

THE DYNAMICS OF PRIVATE FOOD SAFETY STANDARDS: A CASE STUDY ON THE REGULATORY DIFFUSION OF GLOBALG.A.P.

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Abstract The emergence and importance of private standards in contemporary regulatory governance have been the subject of extensive debate. Recent studies have attempted to explore several dimensions of private regulation, such as its growth or effectiveness. By contrast, this article focuses on the regulatory diffusion of private standards. There has been a broad range of literature on diffusion and reception of norms—for instance, the scholarship of legal transplants or law’s migration addressed how international treaties or foreign national laws were received in States. However, norm exportation and importation does not only occur between States; this article focuses on regulatory diffusion between private actors. To do so, it examines the case of GLOBALG.A.P., a private food safety scheme started in Europe that has influenced private standard initiatives beyond Europe. This article concludes by emphasizing that successful regulatory diffusion requires taking local contexts into account and preserving diversity.

Keywords: food safety, GLOBALG.A.P., local diversity, private standards, regulatory diffusion.

I. INTRODUCTION: EXPORTATION AND IMPORTATION OF NORMS

The construction of norms, institutions and practices has become increasingly complex, diversified and pluralistic. The area of food safety is not an exception. Food safety has traditionally been a governmental or intergovernmental matter. It has been the subject of national regulations and international Codex Alimentarius Commission (Codex) standards, both of which are addressed by the World Trade Organization (WTO)’s Sanitary and Phytosanitary

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Agreement (SPS Agreement). However, in addition to governmental and intergovernmental regulations, various private standards are emerging and proliferating in the field of agro-food trade. While such private standards are voluntary and are not enforced by governments, they nonetheless exert a strong influence over agro-food exports.

This article addresses the transformation of global governance in agro-food trade caused by the proliferation of private standards. Private standards are diverse in terms of their origin and in the kinds of issues that they address.¹ Among the numerous food safety standards on the rise, this article focuses on those relating to ‘good agricultural practices (GAP)’. The Food and Agriculture Organisation (FAO) defined the concept of GAP in 2003 as ‘practices that address environmental, economic and social sustainability for on-farm processes, and result in safe and quality food and non-food agricultural products’.² Thus, GAP standards generally cover the production of safe, sufficient, and high-quality food on farms, as well as environmental protection and the welfare of farm workers. Among the various GAP initiatives, this article focuses its analysis on GLOBALG.A.P.—originally started in 1997 by retailers belonging to the Euro-Retailer Produce Working Group, GLOBALG.A.P. has been applied widely in Europe and has also expanded beyond Europe.³

Research on GLOBALG.A.P. is not new. Existing literature on GLOBAL G.A.P. has primarily focused on its trade impact—whether and how GLOBAL G.A.P. standards function as trade barriers to agro-food exports from Africa and Latin America to the EU.⁴ Such concern over GLOBALG.A.P. has been also addressed under the WTO’s SPS Agreement.⁵ The concerns were first raised at a 2005 meeting of the SPS Committee, a forum in which all WTO Member States participate.⁶ At the meeting, St. Vincent and the Grenadines, supported by Jamaica, expressed a concern that GLOBALG.A.P. standards (named EurepGAP at that time) had become trade conditions for their banana

¹ D Vogel, ‘Private Global Business Regulation’ (2008) 11 Annual Review of Political Science 269.

² See the website of the FAO <<http://www.fao.org/prods/gap/>> accessed 26 December 2012. For an overview of the development of GAP in the international sphere, see A Burrell, ‘Good Agricultural Practices in the Agri-Food Supply Chain’ (2011) 13 *EnvntlRev* 251.

³ See GLOBALG.A.P. History <http://www.globalgap.org/uk_en/who-we-are/history/> accessed 20 December 2012.

⁴ P Gibbon, S Ponte and E Lazaro (eds), *Global Agro-Food Trade and Standards: Challenges for Africa* (Palgrave Macmillan 2010); AB de Battisti, J MacGregor and A Graffham (eds), *Standard Bearers: Horticultural Exports and Private Standards in Africa* (International Institute for Environment and Development 2009); OECD, *Private Standard Schemes and Developing Country Access to Global Value Chains: Challenges and Opportunities Emerging from Four Case Studies [Chile, Ghana, Peru and South Africa]* AGR/CA/APM (2006) 20/Final, 3 August 2007.

⁵ The question of whether and how the SPS Agreement covers private standards has been much discussed. See J Wouters and D Geraets, ‘Private Food Standards and the World Trade Organization: Some Legal Considerations’ (2012) 11 *World Trade Review* 488.

⁶ It meets three times in a year, and one of its main functions is to receive and discuss ‘specific trade concerns’ raised by Member States.

exports to the UK. They argued that GLOBALG.A.P. standards are ‘not mandatory’ but are becoming *de facto* requirements to enter the UK market.⁷

The effects of GLOBALG.A.P. are not limited to its trade impacts, however. This article focuses on the regulatory impacts that GLOBALG.A.P., a single private standard started in Europe, has on global food safety governance: how GLOBALG.A.P., through norm diffusion,⁸ affects other private standard initiatives and triggers regulatory change in the receiving States.

Legal scholars have long studied the reception of foreign norms and transformation of domestic settings, usually, in the contexts of international treaties or the migration of national rules. At the same time, there is an extensive body of literature in non-legal spheres (eg political science or international relations), which has also addressed norm or policy diffusion. The theory of diffusion in political science has been developed in several contexts, such as how EU laws and institutional models influence (potential and new) Member States of the EU,⁹ or how the policy of democracy and economic liberalization proliferate worldwide.¹⁰ This article mainly draws from theories found in the legal literature on norm diffusion and reception; this article does not aim to contribute to the broader literature on diffusion by integrating non-legal and legal disciplines. Nevertheless, the article does selectively refer to work from political science and international relations when these can provide important insights.

The rest of this article proceeds as follows. Section II reviews the existing legal literature that helps us understand private norm diffusion and reception. This section offers a theoretical framework for the article and takes up three relevant bodies of legal literature. The first is concerned with ‘law’s migration’,¹¹ ‘transnational legal ordering’¹² or ‘legal transplants’.¹³

⁷ Since the trade concern over private standards was raised in the WTO’s SPS Committee in 2005, private standards have been frequently discussed, and in March 2011 the SPS Committee adopted five actions addressing them. See the WTO news at <http://www.wto.org/english/news_e/news11_e/sps_30mar11_e.htm> accessed 26 December 2012. However, it seems that the debates under the SPS Committee represented a half-hearted attempt to address the concern. The lack of effective action is mainly due to the need for a better understanding of the effects of private standards on agro-food trade.

⁸ The term ‘diffusion’ encompasses the influential processes (rather than outcomes) of a foreign private norm (in this article, GLOBALG.A.P.). C Knill, ‘Introduction: Cross-National Policy Convergence: Concepts, Approaches and Explanatory Factors’ (2005) 12 *Journal of European Public Policy* 766.

⁹ For instance, see a special issue of *West European Politics*, ‘From Europeanisation to Diffusion’ (2012) 35 *West European Politics* 1.

¹⁰ B Simmons, F Dobbin and G Garrett, *The Global Diffusion of Markets and Democracy* (CUP 2008).

¹¹ J Resnik, ‘Law’s Migration: American Exceptionalism, Silent Dialogues, and Federalism’s Multiple Ports of Entry’ (2006) 115 *YaleLJ* 1564.

¹² G Shaffer (ed), *Transnational Legal Ordering and State Change* (CUP 2013).

¹³ TT Arvind, ‘The “Transplant Effect” in Harmonization’ (2010) 59 *ICLQ* 65; D Berkowitz, K Pistor and JF Richard, ‘The Transplant Effect’ (2003) 51 *AJCompL* 163.

This literature assists in examining the effects, changes and transformation that occur in receiving States.

The second literature in Section II is concerned with a specific mechanism of regulatory diffusion called the ‘market-based approach’ or ‘market-driven governance system’.¹⁴ There are various processes of global regulatory changes, but the ‘market-based approach’ focuses particularly on market forces that can bring about regulatory change and transformation in receiving States.

The third body of literature is on ‘transnational private regulation’.¹⁵ This article analyses how norm diffusion is derived from *private actors*, so work on ‘transnational private regulation’ is the closest to this article’s research subject. The early legal literature on transnational governance focused on the governance system beyond nation states, including governance through private regimes.¹⁶ Currently, the literature addresses how the emergence of private regulation/regimes transforms (national and global) regulatory governance systems, with insights of legitimacy or effectiveness of regulation.

These three literatures in Section II highlight four factors that should be considered when analysing norm diffusion. Next, Sections III and IV study the case of GLOBALG.A.P. and its proliferation outside of Europe. These two sections consider to what extent case findings support the analysis in Section II. First, Section III looks at GLOBALG.A.P. as an exporter of norms, analysing its efforts to reach beyond Europe via the benchmarking process. Then, Section IV examines the importers of norms by studying emerging local GAP initiatives, mainly in Japan. In addition, this section briefly introduces local GAP initiatives in Thailand and the US in comparison to that of Japan. These three countries—Japan, Thailand and the US—were chosen because research on GAP in these countries was scarce compared with that concerning countries in Africa and Latin America.¹⁷ Also, the three countries had varied responses to the arrival of the GLOBALG.A.P. standards, which allows for an analysis of several possible processes for GAP norm diffusion.

¹⁴ A Bradford, ‘The Brussels Effect’ (2012) 107 *NWULRev* 3. See also T Bartley, ‘Institutional Emergence in an Era of Globalization: The Rise of Transnational Private Regulation of Labor and Environmental Conditions’ (2007) 113 *American Journal of Sociology* 299.

¹⁵ C Scott, F Cafaggi and L Senden (eds), *The Challenge of Transnational Private Regulation: Conceptual and Constitutional Debates* (Wiley-Blackwell 2011).

¹⁶ See, C Joerges, IJ Sand and G Teubner (eds), *Transnational Governance and Constitutionalism: International Studies in the Theory of Private Law* (Hart 2004); H Schepel, *The Constitution of Private Governance: Product Standards in the Regulation of Integrating Markets* (Hart 2005).

¹⁷ See literature referenced (n 4). For one leading work on the impacts of GLOBALG.A.P. in Asia, see UNCTAD, *Challenges and Opportunities Arising from Private Standards on Food Safety and Environment for Exporters of Fresh Fruit and Vegetables in Asia: Experiences of Malaysia, Thailand and Viet Nam*, UNCTAD/DITC/TED/2007/6 (United Nations Publication 2007).

In both legal and non-legal literature on diffusion, it has been pointed out that more empirical research on private regulation is needed.¹⁸ In this vein, this article contributes to the need for empirical work¹⁹ by examining the regulatory impacts of GLOBALG.A.P.—how its ideas proliferate and influence non-European countries. Sections III and IV utilize interviews conducted by the author with relevant actors in 2011 and 2012.²⁰ In some cases, interview information was confirmed and updated by later emails. The analysis and arguments in this article are supplemented by insights gained from the interviews, which uncovered the realities of private norm diffusion. The final Section concludes.

II. THREE RELEVANT BODIES OF LITERATURE ON PRIVATE NORM DIFFUSION

A. *The Migration of Law and Its Various Effects in Receiving States*

As suggested previously, the literature on ‘law’s migration’,²¹ ‘transnational legal ordering’²² or ‘legal transplants’²³ provides important insights for this article’s research, namely in examining the effects, impacts and innovation that occur in receiving States. While this article focuses on *non-State, private* norms or standards, the focus in the literature has been on international treaties or foreign national rules (eg international human rights laws, education policies or basic national codes) migrating into receiving States. Nevertheless, the literature offers important insights for *private* norm diffusion.

Led by Gregory Shaffer, work on ‘transnational legal ordering’²⁴ identifies five types of changes in receiving States: change in substantive law and practice; change in the boundary of the state, the market and other forms of social ordering; change in the institutional architecture of the state; changes in the role of professional expertise in governance; and change in accountability mechanisms.²⁵ One important lesson drawn from above is that the influences and consequences of importing foreign (or international) norms are diverse: external norms entering a country may produce myriad consequences.

¹⁸ Scholars tend to concentrate on the history or origins of civil regulations, and it has been pointed out that ‘there are few scholarly studies of the effectiveness of most civil regulations.’ Vogel (n 1) 275. See also Shaffer (n 12) 2.

¹⁹ With regard to the research on private norm diffusion, the FSC (the Forest Steward Council)’s certification scheme in the forestry sector is the most well-known private regulation. Vogel (n 1) 271. The acceptance or rejection of their standards has been intensively studied in political science. B Cashore, G Auld, S Bernstein and C McDermott, ‘Can Non-State Governance “Ratchet up” Global Environmental Standards? Lessons from the Forest Sector’ (2007) 16 *Review of European Community International and Environmental Law* 158.

²⁰ Interviews were conducted specifically with the GLOBALG.A.P. team in Cologne, the team of the Japanese GAP initiative, called ‘JGAP’ in Tokyo, the team of the ThaiGAP in Bangkok, the team of GLOBALG.A.P. North America in Baltimore and the United Fresh Produce Association in Washington DC. ²¹ Resnik (n 11). ²² Shaffer (n 12).

²³ Arvind (n13); Berkowitz et al (n 13).

²⁴ Shaffer (n 12) 7: ‘This concept of transnational legal ordering is used to assess the construction, flow, and impact of transnational legal norms.’ ²⁵ Shaffer (n 12) 23.

At the same time, there has been a cautionary note concerning the transformative effects brought by foreign norms. The literature on ‘legal transplants’ argues that the effects of norm diffusion may generate undesirable consequences, such as ‘the mismatch between preexisting conditions and institutions and transplanted law, which weakens the effectiveness of the imported legal order’.²⁶ Such a mismatch occurs because ‘the social, economic and institutional context often differs remarkably between origin and transplant country’.²⁷ The concern may apply to the importation of foreign private norm (in this article, GLOBALG.A.P.) as well as that of foreign State laws.

Existing literature also helps us realize that the norms can affect various dimensions of national law, policy and institution in various non-binding forms, and that the ideas and aspirations of the norms reach down to the local community level. The work of Judith Resnik on ‘law’s migration’ finds various local actions and initiatives that occurred in opposition to the US’s refusal to ratify international treaties such as the Convention to Eliminate All Forms of Discrimination against Women and the Kyoto Protocol concerning climate change.²⁸ Even without US ratifications, there have been many innovative initiatives supporting and implementing the purposes of the international treaties at local state and city levels. Such actions have also been assisted by non-governmental organizations (NGOs).²⁹ An important lesson drawn from this is that just as international and foreign national laws affect parties at different levels (eg local governments, cities and NGOs), foreign private norms influence not only the private sector, but the public sector as well. Such public and private interactions in the context of private norm diffusion will be further discussed below in subsection C.1.

B. Market-Driven Regulatory Mechanism

Global regulatory change has traditionally—and is still primarily—carried out by making international agreements among States. However, a mechanism of market-driven regulatory diffusion has recently received much attention from scholars.³⁰ It is sometimes referred to as ‘unilateral regulatory globalization’³¹ or ‘unilateral regulatory initiatives or extensions’,³² where ‘a single state is able to externalize its laws and regulations outside its borders through

²⁶ Berkowitz et al (n 13) 171.

²⁷ *ibid.* See also, K Alter, L Helfer and O Saldías, ‘Transplanting the European Court of Justice: The Experience of the Andean Tribunal of Justice’ (2012) 60 *AJCompL* 634-5.

²⁸ Resnik (n 11) 1634-47.

²⁹ *ibid* 1639.

³⁰ Scholarly attention for the diffusion of regulation based on the market power is remarkable in the area of environmental governance. See G Shaffer and D Bodansky, ‘Transnationalism, Unilateralism and International Law’ (2012) 1 *Transnational Environmental Law* 3440.

³¹ Bradford (n 14) 3.

³² CF Sabel and J Zeitlin, ‘Experimentalist Governance’ in D Levi-Faur (ed), *The Oxford Handbook of Governance* (Oxford University Press 2012) 177-8.

market mechanisms'.³³ One recent interesting example is norm transfer in the transatlantic context—the remarkable impact of EU legislation on US policies and laws, based on the power of the EU's large market size.³⁴ This is also labelled as 'the Brussels effect'.³⁵

One reason for scholars paying close attention to market-driven regulatory mechanisms is the long debate over whether market forces cause a 'regulatory race to the bottom' or a 'race to the top'. Under the notion of the 'regulatory race to the bottom', it has been argued that governments lower standards in order to reduce the production costs of their national producers, thereby making their exports more competitive. However, David Vogel's *Trading Up* demonstrates that economic globalization and market forces do not necessarily result in lowering standards.³⁶ Sometimes, it leads to a 'race to the top': exporting countries adopt stricter standards in line with those in importing countries out of the fear of losing market access. Such potential virtuous effects of the market—the market's ability to make changes and improve standards worldwide—have attracted scholars' attention.

The phenomenon of unilateral regulatory initiatives based on market forces is not necessarily limited to the exportation and importation of EU laws. This article argues that a similar process of *private* norm extension also occurs through market mechanisms—foreign *private standards*, which are not legally enforceable, can also diffuse and enter different countries (and regions). Such a phenomenon is referred to as a 'non-State market-driven mechanism'.³⁷ By way of illustration, GLOBALG.A.P. has proliferated, because GAP schemes outside Europe have a strong incentive to adopt standards similar to those of GLOBALG.A.P. in order to access the EU market. Such an incentive works due to the globalization of supply chains and the correspondent increase in the responsibilities imposed on producers. Market pressures such as 'the promise of price premiums, market access, or prevention of negative boycott campaigns'³⁸ create 'incentives to producers of the product to comply with the standards'.³⁹

³³ Bradford (n 14) 3.

³⁴ For instance, J Scott, 'From Brussels with Love: The Transatlantic Travels of European Law and the Chemistry of Regulatory Attraction' (2009) 57 *AJCompL* 897; G Shaffer, 'Globalization and Social Protection: The Impact of EU and International Rules in the Ratcheting up of U.S. Data Privacy Standards' (2000) 25 *YaleJIntlL* 1.

³⁵ The expression of 'the Brussels Effect' is drawn from the title of Bradford's article (n 14).

³⁶ D Vogel, *Trading Up: Consumer and Environmental Regulation in a Global Economy* (Harvard University Press 1995).

³⁷ B Cashore, G Auld and D Newsom (eds), *Governing Through Markets: Forest Certification and the Emergence of Non-State Authority* (Yale University Press 2004) 4. ³⁸ *ibid* 23.

³⁹ *ibid*. For a similar account for the force of the market-driven mechanisms, using the keywords of 'reputation', 'information' and 'competition,' see Bartley (n 14) 307 (noting that producers and retailers care about their 'reputation' which affects their market access, and attempt to provide 'information' to consumers in the market by adhering to foreign (governmental or private) standards, thereby raising 'competitive advantage' over competitors).

While the role of market forces is one significant factor in promoting global regulatory diffusion, a number of commentators recognize that this is not the only factor.⁴⁰ There are two commonly stated conditions that supplement the role of market power, contributing to regulatory change. First, some studies argue that successful norm diffusion depends on the relative costs of regulatory adjustment.⁴¹ Regulatory change incurs costs both in departing from the status quo and in complying with a new norm.⁴² In the case of an arrival of foreign national laws, a foreign law would be adopted more smoothly if it ‘resonate[d] well with domestic rules, traditions, and practices’ in the receiving State.⁴³ In other words, the costs would increase if the new norm diverged too much from existing practices on the receiving side.

Secondly, the existing studies have also found that the support of citizens, firms and non-governmental actors is important for regulatory change to occur on the receiving side. In the recent transatlantic context—the relatively higher environmental and safety standards in the EU compared to those in the US—it has been pointed out that there have been strong pressures from the consumer and environmental activists in the EU to adopt stricter standards, while non-governmental actors have in general been weak in pressurizing the US federal government to enact legislation that conflicts with business interests.⁴⁴ Nevertheless, there have been a few cases where EU laws were successfully adopted in the US because of non-governmental actors or advocacy groups.⁴⁵ In particular, the work of Joanne Scott on the influence of the EU’s REACH regulation⁴⁶ over the US regulatory environment shows that non-governmental actors at the state level (instead of the federal level) played an important role in bringing the ideas contained in the EU regulation into state-level policy reform.⁴⁷

⁴⁰ Scott (n 34) 899; Bradford (n 14) 7. See also Shaffer (n 34) 81.

⁴¹ D Vogel and RA Kagan, ‘Introduction’ in D Vogel and RA Kagan (eds), *Dynamics of Regulatory Change: How Globalization Affects National Regulatory Policies* (University of California Press 2004) 14 (citing Sebastian Princen, ‘The California Effect in the EC’s External Relations: A Comparison of the Leghold Trap and the Beef Hormone Issues between the EC and the US and Canada’ (1999) unpublished paper read at European Community Studies Association Sixth Biennial International Conference); D Vogel, *The Politics of Precaution: Regulating Health, Safety, and Environmental Risks in Europe and the United States* (Princeton University Press 2012) 284: ‘[T]he adjustment costs of having a country’s domestic regulations converge on the stricter standards of a major trading partner are a critical factor in explaining when policy convergence and/or trading up is or is not likely to occur.’

⁴² S Princen, ‘Trading Up in the Transatlantic Relationship’ (2004) 24 *Journal of Public Policy* 130.

⁴³ S Lavenex and F Schimmelfennig, ‘EU Rules beyond EU Borders: Theorizing External Governance in European Politics’ (2009) 16 *Journal of European Public Policy* 804 (in the context of the expansion of EU rules to third countries).

⁴⁴ Vogel (n 41) 286.
⁴⁵ Shaffer (n 34) 64 (in the context of the influence of the EU Directive on privacy protection on the US). See also Bradford (n 14) 53 (‘[T]he relative influence of export-oriented and nonexport-oriented firms will impact the United States’ response to the Brussels Effect.’).

⁴⁶ Council Regulation (EC) 1907/2006 of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) [2007] OJ L136/3.

⁴⁷ Scott (n 34) 935–6, 939–40.

The fact that these two factors occur in receiving States indicates that while norm/standard diffusion is initiated and promoted by norms/standard exporters using market pressures, whether or not the diffusion succeeds also depends on domestic conditions and reactions on the receiving side.

C. Transnational Private Regulation

The third body of literature is on 'transnational private regulation' and conducts a conceptual analysis of private regulation and regimes instead of dealing with foreign national laws or European laws as research subjects. In this sense, the literature presented here shares this article's research interests. The literature is also linked to 'civil regulation' or 'privatization of regulation' as discussed in political science, where private regulation is characterized as a new mode of governance that fills a gap left by government and international organizations.

Led by Colin Scott, Fabrizio Cafaggi and Linda Senden,⁴⁸ the literature on transnational private regulation explains its scope as follows:

The concept of transnational private regulation emerged, it has been claimed, to capture the idea of governance regimes which take the form of 'coalitions of nonstate actors which codify, monitor, and in some cases certify firms' compliance with labor, environmental, human rights, or other standards of accountability'.⁴⁹

This concept of 'transnational private regulation' includes GLOBALG.A.P. However, studies of transnational private regulation do not necessarily focus on norm diffusion. Rather, the literature is concerned with broader issues, such as the emergence of private regulation and regimes and their impact on governance systems. Nonetheless, the literature helps us take into account two important factors that successfully promote norm diffusion: public and private interactions; and the 'legitimacy' of private standards.

1. Public and private interactions

This article investigates how GLOBALG.A.P., a private standard started in Europe, affects other private standard initiatives in the world. However, the rise of private standards does not necessarily mean that government-driven actions or policies are unimportant. GLOBALG.A.P. may influence not only local private schemes in other countries, but government-driven GAP schemes as well. One research interest in the literature on transnational private regulation is the interactions between public and private regimes.⁵⁰

⁴⁸ Scott et al (n 15).

⁴⁹ C Scott, F Cafaggi and L Senden, 'The Conceptual and Constitutional Challenge of Transnational Private Regulation' in Scott et al (n 15) 3 (referring to Bartley (n 14) 298).

⁵⁰ F Cafaggi, 'New Foundations of Transnational Private Regulation' in Scott et al (n 15) 39. For the importance of the focus on relationship between public and private standards in research,

In some cases, public regulation preceded private regulation; in some cases it was the other way around. One hypothesis is that some interactions between public and private schemes may successfully promote the proliferation of the norm in receiving States. In this vein, it is important to ascertain whether the relation between governmental and private schemes is competitive or complementary. On the one hand, if a private scheme competes against a government-drive scheme, the competition may actually encourage the proliferation of the private effort. On the other hand, the development of governmental and private schemes may be mutually reinforcing. It has been suggested that ‘in an area where regulatory protection is frequently demand driven [as in the agro-food sector], the relationship between the regulator and the private sector may be less than antagonistic’.⁵¹ Intentionally or not, governments may let a private scheme pursue stricter standards than governmental regulation. Also, the coexistence of governmental and private schemes may generate complementary effects, thereby producing a somewhat positive understanding of ideas presented by the two schemes in receiving States: ‘[T]he relationship between the public and voluntary private standard systems is still evolving, with the former appearing to be ceding some ground to the latter but without this necessarily leading to an inferior outcome for society as a whole.’⁵² This may be seen as one type of ‘institutional complementarity approach’, where the existence of a related public scheme provides a foundation for ‘private regulation to operate effectively and credibly’.⁵³

2. ‘Legitimacy’ of private standards

The legitimacy of private regulation has been increasingly debated in existing literature on private regulation/regimes. Scholars point out the fact that many private regulatory regimes lack mechanisms that are involved when public laws are established and implemented, such as legislature or judicial review.⁵⁴ Thus, private regulation, which is driven by the special interests of a handful of initiators, may not necessarily serve broader public purposes. It has been argued that ‘[r]egulatory institutions that supply participatory mechanisms that are fair, transparent, accessible, and open ... are more likely to produce common interest regulation’.⁵⁵ Here, the argument highlights the need

Vogel (n 1) 275: ‘One key research question has to do with the relationship between civil regulation and public or state regulation.’ See also Burrell (n 2) 263.

⁵¹ J Scott, *The WTO Agreement on Sanitary and Phytosanitary Measures: A Commentary* (Oxford University Press 2007) 310.

⁵³ Cafaggi (n 50) 48.

⁵² Burrell (n 2) 265.

⁵⁴ Scott et al (n 49) 13.

⁵⁵ W Mattli and N Woods, ‘In Whose Benefit? Explaining Regulatory Change in Global Politics’ in W Mattli and N Woods (eds), *The Politics of Global Regulation* (Princeton University Press 2009) 4.

for private regulation to embrace constitutional elements, such as participation, transparency and openness.

While the debate over private regulatory governance has increasingly demanded public purposes and constitutional mechanisms, it is still unclear why private regulation is required to serve broader public purposes in the first place. Why can private regulations not remain 'purely private goods'⁵⁶ or 'pure capture regulation' (in contrast to 'common interest regulation')⁵⁷ by pursuing special and narrow interests? There are two reasons arguing against this.

First, there are growing concerns over the impacts of private regulation: 'Private rules in the form of standards have far reaching consequences affecting a wide range of actors, such as consumers and suppliers across the globe.'⁵⁸ Indeed, a number of studies have recognized trade impacts of GLOBALG.A.P. on smallholders in developing countries.⁵⁹ Because of such broad impacts of private standards, there have been gradual demands for greater legitimacy in private governance.

Second, legitimacy will better secure 'regulatory compliance' with private regulation.⁶⁰ It has been argued that '[i]n private global governance regimes, . . . legitimacy . . . is a crucial element in the effectiveness of a norm and in the level of compliance with that norm'.⁶¹ Similarly, it has been suggested that 'legitimacy takes on added importance because, by definition, nonstate governance schemes lack the traditional enforcement capacities associated with the sovereign state'.⁶² These arguments imply that constitutional mechanisms to achieve legitimacy and accountability are required for private regulatory regimes to be effective, particularly because such mechanisms would secure compliance.

Thus, gaining legitimacy would be one strong factor enabling private standards to diffuse. While the concept of legitimacy within the context

⁵⁶ Scott et al (n 49) 6.

⁵⁷ Mattli and Woods (n 55) 12.

⁵⁸ D Fuchs, A Kalfagianni and T Havinga, 'Actors in Private Food Governance: The Legitimacy of Retail Standards and Multistakeholder Initiatives with Civil Society Participation' (2011) 28 *Agriculture and Human Values* 354.

⁵⁹ See literature referenced (n 4).

⁶⁰ D Casey and C Scott, 'The Crystallization of Regulatory Norms' in Scott et al (n 15) 76: 'A central problem of regulatory governance is seeking to understand the conditions under which regulatory rules are followed. Within regulatory research, this is often expressed in terms of the problem of compliance.'

⁶¹ N Hachez and J Wouters, 'A Glimpse at the Democratic Legitimacy of Private Standards: Assessing the Public Accountability of GLOBALG.A.P.' (2011) 14 *Journal of International Economic Law* 681. See also DK Casey, 'Three Puzzles of Private Governance: GlobalGAP and the Regulation of Food Safety and Quality' (2009) UCD Working Papers in Law, Criminology & Socio-Legal Studies Research Paper No 22/2009, 16–17 <<http://ssrn.com/abstract=1515702>>; G Schouten and P Glasbergen, 'Creating Legitimacy in Global Private Governance: The Case of the Roundtable on Sustainable Palm Oil' (2011) 70 *Ecological Economics* 1891.

⁶² S Bernstein and B Cashore, 'Non-State Global Governance: Is Forest Certification a Legitimate Alternative to a Global Forest Convention?' in J Kirton and M Trebilcock (eds), *Hard Choices, Soft Law: Voluntary Standards in Global Trade, Environment and Social Governance* (Ashgate Publishing 2004) 33.

of private regulation is still complex, a common argument is that '[I]egitimacy at its most basic means acceptance as appropriate by relevant audiences'.⁶³ 'Relevant audiences' in the context of GAP are those constituencies who accept a new foreign private norm and decide to make changes, including producers, retailers and consumers in receiving States. In the context of agro-food trade, it is crucial to include producers in developing countries. In order for those constituencies to accept the foreign norms as appropriate, the governance institution of the foreign norm must secure participation or transparency.⁶⁴ This is so-called 'input legitimacy'. The argument regarding the need for 'proceduralization'⁶⁵—inclusiveness, openness and transparency of private regulation—can also support the concern over gaining legitimacy.

That said, input legitimacy or proceduralization may not necessarily ensure the creation of 'appropriate' norms for all related constituencies in terms of substantive contents. So-called 'output legitimacy' is therefore necessary as well.⁶⁶ 'Appropriate' norms are standards that are suitable for local objectives, which may be different from shared global goals. This is why it is at times argued that it is difficult to require 'output legitimacy'. It has been argued that 'different stakeholders will tend to define different objectives, or even similar objectives differently'.⁶⁷ On this point, there must be room in the creation and enforcement of standards to allow for 'divergence' or 'difference', which overrides 'convergence' and 'sameness' in order to receive wider acceptance. Such an argument on the need for some divergence and flexibilities is also related to the concern over the friction or mismatch caused by the diffusion of global standards and actual local practices. It has been argued that '[I]ittle scrutiny is given to how such [global] standards are made to work locally, and the consequences of such implementation'.⁶⁸ This point echoes the discussion in the previous subsection A, regarding the risk of legal transplants and its unsuccessful outcome.

D. Summary

This subsection summarizes four important factors in researching private norm diffusion, drawn from the three bodies of scholarship described above. First, private norm diffusion, similar to the diffusion of State laws, may cause

⁶³ *ibid* 49. See also Casey and Scott (n 60) 88: '[F]or a regulatory norm to be legitimate, it must be accepted by those to whom it is addressed.'

⁶⁴ Fuchs, Kalfagianni and Havinga (n 58) 357.

⁶⁵ For the emergence and importance of the procedural dimension in environmental governance, see J Scott, 'Flexibility, 'Proceduralization', and Environmental Governance in the EU' in G de Búrca and J Scott (eds), *Constitutional Change in the EU from Uniformity to Flexibility* (Hart Publishing 2000) 272.

⁶⁷ Fuchs, Kalfagianni and Havinga (n 58) 359.

⁶⁸ V Higgins and W Larner, 'From Standardization to Standardizing Work' in V Higgins and W Larner (eds), *Calculating the Social: Standards and the Reconfiguration of Governing* (Palgrave Macmillan 2010) 206.

various effects in receiving States. Importantly, there is a risk of negative effects if there is a mismatch between foreign norms and prevailing circumstances in receiving States. It is therefore critical to examine the appropriateness of foreign norms in local contexts. Second, market forces are a major driving factor for private norm diffusion, while other factors—such as the low costs of regulatory adjustment and the role of NGOs/experts—may supplement the diffusion. Third, after the arrival of a foreign private norm, the interaction of public and private schemes in the receiving State may help diffuse the new foreign norm. Lastly, the legitimacy of private regulation/regimes can contribute to their smooth reception in the receiving State.

III. GLOBALG.A.P. AND ITS EFFORTS TO EXPAND BEYOND EUROPE

Both this and the following sections examine the proliferation of GLOBALG.A.P. as an empirical case and consider to what extent its findings support the analysis in Section II. Private norm diffusion is initiated by exporters of norms and standards who intend to promote their norms and standards outside their jurisdictions. Regulatory change may occur when the receiving side responds to the exporters' attempt. Thus, the diffusion of GLOBALG.A.P. is likely to happen through two-way interactions between GLOBALG.A.P. and the receiving parties. This Section looks at the motivations and aspirations of GLOBALG.A.P. as an exporter of GAP norms and analyses GLOBALG.A.P.'s efforts to work with local GAP schemes.

A. Historical Background and Developments

GLOBALG.A.P. was originally founded as 'EurepGAP' by the Euro-Retail Produce Working Group in 1997.⁶⁹ The working group was concerned about the inadequacy of national food safety laws and the reputational costs associated with high-profile food safety crises in Europe.⁷⁰ Such concerns prompted group members to take steps to ensure food safety and quality by regulating their supply chains. However, the GLOBALG.A.P. scheme was concerned not only with food safety: the scheme took a holistic and integrated approach which covered food safety, environmental protection and workers' and animal welfare in farming.⁷¹

⁶⁹ For a history of GLOBALG.A.P., see the GLOBALG.A.P. website (n 3).

⁷⁰ For a background of the rise of EurepGAP in the context of an emerging corporate-environmental food regime, see H Friedmann, 'From Colonialism to Green Capitalism: Social Movements and Emergence of Food Regimes' in FH Buttel and P McMichael (eds), *New Direction in the Sociology of Global Development* (Elsevier 2005) 251–5.

⁷¹ It has been noted that there is a tendency in contemporary private standards to 'bundle [together] safety, environment and social standards'. World Bank Report, No 31207, *Food Safety and Agricultural Health Standards: Challenges and Opportunities for Developing Country Exports* (2005) 28.

The regulatory structure of GLOBALG.A.P. is complex and dense. GLOBALG.A.P. has developed standards for several categories and one of them is the 'integrated farm assurance standard'.⁷² This is divided into three production areas: 'crops', 'livestock' and 'aquaculture'. The category of 'crops' includes 'fruit and vegetables', 'coffee', 'flowers' and so on. The requirements for 'fruit and vegetables', for instance, currently cover 228 items—these items (and also items in other subcategories like 'coffee' or 'flowers') are the core substantive standards of GLOBALG.A.P., the so-called 'control points and compliance criteria (CPCC)'. Among the control points for 'fruit and vegetables', 142 cover issues of food safety, 40 address environmental protection, 28 workers' welfare and 18 traceability.⁷³ The standards are revised every four years to ensure continued relevance and effectiveness,⁷⁴ and the current operating standards for fruit and vegetables have been updated in 'Version Four', which was finalized in March 2011 and became obligatory in January 2012.

When producers apply for GLOBALG.A.P. certification, not all the CPCC have the same level of importance. GLOBALG.A.P. standards are graded in a three-level system that determines the required extent of compliance with each standard: standards of 'major must' require full compliance, while 'minor must' standards require 95 per cent compliance and other kinds of standards are only 'recommended'.⁷⁵ In terms of verification of compliance, GLOBALG.A.P. itself does not verify compliance and issue certifications for producers; instead, it put into place a third-party certification system in order to assure objectivity and credibility. Some scholars argue that such third-party certification systems play an important role in promoting private regulation: 'Verification is important because it provides the validation necessary for a certification programme to achieve legitimacy.'⁷⁶

⁷² Other standards developed by GLOBALG.A.P. are 'compound feed manufacturer standard', 'animal transport', 'plant propagation material standard' and 'risk assessment on social practice'.

⁷³ See GLOBALG.A.P. Presentations, 'Introduction Presentation Crops USA by Dr Kristian Moeller, Washington DC 2011' 9 at <http://www1.globalgap.org/cms/front_content.php?idcat=40> accessed 26 December 2012.

⁷⁴ See GLOBALG.A.P. Procedures for the Setting and Revision of GLOBALGAP Standards, V1.0-1_Aug08, at <http://www1.globalgap.org/cms/upload/The_Standard/Standards-Development/GLOBALGAP_Standard_setting_procedure_V1_Aug08.pdf> accessed 26 December 2012.

⁷⁵ Some studies have suggested that there is a pattern between these three compliance levels and GLOBALG.A.P.'s holistic approach which covers food safety, environmental protection, and workers' and animal welfare in farming. That is, standards relating to food safety are mostly categorized in 'major must', while standards relating to environmental protection and workers' and animal welfare are categorized as 'major must' less often and are instead treated as 'minor must' and 'recommended' categories. See NM Van Der Grijp, T Marsden and JSB Cavalcanti, 'European Retailers as Agents of Change Towards Sustainability: The Case of Fruit Production in Brazil' (2005) 2 *Environmental Sciences* 36. Such a pattern was also demonstrated by the presentation by EurepGAP in 2004. See K Moeller, 'Reducing the Use of Methyl Bromide via EUREPGAP: The Private Sector Holistic Approach' 14 at <ec.europa.eu/clima/events/0014/standards_3_en.pdf> accessed 27 December 2012.

⁷⁶ Cashore et al (n 19) 162. See also C Bain, E Ransom and MR Worosz, 'Constructing Credibility: Technoscience to Legitimate Strategies in Agrifood Governance' (2010)

In other words, independently verified commitment to the standards strengthens the credibility of the schemes and therefore it fuels promotion of the use of such schemes.⁷⁷ So far, GLOBALG.A.P. has made agreements with 142 certification bodies operating around the world.⁷⁸ The process of certification and the activities of certification bodies are also subject to detailed rules under GLOBALG.A.P.,⁷⁹ which has sanction provisions against certification bodies in the case of their own non-compliance.

In terms of the historical development of GLOBALG.A.P., two events are worth mentioning. The first is the attainment of an equal partnership between retailers and producers in the governance of GLOBALG.A.P. As mentioned, GLOBALG.A.P. was originally initiated by retailers; however, since 2001 the governing organs of GLOBALG.A.P. have comprised an equal number of retailers and producers.⁸⁰ Members of the Board and the three Technical Committees are elected from among GLOBALG.A.P. members.⁸¹ Membership is open for any retailers, suppliers or producers in the world. This movement to equivalence between retailers and producers can be seen as an important step in gaining 'input legitimacy' for GLOBALG.A.P.⁸²

25 *Journal of Rural Social Sciences* 176–7; Cashore, Auld and Newsome (n 37) 26–7; Bartley (n 14) 302.

⁷⁷ However, some studies have expressed caution over the credibility of the third-party certification systems. For instance, some have argued that GLOBALG.A.P.'s assessment and inspection system is not sufficiently stringent when it comes to improving workers' welfare. See C Bain and M Hatanaka, 'The Practice of Third-Party Certification: Enhancing Environmental Sustainability and Social Justice in the Global South?' in Higgins and Lerner (n 68) 64–8. For a similar criticism over the verification of GLOBALG.A.P. standards, Bain, Ransome and Worosz (n 76) 180–1. For a cautionary note over the effectiveness of the third-party certification systems in general, see L Silva-Castañeda, 'A Forest of Evidence: Third-Party Certification and Multiple Forms of Proof: A Case Study of Oil Palm Plantations in Indonesia' (2012) 29 *Agriculture and Human Values* 361–70.

⁷⁸ See GLOBALG.A.P. Certification at <http://www.globalgap.org/uk_en/what-we-do/the-gg-system/certification/> accessed 20 December 2012.

⁷⁹ GLOBALG.A.P. General Regulations, English Version, Final Version 4.0, March 2011, Part III, Certification Body and Accreditation Rules.

⁸⁰ See GLOBALG.A.P. Board at <http://www.globalgap.org/uk_en/who-we-are/governance/board/> accessed 20 December 2012.

⁸¹ It has been pointed out that it is important for a non-European to be elected as a member of the Committees in order to allow perspectives outside Europe to influence the development or revision processes of the standards. See C Bain, 'Governing the Global Value Chain: GlobalGAP and the Chilean Fresh Fruit Industry' (2010) 17 *International Journal of Sociology of Agriculture and Food* 11.

⁸² However, there have been critics of this supposedly equal partnership. One criticism is that the equal representation seems to be superficial, because the majority of producers attending the Committees are major corporate suppliers, and do not represent the interests of local producers or farmers. Bain, *ibid* 7. See also C Rosin, H Campbell and L Hunt, 'Audit Me This! Kiwifruit Producer Uptake of the EurepGAP Audit System in New Zealand' in C Stringer and RB Le Heron (eds), *Agri-food Commodity Chains and Globalising Networks* (Ashgate 2008) 64 : 'The current retailer membership of EUREP incorporates the top corporate European supermarkets. These form an important concentration of retailer power... .' Another criticism is about geographical inequalities. Fuchs, Kalfagianni and Havinga (n 58) 361: 'The majority of both retailer and producer members in this committee is from Europe.'

Another development that merits attention is the scheme's renaming: EurepGAP became GLOBALG.A.P. in 2008. According to one news source:

This growing connection with the industry's smallholders outside Europe has altered GLOBALG.A.P.'s public image, according to the organisation's managing director Kristian Möller. 'The name change is all about how the system is perceived.'⁸³

Indeed, there have been considerable efforts by GLOBALG.A.P. to reach outside Europe, emphasizing that it is not serving only producers and retailers in Europe. According to the current website of GLOBALG.A.P., it is described that 'GLOBALG.A.P. is the worldwide standard that assures [Good Agricultural Practice]'.⁸⁴ The scheme's name change has contributed to promoting its global purposes to some extent. Next, we will turn to GLOBALG.A.P.'s efforts to connect local GAP initiatives with GLOBALG.A.P. standards.

B. Reaching outside Europe

There are two ways in which GLOBALG.A.P. is undertaking norm diffusion. First, GLOBALG.A.P. standards are being implemented by increasing the number of certified producers outside Europe. The number of certified producers outside Europe is increasing but at different rates in different regions and countries. For instance, according to the GLOBALG.A.P.'s annual report,⁸⁵ 'Europe still accounts for 74% of all certifications, with half of all producers from Southern Europe. Spain, Italy, and Greece are the countries with the most certified producers. The Americas [such as Chile and Argentina] and Africa are gaining a larger share of overall certifications.'⁸⁶ In comparison, the number certified in Asia is low. The Asian country with the most certified producers is China, with 280 in 2011. This article addresses Japan and Thailand, which in 2011 had 20 and 263, respectively.⁸⁷

To increase the number of certifications, GLOBALG.A.P. has adopted a system of 'national technical working groups' that are established voluntarily by GLOBALG.A.P. members. GLOBALG.A.P. explains: 'Think Global, Act Local. That's the philosophy at the heart of GLOBALG.A.P.'s activities. And that's why GLOBALG.A.P. members have set up National Technical Working

⁸³ EuroFruit Magazine, No 403, January 2008, available at GLOBALG.A.P. in the Press 2008 <http://www1.globalgap.org/cms/front_content.php?idart=736> accessed 22 January 2013.

⁸⁴ See GLOBALG.A.P. 'Who We Are' at <http://www.globalgap.org/uk_en/who-we-are/> accessed 20 December 2012.

⁸⁵ See GLOBALG.A.P. Annual Report 2011, 30-1 at <http://www.globalgap.org/export/sites/default/content/galleries/documents/120501_Annual_Report_2011_web_en.pdf> accessed 26 December 2012.

⁸⁶ *ibid* 30. The certified number in Spain was 25,923; Italy was 15,892; and Greece was 12,414.

⁸⁷ *ibid* 30-1.

Groups (NTWGs).⁸⁸ Thus, this system of setting up national technical working groups is one way to stimulate interactions between GLOBALG.A.P. and local people, thereby increasing understanding of GLOBALG.A.P. There are currently 45 national working groups in the world.⁸⁹ Those groups can create national interpretation guidelines of GLOBALG.A.P. standards that are suitable for their local needs, but one should be mindful that this is subject to the approval of GLOBALG.A.P. Committees.⁹⁰

Expanding the implementation of GLOBALG.A.P. as above is the primary and direct way to promote GLOBALG.A.P. compliance. However, there is the second way to promote GLOBALG.A.P. standards outside Europe: the 'benchmarking' between GLOBALG.A.P. and local GAP schemes. For local GAP scheme owners, to be benchmarked with GLOBALG.A.P. means obtaining a status equivalent to GLOBALG.A.P. standards. With a benchmarked status, agricultural products certified by the local scheme can gain market access to Europe and also to other markets where people are interested in purchasing agricultural products in line with GLOBALG.A.P. standards. There have been some studies on the early cases of benchmarking between GLOBALG.A.P. and local schemes:⁹¹ in 2005, ChileGAP became the first scheme to be benchmarked with GLOBALG.A.P.;⁹² the government of Mexico made efforts for its national quality scheme to be benchmarked with GLOBALG.A.P. and succeeded in 2006;⁹³ and KenyaGAP also sought benchmarked status and gained it in 2007.⁹⁴

This article especially focuses on the benchmarking process as a vehicle of norm diffusion and proliferation, rather than on the direct implementation of GLOBALG.A.P. standards. From the perspective of GLOBALG.A.P., the two ways (ie the direct implementation of GLOBALG.A.P. and benchmarking with GLOBALG.A.P.) are not different in terms of its norm diffusion, as both can generate agricultural products in line with GLOBALG.A.P. standards. However, from the perspective of local schemes, benchmarking and direct implementation are different: benchmarking engages with local schemes, whereas direct implementation does not engage.

GLOBALG.A.P. started the benchmarking procedure in 2001. The benchmarking process starts from the submission of an application by a local

⁸⁸ See the GLOBALG.A.P. National Technical Working Groups (NTWG) at <http://www.globalgap.org/uk_en/who-we-are/ntwgs/> accessed 20 December 2012.

⁸⁹ See GLOBALG.A.P. List of all GLOBALG.A.P. National Technical Working Groups at <http://www.globalgap.org/uk_en/who-we-are/ntwgs/list-of-ntwgs/> accessed 20 December 2012.

⁹⁰ Hachez and Wouters (n 61) 703.
⁹¹ O van der Valk and J van der Roest, *National benchmarking against GLOBALGAP: Case studies of Good Agricultural Practices in Kenya, Malaysia, Mexico and Chile*, Report 2008.079, Project code 40432 (LEI Wageningen UR 2009).

⁹² Bain (n 81) 11.
⁹³ H Friedmann and A McNair, 'Whose Rules Rule? Contested Projects to Certify Local Production for Distant Consumers' (2008) 8 *Journal of Agrarian Change* 420–1.

⁹⁴ A Tallontire, M Opondo and V Nelson, 'Beyond the Vertical? Using Value Chains and Governance as a Framework to Analyse Private Standards Initiatives in Agri-Food Chains' (2011) 28 *Agriculture and Human Values* 432.

standard owner. When the application is submitted, the applicant's certification process and substantive standards are evaluated for their equivalence with GLOBALG.A.P., in accordance with the 'Benchmark Cross-Reference Checklist'. This procedure is subject to the benchmarking regulation, and a new version of the regulation (Version Four) became effective in February 2012.⁹⁵

One major change introduced by the new regulation (Version Four) is the adoption of two different levels of recognition:⁹⁶ the status of full equivalence, which remains the same, and that of 'resembling'. Under the new 'resembling' status, the applicant's standards are not considered fully equivalent to GLOBALG.A.P. standards, so applicants are allowed to omit some parts of GLOBALG.A.P.'s CPCC (for instance, the standards related to workers' welfare).

By introducing the 'resembling' status, GLOBALG.A.P. is arguably pushing its diffusion policy further: GLOBALG.A.P. appears to compromise its higher level of standard integrity for more universal standard diffusion. Prior to Version Four, GLOBALG.A.P.'s benchmarking procedure was rigid in order to pursue the integrity of GAP standards being implemented worldwide. The applicant's standards were evaluated against GLOBALG.A.P.'s CPCC, which included 'major must' and 'minor must' standards (as mentioned, 'minor must' requires 95 per cent similarities). This remains the same, but under the previous benchmarking procedure, 22 local schemes gained benchmarked status: 11 schemes of European origin, 5 of South American, 4 of Asian and 2 of African. It appears that GLOBALG.A.P.'s norm diffusion through benchmarking had not been achieving sufficient proliferation outside Europe. In some situations, schemes had been newly developed and created

⁹⁵ GLOBALG.A.P. Benchmarking Regulations, English Version 4.0, Edition 4.0 Feb 2012, Obligatory from 7 February 2012. In general, the procedure consists of three major stages after the application: (1) independent technical review, (2) peer review among GLOBALG.A.P. members, and (3) final accreditation by cross-checking the review under the previous stages with a real case in which local certification has been issued. In order to complete the equivalence process in this third stage, there must be at least one case in which a certification occurred under the local standard. In some situations, standards have been newly developed and have not been used by local producers yet (ie no prior example of certification under the local standard exists) so there is no way to certify that the local standard's certification process is equivalent to GLOBALG.A.P. certification.

⁹⁶ Since 2001 when the benchmarking procedure first started, there have been two benchmarking categories: the 'Full Benchmarked Scheme' and the 'Approved Modified Checklist'. These two categories remain the same in the new benchmarking regulation. Under the 'Full Benchmarked Scheme', an applicant scheme is assessed for the equivalency of both its procedural and substantive components (ie equivalency with GLOBALG.A.P.'s general certification rules and the CPCC). In the case of the 'Approved Modified Checklist', an applicant scheme is assessed only in terms of substantive equivalency with the CPCC, but not in terms of equivalency with GLOBALG.A.P.'s general certification rules. In this case, the applicant is using GLOBALG.A.P.'s certification system and not developing their own procedural certification system. Local schemes that have run for years and are accustomed to using their own general certification rules would apply for the 'Full Benchmarked Scheme', while newly developed schemes would apply for the 'Approved Modified Checklist', as this category does not require local schemes to develop their own certification system.

with an intention to obtain a benchmarking position with GLOBALG.A.P., and therefore it may not have been very difficult to adapt their structures to GLOBALG.A.P. standards—especially if the new schemes had financial and administrative resources.

On the other hand, there had been concerns that GLOBALG.A.P.'s equivalent requirements were too burdensome for some local GAP schemes that had been operating long before the rise of GLOBALG.A.P.—in order to obtain equivalence, such local standards would have had to change significantly to fit GLOBALG.A.P. standards.⁹⁷ With the aforementioned revisions in Version Four, it is speculated that more standard owners will apply for benchmarking under the 'resembling' status in order to inform markets that their local standard is at least partially in line with GLOBALG.A.P. standards, even if the two schemes are not fully equivalent. Information about resemblance rather than full equivalence may be enough to increase market access. The new benchmarking regulation may result in less integrity, but may achieve greater universality; the pursuit of universality necessarily involves accepting some 'divergence' or 'difference' of local GAP standards from GLOBALG.A.P. standards.

IV. RECEIVING GLOBALG.A.P.: JAPAN, THAILAND AND THE US

The previous section examined GLOBALG.A.P.'s efforts to expand beyond Europe. This section looks at the receiving side of GLOBALG.A.P., primarily by investigating the case of Japan, but also by briefly looking at the situations in Thailand and the US. Each of the three cases raises interesting and important issues in the light of the four factors of private norm diffusion presented in Section II: (1) the role of market forces in promoting norm diffusion; (2) the legitimacy of the private regime; (3) the interaction between private and public standards and (4) the appropriateness of GLOBALG.A.P. in the local context.

A. The Case of Japan

1. Historical background and developments

In Japan, awareness of the importance of GAP emerged against the background of the food safety crisis in 1996. Since then, GAP has been recognized in Japan as a tool to improve unhygienic food practices. A first local GAP scheme arose from a private entity—the development of the 'JGAP' standards in Japan was initiated by producers. The first step came from Katayama farm, an apple producer in Aomori prefecture. In 2004, Katayama farm became the first

⁹⁷ Interview by the author with Mr Ignacio Antequera, the GLOBALG.A.P. secretariat in Cologne, 23 January, 2012.

EurepGAP-certified producer in Japan. One year later, Katayama farm and a few other producers (including the second EurepGAP-certified farm, Wa-go-en farm in Chiba prefecture) created their own GAP scheme named 'JGAP'.⁹⁸ One of the founding group's most important aims in developing the JGAP system was to create a GAP scheme that was suitable to the Japanese farming context.⁹⁹ In November 2006, the founding assembly of JGAP was held with 30 farms.

Although the JGAP standards were developed by producers, JGAP's founding producer group actively sought the participation of retailers. By July 2008, the governing board of JGAP consisted of seven producers and seven retailers, 'an equal partnership' much like the current governance structure of GLOBALG.A.P.¹⁰⁰ Several major Japanese retailers have joined the governing board, including Aeon Co. Ltd, COOP Japan (Japanese Consumer's Cooperative Union), The Daiei Inc., and Ito-Yokado Co. Ltd. Like GLOBALG.A.P., the JGAP system also introduced a third-party certification mechanism in 2007.¹⁰¹ By April 2012, 1,681 producers had been JGAP certified.¹⁰²

A second goal of the founding group was to seek GLOBALG.A.P. benchmarked status: the founding producers aimed to establish a higher-level GAP scheme in Japan that could become a mainstream global standard. In 2007, JGAP's 'Version 2.1' standards achieved GLOBALG.A.P. equivalence status.

However, it was gradually noted by the JGAP governing board that some GLOBALG.A.P. standards do not fit the Japanese farming context. Also, domestic producers' demand for GLOBALG.A.P. equivalence status has not been strong. In 2009, JGAP decided not to maintain its GLOBALG.A.P. equivalent status and made modifications to the structure of JGAP standards during regular version updating.¹⁰³ JGAP identified several standards as unique to the European style of farming, separating them from its basic standards. Accordingly, JGAP has created a separate set of standards applied exclusively to fresh fruits and vegetables that are intended for export to foreign markets (hereinafter, 'JGAP's export standards'). Japanese producers not intending to export their products are only required to comply with a basic set of standards (hereinafter, 'JGAP's basic standards') and

⁹⁸ The group was originally established as 'Japan Good Agricultural Initiative (JGAI)' in 2005.

⁹⁹ Interview by the author with Mr Yasuaki Takeda, managing director of JGAP, at the JGAP secretariat office in Tokyo, 13 August, 2012.

¹⁰⁰ See Articles of Organization, Article 14(2) (in Japanese) at <http://jgap.jp/JGAP_Assoc/teikan.pdf>. Currently, the governing board of JGAP consisted of eight producers, eight retailers, and five more representatives. See the JGAP Newsletter, 'JGAP Plus' September 2012, at <http://jgap.jp/navi_01/JGAP_plus_201209.pdf> accessed 30 December 2012.

¹⁰¹ JGAP (ed), *Official Handbook on JGAP* (Nougyou Gijutsu Tsushin Sha 2010) 19.

¹⁰² See the JGAP Newsletter, 'JGAP Plus,' July 2012, at <http://jgap.jp/navi_01/JGAP_plus_201207.pdf> accessed 30 December 2012.

¹⁰³ Interview by the author with Mr Yasuaki Takeda, 18 February, 2011.

do not have to comply with the separate export standards.¹⁰⁴ By creating the dual system, JGAP is seeking a ‘localization’ of GAP—an application of GAP to the Japanese farming context in order to meet local needs specifically.

In separate efforts, the Japanese government—in particular, the Ministry of Agriculture, Forest and Fishery (the MAFF)—also sought to introduce GAP policy in Japan, but it has moved very slowly. The term ‘GAP’ first appeared in a Cabinet Decision in March 2005, in the ‘Basic Plan for Food, Agriculture, and Farm Villages’.¹⁰⁵ The Decision stated that the Japanese government would develop a manual in order to establish and promulgate GAP schemes in Japan.¹⁰⁶ In 2007, the MAFF announced a basic framework for GAP.¹⁰⁷ This ‘basic GAP’ is a simple checklist which consists of around 30 checkpoints in the production of vegetables, fruits, rice, wheat and so on.

Each Japanese prefecture reacted differently to this basic GAP. Consequently, different GAP schemes have been developed in different regions. Some prefectures created schemes that went beyond the MAFF’s basic GAP, while others were content to follow the simple checklist proposed by the MAFF. Multiple regional GAP programmes thus existed inside Japan, even as the private JGAP scheme grew.

Against this complex landscape, the MAFF attempted to unify the GAP schemes in Japan, inventing the ‘guidelines for GAP’ in 2010.¹⁰⁸ These guidelines were written in more detail than the basic GAP of 2007. They covered nine different product categories, such as vegetables, rice, wheat, fruits and tea, with each category consisting of 40 to 50 control points. Notably, these guidelines include a table comparing those control points with existing governmental requirements and showing how each control point matches existing legislation, regulations or decrees. Some points do not coincide with existing governmental requirements, but they are very few. Most of the checkpoints actually align with governmental requirements. This suggests that the MAFF guidelines were carefully crafted so as not to exceed existing governmental requirements. In this regard, JGAP standards are still going beyond the MAFF guidelines because they exceed existing government requirements.

¹⁰⁴ Currently, JGAP’s basic standards plus export standards (namely, JGAP’s ‘2010 Version’ Standards of Fruits and Vegetables) are in the process of being benchmarked with GLOBALG.A.P.

¹⁰⁵ Cabinet Decision of 25 March 2005 at <http://www.maff.go.jp/j/keikaku/k_aratana/pdf/20050325_honbun.pdf> accessed 30 December 2012.

¹⁰⁶ See the MAFF website at <http://www.maff.go.jp/j/seisan/gizyutu/gap/g_torikumi/index.html> accessed 30 December 2012.

¹⁰⁷ See the MAFF website, at <<http://www.maff.go.jp/j/seisan/gizyutu/gap/guideline/index.html>> accessed 30 December 2012.

¹⁰⁸ See the MAFF website, at <<http://www.maff.go.jp/j/seisan/gizyutu/gap/guideline/index.html>> accessed 30 December 2012.

2. Evaluation

This subsection analyses how and to what extent GLOBALG.A.P. standards are received in Japan through the launch of the JGAP system, according to the factors presented in Section II.

First, we need to address whether the role of market forces was the main factor of the reach of GLOBALG.A.P. into Japan. The JGAP initiative originated in food crisis and not in export interests targeting Europe.¹⁰⁹ In this respect, it can be said that a private GAP initiative was started in Japan not because of market forces but because of the ideas of GAP itself. As stated, the JGAP founding group's aim was not to use GLOBALG.A.P. as a basis in developing the JGAP standards. Rather, the founding group aimed to establish a GAP scheme suitable for Japanese farming. Nonetheless, we can still find the effects of GLOBALG.A.P. on the JGAP system in the founders' desire to seek a GLOBALG.A.P. benchmarked status. The JGAP founding producer group perceived GLOBALG.A.P. as a mainstream standard for international trade in fruits and vegetables, one with which JGAP should be recognized as equivalent.¹¹⁰ Also, we can see the influence of GLOBALG.A.P. on JGAP in the structure of JGAP standards: JGAP standards cover the issues of workers' health and safety as well as the environment and conservation. JGAP seemed to be inspired by GLOBALG.A.P.'s ideas regarding what 'good' agricultural practices were.

Second, the literature suggests that the legitimacy of the private regime may influence the reception of the norm. In this vein, we need to look at 'input legitimacy' of JGAP. Whereas GLOBALG.A.P. was created by retailers, JGAP was initially driven by producers. The question may arise as to why producers began the development of JGAP rather than retailers. The reason is not apparent, but it should also be pointed out that Japanese retailers were not uninterested in the GAP movement. Two major Japanese retailers—Aeon and COOP Japan—separately developed GAP systems for their private brands.¹¹¹ It can be said that the creation of JGAP by producers has united retailers' interests with the producers' movement. This is also reflected in the current governance of JGAP, which includes the same number of producers and retailers in its governing board.

Third, the interaction between the public and private standards occurred in Japan's case. The relation between JGAP and the governmental GAP scheme

¹⁰⁹ The main export destinations of Japanese agricultural products (including fishery and manufactured food) in 2006 were the US, Hong Kong, China, South Korea and Taiwan. See the MAFF website at <http://www.maff.go.jp/j/wpaper/w_maff/h18_h/trend/t1_2_4_04.html> accessed 30 December 2012.

¹¹⁰ Interview by the author with Mr Yasuaki Takeda on 13 August, 2012. JGAP team also developed new standards for green tea and rice, but JGAP did not seek GLOBALG.A.P. equivalence for these sets of standards.

¹¹¹ Aeon developed own GAP named 'A-Q' in December 2002. COOP introduced 'COOP GAP' in 2004.

can be said to be complementary, especially after the ‘guidelines for GAP’ were established by the MAFF in 2010. With the governmental ‘guidelines for GAP’, JGAP can focus more on introducing itself to producers instead of explaining why GAP is necessary in the first place. Also, JGAP can mention that their standards are consistent with the governmental MAFF guidelines for GAP.¹¹² Local GAP initiatives that are consistent with the MAFF guidelines can receive subsidies from the Japanese government,¹¹³ which means that farmers can receive government assistance to comply with JGAP standards, since JGAP standards meet the MAFF guidelines. As suggested in Section II.C, this is an example of a governmental scheme providing a foundation for ‘private regulation to operate effectively and credibly’.¹¹⁴

Lastly, we need to look at the actual arrival of GLOBALG.A.P. in Japan, including mismatch between the idea of GLOBALG.A.P. and the Japanese context. It is crucial to evaluate JGAP’s attempt to seek GAP ‘localization’ by creating the dual system: JGAP’s basic standards and export standards. Such ‘localization’ by JGAP raises a question previously addressed: the appropriateness of GLOBALG.A.P. In the JGAP case, the issue is whether JGAP ‘localization’ happened because there was too little room in the GLOBAL G.A.P. standards to allow for sufficient ‘divergence’ or ‘difference’ to make GLOBALG.A.P. suitable for local objectives.

JGAP’s export standards consist of 46 control points, and these are identified as not fitting the Japanese context for several reasons. Some of the 46 relate to objective factors. One example is standards that apply to producers growing genetically modified organisms (GMOs). In Japan, growing GMOs is not prohibited, though it is not yet popular. Another example is standards on the use of biocides, waxes and plant protection products for post-harvest treatment. The use of such post-harvest chemicals is not popular in Japan either. Therefore, JGAP’s standards are differentiated from GLOBALG.A.P. by excluding these control points due to their irrelevance. Having the dual system can be viewed as a pragmatic decision made by JGAP in order to clarify that their basic standards cover only the Japanese farming context.

However, other reasons for JGAP’s export standards appear to be less objective. Among the 46 control points identified as being unsuitable to domestic farming, 11 are concerned with the environment and conservation and 10 address workers’ health, safety and welfare. This does not mean that JGAP’s basic standards do not incorporate standards related to such issues: there are 20 control points concerning the environment and conservation and 19 control points concerning workers’ health, safety and welfare in JGAP’s basic standards. Thus, JGAP does focus on these issues, but it does

¹¹² See the JGAP website at <http://jgap.jp/LB_01/index.html> accessed 30 December 2012 (where it states that ‘JGAP’s 2010 Version Standards of Fruits and Vegetables is in line with the MAFF guidelines for GAP’).

¹¹³ See the MAFF website at <<http://www.maff.go.jp/j/seisan/gizyutu/gap/yosan.html>> accessed 30 December 2012.

¹¹⁴ Cafaggi (n 50) 48.

so differently from GLOBALG.A.P. For instance, 4 out of 11 control points concerning the environment under JGAP's export standards are related to the conservation of biodiversity. Similarly, 8 out of 10 control points concerning workers' health, safety and welfare under JGAP's export standards are concerned with workers' welfare (not workers' health and safety issues). This suggests that some GLOBALG.A.P. standards relating specifically to the conservation of biodiversity or workers' welfare do not fit into current Japanese agricultural circumstances and knowledge. However, it may be simplistic to say that these GLOBALG.A.P. standards are 'inappropriate' in the Japanese context. Rather, JGAP's exclusion of these specific control points may reflect a reluctance to change current Japanese practices without commercial reasons for doing so.

B. A Comparative Case: Thailand

This subsection briefly looks at the situation in Thailand from the four factors of private norm diffusion. The subsection also compares experiences of Thailand and Japan in importing the ideas of GLOBALG.A.P.

In Thailand, the government and a private body began to take actions towards developing a GAP scheme almost at the same time. The government's national scheme, called 'Q-GAP', was established in 2004. It was launched out of common concerns in the country on the use of agro-chemicals in the harvesting process.¹¹⁵ The Thai government's motivation was to provide a basic GAP scheme for Thai producers, similar to what the Japanese government intended for Japanese producers. While Q-GAP certification was a good introduction to GAP for Thai producers, it did not lead to good export opportunities for them. One reason for the lack of export opportunities was that Q-GAP certification was done by the government itself rather than by a third party. This diminished Q-GAP's independence and credibility.¹¹⁶ Another reason was that Q-GAP was formulated with only eight standards¹¹⁷ and was far less detailed than GLOBALG.A.P. (named EurepGAP at that time). Also, the Q-GAP standards did not cover labour or environmental protection issues. These two aspects starkly distinguished Q-GAP from EurepGAP.

Meanwhile, a private initiative began in 2001. Exporting companies (eg KC Fresh) proposed that a GAP system be created, with safety concerns in exporting baby corn and asparagus to the EU. Professors in the Research and Development Institute and Faculty of Agriculture at Kasetsart University (Kamphaengsaen Campus, NakhonPathom) responded and decided to provide

¹¹⁵ V Sardud, 'National Experiences: Thailand' in UNCTAD (n 17) 53.

¹¹⁶ *ibid* 54: 'Such an approach creates doubts as to the independence and credibility of the system and certification.'

¹¹⁷ The eight standards include: (1) safety of water used, (2) site, (3) use of agro-chemicals, (4) product storage and on-site transportation, (5) data records, (6) pest-free products, (7) quality management and (8) harvesting and post-harvesting handling. *ibid* 58.

training services.¹¹⁸ The professors cooperated with private companies, and they created the first private scheme applied to the western part of Thailand. The scheme was named 'Western GAP' and addressed fresh fruits and vegetables. Western GAP was based on EurepGAP Version 2.1 (October 2004).¹¹⁹ While EurepGAP Version 2.1 consisted of 213 control points, Western GAP consisted of only 50 control points. Although it had fewer standards, Western GAP did cover workers' health and the environment.¹²⁰

Western GAP was the basis for the ThaiGAP scheme, which was launched in 2006.¹²¹ Thus, ThaiGAP has remained similar in form to the Western GAP multi-stakeholder initiative. ThaiGAP was created with the participation of various actors instead of being driven by either retailers (like GLOBALG.A.P.) or producers (like JGAP). This is reflected in ThaiGAP's governing board, which currently consists of 20 members: 5 producer associations, 1 retailer association, 4 governmental organizations, 7 individuals appointed on the merits of expertise, 2 NGOs (including Kasetsart University) and 1 consumer group.¹²² In this vein, it can be said that the ThaiGAP attempted to secure 'input legitimacy'.

In Thailand, in contrast to Japan, the impetus for the development of Western GAP and then ThaiGAP was mainly to create opportunities for exports to Europe. This is also illustrated by their efforts to benchmark with GLOBALGAP. In 2008, the ThaiGAP Institute under the Board of Trade of Thailand started to prepare an application to benchmark ThaiGAP standards with GLOBALG.A.P. The motivation for this was to place Thai exporters on more equal footing when trading with European markets. The benchmarking process required raising the level of ThaiGAP standards to make them as high as those of GLOBALG.A.P. as well as fully incorporating environmental and workers' health issues. This was not an easy process for the ThaiGAP team, and it was not until May 2010 that ThaiGAP was finally approved as a GLOBALG.A.P. equivalent.¹²³

¹¹⁸ Interview with the ThaiGAP office, 18 July, 2011. At that time, one US foundation, the Kenan Institute, provided aid to this private initiative, in order to support the creation of the cluster among the universities, local governments and producers.

¹¹⁹ Western Cluster GAP, *ThaiGAP and EurepGAP* (2006).

¹²⁰ As for 'worker health' issue, it included a standard similar to the EurepGAP 12.3.1, stating that 'are First Aid boxes present in the vicinity of the work?' As for 'environmental' issue, it included two standards: one was similar to the EurepGAP 13.2.4 concerning animal and plant diversity on the farm, and another relates to setting up a place to throw rubbish.

¹²¹ In the years of the preparation of its launching (2004–06), GIZ (the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH), a German enterprise which implements programmes commissioned by the German government, offered aid. Interview with the ThaiGAP office, 18 July, 2011.

¹²² Interview with the ThaiGAP office, 18 July, 2011. Two NGOs are Kasetsart University and the GIZ. One consumer group is Thai Health Promotion Foundation.

¹²³ ThaiGAP Version 2.0 is now benchmarked with GLOBALG.A.P. 'Version Four', in March 2013. See GLOBALGAP website <http://www.globalgap.org/nl/1303/uk_en/media-events/news/articles/ThaiGAP-Successfully-Re-benchmarked-for-GLOBALG.A.P.-Integrated-Farm-Assurance-Standard-Version-4/> accessed 29 March 2013.

With regard to the interactions between private and public GAP standards, both Q-GAP and ThaiGAP continue to exist.¹²⁴ It can be said that each serves a different purpose. While ThaiGAP focused on promoting the exportation to the EU, the Thai government had a different motivation behind the development of Q-GAP: the government took a ‘gradual approach’,¹²⁵ beginning with basic GAP standards that would be relatively simple for farmers to follow. It is suggested that such a gradual approach is needed for Asian local farms and markets, where domestic demand for higher-level third-party certification has not been sufficiently strong.¹²⁶ Perhaps, ThaiGAP and Q-GAP are creating a supportive environment together for Thai farmers: one intends to support exporting opportunities and the other attempts to upgrade domestic farming practices.

After the completion of the benchmarking process with GLOBALG.A.P., the ThaiGAP team has made an important move by creating two types of standards: ‘ThaiGAP Level 1’ maintains high-level standards and targets European markets, while ‘ThaiGAP Level 2’ contains around 80 per cent of the Level 1 standards and targets products sold in Thai domestic markets.¹²⁷ This dual system is similar to JGAP’s, which differentiated standards for exports to Europe from standards for farms serving local Japanese markets. The establishment of a dual system is an ongoing project of ThaiGAP, thus it remains to be seen how it will be implemented in the future. However, the dual system made by ThaiGAP and JGAP sends a message to GLOBALG.A.P.—as suggested previously, this is the question of the appropriateness of GLOBALG.A.P. and some flexibility is necessary to expand further outside Europe. The next subsection briefly addresses a recent response from GLOBALG.A.P. to accommodate such flexibility, on the basis of the GLOBALG.A.P.’s experience in the US.

C. Implications from GLOBALG.A.P.’s Experience in the US

So far, we have seen how local schemes in Japan and Thailand responded to the arrival of GLOBALGAP. In order to diffuse and be accepted outside of Europe, GLOBALG.A.P. itself has had to make some changes. Section III.B explained that GLOBALG.A.P. already amended its benchmarking structure into a two-tiered system—one tier for full equivalence and the other of a ‘resembling’ status. This subsection highlights one more recent change in GLOBALG.A.P. which has an important implication for the fourth issue of private norm diffusion, that is, the appropriateness of GLOBALG.A.P. in the local context.

¹²⁴ By July 2012, seven producers had been certified by ThaiGAP Version 1.0. Email from ThaiGAP office to the author, 13 July, 2012.

¹²⁵ UNCTAD, ‘VII. Recent Developments and the Way Forward’ (n 17) 85.

¹²⁶ *ibid.* ¹²⁷ Interview with the ThaiGAP office, 18 July, 2011.

So far, GLOBALG.A.P. has applied its standards (the so-called ‘control points and compliance criteria (CPCC)’) uniformly in its direct implementation and certification process. As stated in Section III.B, the only system previously allowed to take local contexts into account under GLOBALG.A.P. was that of the voluntarily established ‘national technical working groups’. However, GLOBALG.A.P. recently designed and approved a separate set of standards applied exclusively to the US market that only addresses food safety and excludes the environmental protection and workers’ welfare issues (‘GLOBALG.A.P. IFA Produce Safety Version 4’).¹²⁸ This development occurred because of concerns about the limited number of GLOBALG.A.P. certifications obtained by US producers (eg by 2011 the number was 470) and because of US producers’ negative opinions about the inclusion of environmental protection and workers’ welfare issues in GAP standards.¹²⁹ Such a negative reaction to GLOBALG.A.P.’s ideas is a distinctive feature of the US case and contrasts with Japan and Thailand, where the full set of GLOBALG.A.P. standards (including those on the environment and labour) was initially accepted through their benchmarking processes.

In the US, the proliferation of GAP standards occurred in a non-harmonized, fragmented order. One of the GAP standards was a public one: the USDA (United States Department of Agriculture) GAPs. However, many private standards have been operating as well. In June 2009, a US trade association, United Fresh (the United Fresh Produce Association) started a harmonization project of various GAP standards in the US.¹³⁰ This project, called ‘Produce GAPs Harmonization Initiative’, aimed to create a set of standards ‘that is globally recognized, but specifically applicable to North America operations’.¹³¹ It was reported that ‘[r]ather than create a new standard, the [Technical Working Group] began its efforts by examining similarities and differences in many of the existing GAP standards’.¹³² Eighteen standards operating in the US were chosen and examined.¹³³ The harmonization project

¹²⁸ GLOBALG.A.P. North America Newsletter, March 2012 at <<http://hosted-p0.vresp.com/903543/18cfa65e13/ARCHIVE>> accessed 30 December 2012.

¹²⁹ See the United Fresh Produce Association website, ‘Produce GAPs Harmonization Initiative’ at <http://www.unitedfresh.org/newsviews/gap_background> accessed 30 December 2012 (where it states that ‘[i]nclusion of non-food safety standards (environmental, social issues) is a likely obstacle to harmonization, particularly in North America. These issues may need to be addressed separately.’).

¹³⁰ See the United Fresh Produce Association website <http://www.unitedfresh.org/newsviews/gap_harmonization> accessed 29 March 2013.

¹³¹ See Harmonization of Produce Food Safety Standards Steering Committee Meeting Summary, 22 September 2009 at <http://www.unitedfresh.org/assets/GAPs2009/Steering_Committee_Meeting_Summary_090922.pdf> accessed 29 March 2013.

¹³² D Gombas, ‘Produce GAP Standards: Harmonizing Food Safety’ (August/September 2010) Food Safety Magazine at <<http://www.foodsafetymagazine.com/magazine-archive1/augustseptember-2010/produce-gap-standards-harmonizing-food-safety/>> accessed 29 March 2013.

¹³³ See Produce GAPs Harmonization Initiative Technical Working Group Meeting, 16–17 December 2009, Meeting Summary at <<http://www.unitedfresh.org/assets/GAPs2009/>>

was completed in September 2012, resulting in 'Harmonized Standards'.¹³⁴ Except for workers' health and hygiene issues, the Harmonized Standards mainly consist of food safety issues and do not address the environment or workers' welfare.

During the United Fresh harmonizing process, GLOBALG.A.P. was recognized as one existing standard in the US. However, in contrast to the cases of Thailand and Japan, there were already numerous private GAP standards operating in the US. In this situation, GLOBALG.A.P. thought that it needed to create a separate set of standards for the US market in order to further proliferate in the US.¹³⁵ Given the clearly different values held in Europe and the US regarding the inclusion of non-food safety issues in agricultural production processes, GLOBALG.A.P. needed to be pragmatic. Norm diffusion requires consideration for local contexts and sometimes even sacrificing the integrity of original standards.

V. CONCLUSION: TO WHAT EXTENT SHOULD LOCAL CONTEXT BE CONSIDERED?

Focusing on the case of GLOBALG.A.P., this article has addressed how private norms can proliferate worldwide and transform emerging local private bodies. This concluding section highlights what we can draw from the examples of Japan, Thailand and the US, in the light of the four factors of private norm diffusion: (1) the role of market forces in promoting norm diffusion; (2) the legitimacy of the private regime; (3) the interaction between private and public standards and (4) the appropriateness of GLOBALG.A.P. in the local context.

First, GLOBALG.A.P. can depend on market forces to promote its standards, since local GAP schemes outside Europe may have a strong incentive to adopt GLOBALG.A.P. in order to access the EU market. This effect has been largely seen in the case of ThaiGAP. However, the role of market forces is not always relevant: the case of Japan shows that the receiving side of GLOBALG.A.P. may not always have strong interests in exporting to the EU. Trading interests vary according to goods (eg agricultural products) being covered by private regulation/regimes.

However, ideas and norms may migrate without trade relations or export interests. In Japan's case, the JGAP scheme aspired to make its standards

[TWG_meeting_summary_12_16_09.pdf](#)> accessed 29 March 2013: 'Of the 18 standard owners approached, 10 replied in time for the meeting: Mushroom GAPs, AIB, GlobalGAP, CanadaGAP, Silliker, CA Strawberry, CA LGMA, SENASICA, AFDO Model Code for Produce Safety and USDA GAPs.'

¹³⁴ For the completed harmonized standards, see the United Fresh Produce Association website <http://www.unitedfresh.org/assets/food_safety/Harmonized_Standard_pre-farm_gate_110722.pdf> accessed 29 March 2013.

¹³⁵ Interview by the author with Mr Thomas Fenimore, Executive Vice President of GLOBALG.A.P. North America in Baltimore, 6 April, 2012.

as high as GLOBALG.A.P.'s via the benchmarking process, viewing GLOBALG.A.P. as best practices. In political science, this mechanism is explained as 'normative emulation/mimicry': while '[t]here is little functional need to adopt',¹³⁶ JGAP followed GLOBALG.A.P. standards. On the other hand, there are examples where foreign ideas and norms do not (or barely) affect local actors. The case of the US was one such case. Also, domestic markets in Japan and Thailand, where there are no interests in exporting agricultural products to the EU, appear to be in a similar situation. This point is addressed later in (4) the appropriateness of GLOBALG.A.P. in the local context.

Second, the diffusion of a private norm is affected by the legitimacy of the private regime. Like GLOBALG.A.P., both JGAP and ThaiGAP seemed concerned over the 'input legitimacy' of their governance schemes. The creators of private regimes thus appear to regard a participatory and transparent mechanism as a vital element for success. However, as noted, the 'input legitimacy' of the governance scheme does not necessarily secure 'output legitimacy' (ie the new norms may not be appropriate to certain local contexts). This point is also discussed under (4) below.

Third, this article examined public and private interactions in the process of norm diffusion. As the cases of Japan and Thailand have shown, the coexistence of a governmental GAP scheme and a private scheme may help the ideas of GLOBALG.A.P. diffuse.

Fourth, the greatest challenge for private norm diffusion is the appropriateness of foreign private norms in the local context. Notably, both JGAP and ThaiGAP later adopted dual systems, with two different sets of standards that producers can choose to follow. If a producer is interested in exporting to Europe, then the producer can choose to be certified under the set of standards matching GLOBALG.A.P. If a producer is interested in selling products only in the domestic market, the producer can choose the set of standards more concerned with local production processes.

Scholars note that accepting foreign norms and standards causes friction and tension in the receiving side's social and cultural life. This problem has been recognized in importation of European laws,¹³⁷ and a similar issue might occur in the context of private norm importation as well. In this vein, the dual system, adopted by JGAP and ThaiGAP, may become an important opportunity to make GAP standards locally meaningful. Moreover, the dual system may become an important step for the local schemes themselves

¹³⁶ T Börzel and T Risse, 'When Europeanisation Meets Diffusion: Exploring New Territory' (2012) 35 *West European Politics* 196.

¹³⁷ For the context of the REACH Regulation, which may cause friction between the European system and local systems, see E Fisher, 'The "Perfect Storm" of REACH: Charting Regulatory Controversy in the Age of Information, Sustainable Development, and Globalization' (2008) 11 *Journal of Risk Research* 556; V Heyvaert, 'Globalizing Regulation: Reaching Beyond the Borders of Chemical Safety' (2009) 36 *Journal of Law and Society* 122.

(JGAP and ThaiGAP) to be accepted and understood in their countries. Then, the standards for domestic markets may become an interim step for local producers to seek a higher-level certification under the standards for exports in the future. Meanwhile, the GLOBALG.A.P.'s ideas of 'good' agricultural practices can gradually proliferate under the standards established for domestic markets.

One implication drawn from the cases of Japan and Thailand is that the receiving side is not a passive actor:¹³⁸ it can be a competitor by creating norms tailored to its local setting and accepting the GLOBALG.A.P. standards selectively. Indeed, there may be several rivals of GLOBALG.A.P. in the receiving State. The exporter of a norm (eg GLOBALG.A.P.) may therefore need to change. For instance, the GLOBALG.A.P. standards were modified to enter the US.¹³⁹ It will take several years to evaluate whether the exclusion of the environmental protection and workers' welfare issues from the US version was an appropriate way for GLOBALG.A.P. to proliferate in the US as including these issues had been an important feature of GLOBALG.A.P. One concern is that GAP in the US will not be transformed as dramatically as it would have been had the US received the full set of GLOBALG.A.P. standards. The US case may exemplify a dilemma regarding norm importation: '[w]hile importation is facilitated if the legal norm can be translated and appropriated to fit the local context, ... [legal norms] are more transformative if they challenge existing assumption'.¹⁴⁰

Research on private norm diffusion has just begun. Local transformation brought on by norm diffusion may take years and may even be invisible. Consequently, this article's analysis is limited to short-term research and to three research locations (Japan, Thailand and the US). However, if it is successful, private norm diffusion is a salient element for global regulatory change. It is important to trace the transformative effects over time and also broaden the research into different receiving countries.

¹³⁸ For the competition between foreign norms and domestic ones, the case of the FSC standards should be recalled. In some countries, FSC standards gained wide acceptance, while in others, such as the US or Sweden, rival standards emerged from domestic companies, creating more flexible and somewhat lower alternatives to the FSC scheme. See Cashore et al (n 19) 165–6. Also, for the competition among multiple standard-setters to become a single, dominant global standard, see T Büthe and W Mattli (eds) *The New Global Rulers: The Privatization of Regulation in the World Economy* (Princeton University Press 2011) 18–19.

¹³⁹ There is another development within GLOBALG.A.P. It recently created the new 'localg.a.p. program', in response to the large number of local GAP schemes around the world. Under this new programme, GLOBALG.A.P. assists local GAP initiatives that want to develop their own customized standards that meet local needs. GLOBALG.A.P. now increasingly attempts to consider local contexts and is involved from the time local schemes are created. See GLOBALG.A.P., the localg.a.p. program at <http://www.globalgap.org/uk_en/what-we-do/localg.a.p./localg.a.p.-Program/> accessed 4 April 2013.

¹⁴⁰ Shaffer (n 12) 12.