

PDF hosted at the Radboud Repository of the Radboud University Nijmegen

The following full text is an author's version which may differ from the publisher's version.

For additional information about this publication click this link.

<http://hdl.handle.net/2066/100876>

Please be advised that this information was generated on 2017-05-29 and may be subject to change.

NIJMEGEN SOCIOLOGY OF LAW WORKING PAPERS SERIES



2012/01

Tetty Havinga

Conceptualizing Regulatory
Arrangements: complex networks of
actors and regulatory roles

The Institute for Sociology of Law is part of the Law Faculty of the Radboud University Nijmegen. It has a long tradition of empirical research in the area of law and society. Special focuses are the legal professions, food safety regulation, migration law and anti-discrimination law. The researchers at the Institute have different disciplinary backgrounds (including law, sociology, anthropology, development studies, Middle Eastern studies) and much of their research is interdisciplinary.

The Nijmegen Sociology of Law Working Paper Series provides a vehicle for staff members, PhD students and fellows to rapidly disseminate their research results.

ISSN 2212-7844

Nijmegen Sociology of Law Working Papers Series 2012/01

Faculty of Law
Radboud University Nijmegen
P.O. Box 9049
6500 KK Nijmegen
The Netherlands

Editors Dr. Tetty Havinga, t.havinga@jur.ru.nl
 Friso Kulk MA LLM
 Dr. Anita Böcker

Lay-out Hannie van de Put

Cover photo Erik van 't Hullenaar

© 2012, Tetty Havinga

url: www.ru.nl/rechten/SociologyofLawWorkingPapers

CONCEPTUALIZING REGULATORY ARRANGEMENTS: COMPLEX NETWORKS OF ACTORS AND REGULATORY ROLES

Tetty Havinga*

Abstract

Food regulation nowadays involves a broad variety of actors, including government agencies as well as other stakeholders. In this chapter I explore which actors are involved in private and mixed forms of food regulation. This question is important when considering such issues as the effectiveness, legitimacy and accountability of regulatory regimes. I argue that a dichotomous distinction between public (governmental) and private (non-governmental) regulation is not an adequate conceptualisation for analysing the reconfiguration of relationships between the actors involved in food regulation. We need more sophisticated distinctions linking the type of actor to the role they play in the regulatory process. I disentangle the regulatory process into multiple regulatory roles/actions in order to analyse complex patterns of actor involvement in a regulatory regime.

Key words

Food regulation – regulatory arrangements - food safety – certification – private regulation – governance triangle – supermarkets – food supply chain – regulatory roles – type of actors in regulatory arrangements

Introduction

The regulation and governance of food has changed dramatically in recent decades. Traditional food regulation consisted of national governments enacting food legislation and enforcing compliance with the laws. Several developments in society have contributed to the emergence of national and transnational private or mixed forms of food regulation.

Food supply chains are increasingly becoming international. Fresh products are sourced all over the world to assure Western consumers a continuous stream of fruits and vegetables throughout the year. Many processed food products are made up of a variety of ingredients, drawn from all over the world. Regulating complex global food supply chains is difficult for national governments since their jurisdiction is limited to their own national territory.

Food safety issues has been transformed from a predominantly neutral, technical issue that is the preserve of food experts into a contested political

* The author thanks Frans van Waarden, Jaap van der Kloet and the participants in the Regulating Food Safety and Quality Stream at the Regulation in the Age of Crisis Third Biennial Conference of the Standing Group on Regulatory Governance of the European Consortium for Political Research (ECPR), June 17-19 2010, Dublin for their comments on earlier drafts of this chapter.

matter that is debated in parliament, on television and in the newspapers. Food scares and incidents such as mad cow disease (BSE), contaminated milk, and EHEC have received wide media attention. The risks connected with food have become increasingly visible.

Traditional government food regulation was perceived as no longer adequate, similarly to government regulation in other domains. Traditional regulation is believed to be ineffective and inflexible, while it disregards the responsibilities of citizens and organizations. The way both the UK government and the EU handled the BSE crisis is often cited as a turning point, which demonstrated an urgent need to transform food regulation.

These social developments resulted in a shift towards private and mixed forms of regulation and a shift from national government regulation towards European Union regulation. In an attempt to restore consumer confidence and to retain export markets, governments in Brussels and the EU member states enacted stricter food safety regulations and reorganized the government food safety system. Food producers and suppliers expressly bore primary responsibility for food safety while national governments became responsible for controlling the adequacy of risk control mechanisms of companies in a food chain. As a result of their legal responsibility and from a fear of potential damage to their reputation in case unsafe food products should find their way to market, the food industry and food retailers developed initiatives to decrease food safety risks and increase consumer confidence in safe food.

These reforms involved the emergence of new forms of food regulation, including transnational private food standards, corporate social responsibility initiatives, and codes of conduct. These transformations involve a new relationship and a changed distribution of responsibilities between government bodies on the one side and private actors on the other. New forms of food regulation are characterised by a less dominant role for the government and more responsibilities for private actors (Havinga 2006, Henson and Humphrey 2011, Marsden et al. 2010, Oosterveer 2005). These new forms of food regulation include both public actors and also private actors, such as firms, NGOs and other organisations both inside and outside the food production chain. Government regulation is moving from a prescriptive, command-and-control system towards an enforced self-regulatory approach (Braithwaite 1982, Hutter 2011, Martinez et al. 2007) in which the government lays down broad standards and leaves it to companies to develop, implement and monitor risk management systems. An example is the European Food Law, which requires all food businesses to have controls that demonstrate that they manage food safety risks.

Recent trends are the emergence of retailer-led food governance and global coalitions for setting food safety standards, an increased use of global

business-to-business standards and third party certification (Fulponi 2006, Harrison 1997, Hatanaki and Busch 2008, Havinga 2006, Marsden et al. 2000, 2010). Another trend is the increase of consumer hallmarks for 'new' issues, such as animal welfare, fair trade, sustainability, healthy food, and halal food.

Marsden et al. (2010) describe the new situation as the Public-Private Model of Food Regulation.

Various forms of food regulation

Regulation is a means for controlling harm in the public interest in order to protect consumers, citizens and the environment (Hutter 2011: 10). Henson and Caswell (1999) distinguish between direct and indirect regulation of food safety (see figure 1).

Figure 1: Types of regulation of food safety

Source of the rules	Character of the rules	
	Direct	Indirect
Public	Dutch Commodities Act (Warenwet) ¹ UK 1990 Food Safety Act EU General Food Law ²	Product liability law ³ TBT-GATT agreement ⁴
Hybrid Public-private	Industrial code of hygienic practice	Liability insurance policy
Private	Private food safety certification scheme (GlobalGap, MSC)	Food company complaints procedure

Direct regulation entails obligatory prescriptions and requirements for the production and handling of food to assure the production of safe food. Even though indirect regulation does not provide prescriptions for the production and the product, it is nevertheless expected to act as an incentive to implement food safety controls indirectly by shifting the cost-benefit balance or imposing process requirements. For example, liability law is assumed to promote food safety by encouraging producers to do their best to produce safe products (Havinga

1 Dutch Law of 19 September 1919 (Stb. 581, latest change Stb. 2001, 601).

2 Regulation EC no. 178/2002 of 28 January 2002 laying down the General Principles and Requirements of Food Law, Establishing the European Food Safety Authority and Laying down procedures in matters of food safety. *Official Journal of the European Communities* 2002 L31/1-24.

3 Art. 185-193 bk 6 BW.

4 GATT Agreement on Technical Barriers to Trade (TBT).

2010). A food company's consumer complaint procedure is an example of private, indirect regulation because the expectation is that learning from complaints will increase the product's quality. Direct regulation is intended to provide food safety whereas indirect regulation may aim at increasing food safety; however, a contribution to food safety may also be an unintended de facto effect.

Until recently, most research on food safety has focused on direct forms of food safety regulation. Recently, however, not only public regulatory arrangements but also private forms of direct food safety regulation have started to attract attention (Fuchs et al 2011, Fulponi 2006, Havinga 2006, Henson and Reardon 2005, Marsden et al. 2000, 2010, Martinez et al. 2007, Rothstein 2005, Van Waarden 2006).

This paper deals with two questions in the context of the reconfiguration of the relationships between the various actors: which actors are involved in the new food regulatory arrangements? And what roles do these actors play?

Public and private actors in regulatory arrangements

Some authors only distinguish between public and private actors (e.g. Spruyt 2001; Josling, Roberts and Orden 2004: 156), state and non-state actors or government and non-government actors. Daniel Stewart (2010) implicitly distinguishes state actors from non-state actors in his analysis of the availability of judicial review to actions of non-state actors. Bingen and Busch (2006: 246) observe 'a constantly evolving and changing global network of relationships among public and private, mandatory, voluntary, and national and international standards bodies instead of neatly delineated public and private responsibilities'.

Several authors on environmental regulation and sustainability have replaced this public-private dichotomy by the following threefold classification: state, market and civil society. In their analysis of non-state, market-driven governance systems, Bernstein and Cashore (2007: 356) and Abbott and Snidal (2009a, 2009b) distinguish between two types of non-state actors: firms and NGOs. A similar threefold classification is made by Levi-Faur (2010), who distinguishes between civil, market, and state actors. For Levi-Faur a non governmental organization can be controlled by civil society actors (CiNGO), market actors (MaNGO), or state actors (GoNGO). 'This distinction between different types of NGOs which act as regulators will allow us to develop a clearer understanding of hybrid designs of regulatory institutions.' Because of the ambivalent definition of NGO I prefer to speak of civil actors (alongside government or state actors and firms or market actors).

Figure 2: Threefold classifications of actors in regulation

Abbott & Snidal 2009	Levi-Faur 2010	Marsden et al 2010
States	State actors	Policy & regulatory interests
Firms	Market actors	Private interests
NGOs	Civil actors	Consumer & social interests

The Governance Triangle

Abbott and Snidal (2009a) visualize the variety of regulatory standard-setting (RSS) in their Governance Triangle (see figure 3). They distinguish three groups of actors directly involved in RSS: states, firms and NGOs. Abbott and Snidal consider RSS rules to be a form of regulation, even though they are voluntary (that is not legally mandatory).

Figure 3: The governance triangle (Abbott and Snidal 2009a, 50)

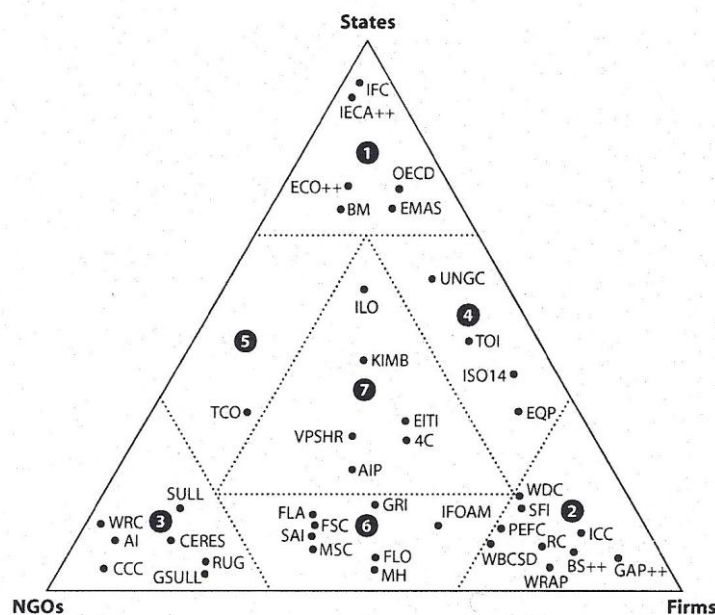


Figure 2.1. The governance triangle

The seven zones in the triangle indicate the three forms of single-actor standards (1-3), three forms of dual-actor standards (4-6) and one form involving direct participation of all three groups of actors (7). Abbott and Snidal included only four regulatory food standards in their governance triangle⁵; in

5 Marine Stewardship Council (MSC) 1997, Max Havelaar (MH) 1988 (fair trade coffee) and International Federation of Organic Agriculture Movements (IFOAM) 1972 (organic →

another publication they include another two food standards⁶. Further food standards could easily be included. Most food regulatory arrangements are situated in zone 1 (state regulation) and zone 2 (industrial self-regulation).

Abbott and Snidal show the evolution of the governance triangle (see figure 4). In the pre-1985 period there are only a few RSS schemes, mostly in Zone 1 (state). The decade between 1985 and 1994 shows the emergence of RSS schemes, especially firm-schemes, as well as the first multi-stakeholder and NGO schemes. The post-1994 period shows a continued proliferation of firm schemes and an increasing number of NGO schemes as well as the emergence of collaborative schemes (NGOs and firms or tripartite, zone 6 and 7).

Figure 4: Evolution of the governance triangle over time

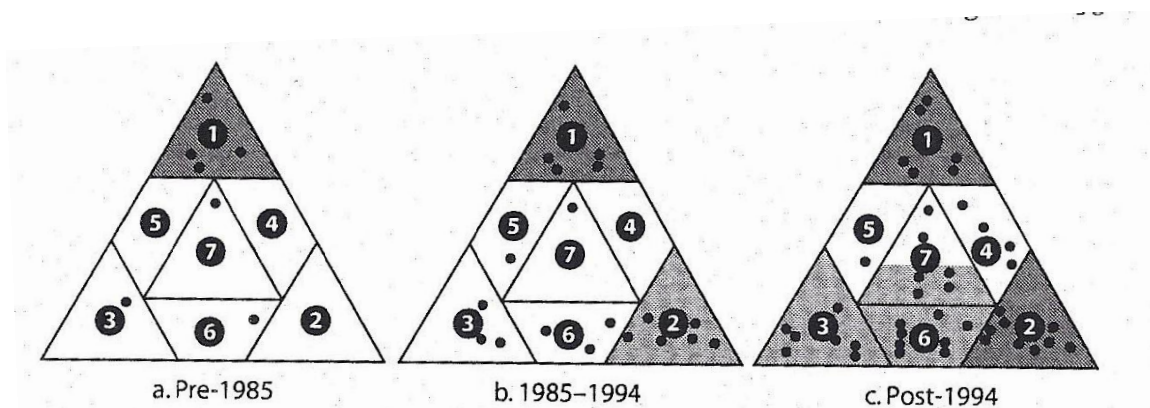


Figure 2.2. Evolution of the governance triangle

From Abbott and Snidal 2009a: 53.

The governance triangle is useful for analyzing changes in regulatory standards over time or to compare regulatory arrangements between different sectors or countries. Food regulatory schemes are dominated by state regulation (zone 1) and by firm schemes (zone 2). This applies particularly to food safety standards. The food standards that involve civil actors are mainly concerned with other issues such as sustainability or fair trade, but it is quite possible that civil actors will become more important in food regulation in the future. We can already witness an increase in the numbers of these actors in the regulatory

food), all three in zone 6 (dual-actor standards with involvement of firms and NGOs) and WHO Code of Marketing for Breast-milk Substitutes (BM) 1981 in zone 1 (state standard).

6 GlobalGap 1997 and SQF 1994 (SafeQualityFood), Abbott and Snidal 2009b: 513, both in zone 2.

domain, devoted to social interests (e.g. fair trade), environmental interests (e.g. organic food), or animal welfare (e.g. free-range meat).⁷ It remains to be seen whether future regulation in this field will develop in the way Abbott and Snidal sketch out.

However, an analysis focused on actor types also has its drawbacks. Let us look at the example of GlobalGAP (Global Partnership for Good Agricultural Practices). GlobalGAP is a private sector body originally set up by European supermarkets chain to set standards for the certification of agricultural products around the globe. GlobalGap is classified as a single-actor standard in the Governance triangle (Zone 2). In fact, however, GlobalGap is not a single-actor standard, but a standard set by actors from one single category of actors (firms). Multiple actors are involved in GlobalGap, all with very different positions and interests. GlobalGap is a membership organization with three different types of members: retail and food service members, producer/supplier members and associate members such as certification bodies, consultancies and the crop protection industry. Conflicts of interest exist within these member categories, for example between multinational supermarket corporations and small local retailers or between aquaculture industries in Norway and Thailand. Moreover, other stakeholders such as environmental NGOs, scientific experts or government officials are also involved in working groups or meetings of GlobalGap.

The focus on actor types in the regulatory triangle neglects that a 'single-actor standard' might involve multiple actors with conflicting interests. Furthermore, retail food standards (e.g. the British Retail Consortium Global Standards), halal certification (e.g. the quality system of the Halal Correct Certification Foundation) and traditional industrial self-regulation (e.g. the South Africa Olive Commitment to Compliance scheme or the Unilever Supplier Qualification System) are Zone 2 standards in the governance triangle, just like GlobalGap, although they differ significantly in terms of the actors involved. We should therefore differentiate between various actors.

Authors on food regulation tend to focus less on NGOs or civil society than do authors on environmental regulation, probably because civil society actors do not play a significant role in many food regulatory arrangements. Because of this, I neglected to include civil society organisations in an analysis of shifts in food safety regulation (Havinga 2006). However, in the field of food safety it is particularly important to distinguish between different types of private actors, so I distinguished three important institutional actors in this field: state (government agencies), industry (food industry and farmers) and third parties⁸

⁷ See footnote 6 for some examples of zone 6 standards.

⁸ This concept of 'third party' differs from the concept of Levi-Faur.

(private auditing and certification organisations, retailers and consumer organisations) (Havinga 2006). Fuchs et al. (2011, 360) stress the importance of retailers in food regulation when they distinguish four types of stakeholders in private retail food standards: 1) retailers, 2) producers: food industry, growers, fishers, 3) certification bodies and 4) civil society and NGOs.

Dilling et al. (2008: 3-4) distinguish three actor constellations from which the para-legal systems of the business world emerge: single enterprises (corporate self-responsibility), transnational corporate networks, and non-governmental organisation- business partnerships.

Analysing networks and production chains

In another body of literature, authors on food regulation do analyse the networks or production chains connected to a particularly regulatory regime.

Marsden et al. (2010: 120) distinguish between three types of interest in the new hybrid food policy-formation network:

1. policy and regulatory interests,
2. private interests, and
3. consumer and social interests.

These types of interest correspond to the three actor categories in the regulatory triangle proposed by Abbott and Snidal (state, firms, NGOs, see figure 2). Marsden et al. (2010: 283, italics in original, 290) argue that 'it is the *interactions* between public and private actors that are essential to a fuller understanding of the food system' and the boundaries between public, private and civil society interests become less clear with time. Other authors also observe the blurring of the public-private distinction and the rise of hybrid organisations and networks combining government and non-governmental actors (e.g. Bingen and Busch 2006, Black 2002, Havinga 2006, Hutter 2011, Levi-Faur 2010).

In their analysis of the new regulation and governance of food, Marsden et al. pay attention to a variety of actors such as UK and EU government bodies, corporate retailers, farmers, producers, manufacturers, global standard-setting organisations, private certification bodies, logistic firms, environmental and social NGOs. They paint a picture of various complex networks involving many organisations and regulations (see figure 5, for example).

Figure 5 Regulation in the supply chain and the role of different global organizations⁹

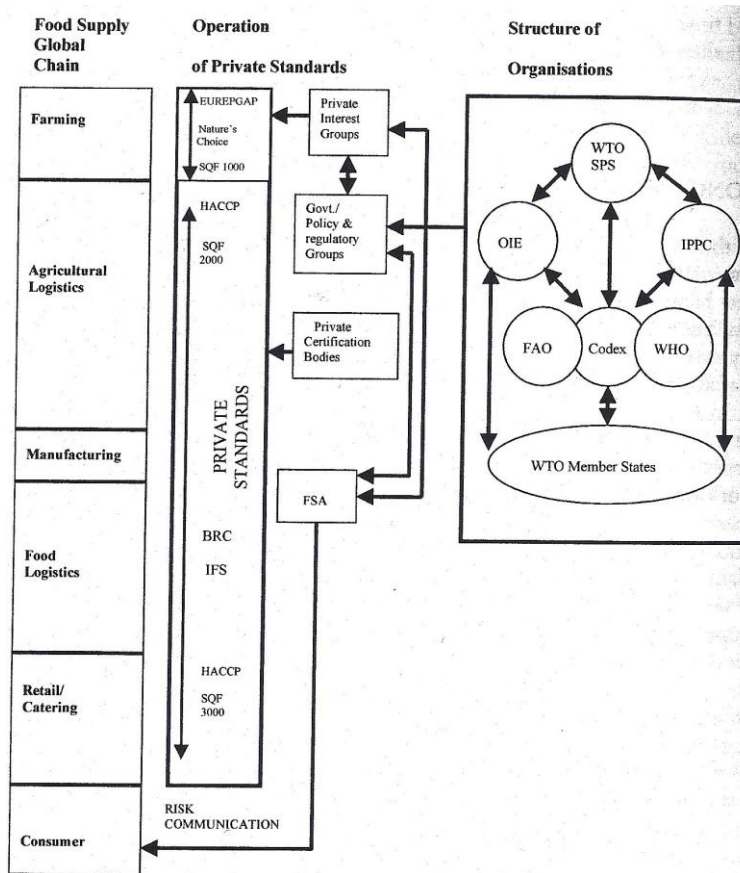


Figure 11.2 Regulation in the food supply chain and the role of different global organisations.

From Marsden, Lee, Flynn and Thankappan 2010: 280.

Bush and Oosterveer (2007: 391) describe export firms as key actors in the shrimp trade, linking local producers in Thailand and Vietnam with global trade networks. They conclude that certification bodies are unable to audit the chain below the level of exporters, where capital and information flow through informal, diffuse trade networks. This governance arrangement involves a complex mix of state and non-state actors: bureaucrats, retailers, wholesalers, im-

9 BRC (British Retail Consortium), EurepGap (Euro-Retailer Produce Working Group Good Agricultural Practice), FAO (Food and Agriculture Organisation), FSA (Food Standards Agency), HACCP (Hazard Analysis and Critical Point), IFS (International Food Standards), IPPC (International Plant Protection Convention), OIE (Organisation Mondiale de la Santé Animale/ World Organisation for Animal Health), SPS (Sanitary and Phytosanitary Measures), SQF (Safe Quality Food), WHO (World Health Organisation), WTO (World Trade Organisation).

porters and exporters, local trade network, producers, NGOs, processing companies and consumers.

In a study of public-private protection of forests and fish (Forest Stewardship Council and Marine Stewardship Council), Van Waarden (2010) points to the involvement of a wide range of actors from all phases in the value chain, with different interests, as one of the factors contributing to the success of these schemes: small scale and large fisheries, fishery associations and cooperatives, suppliers, manufacturers, distribution, retailers, scientists, indigenous people's organisations, fishery communities, and environmental groups.

To conclude, the broad threefold categorisation of actors involved in regulation (state actors, firms and civil society) is useful in analysing the balance between these three actor types in comparative perspective, whether historical, as Abbot and Snidal do, or when comparing countries, industries or fields of regulation. However, a more sophisticated categorisation of firms is needed for analysing the involvement of actors in non-governmental and hybrid systems of food regulation. Consider three private food regulatory regimes: GlobalGap, BRC, and a Dutch Halal certification scheme. All three would be classified as firm schemes in zone 2 according to Abbott and Snidal. Yet the three are only similar in some ways. When analysing the effectiveness and legitimacy of a regulatory regime it is important to distinguish between non-governmental actors which are regulated (regulatees), non-governmental actors which are part of the production chain but are not regulated themselves by the regulation under consideration (such as suppliers and retailers), and non-governmental actors providing services to the regulated industry (such as certification and auditing organisations).¹⁰ The increasing role of transnational and international government bodies in food regulation means it is inevitable also to distinguish between different levels of state actors. Following Marsden et al. (2010), civil society interests can be broken down into social interests (e.g. child labour, fair trade, occupational health, public health), environmental interests (e.g. biodiversity, sustainability, insecticides) and consumer interests (e.g. food safety, food security, choice and price).¹¹ Figure 6 provides a survey of these distinctions.

10 Havinga 2008.

11 Animal rights groups do not fit into this categorization very well.

Figure 6 Types of actors involved in regulation and their position in the supply chain

Type of actor		Position in regulation/supply chain	Actor role
State		- transnational level - (federal) level - state level - local level	
Non-state/private	Market/firms	Inside regulated supply chain	- Regulatees - Associations of regulated industry - Firms up- or downstream in supply chain not target of regulation at hand
		Outside regulated supply chain	- Providing services (e.g. standard setting, auditing, certification, disinfectants, education, consultancy)
	Civil society (NGOs)		- Social interest groups - Environmental interest groups - Consumer interest groups

Regulatory roles

Traditional Command-and-Control regulation is conceptualised as state legislation. However, a regulatory regime comprises not only legislation and other rules. Picciotto (2002) conceptualised regulation as consisting of three elements: rule-making, monitoring compliance, and enforcement (Scott 2002, Havinga 2006, Levi-Faur 2010).

Levi-Faur (2010) distinguishes further between three roles: regulator, regulatee, and third party¹². Combining these three roles with three actor types, he distinguishes 27 types of third party regulatory designs (see figure 7).

Figure 7 Types of Third party regulatory designs (Levi-Faur)

Table 1: Types of Third Party Regulatory Designs

Type of Third Party Enlisted	State Actors as Regulators (e.g. regulatory agencies; GoNGOs)			Market Actors as Regulators (e.g. Mangos)			Civil Actors as Regulators (e.g., CiNGOs)		
	S	M	C	S	M	C	S	M	C
State Actor as regulatees	SSS	SMS	SCS	MSS	MMS	MCS	CSS	CMS	CCS
Market Actors as Regulatees	SSM	SMM	SCM	MSM	MMM	MCM	CSM	CMM	CCM
Civil Actors as Regulatees	SSC	SMC	SCC	MSC	MMC	MCC	CSC	CMC	CCC

Triplets Key: First letter means the Regulator; Second represents the enlisted third party; Third letter the regulatee; S=State; M=Market; C=Civil

From Levi-Faur, David (2010) 'Regulation and Regulatory Governance', *Jerusalem Papers in Regulation & Governance* 1 (regulation.huji.ac.il)

Mattli and Woods (2009) include implementation in their definition of regulation: 'the organisation and control of economic, political, and social activities by means of making, implementing, monitoring, and enforcing of rules.' Adding implementation implies that we should consider the regulatees as part of the regulatory regime.

12 Levi-Faur 2010 distinguishes three main strategies in regulation: 1. first party regulation: Regulator=regulatee (self-regulation), 2. second party regulation: regulator independent of regulatee (e.g. state regulation of business, or retailer imposing regulation on suppliers), 3. third party regulation – relationship between regulator and regulatee is mediated by a third party as independent auditor (e.g. EurepGAP). The meaning of the concepts 'first party', 'second party' and 'third party' is not consistently used in the literature. E.g. Van Waarden 2012: first party = self-regulation by actor, second party = actor involved in transaction imposing standards, third party = independent actor not involved in transaction; Bingen and Busch 2006 : first party = supplier, second party = buyer, third party = independent third assessing compliance, fourth party = state/regulatory agency. Havinga (2006) categorized retailers setting food safety standards for their suppliers as third party regulation.

For Abbott and Snidal (2009a: 63) the regulatory process comprises five main stages (or five tasks):

1. Agenda-setting (placing an issue on the regulatory agenda)
2. Negotiation (negotiating, drafting and promulgating standards)
3. Implementation (implementing standards within the operations of targets of regulation such as firms)
4. Monitoring compliance
5. Enforcement (promoting compliance and responding to non-compliance)

Agenda-setting is added to rule-making. Abbott and Snidal use the abbreviation ANIME to refer to these five stages.

In my examination of private forms of food regulation such as GlobalGap and BRC, there seems to be one important phase missing in ANIME. In traditional command-and-control regulation, after making the rules, the next phase is implementing the rules. However, in private regulation drafting and promulgating the rules is not enough. Rules from GlobalGap or BRC, for instance, are not just being implemented in farms or the food industry. It seems to be crucial that these rules were first promoted and eventually made mandatory by dominant market parties such as big supermarket chains.

Regulatees have to accept or adopt a regulation. Adopting a regulation means deciding to accept the rules and to aim at compliance. By and large, an organization may adopt a regulation because it is legally mandatory, because compliance with the regulation is an obligation imposed by a dominant actor in the market (such as the combined retailers) or because the regulatee considers adoption beneficial for some reason (e.g. improving reputation, market share, price). Henson and Humphrey meet this objection by including adoption in the five functions involved in making a food standard operational: standard-setting, adoption, implementation, conformity assessment and enforcement (2011: 155-156). They are right to argue that the distinction between standard setting and adoption clarifies the issue of compulsion and obligation.¹³

Conclusions

When I started working on this paper, my purpose was just to add some distinctions of actors to the three main actor types (state, firm, NGO) and to include some regulatory activities among the three elements of regulation (rule

¹³ Both Meidinger and Van Waarden distinguish different functions for certification schemes. Van Waarden (2010) distinguishes three main functions for a certification standard organization such as FSC and MSC: standard setting, accreditation, and trademark assurance. Meidinger arrives at four functions: standard setting, certifying compliance, accrediting certifiers and labelling products (2008: 265).

making, monitoring and enforcement). However, my work on the paper, which involved reading and rereading the literature, revealed the high level of complexity of regulation. Many distinctions are only important in the context of particular regulatory arrangements or a particular inquiry. Besides, it often is more important to know whether the different tasks or functions (e.g. drafting the rules, adopting the rules, implementing the rules, assessing conformity and enforcing compliance) are carried out by the same organisation or by three or more different organisations than to know that all tasks are carried out by market actors (making this a single-actor regulation in the governance triangle).

Black (2008) sees accountability problems because regulatory roles and responsibilities are distributed among several actors (deciding on goals, drafting standard, monitoring, enforcement). It is impossible to call a standard-setter to account for enforcement of the rules or to call the enforcer to account for rules he did not make. Black (2008) asks, 'How to call to account a constellation of regulators?'

To make it even more complex: the involvement of actors and the roles they perform develop over time. Bernstein and Cashore (2007) showed for non-state, market-driven governance systems that political legitimacy is constructed in a three-phase process with different relationships between the actors and participation of different actors. Bernstein and Cashore distinguish between the initiation phase, the phase of widespread support and the phase of political legitimacy. A picture of the actors and roles involved in Eurepgap in 1997 differs significantly from the picture of GlobalGap in 2010 (Van der Kloet and Havinga 2008, Van der Kloet 2011). The picture will be different again at some other moment in time.

Five main functions seem to apply to every regulatory arrangement. These functions are similar to the functions Henson and Humphrey (2011) distinguish for food standards, but are worded slightly differently to make them universally applicable. For a regulatory arrangement to be effective, rules have to be laid down and subsequently adopted and implemented, and compliance with the rules has to be monitored and enforced. All regulatory activities can be thought of as part of one of these functions.

1. Standard setting (rule making)
2. Adoption
3. Implementation
4. Monitoring compliance (assessing conformity)
5. Enforcement

Figure 8 Catalogue of regulatory activities connected to five main functions

<i>Actions</i>	<i>Sideline actions</i>
I. Rule making¹⁴	
1. First step (initiator) agenda setting 2. Determine goals of regulation 3. Negotiation about the rules 4. Drafting the rules 5. Lay down the rules (decide on and promulgating the rules) 6. Further regulations and implementing rules	<ul style="list-style-type: none"> - Lobbying - Risk assessment - Mobilizing resistance or support - Adapting the rules (to new situations and acquired experience)
II. Adoption¹⁵	
7. Adopting the rules 8. Imposing the rules on suppliers or other actors in the supply chain (make the rules compulsory for other actors)	<ul style="list-style-type: none"> - Promoting and supporting the rules - Education & coaching - Facilitating
III. Implementation	
9. Implementing rules within firms (or other targets of regulation/regulatees)	<ul style="list-style-type: none"> - Promoting and supporting the rules - Education & coaching - Facilitating
IV. Monitoring¹⁶	
10. Testing 11. Inspection 12. Audit, verification 13. Certification 14. Documentation 15. Tracing non-compliant and undesirable behaviour	<ul style="list-style-type: none"> - Accreditation certification bodies - Trademark assurance - Evaluation and adaptation of monitoring strategy
V. Enforcement	
16. Sanctioning non-compliance (warning, fine, withdrawal certificate) 17. Legal enforcement (prosecution, civil law claim, appeal)	<ul style="list-style-type: none"> - Accreditation of certification bodies - Trademark assurance - Developing instruments and strategy in response to non compliance - Evaluation and adaptation of enforcement strategy

14 These activities may repeat on another level, e.g. EU, Member states, agency and so on and after some time in the future.

15 These activities may repeat up- or downstream in the food chain when requirements are passed on: e.g. supermarket – manufacturer – import firm – export firm – farmer.

16 Monitoring is a continuous process.

We need to analyse particular regulatory regimes and establish which actors are involved, how they are interrelated and what role they play. A crude distinction between three parties -- state , market and civil society -- masks interdependence, conflicts of interest and power. Knowledge of which particular actors are involved and what their role is in the regulatory social field reveals power relations that may have an effect on the reliability of a certificate, the level of compliance with prescriptions, and the openness of decision making. These insights might trigger government agencies to interfere or to monitor more actively.

References

- Abbott, K.W. and Snidal, D. (2009a) 'The Governance Triangle: Regulatory standards institutions in the shadow of the state', in W. Mattli and N. Woods (eds.) *The Politics of Global Regulation*, Princeton, NJ [etc.]: Princeton University Press, 44-88.
- (2009b) 'Strengthening International Regulation Through Transnational New Governance: Overcoming the orchestration deficit', *Van der Bilt Journal of Transnational Law*, 42: 501-578.
- Bernstein, S. and Cashore, B. (2007) 'Can non-state global governance be legitimate? An analytical framework', *Regulation & Governance*, 1: 1-25.
- Bingen, J. and Busch, L. (eds.) (2006) *Agricultural Standards. The Shape of the Global Food and Fiber System*, Dordrecht: Springer Netherlands.
- Black, J. (2002) 'Critical reflections on regulation', London: CARR Discussion Paper Series.
- (2008) 'Constructing and contesting legitimacy and accountability in polycentric regulatory regimes', *Regulation & Governance*, 2: 137-164.
- Braithwaite, J. (1982) 'Enforced Self-regulation: a new strategy for corporate crime control', *Michigan Law Review*, 80: 1466-1507.
- Bush, S.R. and Oosterveer, P. (2007) The Missing Link: Intersecting Governance and Trade in de Space of Place and the Space of Flows. *Sociologia Ruralis*, 47: 384-399
- Dilling, O., Herberg, M. and Winter, G. (2008) Introduction: Private Accountability in a Globalising World, in O. Dilling, M. Herberg and G. Winter (eds.) *Responsible business. Self-Governance and Law in Transnational Economic Interactions*. Oxford and Portland Oregon: Hart publishing, 1-13.
- Fuchs, D., Kalfagianni, A. and Havinga, T. (2011) 'Actors in Private Food Governance: The legitimacy of retail standards and multistakeholder initiatives with civil society participation', *Agriculture and Human Values*, 28: 353-367.
- Fulponi, L. (2006) 'Private voluntary standards in the food system: The perspective of major food retailers in OECD countries', *Food Policy*, 31: 1-13.
- Harrison, M., Marsden, T. and Flynn, A. (1997) 'Contested regulatory practice and the implementation of food policy: Exploring the local and national interface', *Transactions of the Institute of British Geographers*, 22: 473-487.
- Hatanaka, M., Bain, C. and Busch, L. (2005) 'Third-party certification in the global agrifood system', in S. Henson and T. Reardon (eds.) *Private Agri-food Standards: Implications for Food Policy and Agri-food Systems*, *Food Policy*, 30: 354-369.
- Hatanaka, M. and Busch, L. (2008) 'Third-Party Certification in the Global Agrifood System : An Objective or Socially Mediated Governance Mechanism?', *Sociologia Ruralis*, 48/1: 73-91.
- Havinga, T. (2006) 'Private regulation of food safety by Supermarkets', *Law & Policy*, 28: 515-533.
- (2008) 'Actors in private food regulation. Taking responsibility or passing the buck to someone else?' *Nijmegen Sociology of Law Working Papers Series 2008/01*, Nijmegen: Institute for Sociology of Law.
- (2010) 'The Influence of Liability Law on Food Safety. On Preventive Effects of Liability Claims and Liability Insurance'. *Nijmegen Sociology of Law Working Papers Series 2010/02*, Nijmegen: Institute for Sociology of Law.
- Henson, S. and Caswell, J. (1999) 'Food safety regulation: an overview of contemporary issues', *Food policy*, 24: 589-603.
- Henson, S. and Humphrey, J. (2011) 'Codex Alimentarius and private standards', in B. Van der Meulen (ed.) *Private Food Law. Governing food chains through contract law, self-regulation, private standards, audits and certification schemes*. Wageningen: Wageningen Academic Publishers, 149-174.
- Henson, S. and Reardon, T. (2005) 'Private Agri-food Standards: Implications for Food Policy and Agri-food Systems', *Food policy*, 30: 241-253.

- Hutter, B. M. (2011) *Managing Food Safety and Hygiene. Governance and Regulation as Risk Management*. Cheltenham/Northampton: Edward Elgar.
- Josling, T., Roberts, D. and Orden, D. (2004) *Food Regulation and Trade. Towards a Safe and Open Global System*. Washington DC: Institute for International Economics.
- Levi-Faur, D. (2010) Regulation and Regulatory Governance, *Jerusalem Papers in Regulation & Governance* 1 (regulation.huji.ac.il) [forthcoming in D. Levi-Faur (ed.) *Handbook on the Politics of Regulation*, Cheltenham 2011)
- Marsden, T., Flynn, A. and Harrison, M. (2000) *Consuming Interests. The Social Provision of Foods*, London: UCL Press.
- Marsden, T., Lee, R., Flynn, A. and Thankappan, S. (2010) *The New Regulation and Governance of Food. Beyond the Food Crisis?* New York/London: Routledge.
- Martinez, M.G., A. Fearne, A., Caswell, J.A. and Henson, S. (2007) 'Co-regulation as a possible model for food safety governance: Opportunities for public-private partnerships', *Food Policy*, 32: 299-314.
- Mattli, W. and Woods, N. (eds.) (2009) *The Politics of Global Regulation*, Princeton, NJ [etc.]: Princeton University Press.
- Meidinger, E. (2008) 'Multi-interest self-governance through global product certification programmes.' in O. Dilling, M. Herberg and G. Winter (eds.) *Responsible Business. Self-governance and law in transnational economic transactions*, Oxford en Portland Oregon : Hart publishing: 259-292.
- Oosterveer, P. (2005) *Global Food Governance*, Wageningen: Wageningen University.
- Picciotto, S. (2002) 'Introduction: Reconceptualizing regulation in the era of globalization', *Journal of Law and Society*, 29: 1-11.
- Rothstein, H. (2005) 'Escaping the Regulatory Net: Why Regulatory Reform Can Fail Consumers', *Law & Policy*, 27: 520-548.
- Scott, C. (2002) 'Private Regulation of the Public Sector: A neglected facet of contemporary governance', *Journal of Law and Society*, 29: 56-76.
- Spruyt, H. (2001) 'The supply and demand of governance in standard-setting: insights from the past', *Journal of European Public Policy*, 8: 371-391.
- Stewart, D. (2010) 'Excluding judicial review from the decisions of non-state actors', Paper presented at the Regulation in the Age of Crisis Third Biennial Conference of the Standing Group on Regulatory Governance of the European Consortium for Political Research (ECPR), Dublin June 2010.
- Van der Kloet, J. and Havinga, T. (2008) 'Private regulation of food safety from a regulatee's perspective' *Nijmegen Sociology of Law Working Papers Series 2008/07*, Nijmegen: Institute for Sociology of Law.
- Van der Kloet, J. (2011) 'Transnational Supermarket Standards in Global Supply Chains. The Emergence and Evolution of GlobalGAP', in J. Van der Kloet, B. De Hart & T. Havinga (eds.) *Socio-legal Studies in a Transnational World*. Special Issue *Recht der Werkelijkheid*, (32) 3, p. 200-219.
- Van Waarden, F. (2006) 'Taste, tradition, transactions, and Trust: The public and private regulation of food', in C. Ansell and D. Vogel (eds.) *What's the Beef? The Contested Governance of European Food Safety*, Cambridge MA: MIT Press: 35-59.
- (2010) 'Governing global commons: Public-private-protection of fish and forests', in J. Swinnen, J. Wouters, M. Maertens and A. Marx (eds.) *Private Standards and Global Governance. Legal and Economic Perspectives*, Cheltenham: Edgar Elgar.
- (2012) 'Varieties of private market regulation: problems and prospects', in D. Levi-Faur (ed.) *Handbook on the Politics of Regulation*, Cheltenham: Edward Elgar Publishers: 469-485.