

# **Can Non-State Global Governance be Legitimate?**

## **A Theoretical Framework**

By

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## **ABSTRACT**

In the absence of effective national and intergovernmental regulation to ameliorate global environmental and social problems, “private” alternatives have proliferated including self-regulation, corporate social responsibility, and public-private partnerships. Among them, “non-state market driven” (NSMD) governance systems deserve elevated attention because they offer the strongest regulation and potential to socially embed global markets. NSMD systems encourage compliance by recognizing and tracking, along the market’s supply chain, responsibly produced goods and services. They aim to establish “political legitimacy,” whereby firms, social actors, and stakeholders are united into a community that accepts “shared rule as appropriate and justified.” Drawing inductively on evidence from a range of NSMD systems, and deductively on theories of institutions and learning, we develop a theoretical framework to explicate whether and how political legitimacy might be achieved. The framework corrects existing literature’s inattention to the conditioning effects of global social structure and its tendency to treat actor evaluations of NSMD systems as static and strategic. It identifies a three-phase process through which NSMD systems might gain political legitimacy. It posits that a “logic of consequences” alone cannot explain actor evaluations: the explanation requires greater reference to a “logic of appropriateness” as systems progress through the stages. The framework aims to guide future empirical work to assess the potential of NSMD systems to socially embed global markets.

Where national and international regulation of significant global social and environmental problems has been absent or weak, an array of voluntary, self-regulatory, shared governance and private arrangements are beginning to fill the policy void (Haufler 2001; Gunningham et al. 2003; Howlett 2000; Ruggie 2004; Hay et al. 2005). The interdisciplinary literature that has emerged to describe, understand, and explain the rise of these mechanisms includes rich descriptions of corporate social responsibility (CSR) (Vogel 2005), industry self-regulation (Webb 2002), political consumerism (Micheletti et al. 2003), voluntary instruments, and public-private partnerships (Rosenau 2000; Börzel & Risse 2005). In addition, large-N (Prakash & Potaksi 2006) and historical case studies (Sasser et al. 2006; Boström 2003; Gulbrandsen 2005) have addressed why specific types of private authority emerged, and why firm-level support for such mechanisms often varies within and across sectors.

Despite these advances, theory development is being hampered by the conflation of mechanisms with different characteristics, degrees of authority, scope, and prospects for transforming the global marketplace. We argue that “non-state market driven” (NSMD) governance systems ought to be differentiated from among these mechanisms. They deserve independent assessment because, unlike the voluntary nature of most other private authority, they are designed to create binding and enforceable rules. They can be formally defined as deliberative and adaptive governance institutions designed to embed social and environmental norms in the global marketplace, that derive authority directly from interested audiences, including those they seek to regulate, not from sovereign states.<sup>1</sup> Operationally, they use global supply chains to recognize, track and label products and services from environmentally and socially responsible businesses. They operate in what John Ruggie (2004:504) labels an emerging global public domain: an “increasingly institutionalized transnational arena of

discourse, contestation, and action concerning the production of global public goods, involving private as well as public actors.” Here, publics increasingly express their demands to moderate the excesses of global liberalism and to “embed” markets in broader societal goals.

Buoyed by widespread support in the forest sector,<sup>2</sup> NSMD systems have proliferated to address global problems including fisheries depletion, deleterious environmental impacts from food production, tourism, and mining, rural and community poverty, and inhumane working conditions (see Appendix A). Their potential impact is far from trivial. Current systems alone operate in sectors that represent one fifth of the products traded globally.<sup>3</sup>

What makes these non-state governance systems unique? How do they gain governing authority? What is their transformative capacity? To address these questions, we develop a theoretical framework that explicates how NSMD systems might achieve “political legitimacy,” defined as *the acceptance of shared rule by a community as appropriate and justified*. We focus on legitimacy because if NSMD systems are to achieve their goal of moving beyond static systems in which firms and social actors constantly evaluate and re-evaluate whether to withdraw support based on short-term cost-benefit calculations, they must become more deeply engrained as legitimate authorities (Levi & Linton 2003:419).

Our framework addresses three shortcomings in existing scholarship. First, we draw on, and revise, Cashore (2002) to differentiate NSMD systems from other forms of private authority. Isolating NSMD systems improves the prospects of cumulative findings on comparable cases.

Second, we highlight how globally institutionalized norms, or social structure, provide the constitutive and regulative basis of legitimacy for these systems. Such conditioning effects are ignored by virtually all existing scholarship on private authority. These effects are important to assess because they are analytically prior to the interactions and choices of the actors who

grant or refuse to grant NSMD systems legitimacy.

Third, we challenge the tendency in existing scholarship to assess support for NSMD systems as *either* strategic *or* norm-driven. Instead, our framework recognizes that whereas relevant members of the NSMD community may always be driven in part by strategic calculations, NSMD systems can both change, and reflect changes in, the constitutive norms underlying markets.<sup>4</sup> We argue that while much of the *initial* motivation for firms to participate comes from market-based incentives, a full-fledged theory of NSMD system emergence and institutionalization must address how firms, *as well as* consumers, community stakeholders, and nongovernmental organizations (NGOs) interact with norms embodied in, and promoted by, NSMD systems. Accounting for these interactions requires the integration of rationalist scholarship with sociological approaches to institutionalization. We posit that actor interactions produce a three-phase process through which NSMD systems may gain political legitimacy: initiation (phase I), building widespread support (phase II), and political legitimacy (phase III). As systems move through the phases, we argue that what March and Olsen (1989, 1998) identify as a “logic of appropriateness” becomes increasingly important to explain actors’ evaluations, although strategic action based on a “logic of consequences” continues to play a role.

Our method includes both inductive and deductive elements. Inductively, we draw on data collected over the last seven years through individual and collaborative research projects, as well as data in secondary literature.<sup>5</sup> Deductively, we draw on theoretical work in political science, sociology and management on logics of action, institutions, and advocacy coalitions to build propositions on conditions for movement from phase II to III. Thus, we are explicitly not engaged in theory testing, but in building a comprehensive theoretical framework. The need to build theory that encompasses the transformative impact that *might* occur – and that provides a

framework for future research on this question – is especially justified given the ultimate goal of NSMD systems.

## **1. DISTINGUISHING NSMD FROM OTHER FORMS OF PRIVATE GOVERNANCE**

Below we discern five characteristics of an ideal-type NSMD system. This effort allows us to differentiate NSMD systems from other forms of private authority and to show how other systems may diverge from or converge with the ideal-type over time.

First, NSMD systems do not derive policy-making ability from states' sovereign authority. As elaborated in Cashore's earlier work (2002), this feature does not mean that states are unimportant: some state agencies have provided financial support for particular NSMD systems and domestic and international regulatory environments potentially affect their activities. However, even in cases where governments supported their formation, NSMD systems do not derive governing authority from states nor are they accountable to them. This feature differentiates an NSMD system from traditional state governance or public-private partnerships, where states directly exercise or delegate authority.

Second, NSMD institutions constitute governing arenas where actors purposely steer themselves towards collective goals and values (Rosenau 1995), and where adaptation, inclusion, and learning occur over time and across a wide range of stakeholders. Dynamic governance differentiates NSMD systems from most traditional eco-labeling initiatives (e.g., Nordic Swan), which generally identify a static measure of environmental quality a firm must adopt to receive a label. NSMD system managers justify this design feature on the grounds that they make NSMD systems more democratic, open, and transparent than many of the business-dominated public policy networks they seek to bypass, as well as most corporate self-regulation and many social

responsibility initiatives.

Third, authority granted to NSMD systems emanates from the market's supply chain. Producers and consumers from extraction to end-users (in the case of commodities such as forest or agricultural products) or from service providers to consumers (in the case of services such as tourism) make individual choices about whether to require that products or services are certified for compliance to an NSMD system.

Fourth, NSMD systems aim to *reconfigure* markets. They attempt to ameliorate global problems that, in their absence, firms have little incentive to address. This feature distinguishes NSMD systems from new arenas of private authority to standardize business practices such as accounting or to improve market coordination. In those cases, economic incentives for profit-maximizing firms inherently exist. Thus, they pose no puzzle for compliance (Porter 2007).

Fifth, NSMD systems possess mechanisms to verify compliance and to create consequences for non-compliance. This feature means, in effect, they develop mandatory standards for those who sign onto the system. The most common compliance mechanism is a third-party audit in which auditors "certify" firm or producer compliance with the rules, or identify improvements required for a successful audit. In contrast, self-regulation and CSR standards are usually voluntary and often discretionary, even for those who sign onto them. Examples of the latter include the UN Global Compact, the OECD's Guidelines for Multinational Enterprises (revised in 2000), the Global Reporting Initiative, and, until 2005, the Chemical industry's Responsible Care program. To be clear, what defines NSMD governance is not NGO rather than business sponsorship – business-dominated initiatives may evolve into NSMD systems – but rather between systems that do or do not possess the above characteristics.

Arguably the first full-fledged global NSMD system was the Forest Stewardship Council

(FSC) certification program. Transnational environmental and social groups created the FSC in 1993 following governments' failure to negotiate a binding global forest convention. To avoid business domination, which many viewed as a key problem with state-centred processes, the FSC includes environmental, social, and economic decision-making chambers, each with equal voting weight. It also *excludes* governments from formal participation. The FSC created nine international principles and criteria (later expanded to 10) to guide the development of environmentally and socially appropriate standards in local settings around the world. The FSC accredits and requires auditors to certify companies who manage their operations according to FSC rules.

Forest industry and forest owner associations subsequently undertook their own initiatives in national settings including the United States, Canada, Indonesia, Finland, Brazil, Malaysia and Australia. In many cases, their interest in competing as a “legitimate” NSMD system in the global marketplace led them to adapt their systems to transnational market requirements or, as in the case of the Program for Endorsement of Forest Certification (PEFC), to create formal global institutions.<sup>6</sup> Because debates continue among industry, forest owners, and environmental groups over which program is preferable – like similar debates in other sectors – our framework draws attention to the dynamic interactions among burgeoning NSMD systems and their competitors as they vie for legitimacy.

Appendix A reviews the most prominent systems and identifies when they began to fit the NSMD classification. Examples include the Fair Trade Labelling Organization (FLO), which coordinates under one system groups who had worked on consumer campaigns to improve the conditions of poor and marginalized producers in the developing world. It covers internationally traded commodities and specialized goods including coffee, tea, cocoa, sugar, bananas, rice,



honey, vanilla, nuts, clothing, sporting goods, flowers, wine, and diamonds. Similarly, Social Accountability International, initiated by the nonprofit Council on Economic Priorities to reduce sweatshop labor practices, developed into a system that monitors individual companies according to specified social criteria, including child labor and worker safety (Bartley 2003; Courville 2003; O'Rourke 2003). The FSC model explicitly inspired the Marine Stewardship Council (MSC) governing natural fisheries management and the Sustainable Tourism Stewardship Council, among others. The International Social and Environmental Accreditation and Labelling (ISEAL) Alliance is an umbrella organization created to develop agreement on "best practices" for any NSMD system (ISEAL 2006).

## **2. THE GOAL OF POLITICAL LEGITIMACY**

The outcome our framework is designed to explain is "political legitimacy", as defined in the introduction.<sup>7</sup> Whereas the concept of legitimacy generally refers to viewing the actions of an entity as "desirable, proper, or appropriate" (Suchman 1995:574), our focus is specifically political legitimacy because it concerns the acceptance of a governance relationship, where commands ought to be obeyed. It reflects "a more general support for a regime [or governance institution], which makes subjects willing to substitute the regime's decisions for their own evaluation of a situation" (Bodansky 1999:602). Political legitimacy requires institutionalized authority (whether concentrated or diffuse) with power resources to exercise rule as well as shared norms among the community. Such norms provide justifications and a shared understanding of what an acceptable or appropriate institution could look like and bounds what it can and should do.

We focus on legitimacy because compared to sovereign states, which by definition

possess legitimate authority, or international organizations, which derive their legitimacy from the consent of already legitimate sovereign states, the authority of NSMD systems must be actively granted. Moreover, absent the coercive capacity of states, transnational systems rely to a greater degree on legitimacy to be effective.

We purposely avoid adding specific content to what legitimacy requires by definitional fiat. Instead our framework focuses conceptual attention on how the normative environment and interactions of actors within NSMD communities determine and shape the process and content of legitimacy granting. This approach highlights that *criteria of legitimacy are contingent on historical understandings at play and the shared norms of the particular community or communities granting authority*. Moreover, the range of actors that comprise the relevant political community and the nature of that membership are not given, but vary depending on the relevant market and social settings. For example, in forestry, the relevant community comprises forest landowners and forest management companies, producers of forest products and purchasers of those products further down the supply chain, as well as retailers and consumers. For tourism, it is tour operators, travel service providers, hotel and resort owners, local communities that are the destinations of travelers and that provide the workforce, and travelers themselves. In all cases, environmental and social NGOs also represent broader interested audiences in the global public domain.

### **3. A THEORETICAL FRAMEWORK**

Absent an underpinning of sovereign authority, and the obligation to obey that follows from it, NSMD governance initially requires its primary participants, firms and NGOs, to make conscious evaluations about *whether* to join and withdraw. Hence, our framework must identify

the processes through which day-to-day strategic evaluations on whether to participate give way to acceptance among a defined community that the NSMD system is an appropriate place in which to deliberate, develop, implement, and enforce environmental and social policies. Our theoretical framework designed to accomplish this task consists of two parts: social structure and actor interactions.

### **Social Structure**

Global norms and institutions structure actors' choices over whether to support NSMD systems. They serve a constitutive or legitimating function that has enabled the emergence of NSMD governance by defining what appropriate authority is, where it can be located, and on what basis it can be justified. They also serve a regulative function by prescribing and proscribing the boundaries of NSMD governance activities.

Constructivist International Relations scholarship has employed such a notion of social structure, drawing especially on insights from sociological institutionalism (Finnemore 1996; Meyer et al. 1997; Barnett & Coleman 2005; Reus-Smit 1997; Ruggie 1998:22-25). Although these writings employ various formulations – an “environment” in which organizations operate, “normative structure,” “social structure” – their basic insight is that already institutionalized norms define appropriate and inappropriate courses of action, legitimate institutional forms, and create a context in which cost-benefit analysis occurs, even making certain actions unthinkable.

Structuring can be understood to operate through an idea of “fitness”, where legitimacy is understood as embedded in social systems that provide a basis of appropriateness, or that make the purposes, goals, or rationale of an institution understandable and justifiable to the relevant audience in society (Weber 1994, 7; Bernstein 2001). Thus, legitimacy is enhanced when the

norms and rules of organizations conform to existing social structure, where they compete for legitimacy (Scott & Meyer 1983:140; Barnett & Coleman 2005:598). In the case of NSMD systems, the relevant social structure includes institutionalized global marketplace norms as well as emerging democratic, social, and environmental norms in the global public domain. These norms can be found not only in specific declarations or principles that might apply to the sector, product or process in question (for example, the Statement of Forest Principles or Convention on Biodiversity in the case of forestry or core International Labor Organization (ILO) conventions in the case of labor), but also include broadly accepted norms of global environmental, labor and human rights governance. These may be embodied in international treaties or “soft” declaratory international law, as well as action programs, or statements of leaders. Relevant international “hard” law includes legalized trade rules under the WTO, especially the agreement on Technical Barriers to Trade (TBT), which includes coverage of non-governmental standardizing bodies.<sup>8</sup>

Social structure, however, is not wholly determinative of NSMD success or failure for two reasons. First, NSMD systems may themselves be a source of change in international norms and rules. Second, in line with most social theory, we recognize that agents and organizations almost always possess some autonomy. They may therefore pursue a variety of strategies including acquiescence, compromise, manipulation, or strategic social construction to succeed within given structures (Barnett & Coleman 2005:600-602). For these reasons, our overall framework stresses the importance of the interaction of social structure with the dynamics of choice, an increasingly common strategy among scholars interested in the interaction of logics of consequences and appropriateness (Finnemore and Sikkink 1998; Risse et al. 1999; Checkel 2005).

### *Evidence that Global Norms and Rules Matter*

In addition to the self-evident incorporation by NSMD systems of substantive social or environmental norms on specific issues, three sets of relevant norms in social structure have facilitated their emergence. First, with some irony, sovereignty norms have worked to their advantage. Although NSMD systems are disadvantaged in gaining legitimacy in comparison to intergovernmental institutions because they must build authority from the bottom up, their autonomy from intergovernmental processes allows them to tap into emerging norms more quickly. NSMD systems in forestry, fisheries, workers rights, and agricultural production emerged because certification corrected inattention to existing problems or provided a way forward when international negotiations stalled. They also effectively bypassed thorny debates over sovereignty – frequently a source of intergovernmental stalemate – because they targeted firms, not states.<sup>9</sup>

Second, the emergence of NSMD systems has corresponded with a general shift in global environmental norms, and in the international political economy more generally, toward sympathy with market mechanisms and international liberalism more broadly (Bernstein 2001). This shift has provided a supportive normative environment for market-based systems like NSMD. For example, Principle 12 of the 1992 Rio Declaration on Environment and Development – the most widely accepted consensus statement on sustainable development norms – posits that environmental protection and open markets are compatible. This position is also found in the WTO preamble and in policy statements across the Bretton Woods and UN system. Recent events and initiatives reinforce this normative understanding, including the 2002 World Summit on Sustainable Development (WSSD), where public-private partnerships

emerged as a dominant mechanism to implement sustainable development in the shadow of disappointing progress in most areas of intergovernmental cooperation. We do not argue that this trend is necessarily “good” for achieving environmental or social goals. Rather, we simply note that an increasingly shared understanding exists that finding ways to work with markets and the private sector is the appropriate course of action in global governance.

Third, NSMD systems have tapped into increasing democratic pressures on procedural norms. These pressures range from demands for democratic reform and improved public accountability of international institutions to states and/or broader affected publics (Held & Koenig-Archibugi 2005; Payne and Samhut 2004), to pressure for “stakeholder democracy” that calls for “collaboration” and truer “deliberation” among states, business, and civil society (Bäckstrand & Seward 2004; Vallejo & Hauselman 2004). Moreover, international environmental and labor institutions, norms, treaties, and declaratory law have been on the forefront of promoting increased public participation and transparency at all levels of governance (Bernstein 2005). Specific examples include codification in principles such as Rio Declaration Principle 10 (which states that environmental issues are best handled with participation from all “concerned citizens at the relevant level”) and the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, which came into force in 2001. Institutional reforms along these lines include the creation of the United Nations Environment Program’s civil society forum (institutionalized in 2002), the World Bank Inspection Panel (created in 1993 to improve accountability to local communities), and the reform of voting and decision making procedures in the Global Environmental Facility in the mid-1990s to improve meaningful participation from developing countries.

Not surprisingly, NSMD systems have taken these democratic norms very seriously. For

example, they help explain the Forest Stewardship Council's eventual adoption of its three-chamber decision-making process. Likewise, the emergence of the Workers Rights Consortium can be explained, in part, by the failure of the Fair Labor Association (FLA) to develop multi-stakeholder processes in which social groups and institutional purchasers of products felt included in their policy process (the FLA has since adapted some of its governance mechanisms to better incorporate such interests). Similarly, the domination of Unilever in the development of the Marine Stewardship Council contributed to its limited uptake from environmental and social groups that ought to have been its biggest supporters. Following complaints of a "democratic deficit" from its backers and NGOs in 1997, it undertook a governance review that resulted in an overhaul designed to better ensure openness, transparency and accountability to all stakeholders (Marine Stewardship Council 2001). It left ultimate decision-making to a board of trustees, which reflected a broad range of interests and technical expertise, rather than its stakeholder council, in order to avoid capture.

The internal attention to democratic norms is increasingly matched by external expectations. States and international organizations, including the WTO, World Bank, ILO and Food and Agricultural Organization, increasingly demand that the development and implementation of standards be inclusive, transparent, include participation of stakeholders, and adaptable to local conditions in order to be recognized as legitimate. As one NSMD system official explained, "it's a chicken or egg"<sup>10</sup> situation, where democratic expectations created by NSMD systems are feeding back to create expectations for all social and environmental standards, including those set by traditional standard setters such as the International Organization for Standardization (ISO).

In terms of "hard" law, contemporary international trade rules provide an enabling

environment for NSMD systems in at least two ways. First, the neo-liberal normative environment reflected in contemporary trade regimes provides enabling conditions for market-friendly systems such as NSMD governance. While NSMD systems must navigate the trade rules that regulate international standards in order to avoid disputes, these rules target state regulation and leave significant leeway for non-state governance. Indeed, governments and intergovernmental organizations have resisted directly adopting an NSMD system standard in order to avoid trade disputes. For example, the ILO considered, but rejected a proposal to certify countries rather than firms with a “global social label”<sup>11</sup> owing to developing country concerns it would constitute a non-tariff trade barrier and contravene WTO rules (Bartley 2003:450).

Second, while ambiguities in trade law make it uncertain what the outcome of a trade dispute would be if a state adopted an NSMD system standard (Joshi 2004), NSMD systems are increasingly proactive in seeking to conform to international rules. For example, ISEAL has instructed its members to adhere to TBT Annex 3 (the Code of Good Practice for the Preparation, Adoption and Application of Standards) and Annex 4 (Second Triennial Review), which define conditions for recognition of international standards. NSMD systems have also started to register with the World Standards Services Network and ISEAL has recommended they conform to relevant ISO guides.

### **Actor Interactions: A Three-Phase Process toward Political Legitimacy**

Against this backdrop of an enabling global social structure, we posit a three-phase process of actor interaction that takes the perspective of actors or audiences (the NSMD community) along the supply chain who must evaluate whether to support the NSMD system in question. It also focuses attention on the legitimacy achieving strategies of NSMD systems and



identifies processes of interaction and learning through which political legitimacy develops. In so doing, it addresses the paradox of why profit maximizing firms would ever agree to abide by a non-state political authority that increases burdens and shapes their behaviour, especially when incentives to avoid, shirk and exit the system are high (Prakash 2001; Raines 2003; Rivera 2002; Sasser 2002). Similarly, it addresses why environmental and social groups would ever agree to a certification system palatable to firms when such systems face overwhelming pressure to devise “second best” standards that do not put supporting firms at a competitive disadvantage *vis-à-vis* non-participants.

This conundrum, when acknowledged at all, is frequently cited by rationalist accounts to argue that NSMD systems will never be effective. Such accounts assume that evaluations of legitimacy are utilitarian: firms base evaluations on cost-benefit calculations because they value profit-maximization while environmental and social organizations base evaluations on whether the system’s rules might ameliorate the environmental or social problem(s) they were created to address.<sup>12</sup> Whereas attention to such calculations may be appropriate for understanding functional legitimacy – the idea that organizations serve functions that constituents value (Barnett and Coleman 2005:597-598)<sup>13</sup> – it is incomplete for understanding how political legitimacy – which emphasizes a shared sense of community and norm generation – might emerge.

To overcome the limitations of utilitarian assumptions, we draw from complementary literatures in political science, organizational sociology and management that identify different logics or drivers of action. Political scientists, for example, have been drawn to March and Olsen’s identification of a “logic of appropriateness.” In contrast to a utilitarian logic of consequences, this institutional logic “...pictures political action as driven less by anticipation of

its uncertain consequences and preferences for them than by a logic of appropriateness reflected in a structure of rules and conceptions of identities” (1996:250). Such processes are “...built upon visions of civic identity and a framework of rule-based action.... Embedded in this notion are ideas about the obligations of citizenship and office, the commitment to fulfill an identity without regard to its consequences for personal or group preferences or interests” (1996:254). Similarly, management scholars (Oliver 1991; Greening and Gray 1994; Prakash 2001) have shown the explanatory power of enduring norms and organizational cultures on how firms manage relationships with an increasingly complex array of stakeholders. And, in an influential review, Suchman (1995) distinguishes subjective, and largely non-durable “day-to-day” evaluations of whether an organization seeking societal approval fits the evaluator’s own goals and interests (producing “pragmatic” legitimacy) from a situation in which the appropriateness of the entity becomes so engrained and durable that “to do otherwise was unthinkable” (i.e., it possesses “cognitive” legitimacy). Political legitimacy almost always has some elements of both, but fits neither ideal-type: It cannot rest simply on pragmatic evaluations since it requires accepting an institution that sometimes does not operate in congruence with particular actors’ immediate interests; but it rarely if ever corresponds to the “cognitive” ideal-type. It almost always rests on a discursive validation based on implicit or explicit justifications. To be clear, the distinction is not between “good” values like environmental protection versus, say, profit maximization, but between actions motivated by an un-embedded utilitarian logic versus a situation where interests are pursued in congruence with norms of institutional appropriateness as defined by the governance system. What is “good” is often precisely the issue to be worked out within politically legitimate arenas recognized by a wide ranging and diverse community.

Thus, we argue that logics of consequences and appropriateness are always at play in

motivating firms and social actors over support of NSMD systems. However, changes in the norms of appropriateness (from, say, laissez-faire liberalism to a more socially embedded market), which both enable the legitimacy of NSMD governance systems and are actively promoted through its socializing efforts, shift understandings of how profit-maximization should occur as systems progress through the three stages (see Diagram 1).<sup>14</sup> This can occur in two ways. First, as NSMD systems gain legitimacy, their rules may change material incentives facing firms, thus change evaluations of actors even when acting strategically. For example, the institutionalization of NSMD systems in niche markets creates new opportunities for participating firms to pursue profit. A second reason is that reference to a “logic of appropriateness” can explain how norms potentially re-define firms identities (e.g., from exclusively profit-maximizers to socially responsible actors) in accordance with the expectations of the NSMD system, whether or not they agree with particular decisions of these institutions (Checkel 2005:804; March & Olsen 1996, 1998; Suchman 1995).

Following recent scholarship on the interaction of a logic of consequences and of appropriateness (Checkel 2005), our framework moves beyond the view that targets of NSMD systems largely react in a strategic manner to material and normative pressure from system supporters (Risse et al. 1999). Rather, we assume norm-driven behaviour and socialization also play a role and conditions conducive to overt norm-driven behaviour increase in stages II and III.

### **INSERT DIAGRAM 1 HERE**

#### ***Phase I: Initiation***

This phase captures early support for NSMD systems, before any active efforts on the part of NGOs to change company evaluations through targeted boycotts, public shaming, or

other information and publicity campaigns.<sup>15</sup> Thus, economic demand for certified products will be limited or non-existent. Without firm support at this stage, the particular certification program will necessarily die.

**Firm Evaluations.** According to the utilitarian logic that dominates at this stage, firms must perceive the costs of NSMD governance to be less than current or potential economic benefits. Thus, everything else being equal, “model” firms already performing at, or close to, the requirements of the NSMD system will join first since the system will grant an outside stamp of approval that differentiates them from their competitors. For other firms, the high cost of changing practices to meet a system’s requirements acts as a deterrent.

A variety of intervening factors influences how firms make these cost-benefit calculations, especially whether to take into account strategic considerations and longer term risk exposure or only short-term profit-maximization. First, non publicly-traded firms with a low debt load can more easily adopt a longer time frame than firms with higher debt loads and publicly-traded firms. Likewise, companies with highly recognized logos that render them *de facto* monopsonists, such as Nike, have greater leeway in how to evaluate support for certification programs. Third, managers may find a “business” case to adopt a NSMD standard for efficiency or as part of a longer term strategic decision. For example, they may be convinced the standards will help them become more efficient and lower costs, improve labor or community relations, attract investment, open new market opportunities, reduce a variety of risks, or anticipate and avoid future regulatory burdens. These arguments may be part of NSMD systems’ attempts to convince firms to join, or may be generated internally. They depend in part on corporate culture and/or the values of senior managers (Prakash 2001; Howard-Grenville & Hoffman 2003; Vogel

2005:19-24).

Finally, firms that market environmentally or socially sustainable products have a clear incentive to join since their core values fit with the system. Indeed, when a firm faces uncertainty over its profit maximizing choices, it may “fall back” on existing values, which could include environmental stewardship or social responsibility (Delmas & Toffel 2004). Such values vary significantly across firms in the same sector. At this point a consequentialist logic dominates because firms still aim to maximize core values. However, because those values come in part from non-market norms, a logic of appropriateness plays a supporting role. To the degree such values overlap with values held by social and environmental groups, it can facilitate norm generation within the relatively small community at phase I.

**Environmental and Social Group Evaluations.** Like firms, environmental and social groups in phase I make choices driven by strategic calculations that fit their own core values and organizational self-interest. They have an incentive to participate in and positively evaluate governance systems that respond to their goal of ameliorating social and environmental problems.

**Expected Result in the Marketplace.** The dominance of strategic logic will first create segmented or “niche” markets that signal conformity of a small number of firms’ practices with NSMD system requirements. As a result, phase I creates a well defined, although small, “political community” of firms and social and environmental stakeholders, all of whom benefit from addressing global problems. Their overlapping values and strategic interests predisposes them to develop “trust” ties, shared norms and understandings, as well as feelings that they are

“fighting the good fight” amidst a wave of poor practices elsewhere.

However, the small group of participating firms will be unable to make a serious dent in ameliorating global problems for two reasons. First, solving them requires widespread support. Second, because NSMD systems initially attract firms already practicing close to a system’s standards, they make relatively limited impact “on the ground.”

**Evidence for Phase I.** The empirical evidence on initial firm uptake of NSMD systems illustrates the plausibility of our arguments. In the forestry case, the vast majority of industrial forest companies worldwide refused to support the FSC in the early days. Instead, support came from a handful of firms, such as Collin’s Pine in Oregon, interested in distinguishing their practices from those of their heavily criticized competitors (MacArthur Foundation 1998). Many of those initial supporters were small private forest owners willing and able to put environmental values before profits (Hayward and Vertinsky 1999). Likewise, the first supporters of Fair Trade coffee tended to be small business cafés that marketed their concern with developing country coffee production to appeal to their educated clientele (Courville 2001). Similarly, virtually every empirical study reveals that NGOs make strategic evaluations based on whether NSMD systems achieve core values of environmental or social improvement.

### ***Phase II: Building Support***

A major conundrum confronts systems vying for greater support: to attract firms who face higher compliance costs to join, systems face pressure to ease behavioural requirements, something strategically motivated environmental and social groups will resist. Phase II is thus marked by sector or firm-level shaming and/or boycotting activity that targets initially

recalcitrant companies in an attempt to raise the costs of non-participation.

If firms and NGOs followed this strategic logic, we would expect to see divergence of standards, fragmentation of systems, and the creation of distinct and polarized communities. While some evidence supports this explanation for marketplace dynamics, this phase is also marked by convergence, or, in some sectors, oscillating divergence and convergence. To explain convergence, we argue that normative pressures from global social structure combined with the emergence of shared norms and learning can lead to a redefinition of disparate interests and the prerequisites for widespread community building. When convergence occurs, discerning strategic versus norm-governed behaviour becomes more difficult since interests may be redefined. Below we explain these countervailing dynamics and assess these arguments against the empirical evidence.

**Firms' Strategic Behavior.** Firms' strategic choices at this phase fall under three categories. The first group comprises firms that initially joined because they easily met a system's standards. Their desire to see the system expand rests on the relative evaluation of the economic benefits they receive from a niche system that differentiates them from competitors and the costs they incur from already practicing at a higher standard. Only if costs outweigh benefits does expansion serve their interests, because it would "raise the bar" of competitors operating in less stringent regulatory environments. The second group comprises firms that initially joined because their organizational culture or values and financial health pre-disposed them to be proactive. They should generally support expansion since it would promote what they believe to be appropriate business practices.

The third group – comprising the vast majority of firms – are those that initially rejected

participation because of perceived costs or fears of loss of autonomy to NGOs with limited knowledge of how markets function. This group is the primary target of environmental and social groups who aim to increase participation.

Utilitarian logic dictates that to attract this third group, in the absence of increased market demand and/or price premiums, certification systems must relax behavioural requirements to reduce compliance costs because this group has further to go to meet standards. Moreover, the experience of systems in Appendix A has been that price premiums and demand only develop incrementally because of hurdles in the supply chain, including fragmentation of producers and limited awareness of customers and consumers. Even if, miraculously, supply chain support quickly accounted for, say, 50% of demand, the unregulated 50% would still produce countervailing pressure on standards if compliance costs are high since it would leave a sizable market for certified companies who have an incentive to cheat or exit the system.

**Environmental and Social Groups' Strategic Behavior.** Environmental and social groups essentially fall into two camps: those supportive of the creation of NSMD systems and those who were either indifferent or critical of such efforts.<sup>16</sup> The strategic interest of the former group is to maintain or increase standards. They have “learned” that existing standards can be met (they can point to companies who joined at phase 1) and are thus disposed toward shaming firms to meet these standards. They may even believe standards can be raised because some firms did not have to significantly change practices to meet them. Sasser (2002), for example, found that most NGOs will not be ready to grant legitimacy to non-state governance until the on-the-ground effects are shown to improve environmental or social integrity. The second camp is freer to criticize perceived deficiencies in existing systems. They point to unpopular firms receiving



certification or rules and standards they deem inappropriate. Their interest is to raise standards. However, successful efforts to do so risk driving away firm support.

**Evidence of Strategic Action in the Marketplace.** The evidence indicates that these strategic dynamics tell only part of the story.

Supporting this logic, we observe many efforts to fend off certification, justify the status quo or existing government regulation, and discredit supporters. For example, the majority of forest companies in North America and Europe initially balked at the FSC, explaining that public policies were wholly adequate (Cashore 2002). Similarly, companies criticized for using developing country “sweatshops” such as Nike initially defended their practices. NSMD systems in their early stages, such as in fisheries and mining, continue to see limited uptake by most companies, and little support by retailers along the supply chain. Likewise, Starbucks and Peet’s coffee initially attempted to justify their coffee purchasing practices as responsible.

Environmental and social groups responded strategically to denounce such claims. Tactics have included shaming companies through the media with evidence of their destructive practices, and obtaining support from customers, whose operations are not the target,<sup>17</sup> for improved performance from their suppliers. For example, the US apparel industry has been much more responsive to activists’ “dirty gold” campaign than their mining industry suppliers.

When “fending off” fails, industry associations often move to a “plan b” strategy of “pacifying” through the creation of new initiatives (Oliver 1991). These alternatives – mostly of the kind we contrasted to NSMD systems above – rarely include meaningful stakeholder governance or require significant behavioural changes. Forestry and tourism, in particular, have been marked by proliferation of systems. Under such circumstances, the “community” becomes

polarized with few shared norms.

**Evidence of Norm-Driven Activity, Learning, and Pressures for Convergence.** An observed, though unintended consequence of fragmentation has been increased public debate among supporters of competing systems. In such cases, as each side has argued about the appropriateness of their preferred responses, they simultaneously learned about causal mechanisms that permeate efforts to institutionalize NSMD. Moreover, various non-industry actors gained knowledge previously unavailable to them about how the industry actually works, including details of production and processes (McDermott 2003). Strong evidence for this pattern comes from forestry, the sector with the longest history in our phase II. In these cases, competition moved from a binary opposition to more nuanced discussions of possible “win-win” solutions and learning among NGOs that some practices previously deemed detrimental may have positive social or environmental consequences.

The mechanisms under which this can occur may vary, but inductively we can discern two patterns. First, business-initiated competitors frequently move toward incorporating characteristics of NSMD systems – they engage in “mimetic isomorphism” or “mimicking the most prominent or secure entities in the field” (Suchman 1995:589). For example, although the chemical industry maintains control over Responsible Care’s governance, it started to require third-party verification of its standards in 2005. Similarly, the FLA, spawned by the US Apparel Industry Partnership, initially lacked mandatory standards or independent verification of compliance, but introduced mandatory third-party auditing in response to competition with the Workers Rights Consortium (Bartley 2003; Göbel, 2004:51-52). And, whereas the American Forest & Paper Association (AF&PA) attempted to retain as much authority as possible over its

Sustainable Forestry Initiative when it created an external advisory committee, this body's failure to fit the norms of what the marketplace considered appropriate led AF&PA to adapt again and create an independent multi-stakeholder board with control over rule development. This strategy is at once an attempt to buttress legitimacy by conforming to established models or standards *and* a signal that reinforces the legitimacy of the organizations mimicked, since it recognizes those entities as the accepted standard.

Second, these systems frequently act strategically to enlist "business friendly" environmental and social groups in an attempt to gain credibility in the wider community, but with the consequence of opening up space for shared norms to emerge. This occurs because even business-friendly NGOs will attempt to influence understandings from the "inside" and will share information with mainstream activists. False claims and rhetoric on all sides become less tenable as greater information is made available to all parties. Together, these two patterns of behaviour suggest that the transformation of many business-initiated NSMD competitors toward the NSMD model illustrates an appropriateness logic at play. In perhaps the clearest example, most firms and business associations in Europe and North America have begun to justify their support of forest certification as an engrained business practice – a justification completely absent in the mid-1990s (personal interviews).

Convergence effects can be observed both within NSMD systems and competitors as a result. In the former case, as market support increases incrementally for certification in general, more firms might join the original program in the hope of "working from within" to develop market-friendly standards. A greater sense of community develops as systems focus on providing strategic advantages for firms that join, sharing experiences, and directing attention to the technical means of implementation. For example, initially, virtually all leading environmental

groups opposed certifying timber from plantations or old growth forests. However, intense discussions led activists to “learn” that fast growing plantations could play a role in reducing demand elsewhere and minimize environmental impacts. Likewise discussions about how old growth forests function led FSC to accept responsible harvesting in them. Such discussions generated the concept of “high conservation value” forestry – a normative term that now permeates forestry discussions. In the case of shade grown coffee certification, communities of shared understandings are emerging as participants gain scientific knowledge about the role of shade and fertilizers in environmentally-friendly bean growing and the existence of markets that reward such behaviour.

In the case of NSMD competitors, pressure mounts to “ratchet up” their efforts in response to market demand and the broader normative environment. For instance, many large scale coffee companies are working with the Rainforest Alliance to increase their own behavioral requirements in order to access a coffee certification market dominated by small growers (Fair Trade) and organic coffee (IFOAM) producers. Likewise, environmental groups established the Tropical Forestry Trust to help forest companies access green markets in exchange for a commitment to pursue certification in the future.

At this point, strategic versus norm-driven motivations and behaviour become hard to disentangle. Such difficulties resonate with broader trends noted in the management literature, which points to shifts in business practices from viewing social and environmental initiatives as issues of regulatory compliance to matters of social responsibility or “strategic engagement” (Howard-Grenville & Hoffman 2003:71). Core values of business may remain largely unchanged, but norms of the appropriate way to do business are shifting.

Accordingly, we observe business-led efforts that appear strategically motivated, but

operate within a new understanding of appropriate marketplace behaviour. The new market environment creates an incentive for firms to convince purchasers down the supply chain to recognize all NSMD certification programs as appropriate, arguing that “competition is good” but “clarity is needed.” In response, some entrepreneurial environmental groups have opted for a “third way” of initiating programs that fit the NSMD governance category, but with more relaxed standards than earlier programs. In addition, we see the rise of umbrella organizations such as ISEAL to build consensus on best practices and multi-stakeholder efforts designed to encourage increased understandings, collaboration, and reduction of uncertainty. Such efforts include formal meetings of supporters of different programs or approaches and new proposals to address the legitimacy and appropriateness of both specific standards and “rules of the game.” In the forest sector this resulted in the International Forest Industry roundtable publicly adopting virtually all of the FSC principles and criteria. When these efforts failed to address environmental NGO concerns, it actively sought agreements with environmental groups through a global multi-stakeholder process, the Forest Dialogue.

Phase II can lead to at least three scenarios. First, the combination of increased public awareness and competition among systems can put pressure on governments to move in and regulate the problem. However, this seems unlikely at the global level since the collective action and political obstacles to international agreement on problems that prompted most NSMD systems remain. Second, institutionalization may continue to be elusive, with pressures for divergence and convergence fluctuating. This might be owing to resistance to learning, mistrust, or because of deep divisions within the NSMD community, whether between firms and NGOs, among NGOs, or because other relevant actors such as indigenous communities may hold very different understandings of what governance norms are appropriate. Here, we would expect to

see pockets of success, but also confusion in the marketplace and little progress on the broader global problems driving NSMD governance attempts. A third possibility is the institutionalization of NSMD governance to the point that a critical mass of actors in a sector agree on a common project and to abide by the rules of systems to which they are bound. After describing what this stage might look like, we hypothesize about the conditions that facilitate its emergence.

### ***Phase III: Political Legitimacy***

Reflecting our description of political legitimacy, in this phase the full range of stakeholders within a targeted sector recognize their membership in a political community that grants an NSMD system authority to govern. Power struggles do not end – thus strategic action still occurs – but the community recognizes NSMD systems as legitimate arenas in which to mediate disputes and address policy problems. While market transactions along the supply chain still provide the mechanisms through which authority is embedded, and supply chains and product labelling are still critical for recognizing and enforcing compliance, firms no longer evaluate from a strictly strategic perspective whether to grant support to NSMD systems. Instead, they work through them to advance their interests. Similarly, environmental groups move from contingent support based on a specific standard to an acceptance that the NSMD system is a legitimate arena in which to develop appropriate standards. Institutional arrangements facilitate processes in which firms and non-business stakeholders jointly participate to develop standards that best encourage efficient and effective ways to address social and environmental problems.

Since no current system operates fully at this phase, we cannot give empirical illustrations, nor can we pre-judge the exact institutional form NSMD governance will take. It

could be centered on a single sector-wide system or a coordinated network bound together by shared norms or a common set of minimal standards and practices. Regardless of its institutional form, once fully institutionalized, NSMD governance standards and behavioral requirements can be *increased* without putting supporters at a competitive disadvantage as virtually all firms in the legitimate marketplace would be part of the NSMD community.<sup>18</sup>

### ***Conditions for Moving from Phase II to Phase III***

Developing propositions on the conditions for moving from phase II to phase III cannot proceed inductively since systems are, at most, at the beginning of such a transition. We thus proceed deductively, drawing from two distinct literatures that address how diverse members of a policy community may come to accept as appropriate particular procedures and/or policies even as they maintain distinct core values.

The first literature we draw upon is the “advocacy coalitions framework” (ACF) (Sabatier and Jenkin-Smith, 1993). While complex, the key contribution from this literature relevant for NSMD systems is its findings that “policy-oriented learning across coalitions” can lead to congruence, or at least mutual understanding, among groups with distinctly different core values under certain conditions. Since phase III concerns legitimacy of systems rather than agreement on outcomes among groups, we would expect that such learning processes are essential, i.e., we hypothesize that they constitute necessary conditions for moving to phase III. A key mechanism for policy learning this literature finds is a forum where expert knowledge from either side can be presented, criticized, and justified. A related set of conditions, identified in a recent study that expanded the ACF to include the psychology of stakeholders, concerns procedural factors. It found the strongest statistical associations were among trust, procedural fairness, and a

consensus on the legitimacy of their collaborative policy process (Leach and Sabatier 2005:498). These findings resonate with pressures on NSMD systems toward democratic decision-making, as well as recent empirical findings that suggest a lack of participation and accountability in NSMD rule-making, or lack of resources to enable participation, prevents a sense of “ownership” among participants in the scheme, which can in turn influence perceptions of justice and fairness (de Azevedo 2004:88-89; Raines 2003).

A second literature, that adapts insights from Jürgen Habermas’s theory of communicative action to international relations, reinforces the importance of shared understandings and fairness (Risse 2000:2005). This scholarship argues that legitimacy is enhanced under conditions where actors share enough of a “common lifeworld,” of collective interpretations of the world and themselves, upon which they can draw to make truth claims and interact within a system of norms and rules perceived as legitimate. Actors must also be open to arguing and persuasion and avoid pulling rank, using private information, or coercive tactics.

The most important empirical finding in this literature for our stage III is that argumentation as described above, which facilitates legitimacy, has been found mainly to play a dominant role when norms are already well institutionalized (Risse 2005:164-165; Risse et al. 1999). Though this creates a circularity problem since the legitimacy of the system is required for participants to be willing to forego strategic behaviour, it also leads us to hypothesize that learning processes in the lead-up to phase III are important in designing formally democratic or deliberative procedures, since practices associated with true deliberation are unlikely to take hold until late in a process of socialization to the norms of the system.

These findings suggest two additional propositions about the conditions under which NSMD systems might move to phase III. First, learning processes must be established that



include forums for exchanges of expert information, the building of databases of experiences, and the development of best practices. Second, systems must be designed to create a learning environment in which stakeholders can “build community” that taps into shared understandings of legitimacy among participants. These understandings in turn often stem from broader legitimating norms globally. One value, fairness, stands out as important, but depends less on formal procedures than on a sense that weaker actors have a reasonable ability to influence outcomes and that mechanisms are in place to ensure, for all actors, a sense of ownership of decisions that affect them. As the FSC and MSC examples indicated, and best practices developed by organizations like ISEAL dictate, this is currently a priority, although challenging to achieve in practice. Virtually all systems identified in Appendix A are involved in processes to enable better access, transparency, and a sense of ownership among disempowered players, especially firms and social groups in the South, and small producers generally.

## **CONCLUSION**

Our framework makes three theoretical contributions. First, it reveals the significant influence of social structure on the emergence and institutionalization of NSMD systems, and its interaction with firm and NGO evaluations. Second, it demonstrates that static analyses, in which preferences are treated as given, are unable to capture how the interactions of firms and social and environmental actors can create new identities and shared norms that drive the evolution of NSMD governance systems. As our analysis suggests, and empirical examples illustrate, many NSMD arrangements are engaged in legitimating processes that contain elements of a logics “of appropriateness” and “argumentation” in which stakeholders and targeted actors can discuss, argue, and deliberate in increasingly legitimate arenas about NSMD governance and standards.

This last point reveals a contribution to the ongoing dispute in International Relations theory over which “logic of action” takes priority. Our analysis supports the growing recognition that both a “logic of consequences” and “logic of appropriateness” are almost always at play, but one or the other may appear to take priority in different contexts. In the case of NSMD governance systems, the need to pay attention to the explanatory power of a logic of appropriateness increases as institutionalization progresses. This proposition, built upon our preliminary empirical assessment, is especially significant as the governance in question takes place in the global marketplace, a realm in which utilitarian logic is assumed to dominate.

In addition to these theoretical contributions, our framework suggests a number of implications for the future of NSMD systems. First, their transformative potential to socially embed markets is greater than that of other non-state, hybrid and voluntary initiatives with which they have been conflated. However, if we are right that political legitimacy ultimately rests on community building, achieving it will be much more challenging for NSMD systems than for other forms of private authority. Members of self-regulatory systems or private technical networks for business coordination, for example, tend to share common identities and a focus on pragmatic and performance-oriented criteria of legitimacy, driven by goals of efficiency and economic gain (Porter 2007). In contrast, NSMD systems engage a wider array of stakeholders with multiple identities (producers, consumers, environmentalists), geographic locations, and interests. Thus, actors within an NSMD network are more likely to disagree on which performance criteria produce legitimacy and their relative importance vis-à-vis procedural norms.

Second, our framework suggests that analyses based solely on utilitarian firm-level responses severely underestimate the potential of NSMD systems, misrepresent their wider

transformative goal of socially embedding the global marketplace, and neglect the importance of wider social structure. Such analyses would erroneously conclude that while NSMD systems are currently doing some good in niche markets, the prospects for widespread adoption are minimal. Instead, they will serve a purpose mostly of rewarding companies already engaging in good practices or easing the guilt of consumers purchasing those products.

To correct for this truncated picture, which is not supported by the empirical record, our theoretical framework identified processes through which authority is generated. While we are not Pollyannish about the prospects for successful transformation – the necessary conditions present formidable hurdles – preliminary evidence of the evolution of some systems in this direction justified our attempt to better understand how and whether such transformations might occur. The theoretical framework developed here positions the next step for empirical research: theory testing that includes a systematic assessment of the *full* range of actor motivations, and the factors that influence them, within and across NSMD communities as these systems evolve.

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## ENDNOTES

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<sup>1</sup> This definition builds on Cashore (2002). The acronym admittedly does not capture the phenomenon perfectly, but we use it because of its uptake in the academic literature and to avoid further proliferation of jargon.

<sup>2</sup> The majority of industrial or commercial forest lands in the United States, Canada, and Europe are under a third-party certification system. Major retailers in Europe and the United States have announced a preference for certified forest products. Concerted efforts are underway to expand support for certification in developing countries (Cashore et al. 2004). Evidence is also mounting for certification's behavioral impact (Newsom, Bahn, and Cashore, 2006).

<sup>3</sup> This figure was derived from WTO (2003) by dividing the total trade in sectors represented in Appendix A with total global trade.

<sup>4</sup> For example, while Cashore et al. (2004) recognized the importance of assessing moral and socially engrained motivations, it focused primarily on explaining divergence in self-interested calculations of firms across countries. Nor did it address how motivations might become more norm-driven over time, other than through "routinization."

<sup>5</sup> This data includes over 230 interviews and 21 country level analyses that focused primarily on NSMD in the global forest sector. Additional research conducted from 2004-2006 included key informant interviews and documentary analysis on the range of NSMD systems in Appendix A.

<sup>6</sup> European forest owners originally created the PEFC as an "umbrella" "mutual recognition" program for national initiatives developed to compete with, or preempt, the FSC model in domestic settings. Only later did it evolve toward the NSMD ideal-type.

<sup>7</sup> For a fuller defense of that definition, see Bernstein 2005.

<sup>8</sup> We *do not* equate law and legitimacy, but acknowledge that law can be an important source and indicator of legitimacy for a rule.

<sup>9</sup> Still, sovereignty has worked against legitimacy at the national level in some developing countries where some NSMD schemes are seen as reflecting Northern interests.

<sup>10</sup> Personal interview, senior executive of an NSMD system, 12 January 2006.

<sup>11</sup> The impetus for the proposal came from the Clinton administration as part of its promotion of labor standard certification, which eventually evolved into the NSMD system FLO.

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<sup>12</sup> Our depiction of firms' values and environmental and social groups' values are stylized in order to capture the core conflict within NSMD communities. Firms, NGOs and other actors are not monolithic in their values, which our discussion of the three phases reveals.

<sup>13</sup> Functional legitimacy corresponds roughly to Suchman's (1995) concept of "pragmatic" legitimacy, where actors evaluate an organization based on whether it produces benefits for an audience, is responsive to its larger interests, or reflects its value.

<sup>14</sup> Thus, ontologically, our position is that markets are always socialized to some degree (Polanyi 1944). Our interest is in how changes in the logic of appropriateness can modify the context in which actors define their interests and identities.

<sup>15</sup> In practice some firms may be targeted as programs emerge, but for analytic reasons we address targeting as part of phase II.

<sup>16</sup> This is a stylized simplification for the sake of theory building.

<sup>17</sup> A general empirical finding in all sectors represented in Appendix A is that firms that are only required to give "preference to" certified products in their procurement policies, but themselves are not the target of NSMD systems, are much more likely to give support than firms required to undergo behavioral changes.

<sup>18</sup> Black markets could still exist, but they are a problem not specific to non-state governance.

## Appendix A: Examples of NSMD Governance Systems

	Origin	Initiators	Policy Problem	Market	Regulatory Target	Tracking Process?
Fair Labour Association (FLA)	2001*	Industry, Clinton administration, consumer and labour rights organizations	Labour conditions, workers rights	Apparel, shoes	Producers i.e., sweatshops	Yes
Forest Stewardship Council (FSC)	1993	Environmental groups, handful of socially concerned forest management companies	Global forest deterioration	Forest products	Industrial forest companies and forest owners	Yes
Fair Trade Labelling Organization (FLO)	1997**	European NGO and consumer groups	Poor and marginalized producers in the developing world, working conditions	Includes coffee, tea, cocoa, sugar, bananas, soccer balls	Primary and value added producers	Yes
International Federation of Organic Agriculture Movements (IFOAM)	1997***	Organic-focused farmers' organizations and extension specialists	Impacts of food production (chemicals in soil, water, human health)	Agricultural products	Farmers and processors	Yes
Leadership in Energy and Environmental Design (LEED)	2000	US Green Building Council	Environmental impacts of construction industry	Home and business builders	Building sector	Yes
Marine Aquarium Council (MAC)	1998	Environmental groups, aquarium industry, public aquariums and hobbyist groups	Ecosystem fisheries management and fish handling	Hobby aquarium trade	Fishers	Yes
Marine Stewardship Council (MSC)	1996	World Wide Fund for Nature (WWF), Unilever	Fisheries depletion	Fish sales	Industrial Fishers	Yes
Mining Certification Initiative (still in formulation phase)	2001	World Wide Fund for Nature, Placer Dome	Natural resource destruction	Mining products, including gold and jewellery	Mining companies	Emerging
Program for the Endorsement of Forest Certification (PEFC) (Umbrella for a number of national schemes)	2000	European forest owners association	Sustainable forestry	Forest products	Forest owners	Yes (in some countries)
Rainforest Alliance Certification	1993	Sustainable Agriculture Network (SAN) (Environmental groups)****	Impacts of tropical agriculture on biodiversity, waterways, deforestation and soil erosion	Agricultural products including bananas, coffee, cocoa, citrus, flowers and foliage	Tropical farmers, especially Central America	Yes
Social Accountability International (SAI) (Originally CEPAA)	1997	Council on Economic Priorities, and handful of firms	Workers rights, community involvement	Wide range of factory products including toys and cosmetics (Excludes by design extractive operations)	Factories (manufacturing facilities)	Yes

Sustainable Forestry Initiative (SFI) Certification	1994*** **	American Forest & Paper Association	Sustaining forests	Forest products	Forest companies	Yes
Sustainable Tourism Stewardship Council	2003*** ***	Rainforest Alliance, multilateral agencies and industry representatives	Impacts of tourism on biodiversity	Tourism	Tourism facilities, operators, organizers, and tourists	Emerging

\* Year FLA established a system in which auditors verified samples of companies for compliance. In 2002, the FLA Board, rather than companies, decided which companies to monitor and assigned monitors to them.

\*\* FLO united 15 separate initiatives, the first of which was the 1988 Fair Trade Initiative based in Holland.

\*\*\* Founded in 1972, but gradually evolved into an NSMD system. In 1997 established an arms-length body to accredit certifiers.

\*\*\*\* SAN was created in 1992 to develop standards and pave the way for Rainforest Alliance certification of agricultural products, the first of which occurred in 1993. Its first coffee certification took place in 1996.

\*\*\*\*\* 1994 was the year that the SFI provided for a third-party verification component.

\*\*\*\*\* Effort to unify disparate eco-tourism programs operating globally.

Sources: Primary research, including in person interviews and communications, as well as Bartley 2003, Courville 2003, and Vallejo and Hauselmann 2004.

**Diagram 1: The Three Phases of NSMD Governance**

