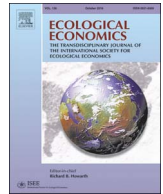




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## COMMENTARY

# Beyond Regulatory Governance? On the Evolutionary Trajectory of Transnational Private Sustainability Governance

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## ABSTRACT

Three narratives predominate about what drives change in the governance of private sustainability-standards in global supply chains. All three narratives present a pathway of change in which standard-setting as a form of regulatory governance is likely to remain relevant for the politics of sustainable production. This commentary proposes a fourth narrative of change. It argues that in some prominent sectors firms develop new policy instruments that strip sustainability interventions in supply chains from their regulatory governance qualities. Standard-setting organizations themselves meanwhile expand functions that are not of a regulatory governance nature. In this pathway, standard-setting organizations move in a different direction than the other three: away from certification and regulatory governance as core business.

## 1. Introduction

Literature on transnational private sustainability governance recognizes that the governance of sustainability standards in global supply chains by private standard organizations (PSOs) is subject to change. Literature identifies at least three narratives about what drives such change and in what direction it may go (cf. [Glasbergen and Schouten, 2015](#)). First, PSOs focusing on similar issue areas and sectors will change due to interactions of a competitive or cooperative nature, resolving or prolonging coordination problems ([Eberlein et al., 2014](#); [ITC, 2017](#)). Second, private governance will increasingly be encapsulated by governmental, nongovernmental and intergovernmental efforts at meta-governance that change the modes of practices of PSOs ([Derckx and Glasbergen, 2014](#)). Third, private governance will become the arena for contestation among “Northern” and “Southern” actors over what constitutes sustainable production and who stands to gain from it ([Schouten and Bitzer, 2015](#); [Knorringer and Nadvi, 2016](#)).

In different ways, all three narratives present a pathway of change that leads to either further institutionalization of PSOs ([Dingwerth and Pattberg, 2009](#)), or to further politicization of PSOs as modes of governance. In all three pathways, PSOs remain relevant, providing regulatory governance for sustainable production.

This commentary proposes a fourth narrative of change next to these three relevant narratives. It argues that firms develop new policy instruments that strip sustainability interventions in supply chains from their regulatory governance qualities. Meanwhile, some PSOs expand functions that are not of a regulatory governance nature. That PSOs have non-regulatory functions has long been acknowledged (cf. [Locke,](#)

[2013](#); [Visseren-Hamakers and Glasbergen, 2007](#)), but many scholars have over the years increasingly focused on PSO's potential and impact as regulators. Now that the non-regulatory repertoire of PSOs seems to be increasing in some sectors, and businesses are promoting non-regulatory solutions for sustainability, it is time to focus on this development as significant for our consideration. This commentary suggests a pathway on the basis of the assumption that PSOs may deviate from their regulatory governance-repertoire in an attempt to be responsive to their sponsors. If this pathway gains currency, it could challenge the potential for sustainability-standard-setting as a mode of authoritative and inclusive governance verifying business compliance with sustainability criteria.

## 2. What Organizations Are we Looking at?

Organizations like Utz, Fairtrade Labelling Organization (FLO), Rainforest Alliance, Fair Labor Association or Forest Stewardship Council, which for clarity in this commentary we will call private standard organizations (PSOs), are studied by political scientists, legal scholars, sociologists, business studies scholars and environmental management scholars. A variety of concepts is used to denote what these organizations are, and what they have in common, depicted in [Fig. 1](#).

Some analysts emphasize the capacity of these organizations to *govern* issue areas, to gain an *authoritative* position for rule towards industries ([Cashore, 2002](#); [Cutler et al., 1999](#); [Graz, and Nölke, A. \(Eds.\), 2007](#); [Green, 2013](#)). Many also conceptualize these organizations in terms of their rule-making or *regulatory* capacity ([Scott et al.,](#)

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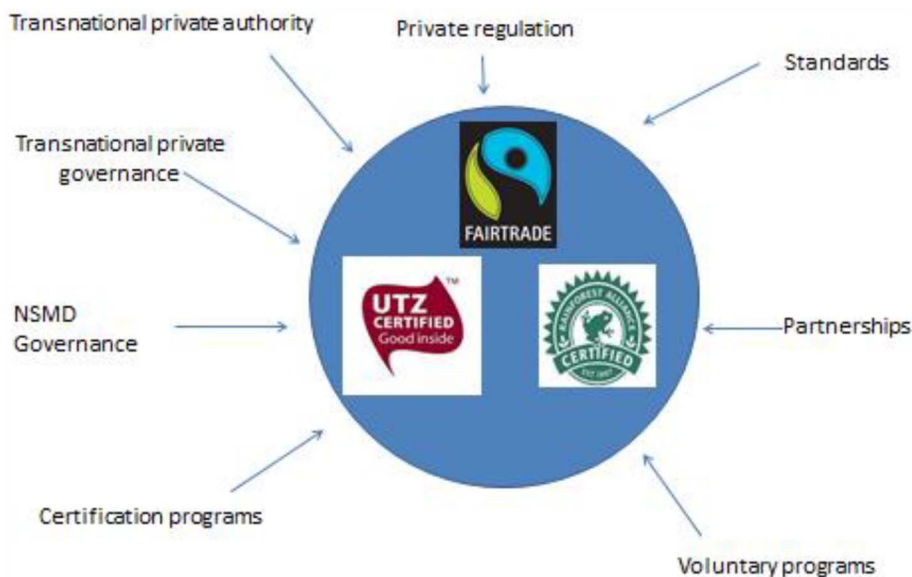


Fig. 1. Academic conceptions of private standard organizations.

2011). Others are mostly interested in their problem-solving capacity as *programs* (Prakash and Potoski, 2006; Borck and Coglianesi, 2009). Yet others emphasize the *standardizing* effect of these organizations, creating norms for conformity that organizations occupying a field need to comply with (Reinecke et al., 2012). Some scholars are interested in these organizations as devices for corporations to manage their societal agendas, and engage in *Corporate Social Responsibility (CSR)* (Kolk, 2011). Finally, some studies analyze these organizations in light of their ability to get corporations to collaborate on developmental agendas, and *partner* with each other, with governments and with Civil Society Organizations (CSOs) (Visseren-Hamakers and Glasbergen, 2007).

These different conceptualizations reveal an interest in different characteristics, which are put forward as defining for the full cohort of PSOs. As a result, scholars develop slightly different ideas about how PSO goals and incentives inform their different relationships to other parties, to society, to industry and to governments.

For the purposes of this commentary, the starkest contrast in the conceptualizations among literatures is between on the one hand conceptualizations, interpreting these organizations as engaged in *regulatory governance*: rule-making, collective steering, a drive towards conformity, and businesses subject to authority; and on the other hand conceptualizations emphasizing mutual problem-solving, collaboration, and possibly normatively engaged activities. Arguably the former approach appears to have the upper hand in academic study. If we use Utz Certified, Fairtrade (or Fair Trade) and Rainforest Alliance as search terms in Google Scholar, we find that over 90% of the citation-based-top 50 scoring articles describing one of these three organizations use a conceptualization that refers to the PSO's regulatory governance quality, rather than a partnership or CSR-related perspective. A search using three other totemic examples of PSOs (Forest Stewardship Council, Fair Labor Association and Marine Stewardship Council) yields similar results.

It may very well be that studies describing PSOs as a partnership reveal an interest in their regulatory function, or those describing PSOs as private authority also taking stock of non-regulatory activities. But concepts do emphasize predominant features and direct how findings on phenomena are generalizable to a larger population of entities that may be more or less regulatory character. And this means that the predominant focus appears to be on learning about PSOs as belonging to a class of new modes of regulatory governance.

### 3. Organizational Change

Previous literature identifies a set of trends in sustainability standard-setting that imply present or future change in PSO activities (Eberlein et al., 2014; Schouten and Bitzer, 2015). First, PSOs change as a result of interaction among themselves (Eberlein et al., 2014; Reinecke et al., 2012). Interactions are of a competitive type when different PSOs have a similar policy focus and address similar industries (Overdevest, 2010; Fransen, 2015; Marx and Wouters, 2014). Second, interaction among PSOs that have essentially different policy foci may be more or less productive, and lead to more or less effective coordination in addressing broader sustainability issues (Auld, 2014). As a result, the literature expects, to varying degrees, PSO-policy revisions that result from such interactions (Dingwerth and Pattberg, 2009; Reinecke et al., 2012).

Second, meta-governance initiatives shape existing PSOs and inspire policy-makers of PSOs-to-be (cf. Glasbergen and Schouten, 2015; Verbruggen and Havinga, 2016; Murphy-Gregory and Gale, 2015). These meta-governance initiatives may be (inter-)governmental or nongovernmental. In the case of (inter-)governmental meta-governance, this may lead to evolving links between PSOs and existing international public policy instruments such as environmental agreements (Green, 2013), commercial arbitration (Ter Haar and Keune, 2014), and bilateral trade policies or regional energy policies (Schleifer, 2013; Ponte, 2014). Similarly, governments can sometimes meta-govern PSOs through public procurement policies that set requirements for sustainable production of goods bought by governments (Derckx and Glasbergen, 2014; Gulbrandsen, 2014). In case of nongovernmental meta-governance, non-state actors build institutions and initiatives to address coordination problems among PSOs (Derckx and Glasbergen, 2014; Loconto and Fouilleux, 2013; Bernstein and Van der Ven, 2017).

Third, actors from emerging economies develop their own approaches to sustainable development in supply chains or challenge existing PSOs (Bartley, 2014; Schouten and Bitzer, 2015; Knorrina and Nadvi, 2016). This includes building new emerging locally focused private standards, national commodity platforms, and a range of governmental policies that may enhance or undercut the work of private standard professionals. Change in PSOs in this context is about how to reconcile these emerging economy demands and initiatives with existing PSO policies and practices.

As a whole, these three trends imply organizational change as a result of competition, coordination and collaboration dynamics, increasing institutionalization and/or politicization of standard-setting

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