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## **Transnational Business Governance Interactions: Conceptualization and Framework for Analysis<sup>1</sup>**

**Abstract:** This article demonstrates the value of studying interactions in transnational business governance (TBG) and proposes an analytical framework for that purpose. The number of TBG schemes involving non-state authority to govern business conduct across borders has vastly expanded in a wide range of issue areas. As TBG initiatives proliferate, they increasingly interact with one another, and with state-based and other normative regimes. The key challenge is to understand the implications of TBG interactions for regulatory capacity and performance – the most fruitful initial focus – and ultimately for the impacts of regulation on social and environmental problems. To gain purchase on these complex issues, the article develops an original framework that disaggregates the regulatory process, focusing on the points at which interactions may occur and suggesting, for each point, a series of analytical questions that probe the key features of TBG interactions.

**Key words:** global business, interactions, non-state, regulatory process, transnational governance

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<sup>1</sup> This paper was prepared, and is ultimately destined for publication, as the introductory article in a special issue of the journal *Regulation & Governance* on transnational business governance interactions. Except for this introduction and a commentary by Tim Bartley, the papers in the special issue were first presented in May, 2011 at a workshop at the European University Institute in Florence entitled "Transnational Business Governance Interactions: Theoretical Approaches, Empirical Contexts and Practitioners' Perspectives." The workshop was a joint initiative of the TBGI project and the Transnational Private Regulation (TPR) project funded by the Hague Institute for Internationalization of Law (principal investigator Fabrizio Cafaggi). The workshop received financial support from Arizona State University, the Robert Schuman Centre for Advanced Studies and the TPR project. The authors are grateful to Chris Stienburg (Osgoode JD '13) for invaluable research assistance.

## **Introduction**

An increasing portion of business regulation emanates not from conventional state and inter-state institutions but from an array of private sector, civil society, multi-stakeholder and hybrid public-private institutions operating in a dynamic, transnational regulatory space. Accounting standards, fair trade labels, forestry certification schemes, labor rights monitoring, transparency standards for extractive industries, and many more: *transnational business governance* (TBG) has grown in scope and importance as production, consumption and their impacts have globalized and as states reconsider established modes of regulation. Scholars have devoted substantial attention to the emergence, forms, legitimacy and effectiveness of individual TBG initiatives. As TBG schemes proliferate, however, it has become clear that they do not operate in isolation. Rather, they *interact* with one another, and with other normative regimes, state-based and non-state, in highly diverse ways.

Consider two examples. In forestry, industry-based sustainable forestry certification schemes have emerged alongside the more NGO-based Forest Stewardship Council (FSC). Interactions between the FSC and its industry-based alternatives are often competitive (e.g. Meidinger 1999; Cashore et al. 2004; Overdevest 2010), but they also exhibit considerable coordination and institutional mimicry (Gulbrandsen 2010; Fransen 2012). Moreover, while all these schemes have long interacted with state regulation in various ways (Meidinger 2001), new interactive possibilities have been created by recent European and American legislation requiring that all imported wood products must have been harvested legally in their source countries. Three papers in this special issue explore these possibilities (Bartley; Cashore & Stone; Overdevest & Zeitlin).

Food safety regulation involves a broader set of actors organized around diverse market chains and playing highly differentiated and intertwined roles. Iizuka and Borbon-Galvez (2009) describe a complex interactive system in which Latin American food safety standards are formulated by varied transnational non-state organizations, adopted by diverse state agencies, and implemented by combinations of local government officials and businesses (Meidinger 2009). Governance is thus performed by a wide range of actors, each constantly taking account of the others' activities.

*Transnational business governance interactions* (TBGI) are ripe for systematic attention. By “interactions” we mean the myriad ways in which governance actors and institutions<sup>2</sup> engage with and react to one another. Researchers have begun to examine isolated aspects of the phenomenon – for example, interactions between TBG schemes and official legal systems, or specific cases of inter-scheme competition or isomorphism. However, our knowledge of these interactions, and hence of their role in larger regulatory systems, remains incomplete. What are the drivers, mechanisms and pathways of interaction? What are its outputs, outcomes and impacts? Without addressing such questions, it is impossible to assess the full implications of TBG, including whether TBG schemes are racing one another to the top or the bottom and whether their interactions reinforce or undermine efforts to achieve regulatory goals such as sustainable development.

We argue that the study of TBG interactions and their effects is a promising research program and propose an analytical framework for furthering that program. TBG is characterized by heterogeneous actors possessing various regulatory capacities, acting within diverse institutional contexts, seeking to influence the allocation and exercise of regulatory authority, and performing a range of regulatory tasks throughout the policy cycle, from agenda-setting and rule formation to compliance promotion and sanctioning. This implies a high degree of interaction – within and among TBG schemes, and between TBG schemes and state-based regulation. Interactions occur at multiple levels (e.g., of individual actors, TBG schemes or entire governance complexes), take many forms (e.g., competition, imitation or steering), have varied effects on regulatory outputs, outcomes and impacts, and exhibit temporal dynamics (e.g. diffusion, divergence and adaptation).

Building on these assumptions, we propose an analytical framework to facilitate investigation of the drivers, forms, causal mechanisms and pathways of TBGI, and their effects on regulatory

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<sup>2</sup> For our purposes, institutions are cognitive and normative structures that facilitate and constrain behaviour. Examples include economic and political infrastructures; taken-for-granted social rules of behaviour; and international regimes and regime complexes (Ikenberry 1988; Jepperson 1991; Scott 2001; DiMaggio and Powell 1991; North 1990; Krasner 1982; Raustiala & Victor 2004). We distinguish institutions from actors, which are individuals and organizations capable of taking goal-oriented action. While some institutions are largely disconnected from organizations, others – and these are the ones we will mainly focus on - are predominantly structured around organizations, which embody the larger (institutional) normative and cognitive framework (e.g., Hodgson 2006). A key point for present purposes is that both institutions and actors can interact.

capacity, performance and outcomes. We do not specify a particular theoretical orientation or methodological approach. We believe that theoretical and methodological diversity is essential in dealing with as complex a phenomenon as TBGI. Our objective is to offer an analytical framework that can mobilize a range of theoretical approaches in a shared research program.

The papers in this special issue advance the TBGI research agenda. Drawing on rich and well-researched empirical contexts, notably forestry governance, natural resource management and global finance, these papers collectively make a substantial contribution toward better understanding the under-explored phenomenon of TBGI and its role in global governance. The article is organized as follows. Section 1 defines TBG (1.1), and TBG interactions (1.2). Section 2 reviews recent scholarship on TBG (2.1) and TBG interactions (2.2) to extract implications for our research program (2.3). Section 3, the core of the article, presents our analytical framework. Section 4 concludes briefly.

## **1. TBGI: The Nature of the Beast**

### **1.1 Transnational Business Governance**

Building on standard accounts of transnational relations (Hale & Held 2011; Keohane & Nye 1971; Risse-Kappen 1995), transnational business governance (TBG) refers to *systematic efforts to regulate business conduct that involve a significant degree of non-state authority in the performance of regulatory functions across national borders*. TBG is longstanding in certain domains, including accounting (Camfferman & Zeff 2006), electricity (Büthe 2010b), product standards (Perry 1955) and kosher food (Starobin & Weinthal 2010). Since World War II, however, TBG initiatives have expanded to include not just “technical” (interoperability) standards aimed at reducing transaction costs (e.g. ,internet protocols) but also quality standards and, increasingly, “regulatory” standards aimed at reducing externalities (Abbott & Snidal 2001). These range from food safety risks (consumption externalities) to worker safety and environmental harms (production externalities). As their scope has broadened, transnational codes of conduct, certification and labeling schemes, reporting mechanisms and the like have emerged in ever-increasing numbers.

The “transnational” in TBG refers to arrangements that cross national borders and involve the exercise of a significant degree of authority by non-state actors. In this regard, “state” denotes actors based in the institutions of the state, including (in contrast to the approaches of

some scholars) intergovernmental, supra-national and trans-governmental structures. We focus on initiatives in which non-state actors are afforded authority to perform varied regulatory functions, alone or together with state-based actors (Meidinger 1997; Cashore 2002; Keck & Sikkink 1998; Risse-Kappen 1995; Black 2001; Abbott & Snidal 2009 a, b, 2010).

“Business” denotes a focus on the regulation of commercial, industrial or professional activity in pursuit of socially defined goals. This includes not just regulation of the ultimate targets but also regulation of intermediaries (e.g. financial institutions) capable of influencing targets’ behavior, and even meta-regulation of government regulation. Importantly, business actors are not just targets of TBG. While regulation is always “co-produced” by regulators and targets insofar as the latter must implement regulation within their organizations (Black 2001), in TBG firms also exercise authority to perform regulatory functions such as agenda-setting, rule-making and enforcement.

Although we speak of “governance,” we focus on “regulatory governance.” Defined broadly, “governance” encompasses all activities performed in conducting the policies or affairs of a state, organization, network or society (Held & McGrew 2002; Hunt & Wickham 1994; Kooiman 1993; Rosenau & Czempiel 1992; Rosenau 1997). Like Hale & Held (2011: 12), we focus on the subset of governance that involves *regulation*: organized and sustained attempts to change the behavior of targeted actors to address a collective problem or attain a collective end, through a combination of rules or norms and means for their implementation and enforcement. State and non-state actors may engage in regulation and rules may be “hard” or “soft”. As the term “regulation” is often associated with state-based actions and legal rules, however, we use the broader term “regulatory governance” (Levi-Faur 2011).

## **1.2 TBG Interactions**

What makes our research agenda distinctive is its explicit focus on interactions as an object of inquiry. This focus is animated partly by the empirical observation that as TBG schemes proliferate, the frequency, intensity and variety of interactions among them, and with state-based institutions, increase; and partly by a theoretically-informed expectation that the increasing complexity of transnational regulatory governance will produce extensive institutional

interactions, some of which may be novel or problematic (Alter & Meunier 2009; Gehring & Oberthür 2009).

TBG schemes take diverse forms and involve heterogeneous actors – from individuals to organizations, technical experts to political entrepreneurs, NGOs to business firms to government agencies. Pursuing diverse interests, values and beliefs about appropriate forms of regulation, these actors engage in complex co-regulatory processes. TBG schemes engage in virtually all of the tasks that constitute regulatory governance, from shaping the regulatory agenda to enforcing norms (Black 2002; 2003; Abbott & Snidal 2009a, b).

As these diverse schemes multiply, they interact with one another and with state-based governance. As noted above, we define “interactions” broadly as including all the ways in which TBG actors and institutions engage with and react to one another and state-based regulatory actors and institutions. Interactions may be symmetrical or asymmetrical, antagonistic or synergistic, intentional or unintentional. They may even be unnoticed by some actors. For example, where one scheme adopts another’s organizational structure or refers to its rules, the latter may engage in a process of mutual adjustment, may choose not to make any adjustment, or may even remain wholly unaware of the interaction. Interactions frequently occur among schemes within a particular sector or issue-area, but they may also occur across domains, as between trade and the environment (Raustiala & Victor 2004; Gehring 2011).

Competition, sometimes shading into conflict or domination, often occurs in domains characterized by multiple schemes driven by actors with differing regulatory goals. In forestry, for example, industry-led certification programs compete for users and legitimacy with the civil society-driven FSC – even as all these schemes intersect with state regulation (e.g., legality requirements) and international agreements (e.g., international trade law). Cooperative interactions also occur, as in extractive industries, where TBG schemes have converged on norms of information disclosure and transparency (Haufler, this issue). TBG schemes may also exhibit a division of labor, as in food safety regulation (Meidinger 2009).

## **2. Current Scholarship**

Most scholarship on TBG has focused on particular TBG schemes or types of schemes (2.1). More recently, scholars have begun to address interactions, applying a wide range of theoretical perspectives (2.2). This research has significant implications for a TBGI research agenda (2.3).

## **2.1 Scholarship on TBG**

Much research on TBG has focused on defining the phenomenon, identifying conditions for its emergence, and evaluating its legitimacy or effectiveness, rather than on interactions (e.g., Cutler et al 1999; Hall & Biersteker 2002; Djelic & Sahlin-Andersson 2006; Dingwerth 2007; Graz & Nölke 2008; Vogel 2009; Büthe 2010a). Most studies examine individual initiatives within a domain, or compare initiatives across domains, such as accounting and quality management (Tamm Hallström 2004) or sustainable forestry and fishing (Gulbrandsen 2008, 2010). Many also focus on particular institutional forms, especially state/non-state partnerships (Bäckstrand 2008; Börzel & Risse 2005; Pattberg 2010; Schäferhoff et al. 2009), and collaborations among state, business and civil society actors (Abbott & Snidal 2009 a, b; Dilling 2012). Other scholars focus on firms' motivations to adopt voluntary TBG norms (e.g., Fransen & Burgoon 2012; Potoski & Prakash 2005). Another important literature addresses the legitimation dynamics through which TBG initiatives pursue, acquire or lose regulatory authority (e.g., Tamm Hallström 2004; Wood 2005; Bernstein & Cashore 2007; Black 2008; Meidinger 2008; Quack 2010; Casey & Scott 2011; Richardson & Eberlein 2011).

Taken together, this research provides important insights into who participates in formulating TBG rules; how schemes verify compliance; how certification bodies mediate between standard setters and regulatory targets; how schemes seek to legitimize themselves; and the relative roles of economic incentives, normative commitment and peer pressure in shaping firms' adherence and compliance. It does not, however, deal adequately with the complex interactions among TBG schemes and with other regulators.

## **2.2 Scholarship on Interactions**

Scholarly interest in TBGI began, and remains preoccupied, with the relationship between TBG schemes and state-based regulation (e.g. Meidinger 2001; Wood 2003; Kingsbury et al. 2005; Schepel 2005; Trubek & Trubek 2007; Eberlein & Newmann 2008; Wood & Johansson 2008; Bartley 2011b). More recent research examines TBGI more broadly, from a variety of positive and normative perspectives representing nearly the full spectrum of theoretical orientations in the social sciences.



Rationalist, actor-centered approaches examine the dynamics of TBGI as bargaining between rational actors shaped by power. Abbott and Snidal's (2009a, b) work on state-business-NGO interactions in the "governance triangle" is an example. Related analyses employ rationalist or historical institutionalism to examine institutional interactions. Regime and regime complexity theory highlights relationships among nested, overlapping and parallel regimes in multiple issue areas (Aggarwal 1998; Raustiala & Victor 2004; Helfer 2004). Analyses of institutional interaction or "interplay" address institutions' effects on one another, proposing discrete pathways and causal mechanisms to explain interaction effects (Gehring & Oberthür 2008, 2009; Oberthür & Stokke 2011). However, both regime complexity and institutional interaction research focus primarily on intergovernmental arrangements and on rule promulgation rather than implementation (Alter & Meunier 2009: 13), albeit with exceptions (Abbott 2012; Auld & Green 2011; Kelley 2009).

Other scholars emphasize the significance of legitimation in shaping interactions (e.g., Wood 2005; Bernstein & Cashore 2007; Black 2008; Fransen 2012; Gulbrandsen, this issue), or employ network theory to analyze the inter-organizational and inter-personal aspects of TBGI (e.g., Smith & Fischlein 2010; Koppell 2010; Richardson 2009). Still other accounts, rooted in sociological new institutionalism, posit that interactions are driven less by conscious strategies than by structural forces arising from the relevant organizational fields (e.g., Bartley 2007b; Dingwerth & Pattberg 2009). Bartley's work on labor and environmental standards (2003, 2005, 2007a, 2011a) examines how these "socially constructed arena(s) of self-referencing, mutually dependent organizations" structure and are structured by TBGI (2007a: 231).

Scholars of law and regulation bring further perspectives to bear on the phenomenon. Perez (2011) introduces the concept of "ensemble regulation" to characterize the regulatory formations constituted by multiple links and cross-sensitivities among environmental TBG schemes. He argues that this ensemble produces positive enforcement and normative externalities even while limiting the possibility for radical critique. Bomhoff & Meuwese (2011) apply concepts of meta-regulation and inter-systemic conflicts to analyze how transnational regulatory initiatives interact with other normative orders (compare Parker 2002). Herberg (2008) uses the concept of "interlegality" (Santos 2002) to characterize interactions, bringing the ideational and cultural dimensions of TBG to the fore. Other scholarship in this vein emphasizes that interactions can

take place through symbols, concepts and discourses, for example by defining and redefining “master metaphors” such as sustainability, ecosystem and health (Meidinger 1999).

Another important line of research concerns the outcomes of interactions and their implications for regulatory effectiveness (Bernauer 1995; Underdal & Young 2004). There is no consensus whether interactions are predominantly competitive or collaborative. A few analysts argue that the predominant pattern is simultaneous cooperation and competition, or “co-opetition” (e.g., Koppell 2010). Others emphasize competition but disagree whether it leads to a race to the bottom or top in terms of outcomes. For Cashore et al. (2004: 5), the answer varies with domestic industry structure, while Overdevest (2004, 2010) argues that public pressure has ratcheted-up transnational forestry standards via regulatory competition. Smith and Fischlein (2010) argue that while competition among rival governance networks induces rule convergence, it also promotes continuing rule innovation and creative solutions to social problems. Meidinger (2008) speculates that competition for acceptance might create pressure to adopt standards that respond to or even anticipate public demands, leading TBG schemes toward more transparent, participatory processes and more ambitious and effective rules.

Others are more pessimistic. Fransen (2011, 2012) and Gulbrandsen (2005, 2010) argue that upward convergence is largely superficial, masking substantial divergence in standards and performance. The regime complexity literature emphasizes – excessively, in Overdevest and Zeitlin’s view (this issue) – negative consequences of interaction, including duplication, lack of coordination, conflicts arising from rule inconsistencies, and cross-institutional strategic behaviour such as forum-shopping and regime-shifting (Alter & Meunier 2009, Raustiala & Victor 2004; Helfer 2004).

A growing literature explores how interactions may be “steered” to promote desired outcomes. Braithwaite and Drahos (2000) use Latour’s (1986) notion of “enrollment” to describe the construction of TBG regimes. Black (2002, 2003) combines the concepts of enrollment and regulatory capacity to analyze interactions within the transnational financial regime. Wood (2003, 2005) employs a governmentality framework to examine steering as a mode of interaction in the field of environmental management. Abbott and Snidal (2009a, 2010; Abbott et al. 2011;

Abbott 2012) explore ways in which governance actors might “orchestrate” TBG interactions to improve regulatory performance.

Others argue that experimentalist processes of benchmarking and learning can promote desired outcomes (Overdevest & Zeitlin, this issue). Calliess and Zumbansen (2010) suggest a decentralized steering dynamic in which state, non-state and hybrid regulators seek to identify an evolving “rough consensus” in light of which they put forward experimental regulatory schemes, which in turn constitute a “running code” that adapts in response to ongoing feedback. This process involves constant cross-fertilization, co-evolution, competition and other “intricate collision[s]” among governance schemes (Zumbansen 2011: 69).

### **2.3 Implications for a TBGI Research Program**

While undoubtedly incomplete, this survey confirms that studying TBGI is a “most promising research programme” (Herberg 2008: 20). A diverse body of TBGI scholarship is emerging, yet we still “know too little about these interplays to know what configurations are stable or potent,” or how multiple regulatory forms co-evolve, hybridize, compete, and reshape organizational behavior (Schneiberg & Bartley 2008: 51-52).

Exploring TBG interactions poses several analytical challenges. First, interactions take place, and can be studied, at multiple levels of analysis: the “micro” level of individuals and organizations, which interact to constitute and govern TBG schemes; the “meso” level of TBG schemes, which interact with one other and with state-based institutions; and the “macro” level of regulatory complexes. Similarly, units of analysis can vary from specific dyadic interactions (Gehring & Oberthür 2009) to larger patterns of interaction within hybrid public-private regime complexes (Abbott 2012).

Second, analysts must choose whether to study interactions as outcomes or as factors producing effects. In the former case, they would ask what drives and shapes interactions; in the latter, what effects interactions have on TBG schemes, regulatory complexes, and regulatory outputs, outcomes and impacts. Either way, they should identify the mechanisms and pathways through which both kinds of influences operate (Hedström & Swedberg 1998).

Third, interactions are dynamic and must be analyzed as such. The nature and patterns of interactions of a scheme in the early days of its inception and stabilization may be distinctly

different from those which characterize it once it is firmly institutionalized. The entry of new players can also introduce new patterns of interactions.

A fourth challenge arises from the diversity of theoretical and methodological approaches to TBGI. As suggested above, analysts may draw predominantly on rationalist accounts, analyzing TBG interactions as encounters among rational actors with particular interests; they may draw on structuralist approaches, emphasizing the significance of system-level properties in shaping interactions; or they may seek to transcend the agency/structure divide. No single approach will be capable of dealing with the full complexity of these phenomena; there is no one “best” theory.

How then to address these challenges? In the next section, we propose an overarching analytical framework that disaggregates TBGI into several components, indicates how they relate to one another, and accommodates a range of theoretical approaches.

### **3. TBG Interactions: A Framework for Analysis**

As we have emphasized, TBG is a dynamic, co-regulatory and co-evolutionary process, involving state, non-state and hybrid actors and organizations, which interact at multiple levels and in multiple ways with a range of effects. These actors and organizations pursue varied interests, values and goals, and possess differential regulatory capacities: varied endowments of resources relevant to performing particular regulatory functions. These include, notably, financial resources, organizational capacity, expertise, authority and legitimacy, and strategic position, all of which actors use to further regulatory projects they support (Black 2002, 2003; Abbott & Snidal 2009a).

As noted in Part 1, regulatory governance requires the performance of a range of functions or roles: (1) framing the regulatory agenda and setting objectives; (2) formulating rules; (3) implementing rules within the targets of regulation; (4) gathering information and monitoring behavior; and (5) responding to non-compliance via sanctions and other forms of enforcement (Black 2002; 2003; Abbott & Snidal 2009a). Each of these can be performed by different actors, and different resources are useful for each. For example, legitimacy based on representativeness or sound governance processes may be important for organizations formulating rules, but

technical expertise may be more important for organizations engaged in monitoring or information gathering. Strategic position is critical for those trying to change target actors' behavior, but may be unnecessary if an organization can enroll or orchestrate others to act on its behalf (Black 2002, 2003; Abbott & Snidal 2009b; Abbott et al. 2011).

Analysis of TBG interactions should take regulatory governance as its starting point. Scholars should first identify the points in the regulatory process at which interactions occur, and should then address six central questions for each such point: (1) who or what is interacting; (2) what drives and shapes interaction; (3) what are the mechanisms and pathways of interaction; (4) what is the character of interaction; (5) what are the effects of interaction; and (6) how do interactions change over time? These questions are not exhaustive, and no single study needs to address all of them. In our view, however, they isolate the key dimensions of the phenomenon. Together with the aforementioned components of regulatory governance, they provide the skeleton of our analytical framework, shown in matrix form in Table 1.

**Table 1. TBG Interactions: an Analytical Framework**

Dimension of interaction	Component of regulatory governance				
	Goal/agenda setting	Rule formation	Implementation	Monitoring, information gathering	Compliance promotion, enforcement
Who or what interacts					
Drivers and shapers					
Mechanisms and pathways					
Character of interaction					
Effects of interaction					
Change over time					

This framework accommodates the diversity of actors and organizations involved in TBG, the multiplicity of drivers, pathways and mechanisms of interaction, the co-evolutionary interplay between agents' actions and systemic properties constituting different interaction characters and effects, and the dynamic nature of interactions. Not every study of TBGI will investigate all elements of the framework. Researchers may focus on some variables while bracketing others. The purpose of this article is to provide a framework within which they can make such choices without losing sight of the whole.

### **3.1 Who or what is interacting?**

We have already highlighted the heterogeneity of actors involved in TBG. These actors perform different regulatory roles at different points in the regulatory process, sometimes performing multiple roles simultaneously. TBG interactions thus involve numerous actor combinations, and these must be specified in any analysis. Analysts may need to disaggregate

generic categories of business, state, and civil society to distinguish between, for example, retailers and primary producers; transnational corporations and small businesses; targets of regulation and firms providing services to targets (e.g., auditors); consumer, human rights, environmental and labour NGOs; actors from the global “North” and “South”; or sub-national, national and international governmental organizations. Frequently, TBG schemes establish their own actor categories, which might be useful for analytical purposes.

As noted in Part 2.3, studying TBGI poses a challenge in terms of levels and units of analysis. This challenge is complicated by the fact that numerous TBG schemes, and many of the organizations that participate in them, are organizations of organizations and thus not simply actors but also arenas where interaction occurs. Furthermore, TBG schemes often participate in rule formation or as rule addressees in other TBG schemes. For example, the FSC and other major TBG schemes are members of the ISEAL Alliance, a meta-regulatory initiative that sets standards for social and environmental standards-setters, while the Global Reporting Initiative (GRI) and other TBG schemes participated in the development of the ISO 26000 social responsibility guide.

To render this complexity tractable, we distinguish three levels of analysis. Micro-level approaches address interactions among individuals and organizations, such as firms and NGOs, to create and govern TBG schemes. Such an approach might, for example, examine interactions within a single scheme – among the actors formulating standards, conducting certifications, and being certified. Meso-level analysis addresses TBG schemes’ interactions with each other and with state-based institutions, often within an organizational field. Such an approach might, for example, examine interactions among particular schemes operating within one industry sector but addressing different issues or involving different actors (e.g. legality and sustainability in forestry, Bartley, Cashore & Stone, and Overdevest & Zeitlin, this issue; or conflict and corruption in mining, Haufler, this issue). Finally, macro or systemic analyses address entire regulatory complexes. Such an approach might examine how a complex constituted by organizational fields, norms and discourses within one domain (e.g., labor rights) intersects with other complexes in different domains (e.g., international trade).

At this early stage in TBGI research, there is value in focusing on the middle, “meso-” level. This level of analysis provides sufficient abstraction to identify patterns and trends, without

sacrificing empirical detail. It recognizes that TBG schemes are arenas in which individuals, firms, NGOs and other agents interact; and that they operate within larger regulatory complexes. Yet it views these relationships from a vantage point that treats TBG schemes themselves as interacting entities.

We can distinguish further between “horizontal” and “vertical” analyses. A horizontal analysis at this level might examine interactions among TBG schemes, such as institutional isomorphism or competition for users. A vertical analysis might examine interactions between a TBG scheme and its constituent actors, or between a TBG scheme and a larger regulatory complex. It might inquire into either “upward” processes of interest aggregation and rule formation, or “downward” processes such as the influence of collective norms on actors’ perceptions, decisions or behavior.

Finally, as to units of analysis, approaches that conceptualize interactions in purely dyadic terms, such as “target/source” (Gehring & Oberthür 2009) or “principal/agent,” while shedding light on relationships and influences, will not capture fully the proliferation of actors and initiatives and their multiple, often-changing interactions. Further, as TBG schemes are unlikely to emerge in previously ungoverned domains (Bartley 2011b), they will typically have to navigate around existing initiatives, particularly national legal regimes, although they may seek to change those systems to accommodate their own norms (e.g., the International Swaps and Derivatives Association and national bankruptcy laws, Biggins & Scott 2011). Thus, approaches that emphasize polycentricity and hybridity are likely to be particularly fruitful.

### **3.2 What drives and shapes interactions?**

The second element of our framework focuses on the factors that drive and shape interactions. One possible driver is the structure of the governance problem. Coordination problems generate different interaction possibilities than do collaboration scenarios. The latter generate multiple competitive or cooperative possibilities depending on their payoff structures and the likelihood of future interactions. Free-rider incentives, externalities and other characteristics of public goods and common pool resources make their governance vulnerable to competition and conflict, inhibiting cooperation. Transaction costs can also inhibit cooperation.



Complex global problems like climate change create different possibilities and challenges for interaction than localized problems like freshwater pollution. In addition, Haufler (this issue) shows that physical features such as the geographic distribution of natural resources may play a role in shaping interactions.

Other drivers operate at the actor level. These include actors' interests, values, perceptions, knowledge and resources. Alignment of interests and values is a powerful enabler of cooperation, as misalignment is of conflict. Asymmetrical distribution of information and resources also influences the likelihood and character of interaction. System-level drivers include the proliferation and density of governance organizations in particular issue areas: the greater the number, the greater the likelihood of interaction. More important than sheer numbers, however, is the degree of overlap and consistency. Schemes may overlap – and exhibit consistency or inconsistency – in members, rules, issue focus, rule addressees, regulatory functions, etc. One scheme's actions may influence others' strategic choices. As noted earlier, the institutional interplay and regime complexity literatures tend to emphasize destructive interactions, whereas experimentalist and legal pluralist scholarship suggests that overlap and inconsistency can be productive.

Industry characteristics are also important drivers. Ownership concentration, value chain integration, average firm size, vulnerability to reputational pressures, maturity of the market and other features can promote different forms of interaction (Cashore et al. 2004). The “market for regulation” is also significant, including the number of would-be regulators and the maturity of regulation. If well established governance institutions operate in stable regulatory markets, governance interactions are likely to be limited.

Interactions are also conditioned by social, economic, technological and political structures (Callon 1998; Law & Hassard 1999). TBG interactions can be shaped by functional interdependencies created by technological structures, as in global financial markets (Porter, this issue). Interactions are also shaped by social networks, lasting patterns of relationships that serve as channels for the transfer of material or symbolic resources (Thompson 2003). Braithwaite and Drahos (2000) highlight the role of professional networks, particularly “model mongers” and “model mercenaries,” in explaining the gradual homogenization of many global business regulation regimes.

Finally, cultures, discourses, mentalities, epistemic communities, and other ideational factors can condition the possibilities for and character of interaction. Regulatory problems are socially constructed, and thus themselves the product of interactions (Wood 2005). Forest governance interactions, for example, focus partly on defining the nature of the forest sustainability problem as a condition for creating and legitimating a governance solution. Such interactions are influenced by shared understandings of proper forest management, sustainability and community stability. Importantly, taken-for-granted concepts can shape TBGI while masking power structures. Governance problems and regulatory solutions are often shaped by dominant discourses of “sustainable development,” “free markets” and so on, which in turn may favor and be shaped by powerful business actors (Levy & Newell 2002; Fuchs & Kalfagiani 2010).

### **3.3. What are the mechanisms and pathways of interaction?**

Rather than simply suggesting that certain factors lead to certain results, analysis of TBGI should explore the mechanisms and pathways through which such influences operate (Hedström & Swedberg 1998; Abbott & Snidal, forthcoming). Mechanisms for facilitating and shaping interaction include organizations (Williamson 1985; Reed 2003), markets (e.g. North, 1990), networks (e.g. Thompson 2003) and communities (Djelic and Quack 2010), each with its own social logics. It is worth noting the importance of “sites” of interactions: which mechanisms and pathways are available is shaped by the specific sites of interaction, i.e. the institutional settings in which interactions take place. Overlapping membership structures are a common organizational mechanism by which interactions are shaped in regime complexes. Relational ties within networks can likewise operate to channel resources, ideas and norms, thus shaping interactions (True & Mintrom 2001). Epistemic communities provide another pathway for facilitating and mediating inter-scheme interactions (Haas 1992; Braithwaite & Drahos 2000).

Interactive mechanisms and pathways can operate at different points in the regulatory governance process. Organizational cross-memberships and social networks may be particularly influential in framing regulatory agendas, designing standard-setting procedures or determining the core elements of TBG schemes (e.g., standards, labeling and certification). Gehring and Oberthür (2009) also identify mechanisms that operate at the level of regulatory outcomes and on-the-ground impacts.

Interactions may be effected through direct communication, with individuals or organizations acting as norm entrepreneurs; or indirectly, through cognitive interactions such as mimicry and policy learning, in which observation and interpretation, rather than interpersonal communication, are the central mechanisms. Cognitive interaction occurs when information, knowledge or ideas produced in one institution modify the perceptions of relevant decision-makers in another (Gehring & Oberthür 2009). An important aspect of interaction among TBG schemes is thus the information such schemes produce: for example, analyzing problems, monitoring and publicizing performance, and communicating views on proper governance. Indeed, gathering and disseminating information may be among the most important mechanisms of TBG interaction. TBG schemes may use evidence from state-based or other TBG schemes in defining and performing their own roles and functions, or in pushing issues onto policy agendas, mollifying group pressure, searching for optimum policy solutions, or creating legitimacy (Rose 1993; Bennett 1991; Bennett & Howlett 1992; Dolowitz & Marsh 2000).

A range of intermediating actors, including NGOs, consulting firms and certification bodies, act as pathways of interaction in policy diffusion processes. These actors select and interpret evidence from other schemes in the same or different domains, adapting it to their ends and circumstances. In Dorf and Sabel's (1998) experimentalist governance model, TBG schemes might be designed, or perceived, as governance experiments; a meta-level overseer evaluates their performance, taking the best ideas from each experiment to create new governance systems (Overdevest & Zeitlin, this issue).

One important potential set of mechanisms and pathways that is overlooked in the TBG literature consists of the tools and techniques of regulatory governance. Meta-regulatory standards for TBG standards-setting, auditing, accreditation or certification, promulgated by such meta-organizations as the ISEAL Alliance, ISO and the WTO, are one example. These meta-regulatory standards can be important mechanisms of interaction.

Another example is provided by co-regulatory and other enrollment devices by which state and non-state organizations are harnessed to produce hybrid governance regimes (Abbott & Snidal 2009b, 2010; Black 2002; Scott 2004). As the "new governance" literature emphasizes, enrollment occurs at multiple stages of the regulatory process. At the rule-formation stage, a regulator can adopt the standards of another scheme; for example, the EU has adopted IASB

accounting rules; the fair trade codes reference ILO rules; and many state regulations incorporate ISO and Codex standards. One common mechanism of rule interaction is conditional rule referencing: “if you comply with X’s rule, that will constitute compliance with my regulation.” Such conditional rule referencing can produce myriad interactions. Importantly, the scheme whose rules are being adopted may be unaware of the enrollment, far less having consented to it. Review and accountability procedures, including peer review, are important elements of monitoring in the regulatory process and thus operate as mechanism of interaction.

Regulatory strategies such as these can thus structure interactions among numerous TBG schemes, contributing to the creation of multi-layered regulatory complexes (e.g., Cashore & Stone, this issue; Perez 2011). National laws that stipulate compliance with TBG standards, for example, produce not only interactions between national regulators and a TBG scheme (Gehring & Oberthür 2009; Meidinger 2009; Scott 2004; Black, 2002), but also functional interdependencies which can enhance the capacity of each participant: the TBG scheme gains the state’s enforcement capacity; the state gains the norm-generating capacity of the scheme; and each gains the symbolic resources of the other.

Interactions can also occur at the level of regulatory implementation, through the mechanism of the supply chain. For example, a supplier may face demands from different buyers to conform to multiple schemes, and so may adopt the most demanding one for all its operations, displacing the others in practice. Alternatively, the mechanism for interaction may be legal requirements for firms to comply with multiple state or TBG standards, which conflict or produce adverse outcomes in combination. For example banks operating in the EU must comply with the rules of the IASB and the Basle Committee on Banking Supervision; in the 2008 financial crisis this double requirement created a vicious cycle, significantly worsening the crisis (Black 2012). Such interactions may then prompt interactions between standard-setters, either vertically (e.g., if politicians become involved) or horizontally between schemes (in this case, the Basle Committee urged IASB to change its rules).

As Abbott & Snidal (forthcoming) note, mechanisms and pathways are often complex and intertwined, requiring the development of stylized facts so that descriptive detail does not

obscure analytical insight; yet they allow analysts to move beyond conjecture about the implications of TBGI to produce clear, generalizable accounts of the genesis of interactions and the link between interactions and regulatory outcomes. They represent one of the most promising avenues to gain analytical purchase on the complex phenomenon of TBGI.

### **3.4. What is the character of interaction?**

As noted earlier, most scholars emphasize the competitive nature of TBG interactions. Yet this is only one of several characters of interaction, which fall, roughly speaking, into four categories:

- **Competition:** for regulatory “turf,” financing, reputation, legitimacy, adherents or other benefits. Schemes may compete on price (e.g., certification costs), product differentiation (e.g., more or less stringent requirements), or other bases. Competition may also be non-market, e.g., for authority to define key terms and practices.
- **Coordination:** ranging from emulation and mimesis, to deliberate collaboration, to conscious division of labor. Coordination occurs, among other reasons, as TBG schemes strive for legitimacy and policy relevance, learn from one another, and copy proven “recipes for success.”
- **Cooptation:** ranging from friendly convergence on norms and activities, to meta-regulation, to hegemony or dominance, with certain initiatives achieving a quasi-monopolistic position (e.g., Büthe 2010b).
- **Chaos:** unpredictable, undirected interactions, sensitive to slight perturbations and displaying no clear pattern.

More than one of these may characterize interactions in a given TBG domain. Interactions between the same actors and institutions may, for example, exhibit competition and cooperation simultaneously (e.g. Koppell 2010). Moreover, there may be dynamic transitions between categories, for example with initial chaos developing into competition as schemes vie for adherents, then coordination as they converge on standard regulatory recipes, and cooptation as one scheme corners the regulatory marketplace. Equally, coordination might devolve into competition or chaos.

In the case of competition, analysis centres on which strategies are used to gain dominance in the struggle: for example, appeals to the profit motives of target firms or to broader audiences via norms and legitimation (e.g., Bernstein & Cashore 2007; Gulbrandsen 2010). In the case of coordination, it is important to note that interactions, and information about them, can both be asymmetric. For example, it is doubtful that the ILO or ISO has a record of every regulatory scheme that references its standards. Coordination may also be direct or indirect. Indirect coordination includes common cognitive framing of a problem or a set of shared goals. Direct coordination may take place through hierarchy, network or peer-to-peer interaction.

Of these, hierarchy is surprisingly common. Where organizations are “nested” (Aggarwal 1998), coherence is relatively easy to achieve, as the hierarchically superior regime can resolve conflicts. For example, in food safety, the Codex Alimentarius Commission is the dominant standards body; local standard-setters must formulate standards within the framework it has set. Alternatively, or in addition, hierarchical interactions may be based on divisions of labor: one scheme may enroll another to perform certain regulatory functions, as FSC and MSC enroll Accreditation Services International (ASI) to manage certification and chain of custody processes. Hierarchies may be based on formally agreed power arrangements, or may arise from legal authority (e.g., the significance of the WTO rules for voluntary standards). Hierarchy may of course be combined with networked or peer-to-peer interactions. For example, standard-setting TBG schemes may be in a hierarchical relationship with a shared third-party certification organization but in a peer-to-peer relationship with one another.

Different modes of interaction may arise at different institutional levels. For example, even if two TBG standard-setting schemes in the same domain do not actively compete, their local units may compete fiercely over local businesses, as they seek to expand their regulatory share. This can have a significant effect on interaction dynamics at higher levels.

“Carving out” is another mode of coordination, in which one scheme deliberately shapes itself around others to fill a perceived gap. This interaction is asymmetric, rather than mutual or hierarchical, and need not be managed by a “meta” orchestrator. Such interactions appear quite

common, as each new scheme carves out a distinctive regulatory domain amidst existing state and non-state schemes (Wood 2003, 2005).

Interactions may also take the form of cooptation: one scheme adopts the rules of another through referencing or certification, as discussed above. For example, ASI coopts the ISO accreditation regime by maintaining its practices in line with ISO 17011 standards for accreditation bodies. Widespread cooptation can produce de facto domination, as the widespread adoption of ISO accreditation and auditing standards by other standards-setting bodies illustrates. Domination may also be more deliberate, with a particular scheme maneuvering itself into recognition by an international body, as the Codex Alimentarius Commission has done (Büthe 2009).

Finally, interactions can simply be chaotic. In a particular domain, schemes may overlap, each claiming authority and intersecting with others on multiple issues, producing not only confusion but “substantial impacts on each other in the process” (Young 1996: 6). Whether such chaos evolves into another mode likely depends on whether the relevant organizations work at cross-purposes or pursue similar goals, whether their rules are compatible, and whether they perform complementary functions. As a mode of interaction, however, chaos cannot be discounted.

### **3.5. What are the effects of interactions?**

Scholars have employed various analytical frameworks to study the effects of TBGI. As discussed above, several studies focus on whether competitive interactions lead to a “race to the bottom” or “race to the top”, in terms of the stringency of standards (e.g., Cashore et al. 2004; Overdevest 2004; Smith & Fischlein 2010; Bartley 2007b). Others emphasize homogenization, standardization and isomorphism, focusing more on whether and why significant differences persist between schemes than on social impacts (e.g., Dingwerth & Pattberg 2009; Bartley 2011a). The familiar division between outputs, outcomes and impacts is a useful starting point for analysis (Underdal 2004). While impacts on social or environmental conditions are of course the ultimate concern, they are very difficult to isolate and quantify due to the number of variables in play and the multiplicity and complexity of causal chains. More immediate effects are more tractable, but highly diverse. Analysis might focus, for example, on the regulatory outputs of

interaction, such as institutional features of TBG schemes, or norms and their uptake by targets; or it might investigate regulatory outcomes (changes in target behavior).

Moving beyond the output-outcome-impact cascade, we suggest asking an intermediate question: what are the effects of interactions on regulatory capacity and performance? Capacity and performance are enhanced by harnessing the diverse motivations, competencies and resources of the actors seeking to participate in or control a regulatory space. Analysts might ask, then, how successful is the process of enrolling, mobilizing or orchestrating the actors whose contributions are essential to achieving regulatory goals? This can be asked both of TBG schemes and of the larger regulatory complex. While early regime complexity scholarship focused on the negative consequences of institutional overlap for regulatory effectiveness, more recent studies focus on relationships beyond overlap and point to potentially productive interactions. For example, interactions may promote innovation and experimentation, as well as local adaptability and flexibility (Keohane & Victor 2011; Sabel & Zeitlin 2008; Overdevest & Zeitlin, this issue). The regime interplay literature (Oberthür & Gehring 2011) emphasizes that “synergy” is at least as common as “conflict”, at least in the environmental field.

For TBG schemes, inconsistency with state-based rules may occur, but is typically resolved through legal hierarchy. TBG schemes may compete, but synergies among them may increase over time, as they increase actor choice, complement public standards and address problems in diverse ways (Abbott 2012). The existence of multiple TBG schemes may serve to recruit additional constituencies to address a given problem, produce greater overall regulatory capacity, or prompt greater uptake of norms by producers, retailers and other actors. Interaction among TBG schemes within a particular domain may also lead to common cognitive framings of problems and goals, norms and ways of acting, as well as discourses that broaden engagement and facilitate further interactions. On the other hand, multiplicity may dilute regulatory capacity and performance as schemes work at cross-purposes and targets seek out the least demanding rules. Simply put, the effects of interaction will vary with the empirical context.



### 3.6. Development over time

Finally, interactions are fluid and dynamic; a snapshot of interactions frozen at a moment in time has little analytical value. Over time, interaction may lead TBG schemes to converge or diverge in institutional design, membership, standards or other parameters. It may diffuse ideas and practices from one place or sector to others, spurring processes of mutual adaptation and learning. It may result in concentration or fragmentation of regulatory markets, proliferation or withering away of TBG schemes. Standards may become more stringent or lax; enforcement may become more formal and legalistic, or less. Given the multiplicity of actors, levels, and mechanisms of interaction, there are good reasons to expect TBG – and the wider regulatory complexes it helps constitute – to be characterized by unintended consequences, tipping points and emergent properties. An account of TBG interactions should address such temporal dynamics across all dimensions of regulatory governance.

For example, a domain may initially be characterized by one or a few unstable, weakly institutionalized schemes. Many start as small groups of interested individuals, and then move to formal organization. As the FSC illustrates, a TBG scheme may gradually become more widely adopted within its domain. Its success may lead to it becoming a model for other schemes in the same or other domains. MSC, for example, imitated FSC's organizational structure, standards model, labeling and certification, and even its accreditation body, ASI, leading to more numerous interactions with other schemes. A meta-organization such as the ISEAL Alliance may then bring together now-stable schemes as models, institutionalizing that model and bringing further stabilization, and further interactions.

However, the nature of these temporal processes must be probed. For example, the theory of punctuated equilibrium (Hall 1993) may not pertain. Moreover, there may be different patterns of change across particular dimensions of regulatory governance. Disaggregating interactions into components of the regulatory process, as proposed here, makes it easier to see whether, for example, apparent stability at the level of stated goals in fact masks paradigmatic changes at the level of implementation (Howlett & Cashore 2009; Black et al 2005). Individual theoretical perspectives may not capture the full range of shifts in constellations of organizations and their cognitive, normative or communicative structures, such as the recharacterization of problems and solutions (e.g., re-conceptualizing plant genetic rights from common heritage to private property,

Raustiala & Victor 2004). Hence it is all the more important to draw on a number of theoretical perspectives, as exemplified in this special issue.

#### **4. Conclusion**

This article has demonstrated the value of studying TBG interactions and their effects. As we have clearly indicated, this is a highly complex issue. We have therefore proposed an analytical framework that can be used by scholars in a variety of theoretical traditions to gain purchase on this difficult topic. Our framework is rooted in a regulatory governance perspective that views TBG as a dynamic, co-regulatory and co-evolutionary process, involving state, non-state and hybrid actors and organizations that pursue varied interests and seek “regulatory share” (Black 2009), have different regulatory capacities, and interact at multiple levels and in multiple ways, with a range of effects. What makes our framework distinctive is its focus on the regulatory governance *process*. The framework (Table 1) is based on disaggregating this process and focusing on the points in the process at which interactions may occur. At each point, we suggest a series of analytical questions that highlight the key features of TBG interactions: who or what is interacting; what drives and shapes interactions; what are the mechanisms and pathways of interaction; what is the character of interaction; what are the effects of interaction; and how does interaction change over time?

While the ultimate goal remains to assess the impacts of interactions on the attainment of societal ends, we suggest a more modest initial focus on effects on *regulatory capacity and performance*. Can we isolate the effects of interactions on regulatory capacity, and on the performance of the regulatory system? The conditions for effective capacity and performance include some degree of shared interests, goals, and understandings; enrolment and orchestration of needed resources; mechanisms to promote compliance; and the like. In this respect, we can draw on existing work on TBG schemes, the literature on responses to international norms and the regulatory governance literature for insights. Yet such an approach still faces major conceptual and methodological challenges, including which concepts and indicators of capacity and performance are useful to guide empirical analysis. The analytical framework we propose is

thus only a first step in addressing these difficult questions; but it is an important one nonetheless.

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