

# 16

## Private Actors in Multi-level Governance: GLOBALG.A.P. Standard-setting for Agricultural and Food Products

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### Introduction

One aspect of governance and regulation that tends to be persistently overlooked is the role of private actors, particularly as standard-setting agencies. Historically, industry bodies have traditionally set standards in specific fields (Schepel 2005: 145). In recent years, however, private standards have taken on significance as regulatory tools. While much has been written about the implications of private standards and standardisation (e.g. Marx et al. 2012; Casey 2009; Henson and Humphrey 2009; Havinga 2006), very little has been written about how standards become such regulatory tools. Unpacking the 'black box' of standardisation to see how it works is a neglected field of inquiry. This chapter makes a contribution to redressing this situation. We do so by applying the work of regulatory scholars, Julia Black, John Braithwaite and Ian Ayres, to a transnational, private standard-setting organisation, GLOBALG.A.P. We use Black's (2001) work on 'decentred regulation' and Ayres and Braithwaite's (1992) work on 'responsive regulation' to account for private actors as regulators in a multi-level governance structure.

In this chapter, we use the term ‘multi-level governance’ (MLG) in the sense explained in the introductory chapter of this collection. As *Daniell and Kay* note in their chapter, the term ‘multi-level governance’ refers to a system of ‘continuous negotiation among nested governments at several territorial tiers’ (Marks 1993: 392). Subsequent refinements of the term ‘stress the non-hierarchical, informal and deliberative aspects of the negotiations under scrutiny’ (*Kay*). GLOBALG.A.P. may belong to the ‘Type II MLG’ to which *Kay* refers (Hooghe and Marks 2001). With its highly developed governance structure, however, we suggest that GLOBALG.A.P has a more enduring quality than would be expected of a Type II system.

In the next section, we discuss standards and standardisation, particularly in the context of the agri-food sector. We also explain the way in which these standards acquire legal force (predominantly through the institution of private law contract). The discussion then turns to the governance structure of GLOBALG.A.P. While the level of detail in this section may be daunting, the point is to demonstrate the sophistication and complexity of this private governance regime that is at least equal to corresponding structures in the public sphere. The work concludes with an encouragement to the reader to consider with fresh eyes the way in which we are governed and to seek out opportunities to engage with these governance processes.

## Standards and standardisation

Private standards have become a much more prevalent part of the governance of global agri-food value chains in the last 10 to 15 years. Private firms and standards-setting coalitions, including companies and NGOs [non-government organisations], have created and adopted standards for food safety, as well as food quality and environmental and social aspects of agri-food production. These are increasingly monitored and enforced through third party certification. This has raised profound questions about the role of public and private institutions in establishing and enforcing food safety norms. (Henson and Humphrey 2009: iii).

Thus begins the Executive Summary of a report prepared for the 32nd session of the Codex Alimentarius Commission, held in 2009. The commission is the principal organ of the Joint Food Standards Programme of the Food and Agriculture Organisation and the World Health Organisation, special agencies of the United Nations. The paragraph quoted contains a number

of ideas that this chapter will explore in further detail: the nature of standards, private firms and standard-setting coalitions; and the 'public/private' dichotomy as part of an MLG structure in international trade. We also use this quote as a starting point for commenting on the lack of understanding, on the part of many, of the way in which law works and the way in which law 'manages' power and the power balance in relationships. This lack of understanding leads to flawed arguments about the role of private sector entities in international trade and to claims for law reform that are often misplaced.

## Standards and contract

Regardless of who develops any given standard, whether it is a state agency or a private sector body, the standard has no inherent legal force. It derives its legal force either from legislation that mandates compliance with it or from the private law of contract that similarly mandates compliance with it.

One concern that has arisen in recent times is the *de facto* mandatory nature of some standards. This comes about in one of two ways: either commercial reality dictates to particular participants in a market that, if they wish to have access to that market and remain in that market, they will need to comply with the provisions of a particular standard; alternatively, a particular standard will, for example, be referred to in legislation concerning public health and safety. Such legislation will not necessarily, however, mandate compliance with the standard referred to in the legislation.

Rather, the legislation will stipulate that the goods a retailer offers for sale must be 'safe'; that is, must not be harmful to consumers. It may refer to a particular safety standard, stating that compliance with such a standard would be one way of discharging the retailer's obligation. What such legislation does is to put the responsibility for the safety of goods sold to the public on the retailer. Should a consumer be adversely affected by a product purchased from the retailer, the latter is *prima facie* liable for that injury unless they can prove that they met their duty of care to the consumer. This can be difficult to do. One way of discharging this onus, however, is to provide evidence that they complied with a standard.

In order to protect themselves, retailers will either develop their own standards to manage this risk, or they will adopt standards already established.

## Private firms and standard-setting coalitions

Standards set by private firms and ‘standard-setting coalitions’ (Henson and Humphrey 2009) have become increasingly important in international trade in recent times. They are, in fact, a regulatory tool, although as such they have been largely overlooked by most legal scholars because they originate in the private sector and are seldom the subject of judicial consideration or review. In other words, they fall outside the conventional field of inquiry or investigation of legal scholars. Social scientists more generally have also overlooked aspects of this area of inquiry. Schepel (2005: 2–3) explains this situation thus:

Standardization is a ‘much neglected area of social science research, attracting much less attention than it deserves.’ One of the reasons for this, I suspect, is that social scientists like to construct a world according to a series of distinctions – state and market, law and society, public and private, national and international – that are inherently incapable of capturing or explaining standardisation. Standards hover between the state and the market; standards largely collapse the distinction between legal and social norms; standards are very rarely either wholly public or wholly private, and can be both intensely local and irreducibly global.

Schepel’s explanation holds true for legal scholars as a subset of social scientists. Legal scholars, like other social scientists, tend to look at ‘the law’ within the spheres to which Schepel refers (state, market, law, society, public, private, national, international), rather than looking at ‘the law’ cutting across these spheres. This statement requires further clarification, however: traditionally, legal scholars have concerned themselves with studying norms that have been made ‘according to the procedures and passed through the institutions prescribed by law’ (Schepel 2005: 2).

Standards, generally speaking, have not been made in this way and have not, traditionally, been regarded as ‘laws’. The narrowness of this definition has been one of the problems with explaining and accounting for developments that have been occurring in society. It has led, among other things, to the development of new spheres of inquiry and a new application of terminology: regulation and governance, rather than law and government, for example. Another explanation for the apparent neglect of this area of inquiry by legal scholars is ‘the peculiar history and culture of the institutionalised study of law as it has developed in England and of its primary base, the law school’ (Twining 1994: xix). Twining’s comment applies equally to the Australian context; possibly even to all legal systems based on English common law and its study.

An investigation of standards, their creation and application from a legal perspective sits more comfortably in the area of regulation and governance than it does in the more traditional area of legal inquiry. Perhaps not surprisingly, the sphere of regulation and governance is inherently interdisciplinary; among other things, it examines ‘rules’ and their application across the spheres referred to above, rather than within them. It also redefines ‘rules’ more broadly than the definition of ‘laws’ also referred to above.

Why should legal scholars be concerned with studying standards and standardisation? The answer lies partly in a definition of the term, ‘regulation’, coined by Julia Black (2001: 142) as:

a process involving the sustained and focused attempt to alter the behaviour of others according to defined standards or purposes with the intention of producing broadly defined outcome or outcomes.

An element of this definition is the attempt to alter behaviour ‘according to defined standards’. Standards are brought into existence for a great variety of reasons: product safety, quality control (of services as well as goods), reducing transaction costs, managing expectations and liability. They cannot be classified solely by their provenance either; that is, whether they have been created by a private, non-state actor or a public, state actor. Depending on the context, standards created in the private sector may be incorporated into legislation and thus made mandatory; voluntary standards contained in legislation may be mandated in the private sector by being incorporated into contracts. Henson and Humphrey illustrate this complexity succinctly, making one clear distinction that many non-lawyers overlook: that private standards can become ‘de facto mandatory in a commercial sense through adoption by dominant market actors’ (Henson and Humphrey 2009: iii).

Unlike other non-lawyers, Henson and Humphrey do not extrapolate from this that such standards are therefore *de jure* mandatory. This is an important distinction. Non-lawyers frequently equate a *de facto* mandatory standard with a *de jure* mandatory standard because they focus on the exercise of power in the voluntary, contractual relationship that is governed in part by the standard in question. A lawyer will or should realise that these are not the same thing: that law deals with this exercise of power in a different way, namely with competition law. This is an important point and it is worth spending some time unpacking the ideas and assumptions underpinning it.

In the first place, if we say that a standard is ‘de facto mandatory’, what we mean is that a party is mandating compliance with that standard by another party that is not required in law to comply with the standard. The former can compel compliance with the standard because, in the relationship between the two, its bargaining power is stronger; that is, the latter is of the view that it will be more disadvantageous for it not to comply with the standard than it will be to comply with the standard. On the legal landscape, this places the two parties in a contractual relationship in a market in which one party is in a stronger bargaining position than the other.

As a matter of law, a contract is a voluntary institution; that is, the parties to a contract can choose whether or not they enter into a contract with each other and, if so, on what terms. This is referred to as party autonomy and is a fundamental principle of contract law that is recognised and accepted across all jurisdictions, in all legal systems, or at least in those systems in which parties to such contracts are found (even, interestingly, in those of planned economies: Schmitthoff 1961).<sup>1</sup> Irrespective of the legal system, the negotiating power of a party to a contract is largely irrelevant to the formation of a contract. As a matter of contract law, the assumption is that the parties to a contract have concluded it on the terms they have negotiated as acceptable between them.

Clearly, this ignores the commercial reality of ‘standard form’ contracts<sup>2</sup> and situations in which the party in the stronger bargaining position can prevail in contracting on their terms, rather than those of their counterpart. It is fair to say that most, if not all, developed legal systems limit the extent to which one party can exert power over the other to ‘persuade’ or ‘compel’ the latter to conclude a contract. This is certainly true of the legal systems of developed economies and states. Australian law, for example, has the defences of duress at common law and of undue influence and of unconscionable conduct in equity. It also has certain statutory causes of action such as unconscionability under the Australian Consumer Law (Part IVA of what was formerly the *Trade Practices Act 1974* (Cth)), Part 2, Division 2 of the *Australian Securities and Investment*

1 China and Cuba, for example, are signatories to the United Nations Convention on Contracts for the International Sale of Goods: United Nations, *Treaty Series*, Volume 1489, p. 3.

2 A ‘standard form’ contract is one in relation to which one party has set out all the terms to which they are willing to be bound and presented it to the other contracting party on a ‘take it or leave it’ basis. Most contracts that consumers conclude with institutions such as banks, insurance companies and utility companies are such contracts.

*Commission Act 2001* (Cth) and the *Contracts Review Act 1980* (NSW). The Australian Consumer Law (dealt with under Part XI and Schedule 2, *Competition and Consumer Act 2010* (Cth)) provides for 'unfair' terms in a consumer, 'standard form' contract (as defined under the Act) to be declared void.

Common to all these measures is the fact that they apply, in effect, retrospectively. That is, they do not contain any prerequisites for the formation of the contract itself; rather, they enable one of the contracting parties to avoid the contract (or certain terms in the contract, in the case of the Australian Consumer Law provisions, for example) by showing that their circumstances meet the elements of one of these causes of action. Legal systems in which the rule of law, legal institutions and governance structures are fragile or weak are less likely to have effective, functioning competition regimes such as those found in developed systems. Consequently, market participants in such systems may well behave in a manner that, in other legal systems, would be subject to certain constraints on, and sanctions for, the exercise of market power.

## Private standards in the agri-food sector: The case of GLOBALG.A.P.

In the 1990s, public confidence in the ability of the state to regulate for food safety dropped dramatically when it was established that a fatal disease found in cattle – bovine spongiform encephalopathy or 'mad cow disease' – had 'jumped' species and was presenting as Creutzfeldt-Jakob Disease in humans. Responses to consumer concerns about the provenance of what they were eating included, on the part of the state, the introduction in the United Kingdom of the *Food Safety Act*. Among other things, this Act made it an offence for a person to sell food that did not meet food safety requirements (s. 8).

GLOBALG.A.P. is the name of a private sector, voluntary standard-setting organisation that first came into existence in 1997 under the name EurepG.A.P. It was established by the Euro-Retailer Produce Working Group (EUREP) for the purpose of setting standards and procedures for the development of 'GAP' (Good Agricultural Practice) (Bayramoglu and Gundogmus 2009: 52). Apart from consumer concerns regarding food safety, EurepG.A.P. was also responding to concerns of citizens

as consumers for the environment and for labour standards, especially in developing countries. Through EurepG.A.P., retailers in Europe set about harmonising their differing standards. Producers dealing with these retailers also became involved with EurepG.A.P. in the process of harmonising certification standards. In the decade following, retailers and producers outside Europe also became involved in this process and, in 2007, EurepG.A.P. was renamed GLOBALG.A.P. to reflect this shift.

Much of the writing about GLOBALG.A.P. and what it represents has tended to have a concerned, if not critical, tone (Wouters et al. 2009; Havinga 2006). It is not the purpose of this chapter to engage directly with those works. In exploring the role of the private sector in the context of MLG, however, this chapter will hopefully also allay some of those concerns. Similarly, considering the perceived Eurocentric nature of GLOBALG.A.P. (Campbell 2005) must also wait for another occasion, as too must an evaluation of GLOBALG.A.P. standards and their implementation. As stated, the purpose of this chapter is to examine the role of private, non-state actors as ‘regulators’ in the context of MLG. To that end, discussion in this chapter is concerned with understanding the GLOBALG.A.P. standards as regulatory tools, not evaluating their implementation or effectiveness.

## What levels, actors and sectors are involved?

As already stated, GLOBALG.A.P. is a private sector organisation that develops voluntary standards in the agri-food sector. According to its website,<sup>3</sup> GLOBALG.A.P. currently has 16 standards across three areas (or scopes): crops, livestock and aquaculture. These include: the Integrated Farm Assurance (IFA) Standard; the Compound Feed Manufacturing Standard (CFM); the Livestock Transport Standard (LT); the Product Safety Standard (PSS) and the Plant Propagation Material Standard (PPM). It has also developed the Risk Assessment on Social Practice Standard (GRASP) and a module for Animal Welfare. These last two instruments are the ‘Add-on’ element of the ‘GLOBALG.A.P. + Add-on’ certification scheme or ‘product’.

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3 [www.globalgap.org/uk\\_en/what-we-do/globalg.a.p.-certification/](http://www.globalgap.org/uk_en/what-we-do/globalg.a.p.-certification/) [Accessed: 20/07/2017].

For example:

The GLOBALG.A.P. Integrated Farm Assurance (IFA) Standard covers the certification of the whole agricultural production process of the product from before the plant is in the ground (origin and propagation material control points) or from when the animal enters the production process to non-processed product (no processing, manufacturing or slaughtering is covered, except for the first level in Aquaculture). GLOBALG.A.P. provides the standard and framework for independent, recognized 3rd party certification of primary production processes based on ISO/IEC Guide 65. (Certification of the production process – cropping, growing, rearing, or producing – of products ensures that only those that reach a certain level of compliance with established Good Agricultural Practice (G.A.P.) set out in the GLOBALG.A.P. normative documents are certified (GLOBALG.A.P. 2017).

The IFA Standard applies to certain crops: fruit and vegetables, combinable crops, tea, green coffee, flowers and ornamental plants (horticulture); and certain livestock: cattle, sheep, pigs, poultry, turkey; and certain aquaculture.

A recent initiative in GLOBALG.A.P. standards development is the GLOBALG.A.P. Risk Assessment on Social Practice (GRASP),<sup>4</sup> which is the result of nearly five years of stakeholder consultation, supported by the GTZ (Deutsche Gesellschaft für Technische Zusammenarbeit GmbH) and Coop Switzerland in the initial development of the module. In the second phase of the project, GLOBALG.A.P. members, Edeka, Lidl, Metro AG and Migros, also assisted in implementing the GRASP module in selected pilot countries. The development of the module was accompanied by intensive stakeholder dialogue in more than 20 countries on five continents. The results of this process were reviewed together with contributions from further public consultation. GRASP is a voluntary assessment that can be undertaken at the same time as a GLOBALG.A.P. audit. The results of such an assessment are not intended to affect GLOBALG.A.P. certification. They do, however, provide additional information to supply chain partners who have been given access to the results.

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<sup>4</sup> [www.globalgap.org/uk\\_en/for-producers/globalg.a.p.-add-on/grasp/index.html](http://www.globalgap.org/uk_en/for-producers/globalg.a.p.-add-on/grasp/index.html) [Accessed: 9/11/2017].

The purpose of providing this brief insight into what are, in fact, complex instruments is twofold: to indicate the comprehensive nature of the IFA Standard and to demonstrate the breadth of issues with which GLOBALG.A.P. engages. This work draws on research focusing on the nature of standards more generally, particularly those set by entities located in the private sector, and how these standards can be explained as part of the network of regulations governing international trade.

It is in this context that the standards of GLOBALG.A.P. operate. The members, board and committee members and office bearers of the organisation responded to a number of drivers, including, it is suggested, a gap: a regulatory failure. They responded to that failure by developing a sophisticated regime and governance structure that, in turn, has developed and administered the foremost private standard-setting body in the world. In the area of food safety certification, GLOBALG.A.P. is, according to its website, the most widely accepted private sector system in the world. Even allowing for bias in this statement, it is beyond question that GLOBALG.A.P. is the single most significant private sector standard-setting institution worldwide.

## Governance structure of GLOBALG.A.P.

The GLOBALG.A.P. governance structure consists of a board, secretariat, Technical Committees and National Technical Working Groups. The following information is available at the relevant links on the GLOBALG.A.P. website.<sup>5</sup>

### The board

The board comprises an equal number of producer and retailer representatives elected from the membership and is headed by an independent chairperson. Its task is to determine strategy, design the standards-setting procedure, adopt standards and rules and provide the legal framework for regulating the certification bodies.

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<sup>5</sup> See for example [www.globalgap.org/uk\\_en/who-we-are/governance/](http://www.globalgap.org/uk_en/who-we-are/governance/) [Accessed: 20/07/2017].

## The Technical Committees

The five Technical Committees (for livestock, aquaculture, crops, GRASP and Systems and Rules) comprise members of GLOBALG.A.P. who are experts in the particular field for which the committee is responsible. These members are selected from across the supply chain and are elected for a four-year term. Half represent producers and half represent retail members of GLOBALG.A.P. The committees are responsible for ‘developing and defining the standard criteria’ (referred to as control points and compliance criteria). They are also responsible for defining the general regulations that ‘establish clear criteria for the successful implementation and verification of standards’. The terms of reference for the Technical Committees are available from the GLOBALG.A.P. website. They stipulate the obligations of committee members, including voting procedures and the development of four-year activity plans. The latter include detailed milestones that are re-evaluated annually; they are shared with the National Technical Working Groups and benchmarked schemes and are published on the GLOBALG.A.P. website once they have been approved by the board.

## Stakeholder Committees

Previously, there were eight Stakeholder Committees: SHC GRASP, SHC Water, SHC Animal Welfare, SHC Microbiological Risk Assessment, SHC Crop Protection, SHC Flowers and Ornamentals, SHC Producer Groups and SHC Chain of Custody. The Stakeholder Committees were working groups. Their membership was drawn from ‘a wide range of industry experts including GLOBALG.A.P. members, non-members, non-government organisations, retailers and suppliers’ and their responsibilities included:

- developing change proposals
- preparing initial drafts of the required Control Points and Compliance Criteria, add-on modules or guidelines based on background research
- reviewing public input and making revisions to drafts of standards
- advising the GLOBALG.A.P. Board and Technical Committees.

The Stakeholder Committees have now been replaced by Focus Groups, which are established as needed and work on specific topics as required.

## Certification Body Committee

The Certification Body Committee (CBC) is responsible for coordinating and supervising the activities of GLOBALG.A.P.-approved certification bodies. There are currently more than 140 such bodies worldwide. The CBC comprises experts employed by certification bodies that are associate members of GLOBALG.A.P. and are also accredited consistently with ISO Guide 65 to at least one GLOBALG.A.P. scope. The CBC discusses issues concerning GLOBALG.A.P. implementation, provides feedback and represents the activities of the certifying bodies within the GLOBALG.A.P. system. Any changes proposed by the CBC are issued to the Technical Committees for consideration and approval. A CBC subgroup was specifically established for South American certification bodies in early 2012 at their request. This regional subgroup, CBC Latin America, represents local sector interests. It communicates regularly with the CBC (referred to as CBC Central).

## Integrity Surveillance Committee

The Integrity Surveillance Committee (ISC) has been in place since 2009. It comprises industry experts who have a local legal background. Committee members are appointed by the board but operate independently. The ISC is part of the GLOBALG.A.P. Integrity Program, which was established in 2008. According to the GLOBALG.A.P. website, there are 'over 1800 trained inspectors and auditors working for more than 150 accredited certification bodies certifying over 530 products and more than 170,600 producers, spread across 120 plus countries in 5 continents'. The Integrity Program was developed to foster and maintain the confidence and trust of stakeholders in the GLOBALG.A.P. product and certification process. The way in which the program works is set out on the GLOBALG.A.P. website.

In essence, however, GLOBALG.A.P. auditors assess certification bodies (CB) by way of a document review and by sampling producers directly to check inspection performance of the CBs. The auditors advise the certifying bodies as well as accreditation bodies of any deviation in the compliance requirements. Audit reports are forwarded to the ISC, which makes the final decision on the approval status of a CB. Where a certification body fails to comply with a second warning concerning non-compliance, a so-called Yellow Card is issued to that CB. This is

also published on the website and is only removed once the CB has been successfully reassessed. Should the CB be unsuccessful, a so-called Red Card is issued and also published on the GLOBALG.A.P. website.

When a Red Card is issued, the CB is prohibited from issuing new certificates, or reissuing them, for up to six months. Should such a CB fail its reassessment, its license and certification agreement with GLOBALG.A.P. will be cancelled for at least two years. Each of these sanctions is displayed on the GLOBALG.A.P. website. The ISC reviews cases of non-compliance by CBs 'on an anonymous basis, defines corrective measures and proposes sanctions, which the GLOBALG.A.P. Secretariat then enforces'.

## National Technical Working Groups

Several countries have established a National Technical Working Group (NTWG). Forty-two countries have a NTWG for a range of scopes and sub-scopes. These countries include Brazil, Japan, Kenya, New Zealand, Chile, Vietnam, Pakistan, India and Thailand. GLOBALG.A.P. does not require the establishment of such groups but does support, encourage and work with those that are established. Information is also set out on the GLOBALG.A.P. website on how to set up and host a NTWG.

NTWGs play an important role in the GLOBALG.A.P. regulatory structure. They provide an 'in-country' forum in which GLOBALG.A.P. members can consider necessary adaptations to respond to local challenges of implementing GLOBALG.A.P. measures. NTWGs can, and do, develop national interpretation guidelines (NIG) in accordance with the procedure established by GLOBALG.A.P. for this purpose. Draft NIGs are submitted to the GLOBALG.A.P. secretariat for approval, following consultation with the Technical Committees.

Once the NIGs are approved, they are binding on producers and certification bodies with respect to that country. Accreditation bodies 'must ensure that all the accredited certification bodies have adopted the NIG in their auditing and certification activities'. The NTWGs and the NIGs complete the feedback loop between national producers and certification bodies and the GLOBALG.A.P. board, Technical Committees and secretariat. The main activities of the NTWGs include translating official GLOBALG.A.P. documents into languages used in the relevant country; supporting the Technical Committees with proposals for revising the protocols; and, at the request of FoodPLUS, participating in the peer-review processes of benchmarking and recognition activities of schemes operating within their country.

## GLOBALG.A.P. as regulator

Applying Black's (2001) definition of 'regulation' (above) to GLOBALG.A.P., it is clear that the regime established by the latter is one of regulation and that the organisation itself is a regulator. We suggest, further, that GLOBALG.A.P. is, in fact, a *responsive* regulator. Elsewhere, we have explored the relationship between GLOBALG.A.P. as a private standard-setting organisation and state agencies in relation to the regulation of food safety and quality (Lockie et al. 2013).

We considered there the interaction of state and private regulation in the national context of Australia, Vietnam and the Philippines, using the concept of responsive regulation (Ayres and Braithwaite 1992) as an analytical device to explore such interdependencies in these particular national contexts. In the next section, however, we use responsive regulation as a lens for considering the responsiveness of GLOBALG.A.P. as a regulator.

Although our focus is on GLOBALG.A.P. as a private regulator, we do not suggest that it regulates *to the exclusion* of public or state regulators. Our deliberations here contribute to the conversations concerning hybrid forms of regulation. In focusing on a private actor as regulator, however, we seek to demonstrate that a private actor is as capable of improving the effectiveness, transparency and legitimacy of its regulation as a public regulator.

## GLOBALG.A.P. as responsive regulator

We use two examples to illustrate the responsiveness of GLOBALG.A.P. as a regulator:

1. the concerns of small farmers in developing states about being excluded from European markets because of an inability to meet GLOBALG.A.P. standards
2. support and encouragement for the creation of National Technical Working Groups.

## GLOBALG.A.P. and small farmers

In 2005, Saint Vincent and the Grenadines raised concerns with the Sanitary and Phytosanitary (SPS) Committee of the World Trade Organization (WTO) about private standards (WTO 2007). These states were representing the interests of small farmers who had little or no capacity to meet the requirements of the GLOBALG.A.P. standards. As a result, they feared they would lose access to the valuable European markets whose retailers required compliance with those standards as part of their risk management strategy concerning food integrity and safety. In response to these concerns and, almost certainly, motivated by a desire to head off more formal intervention from the WTO and its agencies, GLOBALG.A.P. initiated and developed a project to assist farmers of small holdings to comply with the GLOBALG.A.P. standards. With the support of the UK Department for International Development and the German Society for Technical Cooperation (Deutsche Gesellschaft für Technische Zusammenarbeit, GTZ), GLOBALG.A.P. established an 'Africa Observer' project in 2007 (Will 2010; Homer 2010: 16). The objectives of this project were:

to identify ways in which the GLOBALG.A.P. standard [could] become more inclusive for smallholder farmers in developing countries and to assist GLOBALG.A.P. to develop new and adjust existing technical standards and tools appropriate for smallholder certification (Will 2010: 9).

This initiative developed to become what is now 'localg.a.p.' and 'localg.a.p. program'. 'Localg.a.p.' is described on the GLOBALG.A.P. website as a:

cost-effective solution for emerging markets [that] helps producers gain gradual recognition by providing an entry level to GLOBALG.A.P. Certification. [I]t helps retailers gain access to quality foods, support their local and regional producers and promote Good Agricultural Practice.

The point here is not to evaluate the effectiveness of the initiative, nor to debate the advantages and disadvantages of this particular approach. It is simply to demonstrate that a private actor, as regulator, responded to criticisms of its regulatory processes in a way that sought not only to improve the effectiveness of that regulation, but also to enhance the legitimacy of the regulator and the transparency of the process.

## National Technical Working Groups

The second example of GLOBALG.A.P.'s responsiveness is the acceptance, support and engagement of the National Technical Working Groups. As indicated above, GLOBALG.A.P. does not require members to establish such working groups. However, it enables the creation of such groups as an agency within the regulatory structure created by the private actor. Again, the purpose of the discussion here is not to evaluate the particular approach adopted by GLOBALG.A.P. in recognising and managing the establishment of such groups. The purpose here is simply to recognise that the private regulator has adopted this approach, rather than resisting the participation of members and stakeholders at the local level. Rather than either reject such contributions outright or accept them through an opaque, informal and arbitrary process, the organisation has set up a structure dealing with what can be contributed by these groups, and how and in what way such contributions may be given effect.

## Conclusion

Notwithstanding the recognition and acceptance of a plurality of actors in the MLG landscape, the role of the state and public actors seems to occupy the attention of most commentators. Private, non-state actors seem to be considered as subordinate or ancillary players, complementing and supplementing the activities of state actors. While formally subordinate to the authority and competence of the nation state, we suggest that, in fact, GLOBALG.A.P. as a regulator is on an equal footing with public regulators and agencies. In the field of agri-food, food safety, integrity and quality and the management of risk along the production and delivery chain the governance structure is a hybrid of private and public actors.

To properly understand the governance of this field, it is essential that the nature and role of private regulators in general, and GLOBALG.A.P. in particular, are examined and understood. In this chapter, we have used a private sector food safety and quality regulator as the focus of our inquiry. Similar 'regulators' can, however, also be found elsewhere in the market; for example, particularly in relation to financial and professional services. By discussing the way in which standards and standard-setting bodies operate, we hope readers will consider anew the way in which we are governed and will seek out opportunities to engage not only with public, but also with the private governance processes.

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