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Private Standards and Global Governance

Economic, Legal and Political
Perspectives

Edited by
Axel Marx
Miet Maertens
Johan Swinnen
Jan Wouters



Leuven Centre
for Global
Governance Studies

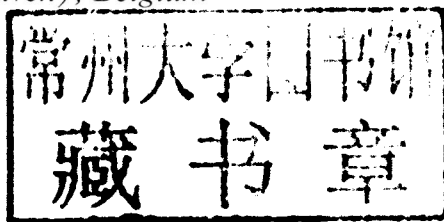
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Axel Marx, Miet Maertens, Johan Swinnen
and Jan Wouters

University of Leuven (KU Leuven), Belgium



LEUVEN GLOBAL GOVERNANCE

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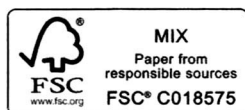
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Figures

| | | |
|-----|------------------------------------------------------------------------------------------|-----|
| 3.1 | The governance triangle | 63 |
| 3.2 | FM and CoC certification | 85 |
| 6.1 | Index of agricultural exports from Sub-Saharan Africa, 1990–2005 | 161 |
| 6.2 | Impact of vegetable contract farming on the length of the ‘hungry’ season in Madagascar | 165 |
| 6.3 | Income effects of green bean exports in Senegal | 166 |
| 6.4 | Poverty effects of green bean exports in Senegal | 167 |
| 6.5 | Income effects of tomato exports in Senegal | 168 |
| 6.6 | Poverty effects of tomato exports in Senegal | 168 |
| 7.1 | Horticulture exports (tons) from Senegal, 1997–2006 | 176 |
| 7.2 | Research area: rural communities of Gandon and Ross Béthio selected for household survey | 180 |
| 7.3 | Household employment in tomato export industry, 2003–2006 | 182 |
| 7.4 | Comparison of income from different sources across households | 185 |
| 7.5 | Comparison of poverty levels across households | 186 |
| 8.1 | Information contractual network with vertical information | 214 |
| 8.2 | Information network centred on retailers | 215 |
| 8.3 | Risk management and product recalls | 216 |

Tables

| | | |
|-----|-----------------------------------------------------------------------------------|-----|
| 3.1 | FSC FM certification adoption | 85 |
| 3.2 | FSC CoC certification adoption | 86 |
| 3.3 | Ranking of countries according to FSC-certified surface area (FSC-FM certificate) | 87 |
| 6.1 | Smallholder procurement in Sub-Saharan African export supply chains | 162 |
| 6.2 | Employment in Sub-Saharan African export horticulture supply chains | 163 |
| 7.1 | Comparison of household characteristics | 183 |
| 9.1 | Definition of SPS Measures | 236 |
| 9.2 | Examples of private standards | 240 |

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Contents

| | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| <i>List of figures</i> | vii |
| <i>List of tables</i> | viii |
| <i>List of editors</i> | ix |
| <i>List of contributors</i> | x |
| 1 Introduction: private standards and global governance <i>Axel Marx, Miet Maertens, Johan Swinnen and Jan Wouters</i> | 1 |
| PART I GLOBAL GOVERNANCE THROUGH PRIVATE STANDARDS: THE CASES OF NATURAL RESOURCES, FOOD AND LABOUR CONDITIONS | |
| 2 Governing global commons: the public-private protection of fish and forests <i>Frans van Waarden</i> | 15 |
| 3 Private standards in forestry: assessing the legitimacy and effectiveness of the Forest Stewardship Council <i>Axel Marx, Emilie Bécault and Jan Wouters</i> | 60 |
| 4 Private standards in global agri-food chains <i>Spencer Henson and John Humphrey</i> | 98 |
| 5 Market-driven promotion of international labour standards in Southeast Asia: the corporatization of social justice <i>Ludo Cuyvers and Tim De Meyer</i> | 114 |
| PART II PRIVATE FOOD STANDARDS AND GLOBAL GOVERNANCE: ECONOMIC PERSPECTIVES | |
| 6 Private standards, global food supply chains and the implications for developing countries <i>Miet Maertens and Johan Swinnen</i> | 153 |
| 7 Globalization, private standards and poverty: evidence from Senegal <i>Liesbeth Colen, Miet Maertens and Johan Swinnen</i> | 172 |

PART III PRIVATE FOOD STANDARDS AND GLOBAL GOVERNANCE: LEGAL PERSPECTIVES

| | | |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| 8 | Transnational governance by contract: private regulation and contractual networks in food safety <i>Fabrizio Cafaggi</i> | 195 |
| 9 | Food safety-related private standards: the WTO perspective <i>Gretchen H. Stanton</i> | 235 |
| 10 | Private standards, global governance and international trade: the case of global food safety governance <i>Jan Wouters, Axel Marx and Nicolas Hachez</i> | 255 |
| 11 | Conclusion: private standards – a global governance tool? <i>Axel Marx, Miet Maertens, Johan Swinnen and Jan Wouters</i> | 293 |
| | <i>Index</i> | 310 |

1. Introduction: private standards and global governance¹

**Axel Marx, Miet Maertens, Johan Swinnen
and Jan Wouters**

During the last three decades many social scientists have discussed the impact of globalization. Some critics have argued that existing multilateral and governmentally driven initiatives are incapable of addressing the global challenges that result from trade liberalization and increased economic globalization. At the same time, one can observe the emergence of new non-state market regulatory initiatives. These private voluntary regulatory initiatives aim to govern production processes and supply chains across the globe according to a set of 'private' standards. These standards may contain rules with regard to a diversity of issues such as food safety, ecological protection, labour conditions, human rights protection and others. Several authors consider private standards, besides other instruments, as an increasingly important global governance tool.

As a result, across disciplines and focusing on different areas of research, several scholars have started to study this phenomenon. Initial studies have focused on the emergence of private standards, their design and diversity and their legitimacy as a global governance tool. Recently, scholars also started to address their effectiveness as a governance tool. Hence, along with the proliferation of private standards, the scientific literature on this theme has increased tremendously in the last decade. What emerges from these studies is a complex picture of private governance raising several unresolved issues with regard to questions of their effectiveness and legitimacy, their relationship with public policy arrangements, as well as to the overall issue of whether private standards constitute a viable global governance instrument. In addition, a thematic divide, also partially reflected in a disciplinary divide, can be observed with economic and legal scholars focusing mostly on private food standards, and political scientists and governance scholars analyzing labour standards and social and environmental standards for the management of natural resources. The result is a fragmented literature along disciplinary and thematic lines with little interaction, notwithstanding the fact that this

scholarship focuses on highly related issues. This volume aims to bridge these disciplinary and thematic research lines and address some of the identified key questions with regard to private standards as a global governance tool. In addition, the book makes a specific contribution to the study of private food standards by including legal and economic analysis of these standards.

The book's origins lie in an international experts' workshop that was organized in November 2008 at the University of Leuven. The workshop conveners, LICOS Centre for Institutions and Economic Performance and the Leuven Centre for Global Governance Studies, brought together practitioners and researchers from different disciplines who focus on different aspects of private standards. This book contains a selection of the papers presented at this workshop, subsequently revised, and a number of additional invited contributions. The book contains nine chapters. Chapters 2–5 provide a broad assessment of private standards with regard to legitimacy and effectiveness across different thematic areas: natural resources, food and labour conditions. The subsequent chapters focus specifically on private food standards. Chapters 6 and 7 provide an economic analysis of food standards. Chapters 8–10 offer a legal perspective. The book ends with a concluding chapter on private standards as a global governance tool.

GLOBAL GOVERNANCE THROUGH PRIVATE STANDARDS: THE CASES OF NATURAL RESOURCES, FOOD AND LABOUR CONDITIONS

Chapters 2–5 introduce and critically discuss three broad areas in which governance through private standards is especially prominent, namely the areas of natural resources management, food safety and labour conditions.

Frans van Waarden in Chapter 2 on '*Governing Global Commons: Public–Private Protection of Fish and Forests*' focuses on the emergence and proliferation of private forms of governance as an important tool for global natural resources management. After a historical overview of public and private regulation of common property resources in which he pinpoints the failure and weakness of (inter)governmental solutions with regard to biodiversity, van Waarden discusses several market-based regulatory solutions to the protection of forests and fisheries. Two certification schemes in particular are given in-depth attention, namely those of the Forest Stewardship Council (FSC) and the Marine Stewardship Council (MSC), which aim to fulfill three functions: standard

setting, accreditation of independent certification bodies, and trademark assurance. In the course of this analysis, the author discusses the emergence of the two certification schemes, provides a comparative analysis and discusses some problems such as the management of diversity, the problem of enforcement (limited audit resources) and issues concerning the maintenance of certificate credibility and reputation.

These problems point to shortcomings of certification mechanisms and call for solutions. Van Waarden emphasizes that there is a need to certify the certifiers, which can be achieved through different means either private or public. Van Waarden builds on historical evidence to make the case for public recognition of private standards and identifies some initial current trends in which states join or make use of private arrangements with regard to the protection of forests and fisheries. He concludes his discussion with the observation that the result of these trends is the emergence of new economic governance regimes, combining elements of markets, associations, hierarchies and states. As a result, van Waarden recommends that more should be invested in developing a genuine Ecological Public Private Partnership (EPPP), where private initiatives such as the FSC and MSC are publicly supported but also controlled.

Axel Marx, Emilie Bécault and Jan Wouters, in Chapter 3 entitled **'Private standards in forestry: assessing the legitimacy and effectiveness of the Forest Stewardship Council'**, draw on recent findings in the academic and policy-oriented scholarship to evaluate whether, 20 years on, the Forest Stewardship Council (FSC), one of the most prominent examples of transnational private regulation in global environmental politics, still holds great promise as an alternative to multilateral forest governance. They focus, in particular, on two dimensions of the FSC that figure rather prominently in discussions of transnational policy networks, namely legitimacy and effectiveness. After a brief description of forest certification and the FSC, the chapter examines the legitimacy of the organizational procedures of the FSC from both a normative perspective and a sociological/constructivist perspective. It then assesses various aspects of the effectiveness of the FSC as a global governance tool for the promotion of sustainable forest management practices worldwide. This two-step analysis reveals that despite scoring relatively well under democratic criteria of input and output legitimacy and in terms of process effectiveness, i.e. adoption of FSC certificates, the FSC is still confronted with several challenges. The authors identify, in particular, a strong North–South divide both in terms of formal representation/participation as well as in relation to certificate adoption, limiting the potential of the FSC to respond to forest degradation problems in developing countries. In line with these findings and with similarity to van Waarden's closing

remarks, the authors conclude that addressing global forest challenges requires strengthening the interaction between multilateral and private forms of governance in ways that complement and reinforce each other's performance and legitimacy. Greater involvement and supervision by multilateral institutions could be beneficial to the operation of the FSC. Multilateral organizations could notably help in addressing the North–South financial gap in private forest governance, and can also play a key role in supporting much-needed empirical research on the actual effectiveness of forest certification. With respect to the legitimacy dimension, the international public sector could assist the FSC in achieving a higher level of representation of developing countries in its governance structure by providing financial support to the development of poorer and smaller forest organizations in the South so they can more easily access private transnational environmental governance networks.

Spencer Henson and John Humphrey, in Chapter 4 on '**Private Standards in Global Agri-Food Chains**', shed light on the nature of private food standards and how they relate to and differ from public regulations and international guidelines on food safety. In recent years, discussions have emerged about the impact of private standards on developing countries' access to foreign markets and their legitimacy. Henson and Humphrey distinguish between two main types of private standards. Premium standards schemes aim to establish a differentiation across products by attributing specific characteristics related to, for example, animal welfare, ecological production or fair trade, and by communicating these to consumers through labels. Baseline schemes, in contrast, are aimed at meeting the required minimum level of performance. Such baseline standards are often established by large companies. They are a tool for business-to-business governance and are generally 'invisible' to consumers.

The main issues the authors address are the diversity of private standards and the relationship between private standards and public food safety regulation. They further discuss the factors contributing to the emergence and spread of corporate standards. One of the main insights here is that private standards create entire standard schemes. This entails a change in the way monitoring and control is exercised along value chains. They further argue that private standard-setters can be seen as translating the public rules of, for example, the Codex Alimentarius, into standards that provide sufficient guidance for implementers to know what to do and for conformity assessors to determine whether compliance has been achieved. Finally they note that the extensive 'prerequisites' linked to the adoption of private standards potentially cause the greatest problems for developing countries because of costs related to demonstrating compliance.

Ludo Cuyvers and Tim De Meyer in Chapter 5 on ‘**Market-driven promotion of international labour standards in Southeast Asia – the corporatization of social justice**’ focus on private labour standards and analyze whether the pursuit of social justice related to the international liberalization of trade may be left entirely to market forces. The authors present a line of reasoning in which they raise two main questions. First, are states applying social clauses, i.e. making their commitments to liberalize trade and investment conditional upon the observance of labour standards? Second, can markets themselves make up for government failure to allocate correctly the social costs of economic production? They observe that traditional governance methods that rely on public international law are increasingly complemented by market-driven or private initiatives. This ‘privatization of social justice’ raises questions about the legitimacy and effectiveness of measures used to promote compliance with international labour standards. Cuyvers and De Meyer review the evolution of the social clause and analyze the diversification of governance methods to promote international labour standards through market-driven initiatives.

The authors suggest that the failure of state-centered regulation has been the main driver behind private driven initiatives for international labour regulation. Concerning the effectiveness of private initiatives the authors state that, so far, they only affect certain parts of the economy and they have been more successful in tackling tangible workplace rights violations (e.g. child labour and safety and health) than those that deal with wages, overtime restrictions and freedom of association. Moreover, private labour standards generally face the same challenges as traditional command-and-control regulatory systems.

Cuyvers and De Meyer illustrate some of the analytical aspects highlighted in the literature by describing outsourced regulatory systems from two Southeast Asian nations, Thailand and Cambodia. The authors conclude that it is not yet warranted to say that the pursuit of social justice in the framework of international trade liberalization can be left entirely to market forces. While market-driven initiatives play a crucial role in stimulating work floor awareness and action on labour standards, they are no long-term replacement for traditional labour market institutions.

PRIVATE FOOD STANDARDS AND GLOBAL GOVERNANCE: ECONOMIC PERSPECTIVES

The subsequent five chapters focus on private food safety standards. Chapter 6 and 7 take an economic perspective.

Miet Maertens and Johan Swinnen in Chapter 6 on ‘**Private standards, global food supply chains and the implications for developing countries**’ provide an overview of the arguments and empirical evidence for the development implications of increasing food standards. The proliferation of private and public standards causes dramatic changes in the way food production and trade are organized, with important implications for rural households in developing countries. Understanding the link between standards, the governance of food supply chains and rural incomes in developing countries is crucial from a development perspective. Maertens and Swinnen address the concern that stringent standards will lead to exclusive and exploitative supply chains and result in adverse implications for development. They show that this is not necessarily the case.

The authors first describe how increasing food standards influence the structure and governance system of food supply chains. The need for a consistent supply of high-standard produce, the need for monitoring compliance with standards, and the high costs related to compliance and certification, stimulate consolidation and vertical coordination in food supply chains. The authors subsequently analyze the development implications of increasing standards and the structural changes in food supply chains they induce. Through a thorough review of existing empirical evidence and insights from three original case studies on horticulture exports from Sub-Saharan Africa, the authors provide new insights on how supply chains have responded to increasing standards and how this has impacted development. Evidence suggests that varying degrees of vertical coordination occur, which result in differentiated development effects. The channels through which rural households benefit from high-standards trade are diverse. An important distinction can be made between product market effects and labour market effects. The case studies show that smallholder producers benefit from supplying high-standards produce to exporters under contract-farming arrangements through both direct and indirect effects. In the case of complete vertical integration in the chains, rural households, including the poorest households, benefit from employment opportunities created in the chains. Overall, empirical findings point to positive welfare effects of high-standards trade and modernizing supply chains.

Maertens and Swinnen conclude that, although there are important concerns related to the increased use of public and private standards in the food sector, standards can also bring about important positive effects for rural development and poverty reduction. They show that next to direct product market effects, which have received most of the attention in the literature, benefits can come in various ways through indirect labour market effects. A key issue in understanding these effects is the way in

which supply chain structures and governance systems respond to increasing standards.

Chapter 7 builds on the previous one by discussing in detail one specific case study. **Liesbeth Colen, Miet Maertens and Johan Swinnen** in their chapter on '**Globalization, private standards and poverty: evidence from Senegal**' start from the observation that there is a wide consensus among economists that the integration of developing countries in global trade and foreign direct investment flows is an important driver for growth but that poverty effects of globalization are less clear. Trade and investment in high-value agri-food supply chains can potentially benefit the poor because of a direct link with the rural economy and the intensive use of unskilled labour. Yet, increasing food standards, public as well as private, cast doubt on these beneficial effects. The poverty effects of increasing standards and the globalization of food supply chains remain highly debated. Surprisingly, little empirical research has focused on the overall poverty effects of globalization in the agri-food sectors of developing countries. This chapter aims at contributing to fill this gap in the empirical literature.

Colen, Maertens and Swinnen analyze the overall level of household income and the poverty effects of tomato exports and FDI inflows in the tomato sector in Senegal. The tomato export chain is dominated by a single multinational company that applies a strategy of vertical integration at different nodes in the supply chains, including primary production. One could therefore *ex ante* consider the tomato export sector in Senegal as a 'worst-case scenario' of globalization. Using data from secondary sources, several company interviews and a large household survey, the authors attain several important findings. First, tomato exports to the EU increased sharply, despite increasing standards in the EU. Second, tomato exports contribute significantly to poor household incomes and poverty reduction through employment effects. Third, no evidence was found that asset-poor households or unskilled individuals are disadvantaged in accessing employment in the tomato export sector. These are important findings as they show that even in this worst-case scenario of export development – with one multinational company dominating the chain and no smallholder producers involved in the chain – there are positive development effects through labour market effects.

The authors' conclusions challenge a few general views in the literature. First, the study shows that gains from high-standards food trade concentrated with foreign investors and large food companies do not necessarily marginalize the poor in developing countries. Second, the results show that important benefits may come through labour market effects rather than through product markets. Many empirical studies

assume that there cannot be benefits for the rural poor when households are excluded as primary producers as a result of increasing standards. This study shows the importance of including labour market effects when assessing the overall impact for the rural poor. Third, the case study on Senegalese tomato exports adds to the existing evidence of the possibilities of high-standards export development in Sub-Saharan Africa and thereby contributes to the need for a balanced perspective on standards as barriers or catalysts to trade.

PRIVATE FOOD STANDARDS AND GLOBAL GOVERNANCE: LEGAL PERSPECTIVES

Chapters 8–10 focus on legal aspects related to global private food governance.

Fabrizio Cafaggi, in Chapter 8 on ‘**Transnational governance by contract: private regulation and contractual networks in food safety**’, provides a general regulatory framework for the analysis of private food standards. The analysis starts from the assumption that there is a direct relationship between the development of transnational private regulation (TPR) and the structure of supply chains in the agri-food industry. This link is then assessed in the framework of changing dimensions of food safety as a public and private global regulatory issue. The main ‘shifts’ in food safety regulation are: from producer driven and sector specific to retail driven; from state level to transnational; from public to private; from product to process standards (which warrants a supply-chain approach) and from on-site inspection to third-party certification. Cafaggi delves into a situation of increasing outsourcing and vertical disintegration in which private food safety regulation is implemented mainly by means of contract instruments and tort law. In the chapter he develops a coordinated approach which integrates the value supply chain perspective with regulatory theory to show how co-evolutionary patterns explain changes of task allocation in the supply chain and the increasing use of TPR.

The central theme of the chapter revolves around the use of contractual governance in the wider framework of transnational contracting, specifically that of network and collaborative contracts, for the regulation and monitoring of safety in supply food chains. Cafaggi shows how TPR affects the form and the function of a supply chain and requires specific contractual arrangements among suppliers, and further, between suppliers and retailers, to implement safety standards and to monitor their compliance. Cafaggi continues by describing different inter-firm