declaration specifically outlines that “this process should take account of the central role of freedom of association and collective bargaining as well as industrial relations and social dialogue as an ongoing process” (ILO 2022). As a mechanism, there is a provision for creating tripartite national focal points to promote the principles of the MNE declaration. In addition, the declaration recognises the role of the ILO in promoting company-union dialogue in national contexts, to achieve voluntary consensus between parties in case of specific disputes or conflicts. The MNE declaration also very clearly outlines in paragraph 12 and subsequently when referring to institutional mechanisms that reference is being made both to host and home countries when addressing safeguarding of international labour standards.

As shown above, the MNE declaration builds synergy with the UNGPs on business and human rights. The UNGPs point to approaches regarding “domestic measures with extraterrestrial implications”, which include “requirements on “parent” companies to report on global operations of the entire enterprise” or “performance standards required by institutions that support overseas investments” (Office of the High Commission on Human Rights 2011). The UNGPs outline an operational plan that seeks a “policy commitment” through a “human rights due diligence process” as well as “processes to enable the remediation of any adverse human rights impacts” (Office of the High Commission on Human Rights 2011). As mentioned earlier, UNGPs can provide a normative guide to evolving due diligence frameworks. The reference to a Dutch court (van Damm 2021) using it as a standard for what states do gives an instance that operationalising it in national contexts is possible within domestic courts, if legal interventions use them wherever possible.

Similarly, the **OECD’s Guidelines for Multinational Enterprises** on Responsible Business Conduct which were revised in 2023 —after more than decade— serve as an important instrument to delineate responsible business conduct. It especially recognises due diligence with respect to supply chains. While not binding, it seeks to create mechanisms that follow risk-based due diligence “to identify, prevent and mitigate actual and potential adverse impacts” (OECD 2023, A11). It seeks to mitigate any adverse impacts, as well as encourage subsidiaries and partners to follow similar due diligence. It also includes refraining “from discriminatory or disciplinary action or otherwise engaging in reprisals against workers, trade union representatives or other worker representatives who make bona fide reports to management or, as appropriate, to the competent public authorities, on practices that contravene the law, the Guidelines or the enterprise’s policies” (OECD 2023, A9).

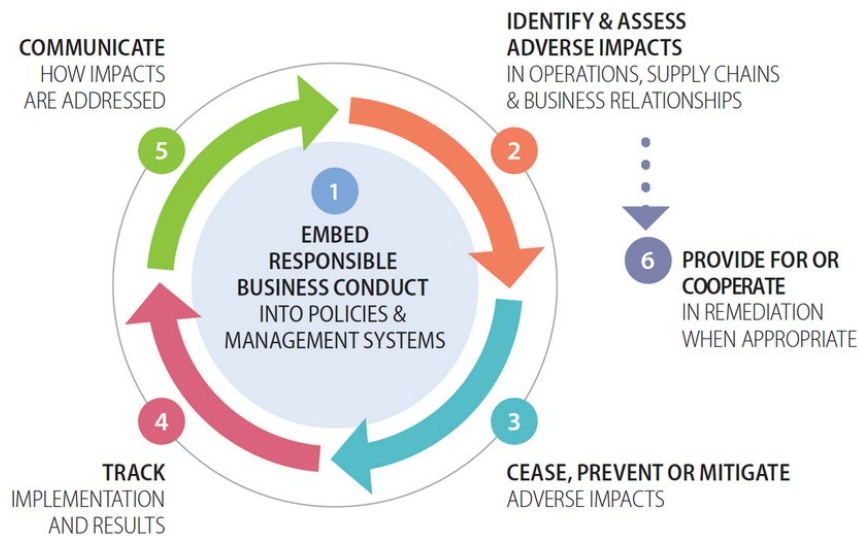
► Figure 3: Six Stages of Due Diligence Process (reproduced from <https://mneguidelines.oecd.org/>)

Figure 3 outlines six stages of the due diligence process, as per the OECD guidelines<sup>31</sup>. Trade unions are useful agents that can involve themselves in all these stages. Moreover, depending on national contexts and trade union influence, processes of embedding trade unions into responsible business conduct can be initiated. The guidelines encourage National contact points (NCPs) who serve as agents that promote awareness on guidelines as well as arbitration for violations (OECD 2023). However, while some clarity on NCPs and their roles has been expanded, experience will let us know whether it is able to remedy some concerns raised by affected people in different contexts. For example, (OECD Watch 2015, 25) has listed some important concerns regarding NCPs in their adjudication process, including high costs borne by victims as well as stringent and prohibitive requirements for evidence to accept a complaint.

As outlined at the start of the paper, the **Corporate Sustainability Due Diligence Directive (CSDDD)** of the European Union was approved by the European Parliament on April 24, 2024 (European Parliament 2024b). The adopted text makes specific reference to the OECD's guidelines as well as MNE declaration as "internationally recognised frameworks setting out practical due diligence steps to help companies identify, prevent, mitigate and account for how they address actual and potential impacts in their operations, supply chains and other business relationships" (European Parliament 2024a). The directive is one step closer to be applicable to all member states of the EU. The criteria for firms that are covered has moved from the original criteria of 500 employees and a turnover of 150 million euros to 1000 employees and 450 million euros. The phasing of the CSDDD is said to start with companies with 5000 employees or more and 1500 million euros turnover in 2027 (McGowan 2024). With a motivation to meet the SDGs, the CSDDD clearly states that natural and human risks in the future could be detrimental to business and therefore it sees the private sector as an important component of ensuring inclusive and sustainable economic growth in the future. The EU's CSDDD is a significant instrument, since it brings in binding obligations including specific reporting requirements, as well as creating supervisory structures to monitor and evaluate progress towards human rights and environment due diligence. However, one important consideration that needs to be addressed at the level of global governance is the specificity of obligations that the directive seeks to bring out. There is an obvious gap that needs to be given due attention, and trade unions could be effective agents in taking this

<sup>31</sup> The OECD has specific sectoral guidelines in garment and footwear, extractive industries, agricultural GVCs among others.

forward. The directive clearly sees obligations as “obligations of means” which means that companies need to take all measures that they are capable of taking and it does not entail an obligation on results, *per se*. In other words, the idea is that the binding obligation emerges out of the action taken by companies and less on an evaluation of results or outcome of due diligence. For instance, Clause 19 states that “this directive should not require companies to guarantee, in all circumstances, that adverse impacts will never occur or that they will be stopped” instead requiring them to take “appropriate measures which are capable of achieving the objectives of due diligence by effectively addressing adverse impacts”. Clause 73, referring to corporate transitions to a sustainable economy, states that “being an obligation of means, due account should be given to the progress companies make, and the complexity and evolving nature of climate transitioning”. Both these instances indicate that the obligation has certain limitations in terms of engaging with impact and results. In which case, developing protocols for progress and evaluating due diligence measures is a constant process that could have trade union buy-in, and in some cases could also be a means of promoting labour organising.

In the realm of **development finance**, international financial institutions (IFIs) like the IFC and World Bank have their own instruments dealing with labour standards. As donors, these multi-lateral initiatives seek to promote and establish performance standards by recipients. There is some level of coherence between labour standards of the ILO and these instruments. The IFC’s guidance note 2 and performance standard 2 (PS2) makes explicit mention of core ILO conventions<sup>32</sup>. And the World Bank’s Environmental and Social Standards<sup>2</sup> (ESS2) is informed by core ILO conventions<sup>33</sup>. IFC’s performance standard 2 proposes that businesses form internal labour standards performance teams and include participation from key stakeholders, especially trade unions, in order to monitor and see progress of labour standards within a company (IFC and SAI 2010). However, there is some ambiguity in the IFI’s promotion and protection of labour standards, when it comes to defining who the worker is. The nature of protection is differentiated for workers outside a direct employment relationship. For contractual workers employed by a third-party contractor or those employed by a supplier contractor, there is relative dilution of labour protections (Ebert 2019, 116). Paras 24-25 of IFC’s standards stress that the client should use “commercially reasonable” procedures and efforts to build compliance with PS2 for these workers, which in light of tight financial constraints in GVCs would be a difficult task. However, there is a clause in para 26 that suggests that wherever possible, if no grievance redressal mechanism exists, the grievance redressal mechanism of the client should be made available to these workers.

Meanwhile, the ADB is undergoing a review of its environmental and social framework. A recent consultation draft (to be finalised and approved by 2024) has a section that includes specific labour protections for project workers<sup>34</sup>, which includes provisions for freedom of association (ADB 2023, 45-52). Engaging with this process and remedying the specific concern regarding differentiated categories of workers can be an important agenda to ensure decent work and social dialogue.

### 4.3 Social Partner Initiatives

Global union federations and local level trade unions have managed to build pressure at several levels, whether it is towards promoting adequate safety protocols (Accord on Fire and Building

<sup>32</sup> For Performance Standard 2, Labour and Working Conditions (2012), See <https://www.ifc.org/en/insights-reports/2012/ifc-performance-standard-2>

<sup>33</sup> For World Bank’s Environmental and Social Standards (ESS), See <https://projects.worldbank.org/en/projects-operations/environmental-and-social-framework/brief/environmental-and-social-standards>

<sup>34</sup> There are internal classifications and similar caveats in terms of differentiated protections mentioned for — direct workers, contractual workers, primary supply workers and community workers.

Safety in Bangladesh) or promoting Freedom of Association in Indonesia. The global framework agreement signed between IndustriALL, and H&M is one such instance that seeks to build a “sustainable garment industry with a unionized workforce, constructive labour-management relations, living wages through industry level collective agreements, and safe workplaces.”<sup>35</sup> **Framework agreements** between Global Union Federations and transnational corporations have come to cover not only the lead firm but different suppliers and producers across the value chain (Zimmer 2021). They are different from corporate codes of conduct and are more akin to industrial relations at an international level. Several GFAs across different sectors, between trade unions and lead firms have been signed<sup>36</sup>. They are signed to uphold ILO core labour conventions and international labour standards, but in many instances, they may have a specific ambit which is outlined in an implementation mechanism. However, most of them explicitly argue that the ILO core labour standards should take precedence in case national laws fall short (IndustriALL Global Union 2012). They are quite often an agreement or settlement between a Global Union Federation and a transnational corporation applying to several countries, but in some cases such as the Bangladesh accord or the Indonesian Protocol on Freedom of Association, they are focused on one country. A significant number of these agreements have been signed with MNEs in the global North. While trade unions in the global south are signatories to the framework agreement, the wider global experience suggests that global union federations along with trade unions in the developed countries— where many lead firms operate— are the primary negotiating agents, something flagged by studies suggesting that this distances agreements from the implementation in the countries where producer/suppliers operate. This is a major concern when examining trade union participation. The lack of coordination or communication between global North trade unions and those operating in the host countries can be seen as a serious governance deficit. Securing this communication is an important peg toward enhancing social dialogue in GVCs.

Meanwhile, apart from these deficits in comprehensive social dialogue along the GVC, GFAs between Global Union Federations and Multinational Enterprises show different degrees of involvement with the GVCs. In some instances, there is absolutely no mention of the GVC and the buyer-supplier relationship, while in others, there is a provision for the MNE “to encourage suppliers and subcontractors to adhere to the standards set out in the GFA” (Hadwiger 2016). Further, monitoring becomes an issue since the spread of GVCs and multiple actors makes it difficult to verify commitments. However, trade unions at the local level could serve as important agents in developing verification protocols and information feedback. In some instances, clear sanctions in terms of termination clauses are included. However, one serious problem in many of these agreements is that they fall prey to a lack of specificity, so much so that subsidiaries of MNEs that signed agreements remain ill-informed of such documents, and in many cases, the lack of a specific country of operation/enforcement leaves further ambiguity in these agreements.

As discussed in earlier sections, there is an unevenness in decent work outcomes for workers in GVCs, which includes wages. This includes instances of non-payment of wages or severe wage-gaps that persist, especially for women workers. The Asia Floor Wage Alliance, an alliance of trade unions, NGOs, academic and other social partners, recognised that a “minimum living wage” was possible in the buyer-driven garment sector, since the wage bill across the value chain was a single digit figure, and any improvement in wages could be achieved without any change in the retail prices which large retail firms were operating with (Bhattacharjee and Roy 2012, 74-75). Further, increase in wages has been attributed to improve productivity (Lollo and O'Rourke, 2020). Earlier discussions suggest that economic upgradation of firms within the value chain can

<sup>35</sup> See <https://www.industriall-union.org/industriall-global-union-and-hm-sign-global-framework-agreement>

<sup>36</sup> <https://www.industriall-union.org/global-framework-agreements>

lead to improved wage outcomes, but this may not necessarily transmit to unskilled and informal workers. Campaigns that address decent wage outcomes are important in building momentum for social dialogue purposes. However, they cannot be seen in isolation with existing guidelines and emerging due diligence requirements. The campaign used evidence-based research to calculate a living wage based on several criterion—both food and non-food—which was then promoted through publicity campaigns and directed towards brands at an international level, eventually leading to some form of a benchmark for calculating wages (Bhattacharjee and Roy, 2012). This data can be useful in developing communication tools to engage with evolving due diligence requirements.

Meanwhile, suggested improvements in technology are seen to offset women's employment, especially in sectors moving from low-skill, low-wage employment profiles. Further, serious concerns surrounding sexual harassment at the workplace persist. **Social dialogue surrounding women's employment** is an important peg in terms of social partners initiatives. In April 2022, the TTCU which is an Indian women and Dalit-worker led union, along with Global Labour Justice-International Labour Rights Federation signed an agreement with garment and textile firm Eastman Exports along with international firms like H&M, Gap and PVH to end gender-based violence (Singaravel 2022). One important component of this agreement was a recognition that the right to organise and form unions are important so that a collective voice can be generated to fight gender-based violence at the workplace and outside<sup>37</sup>. The Dindigul agreement, as it is called, seeks to bring together the momentum for unionising within the demands for safety and prevention of gender-based violence. Recognising the importance in improving women's work in GVCs can be an important part of trade union action. This must also take into account care and reproductive work women workers enter into. This unpaid work is as much part of their everyday working lives and remains outside any consideration of value addition. Specific agreements that engage with women's work could create necessary momentum since they are the largest section of the workforce in several sectors, especially garment and textiles.

In addition, **fairtrade initiatives and ethical trade activities** through multi-stakeholder coalitions between NGOs in the global North and social partners in global South provide another arena for intervention. CSR-led factory auditing and standard setting have proliferated through a variety of mechanisms for American and European firms, whether it is the 'monitoring-over-sight' through the Fair Labor Association (FLA), Ethical Trading Initiative (ETI) and the Business Social Compliance Initiative (BSCI), or the Worldwide Responsible Accredited Production (WRAP) program promoted by the American Apparel and footwear Association (Bartley and Zhang 2012). Reputational damage is an important component for these initiatives and serious factory accidents have generated responses from consumers and government alike. There is a fear of retail losses with such campaigns and can also cause reputational harm but ends up bringing labour rights into the forefront (Sydow and Frenkel, 240).

While the list of social partner initiatives that are outlined are not exhaustive, they are invaluable in building a discourse around securing international labour standards across GVCs. Further, their contribution in generating evidence of violation and non-compliance cannot be understated. Several initiatives located in major cities in the global North are involved in key litigation as well as evidence-based research to build accountability and generate activity in the judicial system in the global North.

<sup>37</sup> See <https://asia.floorwage.org/wp-content/uploads/2023/01/Dindigul-Agreement-Fact-Sheet.pdf>

## 4.4 Private Governance

Private initiatives— outside of national governments, multilateral initiatives and trade unions— try to create accountability and promote labour safeguards. This is not to suggest that governments or trade unions are excluded in these initiatives, but the primary thrust is to create mechanisms that generate private standards for improved social and economic outcomes. However, the challenge in many of these instances is that their inclusion of trade unions in deliberation on standards is absent or cursory at best.

The **Better Work initiative**, a collaboration between the ILO and the IFC exists in several countries including Bangladesh, Cambodia, Indonesia and Vietnam in the Asia-Pacific Region. It operates akin to a corporate social responsibility (CSR) initiative through a combination of private fees from factory engagement and financial support from its development partners. It seeks to address “non-compliance” with labour standards and upholding freedom of association, collective bargaining and right to organise by creating worker-management committees, where workers can elect their own representatives so that workers can have a voice and violations can be addressed (Anner 2018). It is a direct intervention that seeks to build institutions for social dialogue. In the Better Work Vietnam (BWV) the bipartite Performance Improvement Consultative Committees (PICCs) that were formed are seen as ineffective because of ‘sourcing squeeze’ from global demand, which means the effects on wages and overtime violation cannot be dealt with effectively through social dialogue, but this then quite often provides some leverage to strike (Delautre 2019). Wildcat strikes in Vietnam, especially between 2010 and 2013 were seen in many factories, including those monitored by the Better Work programme of the ILO and IFC. One survey of the causes suggests that wages and bonus/overtime payments were reasons for more than half these strikes, many of whom were successful in managing some concession from their employers (Anner 2018).

Better Work across several countries in the Asia-Pacific region has made attempts at the formation of bipartite worker-manager committees that seek to build dialogue and ensure compliance with labour standards. This partnership may not always include the buy-in of trade unions and may sometimes operate in environments where the overall national policy climate may be in favour of flexibility, causing a contradictory situation. For example, in Indonesia these committees were created in a context where the government passed the Job Creation Act (or Omnibus Law), that harmonized and simplified clearance and compliance requirements to foster growth and investment. This law was opposed by the national trade unions (BetterWork 2022).

**Private certification** is another mechanism of private governance. The International Standards Organisation (ISO) provides key standards that seek to build compliance based on defined auditing standards, claiming a rigorous procedure for finalisation of these standards. Increasingly, GVCs have been utilising ISO based standards to showcase compliance, quite often promoted by global North stakeholders and customers. For instance, following the tragic Rana Plaza and Tazreen disasters in Bangladesh, many garment manufactures based in Europe and the United States felt the need to “develop private-sector mitigation efforts, based on aggressive factory inspection and utilising third-party inspectors, testing facilities and auditors, that had not been previously utilised in Bangladesh” (Cooper, 2018, p. 72). The underlying claim was that existing national mechanisms for occupational health and safety were slow and not quick to remedy shortcomings. In this context, the ISO and its different standards, especially, ISO 45001 on OSH and ISO 26000 referring to social responsibility serve as important benchmarks to evaluate the status of compliance with certain given standards. In terms of differential modes of regulation and creating standards, the ISO and similar meta-standards represent a domain of privatised regulation that are an important part of “the rules and norms governing the global economy”

(Heras-Saizarbitoria et al 2020, 399). As major manufacturers in the global north expanded their division of labour across diverse national sites, there was fear that the final product could face an uncertainty in terms of quality, which then meant that many of these bodies, especially the ISO served a useful role in standardising quality control, which was useful to build consumer buy-in.

These standards operate through what appears to be an inter-firm quality standard. However, the absence of key social partners seems to have consequences. For instance, during deliberations and discussions on the ISO45001 (OSH), the definition of workers did not adequately acknowledge non-standard forms of employment that are quite common in global value chains (Heras-Saizarbitoria 2020, 407). One important concern is that owing to their self-generated private mechanisms, certification would lead to a feeling that this meant compliance with national standards, something even employers' organisations voiced as a concern.

It is important to recognise that International Labour Standards are a significant outcome of workers experiences, and trade union involvement in enhancing and building them are crucial in ensuring their legitimacy. The close linkages between these management systems, auditing processes and related agencies leaves a regulatory vacuum that does not adequately address trade union concerns, especially among workers in key supply chain sectors. Meanwhile, organisations such as Social Accountability International include standards like SA8000 that seek to create scope for collective bargaining, allowing for CSR to become an important peg in ensuring social compliance.

**Supplier codes of conducts** have been another mode of self-regulation among lead firms owing to public pressure (Vandenbroucke 2023). They seek to foster compliance to international labour standards among their suppliers in GVCs. However, one feature that is reported is that lead firms generally do not contribute adequately towards the required due diligence, which then automatically places the burden onto the supplier (Vaughan-Whitehead and Pinedo Caro 2017). Codes of conduct and their associated requirements imply costs, but also give an indication of the choices that suppliers make based on the firm or buyer that is making these codes mandatory as part of the supplying contracts. It would appear that cost-benefit assessments by suppliers could influence their decision to abide by codes of conduct. These are largely an increase in variable costs linked to improved labour standards, which includes overtime limits, worker bargaining on wages, safety equipment as well as fire and building safety infrastructure (Mosley 2022). However, there is evidence to suggest that failure to comply with codes of conduct quite often have little effect on choices by firms to end agreements with suppliers (Blasi and Blair 2019). In such a context, the room for negotiation and upholding labour rights would appear to be very narrow.

Another recent development is from the realm of technology. **Blockchain technology**, which is system of distributed ledger technology, provides a chain of verifiable blocks of information inputted in a sequence that is very difficult to tamper with. This is seen as guaranteeing transparency and verifiability, which is a serious concern in GVCs whether it includes 'ethical' consumers who wish to access the source and process through which the product they purchase has gone through, or suppliers and buyers monitoring movement of goods, or even national and international regulators requiring modes of verifying origin and movement of goods across different trading zones (Khorana and Norberg 2022). Securing labour standards through blockchains can be an important innovation, which has important implications for reducing regulatory costs along the supply chain, but also serves a more robust and verifiable mechanism to monitor workers' rights. Workers and trade unions, using active internet-of-things (IoT) monitoring mechanisms could actively give updated information on core labour standards, whether it is the working hours or wages being paid that can be transmitted to national regulators as well as consumers.

However, there is also an element of caution that comes with such technology. In many GVCs, producers are largely concentrated in developing countries, and especially in the case of agricultural<sup>38</sup> or mineral GVCs, the penetration of technology is variable which could be a serious limitation with these technologies and could create another uneven process of technological access (Kohler and Mpufane 2019). However, while these technologies have a tendency to develop and emerge in private contexts, there is a need to make them instruments of public accountability, which would possibly need active intervention from trade unions and governments as well as international agencies such as the ILO.

The variety of private initiatives provide mixed outcomes. Several factors could lead MNEs to choose to invest in labour improvement within supply chains. Several of these private initiatives operate in an autonomous arena but have gained a certain legitimacy. Inter-firm acceptability is crucial to these standards taking shape. Ineffective labour market institutions in certain countries add to the proliferation of these standards. However, a major concern with these standards is the following: opaque redressal mechanisms and separation from public modes of labour governance. However, what is useful for the purpose of our paper and our discussions is that many of these private initiatives come at a cost. This cost has to be inputted into firm-level costing strategies, which includes investment in social upgrading and decent work outcomes. This information could be useful to generate clear protocols for emerging due diligence initiatives.

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<sup>38</sup> The IBM and Farmer Connect with the *Thank My Farmer* initiative uses blockchain technology. See <https://newsroom.ibm.com/2020-01-06-Farmer-Connect-Uses-IBM-Blockchain-to-Bridge-the-Gap-Between-Consumers-and-Smallholder-Coffee-Farmers>

## ► Conclusion and Future Course of Action

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Efforts across national, regional and international contexts towards securing labour rights in GVCs display mixed outcomes. At a textual level, most multilateral standards echo the core message of the ILO's core conventions and international labour standards. Moreover, they recognise the complex transnational character of GVCs and the challenges for national jurisdictions to hold actors liable for violations. The ILO's centenary declaration for the future of work recognises the diversity of "work arrangements, production and business models" in domestic and global supply chains. It would appear that the normative foundations of labour standards for all kinds of non-standard work arrangements are fairly comprehensive. The ILO's decent work agenda — as a part of the global sustainable development agenda— is squarely rooted in employment generation, rights at work, social protection and social dialogue with gender equality. Trade unions are important agents in achieving these goals. However, the specific character of GVCs present serious challenges to decent work outcomes and social dialogue. Rooted in flexibility and profit-maximisation, firms operating within GVCs are quite often operating in contexts where trade unions, freedom of association and social dialogue are absent, either by omission or commission. Weak labour market institutions, limited trade union density, and chronic poverty and unemployment contribute to this situation. GVCs produce variable economic pathways for firms and countries as well as uneven social outcomes for workers employed. The inherent flexibility and mobility they represent appears to quite often foster a 'race to the bottom' for host countries where suppliers and subcontractors operate in specific sectors like garment and textiles, while in some sectors like ICT and electronics they lead to increased wages and formal employment.

As per the discussion on terminologies, we see a complex set of actors intersecting at local, national, regional and international levels towards the movement of goods and services. The GVC framework utilised in the paper has a specific remit. It seeks to isolate value-generation as a propelling force in the evolution of GVCs. It takes on multiple governance frameworks as derived from the GCC and GPN approaches, but, moves towards a more concrete set of value-addition motives within production and distribution processes within GVCs. In other words, it acknowledges the value of different governance mechanisms and the role of trade unions but uses the concept of value-addition to link these governance possibilities within economic upgradation pathways. Trade unions are important institutions for governance, and sometimes their input is restricted to generating or responding to top-down regulatory frameworks seen as post facto moments in global governance. However, if their intervention can be informed by an understanding of economic drivers of GVCs through the value chain perspective, this could allow them to have a more strategic intervention in GVC governance.

This paper attempts to examine the GVC universe beyond approaches that look at existing standards as standalone institutions that need to be adhered to. It attempts to build on the existing literature and adopts a perspective that could allow trade unions to produce knowledge that can inform tactics for claim-making at national, regional and global contexts. By deploying a value chain perspective, the paper tries to outline studies that showcase the relative strengths of players within GVCs, in terms of relative value-addition by different actors at different levels. This gives a realistic sense of developing specific claim-making pathways. Claim-making is used in a comparable manner as social dialogue. The perspective adopted by the paper is to see how trade unions and key social partners can collectively generate momentum to raise claims for decent work outcomes and labour rights.

In this regard, trade unions need to root their claims on evidence-based knowledge. The evidence in many instances regarding violations in GVCs are post-facto and occur after the violation has

taken place. Trade unions and social dialogue mechanisms respond to decent work deficits and labour rights violations in GVCs. This is an important function of social dialogue mechanisms and trade unions are indispensable agents in these processes. Several different input-output databases<sup>39</sup> that address value-addition in exports and imports are important resources that could allow trade unions to build strategic plans to identify key sectors and move beyond a generalised approach to engaging with GVCs. These input-output databases move from generic trade in goods and services to specific value-chain processes that give specific functional roles. Trade unions can use these to deploy their innate knowledge of workers' subjective positions in GVCs as a means to secure labour rights and hold businesses accountable. However, the innate flexibility and evolving forms of firms in GVCs sometimes does not allow for active trade union intervention, leaving workers vulnerable. Currently, the ILO has commissioned studies like (Viegelahn, Huynh and Kim 2023) that address job creation, GSC participation and employment shares within GSCs in southeast Asia over two decades using data from the ADB's multi-regional input-output tables. However, while this gives a broad perspective on important labour market indicators and employment profiles within GSCs in the region, the linkage with trade unions is relatively undeveloped. Further, the perspective does not significantly engage with firm-level dynamics.

The paper seeks to build on these experiences. The paper has outlined some economic upgradation pathways in the existing academic and institutional literature. These provide some sense of linkages between firms within and across sectors and countries. These linkages are then scrutinized for the diverse types of jobs within them, in terms of skills, wages, and scope for freedom of association. As GVCs deepen or shift, different changes in these economic linkages and job/skill profiles emerge. These may shape social dialogue and trade union interventions. Further, these economic changes operate within different governance frameworks that include national, regional and international levels as well as a series of private (firms, standards organisations), public (governments and state agencies), social partners (trade unions, NGOs) and multilateral institutions. Further, countries participating in GVCs leverage trade agreements to gain market access and bolster domestic industry.

The paper attempts to address this complexity by looking at some tendencies that emerge from a value chain perspective. In this context, the paper adopts a combination of different possibilities to build resources towards trade union intervention. These include:

- Identifying sectors: This based on the input-output tables that gives data on value-addition based on imports and exports in defined countries. Mapping backward and forward linkages at a macro level is a first step. This allows us to separate sectors with higher GVC participation. This could include identifying lead firms and MNEs from the global north, as well as suppliers. Further, already existing literature on levels in GVCs could be helpful. Some of these have been referred to in the paper (de Vries et al 2019); (Fernandez-Stark and Gereffi 2019); (Viegelahn, Huynh and Kim 2023).
- Identifying processes and functions: Within these input-output structures, key labour processes are identified. These are mapped for key sectors that show increased GVC participation (Bair and Gereffi 2003).
- Jobs, wages and skills: Based on labour force data, census data as well as secondary literature, some employment and occupational profiles, skill levels, wage levels are mapped along with the identified sectors in specific countries.

<sup>39</sup> See note 8 above.

- National regulatory environment: key laws and standards at the national level that pertain to these sectors and workers need to be identified (ILO 2016a).
- Trade unions: Identifying existing social dialogue mechanisms, collective bargaining agreements as well as trade unions and social partners operating.
- Trade agreements: evidence regarding negotiation texts where these sectors and associated products are included, excluded or have special mention. Further, negotiations between key countries that are important for GVC linkages need to be mapped (Azmeah 2019); (UN-ESCAP 2021); (Park 2014).
- Due diligence: Mapping and identifying specific due diligence mechanism based on key lead firms in the global North or the global South. The requirements need to be integrated into knowledge on economic and social upgradation pathways.

This is a preliminary methodology based on the current review conducted. However, what this method seeks to generate is effective knowledge generation on economic upgradation pathways from a trade union perspective. With increasing binding provisions entering into due diligence frameworks, knowledge on economic upgradation could be useful to integrate due diligence into GVCs governance.

Economic upgradation pathways tell us how firms evolve, what types of workforces are employed, and how value is generated at each level, eventually realised in the price the consumer pays. The logic is completely governed by improved economic outcomes and enhancing competitiveness. In this context, trade unions are crucial actors in introducing a social upgrading agenda within processes of economic upgradation.

This becomes important when engaging with due diligence mechanisms across countries and multilateral frameworks. Due diligence generally operates with an “obligation of means” or a requirement to use all means possible towards building capacities and efforts to remedying human rights violations. This provides a major gap when it comes to evaluating results or mapping them with MNE efforts. In other words, firms may make the efforts, but results or outcomes are not necessarily in their ambit of responsibility. Moreover, there is a conflict or contestation between two approaches to corporate action. To take an example, the EU’s recent due diligence mechanism—with binding provisions—seeks to integrate human rights and environment safeguards into business decisions. In this case, the challenge for social partners is to understand how a non-market rationale of social upgrading can be integrated or coexist with an ‘apparent’<sup>40</sup> market rationale. Traditional market wisdom suggests that profit alone is a function of competitiveness. And, in the absence of binding provisions and limited accountability, profit becomes the singular axis through which firms decide on costs and upgradation pathways. However, value chain analysis (Porter 1985) suggests that competitiveness is multifaceted, and firms need to harness different pathways to assure competitive advantage. Hence, if trade unions can use the current HRDD momentum to integrate (wherever possible) decent work goals into the apparent market logic of upgradation, this would be a significant development. Taking into account strategic sectors as well as functional roles that can be generated at the trade union level will provide more robust complements to due diligence requirements. This needs a robust evidence-based framework as well as developing appropriate communication tools that can be

<sup>40</sup> The word apparent is used here, since most market-led initiatives are significantly propped up by state and international incentives.

collectively generated. Some possibilities in this regard which emerge from texts within existing guidelines could lead to specific initiatives:

- Integrating decent work deficits as corporate risks. This could mean building adequate result/outcome protocols vis-à-vis different due diligence frameworks. This will be generated after identifying key sectors. This could look at value chains and identify weaknesses when it comes to economic and social upgrading and then input them into corporate sustainability risks.
- Generating decent work protocols that can be included in corporate sustainability reports. Further, this could be an advocacy exercise to ensure firms include decent work deficits in their corporate sustainability reports. The ILO could generate model guidelines for this.
- Create company-union dialogues to negotiate due diligence requirements. This could utilise GFAs but locate it within host countries mediated through trade unions in home countries.
- Create north-south trade union initiatives to generate knowledge on MNE strategies.
- Entering supervisory bodies in multilateral agencies to guide due diligence frameworks. This means ensuring governments and multilateral institutions recognise trade unions as effective members for knowledge-generation and compliance monitoring when it comes to due diligence.

These are suggestive, but, a more accurate and comprehensive list can only be possible, if knowledge of evolving economic upgrading pathways is expanded from a trade union perspective. This is a process that will need increased deliberation among key social partners in the coming months and years.

In conclusion, one very important historical reality is that capitalist enterprises have historically required social and political institutions as a means to embed markets in society (Polanyi 1967). In fact, trade unions have always played this role, and their emergence is in some ways an outcome of this process. Social security emerged as a means to further decommodify labour, and to re-embed market societies in an emerging order where labour standards became acknowledged universal rights. In the current context of competing trade regimes, economic growth in emerging economies, climate change and environmental degradation as well as diversifying GVCs, human rights and workers' rights violation persist. In this context, trade unions and social partners need to collectively work towards utilising a variety of evidence-based knowledge and emerging due diligence approaches as a means of embedding GVCs in social standards like the core labour conventions and human rights conventions. This means adhering to standards while also collectively innovating and arriving at model approaches towards integrating decent work goals into firm-level economic upgradation decisions.

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The International Labour Organization is the United Nations agency for the world of work. We bring together governments, employers and workers to improve the working lives of all people, driving a human-centred approach to the future of work through employment creation, rights at work, social protection and social dialogue.

### Contact details

#### Bureau for Workers' Activities (ACTRAV)

International Labour Organization  
Route des Morillons 4  
1211 Geneva 22  
Switzerland  
T +41 22 799 7708  
[actrav@ilo.org](mailto:actrav@ilo.org)  
[www.ilo.org/actrav](http://www.ilo.org/actrav)



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